



Texas Association of Nonprofit Organizations (TANO)

Insurance Program

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Explanation of Workers Compensation Coverage

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WHAT IS WORKERS COMPENSATION INSURANCE?

Employers are legally obligated to take reasonable care to assure that their workplaces are safe. Nevertheless, accidents happen. When they do, workers compensation insurance provides coverage.

Workers compensation insurance serves two purposes: It assures that injured workers get medical care and compensation for a portion of the income they lose while they are unable to return to work and it usually protects employers from lawsuits by workers injured while working.

Workers receive benefits regardless of who was at fault in the accident. If a worker is killed while working, workers comp (as it is often abbreviated) provides death benefits for the worker's dependents.

EACH STATE IS DIFFERENT

Workers compensation systems are established by statutes in each state. State laws and court decisions control the program in that state and no two states have exactly the same laws and

regulations.

States determine such features as the amount of benefits to which an employee is entitled, what impairments and injuries are covered, how impairments are to be evaluated and how medical care is to be delivered. In addition, states dictate whether workers compensation insurance is provided by state-run agencies and by private insurance companies or by the state alone. States also establish how claims are to be handled, how disputes are resolved and they may devise strategies, such as limits on chiropractic care, to control costs.

To learn about the requirements where you live, visit your state's workers compensation Web site.

If your business expands to another state, you may have to deal with very different rules in the new state. The discussion here covers the general features of workers compensation programs.

WHAT INJURIES ARE COVERED?

Injuries employees sustain on the workplace premises or anywhere else while the employee is acting in the "course and scope" of employment are covered if their employer has workers comp insurance. For example, the leading cause of workers comp death claims is traffic accidents that occur when the employee is in a vehicle for work purposes, whether the trip is made in the company's car or the employee's own vehicle. Accidents driving to and from work would not be covered.

In addition to injuries from accidents, workers comp covers injuries employees may sustain from other events that may occur while they are working, including workplace violence, terrorist attacks and natural disasters.

Workers comp insurance also covers certain illnesses and occupational diseases (defined in the state statutes) contracted as a result of employment. For example, employees who work with toxic chemicals can be made ill by exposure to the chemicals.

WHAT TREATMENT DO INJURED WORKERS RECEIVE?

Injured workers receive all medically necessary and appropriate treatment. With medical costs soaring, many states have adopted measures designed to rein in expenditures. These include utilization management guidelines, which describe acceptable treatment protocols and diagnostic tests for specific injuries.

WHAT BENEFITS DO INJURED WORKERS RECEIVE?

Income replacement benefits are based on whether the disability is total or partial and whether it is permanent or temporary. Impairment is generally defined as a reduction in earnings capacity, sometimes using the American Medical Association's criteria.

Most states require that benefits be paid for the duration of the disability, but some specify a

maximum number of weeks, particularly for temporary disabilities. The benefit amount is a percentage of the worker's weekly wage (actual or state average).

DO I HAVE TO BUY WORKERS COMPENSATION INSURANCE?

In most states sole proprietors and partnerships aren't required to purchase workers compensation unless and until they have employees who aren't owners. Most states will allow sole proprietors and partners to cover themselves for workers comp if they choose to. Some states don't require employees to be covered if they are paid solely on commission.

Employees are generally defined as people performing services at the direction of the employer, for hire, including minors and workers who are not citizens.

Many states exempt employers with only a few employees from mandatory coverage laws. The threshold number of employees that triggers mandatory insurance is either three, four or five, depending on the state. Texas is the only state in which workers comp insurance is truly optional.

In some states, immediate family members—parents, spouse and children—may not have to be counted as employees for purposes of determining whether you must have workers comp insurance. These exceptions usually do not apply to other family members, such as sisters, brothers or in-laws.

Under some laws, independent contractors are not considered to be your employees. However, for the purpose of workers comp insurance, most states will treat an uninsured contractor or subcontractor or employees of an uninsured subcontractor as your employee—meaning you may be liable if he or she is injured while working for you. To avoid any unintended liability, larger companies often require any contractors or subcontractors doing work for them to provide proof they have workers comp insurance.

