

This is intended to provide Pennsylvania employers with general information regarding their rights and duties under the state's workers' compensation program.

Workers' Compensation (WC) is mandatory, employer-financed, no-fault insurance which ensures that employees disabled due to a work-related injury or disease will be compensated for lost wages and provides necessary medical treatment to return them to the workforce.

The workers' compensation system provides an "exclusive remedy" to employers and employees and is designed to simultaneously achieve the goals of safer workplaces, prompt compensation and treatment of those it protects and reduced litigation costs to all parties.

PA WC Coverage Requirements

The requirement to insure workers' compensation liability is mandatory for any employer that employs at least one employee who:

- could be injured or develop a work-related disease in this state, or
- could be injured outside the state if the employment is principally localized in Pennsylvania, or
- could be injured outside the state, while under a contract of hire made in Pennsylvania, if the employment is not principally localized in any state, if the employment is principally localized in a state whose workers' compensation laws do not apply, or the employment is outside the United States and Canada,
- unless all employees are excluded from the provisions of Pennsylvania's workers' compensation laws.

Failure to Carry WC Coverage

In the event an employer is uninsured at the time an employee suffers a compensable work-related injury, the department will pursue reimbursement from the employer of monies paid from the Uninsured Employers Guaranty Fund in relation to the claim. Reimbursement will include costs, interest, penalties, fees under section 440 of the Worker's Compensation Act and attorney fees. The department will also pursue prosecution against the uninsured employer under section 305 of the Act.

In addition, an uninsured employer faces grave civil and criminal risks for failing to maintain continuous workers' compensation coverage. Not only can the employee sue the employer in tort for work-related injuries or diseases, in which suit the employee may recover amounts in excess of those allowed

under workers' compensation, but the employer and those individuals responsible to act on its behalf may each be criminally charged for each day's failure to maintain continuous workers' compensation coverage.

Misdemeanor convictions can result in the potential imposition of a \$2,500 fine and up to one year in imprisonment for each day the employer is in violation of the requirement to maintain workers' compensation coverage. Felony convictions can result in the potential imposition of a \$15,000 fine and up to seven years imprisonment for each day the employer intentionally violated this requirement. Further, the employer and those individuals responsible to act on its behalf may be required to pay all benefits awarded by a workers' compensation judge.

The Bureau of Workers' Compensation investigates employer compliance with workers' compensation laws and may initiate the filing of charges against employers and individuals responsible to act on its behalf if workers' compensation coverage is not continuously maintained.

Further, any individual, including competitors, may seek county district attorney approval to file a private criminal complaint against an employer who fails to maintain workers' compensation coverage when required to do so.

Assessments

Section 1610 of the Workers' Compensation Act authorizes the Department of Labor & Industry to assess an employer \$200 a day up to 30 days for failing to respond to the Department's request for information regarding workers' compensation coverage.

Municipality Building Permits

Section 302 of the act requires that a municipality shall require the Contractor to present proof of workers' compensation insurance or an affidavit that the contractor does not employ other individuals and is not required to carry workers' compensation insurance prior to issuing a building permit to a contractor.

Posting Notice

An employer is required by law to post, in a prominent and easily accessible place, at its primary place of business and sites of employment, a notice containing the name, address and telephone number of the insurer or other appropriate party to address regarding workers' compensation claims or to request information.

Insuring WC Liability

An employer may insure its workers' compensation liability:

- By purchasing a workers' compensation policy from the State Workers' Insurance Fund (SWIF).

Call SWIF at 570-963-4635.

-or-

- Through an insurance company.

Visit the PA Insurance Department's website at www.insurance.pa.gov for carriers approved to offer workers' compensation insurance in PA.

-or-

- By securing Department of Labor & Industry approval to self-insure individually or as a group.

An employer seeking approval to self-insure must submit its latest audited financial statements along with an application fee with each application. Self-insured employers are required to set aside funds to pay workers' compensation claims and post security for future claims.

Self-insured employers are also required to maintain an accident and illness prevention program as a prerequisite for retention of self-insured status and to file an annual program report with their renewal application. An employer may also self-insure as a member of a certified group, which is restricted to businesses of a similar nature.

For more information on how to self-insure, contact the bureau's Self-Insurance Division at 717-783-4476.

