

# EMPLOYMENT LAW SUMMARY

## Oklahoma 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 or their survivors for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

As of Feb. 1, 2014, the Oklahoma Administrative Workers' Compensation Act (AWCA) establishes requirements for employers in the state. This Employment Law Summary summarizes the AWCA's requirements for employers and reflects the law as amended effective May 28, 2019.

The Oklahoma Workers' Compensation Commission ([Commission](#)) monitors and enforces employer compliance with the AWCA.

### **AWCA "OPT-OUT" PROVISION REPEALED**

As originally enacted, the AWCA allowed employers to voluntarily elect to be exempt from (or "opt-out" of) the law's requirements and instead establish their own alternative benefit plans. On Sept. 13, 2016, however, the Oklahoma Supreme Court [struck down](#) the opt-out provision on state constitutional grounds. The AWCA itself has also been amended to remove this option.

### **EMPLOYERS SUBJECT TO THE AWCA**

As a general rule, any entity that pays an individual for his or her services will likely be considered an employer subject to the AWCA. "Employer" includes any person or public and private entity that has at least one employee.

### **AWCA COVERAGE REQUIREMENTS**

The AWCA requires employers to provide workers' compensation coverage for their employees. An employer may satisfy this requirement by either:

- Purchasing and maintaining workers' compensation or guaranty insurance from a company that is authorized to provide it in Oklahoma; or
- Obtaining the Commission's approval to self-insure, either as an individual employer or as part of a group of employers that have a common interest and agree, in writing, to pool their resources and liabilities.

Employers must cover the entire cost of providing workers' compensation coverage for their employees. An employer that requires, or even allows, an employee to contribute to the cost of coverage may be subject to criminal charges.

Certain individuals may be allowed to exclude themselves or waive their right to coverage or compensation under the AWCA. This may apply only if the person:

- Operates his or her own business;
- Is not a subcontractor; and:
- Is any of the following:
  - Corporate officer;

- Sole proprietor;
- Partner of a partnership;
- Member of a limited liability company;
- Member of a professional association; or
- Self-employed employer.

## INSURANCE POLICIES

If an employer purchases workers' compensation insurance to satisfy the coverage requirement, the policy must cover the employer's entire liability under the law. An insured employer may allow its insurance provider to administer its claims and pay any benefits owed. However, employers should be aware that insurance coverage does not actually relieve them from any legal obligations. Employers should always ensure that they are compliant with the law, even if another company agrees to cover their duties and liabilities.

When purchasing an insurance policy, employers will have the option of including a deductible. Insurance companies are required to fully disclose all offered deductible amounts in writing before they complete the sale of a policy. Although deductibles can help reduce premium costs, an employer that includes one in its policy must be prepared to cover the deductible amount for each and every workplace injury that may occur. Insurance providers are required to pay the deductible amounts up front when an injured employee is entitled to receive benefits under the AWCA, but the employer will be responsible for reimbursing the deductible amount for every compensable injury.

After an employer purchases workers' compensation insurance, the insurance provider must file a notice of the policy or a copy of the guaranty contract with the Commission within 30 days. Although the AWCA does not impose a specific obligation on insured employers to report their coverage, it is in an employer's best interest to request confirmation that the Commission has received notification of coverage from the insurance provider. This is because the Commission may assess a penalty against an employer if it has any reason to believe that the employer is not compliant with the coverage requirement.

## SELF-INSURANCE

A self-insured employer uses its own assets, rather than those of an insurance company, to guarantee its workers' compensation liability under the AWCA. An employer can become self-insured as an individual entity or as part of a group of employers that have a common interest.

Employers must obtain a permit from the Commission allowing them to self-insure. A self-insurance permit from the Commission allows an employer or group of employers to self-insure for a period of **one year**. Self-insured employers must then renew their self-insurance status each year thereafter.

## INDIVIDUAL EMPLOYER'S SELF-INSURANCE

To become self-insured as an individual entity, an employer must send a completed **Application for Individual Own Risk Employer Permit** ([Form-SI Employer](#)), along with several other documents and a nonrefundable payment of \$1,000, to the Commission. The Commission may also require specific forms of proof that the employer has the financial ability to pay the required compensation under the AWCA. The proof required for this may depend on the employer's size.

In general, the minimum eligibility requirements for self-insurance include having at least 100 employees and at least \$1 million in net assets. An employer must also have been continuously engaged in business for at least three years immediately preceding an application for self-insurance in order to meet minimum requirements.

However, the Commission has the discretion to waive certain requirements or to require additional security guarantees before approving an employer to self-insure.

Individual Employer Self-insurance Requirements	
Employer with:	May be required to:
Fewer than 100 employees Less than \$1 million in net assets	Provide proof of excess coverage and deposit with the Commission: •Securities;* •An irrevocable letter of credit;* or •A surety bond payable to the state*
More than 100 employees and more than \$1 million in net assets	Provide proof of excess coverage and secure: •A surety bond payable to the state;* or •An irrevocable letter of credit*

\* Commission determines amount, which must be at least the average of the employer's yearly claims from the prior three years

Upon being approved for self-insurance, an employer must pay a fee of \$1,000 to the Commission. Self-insured employers must also pay quarterly assessments, which are determined as percentages of the actual losses they pay in any given year.

