

EMPLOYMENT LAW SUMMARY

South Carolina 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 South Carolina Workers' Compensation Law (WCL) establishes employer responsibilities relating to workers' compensation in the state. The [South Carolina Workers' Compensation Commission](#) (Commission) administers the workers' compensation system and enforces employer responsibilities under the WCL.

EMPLOYERS SUBJECT TO THE WCL

An employer is subject to the WCL if it:

- Has **four or more employees** regularly employed in the same business or establishment; and
- Had a total annual payroll of **\$3,000 or more** during the previous calendar year (regardless of how many employees the employer had during that period).

In addition, the WCL applies to **any employer** that engages in activities involving **ionizing radiation**.

EMPLOYEES

The term "employee" broadly includes any person engaged in employment under any appointment, contract of hire or apprenticeship. Employment agreements may be expressed or implied. The WCL specifies that both aliens and minors are employees, even if their employment is unlawful.

EXCLUSIONS

The WCL specifically excludes certain types of workers from the definition of an employee. The following are among those who are **not** considered employees under the WCL:

- Casual workers;
- Sole proprietors;
- Partners of a partnership;
- Agricultural workers;
- Railroad workers;
- Agricultural product sellers;
- Licensed real estate salespersons;
- Federal employees working within the state; and
- Individuals who own or lease a vehicle and drive it for a motor carrier.

VOLUNTARY ELECTION

Employers that are exempt from the WCL may voluntarily elect to become subject to the law. To make this election, an employer must:

- Provide workers' compensation coverage for any individuals that would otherwise be excluded; and
- File a notice of the election with the Commission.

Sole proprietors and partners of a partnership can elect coverage for themselves as employees only if they are actively engaged in the operation of the business.

COVERAGE REQUIREMENTS

The WCL requires employers to secure their ability to pay all benefits to and for any employee who sustains a work-related injury or disease. Employers may satisfy this requirement by:

- Purchasing a workers' compensation insurance policy from an authorized insurer; or
- Obtaining the Commission's authorization to self-insure, either individually or as part of a group.

The WCL prohibits employers from making employees pay for any part of their workers' compensation coverage. An employer may face criminal charges if it deducts an employee's wages for this purpose.

An employer that fails to provide coverage as required loses the WCL's protections for employers. This means that if an employee sustains a work-related condition, he or she would have the option of suing the noncompliant employer in court to recover all damages instead of having to accept the more limited benefits available under the WCL. In addition, an employer that fails to provide coverage as required may be subject to multiple fines and criminal charges.

CORPORATE OFFICER COVERAGE REJECTION

As a general rule, employees cannot waive their rights to coverage or benefits under the WCL. However, the WCL provides one exception for corporate officers. A corporate officer may reject coverage by completing [Form 5](#) ("Corporate Officer Notice to Reject"), filing it with the employer's insurer and providing a copy to the employer via registered or certified mail.

INSURANCE POLICY COVERAGE

Under a workers' compensation insurance policy, the issuing insurance carrier agrees to administer claims and promptly pay all WCL benefits for the insured employer. The carrier also agrees that these obligations continue even if the employer does not make premium payments after an employee's injury or does not provide required notices.

After an employer purchases workers' compensation insurance, the issuing carrier must file a notice with the Commission **within 30 days**. Although the WCL makes insurance carriers responsible for reporting coverage, it is in every insured employer's best interest to confirm that the Commission has received coverage notification from its carrier. This is because the Commission may investigate and impose fines on any employer that does not have proof of coverage on file.

SELF-INSURANCE COVERAGE

A self-insured employer uses its own assets, rather than an insurance policy, to secure its liabilities under the WCL. An employer may self-insure individually or as part of a group self-insurance fund. Any employer that wishes to self-insure must first obtain a certificate for self-insurance from the Commission's Self-Insurance Division (SID).

CERTIFICATION PROCESS

The process of obtaining a certificate for self-insurance begins when an employer or group of employers submits an application, along with other required documents, to the SID. The table below provides an overview of the filing requirements for each type of self-insurance.

