

Utah Labor Commission Industrial Accidents Division



EMPLOYERS' GUIDE



Employers' Guide to Workers' Compensation





Employers' Guide to Workers' Compensation

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The workers' compensation system is not only important to employees—it is important to employers as well. This Employers' Guide to Workers' Compensation will help Utah employers understand the basic requirements of the workers' compensation system.

This Guide does not attempt to provide detailed answers for every question that might arise under the workers' compensation system. Instead, the Guide provides answers to employers' common questions about workers' compensation. An employer that requires additional information is urged to contact its insurance carrier or the Labor Commission's Industrial Accidents Division.

www.laborcommission.utah.gov



What is Workers' Compensation?

Q 1. What is workers' compensation?

A Workers' compensation is a no-fault insurance system that provides medical and disability benefits for employees who suffer injury or illness because of their work.

Q 2. How does the workers' compensation system benefit employers?

A Workers' compensation benefits are the **exclusive remedy** for work-related injuries and illnesses. This means that injured workers will receive the defined medical and disability benefits provided by the workers' compensation system, but cannot sue their employers or co-workers in court for damages. In other words, the workers' compensation system spares injured workers and their employers the costs and uncertainties of judicial litigation. Refer to Utah Code 34A-2-105.

Workers' Compensation Coverage

Q 3. Are employers required to provide workers' compensation coverage for their employees?

A Yes. With a few exceptions discussed in Q4, below, every employer is required to provide workers' compensation coverage for all its employees. Refer to Utah Code 34A-2-201.

Q 4. What about businesses that don't have any employees?

A Businesses with no employees may not be required to carry workers' compensation coverage. For example, sole proprietorships, partnerships and limited liability companies in which the owners perform all the work and have no employees, may not be required to have workers' compensation coverage. Refer to Utah Code 34A-2-104.

Q 5. Can employees be required to pay for their own workers' compensation coverage?

A No. Utah law requires employers to provide workers' compensation coverage and prohibits the cost from being passed on to employees.

Q 6. Do an employer's other insurance policies satisfy the requirement to provide workers' compensation coverage?

A No. Other types of insurance—typically general health insurance policies and liability insurance policies—do not cover workplace injuries or illnesses, nor do they provide the disability and dependents' benefits required by the workers' compensation system. Furthermore, only workers' compensation coverage gives employers the protection of the workers' compensation system's *"exclusive remedy."*

Q 7. Are unemployment insurance and workers' compensation insurance the same thing?

A No. Unemployment insurance provides periodic payments to the unemployed; workers' compensation insurance protects against the consequences of workplace injuries and illnesses. An employer that has registered with the Department of Workforce Services for unemployment insurance coverage must also obtain workers' compensation insurance coverage.

Q 8. What are an employer's options for providing workers' compensation coverage?

A Employers can provide workers' compensation coverage in one of three ways:

- ▶ Purchase workers' compensation insurance from the Workers' Compensation Fund (WCF). WCF is the "insurer of last resort" for Utah employers, meaning that WCF must provide coverage for any Utah employer;
- ▶ Purchase coverage from one of the other carriers authorized by the Utah Insurance Department to sell workers' compensation insurance in Utah; or
- ▶ Obtain permission from the Industrial Accidents Division to *"self insure."*

Q 9. How can I find the insurance carriers that sell workers' compensation insurance?

A The Utah Insurance Department authorizes insurance carriers to sell workers' compensation insurance in Utah and lists such carriers on their Website: www.insurance.utah.gov. Employers can also contact insurance brokers for assistance in obtaining workers' compensation insurance.



Q 10. What about “self insurance?”

A Utah law allows the Labor Commission to authorize some employers to provide workers' compensation coverage by self-insuring. Advance authorization is required. The requirements and process to obtain authority to self-insure can be found at: www.laborcommission.utah.gov or by calling the Division at: **801-530-6800**.

Q 11. How does a Utah employer provide workers' compensation coverage for employees working outside Utah?

