

WORKERS' COMPENSATION INSURANCE

WHAT IS WORKERS' COMPENSATION INSURANCE?

Workers' compensation insurance provides compensation to employees who have a work-related injury or disease. Compensation includes partial wage replacement and full payment of medical and vocational rehabilitation costs. In case of death, workers' compensation benefits are paid to the employee's dependents. Workers' compensation insurance companies and self-insured employers pay these benefits and collect the premiums. The Minnesota workers' compensation law was designed to standardize benefits, reduce litigation, and encourage early rehabilitation intervention, good employee/employer relationships and return-to-work programs.

WHO IS REQUIRED TO HAVE WORKERS' COMPENSATION INSURANCE?

Generally all employers are required to have workers' compensation insurance and display the name of their insurer in a conspicuous place on a poster provided by the Department of Labor and Industry. Under Minn. Stat. § 176.021, every employer is liable to pay compensation in every case of personal injury or death arising out of and in the course of employment. Minn. Stat. § 176.181, subd. 2. requires employers who have not been approved for self-insurance (through the Minnesota Department of Commerce) to provide workers' compensation insurance for their employees. Employees are generally defined as persons performing services for another for hire including minors and workers who are not citizens.

Some entities, if they have no employees are not employers so they have no one to insure:

- Sole Proprietorships: Individually or family run, non-incorporated businesses owned by one person, including true independent contractors, where any employees are immediate family members (a spouse, parent or child, regardless of age). Note: Once a non-immediate family member is hired, insurance is required.
- Partnerships: Partners in business or farm operations where every employee is a partner or a spouse, parent or child of a partner, regardless of age.

Other categories of employment are excluded from workers' compensation requirement:

- Closely Held Corporations: Executive officers owning 25 percent or more of a closely held corporation or spouse, parent or child of the executive officer, regardless of age, are automatically excluded unless the business elects to cover them. To qualify for this exemption, such corporation must have 10 or fewer shareholders and less than 22,800 hours of payroll in the preceding calendar year.
- Employees of such a corporation who are more distantly related by blood or marriage to an executive officer of the corporation may also be excluded by filing a written request to be excluded. This includes brothers, sisters, aunts, uncles, grandparents and grandchildren. Cousins may not be excluded from coverage.
- Limited Liability Companies: There are exclusions for managers and members of their families that are similar to the exclusions for closely held corporations.

- **Family Farm Operations:** Persons employed by a family farm which pays or is obligated to pay cash wages during the preceding calendar year of less than the current coverage threshold. The threshold is \$8,000 unless the operation has \$300,000 in total liability coverage and \$5,000 in medical insurance coverage for farm laborers. Where the \$300,000 insurance coverage threshold is not met, the farm operation may pay up to the statewide average annual wage in total payroll to farm laborers in the previous year before workers' compensation insurance is required. The farmer-employer's immediate family members, farmers or their family members exchanging work within the community and their employees are also exempted from coverage. Executive officers of a family farm corporation are excluded.
- **Casual Employees:** An employee who is not working in the usual course of the trade, business, profession or occupation of the employer and both the employee and the employer understand that the employment is meant to be for one time or infrequent rather than permanent or periodically regular.
- **Household Workers:** This includes a domestic worker, a repairer, groundskeeper or maintenance worker at a private household who earns less than \$1,000 cash during a quarter of the year unless more than \$1,000 was earned in any quarter of the previous year.

The Department of Labor and Industry has definition sheets which expand the definitions and criteria above. They can be accessed at the address, phone number or website listed in the Resource Directory section of the Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota*.

The Minnesota Workers' Compensation Act provides that insurance coverage may be purchased for many of the above named classes of persons. When coverage is provided, the insured person becomes an "employee" as defined within the statute. When coverage is elected, written notice must be provided to the insurer and becomes effective the day following receipt of the notice or at a later date requested in the notice.

An employer contracting with an independent contractor may also provide insurance for that entity. The provider of the insurance may only charge the independent contractor a fee for the coverage if the independent contractor elects in writing to be covered and is issued an endorsement setting forth the terms of the coverage, the names of the persons covered, the fee charged and how the fee is calculated.

Employers who do not obtain the required insurance face serious consequences including penalties of up to \$1,000 per employee per week and an order prohibiting the employer from employing any person. In addition, the employer of any nonresidential construction, repair, or remodeling project that fails to provide workers' compensation coverage for employees may be sued for damages by any losing bidder on the project. The losing bidder may be entitled to recover the amount of profit the winning contractor expected to make on the project, as well as costs and attorney fees.

WORKER IDENTIFICATION NUMBER

The DLI Workers' Compensation Division is incorporating a new worker identification – or WID number into its system that may be used instead of a social security number (SSN) to identify claims.

