

EMPLOYMENT LAW SUMMARY

Vermont Workers' Compensation – Employer Responsibilities



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 Vermont Workers' Compensation Act (WCA) establishes employer responsibilities relating to workers' compensation in the state. The [Vermont Department of Labor](#) (VDOL), administers the workers' compensation system and enforces employer responsibilities under the WCA.

EMPLOYERS SUBJECT TO THE WCA

The WCA applies to all employers with **one or more employees** working in Vermont. For this purpose, an individual is an employee if he or she enters into the employment of, or works under contract of service or apprenticeship with, an employer. Nevertheless, certain types of workers are specifically excluded from the WCA's definition of an employee.

EXCLUSIONS

Under the WCA, the term "employee" does **not** include:

- Casual workers whose employment is not in the nature and not for the purpose of the employer's trade or business;
- Amateur sports participants (even if an employer contributes to the support of the sports);
- Most real estate brokers and salespeople;
- Agriculture and farm workers who work for an employer with an aggregate payroll of less than \$10,000 in a calendar year;
- Members of an employer's family who live in the employer's house;
- Private household workers; and
- Workers covered by federal workers' compensation laws.

In addition, a **sole proprietor** or **partner-owner** of an unincorporated business is not considered an employee of an entity that contracts for the individual to provide services, as long as the sole proprietor or partner-owner of the unincorporated business:

- Performs work that is distinct and separate from that of the contracting entity;
- Controls the means and manner of the work performed;
- Holds him- or herself out as in business for him- or herself;
- Is not treated as an employee for purposes of income or employment taxation with regard to the work performed;
- Holds him- or herself out for work for the general public and does not perform work exclusively for or with another entity; and
- Performs services under a written agreement or contract that explicitly states that he or she is not considered an employee under the WCL, works independently, has no employees and has not contracted with other independent contractors. This agreement or contract must also include information regarding the sole proprietor or partner-owner's rights to purchase or elect not to purchase workers' compensation insurance coverage.

COVERAGE REQUIREMENTS

The WCA requires employers to secure their ability to pay workers' compensation benefits to and for any employees who sustain work-related injuries or diseases. Employers may satisfy this requirement by either:

- Purchasing an insurance policy from a company authorized to transact workers' compensation insurance in Vermont; or
- Obtaining the VDOL's authorization to self-insure.

Employers must pay the full cost of providing this coverage. The WCA prohibits employers from allowing or requiring employees to contribute to the cost.

VOLUNTARY COVERAGE

Employers may voluntarily elect to provide coverage for certain workers who would otherwise not be considered employees under the law. This option is available only for otherwise-exempt:

- Agriculture and farm workers;
- Private household workers; and
- Members of an employer's family.

To make this election, an employer must obtain WCA-compliant coverage for the otherwise-exempt workers and file a certificate of the coverage with the VDOL.

VOLUNTARY EXCLUSIONS

If it obtains approval from the VDOL, a corporation or a limited liability company (LLC) may elect to exclude **up to four** executive officers, managers or members from its WCA coverage. To obtain this approval, an employer must complete and submit Form 29 ("Application to Exclude Corporate Officers or LLC Members from Workers' Compensation Coverage") to the VDOL.

INSURANCE COVERAGE

Every workers' compensation insurance policy sold in Vermont must cover the insured employer's entire liability under the WCL.

Each policy must also contain an agreement by the insurer that it will promptly pay all WCL benefits for which the employer may become liable during the policy period. This obligation continues even if the employer becomes insolvent or bankrupt, does not make premium payments after an employee's injury or does not provide required notices.

When purchasing an insurance policy, employers will have the option of including one or more deductibles, of at least \$500, for medical expenses or disability benefits under the WCL. While deductibles can help reduce premium costs, an employer that includes them 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 WCL, but the employer will be responsible for reimbursing the deductible amount for every compensable injury.

Within **30 days** after purchasing a workers' compensation insurance policy, an insured employer must submit a copy of its policy or a certificate of coverage to the VDOL. The certificate must include the policy's:

- Number;
- Effective date;
- Date of expiration;
- Covered operations; and
- The signature of an authorized representative of the issuing insurance company.

