



OKLAHOMA

Workers' Compensation Commission

Guide for Employers

This is a guide to Oklahoma workers' compensation law and rules. It is based on laws and rules in effect in 2015. Laws and rules can change by acts of the Legislature, rulemaking by the Oklahoma Workers' Compensation Commission, or by decisions of the higher courts of Oklahoma. This guide provides basic information, but please keep in mind that every situation is different; the Commission cannot provide legal advice by applying the law to a particular set of facts. This guide is supplemented in places with frequently asked questions pertaining to the subject area addressed.

Please note: the laws and procedures summarized herein apply only to injuries occurring on or after February 1, 2014. The Workers' Compensation Commission assumed jurisdiction over work-related injuries, illnesses, and deaths occurring on or arising on or after that date.

Introduction: What is Workers' Compensation?

Workers' compensation is a system of insurance that provides medical and indemnity benefits for workers' with job-related injuries or illnesses. Workers' compensation is a "no fault" system, meaning fault for the accident is not relevant to eligibility for benefits. Workers' compensation provides for:

- Medical care for work-related injuries or illnesses;
- Payments for wages lost as a result of work-related injuries or illnesses;
- Replacement for lost wages; this is temporary total disability (TTD);
- Compensation for permanent disabilities, within limitations set by law;
- Death benefits for the families of workers' who died due to a work-related injury;
- Vocational retraining for workers' who are unable to return to their prior occupation;

Question: Who is covered by the Administrative Workers' Compensation Act?

Answer: Generally, every employee who is injured on the job in a work-related injury is covered by the Administrative Workers' Compensation Act, but only if the injury occurred on or after February 1, 2014.

Some exceptions do apply. For example, agricultural or horticultural workers employed by an employer with less than \$100,000 in payroll for agricultural or horticultural workers in the preceding calendar year are not "employees" under the act, and not covered. Other exceptions include:

- *In general, employees of the Federal government, or employees who are covered for injuries, disease, or death arising out of and in the course of employment under any Act of Congress (federal law);*
- *Any person who is a licensed real estate sales associate or broker, paid on a commission basis;*
- *Any person who is providing services in a medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations to provide workers' compensation for such person. This exception does not apply to nursing homes;*
- *Any person employed by an employer with five or fewer total employees, all of whom are related by blood or marriage to the employer, if the employer is a natural person or a general or limited partnership, or an incorporator of a corporation if the corporation is the employer;*
- *Independent contractors do not fall under the definition of "employee" under the AWCA and are therefore not covered.*

Question: How do employers obtain workers' compensation coverage?

Answer: In Oklahoma, most employers must provide coverage to their employees with workers' compensation coverage. Employers may buy their insurance from a private insurance company. Employers may also meet their obligation under law to secure compensation for their employees by obtaining approval from the Commission to become a self-insured employer, by becoming a member of a Commission-approved group self-insurance association, or by becoming a "qualified employer", with approval by the Oklahoma Insurance Department.

Responsibilities prior to a work injury occurring

Every employer, with a few exceptions, is required by law to carry workers' compensation insurance, or "secure compensation" for its employees, as defined by law. What it means to "secure compensation" is discussed later in this guide.

Every employer should post the CC-Form-1A in a conspicuous place on the premises of the business, so that workers are aware of their rights under law.

What to do when a work injury has occurred

The employer must promptly provide the injured worker with reasonable and necessary medical treatment. The employer has the right to choose the treating physician, but must provide treatment within five (5) days of notice or knowledge that the injury has occurred. If the employer fails to do so, the injured worker may seek treatment with his or her own physician at the employer's expense. The employee may also obtain emergency treatment at the expense of the employer, and select the physician for that treatment where the employer does not provide the emergency treatment.

Benefits owed to the injured worker

The employer must provide temporary total disability (TTD) benefits to an employee who has been determined by the treating physician to be unable to perform his or her job duties, or any alternative light duty work. The first installment of TTD is due on the fifteenth day after the employer has notice of an injury unless the employer contests the employee's right to compensation by timely filing the CC-Form-2A Employer's Intent to Controversy Claim. There is no payment for the first three (3) days of the initial period of temporary total disability.

If the employee can perform modified duty, the employer should offer modified employment that complies with the restrictions dictated by the treating physician. If the employer cannot provide modified duty, then TTD should be paid.

Exceptions from the General Rule that Coverage Must be Provided

This section provides more in-depth explanation of some of the various exceptions to the general rule that employers must secure compensation on their employees. This list is not exhaustive, but it does contain some notable exemptions.

Small Family Businesses - Some small businesses may not have a legal obligation to secure compensation. Employees of businesses with five (5) or fewer total employees, all of whom are related by blood or marriage to the employer, are not "employees" for the purposes of the AWCA, so employers are not required to secure compensation for those individuals. However, for this exception to apply, the employer must be "a natural person", a "general or limited partnership" or "an incorporator of a corporation if the corporation is the employer."

Sole Proprietors - Sole proprietors are not "employees", and are therefore not obligated to secure compensation on themselves. However, sole proprietors may elect to be covered by a policy of insurance covering benefits under the AWCA.

Partners, Stockholders - Partners of an LLC who own at least ten percent (10%) of the capital of the LLC and any stockholder-employees of a corporation who own at least ten percent (10%) or more stock in the corporation are not "employees" under the AWCA. However, such individuals may elect to be covered by a policy of insurance covering benefits under the AWCA.

