



**COLORADO**

Department of  
Labor and Employment

Division of Workers'  
Compensation

# EMPLOYER'S GUIDE



**December 2015**



**THE INFORMATION IN THIS  
BOOKLET IS INTENDED TO BE  
GENERAL INFORMATION ON  
THE COLORADO  
WORKERS' COMPENSATION  
SYSTEM AND IS NOT INTENDED  
TO BE A  
SUBSTITUTE FOR LEGAL  
ADVICE**

**Division of Workers' Compensation  
633 17th Street, Suite 400  
Denver, Colorado 80202-3626  
[www.colorado.gov/cdle/dwc](http://www.colorado.gov/cdle/dwc)**

# Workers' Compensation Guide For Employers

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# I. INTRODUCTION

The purpose of workers' compensation is to speedily and justly compensate employees for injuries occurring during the performance of their jobs and to insure employers against liability for injuries to their employees. Before the workers' compensation law was established, there was little recourse for workers injured on the job. A worker could sue in court, but had to prove negligence. The outcome was uncertain and could take years to resolve. This was costly both to the employer and the worker, often with little benefit to either party. The move toward workers' compensation began during the Industrial Revolution as mechanization brought an increase in work-related injuries. It was a new legal concept: liability without regard to fault. First established in Germany in 1856 and adopted soon after by England and most of Western Europe, workers' compensation was enacted in Colorado in 1915. By 1920, most states had workers' compensation laws and by 1947, all states mandated workers' compensation coverage.

Most of the information in this booklet is for employers who have or are seeking insurance coverage from insurance companies. If an employer is self-insured or a part of an insurance pool, some of the reporting requirements may be different.

## II. THE COLORADO WORKERS' COMPENSATION ACT

Workers' compensation is based on a mutual agreement between the employer and the employee and is called the "exclusive remedy" provision of the Workers' Compensation Act. This serves two basic purposes.

- To promptly provide employees with reasonable and necessary medical treatment and partial wage replacement while the employee recovers from the effects of a work-related injury or occupational disease. In the case of a fatality, to provide death benefits to dependent survivors.
- To provide employers with predictable costs for work-related injuries and illnesses.

Workers' compensation insurance coverage is paid by the employer. Employers purchase insurance coverage through a private insurance company or, if qualified, through self-insurance programs.

**No portion of the cost of insurance may be deducted from an employee's wages.** In Colorado there currently is no recognized form of alternative coverage that can be used instead of workers' compensation coverage.

The Division of Workers' Compensation in the Department of Labor and Employment administers the workers' compensation system in Colorado.

# III. INSURANCE COVERAGE

All public and private employers in Colorado, with limited exceptions, must provide workers' compensation coverage for their employees if one or more full- or part-time persons are employed, including family members. A person hired to perform services for pay is presumed by law to be an employee. This includes all persons elected or appointed to public sector service and all persons appointed or hired by private employers for remuneration. There are a few exemptions to this definition.

## EXEMPTIONS

There are some exemptions from coverage requirements for specific occupations and individuals. The following is only a partial list of occupations and/or individuals that may be exempt from mandatory coverage under the Workers' Compensation Act. The exemptions listed here are described only in general terms. As individual situations vary, and as some exemptions have specific requirements that must be met in order to qualify, please consult the Workers' Compensation Act or contact the Division of Workers' Compensation for detailed information on exemptions.

- Certain casual maintenance or repair work performed for a business for under \$2,000 per calendar year
- Certain domestic work, maintenance or repair work for a private homeowner that is not done full time. Full time is defined as 40 or more hours per week OR five or more days per week.
- Licensed real estate agents and brokers working on commission
- Independent contractors who perform specific for-hire transportation jobs

- Drivers under a lease agreement with a common or contract carrier, when the carrier has offered the driver a policy of workers' compensation insurance.
- Any person who volunteers time or services for a ski area operator
- Persons who provide host home services as part of residential services and supports
- Federal employees (covered under federal laws)
- Railroad employees (covered under federal laws)
- Independent contractors who are generally defined in the section entitled "Independent Contractors," below.

## **INDEPENDENT CONTRACTORS**

A person hired to perform services for pay is presumed by law to be an employee unless they meet the definition of an independent contractor or qualify under a specific exemption provided by workers' compensation laws. A person who works as an independent contractor and can prove that the person meets the legal definition of independent contractor is not an employee and is not entitled to workers' compensation benefits unless the person buys a separate policy.

