



## Worker's Compensation

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The Department of Workforce Development (DWD) houses the Worker's Compensation Division, which administers the state's Worker's Compensation (WC) program. The WC law, established in 1911, is a system of no-fault insurance that pays benefits to employees for accidental injuries or diseases arising from an employee's job.

### EXCLUSIVE REMEDY AGAINST EMPLOYERS

Generally, for workplace injuries, WC is the exclusive remedy against the employer. In other words, an injured employee typically cannot sue his or her employer for damages beyond those authorized by the WC statutes or seek punitive damages. Conversely, the employee need not prove that the employer was negligent or otherwise at fault for the injury, and an employer may not seek to reduce payments for any contributory negligence by the employee. Under WC law, the employee need only demonstrate that his or her injury was not self-inflicted and happened while the employee was engaged in some activity related to employment.<sup>1,2</sup>

### COVERAGE REQUIRED

An employer is required to cover employees with WC insurance if the employer usually has three or more employees or if the employer has fewer than three employees, but a payroll of \$500 or more during any calendar quarter. In addition, farmers who employ six or more employees on any 20 days in a calendar year must have insurance within 10 days after the 20th day of employment. The law provides penalties for employers who fail to obtain insurance when required to do so, and if an employee is injured at work and his or her employer has not maintained the proper insurance, the employee may still receive WC benefits paid from the state's uninsured employers fund.<sup>3</sup>

Business entities that do not meet the statutory definition of an "employer" may voluntarily opt into the WC program, and certain self-employed persons may voluntarily opt into the WC program as "employees," as well. Any business or person who opts into the WC program agrees to its regulations and requirements.<sup>4</sup>

Although most employers purchase WC insurance from an insurance provider, employers may choose instead to self-insure; that is, to pay workers' compensation claims using their own funds. Some larger private sector employers and various governmental employers have opted to self-insure; any employer that wishes to do so must obtain written approval from DWD prior to doing so.<sup>5</sup>

The cost of WC insurance varies based on job classification. Insurance rates and classifications depend on past work-related injury experience, payroll, and level of hazard in an occupation. The Wisconsin Compensation Rating Bureau sets the premium rate for each class with the approval of the Commissioner of Insurance. An insurance provider that terminates a WC insurance policy or fails to renew a policy must notify DWD before the termination or nonrenewal may take effect.<sup>6</sup>

### BENEFITS AVAILABLE TO EMPLOYEES

When an employee is injured in the performance of his or her work duties, he or she is eligible under WC to receive the following:

- All reasonable and necessary medical costs.
- Benefits for lost wages while recovering from an injury.

- Benefits for permanent disability if the employee does not fully recover from the injury.
- Benefits for loss of earning capability.
- Death benefits and burial expenses up to certain limits.
- Vocational rehabilitation services.<sup>7</sup>

For the period when an employee is out of work and recovering from an injury, the employee may receive WC benefits in an amount that is up to two-thirds of weekly wages, subject to a weekly maximum. In addition to the benefits listed above, if an employee has a permanent disability, the employee will receive an additional period of compensation based upon statutory formulas in existence at the time of the injury. A waiting period applies before a benefit may be paid. The waiting period is the first three days, excluding Sunday, after the accident in which an employee is injured. If a disability from work lasts beyond the seventh day, the first three days are fully compensated, including Sunday if normally worked. Generally, the first insurance payment is made within 14 days of the report of the injury.<sup>8</sup>

## REQUESTS FOR EVALUATIONS AND DISPUTE RESOLUTION

Upon receiving a claim for WC coverage, an employer or WC insurance provider may require the employee to undergo an examination by a health care or mental health care provider and, if the employee is claiming a loss of earning capability, a vocational evaluation. The employer or insurance provider must cover all expenses related to the examination and must inform the employee that he or she has the right to have a medical provider of the employer's choice attend the examination and the right to receive copies of any reports or findings issued by the examiner.

If a WC insurance provider or an employer denies a WC claim in whole or in part or if an employee believes he or she is entitled to additional benefits, the employee may seek dispute resolution with DWD. If the employee has not retained an attorney, DWD refers the claim to an alternative dispute resolution specialist, who determines whether the dispute can be resolved without a formal hearing. If the dispute cannot be resolved through the informal alternative dispute process, the employee may request a formal, legally binding hearing before an administrative law judge. The administrative law judge issues a decision, which may be appealed by either party to the Labor and Industry Review Commission. The decision of the Labor and Industry Review Commission may be appealed to circuit court.<sup>9</sup>

## POST-INJURY RIGHTS

Generally, an employer may not unreasonably refuse to rehire an injured employee if suitable employment is available within the employee's physical and mental or psychological limitations. If the employer has suitable employment available and unreasonably refuses to rehire the employee, the employer is liable for any lost wages up to a total of one year's wages. However, the employer is not required to hold or create a job for the employee after an injury.<sup>10</sup>

<sup>1</sup> Section 102.03, Stats.

<sup>2</sup> An employee may bring an action against a party that is not the employer (third party) if the third party is at least partially responsible for the employee's injury. Additionally, an employer or insurer who has compensated an employee through the Worker's Compensation Act may bring an action against a third party if the third party contributed to the employee's injury. For more information on the laws controlling third party actions for employment related injury, see the Wisconsin Legislative Council Issue Brief [Worker's Compensation and Third-Party Liability for COVID-19 \(dated June 17, 2020\)](#).

<sup>3</sup> Sections 102.04, 102.28, and 102.80 to 102.85, Stats.

<sup>4</sup> Section 102.075 to 102.078, Stats.

<sup>5</sup> Section 102.28, Stats.

<sup>6</sup> Section 102.31, Stats.

<sup>7</sup> See generally ch. 102, Stats., and DWD chs. 80 and 81, Wis. Adm. Code.

<sup>8</sup> Section 102.43, Stats.

<sup>9</sup> Sections 102.16, 102.17, 102.18, and 102.23, Stats.

<sup>10</sup> Section 102.035, Stats.