



Workers' Compensation in Oklahoma Employer's Rights & Responsibilities

**Workers' Compensation Court Counselor Program
1915 N. Stiles Avenue, Oklahoma City, OK 73105
210 Kerr State Office Bldg, 440 S. Houston, Tulsa, OK
74127**

**(405) 522-8760 • OKC (918) 581-2714 • TU
(800) 522-8210 • In-State Toll Free**

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 Code and should not be construed as offering or providing legal advice.

What is Workers' Compensation Coverage?

Workers' compensation is an insurance program that provides compensation for disability, and medical and rehabilitation benefits, for employees injured on the job. In the case of accidental death of an employee, it includes benefits to the employee's dependents. Under workers' compensation, both workers and employers are protected. Each covered worker has a right to benefits for a compensation injury. In return, employers are protected from liability lawsuits outside the workers' compensation system.

What Employees Are Covered By The Workers' Compensation Code?

Generally, every employee hired in Oklahoma or who is injured in Oklahoma is covered by the workers' compensation laws of the state. Independent contractors are not employees and are therefore not covered. Other exceptions to coverage include persons covered for job-related injuries under the federal law; certain agricultural workers; licensed real estate brokers paid on a commission basis; certain persons providing services administered by the Oklahoma Department of Human Services; any person employed by an employer with 5 or fewer employees, all of whom are related by blood or marriage to the employer; any person employed by a tax-exempt youth sports league; sole proprietors, members of a partnership, certain persons who are a party to a franchise agreement, certain members of a limited liability company and certain stockholders of a corporation; any person that provides voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitation therapy, transportation, lodging or reimbursement for incidental expenses; owner-operators of a truck-tractor; and drive-away owner operators. All of these groups of people are exempt from the workers' compensation laws of the state by law.

Persons asserting exemption from the Workers' Compensation Code as an independent contractor may complete an "Affidavit of Exempt Status." The form is available on the Oklahoma Insurance Department's website at:

www.ok.gov/oid/documents/affidavitof independent contractor.pdf.

To learn more about the Affidavit of Exempt Status, contact the Oklahoma Department of Insurance at:

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Oklahoma Department of Insurance
P.O. Box 53408
Oklahoma City, OK 73152
(405) 521-2828 or (800) 522-0081 (In-State toll free)
Via the Web at: www.oid.state.ok.us

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

No. Sole proprietors, members of a partnership, members of a limited liability company who own at least 10% of the capital of the limited liability company and certain stockholder employees who own at least ten percent (10%) stock in the corporation are specifically exempted from the workers' compensation laws of the state by law. However, such persons may elect to be covered by a workers' compensation insurance policy.

We Own a Business That Only Employs Immediate Family Members. Do We Have To Purchase Workers' Compensation Insurance?

An employer with 5 or fewer total employees, all of whom are related by blood or marriage to the employer, are exempt from the Workers' Compensation Code by law.

I Am An Independent Contractor. If I Subcontract Any Part Of A Contract To A Subcontractor, Can I Be Liable For A Job-Related 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 job-related injuries to any employee of the subcontractor if the subcontractor has not secured workers' compensation coverage for its employees.

How Do Employers Obtain Workers' Compensation Coverage?

In Oklahoma, most employers must cover their employees with workers' compensation insurance. Employers may buy their insurance from a private insurance company or CompSource Oklahoma, an entity created by law which provides workers' compensation coverage for public and private Oklahoma employers. Employers also

may satisfy their workers' compensation obligations by insuring themselves as an own-risk employer or member of a group self-insurance association, if approved by the Workers' Compensation Court Administrator. For information about workers' compensation self-insurance, contact the Court's Insurance Department at 405-522-8680 or by e-mail at insurancedept@owcc.state.ok.us. The law requires that the same benefits be provided no matter which type of coverage the employer has.

A Workers' Compensation Premium Reduction (WCPR) program is offered by the Oklahoma Department of Labor. To enroll in the program or for additional information, contact the Oklahoma Department of Labor at 405-521-6141 or toll free statewide at 888-269-5353. Premium discounts also may be available to certain employers that use the services of a certified workplace medical plan (CWMP). CWMPs are organizations that provide managed medical care for workers' compensation. For information about CWMPs, contact the Managed Care Systems office of the State Department of Health at 405-271-6868 or on the web at www.health.state.ok.us.

