

WISCONSIN



DWD

Department of Workforce Development

Youth Apprenticeship Forum



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Worker's Compensation Requirements In Wisconsin

What is Worker's Compensation Insurance?



- ❖ Worker's Compensation is a system of no fault insurance that provides wage replacement and medical benefits to employees for accidental injuries or diseases related to the employee's work.
- ❖ Exclusive remedy for all work related illnesses and injuries.
- ❖ Protects an employer from lawsuits brought by an employee because of a work related illness or injury

What benefits are payable under a worker's compensation policy?



- ❖ All reasonable and necessary medical costs.
- ❖ Lost time benefits for wage loss (Temporary Total Disability (TTD) or Temporary Partial Disability (TPD)) sustained by an employee while recovering from an injury. These are based on two-thirds of the employee's wage rate up to a specific maximum. Eligibility for temporary disability benefits are determined and must be documented by a doctor.

What benefits are payable under a worker's compensation policy?



- ❖ Benefits for permanent disability (Permanent Partial Disability (PPD) or Permanent Total Disability (PTD)) if the employee does not fully recover from the injury. Permanent disability is awarded for the potential, or actual, loss of earning capacity. The amount of benefit payment for permanent disability depends on the seriousness of the permanent disability.
- ❖ Vocational Rehabilitation.
- ❖ If a death occurs to an injured employee, death benefits and burial expense will be paid up to specific limits.

Who is covered by the WC Law?



- ❖ Nearly all private and public employees in Wisconsin are covered by the WC Act.
- ❖ A few classes of workers who are covered by federal laws and are not covered by the WC Act.
- ❖ Employees of the federal government (such as postal workers, employees at a veterans administration hospital, or members of the armed forces) are covered under the Federal Employees' Compensation Act.

Who is covered by the WC Law?



- ❖ People who work on interstate railroads are covered by the Federal Employers Liability Act.
- ❖ Seamen on navigable waters are covered by the Merchant Marine Act of 1920 (known as the Jones Act).
- ❖ People loading and unloading vessels are covered by the Longshoremen's and Harbor Worker's Compensation Act.

Who is considered an employee?



- ❖ Every person in the service of another under any contract of hire, express or implied, including;
- ❖ Family members (except for some farm operations)
- ❖ Minors
- ❖ Part-time employees
- ❖ Corporate Officers

Employee Exceptions



- ❖ Domestic servants
- ❖ Any person whose employment is not in the trade, business, profession or occupation of the employer
- ❖ Some farm employees
- ❖ Volunteers, including volunteers of non-profit organizations that receive money or other things of value totaling not more than \$10.00 per week
- ❖ Religious sect members that qualify and are certified for an exemption
- ❖ Employees of Native American tribal enterprises (including casinos), unless the tribe elects to waive its sovereign immunity and voluntarily become subject to the Act.

When is Worker's Compensation Insurance Required?



- ❖ If an employer usually employs 3 or more full or part-time employees. This employer needs insurance immediately upon employing a 3rd person.
- ❖ If an employer employs 1 or more full or part-time employees and has paid gross combined wages of \$500 or more in a calendar quarter. This employer must have insurance by the 10th day of the first month of the next calendar quarter.

When is Worker's Compensation Insurance Required?



- ❖ There are four calendar quarters in a calendar year; the 1st quarter is January through March, the 2nd quarter is April through June, the 3rd quarter is July through September; and, the 4th quarter is October through December.
- ❖ The farm (farmer) who employs 6 or more employees (at one or more locations) on the same day for 20 days (consecutive or non consecutive) during a calendar year. A calendar year is January through December. The farmer must have insurance within 10 days after the 20th day with 6 or more employees is reached.
- ❖ Some relatives of farmers are not counted towards the 6 employees, but will be covered under a policy if one is purchased.

Corporations and Corporate Officers



- ❖ 2 corporate officers of a closely held corporation (10 or fewer shareholders) may exclude themselves from coverage
- ❖ If the corporation has other employees and/or officers, a policy is required and the exclusion is made by endorsement on the policy
- ❖ If the corporation has no more than 2 officers and no other employees, the exclusion is made by filing a Notice of Corporate Officer Option with the WC Division

Sole Proprietorships, Partnerships, LLCs



- ❖ Excluded from Worker's Compensation and need not have a policy unless they have any other employee(s)
- ❖ All worker's compensation policies exclude sole proprietors, partners, and LLC members, but these people may elect to be covered by endorsement on the policy

What about Independent Contractors?



