

Workers' Compensation – Employee Eligibility

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.

In Washington, the state Industrial Insurance Law (IIL) requires employers to provide workers' compensation coverage for all employees by either participating in a state-run insurance pool called the Washington State Fund (State Fund) or by becoming an authorized self-insurer. The IIL and state regulations govern employee eligibility for benefits in the state.

The Washington Department of Labor & Insurance ([L&I](#)) handles and pays all workers' compensation claims for employers who participate in the State Fund. Self-insured employers handle and pay their own employees' claims, but the L&I oversees the handling and enforces the IIL and state regulations for all claims.

COVERED EMPLOYEES

Most workers are covered under the IIL. The law broadly defines a covered employee as any person who is engaged in the employment of an employer "whether by way of manual labor or otherwise." The definition of an "employer" includes any person or organization that contracts with **one or more** workers, "the essence of which is the personal labor" of the workers.

Exclusions

The IIL specifically excludes certain workers from the definition of a covered employee. Workers who are **not** covered under the IIL include:

- Domestic servants working in a private home for an employer that has fewer than two employees regularly employed for 40 or more hours per week;
- Workers employed to do gardening, maintenance or repair in or about the private home of the employer;
- Workers whose employment is not in the usual course of trade, business, profession or occupation of the employer;
- Workers performing services in return for aid or sustenance only from any religious or charitable organization;
- Sole proprietors and partners;
- Children under age 18 who are employed by their parent or parents in agricultural activities on the family farm;
- Jockeys participating in or preparing horses for race meets licensed by the Washington horse racing commission;
- Corporate officers;
- Musicians and entertainers working under contracts with purchasers of the services for specific engagements;
- Newspaper vendors, carriers and distributors;

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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- Freelance news reporters;
- Insurance salespeople;
- Members of limited liability companies;
- Employees of common carriers by railroad;
- Licensed electricians, registered construction contractors and other workers who meet specific IIL criteria showing they maintain a separate business from the hiring entity.

Despite the exclusions, employers may elect to provide coverage for many of these workers. Employers elect coverage by filing written notice with the L&I and posting printed notices in the workplace regarding the elected coverage.

COMPENSABLE INJURIES

A covered employee is entitled to workers' compensation benefits if he or she sustains a physical injury from a traumatic event while acting "in the course of employment." Unlike workers' compensation laws in many other states, the IIL does **not** require an injury to "arise out of" the employment in order to be compensable. This means an employee is not required to show that his or her job-related activity caused his or her injury. An injury is compensable if it occurs while an employee is acting at his or her employer's direction or furthering the employer's business.

Although exceptions may apply, compensable injuries also include those that occur while an employee:

- Goes to and from work immediately before or after a work shift in areas controlled by the employer, except parking lots;
- Attends to his or her personal comfort (such as eating lunch on the premises or using the bathroom) during a work shift; or
- Is engaged in work activities in the employer's interest while on a work-related trip away from the employer's premises.

Exclusions

An employee is **not** acting in the course of employment while:

- Participating in social and recreational activities or any other company events that take place outside of the employee's normal work hours and for which the employee is not required or paid to participate;
- Traveling to and from work in certain employer-sponsored transportation programs, such as where the employer provides a bus pass or arranges a car pool;
- Committing a felony; or
- Intentionally causing his or her injury.

COMPENSABLE OCCUPATIONAL DISEASES

Occupational diseases are different from work-related injuries in that they occur over time rather than from a single traumatic event. To be compensable under the IIL, a disease must arise "naturally and proximately" out of an employee's particular employment. This means that, unlike employees with injury claims, an employee claiming an occupational disease must prove that his or her distinctive job conditions caused the disease. This requires an opinion from a medical provider stating that it is "more probable than not" that the work conditions of the employee's job caused the disease.

Exclusions

Compensable occupational diseases do **not** include:

- Mental conditions and disabilities caused by stress;

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- Conditions caused by activities that are common to all employment or non-employment life (such as having to sit and stand); or
- Conditions caused by exposures or activities that are coincidental to employment (such as catching an illness from a co-worker).

EMPLOYEE RESPONSIBILITIES

Employees may lose their rights to benefits, in whole or in part, if they do not meet additional requirements and expectations under the IIL. Among these duties, employees are expected to:

- Inform a supervisor or manager of injuries or diseases as soon as possible;
- Inform the initial treating physician of injuries or diseases and make sure the provider completes and submits a report to the L&I or self-insured employer;
- Obtain medical treatment from a medical provider that is part of the L&I's network after the first treatment visit;
- File a claim for benefits with the L&I (or with the employer, if it is self-insured) within **one year** for injuries or within **two years** for occupational diseases;
- Submit to medical examinations upon reasonable requests by the L&I or self-insured employer; and
- Accept any work offered by the employer within any medical restrictions given by the treating provider.

MORE INFORMATION

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