



Provided By RC Insurance Services, Inc.

Workers' Compensation – 2016 Overview and Update

Workers' compensation is a system of no-fault insurance that provides monetary and medical benefits to employees who sustain work-related injuries or diseases. Workers' compensation is governed by state law. In Wisconsin, the Workers' Compensation Act (WCA) establishes requirements for employers and employees, benefits for employees, and eligibility criteria. The [Wisconsin Department of Workforce Development](#) (DWD) enforces workers' compensation compliance throughout the state.

This Employment Law Summary provides an overview of the WCA, with a specific focus on the changes that became effective on **March 2, 2016**.

EMPLOYERS SUBJECT TO THE WCA

Most employers in Wisconsin are subject to the WCA. An employer is subject to the WCA if it:

- Usually employs **three or more** employees for services performed in Wisconsin;
- Usually employs fewer than three employees but has paid wages of **\$500 or more** in any calendar quarter for services performed in Wisconsin;
- Engages in farming and employs six or more employees on any 20 days during a calendar year;
- Does not meet the above criteria but elected, by purchasing a workers' compensation insurance policy, to become subject to the WCA; or
- Is the state or is a local governmental unit within the state. (Prior to March 2, 2016, the WCA's language referred to governmental employers using more specific terms. The changes, effective March 2, 2016, more uniformly refer to these employers as the state and as any local governmental unit.)

EMPLOYER COVERAGE REQUIREMENTS

Under the WCA, employers must purchase a workers' compensation insurance policy, covering all of their employees, from an insurer that is authorized to do business in Wisconsin.

An employer may obtain an exemption from the insurance policy requirement, via a written order of the DWD, if it can show that it has the financial ability to pay all claims under the WCA and meets other obligations for the authority to self-insure.

As of **March 2, 2016**, the WCA also allows certain governmental employers to elect to self-insure without a written order from the DWD. However, governmental self-insured employers (only):

- Are exempt from Self-Insured Employer's Liability Fund assessments; and
- Cannot use the Self-Insured Employers Liability Fund to cover their liability under the WCA.

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COVERED EMPLOYEES

Most workers are covered under the WCA. Prior to March 2, 2016, the WCA's definition of a covered employee specifically included individuals who sell or distribute newspapers or magazines on the street or from house to house. Effective **March 2, 2016**, however, these individuals are no longer automatically covered. Instead, they are subject to the WCA's nine-point test for determining whether an individual is an independent contractor.

Also effective **March 2, 2016**, individuals who provide self-directed, long-term care services to elderly and disabled people are covered employees under the WCA. If the person receiving the care has his or her own workers' compensation insurance, the care provider will be covered under that policy. Otherwise, the care provider will be covered under the workers' compensation policy of the long-term care program's fiscal management services provider.

EMPLOYEE CLAIMS

Effective **March 2, 2016**, employees who suffer traumatic injuries (or their survivors, when applicable) must file a claim for benefits with the DWD within **six years**. This is a significant reduction from the 12-year period that previously applied for traumatic injuries. This reduction does **not** apply for occupational diseases. Employees still have 12 years to file claims in occupational exposure cases.

An employee will not be allowed to recover any benefits if he or she fails to file a claim within the six-year period for a traumatic injury or the 12-year period for an occupational disease.

However, some exceptions are possible for occupational diseases and for certain specific and narrowly defined traumatic injury claims. The table below provides details about the time requirements for various injury claims.

Time Limits for Claims		
Work-related condition	Claim must be filed with the DWD within:	
Traumatic injury (other than those listed below)	6 years	After the later of: <ul style="list-style-type: none"> • The date of injury or death; or • The date of the employer's last payment of compensation under the WCA (other than for medical treatment or burial expenses) or the date benefits would have last been payable, if the employer paid benefits in advance.
Occupational disease	12 years	
No time limit for traumatic injuries resulting in:		
<ul style="list-style-type: none"> • Loss or total impairment of: <ul style="list-style-type: none"> ○ A hand; ○ Any part of a forearm; ○ A foot; ○ Any part of a lower leg; 	<ul style="list-style-type: none"> • Loss of vision; • A permanent brain injury; or • The need for: <ul style="list-style-type: none"> ○ An artificial spinal disc replacement; or ○ Total or partial knee or hip replacement. 	

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EMPLOYEE BENEFITS

Temporary Total Disability (TTD)

An employee is entitled to receive weekly TTD benefits, for time periods during which he or she is recovering from a work-related injury, and, due to that injury, is either:

- Completely unable to work; or
- Able to return to restricted work but neither the employer nor any other employer offers suitable work within his or her medical restrictions.

An employee may lose his or her right to receive TTD benefits under limited circumstances, such as incarceration (when the employee is not available to work during the healing period) or certain cases of employee suspension or termination where the employee has allegedly committed a crime or when the employee has violated the employer's drug policy.

Effective **March 2, 2016**, an employer also may deny TTD benefits based on an employee's **misconduct** or **substantial fault**. These additions to TTD disqualifications are significant because the definitions of "misconduct" and "substantial fault" are relatively broad.

