

Consumer's Guide to Worker's Compensation Insurance for Employers

**State of Wisconsin
Office of the Commissioner of Insurance
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All questions relating to the Wisconsin Worker's Compensation Act should be directed to the Department of Workforce Development (DWD) at (608) 266-1340.

All questions relating to the Wisconsin Worker's Compensation Insurance Pool should be directed to the Wisconsin Compensation Rating Bureau (WCRB) at (262) 796-4540.

All questions relating to claims for which an application for a worker's compensation hearing has been filed should be directed to the Division of Hearings and Appeals Office of Worker's Compensation Hearings (OWCH) at (608) 266-7709.

All questions relating to the insurance laws should be directed to OCI at 1-800-236-8517.

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Introduction

Worker's compensation provides protection mandated by state law for a worker and their dependents against injury and death occurring in the course of employment. It provides wage replacement and medical benefits to employees for accidental injuries or diseases related to the employee's work. Worker's compensation insurance is not health insurance.

The purpose of the worker's compensation system is to provide financial and medical benefits to the victims of work-related injuries and their families regardless of fault. The laws place the financial burden on the employer. This compensation is generally the exclusive remedy for the injured employee.

Wisconsin Worker's Compensation Act

Where did Worker's Compensation come from?

Before 1911, a worker who was injured in the course of their employment could sue their employer in a civil or tort action, which was the same remedy available to a person injured under other circumstances. The tort remedy, however, had certain drawbacks. It required the worker to prove the injury occurred because the employer was negligent and the employer had three important defenses: (1) the worker was also negligent, (2) the worker knew of the dangers involved and assumed the risk, or (3) the injury occurred because of the negligence of a fellow employee. While workers had a difficult time proving their case, employers faced the possibility of unlimited jury awards. To many this system was unfair.

In 1911, Wisconsin adopted the Workmen's Compensation Act (Act). This created a no-fault system under which a worker no longer had to prove negligence on the part of the employer, and the employer's three defenses were eliminated. The intent of the law was to require an employer to promptly and accurately compensate a worker for any injury suffered on the job, regardless of whose fault it might be.

In return, the Act limited the financial amount a worker could recover. Workers are only entitled to (1) certain wage loss benefits, (2) the cost of medical treatment, and (3) certain disability payments. Prior to the Act, workers had been able to financially recover for pain and suffering, loss of enjoyment of life, and other damages a jury might award. Recovery under the Act is limited to these three areas, no matter how serious the injury.

The Act is not an insurance law. As such, jurisdiction for the administration of the Act is under the Wisconsin Department of Workforce Development (DWD), **not** the Office of the Commissioner of Insurance (OCI).

System Administration

Wisconsin Worker's Compensation Division (contact information on page 17)

The Worker's Compensation Division (Division) is a division at the Wisconsin Department of Workforce Development (DWD). The Division is responsible for the administration of the Worker's Compensation Act of Wisconsin, Chapter 102. DWD does not have jurisdiction for the administration of the insurance laws, such as the worker's compensation rates.

The Division:

- Administers programs to ensure injured workers receive required financial and other benefits from insurers and self-insured employers, to encourage injured worker's rehabilitation and reemployment, and to promote techniques reducing the number of work-related injuries, illnesses, and deaths.
- Administers Chapter 102 with respect to enforcement, payment of claims, violations, compliance and enforcement of insurance requirements and other related duties
- Collects reports of all claims involving loss of time from work.
- Adjudicates disputed worker's compensation claims.

Worker's Compensation Insurance Coverage Requirements **[Sections 102.04 and 102.07, Wis. Stat.]**

An employer must carry a worker's compensation insurance policy if they do any of the following:

1. Usually employs three or more persons full- or part-time. If this is the case, the employer is required to have a worker's compensation insurance policy immediately; or
2. Employs one or more full- or part-time employees to whom they have paid gross combined wages of \$500 or more in any calendar quarter for work done at one or more locations in Wisconsin. The employer must have insurance by the 10th day of the first month of the next calendar quarter; or
3. If the employer is a farmer who employs six or more full- or part-time employees (at one or more locations) on the same day for 20 days (consecutive or nonconsecutive) during a calendar year (January through December). The farmer must have insurance within 10 days after the 20th day of employment. Note: Some relatives of the farmer are not counted as employees. Call the Worker's Compensation Division at (608) 266-1340 to see whether you need to count all your relatives among your employees.

Wisconsin law requires a subject employer with employees working in Wisconsin have a worker's compensation insurance policy with an insurance company licensed to write worker's compensation insurance in Wisconsin. As a result, every employer, as described in s. 102.04 (1), Wis. Stat., is required under s. 102.28 (2), Wis. Stat., to have a worker's compensation insurance policy **in the name of the employer/owner or in the name of the business entity**.

An employer subject to the Act may not withhold or collect any money from employees or any other person, including independent contractors and subcontractors, to pay for worker's compensation insurance. To do so is illegal. No agreement by an employee waiving rights to compensation is valid. [ss. 102.16 (3) and (5), Wis. Stat.]

Buying Insurance

Voluntary Marketplace

In Wisconsin, there are about 300 insurance companies licensed to write worker's compensation insurance. Worker's compensation insurance is obtained through an insurance agent and/or an insurance company. The State of Wisconsin does not offer or provide worker's compensation insurance coverage. If you have or know an insurance agent or company, you may contact them; if not, you may want to contact business associates or industry organizations for a recommendation. Information about agents and companies can also be found on OCI's website at oci.wi.gov.