- ❖ Must meet a 9-point test
- ❖ All 9 points must be met and maintained
- ❖ Any person who does not meet the 9-point test of independence (and is not an employer himself or herself) is an employee of any employer they are working under in Wisconsin

Nine-point independent contractor test

- ❖ A contractor/independent contractor relationship is determined based upon the nine-point test. Under s. 102.07 (8) (b), Wis. Stats., an individual is required to meet a nine-point statutory test to be an independent contractor rather than an employee. A person is not an employee of an employer for whom he or she performs work or services if he or she meets the following nine-point test:
 - ❖ 1. Maintains a separate business with his or her own office, equipment, materials and other facilities.
 - ❖ 2. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on that work or service in the previous year.
 - ❖ 3. Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work.

Nine-point independent contractor test

- ❖ 4. Incurs the main expenses related to the service or work that he or she performs under contract.
- ❖ 5. Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for a failure to complete the work or service.
- ❖ 6. Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.
- ❖ 7. May realize a profit or suffer a loss under contracts to perform work or service.
- ❖ 8. Has continuing or recurring business liabilities or obligations.
- ❖ 9. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Can someone waive their right to worker's compensation?

- ❖ No agreement to waive the right to compensation is valid under s. 102.16 (5), Wis. Stats.
- ❖ Even if an individual signs a waiver, it is not valid and would have no effect on the validity of a worker's compensation claim. Since 1990, the Act has set forth a nine-point independent contractor test under s. 102.07 (8) (b), Wis. Stats., that an individual must meet to be considered an independent contractor. An independent contractor who meets the nine-point test is not an employee under the Act

How does an employer protect themselves when contracting with an independent contractor?

- ❖ Make sure 9-point test is met and maintained
- ❖ Check with insurance carrier as to what they require at audit as proof that a person is an IC
- ❖ Require in the contract that the IC have a WC policy
- ❖ Require the IC to provide a certificate of insurance
- ❖ The only way employers can completely protect themselves from any liability is to have a worker's compensation insurance policy covering his or her business. A WC policy covers any individual working under the employer if he or she is found to be an employee at the time of injury.

What are the Penalties for Failure to Insure?



- ❖ Twice the amount of premium not paid during an uninsured time period or \$750, whichever is greater
- ❖ Under certain circumstances, \$100 for each day uninsured up to 7 days
- ❖ The Department may order an employer to cease operations until the employer complies with the insurance requirements of WC Act

What are the Penalties for Failure to Insure?



- ❖ In addition, an uninsured employer is personally liable for reimbursement to the Uninsured Employers Fund for benefit payments made by the Fund under section 102.81(1) of the Wisconsin Statutes to an injured employee (or the employee's dependents) of the uninsured employer.
- ❖ The penalties and reimbursements to the Fund are mandatory and non-negotiable

What are the Penalties for Failure to Insure?



- ❖ Uninsured employers do not have the normal exemptions of property from seizure and sale on execution of a judgment
- ❖ Officers and directors of an uninsured corporation are personally liable for benefits owed by the corporation
- ❖ Members of an LLC are personally liable for benefits owed by the LLC

Worker's Compensation Online Support

- ❖ Wisconsin Worker's Compensation Division website
 - ✓ <http://dwd.wisconsin.gov/wc/>
- ❖ Worker information
 - ✓ <http://dwd.wisconsin.gov/wc/workers/>
- ❖ Employer information
 - ✓ <http://dwd.wisconsin.gov/wc/employers/>
- ❖ Legal information
 - ✓ <http://dwd.wisconsin.gov/wc/legal/>

Worker's Compensation Statutes and Administrative Rules

- ❖ Chapter 102, Wisconsin Statutes:
 - ✓ <http://docs.legis.wi.gov/statutes/statutes/102.pdf>
- ❖ DWD 80 – 82, Wisconsin Administrative Code
 - ✓ <http://docs.legis.wisconsin.gov/code/toc/dwd>

Thank You!



Questions?

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