

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.

The Kentucky Workers' Compensation Act (WCA) establishes the requirements an individual must meet in order to receive workers' compensation benefits in the state. The Kentucky [Department of Workers' Claims](#) (DWC) is responsible for determining whether an individual is eligible to receive benefits under the WCA.

In general, an individual will be eligible for benefits if he or she:

- Is a **covered employee**; and
- Sustains a **compensable condition**.

COVERED EMPLOYEES

Most workers are covered under the WCA, as long as they are working under a contract for hire made in Kentucky or their employment is principally located in the state.

For coverage purposes, the law defines an employee as any person in the service of an employer under any contract of hire or apprenticeship. Employment may be expressed or implied, and workers are covered even if their employment is not legal. The WCA also specifically includes the following as covered employees:

- Minors;
- Helpers and assistants of employees, whether paid by the employer or employee, if employed with the employer's actual or constructive knowledge;
- Executive corporate officers;
- Government workers;
- Members of volunteer ambulance services, fire departments and police departments;
- Regularly-enrolled volunteer members and trainees of a state emergency management agency;
- Members of the Kentucky National Guard who are on state active duty; and
- Any person performing service in the course of the trade, business, profession or occupation of an employer at the time of an injury.

Exclusions

Certain workers are **not** covered under the WCA, even if they otherwise fit into the description of a covered employee. The WCA specifically excludes the following from coverage:

- Domestic servants working in a private home (unless the employer has two or more domestic employees who each regularly work 40 or more hours per week);

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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- Workers performing maintenance, repair, remodeling, or similar work for fewer than 20 consecutive workdays in or about the private home of an employer or in or about the business premises of an employer that has no other employees;
- Workers who perform services for only aid or sustenance from any religious or charitable organization;
- Workers who are covered under federal workers' compensation laws (except the Black Lung Benefits of the Federal Coal Mine Health and Safety Act of 1969);
- Agricultural workers;
- Any person who would otherwise be covered but elects not to be covered in accordance with the law;
- Drivers and passengers in voluntary vanpool or carpool programs, while on their way to or from work; and
- Members of certain religious sects or divisions that have provided their members with a reasonable alternative to workers' compensation insurance for at least 10 years.

Elective Coverage

Workers who are excluded from the WCA's definition of a covered employee may become covered employees if the employer elects to obtain workers' compensation coverage for them. An employer that makes this election must provide notice and proof of the coverage to the affected worker(s).

Business owners, including any partners of a partnership and members of a limited liability company (LLC) who have ownership interests in those entities, may elect to include themselves as covered employees under the WCA as well. These individuals elect coverage by naming themselves as an additional insured in their workers' compensation coverage or, if they have no employees, by purchasing a workers' compensation insurance policy specifically for themselves.

COMPENSABLE CONDITIONS

In general, compensable conditions only include physical damage to an individual's body or prosthetic appliances. Psychological, psychiatric or stress-related conditions are not compensable unless they directly result from a compensable physical condition. To be compensable, a physical injury or disease must arise out of and in the course of employment.

Injuries

The WCA defines an injury as "a harmful change in the human organism evidenced by objective medical findings." An injury may be compensable if it "proximately results" from any work-related traumatic event or series of traumatic events, including cumulative trauma. Compensable injuries do not include the natural effects of the aging processes nor any communicable disease, unless the risk of contracting the disease is increased by the nature of the employment.

Occupational Diseases

An occupational disease may be compensable if, considering all the circumstances:

- There is a causal connection, which is apparent to a rational mind, between the disease and the work conditions;
- The disease follows as a natural result of work exposure that:
 - Is required by the nature of the employment; and
 - Would produce the disease "independently of any other cause whatsoever."
- The disease can be fairly traced to the employment as the proximate cause.

An occupational disease must also be incidental to the character of the business and not independent of the employer-employee relationship.

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More detailed requirements may apply for certain occupational diseases under the WCA. For example, pneumoconiosis resulting from exposure to coal dust may be compensable only if the employee had been exposed to coal dust in Kentucky over a continuous period of at least two years during the 10 years immediately preceding the date of his or her last exposure to any coal dust (or five years during the preceding 15 years).

Exclusions

An injury or disease is **not** compensable if it was primarily caused by the injured employee's:

- Voluntary intoxication; or
- Willful intention to injure or kill him- or herself or another.

In addition, an employee may lose his or her right to receive benefits if he or she knowingly made any false representations about his or her physical condition or medical history at the time of being hired by the employer. For occupational disease claims, an employee could lose the right to receive benefits if he or she failed to give the employer truthful information about any previous employment at the time of hiring.

NOTICE REQUIREMENTS

Employees must give their employers written notice of an injury **as soon as practicable** after a work-related accident occurs. The notice must be signed and must include:

- The employee's name and address;
- The time, place, nature and cause of the accident;
- The names of any witnesses;
- The nature and extent of the resulting injury; and
- The work or employment the employee was engaged in at the time of the accident.

An employee's failure to provide proper notice will **not** bar him or her from receiving benefits if:

- The failure was due to a mistake or other reasonable cause;
- The employer, its agent or its representative had knowledge of the injury; or
- The employer was not misled and prejudiced by the failure.

CLAIM FILING REQUIREMENTS

In cases where an employer does not voluntarily pay benefits to an injured employee, the employee may lose any right to receive benefits if he or she does not file a claim with the DWC within certain time

periods. Specifically, employees must file a claim:

- Within **two years** after the date of any accident that resulted in an injury; or
- Within **three years** after the later of either:
 - The employee's last injurious exposure to the occupational hazard that caused an occupational disease; or
 - The date the employee first experienced a distinct manifestation of the occupational disease.

However, if an employer had knowledge of an occupational disease and its cause, the employee may file a claim within **five years** (or 20 years for radiation- or asbestos-related diseases) after the last injurious exposure to the causative occupational hazard.

In order to preserve the right to receive any *additional* benefits, employees who have received some benefits from an employer may also be required to file a claim within certain time periods. Specifically, an employee who has received some benefits under the WCA must file a claim:

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- Within **two years** after the later of either:
 - The date the employer suspended the benefit payments; or
 - The date of the accident that resulted in an injury.
- Within **five years** after the last injurious exposure to the occupational hazard that caused an occupational disease (or within 20 years for radiation- or asbestos-related diseases).

MORE INFORMATION

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