

EMPLOYMENT LAW SUMMARY

North Carolina: Workers' Compensation – Employer Penalties



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 North Carolina Workers' Compensation Act (WCA) determines the penalties employers face if they fail to comply with state requirements. The [North Carolina Industrial Commission](#) (NCIC) enforces compliance throughout the state.

FAILURE TO MAINTAIN COVERAGE

Employers that do not maintain adequate workers' compensation coverage (through an insurance policy or self-insurance) may be subject to several administrative, civil and criminal penalties.

ADMINISTRATIVE PENALTIES

The WCA requires employers to file proof of adequate coverage with the NCIC. Employers that refuse or neglect to secure adequate coverage face a **\$1 fine for each employee** (subject to a minimum of **\$20** and a maximum of **\$100**) **per day** until the violation ceases. Employers have the right to request a hearing to appeal these penalties.

CIVIL PENALTIES

When an employer does not have adequate workers' compensation coverage, the WCA allows its injured workers to sue the employer in civil court to recover all damages resulting from their injuries instead of accepting the more limited benefits available under the WCA. In addition, noncompliant employers are subject to a civil penalty equal to **100 percent** of any compensation an employee recovers in civil court. The same penalty applies to individuals who have, but fail to use, the authority and ability to make an employer maintain adequate coverage.

The WCA authorizes the NCIC to attach or seize any property necessary to prevent an employer from disposing of its assets or leaving the state before paying all workers' compensation benefits due to its injured employees.

CRIMINAL PENALTIES

Employers that willfully fail to maintain adequate workers' compensation coverage as required may be charged with a **class H felony**, which is punishable by:

- Imprisonment between four and 25 months;
- A fine determined at the discretion of the court; or
- Both imprisonment and a fine.

If an employer's violation is due to negligence, the penalty is a **class 1 misdemeanor**, punishable by imprisonment between one and 150 days, a fine determined at the discretion of the court or both. Individuals may be held personally liable for the same charges if they have the ability and authority to bring an employer into compliance but willfully fail to make an employer comply.

At its discretion, the NCIC may forgo or return all or part of a civil penalty to employers or individuals who correct their lack of workers' compensation coverage and pay all outstanding claims.

COERCING EMPLOYEES TO FORGO BENEFITS

Employers are prohibited from coercing or attempting to coerce any employee to forgo any compensation to which he or she is entitled under the WCA. An employers that coerces an employee may be charged with a **class H felony**, punishable by:

- Imprisonment between four and 25 months;
- A fine determined at the discretion of the court; or
- Both imprisonment and a fine.

REQUIRING EMPLOYEES TO FUND THEIR COVERAGE

The WCA prohibits employers from requiring or encouraging their workers to fund any portion of their workers' compensation coverage. Employers that receive employee contributions for their workers' compensation coverage may be charged with a **class 3 misdemeanor**, punishable by a fine of up to \$500.

FAILURE TO PAY BENEFITS

Employers must begin paying WCA benefits within **14 days** after they receive actual notice of a work-related injury or death. Employers (or their insurance carriers, if applicable) must notify the NCIC of their first payment of benefits and of any suspension, reinstatement, change or modification to an employee's benefits. A copy of this report must be furnished to the employee as well.

An employer that does not make an initial benefit payment within the 14-day period is subject to a fine equal to **10 percent** of the delayed payment, unless the late payment is excused by the NCIC. A late payment may be excused if the employer can prove it had no control over the conditions that caused the delay.

RECORDING AND REPORTING VIOLATIONS

Employers that refuse or neglect to comply with WCA recording and reporting requirements are subject to a **fine of between \$5 and \$25** for each refusal or neglect to record and report. Employers have the right to appeal this sanction with the NCIC.

FRAUD

Employers face possible criminal charges if they willfully make a false statement or representation of a material fact with the intent of obtaining or denying (or assisting another to obtain or deny) workers' compensation benefits.

