

EMPLOYMENT LAW SUMMARY

Colorado Workers' Compensation – Employer Responsibilities



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) defines employer responsibilities under the state's workers' compensation program. The [Division of Workers' Compensation](#) (DWC), part of the Colorado Department of Labor and Employment, monitors compliance with WCAC requirements throughout the state.

EMPLOYER LIABILITY

The workers' compensation system exists to reduce the risk of litigation when work-related accidents and diseases lead to employee disability. Without this system, employees could sue their employers for negligence and use any damages awarded by the courts to cover their medical expenses and compensate for their loss of income. The workers' compensation system provides benefits without a determination of fault or negligence. Under normal circumstances, injured employees renounce their right to sue their employers in exchange for these benefits.

LAST EMPLOYER LIABLE

In cases of occupational disease where a disabled employee has been exposed to harmful agents while working for more than one employer, the WCAC dictates that workers' compensation benefits must be paid by the employer that most recently exposed the disabled employee to the harmful agents.

Under the "last employer" provision, the employer that most recently exposed the employee to harmful agents is solely liable for the benefits owed to the employee if the exposure caused or aggravated the employee's disability. Harmful agents include harmful quantities of silicon dioxide (SiO₂) dust, asbestos dust, coal dust and radioactive or fissionable materials.

THIRD-PARTY LIABILITY

The WCAC requires employers to provide workers' compensation benefits to eligible employees even when employees' disabilities are caused by third parties. However, the WCAC also allows employers to recover the costs of providing these benefits from third parties.

In addition, because the WCAC applies only to the employment relationship, injured employees may sue third parties to recover damages. Any sum recovered from a third party, in excess of the costs of providing workers' compensation benefits, must be paid to the injured employee.

EMPLOYERS SUBJECT TO THE WCAC

Unless an exception applies, all employers in Colorado are required to carry workers' compensation coverage. The term "employer" under the WCAC includes:

- The state and every county, city and town government as well as irrigation, drainage, school and taxing districts;
- Any person, association, firm, corporation, personal representative, assignee, trustee or receiver that employs another in the same business or employment; and

- Institutions that participate in a bona fide cooperative education or student internship program sponsored for the purpose of providing on-the-job training.

EXCLUDED EMPLOYERS

The following are **not** subject to the WCAC:

- A buyer of goods when a lessee, sublessee, contractor, subcontractor or their employee who is delivering the goods to the buyer injures oneself while not on the buyer's premises;
- Licensed real estate brokers and licensed real estate sales agents who are excluded from the WCAC's definition of an employee;
- Any person, company or corporation operating a commercial vehicle and hired as an independent contractor only to perform for-hire transportation, including loading and unloading, and who contracts to perform a specific transportation job, transportation task or transportation delivery for another person, company or corporation;
- Certain charitable, fraternal, religious and social employers that are elected or appointed to serve in an advisory capacity and receive an annual salary of up to \$750;
- Farm and ranch employment and employers of persons that do casual maintenance, repair, remodeling, yard, lawn, tree or shrub planting, trimming or similar work about the place of business, trade, or profession of the employer, if the employer has no other employees subject to the WCAC;
- Employers that hire individuals for domestic work or maintenance, repair, remodeling, yard, lawn, tree or shrub planting, trimming or similar work about the private home of the employer if:
 - The employer has no other employees subject to the WCAC; and
 - Job assignments are not within the course of the trade, business or profession of the employer;
- Common carriers by railroad;
- The Colorado Division of Civil Air Patrol, if covered by federal law; and
- Lessors or sublessors of real property who lease real property for agricultural production or to conduct any other type of business.

COVERAGE REQUIREMENTS

Employers subject to the WCAC must obtain workers' compensation coverage for their employees by either:

- Purchasing an insurance policy from a private insurance carrier licensed to do business in the state; or
- Securing the DWC's approval to self-insurance (either as an individual employers or as part of a group of employers).

Employers may not waive or be released from coverage obligations, unless they qualify for an exception under the WCAC and receive authorization from the DWC. Employers must also bear the full cost of providing workers' compensation coverage and cannot require their employees to pay for any part of it.

For an employer that obtains coverage through an insurance policy, the WCAC requires the insurance carrier to report the issuance or renewal of coverage to the DWC within **30 calendar days** of the effective date for the coverage. Insurance carriers must also inform the DWC of a coverage cancellation within 30 calendar days of when coverage is cancelled. Employers are required to provide their insurance carriers with any information that they may need in order to report coverage to the DWC, including taxpayer identification numbers.

In addition, employers are required to submit annual reports to the DWC that list any workers' compensation policy forms, endorsements, riders, letters, notices or other documents affecting the their coverage. These reports must be submitted by **July 1** each year, and each must contain certification by an officer of the carrier that, to the best of the officer's knowledge, each policy form, endorsement, rider, letter, notice or other document affecting the insurance policy or contract in use complies with Colorado law.

