

EMPLOYMENT LAW SUMMARY

Delaware: 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 for work-related injuries, diseases and deaths. Workers' compensation is governed by state law. The Delaware Workers' Compensation Law (WCL) establishes employer responsibilities relating to workers' compensation in the state. The Office of Workers' Compensation (OWC), which is part of the Division of Industrial Affairs (DIA) within the Delaware Department of Labor, administers the workers' compensation system and enforces employer responsibilities under the WCL.

EMPLOYERS SUBJECT TO THE WCL

In general, the WCL applies to every employer that has at least one employee working in Delaware. If an employer's primary place of business is outside of the state, the employer is subject to the WCL if at least one employee performs any of the following within Delaware:

- Construction or contracting work for which a Delaware license is required;
- More than five consecutive days of any work for the employer's business at a single time; or
- An aggregate of more than 15 days of any work for the employer's business in any six-month period.

Under the WCL, an "employee" includes any person who performs service under a contract of hire or for valuable consideration within the state. Employment contracts may be express or implied. However, the following individuals are not considered employees under the WCL:

- Farm laborers;
- Casual workers;
- Direct sellers;
- Certain sports officials for amateur sporting events;
- Household workers who earn less than \$750 in cash in any three-month period from a single household;
- Sole proprietors; and
- Partners of a partnership.

COVERAGE REQUIREMENTS

Employers subject to the WCL must maintain adequate workers' compensation coverage for their employees. An employer may fulfill this coverage requirement by either:

- Purchasing an insurance policy from a carrier licensed by the Delaware Department of Insurance (DDOI) to provide workers' compensation insurance in the state; or
- Obtaining the OWC and DDOI's approval to self-insure, either individually or as a part of a group.

If an employer's primary place of business is outside of Delaware and the employer is subject to the WCL because it has at least one employee working within the state, the employer may satisfy the WCL's coverage requirement by either purchasing a Delaware workers' compensation insurance policy or through any of the following, as long as it provides benefits that are the same or greater than the benefits required under the WCL:

- A certificate of self-insurance from another state;
- A written rider on an out-of-state workers' compensation insurance policy that covers employees working within Delaware; or
- A substitute system approved by the OWC.

All employers must pay the full cost of providing the required coverage. The WCL specifically prohibits employers from allowing or requiring any employee to contribute toward the cost.

VOLUNTARY EXCLUSIONS

Although workers' compensation coverage is mandatory for all employees, the WCL allows the following individuals to voluntarily elect to be excluded from their employers' coverage:

- Executive officers of a corporation (the president, vice president, secretary, treasurer or any other officer elected by the corporation's board of directors);
- Members of a limited liability company (LLC);
- Immediate family members of a sole proprietor; and
- Immediate family members of a partner of a partnership.

To make a voluntary exclusion election, these individuals must enter a written agreement with their employer, and the employer must submit the agreement to its insurance carrier or to the DIA. Each corporation is limited to eight executive officer exclusions and each LLC is limited to four member exclusions.

VOLUNTARY COVERAGE

A Delaware employer that is not subject to the WCL may voluntarily elect to provide coverage for any otherwise exempt workers. Sole proprietors and partners of a partnership may also elect to provide coverage for themselves. To make these elections, an employer must purchase a Delaware workers' compensation insurance policy that names the individual(s) to be covered and comply with all other WCL requirements while the coverage is in effect.

INSURANCE COVERAGE

All Delaware workers' compensation insurance policies must include an agreement by the issuing insurer that it will promptly pay all WCL benefits for the insured employer. 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. When purchasing or renewing an insurance policy, employers will have the option of including a deductible, of between \$500 and \$5,000, for medical expenses and death benefits under the WCL. Although a deductible can help reduce premium costs, an employer that includes one in its policy must be prepared to cover the deductible amount for every workplace injury that may occur. Insurance providers are required to pay a deductible amount upfront when an employee or his or her surviving dependents are entitled to receive benefits under the WCL, but the insured employer will be responsible for reimbursing the deductible amount for every compensable injury or death. Insured employers that have been in business for at least three years and have an annual premium of \$3,161 or more may be eligible for a premium reduction by participating in the DDOI's Workplace Safety Program.

SELF-INSURANCE COVERAGE

A self-insured employer uses its own assets, rather than an insurance policy, to secure its obligations under the WCL. Employers may self-insure individually or as members of a group. To become self-insured, an employer must obtain approval from both the OWC and the DDOI. An employer may be eligible for individual self-insurance if it has the financial ability to pay all WCL benefits that could become due. Other than this requirement, the WCL and its related regulations do not include specific details about how an employer may qualify for an individual self-insurance approval. Thus, an individual employer that wishes to self-insure should contact the OWC directly for more information. For group self-insurance approval, DDOI regulations specify that a group must have at least five employers and that the employers in the group must:

- Be engaged in the same or similar type of business;
- Be members of the same bona fide trade or professional association that has been in existence for at least five years; and
- Have a combined net worth of at least \$1 million.

If the OWC and DDOI approve an employer or group for self-insurance, the agencies will issue a certificate that authorizes the employer or group to operate as a self-insurer. This certification may remain in effect for as long as the employer or group complies with all WCL requirements.

COVERAGE REPORTING

Every employer subject to the WCL must provide the OWC with evidence of its compliance with the WCL coverage requirements every year and any time upon the OWC's request. A self-insurance certificate or a certificate from an insurance carrier is generally sufficient to satisfy this requirement.

NOTICE POSTING REQUIREMENT

Employers must post and maintain a workers' compensation notice in a conspicuous and accessible location in or about every place of employment where employees normally pass. Employers may use the Delaware Labor Law poster to comply with this requirement.

INJURY REPORTING

Under the WCL, employers must keep a record of all injuries and occupational diseases reported by their employees. Within 10 days after an employer first obtains knowledge of an employee's work-related injury or disease, the employer must complete a First Report of Occupational Injury or Disease form and file it with the OWC. The employer must also provide a copy of the completed form to the employee.

PROVIDING MEDICAL CARE

Employers must provide and pay for all reasonable medical care necessary to treat an employee's work-related condition. Employees have the right to obtain the care from a physician of their choice. All medical expenses must be paid within 30 days after an employer receives a bill and documentation for the expenses, unless the employer notifies the employee in writing that the expenses are contested or that further verification is required. If an employer pays a medical bill but wishes to reserve its right to later contest its liability for the payment, the employer must give the medical provider and the employee a clear and concise written explanation of the payment, which must include:

- The specific expenses that are being paid;
- The date on which the payment is made; and
- The following statement, which must be conspicuously displayed on the explanation in at least 14-point type: "This claim is IN DISPUTE and payment is being made without prejudice to the employer's right to dispute the compensability of the workers' compensation claim generally or the employer's obligation to pay this bill in particular."

COMPENSABILITY DETERMINATIONS

After an employee provides notice of a work-related condition to his or her employer, the employer has 15 days to send a written notice to the employee regarding his or her claim for workers' compensation benefits. This notice must indicate either that the employer:

- Accepts the claim;
- Denies the claim; or
- Is unable to make a decision on the claim.

If an employer denies a claim, the notice must include the reason for the denial. If an employer is unable to make a compensability decision with the 15 days, the notice must state the reason for the inability and approximately when a determination will be made.

ACCEPTED CLAIMS

If an employer accepts an employee's workers' compensation claim, it must:

- Enter a written agreement with the employee regarding any WCL benefits for lost work time; and
- File the original written agreement with the OWC.

The employer must also begin paying WCL benefits to the employee within 14 days after the date of the agreement.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the OWC's website for more information about workers' compensation laws in Delaware.

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