

Wisconsin Contractors Institute

Wisconsin Worker's Compensation Laws

Course Number: 17286

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Chapter 5 - Wisconsin Worker's Compensation Laws

What Is Worker's Compensation?

Worker's compensation is a system of no-fault insurance that pays benefits to employees for accidental injuries or diseases related to the employee's work. In return for prompt and certain payment of benefits to an employee, an employer's liability is limited.

Who is required to have worker's compensation insurance?

Most Wisconsin employers are required by law to have worker's compensation insurance.

■ Employers who employ three or more workers on a full-time or part-time basis must have insurance.

■ Employers who employ one or more workers on a full-time or part-time basis and who pay gross, combined wages of \$500 or more in any calendar quarter for work done in Wisconsin must have insurance by the 10th day of the first month of the next calendar quarter.

Must out-of-state employers carry Wisconsin worker's compensation insurance?

Yes, you must carry the insurance if you have employees working in Wisconsin. The policy must be with an insurance company licensed to write worker's compensation in Wisconsin and endorsed to name Wisconsin as a covered state in section 3-A. Your insurance company must file the properly endorsed policy with the Wisconsin Compensation Rating Bureau.

Who is considered an employee and covered by the Worker's Compensation Act?

Nearly all private and public employees in Wisconsin are considered employees and covered under the Act, including:

- Part-time employees. Whether an employee works part-time or full-time has no bearing on the requirement to carry worker's compensation insurance.
- Family members. An employee's relationship to the owner has no bearing on the requirement to carry worker's compensation insurance.
- Minors. An employee's age has no bearing on the requirement to carry worker's compensation insurance.
- Corporate officers.

Who is not considered an employee under the Worker's Compensation Act?

The following are the only workers who are not considered employees under the Act.

- Domestic servants.
- Any person whose employment is not in the trade, business, profession or occupation of the employer.
- Some farm employees (certain relatives of a farmer).
- Sole proprietors, partners and members of limited liability companies.
- Qualified and certified members of certain religious sects.

- Volunteers of non-profit organizations receiving salary or in-kind compensation totaling not more than \$10 per week.
- Employees of Native American tribal enterprises (including casinos), unless the tribe elects to waive its sovereign immunity and voluntarily become subject to the Act.

All workers' compensation policies exclude sole proprietors, partners or members of limited liability companies unless there is a specific written endorsement to include them. Sole proprietors, partners and members of limited liability companies may voluntarily purchase worker's compensation insurance to cover their own work-related injuries and illnesses.

Where Do You Get Insurance?

There are about 350 insurance companies licensed to write worker's compensation insurance in Wisconsin.

If any insurance carrier denies your application for insurance, you may apply to another carrier or to the Wisconsin Compensation Rating Bureau, 20700 W Swenson Drive, Suite 100, Waukesha, WI 53186. The telephone number is (262) 796-4540. The Internet URL is <http://www.wcrb.org>. The Rating Bureau will assign an insurer to write a policy for you. The cost is the same for assigned coverage.

What Will Insurance Cost?

The cost of insurance will vary. There are approximately 650 separate job classifications rated on past experience in industry. Insurance will cost more for the most hazardous occupations and those that are highest in gross payroll.

The Wisconsin Compensation Rating Bureau sets the premium rate for each class with the approval of the Commissioner of Insurance.

What Liability Is Covered?

Any worker's compensation insurance policy covers liability for compensation and medical expense.

The policy will not cover:

- Penalties for false reporting;
- An unreasonable refusal to rehire the employee;
- Increased compensation for a safety violation;
- Illegal employment of a minor; and,
- Penalties for untimely payments caused by delays in reporting

What Are The Penalties For Failure To Insure?

The penalties are substantial and severe. Employers that fail to obtain insurance when required may be ordered by the Department to cease operations until coverage is obtained. The normal penalty for an illegal lapse in worker's compensation coverage is twice the amount of premium not paid during the uninsured time period or \$750, whichever is greater. An employer who has an illegal lapse in worker's compensation insurance of 7 consecutive days or less is subject to a

\$100 penalty for each uninsured day up to 7 days, provided that the employer has not previously had an illegal lapse in coverage and that no injury occurred during the uninsured period.

