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DOES YOUR PENNSYLVANIA BUSINESS NEED WORKERS' COMPENSATION INSURANCE?

A practical guide from the Artell Law Group team

If you have employees, including seasonal or part-time employees, then yes, your business must have workers' compensation insurance.

The PA Workers' Compensation Law requires all employers with *any* employees to carry workers' compensation insurance before an employee's first day of work. Workers' compensation insurance is partially designed to protect the *employer* by helping to dissuade employees from suing employers for the tort of negligence resulting in on-the-job injuries. In exchange, for qualified injuries sustained on-the-job, employees are guaranteed coverage for medical costs and sometimes partial replacement of lost wages.

There are stiff civil and criminal penalties for failing to obtain workers' compensation insurance. On the criminal side, employers can be fined as much as \$2,500 and/or face one year in prison for every day of missing coverage. Also, the employer may be required to pay restitution in the amount of any workers' compensation award for injured workers. Usually the offense is a misdemeanor, but it may constitute a felony if the violation was intentional. On the civil side, employers normally are immune from personal injury claims by employees by having workers' compensation insurance, but do subject themselves to liability when lacking workers' compensation insurance.

Only businesses with employees are required to carry workers' compensation insurance. It should be noted that *independent contractors* are not considered *employees*. Therefore, if you exclusively

subcontract work to independent contractors in your business, you would not be legally required to obtain workers' compensation insurance. However, independent contractor rules are specific and need to be carefully considered. Treating an employee like an independent contractor can have tax implications and result in penalties and fines. Federal and State level independent contractor rules vary, and in addition, the rules may differ in how they apply based on the nature of the situation (workers' compensation issues vs. unemployment compensation issues, for example). We are available for assistance with interpreting independent contractor rules.

Basics

The Workers Compensation Act in Pennsylvania is enforced by the PA Department of Labor and Industry, Bureau of Workers' Compensation (Bureau), and covers all employees' injuries "arising in the course and scope of employment," which includes injuries sustained on the employer's premises, as well as injuries incurred while engaged in the furtherance of the employer's business off the premises.

If an employee is injured while working or suffers a work-related illness, workers' compensation benefits cover the reasonable and necessary medical expenses. If the employee is unable to return to work for seven days, the benefits will also cover wage-loss compensation benefits until the employee can return to work. Wage-loss benefit payments will continue as long as the worker is totally disabled due to a work related injury, up to a maximum of 500 weeks of benefit payments. Also, death benefits can be paid

to dependent survivors of workers whose deaths are work-related and occur within 300 weeks from the date of injury.

Employers must choose their type of insurance coverage. Benefits may be paid by private insurance companies, third party administrators, the State Workers' Insurance Fund, which is a state-run workers' compensation insurance carrier, or the employers themselves if they self-insure. Your insurance agent that handles your business insurance can most likely help with obtaining a workers' compensation insurance policy. Alternatively, we have worked with some very good agents that we can refer you to for assistance in procuring a policy.

Employers must post form LIBC-500, "Remember: It Is Important to Tell Your Employer About Your Injury", to inform employees of the name, address, and phone number of their workers' compensation insurance company, their third-party administrator, or other party handling workers' compensation claims. For more information on postings required for most employers, see our article entitled *Basic Minimum Workplace Poster Requirements for Pennsylvania Employers*.

Types of Claims Covered

Workers' compensation benefits cover employees who are injured during the course and scope of their employment and which are related to the employment. The most common injury is a one-time accident at the workplace, but an injury could also result from a series of small events that all together result in a serious condition such as carpal tunnel syndrome. Issues may arise over whether an employee was injured as a result of employment. Sometimes employees are injured away from or outside of the workplace, such as in the parking lot, but are still eligible for workers' compensation benefits. Additionally, for example, employees injured playing a sport that is sponsored by the company (i.e. the company softball team) will qualify for workers' compensation coverage. Further, certain employees may travel away from the workplace or work from home, but their

injuries can still occur within the course of their employment. Sometimes injuries occur at work but might not be covered by workers' compensation benefits. For instance, an injury may result from the intentional actions of a third party, and not from the employment itself – such as if two workers engage in a physical altercation with each other.

