

# 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 Kentucky Workers' Compensation Act (WCA) establishes obligations for employers and penalties for noncompliance. The Kentucky [Department of Workers' Claims](#) (DWC) administers the workers' compensation system and enforces the WCA in the state.

## **FAILURE TO COMPLY WITH COVERAGE REQUIREMENTS**

The WCA requires all employers to maintain workers' compensation coverage for their employees, either by purchasing an insurance policy or by obtaining the DWC's approval to self-insure. An employer that fails to comply with this requirement may be subject to:

- Administrative **fin**es between **\$100 and \$1,000** for each employee, as well as for each day during which each employee did not have coverage;
- Criminal charges punishable by **fin**es between **\$100 and \$1,000**, **imprisonment for 30 and 180 days, or both** for each offense; and
- A **stop-work order** issued by the DWC.

## **Cost of Coverage**

The WCA also requires employers to pay the full cost of their workers' compensation coverage. An employer that deducts any portion of the cost from the wages or salary of an employee may be subject to the following penalties for each offense:

- Administrative **fin**es between **\$100 and \$1,000**; and
- Criminal charges punishable by **fin**es, **imprisonment or both**. Fines may be between \$100 and \$1,000, and imprisonment may last between 30 and 180 days.

Several additional WCA requirements apply to employers that self-insure. If a self-insured employer violates any WCA provision relating to self-insurance, it may lose the DWC's approval to self-insure and may also be subject to administrative **fin**es between **\$500 and \$5,000** per violation.

## **Damages**

If an employee sustains a work-related condition while the employer does not have the required coverage, the employee may **sue the employer in court for damages**. These damages may exceed the employer's liability and the cost of limited benefits available to injured employees under the WCA. In this type of lawsuit for damages, the uninsured employer is barred from claiming that:

- The condition was caused by the negligence of a fellow employee;
- The employee assumed the risks of the employment; or
- The employee's negligence contributed to the condition.

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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## **Uninsured Employer's Fund**

Uninsured employers may be required to reimburse Kentucky's Uninsured Employer's Fund for all benefits paid to the uninsured employers' injured workers. The DWC has the authority to obtain a **10-year lien** against the employer's assets, and the Kentucky Attorney General may sue the employer in court to collect the payments.

## **FRAUD/MISREPRESENTATION**

Employers have a duty to provide truthful information regarding employment hazards, employee classifications, payrolls and any other facts that are used to determine both the premium amounts the employer must pay for workers' compensation coverage and the benefits that must be paid for injured employees.

An employer that provides false or misleading information for purposes of reducing its premiums or receiving or providing any service or benefit available under the WCA may be subject to administrative fines and criminal charges for each violation, as outlined below:

<b>Administrative Fines</b>	The greater of: <ul style="list-style-type: none"> <li>\$5,000 per individual;</li> <li>\$10,000 per corporation; or</li> <li>Twice the amount of gain received as a result of the violation.</li> </ul>
<b>Criminal Charges</b>	<ul style="list-style-type: none"> <li>Fines between \$200 and \$2,000;</li> <li>Imprisonment for 30 to 180 days; or</li> <li>Both a fine and imprisonment.</li> </ul>

In addition, if an employer knowingly uses or participates in any employee leasing arrangement for the purpose of paying lower premiums, taxes or assessments, the employer may be subject to criminal charges punishable by **fines between \$500 and \$5,000, imprisonment for up to 180 days or both** for each offense.

The DWC may also order an employer to **repay the amount of any benefit** the employer secured through a WCA violation.

## **FAILURE TO REPORT AN INJURY**

If a work-related condition results in an employee's absence from work for more than one day, the employer must report it to the DWC within **one week** after either the date the injury occurred or the date the employer first had knowledge of the injury or disease.

An employer that fails to report an injury within **15 days** from the date the report was due may be subject to administrative **fines between \$100 and \$1,000** for each offense.

## **FAILURE TO MAKE TIMELY BENEFIT PAYMENTS**

Employers must pay workers' compensation benefits within specific time periods outlined in the WCA. For example:

- Medical expenses must be paid within **30 days** after the employer receives an invoice from a medical provider; and
- Income benefits must be paid within **15 days** after the employer is notified of an alleged work-related injury or disease.

An employer that delays or fails to make any payment without reasonable grounds may be fined **between \$100 and \$1,000** for each violation. In addition, employers must pay **up to 18 percent interest** on all delayed payment amounts.

## **CLAIM HANDLING VIOLATIONS**

Employers must ensure that they (or the entity responsible for paying benefits on their behalf) file reports with the DWC **within one week** after:

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- Commencing benefit payments (additional reports must also be filed every 60 days while an employee is receiving temporary total disability benefits);
- Changing benefit payments; and
- Terminating benefit payments.

An employer that fails to comply with these claim reporting requirements may be subject to administrative **finances between \$100 and \$1,000** for each violation.

Self-insured employers that engage in unfair claims settlement practices may be subject to administrative **finances between \$1,000 and \$5,000** for each violation. If a self-insured employer demonstrates a pattern of violations, the DWC may **revoke its authority to self-insure**.

## PERSONAL LIABILITY

The following individuals may be held personally liable for WCA penalties if they knowingly authorize, order or carry out a violation of the law:

- Owners of a sole proprietorship;
- Partners of a partnership;
- Principals of a limited liability company (LLC); and
- Corporate officers.

## MORE INFORMATION

Contact Touchstone Consulting Group or visit the DWC [website](#) for more information on workers' compensation laws in Kentucky.