



Why do I need workers' compensation insurance?

A guide for
Oregon employers

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Why is there workers' compensation insurance?

Because it's good for workers and good for business. You know it's in the best interest of your employees. If they get hurt, it provides them with medical treatment, payment for time loss and disability, and even reemployment assistance if they need it. But did you know that workers' compensation was created to protect employers too?

There was a time when workers who were hurt on the job often had to sue their employers to get help with their expenses. To the worker, this either meant no benefits or a long delay. To the employer, it meant possible financial ruin if the worker won a large award in court.

Workers' compensation insurance was the answer to both problems. It replaced legal liability with no-fault insurance. Employees with injuries or diseases caused by work could get treatment quickly, with no need to prove the employer at fault. Employers were protected from lawsuits. Benefits were for actual loss and didn't add large sums intended to punish the employer or pay for "pain and suffering." As long as the injury or illness resulted from work, neither employer nor employee had to go to court.

Who needs it?

As with most no-fault insurance, workers' compensation is only fair if it applies to all workers and employers. Today, the state of Oregon requires almost all employers to carry workers' compensation insurance on their employees. If you employ workers in Oregon, you probably need workers' compensation coverage. Ask yourself the following questions:

Am I an employer?

If you pay someone to work for you, and you are in charge of the way the job is done, that worker is probably your employee. If you aren't in charge, the worker is usually called an independent contractor. However, the difference between an employee and an "independent contractor" has never been clear.

In 1989, the Oregon Legislature tried to end the confusion for several agencies by defining an independent contractor using a checklist of eight tests. But workers' compensation law doesn't specifically say an independent contractor is never an employee. In 1994, the Oregon Supreme Court ruled that, for workers' compensation purposes, the independent contractor checklist doesn't prove someone is or is not an employee.

So instead of using the independent contractor checklist to tell you if you need workers' compensation insurance, you must go by general guidelines that have evolved in the courts. The courts look at four main areas to decide whether a worker is an employee:

1. Do you actually control or have the right to direct the worker?
2. How is the worker paid? By the hour? By the piece? On a commission? By the job?
3. Who supplies the tools and equipment the worker needs to do the job?
4. Do you have the right to fire the worker without breach of contract?

These questions can't always be answered by a simple "yes" or "no." If you have questions, call the WCD Employer Compliance Unit: (503) 947-7814.

Are my employees exempt?

Some workers don't have to be covered by workers' compensation, even if they are employees. Here are some of the most common exceptions:

Sole proprietors. If you are a sole proprietor, you don't need coverage on yourself.

Partners. In construction, exempt partners are limited to two, unless all partners are family members (related as parent, daughter, son, daughter-in-law, son-in-law, grandchild, spouse, or sibling). In other industries, most partners don't need coverage. The partners have to be real partners, though, with the right to make business decisions.

Private residence workers. People working for you at your home. This includes workers doing cleaning, home health care, gardening, maintenance, and even remodeling. It doesn't include laborers constructing a new home.

Casual labor. If your total payroll is always less than \$500 within any 30-day period, your workers are "casual" and don't have to be covered by workers' compensation. However, if your payroll reaches \$500 within any 30-day period, workers' compensation is required from day one of that period.

If you're in construction, keep in mind that the Construction Contractors Board (CCB) rules don't allow you to hire even casual labor while you are registered as not having workers.

Some corporate officers. Corporate officers don't have to be covered by workers' compensation if they serve on the board of directors and own at least 10 percent of the stock (or an amount equal to the average amount held by all stockholders). This requirement doesn't apply to most family-run farms.

In the construction or timber industries, the above applies only if all corporate officers are family members; otherwise, the number of exempt officers in these two industries is limited to two corporate officers or one corporate officer per 10 employees, whichever is more.

Most limited liability company members. Most members are exempt, except in the construction trade. In construction, exemptions are allowed only if the company is registered with the Construction Contractors Board. In that case, all members are exempt if they are members of one family. Otherwise, exemptions are limited to two members or one member per 10 employees, and the members must have substantial ownership interest in the company.

