

EMPLOYMENT LAW SUMMARY

Idaho: Workers' Compensation – Employer Responsibilities



Because You're Different

Workers' compensation is a system of no-fault insurance that provides monetary and medical benefits to employees for work-related injuries and diseases. Workers' compensation is governed by state law. The Idaho Workers' Compensation Law (WCL) establishes employer responsibilities relating to workers' compensation in the state. The [Idaho Industrial Commission](#) (Commission) administers the workers' compensation system and enforces employer responsibilities under the WCL.

COVERAGE REQUIREMENT

An employer's primary responsibility under the WCL is to secure its ability to pay all WCL benefits to and for any employees who sustain work-related conditions. An employer may satisfy this requirement by either:

- Purchasing a workers' compensation insurance policy from an insurance company authorized by the Commission and the Idaho Department of Insurance (Insurance Department) to provide the coverage; or
- Obtaining the Commission's approval to self-insure.

Employers must pay the full cost of providing this coverage and are prohibited from requiring or allowing their employees to contribute any portion.

If an employer fails to secure coverage as required, an injured employee may either sue the employer in court for damages or file a claim for benefits under the WCL. A noncompliant employer is also subject to numerous fines, criminal charges and stop-work orders.

If an employee files a lawsuit against a noncompliant employer, the court may order the employer to pay all damages resulting from the employee's injury instead of the more limited benefits available under the WCL. If an employee files a WCL claim against a noncompliant employer, the Commission will order the employer to pay not only all the WCL benefits claimed by the employee, but also an additional 10 percent of the total benefits, along with all costs and attorney's fees associated with the claim.

EMPLOYERS SUBJECT TO THE WCL

In general, the WCL's mandatory coverage requirement applies to all public and private employers that have **one or more employees** working in Idaho. The term "employer" is defined as any person who has expressly or impliedly hired or contracted the services of another. The WCL specifies that the following, among others, are employers subject to the WCL:

- Contractors and subcontractors that hire other workers;
- Certain owners or lessees of a premises used for business purposes;
- Local governments that use the services of volunteer firefighters; and
- Farm labor contractors.

The term "employee" generally includes any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer. This includes minors, even if their employment is unlawful.

EXCLUSIONS AND VOLUNTARY COVERAGE

Despite its broad definition of an employee, the WCL specifically excludes certain types of workers from its mandatory coverage requirement. However, an employer may elect to be subject to the WCL for any of these excluded workers. To make this election, an employer must provide workers' compensation coverage and file a completed [Form IC 52](#) ("Election of Coverage") with the Commission.

Workers for whom an employer is **not** required, but may, provide coverage under the WCL include:

- Household domestic servants;
- Casual workers;
- Outworkers;
- Sole proprietorship owners;
- Working members of a partnership or limited liability company (LLC);
- Corporate officers and directors who own at least 10 percent of all of the issued and outstanding voting stock of the corporation;
- Family members (related by blood, adoption or marriage) of a sole proprietorship owner, or of the owner of a single member LLC that is taxed as a sole proprietorship, who live within the sole proprietorship or LLC owner's household;
- Workers covered under federal workers' compensation laws;
- Certain agricultural aircraft pilots;
- Associate real estate brokers and real estate salesmen who are paid solely on commission;
- Volunteer ski patrollers; and
- Certain sports officials for secondary schools.

VOLUNTARY EXCLUSIONS FOR FAMILY MEMBERS OF SOLE PROPRIETORSHIP OWNERS

As noted above, a sole proprietorship owner is not required to provide coverage for his or her family members who work for the sole proprietorship, as long as the family members live within the sole proprietorship owner's household. If a sole proprietorship owner employs family members who do **not** live within his or her household, those individuals must be covered under the WCL.

However, the law allows a parent, child or grandchild employee of a sole proprietorship owner to voluntarily elect to be exempt from the WCL coverage requirement. To make this election, the individual must complete and file both an original and a copy of [Form IC53](#) ("Declaration Under Section 72-212(5)"), which must be signed by both the employee and the employer, with the Commission.