SELF-INSURANCE

Self-insured employers use their own assets, rather than an insurance policy, to secure their WCAC obligations. Employers may self-insure only if they receive a license from the DWC. The WCAC also allows employers to pool their resources and liabilities to form self-insurance groups. To qualify for a self-insurance license, an employer must:

- Regularly employ **at least 300 individuals** in Colorado (some exceptions are possible at the DWC's discretion if other criteria are met);
- Submit its most recent certified financial statement as well as the certified financial statements for the four previous, consecutive years;

- Prove that it has been in business for **at least five years** (some exceptions are possible if the employer is backed up by a parent company with a business history of at least five years);
- Prove it has sufficient financial strength and liquidity to guarantee it will be able to meet all of its obligations under the WCAC;
- Obtain an insurance policy of specific excess insurance acceptable to the DWC;
- Deposit a security of **at least \$300,000** against its liability under the WCAC;
- Name the DWC as the beneficiary of the security; and
- Show that it has, within its own organization, ample facilities and competent personnel to handle all claims and administer all duties under the WCAC (the employer may hire a third-party administrator to provide these services).

The DWC has sole discretion to determine whether an application should be approved or denied. If the DWC advises an employer on why its application was denied, the employer will have **30 days** to comply with the requirements identified by the DWC and gain approval. An employer can request an additional 30 days through a written petition.

Once issued, self-insured permits must be renewed every year. A self-insured employer must submit copies of financial statements, payroll records, workers' compensation claim reports and any other information that the DWC deems necessary to evaluate whether the employer remains in condition to self-insure.

RECORDKEEPING

The WCAC requires employers to keep a record of all employee injuries that result in fatalities, permanent physical impairment or more than three shifts or calendar days of lost work time. Employers must also keep a record of any occupational diseases that have been listed by the DWC.

NOTICE REQUIREMENTS

The WCAC requires every employer to display a notice indicating that the employer has workers' compensation coverage as required. The notice must identify the employer's insurance carrier or state that the employer is self-insured.

Specifically, the notice must direct employees to report work-related injuries within **four days**. The notice must be displayed in a prominent place and must be at least 14 inches in height and 11 inches in width. Lettering on the card must be at least half an inch in size. The notice must state:

Warning.

If you are injured on the job, written notice of your injury must be given to your employer within four working days after the accident, pursuant to Section 8-43-102(1), Colorado revised statutes.

If the injury results from your use of alcohol or controlled substances, your workers' compensation disability benefits may be reduced by one-half in accordance with Section 8-42-112.5, Colorado revised statutes.

Warning (for self-insured employers).

If you are injured on the job, written notice of your injury must be given to your employer within four working days after the accident, pursuant to Section 8-43-102(1.5), Colorado revised statutes.

If the injury results from your use of alcohol or controlled substances, your workers' compensation disability benefits may be reduced by one-half in accordance with Section 8-42-112.5, Colorado revised statutes.

INJURY REPORTING

The WCAC requires employers to immediately report to the DWC any accident that results in injuries to three or more employees. Any other accident (or exposure) must be reported within **10 days** if it results in:

- A fatality;
- Permanent physical impairment;
- More than three shifts or calendar days of lost time from work; or
- An occupational disease that falls into any of the following categories:
 - Cancer;
 - Chronic respiratory disease;
 - Blood borne infectious, contagious diseases
 - Nervous system diseases; or

- Pneumoconiosis; including, but not limited to, coal worker's lung, asbestosis, silicosis and berylliosis.

The report must be submitted using the [First Report of Injury](#) form issued by the DWC. Workplace incidents that do **not** result in the scenarios described above must be reported only to the employer's insurance provider in a monthly summary form.

BENEFIT PAYMENT

The WCAC requires employers to pay workers' compensation benefits to eligible employees in a timely manner. The timing of payment depends on the benefit that is being paid, as shown in the table below:

Benefit Type	Authorization of Payment	Timing of Payment
Any benefit	Awarded by DWC or court order	<ul style="list-style-type: none"> •Payment is due on the date of the order; •Employee must receive first payment within 30 days; •If appeals are filed, first payment must be received within 30 days after all appeals are exhausted.
Temporary Disability	Employer admission	<ul style="list-style-type: none"> •Payment is due on the date of claim acceptance; •First payment must be received within five calendar days after the acceptance; •Temporary, total disability payments must be received at least once every two weeks after initial payment; •In some instances, even though an employer's First Report of Injury and acceptance is timely filed, the first installment of compensation benefits may be paid more than 20 days after the insurer has notice or knowledge of the injury.
Permanent Disability	Employer admission	<ul style="list-style-type: none"> •Payment due on the date of acceptance; •First payment must be received within five calendar days after acceptance; •Subsequent payments must be paid at least once every two weeks; •Permanent disability benefits awarded by admission are retroactive to the date of maximum medical improvement (MMI); •An insurer can receive credit against permanent disability benefit payments for any temporary disability benefits paid beyond the MMI date.

RETURN-TO-WORK PROGRAMS

Implementing a program to put an injured employee back to work, even in a temporary role, can help reduce workers' compensation premiums, increase the employer's overall output and raise the injured employee's morale. The DWC will allow a premium dividend of up to **10 percent** for employers that reemploy injured employees at their pre-injury wages.

MORE INFORMATION

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

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