A Generally speaking, Utah employees working out-of-state for less than six months are covered by their employer's Utah workers' compensation insurance. The employer can extend the initial six-month period by filing notice with the Industrial Accidents Division. If an employee is permanently stationed in another state, the employer must comply with the workers' compensation coverage requirements of that other state.

Q 12. Can an employer pay an injured worker's medical and disability benefits without going through the workers' compensation system?

A **No.** Direct payment of benefits is specifically prohibited by Utah law.

Q 13. What are the consequences for employers that fail to obtain workers' compensation coverage?

A The consequences can be severe. They include:

- ▶ Penalties of at least \$1,000;
- ▶ Injunctions prohibiting continued business operations; and
- ▶ Loss of the protection of the “*exclusive remedy*,” which means that the employer and its employees can be sued in court for damages by an injured worker.

It is **much** less expensive to obtain workers' compensation coverage than to try to go without it.

Who Can Claim Workers' Compensation Benefits?

Q 14. Are all employees covered by workers' compensation?

A Almost all employees are covered by the workers' compensation system and can claim benefits for workplace injuries or illnesses. However, a few types of employment are excluded from the workers' compensation system:

- ▶ Some agricultural workers;
- ▶ Some casual or domestic workers;
- ▶ Some real estate and insurance brokers;
- ▶ Sole proprietors, partners of a partnership, and members of limited liability companies.

While these types of workers are not automatically covered by the workers' compensation system, their companies can elect to provide coverage for them.

Q 15. Are corporate officers and directors covered by workers' compensation?

A Yes. However, a corporation can choose to exclude some or all of its officers and directors from coverage. To exclude officers or directors, a corporation must first notify its workers' compensation insurance carrier. Small corporations that do not have a workers' compensation insurer can provide the notice of exclusion to the Industrial Accidents Division. The requirements and process to obtain a Corporate Directors and Officers Exclusion can be found at: www.laborcommission.utah.gov.

Q 16. What is the status of independent contractors under the workers' compensation system?

A In order to qualify as an independent contractor, a business must be independent in its work and not subject to the control and direction of some other entity. Independent contractors are treated the same as any other business—if it has employees it is required to obtain workers' compensation coverage. But if the independent contractor does not have any employees, it may be eligible for a workers' compensation coverage waiver.

Q 17. What is a "statutory employer?"

A If an employer hires a contractor, Utah law expects the employer to verify that the contractor has complied with workers' compensation coverage requirements. If the hiring employer fails to verify coverage and the contractor does not have insurance, Utah law treats the hiring employer as the "statutory employer" of the uninsured contractor's employees. The hiring employer is then liable for the employees' workers' compensation benefits.

Q 18. What is a Workers' Compensation Coverage Waiver?

A A Workers' Compensation Coverage Waiver is a certification by the Industrial Accidents Division that the waiver holder: a) has no employees; and b) has provided evidence that it is an independently established business. The waiver holder can present the waiver as proof of compliance with workers' compensation requirements. The requirements and process to obtain a waiver can be found at: www.laborcommission.utah.gov.

Q 19. Are "leased" employees treated differently than regular employees?

A While a business may "lease" its employees from an employee-leasing company, it is the business—not the leasing company—that is the employer for workers' compensation purposes. A leasing company may provide workers' compensation coverage on behalf of the business, but it is the business that is ultimately responsible. *A business with employees should never assume that its workers' compensation responsibilities are being taken care of by someone else.*

Q 20. Are volunteers covered by workers' compensation?

A A volunteer for a government entity is entitled to workers' compensation medical benefits; and in some cases, disability benefits.

A volunteer for a non-government entity is not considered an employee and is not entitled to workers' compensation benefits; unless the non-government entity chooses to provide coverage for the volunteer.



Providing Notice and Reporting Injuries

Q 21. What notices are employers required to post?

A Employers are required to post notice that they are in compliance with workers' compensation laws. These notices, which must be placed in conspicuous locations at the place of business, are available free of charge in English and Spanish at the Labor Commission and on the Labor Commission's website: www.laborcommission.utah.gov.

