

# EMPLOYMENT LAW SUMMARY

## Nevada 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 Nevada Industrial Insurance Act (NIIA) establishes employer responsibilities relating to workers' compensation in the state. The Workers' Compensation Section of the Nevada [Division of Industrial Relations](#) (DIR) administers the workers' compensation system and enforces employer responsibilities under the NIIA.

### EMPLOYERS SUBJECT TO THE NIIA

The NIIA applies to virtually all employers in Nevada. Under the NIIA, an employer is any entity in the state that has at least **one non-exempt** employee in its service under a contract of hire. Employment contracts may be expressed or implied. In addition, a person's employment does not have to be legal in order for the NIIA to apply to the employer.

Among others, non-exempt employees include:

- Aliens and minors;
- Corporate executives who render actual service for pay;
- Musicians who provide music for hire (such as members of local supporting bands and orchestras commonly known as house bands); and
- Lessees engaged in mining or operating a reduction plant.

### EXEMPTIONS

Employers are not required to provide coverage for the following:

- Casual workers whose employment is not in the course of the employer's trade, business, profession or occupation ("Casual" means the work contemplated is to be completed within 20 working days in a calendar quarter and the total labor cost of the work is less than \$500).
- Theatrical or stage performers;
- Musicians whose services do not last more than two consecutive days or recur for the same employer;
- Domestic servants;
- Agricultural workers;
- Volunteer ski patrollers who receive no compensation other than meals, lodging or use of ski tow or lift facilities;
- Sports officials who perform services for a nominal fee at amateur, intercollegiate or interscholastic sporting events sponsored by a public agency, public entity or private, nonprofit organization;
- Most licensed real estate brokers and real estate salespeople;
- Direct sellers;
- Self-employed owners of unincorporated businesses (sole proprietors); or
- Individuals who meet the NIIA's definition of an "[independent enterprise](#)."

## **ELECTIVE COVERAGE**

An employer is **not** subject to the NIIA if it employs only exempt employees. Employers that are not subject to the NIIA do not enjoy the NIIA's protections against negligence lawsuits that may arise from a work-related injury or illness.

For this reason, Nevada law allows employers that are not subject to the NIIA to voluntarily elect to become subject to the NIIA and extend coverage to exempt employees. Employers that elect NIIA coverage are subject to the same rules and obligations as non-exempt employers.

To elect coverage, an employer must file a [written statement](#) with its workers' compensation insurance carrier and with the DIR. Sole proprietors that [elect](#) to provide coverage for themselves may be required to submit to a physical examination, at their own expense, before their elective coverage becomes effective.

## **ELECTIVE EXCLUSIONS**

Although every workers' compensation insurance policy sold in Nevada must provide coverage for all of the insured employer's employees, the NIIA allows certain corporate officers and company managers to exclude themselves from a policy. These individuals must file a written rejection statement with the insurance carrier. This option is available to an officer of a corporation or a manager of a company who:

- Owns the corporation or company; or
- Does not receive pay for the services he or she performs for the corporation or company.

In addition, nonprofit corporations may reject coverage for all of their current and future corporate officers who do not receive pay for their services.

Finally, exempt employees may reject their employer's voluntary coverage by filing a [written statement of NIIA rejection](#) with the employer, the employer's workers' compensation insurance carrier and the DIR. Employees who reject elective coverage lose all NIIA protections.

All coverage rejections become effective as of the date an insurance carrier receives a properly executed notice.

## **COVERAGE REQUIREMENT**

The NIIA requires all covered employers to secure their ability to pay for all eligible workers' compensation benefits. To satisfy this requirement, an employer must obtain and maintain either:

- An insurance policy from a company that is authorized by the Nevada Department of Insurance (NDOI) to provide workers' compensation coverage; or
- The NDOI's approval to self-insure.

Certain groups of employers also have the option of pooling their resources and liabilities to obtain a group insurance policy or to self-insure as a group.

Regardless of the coverage method used, all employers cannot make their employees contribute, in full or in part, to the cost of their workers' compensation coverage.

## **INSURANCE POLICIES**

Generally, insurance carriers become responsible for administering any claims that are filed against the employers they insure. As part of these responsibilities, insurance carriers must promptly pay all workers' compensation benefits that become payable to or for any employees who sustain work-related injuries during the coverage period.

However, an insurance carrier's obligation to administer and pay for eligible claims does not relieve employers from any legal obligations under the NIIA. Employers should always ensure that they are compliant with the NIIA, even if an insurance carrier agrees to administer their claims process and cover their liabilities.

An insured employer should also be aware that failing to pay premiums according to the terms of its workers' compensation insurance policy may allow its carrier to cancel the coverage without advanced notice. This could leave the employer exposed to direct liability for any employee injuries that occur after the policy cancellation, as well as to several penalties for failing to maintain coverage.

## **GROUP INSURANCE POLICIES**

The DIR may grant a group of employers the right to purchase a single workers' compensation insurance policy that covers all members of the group. To qualify for this approval, all of the employers in a group must be engaged in a common trade or business. In addition, the group must show, to the DIR's satisfaction, that the formation and operation of a workers' compensation insurance program will assist substantially in claims handling and accident prevention for the group, as a whole.

## SELF-INSURANCE

A self-insured employer uses its assets, rather than an insurance policy, to secure its liabilities and pay benefits under the NIIA. A self-insured employer is also responsible for performing (or hiring a third party to perform) all claims administration duties under the law.

Employers that wish to self-insure must apply for and obtain a self-insurance certificate from the NDOI. To meet the minimum qualifications for a self-insurance certificate, an employer must prove to the NDOI that it has sufficient administrative and financial resources to promptly pay all benefits that may become due under the NIIA. In general, an employer will meet this requirement if it:

- Has a tangible net worth of at least \$2.5 million;
- Deposits a bond or other securities of at least \$100,000 with the NDOI; and
- Has excess insurance to protect against a catastrophic loss.