If an insurance company turns down your application for insurance, you should ask your agent to search the marketplace for another company. A company lookup of licensed insurers including addresses and phone numbers is available on OCI's website at oci.wi.gov.

Worker's Compensation Insurance Pool

The Wisconsin Compensation Rating Bureau (WCRB) is a licensed rate service organization for worker's compensation insurance in Wisconsin. It was created by Wisconsin insurance law and, while it is regulated by OCI and works very closely with the Worker's Compensation Division, WCRB is not a state agency. WCRB is an unincorporated association of insurers who, by law, must be members of WCRB.

If coverage is not available in the voluntary market, your agent should submit an application to the Wisconsin Compensation Rating Bureau. WCRB acts as administrator and trustee of the Wisconsin Worker's Compensation Insurance Pool (Pool).

The Pool is a risk-sharing plan created to provide worker's compensation insurance to any employer who is unable to obtain coverage in the voluntary market and who is, in good faith, entitled to such insurance. Employers ineligible for coverage from the Pool include out-of-state employers with no Wisconsin operations and employers who owe the Pool monies from prior policies.

WCRB will assign an insurance company to issue and service a worker's compensation insurance policy for the employer. The premium cost is generally the same for Pool coverage. Pool insureds lose the benefit of possible insurance company dividends and premium discounts for large employers, so it is in the interest of larger employers to find voluntary coverage if at all possible.

All insurers licensed to write worker's compensation insurance in Wisconsin must participate in funding the Pool and are represented by four insurance companies designated as servicing carriers of the Pool. The insurance company assigned to service a policy issued through the Pool writes the policy in its own name and provides claims, loss control, auditing, and other services, just as they would for their voluntarily written policyholders.

All agents must be willing to assist employers with applying to the Pool. However, agents do not represent the Pool and do not have any binding authority for Pool coverage or payments. Employers may apply directly to the Pool without an agent.

WCRB is responsible for the classification of employers, the rates and rating plans used, all policy forms and endorsements and the collection and analysis of all statistical and other data needed to meet its responsibilities. All of WCRB's worker's compensation rates, rating plans, forms, etc., must be filed with and approved by OCI before insurance companies can use them. All worker's compensation insurance companies must use and abide by the rates, forms and rules filed by WCRB. Deviations are not permitted.

WCRB assists the Worker's Compensation Division in its enforcement activities. By law, WCRB receives required information on every worker's compensation policy issued to every employer with operations in Wisconsin and every termination thereof and transmits this information via computer to the Worker's Compensation Division.

For more information on the Pool, contact your agent or WCRB (contact information on page 18 of this publication).

Who Is Covered by the Worker's Compensation Act? Are There Any Exceptions?

Nearly all employers and their employees in Wisconsin are covered. This includes both public and private employers. In fact, when talking about worker's compensation, it is easier to discuss the exceptions. There are a few classes of workers who are covered by federal laws and are not covered by the Act.

Employees of the federal government (such as postal workers, employees at a veteran's administration hospital, or members of the armed forces) are covered by federal laws. People who work on interstate railroads are covered by the Federal Employers Liability Act. Seamen on navigable waters are covered by the Merchant Marine Act of 1920, and people loading and unloading vessels are covered by the Longshore and Harbor Worker's Compensation Act.

Native American tribal enterprises (including casinos) are not required to comply with any of the provisions of the Act. Tribes are sovereign nations covered by sovereign immunity. The Wisconsin DWD Worker's Compensation Division does not have jurisdiction over tribal enterprises, including whether or not a tribe covers its employees with worker's compensation insurance or pays worker's compensation benefits, unless a tribe elects to waive its sovereign immunity. The Worker's Compensation Division has long held a tribal enterprise can waive its immunity by voluntarily purchasing a worker's compensation insurance policy. In this case, pursuant to s. 102.05 (2) of the Act, the tribal enterprise, like any other enterprise not subject to the law, has elected to accept the provisions of the Act by voluntarily purchasing a policy.

Other employee exceptions to the Wisconsin Worker's Compensation Act insurance requirement are domestic servants, some farm employees, volunteers, including volunteers of nonprofit organizations receiving money or other things of value totaling not more than \$10 per week, and religious sect members that qualify and are certified for an exemption. Virtually all other workers and employers are subject to the Act.

Family Members

Family members who work at the business are considered and counted as employees and covered by the Act. With the exception of farmers, an employee's relationship to the owner has no bearing on the requirement to carry worker's compensation insurance.

Minors

Minors are considered and counted as employees and covered by the Act.

Part-time Employees

Part-time employees are considered and counted as employees and covered by the Act. Whether an employee works part-time or full-time has no bearing on the requirement to carry worker's compensation insurance.

Partnership or Small Business

The employees of partnerships, sole proprietorships, limited liability companies and corporations are covered by the Act. The partners, sole proprietors, and members of limited liability companies are exempt by the Act but may opt-in for coverage for themselves.

All worker's compensation policies exclude the sole proprietor, partners, and members of limited liability companies unless specifically endorsed to include them. Sole proprietors, partners, and members of limited liability companies may voluntarily purchase worker's compensation insurance to cover their own work-related injuries and illnesses.

