

EMPLOYMENT LAW SUMMARY

Utah: Workers' Compensation – Employer Responsibilities



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 Utah Occupational Disease and Workers' Compensation Acts (WCA) establish employer responsibilities relating to workers' compensation in the state. The [Utah Division of Industrial Accidents](#) (Division) administers the workers' compensation system and enforces employer responsibilities under the WCA.

EMPLOYERS SUBJECT TO THE WCA

An employer is subject to the WCA if it has one or more full- or part-time employees regularly employed in the same business, or in or about the same establishment, under any contract of hire in the state. Employment contracts may be express or implied.

The term "employee" includes aliens and minors, even if their employment is not lawful.

However, the WCA specifically excludes certain types of employment from its requirements. Among others, the WCA does not apply to:

- Domestic employers (unless they have an employee who works 40 hours or more per week);
- Agricultural employers that only employ immediate family members or have a total annual payroll of \$8,000 or less for non-immediate family members; or
- Disabled individuals who receive home- and community-based services for less than seven hours per week and do not receive state or federal money to pay for the services.

COVERAGE REQUIREMENTS

Employers subject to the WCA must secure their ability to pay all WCA benefits to and for any employees who sustain work-related injuries or diseases. Employers may satisfy this requirement by obtaining either:

- A workers' compensation insurance policy from an insurance carrier authorized to provide the coverage in Utah; or
- The Division's approval to pay direct benefits as a self-insured employer.

Employers are prohibited from making their employees contribute to the cost of providing workers' compensation coverage. Under the WCA, any employee agreement to contribute to coverage costs is automatically void, and an employer that deducts any portion of its coverage costs from an employee's wages may be subject to criminal charges.

Employers that fail to comply with WCA coverage requirements are subject to civil fines, criminal charges and stop-work orders. Employers without coverage also lose WCA protections. This means that if an employee sustains a work-related condition, he or she may sue the noncompliant employer in court for damages instead of having to accept the more limited benefits available under the WCA.

CONTRACTOR COVERAGE AND WAIVERS

As a general rule, employees may not waive their rights to coverage or benefits under the WCA, and any agreement to that effect is automatically void. In addition, any business entity that hires a contractor to perform work must provide workers' compensation coverage for that contractor's employees and subcontractors, as applicable, unless the contractor shows that it already has its own coverage.

However, the WCA allows certain individuals to waive coverage for themselves. Employers that hire individuals who waive their coverage are not required to meet WCA coverage requirements for those individuals. Coverage waivers are available only for:

- The owner of a sole proprietorship that has no employees (other than the owner);
- A partner of a partnership that has no employees (other than the partners); and
- Up to five officers or directors of a corporation that has no employees (other than the directors and officers).

To waive the right to be covered, these individuals must apply for a [Workers' Compensation Coverage Waiver](#) (WCCW) from the Division. Before relying on a WCCW, the employer must obtain:

- A photocopy of the individual's WCCW; and
- A printout of the Division's waiver status verification website showing that the individual's WCCW had not been revoked as of the date the employer contracted with the individual.

ELECTIVE COVERAGE

Partners of a partnership and owners of a sole proprietorship are not considered employees under the WCA. Therefore, a partnership is not required to provide coverage for its partners, and a sole proprietorship is not required to provide coverage for its owners. Nevertheless, these entities may elect to include partners or a sole proprietorship owner under their workers' compensation coverage. This type of election is made by providing a written notice that includes the names of the individuals to be covered to either:

- The partnership or sole proprietorship's workers' compensation insurance carrier; or
- The Division (if the partnership or sole proprietorship is self-insured or has no employees other than partners or the sole proprietorship owner).

Similarly, domestic and agricultural employers that are not subject to the WCA may voluntarily provide workers' compensation coverage for the individuals who work for them. Any employer or entity that elects to cover otherwise exempt individuals becomes fully subject to all WCA provisions with respect to the covered individuals.

CORPORATE OFFICER AND DIRECTOR EXCLUSIONS

Any corporation that has workers' compensation coverage may elect to exclude up to five directors or officers from the coverage. To make this election, the corporation must provide [written notice](#) to its insurance carrier or the Division. The notice must include the name of each director or officer to be excluded.

PRIVATE INSURANCE COVERAGE

Under a workers' compensation insurance policy, the issuing insurance carrier agrees to administer claims and promptly pay all WCA benefits for the insured employer. The WCA specifically prohibits insured employers from paying benefits directly to or for injured employees instead of allowing their insurance carriers to make the payments.

When an insurance carrier issues a workers' compensation insurance policy, it must notify the Division of the employer's coverage within 30 days. The 30-day period begins on the policy's inception date. Although the WCA makes insurers responsible for reporting coverage, it is in an employer's best interest to confirm that the Division has received coverage notification from the insurer. This is because the Division may investigate and impose fines on any employer that does not have proof of coverage on file.

SELF INSURANCE

A self-insured employer uses its assets, rather than an insurance policy, to pay its obligations under the WCA. An employer that wishes to self-insure must first submit [Form 109](#) (Application for Self-insurance) to and obtain the Division's approval.

