

# EMPLOYMENT LAW SUMMARY

## Montana 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 Montana Workers' Compensation Act (WCA) establishes employer responsibilities relating to workers' compensation in the state. The Montana Department of Labor and Industry (DLI) administers the workers' compensation system and enforces employer responsibilities under the WCA.

### EMPLOYERS SUBJECT TO WCA

The WCA applies to every employer that has one or more employees working in Montana. This means that an employer is subject to the WCA if it has any employee whose employment duties are:

- Primarily carried out or controlled within Montana; or
- Performed within Montana on a regular or recurring basis.

The WCA also applies to every employer engaged in the construction industry within Montana, even if both the employer and its employees are out-of-state residents.

### EMPLOYEES

The WCA defines an "employee" as any person in the service of an employer under any express or implied appointment or contract of hire. The term employee specifically includes, among others:

- Aliens and minors (regardless of whether their employment is lawful);
- Officers and board members of quasi-public or private corporations who render actual service for pay for the corporations;
- Juveniles who perform work under court-authorized delinquency prevention or rehabilitation programs;
- Workers who receive on-the-job vocational rehabilitation or other on-the-job training under a state or federal vocational training program;
- Aircrew members;
- Workers who perform community service for a nonprofit organization under a court order;
- Inmates working in federally certified prison industries programs;
- Volunteer firefighters and ambulance service providers; and
- Members of religious entities who perform services for pay for the religious entities.

### EXCLUSIONS

The WCA specifically excludes certain types of workers from its definition of an employee. For purposes of determining whether an employer is subject to the WCA, the following are not considered employees:

- Domestic workers;
- Volunteers who receive no wages other than meals, lodging or use of recreational facilities;

- Licensed foster care providers that provide care to up to six foster children in their own residences;
- Temporary agricultural workers;
- Casual workers whose employment is not in the usual course of the trade, business, profession or occupation of the employer;
- Sole proprietors;
- Partners of a partnership or limited liability partnership;
- Managers and members of a limited liability company;
- Corporate officers and board members who do not render actual service for pay for the corporation; and
- Montana workers who are employed to perform work solely in North Dakota, as long as the employer maintains coverage for them under North Dakota's workers' compensation law.

## COVERAGE REQUIREMENTS

An employer's primary responsibility under the WCA is to maintain adequate workers' compensation coverage for all of its employees. The law provides three options—called Plans 1, 2 and 3—for satisfying the coverage requirement. These plans allow employers to provide coverage by either:

- Plan 1—Obtaining the DLI's approval to self-insure (either individually or as part of a group);
- Plan 2—Purchasing an insurance policy (either individually or as part of a group) from a private insurance carrier authorized to provide workers' compensation insurance in Montana; or
- Plan 3—Obtaining coverage from the Montana State Fund.

Regardless of the coverage method used, employers are prohibited from making their employees contribute to the cost of providing workers' compensation coverage. Employers that fail to comply with WCA coverage requirements may be subject to several penalties, including fines, criminal charges and stop-work orders.

## ELECTIVE COVERAGE

An employer may elect to provide coverage for individuals who are excluded from the WCA's definition of an employee. To make a voluntary coverage election, an employer must provide written notice to its insurance carrier or the DLI. The written notice must include the names of the individuals to be covered along with their wages. This information is used for calculating premiums and WCA benefit rates.

## PLAN 1: SELF-INSURANCE COVERAGE

A self-insured employer uses its own assets—rather than an insurance policy—to pay all benefits that become due under the WCA. An employer that wishes to self-insure must apply for approval from the DLI and the Montana Self-insurers Guaranty Association (Guaranty Fund). To meet the minimum qualifications for this approval, an employer must submit audited financial statements and other documents. This shows that the employer is both solvent and financially able to pay all benefits that may become due under the WCA. In addition, the DLI and Guaranty Fund may require an employer to:

- Provide a security deposit of \$250,000 or more;
- Obtain an excessive insurance policy; and
- Provide additional proof of solvency and financial ability at any time.

