

EMPLOYMENT LAW SUMMARY

South Dakota Workers' Compensation – Employer Responsibilities



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 Dakota Workers' Compensation Law (WCL) establishes employer responsibilities relating to workers' compensation in the state. The South Dakota [Department of Labor and Regulation](#) (DLR) administers the workers' compensation system and enforces employer responsibilities under the WCL.

EMPLOYERS SUBJECT TO THE WCL

Virtually all employers in South Dakota are subject to the WCL. The law's definition of an employer includes any entity using the service of another for pay. An employee includes any person, including a minor, in the service of another under any expressed or implied contract of employment.

EXCEPTIONS

Certain types of employment are exempt from WCL requirements. Specifically, an employer does **not** have any workers' compensation responsibilities in relation to any of the following:

- Workers whose employment is not in the usual course of the trade, business, occupation or profession of the employer;
- Employees engaged in interstate or foreign commerce who are covered under federal workers' compensation laws;
- Domestic servants (including babysitters) who work 20 or fewer hours per week;
- Farm or agricultural laborers who do not operate threshing machines, grain combines, corn shellers, cornhuskers, shredders, silage cutters or seed hullers for commercial purposes; or
- Individuals who meet the WCL's definition of an [independent contractor](#).

COVERAGE REQUIREMENTS

An employer's primary responsibility under the WCL is to secure and maintain adequate workers' compensation coverage for its employees. Employers may satisfy this requirement by obtaining an insurance policy from an authorized insurance carrier (or carriers) or by obtaining the DLR's approval to self-insure.

By securing coverage, an employer limits its liability for employees' work-related injuries to the specific benefits that are available under the WCL. If an employer fails to secure coverage, an injured employee may sue the employer in court for virtually unlimited damages or may obtain double the amount of WCL benefits that he or she would have otherwise been entitled to receive if the employer had provided coverage as required.

ELECTIVE COVERAGE

An employer that has exempt employees may voluntarily elect to become subject to the WCL in relation to those employees by providing workers' compensation insurance coverage for them.

Individuals (such as sole proprietors) who perform labor incidental to their own occupation may also elect to provide workers' compensation coverage for themselves. This type of election makes an individual subject to the WCL as an employer, regardless of whether he or she uses the services of another for pay.

INSURANCE POLICIES

When an employer purchases workers' compensation insurance to satisfy the coverage requirement, the insurance carrier performs most of the employer's responsibilities for claim administration and benefit payments under the WCL. The insurance carrier is also required to file proof of employer coverage with the DLR after issuing a policy.

However, employers should be aware that insurance coverage does not actually relieve them from any legal obligations under the WCL. Employers should always ensure that they are compliant with the law, even if an insurance company agrees to cover their duties and liabilities.

When purchasing an insurance policy, employers will have the option of including a deductible. Although deductibles can help reduce premium costs, an employer that includes a deductible in its policy must be prepared to cover the deductible amount for every workplace injury that may occur. Insurance carriers are required to pay the deductible amounts upfront when an injured employee is entitled to receive benefits under the WCL, but the employer will be responsible for reimbursing the deductible amount for each compensable injury.

For certain insured employers, workers' compensation insurance carriers must provide annual workplace safety review services as part of their policies. These services must be provided to insured employers that:

- Have more than five employees; and
- Pay \$5,000 or more in annual workers' compensation premiums.

As part of these safety review services, an insurance company can make written recommendations for improving safety at an employer's workplace. An employer's failure to comply with these recommendations may allow its insurance carrier to increase its premium rates.

SELF-INSURANCE

A self-insured employer uses its own assets, rather than an insurance policy, to insure against its obligations under the WCL. Employers that wish to self-insure must obtain the DLR's approval. To obtain this approval, an employer must submit an [application](#), along with the following, to the DLR:

- Proof of the employer's solvency and financial ability to pay the benefits required under the WCL;
- A minimum of \$250,000 in a surety bond or other security; and
- A \$2,000 application fee.

If the DLR approves an employer for self-insurance, the employer is authorized to self-insure for a period of one year and must apply for renewals annually. While the employer is self-insured, the DLR may use the employer's security deposit to hire a qualified administrator to manage the employer's responsibilities related to employees' claims under the WCL. The DLR may also revoke an employer's authorization to self-insure if the employer fails to comply with any WCL provisions.

