



Workers' Compensation in Oklahoma

Employer's Rights & Responsibilities

Workers' Compensation Court
Counselor's Program
1915 N. Stiles
Oklahoma City, OK 73105

(405)522-8760
(800)522-8210 Toll-free
(405)522-8683 FAX

A brief explanation of workers' compensation requirements in Oklahoma and answers to commonly asked questions.

What is Workers' Compensation Coverage?

Most employers in Oklahoma are required to provide workers compensation coverage for their employees. The purpose is to provide benefits to employees who have suffered certain job-related injuries or occupational diseases. An employee's dependents may also be entitled to benefits if the employee dies as a result of a job related injury.

What Employees Are Covered By The Workers' Compensation Act?

As a general rule, the law applies to all employees hired in the state of Oklahoma or who are injured in the state of Oklahoma. Some workers employed in agriculture or horticulture, licensed real estate brokers, most household workers and employees of the federal government are not covered.

A person performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitation therapy, transportation, lodging or reimbursement for incidental expenses is not an employee under the Workers' Compensation Act.

I Am A Sole Proprietor, Am I Required To Have Workers' Compensation Coverage On Myself?

No. Sole proprietors, members of a partnership, and certain other stockholder employees who own at least ten percent (10%) stock in the corporation are specifically excluded from the definition of "employee" under the Workers' Compensation Act.

Effective September 1, 1993, these persons, as well as members of a limited liability company who own at least 10% of the capital of the limited liability company may obtain from the Department of Labor

a “Certification of Non-Coverage Under The Workers’ Compensation Act”. To learn more about this contact the **Department of Labor** at:

4001 N. Lincoln Blvd.
Oklahoma City, OK 73105-5212
(405) 528-1500

If you are a sole proprietor, 10% stockholder or partner you may get workers’ compensation as an “employee” with a special endorsement to the policy.

We Own a Business That Only Employs Immediate Family Members. Do we Have to Purchase Workers’ Compensation Insurance?

Beginning November 1, 1997, an employer with five or less total employees, all of whom are related by blood or marriage to the employer, will be exempt from the Workers’ Compensation Act.

I Am An Independent Contractor, If I Subcontract Any Part Of A Contract to A Subcontractor, Can I Be Liable For An On-The-Job Injury Of An Employee Of The Subcontractor?

Yes. Both the independent contractor who subcontracts part of the job and the principal employer can be held liable for injuries to any employee of the subcontractor if the subcontractor has not secured workers’ compensation coverage for his employees.

How Do I Obtain Workers’ Compensation Coverage?

You may purchase a workers’ compensation policy from any insurance company authorized to sell workers’ compensation insurance in Oklahoma, or you may self-insure, subject to the approval of the administrator of the Workers’ Compensation Court, or you may obtain coverage through CompSource Oklahoma. You may also purchase “equivalent” insurance from a company approved by the Insurance Commissioner to offer this type coverage.

Are There Penalties For Not Obtaining Workers' Compensation Coverage?

Yes. An employer required by law to secure workers' compensation coverage, who fails to obtain such coverage, may be charged with a misdemeanor and subjected to a fine. In addition, after an employer is cited for two offenses of failing to obtain workers' compensation coverage, the Commissioner of Labor has the authority to order cessation of business activities until insurance is procured.

Who Pays The Premium Or Cost Of Workers' Compensation Insurance?

All costs for workers' compensation insurance are paid by the employer. The employer may not deduct money from an employee's wages to pay workers' compensation insurance premiums.

What Should An Employer Do If An Employee Is Injured On The Job and you participate in a certified workplace medical plan?

Provide necessary medical care.

You may be able to participate in a certified workplace medical plan approved by the Department of Health. Contact your insurance carrier about this. If you participate in an approved certified workplace medical plan, an employee has the choice of getting treatment within the plan or from a physician who has treated him prior to the injury. Or the employee may select a physician who has maintained records and treatment of an immediate family member prior to the injury.

If you have a certified workplace medical plan, employees must make their election in writing within thirty (30) days after starting work, or within thirty (30) days after the adoption of a certified workplace medical plan, or on the annual open enrollment date of the certified workplace medical plan.

