



Why do I need workers' compensation insurance?



A guide for Oregon employers

Table of Contents

Why is there workers' compensation insurance?	2
Who needs it?	3
Am I an employer?	3
Are my employees exempt?.....	4
How do I get workers' compensation coverage?.....	6
The insurance policy	6
Proof of coverage	7
Worker leasing.....	7
Temporary staffing.....	7
What if I don't comply?	8
Frequently asked questions	9
An ounce of prevention.....	12
Whom do I call?	13
Services directory (department phone numbers).....	15

Introduction

Why is there workers' compensation insurance?

Workers' compensation insurance is good for workers and good for business. You know it's in the best interest of your employees. If they get hurt, it provides them with medical treatment, payment for time loss and disability, and even re-employment assistance if they need it. But did you know that workers' compensation was created to protect employers, too?

There was a time when workers who were hurt on the job often had to sue their employers to get help with their expenses. To the worker, this either meant no benefits or a long delay. To the employer, it meant possible financial ruin if the worker won a large award in court.

Workers' compensation insurance was the answer to both problems. It replaced legal liability with no-fault insurance. Employees with injuries or diseases caused by work could get treatment quickly, with no need to prove the employer at fault. Employers were protected from lawsuits. Benefits were for actual loss and didn't add large sums intended to punish the employer or pay for "pain and suffering." As long as the injury or illness resulted from work, neither employer nor employee had to go to court.

Workers' Compensation: Employer Information

Who needs it?

As with most no-fault insurance, workers' compensation is only fair if it applies to all workers and employers. The state of Oregon requires almost all employers to carry workers' compensation insurance on their employees. If you employ workers in Oregon, you probably need workers' compensation coverage. Ask yourself the following questions:

Am I an employer?

If you pay someone to work for you, and you are in charge of the way the job is done, that worker is probably your employee. If you aren't in charge, the worker is usually called an independent contractor. However, the difference between an employee and an "independent contractor" is often unclear.

In 1989, the Oregon Legislature tried to end the confusion for several agencies by defining an independent contractor using a checklist of eight tests. But workers' compensation law doesn't specifically say an independent contractor is never an employee. In 1994, the Oregon Supreme Court ruled that, for workers' compensation purposes, the independent contractor checklist does not prove someone is or is not an employee.

So instead of using the independent contractor checklist to tell you if you need workers' compensation insurance, you must go by general guidelines that have evolved in the courts. The courts look at four main areas to decide whether a worker is an employee:

1. Do you actually control or have the right to direct the worker?
2. How is the worker paid? By the hour? By the piece? On a commission? By the job?
3. Who supplies the tools and equipment the worker needs to do the job?
4. Do you have the right to fire the worker without breach of contract?

These questions can't always be answered by a simple "yes" or "no." For helpful information from all agencies, visit www.independentcontractors.com.

Are my employees exempt?

Some workers don't have to be covered by workers' compensation, even if they are employees. Here are some of the most common exceptions:

Sole proprietors. If you are a sole proprietor, you don't need coverage on yourself.

Partners. In landscape and building construction, exempt partners are limited to two, unless all partners are family members (related as parent, daughter, son, daughter-in-law, son-in-law, grandchild, spouse, or sibling). In other industries, partners are not required to cover themselves. The partners must be real partners, though, with the right to make business decisions.

Private residence workers. People working for you at your home. This includes workers doing cleaning, home health care, gardening, maintenance, and even remodeling. It doesn't include laborers performing landscape construction or constructing a new home.

Casual labor. If your total payroll is always less than \$500 within any 30-day period, your workers are "casual" and don't have to be covered by workers' compensation. However, if your payroll reaches \$500 within any 30-day period, workers' compensation is required from the earliest start date of your current workers.

If you're in landscape or building construction, keep in mind that the Construction Contractors Board (CCB) and the Landscape Contractors Board (LCB) rules don't allow you to hire even casual labor while you are registered as not having workers.