If a business hires an individual as an independent contractor, the independent contractor must be:

- Free from the business' control and direction over how the service is performed; AND
- Customarily engaged in an independent trade, occupation, profession, or business related to the service being performed.

These are the two key principles of independent contracting.

A written contract may be helpful in proving independent contractor status and is always helpful in defining the work relationship. However, the actual facts of the work relationship are the most important evidence. If the actual facts differ from what the written contract says, the facts will control. A list of important criteria about written contracts is provided in the next section.

It is important to remember that if a contractor is hired who has employees, the business must verify that the contractor has workers' compensation insurance for those employees. A business may verify insurance coverage by requesting a certificate of insurance from the contractor's insurance company or by checking the employer's insurance coverage verification link on the Division's website. Notification of any policy changes may also be requested of the insurer. If the contractor does not have workers' compensation insurance for its employees throughout the duration of the work being done for the business, the business that hired the contractor can be held responsible for the workers' compensation insurance for the contractor's employees. If the business provides coverage for the contractor's employees because the contractor failed to do so, the business can recover the cost of the premium from the contractor.

## **WRITTEN CONTRACTS WITH INDEPENDENT CONTRACTORS**

When a business intends to hire an independent contractor for a project, the parties may decide to write a contract. This helps to establish that the independent contractor adequately meets the two key principles of independent contracting identified above. A contract should show the following factors appropriate to the parties' circumstances.

- The business does not require the individual to work for it exclusively, except that the individual may choose to work exclusively for the business for a finite period of time specified in the contract.
- The business does not establish a quality standard for the individual, except that the business may provide plans and specifications regarding the work. The business cannot oversee the actual work or instruct the individual as to how the work will be performed.
- The business does not pay a salary or an hourly rate but rather pays a fixed or contract rate.
- The business does not have the right to terminate the individual's services during the contract period unless the individual violates the terms of the contract or fails to produce a result that meets the specifications of the contract.
- The business does not provide more than minimal training for the individual.
- The business does not provide tools or benefits to the individual, except that materials and equipment may be supplied.
- The business does not dictate the time of performance, except that a completion schedule and a range of negotiated and mutually agreeable work hours may be established in the contract.
- The business does not pay the individual personally but rather makes checks payable to the trade or business name of the individual.
- The business and the individual do not combine business operations in any way; all business operations are maintained separate and distinct.

Additional relevant factors will also be considered such as whether the worker maintains an independent business card, listing, address, or telephone; has a financial

investment such that there is a risk of suffering a loss on the project; uses his or her own equipment on the project; sets the price for performing the project; employs others to complete the project; and carries liability insurance.

**REMEMBER:** A written contract may be helpful in proving independent contractor status. However, the facts of the work relationship are actually more important than what the contract says. Section 8-40-202(2), C.R.S. states requirements for disclosure and format for such contracts. Be sure you are familiar with this section of the law.

## CONSTRUCTION INDUSTRY

Every person performing construction work on a construction site is required to have workers' compensation insurance. Moreover, anyone who contracts for the performance of construction work on a construction site must either provide workers' compensation for, or require proof of workers' compensation from, everyone with whom he or she has a direct contract.

There are four exceptions to the requirement to be covered by workers' compensation insurance while working on a construction site:

- Corporate officers who own at least 10% of the shares of the corporation.
- Members of an LLC who own at least 10% of the shares of the LLC.
- Sole proprietors who have a trade name registered with the Secretary of State.
- Partners in a partnership with a trade name registered with the Secretary of State.

Anyone who meets one of the above criteria is eligible to reject the required workers' compensation coverage.

To do so, the person must file a form with either their workers' compensation insurance carrier (if applicable), or with the Division of Workers' Compensation. Forms are available on the Division's website. In order to ensure that everyone hired as a contractor is in compliance, business owners may check the Division's website to verify insurance coverage information and/or coverage rejection status.

If a business hires contractors to perform construction work and does not ensure that the contractors are in compliance regarding workers' compensation, the business that hired the contractors can be fined up to \$250.00 per day for a first offense, and from \$250.00 up to \$500.00 per day for any subsequent offense.

## **CORPORATIONS AND LIMITED LIABILITY COMPANIES**

Corporations and Limited Liability Companies (LLCs) are independent legal entities. Because of this, corporate officers and members of the LLC are employees of the corporation or LLC. Corporate officers and members of an LLC must be covered by workers' compensation insurance, unless they elect to reject the required coverage.