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Oklahoma City Area: (405) 522-8760

Tulsa Area: (918) 581-2714

Statewide Toll Free: (800) 522-8210

Electronic Mail: Counselors@owcc.state.ok.us

Are There Penalties For Not Obtaining Workers' Compensation Coverage?

Yes. An employer required by law to secure workers' compensation coverage that fails to obtain such coverage, may be charged with a misdemeanor and subjected to a fine. In addition, after an employer is cited for 2 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.

When Should My Employee Report An Injury That Occurred On The Job?

To properly handle injuries you should require job-related injuries to be reported to you as soon as possible. The law requires an employee to report a single event injury within 30 days or for medical treatment to be obtained within the 30-day period. In cases of occupational disease or injuries caused by repeated trauma, an employee must

Where Can I Obtain Help In Improving Workplace Safety?

The Oklahoma Department of Labor has a Safety Pays® OSHA Consultation Division that provides free safety and health consultation services to private sector employers in Oklahoma. For more information, contact the Oklahoma Department of Labor by telephone at 405-521-6100 or toll free statewide at 888-269-5353, or by e-mail at labor.info@labor.ok.gov. Workplace safety information also may be obtained from the employer's workers' compensation insurer.

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

A party to a dispute can request voluntary mediation to settle a dispute whether a claim has been filed with the Court or not. Any workers' compensation claim can be mediated except Multiple Injury Trust Fund claims and disputes on medical care arising within a certified workplace medical plan. All final settlements must be approved by the Court. If mediation is desired, a request for court ordered mediation may be requested or the Counselor's Office can be contacted for a voluntary mediation request form.

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 a group self-insurance association must make a good faith effort to notify an employer of the possibility of and terms of any settlement. Policyholders (employers) may waive this requirement.

Where Can I Obtain Additional Information About Workers' Compensation?

You may contact the Workers' Compensation Court's Counselor Program, visit the Court's web site at www.owcc.state.ok.us, or search the Oklahoma statutes on workers' compensation online at: www.owcc.state.ok.us/administrator_and_court_rules.htm.

The Court Counselor Program also is known as the Ombudsman 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 contact the Counselor Program at the address and telephone numbers listed below.

give notice to the employer within 90 days of the employee's separation from employment.

What Should An Employer Do If An Employee Is Injured On The Job?

An employer should promptly provide medical care to an injured employee after notice of the injury. The employer has the right to initially select the treating physician to provide such medical, surgical or other treatment as may be reasonable and necessary. However, an injured worker is allowed to secure necessary medical services from a physician of the worker's own choice at the employer's expense, where the employer fails or neglects to provide treatment within 7 days after actual notice of the injury, or where an emergency exists.

The physician selected by the employer shall become the treating physician. If the employee is covered by a certified workplace medical plan, the employer shall select a treating physician from the plan's network of physicians.

Does An Employer Have To Report Job-Related Injuries?

Oklahoma law requires an employer to report injuries received by its employees to the Workers' Compensation Court, and to the employer's workers' compensation insurance carrier, within 10 days of notice of the injury. **Only injuries that resulted in the loss of time beyond the shift or required medical attention away from the work site must be reported.** Failure or refusal to report such an injury may subject an employer to an administrative fine by the Court Administrator of not more than \$1,000.

The form prescribed by the Court for the purpose of making the report is known as the Form 2 (Employer's First Notice of Injury). It is available on the Court's web site at www.owcc.state.ok.us/court_forms.htm.

The filing of a Form 2 is not an admission of liability or that the employee provided proper notice of the injury.

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

Under Oklahoma law you may not discharge an employee because the employee has in good faith filed a claim, retained a lawyer for representation regarding a claim, has

instituted any proceeding under the Workers' Compensation Code, or has testified or is about to testify in any such proceeding. An employee cannot be discharged during a period of temporary total disability solely on the basis of absence from work. If an employee is terminated in retaliation for filing a workers' compensation claim, the employee may seek to enforce this provision in district court.

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

No. An injured worker that is covered by a certified workplace medical plan may secure necessary emergency medical services, at the employer's expense, from medical providers who are not part of the plan.

Can A Worker Change Doctors?

Yes. The procedure for changing a treating physician differs depending upon whether or not the employee is covered by a certified workplace medical plan (CWMP).