Employers who have an existing worker's compensation insurance policy may add themselves to that policy by notifying their agent and paying the additional premiums. It is necessary to have the policy endorsed to name the sole proprietor, partners, or members of limited liability companies for them to be covered.

Self-Employed Individuals/Sole Proprietors

A business that is neither a partnership nor a corporation but is owned by one person is called a "sole proprietorship." The owner of that business is "self-employed." The employees of a sole proprietorship are covered by the Act, but the sole proprietor (the person who owns the business) is self-employed. He or she is not an employee of anyone and accordingly is not covered by the Act unless he or she chooses to be. A sole proprietor who has no employees is not required to carry a worker's compensation insurance policy.

Worker's compensation is recommended even for sole proprietors who are not required to provide it by law. If you do not have worker's compensation for yourself by opting-in, it is important to understand the coverage exclusions of your health insurance policy pertaining to work-related injuries and illnesses.

Most health insurance policies exclude any work-related injury or illness, and as a result **your health insurance policy will not cover work-related injuries and illnesses.**

Corporate Officers

Corporate officers are considered and counted as employees and are covered by the Act.

All worker's compensation insurance policies covering corporations include corporate officers. However, in a closely held corporation, defined as a corporation with not more than 10 stockholders, no more than two officers may exclude themselves from coverage. If the corporation has other employees, and/or officers, an insurance policy is required and the exclusion for officers must be made by an endorsement on the worker's compensation insurance policy. The name(s) of the officer(s) must be given. The exclusion will remain in effect for the entire policy period. Officers who are excluded will still be counted in determining whether the employer is subject to the Act under s. 102.04 (1) (b), Wis. Stat.

If a closely held corporation has no more than two corporate officers and has no other employees, a worker's compensation insurance policy is not required if both officers elect not to be subject to the Act by filing with the Worker's Compensation Division the Notice of Corporate Officer Option.

Important note: A corporation with more than two corporate officers or any other employee or employees is not eligible to file a Notice of Corporate Officer Option and must obtain and/or maintain a worker's compensation insurance policy.

If you have any questions regarding whether a corporation qualifies to file a Notice of Corporate Officer Option, please contact the Worker's Compensation Division, Bureau of Insurance Programs at (608) 266-1340.

Independent Contractors

If one company hires another company to come in and do some work for it, the second company is ordinarily an "independent contractor" and not an employee of the first company. Sometimes, however, a company hires one person to come in and perform a specific job and disputes arise as to whether or not they are an employee or an independent contractor.

A person is not an independent contractor for worker's compensation purposes just because he or she, the supervising contractor, or another regulator says so.

The Act contains specific statutory conditions that must be met before a worker in the service of another person is not considered to be an employee for worker's compensation. There are nine conditions establishing whether independent contractors are employees. Any owner/operator or independent contractor who does not meet and maintain all of the nine specific tests of independence in the Act (and who is not an employer himself or herself) is an employee of any employer they are working under in Wisconsin.

Under s. 102.07 (8), Wis. Stat., a person is required to meet and maintain all nine of the following requirements:

1. Maintain a separate business.
2. Hold or have applied for a Federal Employer Identification Number (FEIN) with the Federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on the work or service in the previous year. [Note: When requesting a FEIN from the IRS, you must inform the IRS you are required by Wisconsin Worker's Compensation law to obtain a FEIN. A Social Security number cannot be substituted for a FEIN and does not meet the legal burden of s. 102.07 (8), Wis. Stat.]
3. Operate under specific contracts.
4. Be responsible for operating expenses under the contracts.
5. Be responsible for satisfactory performance of the work under the contracts.
6. Be paid per contract, per job, by commission, or by competitive bid.
7. Be subject to profit or loss in performing the work under the contracts.
8. Have recurring business liabilities or obligations.
9. Be in a position to succeed or fail if business expense exceeds income.

A sole proprietor/independent contractor who has no employees or who is not required to be insured may elect to buy a worker's compensation policy to cover any person(s) deemed to be an employee or to meet contractual obligations. The sole proprietor/independent contractor is not required to cover themselves under the policy. This policy is sometimes referred to as an "If Any" policy because it does provide coverage if any other person working with or for the sole proprietor/independent contractor under the contract is found to be a statutory employee under the nine-point test. This policy is also sometimes referred to as a "minimum-minimum premium" policy. It is issued with the minimum premium for the highest rated classification on the policy.

For additional information about sole proprietors and independent contractors, please refer to the following publication on the Wisconsin DWD Worker's Compensation Division's Web site at https://dwd.wisconsin.gov/dwd/publications/wc/WKC_13964_P.pdf.

Volunteers and Worker's Compensation in Wisconsin

The Wisconsin Worker's Compensation Act (Act) does not provide for worker's compensation coverage for volunteers, including volunteers of nonprofit organizations who receive money or other things of value totaling not more than \$10 per week. [s. 102.07 (11) and 102.07 (11m), Wis. Stat.] Volunteers cannot be covered under a worker's compensation policy and cannot collect worker's compensation benefits if they incur an injury or illness during the course of their voluntary service. The Act has no jurisdiction over any other form of relief available to a volunteer.