To be eligible to reject coverage, the following criteria must be met:

- The corporate officer or LLC member must own at least 10% of the stock of the company; AND
- For corporations, a corporate officer is defined as being the president, vice-president, secretary, treasurer, or chairman of the board.

Corporate officers or LLC members who wish to reject coverage must do so by filing the appropriate form either

with the company's workers' compensation carrier or, if the company has no other employees and all corporate officers or LLC members are eligible to and wish to reject coverage, with the Division. Forms are available from your company's workers' compensation carrier or on the Division's website.

## **TYPES OF INSURANCE COVERAGE**

In Colorado, there are four ways in which an employer may obtain workers' compensation coverage:

1. Commercial Insurance;
2. Pinnacol Assurance;
3. Self-Funding (Individual); or
4. Self-Funding (Groups and/or Pools).

### ***Commercial Insurance/Pinnacol Assurance***

Workers' compensation insurance may be purchased from one of over five hundred private insurance companies, including Pinnacol Assurance, authorized to conduct business in the State of Colorado. Pinnacol Assurance is required to write insurance policies for all businesses, including those in high risk industries. Those who purchase commercial insurance often receive cost advantages over prevailing insurance rates through innovative cost-plus and cash flow plans, that are available to select customers, and "package deals" where other types of insurance policies are discounted for the inclusion of the workers' compensation business. Changes in the laws and the market may result in fluctuations in the types of plans that are offered and in the availability of coverage from year-to-year.

## ***Self-funding, Individual - Self-Insurance***

Colorado workers' compensation statutes allow employers, meeting strict financial and loss control standards, to self-insure this risk. Authorized by special permit, such workers' compensation obligations are paid directly from the earnings and assets of the employer. Permits to self-insure individual companies are obtained through the Division of Workers' Compensation. Employers applying for self-insurance must regularly employ 300 or more employees in Colorado or be a division or subsidiary of a parent company that has a minimum of \$100,000,000 in assets.

## ***Self-funding, Groups/ Pools***

Colorado law allows group pooling by public sector employers under Section 8-44-204, C.R.S. and for trade or professional associations under Section 8-44-205, C.R.S. The Division of Workers' Compensation does not administer this program. It is administered by the Division of Regulatory Agencies.

For all methods of financing the workers' compensation risk, the employer and employees are subject to the same laws and rules of procedure.

## **IT PAYS TO SHOP AROUND**

Given the expense of workers' compensation insurance and its potential impact on the lives of employees, a business should review its workers' compensation coverage options before selecting an insurer.

### ***Tips***

- Start shopping 2-3 months before the current policy expires. Insurers generally take a month or more to evaluate a business' loss history and return a quote.

- Solicit quotes from several insurers that represent the range of rates in the total market. An agent may be consulted to get a representative sample.
- Make sure employees are properly classified by the underwriter.
- Ask the agent about the quality and timeliness of service provided by a prospective insurer before switching to a new insurer.
- Check with other employers in the community about their experiences with their insurers.
- Discuss with the agent, broker or insurer what alternative plans may be available (i.e., self-funding, deductible options, premium credits, etc.). Be aware that past loss experience will have a direct correlation to future premiums.
- Address any questions regarding insurance practices of individual insurance companies to the Department of Regulatory Agencies, Division of Insurance.

## **RATEMAKING AND APPEALS**

Insurance companies establish rates for premiums as a part of their underwriting process. They use loss costs established by the National Council on Compensation Insurance (NCCI). These loss costs are based on overall average losses, loss adjustment expenses and loss trends of all workers' compensation insurers in Colorado. The insurers also use expense multipliers based on operating expenses such as production costs, general expenses, taxes, licenses and fees, and profits, on top of the loss costs. These components (loss costs and expense multipliers) combined result in manual rates by classifications. These manual rates are generally applied to each \$100 of payroll paid out by employers. Insurers classify employers by the type of business in which the employer engages.

If you do not understand why your business was classified at a particular classification or rate or how your experience modification factor was calculated, talk to your agent or to someone in the underwriting department at your insurance company.

If there is a disagreement with the agent or insurer on the classification assignment or experience modification factor, you may file a written appeal with the Workers' Compensation Classification Appeals Board, Tim Hughes, c/o National Council on Compensation Insurance, 10920 W. Glennon Ave., Lakewood, CO 80226, within thirty (30) days after you have exhausted all appeal review procedures provided by your insurance company. The board will have a hearing on your dispute as soon as possible. You or your legal representative may appear before the board at the hearing. They will render a final written decision on your appeal.

