

EMPLOYMENT LAW SUMMARY

Wisconsin Workers' Compensation – Employee Eligibility



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.

In Wisconsin, eligibility for workers' compensation benefits is determined by the Wisconsin Workers' Compensation Act (WCA). The Wisconsin [Department of Workforce Development](#) (DWD) resolves any disputes about eligibility.

COVERED EMPLOYEES

Most workers in Wisconsin are covered under the WCA. In general, covered individuals include "every person in the service of another under any contract of hire." These include:

- Full-time employees;
- Part-time employees;
- Minors;
- Illegal immigrants;
- Corporate directors (if compensated);
- Corporate officers; and
- Volunteer firefighters.

The WCA specifically **excludes** the following from coverage:

- Sole proprietors, partners and members of limited liability companies;
- Employees of the federal government;
- Shareholders of a corporation;
- Volunteers;
- Domestic servants;
- Volunteer members of a non-profit board of directors;
- Religious sect employees (as long as the employer applies for the exemption);
- Native American tribal enterprise and casino employees; and
- Independent contractors.

Prior to March 2, 2016, the WCA's definition of a covered employee specifically included individuals who sell or distribute newspapers or magazines on the street or from house to house.

Effective March 2, 2016, however, these individuals are no longer automatically covered. Instead, they are subject to the WCA's nine-point test for determining whether an individual is an independent contractor.

Also effective March 2, 2016, individuals who provide self-directed, long-term care services to elderly and disabled people are covered employees under the WCA. If the person receiving the care has his or her own workers' compensation insurance, the care provider will be covered under that policy. Otherwise, the care provider will be covered under the workers' compensation policy of the long-term care program's fiscal management services provider.

INDEPENDENT CONTRACTORS

In order for an employee to be classified as an independent contractor, certain conditions must be met. Specifically, the WCA includes a nine-part test that establishes whether a worker is an independent contractor or a covered employee. In the event of a dispute, the DWD will determine whether the elements of the test have been fulfilled on a case-by-case basis.

For an employer to classify a worker as an independent contractor, the worker must:

- Maintain a separate business;
- Obtain a Federal Employer Identification number from the Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on the work or service in the previous year;
- Operate under specific contracts;
- Be responsible for operating expenses under the contracts;
- Be responsible for satisfactory performance of the work under the contracts;
- Be paid per contract, per job, by commission or by competitive bid;
- Be subject to profit or loss in performing the work under the contracts;
- Have recurring business liabilities and obligations; and
- Be in a position to succeed or fail if business expense exceeds income.

An employer should take care when categorizing a worker as an independent contractor. Incorrectly categorizing a worker can lead to court-ordered injunctions, liens and fines.

EMPLOYEES' RESPONSIBILITIES UNDER THE WCA

An injured employee is expected to:

- Inform a supervisor or manager of an injury immediately, even if the injury is minor and will heal without medical attention;
- Obtain any necessary medical attention, which may include seeking first aid, seeing a doctor or going to the emergency room; and
- Maintain all relevant medical and payment records for possible future use.

An injured employee should notify his or her employer within **30 days** of the injury and receive medical attention without delay. Failure to provide notice can delay potential workers' compensation benefits.

CLAIMS PROCESS

Once an employer is notified of a work-related accident or injury, the employer must report it to its insurance carrier within **seven days**. If the injury was fatal, however, the report must be made within 24 hours. Once the insurance carrier is notified of the injury, it must electronically report all lost time and compensation claims to the DWD. If the injury resulted in a fatality, the insurance carrier must also report this to the DWD within 24 hours.

If an injured employee's claim is denied, he or she may file a claim with the DWD regarding the denial of benefits.

Effective March 2, 2016, employees who suffer traumatic injuries (or their survivors, when applicable) must file a claim for benefits with the DWD within **six years**. This is a significant reduction from the 12-year period that previously applied for traumatic injuries. This reduction does not apply for occupational diseases.

An employee will not be allowed to recover any benefits if he or she fails to file a claim within the six-year period for a traumatic injury. However, some exceptions are possible for occupational diseases and for certain specific and narrowly defined traumatic injury claims. The table below provides details about the time requirements for various injury claims.

Time Limits for Claims	
Work-related condition	Claim must be filed with the DWD within:
Traumatic injury (other than those listed below)	6 years
Occupational disease	No limit

After the later of: • The date of injury or death, or • The date of the employer's last payment of compensation under the WCA (other than for medical treatment or burial expenses) or the date benefits would have last been payable, if the employer paid benefits in advance.

No time limit for traumatic injuries resulting in:

Loss or total impairment of:**Time Limits for Claims**

- A hand;
- Any part of a forearm;
- A foot;
- Any part of a lower leg
- Loss of vision;
- A permanent brain injury; or

The need for:

- An artificial spinal disc replacement; or
- Total or partial knee or hip replacement.

If the parties cannot resolve the dispute on their own, the DWD will hold a hearing to allow the employee and employer to present evidence regarding the claim. The Administrative Law Judge who conducts the hearing will then issue a decision within 90 days after the hearing.

Either party may appeal the decision within 21 days to the Labor Industry Review Commission (LIRC). Any party dissatisfied with a LIRC decision may appeal to a state circuit court for review. Circuit court decisions are appealable to the Wisconsin Court of Appeals. The Wisconsin Supreme Court is the next and highest level of appeal in the state.

UNINSURED EMPLOYERS

If an injured employee works for an uninsured employer, he or she may apply for workers' compensation benefits through the Uninsured Employers Fund (UEF). If the claim is valid, the UEF will distribute benefits as if it is the employer's insurance carrier.

The UEF is funded through fines assessed against noncompliant employers. The uninsured employers are required to reimburse for the UEF for benefit payments made on their behalf.

MORE INFORMATION

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

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