

North Carolina Industrial Commission



Workers' Compensation

Understanding Your Workers'
Compensation Obligations

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Employer's Requirements to Carry Workers' Comp Insurance

- North Carolina law requires that all businesses which regularly employ three or more employees obtain workers' compensation insurance or qualify as self-insured employers.

Exceptions to the Three-Employee Rule

- Use or Presence of Radiation
 - Businesses in which one or more employees' work involves the use or presence of radiation are required to have workers' compensation insurance
- Sawmills and Logging operators
 - Less than ten (10) employees
 - Saws and logs less than 60 days in any six (6) consecutive months
 - Principal business is unrelated to sawmilling or logging
- Federal Government
 - Federal workers' compensation is handled through the U.S. Department of Labor

Agricultural Employers

- Not required to carry workers' compensation insurance unless:
 - Ten (10) or more full-time, non-seasonal agricultural workers
 - Regularly employed by the same employer
- Sellers of Agricultural Products
 - Does not apply to persons, firms, or corporations
 - Engaged in selling agricultural products for the producers thereof
 - On commission or for other compensation, paid by the producers
 - Product must have been prepared for sale by the producer

Who is an employee?

- Every person engaged in employment
 - Appointments, contract of hire, apprenticeships
 - Express or implied, oral, or written
- Includes people lawfully or unlawfully employed
 - Minors
 - Undocumented workers
- Includes temporary, part-time, and seasonal workers

Who is excluded as an employee?

- Casual Employees
 - Persons whose employment is both
 - Casual, and
 - Not in the course of the trade, business, profession, or occupation of his employer
- Domestic Servants
 - Directly employed by the household
- Certain railroad employees

Business Structure

- Sole proprietors, LLC members, and partners are not automatically counted as an employee; may elect to be included if they meet certain requirements under the statute
- Corporate Officers
 - May elect to be excluded from existing insurance coverage
 - Still counted in determining whether a business has three (3) or more employees

Principal Contractors & Subcontractors

- Any principal contractor or intermediate contractor cannot be held responsible for workers' compensation liabilities of a subcontractor if:
 - Subcontractor has workers' compensation insurance in effect on the date of injury regardless of whether a certificate of insurance was timely obtained
 - Or
 - The subcontractor's workers' compensation insurance expired prior to the date of injury provided that a certificate of insurance was obtained (a) at any point to subletting and (b) the principal was unaware of the expiration or cancellation
- This applies to principal contractors, intermediate contractors, or subcontractors who sublet any contract for the performance of any work

Trucking

- Any principal contractor, intermediate contractor, or subcontractor
 - Irrespective of whether it regularly employs three (3) or more employees
 - Contracts with an individual who operates a truck, tractor, or truck tractor trailer licensed by the US DOT and the individual has not obtained workers' compensation insurance for himself personally and for his employees and subcontractors, then...
 - The principal contractor shall be liable as an employer for work-related injuries of the independent contractor, his employees, and subcontractors

Trucking: Exceptions

- Will not be liable as an employer if
 - Contract is with an independent contractor who is an individual licensed by US DOT and the independent contractor personally is operating the vehicle pursuant to that license
- A trucking company may obtain a blanket policy to cover all independent contractors and their employees or subcontractors
 - May include in contract an agreement for the independent contractor to reimburse the cost of covering that independent contractor under workers' compensation insurance

Where do I get Workers' Compensation Coverage?

- Conventional and open market
 - Insurance policy
 - Contact an independent insurance agent and request his/her assistance in providing your business with coverage
- Assigned risk pool
 - Option for employers without a sufficient history or that have been unable to obtain insurance in the open market due to risk
 - Administered by the N.C. Rate Bureau. For more information, call **(919) 582-1056** and ask for an insurance agent.

Obtaining Coverage (continued)

- Self-insured
 - Must qualify to become self-insured. Assessment of your financial solvency
 - Contact the Department of Insurance **(919) 807-6750**
- Self-insured fund
 - Each business contributes financially to the self-insurance pool
 - To receive a list of the self-insured funds in North Carolina, contact the Department of Insurance at **(919) 807-6750**

How much does it cost?

- The cost varies depending upon your market of coverage
- There are rates for each specific type or classification of employment
- These rates are applied on a percentage basis
- The percentage is applied to per one hundred (\$100.00) dollars of payroll
- You may contact your insurance agent to receive these rates and/or the N.C. Rate Bureau at **(919) 582-1056**

What if I don't have it?

- If you fail to carry workers' compensation insurance, you may:

- 1) Face stiff financial civil penalties;

Business – minimum of \$50.00 per day up to \$100 per day depending upon number of employees

Individual – assessed cost of claim as penalty

- 2) Be charged with a misdemeanor;

- 3) Be charged with a felony;

- 4) Be imprisoned.

- **Contact your lawyer or insurance agent if you are unsure of your responsibilities as an employer**

You cannot waive the requirements of the North Carolina Workers' Compensation Act



Fraud

The N.C. Industrial Commission Compliance and Fraud Investigative Division investigates:

- Employers who operate as non-insured employers in violation of the North Carolina Workers' Compensation Act
- Suspected criminal violations of the Workers' Compensation Act
 - Employees suspected of committing workers' compensation fraud
 - Employers, insurers, health care providers, and attorneys suspected of criminal violation of the Workers' Compensation Act

Contact Information

- Compliance and Fraud Investigative Division
 - Reporting Fraud
 - 1-888-891-4895
 - fraudcomplaints@ic.nc.gov
- North Carolina Industrial Commission
 - 919-807-2501 or 1-800-688-8349
 - Information Specialists (Option 3)
- Visit our website
 - www.ic.nc.gov

Employee Classification Section

- Created by Gov. McCrory's Executive Order in January 2016
- Primary point of contact for employees, businesses, and citizens who desire to report suspected instances of employee misclassification
- E-mail: emp.classification@ic.nc.gov.
- Telephone: (919) 807-2582 / Fax: (919) 715-0282
- Mail: Employee Classification Section
 North Carolina Industrial Commission
 4333 Mail Service Center
 Raleigh, NC 27699-4333

Checklist for Reporting

- Name and address of business and/or individual you suspect is committing misclassification
- Nature of work/activities being performed by worker
- Other agencies to which this information has been reported
- Relationship of reporting party to the business, if any (employee, former employee, partner, competitor, etc.)
- Details about employer relationship with workers including, but not limited to: employer establishes the activities that constitute the daily work requirements for workers, employer provides direction on how to complete specific working tasks, employer provides equipment for workers to complete assignments/tasks, etc.
- Documentation that supports the claim for misclassification including, but not limited to: tax documentation, copies of payment records, employment offer letter, documentation pertaining to agreement for contracted services, etc.
- The number of additional workers performing the same and/or similar duties
- Additional information pertaining to suspected misclassification activity

Employee Classification Section

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