The board's decision will be final and not subject to appeal unless you, the insurer or Pinnacol Assurance provides written notice of appeal to the Commissioner of Insurance within thirty (30) days after the date of the board's decision. Send the written notice of appeal to the Commissioner of Insurance at 1560 Broadway, Suite 850, Denver, CO 80202.

## **PENALTIES TO UNINSURED EMPLOYERS**

The Division of Workers' Compensation investigates all information received or discovered about employers who may be uninsured for workers' compensation. If an employer fails, neglects or refuses to obtain workers' compensation insurance as required by law, the Director of the Division is authorized to assess fines of up to \$250.00 per day for the first violation and from \$250.00 per day up to \$500.00 per day for any subsequent violations. In addition, a cease and desist order may also be issued

against the business to stop the business operations until insurance is obtained.

The Colorado Workers' Compensation Act does not provide a fund to cover the medical expenses or lost wages of employees injured while working for uninsured employers. Employers have the sole responsibility to provide insurance. If unlawfully uninsured at the time of an injury, the employer must pay all statutory medical and disability benefits for the injured employee and an additional 50% of all temporary, permanent and disfigurement benefits for having been uninsured.

## **IV. UNEMPLOYMENT INSURANCE vs. WORKERS' COMPENSATION**

Workers' Compensation insurance differs from unemployment insurance. Workers' compensation insurance provides compensation and medical benefits for those injured on the job.

Unemployment insurance provides temporary and partial wage replacement for those who are unemployed through no fault of their own. The employee must be able to work, be available for work, and be willing to seek and accept suitable work to qualify for unemployment benefits.

To get information about a new employer account, your liability as an employer, or for tax rate information, contact Unemployment Insurance Tax at 1.800.480.8299 (in-state toll free), or in the Denver metro area, 303.318.9100.

# V. EMPLOYER RESPONSIBILITIES

## MAINTAIN A SAFE ENVIRONMENT

An unsafe working environment can be one of the most costly aspects of doing business. Workers' compensation is considered the "exclusive remedy" for occupational injuries or diseases; however, additional fines and criminal penalties have been assessed in extreme cases by civil courts in other states. The Occupational Safety and Health Administration (OSHA) and the Mining Safety and Health Administration (MSHA) also have assessed fines. Indirect costs attributable to occupational injuries or diseases may be much more than the direct costs paid on a claim.

## POST NOTICES FOR EMPLOYEES

Every employer must post a notice in the workplace that reads as follows:

**IF YOU ARE INJURED ON THE JOB, WRITTEN NOTICE OF YOUR INJURY MUST BE GIVEN TO YOUR EMPLOYER WITHIN FOUR WORKING DAYS AFTER THE ACCIDENT, PURSUANT TO SECTION 8-3-102(1) AND (1.5), COLORADO REVISED STATUTES.**

**IF THE INJURY RESULTS FROM YOUR USE OF ALCOHOL OR CONTROLLED SUBSTANCES, YOUR WORKERS' COMPENSATION DISABILITY BENEFITS MAY BE REDUCED BY ONE-HALF IN ACCORDANCE WITH SECTION 8-42-112.5, COLORADO REVISED STATUTES.**

Failure to post this notice in a conspicuous place on your work site exempts employees from the written reporting requirements until the notice is posted. This notice must have a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of one-half inch in height. Posters may be obtained from your workers' compensation insurance company.

Every employer also must continuously post a "Notice to Employees" poster in one or more conspicuous places on the employer's work site. The notice advises the employees that the employer is insured as required by law. It contains information about the Colorado workers' compensation system. This poster also provides the name of the medical provider designated by the insurance company. Your insurer should provide this poster to you.

It is very important that employers tell their employees the name of the insurance company, the designated medical provider, and what to do if a work-related injury or illness occurs.

## **REPORT FEIN**

Every employer must provide, on request of its insurer, all federal employer identification number(s) (FEIN's) or other taxpayer identification number(s) for all of its business operations in Colorado. All changes to FEIN's or other taxpayer ID numbers must be reported immediately to your insurance company.

# **VI. WHEN AN INJURY OCCURS**

## **MEDICAL TREATMENT**

When a worker is injured on the job, promptly furnish medical treatment. Emergencies should always be handled by the closest medical facility.