If sole proprietors, partners, corporations, or limited liability companies are working under a contract, they must also qualify as independent contractors to be exempt from workers' compensation insurance.

Workers from out of state. Out-of-state employers temporarily working in Oregon are not required to obtain Oregon workers' compensation insurance policies if the following is true:

1. Their home-state policies cover the workers they bring into Oregon on temporary assignment;
2. Their home state recognizes an Oregon employer's Oregon coverage while doing work on temporary assignments in that state; and
3. They do not use Oregon subject workers while they are in Oregon.

This allows most employers and workers from other states to use their home-state coverage when they are temporarily working in Oregon. This does not change the requirement that employers must obtain Oregon coverage for any Oregon subject workers. For more information, go to www.wcd.oregon.gov/compliance/ecu/etmap.html.

Public contracts are now handled the same as private contracts with respect to obligation for workers' compensation in Oregon. Workers temporarily in Oregon are defined by nine criteria found in Oregon Administrative Rule 436-050-0055.

How do I get workers' compensation coverage?

The insurance policy

In Oregon, there are two methods to get workers' compensation insurance coverage: through an insurance company or by self-insurance.

Insurance companies. You can get insurance from any insurer authorized to provide workers' compensation in Oregon. There are more than 400 such companies registered to write workers' compensation insurance in Oregon. Many of these insurers sell policies through agents. Often the agency that handles your other business insurance will also help you place your workers' compensation insurance. Some insurers will deal directly with you, and a few have made special arrangements to provide workers' compensation through business organizations or associations. The Department of Consumer and Business Services has an ombudsman who is an advocate for small business and is available to discuss options with you. Call (503) 947-7880 for assistance.

Oregon Insurance Plan. If you can't find an insurer willing to write your policy, you can get insurance through the Oregon Insurance Plan. Oregon law requires workers' compensation insurers to belong to an insurance plan for employers who can't get insurance on the open market.

The insurance plan is administered by the National Council on Compensation Insurance (NCCI). NCCI requires a special application. A deposit must be made prior to the processing of your application. After NCCI checks the application and establishes that you don't have a bad debt with a previous insurer, it assigns the account to an authorized Oregon insurance company. To contact NCCI, call (800) 622-4123 and ask for Oregon coverage. You can also visit the Web site: www.ncci.com.

Self-insurance. You may be able to qualify as a self-insured employer. This option is usually only available to very large employers, because the employer must have the resources to pay for major claims and assure proper processing. You must have special bonding and be certified by the Workers' Compensation Division (WCD) to be self-insured.

The guaranty contract

Once you have insurance, is there anything else you need to do? Yes. It is the employer's responsibility to make sure the insurer files a guaranty contract with the state of Oregon WCD. A guaranty contract is the insurer's promise to provide appropriate benefits for your workers if they are injured. This contract is in effect until the employer is notified in writing of termination of the contract. The guaranty contract system makes it easier and less costly in Oregon than in most other states to make sure Oregon employers keep their workers covered by workers' compensation insurance.

After the guaranty contract is filed, WCD mails you a certificate called a Notice of Compliance. You must post this notice where your employees will see it. If an insured employer does not properly post the notice (or if a noncomplying employer does!), the employer can be fined.

When you receive your Notice of Compliance, you know you have valid workers' compensation coverage. If you pay for workers' compensation insurance but don't receive your Notice of Compliance within 30 days, check to be sure your insurance company filed a guaranty contract. If you have any questions about the guaranty contract or the Notice of Compliance, call WCD at (503) 947-7814.

Worker leasing

If you hire your employees through a "worker leasing company," the leasing company will handle your payroll, your workers' compensation, and most other paperwork. Worker leasing companies must be licensed with WCD to do business in Oregon. You can call WCD at (503) 947-7544 to check the licensing status of a worker leasing company.

What if I don't comply?

