

The Employers' Guide to Workers' Compensation



New York State
Workers' Compensation Board

Workers' compensation insurance protects employers and employees against financial losses in the case of injury. Any for-profit business or nonprofit that compensates workers should seriously examine the criteria explained here to determine whether it must carry insurance or merits an exemption.

New York State's Workers' Compensation Law requires that employers continuously provide for workers' compensation benefits to all employees, even part-time staff and family members in their employ. If people are under your direct control, you probably have employees, **regardless of their tax status**; the person providing direction and control at the moment of compensable injury is the employer.

For these purposes, the term **employee** generally includes day labor, leased employees, borrowed employees, part-time employees, unpaid volunteers (including family members) and most subcontractors.

Purchasing insurance is a cost of doing business, and recent Reform legislation has cut those costs. The system is being reformed to reduce premiums and expenses. Another goal is expediting the claims process and increasing efficiencies, which reduces the number of controverted claims, driving down system costs further.

Obtaining Insurance Coverage

Employers may satisfy workers' compensation coverage requirements by obtaining insurance in one of the following ways:

Private Insurance. Hundreds of private insurance carriers are authorized to write workers' compensation insurance policies in New York.

State Insurance Fund. The State Insurance Fund, a quasi-public insurance carrier, also writes workers' compensation insurance. It is the insurer of last resort in New York.

Individual Self-Insurance. Employers can set aside reserves for self-insurance, but this is a formal process that follows defined regulations. Contact the Board's Self-Insurance Unit at 518-402-0247.

Group Self-Insurance. Becoming part of a group self-insurance program may be a viable option. Contact the Self-Insurance Unit for a list of authorized groups.

The Board is notified when insurers write, modify or cancel insurance coverage. If workers' compensation coverage is cancelled, and the Board does not have record of replacement coverage, the Board sends an inquiry letter to determine if there is new coverage or if coverage is not required. If no response is received, a penalty notice is sent.

There are some legal exemptions from carrying workers' compensation insurance.

- Sole proprietorships without employees;
- Partnerships under New York law (LLC, LLP, PLLC, PLLP or RLLP) without employees other than the partners or members;
- One- and two-person corporations where those individuals own all the stock, hold all corporate offices, and do not have other employees; and
- Nonprofit entities (under IRS rules) that do not have compensated individuals, except clergy or teachers, providing any services.

Your Right to Appeal a Penalty

Employers have 30 days from the date of the initial penalty to contact the Board's Compliance Unit and appeal violations for not providing coverage, or for not keeping and disclosing records. However, penalties may continue to accrue during the process. Sole proprietors, partners and certain corporate officers are personally liable for workers' compensation penalties.

There are significant reasons to comply with the law.

- ✓ If you have a policy in place, your employees generally cannot sue you for a work-related injury or illness.
- ✓ The Board employs investigators to ensure compliance.
- ✓ The Chair of the Board may order businesses that do not carry insurance to close with a **Stop-Work Order**.
- ✓ People and businesses who are penalized or receive Stop-Work Orders may not bid on public works projects.
- ✗ Not carrying insurance for employees is a crime, and the business owner can be prosecuted for a misdemeanor or felony.
- ✗ There is a \$2,000 penalty for every 10 days without insurance, and penalties accrue until a policy or a reason for exemption takes effect. There are also significant penalties for failing to keep and produce records and misrepresenting payroll and employee types.
- ✗ In addition to penalties, if an employee is hurt and there is no workers' compensation insurance, the business owner is liable for lost wages, for the actual cost of medical care, and penalties. There is no cap on Workers' Compensation benefits in New York for permanent total disability and death cases.

**Workers' compensation fraud is a Class E felony,
punishable by up to four years imprisonment,
\$5,000 individual/\$10,000 corporate fine,
and five years probation.**

**Any subsequent violation is a Class D felony,
punishable by up to seven years imprisonment.**

To report fraud, call 1.888.363.6001.

For More Information

New York State Workers' Compensation Board

Compliance Unit: 866-298-7830

Self-Insurance Unit: 518-402-0247

Advocate for Business: 800-628-3331

[Employers Handbook](#)

www.WCB.NY.Gov

New York State Department of Financial Services

www.DFS.NY.Gov

New York State Insurance Fund

www.NYSIF.com

New York Self-Insurers Association

www.NYSelfInsurance.com

This booklet contains general information about New York state's workers' compensation program. It is not legal advice and does not contain a complete description of the law.