

EMPLOYMENT LAW SUMMARY

Georgia: Workers' Compensation - Employee Eligibility



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 or deaths. Workers' compensation is governed by state law.

The Georgia Workers' Compensation Act (WCA) establishes eligibility requirements for employees in the state. The [Georgia State Board of Workers' Compensation](#) (Board) determines whether an individual is an employee for coverage purposes.

To qualify for workers' compensation benefits, an individual must be a **WCA-covered employee** and sustain a **compensable injury or disease**. Other factors may affect eligibility as well.

While the benefits available to employees are generally the same for injuries and occupational diseases, the WCA includes separate eligibility requirements for each type of condition. This Employment Law Summary makes special note of the differences.

COVERED EMPLOYEES

The WCA covers most workers for both accidental injuries and occupational diseases. A "covered employee" is any person in service of another under any contract of hire or apprenticeship. An employment contract may be written or implied.

The WCA specifically includes minors, even those who are illegally employed, as covered employees. Several public service workers, such as firefighters and law enforcement personnel, are also included in the definition.

However, employers with **fewer than three** employees in the state are **not** required to provide coverage for their employees.

NOT COVERED EMPLOYEES

The WCA specifically excludes the following individuals from coverage:

- Casual employees;
- Parties to franchise agreements;
- Common carriers by railroad engaged in intrastate trade or commerce;
- Farm laborers;
- Domestic servants
- Airline pilots and their assistants flying for state or county forest fire protection programs; and
- Independent contractors.

For WCA purposes, an "independent contractor" includes certain sports officials, people who buy and resell products, people who distribute printed materials and any worker who:

- Is party to a written or implied contract intending to create an independent contractor relationship with the employer;

- Has the right to exercise control over the time, manner and method of the work to be performed; and
- Is paid on a set price per job or on a per-unit basis, rather than on a salary or hourly basis.

ELECTIVE COVERAGE

The following employees may **elect to be exempt** from WCA coverage by providing written certification to the employer's insurer, or, if the employer is self-insured, to the Board:

- Corporate officers, limited to five per corporation; and
- Limited liability company (LLC) members, limited to five per LLC.

The following may **elect to be included** as covered employees, as long as they are actively engaged in the operation of the business, by notifying the company's insurer:

- Sole proprietors; and
- Partners of a partnership.

In addition, employers may elect to include farm laborers as covered employees. Employers with fewer than three employees may also elect to provide coverage and be bound by the WCA.

COMPENSABLE CONDITIONS

For an **injury** to be compensable, it must be caused by an accident arising out of and in the course and scope of employment. This includes aggravations of pre-existing conditions, but only to the extent that the work-related injury causes any disability. A disease may be included as a compensable injury if it results naturally and unavoidably from an accident. Otherwise, specific eligibility rules for occupational diseases apply.

An employee's **occupational disease** is compensable if it arises out of and in the course of the particular trade, occupation, process or employment that exposes the employee to the disease. An employee who makes a workers' compensation claim for an occupational disease must also prove that:

- There is a direct causal connection between the work conditions and the disease;
- The disease followed as a natural incident of exposure due to employment;
- The disease does not follow substantial exposure to conditions outside of the employee's employment;
- The disease is not an ordinary disease of life to which the general public is exposed; and
- The disease appears to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence.

The WCA also includes special rules for hernias and other conditions.

CONDITIONS THAT ARE NOT COMPENSABLE

Compensable injuries and diseases do **not** include:

- Partial hearing loss due to noise, psychiatric and psychological problems, and heart and vascular diseases (however, these become compensable if certain requirements are met under the WCA);
- Injuries caused by a third person's willful act directed against an employee for personal reasons;
- Heart disease, heart attack, failure or occlusion of any coronary blood vessels, stroke, or thrombosis, unless the employee can prove the condition is attributable to performing his or her usual work;
- Alcoholism and any resulting disabilities; or
- Drug addiction and any resulting disabilities, unless they resulted from treatment of an initial compensable injury by an authorized physician.

DISQUALIFICATION FROM BENEFITS

Even when an eligible employee has a compensable injury, certain factors may still prevent him or her from receiving workers' compensation benefits. These include the employee's behavior, substance abuse and fraud.

The WCA specifies that an employee is **not** eligible for compensation when an injury is due to the injured employee's:

- Willful misconduct, including intentional self-infliction;
- Attempt to injure another;

- Willful failure or refusal to use a safety appliance;
- Willful failure to perform a duty required by law; or
- Alcohol intoxication or being under the influence of marijuana or other controlled substances that were not legally prescribed.

In addition, injuries sustained while an employee voluntarily participates in recreational, social, athletic or exercise activities are only compensable under certain circumstances, such as where the activities are during work hours and part of the employee's work-related duties.

CLAIM FILING REQUIREMENTS

To preserve any right to receive benefits under the WCA, employees must file a claim with the Board within certain time frames. The deadlines depend on the type of condition claimed and on whether the employer has paid any benefits.

For **accidental injuries**, employees must file a claim within **one year** of the date of injury or of the date of the last medical treatment provided by the employer. If the employer paid any weekly benefits, employees may file a claim within **two years** of the date of the last weekly benefit payment.

For **occupational diseases**, the "date of injury" is the first date on which the employee was actually disabled from work due to the condition. This is called the **date of disablement**. The time within which an employee may file a claim for an occupational disease starts on the date the employee knew, or, in the exercise of reasonable diligence, should have known of the disablement and its relationship to the employment. Employees may file a claim within **one year** of that date, but the time period may never extend more than **seven years** after the employee's last injurious exposure to the hazard of the disease.

All claims for death benefits must be filed within one year of the death.

ADDITIONAL EMPLOYEE RESPONSIBILITIES

The WCA sets additional expectations and responsibilities for injured employees. Failing to satisfy the following duties may cause an individual to lose benefits, either in whole or in part. Employees must:

- Immediately (or as soon as reasonable and practicable) inform a supervisor or manager in person of any injury;
- Provide **written notice** of injury to the employer within **30 days** (if the employer did not already have notice or knowledge of the injury);
- Provide the employer with a signed release for medical records and other information reasonably related to any claimed condition;
- Accept the employer's offer of employment (if the offer of employment observes the restrictions related to the claimed condition);
- Accept all medical services furnished by the employer under the WCA;
- Submit to medical examinations upon the employer's reasonable request; and
- Participate in and follow all rules regarding alternative dispute resolution and other proceedings for resolving disputed claims.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the Board website for more information on workers' compensation laws in Georgia.

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.