An uninsured employer is personally liable to reimburse the Uninsured Employers Fund for benefit payments to an injured employee. Aggressive collection action including warrants, levies, garnishment and execution against property are used to insure reimbursement. The normal exemptions of property from seizure and sale on execution of a judgment do not apply to uninsured employers.

Is There Any Penalty For Negligence?

Negligence, either by the employer or employee, is not an issue except when the injury occurs because:

- An employer violated a safety order/statute; failed to use safety devices; and/or, disobeyed an established safety rule resulting in the employer possibly being liable for a 15 percent increase in compensation, up to a maximum of \$15,000.
- An employee was intoxicated by alcohol or illegal drugs resulting in the employee's compensation possibly being reduced by 15 percent with a maximum reduction of \$15,000.

What Is The Uninsured Employers Fund?

The Uninsured Employers Fund (UEF) pays benefits on valid claims filed by employees who are injured while working for illegally uninsured employers. When an employee files a compensable claim, the UEF pays benefits as if the uninsured employer had been insured. The uninsured employer is required to reimburse the UEF for all costs of a claim paid by the Fund.

What Is Self-Insurance?

Approximately 200 private-sector and 50 municipal employers are self-insured. The self-insured do not purchase insurance, but pay their claims using their own funds. Self-insurers must have written approval from the department before becoming self-insured. The approval process includes submitting an application with five years of audited financial data, and documentation demonstrating expertise in safety and claims management. Self-insurers are required to have excess insurance and other security to protect against potential claims.

What Must An Employer Report?

All employers must report all work-related fatalities to the Worker's Compensation Division, Madison Office, within 24 hours.

Insured employers must report any claim of an injury to their insurance carrier within 7 days.

Self-insured employers and insurance carriers must report injuries which result in time lost from work four days or more after the date of injury to the Worker's Compensation Division, Madison Office. The report must be on a form WKC-12 - First Report of Injury, or electronically filed, and must be filed within 14 days after the injury. Form WKC-13 – Supplemental Report or its

electronic equivalent must be filed by the 30th day after the injury or first day of lost time after the date of injury.

Treating physician's medical reports for disabilities of more than 3 weeks as well as final payment reports for all reported claims are required.

Employers are required to provide the Worker's Compensation Division, Madison Office, with OSHA survey information when requested.

What Are The Penalties For Not Filing Injury Reports?

If an employer intentionally fails to file a report of injury, the employer may be assessed a penalty for bad faith up to \$15,000 or 200 percent of compensation due.

An employer may be assessed a 10 percent penalty payable to the injured worker for delay in reporting an injury which causes an untimely payment.

What Benefits Are Payable?

- All reasonable and necessary medical costs

- Lost-time benefits for wage loss (temporary disability) while recovering from an injury. These are based on two-thirds of the employee's wage rate up to a specified maximum.

- Benefits for permanent disability if the employee does not fully recover from the injury. The amount of benefit depends on the severity of the permanent disability.

- Job retraining or placement

- Death benefits and burial expenses up to specific limits

Who Picks The Doctor For Treatment?

The employee has the right to select any physician, psychologist, podiatrist, dentist or chiropractor, unless there is an emergency. The employer is obligated to offer the choice and can lose rights by failing to do so. The employee has the right to a second choice on notice to the employer or insurer.

An employer may also require an employee to submit to reasonable medical examinations for the purpose of reviewing claims for compensation. Out-of-state treatment requires an insurer's consent unless it is based upon a referral from an in-state provider.

Is The Injured Employee Guaranteed A Job?

The employer may not "unreasonably" refuse to rehire an injured employee if suitable employment is available within the employee's physical and mental limitations. If the employer has suitable employment available and unreasonably refuses to rehire the worker, the employer is

liable for any lost wages, up to a total of one year's wages. The employer is not required to hold or create a job to guarantee the employee a job after an injury.

Who Pays For Worker's Compensation Insurance?