Certain stress, mental, and physiological conditions caused by the work environment, which were not caused by a physical injury, may or may not be covered as compensable injuries. Benefits are not usually available for self-inflicted injuries, injuries resulting from crimes or third parties, injuries resulting from illegal use of drugs or clear violations of workplace policy, and pre-existing conditions. Although, employees with pre-existing conditions may still be eligible for workers' compensation benefits if their conditions are worsened or aggravated by working conditions.

Health Care Provider Visits

Employers and/or their insurers should designate a list of six approved health care providers in the immediate area, at least three of whom are physicians, with phone numbers and addresses, and properly post the list in an area accessible to all employees. If the employer properly posts this list, then any injured workers must be treated by a health care provider from the list for the first 90 days following the first treatment of the injury. If the worker fails to go to an approved health care provider from the list, the employer or insurance company may avoid making benefits payments during that 90-day period. If the employer fails to post a list of health care providers, the worker may go to any health care provider and the employer or insurance company will still be required to make the benefit payments. Employers cannot interfere with or direct the course of treatment for the worker as long as the treatment is reasonable, necessary, and causally related to the work injury.

The health care provider must submit periodic reports along with all billing information on forms prescribed by the Workers' Compensation Bureau. The employer or insurance company is required to pay for or to contest the medical treatment within

thirty (30) days after the required forms have been submitted to insurance company. If the employer and insurance company fail to contest the treatment in this 30-day period, they waive the right to do so and must make the payment. If the employer or insurance company then fails to make timely payment for the medical treatment, then penalties may be assessed.

Employers and insurance companies should consult legal counsel before contesting whether or not medical treatment is related to the work injury. If they contest it unsuccessfully, they may be assessed monetary penalties. If the medical treatment appears on its face to be related to the work injury, as determined by the Bureau, the employer and insurance company will have to prove that it wasn't related to the work injury. If it does not appear on its face to be related to the work injury, the employer and insurance company can refuse to pay until the Bureau rules on the matter, and the employee must prove that the medical treatment was related to the work injury. Any employer or insurance company that challenges the causation of medical bills may be subject to monetary penalties for refusing to pay medical bills if the Bureau rules that the treatment was related to the work injury.

What to Do When a Work Injury Occurs

Employees must report any work-related injuries and illnesses to their supervisor within 21 days to be eligible to receive benefits, which will then be retroactive to the date of injury. If the employee reports the injury to the employer between 21 and 120 days after the date of injury, the employee will be eligible for benefits only from the date that notice was given to the employer. If the employee does not report the injury within 120 days of the date of the injury, payment of benefits usually is not required.

When informed of an employee's work-related injury, employers should document the date of the employee's notice in writing and must then immediately inform their insurance carrier about the injury. If the injury was sustained over a period

of time, beyond one day or a regular shift, the employer must also report the injury to the Bureau by filing a "First Report of Injury" within seven days, or if a death resulted from the injury, within 48 hours. An insurance carrier will appoint its own counsel to handle the matter. Then it usually responds within 21 days to approve the claim by filing a "Notice of Compensation Payable" (NCP) or deny the claim by filing a Notice of Workers' Compensation Denial. If the claim is approved, the employer must file with the Bureau a 'Statement of Wages' form to calculate the employee's wages and should send a copy to the injured employee—then the employee will begin receiving benefit payments. If the claim is denied, then the employee will have the right to file a Claim Petition with the Bureau for a hearing.

Instead of immediately approving or denying the claim, the insurance carrier also has the option of issuing a "Notice of Temporary Compensation Payable" (TNCP) to extend the 21-day response period to 90 days without admitting liability, but it must temporarily pay benefits during that time. The employer must still file with the Bureau a "Statement of Wages" form to calculate the employee's wages and should still send a copy to the injured employee. The insurance carrier then has 90 days to revoke the temporary acceptance of liability by filing a "Notice Stopping Temporary Compensation Payable" and either approve or deny the claim. If the insurance company fails to do so or continues making payments after the 90-day period, the notice automatically converts into a Notice of Compensation Payable requiring the payment of benefits to the employee.

