

Workers' Compensation Insurance Requirements For Employers



Colorado Department of Labor and Employment
Division of Workers' Compensation
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WHAT IS WORKERS' COMPENSATION INSURANCE?

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.

WHO PAYS FOR WORKERS' COMPENSATION INSURANCE?

Workers' compensation insurance coverage is paid by the employer. Employers purchase insurance coverage through a commercial insurance carrier or, if qualified, through self-insurance programs. **No portion of the premium may be deducted from an employee's wages.**

WHO IS CONSIDERED AN EMPLOYEE AND COVERED BY THE WORKERS' COMPENSATION ACT?

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.

WHO IS NOT CONSIDERED AN EMPLOYEE UNDER THE WORKERS' COMPENSATION ACT?

There are some exemptions from coverage requirements for specific occupations and individuals. The Division of Workers' Compensation can provide detailed information on exemptions. The following is only a partial list of occupations and/or individuals exempt from mandatory coverage under the Workers' Compensation Act:

- * Certain casual maintenance or repair work performed for a business for under \$2,000 per calendar year.
- * Licensed real estate agents and brokers working on commission.
- * Any person who volunteers time or services for a ski area.
- * Certain business owners.
- * Independent contractors who are generally defined below.
- * Certain domestic work, maintenance or repair work for a private homeowner that is not done full time.
- * Drivers under a lease agreement with a common or contract carrier.
- * Federal employees and Railroad employees (covered under federal laws).
- * Certain corporate officers and members of LLC's.

WHO IS AN INDEPENDENT CONTRACTOR?

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

1. free from the business' control and direction over how the service is performed; and
2. the individual must be customarily engaged in an independent 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. *However, the actual facts of the work relationship are the most important evidence.*

DO CORPORATE OFFICERS AND MEMBERS OF LIMITED LIABILITY COMPANIES NEED TO BE COVERED BY WORKERS' COMPENSATION INSURANCE?

A corporate officer of a corporation or a member of a limited liability company may elect to reject the requirement to carry workers' compensation insurance. The election to reject coverage is completed by providing written notice on a form available from the Division. A *corporate officer* is defined as the chairperson of the board, president, vice-president, secretary, or treasurer who is an owner of at least ten percent of the stock of the corporation and who controls, supervises, or manages the business affairs of the corporation. A *member* is defined as an owner of at least ten percent of the membership interest of the limited liability company at all times and who controls, supervises, or manages the business affairs of the limited liability company.

MUST OUT-OF-STATE EMPLOYERS CARRY COLORADO WORKERS' COMPENSATION INSURANCE?

Yes, you must carry the insurance if you have employees working in Colorado. The policy must be with an insurance company authorized to write workers' compensation in Colorado and endorsed to

name Colorado as a covered state. Your insurance company must file the properly endorsed policy with the National Council on Compensation Insurance (NCCI).

IF I'M AN EMPLOYER WHO SHOULD, BY LAW, HAVE A WORKERS' COMPENSATION INSURANCE POLICY, BUT WHO IS NOW OPERATING WITHOUT WORKERS' COMPENSATION INSURANCE, WHAT DOES THE LAW REQUIRE ME TO DO?

An employer whose workers' compensation insurance has lapsed or who has never had workers' compensation insurance is subject to penalties and closure action under C.R.S. 8-43-409 and must:

- * Immediately obtain a workers' compensation policy.

WHAT PENALTIES MAY BE ASSESSED FOR NOT CARRYING WORKERS' COMPENSATION INSURANCE?

We must and do enforce mandatory penalties if an employer does not obtain and maintain a workers' compensation insurance policy when required to have one. If you do not comply, you risk the following:

- * The Director of the Division is authorized to issue a cease and desist order against the business to stop business operations until insurance is obtained.

and/or

- * You are subject to a fine. The fine for failure to carry workers' compensation insurance when required is up to \$250 for every day that the employer fails or has failed to keep the insurance as required by articles 40 to 47 of the Colorado Workers' Compensation Act for the first violation, with a maximum of \$500 per day for subsequent violations.

- * In addition, in cases where compensation has been awarded to an injured worker, benefits are increased by 50% where an employer failed to obtain or maintain the required insurance.

In Colorado there are three ways in which an employer gets workers' compensation coverage:

1. Commercial Insurance
2. Self-Insurance
3. Self-Insurance (Groups and/or Pools)

HOW DO I OBTAIN WORKERS' COMPENSATION INSURANCE?

The State of Colorado does not write or provide workers' compensation insurance coverage.

Commercial Insurance: Workers' compensation insurance may be purchased from one of over four hundred commercial insurance companies authorized to conduct business in the State of Colorado.

Self-Insurance: Colorado workers' compensation statutes allow for employers meeting strict financial and loss control standards, to self-insure this risk. Authorized only by special permit, such workers' compensation obligations are paid directly from the earnings and assets of the employer. Certification for the self-insurance of individual companies is 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 Insurance, Groups/Pools: Colorado law allows for 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. This program is administered by the Division of Insurance in the Department of Regulatory Agencies.

IF I HAVE ADDITIONAL QUESTIONS REGARDING THE REQUIREMENT TO OBTAIN WORKERS' COMPENSATION INSURANCE, WHO CAN I CONTACT?

If you have further questions regarding your obligation to obtain workers' compensation insurance, please write or call the Colorado Division of Workers' Compensation.

DIVISION OF WORKERS' COMPENSATION

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