Once the DLI and the Guaranty Fund approve a self-insurance application, the DLI will issue an order of approval. This allows the employer to self-insure for the remaining portion of the fiscal year in which the employer submitted its application. Each fiscal year begins July 1 and ends on the following June 30. Self-insured employers must apply to renew their self-insurance approvals each year.

## GROUP SELF-INSURANCE

The WCA allows groups of two or more employers to combine their assets and liabilities to self-insure as a group. Like individual employers, groups that wish to self-insure must apply for approval (and annual renewals) from the DLI and Guaranty Fund. However, groups must also meet additional requirements in order to obtain approval for group self-insurance. For example, an application for group self-insurance must include:

- Proof that each of the employers in the group has been in business for at least three years;
- A signed copy of the group's bylaws;
- A written agreement, signed by all members of the group, indicating that they agree to be jointly and severally liable for all WCA obligations incurred by the group;

- Proof that the group has excess liability insurance coverage; and
- Detailed information about how the group plans to operate its group self-insurance program.

Self-insured groups may also be required to provide additional security deposits and obtain additional excess insurance policies.

## **CLAIMS EXAMINER REQUIREMENT**

All self-insured employers and groups must use a qualified claims examiner to administer each WCA claim made against them. To be qualified, a claims examiner must maintain an office located in Montana and must examine each WCA claim from that office. For each WCA claim, the claims examiner must have the authority to:

- Determine liability;
- Authorize benefit payments;
- Manage the claim; and
- Settle the claim.

## **QUARTERLY REPORTING AND ANNUAL ASSESSMENT REQUIREMENTS**

All self-insured employers and groups must file quarterly reports with the DLI. Each report must include specific information about the following for the previous quarter:

- All WCA benefits paid to employees (and their survivors);
- All medical expense payments made to medical providers under the WCA; and
- All other payments made to or on behalf of any employees (or their survivors) under the WCA.

In addition, all self-insured employers and groups must pay annual assessments to a state fund that is used to pay WCA administration and regulation costs. The DLI determines the amount of each self-insured employer's assessment using information from the employer's quarterly reports. The assessment amount may be up to 4 percent of the total WCA amounts the employer paid in the prior calendar year. The DLI notifies each self-insured employer of its assessment amount by April 30 of each year. A self-insured employer must pay the amount assessed either in full by July 1 or in two equal installments by July 1 and Dec. 31 of each year.

## **PLAN 2: PRIVATE INSURANCE COVERAGE**

An employer may satisfy the WCA coverage requirement by purchasing an insurance policy from a private company that is authorized by the Montana State Auditor to provide workers' compensation insurance in Montana. Every workers' compensation insurance policy must cover the insured employer's entire liability under the WCA. Issuing insurance carriers must also agree to administer claims and promptly pay all WCA benefits for an insured employer, even if the employer does not provide required notices or make its premium payments after an employee's injury. However, employers should be aware that insurance coverage does not necessarily relieve them from any legal obligations. Employers should always ensure that they are compliant with the law, even if another company agrees to cover their duties and liabilities.

## **GROUP INSURANCE POLICY COVERAGE**

The WCA allows two or more employers to join together to purchase a group insurance policy that covers each group member's entire liability under the WCA. A group policy allows members of the insured group to obtain greater premium discounts than they would otherwise have available to them under an individual insurance policy. A group that wishes to purchase a group policy must first adopt a written plan of operation. A group's plan of operation must include:

- Composition and selection of a governing board;
- Methods for administering the group's WCA claims;
- Eligibility requirements to join the group; and
- Guidelines for premium payments, discount distribution and risk management.

## **INSURANCE POLICY DEDUCTIBLES**

When purchasing an insurance policy, employers will have the option of including deductibles. Under the WCA, an insurance carrier:

- Must offer deductibles of at least \$500 for medical expenses only; and
- May offer deductibles in any amount for other WCA benefits.

Although deductibles can help reduce premium costs, an employer that includes them in its policy must be prepared to cover the deductible amount for each and every workplace injury that may occur. Insurance carriers are required to pay the deductible amounts upfront when an injured employee is entitled to receive benefits under the WCA; however, the employer will be responsible for reimbursing the deductible amount for every compensable injury.

