

Workers' Compensation – Employer Responsibilities

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

Workers' compensation is governed by state law.

The New Mexico Workers' Compensation Act (WCA) establishes employer responsibilities relating to workers' compensation in the state. The [New Mexico Workers' Compensation Administration](#) (WC Administration) administers the workers' compensation system and enforces employer responsibilities under the WCA.

EMPLOYERS SUBJECT TO THE WCA

An employer is subject to the WCA if it:

- Has **three or more employees**, at least one of whom works in New Mexico; or
- Is engaged in **construction** activities (regardless of the number of employees) that require licensing in New Mexico.

Under the WCA, the term “employer” specifically includes all:

- Private entities engaged in any business or trade (including agriculture);
- Charitable organizations; and
- Governmental entities.

EMPLOYEES

The WCA defines the term “employee” as any person in the service of an employer under any service contract or apprenticeship, regardless of whether the employment is permanent, temporary or transitory, and regardless of whether the person is a resident of New Mexico. Employment contracts may be express or implied. The WCA definition of **employee** specifically includes:

- Aliens and minors (even if their employment is unlawful);
- Public employees;
- Corporate officers;
- Sole proprietorship owners;
- Members of a limited liability company (LLC);
- Farm and ranch laborers; and
- Certain mining-property lessees.

EXCLUSIONS AND VOLUNTARY ACCEPTANCE

The WCA also specifically **excludes** certain individuals for the purpose of determining whether a private employer has three or more employees. The following is a list of excluded individuals:

- Casual employees;
- Private domestic servants;
- Workers engaged in interstate commerce who are not subject to state law; and
- Real estate salespeople.

Employers that are not covered by the WCA because they do not meet the criteria mentioned above or because they employ fewer than three employees may elect to become subject to New Mexico's workers' compensation laws. Employers that volunteer to become subject to the WCA must comply with all WCA requirements for all covered employees.

An employer that elects coverage under the WCA must either:

- File proof of the coverage with the WC Administration; or
- Complete and file an [Election to be Subject](#) form with the WC Administration.

COVERAGE REQUIREMENTS

An employer's primary responsibility under the WCA is to secure its ability to pay all WCA benefits to and for any employees who sustain work-related injuries or diseases. Employers may satisfy this requirement by either:

- Purchasing an insurance policy from a company authorized by the New Mexico Office of the Superintendent of Insurance to provide workers' compensation coverage in the state; or
- Obtain the WC Administration's approval to self-insure.

Even if no employees ever sustain a work-related condition, an employer that fails to comply with coverage requirements may be subject to numerous fines, criminal charges and stop-work orders. In addition, the state may suspend or revoke the license of a construction employer that does not provide the required coverage.

VOLUNTARY COVERAGE REJECTIONS

As a general rule, employees may not waive their rights to coverage or benefits under the WCA. However, the law allows the following individuals to voluntarily reject coverage for themselves by filing a [Rejection Notice](#) with the WC Administration:

- Corporate officers who own 10 percent or more of the corporation's outstanding stock;
- LLC members who hold at least a 10 percent ownership interest in the LLC; and
- Sole proprietorship owners who have no other employees.

INSURANCE POLICIES

Under a workers' compensation insurance policy, the issuing insurance carrier becomes directly and primarily responsible for paying all required WCA benefits and filing reports with the WC Administration for the insured employer. Insured employers must cooperate with their insurance carriers to ensure compliance with the WCA at all times.

After obtaining an insurance policy, an insured employer must either file or direct its insurance carrier to file a copy of its policy with the WC Administration.

New Mexico insurance laws require all workers' compensation insurance carriers to offer employers the option of including a deductible of between \$500 and \$10,000 in their policies. If an employer chooses to include a deductible, the insurance carrier must still directly pay all WCA benefits to employees or medical providers as they become due. The carrier may then seek reimbursement from the employer for the deductible amount.

Employers are prohibited from allowing or requiring their employees to contribute to any portion of the deductible amount.

SELF-INSURANCE

A self-insured employer uses its own assets, rather than an insurance policy, to secure its obligations under the WCA. Employers that wish to self-insure must obtain authorization from the WC Administration. This authorization is available to individual employers and to certain groups of two or more employers that pool their resources to self-insure as a group. The table below provides an overview of the minimum eligibility requirements for each type of self-insurance.

Self-insurance Minimum Eligibility Requirements	
<i>Individual Self-insurance</i>	<i>Group Self-insurance</i>
<p>An employer must have:</p> <ul style="list-style-type: none"> • Been in business for at least three years; • A current tangible net worth of at least \$2.5 million; • A strong trend of financial health and financial solvency; • A risk management program; and • A bona fide employment relationship with the employees whom it proposes to cover through self-insurance (employee leasing companies are not eligible for self-insurance). 	<p>All employers in the group must:</p> <ul style="list-style-type: none"> • Be engaged in the same or similar type of business; • Be members of the same bona fide trade or professional association that has been in existence for at least five years; • Have a combined net worth of at least \$3 million; • Have an estimated annual standard premium of at least \$250,000; and • Have an indemnity agreement jointly and severally binding both the group and each member to meet each member's WCA obligations.