A volunteer for a nonprofit organization that is exempt or eligible for exemption from federal income taxation under the Internal Revenue Code who receives nominal payments of money or other things of value totaling not more than \$10 per week is not considered to be an employee under the Act, unless the nonprofit organization elects to cover the volunteer under its policy.

Although the statute is clear volunteers are not covered by the Act, questions often arise regarding coverage for volunteers.

What is the definition of a volunteer?

A volunteer is a person who provides services of their own free will to or on behalf of an organization or entity who neither receives nor expects to receive any kind of pay or compensation for their services.

When, how, and if volunteers evolve into employees?

A question to consider regarding when, how, and if volunteers evolve into employees is "does the worker receive or expect to receive compensation (almost anything of value including discounts, certificates, credits, vouchers, etc.) in exchange for their services?" If not, the worker is probably a volunteer. If the answer is yes, they are most likely an employee.

The situation gets murky when the volunteer worker is a member of an organization receiving compensation for providing the services of the volunteer worker. A general rule of thumb is if nothing of value changes hands from the recipient of services to the worker (the provider or performer of services), it is probably a volunteer situation. However, if something of value is received, accepted or expected by the worker (the provider or performer of the services) or the organization in exchange for the work performed, an employee/employer relationship may exist. Any claim filed by a worker (the provider or performer of services) injured while performing services under these conditions would be decided according to the facts at the time of injury. There is no way to predict whether the claim would result in finding the worker was a volunteer or there was an employee/employer relationship.

If you have questions regarding volunteer workers and the Wisconsin Worker's Compensation Act, contact the Wisconsin DWD Worker's Compensation Division, Bureau of Insurance Programs, at (608) 266-1340 or write to P.O. Box 7901, Madison, Wisconsin 53707-7901

Insurance for Farm Accidents

Worker's compensation insurance is highly recommended even for farmers who are not required to provide it by law. If you do not have worker's compensation insurance for all family members who help with farm work, it is important to understand your health insurance policy and its coverage for on-farm injuries and farm-related illnesses.

You cannot assume your health insurance policy will cover all farm accidents. Most health insurance policies exclude any work-related injury or illness.

Ask questions and get written statements about coverage for all family members who may be helping with farm work. Although farm plans which are marketed only to farm families are more likely to cover farm-related illness or injuries, it is important to read the exclusions and clarify the benefits if you do not have a worker's compensation policy.

Must Employers Purchase Worker's Compensation Insurance?

The law requires every employer subject to the Act must provide some way of assuring it can pay benefits to its workers should they become injured. Most employers in Wisconsin provide this security by purchasing a worker's compensation insurance policy from a private insurance company. The insurance company then reports to the State of Wisconsin Department of Workforce Development (DWD) it is providing coverage for the employer. However, some employers are self-insured.

What Is Self-Insurance?

Some employers who are financially sound (and usually quite large) are self-insured. An employer can only be self-insured if it obtains permission from DWD. DWD requires employers to demonstrate a very sound financial condition in order to be self-insured.

Out-of-State Employers

Out-of-state employers with employees working in Wisconsin must have a worker's compensation insurance policy with an insurance company licensed to write worker's compensation insurance in Wisconsin.

Section 102.28 (2), Wis. Stat., requires an employer subject to the Act with employees working in Wisconsin must have a worker's compensation insurance policy with an insurance company licensed to write worker's compensation insurance in Wisconsin. The policy must be endorsed to name Wisconsin as a covered state in section 3-A of the policy. If an out-of-state employer has a worker's compensation insurance policy with an insurance company licensed to write worker's compensation in Wisconsin, they may simply add Wisconsin coverage by name to section 3-A of the policy endorsement.

If an out-of-state employer has a worker's compensation insurance policy with an insurance company not licensed to write in Wisconsin, they must obtain a policy from a Wisconsin-licensed insurance company to cover their Wisconsin exposure. If the insurance company has not done so, it must file the properly endorsed policy with the Wisconsin Compensation Rating Bureau (WCRB) so it may be issued to the employer doing business in Wisconsin.

For more information on out-of-state employers contact WCRB (contact information on page 19 of this publication).

Penalties for Not Obtaining/Maintaining Worker's Compensation Insurance or Permission to Be Self-Insured

There are severe penalties for the failure of an employer to provide worker's compensation insurance coverage including lapses in coverage. First, if a worker is injured, the employer is personally liable for uninsured benefit claims for which their employees are eligible. [s. 102.85 (5), Wis. Stat.]

Second, the DWD Worker's Compensation Division actively enforces the Act. If an uninsured employer fails to obtain or maintain insurance when required, DWD may order the uninsured employer to cease operations until the uninsured employer complies with the Wisconsin Worker's Compensation Act. [s. 102.28 (4), Wis. Stat.]

By law, a penalty is imposed on an employer for failing to have worker's compensation insurance coverage where required. The normal penalty is twice the amount of premium not paid during an uninsured time period or \$750, whichever is greater. Under certain circumstances, an employer who has an illegal lapse in worker's compensation insurance of seven consecutive days or less can be subject to a penalty of \$100 for each day he/she is uninsured up to seven days, provided:

1. The employer has not previously been penalized for not having worker's compensation insurance coverage.
2. No injury the employer is liable for under s. 102.03, Wis. Stat., occurred during the uninsured period.