Upon receiving notice of a work related injury, the employer, or insurance carrier, shall provide a designated provider list to the injured employee within seven business days. The designated provider list shall be comprised of one to four physicians, based on the number of medical providers willing to treat an injured employee within thirty miles of the employer's location.

When selecting the designated physician(s), it is extremely important to assure that you are furnishing the best medical care possible. Quality and appropriate medical care are important in cost containment and minimizing the effect of an injury to an employee. Your insurance carrier may have established a preferred provider network that can save additional medical expense.

By designating a physician, the employer will have an immediate source of treatment for the injured employee and claims may be managed consistently by the same facility. This increases communication among the employer, insurer, employee and treating physician. When a claim is in dispute, check with your insurance company before contacting the employee or treating physician.

## **INVESTIGATE ACCIDENTS AND REPORT INJURIES**

All accidents should be investigated to ensure that all pertinent facts are gathered and available if the insurance company has any questions regarding the claim. Establish

communication early with the insurance company or third party administrator. This communication should be maintained until the conclusion of the claim. **The law requires an employer to notify the insurance company of an injury within 10 days**, no matter how minor the injury. This is done by filing an Employer's First Report of Injury form. If the employer questions whether an injury is work related, this should be documented and filed with the first report form. Timely filing is critical because the carrier cannot pay compensation benefits or medical bills until it has knowledge of the injury and has the opportunity to evaluate liability. Failure of the employer to file this report in a timely manner may result in penalties against the employer.

Notice of a fatality or an accident in which three or more employees are injured should be given immediately to the insurer, because the insurance carrier must file an Employer's First Report of Injury with the Division of Workers' Compensation.

Filing the Employer's First Report of Injury is not necessarily an admission that you agree with the facts of the incident. It is a statement that the employee is making a claim.

By law, the injured worker must notify the employer in writing within four working days of an injury. If the injured employee does not notify the employer within this time frame and the employer posted the proper notice, the worker still may receive benefits, but there may be a penalty for not reporting timely.

## EMPLOYER'S FIRST REPORT OF INJURY

Your insurance company should provide you with copies of this form and help you complete the form. If you do not know where to report, check with your insurer. This report initiates the claim, and the insurer sends the form to the Division of Workers' Compensation by Electronic Data Interchange (EDI). In most cases, the management of workers' compensation claims in an efficient manner is dependent on the insurer receiving complete, factual information on the Employer's First Report of Injury.

Some insurance companies may have systems for filing the Employer's First Report of Injury electronically. Your insurance company will provide you with information on how to file this report.

Wages are defined in the Workers' Compensation Act as the money (including overtime) rate at which an employee is paid at the time of injury. Wages include fringe benefits of group health insurance, board, rent, housing or lodging, and gratuities reported to the IRS. No per diem payment shall be considered as wages unless it is also considered wages for federal income tax purposes. The fringe benefits are only computed into the wage replacement when the employer no longer pays the fringe benefit during any time the employee is receiving temporary disability benefits.

Complete the section of the Employer's First Report of Injury that deals with wages very carefully. There is a section for the Average Weekly Wage (AWW). This is used to determine compensation benefits for the employee. There is a form called Average Weekly Wage Worksheet that you can obtain from your insurance company or on the Division's website to help you calculate the AWW.

The following are examples of AWW calculations:

- Gross monthly pay x 12 ÷ 52  
Example: \$2000 x 12 ÷ 52 = \$461.54
- Daily rate x number of days and partial days worked  
Example: \$80 x 5 = \$400
- Hourly pay rate x number of weekly hours worked  
Example: \$7.50 x 40 = \$300

Where an employee is paid for piecework, tonnage, commission or any basis other than mentioned above, the total amount earned in the 12 months prior to the injury is divided by the number of pay periods the injured employee was employed during this 12-month period. Where an employee is paid by the mile, calculation of mileage for AWW purposes is limited to the average number of miles per day driven in the 60 working days preceding the injury. This is multiplied by the rate per mile to arrive at a daily wage.

If one of the above methods is insufficient to determine a fair AWW due to the nature of the employment, the Division may determine a fair AWW using another method. Your insurer can help with questions regarding calculation of average weekly wage.

## **STAY IN TOUCH WITH THE INJURED EMPLOYEE**

When first injured, most employees are very fearful about their future and their ability to return to work. This uncertainty can hinder their recovery. Usually, the longer an injured worker is off work, the more difficult it is to return to work, both physically and psychologically. Employers can speed up the healing process and recovery by reassuring injured employees that they are cared about and wanted back at work as soon as possible.