All individual self-insured employers must use a third party or in-house administrator that is approved by the Commission to adjust their workers' compensation claims under the AWCA. An in-house administrator must hold a current and unrestricted workers' compensation adjuster license for Oklahoma.

## GROUP SELF-INSURANCE ASSOCIATIONS

An employer may be eligible to self-insure as part of a group of two or more employers if it has a common interest with all of the other group members. This means that the employers in a group must either be engaged in the same industry or be members of an Oklahoma trade association that has been in business for at least **five years**. In addition, a group of employers will be only be eligible for self-insurance if they have a collective net worth of at least \$2 million and meet other financial requirements set out by the AWCA.

To become self-insured, eligible groups must submit, among other things, a completed **Application for Group Self-Insurance Association Permit** ([Form SI – Group](#)) and a nonrefundable payment of \$1,000, to the Commission.

Once approved for group self-insurance, a group may be required to submit several forms of security and additional documents. Self-insurance groups must also pay quarterly assessments and follow Commission rules for claims administration, funding, auditing and other functions.

If an individual employer would like to join an existing self-insurance group, it must submit a request to the Commission along with other documents, including a signed agreement indicating that it accepts joint and several liability for the group. The Commission may approve an employer as a new member of an existing self-insurance group only if the employer is solvent, has the financial ability to meet its obligations as a member and is compliant with all other legal requirements applicable to self-insured groups.

## AWCA NOTICE POSTING REQUIREMENT

The AWCA requires all employers to post one or more notices in conspicuous places in and around their businesses to inform employees about their rights and obligations under the law. The notices must contain the name and address of the employer's insurance carrier, if any, and the insurance policy's expiration date. The required notices are available in both English and Spanish on the Commission's website.

## AWCA INJURY REPORTING REQUIREMENT

If an employee is injured in the workplace and misses more than three days of work as a result, the employer must send an **Employer's First Notice of Injury** to the Commission, using [CC-Form-2](#). The report is due **within 10 days** after the employer received notice or first had knowledge of the injury. Insured employers must send a copy of the notice to their insurance providers within the 10-day period as well.

## DUTY TO PROVIDE MEDICAL TREATMENT UNDER THE AWCA

Employers must **promptly** provide any medical services that are reasonably necessary in connection with an employee's work-related injury. The AWCA grants employers the right to choose the treating physician for an injured employee. However, if an employer fails or neglects to provide medical treatment **within five days** after having actual knowledge of an injury, the employee may select his or her own physician to provide the services at the employer's expense. An employee may also choose the physician for any emergency treatment at the employer's expense, as long as the employer does not provide the emergency treatment first.

Employers must pay medical expenses associated with a work-related injury **within 45 days** after they receive a complete and accurate invoice from a medical provider. An employer that has a good faith reason to request additional information about an invoice may do so within that same time period and delay the payment until after it receives the required information.

## AWCA CLAIM DECISION REQUIREMENTS

After an employee reports an injury, the employer has **15 days** to decide whether to accept the injury as compensable under the AWCA or whether it will contest the claim. The 15-day period begins on the later of either 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.

Also within those first 15 days, the employer must provide notice of its decision to the Commission, using [CC-Form-2A](#). Under certain circumstances, an employer may request a one-time extension of the 15-day period using [CC-Form-2A Extension](#).

## ACCEPTED CLAIMS

If an employer accepts a claim or if it fails to file a claim decision or extension request within the 15-day period, it must begin paying benefits directly to the employee for any lost work time that the employee alleges to be attributable to the injury. The first benefit payment must be made **by the 15th** day after the employer received notice or had knowledge of the injury. The initial payment must include all benefit amounts that had accrued for lost wages, starting with the fourth day of the employee's disability from work. After that first payment, the employer must continue paying benefits in weekly installments.

## CONTESTED CLAIMS

An employer that chooses to begin paying benefits (or that must begin paying benefits because it failed to file a CC-Form-2A or appropriate extension request within 15 days) may still contest the claim by filing a CC-Form-2A at any time. When an employer files a CC-Form-2A notifying the Commission that it contests a claim, it must also send a copy of the form to the employee. The employee may then request a hearing before the Commission.

## ADDITIONAL AWCA RULES FOR EMPLOYERS

The AWCA includes various other provisions relating to employers' obligations and rights under the law. The following list provides a summary of these. Under the AWCA, employers:

- May voluntarily elect to provide coverage for any employee(s) who are exempt or excluded from the AWCA's coverage requirement;
- May not deny that a person meets the AWCA definition of a covered employee if the employer pays premiums for a workers' compensation insurance policy based on that person being employed;
- May not discharge or otherwise discriminate against an employee because the employee has filed a workers' compensation claim in good faith or has participated or plans to participate in any proceeding under the AWCA;
- May not discharge an employee during a period of temporary total disability (TTD) solely because the employee is absent from work or for the purpose of avoiding payment of TTD benefits to the employee;
- Are not required to rehire or retain an injured employee if:
  - The employee's position is no longer available; or
  - The employee has exhausted TTD benefits and is physically unable to perform the job duties, as determined by the treating physician.

## MORE INFORMATION

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