NOTICE POSTING REQUIREMENTS

The WCL requires employers to display informational postings promoting safety in the workplace. These postings must be placed in visible locations throughout the workplace. While the WCL does not require any specific format for these posters, the DLR provides the following three model options that employers may use to comply with this requirement:

- [Team Work Makes the Dream Work](#)
- [Safety First](#)
- [Together Everyone Achieves More](#)

INJURY REPORTING AND RECORDKEEPING REQUIREMENTS

Within **seven calendar days** (not counting Sundays and legal holidays) after an employer first obtains knowledge of an employee's work-related injury, the employer must:

- Prepare and sign a [written report](#) of the injury;
- Provide a copy of the report to the employee; and
- Preserve the report in its records for at least four years from the date of injury.
- The employer must also file the injury report with the DLR for any injury that:
- Requires medical treatment other than minor first aid; or
- Incapacitates an employee from work for seven or more calendar days.

An employer that is covered by an insurance policy must submit the report to its insurance carrier, and the carrier must then file it with the DLR within 10 days of receiving it. A self-insured employer must submit the report directly to the DLR using the [First Report of Injury Management System](#).

In addition, all employers must keep their books, records and payrolls open for inspection by the DLR at all times. The DLR must be allowed to inspect these records upon request.

PROVIDING MEDICAL CARE

Employers must provide employees with all medical care required to treat any work-related injuries. The WCL requires workers' compensation insurance carriers and self-insured employers to provide these services through a [case management plan](#) that meets certain requirements.

However, an injured employee has the right to make an initial selection of any licensed medical practitioner or surgeon to provide and direct treatment for his or her work-related injury. If possible, an employee must notify his or her employer of this selection before obtaining any treatment. Otherwise, the employee must notify the employer as soon as reasonably possible after obtaining the first treatment. Treatment received on an emergency basis does not trigger these requirements or constitute an employee's selection.

Once an employee properly selects a medical provider, the employer is not liable for the cost of any treatment the employee receives from other providers, unless:

- The treatment is for an emergency;
- The treatment is the result of a referral from the employee's properly selected medical provider; or
- The employer approves the additional treatment or switch to a different provider in advance.

A medical practitioner or surgeon that provides care to an injured employee must provide a copy of his or her initial treatment report to the employer and to the DLR within 14 days of the employee's first visit. If an employee requires ongoing treatment, the medical practitioner must send status reports to the employer and to the DLR at least every 30 days while the treatment continues. Employers must provide copies of these reports, at their own expense, to injured employees who request them.

CLAIM INVESTIGATIONS AND PAYMENTS

Employers must accept or deny every claim (in whole or in part) for WCL benefits **within 20 days**. For an insured employer, the 20-day period begins once the employer reports a claim to its insurance carrier. For a self-insured employer, the 20-day period begins once the employer files an employee's injury report with the DLR. The DLR may extend this period to 30 days if an employer can show that it needs additional time to make a decision.

An employer that accepts a claim must also begin providing any required monetary benefits to the injured employee. Monetary benefits must be paid at the same intervals at which the employee's wages were paid prior to injury. In situations where this is not feasible, benefits must be paid weekly.

Also, **within 30 days** after receiving a bill for medical treatment, an employer (or its insurance carrier, if applicable) must:

- Pay the charge or any portion of the bill that is not denied;
- Deny all or a portion of the bill on the basis that the injury is not compensable or that the service or charge is excessive or not medically necessary; or
- Request additional information to determine whether the charge or service is excessive or not medically necessary or whether the injury is compensable.

ADDITIONAL RESPONSIBILITIES

Along with the requirements summarized above, an employer's duties under the WCL include:

- Keeping all employee claims records confidential;
- Not retaliating against employees who file workers' compensation claims;
- Not discriminating against job applicants due to pre-existing injuries (unless the injuries affect their ability to perform the work for which they are being hired);
- Obtaining the DLR's approval for any agreement made with an employee relating to payment of workers' compensation benefits; and
- Providing employment records for the 52-week period before an employee's claimed date of injury within 10 days after an insurance carrier or other employer (against which the employee has made a workers' compensation claim) makes a request for the records (employers can charge the requesting party up to \$15 for these).

MORE INFORMATION

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

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