To meet the minimum qualifications for self-insurance, an employer must:

- Have been in business for at least 5 years (an employer can also satisfy this requirement if it is guaranteed by a parent company that has been in business for at least 5 years);
- Have a net worth of at least \$10 million; and
- Demonstrate sufficient financial strength and liquidity to pay its WCA obligations promptly and in full.

Along with its application, an employer that wishes to self-insure must submit the following to the Division:

- A current, certified financial statement;
- Prove of coverage under a specific aggregate excess insurance policy; and
- A surety bond of at least \$100,000 (the Division may increase or decrease the amount required at any time).

If the Division approves an application, it will issue written authorization for the employer to self-insure. A self-insurance authorization is effective for one year and must be renewed annually.

Every self-insured employer must either demonstrate to the Division that it has a sufficient number of competent staff members to administer its workers' compensation claims or contract with an insurance carrier or adjusting company to administer its claims. The Division may train and test any claims administrators designated by a self-insured employer. Every self-insured employer must also designate:

- A contact person within Utah who is knowledgeable about workers' compensation claims and maintains a toll-free number or accepts a reasonable number of collect calls from employees; and
- An agent within Utah to receive all WCA notices or orders.

Finally, every self-insured employer must obtain an experience modification factor from the [National Council on Compensation Insurance](#) and pay annual assessments to the Utah State Tax Commission by March 31 each year. The Division determines the amount of each self-insured employer's assessment and provides notice of the amount each year. If a self-insured employer fails to obtain an experience modification factor or pay its assessment, the Division may immediately revoke its authorization to self-insure.

NOTICE POSTING REQUIREMENT

Employers must post a typewritten or printed workers' compensation notice in locations where employees will see it in their workplaces. The notice must state that the employer either has workers' compensation insurance coverage or is self-insured as required under the WCA. The Division provides a model [notice](#) that employers may use to comply with this requirement.

INJURY REPORTING AND RECORDKEEPING REQUIREMENTS

Employers must complete [Form 122](#) (Employer's First Report of Injury or Illness) for any work-related condition that results in an employee's:

- Death;
- Medical treatment;
- Loss of consciousness;
- Loss of work;
- Restriction of work; or
- Transfer to another job.

Employers that receive a [Form 123](#) (Physician's Initial Report of Injury or Occupational Disease) from a medical provider must also complete and file a Form 122. However, employers do not have to complete Form 122 for any minor injury that requires only first-aid treatment, such as a cut or scratch, if the treatment is administered on-site or at an employer-sponsored free clinic. An employer that is required to complete Form 122 must also, within seven days after first obtaining knowledge of the employee's work-related condition:

- File the Form 122 with its insurance carrier, claims administrator or the Division (insurance carriers and claims administrators must then submit Form 122 to the Division within 14 days after an employer first obtains knowledge of a work-related injury);
- Provide a copy of the completed form to the employee;
- Provide the employee with [Form 100](#) (Injured Workers' Rights and Responsibilities); and
- Maintain a copy of the Form 122 in its internal records.

PROVIDING MEDICAL CARE

Employers must pay for all reasonable medical care required to treat their employees' work-related conditions. The WCA allows workers' compensation insurance carriers and self-insured employers to adopt managed health care programs, under which specific health care providers are designated as "preferred providers" to administer initial medical care to employees. Under a preferred provider program, an employee who reports a work-related condition must:

- Be given the opportunity to select from two or more providers; and
- Seek initial medical care from one of them.

After receiving initial care from a preferred provider, the employee may choose any qualified provider, such as his or her own doctor, to provide subsequent treatment. An employee that wishes to change medical providers a second time must first obtain permission from the insurance carrier, self-insured employer or the Division. Emergency treatment and referrals to other providers do not count as an employee's choice of providers.

At the time a preferred provider program is established, the insurance carrier or self-insured employer must notify employees of the requirements of the program. Employees who have not been notified about a preferred provider program may seek initial medical treatment from any qualified provider.

Any medical provider that treats an employee with a work-related condition must submit a bill to the employer or its insurance carrier within 30 days after each visit. Unless an employer disputes liability for a medical bill, each bill must be paid within 45 days after the provider submits it.

CLAIM DECISIONS AND BENEFIT PAYMENTS

Employers (or their insurance carriers) must investigate and either accept or deny each workers' compensation claim within 21 days after they first receive notice or knowledge of an employee's work-related condition. An employer that cannot complete its investigation within the 21-day period, may request an additional 24 days by filing [Form 441](#) (Notice of Further Investigation of a Workers' Compensation Claim) with the Division. A copy of Form 441 must also be provided to the injured employee. To deny a claim, employers must file [Form 089](#) (Employee Notification of Denial of Claim) with the Division. A copy of Form 089 must also be provided to the affected employee.

An employer that does not deny a claim or request an extension for further investigation within the 21-day period must begin paying benefits to the employee and file Form 141 (Statement of Benefits Paid) with the Division. A copy of [Form 141](#) must also accompany the initial payment made to the employee. An employer that begins paying benefits within the investigation period does not lose its right to deny the claim at a later time.

MORE INFORMATION

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

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