The employer may be asked to complete forms that describe the job duties and physical requirements of the employee's regular or modified-duty position. This is used by physicians to evaluate if the employee can return to full duty or perform modified duties.

## **SUPPLEMENTAL REPORT OF ACCIDENT**

When the injured employee either returns to work or is terminated from your employment, you must provide the insurance company with a completed Supplemental Report of Accident form. Your insurer can provide this form.

## **LEARN FROM PAST ACCIDENTS TO PREVENT FUTURE ACCIDENTS**

Many employers recognize the importance of accident prevention in reducing workers' compensation costs. Evaluate what caused the workplace injury and correct any safety or training problems to prevent future accidents and injuries.

## **RESPONSIBILITIES OF THE INSURANCE COMPANY**

The insurance company has 20 days after an *Employer's First Report of Injury* has been filed or should have been filed with the Division, to formally state a decision (position) as to whether benefits will be paid for an injury that causes the employee to lose more than three days, or three shifts, or results in physical impairment. This is also true of fatalities. The insurer's decision is mailed to the employee, the employer and the Division of Workers' Compensation as an Admission of Liability or a Notice of Contest (denial). The insurance company assigns a claim number and a claims adjuster to the claim. You may contact the adjuster with questions about the claim.

## **VII. WORKERS' COMPENSATION BENEFITS**

Insurance companies and self-insured employers must also report all other injuries requiring only medical care to the Division of Workers' Compensation by monthly summary form.

An injured worker may receive several types of benefits. The following is a summary of some of these benefits. Contact your insurance company if you need additional information.

### **MEDICAL BENEFITS**

Workers' compensation insurance pays for all reasonable and necessary medical expenses, if the care is received from an authorized treating physician. The authorized treating physician can refer the employee to other doctors for treatment of the injury. Other expenses such as reasonable and necessary supplies, prescriptions, and mileage for medical appointments are also covered. The insurance company may request that the employee be examined by another doctor of its choice. Medical providers under workers' compensation must bill their fees to the insurance company, according to an established Medical Fee Schedule. The medical provider cannot bill the employee or the employer for any fees over the established schedule.

# COMPENSATION BENEFITS

## *Temporary Disability*

The employee is eligible to receive compensation benefits if the employee misses more than three shifts, or three days, due to a work-related injury or illness. Payment for the first three days missed is only made if the employee is off work more than two weeks or fourteen days. This wage replacement is called temporary disability benefits. If the employee is off work completely, the employee receives temporary total disability (TTD) benefits. The rate for TTD is calculated at sixty-six and two-thirds percent of the average weekly wage (AWW) up to the maximum allowed. The maximum average weekly wage is established on July 1st of every year by the Director of the Division of Worker's Compensation.

Temporary partial disability (TPD) benefits are paid when the employee returns to modified duty with reduced wages or reduced hours. This is calculated at two-thirds of the difference between the AWW at the time of the injury and the part-time earnings.

Payment of temporary benefits stops when the employee returns to work at full wages; is given a written release to return to regular work by the authorized treating doctor; is given a written release by the authorized treating doctor to return to modified work; the employer makes a written offer of such work and the employee begins or refuses to begin the work; or when the authorized treating doctor determines that the injured worker has reached maximum medical improvement (MMI). MMI means that the injury or disease causing disability has become stable and no further medical treatment will

improve the condition. There are other statutory reasons for terminating temporary benefits, such as death or incarceration with conviction.

If you are a temporary help contracting firm, a business which hires people to work for a third party, the injured employee is entitled to receive one written offer of modified work. Any future offers do not have to be in writing. The offer of work must be approved by the doctor and the employee is allowed at least twenty-four hours or three business days, not including Saturday, Sunday, or a legal holiday, to respond to the offer of work. A written offer of modified employment must clearly state that future offers of employment need not be in writing; the policy of the temporary help contracting firm regarding how and when employees are expected to learn of such future offers; and that benefits will be terminated if an employee fails to respond to an offer of modified employment.

Benefits may be reduced under certain circumstances. Examples include:

- The employee willfully failed to use a safety device.
- The employee willfully failed to obey a reasonable safety rule that was written and posted.
- The employee willfully misled you about his or her physical ability to perform the job.
- The injury resulted from the use of drugs or alcohol.
- The employee owed child support.
- The employee returned to work full or part time.
- The employee or dependents received social security.
- The employee received an employer-funded pension or disability benefits.
- The employee received unemployment insurance benefits.