Cost of WC Insurance

An insured employer is assigned a classification indicating the employer's line of work. Employer classifications are determined by the PA Compensation Rating Bureau, a non-government agency licensed and regulated by the PA Insurance Department. The employer's basic premium is based on its classification code, the carrier's rate for the classification and the employer's annual payroll.

Insurance rates may vary so employers may want to contact several different authorized insurance carriers for information on their rates.

Employers Can Reduce WC Costs

1. *Develop a certified workplace safety program.*

Employers with a functioning workplace safety committee, certified by the bureau, are eligible to receive a 5 percent annual workers' compensation policy premium discount.

2. *Offer job openings to injured workers.*

An employer is obligated by law to offer available jobs to its injured workers if the worker is capable of performing the job.

3. *Have a list of designated medical providers.*

The employer may be relieved of its liability to pay for medical services rendered during the first 90 days of treatment if it posts a list of six or more health care providers (at least three of which must be physicians

and no more than four of which may be coordinated care organizations), the list meets certain other legal requirements and the employee fails to treat with a medical provider on the list.

The employer is required to inform its employees in writing of their rights and duties regarding the provider list and to have employees acknowledge in writing that they understand those rights and duties. After the initial 90-day treatment period, the employee has the option of choosing his or her own doctor. The employee is required to notify the employer within five days of a visit to a non-designated provider.

4. *Strive for an injury-free workplace.*

The Workers' Compensation Act encourages employers to provide safe working environments by providing premium discounts to employers who have not experienced a compensable lost-time injury in the preceding two years.

5. *Corporations may seek exception from the requirements for certain executive officers.*

Executive officers who have an ownership interest in a subchapter S corporation, or at least a 5 percent ownership interest in a subchapter C corporation, or who serve voluntarily, without pay, in a non-profit corporation, may apply for exclusion with their workers' compensation carrier or, if no insurance, to the Bureau of Workers' Compensation.

6. *Report suspected workers' compensation fraud.*

Fraud contributes to the cost of doing business. Anyone who commits fraud may be subject to civil or criminal penalties.

An employer commits fraud by understating payroll or misclassifying employee job codes in order to reduce premiums, thus making it difficult for the honest employer to compete in its market. Medical providers and others may also engage in fraudulent activity by billing for services that were not provided. Reports of these types of fraud should be directed to the PA Insurance Fraud Prevention Authority at 888-565-IFPA.

An employee commits fraud by knowingly and intentionally collecting total disability benefits or partial disability benefits in excess of the amount permitted by law while employed or receiving wages and/or by knowingly and intentionally failing to report wages, unemployment compensation, social security, severance or pension plan benefits while receiving workers' compensation benefits.

If you suspect that someone collecting workers' compensation benefits is doing so fraudulently, send written correspondence to the Compliance Section, Bureau of Workers' Compensation. Be sure to include the full name and address of the person collecting workers' compensation benefits, the name of the employer by whom the individual became eligible to receive the benefits (if known) and your reasons for believing the individual is collecting benefits fraudulently. If you are willing to

provide additional information to the insurance carrier, include your name and address or telephone number, including area code.

If the information you provide enables the Compliance Section to locate an insurance carrier paying benefits, your response will be forwarded to that carrier so that it may conduct an investigation.

Reporting Injuries

Unless the employer has knowledge of the injury or the employee gives notice within 21 days of the injury, no compensation is due until notice is given. Notice must be given no later than 120 days after the injury for compensation to be allowed.

The employer is required to immediately report all injuries to its insurer or, if self-insured, the individual responsible for management of its workers' compensation program.

For injuries resulting in the loss of a day, shift or turn (or more) of work, the employer must also submit a First Report of Injury electronically to the bureau, either via Electronic Data Interchange or the internet **www.dli.pa.gov**, within seven days of injury. However, First Reports for injuries resulting in death must be filed with the bureau within 48 hours. Copies of First Reports must also be provided to the injured worker and the employer's insurer.

Employee Compensation Benefits

Injured employees are entitled to employer-paid medical treatment and, if cumulative period(s) of disability exceed seven days, wage-loss benefits. Wage-loss benefits must commence within 21 days of the employer's knowledge or notice of injury, unless the claim is denied within that time period.

