

# EMPLOYMENT LAW SUMMARY

## Arkansas Workers' Compensation - Employer Responsibilities



*Because You're Different*

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 Arkansas Workers' Compensation Law (WCL) establishes employer responsibilities relating to workers' compensation in the state. The [Arkansas Workers' Compensation Commission](#) (Commission) investigates and enforces employer responsibilities under the WCL.

### EMPLOYERS SUBJECT TO THE WCL

The WCL applies to every employer in the state that:

- Has three or more employees regularly employed in the course of business;
- Engages in building or building repair work and has **two or more** employees;
- Is a contractor that employs one or more employees and subcontracts any part of its contract; or
- Is a subcontractor that employs **one or more** employees.

The WCL defines "employer" as any individual, partnership, limited liability company (LLC), association or corporation carrying on any employment. An "employee" is defined as any person, including any minor, who is in the service of an employer under any contract of hire or apprenticeship. Employment contracts may be expressed or implied.

### EXCLUSIONS

For purposes of determining whether an employer has three or more employees, the following are **not** considered employees:

- Individuals whose employment is casual and not in the course of the trade, business, profession or occupation of the employer;
- Domestic servants employed in or about an employer's private home;
- Individuals employed to perform gardening, maintenance, repair, remodeling or similar work in or about an employer's private home;
- Agricultural farm workers;
- Individuals performing services for any nonprofit religious, charitable or relief organization;
- Most distributors of newspapers and other periodicals;
- Workers who are covered under federal workers' compensation laws; and
- Most real estate agents.

### COVERAGE REQUIREMENTS

The WCL requires employers to secure their ability to pay workers' compensation benefits to and for any employees who are injured in the course and scope of employment. To meet this requirement, an employer may either:

- Purchase an insurance policy from a carrier that is authorized to provide workers' compensation insurance in Arkansas; or
- Obtain the Commission's authorization to self-insure.

Employers are prohibited from making their employees contribute to the cost of providing workers' compensation coverage.

An employer that fails to provide coverage as required may be subject to several penalties. These penalties may include fines for each day of the failure, criminal charges and stop work orders. A noncompliant employer also remains liable to pay benefits to and for any injured employees under the WCL. However, an injured employee may choose to sue a noncompliant employer in court for damages instead of accepting the more limited benefits available under the WCL.

## VOLUNTARY COVERAGE EXCLUSIONS

Although the WCL requires coverage for all employees, certain individuals may elect to exclude themselves from coverage and waive their rights to benefits under the WCL. This option is available only to the following individuals, who must complete and file [Form AR-A](#) with the Commission in order to exclude themselves from coverage:

- Corporate officers;
- Sole proprietors;
- Partners of a partnership;
- Members of an LLC;
- Members of a professional association; and
- Self-employed individuals (other than subcontractors) who own and operate their own businesses.

For purposes of determining whether an employer has three or more employees, these individuals must always be counted regardless of whether they waive coverage.

## VOLUNTARY COVERAGE INCLUSIONS

Employers that are exempt from the WCL may voluntarily become subject to the law by providing workers' compensation coverage for their employees. Likewise, an employer that is subject to the WCL but employs a worker who is excluded from the WCL's definition of an employee may voluntarily include that worker under its coverage.

## INSURANCE POLICIES

If an employer purchases workers' compensation insurance to satisfy the coverage requirement, the policy must cover the employer's entire liability under the law. All workers' compensation insurance policies must contain an agreement by the insurer that it will promptly pay all WCL benefits. Insurers must also agree that this obligation continues even if the employer does not make premium payments after an employee's injury or does not provide required notices.

An insured employer may allow its insurance provider to administer its claims. However, employers should be aware that insurance coverage does not actually relieve them from any legal obligations. Employers should always ensure that they are compliant with the law, even if another company agrees to cover their duties and liabilities.

When purchasing an insurance policy, employers will have the option of including a deductible. Insurance companies are required to fully disclose all offered deductible amounts in writing before they complete the sale of a policy. Although deductibles can help reduce premium costs, an employer that includes one in its policy must be prepared to cover the deductible amount for each and every workplace injury that may occur. Insurance providers are required to pay the deductible amounts upfront when an injured employee is entitled to receive benefits under the WCL, but the employer will be responsible for reimbursing the deductible amount for every compensable injury.

## SELF-INSURANCE

A self-insured employer uses its own assets, rather than an insurance policy, to insure against its obligations under the WCA. Certain groups of employers may pool their resources and liabilities to self-insure collectively. Every employer or group of employers that wishes to self-insure must first obtain the Commission's authorization.

## SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

The authorization process for an employer that wishes to self-insure begins by submitting a completed [application for individual self-insurance](#) at least **60 days** before the desired effective date. Along with this application, an employer must also:

- Submit a current, audited financial statement showing that it has a net worth of at least \$250,000 and enough working capital to promptly pay all WCL claims;
- Provide a written agreement to directly pay all benefits that may become due under the WCL;
- Provide a written agreement to deposit at least \$100,000 in securities to guarantee WCL payments; and
- Pay a nonrefundable \$100 application fee.

## GROUP SELF-INSURANCE

The WCL allows groups of **two or more employers** to qualify as group self-insurers. To meet the minimum qualifications for group self-insurance, each of the employers in a group must either be engaged in the same type of business activity or pursuit or be members of the same trade or professional association that:

- Has been in active existence for at least three years;
- Was created for purposes other than group self-insurance;
- Has a constitution or bylaws;
- Has an elected board of trustees who will all be members of the self-insured group; and
- Has members that support the association through payments of dues on an annual, semiannual, quarterly or monthly basis.

Qualifying groups that wish to self-insure must submit an [application for group self-insurance](#) to the Commission, along with the following:

- An indemnity agreement jointly and severally binding the group and each member of the group to comply with the WCL;
- An individual application completed by each employer in the group;
- Current, audited financial statements for each member of the group showing a combined net worth of at least \$1 million and enough combined working capital to promptly pay all WCL claims; and
- A nonrefundable \$100 application fee.

A group of employers that wishes to self-insure must also deposit at least \$200,000 in securities to guarantee benefit payments under the WCL.

## NOTICE POSTING REQUIREMENTS

Employers must post and maintain a printed or typewritten [notice](#) regarding their workers' compensation coverage in each workplace where their covered employees work. The notice must be posted in a conspicuous location that is readily accessible to all employees. If an employer is insured, its notice must include the name and address of its insurance carrier and the date the policy expires.

## INJURY REPORTING AND RECORDKEEPING

When an employee sustains a work-related injury or illness, he or she has a duty to notify the employer as soon as possible. **Within 10 days** after first obtaining knowledge of an employee's work-related condition, the employer must complete [Form 1](#) ("First Report of Injury or Illness") and submit it to the Commission.

Employers must also keep a record of each work-related condition sustained by their employees and keep these records available for the Commission's inspection at all times.

## PROVIDING MEDICAL CARE

Employers must promptly provide any required medical care to treat an employee's work-related condition. The WCL allows employers to contract with managed care organizations (MCOs) to provide this treatment. Using an MCO can help control treatment costs and allows an employer to choose the initial treating physician (other than for emergency treatment) for an injured employee. Employers that contract with MCOs must post [Form H](#) ("Health Care Notice for Employees Under Managed Care") in their employees' workplaces.

## INITIAL BENEFIT PAYMENT AND CLAIM REPORTING

Employers must either begin paying benefits to the employee or deny a claim within 15 days of the date when they first obtain knowledge of an employee's injury, or the date an employee first becomes disabled from a work-related condition, whichever is later. Either way, the employer must also complete and submit [Form 2](#) ("Employer's Intent to Accept or Controvert Claim") to the Commission.

If an employer is unable to obtain sufficient medical information regarding an injury within the first 15 days, it must write to the Commission to request additional time for its initial Form 2 submission. This request must be postmarked within the 15-day filing period.

An employer that fails to file a timely Form 2 may still deny an employee's claim at a later time. However, if the employer also fails to pay any required benefits to the employee within the first 15 days, the Commission may order the employer to pay both the amount due, plus an additional 18 to 36 percent of the claim to the employee.

## **OFFERS OF SUITABLE EMPLOYMENT**

Unless they have reasonable cause not to, employers must offer injured employees an opportunity to return to work in any available job that is suitable to their physical and mental limitations resulting from a work-related condition. An employer that fails to offer available, suitable work without reasonable cause may be ordered to pay:

- The difference between any workers' compensation benefits the employee receives and the actual wages the employee would have earned if he or she had not sustained the injury; and
- All costs associated with a vocational rehabilitation program for up to 72 weeks.

If any injured employee refuses an offer of suitable employment, he or she may lose the right to receive any workers' compensation benefits during the period of the refusal.

## **MORE INFORMATION**

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

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