

## Is There Any Penalty For Negligence By The Employer Or The Employee?

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

- ▶ An employer violated a safety order/statute 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 fails to use safety devices that are provided by the employer and that are adequately maintained, and the use of which is reasonably enforced by the employer resulting in the employee's compensation possibly being reduced by 15 percent with a maximum reduction of \$15,000.
- ▶ An employee violated the employer's drug and/or alcohol policy and there is direct causation between the violation and the workplace injury. Under this circumstance, medical expense is due, but no wage replacement or death benefits are payable to the employee or his/her dependents.

## What Injuries Must An Employer Report?

All employers must report, by phone, all work-related fatalities to the Worker's Compensation Division, Madison Office, (WC-Madison) within 24 hours. All employers must also report all work-related fatalities to their insurance carrier within 24 hours. Additionally:

- ▶ Employers are required to provide the WC-Madison, with U.S. Department of Labor – Occupational Safety and Health Administration (OSHA) survey information when requested.
- ▶ Insured employers must report any claim of an injury to their insurance carrier within 7 days.
- ▶ Self-insured employers and insurance carriers must report the following to the WC-Madison:
  - Injuries that result in time lost from work 4 days or more after the date of injury. Except in the case of fatalities, such reports must be made electronically within 14 days after the injury.
  - Claim payment and wage-related information within 30 days after injury, with some exceptions. Exceptions to electronic reporting are for litigated, permanent total disability and fatal claims.
  - A final treating practitioner's medical report for injuries resulting in disabilities of more than 3 weeks, any permanent disability, surgery other than to correct a hernia or eye injuries requiring medical treatment on 3 or more occasions off the employer's premises.

## 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 200% of compensation due up to a \$30,000 maximum. An employer may be assessed a 10% penalty payable to the injured worker for delay in reporting an injury that causes an untimely payment.

## Who Picks The Doctor For Treatment?

The employee has the right to select any physician, psychologist, podiatrist, dentist, chiropractor, physician assistant or advanced practice nurse prescriber, unless there is an emergency. The employee has the right to a provider of second choice through notice to the employer or insurer. An employer may 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.



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## What If I Suspect Fraud?

[dwd.wisconsin.gov/wc/fraud/](http://dwd.wisconsin.gov/wc/fraud/)

If you suspect fraud from an employee, employer, medical provider or insurance carrier, you may report it to the Worker's Compensation Division. The Division has an agreement with the Department of Justice for assistance with investigating and prosecuting fraud.

### Questions about Worker's Compensation should be directed to:

Wisconsin Department of Workforce Development  
Worker's Compensation Division  
201 E. Washington Avenue  
P.O. Box 7901  
Madison, WI 53707-7901

(608) 266-1340  
(608) 267-0394 (Fax)

Website: [dwd.wisconsin.gov/wc/](http://dwd.wisconsin.gov/wc/)

DWD is an equal opportunity employer and service provider. If you have a disability and need assistance with this information, please dial 7-1-1 for Wisconsin Relay Service. Please contact the Workers Compensation Division at (608) 266-1340 to request information in an alternate format, including translated to another language.

# Wisconsin Worker's Compensation Law

## EMPLOYER FACTS

STATE OF WISCONSIN  
 DWD  
Department of Workforce Development

Worker's Compensation



## What Is Worker's Compensation?

[dwd.wisconsin.gov/dwd/publications/wc/wkc-13328-p.htm](http://dwd.wisconsin.gov/dwd/publications/wc/wkc-13328-p.htm)

Worker's compensation is a system of no-fault insurance that pays benefits to employees for 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 Must Have Worker's Compensation Insurance?

Most Wisconsin employers are required by law to have worker's compensation insurance, including:

- ◆ Employers who employ 3 or more workers on a full-time or part-time basis must have insurance.
- ◆ Employers who employ 1 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.
- ◆ Farmers employing 6 or more workers on any 20 days during a calendar year must have insurance 10 days after the 20th day of employment.

## Are There Any Exemptions?

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 Workers Compensation 9-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 employees, as well as 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. Find more online at:

[dwd.wisconsin.gov/dwd/publications/wc/wkc-13324-p.htm](http://dwd.wisconsin.gov/dwd/publications/wc/wkc-13324-p.htm)

In addition, there are specific provisions under s. 452.38 for a real estate broker, agent or salesperson that may exempt them from the Act. For more information, visit:

[dwd.wisconsin.gov/dwd/publications/wc/wkc-10466-p.htm](http://dwd.wisconsin.gov/dwd/publications/wc/wkc-10466-p.htm)

## How About Sole Proprietors, Partners and Limited Liability Companies?

[dwd.wisconsin.gov/dwd/publications/wc/wkc-13964-p.htm](http://dwd.wisconsin.gov/dwd/publications/wc/wkc-13964-p.htm)

Sole proprietors, partners and members of limited liability companies are not considered or counted as employees. Generally, policies exclude sole proprietors, partners and members of limited liability companies, unless they are specifically endorsed to include them. Sole proprietors, partners and members of limited liability companies 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 must be completed by filing a Corporate Officer Option Notice with the Worker's Compensation Division.

## 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 made by employees who waive rights to compensation are not valid.

## What Will Insurance Cost and Where Do Employers Get It?

[wcrb.org](http://wcrb.org)

The cost of insurance will vary and is based on payroll. The amount due is determined through approximately 650 separate job classifications rated on past experience in the industry. Insurance will cost more for most hazardous occupations. With approval of the Commissioner of Insurance, rates are set statewide by the Wisconsin Compensation Rating Bureau (WCRB). To obtain a policy, there are approximately 400 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 WCRB for assigning an insurer to write a policy for you. The cost is the same for assigned coverage.

## Contact WCRB:

20700 W. Swenson Drive, Suite 100  
Waukesha, WI 53186  
(262) 796-4540

## What Is Self-Insurance?

Approximately 180 private sector and 55 municipal employers are self-insured. Self-insured entities pay their claims using their own funds, instead of purchasing insurance. Self-insurers must have written approval from the Worker's Compensation Division before becoming self-insured. The approval process includes submitting an application with 5 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 Are The Penalties For Failure To Insure?

The penalty for any 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 a coverage lapse of 7 consecutive days or less is subject to a \$100 penalty for each uninsured day up to 7 days, if the employer has not previously had an illegal lapse in coverage and that no injury occurred during the uninsured period. In addition, employers that fail to obtain required insurance may be ordered by the Worker's Compensation Division to cease operations until coverage is obtained.

## What If An Injury Occurs Without A Policy?

[dwd.wisconsin.gov/wc/employers/uef-info.htm](http://dwd.wisconsin.gov/wc/employers/uef-info.htm)

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

## What Benefits Are Payable To An Injured Employee?

- ◆ 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.

## What Liability Is Covered Under A Policy?

Any worker's compensation insurance policy covers liability for compensation and medical expenses for all employees. Policies do not cover:

- ◆ Penalties for false reporting.
- ◆ Penalties for refusal to rehire an injured employee, if otherwise medically able.
- ◆ Increased penalties for safety violations.
- ◆ Illegal employment of a minor.
- ◆ Penalties for untimely payments caused by delays in reporting.

