

EMPLOYMENT LAW SUMMARY



Nebraska Workers' Compensation – Employer Responsibilities

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 Nebraska Workers' Compensation Act (WCA) establishes employer responsibilities relating to workers' compensation in the state. The [Nebraska Workers' Compensation Court](#) (WC Court) administers the workers' compensation system and enforces employer responsibilities under the WCA.

EMPLOYERS SUBJECT TO THE WCA

With limited exceptions, the WCA applies to every Nebraska-resident employer, as well as every nonresident employer performing work in the state, that employs one more employees in its regular trade, business, profession or vocation.

The term "employee" generally includes any person who performs services under any contract of hire. Employment contracts may be express or implied. The term employee specifically includes:

- Aliens;
- Minors;
- Corporate officers who own less than 25 percent of a private corporation's common stock; and
- Officers of a nonprofit corporation who earn less than \$1,000 per year from the nonprofit corporation

AGRICULTURAL EMPLOYERS

Special rules apply for agricultural employers. In particular, an agricultural employer is subject to the WCA only if the employer:

- Has **10 or more full-time employees** who are not related to the employer (for this purpose, an unrelated employee is anyone other than the employer's spouse or family member within the third degree by blood or marriage); and
- The unrelated employees worked on each working day of at least 13 calendar weeks during a calendar year (weeks are not required to be consecutive).

Agricultural employers that meet the criteria above have **30 days** to comply with the WCA with respect to all unrelated employees, regardless of whether the unrelated employees work full or part time. The 30-day period begins after the 13th week in which the criteria mentioned above are met. Once the WCA applies, the agricultural employer will be subject to it for the rest of the calendar year in which the criteria are met and the entire subsequent calendar year.

EXEMPT EMPLOYERS

Agricultural employers that do not meet the criteria mentioned above are generally exempt from the WCA. Likewise, the WCA does **not** apply to:

- Railroad companies engaged in interstate or foreign commerce;
- Employers of household domestic servants in a private residence; or
- Employers that only employ casual workers (those whose work is not within the usual course of the employer's trade, business, profession or occupation).

However, employers that are exempt from the WCA may voluntarily elect to be subject to the law. To make this election, an employer must purchase a workers' compensation insurance policy that covers its employees.

Agricultural employers that are exempt and do **not** voluntarily elect to provide workers' compensation coverage must provide a written notice to any employees who are unrelated to the employer.

The required notice must be provided to each unrelated employee at the time he or she is hired or within at least 30 days before an employee sustains a work-related condition. Each unrelated employee must sign the notice, and the agricultural employer must retain a copy. The notice must include the following statement:

"In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease. You should plan accordingly."

An employer that wishes to return to its exempt status after becoming subject to the WCA must post a written notice in every site where its employees work. The notice must be on display for at least **90 days** before the employer may cancel its workers' compensation insurance policy. The notice must state:

- That the employer will no longer carry workers' compensation insurance for the employees; and
- The date the insurance coverage will cease.

COVERAGE REQUIREMENT

An employer's primary obligation under the WCA is to secure its ability to pay all workers' compensation benefits to and for any employees who sustain work-related conditions. Employers may fulfill this obligation by either:

- Purchasing a workers' compensation insurance policy from a private insurer licensed by the [Nebraska Department of Insurance](#) (DOI); or
- Obtaining the WC Court's authorization to self-insure (available only for corporations and political subdivisions).

Every employer must pay the full cost of providing this coverage. The WCA prohibits employers from allowing or requiring employee contributions toward coverage costs. An employer that deducts an employee's wages for this purpose may be subject to criminal charges.

COVERAGE ELECTIONS FOR EXEMPT EMPLOYEES

Employees may not waive their rights under the WCA. However, certain individuals are **not** considered employees, including:

- Corporate officers who own 25 percent or more of a private corporation's common stock;
- Officers of a nonprofit corporation who receive \$1,000 or less in annual compensation from the nonprofit corporation;
- Individual employers;
- Partners of a partnership;
- Members of a limited liability company; and
- Self-employed individuals.

However, these individuals may elect coverage for themselves by filing written notice with their workers' compensation insurance carrier. A corporate officer must also file the written election notice with the secretary of his or her corporation.

Once any of these individuals elects coverage, the election is effective for both the current policy and any subsequent policies issued by the same insurer. These individuals may terminate their elective coverage by filing a written termination notice with the insurer (and with the corporation's secretary for a corporate officer's election termination).

The WCA also includes special provisions for individuals who lease out and drive commercial vehicles for self-insured motor carriers that have a principal place of business in Nebraska. These individuals may elect to become covered under a self-insured motor carrier's workers' compensation coverage if the motor carrier agrees writing to provide the coverage.

INSURANCE POLICIES

When an employer purchases a workers' compensation insurance policy to satisfy the WCA's coverage requirement, the issuing insurance carrier becomes directly responsible for administering claims and paying all WCA benefits for the insured employer. Insurance carriers are also responsible for notifying the WC Court of an insured employer's coverage within 10 days after a policy becomes effective.

Every workers' compensation insurance policy must be in a form approved by the DOI. The policy must cover the insured employer's full liability under the WCA. When purchasing a policy, however, employers will have the option of including a deductible. Under the WCA, workers' compensation insurance carriers:

- Must offer a deductible of up to \$2,500 per claim for WCA medical benefits;
- May offer a deductible of at least \$50,000 per claim for all WCA benefits; and
- Must fully disclose all available deductible amounts in writing before completing the sale of a policy.

An employer that wishes to include a deductible must choose only one deductible amount from among those offered by the insurer. Although a deductible can help reduce premium costs, an employer that includes one must be prepared to cover the full deductible amount for every workplace injury or illness that may occur. Insurance carriers are required to pay deductible amounts upfront when an employee is entitled to receive WCA benefits, but employers must reimburse the deductible amount for every compensable WCA claim.

