

EMPLOYMENT LAW SUMMARY

Maine Workers Compensation - Employer Responsibilities



Because You're Different

Workers' compensation is a system of no-fault insurance that provides monetary compensation and medical benefits to employees, or their survivors, for work-related injuries, diseases and deaths. Workers' compensation is governed by state law. The Maine Workers' Compensation Act (WCA) establishes the benefits available to employees who are injured in the course and scope of their employment.

The [Workers' Compensation Board of Maine](#) (Board) administers the workers' compensation system and enforces employer compliance with the WCA. Under the WCA, the Board must take an "active and forceful role" in enforcing employers' compliance with the law. This means that the Board is authorized to continually monitor individual claims and to perform audits and inspections on employers at any time. Employers must cooperate with these efforts and must provide the Board with any information it requests.

EMPLOYERS SUBJECT TO THE WCA

In general, the WCA applies to every employer that has **one or more employees** working in Maine. Under the WCA, the term "employer" specifically includes:

- Private employers, including corporations, professional corporations, partnerships and natural persons;
- Design professionals (licensed architects, professional engineers, landscape architects, land surveyors, geologists and soil scientists, or any corporation or partnership that employs them to provide professional services during the construction, erection or installation of any project);
- Independent contractors that hire and pay other workers;
- Private employment agencies that provide temporary help services; and
- Landowners that contract to have wood harvested from their property by a contractor, if the contractor is subject to the WCA as an employer but does not provide coverage for its employees.

The term "employee" includes any person who performs services for pay under any contract of hire. Employment contracts may be expressed or implied. The WCA specifically includes the following as employees:

- Minors (even if illegally employed);
- Executive officers of a private corporation;
- Individuals engaged in harvesting forest products for commercial purposes (except under limited circumstances);
- Individuals performing construction work on a construction site (except under limited circumstances); and
- Individuals employed by a private employer while incarcerated.

COVERAGE REQUIREMENT

Employers subject to the WCA must secure their ability to pay all WCA benefits to and for any employees who sustain work-related conditions. An employer may satisfy the coverage requirement by either:

- Purchasing a workers' compensation insurance policy from an insurance company authorized to provide the coverage; or

- Obtaining authorization to self-insure from the [Maine Bureau of Insurance](#) (MBI).

Employers may also obtain the Board’s approval to provide coverage through an alternative program. To obtain this approval, an alternative program must provide equal or greater benefits than those available under the WCA and must be operable only for a fixed period of time. Certain WCA provisions may also be altered through collective bargaining agreements.

By complying with the WCA’s coverage requirement, employers enjoy protection against civil lawsuits for damages by employees who sustain work-related conditions. However, WCA coverage does **not** protect an employer from lawsuits for damages if an illegally employed minor sustains a work-related injury or if any employee’s injury is caused by:

- Defects in the employer’s ways, works or machinery;
- Negligence of an employee in a superintending capacity; or
- Negligence of employee in charge of railroad equipment.

An employer that fails to secure coverage as required loses all WCA protections. Specifically, employees can sue noncompliant employers to recover all damages resulting from any work-related injury. Noncompliant employers are particularly disadvantaged in these types of lawsuits, because the WCA also precludes them from raising certain defenses.

In addition, an employer that fails to secure workers’ compensation coverage may be subject to:

- Numerous civil penalties;
- Stop-work orders;
- Criminal charges;
- Revocation of its authority to do business in Maine;
- Administrative dissolution of its status as a corporation or limited liability company (LLC); and
- Revocation or suspension of any state-issued license, certification or registration.

EXCLUSIONS

The WCA specifically excludes certain types of employment from its coverage requirements. This means that an employer does **not** have to provide workers’ compensation coverage for individuals who work in these excluded types employment. The following is a list of excluded employment types:

- Real estate brokers and salespeople;
- Workers covered under federal or admiralty law;
- Domestic servants;
- Certain agricultural and aqua-cultural workers who are covered under an employer's liability insurance policy with specified coverage limits;
- Owners or lessors of equipment weighing more than 7,000 pounds who are hired to operate the equipment on, or to transport materials to or from, a construction site; and
- Independent contractors.