Some corporate officers. Corporate officers don't have to be covered by workers' compensation if they also serve on the board of directors and own at least 10 percent of the stock (or an amount equal to the average amount held by all stockholders). Incorporated construction companies are limited to two exempt officers.

There are exceptions to the ownership requirement of family-run farm and timber businesses. Landscaping and building construction companies are usually limited to two exempt officers; however, family-run landscaping and building construction companies may be allowed additional exempt officers.

Most limited liability company members.

Most members are exempt, even if the members do not have substantial ownership, except in the landscape and building construction trade. In landscaping and building construction, all members are exempt if they are of the same family. Otherwise, exemptions in construction, are limited to two members or one member per 10 employees, and the members must have substantial ownership interest in the company.

If sole proprietors, partnerships, corporations, or limited liability companies are working under a contract, they must also qualify as independent contractors to be exempt from workers' compensation insurance.

Workers from out of state. Out-of-state employers temporarily working in Oregon are not required to obtain Oregon workers' compensation insurance policies if the following is true:

1. Their home-state policies cover the workers they bring into Oregon on temporary assignment;
2. Their home state recognizes an Oregon employer's Oregon coverage while doing work on temporary assignments in that state; and
3. They do not use Oregon subject workers while they are in Oregon.

This allows most employers and workers from other states to use their home-state coverage when they are temporarily working in Oregon. This does not change the requirement that employers must obtain Oregon coverage for any Oregon subject workers. For more information, go to www.wcd.oregon.gov/compliance/ecu/etmap.html.

Public contracts are now handled the same as private contracts with respect to obligation for workers' compensation in Oregon. Workers temporarily in Oregon are defined by nine criteria found in Oregon Administrative Rule 436-050-0055.

How do I get workers' compensation coverage?

The insurance policy

In Oregon, employers can obtain workers' compensation coverage through an insurer, be certified as self-insured, or can make an arrangement for coverage through an Oregon-licensed worker leasing company.

Insurance companies. You can get insurance from any insurer authorized to provide workers' compensation in Oregon. There are more than 400 such companies registered to write workers' compensation insurance in Oregon. Many of these insurers sell policies through agents. Often the agency that handles your other business insurance will also help you place your workers' compensation insurance. Some insurers will deal directly with you, and a few have made special arrangements to provide workers' compensation through business organizations or associations. The Department of Consumer and Business Services has an ombudsman who is an advocate for small business and is available to discuss options with you. Call 503-378-4209 for assistance.

Oregon Assigned Risk Insurance Plan. If you can't find an insurer willing to write your policy, you can get insurance through the Oregon Assigned Risk Insurance Plan. Oregon law requires workers' compensation insurers to belong to an insurance plan for employers who can't get insurance on the open market.

The insurance plan is administered by the National Council on Compensation Insurance (NCCI). NCCI requires a special application. A deposit must be made before the processing of your application. After NCCI checks the application and establishes that you don't have a bad debt with a previous insurer, it assigns the account to an authorized Oregon insurance company. To contact NCCI, call 800-622-4123 and ask for Oregon coverage. You can also visit the website www.ncci.com.

Self-insurance. You may be able to qualify as a self-insured employer. This option is usually only available to very large employers, because the

employer must have the resources to pay for major claims and assure proper processing. You must have special bonding and be certified by the Workers' Compensation Division (WCD) to be self-insured.

Oregon proof-of-coverage filing

Once you have insurance, is there anything else you need to do? Yes. It is the employer's responsibility to make sure the insurer files proof of coverage with the State of Oregon WCD. Filing a workers' compensation insurance policy as proof of coverage is the insurer's promise to provide appropriate benefits for your workers if they are injured. The insurer files proof of coverage on behalf of the employer for each new or renewed policy issued by the insurer. The workers' compensation coverage is effective when the application for coverage, together with any required fees or premium, are paid and accepted by the insurer representative or on the date specified in writing. The coverage continues until the expiration of the policy or earlier when proper notice of an earlier cancellation is given by the insurer or the employer obtains and files new coverage.

