

EMPLOYMENT LAW SUMMARY

New Hampshire Workers' Compensation - Employer Responsibilities



Workers' compensation is a system of no-fault insurance that provides medical and monetary benefits to employees who sustain work-related injuries and diseases. Workers' compensation is governed by state law.

The New Hampshire Workers' Compensation Law (WCL) outlines employers' responsibilities relating to workers' compensation in the state. The [Workers' Compensation Division](#) (WCD), part of the New Hampshire Department of Labor, administers the workers' compensation system and enforces employer compliance with the WCL.

EMPLOYERS SUBJECT TO THE WCL

The WCL applies to all employers that have **one or more** part- or full-time employees working in New Hampshire.

The term "employee" generally includes any person who performs services for pay within the state, even if an employment contract was made outside of the state or if neither the employee nor the employer are residents of the state.[iii][iv] Employment contracts may be expressed or implied.

However, the WCL specifically **excludes** the following as "employees" for purposes of determining whether an employer is subject to the WCL:

- Railroad workers covered by the federal Employers' Liability Act;
- Direct sellers;
- Real estate brokers and agents;
- Real estate appraisers;
- Workers providing services as part of a residential placement for individuals with developmental, acquired or emotional disabilities; and
- Independent contractors (as defined by law).

In addition, corporate employers may exclude up to three executive officers, and limited liability companies (LLCs) may exclude up to three members or managers, in determining whether they are subject to the WCL.

An employer that is subject to the WCL must have, or immediately obtain, an employer identification number from the [Internal Revenue Service](#).

COVERAGE REQUIREMENTS

Under the WCL, an employer's primary responsibility is to secure its ability to pay workers' compensation benefits to and for any employee who sustains a work-related injury or disease. This responsibility begins before an employer hires any employee. Employers may satisfy this requirement by either:

- Purchasing an insurance policy from a company licensed to provide workers' compensation insurance in New Hampshire; or
- Obtaining a permit to self-insure, either as an individual employer or as part of a group of employers that have similar trades, businesses, occupations, professions or functions.

Employers subject to the WCL must provide coverage for all their employees, including any corporate officers or LLC members or managers who were not counted for purposes of determining whether the employer is automatically subject to the WCL.

Employers that fail to provide coverage as required may be subject to stop-work orders, fines and other penalties. An employer without coverage also remains liable to pay workers' compensation benefits to and for any injured employees.

COVERAGE ELECTIONS

While the WCL generally requires coverage for all employees, corporations may voluntarily elect to exclude up to three corporate officers and LLCs may elect to exclude up to three members or managers from their coverage.

To exclude an eligible individual, the employer must complete [Form 6WCex](#) ("Exclusion of Executive Officers or Members") and submit it to the insurance carrier or the WCD. An exclusion generally becomes effective as soon as the WCD receives the form, but failure to properly complete the form can invalidate an election. The employer must also send a copy of Form 6WCex to each of the individuals who are listed on it.

In addition, employers that are not subject to the WCL may voluntarily elect to become subject to the law by purchasing a workers' compensation insurance policy.

Similarly, an employer that is subject to the law may voluntarily elect to cover any exempt individuals. To add coverage for a specific individual, an employer must submit [Form 6WC-EL](#) ("Election of Individuals or Partners") to the WCD.

INSURANCE POLICIES

When an employer purchases an insurance policy from a licensed workers' compensation insurance carrier, the carrier becomes responsible for many of the employer's obligations under the WCL. This includes:

- Filing notice of the employer's coverage with the WCD within 10 days after issuing a policy;
- Filing other coverage-related forms with the WCD;
- Paying benefits to and for any injured employees; and
- Filing most claim-related forms with the WCD.

However, an insured employer remains responsible for reporting any work-related injuries and for ensuring that its carrier meets all requirements under the law.

SELF-INSURED EMPLOYERS

A self-insured employer uses its own assets, rather than an insurance policy, to cover its liabilities under the WCL.

An employer that wishes to self-insure must apply for and obtain a permit from the WCD. Groups of five or more employers that have similar trades, businesses, occupations, professions or functions may also obtain a permit to self-insure as a group.

To apply for a self-insurance permit employers must:

- Complete and file an application form ([Form WCSI-1](#) for single employers or [Form WCSI-1A](#) for group employers);
- Complete and file [Form WCSI-11](#) (“Annual Financial Statement”);
- Provide balance sheet information; and
- Submit payroll information.

In addition, an employer or group that wishes to self-insure must guarantee that it has the financial ability to pay all potential workers' compensation claims. To prove this, an employer or group must:

- Establish and maintain loss reserves through a surety bond or other securities;
- Maintain specific excess insurance;
- Use a claim adjuster who is licensed in New Hampshire and maintains facilities in the state; and
- Make all contracts with claim adjusters available for the WCD's inspection upon request.

Once approved, a self-insurance permit remains effective indefinitely. However, the WCD may revoke a self-insurance permit if the employer or group fails to:

- Cooperate with the WCD;
- Provide the WCD with access to all coverage and claims forms;
- Remain financially able to pay all potential claims;
- Pay all required benefits to and for injured employees; or
- Meet any other WCL requirement.

