

# EMPLOYMENT LAW SUMMARY

## Kentucky 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 or their survivors for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Kentucky Workers' Compensation Act (WCA) establishes obligations for employers and penalties for noncompliance. The Kentucky [Department of Workers' Claims](#) (DWC) administers the workers' compensation system in the state and enforces employer compliance with the WCA.

### EMPLOYERS SUBJECT TO THE WCA

Most employers in Kentucky must comply with the WCA. In general, an employer is subject to the WCA if it:

- Employs **one or more** employees; and
- Is not solely engaged in agriculture.

If an employer is exempt from the WCA, it may elect to become subject to it by complying with its coverage requirements.

### COVERAGE REQUIREMENTS

The WCA requires employers to maintain workers' compensation coverage for their employees. This may be satisfied by either:

- Purchasing a workers' compensation insurance policy from an entity that is authorized to issue it in the state; or
- Obtaining the DWC's approval to self-insure, either as an individual employer or as part of a group.

Employers must pay the full cost of providing workers' compensation coverage and may not deduct any portion of the cost from the wages or salary of an employee.

### INSURANCE POLICIES

The DWC ensures that all workers' compensation insurance policies meet WCA standards by requiring insurance companies to submit them for approval before they may be issued. Under the WCA, insurance companies essentially take on the insured employer's responsibilities relating to the payment of workers' compensation benefits.

In general, workers' compensation insurance policies must cover the employer's entire liability for benefits to each employee. Employers may, however, cover their liability through two separate policies if they obtain a DWC-approved 24-hour health insurance policy. This type of policy provides integrated coverage for an employer's group health benefits and the medical portion of workers' compensation benefits. An employer that combines its medical coverage in this manner must also purchase a separate policy to cover its liability for all non-medical benefits under the WCA.

The DWC may also authorize an employer to obtain separate workers' compensation policies for different plants or work locations. This may be allowed only if the employer has workers' compensation coverage for all employees and none of the employees could lose coverage or any benefit rights by transferring to other plants or locations.

As a last resort, Kentucky employers that cannot obtain adequate coverage from any authorized private insurance company in the state can apply for coverage by the [Kentucky Employers' Mutual Insurance Authority](#). A policy issued by this state-run entity does not change an employers' liabilities or responsibilities under the WCA.

## SELF-INSURANCE

A self-insured employer uses its own assets, rather than those of an insurance company, to cover its liability for any work-related injuries sustained by employees. An employer may become self-insured on its own or as part of a group.

### INDIVIDUAL SELF-INSURANCE

To become self-insured, an individual employer must [apply](#) for the DWC's approval and provide proof of its financial ability to directly pay all employee benefits (and to meet all other obligations imposed by the WCA). The proof required may include a security deposit in an amount equal to the employer's potential liability to its employees. If the DWC approves an employer to self-insure, it will issue a certificate that includes a fixed time period during which the employer is authorized to cover its own liability under the WCA.

Regardless of how long its self-insurance certificate remains in force, a self-insured employer must provide the DWC with a statement of its financial condition (which must be audited by an independent certified public accountant) **every year**. This annual statement must be submitted at least 120 days before the end of the self-insured employer's fiscal year.

In addition, the DWC will perform a thorough examination of a self-insured employer's financial status at least once every four years. Self-insured employers must give the DWC unfettered access to their financial (and other) records at all times. They must also pay for all expenses that the DWC may incur to perform its examinations.

### GROUP SELF-INSURANCE

Employers have two options for becoming self-insured as part of a group in Kentucky. Under one option, they may team up with any other employers, including employers from other states, to form a mutual insurance association or a reciprocal or inter-insurance exchange. To satisfy WCA requirements, these organizations must be approved by the DWC and meet specific requirements imposed by Kentucky insurance laws.