If an employer is unsure whether an individual is an independent contractor for purposes of the WCA, the employer may apply to the Board for a predetermination. The table below provides an overview of the factors the Board will consider in determining whether an individual is an independent contractor (rather than an employee for whom coverage must be provided).

A person may be an independent contractor only if:	
All of the following qualifications are met:	And at least 3 of the following qualifications are met:

A person may be an independent contractor only if:

The person:

- Has the essential right to control the means and progress of the work except as to final results;
- Is customarily engaged in an independently established trade, occupation, profession or business;
- Has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
- Hires and pays his or her own assistants, if any, and supervises the details of their work; and
- Makes his or her services available to some client or customer community even if the person's right to do so is temporarily restricted or not voluntarily exercised.

The person:

- Has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work;
- Is not required to work exclusively for the other individual or entity;
- Is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
- Has entered a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
- Is paid based on factors directly related to the work performed and not solely on the amount of time expended;
- Performs work is outside the usual course of business for which the service is performed; or
- Has been determined to be an independent contractor by the federal Internal Revenue Service.

VOLUNTARY ELECTIONS

An employer that has WCA-exempt employees may voluntarily elect to provide coverage for them. To make this election, the employer must purchase a workers' compensation insurance policy and specifically include the otherwise-exempt individuals under the policy's coverage. Employers that choose to provide voluntary coverage become subject to all provisions of the WCA in relation to the otherwise-exempt individuals.

In addition, certain individuals are not considered employees unless they voluntarily elect coverage for themselves. The following individuals are not required to be covered but may elect coverage for themselves by obtaining a workers' compensation insurance policy that clearly indicates the insurance company's intention to cover them:

- Sole proprietors;
- Partners of a partnership or association; and
- Members of an LLC.

Insurance companies that provide voluntary coverage for these individuals must file a notice of elective coverage with the Board.

Partners of a partnership and owners of sole proprietorships may also elect to include themselves under a group self-insurance plan that covers the partnership or sole proprietorship's employees. To make this election, the partnership or sole proprietorship must provide its self-insurance group with written notice naming the partner or sole proprietor to be covered.

VOLUNTARY WAIVERS

As a general rule, employees may **not** waive their rights to benefits under the WCA. Nevertheless, the WCA allows certain individuals to waive coverage for themselves as long as the waiver is:

- In [writing](#);
- Not a prerequisite condition to the person's employment; and
- Approved by the Board.

Individuals Eligible for Waivers

- Owners of at least 20 percent of the outstanding voting stock of a corporation;
- Shareholders of a professional corporation; and
- An individual who is employed by and is the parent, spouse, domestic partner or child of:
 - A sole proprietor;
 - A partner of a partnership;
 - A member of an LLC; or
 - A corporate owner or shareholder who has waived coverage.

However, coverage waivers are **not** available for any individuals who harvest forest products for commercial purposes. These individuals must either be covered under a private employer's WCA coverage or obtain a workers' compensation insurance policy for themselves.

INSURANCE POLICY COVERAGE

When an employer obtains a workers' compensation insurance policy, the issuing insurance company becomes responsible for paying all WCA benefits to and for the insured employer's employees.

The insurance company must also file a notice of the employer's coverage with the Board and administer all WCA claims for the insured employer. An insurance company's claims administration obligations generally include filing all WCA-required reports with the Board and providing any other information the Board or the MBI may require. Insured employers must cooperate with these efforts at all times.

SELF-INSURANCE COVERAGE

A self-insured employer uses its own assets, rather than an insurance policy, to pay all WCA benefits to and for employees who sustain work-related conditions. Self-insured employers must also administer their own claims under the WCA. All claims administration activities must be performed by individuals who are licensed as insurance adjusters in the state.

Employers that wish to self-insure must obtain authorization from the MBI. Employers may obtain this authorization individually or as part of a group of employers that organizes to provide self-insurance coverage for all members of the group. To meet the minimum qualifications for self-insurance, an employer or group must:

- Be solvent and financially able to pay all WCA benefits;
- Deposit a surety bond or other security of at least **\$50,000**;
- Obtain specific reinsurance of at least **\$2 million**; and
- Have a safety organization for preventing injuries.