If you don't have the required workers' compensation coverage, WCD sends an order to you, stating the period of noncompliance and assessing a fine. The penalty for the first offense is two times the amount of premium you should have paid for insurance, with a minimum of \$1,000.

If you continue to employ workers without coverage, the penalty increases to \$250 per day with no limit on the total fine. By law, bankruptcy can't reduce this debt. In addition, WCD will request a permanent court injunction to force you to comply. If you disobey an injunction, you're in contempt of court and subject to other types of sanctions, including jail time.

The expenses that result when a worker is injured could cost you even more than penalties. By law, a noncomplying employer is financially responsible for the same benefits insured workers receive. The law requires that a certified claims examiner process the claim. You must pay a fee for this processing in addition to claim benefit costs. The total bill can (and often does) amount to hundreds of thousands of dollars. Business owners cannot hide behind a corporation or limited liability company because corporate directors and officers and limited liability company members and managers are personally and separately liable for penalties and claim expenses.

But there's more. Lawsuit protection doesn't apply to noncomplying employers. So an employee can file suit against a noncomplying employer in addition to having a legitimate workers' compensation claim. Carrying workers' compensation insurance is vital to your business.

Frequently asked questions

Do I need workers' compensation coverage on family members?

Yes. Family members need to be covered by workers' compensation insurance, regardless of age, unless they are exempt as casual laborers, partners, or for some other reason. (See Pages 4 and 5.)

What if someone works for me in exchange for rent?

If someone works for you for something other than money, the value of the exchange is counted as payment. That makes the worker your employee. Unless that worker is exempt for some other reason, you must have workers' compensation insurance.

Can I make my employees independent contractors?

The short answer is no. Even if workers agree to be independent contractors, that doesn't make it so. Signing a statement is not proof; neither is issuing them 1099 tax forms instead of W-2s. Even a signed contract may not be enough to establish independence.

The circumstances of each work relationship determine whether a person is an independent contractor or employee. Someone who in one case might be considered self-employed could, in another case, be an employee. The main thing to remember is: Don't try to circumvent the law by calling employees independent contractors.

If you contract with an established company to do a job that isn't in your normal line of work, you're likely in the clear. Otherwise, be careful. If you have questions, contact WCD's Employer Compliance Unit, (503) 947-7815. Another great resource regarding independent contractors and the laws you may need to consider is online with links to the responsible agencies. Please visit: <http://www.oregonindependentcontractors.com>

What if I subcontract everything instead of hiring my own employees?

If you subcontract, you're considered a "prime contractor" with special responsibilities under workers' compensation law. You must make sure your subcontractors have workers' compensation coverage when work on the project begins. Otherwise, you are responsible for providing the coverage and without it can be found to be a non-complying employer.

In the construction industry, be sure the subcontractor has a valid registration with the Landscape or Construction Contractors boards.

Can't I just pay the doctor directly if someone gets hurt on the job?

Doctors and hospitals are required to report job-related injuries to your workers' compensation insurer within three working days. If you don't have an insurer, those reports go directly to WCD.

It is illegal for employers to do anything to keep employees from filing injury claims. This means you may not make an employee sign a statement agreeing not to file a claim. You may not require your injured worker to say the injury occurred somewhere other than at work. You cannot pressure your employee to not file an injury claim form in exchange for an agreement to pay the medical bills. You may not require employees to sign up as independent contractors, partners, or corporate officers for the purpose of avoiding workers' compensation requirements.

How much is my workers' compensation insurance going to cost?

Your workers' compensation insurance cost is dependent upon several things. The workers' compensation rating system applies a set of rules to determine the cost for each industry. There are more than 600 classifications that cover virtually every type of existing business. Additionally, if your premium is \$2,500 or more you may be eligible for experience rating. This is an additional modification to your premium that reflects how well your business has performed in claims frequency and severity relative to similar businesses. This modification can cause your premium to decrease, increase, or remain the same.

Workers' compensation rates in Oregon are very reasonable compared with other states. A June 2004 study ranked Oregon 42nd in the nation in workers' compensation costs. In addition, the study showed that Oregon's costs were lower than all of our neighboring states including California, Washington, Idaho, Nevada, Colorado, and Utah.

