

# EMPLOYMENT LAW SUMMARY

## Missouri Workers' Compensation – Employer Responsibilities



Workers' compensation is a system of no-fault insurance that provides medical and monetary benefits to employees (or their survivors) for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Missouri Workers' Compensation Law (WCL) establishes the requirements employers must satisfy in order to enjoy its protections. The [Missouri Division of Workers' Compensation](#) (Division), part of the Missouri Department of Labor and Industrial Relations, administers and enforces employer compliance with the WCL.

### EMPLOYERS SUBJECT TO THE WCL

The WCL defines an "employer" as any person or entity using the services of another for pay. Whether an employer is subject to the WCL depends on its industry. Employers in the construction industry are subject to the WCL if they have **one or more** employees. **All other Missouri employers** are subject to the WCL if they have **five or more** employees.

### COVERAGE REQUIREMENTS

Employers subject to the WCL must obtain and maintain adequate workers' compensation coverage for their employees. The WCL coverage requirements may be satisfied by either:

- Purchasing an insurance policy from an insurance company authorized to provide workers' compensation coverage in the state; or
- Obtaining approval to self-insure, either as an individual self-insured employer or as part of a group of employers organized to self-insure.

The WCL explicitly prohibits employers from requiring or allowing any of their employees to contribute to the cost of providing workers' compensation coverage.

### ADDITIONAL COVERAGE REQUIREMENTS

The WCL imposes a more specific coverage requirement on employers in the **mining industry**. These employers are required to purchase an insurance policy that covers their maximum potential liability for **10 deaths in any one accident**. For any potential liability beyond that amount, employers in the mining industry may either purchase an additional policy or obtain approval to self-insure.

In addition, any employer that obtains any part of its workforce from another entity through an **employee leasing arrangement** may be required to cover its liability through separate policies or self-insurance approvals for its leased and non-leased employees.

### **INSURANCE POLICY REQUIREMENTS**

Every workers' compensation insurance policy must be approved by the Department of Insurance, Financial Institutions and Professional Registration ([Department of Insurance](#)) and must cover the insured employer's full liability under the WCL.

Workers' compensation insurance policies may include deductibles. Subject to the Department of Insurance's approval, an insured employer may self-insure for the deductible amounts under these plans. Consistent with the requirement mentioned above, the Department of Insurance will not approve any deductible policy that **directly or indirectly** permits an employer to charge or pass on any part of the deductible amount to an employee.

An insured employer must provide the Division with a copy of its workers' compensation insurance policy any time the Division's requests it and any time the employer appears at a workers' compensation hearing. An insured employer is also required to provide the correct name and address of its insurance carrier to an injured employee (or his or her dependents in cases of death) upon the employee's (or dependents') request. If an employer fails to provide this information as required, the Division will presume that the employer has violated its coverage obligations under the WCL and may impose penalties on the employer.

### **SELF-INSURANCE REQUIREMENTS**

A self-insured employer uses its own assets, rather than those of an insurance company, to insure against its liability under the WCL. An employer can qualify to self-insure as a single entity or become part of a group of employers that qualifies for self-insurance.

The Division will not approve an employer or group of employers to self-insure unless the self-insurance plan provides injured employees (or their dependents for cases involving an employee's death) with benefits that are at least equivalent to the benefits required under the WCL.

An employer that wishes to self-insure as a single entity must apply for the Division's approval by submitting, along with other documents, an Application for Self-Insurance ([Form WC-81](#)). If the Division issues a preliminary approval based on these initial application materials, the employer will be required to deposit a minimum of \$200,000 for security and meet several other requirements before the Division will issue a final determination as to the employer's self-insurance status. Once approved, an employer's self-insurance status will remain valid as long as the employer meets all filing and compliance requirements prescribed by the WCL.

Groups of employers can also self-insure against their collective liability by pooling their resources. To apply for group self-insurance, employer groups must submit an Application for Group Self-Insurance ([Form WC-81A](#)). Group self-insurance plans must also adhere to all Division regulations and requirements before receiving a final determination allowing the group to self-insure.

### **OPTIONAL MESOTHELIOMA COVERAGE**

The WCL allows employers to reject workers' compensation coverage for certain benefits that may be awarded to an employee who is diagnosed with work-related mesothelioma. This option allows employers a choice between:

- Saving money on coverage premiums, while increasing their potential exposure to liability for virtually unlimited damages if an employee is diagnosed work-related mesothelioma; or
- Higher premium costs, but with a guaranteed limited amount of liability that is predetermined by the WCL if an employee is diagnosed work-related mesothelioma.

Missouri has created the Missouri Mesothelioma Risk Management Fund (Fund) as a resource to help employers insure themselves against liability for work-related mesothelioma. A policy issued by the Fund provides coverage for work-related mesothelioma only. However, employers are not required to participate in the Fund and are free to obtain limited coverage for work-related mesothelioma through a privately issued commercial policy or through self-insurance.

