

EMPLOYMENT LAW SUMMARY

Texas: 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. While participation in the Texas workers' compensation system is optional, employers that choose to participate must comply with all provisions of the Texas Workers' Compensation Act (TWCA). The TWCA defines employer responsibilities in the workers' compensation program. The Texas Division of Workers' Compensation (DWC), part of the Texas Department of Insurance (TDI), enforces employer requirements throughout the state.

COVERAGE REQUIREMENTS

Coverage under the TWCA is important because it determines the extent of liability an employer is exposed to when an employee sustains a work-related injury or disease. Employers that choose not to participate in the workers' compensation program lose the immunity that the TWCA provides against most lawsuits involving work-related injuries. Employers without workers' compensation coverage may be forced to cover the medical expenses of an injured employee and pay punitive damages, judgments for pain and suffering and attorney's fees if the injury was in any way the result of the employer's negligence—even if an employee's negligence played a greater role in causing the injury. Private employers may secure worker's compensation coverage by either:

- Purchasing a policy from an insurance company licensed by the TDI;
- Obtaining the TDI's authorization to self-insure; or
- Joining a self-insurance group that has received a certificate of approval from the TDI.

ALTERNATIVE COVERAGE

Some employers in Texas use health policies, employer indemnification agreements and disability policies to insure against their liability for work-related injuries. However, these policies are not a replacement for workers' compensation coverage. Employers are still exposed to employee lawsuits and may lose the right to use common-law negligence defenses in court. Unlike workers' compensation coverage, alternative policies typically have medical benefit limits. Employers may need to cover the difference between the benefit provided by an alternative insurance policy and a judgment.

SELF-INSURANCE

To become self-insured, an employer must submit an application to the DWC. The application must be submitted on a form issued by the DWC and must be accompanied by a nonrefundable \$1,000 application fee. The approval process may take up to 60 days. Employers may not self-insure during the application process. To obtain an application package, employers must either call or email the office of Self-Insurance Regulation with their request. To qualify for self-insurance, an employer must:

- Show sufficient proof of financial strength and liquidity, and prove that it can meet compensation obligations promptly;
- Present a claim administration plan to the DWC;
- Designate a claim servicing contractor;
- Show the existence of an effective employee safety program; and
- Comply with other regulations provided in the Texas Insurance Code.

Employers that do not meet these criteria will be notified of the changes they need to make. The DWC will provide employers with a reasonable time to satisfy the conditions for approval before the application is rejected. Self-insured employers must secure a reinsurance policy (also called excess insurance). Reinsurance serves to cover workers' compensation liabilities that may go beyond what employers can cover with their own funds on a regular basis. The office of Self-Insurance Regulation requires employers to secure reinsurance for at least \$5 million per occurrence. Self-insured employers must notify the DWC within 10 days if they receive notice of cancellation or termination of their reinsurance coverage. Self-insurance certificates are valid for one year and must be renewed annually according to DWC procedures. The DWC may stagger renewal dates to ease processing times.

NOTICE REQUIREMENTS

Employers must notify their employees of whether they have workers' compensation coverage. This notice must be provided to each employee at the time he or she is hired or, if there is a change, within 15 days of the time the coverage changes take place. Self-insured employers and insurance companies must also notify the DWC of their claim administration contact information within 10 days of securing coverage, unless an exception is authorized. When an employer terminates coverage, it must notify the DWC within 10 days of the last day of coverage.

RECORDKEEPING REQUIREMENTS

The TWCA requires employers to maintain a record of each employee injury. This record must be available for DWC inspection at reasonable times. In addition, self-insured employers must file an annual report with the DWC. This report must include:

- Payroll information;
- The number of employee injuries sustained in the three preceding calendar years;
- The amount of benefits paid to injured workers;
- Annual independent financial statements;
- Evidence of sufficient financial ability to meet all TWCA obligations; and
- A certified actuary estimate of future liability for compensation.

PROHIBITED PRACTICES

DISCRIMINATION AND RETALIATION

Employers may not discharge or in any manner discriminate against an employee because he or she has filed a good-faith claim, hired a lawyer to represent him or her in a claim, instituted a good-faith proceeding or testified in a proceeding. If an employee was discharged in retaliation, he or she may be entitled to reinstatement. However, employees carry the burden of proof in retaliation proceedings. Employers that violate this prohibition may also be required to compensate an employee for all reasonable costs he or she incurred as a result of the violation.

WAIVER OF COMPENSATION

Employers may not require an employee to waive his or her rights to compensation under the TWCA. However, employees have the discretion to waive their right to compensation if they wish to retain common-law rights to sue an employer and recover damages for workplace injuries. An employee may make this waiver only if he or she notifies his or her employer in writing within five days after beginning employment or, if the employer did not have coverage at the time of hiring, within five days after the employer notifies the employee that it has obtained coverage.

EMPLOYER CHARGEBACK

Employers may not directly or indirectly collect or otherwise require or encourage their employees to contribute to the cost of the employers' workers' compensation insurance premiums and related fees, except:

- When an employment relationship exists between a general contractor and a subcontractor that has no employees, if the general contractor agrees to include the subcontractor in the general contractors' coverage; and
- When an employment relationship exists between a hiring contractor and an independent contractor, if the hiring contractor agrees to include the independent contractor with no employees in the hiring contractor's coverage.

FRIVOLOUS ACTIONS

The TWCA prohibits any party from bringing, prosecuting or defending frivolous actions for workers' compensation benefits. A frivolous action is one that is not based on or is not sustained by existing law or a good faith argument for the extension, modification or reversal of existing law.

MORE INFORMATION

Visit the DWC website or contact Heffernan Insurance Brokers for more information on workers' compensation laws in Texas.

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