If a self insured employer approved by the Workers' Compensation

Court has in force a collective bargaining agreement with its employees, the Certified Workplace Medical Plan shall be selected with the approval of both parties who signed the collective bargaining agreement.

Can A Worker Change Doctors Within The Certified Workplace Medical Plan?

Yes. In addition to rules that may be established by the plan, a worker is permitted to petition the Court for a change of physician within the certified workplace medical plan, or for a change of physician outside the plan. The physician must agree to comply with the rules of the certified workplace medical plan.

Must An Employee In Need Of Emergency Treatment Go Through The Certified Workplace Medical Plan?

No. The certified plan must authorize necessary emergency treatment by medical providers who are not part of the plan.

What If I Do Not Participate In A Certified Workplace Medical Plan?

Upon actual notice of an injury, you should provide your employee with medical treatment within three (3) days. Your employee may select a physician to provide medical care at your expense if you fail or neglect to provide medical treatment within three (3) days. In case of an emergency and your failure, your employee or someone on your employee's behalf may obtain immediate medical treatment for your employee where such treatment is not provided. Your employee may petition the Court to change physicians, if the treating physician determines that the injury cannot be treated by the same physician. Upon meeting this condition, the physician is selected by you from a list of three physicians chosen by the employee. The Court will then order the change in physician.

Is It Necessary To Report On-The-Job Accidents?

The workers' compensation law requires employers to notify the Workers' Compensation Court of all injuries which result in the loss of time beyond the employee's shift or which require medical attention away from the work site. A Form 2 (Employer's First Notice of Injury) must be provided to the Court within ten (10) days after the occurrence of an injury. Failure to timely file the Form 2 may subject an employer to an administrative fine of not more than \$1,000. The Form 2 report is

not an admission by the employer that the injury is valid or compensable. Rather, the Form 2 is required if an employee has reported an accidental injury and comes within the reporting guidelines.

Can I Discharge An Employee Who Has Filed A Workers' Compensation Claim?

Under the workers' compensation law you may not discharge an employee because the employee has filed a claim in good faith, has retained a lawyer to represent him in a claim, has instituted any proceeding under the Workers' Compensation Act, or has testified (or is about to testify) in any such proceeding. If you terminate an employee in retaliation for filing a workers' compensation claim, the employee may seek to enforce this provision in District Court. In addition, fraud can be reported to your insurance carrier.

What If Workers' Compensation Fraud Is Suspected?

The Attorney General Workers' Compensation Fraud Unit is the state entity to which cases of suspected workers' compensation fraud should be referred for the purposes of investigation, civil action, criminal action or referral to the District Attorney the Insurance Commissioner or to the Administrator of the Workers' Compensation Court. In addition, fraud can be reported to your insurance carrier.

**The Attorney General Fraud Unit can be contacted at:
4545 N. Lincoln Blvd., Suite 24
Oklahoma City, OK 73105
(405) 522-3403**

What Are Workers' Compensation Benefits?

The various types of benefits available to an injured employee are described below:

Medical

The employer shall provide an injured employee with reasonable and necessary medical care for job-related injuries or occupational

diseases. This includes medical, surgical, hospital, nursing, ambulance, and other related services. Medical benefits also include medication, crutches, braces, supports, prosthetic devices, and physical rehabilitation.

Out-Of-Pocket Expenses

Reimbursements for out-of-pocket expenses include amounts spent on meals, lodging, mileage, and transportation relating to an authorized medical examination or medical treatment, which requires travel outside the city limits of the residence of the injured employee at the time of the examination or treatment. The injured employee should keep accurate records of travel expenses for reimbursement.

Travel expenses paid to the worker shall include only expenses for travel from the residence at the time of medical treatment, not to exceed 600 miles round trip.

The employer is not liable for travel which is wholly within the limits of the city or town of claimant's residence.

Temporary Total Disability (TTD)

An employee is entitled to TTD benefits in the event he or she is unable to work as determined by an authorized physician. An employee is eligible for TTD benefits after being unable to work for more than three (3) calendar days as a result of an on-the-job injury or occupational disease.

