

EMPLOYMENT LAW SUMMARY

North Dakota: Workers' Compensation – Employer Responsibilities



Because You're Different

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 North Dakota Workforce Safety and Insurance Law (WSI Law) outlines employers' responsibilities relating to workers' compensation in the state. The North Dakota Workforce Safety and Insurance Organization (WSIO) administers the workers' compensation system and enforces employer responsibilities under the WSIL. The WSIO is also the sole provider of workers' compensation coverage in North Dakota.

COVERAGE REQUIREMENT

The WSI Law requires virtually every employer that has employees working in North Dakota to obtain a workers' compensation insurance policy from the WSIO. This requirement applies before an employer even hires any employees. Specifically, the law prohibits employers from hiring any person or receiving the fruits of any person's labor in the state without first applying for coverage from the WSIO and notifying the WSIO of the intended employment, the nature of the intended employment, and its estimated payroll for the next 12-month period. However, an out-of-state employer that has employees working in North Dakota may satisfy the WSI Law's coverage requirement through a certificate from another state's workers' compensation agency. The out-of-state certificate must show that the employer is insured under that state's workers' compensation law and that the insurance provides extraterritorial coverage for employees while they are working within North Dakota. If an employer fails to comply with the coverage requirement, the WSIO may order it to pay the premiums it would have had to pay if it had obtained a policy from the WSIO as required, plus interest and numerous fines. A noncompliant employer may also be subject to stop-work orders and lawsuits for damages by employees who sustain work-related injuries.

EMPLOYERS SUBJECT TO THE WSI LAW

Under the WSI Law, the term "employer" generally includes any entity that engages or receives the services of another for pay. An employer may be, among others, a person, partnership, limited liability company, association or public or private corporation. The WSI Law applies to employers that have one or more employees regularly employed in the same business or in or about the establishment in North Dakota. The term "employee" includes any person who performs work for an employer for pay, unless the employer can prove that the person is an independent contractor under a specific test. The term also specifically includes aliens and minors, regardless of whether their employment is legal.

EXCEPTIONS

Despite the WSI Law's broad application, certain types of employment are not subject to the coverage requirement. In other words, employers are not subject to the WSI Law in relation to the following:

- Agricultural service (unless the employer engages in custom agricultural operations that are based outside of North Dakota or that require more than 30 actual working days of operation during the calendar year);
- Domestic service;
- Any employment of a common carrier by railroad;
- Any employment for the transportation of property or persons by nonresidents of North Dakota that does not involve more than seven miles of travel and return over the same route within the state; and

- All members of the clergy and employees of religious organizations engaged in the operation, maintenance and conduct of a place of worship.

The WSI Law also excludes certain individuals from its definition of an employee for whom coverage must be provided. In particular, employers are not required to provide coverage for:

- An individual employer or self-employed person;
- The spouse of an individual employer;
- The children of an individual employer who are under the age of 22;
- Members of the board of directors of a business corporation who are not employed by the corporation in any other capacity;
- Certain real estate brokers and salespeople;
- Certain newspapers deliverers;
- Certain airline workers who are regularly engaged in interstate or foreign flying operations;
- Casual workers whose employment is not in the course of the trade, business, profession or occupation of the employer;
- Individuals engaged in an illegal enterprise or occupation; and
- Certain individuals who operate a licensed truck or licensed tractor for a motor carrier.

However, an individual employer or self-employed person may voluntarily secure coverage for him- or herself, and for his or her children and spouse, through special contracts with the WSIO.

INFORMATION AND INSPECTION

Every employer in the North Dakota, even those not subject to the WSI Law, must keep all of its books, records and payrolls open for the WSIO's inspection at all times. Every employer that is subject to the WSI Law must also:

- File an annual payroll report and an annual estimate of its payroll for the advance premium year with the WSIO (as of Aug. 1, 2019, the payroll report must be filed electronically);
- Allow the WSIO to inspect their places of employment at any time; and
- Answer and require its employees, officers or agents to answer any WSIO questions under oath at any time.

Any employer that fails or refuses to comply with a written request for information from the WSIO within 30 days after the date of the request may be subject to several fines.