Q 22. How should an employer report a worker's injury or illness?

A Once an employer learns by any means or from any source of a workplace injury or illness, the employer must report the injury or illness within seven days to its workers' compensation insurance carrier, or the employer may be subject to penalty.

If an employer has failed to obtain workers' compensation coverage, the uninsured employer should report the injury or illness directly to the Industrial Accidents Division.

Please note that employers may also be required to file a separate report of the occurrence to UOSH.

Q 23. Must injuries be reported if they only require first aid treatment?

A Injuries requiring only first aid treatment, either on-site or at an employer-sponsored free clinic, do not have to be reported. For an explanation of what constitutes first aid treatment, refer to the Labor Commission's Rule R612-100-2(J), at: www.laborcommission.utah.gov.

Q 24. What if an employer doesn't believe that an alleged injury is real, or that it happened at work?

A Even if an employer disputes the validity of an injury or illness, the employer must still report it. Reporting an alleged injury or illness is not an admission of liability. An employer can contact its insurance carrier to explain why it doesn't believe a workers' compensation claim is valid.

Workers' Compensation Premiums

Q 25. How are workers' compensation premiums determined?

A The Utah Department of Insurance establishes basic premium rates. These basic rates are then modified to account for the risks of particular occupations and each employer's claims history for work-related injuries and illnesses.

Q 26. What if an employer thinks its workers' compensation premium is too high?

A An employer can ask its workers' compensation carrier to explain how the premium was computed. An employer can also shop around for lower premiums from other insurance carriers. Additionally, the employer can contact the Utah Insurance Department for assistance.

Benefits Provided To Injured Workers

Q 27. What workers' compensation benefits are provided to injured workers?

- A** Depending on specific circumstances, workers' compensation can pay one or more of the following benefits:
- ▶ Medical Care - the reasonable expense of medical care necessary to treat a work injury or illness. This includes visits to the doctor, hospital bills, medicine and prosthetic devices. It also includes reimbursement for the cost of travel to receive medical treatment.
 - ▶ Temporary Total Disability Compensation is paid for the time a doctor determines the injured worker is unable to do any work because of a work injury or illness. However, no compensation is paid for the first 3 days after an injury or illness unless the disability prevents the injured worker from working for more than a total of 14 days. In that case, the injured worker will be paid for the first 3 days of disability. This type of compensation ends when they return to work or reach medical stability.
 - ▶ Temporary Partial Disability Compensation is paid if a work injury or illness prevents the injured worker from earning his or her full regular wage while recovering. For example, if the injured worker works fewer hours or works at a light-duty job that pays less than their regular job, they are entitled to temporary partial disability compensation in addition to wages.
 - ▶ Permanent Partial Disability Compensation is paid if the work injury or illness leaves the worker with a permanent impairment. This compensation begins when a doctor determines that the worker has reached

medical stability; the duration of this compensation is determined according to an "impairment rating" provided by a physician.

- ▶ Permanent Total Disability Compensation is paid if the work-related injury or illness leaves the worker with a permanent disability that prevents a return to his or her former work or any other work that is reasonably available to the worker.
- ▶ Benefits in Case of Death. If an employee dies from a work injury or illness, workers' compensation will pay up to \$9,000 for funeral and burial expenses. Also, the deceased worker's spouse, dependent children, and other dependents may be entitled to monthly payments.

Q 28. Can workers' compensation benefits be denied because the injured worker was at fault for the injury?

- A** No. Workers' compensation is a no-fault system. However workers' compensation does not cover intentional self-inflicted injuries. Disability compensation (*but not medical benefits*) may be denied for injuries from alcohol or drug abuse. Also, disability compensation can be reduced by 15% for willful failure to use safety devices or follow safety rules. (**Note:** Disability compensation can also be increased by 15% if an injury results from an employer's willful failure to follow safety rules.)

Returning to Work

Q 29. When can an injured worker return to work?