Regardless of whether insurance is required and regardless of how few employees you have, if an employee protected by the state statute is injured or killed in the course of working for you, you may be legally liable. One claim for a serious employee injury could bankrupt many small businesses. Insurance, through the payment of premiums for workers comp coverage, provides a predictable cost for handling this risk.

WHO SELLS WORKERS COMP INSURANCE?

Workers comp insurance is not part of your Businessowners Policy (BOP). It must be purchased as a separate insurance policy.

Each state has its own rules about where employers may buy workers comp insurance. In a few states all employers must buy their workers comp insurance from a state monopoly insurer, known as a state fund. In a number of other states, insurance may be purchased from the state fund or from private insurers. In the states that have them, state funds may serve as an insurer of last resort for businesses that cannot find coverage from a private insurer.

HOW ARE PREMIUMS SET?

Premiums are based on the employer's industry classification code and payroll. Premiums for the most dangerous enterprises, such as trash hauling or logging, may be much higher than premiums for an accounting firm.

Location has also become a factor in workers comp premiums. Since the terrorist attacks of September 11, 2001, workers compensation insurers have been taking a closer look at their exposures to catastrophes, both natural and man-made. For businesses located in an area at high risk of catastrophe, premiums may be higher regardless of the nature of the business itself.

Employers with an annual premium above a certain amount are usually eligible for experience rating, which adjusts the premium up or down depending on the claims history of the company relative to other companies in that industry category. Businesses with higher than average claims will pay a higher premium and those with lower claims will generally pay less.

Experience rating is more sensitive to the number of claims (loss frequency) than the dollar value of claims (loss severity). This is because of the insurance industry maxim, "frequency breeds severity." Insurers know from experience that where more accidents occur, there is a greater likelihood of big losses. A greater number of accidents indicates that overall the working conditions are not as safe as an environment where fewer accidents occur, even if in a given year the few accidents that occurred were more costly.

WHAT ARE MY COSTS FOR WORKERS COMP?

Your costs include insurance premiums, payments made under deductibles and the administrative costs of handling claims and making reports to the state and your insurer.

UNDERSTANDING YOUR WORKERS COMP POLICY

Usually a workers comp policy has two parts: Part One, Workers Compensation and Part Two, Employers' Liability.

Under Part One, the insurer contracts to pay whatever the state-required amounts of compensation may be. Unlike other types of insurance, the workers comp coverage has no ceiling or limit on the policy amount. The insurance company accepts a transfer of the employer's entire statutory obligation—whatever the employer is legally obligated to pay as a result of the injury.

Part Two of the policy provides coverage for an employer who is sued by an employee for work-related bodily injury or illness that isn't subject to state statutory benefits. It has a monetary limit.

Employers' liability also insures an employer in some other situations. One is so-called "third-party over suits," where an injured worker files suit against someone other than the employer (a third party) and that third party then seeks to hold the employer responsible. For example, an employee injured while working with a machine might file suit against the manufacturer of the machine. The manufacturer might then sue the employer claiming that the cause of the injury was modifications the employer made to the machine or improper use. Another situation where this liability coverage applies is when the spouse of an injured worker sues the employer for loss of consortium.

YOUR OBLIGATIONS

In most states you are required to keep records of accidents. You must report work-related accidents to the state workers compensation board and to your insurer within a specified number of days.

Studies suggest that the faster the insurer receives notice of an injury and can initiate medical treatment and benefits, the faster the injured worker recuperates and returns to work. To help get medical treatment to the injured worker faster, some insurers help employers file promptly a "first notice of injury" with the state agency responsible for overseeing the workers compensation system, a step which can trigger the claim process.

THE IMPORTANCE OF GETTING AN INJURED WORKER BACK TO WORK

Long absences from work can have a lasting negative impact on workers' future employment opportunities and thus on their economic well being. A study of injured workers in Wisconsin by the Workers Compensation Research Institute found that the duration of time off from work and periods of subsequent unemployment are lower for injured workers who return to their pre-injury employer than for those who change employers.