If the amount of compensation at issue is less than \$1,000, an employer may be charged with a **class 1 misdemeanor**, punishable by imprisonment between 1 and 150 days, a fine determined at the discretion of the court or both. If the amount of compensation is \$1,000 or more, an employer may be charged with a **class H felony**, punishable by imprisonment between four and 25 months, a fine determined at the discretion of the court or both.

TABLE SUMMARY

The table below provides a brief overview of the penalties described above.

| Violation | Penalty Type | Sanctions |
|--|-------------------|---|
| Failure to maintain adequate coverage | Criminal charges* | A willful violation is a class H felony , punishable by imprisonment (4-25 months), a fine (amount determined by court) or both. A negligent violation is a class 1 misdemeanor , punishable by imprisonment (1-150 days), a fine (amount determined by court) or both. |
| Failure to maintain adequate coverage | Civil penalties* | A fine equal to 100 percent of any WCA benefits payable to employees while the employer is not in compliance. |

| Violation | Penalty Type | Sanctions |
|--|--------------------------|--|
| Failure to maintain adequate coverage | Administrative penalties | A fine of \$1 per employee (\$500 minimum) and a fine of \$100 per each day of non-compliance. |
| Failure to pay benefits | Administrative penalties | A fine equal to 10 percent of any unpaid benefits. |
| Coercing employees to forgo benefits | Criminal charges | A class H felony, punishable by imprisonment (4-25 months), a fine (amount determined by court) or both. |
| Requiring employees to fund any portion of their coverage | Criminal charges | A class 3 misdemeanor, punishable by a fine of up to \$500. |
| Violation of recording and reporting requirements | Administrative penalties | A fine of between \$5 and \$25 per violation. |
| Fraud | Criminal charges | Criminal charges If fraud results in a gain of \$1,000 or more, a class H felony , punishable by imprisonment (4-25 months), a fine (amount determined by court) or both. If fraud results in gain of less than \$1,000, a class 1 misdemeanor, punishable by imprisonment (1-150 days), a fine (amount determined by court) or both. |

*These sanctions also apply to any individual who had the authority and ability to make an employer comply with the WCA but failed to do so.

SELF-INSURED EMPLOYERS

In addition to the sanctions described above, self-insured employers face several penalties, including a **fine of between \$100 and \$1,000**, the revocation, suspension or restriction of their license and orders to pay restitution to any party that is adversely affected, if they (and, in some cases, their affiliates and subsidiaries):

- Violate any provision of the WCA;
- Are in a hazardous financial condition;
- Are determined to be insolvent by a court;
- Experience material loss;
- Experience deteriorating operating trends;
- Report a deficit financial position;
- Experience or will experience in the foreseeable future cash flow or liquidity problems;
- Accumulate contingent liabilities, pledges or guarantees that individually or collectively jeopardize their financial solvency;
- Fail to pay premium taxes;
- Fail to respond or responding with false and misleading information to an NCIC inquiry about their condition;
- File or release false or misleading sworn financial statements to a lending institution or to the general public;
- Become delinquent in their payments of any financial obligation;
- Fail to make proper and timely payment of claims as required by the WCA;
- Fail to pay any assessments made by the North Carolina Self-Insurance Security Association; or
- Are not members of the Association Aggregate Security System (Association) or fail to provide and maintain the deposit required of non-Association members.

Employers are entitled to receive a **45-day advance notice** from the NCIC before any revocation, suspension or restriction takes place. Employers are also entitled to request an administrative hearing to appeal the notification. Generally, the NCIC will schedule a hearing **between 10 and 30 days** after the notice is served. However, affected employers and the NCIC can mutually agree on the time and location for the hearings. The hearings will be private, unless employers request a public hearing.

MORE INFORMATION

Please visit the NCIC [website](#) or contact Heffernan Insurance Brokers for more information on workers' compensation laws in North Carolina.

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