- A** An injured worker can return to work when he or she is able to do so. This may require consultation with a physician, who can issue a light-duty or full-duty work release.

Q 30. Can an employer bring an injured worker back to work on a light-duty assignment?

A Yes, if the light-duty assignment is reasonable and within the injured worker's capabilities as determined by a medical provider. There are advantages to bring an injured worker back to light-duty work as soon as possible:

- ▶ It reduces the amount of disability compensation that must be paid.
- ▶ It avoids the time and expense of hiring and training a new employee.
- ▶ Most importantly, studies show that workers get better faster if they have the opportunity to return to work as they recover from their injuries.

Q 31. Is an employer required to provide light-duty work?

A No, but as discussed above, there are advantages to both the employer and the employee if a light-duty assignment is arranged.

Q 32. If an injured worker returns to work on a light-duty assignment, must he or she be paid the same wage as before the injury?

A No. If the light-duty assignment pays less than the injured worker's pre-injury wage, the injured worker will receive temporary partial disability compensation to help make up the difference.

Q 33. Can an injured worker refuse light-duty work?

A Not without a good reason. If an employer offers suitable light-duty work within documented medical restrictions, the injured worker is required to accept the work or risk losing his or her temporary disability compensation.

Q 34. Can an injured worker be discharged if he or she can't return to work due to a job injury or illness?

A The Utah Workers' Compensation Act does not prohibit an employer from discharging an injured worker if the worker can no longer perform his or her job. However:

- ▶ An employer cannot retaliate against an employee for filing a workers' compensation claim. In *Touchard v. La-Z-Boy, Inc.*, 148 P.3d 945 (Utah 2006), the Utah Supreme Court held that an employee who has been fired or constructively discharged in retaliation for claiming workers' compensation benefits can sue the employer for wrongful discharge.
- ▶ Termination of an injured worker who is capable of performing the essential functions of his or her work may violate the Utah Antidiscrimination Act and the Federal Americans with Disabilities Act (ADA). (*Note: For more information about these Acts, contact the Labor Commission's Antidiscrimination Division, 801-530-6801 or toll free (800) 222-1238.*)

Q 35. Is an employer required to continue providing medical coverage for an injured worker under the employer's group health insurance plan?

A Utah law does not require an employer to continue medical insurance while an employee is off work and receiving workers' compensation benefits because of a workplace injury or illness. However, employers should consider the requirements of other laws, such as the Family and Medical Leave Act (FMLA). (*See section at the back of this booklet for a short description of the FMLA.*)

Selecting Medical Providers

Q 36. Can an employer or its insurance carrier require the injured worker to go to a specific doctor or hospital for treatment?

A Only for the first visit. Specifically, if an employer or insurance carrier has notified the injured worker of a “preferred provider organization” (PPO), the worker must go there for the first medical treatment; otherwise, the worker may be liable for part of the initial treatment cost. But after the first visit, the injured worker can obtain treatment from the medical provider of his or her choice by using their one time change of medical provider option.

If the employer or insurer has not notified the worker of a PPO, the worker can obtain initial medical treatment from the provider of his or her choice.

Q 37. Can the injured worker change medical providers?

A An injured worker can change medical providers one time. The injured worker must notify the workers' compensation insurance carrier of the change. A referral from one medical provider to another is not considered a change of medical providers.

Workplace Safety | Controlling Workers' Compensation Costs

Q 38. How can an employer control or lower workers' compensation costs?

A The best ways to control workers' compensation costs are to prevent accidents and, when an accident does occur, stay involved with the injured employee.