PREMIUM PAYMENTS

Each employer that is subject to the WSI Law must pay an annual premium amount into the North Dakota Workforce Safety and Insurance Fund (WSI Fund) for its workers' compensation coverage. The WSIO determines each employer's annual premium amount based on several factors, such as the type of employment covered, the employer's payroll and the employer's past workers' compensation claims. Premium discounts of up to a total of 25 percent are available for employers that participate in the WSIO's Safety Incentive Programs. Employers may be required to pay their premiums in one lump sum or in periodic installments (along with six percent or higher interest on all deferred portions). The WSIO may set any due date for an employer's annual premium payment or installments and will send a premium billing statement to each covered employer every year. An employer that receives a statement must pay an installment within 30 days from the statement mailing date. After an employer makes a timely payment, the WSIO will send a certificate indicating that the employer has complied with the WSI Law. As of Aug. 1, 2019, an employer that fails to make a premium payment on time may be subject to civil penalties of up to \$250 or two percent of the amounts owed. If an employer fails to pay an installment within the 30-day period, the entire remaining amount of the employer's annual premium may become due immediately, and the WSIO may file a lawsuit to collect it, along with penalties and interest, from the employer. The WSIO may also terminate an employer's workers' compensation coverage if the employer fails to make a premium payment within 45 days from the due date specified on its premium billing statement. Employers are prohibited from requiring or allowing their employees to contribute any portion of their premiums. An employer that deducts any portion of its premium from the wages or salary of an employee is subject to criminal charges and, as of Aug. 1, 2019, civil penalties of up to \$5,000.

NOTICE AND POSTING REQUIREMENTS

Each employer subject to the WSI Law must post a workers' compensation notice, along with a copy of its certificate of compliance from the WSIO, in a conspicuous manner, and in a sufficient number of places within each workplace, to reasonably ensure that employees will see it. The notice must include the WSIO's toll-free telephone number for reporting unsafe working conditions and fraud. The WSIO provides a model notice that employers may use to comply with these requirements. An employer that designates a preferred provider to administer medical treatment for its employees' work-related injuries has additional notice and posting obligations as well. The employer must identify its preferred provider and explain the terms of its preferred provider program in a written notice, which must be:

- Given to each employee at the time the employer first makes its preferred provider selection and any time it changes the selection;
- Given to each employee at the time of hiring and at least annually thereafter; and
- Posted in a conspicuous manner at the employer's fixed worksites, and wherever feasible at mobile worksites, and in a sufficient number of places to reasonably inform all employees about the preferred provider program.

INJURY REPORTING REQUIREMENTS

Employers must file a First Report of Injury form with the WSIO within seven days after receiving notice of any work-related injury from an employee. If an employer fails to file this report on time, the WSIO will consider it an admission by the employer that the alleged injury may be compensable.

MEDICAL CARE

An employee who sustains a work-related injury may select a doctor of his or her choice to provide the initial medical treatment for his or her injury. However, if an employer has selected a preferred provider (and as long as the employer has complied with the WSI Law's notice and posting requirements for its preferred provider program) the employer may require employees to obtain all treatment (other than emergency care) from its preferred provider for the first 30 days after a work-related injury. Once this 30-day period expires, an employee may submit a written request to the WSIO for a change in medical providers, and the employer will have an opportunity to object to the request. Employers are not directly responsible for paying the medical bills associated an employee's claim under the WSI Law. The WSIO will pay for all reasonable and appropriate medical services and supplies necessary to treat an employee's injury once it determines that the injury is compensable. Depending on when an initial claim for an injury is filed, however, an employer may be required to reimburse the WSIO for the first \$250 to \$350 of all medical expenses related to an injury. If this applies, the WSIO will mail a notice of the reimbursement amount to the employer, and the employer must pay the amount within 30 days after the notice was mailed. Employers are prohibited from directly or indirectly charging an injured employee for this amount or for any other payment the employer makes on a workers' compensation claim.

CLAIM PROCESSING AND BENEFIT PAYMENTS

The WSIO has full authority to hear and determine all questions under the WSI Law, and its decisions are enforceable as court judgments. When an employee files a workers' compensation claim, the WSIO will mail a copy of the claim form, along with a form for the employer's response, to the employer. The employer must then file a response with the WSIO, and provide a copy to the employee, within 14 days after the WSIO mailed the forms. Otherwise, the employer is deemed to have admitted that the information in the employee's claim form is correct. After the 14 days, the WSIO may engage in an informal internal review process or conduct a hearing to determine whether the employee's claim is compensable and will thereafter issue a Notice of Decision to the parties by mail. A WSIO Notice of Decision becomes final and may not be appealed unless a party files a written Request for Reconsideration within 30 days after the WSIO mailed it. If an employee is entitled to weekly workers' compensation benefits, the WSIO will pay the benefits directly to the employee from the WSI Fund. The WSIO will make these payments even if an employer has failed to pay a premium installment for its WSIO insurance policy on time and even if an employer has failed to obtain coverage from the WSIO altogether. In these situations, the employer is liable for the premium amounts that applied or would have applied during its noncompliance, plus interest and penalties. In addition, the WSIO may charge an insured employer for the actual cost and the reserves of its employee's claims. Employers are prohibited from requiring an injured employee to use sick leave, annual leave or any other employer-paid time off in lieu of receiving workers' compensation benefits. Employers may, however, allow an employee to use sick leave or annual leave to make up the difference between his or her weekly workers' compensation benefits and his or her regular pay.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the WSIO website for more information on workers' compensation laws in North Dakota.

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