

EMPLOYMENT LAW SUMMARY

Michigan: Workers' Compensation - Employer Penalties



Because You're Different

Michigan's Worker's Disability Compensation Act (WDCA) determines the penalties employers may face if they fail to comply with state workers' compensation requirements. The Michigan Workers' Compensation Agency (WCA), part of the Michigan Department of Licensing and Regulatory Affairs (LARA), enforces compliance throughout the state.

FAILURE TO SECURE COVERAGE

Employers that fail to maintain workers' compensation coverage as required by the WDCA may be charged with a misdemeanor, which is punishable by a fine of up to \$1,000, imprisonment for up to six months or both. Each day for which an employer does not maintain adequate coverage is considered a separate offense. Employers that fail to maintain adequate coverage are also liable for damages to any employee that sustains a work-related injury or disease. This means employees can sue noncompliant employers in civil court to obtain compensation. In addition, the state may issue an order preventing a noncompliant employer from employing any person in its business. Once issued, this injunction stays in place until the employer:

- Proves that it is exempt from the WDCA; or
- Furnishes a surety company bond to adequately cover its workers' compensation liability.

The injunction may be accompanied by a \$1,000 civil fine for each day that the employer failed to maintain coverage during the immediately preceding three years, regardless of whether the employer is currently in compliance.

FAILURE TO PAY CLAIMS AND SUBMIT REPORTS

Employees are entitled to receive compensation benefits within 14 days after they notify their employers of a work-related disability. Subsequent benefit payments must be made on a weekly basis. Employers must keep records of these payments and report their compliance to the WCA. If weekly compensation benefits are not paid within 30 days of when they become due (not including disputed benefits), employees are entitled to receive an additional \$50 per day for each day over 30 when the benefits remain unpaid. The late fee may not exceed \$1,500.

Self-insured employers that fail to promptly pay benefit claims jeopardize their eligibility for self-insurance and may be required to secure other coverage for their workers' compensation liability. Self-insurance permits may be revoked if an employer repeatedly or unreasonably fails to make prompt payments. Licensed insurers that fail to make prompt payments also jeopardize their ability to extend insurance policies in the state. Though this issue may only affect employers indirectly, employers should be aware that if their insurer's license is revoked, they will be required to secure workers' compensation coverage elsewhere. The same penalties apply to employers and insurers that repeatedly or unreasonably fail to submit timely reports to the WCA.

EVASION OF COVERAGE

Employers cannot consistently discharge employees before they reach the minimum amount of work time required to be covered under the WDCA. Employers that engage in this practice are presumed to have discharged their employees for the purpose of evading the provisions of the WDCA. This type of evasion is a misdemeanor, punishable by a fine, imprisonment or both, imposed at the discretion of a court.

PROHIBITED DISCRIMINATION

It is unlawful for any employer to discharge or in any manner discriminate against an employee because he or she has filed a complaint, instituted a proceeding or exercised a right afforded by the WDCA. Employees can recover damages in civil court from their employers for any humiliation, embarrassment, outrage, disappointment or other forms of mental anguish that result from discriminatory actions.

RECOVERY FOR INTENTIONAL INJURY

The WDCA provides an exception to the no-fault presumption in the workers' compensation system by allowing recovery for intentional injuries. Typically, when a worker suffers a work-related injury, workers' compensation provides benefits in exchange for a release of liability that prevents litigation in court, even when a party was negligent. However, employers are not exempt from liability if an employee can prove that he or she was injured because of an intentional tort committed by the employer. An intentional tort is a deliberate act specifically intended to injure. The WDCA presumes that the employer had an intention to injure its employee if the employer:

- Had actual knowledge that an injury was certain to occur; and
- Disregarded that knowledge.

Determining the existence of an intentional tort is a question of law that must be reviewed by a court. Employees who can prove the existence of an intentional tort can recover any damages a court sees fit to impose on the employer.

VEXATIOUS CLAIMS

The WCA can dismiss, impose fees or take other disciplinary actions against those who make vexatious claims. A vexatious claim is a claim that:

- Was taken with the intent to hinder or delay compensation or compensation proceedings;
- Was taken without a reasonable belief that the claim had sufficient merit; or
- Is supported by pleadings, motions, arguments, petitions, briefs or other documents that are grossly lacking in propriety or that grossly disregard the requirements of a fair presentation of the issues.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the WCA website for more information on workers' compensation laws in Michigan.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice. © 2017-2021 Zywave, Inc. All rights reserved.