The insurer or employer must supply the injured employee with copies of the "First Report of Injury," the NCP, and/or the TNCP.

Hearing

If the employer and insurance company deny the claim, the employee has three years from the date of injury to file a Claim Petition for a hearing. Claims are assigned to workers' compensation judges in the region where the employee resides; then all parties are notified in writing as to the date, time, and place of the hearing.

At the hearing, or through multiple hearings, the judge hears evidence presented by both parties. Unless the judge determines that mediation would be futile, the judge assigns the claim to mediation. The judge must approve any settlement before it can be finalized so that a record exists to show that the employee understood the terms of the settlement. If no settlement is reached, the judge will issue a written decision after all evidence has been submitted.

Either party then has 20 days from the date of decision to file an appeal with the Workers' Compensation Appeal Board (Board). After the Board reviews the case and renders a final decision, either party has 30 days from the date of decision to appeal to the Commonwealth Court. After the Commonwealth Court renders a final decision, either party has 30 days from the date of decision to appeal to the Supreme Court of Pennsylvania.

Semi-Annual Re-Certification

Employers have the right to require injured employees to be evaluated by a doctor of the employer's choice once every six months for an Independent Medical Examination (IME). These IMEs are used to assess the extent of the employer's liability for the work injury and the employee's ability to return to work. The chosen doctor should look for inconsistencies in the employee's history, symptoms, restrictions, and limitations, and also whether the employee is exaggerating complaints of pain or other symptoms.

Return to Work

When an injured employee returns to their previous employment, the insurer may file a "Notice of Suspension or Modification" form within seven days of the employee's return to work.

The insurer must then file a Final Statement of Account of Compensation Paid form with the Bureau after the final payment of compensation. A "Final Receipt" – officially called *The Agreement to Stop Workers' Compensation Payments* - form is filed when a worker's benefits terminate, with a copy sent to the employee. An employee has three years

from the date of the last benefits payment to file a Claim petition to contest the termination or denial of benefits. If the employee is unable to return to the previous position, the employer is not obligated to retrain the employee or place the employee in a different position, subject to the applicability of other laws.

Other Laws

Despite the existence of appropriate Workers' compensation coverage, workers' injuries or their compensation payments may be impacted by other laws such as social security, unemployment compensation, pension and benefit laws, tort laws, or discrimination laws. For example, the Americans with Disabilities Act ("ADA") makes it illegal to discriminate against an individual in employment on the basis of the individual's disability. Likewise, the Family and Medical Leave Act (FMLA) requires employers, with 50 or more employees within a 75 mile radius, to provide up to twelve weeks of unpaid leave to eligible workers for certain family and medical reasons. Lastly, while the existence of appropriate Workers' Compensation coverage will most likely preclude it, employees can still assert a legal claim of negligence against the employer related to the employer's actions (or lack thereof) or to perceived wrongdoing by a coworker or third party. Feel free to contact us for more information or referrals to agents that we or our other clients have had good experiences with in having workers' compensation policies procured.

The Artell Law Group, LLC is a streamlined, business oriented law firm operating out of Harrisburg, Pennsylvania. The majority of the firm's clients are successful, privately owned businesses with operations in Pennsylvania. In addition to Pennsylvania tax and business law, the firm also serves as a counsel for out-of-state firms dealing with Pennsylvania matters.

The firm works closely with all clients to understand their needs and goals, providing services in:

*Business Planning & Transactions
Pennsylvania Tax Planning & Appeals
Federal Tax Planning & Controversy
Employment Law
Litigation
Commercial Real Estate Transactions
Estate & Succession Planning
Probate & Estate Administration
Commercial Loan Reviews*

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