Worker leasing

If you arrange for workers and coverage through a "worker leasing company," the leasing company will handle your payroll, your workers' compensation, and most other paperwork. Worker leasing companies must be licensed with WCD to do business in Oregon. You can call WCD at 503-947-7544 or visit www.wcd.oregon.gov and click on "worker leasing companies" to check the licensing status of a worker leasing company.

Temporary staffing

Businesses that have one or more subject workers must have workers' compensation insurance to cover the workers and protect the business from on-the-job injuries. Businesses that do not have subject workers may have need for more help upon occasion under special situations and can turn to temporary staffing companies to fill that special need. The temporary service provider is responsible for the workers and workers' compensation coverage in that instance. If the business routinely has need for additional workers, the business will need to obtain workers' compensation insurance directly

from an Oregon authorized insurer or obtain workers through an Oregon-licensed worker leasing company that provides the required insurance. Obtaining temporary workers requires special documentation before work starts. Using leased workers requires an agreement in place with a licensed worker leasing company.

What if I don't comply?

If you don't have the required workers' compensation coverage, WCD sends an order to you, stating the period of noncompliance and assessing a fine. The penalty for the first offense is two times the amount of premium you should have paid for insurance, with a minimum of \$1,000.

If you continue to employ workers without coverage, the penalty increases to \$250 per day with no limit on the total fine. By law, bankruptcy can't reduce this debt. In addition, WCD will request a permanent court injunction to force you to comply. If you disobey an injunction, you're in contempt of court and subject to other types of sanctions, including jail time.

The expenses that result when a worker is injured could cost you even more than penalties. By law, a noncomplying employer is financially responsible for the same benefits insured workers receive. The law requires that a certified claims examiner process the claim. You must pay a fee for this processing, in addition to claim benefit costs. The total bill can (and often does) amount to hundreds of thousands of dollars. Business owners cannot hide behind a corporation or limited liability company because corporate directors and officers and limited liability company members and managers are personally and separately liable for penalties and claim expenses.

But there's more. Lawsuit protection doesn't apply to noncomplying employers. So, an employee can file suit against a noncomplying employer in addition to having a legitimate workers' compensation claim. Carrying workers' compensation insurance is vital to your business.

Frequently asked questions

Do I need workers' compensation coverage on family members?

Yes. Family members must be covered by workers' compensation insurance, regardless of age, unless they are exempt as casual laborers, partners, or for some other reason. (See Pages 4 and 5.)

What if someone works for me in exchange for rent?

If someone works for you for something other than money, the value of the exchange is counted as payment. That makes the worker your employee. Unless that worker is exempt for some other reason, you must have workers' compensation insurance.

Can I make my employees independent contractors?

The short answer is no. Even if workers agree to be independent contractors, that doesn't make it so. Signing a statement is not proof; neither is issuing them 1099 tax forms instead of W-2s. Even a signed contract may not be enough to establish independence.

The circumstances of each work relationship determine whether a person is an independent contractor or employee. Someone who in one case might be considered self-employed could, in another case, be an employee. The main thing to remember: Don't try to circumvent the law by calling employees independent contractors.

If you contract with an established company to do a job that isn't in your normal line of work, you're likely in the clear. Otherwise, be careful. If you have questions, contact WCD's Employer Compliance Unit, 503-947-7815. Another great resource regarding independent contractors and the laws you may need to consider is online with links to the responsible agencies. Please visit <http://www.oregonindependentcontractors.com>.

What if I subcontract everything instead of hiring my own employees?

If you subcontract, you're considered a "prime contractor" with special responsibilities under

workers' compensation law. You must make sure your subcontractors have workers' compensation coverage when work on the project begins. Otherwise, you are responsible for providing the coverage and, without it, can be found to be a noncomplying employer.

In the construction industry, be sure the subcontractor has a valid registration with the Landscape or Construction Contractors boards.

Can't I just pay the doctor directly if someone gets hurt on the job?

Doctors and hospitals are required to report job related injuries to your workers' compensation insurer within three working days. If you don't have an insurer, those reports go directly to WCD.