Agricultural and Horticultural Employees - Employees of agricultural or horticultural employers who had a gross annual payroll of less than one hundred thousand dollars (\$100,000.00) wages for agricultural or horticultural workers are not "employees" for purposes of workers' compensation, so employers do not need to secure compensation for those individuals.

Independent Contractors - Independent contractors are not "employees" and therefore are not covered under Oklahoma workers' compensation law. Independent contractors are covered more in depth later in the next section.

Independent Contractors

Independent contractors are not employees under Oklahoma workers' compensation law. Many employers are under the mistaken impression that a single action or practice can grant them exemption from workers' compensation law. However, a multitude of factors can be possibly considered when determining whether a worker is an independent contractor or an employee for purposes of workers' compensation.

The factors that are used to legally determine whether an employer/employee relationship exists for purposes of workers' compensation are listed below. *The evidence is weighed under the totality of the circumstances, so no single factor, by itself, is necessarily decisive.*

- The nature of the contract shows that the worker is independent from the contractor. For example, the contract may contain an agreement that the contracting party is an independent contractor.
- The degree of control exercised by the principal (employer) over the work. The greater the degree of control exercised by the principal, the greater the likelihood is that the worker is an employee, rather than an independent contractor.
- Whether the worker is engaged in a distinct occupation or business for others. For example, the worker is a painter who paints houses for multiple employers.
- The kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- Whether the occupation requires special skills, license, education, or training; which tends to indicate that the worker is a contractor.
- The worker supplies all or most of the materials that he or she needs to perform the job. If this is the case, it tends to indicate that the worker is an independent contractor.
- The length of the job, i.e., whether the job is a one-time job or a job that will be performed on a regular basis.

- The worker is paid as a separate contractor, e.g., an invoice is provided to the worker for his/her services; the worker is paid by the job; the worker files a federal income tax return for his/her business; the worker is provided with an IRS Form 1099 from the principal.
- Whether or not the work is a part of the regular business of the employer;
- Whether or not the parties believe they are creating the relationship of master and servant;
- The right of either party to terminate the relationship without liability.

IMPORTANT NOTE: Independent contractors should be aware that a primary contractor may be held liable for the work-related injuries of the employees of any subcontractors, if the subcontractor has not secured workers' compensation coverage for its employees.

FAQs

Are there penalties for failure to carry workers' compensation insurance?

An employer who is required by law to secure compensation and does not do so, may be subject to penalties up to one thousand dollars (\$1,000.00) PER DAY. Failure to secure compensation may also subject the employer to liability in district court in a negligence action maintained by an employee. Failure to secure the payment of compensation or pay any civil penalty assessed against the employer after a judgment by the Workers' Compensation Commission may result in a court order enjoining the employer from engaging in further employment until the employer secures the payment of compensation or makes full payment of all civil penalties.

What does it mean to "secure compensation?"

An employer "secures compensation" either by carrying workers' compensation insurance, obtaining approval from the Workers' Compensation Commission to be self-insured, or obtaining approval from the Oklahoma Insurance Department to become a "qualified employer."

What steps should I take to ensure that an injured employee is provided the proper benefits?

The AWCA creates the legal obligation on the part of the employer to pay appropriate benefits as prescribed by that Act. First and foremost, the employer should ensure that reasonable and necessary medical care is promptly provided for the employee. Also, the employer should make an incident report and notify its workers' compensation insurer or third party administrator of the work-related injury or illness; claims professionals are experienced in administering claims according to the requirements of Oklahoma law. The employer should also ensure that, when requested, payroll and other information is turned over promptly to the workers' compensation insurance carrier or third party administrator so that a determination of benefits payable can be made as soon as possible.

What should I do in cases of suspected fraud?

You should immediately report suspected fraud to the Workers' Compensation Fraud Investigation Unit of the Oklahoma Office of Attorney General, and to your workers' compensation carrier.

Contact information for the Attorney General Workers' Compensation Fraud Investigation Unit is provided below:

Oklahoma City

(405) 522-3403

(877) 800-8764 (toll free)

Tulsa

(918) 581-2885

Online

www.oag.state.ok.us

What are the rules regarding termination of an employee who is on workers' compensation?

Please note: this guide only addresses the retaliation/discrimination provisions of the AWCA, and does not address other potentially applicable provisions of state and/or federal law.

*The AWCA makes it unlawful to discharge an employee during a period of temporary total disability **for the sole reason** of being absent from work or for the purpose of avoiding payment of temporary total disability benefits to the injured employee. However, after temporary total disability has been exhausted, an employer is not required by the AWCA to rehire or retain an employee who is determined by a physician to be physically unable to perform his or her assigned duties, or whose position is no longer available.*

*The AWCA also makes it unlawful to discriminate or retaliate against an employee **because** he or she has:*

- (1) Filed a claim under [the AWCA]
- (2) Retained a lawyer for representation regarding a claim under [the AWCA]
- (3) Instituted or caused to be instituted any proceeding under the provisions of [the AWCA]
- (4) Testified or is about to testify in any proceeding under the provisions of [the AWCA]

The Commission has jurisdiction to hear claims for discrimination or retaliation based on the foregoing.