SELF-INSURANCE COVERAGE

A self-insured employer uses its own assets, rather than an insurance policy, to secure its obligations under the WCA. Employers that wish to self-insure must obtain authorization from the VDOL. The process for obtaining this authorization begins by submitting a completed self-insurance [application](#) to the VDOL. Along with this, an employer must also submit the following, pertaining to each of its three fiscal years immediately preceding the application:

- Audited balance sheets and income statements;
- Annual payroll reports; and
- Its workers' compensation insurance rate, as most recently determined by the National Council on Compensation Insurance and approved by the [Vermont Department of Financial Regulation](#) (VDFR).

If the VDOL approves a self-insurance application, it will issue a certificate that authorizes the employer to self-insure for a one-year period. Self-insured employers must apply for renewals each year. The VDOL may also require a self-insured employer to:

- Establish cash reserve funds;
- Obtain surety bonds;
- Obtain excess insurance;
- Designate a claims adjuster or claims adjusting agency that has full power and authority to act for the self-insurer in any matter respecting workers' compensation; and
- Maintain assets located in Vermont that are sufficient and readily available to satisfy WCL claims.

GROUP SELF-INSURANCE

The WCA also allows certain groups of employers to pool their resources and liabilities to self-insure collectively. This type of self-insurance requires authorization from the VDFR (rather than the VDOL). To meet the minimum qualifications for group self-insurance, all of the employers in a group must be members of an association that has been in existence in Vermont for five or more continuous years. The group must also establish a nonprofit corporation that exists for the sole purpose of providing workers' compensation coverage for its members.

NOTICE POSTING REQUIREMENTS

Every employer that has complied with the WCA's coverage requirement must post and maintain a [notice](#) regarding its coverage in a conspicuous place in and about each of its places of business.

Employers that regularly employ **10 or more employees** for 15 or more hours per week must also post a [notice](#) regarding employees' reinstatement rights under the WCA.

INJURY REPORTING

Every employer must keep a record of each work-related condition sustained by its employees. In addition, an employer must submit a completed [Form 1](#) ("Employer First Report of Injury") with its insurance carrier or claims administrator for any work-related condition that results in an employee's:

- Absence from work for one day or longer; or
- Need for medical attention beyond first aid.

An employer must submit this report **within 72 hours**, excluding Sundays and legal holidays, after it first obtains knowledge of an employee's work-related condition. The employer must also provide a copy of the report to the employee as promptly as possible after submitting it to the insurance carrier or claims administrator.

If an employee's work-related condition requires **only first-aid medical treatment** and does not result in at least one day of lost work time, the employer must submit a completed Form 1 directly to the VDOL within **five days** after first obtaining knowledge of the condition. If the employer contests its liability for the first-aid-only injury, it must also file the report with its insurance carrier or claims administrator. If the employer accepts liability, it may either:

- Submit Form 1 to its insurance carrier; or
- Within 30 days after receiving a bill from the health care provider, pay the billed expense for the first-aid treatment.

Either way, the employer must also provide a copy of its completed Form 1 to the employee. A "first-aid-only" injury is defined as one that requires no more than a one-time medical treatment, for which the expense is less than \$750, and does not result in at least one full day of missed work time. If an injury is initially classified as first-aid-only but later requires additional medical treatment or results in the employee's absence from work for at least one full day, the employer must promptly report the claim to its insurance carrier or claims administrator within 72 hours. The table below provides an overview of these reporting requirements.

Results of Injury	Employer accepts claim	Employer denies or contests claim
First-aid treatment only (one-time-only medical treatment costing less than \$750 and no lost work time)	<ul style="list-style-type: none"> • File Form 1 with VDOL within five days; and • Pay medical bill within 30 days after receiving it. 	<ul style="list-style-type: none"> • File Form 1 with VDOL and insurance carrier within five days.
Medical treatment other than first-aid One full day or more of lost work time	<ul style="list-style-type: none"> • File Form 1 with VDOL and insurance carrier within 72 hours. 	

When an insurance carrier or claims administrator receives a completed Form 1 from an employer, it must immediately enter the reported information into the VDOL's Electronic Data Interchange (EDI) system. If a claim involves lost time from work, the employer or insurance carrier must also provide the employee and the VDOL with written notice of the name and mailing address of the workers' compensation claims adjuster assigned to the claim.

PROVIDING MEDICAL CARE

The WCA requires employers to furnish all reasonable medical services and supplies that may be necessary to treat an employee's work-related condition. This includes prescription drugs and durable medical equipment. The WCA's [Medical Fee Schedule](#) limits how much employers may be charged for these benefits.