Effective communication by employers is critical to facilitate the injured worker's return to work. You should explain to workers how the workers compensation system works and that they are required to report an accident immediately and get medical attention promptly.

Your expectations relative to work-related injuries or accidents should be part of the employee handbook (if there is one), conveyed to new employees as part of orientation, posted on bulletin boards and communicated periodically in safety reviews.

Communicate regularly with employees who are off work due to a work-related injury. Workers who know they are thought about, missed and still part of the workplace team are generally more eager to return. Some insurers will keep employers informed of how the employee's treatment is progressing.

Another aspect of the return-to-work process is successful reintegration into the workplace. Workers comp insurers help you assess the injured worker's needs and capabilities and encourage you to let workers know, in advance of any injury, that you will try to modify work activities to accommodate those who are disabled.

ARE MY EMPLOYEES COVERED WHEN THEY WORK OR TRAVEL IN OTHER STATES?

Your workers comp policy covers claims made only in the states named in the policy "Declarations." If an employee is injured while working in another state, and that state has benefits more generous than the state(s) named in your policy, the employee could file a workers comp claim in the other state and it would not be covered by your policy.

The solution is in the Other States section of the policy, which allows you to list states where employees might work from time to time so there will be coverage for claims filed in those states.

The Other States portion of the policy cannot be used to cover claims in states where coverage must be obtained from the state workers compensation fund.

Other States coverage is intended to provide protection only for incidental exposures in states where the employer does not operate as of the effective date of the policy. If you set up an operating entity in another state, notify your insurer, as this state should be added to the workers compensation section of the policy.

FACTORS THAT AFFECT YOUR PREMIUMS

Premiums for workers comp vary among the states. In states where benefits are more generous, premiums for workers comp insurance may be correspondingly greater. In most states, workers comp benefits continue even after the worker begins to collect Social Security and Medicare.

However, benefits are only one part of the equation. In some states with low benefits and costs, premiums may be high due to the inefficiency of the system for awarding benefits. The generally increasing cost of medical care impacts premiums as well. Although states are working to make changes, for the most part, workers comp doesn't have the types of cost control measures that have been applied to health insurance. Workers comp claimants do not have to pay deductibles. In many states they may visit as many doctors and specialists as they like. There is generally no requirement for doctors to prescribe generic rather than brand name drugs.

ASSIGNED RISK PLANS OR POOLS

An assigned risk plan or pool is a means of providing insurance for businesses that may not be able to get workers comp insurance in the private market. High-risk businesses, businesses with a history of many claims and businesses in new industries without a previous industry claims history are the most likely to get insurance through the assigned risk plan.

Typically, the employer or the agent applies to the plan. The application is then assigned to an insurance company that the state has designated to write the policy. Premiums in assigned risk pools often carry a surcharge over the regular premium rate.

WHAT IS A SECOND INJURY FUND?

About half the states have second injury funds to encourage the hiring of workers who are partly disabled but still able to work. Employers would be reluctant to hire such workers due to the risk they could sustain an injury that would combine with the prior injury or condition to cause a disability. Without second injury funds, the new employer would be liable for the entire cost of the claim. When a partially disabled employee suffers a second injury, part of the cost of the second injury is apportioned to the second injury fund.

Some states discontinued their second injury funds following passage of the Americans with Disabilities Act (ADA). Although the ADA requires employers to maintain confidentiality about employees' disabilities, the confidentiality rule does not apply to communications with state workers compensation authorities or second injury funds.

WHAT CAN I DO TO REDUCE MY WORKERS COMP PREMIUMS?

- **Manage Your Risks**
- **Take Advantage of Saving Opportunities**
- **Be Sure Your Premium is Correctly Figured**
- **Raise Your Deductibles**
- **Try to Avoid Assigned Risk**
- **Coordinate Disability Programs**

Manage Your Risks – Most small companies do not believe they can afford to hire a risk manager. Nevertheless, someone in the company should have a continuing responsibility for loss control and the management of workers comp claims. This involves a variety of programs to keep workers safe, the medical management of claims and early return to work for any injured workers.