Benefits are due for as long as the employee is temporarily totally disabled (not to exceed a maximum of 300 weeks.) For injuries occurring after November 1, 1997, TTD benefits cannot exceed 156 weeks, unless approved by the Court. However, in order to continue benefits past 156 weeks, an employee must request a review of the case by a judge of the Workers' Compensation Court. Compensation may be continued for additional fifty-two (52) week periods, provided the employee requests a review of the case and the judge finds that benefits should continue. TTD benefits may not exceed the maximum of three hundred (300) weeks.

For injuries occurring on or after January 1, 1995, TTD benefits will be equal to 70% of the employee's average weekly wage, not to exceed 90% of Oklahoma's "average weekly wage", as determined by the Oklahoma Employment Security Com-

mission.

TTD benefits will be 70% of the employees' average weekly wage, up to a maximum of 100% of the state's average weekly wage for injuries occurring on or after January 1, 1996.

For injuries occurring on or after November 4, 1994, any insured employer may commence payment of TTD benefits to an injured employee for up to four weeks. This voluntary payment shall be reimbursed by the insurance company within 30 days of the last advance payment. No advance payments shall be made to any person excluded from the definition of employee. Payments are not an admission by the employer or insurance carrier as to liability, compensation rate, or any other material fact.

The *maximum* weekly benefits allowed to be drawn for TTD are based on the date of injury and are as follows:

Date of Injury	Max. Rate
11-1-99 to 10-31-02=	\$473.00
11-1-96 to 10-31-99=	\$426.00
1-1-96 to 10-31-96=	\$409.00
1-1-95 to 12-31-95=	\$368.00
11-1-93 to 1-1-95=	\$307.00

*For earlier injury date contact the Counselors Program.

Permanent Partial Disability (PPD)

PPD benefits are paid for disability resulting from an on-the-job accident or occupational disease which is permanent but does not result in total disability. These are weekly income benefits based on the type and extent of disability. Injuries to many parts of the body are compensated on the basis of a schedule. A copy of this schedule is found in the *Workers' Compensation Handbook*. If the employee has suffered a permanent disability that is not specifically listed in the schedule, such as an injury to the neck or back, compensation is com-

puted on the percentage of disability to the body as a whole. "The Guides to the Evaluation of Permanent Impairment" as published by the American Medical Association, has been adopted to determine the percentage of impairment for injuries to the "body as a whole." For injuries occurring after September 1, 1992 employee's weekly PPD award will be 70% of the average weekly wage, but shall not exceed a maximum 50% of the State's average weekly wage.

Permanent Total Disability (PTD)

PTD benefits are paid for disability from an on-the-job injury or occupational disease resulting in permanent and total disability. For injuries occurring prior to January 1, 1995, the maximum benefit for PTD is equal to 70% of the employees average weekly wage. The *maximum* weekly benefits allowed to be drawn for PTD are based on the date of injury and are as follows:

Date of Injury Max. Rate

11-1-99 to 10-31-02=	\$473.00
11-1-96 to 10-31-99=	\$426.00
1-1-96 to 10-31-96=	\$409.00
1-1-95 to 12-31-95=	\$368.00
11-1-93 to 1-1-95=	\$307.00

*For earlier injury date contact the Counselors Program.

Beginning September 1, 1993, before being judged permanently and totally disabled, an employee must first be evaluated as to the practicability of returning to gainful employment through vocational rehabilitation or training. During the period when an employee, who would otherwise be PTD, is actively participating in a re-training or job-placement, he or she shall receive benefits at the same rate as the employee's temporary total benefits.

Permanent Total Disability from a Combination of Injuries

If permanent total disability results from a combination of work related injuries and the last injury occurred on or after June 1, 2000, the last employer shall be liable for all permanent total benefits.

Death Benefits

Death benefits are paid to a surviving spouse and/or surviving dependent heirs of an employee who died as a result of an on-the-job accident or occupational disease.

Death benefits are set by statute and include lump sum payments and continuing weekly benefits. Heirs of the deceased who were not dependent, but suffered economic loss, may be entitled to a lump sum payment.

In the event no other death benefits are payable, up to \$5,000 shall be paid for funeral expenses in cases of deaths occurring on or after September 1, 1992.

If an employee has injuries resulting from cumulative trauma can I apportion those injuries with the employees' previous employers?

The last employer, where there is injurious exposure of at least 90 days, is liable for the entire injury. If there is no injurious exposure greater than 90 days for any employer, the last employer can seek contribution from previous employers where there was injurious exposure.