To participate in the Fund, employers must make annual contributions in amounts determined by the Fund's board of trustees. An employer's participation in the Fund has the same effect as any other insurance policy or self-insurance plan that covers these limited benefits.

## TAXES AND SURCHARGES

Every employer subject to the WCL, regardless of whether it is insured through a commercial policy or self-insurance, must pay an **annual surcharge** to provide revenue for the state Second Injury Fund. This fund is used to pay certain benefits to employees who become permanently and totally disabled due to a combination of pre-existing conditions and work-related injuries.

An employer's obligation may not be more than **3%** of its workers' compensation net deposits, net premiums or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point. However, for the calendar years 2014 through 2022, all employers must also pay a supplemental surcharge of the same annually determined percentage amount. This supplemental surcharge essentially **doubles** an employer's maximum surcharge for those years. For calendar year 2023, employers must pay a supplemental surcharge of **2.5%** of net deposits, net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point.

If an employer is insured through a policy, the insurance company must collect the Second Injury Fund surcharge when it collects the employer's premium and then must pay the surcharge amount to the Division. A self-insured employer must pay the Second Injury Fund surcharge directly to the Division on a quarterly basis.

## INSURED EMPLOYERS WITH DEDUCTIBLE POLICY PLANS

If an insured employer's policy includes a deductible, the employer must pay an annual administrative surcharge to fund the administrative functions of the Division. The insurance carrier is responsible for collecting this surcharge from the employer and paying it to the Missouri Department of Revenue.

## ANNUAL TAX ON SELF-INSURED EMPLOYERS

Self-insured employers are required to pay an annual tax and to file returns with the Department of Insurance on or before **March 1** of each year. The return must be verified by an affidavit of the employer's president and secretary (or other chief officers or agents) and must state the amount of gross premiums or deposits and credits during the preceding year.

The Department of Insurance determines the amount a self-insured employer will owe for the annual tax each year. The tax amount may be **up to 2 percent** of the net premium rates charged by the top 20 insurance companies providing the greatest volume of workers' compensation insurance coverage in the state.

## NOTICE POSTING REQUIREMENT

The WCL requires employers to post a [notice](#) in their workplaces, in a sufficient number of locations to ensure that all employees will see the information. In addition, the WCL requires employers to send a written notification of employee rights and protections to any employee who may not reasonably be expected to see the posted notice. If an employer is insured through a policy, its insurance carrier must provide the employer with a printed notice that includes all the required information within 30 days of the policy's inception date.

The notice required under the WCL must indicate:

- That the employer is operating under and subject to the provisions of the WCL;
- That employees must report all injuries immediately to the employer by advising the employer personally, the employer's designated individual or the employee's immediate boss, supervisor or foreman;
- That an employee may lose the right to receive compensation if an injury or illness is not reported within 30 days or, in the case of occupational illness or disease, within 30 days of the time the employee is reasonably aware of work relatedness of the injury or illness;
- That employees who fail to notify their employer within 30 days may jeopardize their ability to receive compensation and any other benefits under the WCL;
- The name, address and telephone number of the insurer (if the employer is self-insured, the name, address and telephone number of the employer's designated individual responsible for reporting injuries, or the name, address and telephone number of the adjusting or service company designated by the employer to handle workers' compensation matters);
- The name, address and the toll-free telephone number of the Division;
- That the employer will supply, upon request, additional information provided by the Division; and
- That a fraudulent action by the employer, employee or any other person is unlawful.

## INJURY REPORTING AND CLAIM HANDLING REQUIREMENTS

If applicable, employers must report all employee injuries to their insurance carriers or third-party administrators **within five days** after the later of:

- The date of the employee's injury; or
- The date on which the employee reported the injury to the employer.

In addition, **within 30 days** after an employer has knowledge of an employee's injury, the employer (or its insurance carrier, if applicable) must file a [First Report of Injury](#) with the Division. This requirement applies any time an employee's injury results in the need for:

- Medical attention beyond immediate first aid; or
- Lost time from work.

If an employer accepts an employee's workers' compensation claim and pays benefits to the employee, the payments must be made at least once every two weeks, and the employer must file supplemental reports with the Division. These supplemental reports include a notice that payments have commenced and a notice that payments have been terminated. When payments to an employee are terminated, the employer must also provide the Division with a physician's report and provide the employee with written notification stating the reason for the termination.

Within **120 days** after the date of an employee's injury, the employer must determine whether the employee has sustained an injury that resulted in loss of suitable, gainful employment. If so, the employer may require the employee to undergo vocational rehabilitation to restore the employee to suitable, gainful employment.

## RECORDKEEPING

Every employer must keep a record of the correct names and addresses of each of its employees' dependents. In addition, employers must immediately report to the Division the names and addresses of employee dependents for any employee who dies because of a work-related condition.

## MORE INFORMATION

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

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