The WID number is person-specific: a unique two- to eight-character number is automatically generated within the Workers' Compensation Division computer system when a claim-generating document is received (such as a claim petition where a First Report of Injury form has not been filed). It may be used rather than the SSN, with the date of the injury, to identify a specific case file.

The WID number is optional for now and will be for some time. Contact the DLI Workers' Compensation Division for more information.

WHAT INJURIES AND DISEASES ARE COVERED?

Workers' compensation insurance covers injuries and diseases that arise out of and in the course and scope of the employment. A work-related injury or disease is generally a physical condition that is caused, aggravated, precipitated or accelerated by the work or the work environment. Covered injuries can occur at the work place or outside the work place if the employee is on an assignment or is in transit between different work sites.

EMPLOYEES WHO ARE INJURED OUT OF STATE

Employees who are hired in Minnesota by a Minnesota employer or generally work here and also work out of state are covered by the Minnesota workers' compensation law. If a worker is employed in another state but is injured on the job in Minnesota, he or she can choose to be covered by the Minnesota workers' compensation law or by the law in his or her resident state.

A special provision for North Dakota employees limits the circumstances under which an employee hired in that state by a North Dakota employer could receive benefits under Minnesota law for injuries while temporarily working in Minnesota. Such an employee, who works in Minnesota fewer than 15 consecutive calendar days, or a maximum of 240 hours in a calendar year, will receive benefits under North Dakota law.

WHAT TO DO WHEN AN EMPLOYEE IS INJURED

When an employee is injured, it is the employer's responsibility – not the employee's – to complete a First Report of Injury form. The employer must give the employee the "Minnesota Workers' Compensation System Employee Information Sheet" at the time the employee is given a copy of the First Report of Injury Form. This form must be sent to the employer's workers' compensation insurance company so that it is received no later than 10 days after knowledge of the injury. The insurance company in turn must send the report to the Department of Labor and Industry so that it is received no later than 14 days after the injury if the injured worker is disabled more than three days. If the report is not filed within these deadlines, the employer or insurance company can be fined by the department. Self-insured employers have 14 days in which to file the report with the department.

It is important that the report is filed promptly so the insurance company will have adequate time to investigate the claim. If the work-related injury is serious or results in a fatality, the Department of Labor and Industry must be notified by telephone within 48 hours. The First Report of Injury form also must be filed.

Completing a First Report of Injury form does not mean that the employer accepts liability for the injury. The insurance company will pay on the claim only after it has been investigated and determined that it is most likely compensable.

RETURNING AN EMPLOYEE TO WORK

Employers are strongly encouraged to bring their injured workers back to work as soon as they can. In cases of serious injuries, this might mean reasonably accommodating employees as they improve or modifying jobs they had before they were injured. Employers are encouraged to establish disability management programs to plan for these cases. The employer's workers' compensation insurer can assist in establishing such a program.

If the employee requests it or if the employee remains (or is expected to remain) off work more than 90 days and a valid request for waiver of rehabilitation services is not filed by the employer/insurer, the employee is entitled to receive a vocational rehabilitation consultation to determine whether the employee is qualified to receive vocational services. A rehabilitation consultation is provided at the request of the employer, the insurer, the employee, or the Department of Labor and Industry and must be conducted by a qualified rehabilitation consultant registered with the Department.

It is important to coordinate these return-to-work programs with the employee's union, if there is one, to see that a return-to-work program does not conflict with seniority provisions in union contracts.

For employers of more than fifteen full-time employees, Minnesota law provides a civil penalty for an employer's refusal without reasonable cause to offer continued employment to an employee when continued employment is available within the employee's physical limitations. That penalty is one year's wages for the employee, up to \$15,000.

MAKING A SUITABLE JOB OFFER

A suitable job offer is the offer of a job that is within the injured employee's medical restrictions and that returns the employee as close as possible to the economic status he or she enjoyed before the injury. Economic status includes not only wages, but also opportunities for promotion and advancement. Employee fringe benefits also may be considered in determining economic status. For example, if the employee had a minor injury, the only appropriate suitable job would be his or her old job or one similar to it. Any job, even a job with another employer, can qualify as a suitable job if it meets the tests of medical appropriateness and economic status, and takes into account the employee's former employment age, education, previous work history, interests and skills.

DISPUTE RESOLUTION

The majority of workers' compensation claims are administered without disputes arising. The Minnesota Department of Labor and Industry "must make efforts to settle problems of employees and employers by contacting third parties, including attorneys, insurers, and health care providers, on behalf of employers and employees and using the department's persuasion to settle issues quickly and cooperatively." (Minn. Stat. § 176.261).

