

# Workers' Compensation – Employer Penalties

Workers' compensation is a system of no-fault insurance that provides monetary and medical benefits to employees or their survivors for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Washington Industrial Insurance Law (IIL) governs the workers' compensation system in the state and also establishes penalties employers may face for noncompliance with workers' compensation requirements. The Washington Department of Labor & Industries ([L&I](#)) enforces the IIL and imposes penalties.

An employer's obligations and potential penalties under the IIL may differ based on whether the employer participates in a state-run insurance program or self-insures. This document makes special note of the differing requirements.

## GENERAL IIL VIOLATIONS

The IIL includes a blanket prohibition against violating any of its provisions or any related regulations. This allows the L&I to impose, in addition to the penalties summarized below, fines of **up to \$500** for any employer violation.

## FAILURE TO COMPLY WITH COVERAGE REQUIREMENTS

All employers in Washington must provide workers' compensation coverage for their employees by either participating in the state-run insurance fund (State Fund) or by self-insuring. To comply, employers must apply for and obtain a certificate of coverage or a certificate of self-insurance from the L&I.

An employer that engages in business without first obtaining a certificate may be charged with a **gross misdemeanor**, punishable by incarceration in a county jail for up to 364 days, a fine of up to \$5,000 or both. If the employer knowingly failed to obtain the coverage, or if it engaged in business after its certificate was revoked, it may also be charged with a **Class C felony**, punishable by up to five years in prison, fines of up to \$10,000 or both.

A failure to secure coverage may also subject an employer to a fine equal to the greater of either **\$500 or double the amount of premiums** that it would have had to pay for State Fund coverage during the time period of noncompliance.

If an employee sustains a work-related condition while working for an employer that does not have coverage, the employer must pay **all benefits payable to and for the employee under the IIL** and may also be subject to an additional fine equal to **at least half, but not more than 100 percent**, of the cost for the injury or occupational disease.

## INFORMATION AND RECORDKEEPING VIOLATIONS

All employers have a duty to provide the L&I with complete and truthful information for any purpose relating to workers' compensation. An employer that knowingly misrepresents or conceals information, makes a false statement or causes others to do so may be charged with a **Class C felony**, punishable by a fine of **up to \$25,000**.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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Under the IIL, all employers must maintain payroll and employee records and keep them open for the L&I's inspection at all times. If an employer fails to keep records or refuses to submit records for inspection, the L&I may impose fines of **up to \$250** for each offense. In addition, any individual who personally refuses may be charged with a **misdemeanor**, punishable by incarceration in a county jail for up to 90 days, a fine of up to \$1,000 or both. The L&I may also **revoke an employer's coverage or self-insurance certificate** for a failure to submit records for inspection.

If an employer knowingly fails to provide or misrepresents payroll or work hour information that the L&I uses to calculate the employer's premiums for State Fund coverage, the employer may be ordered to pay:

- **Up to 10 times the amount of the difference** between the premiums that the employer paid and the amount it should have paid; and
- The L&I's **expenses** for auditing the employer's books and collecting the penalty.

In addition, the employer may be ordered to pay the correct premium amounts due and owing, another penalty equal to **100 percent of the premium due and owing** and **interest** on both amounts, accruing from the time the amounts were due until the date of payment.

If the employer had intent to evade determination and payment of the correct premium amount when it knowingly failed to provide or misrepresented information, the employer may be charged with a **Class C felony**, punishable by up to five years in prison, fines of up to \$10,000 or both.

## CLAIM SUPPRESSION AND RETALIATION

The IIL prohibits employers from suppressing employee claims in any way, such as by discouraging employees from reporting work-related injuries or encouraging them to indicate that work-related conditions were sustained off the job. An employer that engages in claim suppression may be subject to fines of **between \$250 and \$2,500** for each offense.

If an employer that engages in claim suppression is a State Fund participant, the L&I may **prohibit it from participating in a retrospective rating program** (which could otherwise reduce its premiums). If a claim-suppressing employer is self-insured, the L&I may **revoke its self-insurance certification**.

The IIL also prohibits employers from discriminating against employees based on the fact that they have filed or communicated an intent to file a workers' compensation claim or based on the fact that they have exercised any other rights provided under the IIL. If an employer violates this prohibition, the employee or the L&I may **sue the employer in civil court**, and the court may order the employer to **rehire and pay back wages** to the employee.

## ADDITIONAL PENALTIES FOR SELF-INSURED EMPLOYERS

Because the L&I handles and pays all workers' compensation claims for employers that participate in the State Fund, those employers have relatively few responsibilities for handling employee claims under the IIL. Self-insured employers, however, must handle and pay their employees' workers' compensation claims themselves, and the IIL includes several requirements for their claims-handling procedures. Among these requirements, self-insured employers must:

- Provide an employee with his or her entire claim file upon request; and
- File a request for allowance or denial of an employee's claim with the L&I within 60 days from the date the employee filed the claim.

Failure to comply with these particular requirements may subject a self-insured employer to fines of **up to \$500** per violation.

Finally, if a self-insured employer unreasonably delays or refuses to pay any benefits required under the IIL, the L&I may impose fines equal to the greater of either **\$500 or 25 percent of the payable benefit amount**.

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## **MORE INFORMATION**

Contact Touchstone Consulting Group or visit the L&I's [website](#) for more information on workers' compensation laws in Washington.