

# EMPLOYMENT LAW SUMMARY

## Massachusetts: Workers' Compensation – Employee Eligibility



*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 and diseases. Workers' compensation is governed by state law.

Massachusetts' workers' compensation laws set eligibility requirements for employees. The [Massachusetts Department of Industrial Accidents](#) (DIA) enforces compliance with these requirements throughout the state.

### COMPENSABLE INJURIES

To qualify for workers' compensation benefits, an employee must sustain a **compensable condition**. An **injury** is a compensable condition if it results from an accident arising out of and in the course of employment.

A **disease** is a compensable condition if the hazard of contracting the disease was inherent in the nature of the employment. Mental or emotional disabilities may be compensable if they are primarily caused by an event (or series of events) that the employer used to intentionally inflict emotional harm.

A condition is **not** compensable if it is the result of voluntary participation in any recreational activity (such as athletic events, parties and picnics), even if the employer pays some or all of the costs of the activity.

### COVERED EMPLOYEES

Massachusetts' workers' compensation laws cover most employees in the state. For workers' compensation purposes, an "employee" is any person in the service of another under any contract of hire. Employment may be expressed or implied.

Massachusetts' workers' compensation laws also specifically include coverage for:

- Reserve or special police officers who are employed to direct or maintain traffic (or for similar purposes);
- Students participating in a work-based experience as part of a school-to-work program; and
- Seasonal, casual and part-time domestic servants who work at least 16 hours per week.

### OPTIONAL COVERAGE

Corporate officers may exempt themselves from workers' compensation coverage if they own **at least a 25 percent** interest in the corporation. Qualifying corporate officers who wish to select this exemption must sign Form 153 and file it with the DIA.

### COVERAGE EXCEPTIONS

Worker's compensation coverage is generally **not** available for:

- Domestic service employees who work fewer than 16 hours per week;
- Masters of and seamen on vessels engaged in interstate or foreign commerce;
- Professional athletes (if their contracts provide for wage payment during disability periods that result from their employment);
- Real estate salespersons solely paid on commission;

- Sales personnel engaged in the direct sale of consumer products (except retail establishments) whose income is proportional to their sales and who are not considered employees under the federal tax code;
- Taxicab operators working for a taxicab company who are not considered employees under the federal tax code; and
- Individuals engaged in interstate or foreign commerce who are covered by federal law for compensation for injury or death.

## DISQUALIFICATION FROM BENEFITS

Even when an eligible employee has a compensable condition, other factors may prevent him or her from receiving workers' compensation benefits, such as the employee's behavior, eligibility for other sources of income and fraud.

<b>Outstanding Default or Arrest Warrant</b>	Individuals who have an outstanding default or arrest warrant against them are disqualified from receiving workers' compensation benefits. These disqualifications may be appealed under certain circumstances.
<b>Misconduct</b>	An employee may not receive workers' compensation benefits if an injury was caused by his or her serious and willful misconduct. However, Massachusetts law does not prevent an employee's dependents from receiving death benefits if the employee's serious and willful misconduct results in his or her death.
<b>Refusing to Submit to a Medical Examination</b>	Employers may suspend workers' compensation benefits for an employee who refuses to submit to, or in any way obstructs, a medical examination. Employers may request injured employees to submit to a medical examination, performed by a registered physician, once every six months during a period of incapacity. The medical examination must be furnished and paid for by the employer or its insurance carrier.  An employee's right to compensation may also be suspended if he or she refuses a written request to be evaluated by a vocational rehabilitation specialist with the DIA. Employers can request a vocational rehabilitation evaluation for a particular employee once every six months.
<b>Suicide</b>	An employee's dependents may be disqualified from receiving death benefits if the employee commits suicide. However, an employer may be required to pay death benefits to an employee's surviving dependents if evidence shows a work-related injury caused the employee to be of such "unsoundness of mind" that he or she could not be held responsible for his or her act of suicide.
<b>Receiving Unemployment Compensation</b>	Receiving unemployment benefits disqualifies an employee from receiving total incapacity benefits. Similarly, employees may not receive unemployment benefits while receiving certain partial incapacity benefits. Employees who want to receive partial incapacity benefits while receiving unemployment benefits must submit a written request to the employer or the employer's insurance carrier. The insurance carrier will then credit any amount of unemployment benefits received by the employee toward any present and future partial incapacity benefit.
<b>Eligibility for Social Security Benefits or Pension</b>	An employee may be disqualified from receiving benefits if he or she: <ul style="list-style-type: none"> <li>•Is at least 65 years of age;</li> <li>•Has been out of the labor force for at least two years; and</li> <li>•Is eligible for Social Security benefits or a pension (public or private).</li> </ul> <p>However, an employee may retain his or her right to workers' compensation benefits by showing that he or she would have remained active in the labor market if the injury had not taken place.</p>
<b>Making False Representations</b>	An injured employee may be disqualified from receiving benefits if: <ul style="list-style-type: none"> <li>•The employee knowingly and willfully made a false representation regarding his or her pre-employment physical condition; and</li> <li>•The employer relied substantially on the employee's misrepresentation when making a decision to hire the employee.</li> </ul> <p>An employee makes a false representation when he or she knows or should have known that he or she was unlikely to fulfill his or her job responsibilities without incurring a serious injury. An employee can restore his or her right to workers' compensation if, before being injured, he or she rectifies any misrepresentation.</p>

## ADDITIONAL EMPLOYEE RESPONSIBILITIES

Massachusetts law sets additional expectations and responsibilities for employees who solicit or receive workers' compensation benefits. Failing to satisfy these expectations and responsibilities may expose an individual to civil or criminal penalties and also cause him or her to lose (in whole or in part) any benefits he or she may otherwise be entitled to receive. Employees are expected to:

- Inform a supervisor or manager of an injury as soon as possible. Employees (or their representatives) must report injuries in writing, stating the time, place and cause of injury. The notice must be signed by the injured employee or the employee's representative.
- Complete and return an earnings report (including self-employment income) when required by the employer, but not more than once every six months.
- Follow any employer instructions on how and when to contact the employer's insurance carrier.
- Report for initial treatment at a health care provider approved by the employer.
- Follow all instructions received by a qualified and authorized health care provider.

## **MORE INFORMATION**

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

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