SELF-INSURANCE FILING REQUIREMENTS	
Individual Self-insurance	Group Self-insurance

SELF-INSURANCE FILING REQUIREMENTS

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| <ul style="list-style-type: none">• Complete and sign Form 7 ("Application to Individually Self-Insure");• Pay an \$200 application fee;• Provide a detailed description of the proposed claims administration program;• Provide a description of any applicable outside safety consultant program;• File audited financial statements for each of the previous three years; and• File quotes for excess insurance. | <ul style="list-style-type: none">• The group must have a collective net worth of at least \$1 million;• Completed and signed Form 6 ("Application to Create a Self-Insurance Fund");• Pay an \$250 application fee; •Provide a copy of the proposed fund's by-laws;• File current audited financial statement for each proposed member of the fund;• Provide a list of the estimated standard premium collected by the fund, by month, for the first fiscal year;• File an indemnity agreement signed by each proposed member;• Provide detailed description of the proposed claims administration program;• File quotes for excess insurance; •Complete and file Form 6A ("Application for Membership in a Self-insurance Fund") for each proposed member. |
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If the SID approves an application for self-insurance, it will send a written contingent-approval notice indicating the employer or group must:

- Obtain a specified type and amount of excess insurance coverage; and
- Deposit \$250,000 or more into a surety bond or other security.

A group self-insurance applicant will also be ordered to establish a reserve account from which it will pay all WCL benefits. The SID may impose additional obligations on any self-insurance applicant as well.

Within **60 days** after SID issues its contingent-approval notice, the employer or group must file proof that it has complied with all of the requirements specified in the notice. Once SID receives the appropriate proof, it will issue a certificate of self-insurance, which authorizes the employer or group to self-insure as of the effective date on the certificate. A certificate may remain in effect indefinitely, as long as the employer or group complies with all WCL provisions.

SELF-INSURER RESPONSIBILITIES

Every self-insurer must designate one individual as its authorized recipient for all documents and other communications related to workers' compensation (designated recipient). Self-insurers must also provide the Commission with written notice that includes the designated recipient's home office address, email address and telephone number.

The WCL also imposes certain taxes and periodic reporting requirements on self-insurers. For example, every self-insured employer and every member of a group self-insurance fund must file:

- An audited financial statement within **90 days** after the close of each fiscal year; and
- A [Form 10](#) ("Self-insurance Tax Return") by the **15th day of the third month** following the end of each fiscal year.

Every group self-insurance fund must file:

- An audited financial statement within **120 days** after the close of each fiscal year; A [Form 11](#) ("Self-Insurer's Quarterly Financial Report") **immediately after each quarter** of each fiscal year.

Under the WCL, the SID has authority to examine or inquire into the financial affairs of any self-insurer at any time, and self-insured employers must cooperate at all times.

NOTICE POSTING REQUIREMENTS

All employers subject to the WCL must post and maintain a [Workers' Compensation Compliance Poster](#) in each workplace where their covered employees work. The notice must be posted in a public place that is readily accessible to all employees.

INJURY REPORTING AND RECORDKEEPING REQUIREMENTS

After obtaining knowledge of any work-related injury, employers must complete [Form 12A](#) ("Employer's Report of Injury") and retain it in their records for at **least two years**. In addition, employers must **immediately** file Form 12A with their insurance carriers or designated recipients for any work-related injury that:

- Requires **\$500 or more** in medical treatment costs; or
- Results in either:
 - The employee's **death**;
 - The employee's absence from work for **more than one day**; or
 - The possibility of permanent impairment to the employee.

In cases where an employee's injury results in less than \$500 in medical expenses and does not cause death, more than one lost work day or the possibility of permanent impairment, the employer is required to file Form 12A with its insurance carrier or designated recipient only if it elects not to directly pay the medical costs itself.

After receiving Form 12A from an employer, the insurance carrier or designated recipient must file a copy of it with the Commission within **10 business days** after the employer first obtained knowledge of the injury. However, this requirement applies only for work-related injuries that require **\$2,500 or more** in medical treatment or result in the employee's death, absence from work or potential permanent impairment. If an injury does not meet any of these criteria, the insurance carrier or designated recipient must file Form 12M ("Annual Minor Medical Report") with the Commission and retain a copy of the employer's Form 12A in its internal records for at **least two years**.