In addition, an employer or group that wishes to self-insure may be required to:

- Obtain an excess insurance policy with retention of \$250,000 or less per occurrence; and
- Submit a surety bond or other type of security deposit of at least \$200,000.

To obtain authorization to self-insure, an employer or group must submit an application, along with audited financial statements and other materials, to the WC Administration. If the WC Administration approves a self-insurance application, it will issue a certificate authorizing the employer or group to self-insure as of the date on the certificate. This authorization continues indefinitely until the employer or group terminates it or the WC Administration revokes it.

The WC Administration may revoke a self-insurance certificate if the employer or group fails to comply with any WCA requirements. These requirements include paying taxes and assessments, filing audited financial statements and other reports with the WC Administration each year and properly administering and paying employees' claims.

For claims administration and WCA benefit payment purposes, each individually self-insured employer must designate at least one licensed claims representative who is located within New Mexico. Similarly, each self-insured group must designate an administrator to provide day-to-day management for the group, and to handle and pay all workers' compensation claims for the group's members. A designated claims representative or group administrator may delegate its claims-handling responsibilities to licensed third-party administrators or adjusters. Group self-insurers must provide a fidelity bond for both their administrators and any third parties they hire to handle claims.

All self-insured employers and groups must allow the WC Administration to examine or audit their records at any time and must also pay all expenses associated with these examinations or audits.

WORKERS' COMPENSATION ASSESSMENT FEE

Under the WCA, all employers and employees must pay a quarterly fee called the workers' compensation assessment fee. Employers must pay the fee by the last day of the month that follows the end of each quarter for which it is due.

The total fee amount is \$4.30. The fee must be paid for each employee who is covered under the WCA on the last working day of each quarter. The employer's portion of this fee is \$2.30 per employee. The employee's portion of this fee is \$2.00. Employers are responsible for collecting the employee portion through payroll deductions and for submitting the total fee amount to the WC Administration.

SAFETY INSPECTIONS

The WCA requires certain employers to undergo annual safety inspections. This requirement applies to all:

- Individually self-insured employers; and

- Insured employers and group self-insurance members that have an annual workers' compensation premium liability of \$15,000 or more.

The WC Administration's [Annual Safety Inspections Manual](#) outlines the minimum standards required for these inspections.

NOTICE POSTING REQUIREMENTS

All employers must post and maintain a workers' compensation [notice](#), along with a supply of the WC Administration's [Notice of Accident](#) form, in conspicuous places where notices to employees and applicants are customarily posted within their workplaces. When an employee is injured, he or she must use a Notice of Accident form to report the injury to the employer.

INJURY REPORTING

An employer that receives a Notice of Accident from an employee must:

- Sign the form to acknowledge receipt;
- Provide a copy of the signed form to the employee; and
- Retain a copy of the form in its files.

In addition, employers must ensure that the WC Administration receives a First Report of Injury (FROI) form through the [Electronic Data Interchange System](#) (EDIS) for any:

- Work-related injury that causes an employee to lose more than seven days of work; or
- Claim of disablement by occupational disease submitted by an employee.

If required to file an FROI with the WC Administration, an employer must ensure that it is submitted within 10 days after the employer first obtained knowledge of the injury or first received the employee's claim for disablement.

PROVIDING MEDICAL CARE

Employers must provide and pay for all reasonable and necessary medical care to treat their employees' work-related conditions. For an injured employee's initial, non-emergency treatment, the employer may either choose the health care provider or allow the employee to make the selection. Regardless of who makes this initial selection, the employee must continue receiving all treatment from the chosen provider for the first 60 days after the first visit.

For any treatment required after the 60-day period, the party that did not make the initial selection may designate a different treating provider. However, a party that seeks to change the designated provider must either:

- First obtain the other party's approval for the change; or

- Give the other party written notice of the new provider's name and address at least 10 days before treatment from the new provider is to begin (this notice may be provided on or after the 50th day of the initial 60-day period).

BENEFIT PAYMENTS

Employers must begin paying weekly workers' compensation benefits to an employee within 14 days after the employee has missed seven (consecutive or nonconsecutive) days of work as the result of a work-related condition. After making the initial benefit payment, the employer must notify the WC Administration through the EDIS within 10 days. Additional weekly benefits must be paid in semi-monthly installments, in amounts as nearly equal as possible, at intervals of up to 16 days.

REHIRING OBLIGATION

Under the WCA, an employee who has stopped working because of a work-related condition has the right to be rehired upon request. An employer is obligated to rehire an injured employee if the employee:

- Applies for his or her former job or for a similar but modified job that the employer has available;
- Is qualified for the job; and
- Provides certification from the treating health care provider that the employee is fit to perform the job without significant risk of re-injury or of repeating or compounding the disablement.

If an employee is permanently disabled from performing his or her former job or any similar but modified job that the employer has available, the employer may be required to provide and pay up to \$2,500 for vocational evaluation and counseling for the employee.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the WC Administration's [website](#) for more information on workers' compensation requirements in New Mexico.