The process for obtaining authorization to self-insure begins by submitting an application, along with several financial documents, to the MBI. If the MBI approves an application, it will issue a certificate authorizing the employer or group to self-insure for a period of up to **one year**. The MBI will also notify the Board of the employer's self-insurance coverage. Self-insured employers must renew their authorizations each year. To apply for a renewal, a self-insured employer must submit a renewal application to the MBI at least **21 days** before its authorization expires.

Finally, in addition to the requirements mentioned above, self-insured employers must (individually or as a group):

- Cooperate and pay any costs associated with audits and inspections by the Board, the MBI and other state agencies;
- Report any event that affects the ownership or structure of its business to the MBI at least 45 days in advance of the event (or within 10 days after the event if the employer did not know about it in advance);
- File annual reports with the MBI; and
- Pay annual assessments to several funds under the WCA.

NOTICE POSTING REQUIREMENT

The WCA requires all employers to post and maintain a workers' compensation [notice](#) in each of their business places. The notice must be conspicuous and posted in a place that is accessible to all employees.

INJURY REPORTING

Employers must file a completed [Form WCB-1](#) (Employer's First Report of Occupational injury or Disease) with the Board if a work-related condition causes an employee to lose **one or more days** of work. The form must be filed within **seven days** after first obtaining notice or knowledge of the condition.

If a work-related condition requires medical treatment and does not cause the employee to lose at least one day of work, the employer must complete a Form WCB-1 within the seven-day period, retain a copy in its records and provide a copy to the employee. Under these circumstances, the employer does not have to file Form WCB-1 with the Board unless, and until, the employee's work-related condition later causes him or her to miss a day of work.

PROVIDING MEDICAL CARE

Employers must provide all reasonable and necessary medical care to treat their employees' work-related conditions. Unless an employee's WCA claim is disputed, employers must pay all bills for medical services within **30 days** after they receive them. The WCA limits the amounts that medical providers may charge employers for these services. These limits are listed in a [medical fee schedule](#).

When an employee is injured, the employer has the right to select the health care provider to provide the initial treatment. After 10 days from the initial treatment, the employee has a one-time right to select a different health care provider. For any additional changes, the employee must first obtain approval from the employer or the Board.

If an employee receives treatment from a provider of his or her choice, the employer may require him or her to undergo an independent medical examination ([IME](#)) by an employer-selected physician. An employer that requests an IME must notify the employee that he or she has the right to have his or her own physician present at the IME. The employer must also pay the full costs of both the IME and the attendance by the employee's physician.

Health care providers that treat an injured employee must provide employers with periodic reports and notices regarding the employee's condition, work capacity, likely duration of incapacity, return to work suitability and treatment required. Employers may request additional information about an injured employee's condition at any time, and providers must respond to these requests within 10 business days after receiving them. An employer that receives WCA-related medical information from a health care provider must provide copies to the employee within **seven days** after receiving it.

PAYING OR DENYING BENEFITS

Employers must either begin making WCA benefit payments to an eligible employee or complete [Form WCB-9](#) (Notice of Controversy), file it with the Board and provide a copy to the employee within **14 days** after first obtaining notice or knowledge of an injury.

If an employer begins paying benefits it must also file [Form WCB-2](#) (Memorandum of Payment) with the Board within the same 14-day period, and subsequent benefit payments must be made weekly and in a timely fashion. The employer may then cease the payments and file a Notice of Controversy with the Board no later than **45 days** after it first received notice or knowledge of the injury. If the employer does not file a Notice of Controversy within that 45-day period, it may not discontinue or reduce the payments without advanced notice unless the employee has returned to work with, or has received an increase in pay from, the employer. Under any other circumstances, the employer must either give the employee at least **21 days advance notice** or request a hearing with the Board.

RE-EMPLOYMENT REQUIREMENT

Under the WCA, an employee who has sustained a compensable injury is entitled to be reinstated to his or her former position, or to any other available position suitable to his or her physical condition, upon request. An employer's obligation to reinstate an employee continues until two years, or three years if the employer has over 200 employees, after the date of the injury.

Employers must also make reasonable accommodations for an injured employee's physical condition, unless they can demonstrate that no reasonable accommodation exists or that an accommodation would impose an undue hardship on their business.

MORE INFORMATION

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

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