How Are Medical Bills Paid?

The self-insured employer or the insurance carrier is responsible for all necessary and reasonable medical treatment

Disfigurement

A lump sum benefit is paid for serious and permanent disfigurement resulting from an on-the-job accident or occupational disease. For injuries occurring on or after September 1, 1992, compensation for disfigurement may not exceed \$20,000.

Rehabilitation And Job-Placement Services

Vocational rehabilitation services, including retraining and job-placement to restore the employee to gainful employment may be provided when the employee is unable to perform the same provided for the injured employee. The medical bills are subject to review and reimbursement per the Workers' Compensation Court Schedule of Medical Fees.

Certified Workplace Medical Plans will establish fees for treatment rendered within the plan.

Is The Employee Responsible For The Remainder Of Medical Charges That Exceed The Schedule Of Medical Fees?

If there is a balance due for medical treatment after the maximum reimbursement is made by the self-insured employer or the insurance carrier, the employee is not responsible for that balance.

Must An Injured Worker Notify His Employer If He Accepts Other Employment While Receiving Temporary Total Disability Benefits?

Yes. Effective September 1, 1993, any person receiving temporary disability benefits from an employer or the employer's insurance company must promptly report in writing to the employer or insurance carrier any change in material fact, the amount of income he is receiving, or any change in his employment status while receiving temporary total disability payments.

Is An Employee Entitled To Receive Temporary Total Disability (TTD) and Unemployment Benefits At The Same Time?

No. For injuries occurring on or after November 4, 1994, no employee may receive TTD and unemployment benefits covering the same period of time.

May A District Attorney Or The Workers' Compensation Court Examine My Records Pertaining To A Workers On-The-Job Injury?

Effective September 1, 1993, upon filing a notice of injury or a claim for benefits with the Court, all employers and employees shall give written permission for the Administrator of The Workers Compensation Court, the Attorney General, and the District Attorney to examine all records relating to the notice of injury or claim.

Where Can I Obtain Help In Improving Workplace Safety?

All workers' compensation insurers must provide workplace safety services for their policy holders. The CompSource Oklahoma is also required to offer this service to policy holders.

Insurers are prohibited from increasing workers' compensation rates to their insureds because of workplace safety plans.

Other Than A Trial, What Are my Options for Settling a Dispute?

The Court, upon its own motion or at the request of any party, may request a settlement conference to be held before a Judge of the Court for the purposes of settling a claim before it goes to trial. In addition to the settlement conference, a party to a dispute can request voluntary mediation to settle a dispute regardless of whether a claim has been filed with the court. Any workers' compensation claim can be mediated except Special Indemnity Fund claims. All final settlements must be approved by the Court. If mediation is desired, or, if you have questions about mediation, contact the Counselor's Office. Forms for requesting mediation are available from the Counselors.

Do I Have A Right To Be Notified If My Insurance Carrier Plans To Settle A Case With The Employee?

Yes. An insurance carrier, CompSource Oklahoma or group self insurance association must make a good faith effort to notify an employer of the possibility of settlement. Policy holders may waive this requirement.

Where Can I Obtain Additional Information About Workers' Compensation?

The Workers' Compensation Court has established a Counselor program. Counselors provide information and improve communications among injured workers, employers, insurance carriers and health care providers. A Counselor can provide general information and an explanation of your rights and responsibilities. You may obtain a Handbook of the Court, including court rules, examples of forms, and Oklahoma statutes dealing with workers' compensation from the Counselor Department for a nominal charge.

This pamphlet has been prepared by the Counselors' Program of the Workers' Compensation Court to provide information to employees with questions about their rights and responsibilities under the Oklahoma workers' compensation

laws. If you have further questions, or need additional information, you may contact the Court at the address and phone numbers listed below.

**Workers' Compensation Court
Counselor's Program
1915 North Stiles Avenue
Oklahoma City, OK 73105-4904**

**OKC Area-(405) 522-8760
Tulsa Area-(918) 581-2714
Statewide-(1-800) 522-8210**

The Information provided in this pamphlet is general in nature and for informational purposes only. It is not intended to be a legal interpretation of the Workers' Compensation Act.

Revised 11/01