

# EMPLOYMENT LAW SUMMARY

## Wisconsin Workers' Compensation - Employer Penalties



*Because You're Different*

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.

Under the Wisconsin Workers' Compensation Act (WCA) employers in Wisconsin may face penalties if they fail to comply with state workers' compensation requirements. The Wisconsin [Department of Workforce Development](#) (DWD) enforces compliance with the WCA and imposes penalties on noncompliant employers throughout the state.

### INSURED EMPLOYERS - AUDIT NONCOMPLIANCE CHARGES

As of Jan. 1, 2017, an employer that covers its workers' compensation liability through an insurance policy must allow its insurance carrier to examine and audit all of its records that relate to the policy. If an employer does comply with this requirement, the insurance carrier must apply an additional charge to the employer's estimated premium, called an Audit Noncompliance Charge (ANC).

The ANC amount is calculated by multiplying the employer's estimated annual premium by two and adding it to the estimated annual premium. Therefore, an employer that does not comply with its insurer's audit must pay **three times its estimated annual premium** for the policy.

### UNINSURED EMPLOYERS

Employers that are subject to the WCA must maintain workers' compensation coverage (either through an insurance policy or self-insurance) for their employees.

An employer that fails to maintain this coverage may be ordered to **cease business operations** until it complies. If an employer continues operating its business without proper coverage after receiving a cease and desist order, the employer may be charged with a class 1 felony, punishable by a fine of up to **\$10,000, imprisonment for up to 42 months or both.**

An employer without proper coverage may also be ordered to pay the following:

- An administrative fine of between **\$100 and \$1,000** plus a civil fine equal to **75 percent** of the administrative fine for:
  - Any failure to maintain coverage that lasts up to 10 days;
  - Any provision of false information to employees regarding coverage; or
  - Failing to notify a person who contracts with the employer that coverage has been cancelled in relation to the contract; and
- Administrative fines of between **\$10 and \$100** per day plus a civil fine equal to **75 percent** of the total administrative fine for any failure to maintain coverage that lasts for 11 or more days.

In addition, the DWD may order a noncompliant employer to reimburse the Uninsured Employers Fund (UEF) for any benefits paid to an injured employee due to the noncompliance.

### OTHER VIOLATIONS AND PENALTIES

The table below provides an overview of the various additional penalties that may apply if an employer fails to comply with the WCA.

Violation	PENALTY
<b>Delaying payment of benefits - Delay of 14 or more days</b>	A possible fine equal to 10 percent of the value of the unpaid benefits.
<b>Delaying payment of benefits - Delay of more than 30 days and unpaid amount over \$500</b>	A mandatory fine equal to 10 percent of the value of all unpaid benefits.
<b>Failure to pay benefits as ordered by the DWD</b>	A fine of up to 25 percent of each amount that was not paid as directed.
<b>Bad faith or malicious payment suspension, payment termination or failure to make payments and bad faith or malicious failure to report an injury</b>	A fine of up to 200 percent of the total compensation due or \$30,000 for each event or occurrence of bad faith or malice.
<b>Illegally employing a minor - Minor was of permit age but did not have a work permit when injured</b>	A fine equal to the compensation payable to the minor, up to \$7,500.
<b>Illegally employing a minor - Minor is of permit age, did not have a work permit and minors are prohibited by law or DWD resolution from working in the industry where injury occurred</b>	A fine equal to double the compensation payable to the minor, up to \$15,000.
<b>Illegally employing a minor - Minor is under permit age</b>	A fine equal to double the compensation payable to the minor, up to \$15,000.
<b>Fraud - Claim is for up to \$2,500</b>	Criminal Class A misdemeanor charge, punishable by a fine of up to \$10,000, imprisonment for up to nine months or both.
<b>Fraud - Claim is for more than \$2,500</b>	Criminal Class I misdemeanor charge, punishable by a fine of up to \$10,000, imprisonment for up to 42 months or both.
<b>Noncompliance with a safety statute, rule or DWD order</b>	Increase in the payable amount of benefits by 15 percent, up to \$15,000.
<b>Unreasonably refusing to rehire, discriminating or retaliating against an employee who has filed or attempted to file a claim</b>	A fine of between \$50 and \$500 per violation, plus up to one year of the employee's wages.
<b>Failure to keep records or knowingly making false records</b>	A fine of between \$10 and \$100 per violation. Employers can ask the DWD to waive or reduce the penalty if the violation was a mistake or was caused by an absence of information. The request must be made within 45 days of when the DWD mails a notice of penalty to the employer. Any fine not paid (in full or in part) within 30 days is subject to 12 percent annual interest (1 percent per month).
<b>Failing to submit reports, knowingly falsifying records, or knowingly making false reports</b>	A surcharge of between \$10 and \$100 per violation. Employers may request a waiver or reduction if the violation was a mistake or was caused by an absence of information. Any fine not paid (in full or in part) within 30 days is subject to 1 percent per month. Employers that refuse or unreasonably fail to submit a report of injuries to the DWD are presumed to have acted with malice or in bad faith.
<b>Repeat violation of any WCA provision or DWD rule or order within 5 years of the first violation</b>	A fine of up to \$2,000, imprisonment for up to 90 days or both.
<b>Third repeat violation within a 3-year period</b>	A fine of up to \$10,000, imprisonment for up to nine months or both.

## ENFORCEMENT

The DWD is authorized to collect any penalties imposed on employers. The DWD may, at its discretion, impose liens and levies on employer property to enforce or compel full payment. Employers that intentionally remove, deposit, conceal or aid in removing, depositing or concealing property to avoid a lien, levy or other collection method commit a Class I felony, punishable by **a fine of up to \$10,000, imprisonment for up to 42 months or both**. Employers can request a hearing to contest liens and levies.

The DWD may also issue a warrant when individuals who are found personally liable for employer violations fail to pay any penalties. This type of warrant will be considered as a final court order imposing a lien on the right, title and interest of the individual's real and personal property located in the county where the warrant is recorded.

## **MORE INFORMATION**

Please see the DWD's or contact Heffernan Insurance Brokers for more information on Wisconsin's workers' compensation requirements.

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