For this purpose, the Department has workers' compensation specialists and attorneys available to the public either by telephone or on a walk-in basis. The addresses and telephone numbers for both the St. Paul and Duluth offices can be found in the Resource Directory section of the *Guide*.

If informal methods are unable to resolve the problem, the Department and the Office of Administrative Hearings offer administrative conferences and mediation sessions.

The Department offers administrative conferences to try to resolve medical and rehabilitation benefit issues. The judges at the Office of Administrative Hearings conduct conferences to determine if the workers' compensation insurers are to be granted their request to discontinue disability benefits to an injured worker. The holder of an administrative conference will attempt to help the parties reach acceptable resolutions of the issues, but if this is not possible, the Department will issue a decision and order, which is appealable.

Administrative conferences are designed to be fast, informal proceedings to resolve workers' compensation disputes. Attorneys may represent the parties but are not mandatory.

Mediation sessions are also used as a method to expedite the handling of disputed workers' compensation claims. The Department will conduct a mediation session at the request of the parties. All parties must be agreeable to the mediation. Unlike other types of dispute resolution proceedings, the presiding official does not issue a decision. The mediator assists the parties in their efforts to work towards solutions and makes sure the agreements are in conformity with the workers' compensation laws. If the parties are successful in reaching resolutions, the mediator will prepare the mediation award and arrange for it to be properly signed, awarded, served and filed. As with administrative conferences, attorneys may represent the parties, but are not mandatory.

Other dispute resolution services offered at the Office of Administrative Hearings are settlement conferences, small claims court, special terms hearings, attorney fees and cost hearings, and formal hearings on workers' compensation issues. Some decisions are appealable to the Workers' Compensation Court of Appeals and the Minnesota Supreme Court.

REDUCING WORKERS' COMPENSATION COSTS

Workers' compensation insurance rates are set within broad limitations by the insurance company. Rates are adjusted by payroll risk classifications and by the employer's experience rating, which is the history of injuries in the business.

It is difficult to control the payroll risk classification because it is determined by the nature of the business and the type of work employees do. However, there are a number of ways to control the cost of workers' compensation premiums for the future. Employers who have accident prevention programs generally will have lower workers' compensation costs. The employer can take an active role in lowering workers' compensation costs by:

- Developing wellness programs that incorporate physical fitness and health education.
- Providing employee education on proper lifting techniques and appropriate body mechanics.
- Initiating return-to-work policies that include reasonable accommodation.
- Contacting Workplace Safety Consultation at the Department of Labor and Industry, which provides a free, nonenforcement service to assist small private-sector employers in

high hazard industries in their voluntary efforts to improve workplace safety and health. The Workplace Safety Consultation Division can be reached at the address and telephone number provided in the Resource Directory section of the *Guide*.

Under state law, all high hazard employers and those with more than 25 employees must establish a joint labor-management safety committee to address workers' compensation and workplace safety issues.

The employer's insurance company or agent can provide more information about accident prevention, safety and health programs and return-to-work programs.

BUYING WORKERS' COMPENSATION INSURANCE

There are several thousand licensed insurance agents who sell workers' compensation insurance in Minnesota. It is best to contact several agents to review the business and to quote prices for the insurance. In Minnesota, workers' compensation insurance is sold through open competition, which means insurance companies establish rates and compete for business. All workers' compensation policies provide coverage mandated by law; therefore, only the price and quality of service varies, and shopping for insurance can save money. Other factors to consider in choosing a carrier are claims servicing, safety counseling, and the carrier's reputation.

Options other than insurance may be available to cover an employer's workers' compensation liability. For example, some large employers or groups of employers are approved by the Department of Commerce to self-insure, which allows them to directly manage their workers' compensation claims and contain their costs. Many large employers who are approved to self-insure their risk hire a claims administration company.

Occasionally, an employer is unable to obtain workers' compensation insurance on the open market because the business is too small to justify the expense of selling and servicing the account or because of the nature of the risk involved in the business. In this case, the employer would buy the insurance through the Assigned Risk Pool. Additional information about this type of plan can be obtained from an insurance agent.

SEMINARS ON WORKERS' COMPENSATION

The Minnesota Department of Labor and Industry provides speakers and sponsors seminars and programs for employers on controlling workers' compensation costs. Information about workers' compensation seminars may be obtained from the Department of Labor and Industry at the address and telephone number provided in the Resource Directory section of the *Guide*, or at its website, www.dli.mn.gov.

FURTHER INFORMATION

Additional information on workers' compensation may be obtained by calling the Workers' Compensation Division at the address and telephone numbers provided in the Resource Directory section of the *Guide*. The Division also produces a primer about HIPPA (privacy of health information) and workers' compensation which will be helpful to employers.