

EMPLOYMENT LAW SUMMARY

Oklahoma Workers' Compensation – Employer Penalties



Workers' compensation is a system of no-fault insurance that provides medical and monetary benefits to employees or their survivors for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Oklahoma Administrative Workers' Compensation Act (AWCA) establishes requirements for all employers the state, effective Feb. 1, 2014. If an employee sustained a work-related injury in Oklahoma before that date, a prior version of the law still governs both the employer's responsibilities and the employee's rights as they relate to that particular injury.

The Oklahoma Workers' Compensation Commission ([Commission](#)) enforces employer compliance with the AWCA and may impose various penalties for violations. This Employment Law Summary provides a general overview of the penalties that may be imposed.

Employers should be aware that on Sept. 13, 2016, the Oklahoma Supreme Court [struck down](#) a provision that allowed employers to "opt out" of the AWCA. The AWCA itself has also been amended to remove this option. Therefore, the penalties addressed in this document may now be ordered against any employer in the state.

FAILURE TO SECURE COVERAGE

The AWCA requires employers to secure workers' compensation coverage for their employees. An employer may satisfy this requirement by either purchasing a workers' compensation insurance policy or obtaining the Commission's approval to self-insure.

An employer that fails to secure coverage may face several penalties, along with potentially increased liabilities in the event that an employee is injured on the job.

The penalties the Commission may impose include:

- A civil fine of **up to \$1,000** for every day of the employer's noncompliance; and
- A criminal **misdemeanor** charge, punishable by a fine of **up to \$10,000**.

If an uninsured employer is ordered, but fails, to pay one or both of these fines, or if an uninsured employer fails to secure coverage after being fined, the Commission may petition a district court for an **employment injunction**—an order prohibiting the employer from engaging in further employment—until it secures coverage and pays all penalties.

Uninsured employers must also pay a **tax** into the state's Multiple Injury Trust Fund. The [Oklahoma Tax Commission](#) assesses and collects this tax. The amount an uninsured employer must pay is determined as a percentage of all workers' compensation benefits paid by all uninsured employers in the state during each quarter of a calendar year.

UNINSURED EMPLOYER'S LIABILITY FOR EMPLOYEE INJURIES

If an employee sustains a work-related injury while his or her employer is uninsured in violation of the AWCA, the Commission may assert the employee's rights and order the uninsured employer to **pay all AWCA benefits** from its own assets.

As an alternative, an injured employee may choose to sue the uninsured employer in a district court to obtain an award for damages. This could subject the uninsured employer to liability for monetary amounts that greatly exceed the limits for compensation available under the AWCA.

PROVIDING FALSE INFORMATION FOR A SELF-INSURANCE PERMIT

If an employer knowingly provides false information to the Commission for purposes of securing or maintaining a self-insurance permit, the employer may not only be subject to the penalties for a failure to have coverage, but the Commission may also bring criminal **felony** charges, for which the employer may be ordered to pay an additional fine of **up to \$10,000**.

DEDUCTING EMPLOYEE WAGES FOR COVERAGE COSTS

Employers must cover the entire cost of providing workers' compensation coverage for their employees. An employer that deducts any amount from an employee's wages for purposes of contributing to the cost of workers' compensation coverage may be charged with a **misdemeanor**, which is punishable by **imprisonment for up to one year, a fine of \$500 or both**.

ILLEGALLY EMPLOYING A MINOR

Under the AWCA, employers may be required to pay twice the amount of benefits owed to an employee who is under the age of 18 if:

- The employee was injured on the job; and
- The employer violated federal or state law in employing the underage worker.

This penalty may not apply if the employer can show that the minor misrepresented his or her age, in writing, to the employer.

FAILURE TO FILE REPORTS WITH THE COMMISSION

The AWCA requires employers to file injury and benefit payment reports with the Commission. Additional reports may be required depending on the nature of the injury and the employee's claim.

INJURY REPORTS

Employers must file an Employer's First Notice of Injury ([CC-Form-2](#)) **within 10 days** of receiving notice or first learning of an employee's injury. The Commission may also require an employer to file additional reports regarding an employee's injury and condition upon request at any time. An employer may be ordered to pay a civil penalty of **\$500** each time it fails to file one of these reports.

The Commission will notify a noncompliant employer of a filing violation before assessing a penalty against it. The employer will then have **20 days** to either file a written request for a hearing or pay the penalty amount established in the proposed order. If the employer fails to do either, the Commission may petition a district court for an **injunction** ordering the employer to stop all business operations until the employer files all required reports and pays all civil penalties.

BENEFIT PAYMENT REPORTS

Employers must also file an Employer's Intent to Accept or Controvert Claim ([CC-Form-2A](#)) with the Commission after an employee reports an injury and misses more than **three days** of work as a result of the injury. This report (or an appropriate request for an extension) must be filed **within 15 days** after the later of:

- The employee's first day of disability from work resulting from the injury; or
- The day the employer first became aware of the incident that caused the injury.

An employer that fails to file this report (or an appropriate request for an extension) within the 15-day period **must begin paying benefits** directly to the employee. These benefits must be paid for any work time the employee claims has been lost because of the injury, excluding the first three days of missed work. The first benefit payment must be made by the 15th day after the employer received notice or had knowledge of the injury. Subsequent payments must continue in weekly installments.

In addition, employers must notify the Commission whenever they stop paying benefits to their employees. Employers must file a Report of Compensation Paid/Suspension of Payments ([CC-Form-4](#)) to satisfy this requirement. This report must be postmarked **within 30 days** of the last payment made to the employee. The Commission may assess a civil penalty of **up to \$100** against an employer that fails to file the report within the 30-day period. Employers will receive notice of noncompliance and an opportunity to hold a hearing on the issue before a penalty is assessed.

FAILURE TO PAY BENEFITS

An employer may be required to pay **interest** on any weekly benefits that it fails to pay to an employee as ordered by the Commission. The interest rate is determined by the Oklahoma Administrative Director of Courts.

In addition, employers are required to pay for all medical expenses associated with a work-related injury **within 45 days** of receiving a bill. The Commission may order an employer that fails to pay medical bills within the 45-day period to pay a penalty equal to **up to 25 percent** of each unpaid amount. The Commission may also order an employer to pay civil penalties of up to **\$5,000** if it finds that the employer demonstrates a pattern of willfully and knowingly delaying payments for medical expenses. This penalty may be imposed for each violation.

RETALIATION

Employers are prohibited from discharging or in any other way discriminating against an employee who, in good faith:

- Files a workers' compensation claim;
- Retains an attorney to represent him or her in a claim; or
- Participates or plans to participate in any proceeding under the AWCA.

Effective May 28, 2019, the ACWA puts district courts, rather than the Commission, in charge of retaliation and discrimination claims under the AWCA. This means that an employee may sue an employer in court for damages for these particular claims. In addition, an employer may now be liable for up to \$100,000 in punitive damages (in addition to other damages) for discrimination or retaliation. (Previously, the remedies for retaliation were limited to \$10,000 in back wages, reasonable attorneys' fees and any court costs associated with the retaliation claim).

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the Commission's [website](#) for more information on workers' compensation laws in Oklahoma.

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