SELF-INSURANCE

A self-insured employer uses its own assets, rather than an insurance policy, to secure its obligations under the WCA. Employers that wish to self-insure must obtain authorization from the WC Court. In Nebraska, corporations and political subdivisions are the only employers that may obtain this authorization. To be eligible for self-insurance, a corporation must:

- Have or reasonably expect to have at least **100 employees** in Nebraska within one year of beginning operations in the state;
- Have been in business under the same organizational structure for a minimum of **five years**;
- Have the financial ability to meet all obligations under the WCA;
- Be able to submit a security deposit of at least **\$500,000** and secure excess insurance coverage; and
- Have a safety committee and an effective written injury prevention program.

The process of obtaining authorization to self-insure begins by submitting a written request for a self-insurance application to the WC Court. This request must be on the employer's own letterhead and signed by a corporate officer. After receiving an application from the WC Court, a corporation must complete the form and submit it to the WC Court, along with the following:

- Certified financial statements, payrolls reports and incurred loss history for the last five years;
- Evidence of its authorization to transact business in Nebraska; and
- Any other information the WC Court requests.

If the WC Court approves a self-insurance application, it will send written notice and a certificate of approval authorizing the employer to self-insure for the term expressed on the certificate. To renew a self-insurance authorization, an employer must submit a renewal application to the WC Court at least **30 days before** the expiration date shown on its current certificate.

Self-insured employers must make arrangements for claim administration and injury and payment reporting under the WCA. Although self-insured employers may contract with third parties to administer their claims, they may not delegate the ultimate responsibility for complying with the WCA to any other party.

To ensure compliance with the WCA, the WC Court may conduct periodic audits and special examinations of a self-insurer's payroll and records as well as the records of any other party that acts on behalf of the self-insurer. A self-insured employer must cooperate with these inspections and must file any reports or other information that the WC Court requires or requests.

INJURY REPORTING

Employers must file a report with the WC Court regarding any work-related condition that results in an employee's:

- Death (regardless of the time between the death and the injury or onset of disease);
- Time away from work;
- Restricted work or termination of employment;
- Loss of consciousness; or
- Medical treatment administered by a physician or other licensed health care professional.

This report must be filed within **10 days** after first receiving notice or knowledge of an employee's work-related injury or disease. As of Dec. 18, 2019, employers must use the WC Court's [Electronic Data Interchange](#) to submit the report. However, the WC Court may allow an employer to file the report on paper, using [Form 1](#) (First Report of Alleged Occupational Injury or Illness) in limited circumstances.

PROVIDING MEDICAL CARE

Employers must provide all reasonable medical care to treat employees' work-related conditions. The WCA grants employees a one-time right to choose their own physician to provide the treatment. When an employee is injured, the employer must notify him or her of this right by providing a copy of [Form 50](#) (Employee's Choice Change of Doctor) as soon as possible. The employee must then give the employer the name of the family physician that he or she chooses. Except in situations involving emergency medical care, the employee must do this before receiving any treatment. If the employee does not, the employer has the right to choose the primary treating physician.

After an initial physician selection is made, an employee may not change to another physician unless the employer agrees or the WC Court orders the change. Referral made by a primary treating physician do not count as a change. Employers are not responsible for any medical expenses for treatment ordered by providers other than by, or through a referral by, a designated primary treating physician.

The WCA limits the amounts that medical providers may charge employers for medical care they provide to employees. These amounts are listed in the WCA [Medical Services Fee Schedule](#). The WCA also allows employers to enter contracts with medical providers or establish certified managed care plans to provide medical services under the WCA. These contracts or plans may establish fees that are different than those provided in the WCA fee schedule.

When an employer receives a medical bill for treatment associated with an employee's work-related condition, the employer must:

- If applicable, notify the medical provider, within **15 business days** after receiving the bill, that additional information is necessary to process the claim; and
- Pay the bill directly to the provider within **30 business days** after receiving all information necessary to process the claim.

An employer that fails to pay a medical bill within the 30-day period may be ordered to pay the provider's billed charges instead of the scheduled or contracted fees.

Employers must also reimburse employees for any travel costs they incur to obtain medical care for work-related conditions. However, this requirement may not apply if an employee selects a physician located outside of the community where he or she lives or works.

BENEFIT PAYMENTS AND CLAIM DECISIONS

Whenever an employer pays any WCA benefits to or for an employee, and whenever an employer pays an employee any portion of his or her salary in lieu of WCA benefits, the employer must [electronically file a Subsequent Report](#) with the WC Court. This report must include cumulative weekly benefits, medical expenses payments and any other payments made under the WCA.

An employee becomes entitled to weekly WCA benefits once he or she has been disabled by a work-related condition for more than seven calendar days. For this purpose, a partial day of disability counts as a calendar day.

Employers must make the first weekly benefit payment directly to an employee or his or her designated representative within **30 days** after the employee has become entitled to it. In general, ongoing benefits must be paid on the same schedule as the employee's wages were paid at the time he or she sustained a work-related condition. However, injured employees may agree, either in writing or electronically, to receive payments under a different schedule.

If an employer believes that an employee is not entitled to WCA benefits, it may refuse to make the initial or subsequent weekly benefit payments without filing notice with the WC Court. An employee that believes he or she is entitled to WCA benefits despite an employer's refusal to pay them must file a petition with the WC Court for a determination as to whether the employee's claim is compensable. If a claim is found to be compensable after an employer has refused to pay benefits, the WC Court may order the employer to pay interest on the amounts that should have been paid to the injured employee.

MORE INFORMATION

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