### **PLAN 3: STATE FUND INSURANCE COVERAGE**

The State Fund is a nonprofit, public corporation that provides a guaranteed insurance option for individual employers in Montana. The State Fund is required to provide a workers' compensation insurance policy to any individual Montana employer that applies for it, unless the requesting employer has an unsatisfied default on a State Fund obligation. The State Fund may, but is not required to, issue group insurance policies. State Fund policies are subject to the same requirements that apply to policies issued by private carriers. Specifically, State Fund policies must cover an insured employer's entire liability under the WCA, and the State Fund becomes responsible for paying benefits and administering claims for its insured employers.

### **COVERAGE REPORTING REQUIREMENTS**

After an employer obtains a workers' compensation insurance policy, the issuing carrier (including the State Fund) must file notice of the policy with the DLI within 30 days. Although the WCA does not impose a coverage reporting obligation on insured employers themselves, the DLI may require any insured employer to provide a copy of its insurance policy at any time.

### **NOTICE POSTING REQUIREMENTS**

Employers must post a sign about their workers' compensation coverage in each workplace. A workplace includes any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent. It also includes any other business place or property that the employer has access to or control over for the purposes of carrying on its usual trade, business or occupation. Within any workplace, the sign must be displayed in all locations where employee notices are normally posted. Employers must obtain a copy of the required sign from their insurance carriers or the DLI.

### **RECORDKEEPING AND INSPECTION REQUIREMENTS**

To ensure compliance with the WCA, employers must allow the DLI to inspect their payroll records and any other materials at any time. Employers must also maintain and allow the DLI to inspect records of all employee injuries and WCA claims. The DLI may enter any place of employment to review or collect this information. An employer may be subject to fines if it refuses the DLI's admission.

### **INJURY REPORTING REQUIREMENTS**

Employers must submit a First Report of Injury (FROI) to their insurance carriers or to the DLI within six days after they first obtain knowledge of an employee's work-related injury or illness. In general, employees are required to use the FROI to report any work-related injuries to their employers within 30 days. An employer that receives an FROI from an employee then has the six-day period to complete the employer portion of the form and submit a copy to the DLI. However, an employer that has knowledge of an injury must still file an FROI within six days—even if it has not received an FROI from an employee. In this case, the employer must complete the entire form before submitting it.

### **COMPENSABILITY DETERMINATIONS AND BENEFIT PAYMENTS**

Employers must either accept or deny an employee's WCA claim within 30 days after receiving notice of the claim. An employer that denies a claim must send written notice of the denial to both the employee and the DLI. An employer that accepts a claim must begin paying any required WCA benefits to the employee and continue making the payments on a biweekly basis. An employer that does not have enough information to make a compensability determination must also begin paying benefits to the employee within the first 30 days. However, these benefit payments will not be considered an acceptance of the claim or a waiver of any WCA defenses if the employer provides both the employee and the DLI with written notice indicating that the payments are conditional. This gives the employer a right to recover the conditionally paid amounts from the employee if the DLI ultimately determines that the employer was not liable for the claim. Payments may be considered conditional for up to 90 days, unless the employer obtains the employee's consent or the DLI's approval to make additional payments conditional. If an employer decides to deny a claim after it has already accepted it or made conditional benefit payments, it must provide written notice to both the employee and the DLI at least 14 days before it discontinues WCA benefit payments to the employee.

### **RETURNING INJURED EMPLOYEES TO WORK**

Employers are prohibited from terminating an employee because he or she has filed a WCA claim. In addition, employers that have or expect to have any vacant positions are required to give injured employees preference over other applicants under certain circumstances. Specifically, an injured employee is entitled to preference if he or she:

- Is capable of returning to work within two years from the date of injury; and

- Has received a medical release to return to work.
- This requirement applies for any vacant position that is:
- Comparable to the employee's pre-injury job; and
- Consistent with the employee's physical condition and vocational abilities.

## **MORE INFORMATION**

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

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