If the NDOI determines that an employer is qualified to self-insure, it will issue a certificate to the employer and send a copy to the DIR. An employer's authorization to self-insure becomes effective on the date of the certificate (or any other date the NDOI specifies in the certificate) and may remain in effect indefinitely.

However, self-insured employers are subject to annual audits and other detailed requirements under the NIIA, and the NDOI may withdraw an employer's self-insurance certificate if the employer fails to comply with NIIA requirements.

## GROUP SELF-INSURANCE

The NIIA also allows certain groups of employers to pool their resources and liabilities to self-insure as a group. These employers must apply for and obtain an NDOI certificate authorizing them to operate as an "association of self-insured private employers."

This type of certificate is available only to groups of **five or more employers** that are members of a single, bona fide trade association that is incorporated in Nevada and has been in existence for at least **five years**.

As a whole, an association of self-insured private employers must meet several additional, detailed requirements under the NIIA in order to qualify for and maintain coverage under a group self-insurance certificate.

## NOTICE POSTING REQUIREMENTS

Employers must post a workers' compensation notice in their workplaces. The notices must be posted in a conspicuous location where employees can easily see it. The notice must include the name, business address and telephone number of the employer's insurance carrier, along with the same information about the carrier's (or self-insured employer's) nearest claims administrator in Nevada. Employers must ensure that this notice remains posted at all times. The DIR has provided a [model notice](#) that employers can use to satisfy this requirement.

If any of an employer's employees receive tips, the employer must also post an additional [notice](#) regarding the process for reporting and including any tip amounts in their wages for purposes of calculating workers' compensation benefits.

## RECORDKEEPING REQUIREMENTS

Employers must allow the DIR to inspect their payroll and other employment records at any time. Insured employers must also keep these records open for inspection by their insurance carriers.

Every employer must ensure that its records include a copy of its workers' compensation insurance policy or its self-insurance certificate from the NDOI. Each member of an association of self-insured employers must also maintain current documentation verifying its good-standing membership in the association. Copies of these coverage documents must be available for the DIR's inspection at each of an employer's places of business at all times. If an employer has a temporary place of business in which it does not intend to remain for more than one year, the employer must be able to provide coverage documents at the temporary location **within 24 hours** after receiving a request from the DIR.

Employers also have a duty to ensure that their records include copies of any federal tax reports filed by employees who receive a total of \$20 or more in tips during any year. An insured employer must provide copies of these reports, along with all other payroll records, to its insurance carrier, and the carrier must include all reported tip amounts as regular wages when calculating the premium rate for the employer's insurance policy.

## INJURY REPORTING REQUIREMENTS

Employers must always have a sufficient supply of [Form C-1](#) ("Notice of Injury or Occupational Disease") available to employees at their worksites. Insured employers must obtain these forms from their insurance carriers. Self-insured employers may obtain them from the DIR.

The NIIA requires **employees** to submit a completed Form C-1 to their employer **within seven calendar days** after sustaining a work-related injury. The employer (such as a supervisor or other person who is in charge at the employee's worksite) must then sign a portion the form to acknowledge receipt of and provide a copy to the employee. Employers do **not** need to file this report with their insurance carriers, nor with the DIR. However, the NIIA does require employers to keep every completed Form C-1 in their records for a minimum of **three years**.

An employer's report-filing duties under the NIIA begin after a medical provider submits a treatment report to the employer using [Form C-4](#) ("Employee's Claim for Compensation/Report of Initial Treatment").

Within **six working days** of receiving a Form C-4, an employer must complete and file [Form C-3](#) ("Employer's Report of Occupation Injury or Disease") with its insurance carrier or the DIR.

## PROVIDING MEDICAL CARE

As soon as an employer obtains knowledge (from any source) of a work-related accident, the employer must provide all necessary first-aid treatment for any employees who are injured. The employer must also pay for each employee's transportation to the nearest place that can provide the necessary medical attention. Insured employers may be reimbursed by their insurance carriers for these costs.

Employers may also direct an injured employee to submit to a medical examination for the purposes of:

- Determining the nature and extent of the injury; and
- Providing any immediate medical attention required.

Injured employees may also request this initial medical examination. Either way, employers must provide each injured employee with the names, addresses and telephone numbers of at least two qualified physicians or chiropractors who practice within 30 miles of the employee's place of employment. The employee may then select one of the providers to conduct the examination. Employers may not require an employee to select any specific provider from among the furnished names.

Within **three working days** after an employee undergoes an initial medical examination, his or her medical provider must send a report, using Form C-4, to both the employer and its insurance carrier. As noted above, an employer's receipt of a Form C-4 triggers its duty to complete and file Form C-3 with its insurance carrier or the DIR (if self-insured).

## COMPENSABILITY DETERMINATIONS AND BENEFIT PAYMENTS

Within 30 days after an insurance carrier or self-insured employer receives notice of an employee's work-related injury, the carrier or employer must either:

- Send a [claim-acceptance notice](#) to the employee and begin paying any workers' compensation benefits to the employee; or
- Send a [claim-denial notice](#), via certified mail, to both the employee and the DIR.

The NIA specifies that accepting and paying the initial benefits for a claim does not mean the employer (or its insurer) admits to being liable for the claim (or any portion of it). However, an employer or carrier that fails to pay benefits or deny a claim within the required 30-day period may be ordered to pay an injured employee triple the amount of benefits to which he or she is entitled under the NIIA.

## MORE INFORMATION

Please contact Heffernan Insurance Brokers or visit the [DIR website](#) for more information about workers' compensation in Nevada.

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. © 2021 Zywave, Inc. All rights reserved.