Disability for workers' compensation purposes refers to wage loss; that is, an employee's inability to return to work at his/her prior earnings or occupation. Wage-loss benefits are based on the employee's pre-injury average weekly wage. Wages include employer-provided room and board, bonuses or incentive pay, vacation pay and gratuities reported for income tax purposes.

If the calculated benefit is less than 50 percent of the established annual statewide average weekly wage, the benefit payable is the lower of 50 percent of the statewide average weekly wage or 90 percent of the workers' average weekly wage. Otherwise, the benefit is 66-2/3 percent of the pre-injury average weekly wage, up to an established statewide maximum

Wage-loss benefits can be reduced by wages received through employment and self-employment. Wage-loss benefits for injuries occurring after Aug. 31, 1993, can be reduced by unemployment compensation benefits received. Wage-loss benefits for injuries sustained after June 24, 1996,

can be reduced by 50 percent of "old age" Social Security benefits received, as well as employer-paid severance and pension plan benefits.

Wage-loss benefits are not due during periods of incarceration following conviction or when the employee is receiving wages equal to or more than his/her pre-injury wages.

Exclusions to the Coverage Requirements

In Pennsylvania, an employer may be excluded from the requirement to insure its workers' compensation liability only if **all** workers employed by it fall into one or more of the following categories:

- Federal Workers
- Longshoremen
- Railroad workers
- Casual workers whose employment is casual in character **AND** not in the regular course of the business of the employer
- Persons who work out of their own homes or other premises not under the control or management of the enterprise **AND** make up, clean, wash, alter, ornament, finish, repair, or adapt articles or materials for sale that are given to them
- Agricultural laborers earning under \$1200 per person per calendar year **AND** no one agricultural laborer is provided by the employer's spouse or child(ren) under the age of 18 who have not sought inclusion under Pennsylvania's workers' compensation laws by filing an express written contract of hire with the Department of Labor & Industry
- Domestic workers who have not elected with the Department of Labor & Industry to come under the provisions of the Workers' Compensation Act
- Sole proprietor or general partners with no other employees
- LLC's where only the employees are members of the LLC
- Persons granted exemption by the Department of Labor & Industry due to their religious beliefs
- Executive officers who have been granted exclusion by the Department of Labor & Industry
- Licensed real estate salespersons or associate real estate brokers affiliated with a licensed real estate broker or licensed insurance agents affiliated with a licensed insurance agency, under a written agreement, remunerated on a commission-only basis and qualifying as independent contractors for state tax purposes or for federal tax purposes under the Internal Revenue Code of 1986

NOTE: Unless **all** employees meet one or more of the above exclusions, the employer must insure its workers' compensation liability, even if the employees are working limited part-time hours or are family members, such as a spouse or child(ren).

Independent Contractors

The rules for independent contractors can be complicated. Just because an employer considers someone an independent contractor does not necessarily mean the person qualifies as such. If any of the following factors pertain to the person being hired, they may be considered an employee and not an independent contractor:

- Work at a location directed by the employer
- Subject to supervision and instructions regarding the details of the work
- Subject to the dismissal by the employer
- Performs on-going services for the employer
- Uses tools, equipment, and materials furnished by the employer
- Has federal income, FICA, and other taxes deducted by the employer
- Performs duties assigned by the employer
- Works hours set by the employer
- Receives a regular salary, usually based on an hourly, weekly, or monthly rate

Questions as to how categories would apply to specific workers should be directed to your personal attorney for interpretation.

Bureau Contacts

Bureau of WC	717-783-5421
Employer Services Helpline	717-772-3702
Claims Information Helpline	
Toll free inside PA	800-482-2383
Local and outside PA	717-772-4447
Hearing Impaired	7-1-1
Health and Safety Division	717-772-1917
Self-Insurance Division.....	717-783-4476
Compliance Section	717-787-3567

email address:

li-bwc-helpline@pa.gov

BWC Web Information:

www.dli.pa.gov

Reference Materials

- The WC Act is available in soft form online at **www.dli.pa.gov**. If you would like a hard copy of the WC Act please contact the bureau at 717-772-4447.
- Visit the web for other workers' compensation informational material, including the PA WC Annual Report, the most frequently asked workers' compensation questions, and safety committee information.
- For information to start a small business, call the Business One-Stop Shop Office at 833-722-6778.

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*