If the employee is **not covered by a CWMP**, the worker is entitled to one change of physician for any affected body part upon application to the Workers' Compensation Court. No change of treating physician can be authorized for a part of the body if no authorized medical care was provided for that part of the body for 180 days before the date of the filing of the application for a change. No more than 2 changes of physician are allowed in a claim.

If the employee is **covered by a CWMP**, the employee may apply for a one-time change of physician to another appropriate physician within the network of the CWMP using the dispute resolution process set out in the CWMP. Once the dispute resolution process has been exhausted, the employee may petition the Court for a change of physician within the plan. If no physician within the plan is qualified to treat the employee's injuries, a physician outside of the plan may be selected if the physician agrees to comply with all the rules, terms and conditions of the certified workplace medical plan.

How Are Medical Bills Paid?

The insurance carrier or the self-insured employer is responsible for the costs for reasonable and necessary medical treatment for a job-related injury or occupational disease.

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

No. If there is a balance due for medical treatment after the maximum reimbursement is made by the insurance carrier or the self-insured employer, 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. Any person receiving temporary disability benefits from an employer or the employer's insurance company must report in writing within 7 days to the employer or insurance carrier any change in material fact, the amount of income being received, or any change in 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 employee may receive TTD covering the same period of time as unemployment compensation benefits or for which employer provided short-term disability benefits are received.

May The Attorney General or The Workers' Compensation Court Examine My Records Pertaining To A Worker's Job-Related Injury?

Yes. Upon filing a notice of injury or a claim for benefits with the Court, all employers and employees shall give written permission for the Workers Compensation Court Administrator and the Attorney General to examine all records relating to the notice of injury or claim.

PTD benefits are figured at 70% of the worker's average weekly wage, up to the maximum set by law. The maximum is equal to the state's average weekly wage.

Before being adjudicated permanently and totally disabled, an employee must be evaluated as to the practicability of returning to gainful employment through vocational rehabilitation or training. During the period when an employee is actively and in good faith being evaluated or participating in a retraining or job-placement program for purposes of evaluating PTD status, the employee shall be paid benefits at a rate equal to the employee's temporary total disability rate for up to 52 weeks. The 52 week period may be extended for an additional 52 weeks by Court order.

6. **Death Benefits.** Death benefits are paid to a surviving spouse and/or surviving dependents of an employee who died as a result of a compensable job-related injury or occupational disease. Death benefits are set by law and include lump sum payments, continuing weekly benefits and funeral expenses. Heirs of the deceased who were not dependent but suffered economic loss, may be entitled to a lump sum payment.

Death benefits charts based on date of death are available on the Court's web site at www.owcc.state.ok.us/charts_rules.htm.

7. **Disfigurement.** A lump sum benefit in an amount not to exceed \$50,000, as determined by the Workers' Compensation Court, shall be paid for serious and permanent disfigurement resulting from a job-related injury or occupational disease. An award for permanent disfigurement shall not be made for a part of the body for which permanent partial impairment is awarded.
8. **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 previous job duties. For purposes of helping injured workers return to the workforce through the encouragement of light duty work or retraining, either party may request, or the Court may order, the Court's Vocational Rehabilitation Director to assist the Court in determining whether vocational rehabilitation training or services are appropriate.

What If Workers' Compensation Fraud Is Suspected?

Cases of suspected workers' compensation fraud should be referred to the Attorney General Workers' Compensation Fraud Unit for the purposes of investigation, civil action, criminal action or referral to the District Attorney, the Insurance Commissioner or to the Workers' Compensation Court Administrator. Suspected fraud also may be reported to the employer's workers' compensation insurance carrier.

The Attorney General Workers' Compensation Fraud Unit can be contacted at:

313 N.E. 21 Street, Suite 260
Oklahoma City, OK 73105
(405) 522-3403
(877) 800-8764 (In-State toll free)

What Are Workers' Compensation Benefits?

The various types of benefits and services that an injured employee may be eligible for are described below:

1. **Medical.** The employer must provide an injured employee with reasonable and necessary medical care for job-related injuries or occupational diseases. This includes, but is not limited to, medical, surgical, hospital, nursing, ambulance, and other related services. Medical benefits also include medication, crutches, braces, supports, prosthetic devices, and physical rehabilitation.
2. **Out-Of-Pocket Expenses.** Reimbursements to an injured employee may include out-of-pocket expenses for meals, lodging and actual mileage related to an authorized medical examination, reasonable and necessary medical treatment, vocational rehabilitation or vocational retraining which requires travel in excess of 20 miles round-trip to and from the injured employee's home to the location of such services. Mileage reimbursement cannot exceed 600 miles round-trip. Meals shall be reimbursed at the rate of \$8.00 per meal per four hours of travel status, not to exceed three meals per day.