Employers must also pay employees their full wages if an absence is needed to obtain medical treatment or examinations related to a work-related condition. However, the paid-absence requirement does not apply if an employee is receiving weekly WCA benefits for the lost work time.

Employers have the right to choose which health care provider will provide the initial medical treatment immediately following an employee's compensable injury. After initial, immediate treatment, employees have the right to select which health care provider will continue treatment. Employees that select a health care provider other than the one selected by the employer must provide the employer advance written [notice](#) of the change. Once an employee selects a new provider, the employer may require him or her to undergo independent medical examinations performed by a health care provider of the employer's choice.

Finally, any health care provider that treats an employee's work-related condition must submit a medical bill and treatment records to the employer or its insurance carrier within six months after each visit. Within **30 days** after receiving these documents, the employer or insurance carrier must either pay the billed expense or provide written notice to the employee, the health care provider and the VDOL that the medical bill is contested or denied.

COMPENSABILITY DECISION

After an employer first obtains knowledge of an employee's alleged work-related condition, the employer or its insurance carrier has **21 days** to either:

- Deny the claim by filing a completed [Form 2](#) ("Denial of Workers' Compensation Benefits by Employer or Carrier") with the VDOL and providing a copy to the employee;
- Submit a written request to the VDOL for more time to make a decision; or
- Begin paying any benefits to which the employee may be entitled under the WCA and fulfill additional requirements as discussed below.

BENEFIT PAYMENTS AND CLAIM REPORTING

If an employer begins paying weekly benefits to an employee, it must also:

- Enter into an "Agreement for Temporary Compensation" ([Form 32](#)) with the employee;
- File a copy of the completed Form 32 with the VDOL;
- Establish a weekday on which weekly benefit payments must be mailed to the employee or deposited into his or her bank account;
- Notify both the employee and the VDOL of the designated day for payments; and
- Ensure that each weekly payment is mailed or deposited on or before the designated day.

An employee's entitlement to weekly WCA benefits begins once a work-related condition results in his or her disability from work for more than **three calendar days**. These days need not be consecutive. The date of injury is the first day of disability unless the employee receives his or her full wages for that day.

When an employee is disabled from work for at least three calendar days, the employer or insurance carrier must immediately:

- Complete [Form 25](#) ("Wage Statement");
- Have the employee complete and return [Form 10](#) ("Certificate of Dependency and Concurrent Employment");
- File both completed forms with the VDOL; and
- Provide copies of the completed forms to the employee.

While investigating a claim, an employer or insurance carrier may elect to begin paying WCA benefits without giving up its right to deny liability for the payments at a later time. To protect this right, an employer or insurance carrier must provide a written notice of the election to the both the employee and the VDOL. This notice must specify the type and duration of any benefits the employer agrees to pay without admitting liability. If the election involves weekly disability benefits, the employer must also provide a completed Form 10 and a completed Form 25 along with its written notice. This generally reserves the employer's right to deny liability for the payments within 90 days after they are issued.

An employer must continue to make weekly benefit payments until the employee has successfully returned to work and is earning his or her full pre-injury wages. Employers that wish to discontinue weekly payments before an employee returns to work must complete and file [Form 27](#) ("Employer's Notice of Intention to Discontinue Payments"), along with evidence to support the discontinuance. Form 27 must be presented to both the VDOL and the employee in question. The employer will need to wait at least **seven days** after filing Form 27 before it can discontinue paying weekly benefits.

The VDOL reviews every Form 27 to determine whether a sufficient basis exists for a proposed discontinuance. If the VDOL finds that sufficient basis exists, it will issue an approval that allows the employer to stop paying benefits as of a specified date. Otherwise, the employer may be ordered to continue the making the payments until after the VDOL holds a hearing and issues a decision on the issue.

REINSTATEMENT REQUIREMENTS

Employers that regularly employ at least **10 employees** who work more than 15 hours per week have an obligation to reinstate certain injured employees to their pre-injury jobs or to suitable alternative positions. This applies for any employee who has:

- Been unable to work for any period of time due to a work-related condition; and
- Recovered from the disability within **two years** after the disability began.

For this purpose, an employee has recovered from a disability when he or she can reasonably be expected to safely perform the duties of his or her prior position or an alternative suitable position. A reinstated employee must regain seniority and any unused annual leave, personal leave, sick leave and compensatory time to which he or she was entitled prior to his or her interruption in employment. Employers may deduct any leave and compensatory time used during the interruption as necessary.

MORE INFORMATION

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

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