The employer pays for the insurance and may not withhold, deduct or collect payment for premiums from any employee or any other person. Agreements by employees waiving rights to compensation are not valid.

What about Independent Contractors?

There are special provisions in the law covering independent contractors. An independent contractor, sub-contractor or owner/operator may actually be a statutory employee of the employer for whom he or she is working unless they meet the nine-point test under s. 102.07(8)(b) of the Wisconsin statutes.

An independent contractor, sub-contractor or owner/operator who employs others must provide insurance for his or her employees. The independent contractor/employer must obtain insurance in his or her personal or trade name. No employer may elect to be under the insurance coverage of another employer or contractor.

Independent contractors who do not have employees or who are not required to be insured may choose to purchase insurance for self-coverage. The policy must be endorsed to name the sole proprietor or partners for them to be covered. Employers and independent contractors may purchase insurance without personal benefit coverage.

What about Sole Proprietors and Partners?

Sole proprietors and partners are not considered or counted as employees. Generally, policies exclude the sole proprietor or partners unless they are specifically endorsed to include them.

Sole proprietors and partners may voluntarily purchase insurance to cover their own work-related injuries and illnesses.

What about Corporations?

Corporate officers are employees. Generally, policies covering corporations include corporate officers. In closely held corporations with not more than 10 stockholders, no more than 2 officers can be excluded from insurance coverage. If the corporation has other employees and/or officers, a policy is required and the election must be made by endorsement on the worker's compensation policy. Officers who have made this election will still be counted in determining whether the employer is subject to the Worker's Compensation Act.

If a closely held corporation has no more than 2 corporate officers and has no other employees, a worker's compensation policy is not required if both officers elect not to be subject to the Worker's Compensation Act.

This election can be completed by filing a Corporate Officer Option Notice with the Department.

Once an employer is required to get a worker's compensation insurance policy, how long does the employer have to keep it?

Once an employer becomes subject to the Wisconsin Worker's Compensation Act (Act) under s. 102.04(1)(b), Wis. Stats., he or she remains subject to the Act unless the employer withdraws from the provisions of the Act under s. 102.05(1), Wis. Stats.

A subject employer is required to have a worker's compensation policy as long as he or she has one or more part-time or full-time employees. Even if a subject employer has only one part-time employee making less than \$500 per quarter, the employer must maintain the insurance for the remainder of that calendar year--and for the next calendar year--(a calendar year is January through December) before he or she is eligible to withdraw from being subject to the provisions of the Act.

If a subject employer lays off all his or her employees, the employer may drop their worker's compensation insurance while they have no employees, however, the employer remains subject to the Act. Therefore, because the employer has already become subject to the Act, if the employer hires an employee at a later date, the employer must have a worker's compensation insurance policy in place on the date any employee begins working, unless the employer has withdrawn from the Act.

Note: Corporations can not withdraw from the provision of the Act. Closely held corporations (a corporation with not more than 10 stockholders) that have no more than two corporate officers and no other employees, may elect not to be subject to the Act by completing and filing with the Department a Corporate Officer Option Notice. A corporation with more than two corporate officers or any other employee is not eligible to file a Corporate Officer Option Notice and must obtain and/or maintain a worker's compensation insurance policy.

As an employer, how do I benefit from the Wisconsin Worker's Compensation Act?

You receive benefits that can mean the difference between the success or failure of your business. If one of your employees gets hurt while working for you, you could be sued for damages, medical care, lost wages, and much more. By complying with the law and carrying appropriate worker's compensation insurance, you receive:

- Protection from most law suits brought by an employee because of a work-related illness or injury.

- Fair and prompt delivery of benefits to your employee who is injured on the job.

- Fair adjudication of disputes by a Worker's Compensation Division Administrative Law Judge.

- Fair and standard insurance premium rates approved by the Office of the Commissioner of Insurance.

Does my employee benefit from the Worker's Compensation Act?

If your employee does get hurt on the job, he or she can look to the worker's compensation system for prompt payment of benefits and fair adjudication of disputes.