## ***Permanent Impairment***

If the employee is unable to fully recover from the injury (for example, due to the loss of use of a hand), the physician decides if there is any permanent impairment and assigns an impairment rating based on the “American Medical Association Guides to the Evaluation of Permanent Impairment,” third edition, revised.

Permanent partial disability (PPD) benefits are paid every two weeks until the award is paid out as compensation for the disability. The weekly amount depends on the laws in effect at the time and date of injury. Disfigurement benefits may be paid to employees who have a scar or disfigurement that is normally exposed to public view. Permanent total disability (PTD) benefits are made to workers who meet the statutory requirements for lifetime benefits.

## **SETTLEMENTS**

The employee may settle all or part of the claim with the insurance company. The settlement usually involves waiving all or some of the employee’s rights to future workers’ compensation benefits, including medical benefits, in exchange for an agreed upon amount of money. If the settlement amount is \$75,000 or more, a written notice of the settlement agreement will be provided to the employer. This settlement must be submitted to the Division of Workers’ Compensation for approval.

## **REOPENING A CLAIM**

After a claim is closed, the employee may apply to reopen the claim if the condition caused by the injury worsened or an error or a mistake occurred. If the claim was settled and the employee waived the right to reopen the claim, the settlement can be reopened only on grounds of fraud or mutual mistake of material fact. An insurer may apply to reopen the claim in order to seek repayment of overpayments made to an employee. The settlement usually involves waiving all or some of the employee's rights to future workers' compensation benefits, including medical benefits, in exchange for an agreed upon amount of money. If the settlement amount is \$75,000 or more, a written notice of the settlement agreement will be provided to the employer. This settlement must be submitted to the Division of Workers' Compensation for approval.

## VIII. THE DIVISION OF WORKERS' COMPENSATION

### DIVISION OF WORKERS' COMPENSATION

633 17th Street, Suite 400

Denver, CO 80202-3626

303.318.8700

Toll-free number (in state) 1.888.390.7936

[www.colorado.gov/cdle/dwc](http://www.colorado.gov/cdle/dwc)

The Division of Workers' Compensation is an administrative agency created by the legislature to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers. The Division's role is different from that of insurance companies that actually sell insurance policies to businesses and pay benefits on workers' compensation claims. The Division does not pay claims. It offers services to help insurance companies, medical providers, attorneys, employers, and employees comply with the provisions of the Workers' Compensation Act. The following are some of the services that are available.

### COVERAGE ENFORCEMENT

The Coverage Enforcement Unit investigates potentially non-insured employers to ensure that they are compliant with the coverage requirements of the Workers' Compensation Act. This unit also serves to deter the misclassification of employees, to level the playing field for all employers, and to protect employees from non-insured injuries. See section "III. Insurance Coverage" of this manual for an overview of coverage requirements and

for the consequences of failure to insure. Please contact the Coverage Enforcement Unit at 303.318.8640 with any questions.

## **CUSTOMER SERVICE**

The Customer Service Unit provides information on all aspects of the workers' compensation system and resources at the Division. Representatives provide technical information about the rights and responsibilities of both employers and employees, and the roles and requirements of insurance companies. You can receive assistance about insurance coverage requirements, independent contractors, reporting injuries, medical and compensation benefits, wage calculations and other issues.

## **COMPENSATION SERVICES**

The Benefits Section offers information to the public on workers' compensation benefits and technical aspects of the workers' compensation system. Claims Managers are experienced in workers' compensation claims adjusting practices. They assist in resolving problems involving the payment of compensation benefits, calculation of permanent impairment or disability benefits, issue lump sum orders and wage calculations. They review admissions of liability, conduct audits, motion to close claims, grant or deny Petitions to Modify, Terminate or Suspend Temporary Benefits and provide training for claims administrators.

## **SELF-INSURANCE**

Administration of employer Self-Insurance programs includes evaluation of applications and review of existing permits. See the "Types of Insurance Coverage" section of this booklet for more information.

## **COST CONTAINMENT CERTIFICATION**

Certification status is granted by the Premium Cost Containment Board to employers who can document that they have had a loss prevention/loss control program in effect for at least one year. The Board is composed of seven members: The Commissioner of Insurance, the Manager of Pinnacol Assurance, and five members appointed by the governor and confirmed by the senate. Certified employers are eligible for up to a 10% reduction in their Workers' Compensation insurance premium. For additional information and a publication on this program, contact the Customer Service Unit at the Division of Workers' Compensation.

