

EMPLOYMENT LAW SUMMARY

Colorado: Workers' Compensation – Employee Eligibility



Because You're Different

Workers' compensation is a system of no-fault insurance that provides medical benefits and compensation for wage loss and permanent physical impairment to employees who sustain work-related injuries and illnesses.

The Workers' Compensation Act of Colorado (WCAC) prescribes the requirements an employee must meet in order to receive workers' compensation benefits in the state. The [Division of Workers' Compensation](#) (DWC), part of the Colorado Department of Labor and Employment, resolves disputes over whether and to what extent an employee may be eligible for benefits under the WCAC.

GENERAL ELIGIBILITY REQUIREMENTS

Individuals are generally eligible to receive workers' compensation benefits if they:

- Meet the WCAC's definition of a covered employee;
- Sustain a work-related injury or disease; and
- Fulfill reporting and notice requirements established by the WCAC.

COVERED EMPLOYEES

Most employees are covered under the WCAC. The WCAC defines an employee as any individual in the service of another person, association of persons, firm or corporation. Employment may be expressed or implied. Under the WCAC, the term employee also specifically includes:

- Minors (regardless of whether they are lawfully employed);
- Foreign workers (regardless of whether they are lawfully employed);
- Public employees;
- Elected officials;
- Members of the state's military forces (while engaged in active service on behalf of the state, under orders from a competent authority);
- Police officers and firefighters (including volunteer firefighters when certain conditions apply); and
- Sheriffs and deputy sheriffs.

EXCEPTIONS

Workers' compensation coverage does not extend to certain individuals. While some exceptions are possible, individuals who are **not** covered by the WCAC include:

- Independent contractors;
- Those whose employment is casual and not in the usual course of the trade, business, profession or occupation of the employer;
- Passenger tramway operators who are off-duty while participating in recreational activities;

- Licensed real estate sales agents and brokers (certain conditions apply);
- Inmates (certain exceptions may apply);
- Individuals who volunteer for a ski-area operator or for a ski-sponsored program or activity;
- Divers who work under a lease agreement with a common or contract carrier;
- Individuals who provide host-home services as part of residential services and support; and
- Individuals who perform services for more than one employer at a race meet or horse track.

ELECTIVE COVERAGE

Certain employers may elect to provide WCAC coverage for:

- Working general partners or sole proprietors who are actively engaged in the employer's business; or
- Officers of agricultural corporations.

In addition, corporate officers and members of a limited liability company (LLC) may elect to reject coverage under the WCAC. This rejection will remain effective for as long as an insurance policy for the organization remains in effect or until the individual in question revokes his or her rejection.

The term "corporate officer" means the chairperson of the board, president, vice president, secretary or treasurer who is an owner of at least 10 percent of the stock of the corporation and who controls, supervises or manages the business affairs of the corporation, as attested to by the secretary of the corporation at the time of the election.

"Member" means an owner of at least 10 percent of the membership interest of an LLC at all times who controls, supervises or manages the business affairs of the LLC.

COMPENSABLE CONDITIONS

In general, a covered employee's condition is compensable if it is the result of an accident arising out of and in the course of employment in Colorado. Compensable injuries may also include occupational diseases and mental impairment.

An injury sustained outside of the state may be compensable if the injured employee was hired or is regularly employed in Colorado. However, this out-of-state provision applies only during the **first six months** after an employee leaves the state, unless the employer files a notice with the DWC electing to extend coverage for the out-of-state employee. The notice must be filed within six months of the employee's departure and must indicate the additional period of coverage.

The WCAC presumes that a disability is not directly related to a work-related incident if more than **five years** have passed after the date of injury or exposure. Similarly, the WCAC presumes that a death is not directly related to a work-related injury if more than **two years** have passed since the date of injury. However, exceptions are possible for cases involving:

- Exposure to radioactive materials, substances or machines;
- Uranium poisoning;
- Asbestosis;
- Exposure to fissionable materials;
- Silicosis; or
- Anthracosis.

BENEFIT REDUCTIONS

An employee's monetary workers' compensation benefits may be reduced by **up to 50 percent** if his or her injury was the direct result of intoxication or the abuse of a controlled substance (not medically prescribed) during working hours. Intoxication refers to a blood alcohol level at or above 0.10 percent or an applicable lower federal level.

A medical facility or laboratory that is certified to conduct these tests must be used to determine whether the employee was intoxicated or under the influence of a controlled substance at the time of injury.

MORE INFORMATION

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

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 purposes only. Readers should contact legal counsel for legal advice. © 2024 Zywave, Inc. All rights reserved.