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# Workers' Compensation – Employer Responsibilities

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

Most employers in Alabama are subject to the state's Workers' Compensation Act (WCA). The [Workers' Compensation Division](#) (Division), part of the Alabama Department of Industrial Relations (DOIR), administers the Alabama workers' compensation system

On **May 8, 2017**, an Alabama Circuit Court struck down the entire WCL and found it to be unconstitutional. (See [Nora Clower vs. CVS Caremark Corp.](#))

On **May 17, 2017**, however, the court issued an order that placed its decision on hold indefinitely.

and enforces employer compliance with WCA requirements.

## EMPLOYERS SUBJECT TO THE WCA

The WCA applies to all Alabama employers that:

- Regularly employ **five or more non-exempt employees** in any business; or
- Operate a business involving the construction or on-site assistance in the construction of new, single-family, detached residential dwellings.

For purposes of determining whether an employer meets the five-employee threshold, the term "employee" includes any person who provides services under an expressed or implied contract of hire. This specifically includes:

- Aliens;
- Minors (regardless of whether they are legally permitted to work); and
- Corporate officers.

## Exempt Employees

Under the WCA, the following are *not* considered employees for purposes of determining whether an employer is subject to the WCA:

- Domestic workers;
- Farm laborers; and
- Casual employees whose employment is not in the usual course of the trade, business, profession, or occupation of the employer.

## Elective Coverage

Employers that employ only exempt employees are not subject to the WCA. However, these employers may voluntarily accept to cover exempt employees and become subject to the law. To make this election, an employer must file written notice with the Division and post a copy of the notice in the workplace.

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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In addition, corporate officers may elect to be exempt from coverage under the WCA. To make this election, a corporate officer must file [written certification](#) with both the Division and the employer's insurance carrier.

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A corporate officer's exemption from coverage does not, however, relieve the employer from continuing coverage for any other employees who were covered prior to the election or who may subsequently be employed by the corporation.

Finally, the WCA specifies that any entity that creates or carries out any fraudulent scheme to have work executed without being responsible for paying workers' compensation benefits is automatically considered an employer that is subject to the WCA.

## COVERAGE REQUIREMENTS

Employers subject to the WCA must obtain and maintain workers' compensation coverage for their employees. An employer may satisfy this coverage requirement by either:

- Purchasing a policy from a carrier that is authorized to provide workers' compensation insurance in the state;
- Obtaining approval to self-insure, either individually or as a group; or
- Purchasing any combination of life, disability, accident, health or other insurance policies, as long as the coverage includes liability for all workers' compensation benefits under the WCA.

Regardless of the method used, employers must pay the full cost of providing their workers' compensation coverage. Any agreement to have an employee pay for any portion of his or her coverage under the WCA is void unless the Division approves it in writing.

Employers are also required to provide the Division with proof that they are compliant with the WCA coverage requirements.

## INSURANCE COVERAGE

Insurance carriers are directly responsible for filing proof of employer coverage with the Division for every employer they cover. Insurance carriers must also administer every claim and pay all eligible benefits.

An insurance policy does not, however, relieve an employer from liability in situations where its insurance carrier is insolvent, bankrupt or cannot be reached for service of process in Alabama. Insured employers also remain liable for any workers' compensation benefits that may exceed their policy limits.

### ***Optional Deductibles***

Alabama workers' compensation insurance providers must offer employers the option to include deductibles of up to \$2,500 per claim in their policies. An employer that chooses this option must pay the designated deductible amount for each compensable injury sustained by its employees. In most cases, the insurance company will still directly pay all benefits payable to an employee or medical provider as they become due and then seek reimbursement for the deductible amount from the employer.

One advantage of including deductibles in a workers' compensation insurance policy is that insurance carriers must apply deductible-based premium reductions before applying any experience modification or premium surcharge in determining an employer's premium rates. Similarly, if an employer's experience rating or safety record is based on benefits paid, any deductible amount paid by an employer will not be included in this calculation.

### ***Premium Discounts***

Insured employers may receive a **5 percent** discount on their workers' compensation insurance premiums if they establish a drug-free workplace program that complies with WCA requirements. To obtain this discount, an employer must [apply](#) for certification from the Division.