If the illegal lapse is greater than seven days, the normal penalty assessment will apply. In addition, **an uninsured employer is personally liable for reimbursement to the Uninsured Employers Fund** for benefit payments made by the Fund under s. 102.81 (1), Wis. Stat., to an injured employee (or the employee's dependents). The penalties and reimbursements to the Fund are mandatory and non-negotiable.

What Is the Uninsured Employers Fund?

The Uninsured Employers Fund (UEF) pays worker's compensation benefits on valid worker's compensation claims filed by employees who are injured while working for illegally uninsured Wisconsin employers. When a compensable claim is filed, UEF pays the injured employee worker's compensation benefits as if the uninsured employer had been insured. UEF is a section of the Wisconsin Department of Workforce Development (DWD), Worker's Compensation Division.

How Is UEF Funded?

UEF is funded through penalties assessed against employers for illegally operating a business without worker's compensation insurance. The penalties are mandatory and non-negotiable. In addition, UEF pursues reimbursement from each uninsured employer of benefit payments made by UEF under s. 102.81 (1), Wis. Stat., to the employee of that uninsured employer or to the employee's dependents. UEF uses aggressive collection action (including warrants, levies, garnishments and seizures of property) to secure satisfaction of penalty assessments and reimbursement of claims paid by the fund.

When Was UEF Implemented?

UEF applies only to injuries occurring on or after July 1, 1996. UEF claims filed for injuries occurring prior to July 1, 1996, are not valid and will be denied. [s. 102.81 (7), Wis. Stat.]

How Is a UEF Claim Application Filed?

To file a claim, an injured worker must complete an Uninsured Employers Fund Claim Application and provide the required documentation. In addition, a claimant is expected to provide assistance to UEF or its agent, including copies of relevant payroll checks, check stubs, bank records, wage statements, tax returns or other similar documentation in determining whether their employer is liable for the injury. A claimant is also required to document any medical treatment, vocational rehabilitation services and other bills or expenses related to a claim. A UEF claim form can be obtained from the DWD Worker's Compensation Division.

Will UEF Verify the Information Provided in a UEF Claim Form?

Yes, the claim will be thoroughly investigated. In verifying information submitted in support of a claim for compensation, UEF or its agent may share information related to a claim with other government agencies, including those responsible for tax collection, unemployment insurance, medical assistance, vocational rehabilitation, family support or general relief.

What if an Alleged Uninsured Employer Refuses to Cooperate With UEF?

An employer who is alleged to be uninsured is required to cooperate with UEF or its agent in the investigation of a claim by providing any records related to payroll, personnel, taxes, ownership of the business or its assets or other documents UEF or its agent requests from the employer to determine the employer's liability under s. 102.03, Wis. Stat. If an employer fails to provide requested information, UEF may presume the employer is an uninsured employer and assess the appropriate penalties.

Once a UEF Claim Application is Filed, How Long Does it Take to Process the Claim?

Within 14 days after receiving a completed UEF claim application, UEF or its agent will take one of the following actions:

1. Mail the first indemnity payment to the injured employee.
2. Deny the claim.
3. Explain to the employee who filed the claim the reason the claim is still under review.

UEF or its agent will report to the employee regarding the status of the claim at least once every 30 days from the date of the first notification while the claim is under review until the first indemnity payment is made or the claim is denied.

For more information regarding UEF, contact the Wisconsin DWD Worker's Compensation Division, Bureau of Insurance Programs. See page 17 for contact information.

Benefits Payable Under Worker's Compensation Insurance

Worker's compensation insurance provides distinct benefits for employees who have injuries or illnesses related to employment:

1. Coverage of all reasonable and necessary medical costs.
2. Benefits for temporary wage loss [Temporary Partial Disability (TPD) or Temporary Total Disability (TTD)] sustained by an employee while recovering from injury. Eligibility for temporary disability benefits are determined and must be documented by a physician. Benefits for temporary wage loss due to disability are based on two-thirds of the employee's wage rate up to a specified maximum amount.
3. Benefits for permanent disability [Permanent Partial Disability (PPD) or Permanent Total Disability (PTD)] if the employee does not fully recover from the injury. Permanent disability is awarded for the potential, or actual, loss of earning capacity. The amount of benefit payment for permanent disability depends on the seriousness of the permanent disability.
4. Vocational rehabilitation.
5. If a death occurs to an injured employee, death benefits and burial expense will be paid up to specific limits.

Medical Benefits

There is full, complete and unlimited coverage of all bills for medical treatment and for hospital services provided to workers injured in the course of their employment.

Indemnity Benefits

There are weekly cash payments to workers to generally replace lost income. In Wisconsin, there are several different kinds of payments that make up indemnity benefits. The principle kinds are:

- **Temporary Total**
In 2018, two-thirds of an employee's earnings, subject to a maximum of \$994 per week, are paid to the injured worker until he or she recovers from the work-related injuries and returns to work.
- **Permanent Total**
Injured workers who are 100% disabled due to a work-related injury are entitled to receive two-thirds of their earnings subject to a maximum weekly amount of \$994 in 2018 for the remainder of their lives.
- **Permanent Partial**
After the healing period has ended, workers who sustain permanent partial disability receive additional compensation of two-thirds of their earnings, subject to a maximum of \$362 per week in 2018, for a specified number of weeks related to the degree of disability.
- **Death Benefit**
There are several benefits payable when an employee is fatally injured dependent upon the worker's family status at the time of death. The maximum payable for a worker with dependents is \$298,200 in 2018. A maximum burial expense of \$10,000 currently is also payable.

