

# EMPLOYMENT LAW SUMMARY

## North Carolina: Workers' Compensation – Employee Eligibility



*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) prescribes eligibility requirements for employees in the state. The [North Carolina Industrial Commission](#) (NCIC) enforces compliance with these requirements.

## GENERAL ELIGIBILITY REQUIREMENTS

To qualify for workers' compensation benefits, an employee must:

- Be a **covered employee** under the WCA; and
- Sustain a **compensable condition**.

## COVERED EMPLOYEES

Most workers are covered under the WCA. The WCA defines a covered employee as any person engaged in employment under any oral or written appointment, contract of hire or apprenticeship. Employment may be expressed or implied. Along with this broad definition, the WCA specifically includes the following as covered employees:

- Minors (regardless of whether their employment is legal);
- Foreign workers (regardless of whether the employment is legal);
- Public employees;
- Non-seasonal agricultural workers working for employers with more than 10 full-time, non-seasonal workers;
- Deputy sheriffs;
- Active-duty members of the North Carolina National Guard;
- Railroad employees working for state-owned railroad companies and electric street railroad employees;
- Pickup firefighters working for the Division of Forest Resources during periods of high fire danger; and
- Sole proprietors, partners of a business, and members of a limited liability company (LLC) who are actively engaged in the operation of their business and elect to be included as employees.

When an employee with a compensable condition is a minor, he or she is entitled to receive the same amount of compensation as an adult working in the same capacity would receive from the employer. In determining a minor's benefit amount, employers must consider the minor employee's future earning capacity and whether he or she would have been promoted had the injury not taken place.

## EXCLUSIONS

Worker's compensation coverage does not extend to some workers. Although exceptions are possible, individuals **not** covered under the WCA include:

- Independent contractors (including taxi drivers)
- Federal employees;
- Inmates in state correctional facilities;
- Workers whose employment is both casual and not in the course of the trade, business, profession or occupation of their employer;
- Domestic servants;
- Non-seasonal agricultural workers working for employers with fewer than 10 full-time non-seasonal workers;
- Railroad employees working for railroad companies not owned by the state;
- Volunteer ski patrol personnel who do not receive compensation for services other than meals, lodging, the use of ski tow or ski lift facilities or any combination of these services; and
- Individuals working for sawmill or logging operators with fewer than 10 employees if:
  - The employer saws and logs fewer than 60 days in any six consecutive months; and
  - The employer's principal business is unrelated to sawmilling or logging.

## COMPENSABLE CONDITIONS

Compensable conditions include work-related injuries and certain diseases caused by exposure to hazardous conditions in the workplace. A condition is compensable only if it results in the need for medical treatment or some sort of disability from work. For an injury to be compensable, it must result from an accident arising out of and in the course of employment.

Regarding diseases, the WCA includes an exclusive list of conditions for which an employee may receive compensation. The list includes certain infections, chemical poisonings, and hearing loss. The list also includes any other conditions that can be proven to have resulted from characteristics that are peculiar to the employee's particular trade or employment. Ordinary diseases of life to which the general public is equally exposed outside of the employment are not compensable.

## EXCLUSIONS

Certain conditions are not compensable even when they otherwise meet the above definitions. Under the WCA, an employee cannot receive workers' compensation benefits if the condition was caused by the employee's:

- Willful intention to injure or kill himself, herself or another;
- Intoxication by any substance that was not supplied by the employer; or
- Being under the influence of a controlled substance that was not prescribed by a health care provider.

To be disqualified because of substance abuse or intoxication, the employee must have consumed a sufficient quantity of intoxicant or controlled substance to cause an appreciable impairment of his or her physical ability, mental capacity or both. Positive blood and medical test results, when conducted under acceptable testing procedures and standards, are presumable evidence of impairment.

In addition, an employee may be disqualified from receiving benefits if:

1. He or she knowingly and willfully made a false representation regarding his or her physical condition;
2. The employer relied substantially on the employee's misrepresentation when making a decision to hire the employee; and
3. There was a cause-and-effect relationship between the misrepresentation and the employee's injury.

To be disqualified for misrepresentation, the employee must have made the false statement:

- At the time of hire or in the course of entering into employment;
- At the time of receiving notice of the removal of any conditions, if a conditional offer of employment was extended; or
- During the course of a post-offer medical examination.

## ADDITIONAL EMPLOYEE RESPONSIBILITIES

The WCA also sets additional employee expectations and responsibilities. Failing to satisfy these expectations and responsibilities may cause an individual to lose (in whole or in part) any benefits he or she may otherwise be entitled to receive. Among the duties, employees are expected to:

- Inform a supervisor or manager of injuries or diseases as soon as possible. The WCA requires employees to report injuries within 30 days of when they happen and to report occupational disease within **30 days** of being advised of the diagnosis from a medical provider;
- Complete and return [Form 90](#) when required by the employer, but not more than once every six months;
- Report for treatment at a health care provider approved by the employer (not applicable if the employee requires urgent medical care at the nearest health care facility);
- Submit to the employer's reasonable requests to undergo independent medical examinations;
- Accept the employer's offer of suitable employment within any work restrictions assigned by a medical provider; and
- File a claim for benefits with the NCIC **within two years** after the work accident or the employer's last payment of medical expenses or monetary compensation.

## 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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