

EMPLOYMENT LAW SUMMARY

Arizona Workers' Compensation - Employer Penalties



Because You're Different

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

The Arizona Workers' Compensation Act (WCA) establishes penalties that employers may face if they fail to comply with state requirements. The [Industrial Commission of Arizona](#) (Commission) administers the workers' compensation system and enforces compliance with the WCA throughout the state.

FAILURE TO MAINTAIN WORKERS' COMPENSATION COVERAGE

The WCA requires employers to maintain adequate workers' compensation coverage (through an insurance provider or self-insurance) for their employees. Employers that fail to do so may be subject to several civil penalties, increased liability for claims and potential criminal charges.

These penalties may apply regardless of whether an injured employee has actually filed a claim against the employer.

The Commission may assess an initial civil penalty of **up to \$1,000** on any employer that is subject to the WCA and not insured as required. If the employer again fails to comply with coverage requirements at any time within **five years** of being ordered to pay the first penalty, the Commission may assess a second penalty of **up to \$5,000**. If it finds any subsequent failures to maintain coverage within the same five-year period, the Commission may assess additional penalties of **up to \$10,000** for every instance of non-coverage.

The Commission may also recover any **attorney's fees** it spends in assessing these penalties, and **10 percent interest** may accrue on the amount of the fines.

Moreover, the Commission may sue a noncompliant employer in a district court to obtain a court order **prohibiting the noncompliant employer from operating its business** in any way until it complies with coverage requirements.

The table below provides a summary of these potential penalties.

Employer's Failure to Maintain Coverage	
Offenses within five-year period	Penalty
First offense	Up to \$1,000
Second offense	Up to \$5,000
Third and subsequent offenses	Up to \$10,000

Additional potential liability

- 10 percent interest on the amount of the penalty
- Amount of any attorney's fees spent by the Commission
- Injunction against operating the business

INCREASED LIABILITY FOR CLAIMS

If an employee has a workers' compensation claim against an employer that is not insured as required by the WCA, the employee may either obtain benefits from a state fund (called the special fund) or sue the uninsured employer for damages in court.

SPECIAL FUND CLAIMS

When an employee obtains benefits from the special fund because of an employer's lack of coverage under the WCA, the uninsured employer may be held liable for:

- The amount of all workers' compensation **benefits** paid to the employee from the special fund;
- The amount of all **costs** associated with processing the employee's claim and determining benefits;
- A penalty of either **10 percent** of the total amount of benefits and costs, or **\$1,000**, whichever is greater; and
- **Interest** at a rate of **10 percent** on the total amount of benefits and costs.

If an employer is found liable for these amounts, the Commission may obtain an eight-year lien on the employer's property and may also recover any **attorney's fees** it incurs in administering the claim through the special fund.

Even if the Commission finds an employee's claim not compensable (thereby relieving the employer from liability for any special fund expenditures), it may still assess a fine of **\$1,000** against the employer if it did not have coverage as required at the time of the employee's alleged injury.

COURT ACTIONS

If an employee sues an uninsured employer for damages in court instead of seeking workers' compensation benefits from the special fund, the uninsured employer not only faces potential liability for amounts that could exceed the remedies otherwise available to the employee under the WCA, but the employer is also placed at a significant disadvantage in defending the action. This is because, in these cases:

- The employer cannot claim as a defense that the employee assumed the risk or that the employee is responsible (in whole or in part) for any negligence that caused the injury;
- The employee's proof of injury is considered evidence of the employer's negligence; and
- The employer has the burden of proving its negligence did not cause the claimed injury.

CRIMINAL PENALTIES

In addition to the above penalties and liabilities, employers that fail to maintain coverage as required by the WCA may be charged with a **Class 6 felony**, which is punishable by up to **one year of imprisonment**, a fine of **up to \$150,000 or both**.

WILFUL MISREPRESENTATION

Employers have a duty to provide accurate information for purposes of calculating workers' compensation premiums. An employer may be charged with a **Class 6 felony** if it willfully misrepresents any information about its payroll, job descriptions or history of losses to an insurance carrier. Class 6 felonies are punishable by **up to one year of imprisonment, a fine of up to \$150,000 or both**.

In addition, the Commission may assess a penalty of **up to three times** the amount of premiums the employee saved due to the misrepresentation.