Vocational Rehabilitation

The cost of rehabilitation is fully covered, and the injured worker is entitled to weekly indemnity payments during the rehabilitation period.

If you have any questions regarding worker's compensation benefits paid to an injured employee or have a complaint about the payment of benefits, contact the Department of Workforce Development. See page 17 for contact information.

Cost of Worker's Compensation Insurance

The cost of insurance will vary depending on how hazardous jobs are in your business classification, based on the basis of the past experience in your industry and your gross payroll. For example, it will cost more to insure blasters than it will barbers. Employers are classified for worker's compensation insurance purposes by the predominate business of the employer and not the specific job.

For example, in a manufacturing risk situation, the product manufactured determines the business of the insured employer. In other words, General Motors would be classified as an automobile manufacturer. There are many different kinds of jobs involved in the manufacturing of automobiles, some of which are more hazardous than others. Nonetheless, all of these jobs are being performed for an employer engaged in the business of manufacturing automobiles and, therefore, all of the employees' payrolls would be classified in the same classification.

There are three standard exception classifications to cover clerical office employees, outside sales people, and drivers. The standard exception classes are the only classifications not related to the business of the employer. Instead, they are related to the job as these jobs are fairly common to all employers.

Premium Rate Determination

WCRB sets the premium rate for each class with the approval of the Commissioner of Insurance. If you feel your business is not properly classified or the premium charge is not appropriate, you can appeal to WCRB for review of your situation. If you are still not satisfied with WCRB's decision, you may request, in writing, for the Commissioner of Insurance to hold a hearing to review WCRB's decision. (s. 626.31, Wis. Stat.)

The Classification System in Worker's Compensation Insurance

The worker's compensation classification system groups similar employers so each classification reflects losses common to them. Since losses vary widely by business or industry of employers, charging the statewide average rates would result in some employers paying too high a premium, while employers in other businesses or industries would pay less than their fair share. Worker's compensation insurance uses approximately 650 separate business classifications for premium purposes.

Accordingly, employers are classified by the business or industry in which they operate to reflect this variation in loss costs. In general, similar businesses have similar exposures to occupational injury and disease.

Each classification combines the payroll and losses of similar employers to develop a price for the insurance protection. The only exceptions to this concept are clerical office employees, outside sales people, and drivers.

The Experience Rating Plan

The Experience Rating Plan offers a method for modifying the cost of insurance to match the characteristics of an individual employer. Employers whose business is too small to rely on past losses as statistically reliable predictors of future losses are not subject to experience rating. Experience rating groups all insureds according to their business operations or classification, adds together the losses of the group, and obtains an average cost for the group.

In worker's compensation experience rating, the actual losses of the individual employer are determined over a period of time, usually three years. The losses are capped which makes the frequency, not severity, of losses more important for determining experience rating modification factors. This experience is then compared or contrasted with the average as reflected by the rate or rates which apply to the employer's business. If the employer has better than average costs, then credit is awarded, while poorer than average experience carries a debit rating. Experience rating takes average loss experience (rates) and modifies it by the individual employer's own loss experience.

Legal Protections in the Event of Insurer Bankruptcy

There are two provisions in the law to protect workers in the event of bankruptcies: the Self-Insurers' Security Fund and the Wisconsin Insurance Security Fund.

Self-Insurers' Security Fund

The Self-Insurers' Security Fund is funded by assessments on other self-insured employers. Should a self-insured employer go bankrupt, the Self-Insurers' Security Fund has the responsibility for making payments to injured workers. Should this occur, it is very important for the injured worker to give notice of their claim to the Self-Insurers' Security Fund immediately. There is also a guaranty fund which assumes responsibility if an insurance company becomes bankrupt.

Wisconsin Insurance Security Fund

Every state has a safety net to protect insurance consumers from financial loss in the rare instance a company becomes insolvent. This safety net is called a "guaranty fund." The guaranty funds are established by state law and are composed of licensed companies in the state. They pay the claims of policyholders and other claimants of an insolvent insurance company. The money to pay the claims against the insurance company comes from assessments made against all of the insurance companies that are members of the guaranty fund.

In Wisconsin, the fund is called the Wisconsin Insurance Security Fund (Fund). The Fund is created by state law and is funded by assessments of insurers licensed to do business in Wisconsin. The Fund essentially protects residents for most claims of licensed insurers in liquidation. The Fund should not be relied upon to eliminate all risks of loss to insureds due to insurer insolvency. Some types of policies may not be fully covered and significant delays could occur in settling obligations in cases of liquidation.

Questions about the coverage and limitations of the Fund may be addressed to:

Wisconsin Insurance Security Fund
2820 Walton Commons Lane, Suite 135
Madison, WI 53718-6797
Phone: (608) 242-9473
www.wilifega.org

Frequently Asked Questions

I have never had a loss, so why do my costs keep rising?

Rates and employers' costs increase whenever losses in Wisconsin increase. Losses increase when there is a benefit increase in the law, when there are more losses, and when losses cost more in indemnity benefits or medical expenses.