As part of the claims review process, the Commission may conduct on-site inspections of all employer records relating to work-related injuries at any time. These inspections are intended to ensure timely and accurate benefit payments and proper report filing as required under the WCL. Employers must cooperate with these efforts at all times.

MEDICAL CARE AFTER INJURY

Employers must pay for all medical treatment that an authorized physician deems reasonable or necessary to treat an employee's work-related condition. The WCL grants employers the right to choose an authorized physician to provide the treatment. However, an employer that fails to provide an authorized physician for emergency care may be ordered to pay the costs for treatment provided by a physician of the employee's choice.

The WCL limits the amounts that medical providers may charge for medical services. The Commission publishes the maximum allowable payments, along with policies governing medical billing and payment, in a medical services provider manual.

Employers and workers' compensation insurance carriers are prohibited from paying – and medical providers are prohibited from accepting – more than the maximum allowable payment amounts listed in the provider manual. An employer that receives a medical bill must review it to ensure compliance with the policies and maximum payments listed in the provider manual. If a medical bill involves unusual or complex circumstances, the bill may be sent to the [Commission's Medical Services Division](#) for review. Unless the Commission has received a request for review, employers must pay an authorized medical provider's bill within 30 days of receiving it.

COMPENSIBILITY DECISIONS AND BENEFIT PAYMENTS

Employers may request a Commission hearing at any time to determine whether it must pay WCL benefits to an employee who has reported a work-related condition. To make this request, an employer must file [Form 21](#) ("Employer's Request for Hearing") with the Commission.

Employers must begin paying temporary disability benefits to any employee who has been out of work for **8 days** because of a reported work-related condition unless the Commission has already determined that there are no payable benefits. The initial payment is due on the **14th day** after the employer first obtained knowledge of the condition. Thereafter, benefit payments must continue on a weekly basis unless the Commission approves a different payment schedule.

An employer that makes an initial WCL benefit payment must also complete section I of [Form 15](#) ("Temporary Compensation Report"), provide a copy to the employee along with the payment, and, **within 10 days** after making the payment, file a copy of Form 15 with the Commission. The employer must also complete [Form 20](#) ("Statement of Earning of Injured Employee"), file it with the Commission and provide a copy to the employee within 30 days after making the initial temporary disability payment.

Paying temporary disability benefits does not necessarily mean that the employer waives any grounds for denying a claim at a later time. Within the **first 150 days** after an employee reports a work-related condition, an employer that has begun paying temporary disability benefits may terminate or suspend the payments without first obtaining the Commission's permission if a good faith investigation reveals grounds for denying the claim or if the employee:

- Returns to work (but payments must resume if the employee does not remain at work for a minimum of 15 days);
- Agrees that he or she is able to return to work and executes [Form 17](#) ("Receipt of Compensation") to that effect;
- Has been released by the treating physician to work without restriction and the employer offers comparable employment;
- Has been released by the treating physician to limited duty work and the employer provides limited duty work consistent with the terms upon which the employee has been released; or
- Refuses medical treatment or any examination or evaluation required under the WCL.

Employers that terminate or suspend payments within the 150-day period without prior approval from the Commission must immediately complete sections I and II of Form 15, file the completed sections with the Commission and send two copies to the employee. The employee may then request a hearing to dispute the termination or suspension by completing section III of the Form 15, filing it with the Commission and providing a copy to the employer. The Commission must hold a hearing within 60 days after receiving the employee's request.

An employer that wishes to terminate or suspend benefit payments **after the initial 150-day period** must first request a hearing for the Commission's authorization. Employers may request this hearing by completing and filing Form 21 with the Commission and mailing a copy to the employee. If the employee's treating physician has declared that the employee has reached maximum medical improvement for his or her work-related condition, the Commission must hold a hearing within 60 days after receiving the employer's request.

MORE INFORMATION

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