Employers that pay less than \$5,000 in annual workers' compensation premiums may also qualify for certain premium discounts if their employees do not have any work-related injuries resulting in benefit payments within a period of at least one year.

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## SELF-INSURANCE

Self-insured employers use their own assets, rather than an insurance policy, to cover their obligations under the WCA. Employers may self-insure individually or as members of a group.

An employer that wishes to self-insure, whether individually or as part of a group, must [apply](#) for approval from the Division. To meet the minimum qualifications for approval, an employer must submit audited financial statements showing that it has:

- A net worth of at least \$5 million;
- Current assets that are equal to or greater than its current liabilities; and
- A positive net income.

In order for a group of employers to self-insure as a group, each employer-member of the group must meet all of these requirements individually.

Once the Division approves a self-insurance application, it will issue a certificate that authorizes the employer or group to operate as a self-insurer for a fixed period of time. During this period of self-insurance, an employer has several additional responsibilities under the WCL. For example, a self-insured employer or group of employers must:

- File annual claims reports with the Division;
- Pay annual assessments into the Alabama Workers' Compensation Administrative Trust Fund and the Self-Insurers Guaranty Fund (amounts calculated based on the amount the employer or group paid for workers' compensation claims in preceding calendar years);
- Maintain specific excess insurance coverage with a minimum retention amount of \$250,000; and
- Engage the services of a competent claims administrator.

## NOTICE POSTING REQUIREMENT

Employers must post a WCA [notice](#) in one or more conspicuous places where employees can see it within their worksites. This notice must include details about the employer's workers' compensation coverage.

## INJURY REPORTING AND RECORDKEEPING REQUIREMENTS

Employers must keep a record of all injuries and occupational diseases reported by their employees.

An employee who sustains a work-related injury must notify his or her employer in writing within **five days** after the accident. No particular form is required for the report, but it must contain at least the following information in sufficient and specific detail:

- The employee's name;
- A description of the injury or incident that took place in the course of employment;
- The time of the injury or incident; and
- The location where the injury or incident took place.

If an employee fails to submit this report within the five-day period, he or she may lose the right to receive any benefits that otherwise would have accumulated during the period of delay. An employee who fails to submit the notice within 90 days after an accident may completely forfeit receiving any workers' compensation benefits.

Employers must complete [Form 2](#) ("Employer's First Report of Injury or Occupational Disease") and submit a copy to the Division **within 15 days** after first obtaining knowledge of an employee's work-related injury or disease. Employers must complete and submit this form regardless of whether the injured employee has submitted a written notice of injury.

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## PROVIDING MEDICAL CARE

Employers must provide injured employees with all medical care necessary to address their work-related injuries. The WCL grants employers the right to select the initial treating physician to treat an employee's work-related condition, but the employee may select a different physician for any ongoing treatment. Employers may provide injured employees with a list of physicians and require them to choose from the list when selecting a provider for ongoing care.

Under the WCL, medical providers must submit bills for their services within one year of providing treatment to an injured employee. Employers (or their insurance carriers) must pay each undisputed medical bill **within 25 working days** of receiving it. If an employer fails to pay a medical bill on time, the provider may petition the Division for an order requiring payment.

## BENEFIT PAYMENTS

The WCA requires employers (or their insurance carriers) to begin paying weekly benefit payments to injured employees within **30 days** to eligible employees. The Division may require an employer that fails to begin paying benefits on time to pay an additional **15 percent** of the delayed benefit amounts and other penalties.

Employers must complete [Form 3](#) ("Supplementary Report") with the Division **within 10 days** of the initial 30-day period to report whether benefits were paid on time or the reason that benefits were not paid. Similarly, employers must complete and file [Form 4](#) ("Claims Summary Form") with the Division within **10 days** after modifying or terminating an employee's benefits.

As an alternative to paying weekly workers' compensation benefits, an employer may continue paying an injured employee's regular wages or salary while he or she is disabled from work. Employers that chose this option must still report the payments using Form 3 and any modification or termination of payments using Form 4.

Finally, if an employee and employer reach an agreement to settle a workers' compensation claim (other than in cases where the Division facilitates the agreement), the employer must report the settlement to the Division, using Form 4, within **10 days** after executing the agreement.

## MORE INFORMATION

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