The basic principle of insurance of "spreading of risk" applies in worker's compensation just as it does in all insurance. This means the employers who happen to have losses in a given year are subsidized by employers who do not have losses in that year. Without this sharing, one large loss could make the cost of insurance prohibitive for the unfortunate employer.

Does this mean my premiums reflect losses of all employers in Wisconsin, even those with more hazardous work?

In Wisconsin, the overall change in premium level is based on total Wisconsin premiums and losses of all employers. However, once the determination is calculated, the change is distributed first to industry groups (i.e., manufacturing risks, contracting risks, and all other risks) and then to the more than 650 classifications representing the business of each insured employer. If the particular employer classification is a large class with many Wisconsin employers, for example "creameries," the final rate ultimately determined for the class is based primarily on the combined loss experience of all Wisconsin creameries only.

Smaller employer classes would have a rate based partially on the class experience, with the remainder based on the loss experience of similar businesses throughout the country and the current underlying rate.

Do premiums paid by Wisconsin employers subsidize the losses of employers in other states?

Wisconsin premium dollars are used for Wisconsin claims; other states are not directly subsidized. Some employers tend to confuse the use of countrywide experience in Wisconsin ratemaking as some form of subsidy. This is not the case. Countrywide loss experience is only used to develop class rates in Wisconsin when a class has no experience in the state. Even when no class exists in the state, a class rate is still developed because an employer may eventually start that kind of business and must buy a worker's compensation insurance policy.

If I operate year after year without a loss, does this mean I am subsidizing my competitors who have losses, yet I am receiving no benefit whatsoever for my good experience?

Insurance is a risk-spreading mechanism allowing all risks to be spread over a pool. A small risk could go 10 years without a loss and then experience one loss in the 11th year totaling more than the premiums paid by the employer during those 11 years. The benefit you get from insurance is the protection against catastrophic financial losses and peace of mind.

If you are a larger risk and have been paying premiums each year in excess of \$7,500, you do receive a benefit for your good experience. Likewise if you are a larger risk and have had poor loss experience, you will be penalized for your experience. Both of these adjustments occur under the Wisconsin Experience Rating Plan which is mandatory for all risks with annual premiums currently in excess of \$7,500.

I have a friendly competitor in my business and we both pay about \$25,000 a year in premium. In the three-year period used for experience rating, he had a claim totaling over \$100,000 while my losses averaged about \$2,000 or less and my three-year total losses were only \$15,000. Yet, he received an experience rating credit and I was debited. How can this happen? Is this fair?

Yes, it can happen and from an insurance viewpoint it is completely fair. To understand these answers one must understand the Experience Rating Plan and how it works.

The Experience Rating Plan is designed and intended to reward risks with good loss experience and penalize the risks with poor experience. In deciding what kind of employer is good or poor, the emphasis is on frequency of loss.

The insurance logic is: "Anyone can have a bad loss, while still being a good, safe operating employer. An employer having many losses however, even if they are all smaller losses, probably has a safety problem and will continue to have many losses until something is done by the employer to correct the problem."

For example, an executive of a firm could be killed in a plane crash while on business and this could easily be a loss of over \$100,000, yet it has nothing to do with the safety of the firm's overall operations. Because of this, the Experience Rating Plan equalizes the effects of losses by limiting each loss of the rated employer to a primary

value of \$5,000. In this example, the one employer had only \$5,000 of actual losses (the \$100,000 is reduced to \$5,000) while the other employer had several smaller losses totaling \$15,000. If the expected losses for both employers was about \$12,000, you can see why the first employer still received a credit (\$5,000 compared to \$12,000), and the second was debited (\$15,000 compared to \$12,000). Worker's compensation studies have shown a risk having many smaller losses, year after year, is the more costly risk to insure in the long run.

My agent obtained my worker's compensation insurance through the Pool because he could not get coverage from any company he represented. Does this mean I am a bad risk? Is insurance through the Pool detrimental to me in any way?

Being insured through the Pool does not mean the employer is a bad risk nor is there a negative stigma to being in the Pool. In fact, the rates are exactly the same in the Pool as in the voluntary market. However, there may be price disadvantages.

Risks with over \$10,000 in premium receive a premium discount in the voluntary market to recognize expense savings. Pool risks do not receive a premium discount. Many risks are eligible to receive dividends when insured in the voluntary market. Pool risks are not eligible. Employers with operations in several states can usually insure all of their operations under one worker's compensation insurance policy in the voluntary market. A Pool policy covers only Wisconsin operations and additional policies would need to be purchased to cover operations in other states.

What risks are most commonly insured through the Pool?

Most of the risks insured through the Pool have generally been identified as one or more of the following:

- The risk is in a business that generally is not profitable to insure and insurance companies are not voluntarily writing this particular class of business at the present time.
- The risk is a new employer and has not been operating long enough to have a loss experience track record. Insurance companies tend to wait and see how a new employer does during the first three to five years.
- The risk is considered a poor risk because of a terrible loss experience and no insurance company will voluntarily insure it unless the employer takes steps to reduce or eliminate losses.
- The agent for the risk represents few or perhaps only one insurance company and the insurance company is not writing worker's compensation for the particular class of business at this time.
- The risk is very small with estimated premiums under \$2,000. Few insurance companies are interested in insuring smaller risks because of the difficulty in achieving a profit insuring these risks. Much of the premium is used for expenses with little left to pay losses.