If you have questions about your premiums, it is usually best to contact your agent or insurer first for an explanation of how your premium was computed. If you dispute how your premium was calculated or how you were classified, then contact the Small Business Ombudsman for workers'

compensation at (503) 947-7880 for assistance. The ombudsman can help walk you through your options and educate you on your appeal rights.

How do I reduce cost?

Your insurer should be able to provide assistance on how to reduce your costs through workplace safety, however Oregon's Occupational Safety and Health Administration (OR-OSHA) has a consultative department available to provide advice on how to improve workplace safety and reduce your net workers' compensation insurance costs.

Doesn't the payroll assessment I send in take care of my workers' compensation?

No. All employers required to have workers' compensation insurance must also pay a workers' compensation assessment to the state of Oregon. It's important to know that this payroll assessment doesn't have any effect on your workers' compensation coverage. Sometimes, employers confuse the payroll assessment with premium payment and think they have workers' compensation insurance.

The workers' compensation assessment is equally shared by workers and employers. The employer submits payment with the Oregon quarterly reporting form. The assessment pays for specific programs that benefit injured workers and the employers who hire them.

What's the difference between SAIF and the Workers' Compensation Division?

SAIF Corp. is a state-owned insurance company that provides workers' compensation insurance. WCD is part of a regulatory agency. WCD and the Insurance Division regulate SAIF as they do other workers' compensation insurers.

An ounce of prevention . . .

You should realize by now that having proper insurance coverage is critical to your business and the welfare of your workers.

The cost of noncomplying employer claims is passed on to employers who have insurance. Strict enforcement helps level the playing field and ensures costs are placed on those who should carry that burden. This is why most employer groups

and business associations support and even lobby for strong enforcement of workers' compensation coverage requirements. Combine this with the support of labor unions and other employee groups, and there is a clear mandate for both the legislature and WCD to take an aggressive role in enforcing workers' compensation compliance.

WCD doesn't wait for a worker to get hurt to investigate and penalize noncomplying employers. A penalty before a claim is a relatively inexpensive wake-up call. An employer who heeds the warning and gets insurance can avoid the much higher costs of claims, claim penalties, and tort liability that go with uninsured injuries. You can help WCD keep employers in compliance by refusing to do business with noncomplying employers and reporting employers you suspect have no workers' compensation coverage. You can call the WCD Employer Compliance Unit toll-free at (888) 877-5670.

If employers have workers' compensation insurance when they need it — before they employ even one worker — investigations and penalties aren't necessary. WCD's Employer Compliance Unit is also in the business of providing information. Consultants are available to answer questions about coverage from 8 a.m. to 5 p.m., Monday through Friday. Management and field staff are available at nearly any time for presentations, forums, and panel discussions. WCD also cooperates with other state and federal agencies to sponsor workshops, seminars, and information fairs.

Whom do I call?

Construction registration requirements:

Who is registered, and how?

Construction Contractors

Board..... (503) 378-4621

Coverage: Who can tell me if I need workers' compensation coverage?

WCD Employer

Compliance Unit (503) 947-7815

Toll-free..... (888) 877-5670

Insurance: Where do I learn more about workers' compensation insurance options? Who can talk to me about getting a better price on my insurance?

DCBS Ombudsman for
Small Business (503) 947-7880

Notice of Compliance: What if I haven't gotten a Notice of Compliance, and it's more than 30 days since I bought a new workers' compensation insurance policy?

WCD Coverage Unit (503) 947-7810

Oregon Insurance Plan: Whom do I or my insurance agent contact if other insurers won't write my coverage?

National Council on Compensation
Insurance (NCCI) – ask for
the Oregon desk (800) 622-4123

Payroll assessment: How do I calculate and submit the workers' compensation payroll assessment?

DCBS Fiscal Section (503) 378-2372

Premium audit: Where do I go if I don't agree with the premium my insurer charged after auditing me?

