

EMPLOYMENT LAW SUMMARY

Florida: Workers' Compensation - Employee Eligibility



Because You're Different

Workers' compensation is a system of no-fault insurance that provides monetary and medical benefits to employees (or their survivors) for work-related injuries, diseases and deaths.

The Florida Workers' Compensation Law (WCL) prescribes eligibility requirements for workers' compensation benefits. The [Division of Workers' Compensation](#) (DWC), which is part of the Florida Department of Financial Services (DFS), handles workers' compensation claims and resolves any disputes over eligibility.

INDIVIDUALS COVERED UNDER THE WCL

Most workers in Florida are covered under the WCL. In general, workers' compensation coverage applies to all individuals (whether lawfully or unlawfully employed) working for pay or receiving compensation for their services, including:

- Aliens and minors,
- Apprentices;
- Independent contractors working in the construction industry; and
- Volunteer firefighters (regardless of whether they are on duty).

INDIVIDUALS NOT COVERED UNDER THE WCL

Workers' compensation coverage does not extend to:

- Casual employees not working in the employer's trade, business, profession or occupation;
- Exercise riders or breeders working for multiple horse farms where no employee-employer relationship exists;
- Independent contractors not engaged in the construction industry;
- Individuals performing community service as part of a court sentence;
- Individuals providing domestic services in private homes;
- Individuals working for facilities serving Medicaid-enrolled clients;
- Inmates (except those working for private employers);
- Medicaid-enrolled individuals that, by definition, are not employed and receive Adult Day Training Services under the Home and Community-Based or the Family and Supported Living Medicaid Waiver program;
- Motor vehicle owner-operators under contract to transport property for an employer;
- Professional athletes;
- Real estate agents paid solely on commission;
- Sports officials working as independent contractors for amateur sporting events;
- Taxicab, limousine and other passenger vehicle drivers when the charges paid by the driver to the company for his or her services is neither proportional nor conditional on fare revenues; and
- Volunteer workers (except those working for a local, state or federal government agency).

Corporate officers and members of an LLC who own at least 10 percent of their business may choose to be exempt from WCL coverage, even if they work in the construction industry. To make this election, corporate officers and members of an LLC must file a [Notice of Election to be Exempt](#) with the DWC.

INDEPENDENT CONTRACTORS

As noted above, independent contractors who perform services in the construction industry are covered under the WCL. Individuals working in other industries may not be considered covered employees of the entities that hire them to perform work if they meet at least four of the following criteria:

- Deposit payments for services into a business (not a personal) account;
- Hold a federal employer identification number, unless the independent contractor is a sole proprietor;
- Maintain at least one bank account in the business' name and use that account for paying business expenses;
- Maintain separate business work facilities, trucks, equipment, materials or similar accommodations;
- Receive payment for services through a bidding process or on a contractual agreement where no employment relationship exists; and
- Perform work or is able to perform work for more than one business or individual of their choice without submitting to an employment application or process.

Workers who do not meet at least four of the previous criteria may still be considered independent contractors after:

- A full consideration of the nature of their situation; and
- A satisfactory explanation that an employment relationship does not exist between the independent contractor and the party receiving the services.

Additional evaluation criteria includes whether individuals:

- Are responsible for the satisfactory completion of the work or services they perform;
- Control the means of performing work or services;
- Have continuing or recurring business liabilities or obligations;
- Incur the principal expenses related to the work or service they perform;
- Realize a profit or suffer a loss in connection with performing work or services;
- Receive payment for their work or services on a commission or per-job basis and not on any other basis; or
- Run a business whose failure or success depends on the relationship of business receipts to expenditures.

Misclassifying an individual as an independent contractor may result in fines of up to \$5,000 for each misclassification.

COMPENSABLE CONDITIONS

To receive workers' compensation benefits, an employee must sustain a compensable condition.

A compensable condition is defined as harm or damage an employee sustains as the direct result of an accident or exposure to a hazardous environment in the normal course of his or her employment. In general, an injury is compensable if it is at least 50 percent of its cause is related to an employment duty. The gravity of the injury must be determined to a reasonable degree of medical certainty, based on relevant medical findings.

Pain and other subjective criteria are not sufficient to establish the existence of a compensable injury. Similarly, mental or nervous injuries caused by stress, fright or excitement are not compensable, unless they are accompanied by physical trauma. If a licensed psychiatrist can establish the existence of mental or nervous injury by clear and convincing medical evidence, compensation is regulated by supplementary provisions of the WCL.

DISQUALIFICATION FROM BENEFITS

Even when an employee has a compensable condition, other factors may prevent him or her receiving workers' compensation benefits. The WCL has provided guidance on how employee behavior, fraud, substance abuse and other events or activities may disqualify eligible individuals.

EMPLOYEE BEHAVIOR

An employee may be disqualified from receiving workers' compensation benefits if his or her condition was caused by his or her willful intention to injure or kill himself, herself or another.

FRAUD

An employee may be disqualified from receiving workers' compensation benefits if a state judge has determined that the employee has knowingly or intentionally engaged in fraudulent or criminal activity to secure benefits.

When filing a claim, Florida law requires individuals to sign a statement acknowledging that knowingly and intentionally filing a false or misleading statement constitutes insurance fraud. If the individual refuses to sign the statement, workers' compensation benefits will be suspended until the document is signed.

SUBSTANCE ABUSE

An employee may be disqualified from receiving workers' compensation benefits if his or her injury was primarily caused by intoxication or by the influence of any drugs, barbiturates or other stimulants.

An employer that has reason to suspect that an employee's injury was caused by intoxication or substance abuse may require the employee to submit to an alcohol test or drug screening. If the employee's alcohol blood level is at least 0.08 percent, the employer may presume that the employee's injuries were caused by intoxication.

If an employee refuses to submit to a screening, the employer may presume the employee's injuries were caused by substance abuse. Employers must comply with state regulations when administering and interpreting alcohol and drug tests.

RECREATIONAL AND SOCIAL ACTIVITIES

Employees may not receive compensation for injuries that occurred during recreational and social activities, unless their participation was mandatory and the employer derived a substantial direct benefit from the activities. The employer's benefit must go beyond a goal of improving employee health and morale that is common to all kinds of recreation and social life.

SUBSEQUENT INTERVENING ACCIDENTS

Employees may not receive compensation for injuries caused by a subsequent intervening accident. A subsequent intervening accident is an incident arising from an outside agency that is the direct and natural result of the original injury. The WCL provides an exemption for employees that suffer subsequent intervening accidents while traveling to or from a health care provider to receive treatment for a compensable injury.

ADDITIONAL EMPLOYEE RESPONSIBILITIES

The WCL also sets additional employee expectations and responsibilities. Failing to satisfy these requirements may cause an individual to lose any benefits he or she is entitled to receive (in whole or in part). Among other things, employees are expected to:

- Inform a supervisor or manager of any work-related conditions as soon as possible but no later than 30 days after they happen;
- Report for treatment at a health care provider approved by their employers (unless the employee requires urgent medical care at the nearest health care facility);
- Follow any employer instructions on how and when to contact the employer's insurance carrier;
- Follow all instructions received by a qualified and authorized health care provider (including submitting to disability evaluations); and
- Accept suitable employment offered by the employer in case of partial disability.

MORE INFORMATION

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

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