

# EMPLOYMENT LAW SUMMARY

## California: Workers' Compensation – Employer Responsibilities



*Because You're Different*

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.

The California Workers' Compensation Act (WCA) defines employer responsibilities under the state's workers' compensation program. The [Division of Workers' Compensation](#) (DWC), which is part of the California Department of Industrial Relations (DIR), monitors and enforces employers' compliance with these requirements.

### COVERAGE REQUIREMENTS

Almost all California employers must secure workers' compensation coverage for their employees. Employers are bound by WCA coverage requirements if they **one or more employees**, regardless of whether the employees work full-time or part-time.

In general, the WCA defines an "employee" as any individual who works for another individual or organization and is not an independent contractor.

To satisfy the WCA coverage requirements, employers must either:

- Secure a workers' compensation insurance policy from a private insurance company licensed to do business in California; or
- Obtain a self-insurance certification from the [Office of Self Insurance Plans](#) (OSIP).

### SELF-INSURANCE

A self-insured employer uses its own assets, rather than an insurance, to cover its obligations under the workers' compensation program.

Employers that wish to self-insure must obtain authorization from the OSIP. Whether the OSIP will grant this authorization depends on an employer's financial strength, proposed benefit delivery system and loss prevention program.

To meet the minimum qualifications for self-insurance, an employer must:

- Have at least \$5 million in shareholder equity;
- Have net profits of \$500,000 or more for the five years immediately prior to the application;
- Make a deposit based on the employer's expected future liabilities, with a minimum amount of \$220,000;
- Hire a certified third-party administrator or ensure that internal staff becomes OSIP-certified to process and handle benefit claims; and
- Provide the following documents:
  - Certified, independently-audited financial statements; and
  - A proposed injury and illness prevention program that meets, at a minimum, Cal/OHSA safety and health regulations.

Self-insured employers are subject to audits by both the DWC and OSIP. These audits are used to verify that self-insured employers are making benefits payments promptly and properly.

Certain employers are **not** allowed to self-insure. These employers include:

- Professional employer organizations;
- Leasing employers;
- Temporary service employers;
- Any employer in the business of providing employees to other employers; and
- Employers that have allowed their coverage to lapse (unless they receive authorization from the DWC).

## GROUP SELF-INSURANCE

Multiple employers can create self-insurance groups by combining their assets to insure against their individual liabilities. Authorization for group self-insurance requires employer groups to show they have sufficient financial stability to meet all their obligations under the WCA. In addition, a group of employers seeking to self-insure must:

- Operate in the same industry;
- Make a deposit equal to 135 percent of its estimated future liabilities;
- Have sufficient funds to cover any losses and administrative expenses for at least eight of out of 10 years;
- Obtain excess insurance for claims over \$500,000; and
- Report to each member of the group any possible conflict of interest between the group and any vendors.

## SELF-INSURANCE ANNUAL RENEWAL

Self-insured employers must submit annual reports to show their continued compliance with eligibility requirements. These reports are also used to assess the adequacy of each self-insurance deposit.

An employer that is required to deposit funds in addition to its initial deposit must make its contributions by the earlier of either 60 days after filing its annual report or May 1 of the year in question.

## COVERAGE NOTICE REQUIREMENTS

Employers subject to the WCA must display workers' compensation posters in conspicuous locations within their employees' workplaces. An employer's posters must:

- State that the employer has workers' compensation insurance coverage in compliance with the WCA;
- Be displayed in both English and Spanish; and
- Include specific information about the employee's rights and obligations under the WCA.

The DWC provides a [model notice](#) that employers may use to satisfy these notice posting requirements. Failing to display this notice may subject an employer to criminal misdemeanor charges and may be considered evidence that the employer does not have the required coverage. In addition, an employer that fails to post the notice does not have the right to choose the treating physician for any employee injuries that occur during the time the notice is not displayed.

Employers must also provide the information contained in the poster to new employees at the time of hiring (or by the end of their first pay period). New employees must also receive instructions on:

- How to obtain appropriate medical care for job-related injuries;
- The role and function of the primary treating physician; and
- How to obtain and submit the form the employee must use to notify the employer he or she wants to use a personal physician.

If an employer is insured, the insurance carrier is responsible for providing the employer with a notice that contains all the required information for new employees.

## INJURY REPORTING REQUIREMENTS

Under the WCA, employers have reporting obligations any time an employee sustains a work-related condition that results in:

- Lost work time beyond the employee's work shift at the time of injury; or
- Medical treatment beyond first aid.

For this purpose, "first aid" means any one-time treatment and any follow-up visit for observation of minor scratches, cuts, burns, splinters, or other minor industrial injuries that do not ordinarily require medical care. Treatment that meets this definition is still considered "first aid" even if it is provided by a medical professional.

**Note:** Effective **Jan. 1, 2017**, workers' compensation insurance carriers are required to report all work-related injuries, **including those that involve only first aid with no lost work time**, to the California [Workers' Compensation Insurance Rating Bureau](#) (WCIRB). The WCIRB uses this information to, among other things, help determine an employer's premium rates for workers' compensation insurance.

However, this change does **not** affect an **employer's** injury-reporting obligations under the WCA. An employer may choose, but is still not required, to report injuries that do not result in lost work time or treatment beyond first aid.

When an employee incurs medical expenses for first aid, the billing medical provider has an obligation to report the treatment to both the DIR and the employer's insurance carrier. The medical provider's report (or an employer's voluntary report of a first-aid-only injury for which no medical expenses are incurred) is what triggers an insurance carrier's new obligation to report the claim to the WCIRB under the new rule.

This reduces an insured employer's incentive to pay medical bills for first-aid-only treatment out of pocket instead of allowing its workers' compensation insurance carrier to cover the expenses, because these types of claims can now affect an employer's premium rates regardless of how the first-aid treatment expenses are paid.

Within **one working day** after an employer receives notice or first obtains knowledge of an employee's work-related injury that results in lost work time or medical treatment beyond first aid, the employer must:

- Provide the employee with [Form DWC 1](#) ("Workers' Compensation Claim Form & Notice of Potential Eligibility");
- Ask the employee to complete the employee section of form DWC 1 and return it to the employer;
- Complete the employer section of the form; and
- Within **one working day** after receiving the form back from the employee, submit the fully completed form to its insurance carrier (or directly to the DWC, if the employer is self-insured) and provide a copy to the employee.

In addition, employers must fill out [Form DLSR 5020](#) ("Employer's Report of Occupational Injury or Illness") and send it to their insurance carriers or claims administrators within **five days** after first receiving notice or obtaining knowledge of an injury.

In the event that an employee becomes the victim of a crime while on an employer's premises, the employer must provide written notice to the employee, within **one day** of the crime, stating that he or she is eligible for benefits resulting from physical and psychiatric injuries.

## REPORTING FOR SELF-INSURED EMPLOYERS

When employers secure coverage with a policy from an insurance company, the insurance company will work with the employer on preparing, maintaining and submitting reports and records that the DWC requires to monitor compliance with California law.

An employer that decides to self-insure, however, must meet certain reporting obligations on its own. One of these obligations is to file an annual report as prescribed by the DWC. Annual reports must show, among other things:

- The amount of all compensation claims;
- The amount of benefits paid to date;
- An estimated amount of future liability on open claims under state and federal laws;
- The average number of employees and the total wages for each adjusting location;
- A list of all open indemnity claims; and
- The amount of security deposit made by the employer.

## MORE INFORMATION

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

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational

