

EMPLOYMENT LAW SUMMARY

New York: Workers' Compensation - Employee Eligibility



Because You're Different

Workers' compensation is a system of no-fault insurance that provides medical benefits and compensation for lost wages and permanent physical impairments to employees who sustain work-related injuries. New York's Workers' Compensation Law (WCL) prescribes eligibility requirements for injured employees. The New York Workers' Compensation Board (WCB), part of the New York Department of Labor (NYDOL), enforces these requirements throughout the state.

COMPENSABLE INJURIES

To qualify for workers' compensation benefits, an employee must suffer a compensable injury and be covered by the WCL. A compensable injury is any accidental wound or disease arising out of employment and includes injuries to prosthetic members. A compensable injury can be specific or cumulative.

- A specific injury is one that results in disability or creates the need for medical treatment after one incident or exposure.
- A cumulative injury is the result of repeated exposure to hazardous conditions often leading to disability, infection or the need for medical treatment over a period of time.

Mental injuries based on work-related stress resulting from disciplinary action, work evaluations, job transfers, demotions or terminations are not compensable injuries if the employer makes these personnel actions in good faith and in accordance with the law. Employees are entitled to receive benefits for work-related injuries even if the injuries are caused by a third party. However, in these circumstances, the employer providing the benefits is allowed to file a lawsuit against the third party to recover the costs of providing benefits to its employees.

INDIVIDUALS COVERED UNDER THE WCL

Most employees are covered under the WCL. The WCL defines an employee as any person rendering service for another who is not an independent contractor or who is not expressly excluded by law. An employee may be working by appointment, contract or as an apprentice. While some exceptions may apply, covered individuals include:

- Aliens;
- Black car operators (considered employees of the New York Black Car Operators' Injury Compensation Fund, Inc.);
- Civil defense volunteers;
- Construction employees;
- Minors under the age of 16 rendering services for the public good;
- Jockeys, apprentice jockeys and exercise persons licensed by the state performing services for an owner or a trainer (considered employees of the New York Jockey Injury Compensation Fund, Inc.);
- Members of authorized auxiliary police organizations;
- Newspaper carriers under the age of 18;
- Professional models;
- Professional musicians and other art performers working for a television station, radio station, film production, theater, hotel, restaurant, night club or similar establishment; and

- Taxicab drivers, operators and lessees.

INDIVIDUALS NOT COVERED UNDER THE WCL

Workers' compensation coverage does not extend to some individuals. While some exceptions are possible, individuals not covered by the WCL include:

- Babysitters;
- Casual workers hired to complete general maintenance and up-keeping tasks in and about a one-family owner-occupied residence;
- Domestic servants;
- Individuals immediately related to their employer (parent, spouse or child);
- Individuals who are incarcerated on a felony conviction;
- Members of a non-profit, supervised, amateur athletic activity;
- Minors who are at least 14 years of age employed in casual labor such as yard work and household chores;
- Partners belonging to a registered partnership;
- Professional models considered employees by another employer covered by the WCL;
- Self-employed individuals; and
- Some individuals whose compensation is based on sales, not on hours worked, such as:
 - Licensed real estate brokers and sales associates;
 - Licensed insurance brokers and agents (excluding life insurance agents receiving an allowance subsidy); and
 - Media sales representatives.

DISQUALIFICATION FROM BENEFITS

Even when an eligible employee has a compensable injury, other factors may prevent him or her from receiving workers' compensation benefits. These factors include failure to submit to a medical examination, employee behavior, substance abuse, off-duty injuries and fraud.

MEDICAL EXAMINATION

Employers may suspend an individual's benefits if the individual fails or refuses to submit to or obstructs an examination required by the WCB.

EMPLOYEE BEHAVIOR

An employee cannot receive workers' compensation benefits if the injury was caused by his or her willful intention to injure himself, herself or another person.

SUBSTANCE ABUSE

An employee may be disqualified from receiving claim workers' compensation benefits if his or her injury was solely caused by intoxication or substance abuse while he or she was on duty. The employer carries the burden of proof in substance abuse matters. The employer must prove not only that the employee was intoxicated at the time of injury, but also that the intoxication was the sole cause of the injury.

RECREATIONAL AND SOCIAL ACTIVITIES

Employees may not receive compensation for injuries that occurred as a result of the employee's voluntary participation in an off-duty athletic event, unless the employer:

- Required the employee to participate in the event;
- Compensated the employee for participating in the event; or
- Otherwise sponsored the activity.

FRAUD

Individuals who knowingly make a false representation with the intent to influence the determination of benefits will be disqualified from receiving any benefit related to the false statement or representation. These individuals may also be subject to an additional fine equal to the amount of benefits directly attributable to the false representation. In addition, individuals who commit fraud by making false statements or omitting material information commit a class E felony. Repeat offenders within a 10-year period commit a class D felony. These felonies are punishable by:

- Imprisonment for up to:
 - 4 years for a class E felony;
 - 7 years for class D felony;
- A fine equal to the greater of:
 - \$5,000 (\$10,000 for corporations); or
 - Twice the amount of fraud-procured gain; or
- Both of the above.

Individuals who knowingly make a false representation to assist another in influencing his or her claim for workers' compensation benefits jeopardize the claimant's eligibility and may subject the claimant to the charges described above.

ADDITIONAL EMPLOYEE RESPONSIBILITIES

The WCL also sets additional employee expectations and responsibilities. Failing to satisfy these requirements may cause an individual to lose (in whole or in part) any benefits he or she is entitled to receive. Employees are expected to:

- Inform a supervisor or manager of injuries as soon as possible. The WCL requires employees to report injuries within 30 days of when they happen (or sooner, if they are serious);
- Report for treatment at a health care provider approved by their employer (not applicable if the employee requires urgent medical care at the nearest health care facility);
- Follow any employer instructions on how and when to contact the employer's insurance carrier; and
- Follow all instructions received by a qualified and authorized health care provider (including submitting to disability evaluations).

MORE INFORMATION

For more information on workers' compensation laws in New York, go to the WCB website or contact your Heffernan Insurance Brokers representative.

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