Permanent Partial Disability (PPD)

An employee may receive PPD benefits if a work-related injury permanently affects his or her physical abilities or capacity to earn wages. These benefits are only available after the employee has reached maximum medical improvement (MMI) for the injury. PPD benefits are determined using a percentage of disability that a physician or other qualified medical expert assigns for an injury.

Effective **March 2, 2016**, physicians and other qualified medical experts who provide PPD assessments for accidental injuries (as opposed to occupational diseases) must include an opinion as to the percentage of permanent disability that was work-related for the accidental injury in question and the percentage that was caused by other factors (including any other occupational exposure). An employer will only be liable for the portion of PPD that resulted from the work-related injury and for any occupational exposure that occurred with that employer. This addition to the WCA also requires employees to disclose all previous findings of permanent disability or other impairments that are relevant to an injury upon request.

The changes to the WCA also include two increases in the maximum weekly rate for PPD benefits. Prior to these WCA changes, the maximum PPD rate had remained the same (\$322) for several years. The following increases were added:

- For injuries that occur between March 2, 2016, and Dec. 31, 2016, the maximum weekly PPD benefit rate is **\$342**.
- For injuries that occur between Jan. 1, 2017, and Dec. 31, 2017, the maximum weekly PPD benefit rate will be **\$362**.

Finally, the changes that are effective March 2, 2016, require the DWD to create regulations to establish minimum PPD ratings for amputation levels, losses of motion, sensory losses and surgical procedures

"Misconduct"

Willful and wanton or intentional and substantial disregard of an employer's interests or of the employee's duties. Misconduct may include:

- Violations of a reasonable written drug or alcohol policy;
- Theft of, or certain damage to, employer property;
- Conviction of a crime that makes it impossible to perform job duties;
- Threats or acts of harassment, assault or other physical violence in the workplace;
- Two or more unexcused absences within the 120 days before termination or excessive tardiness in violation of the employer policy;
- Falsified business records;
- Willful and deliberate violation of licensing or certification standards.

"Substantial fault"

Acts or omissions over which an employee exercised reasonable control and which violate an employer's reasonable requirements. Substantial fault does **not** include:

- Minor rule infractions;
- Inadvertent errors;
- Failures to perform work because of insufficient skill, ability or equipment.

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resulting from work-related injuries. The DWD will revise these regulations every eight years and as necessary to reflect advances in the medical sciences.

Vocational Rehabilitation

Under the WCA, employees who have permanent limitations from a work-related injury that prevent a return to their previous occupations may be entitled to participate in an academic retraining instructional program. The WCA regulates the costs employers must cover for employees' participation in these programs. Covered costs may include program tuition, books, meals and transportation expenses. Eligible employees may also receive TTD benefits, usually for up to 80 weeks, while attending these instructional programs.

Effective **March 2, 2016**, the DWD is authorized to award these benefits to an employee on a prospective basis. This means that employers may be ordered to pay for an employee's schooling before the employee enrolls. Prior to the recent changes to the WCA, an employee had to actually begin the instructional program before the DWD could order the employer to pay for it.

Employers may be ordered to pay for an employee's **future** course of instruction or retraining.

Also effective **March 2, 2016**, an employee who is enrolled in a covered instructional program is allowed to work for **up to 24 hours** per week without having these wages affect his or her TTD benefits. Any wages the employee earns for more than 24 hours of work per week will reduce the employee's weekly TTD payments. These two provisions had previously been in effect but had expired on April 30, 2014. The changes that are effective March 2, 2016, reinstated the provisions with no expiration date.

Decreased Compensation for Safety Violations

The WCA allows an employer to reduce an employee's workers' compensation benefits by **15 percent**, up to a maximum of \$15,000, if the employee's work-related injury was caused by:

- The employee's failure to use safety devices that the employer provided, adequately maintained and enforced the use of by employees; or
- The employee's failure to obey any reasonable safety rule that the employer adopted, reasonably enforced and provided notice of to the employee.

Traditionally, this reduction in benefits also applied to cases of employee alcohol intoxication or the use of controlled substances. Effective **March 2, 2016**, however, an employee may lose his or her right to receive **all** workers' compensation benefits (except medical expenses) if:

- The employee violates the employer's policy concerning drug or alcohol use; and
- The violation is causal to the employee's injury.

ADDITIONAL CHANGES

Other changes to the WCA that became effective **March 2, 2016**, include the following:

- The Wisconsin Department of Justice (DOJ) has the authority to assist the DWD in investigating and prosecuting workers' compensation fraud, and the DWD will provide funding for one DOJ employee position to provide this assistance;
- Treating medical practitioners must provide final medical reports on a timely basis at a maximum charge of \$100, and they do not need to provide a final report in cases where a claim is completely denied;
- The amount that health care providers may charge for electronic certified medical records is limited to \$26 per request; and
- If a physician or other health care provider dispenses a prescription drug outside of a licensed pharmacy, the amount that may be charged for the medication is subject to the limits that apply to pharmacy-dispensed medication.

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MORE INFORMATION

For more information on particular areas of the WCA, please contact RC Insurance Services, Inc. or review an applicable Employment Law Summary.