Hearing Officer Panel (503) 378-8224

Premium calculation: How does my insurance company know how much premium to charge me?

DCBS Ombudsman for
Small Business (503) 947-7880

Reemployment of injured workers:

Who can explain how payroll assessments can benefit me if I hire a worker who was injured on the job?

WCD Reemployment
Assistance Unit (503) 947-7588
Toll-free (800) 445-3948

Self-insurance: What are the requirements for getting certified as a self-insured employer?

WCD Self-Insurance
Certification Unit (503) 947-7716

Worker leasing companies: Where do I get a list of licensed worker leasing companies so I can lease employees?

WCD Worker Leasing Company

Licensing Unit.....(503) 947-7544

For more information, call the Workers' Compensation Division, Employer Compliance Unit, (503) 947-7815, or write to:

Department of Consumer & Business Services

WCD Employer Compliance Unit

350 Winter St. NE

P.O. Box 14480

Salem, OR 97309-0405

Our e-mail address:

wcd.employerinfo@state.or.us

Coverage information among jurisdictions:

www.wcd.oregon.gov/compliance/ecu/etmap.html

Employer Workers' Compensation Coverage:

www4.cbs.state.or.us/ex/wcd/eds_company_search/

Visit the WCD Web site:

www.wcd.oregon.gov

Workers' Compensation Division

www.wcd.oregon.gov

Ombudsman for Injured Workers

egov.oregon.gov/DCBS/OIW/

Workers' Compensation Board

www.wcb.oregon.gov

Workers' Compensation Division

350 Winter St. NE
 P.O. Box 14480
 Salem, OR 97309-0405

General information (503) 947-7810

Workers' Compensation Infoline
 (toll-free in Oregon) (800) 452-0288
 or send e-mail to: workcomp.questions@state.or.us

TTY* (503) 947-7993

Benefits information (503) 947-7585
 (toll-free in Oregon) (800) 452-0288

WCD Employer Index
 (to verify employer's insurance) .. (503) 947-7814

Investigations — Fraud Hotline
 (toll-free in Oregon) (800) 452-0288

Managed care organization
 (MCO) questions (503) 947-7710

Medical fee, medical treatment,
 curative care, palliative care disputes,
 and interim medical benefits..... (503) 947-7816

Reconsideration of
 claim closures (503) 947-7816

Reemployment assistance (503) 947-7588
 or (toll-free in Oregon)..... (800) 445-3948
 Medford region (541) 776-6032 (V/TTY)*
 or (toll-free in Oregon)..... (800) 696-7161

Vocational eligibility/assistance,
 return-to-work plans,
 and vocational disputes (503) 947-7816

Workers' Compensation Board (WCB) (and Hearings Division)

2601 25th St. SE, Suite 150
Salem, OR 97302-1282
(503) 378-3308 for TTY* use ext. 307

Ombudsman for Injured Workers

(503) 378-3351 or TTY* (503) 947-7189
or call the Injured Worker Helpline
(Toll-free) (800) 927-1271

Ombudsman for Small Business

Information (503) 947-7880
or (V/TTY) (503) 378-4100

For employers with questions relating to
workers' compensation policies and claims

Oregon Occupational Safety and Health Division (OR-OSHA)

Consultative Services

Toll-free (800) 922-2689

Salem Central Office (V/TTY) (503) 378-3272

Field offices:

Bend (V/TTY) (541) 388-6068
Eugene (V/TTY) (541) 686-7913
Medford (541) 776-6016
or (V/TTY) (541) 776-6030
Portland (V/TTY) (503) 229-6193
Salem (503) 373-7819

No-cost on-site consultations in safety, industrial hygiene, ergonomics, occupational safety and health programs, and new business assistance

Insurer/Self-Insured Loss Prevention Program

Portland (V/TTY) (503) 229-5910

Ensures that workers' compensation insurance companies provide occupational safety and health loss-prevention services at no charge



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Visit us on the Internet,
www.wcd.oregon.gov



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