

TEXAS

EMPLOYMENT LAW

Workers' Compensation – Employee Eligibility



Workers' compensation is a system of no-fault insurance that provides medical and monetary benefits to employees (or their survivors) for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

While participation in the Texas workers' compensation system is optional, employers that choose to participate must comply with all provisions of the Texas Workers' Compensation Act (TWCA). The TWCA establishes the requirements an individual must meet in order to receive workers' compensation benefits in the state. The [Texas Division of Workers' Compensation](#) (DWC), part of the Texas Department of Insurance (TDI), administers the TWCA and resolves any disputes regarding eligibility.

STATE RESOURCES

[Texas Division of Workers' Compensation website](#)

Topic List

Links to more information about various workers' compensation topics are available [here](#).

COVERED EMPLOYEES

If employer chooses to participate in the Texas workers' compensation system, the TWCA requires the employer to provide workers' compensation coverage for all of its employees. The term "employee" has a broad meaning and includes individuals who are:

- In the service of the employer under an express, implied, oral or written contract of hire;
- Directed by their employers to perform temporary services outside the usual scope of their employers' businesses;
- Engaged in construction, remodeling and repair work for the employer at the employer's premises; and
- Trainees under the Texans Work Program.

The TWCA further specifies that the term employee includes:

- Aliens, regardless of their residence status; and
- Individuals declared to be legally incompetent (legal guardians may exercise the rights of these individuals).

Finally, an employee who sustains a compensable injury while working in another state may be entitled to recover benefits under the TWCA if:

- He or she has worked for at least 10 days of the last 12 months within Texas; or
- The employment is principally located in Texas.



INDIVIDUALS NOT COVERED UNDER THE TWCA

Certain individuals are specifically excluded from the TWCA definition of an employee. Employers that choose to participate in the workers' compensation system are not required – but have the option – to provide coverage for these excluded individuals. If an employer voluntarily provides coverage, the individual must then be treated as if his or her TWCA exemption never applied. Individuals who are not automatically considered employees under the TWCA include:

- Domestic and casual workers;
- Individuals covered by a federal workers' compensation program;
- Farm and ranch employees; and
- Certain professional athletes under a contract for hire or a collective bargaining agreement.

In addition, independent contractors are **not** considered employees and are therefore **not** covered under the TWCA. Instead, an independent contractor is responsible for securing coverage for his or her employees, unless he or she enters into a different agreement with a contracting party.

Under the TWCA, an independent contractor is a person who contracts to perform work or provide a service for the benefit of another and who generally:

- Acts as an employer;
- Is free to determine how the work or services is performed (including the hours of labor and method of payment to any employee);
- Provides the tools, materials and supplies necessary to perform the work or service; and
- Possesses the skills required for the specific work or service.

COMPENSABLE INJURY

To receive workers' compensation benefits, an employee must sustain a **compensable injury**. The TWCA defines a compensable injury as physical damage, harm, infection or disease suffered by an employee as the natural result of his or her employment. An injury is compensable only if it arises out of and in the course and scope of employment.

An activity is in the course and scope of employment if it has to do with and originates in the work, business, trade or profession of the employer. An employee performs activities in the course and scope of employment if he or she is engaged in the furtherance of the employer's business or affairs.

DISQUALIFICATION FROM BENEFITS

Even when an employee has a compensable injury, other factors may prevent him or her from receiving workers' compensation benefits. The TWCA prescribes that employee waivers, preexisting conditions, off-duty activities and natural disasters may be grounds for disqualification. Negligence and assumed risk do not disqualify individuals from receiving benefits.

EMPLOYEE BEHAVIOR

An employee will be disqualified from compensation if the injury occurred because of his or her willful attempt to injure himself, herself or another. This provision also applies to situations in which third parties injure an employee for personal reasons. Likewise, an employee may be disqualified if he or she was injured because of horseplay in the workplace.



INTOXICATION

Intoxication generally disqualifies employees from receiving benefits. According to the TWCA, intoxication includes having a blood alcohol concentration of 0.08 or more and losing the normal use of mental or physical faculties.

Intoxication can occur as a result of the voluntary introduction of any of the following substances into the body:

- A controlled substance;
- A dangerous drug;
- Glue or aerosol paint; or
- Any other similar substance regulated under state law.

Intoxication and loss of normal use of mental or physical faculties does **not** include the use of prescription drugs in accordance with a physician's instructions or the incidental inhalation or absorption of a substance present at the employee's workplace.

WAIVERS

Employees waive their right to sue for damages due to injury if they are covered under the TWCA. Employees can retain their right to sue for damages if they opt out of TWCA coverage. To opt out, employees must notify their employer within **five days** of beginning employment or receiving notice that the employer has obtained workers' compensation coverage. Employers may **not** require employees to opt out as a condition of employment.

PREEXISTING CONDITIONS

Employees with a preexisting condition are not automatically disqualified from receiving benefits. Instead, their eligibility for benefits depends on whether the preexisting condition was aggravated by an injury in the course and scope of employment. To disqualify an employee because of a preexisting condition, an employer must prove that the employee's condition was solely responsible for the injury.

If, upon review of the claim, the DWC finds that an applicant has made two or more general injury claims in the preceding five years, the DWC will release the date and description of each injury to that individual's employer in writing or by telephone. If the employer requests information on three or more claimants, the DWC will require a written authorization from each claimant.

RECREATIONAL AND SOCIAL ACTIVITIES

Employees may not receive compensation for injuries that occurred during off-duty recreational, social or athletic activities, unless their participation was reasonably expressly or implicitly required by their employer.

NATURAL DISASTERS

Employees are disqualified from receiving compensation for injuries that arise from an act of God or natural disaster, unless their employment exposed them to a risk of injury greater than the risk posed to the general public.

ADDITIONAL OUT-OF-STATE COMPENSATION

Employees who are eligible for benefits under the TWCA may not receive more than the benefits available to them under Texas law. Employees that receive higher workers' compensation benefits from another state are disqualified from receiving the benefits in Texas. Employees that receive lesser benefits from another state can recover only the difference between the out-of-state benefits and what they would have been able to recover under the TWCA.

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MORE INFORMATION

Visit the DWC [website](#) or contact Heffernan Insurance Brokers for more information on workers' compensation laws in Texas.