

# EMPLOYMENT LAW SUMMARY

## Illinois Workers' Compensation - Employee Eligibility



*Because You're Different*

Workers' compensation is a system of no-fault insurance that provides medical and monetary benefits to employees who sustain injuries or diseases at work. In Illinois, an injury or illness qualifies for worker's compensation coverage if it is the result of an accident or exposure arising out of and in the course of employment.

The Illinois Worker's Compensation and Occupational Diseases Acts (IWCA) impose certain requirements on employers in the state. The [Illinois Workers' Compensation Commission](#) (Commission) monitors and enforces compliance with the IWCA.

### INDIVIDUALS COVERED UNDER THE IWCA

Nearly every worker in Illinois is covered by the IWCA. Coverage under the IWCA cannot be waived, even by mutual contract. The following is a list of individuals that the IWCA specifically includes under its coverage:

- Full- and part-time employees;
- Minors;
- Contractors and subcontractors;
- Illegal immigrants;
- Members of boards of directors (if compensated); and
- Volunteer firefighters.

### EXCLUSIONS

The following individuals are specifically excluded from coverage under the IWCA:

- Individuals performing services as real estate brokers, broker-salesmen, or salesmen who are paid by commission only;
- Employees of the federal government; and
- Shareholders of a corporation.

In addition, the following individuals may elect to withdraw themselves from the coverage under the IWCA:

- Sole proprietors;
- Partners in partnership;
- Members of a limited liability company; and
- Corporate officers employed by any domestic or foreign corporation.

### INJURY NOTICE REQUIREMENT

An employee who is injured at work must promptly inform the employer. The IWCA requires employees to notify their employers within 45 days of an accident. Any delay in the notice can delay the payment of benefits. A delay of more than **45 days** may result in the loss of all benefits. For occupational diseases, the employee must notify the employer as soon as possible after he or she becomes aware of the condition. Notice in cases of exposure to radiological materials or equipment may be extended to 90 days from the time the employee suspects or knows he or she has received an excessive dose of radiation.

Employees may give notice of a work-related condition orally or in writing. To avoid problems, however, the Commission recommends that employees provide written notice containing the following items:

- The date and place of the accident;
- A brief description of the accident, injury, or disease; and
- The employee's name, address, and telephone number.

Notice to a fellow worker who is not a part of management is not considered notice to the employer.

Employees must also provide notice regarding the medical care obtained. This includes giving the employer the name and address of the doctor or hospital chosen. If the employee changes providers, the employee should again notify the employer.

Employees must give their employers enough medical information for their employers to determine whether to accept or deny a claim. This includes all medical records relevant to the condition for which benefits are sought. An employer is not required to provide benefits if it does not receive the medical information necessary to determine the worker's medical status and fitness to work.

## FILING A CLAIM WITH THE COMMISSION

If an employer fails to pay required workers' compensation benefits, the employee may file a claim with the Commission. In most cases, the employee must file a claim within the later of either:

- **Three years** after first becoming disabled by to an accidental injury or occupational disease; or
- **Two years** of the last payment of any benefit under the IWCA.

Other time limits apply for disabilities caused by certain work-related conditions or hazards. For example, if an employee's disability is caused by radiological materials or equipment or asbestos, he or she must file a claim within **25 years** after the last exposure.

In general, an employee who fails to file a claim with these time periods will be forever barred from taking any legal action against his or her employer for the work-related condition. Under [amendments to the IWCA](#) that went into effect on **May 17, 2019**, however, an employee who misses any of the above deadlines may still be able to file a civil lawsuit against the employer under certain circumstances.

Specifically, this would be allowed in cases where an employee's work-related disability does not become manifest, or known, until after the IWCA's applicable filing deadline has passed.

For example, say an employee is exposed to asbestos in the workplace but has no symptoms of an asbestos-related disease until 40 years after the last workplace exposure. The IWCA's 25-year filing limit for asbestos-related conditions would bar this employee from pursuing any IWCA benefits for the disease. And, because the IWCA generally provides the "exclusive remedy" for all work-related conditions, the employee would also be barred from taking any other legal actions against the employer. The amendments made in May 2019 changed this so that, based on the fact that the employee's condition did not present itself until after the IWCA filing period, the employee could sue the employer in court for damages associated with that condition.

## MORE INFORMATION

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

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