I am a small risk with very little payroll and I have to pay a minimum premium which is just too high. Why?

Minimum premiums in Wisconsin are established for each classification by WCRB and approved by the Commissioner of Insurance. The minimum premiums cover the expense of issuing a policy with a nominal amount available for losses. Classifications with lower rates have lower minimum premiums and classes with higher rates have higher minimum premiums. Generally the minimum premium is based on an annual payroll of \$18,000 which is less than half of the average annual wage for one employee in Wisconsin. Currently, the minimum premium is capped at \$900.

Wisconsin is the only state to have a minimum-minimum premium rule. This exclusive rule provides the minimum premium can be adjusted at the end of the policy whenever the minimum premium is greater than 20% of the actual earned payroll of the employer. In these cases, the final applicable minimum premium is limited to 20% of the earned payroll, but not less than the policy expense constant which is currently \$220.

I think I am misclassified. My employees do different work than the employees of others I am classified with. What can I do?

Under Wisconsin law, WCRB has the responsibility and the authority to classify risks in any reasonable manner. WCRB generally follows the same classifications developed by the National Council on Compensation Insurance (a national rating organization that is advisory in Wisconsin) but there are a number of Wisconsin exceptions.

Worker's compensation insurance is very unusual in two distinct ways. First, it is mandatory for most employers. Second, the named insured is not the direct recipient of the policy benefits.

Employees receive benefits that are paid by the insurance company on behalf of the employer which is the named insured. In classifying the risk, WCRB does not look at what work an employee does, but rather classifies the business of the insured employer. The only exceptions to this concept are clerical office employees, outside sales people, and drivers.

Some employers actually engage in several businesses at the same time. Contractors could actually have employees working in the carpentry business, others in the plumbing business, and still others in several different trades. If the employer keeps separate payrolls for each trade, they are assigned classifications to each business or trade.

If after reviewing your business and the businesses of those you compete with you believe you are misclassified, please contact WCRB and request an inspection. Inspections are conducted within 30-45 days after receipt of a request. The inspections will either verify the accuracy of the classification assigned or will reclassify your business appropriately.

Upon request WCRB will conduct a test audit. WCRB will charge for the test audit on a cost-plus basis (hourly charge and actual expenses incurred to perform the audit).

Contact Information

Worker's Compensation Division of the Department of Workforce Development (DWD)

dwd.wisconsin.gov/wc

Relating to:

- All questions relating to the Wisconsin Worker's Compensation Act
- All injury/claim questions and disputes
- Compliance questions
- Corporate officer options questions
- Employer's improper actions
- Enforcement questions
- Penalty and penalty payment plan questions
- Provider disputes
- Self-insurance questions
- Divided insurance questions
- Wrap-up policy questions
- Withdrawal questions

Madison Area Office:

201 East Washington Ave., Room C100
P.O. Box 7901
Madison, WI 53707-7901
(608) 266-1340 Phone
(608) 267-0394 Fax

Office Hours:

7:45 a.m. to 4:30 p.m.
Monday through Friday

Wisconsin Compensation Rating Bureau (WCRB)

www.wcrb.org

Relating to:

- Wisconsin Worker's Compensation Insurance Pool questions
- Rate questions
- Inspection questions
- Audit questions
- Premium charging questions
- Classification questions
- Experience modification questions
- All questions regarding the proper filing of policies and endorsements pertaining to Wisconsin coverage
- Insurance company filing questions
- Endorsement filing questions
- Questions regarding appeal rights of a WCRB decision
- Questions about statistical reporting

20700 Swenson Dr., Suite 100
P. O. Box 3080
Milwaukee, WI 53201-3080
(262) 796-4540 (Phone)
(262) 796-4400 (Fax)

Office Hours:

7:45 a.m. to 4:15 p.m.
Monday through Friday

The Office of Worker's Compensation Hearings (OWCH)

doa.wi.gov/Pages/LicensesHearings/DHAWorkersCompensation.aspx

Relating to:

- Litigated claims
- Hearing application questions
- Scheduled hearings questions
- Postponement & cancellation requests
- Compromise agreements on a litigated claim
- Court reporter questions
- Interpreter questions
- Updating address requests
- Attorney unavailability
- Incorrect party on litigated claims

4822 Madison Yards Way
5th Floor North
Madison, WI 53705
(608)-266-7709 (Phone)
(608) 266-0018 (Fax)
DHAWCMail@wisconsin.gov

Office Hours:

7:45 a.m. to 4:30 p.m.
Monday through Friday

Office of the Commissioner of Insurance (OCI)

oci.wi.gov

Relating to:

- All questions relating to the insurance laws
- Questions related to the licensing and regulation of insurance companies
- Unfair claim settlement practices questions
- Unfair marketing practices questions
- Worker's compensation rate regulation questions
- Worker's compensation dividend plans questions
- Questions related to the licensing and regulation of WCRB

125 South Webster Street
P. O. Box 7873
Madison, WI 53707-7873
1-800-236-8517 (Phone)
(608) 264-8115 (Fax)

Office Hours:

7:45 a.m. to 4:30 p.m.
Monday through Friday