SELF-INSURED EMPLOYER'S FAILURE TO PAY PREMIUM TAX

Self-insured employers must pay two annual taxes under the WCA. These taxes may be up to 4 percent of the amount the self-insured employer would have paid in premiums if it had obtained coverage from an insurance carrier in a previous calendar year. If a self-insured employer does not pay these taxes by March 31 for the previous year, the Commission may assess a civil penalty of **\$25 or 5 percent of the amount of tax due**, whichever is greater, plus **interest** at a rate of **1 percent per month** accruing from the date the taxes were due.

REFUSING TO SUBMIT BUSINESS RECORDS

The WCA grants the Commission the right to inspect an employer's books, records and payroll. Employers must keep these records open for inspection at all times so that the Commission can, among other things, determine whether the employer is compliant with the WCA. If an employer refuses to allow access to these materials, the Commission may bring a civil action for penalties of **\$500** per refusal. Likewise, the Commission may recover any reasonable **attorney's fees** it may incur to enforce this requirement.

REQUIRING EMPLOYEES TO FUND THEIR COVERAGE

Employers are not allowed to make their employees pay any portion of their workers' compensation insurance premiums. Employers that intentionally collect or receive any premiums from an employee may be charged with a **Class 6 felony** which is punishable by up to **one year of imprisonment**, a fine of **up to \$150,000 or both**.

FAILURE TO POST NOTICE REGARDING WORKERS' COMPENSATION

The WCA requires employers to post a written notice regarding employees' right to reject coverage under the WCA. Employers must also keep blank forms available for employees to use in case they should choose to reject WCA coverage.

If an employee is injured at a time when an employer fails to comply with these requirements, the **employee may choose to sue the employer for damages in court** rather than accept the more limited remedies available under the WCA.

ILLEGALLY EMPLOYING MINORS

An employer that illegally employs an underage worker is liable for an increase of **50 percent of the amount of benefits payable** under the WCA if the minor sustains a compensable injury. If the employer's insurance carrier pays this increased amount to an injured underage worker, the insurance carrier has a right to recover it from the employer.

FAILURE TO PROVIDE INJURY REPORTS

An employer may be charged with a **petty offense**, which is punishable by a fine of **\$1,000**, if it fails to do any of the following:

- Provide the Commission with a report of any work-related injuries upon the Commission's request;
- Inform its insurance carrier (if applicable) and the Commission of any work-related injury within ten days after receiving notice of an accident; and
- If applicable, provide an injured employee with the name and address of its insurance carrier, the policy number and expiration date immediately after the employee reports the injury to the employer.

BAD FAITH AND UNFAIR CLAIMS PROCESSING

Employers must act fairly and in good faith when processing employees' claims under the WCA. If an employer fails to meet these standards, the Commission may assess a penalty of **\$500 or 25 percent** of the amount of any benefits involved, whichever is greater. If the Commission finds that an employer has a history or pattern of repeated unfair claim practices or bad faith, it may impose an additional civil penalty of **up to \$1,000** for every violation found.

The table below lists actions that may subject an employer to these penalties under the WCA.

Bad faith	Unfair claims practices
<ul style="list-style-type: none">•Asserting defenses that are not grounded in fact, warranted by law or supported by good faith arguments•Unreasonably delaying benefits payment or medical treatment authorization•Unreasonably underpaying benefits•Unreasonably terminating benefits•Intentionally misleading an employee about his or her rights under the WCA•Unreasonably interfering with or obstructing an employee's right to choose an attending physician (not applicable to self-insured employers)	<ul style="list-style-type: none">•Unreasonably issuing a notice of claim status without supporting information•Unreasonably failing to acknowledge communication from any party involved in a claim, including the Commission•Failing to act reasonably and promptly upon communications regarding a claim•Directly advising an employee not to consult an attorney•Communicating directly, for an improper purpose, with an employee who is represented by an attorney

NONCOMPLIANCE WITH A COMMISSION ORDER

Employers must comply with any order issued by the Commission. If an employer fails to do so, the Commission may charge the employer with **contempt** and assess a fine of **up to \$1,000**.

GENERAL WCA VIOLATIONS

If an employer fails to comply with any provision of the WCA when processing an employee's claim, the Commission may use money from the state's special fund to process the claim and pay any benefits. Thereafter, the Commission may bring an action against the employer to recover all amounts spent.

Similarly, the WCA imposes a general obligation on employers to follow all WCA provisions. Thus, employers that violate any portion of the WCA may be charged with a **Class 6 felony**, which is punishable by up to **one year of imprisonment**, a fine of **up to \$150,000 or both**.

MORE INFORMATION

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

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