A voluntary exemption is not valid until the Commission approves it and sends a copy of the filed Form IC53 to the employer. If the employer is insured, it must then file the form with its insurance carrier.

INSURANCE POLICY COVERAGE

When an employer purchases a workers' compensation insurance policy to comply with the WCL's coverage requirement, the issuing insurance carrier becomes responsible for administering WCL claims and paying all WCL benefits for the insured employer. Every policy sold in the state must be approved by both the Commission and the Idaho Department of Insurance and must cover the insured employer's full liability under the WCL.

The WCL requires all authorized insurance carriers to designate and maintain a claims administration office within Idaho for each workers' compensation insurance policy. The claims administration office must be staffed with Idaho-licensed and -resident adjusters who have full authority to make claims decisions and payments for the insured employer. Specifically, an insurance adjuster's responsibilities under a workers' compensation insurance policy include:

- Investigating and adjusting all WCL claims;
- Paying all WCL benefits;
- Accepting service of claims, applications for hearings, orders of the Commission, and all process that may be issued under the WCL;
- Entering into settlements with employees who file WCL claims;
- Supplying the insured employer with all forms required by the Commission; and
- Filing required reports with the Commission.

When purchasing an insurance policy, an employer may have the option of including a deductible. Although deductibles can help reduce premium costs, an employer that includes one in its policy must be prepared to cover the deductible amount for each workplace injury that may occur. Insurance carriers are required to pay deductible amounts up front when an employee is entitled to receive benefits under the WCL, but the employer is responsible for reimbursing the deductible amount for each compensable injury.

After an employer purchases workers' compensation insurance, the insurance carrier must file a notice of the policy with the Commission within 30 days. However, the WCL also imposes an obligation on insured employers to report their coverage. Thus, it is in an employer's best interest to request confirmation that the Commission has received notification of coverage from its insurance carrier.

SELF-INSURANCE COVERAGE

Self-insured employers use their own assets, rather than an insurance policy, to cover their obligations under the WCL. An employer that wishes to self-insure must obtain written approval from the Commission. To be considered for the Commission's approval, an employer must have an average annual Idaho payroll of at least **\$4 million** over the past three years. The employer must also submit a completed self-insurance application, along with the following, to the Commission:

- A \$250 application fee;
- Audited financial statements or other documents demonstrating the employer's sound financial condition;
- A history of all workers' compensation claims filed with, and all benefits paid by, the employer or its workers' compensation insurance carrier during the previous five calendar years;
- Copies of proposed excess insurance coverage policies;
- An actuarial study determining adequate rates for the proposed self-insurance plan; and
- A feasibility study with a cost-benefit analysis of self-insurance versus the employer's current coverage.

In addition, an applicant for self-insurance must:

- Designate and provide the Commission with the name and address of a **claims administrator** that employs an Idaho licensed, resident adjuster who has full authority to administer and pay the employer's workers' compensation claims;
- Set up a custodial agreement with the State Treasurer and deposit security of **up to \$10 million** (specific amount determined by the Commission based on prior claims history); and
- Provide any additional information the Commission may request.

Once the Commission approves a self-insurance application, it will issue a certificate that authorizes the employer self-insure for as long as the employer complies with all WCL requirements. These requirements include promptly responding to the Commission's requests for information and submitting to Commission audits.

A self-insured employer must also pay semi-annual assessments and file several reports with the Commission each year. These reports, and their annual deadlines, include:

- [Form IC-211](#) ("Self-Insured Employer Report of Total Unpaid Liability") by **Jan. 31**, by **July 31** and any time upon the Commission's request;
- [Form IC-4010](#) ("Semi-Annual Workers' Compensation Tax Report for Self-insured Employers") and the accompanying computation Form IC-4010a by **March 3** and **July 31**;
- [Form IC2-327](#) ("WC Claims Involving Medical Payments Only and Claims Involving Indemnity Payments Report") by **March 3** (must be filed simultaneously with the first Semi-Annual Premium Tax Report).

