

EMPLOYMENT LAW SUMMARY

Oregon Workers' Compensation - Employer Responsibilities



Because You're Different

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

The Oregon Workers' Compensation Law (WCL) establishes the procedures for handling claims in the state. The [Oregon Workers' Compensation Division](#) (Division) administers the workers' compensation system and enforces employer compliance with WCL requirements.

EMPLOYERS SUBJECT TO THE WCL

Every employer that has **one or more covered employees** in Oregon is subject to the WCL. Under the law, a covered employee is any person who provides services for pay "subject to the direction and control of an employer."

Because several types of workers are specifically excluded from the law's definition of a covered employee, it is possible for an employer to be exempt from the WCL under certain circumstances. However, most entities that secure the right to direct and control the services of any other person for pay must comply with the WCL.

COVERAGE REQUIREMENTS

Employers subject to the WCL must obtain and maintain workers' compensation coverage for their employees. To comply with this requirement, an employer may either:

- Purchase an insurance policy from a carrier that is authorized to transact workers' compensation insurance in Oregon; or
- Obtain approval to self-insure.

INSURANCE COVERAGE

When an employer obtains workers' compensation coverage through an insurance policy, the insurance carrier assumes all of the employer's WCL liabilities and becomes responsible for most of the employer's claim-processing duties under the WCL. Covered employers must assist their insurance carriers in these efforts at all times. Insurance carriers are also required to file proof of coverage with the Division for every employer they cover within **30 days** of the date when a policy becomes effective or is renewed.

Coverage under a policy continues until its term expires or until the employer obtains other coverage, either through another policy or by obtaining certification to self-insure. An employer or its insurance carrier may also cancel an insurance policy within the coverage period if it provides the other party with written notice at least 30 days in advance. Insurance carriers must notify the Division of any canceled policy within 10 days of the cancellation date.

SELF-INSURED INDIVIDUAL EMPLOYERS

A self-insured employer uses its own assets, rather than an insurance policy, to insure its risks under the WCL. An employer that wishes to self-insure must apply for approval from the Oregon [Department of Consumer and Business Services](#) (DCBS).

To qualify for self-insurance, an employer must:

- Demonstrate that it has the financial ability to pay all potential WCL claims; and
- Deposit at least \$100,000 for security with the DCBS.

The actual amount of an employer's required security deposit is calculated based on its normal expected annual claim liabilities and its financial ability to pay them. Based on these same factors, the DCBS may also require an employer to obtain an excess insurance policy for any portion of its WCL liabilities before allowing it to self-insure.

Once the DCBS determines that an employer qualifies to self-insure, it will issue a self-insurance certification. An employer's self-insurance status becomes effective as of the DCBS's certification date. This certification means the employer is directly responsible for handling its employees workers' compensation claims and for paying any benefits due under the WCL, even if it insures a portion of its liability through an excess insurance policy.

Among other duties, a self-insured employer must also:

- Establish an occupational safety and health loss control program;
- Maintain a place of business in Oregon where complete records of all WCL claims are kept, or use outside service companies to keep claims records at no more than three other places within the state; and
- Keep all claims records available for DCBS inspection at all times.

A self-insurance certification remains in effect for as long as the self-insured employer remains compliant with the WCL or until the DCBS approves the employer's request to cancel it. The DCBS must give at least a **30 day** advance notice if it wishes to revoke a self-insurance certification. An employer that cancels or has its self-insurance certification revoked must immediately obtain coverage through an insurance policy to remain compliant with the WCL's coverage requirements.

GROUP SELF-INSURANCE

Certain groups of **five or more employers** may pool their resources to self-insure as a group and cover their liabilities under the WCL. This type of certification is available only if every employer within a group:

- Meets all of the requirements that apply for individual self-insurance; and
- Agrees in writing to be liable for any claims made against any member of the group.

In addition, the group of employers, as a whole, must:

- Meet the requirements for insurance coverage retention and combined net worth;
- Organize as a single entity for the purpose of providing the group coverage;
- Designate an entity responsible for centralized claims processing, recordkeeping and reporting;
- Establish a method for notifying the DCBS of membership commencements or terminations and of their effect on the group's net worth; and
- Establish a loss reserve account dedicated solely for paying benefits under the WCL.

NOTICE POSTING REQUIREMENT

All employers that are subject to the WCL must display a [WCL notice](#) in conspicuous locations in their workplaces. The notice must be posted in as many locations necessary to ensure that all employees are informed about the employer's workers' compensation coverage.