In some states insurers must provide accident prevention services to employers. Even if not required to do so by law, the majority of workers comp insurers can help you improve safety.

In some states, employers are required by law to set up safety committees and other programs to deal with unsafe conditions in the workplace. Even when not required by law, safety committees can be very effective at reducing accidents. For example, after UPS set up worker safety committees at each location to identify the most frequent workplace accidents and took measures to reduce them, injuries that caused workers to take time off from work decreased by 59 percent. You may also be legally required to have a written injury and illness prevention program. Again, even if not legally required to do so, having and following a written program can help reduce accidents.

Take Advantage of Savings Available in Your State – Several states allow merit rating credits. Smaller businesses that typically pay \$5,000 in premiums or less may be entitled to a credit of 5 to 15 percent if they have not had any lost-work-time claims during a designated period. In some states, there are premium credits for drug- and alcohol-free workplace programs and safety

programs. Some insurers may give you a discount if you hire a professional risk management firm to help you with your safety program.

Be Sure Your Premium is Figured Correctly – Make sure you have been placed in the right industry category. Check that the insurer's payroll computation adjusts for overtime pay and allocates the payroll of different employees correctly.

Raise Your Deductibles – A majority of states provide for optional medical deductibles in workers comp insurance policies as a cost saving measure. Deductibles tend to encourage greater safety consciousness on the part of the employer who must pay the deductible amount.

Try to Avoid Assigned Risk – Cutting down on your claims is the best way to stay out of the state's assigned risk plan, or insurer of last resort, which usually costs more. You may have been put into assigned risk without knowing it. Ask your agent to check on your status.

If you have been put in assigned risk, find out from your state workers comp agency if rates are higher. If they are, make a concerted effort to get other insurance. Just because one agent was unable to find something better for you doesn't necessarily mean it doesn't exist. Talk with other agents, investigate group self insurance programs that may be available in your state, talk with other people in your industry and owners of other businesses of similar size and age and with a similar risk level.

Coordinate Disability Programs – This options isn't available everywhere, but in some states businesses are trying to bring costs under control through the coordination of workers compensation, health care and disability benefit plans. The integration of workers compensation and other employee benefit programs is a broad concept that ranges from a simple marketing approach that promises savings from using the same insurer for both coverages to programs that offer a managed care approach to the management of all types of disability, regardless of whether they are work-related.

Besides limiting overlapping programs and streamlining administration, proponents say the change to a broad approach addresses the increasing difficulty of distinguishing between work- and nonwork-related injuries and illnesses, such as injuries due to repetitive motion and mental stress claims. It improves productivity, since nonwork-related disabilities are managed with the same focus of getting the employees back to work as work-related cases.

CAN AN EMPLOYEE WHO HAS AN ACCIDENT SUE ME?

Prior to the states' adoption of the workers compensation system in the first half of the Twentieth Century, injured workers sued their employers after workplace accidents. This was a long, cumbersome and costly process from which the worker might gain nothing if the court failed to find the employer totally responsible for the injury. With so few employers liable for workplace accidents, support for injured workers and the families of deceased workers was a societal problem.

The workers compensation system was adopted to provide injured workers and their dependents timely compensation regardless of who was at fault for a workplace accident. As part of the compromise that made the employer liable for work-related injury and disease costs regardless of fault, the employee surrendered the right to sue the employer for injuries. For the most part, the system works as intended. Injured workers accept workers comp payments and do not sue. This is why workers comp is referred to as the employee's "exclusive remedy."

Nevertheless, there are certainly instances where “exclusive remedy” may not apply and injured workers may sue their employers. Conditions under which such suits are lawful vary among the states. In Florida, for example, injured employees may sue their employers in the following situations:

- The employer commits an intentional and deliberate harmful act or engages in conduct that is certain to result in injury or death
- An employee sexually harasses another employee
- The employer violates the law prohibiting the firing, coercing or intimidating of an employee due to a workers comp claim
- The employer has violated federal law regarding housing and transportation of migrant workers
- The injury is excluded from coverage by workers compensation (such as a claim for psychological stress injury without any physical injury, a type of claim that is not compensable by workers comp in Florida)