The Commission may withdraw an employer's self-insurance approval if the employer fails to comply with any WCL requirement.

NOTICE POSTING

Every employer subject to the WCL must post and maintain a typewritten or printed workers' compensation notice in conspicuous locations in and about its places of business. The notice must include the name and address of the employer's insurance carrier, if applicable, and a statement that the employer has complied with the WCL's coverage requirements. An employer that fails to comply may be subject to criminal charges. The Commission provides a [sample notice](#) that employers may use as a guide in creating their own notices to post.

INJURY REPORTING

Employers must report any work-related condition that results in **medical treatment** or **lost work time**. This report is due within **10 days** after an employer first receives notice or obtains knowledge of the condition. Employers must use the [First Report of Injury or Illness](#) form and file it directly with their claims administrators, who must then file a copy with the Commission. The Commission may request additional information in order to process a claim at any time. Employers and their claims administrators must promptly provide any information requested.

RECORDKEEPING

Employers must keep a record of every work-related injury or disease sustained by their employees. Each record must include a description of the injury or disease, the manner in which it occurred, and the time during which the employee was unable to work because of the condition. Employers must also keep an accurate record of the number and job classification of their employees and the wages paid to them. The Commission has the right to inspect an employer's records at any time and may require an employer to submit sworn statements regarding the number of its employees, its payroll amounts or any information relating to its workers' compensation claims.

The WCL also requires employers to obtain complete copies of their employees' WCL claim files from their claims administrators and must retain each of these files for the shorter of either **the life of the claim** or **five years** after the claim is closed. The files must be kept available for the Commission's inspection within the state of Idaho in either hard copy or immediately accessible electronic format at all times. An employer that fails to keep or provide the required records may be subject to criminal charges.

PROVIDING MEDICAL CARE

Employers must provide all reasonable medical care necessary to treat their employees' work-related conditions. The WCL grants employers the right to select the attending physician to oversee an injured employee's treatment. If an employer fails to provide a physician, the employee may obtain treatment from a physician of his or her choice.

In addition, employees who obtain treatment from an employer-selected physician may request a change to another physician by submitting a written request to the employer. An employer that receives a written request for a physician change from an employee must give the employee a written notice of its decision on the request within **14 days**.

Physicians that provide treatment for employees' work-related conditions must submit regular reports to employers. For any work-related condition that results in a WCL claim, a physician must submit written medical reports to the employer within 14 days after each of the injured employee's visits. An employer that receives a medical report must **promptly** submit copies of them to the Commission. Unless the Commission approves a different schedule, each medical bill must be paid directly to the billing provider within one week after an employer receives it.

PAYING INCOME-LOSS BENEFITS

An injured employee becomes entitled to receive weekly WCL income-loss benefits once he or she has been disabled from work for more than five days as a result of a work-related condition. However, this five-day waiting period does not apply if an employee is hospitalized on an inpatient basis due to a work-related condition. In other cases, income-loss benefits for the first five days become payable if the employee remains disabled from work for longer than two weeks.

Employers must make the first income-loss benefit payment to an employee within **four weeks** from the first day of the employee's disability. This and all other WCL benefit payments must be made by check and issued from the employer's designated claims administrator's in-state office. A copy of the first income-loss benefit check, showing the signature and date, must be sent to the Commission on the same day it is issued to the employee. Employers and claims administrators must also maintain copies of all WCL-benefit checks in their in-state files for Commission audit purposes.

Ongoing income-loss benefits must be paid to an employee on a **weekly** basis, though employers may ask the Commission to authorize a bi-weekly or monthly schedule instead. The WCL prohibits employers from requiring any employee to accept "sick leave" or any other comparable benefit in lieu of the weekly income-loss benefits required under the WCL.

MORE INFORMATION

Please contact Heffernan Insurance Brokers or visit the Commission's [website](#) for more information about workers' compensation requirements in Idaho.

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