Final Exam

- 1.) Employers must carry worker's compensation under which scenario?
 - a. Employ 3 or more workers
 - b. Employ 1 or more workers with combined wages greater than \$500 in a quarter
 - c. Both a & b
 - d. None of the above

- 2.) Worker's compensation is a system of no-fault insurance that pays benefits to employees for accidental injuries or diseases related to the employee's work.
 - a. True
 - b. False

- 3.) Once an employer qualifies to have worker's compensation insurance, the insurance must be in place by the 15th day of the first month of the next calendar quarter.
 - a. True
 - b. False

- 4.) Out of state employers are not required to carry worker's compensation insurance even if the employees are working in Wisconsin.
 - a. True
 - b. False

- 5.) Out of state employers with employees working in Wisconsin must carry a policy with an insurance company licensed to write worker's compensation in Wisconsin.
 - a. True
 - b. False

- 6.) A minor under the age of 18 is not considered an employee under the Worker's Compensation Act?
 - a. True
 - b. False

- 7.) Who is considered an employee and covered by the worker's compensation act?
 - a. Part-time employees
 - b. Corporate officers
 - c. Family members
 - d. All of the above

- 8.) A worker's compensation policy covers liability for compensation and medical expense.
- True
 - False
- 9.) Part-time employees are workers who are *not* considered employees under the Worker's Compensation Act.
- True
 - False
- 10.) A domestic servant is not considered an employee under the Worker's Compensation Act?
- True
 - False
- 11.) Partners and members of limited liability companies are considered employees under the Worker's Compensation Act.
- True
 - False
- 12.) An employee's relationship to the owner has no bearing on the requirement to carry worker's compensation insurance.
- True
 - False
- 13.) Wisconsin has approximately how many separate job classifications for worker's compensation?
- 6
 - 65
 - 650
 - 6,500
- 14.) The Wisconsin Compensation Rating Bureau sets the premium rate for each class with the approval of the Commissioner of Insurance.
- True
 - False
- 15.) A worker's compensation policy will cover penalties for false reporting.
- True
 - False

- 16.) A worker's compensation policy will not cover illegal employment of a minor.
- True
 - False
- 17.) A worker's compensation will not cover increased compensation for a safety violation.
- True
 - False
- 18.) An uninsured employer is personally liable to reimburse the Uninsured Employers Fund for benefit payments to an injured employee.
- True
 - False
- 19.) Assuming the premium not paid during the uninsured time period was \$500, what is the penalty for failure to insure?
- \$500
 - \$750
 - \$1,000
 - \$1,500
- 20.) Self-insurers must have written approval from the department before becoming self-insured.
- True
 - False
- 21.) How quickly must employer report all work related fatalities to the Worker's Compensation Division?
- 1 hour
 - 24 hours
 - 48 hours
 - 7 days
- 22.) Within how many days must an insured employer report any claim of injury to their insurance carrier?
- 1
 - 3
 - 5
 - 7

- 23.) The Uninsured Employers Fund pays benefits on valid claims filed by employees who are injured while working for illegally uninsured employers.
- True
 - False
- 24.) An employer may be assessed a ____ percent penalty payable to the injured worker for delay in reporting an injury which causes an untimely payment.
- 5
 - 10
 - 15
 - 20
- 25.) If an employer intentionally fails to file a report of injury, the employer may be assessed a penalty for bad faith up to \$15,000 or 200 percent of compensation due.
- True
 - False
- 26.) The employer may not "unreasonably" refuse to rehire an injured employee if suitable employment is available within the employee's physical and mental limitations.
- True
 - False
- 27.) Assuming it is not an emergency, who picks the doctor for treatment under worker's compensation?
- Employer
 - Employee
 - Worker's Compensation Division
 - None of the above
- 28.) The employer may withhold a portion of the worker's compensation insurance from the employee's paycheck.
- True
 - False
- 29.) Sole proprietors are not considered or counted as employees.
- True
 - False

30.) In closely held corporations with not more than 10 stockholders, no more than 2 officers can be excluded from insurance coverage.

- a. True
- b. False