## **INDEPENDENT MEDICAL EXAMINATIONS**

If there is a dispute between the injured worker and the employer concerning the maximum medical improvement date (mimi) or the impairment rating that was provided by the treating physician, and the parties wish to bring this dispute before a judge, the law requires that the parties first obtain a Division Independent Medical Examination (DIME). This process was established to reduce litigation and to provide an alternative way to address disputes involving MMI and impairment. Because impairment is an issue in the dispute, a Level II-accredited physician must perform the examination. If the parties cannot agree upon a physician, the Division will select an independent medical examiner based on an application submitted by the party who objects to the impairment rating or statement of MMI. Currently the cost of this IME is \$675 and is paid directly to the doctor by the party that is requesting the DIME.

## **MEDICAL UTILIZATION REVIEW**

If a party to a claim believes that the care provided by a health care provider is not reasonably necessary or reasonably appropriate according to accepted professional standards, they may request a review by a panel of experts, set up by the Division. A fee is charged to cover the costs of this review.

# **IX. PREHEARINGS, SETTLEMENT CONFERENCES AND HEARINGS**

## **PREHEARING AND SETTLEMENT CONFERENCES**

A prehearing conference is an informal hearing conducted by an administrative law judge upon request of one of the parties. The judge may order the parties to attend. A prehearing conference provides an opportunity for the parties to resolve procedural issues prior to a hearing. The judge may order the parties to exchange information, such as employment records, that may assist in resolving issues.

The parties may also request a settlement conference before an administrative law judge. All parties must agree to attend. The judge will facilitate discussion and possible resolution of some or all of the issues. Discussions which take place in a settlement conference are confidential and cannot be used as evidence.

The Division of Workers' Compensation also is a resource for information regarding options for arbitration before an administrative law judge. The parties must agree to arbitration, and the resulting order cannot be appealed.

Anyone needing further information about prehearing conferences, settlement conferences or arbitration should call the Prehearing Unit.

## HEARINGS

A hearing is a formal legal proceeding where an administrative law judge decides what benefits, if any, must be paid, and decides any other issues. All parties may present evidence, including documents and sworn testimony of witnesses. A court reporter makes a record of the hearing. There is no jury and there is no charge for a hearing. Hearings are held by the Office of Administrative Courts within the Department of Personnel & Administration.

# X. PHONE NUMBERS

## DIVISION OF WORKERS' COMPENSATION

**CUSTOMER SERVICE UNIT**  
633 17th Street, Suite 400  
Denver, CO 80202-3626

**303.318.8700**

**Toll-free number 1.888.390.7936**

**SPECIAL FUNDS UNIT**  
**Major Medical, Subsequent Injury,**  
**and Medical Disaster Funds**  
**Toll free number 1.800.453.9156**

**Web Site:**[http:// www.colorado.gov/cdle/dwc](http://www.colorado.gov/cdle/dwc)

### **OTHER GOVERNMENT OFFICES**

Office of Administrative Courts .....	303.866.2000
Division of Insurance.....	303.894.7499
Mine Safety and Health Administration .....	303.231.5400
Occupational Safety and Health Administration	
Denver area employers .....	303.844.5285
All other employers .....	303.843.4500
Unemployment Insurance Tax	
Toll-free number (in state).....	1.800.480.8299
Denver metro area .....	303.318.9100

# XI. PUBLICATIONS

The Division of Workers' Compensation offers a variety of materials to the public regarding the system it administers. Publications are available on the Division's Web Page or can be requested by calling the Customer Service Unit.

- Adjuster's Guide
- Claims Compliance Audit Guide
- Division Independent Medical Examinations Guide
- Employee's Guide (also available in Spanish)
- Employer's Guide to Self-Insuring Workers' Compensation.
- Essentials of the Workers' Compensation Premium Cost Containment Program and Employer Certification
- Loss Prevention and Loss Control Program Manual
- So, You are Thinking of Representing Yourself in Your Workers' Compensation Case... (available in Spanish)
- Work-Related Injuries in Colorado
- Workers' Compensation Act
- Workers' Compensation Insurance Requirements for Employers
- All About Claims Newsletter
- Interpretive Bulletins

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# NOTES

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**C.R.S. Section 10-1-127(7)(a) states: "It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies."**

**Colorado Department of Labor &  
Employment  
Division of Workers' Compensation  
633 17th Street, Suite 400  
Denver, CO 80202-3626**

**M300300046**