

EMPLOYMENT LAW SUMMARY

Massachusetts: 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 and diseases.

Massachusetts' Workers' Compensation Act (WCA) defines employer responsibilities under the state's workers' compensation program. The [Massachusetts Department of Industrial Accidents](#) (DIA) monitors employer compliance with the state's workers' compensation laws.

COVERAGE REQUIREMENTS

The WCA requires Massachusetts employers to obtain workers' compensation coverage for their employees. Employers may satisfy the coverage requirement by:

- Purchasing an insurance policy from a private insurance carrier licensed to do business in the state; or
- Applying for and obtaining a self-insurance certificate from the [Massachusetts Division of Insurance](#) (MDI).

Employers may not waive or be released from the obligation to provide coverage unless they qualify for an exception under the law.

SUBJECT EMPLOYERS (COVERAGE REQUIRED)

The WCA's coverage requirements apply to all Massachusetts employers with **one or more employees**.

The term "employer" includes individuals, corporations, sole proprietorships, limited liability companies, partnerships and any other legal entity that employs individuals for whom coverage must be provided under the WCA.

EMPLOYER EXCEPTIONS (COVERAGE NOT REQUIRED)

The following employers are **not** required to obtain workers' compensation coverage, either because of a specific exception or because they are not considered "employers" under Massachusetts law:

- A homeowner who employs others to do maintenance, construction or repair work on his or her property, if the homeowner resides on the property and does not have more than three apartments;
- The occupant of a home who employs another to do maintenance, construction or repair work on the house he or she occupies; and
- Non-profit entities (as defined by the federal tax code) that are exclusively staffed by volunteers.

EMPLOYEES (COVERAGE REQUIRED)

Under the WCA, the term "employee" generally includes every person in the service of another under any express or implied contract of hire. This specifically includes students who participate in work-based experiences as part of school-to-work programs.

EMPLOYEE EXCEPTIONS (COVERAGE NOT REQUIRED)

The WCA specifies that the following are **not** considered employees for whom coverage must be provided:

- Masters of and seamen on vessels engaged in interstate or foreign commerce;
- Organized professional athletic participants whose contracts of hire provide for wage payments during any disability resulting from the employment;
- Real estate sellers who are paid on commission;
- Direct sellers of consumer products who work under a written contract providing that they are not to be treated as employees for federal tax purposes;
- Leased taxicab operators who are not treated as employees for federal tax purposes;
- Workers covered under federal workers' compensation laws; and
- Casual workers whose employment is not in the usual course of the trade, business, profession or occupation of an employer.

In addition, the WCA makes coverage optional for certain individuals. Specifically:

- An employer may elect to cover any seasonal workers, casual workers or domestic servants who work less than 16 hours per week;
- Officers and directors of a corporation who own at least 25 percent of the issued and outstanding stock of the corporation may elect **not** to be covered (by providing the DIA with a written waiver); and
- Sole proprietors and partners in a partnership may elect coverage by securing insurance with a carrier.

INDEPENDENT CONTRACTORS (COVERAGE MAY BE REQUIRED)

Employers that hire individuals to perform work as independent contractors should be aware that the WCA may actually include these individuals under its definition of an employee for whom coverage must be provided. In a decision issued in 2018, the Massachusetts Supreme Judicial Court confirmed that the following 12 factors (known as the "MacTavish-Whitman" factors) must be considered in determining whether an individual is an employee or independent contractor:

- The extent of control over the details of the work;
- Whether the individual is engaged in a distinct occupation or business;
- The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- The skill required in the particular occupation;
- Whether the employer or the worker supplies the instrumentalities, tools and the place where the individual performs the work;
- The length of time the individual is employed;
- The method of payment, whether by the time or by the job;
- Whether the work is a part of the employer's regular business;
- Whether the parties believe they are creating the relation of master and servant;
- Whether the individual is in business;
- The tax treatment applied to payment for the work; and
- Whether the employer may terminate the relationship without liability, as opposed to the individual's right to complete the project for which he or she was hired.

Prior to the 2018 decision, this determination was based only on an employer's control over an individual's work, whether services were within the usual course of an employer's business and whether an individual was engaged in an independent trade, occupation, profession or business. The court's decision confirmed that the more detailed MacTavish-Whitman factors must be used in determining whether an individual is an employee.

SELF-INSURANCE

A self-insured employer uses its own assets, rather than an insurance policy, to meet state workers' compensation coverage obligations. The MDI will not issue a certificate of approval for an employer to self-insure unless the employer can prove that it has the means to meet all obligations and requirements state law provides to injured employees. In addition, employers that wish to self-insure must show that they have:

- Been in business for at least five years;
- At least 300 employees (may be waived for good cause); and

- An unmodified manual premium of at least \$750,000 (may be waived for good cause).

The MDI may also require an employer to provide a security deposit of at least \$100,000 and various documents that prove its financial ability to meet its workers' compensation obligations.

COVERAGE NOTICE REQUIREMENTS

Employers subject to the WCA must provide their employees and prospective employees with written or printed notice that they have workers' compensation coverage. Employers may use the state's [model notice](#) to satisfy this requirement.

Employers must also inform employees and the DIA in writing when they have any lapse in workers' compensation coverage. Unless an insurance policy is renewed, this notice must be given before or on the day the coverage expires.

INJURY REPORTING REQUIREMENTS

Employers must report every work-related employee injury (or allegation of injury) that prevents the employee from earning his or her full wages for a period of **five or more** calendar days. This report must be filed with the DIA **within seven business days** of when an employer becomes aware of an injury. An employer must also send a copy of this report to its insurance carrier and the injured employee.

Employers must use the [electronic filing system](#) to satisfy their initial injury reporting requirements. The DIA may require an employer to file additional reports, such as copies of medical, hospital and rehabilitation reports and compensation payment records.

BENEFIT PAYMENT REQUIREMENTS

Employers (or their insurance carriers, if applicable) must pay every benefit their injured employees are entitled to receive under the WCA, including medical care, lost wage replacement, and benefits for certain permanent physical impairments. Payments must begin **within 14 days** after an employer receives an employee's first report of injury or initial benefit claim. An employer that denies a claim must issue a written notice justifying the denial within the same time period.

THIRD-PARTY LIABILITY

Employers must pay workers' compensation benefits even when an employee's injury is caused by a third party. However, employers may collect the costs of providing these benefits from the third party.

Any sum recovered from a third party in excess of the insurer's cost of providing benefits to the injured employee (except for interest) must be paid to the injured employee. Any interest recovered in a judgment against a third party will be divided between the insurance provider and the injured employee, in amounts proportional to the sums apportioned to each of them.

RE-HIRING INJURED EMPLOYEES

If a suitable job is available, employers must give preference to, and rehire, any former employee who lost his or her employment because of a work-related injury. Employers that do not give this preference may be subject to a lawsuit. This lawsuit may result in an order to compel the employer to:

- Pay lost wages to the former employee;
- Grant a suitable job to the former employee; and
- Cover reasonable attorneys' fees accrued during the lawsuit (as determined by the court).

MORE INFORMATION

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

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