NOTICE POSTING REQUIREMENT

Employers must post and maintain a WCL notice in a conspicuous place that is available to their employees within their workplaces. Failure to post the required notice may subject an employer to daily fines for each day of noncompliance.

The WCD has provided [Form WCP-1](#) (“Notice of Compliance”) to help employers meet the posting requirement. Employers must obtain this form from their insurance carriers or from the WCD. The notice must include the name and contact information of the employer's insurance carrier (or claims administrator) and must advise employees that the carrier (or the employer, if it is self-insured) is liable for benefit payments under the WCL.

REPORTING AND RECORDKEEPING

When an employee sustains a work-related injury or disease, he or she must report it to the employer as soon as possible. Employers must make a record of each employee injury or disease report and keep the record for at least **five years** from the claimed date of injury.

FIRST REPORT OF INJURY OR DISEASE

If an employee's work-related condition requires any medical treatment other than first aid, the employer must provide the employee with [Form 8aWCA](#) (“Notice of Accidental Injury or Occupational Disease”) and direct the employee to complete it as soon as possible.

Once the employee returns the completed form, the employer must:

- Sign it and provide a copy to the employee;
- Send the form to its insurance carrier (if applicable); and
- File the form with the WCD (or ensure that its insurance carrier files it).

These tasks must be completed within **five days** after an employer first obtains knowledge of an employee's work-related condition that requires medical attention.

SUPPLEMENTAL REPORT

If an employee's work-related condition results in disability from work for more than **three days**, the employer must complete and file [Form 13WCA](#) ("Employer's Supplemental Report of Injury") **within seven days** after the first day of the employee's disability.

Self-insured employers do not have to file the supplemental report with the WCD, but should keep the completed form in their records.

PAYING BENEFITS OR DENYING CLAIMS

Within **21 days** of receiving notice of a claim, an employer (or its insurance carrier) must either:

- Begin paying workers' compensation benefits to the employee and file a report of payment with the WCD; or
- Deny the claim by filing [notice](#) with the WCD. A copy of the notice of denial must also be provided to the injured employee. The notice must include a valid reason for the denial and advise the employee of the right to petition the WCD for a hearing.

ALTERNATIVE WORK AND EMPLOYMENT REINSTATEMENT

The WCL requires employers with **five or more** employees to:

- Establish a written temporary alternative work opportunity plan; and
- Under certain circumstances, reinstate injured employees to their pre-injury employment positions.

In determining whether an employer has five or more employees for these purposes, employers may **not exclude** three corporate officers or LLC members or managers, as they can when determining whether they are subject to the WCL.

TEMPORARY ALTERNATIVE WORK OPPORTUNITY PROGRAMS

Temporary alternative work plans must be designed to help injured employees return to work. The WCD may reimburse up to **50 percent** (or \$5,000 per year, whichever is lower) of the job modification costs an employer incurs to comply with these requirements.

A temporary alternative work plan must include procedures that allow injured employees to obtain temporary alternative work with the employer. Any work provided under the plan must accommodate medical restrictions, and duty elements must be variable as an injured employee's work capacity increases.

EMPLOYEE REINSTATEMENT

An employer's obligation to reinstate an employee to his or her former position applies if:

- The employee requests reinstatement **within 18 months** from the date of injury (reinstatement obligations do not apply to employees that are unable to return to work within 18 months from the date of injury);
- The employer has **five or more** employees both at the time of the employee's injury and at the time the employee requests reinstatement;
- The injured employee's position exists and is **available**; and
- The employee can perform his or her position's duties with or without reasonable accommodations.

An employee's job is considered "available" even if a replacement was hired during the injured employee's absence. If an injured employee's former position has been eliminated, the employer must reinstate the employee in any other existing position that is vacant and suitable, with reasonable accommodations, to the employee's limitations.

SAFE EMPLOYMENT

The WCL requires all employers to provide their employees with safe employment. Among other things, this means employers must:

- Furnish employees with personal protective equipment (PPE), safety appliances and safeguards;
- Ensure that employees regularly use all PPE, appliances and safeguards; and
- Adopt work methods and procedures that will protect the life, health and safety of the employees.

In addition, employers with **15 or more** employees must:

- Establish a written safety program; and
- Establish and administer a joint loss management committee.

For safe employment purposes, the exception that allows employers to exclude three corporate officers or LLC members or managers does **not** apply.

GENERAL RESPONSIBILITIES

The WCL also imposes certain general obligations on employers. Along with other WCL duties, employers must:

- Familiarize themselves with the WCL and related regulations;
- Keep informed regarding the address of their insurance carrier's nearest claims office;
- Advise injured employees regarding their rights under the WCL and assist them in expediting their claims;
- Cooperate with all parties that have a valid interest in a case;
- Ensure all current forms are filed with the WCD; and •Act with due regard for each injured employee's constitutional right of due process.

MORE INFORMATION

For more information about workers' compensation requirements in New Hampshire, please contact Heffernan Insurance Brokers or visit the WCD's [website](#).

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