

EMPLOYMENT LAW SUMMARY

New York: Workers' Compensation - Employer Penalties



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) determines the penalties employers may face if they fail to comply with state workers' compensation requirements. The New York Workers' Compensation Board (WCB), part of the New York Department of Labor (NYDOL), has the authority to enforce compliance throughout the state.

FAILURE TO SECURE COVERAGE

Non-exempt employers that fail to secure workers' compensation coverage within a 12-month period for up to five employees commit a misdemeanor, punishable by a fine of between \$1,000 and \$5,000. Failure to secure coverage includes misrepresentations and concealment of information that lead an employer to avoid paying proper premiums for their employees' coverage. An employer that can prove it took reasonable steps to secure coverage may be excused from the failure to comply with the WCL.

Employers that fail to secure coverage for more than five employees within a 12-month period commit a class E felony, punishable by imprisonment for up to four years, a fine equal to the greater of \$5,000 or twice the amount of gain produced by the violation or both. Repeat violators commit a class D felony, punishable by a fine of between \$10,000 and \$50,000 in addition to other penalties provided by law. The WCB may impose an additional administrative fine of up to \$2,000 for each 10-day period of non-compliance. This administrative fine cannot exceed twice the amount of compensation the employer would have paid for its employees during the period of noncompliance.

PROHIBITED DISCRIMINATION

During the hiring process, it is unlawful for employers to inquire or consider whether an applicant has filed or received workers' compensation benefits. Employers that discriminate against applicants on the basis of workers' compensation benefits may be charged with a misdemeanor, punishable by a fine of up to \$1,000, and may also be held liable for damages and reasonable attorney's fees by a civil court.

Similarly, it is unlawful for any employer to discharge or in any manner discriminate against an employee because he or she has claimed or attempted to claim benefits. It is also unlawful to discriminate against any employee that testifies or is about to testify in a benefit claim. An employer that discriminates against an employee for filing, attempting to file or testifying regarding a claim may be ordered to restore an employee to his or her employment, position or privileges. The WCB may also order the employer to compensate the employee for any wages lost and cover the fees and costs associated with any assistance the employee had from an attorney or licensed representative in a discrimination case. In addition, the WCB may order an employer that engages in prohibited discrimination to pay a fine of between \$100 and \$500 to the state treasury. The employer may not rely on its insurance carrier to pay this fine.

NOTICE POSTING REQUIREMENTS

Employers must display, in a conspicuous place, a notice stating that they have a workers' compensation insurance policy that complies with state law. As of Jan. 1, 2020, the notice must be posted in both English and Spanish. Failing to display this notice may subject an employer to fines of up to \$500 per violation and may be considered evidence that the employer does not have insurance.

FAILURE TO SUBMIT REPORTS/FILINGS

Employers that refuse or neglect to submit injury reports to the WCB may be charged with a misdemeanor, punishable by a fine of up to \$1,000 and an additional fine of up to \$2,500 imposed by the WCB.

FRAUD

Employers that knowingly make a false statement or representation regarding a material fact in the course of an investigation, injury report or benefit claim adjustment to avoid paying a claim or benefit commit a class E felony. Subsequent violations during a 10-year period are considered class D felonies. These 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.

MORE INFORMATION

For more information on workers' compensation laws in New York, visit the Workers' Compensation Board website or contact your official Heffernan Insurance Brokers representative.

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