Under the other group self-insurance option, 20 or more Kentucky employers, as long as they have common interests or membership in a bona fide trade association, may enter agreements to pool their resources and WCA liabilities. These groups must also obtain the DWC's approval to self-insure.

## ELECTIVE COVERAGE

Employers may elect to provide coverage for (and to be subject to all WCA requirements in relation to) any worker who is otherwise excluded from the WCA's definition of a covered employee. For more information about employees who are covered under the law, please see the Employment Law Summary titled: [Kentucky Workers' Compensation – Employee Eligibility](#).

### EXCLUDED EMPLOYEES

To provide elective coverage for an otherwise excluded employee, the employer must name the individual as an additional insured in its workers' compensation coverage and provide the individual with proof that he or she is covered. In addition, the employer must post a notice in the individual's workplace indicating that the employer has accepted all WCA provisions.

An employer that elects coverage in this manner may later withdraw it by filing written notice with the DWC. A withdrawal, however, will not be effective until:

- The date that the workers' compensation coverage was terminated; or
- 60 days after the DWC receives the notice.

The employer must also provide notice to the affected employee(s) before a withdrawal of elective coverage becomes effective.

### BUSINESS OWNERS

Under the WCA, most business owners, regardless of whether they have any employees, are not required to maintain coverage for themselves. This exemption may apply to partners of a partnership and members of a limited liability company (LLC), but only if they can provide specific documentation of their ownership interests and decision-making powers. All business owners may, however, elect to provide coverage for themselves by complying with the WCA coverage requirements and naming themselves as additional insureds.

### COVERAGE NOTICE REQUIREMENTS

Employers must provide the DWC with evidence that they are compliant with WCA coverage requirements. If an employer is insured under a policy or self-insured as part of a group, the insurance provider or self-insured group is responsible for providing the employer's proof of coverage to the DWC. Acceptable evidence may be a copy of an insurance policy or any similar documentation of coverage. This evidence must be filed within **10 days** after a policy is issued or other coverage is completed.

Employers that cancel their insurance or membership in an approved self-insurance group must immediately notify the DWC and indicate the reasons for the cancellation.

### POSTING REQUIREMENTS

Employers must inform their employees about their workers' compensation coverage by posting a [notice](#) at both their principal offices and at any locations where their employees customarily report for payroll and personnel matters. The notice must include specific information regarding the employer's workers' compensation coverage and the employee's rights under the WCA. Workers' compensation insurance companies must provide copies of the required notice to insured employers.

### INJURY RECORDING AND REPORTING REQUIREMENTS

Employers must keep records of any and all work-related injuries and diseases sustained by their employees. In addition, employers must report to the DWC any work-related conditions that result in an employee's absence from work for more than one day. These reports must be submitted within one week of:

- The date of injury; or
- The date when the employer first had knowledge of the injury or disease.

An employer that is insured under a policy or that pays benefits through another entity (such as a self-insured group or a third-party administrator) must provide notice to its insurance carrier or other entity **within three working days** after learning of an injury or disease.

The DWC does not provide a specific form for an employer's first report of injury, but the WCA requires the first report of injury to include, at minimum:

- The name, nature and location of the employer's business;
- The injured employee's name, age, gender, wages and occupation;
- The date and hour of the accident causing the injury; and
- The nature and cause of the injury.

### BENEFIT PAYMENT REQUIREMENTS

The WCA prescribes the following deadlines regarding the payment of benefits and the filing of benefit reports:

Medical expenses	Must be paid <b>within 30 days</b> after receiving an invoice from a medical provider.
Payments to an employee for lost work time (income benefits)	Must begin <b>within 15 days</b> after the employer has knowledge of the disability.
Any ongoing income benefits	Must be paid to the employee at least twice per month.
First payment of benefits	File report within one week of first payment. Additional reports must be filed every 60 days for any ongoing benefit payments.

Changes to the payment of benefits	File report within one week.
Termination of benefits	File report within one week.

## MORE INFORMATION

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

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