- ▶ **Safety programs:** The best way to lower workers' compensation costs is to prevent injuries. Injuries cost money; safety programs reduce injuries and save money. The Utah Labor Commission provides FREE safety consultations for companies. Please contact the Utah Safety and Health Consultation Program at: 801-530-6901 or (800)-530-5090 for assistance with safety programs.
- ▶ **Stay in touch with injured employees:** Research indicates that employers who routinely do only one thing—call injured employee right away and ask, “How are you doing? Hope you get back soon”—reduces disability claims by 21 percent. Become actively involved in each workers' compensation claim and communicate regularly with your injured workers.
- ▶ **Managed health care:** Self-insured employers and workers' compensation insurance carriers can adopt managed health care programs to reduce costs and improve outcomes for medical care of injured workers.
- ▶ **Return-to-work programs:** Bringing injured workers back to work lowers workers' compensation costs. Employers can consult with physicians to determine what kind of light-duty work is appropriate for an injured worker.

Q 39. What if an employee ignores an employer's safety standards?

A Employers are entitled to enforce their safety rules, just as they are entitled to enforce other work rules. The workers' compensation system reduces an injured worker's disability compensation by 15% if the injury resulted from the injured worker's willful failure to obey

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an employer's safety rules. By the same token, an injured worker's disability compensation may be increased by 15% if the injury results from the employer's willful failure to follow safety standards.

Q 40. How does alcohol or drug use affect workers' compensation benefits?

A Disability compensation may be denied or reduced to an injured worker if the injury is caused by use of alcohol or illegal drugs.

Workers' Compensation Fraud

Q 41. Are there criminal penalties for workers' compensation fraud?

A **Yes.** An individual fraudulently claiming workers' compensation benefits is subject to criminal prosecution. Likewise, an employer obtaining workers' compensation insurance by fraudulently underreporting payroll or engaging in other material misrepresentations is subject to criminal prosecution.

The Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act is separate from Workers' Compensation. This federal law requires "covered" employers to provide up to 12 weeks of unpaid job protected leave to "eligible" employees for certain family and medical reasons. For more information, please contact the nearest office of the Wage and Hour Division, listed under U.S. Government, Department of Labor, and Employment Standards Administration.

The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) makes it unlawful for an employer to discriminate in employment against a qualified individual with a disability. The ADA requirements apply to employers with 15 or more employees.

Whether an injured worker is protected by the ADA will depend on if the person meets the ADA's definition of an "individual with a disability." The person must have an impairment that substantially limits a major life activity, have a "record of" or be "regarded as" having such an impairment. Also, she/he must be able to perform the essential functions of a job currently held or desired, with or without accommodations.

Clearly, not every employee injured on the job will meet the ADA definition.

However, if an employer feels their employee may meet the requirements and an employer has questions regarding their responsibilities, they should contact the Utah Antidiscrimination and Labor Division of the Utah Labor Commission at: **801-530-6800**, or toll-free at: **(800) 530-5090**.

Professional Assistance at Your Request

For additional information on workers' compensation or to schedule a Workshop or Seminar at your worksite, please contact the Industrial Accidents Division at: **801-530-6800** or call toll-free at: **(800) 530-5090**. The Industrial Accidents Division offers an Outreach Program to educate the public on the Workers' Compensation laws in Utah. Upon request, the Division will send a staff trainer to your work site or meeting place to conduct an informational presentation at your selected time and date. Presentations are customized to meet the needs of your particular group (*medical providers, employer or employee groups, associations, unions, insurance providers, etc.*).

For assistance in making your workplace a safer environment contact the Utah Occupational Safety and Health Division (UOSH) at **801-530-6855** or call toll-free at **(800) 530-5090**. UOSH Consultation Services are available at employers' request. UOSH Consultation provides confidential, no-cost safety and health services with a non-penalty approach. UOSH offers 1) surveys to identify workplace hazards; 2) recommendations for correcting the safety and health hazards identified; 3) safety and health program review; 4) industrial hygiene sampling; 5) safety and health training; 6) safety and health information; 7) safety and health excellence awards; and more.



Contact Information

Utah Labor Commission Industrial Accidents Division

For further explanation or answers to other questions, contact the Industrial Accidents Division.

Industrial Accidents Division **(801) 530-6800**
Toll Free **(800) 530-5090**
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Additional copies of the "Employers' Guide to Workers' Compensation" may be obtained by phone or on the Internet at: www.laborcommission.utah.gov



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