

Workers' Compensation – Employer Penalties

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

Massachusetts' Workers' Compensation Act (WCA) set forth the penalties employers in the state may face if they fail to comply with state requirements. The Massachusetts [Department of Industrial Accidents](#) (DIA) enforces compliance throughout the state.

FAILURE TO MAINTAIN ADEQUATE COVERAGE

Employers that do not maintain adequate coverage for their workers' compensation claims (through an insurance policy or self-insurance) are subject to criminal, civil and administrative penalties.

CRIMINAL PENALTIES

Criminal penalties include a **fine of up to \$1,500, imprisonment for up to one year or both**. The president and treasurer of a corporation may each be held personally liable for any criminal penalties imposed on the corporation. Employers that fail to obtain adequate coverage after they have received a DIA notice of noncompliance are subject to additional fines and imprisonment for each notice they fail to act upon.

CIVIL PENALTIES

Employers that fail to carry sufficient workers' compensation coverage may face the following:

- **Lawsuits from Injured Employees:** Employees may file a lawsuit for unpaid compensation due to an employer's lack of adequate coverage within six years of when the employer is found to not have adequate coverage. A civil court may order an employer to pay:
 - Compensatory and liquidated damages equal to the lesser of 25 percent of the unpaid compensation or \$25,000; and
 - Court costs and reasonable attorney's fees.
- **Lawsuits from Competitors:** Employers in the construction, repair, remodeling, alteration, conversion, modernization, replacement or renovation of a building, roadway or structure industries can sue a competitor that does not have adequate workers' compensation coverage or that deliberately misclassifies employees to avoid paying higher insurance premiums. To prevail, a competitor must prove that it lost a bid against an employer that did not have adequate coverage because of the cost advantages the employer achieved by violating state law. A court may award:

- Liquidated damages equal to the lesser of **10 percent** of the total bid amount on the employer’s contract or **\$15,000**; and
- Reasonable attorneys’ fees.

ADMINISTRATIVE PENALTIES

Administrative penalties include fines, reimbursement orders, stop work orders, cease-and-desist orders and disbarment from public contracts. The table below provides an overview of these penalties.

Fines:	An employer that violates any provision of the WCA is subject to fines of between \$1,000 and \$10,000 per violation , up to an aggregate maximum of \$10,000, payable to the DIA. Employers subject to this fine have the right to receive notice of the penalty and an opportunity to review it in an administrative hearing.
Reimbursement:	An individual working for an uninsured employer may receive his or her workers’ compensation benefits from the Massachusetts’ Workers’ Compensation Trust Fund after filing a claim with the DIA. When this happens, the Fund can require the uninsured employer to reimburse the cost of providing these benefits.
Stop Work Orders:	<p>The DIA can issue a stop work order (SWO) against any uninsured employer. An SWO requires the employer to cease all business operations at a worksite. An SWO becomes effective upon its delivery to an employer, unless the employer:</p> <ul style="list-style-type: none"> • Provides evidence that it has valid insurance coverage; and • Pays a \$100 civil penalty for each day the employer was uninsured. <p>The DIA may request any law enforcement agency to assist in the enforcement of an SWO. Law enforcement assistance includes preventing any employee or other person from remaining on or entering the employer’s work site after an SWO has taken effect.</p> <p>State law also requires employers to compensate employees for time lost due to an SWO during the first 10 days of business inactivity. Employers subject to an SWO are also ineligible to renew or maintain a license or permit to operate a business or construct buildings in Massachusetts or to obtain a contract for public works in the state.</p>
Cease and Desist Orders:	The DIA has the authority to issue cease-and-desist orders to prevent any employer from engaging in acts or practices that violate state law. Employers that violate cease-and-desist orders may be subject to fines of up to \$10,000 for each violation , and may lose their certificates of approval for self-insurance.
Exclusion from Public Contracts:	In addition to the penalties described above, uninsured employers may be prohibited from bidding or participating in any state- or municipal-funded contract for three years . The same prohibition applies to employers that knowingly misclassify employees to avoid higher premium rates.

ENFORCEMENT BY LIEN

Massachusetts imposes an automatic lien against uninsured employers for any outstanding judgment, reimbursement, penalty, fee or other payment into the private employer trust fund. These automatic liens are:

- Upon the entire interest of the employer; and
- Subordinate to claims for unpaid wages and any previously recorded liens.

SERIOUS AND WILLFUL EMPLOYER MISCONDUCT

An employee who is injured because of an employer's serious and willful misconduct is entitled to receive **twice the amount of compensation** normally owed under state law. Serious and willful misconduct includes employing a minor in violation of the state's child labor laws. If applicable, the employer must reimburse its insurance carrier for the additional amounts of compensation payable to an injured employee.

FAILURE TO PAY BENEFITS

Employers must either begin paying monetary benefits or issue a claim denial **within 14** days of receiving an employee's first report of injury or initial benefit claim. Employers that deny a benefit claim must issue written notice containing justification for the denial. Massachusetts law imposes the following penalties on employers that do not comply with these requirements:

Failure to Pay or Deny Claim Within	Fine	Payable to
14 days	\$250	Affected employee
60 days	\$2,000	DIA
	Plus 10 percent of the unpaid amount	Affected employee
90 days	\$10,000	DIA

An employer with outstanding penalties will not be allowed to defend against any initial claim for weekly benefits. Penalties may be waived if an employer can prove that its failure to make payments was due to events that were beyond its control (or the control of its agents).

UNREASONABLE CLAIMS

Any party (including employers and their insurance providers) that brings, prosecutes or defends a claim without reasonable grounds may be required to bear the whole cost of the proceedings, in addition to paying **twice the amount** of benefits owed to an employee.

FRAUD

Fraudulent claims and misrepresentations during the prosecution or defense of a claim are punishable with criminal and civil sanctions. Fraudulent activities include:

- Concealing or knowingly failing to disclose any material fact;
- Knowingly using perjured testimony or false evidence;
- Knowingly making a false statement of fact or law;
- Knowingly assisting, abetting, soliciting or conspiring in the making of any false or misleading statement, representation or submission;
- Participating in the creation or presentation of evidence known to be false;
- Engaging in conduct known to be illegal or fraudulent;
- Knowingly misclassifying employees or engaging in deceptive employee leasing practices to avoid making full payment of insurance premiums; and
- Employing or contracting others to personally coerce or encourage individuals to file or refrain from filing compensation claims.

Massachusetts law imposes the following penalties for fraudulent activities:

Criminal Penalties	Civil Penalties
<ul style="list-style-type: none"> • Imprisonment for up to five years in state prison; • Imprisonment for between six months and two and a half years; • A fine of between \$1,000 and \$10,000; or • Any combination of fine and imprisonment 	<ul style="list-style-type: none"> • Restitution for any financial loss caused by fraud; • Entire cost of the proceedings, including attorneys' fees; and • A penalty payable to the injured party equal to six times the state's average weekly wage.

In addition, the DIA will report the fraudulent activity of any licensed professional to the appropriate licensing body for further related administrative actions.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the DIA [website](#) for more information on workers' compensation laws in Massachusetts.