The Division will send a copy of the required notice to employers after their insurance carriers file notice of coverage for them or after the DCBS certifies them to self-insure. Employers that are not subject to or not compliant with the WCL's coverage requirements are specifically forbidden from posting this notice.

INJURY REPORTING REQUIREMENTS

Employers must have blank copies of Form 801 ("Report of Job Injury or Illness") readily available at their worksites and must provide a copy to any employee who requests it. If an employer receives notice or has knowledge of a work-related accident, the employer must immediately provide a copy of [Form 801](#) to each employee who may have a compensable injury.

An injured employee must complete Form 801 and submit it to the employer as soon as possible, but no later than 90 days, after an accident. An employer that is covered through a workers' compensation insurance policy must then complete the employer portion of the form and send a copy to its insurance carrier within five days.

However, an employee's formal claim for workers' compensation benefits does not begin until the employee and his or her medical provider complete Form 827 ("Worker's and Health Care Provider's Report for Workers' Compensation Claims") and submit it to the insurance carrier (or to the employer, if the employer is self-insured).

COMPENSABILITY DETERMINATIONS

Within **60 days** after an employee or his or her medical provider submits [Form 827](#), a self-insured employer must provide both the employee and the Division with written notice, using [Form 1502](#) ("Insurer's Report"), indicating whether it accepts or denies the employee's claim. If an employer covers its workers' compensation liabilities through an insurance policy, the insurance carrier will provide this notice and send a copy to the employer.

An employer that accepts a claim but later obtains evidence that the claim is not compensable may revoke its acceptance, as long as it issues a formal notice of claim denial **within two years** after the date of the initial acceptance. There is no time limit for revoking a claim for employee fraud, misrepresentation or other illegal activity.

BENEFIT PAYMENTS

Employers subject to the WCL must pay workers' compensation benefits for and to employees who sustain compensable conditions.

For an insured employer, these responsibilities will usually fall to its insurance carrier. Self-insured employers, along with employers that fail to provide coverage as required under the WCL, must pay workers' compensation benefits and provide the required notices themselves.

DISABILITY BENEFITS

If an employee's medical provider authorizes temporary disability on Form 827 and the employer has not denied the employee's workers' compensation claim, the employer must pay the first installment of temporary disability benefits to the employee within 14 days after receiving the form. After that first payment, temporary disability benefits must be paid at least every two weeks, unless the Division authorizes a different payment schedule.

Employers that begin paying disability payments may continue investigating a claim to determine whether to accept or deny it. The payment of benefits alone is not considered acceptance of a claim or an admission of liability.

An employer may still deny a claim within 60 days of receiving Form 827. However, unless it files a claim denial within the first **14 days** of that period, the employer must begin paying any temporary disability benefits authorized by the employee's medical provider and continue making payments until the claim is denied or until the medical provider releases the employee to his or her regular work.

Under amendments that went into effect on **Jan. 1, 2023**, employers may not end temporary disability benefits until written notice has been mailed or delivered to the employee and, if applicable, the employee's attorney. This notice must state the reason that temporary disability benefits are no longer due and payable.

In addition, the changes provide that an employee's attending physician or nurse practitioner may retroactively authorize temporary disability for up to 45 days prior to the date of the notice described above. If that notice is given more than 45 days after an employee was no longer eligible for benefits, the attending physician or nurse practitioner may retroactively authorize temporary disability back to the date on which benefits were no longer due and payable, as long as certain additional requirements are met.

MEDICAL EXPENSES

Employers must also pay medical expenses for any treatment associated with an employee's work-related condition. Unlike the requirement to pay the first installment of temporary disability benefits within 14 days, the requirement to pay medical bills applies only if:

- The employer has accepted the claim; or
- The Division has ordered the employer to pay the expenses.

If an employer denies an employee's claim, it must send notice of the denial to the employee's medical providers either:

- At the same time it provides notice of the denial to the employee; or
- Within 14 days after receiving a bill from a medical provider.

If an employer accepts an employee's claim, or if the Division orders the employer to pay medical expenses, the employer must pay any outstanding medical expenses **within 60 days** after:

- The employer sent notice of the acceptance to the employee and the Division; or
- The date the Division's order became final.

PROHIBITION AGAINST NO-REHIRE PROVISIONS

As of July 27, 2023, a new Oregon law, House Bill 3471, makes it illegal for an employer to include a no-rehire provision in an agreement to settle an employee's workers' compensation claim, except under specific circumstances. Prohibited provisions include any that bar a worker from seeking further employment, reemployment or reinstatement with the employer.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the Division's website for more information on workers' compensation laws in Oregon.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice. © 2024 Zywave, Inc. All rights reserved.