Under the workers' compensation law, failure of an employer to pay travel expenses within 60 days of receipt of a request for reimbursement may result in a \$500.00 penalty payable to the injured employee.

3. **Temporary Total Disability (TTD).** An employee that is temporarily disabled as a result of a job-related injury or occupational disease and who is unable to return to work for more than **seven (7) calendar days** is eligible for TTD benefits. No TTD benefits are required for the first 7 days after the injury unless the Workers' Compensation Court determines the employee was temporarily totally disabled for more than 21 calendar days. In that event, TTD benefits are payable from the first day.

Generally, the duration of TTD benefits depends on the date and nature of the injury and when the employee's healing period ends. The employee may receive TTD benefits for as long as they are unable to work subject to certain limitations. The maximum duration of TTD benefits is 156 weeks, unless there is a consequential injury, in which case the Court may award an additional 52 weeks. TTD benefits for soft tissue injuries (e.g. sprain, strain, contusion, tendonitis, muscle tear and cumulative trauma) are subject to special rules set by law. In some instances, TTD for a soft tissue injury may be limited to 8 weeks.

Payment of temporary compensation is 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:

<u>Date of Injury</u>	<u>Max. TTD Rate</u>
Nov. 01, 2012 to Oct. 31, 2013.....	\$771
Nov. 01, 2011 to Oct. 31, 2012.....	\$735
Nov. 01, 2010 to Oct. 31, 2011.....	\$716
Nov. 01, 2009 to Oct. 31, 2010.....	\$717
Nov. 01, 2008 to Oct. 31, 2009.....	\$683
Nov. 01, 2005 to Oct. 31, 2008.....	\$577
Nov. 01, 2002 to Oct. 31, 2005.....	\$528
Nov. 01, 1999 to Oct. 31, 2002.....	\$473
Nov. 01, 1996 to Oct. 31, 1999.....	\$426

To obtain rates for earlier injury dates, please contact the Counselor Program.

TTD benefits are figured at 70% of the worker's average weekly wage, up to the maximum set by law. The maximum is equal to the state's average weekly wage.

4. **Permanent Partial Impairment (PPI).** PPI benefits are paid for disability resulting from a job-related injury or occupational disease which is permanent but does not result in total disability. These benefits are based on the type and extent of disability. Disability for certain injuries is compensated on the basis of a schedule found in the law. A sample of benefits under this schedule is located on the Court's web site at www.owcc.state.ok.us under "Benefits Charts" for the applicable injury date. 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 computed based on the percentage of disability to the body as a whole. Determination of the percentage of impairment for injuries, except scheduled injuries, is based on the criteria of the American Medical Association's "Guides to the Evaluation of Permanent Impairment."

PPI benefits are figured at 70% of the worker's average weekly wage, not to exceed \$323 per week for injuries occurring on or after August 27, 2010 through August 26, 2015. For injuries occurring on or after August 27, 2010, the PPI benefit shall not be less than \$150 per week.

5. **Permanent Total Disability (PTD).** PTD benefits are paid for a job-related injury or occupational disease that results in permanent and total disability. PTD benefits are paid during the continuance of the disability until the employee reaches the age of maximum Social Security retirement benefits or for a period of 15 years, whichever is longer.

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

<u>Date of Injury</u>	<u>Max. PTD Rate</u>
Nov. 01, 2012 to Oct. 31, 2013.....	\$771
Nov. 01, 2011 to Oct. 31, 2012.....	\$735
Nov. 01, 2010 to Oct. 31, 2011.....	\$716
Nov. 01, 2009 to Oct. 31, 2010.....	\$717
Nov. 01, 2008 to Oct. 31, 2009.....	\$683
Nov. 01, 2005 to Oct. 31, 2008.....	\$577
Nov. 01, 2002 to Oct. 31, 2005.....	\$528
Nov. 01, 1999 to Oct. 31, 2002.....	\$473
Nov. 01, 1996 to Oct. 31, 1999.....	\$426

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