It is illegal for employers to do anything to keep employees from filing injury claims. This means you may not make an employee sign a statement agreeing not to file a claim. You may not require your injured worker to say the injury occurred somewhere other than at work. You cannot pressure your employee to not file an injury claim form in exchange for an agreement to pay the medical bills. You may not require employees to sign up as independent contractors, partners, members, or corporate officers for the purpose of avoiding workers' compensation requirements.

How much is my workers' compensation insurance going to cost?

Your workers' compensation insurance cost depends on several things. The workers' compensation rating system applies a set of rules to determine the cost for each industry. There are more than 600 classifications that cover virtually every type of existing business. Additionally, if your premium is \$2,500 or more you may be eligible for experience rating. This is an additional modification to your premium that reflects how well your business has performed in claims frequency and severity relative to similar businesses. This modification can cause your premium to decrease, increase, or remain the same.

Workers' compensation rates in Oregon are very reasonable compared with other states. A 2010 study showed Oregon had the 41st highest workers' compensation costs in the nation. In addition, the study showed that Oregon's costs were lower than all of our neighboring states, including California, Washington, Idaho, and Nevada.

If you have questions about your premiums, it is usually best to contact your agent or insurer first for an explanation of how your premium was computed. If you dispute how your premium was calculated or how you were classified, then contact the Small Business Ombudsman for Workers' Compensation at 503-378-4209 for assistance. The ombudsman can help walk you through your options and educate you on your appeal rights.

How do I reduce cost?

Your insurer should be able to provide assistance on how to reduce your costs through workplace safety. However Oregon's Occupational Safety and Health Administration (Oregon OSHA) has a consultative department available to provide advice on how to improve workplace safety and reduce your net workers' compensation insurance costs.

Doesn't the payroll assessment I send in take care of my workers' compensation?

No. The Worker Benefit Fund (WBF) assessment paid with the Oregon quarterly tax reporting form (form OQ) is tax assessed and equally shared by workers and employers. The assessment pays for specific programs that benefit injured workers and the employers who hire them. The assessment is based on the number of hours worked. The employer collects half the WBF assessment amount from the workers and supplements that amount with an employer contribution submitting the full payment with the Oregon quarterly tax reporting. This WBF assessment does not pay for nor purchase the required workers' compensation insurance. Workers' compensation insurance must be purchased separately from an insurer authorized to sell that insurance in Oregon.

What's the difference between SAIF and the Workers' Compensation Division?

SAIF Corp. is a state-owned insurance company that provides workers' compensation insurance. WCD is part of a regulatory agency. WCD and the Insurance Division regulate SAIF as they do other workers' compensation insurers.

An ounce of prevention

You should realize by now that having proper insurance coverage is critical to your business and the welfare of your workers.

The cost of noncomplying employer claims is passed on to employers who have insurance. Strict enforcement helps level the playing field and ensures costs are placed on those who should carry that burden. This is why most employer groups and business associations support and even lobby for strong enforcement of workers' compensation coverage requirements. Combine this with the support of labor unions and other employee groups, and there is a clear mandate for both the Oregon Legislature and WCD to take an aggressive role in enforcing workers' compensation compliance.

WCD doesn't wait for a worker to get hurt to investigate and penalize noncomplying employers. A penalty before a claim is a relatively inexpensive wake-up call. An employer who heeds the warning and gets insurance can avoid the much higher costs of claims, claim penalties, and tort liability that go with uninsured injuries. You can help WCD keep employers in compliance by refusing to do business with noncomplying employers and reporting employers you suspect have no workers' compensation coverage. You can call Employer Compliance toll-free at 888-877-5670.

If employers have workers' compensation insurance when they need it, investigations and penalties aren't necessary. WCD Employer Compliance also provides information. Consultants are available to answer questions from 8 a.m. to 5 p.m., Monday through Friday. Management and field staff are available for presentations, forums, and panel discussions. WCD also cooperates with other state and federal agencies to sponsor workshops, seminars, and information fairs.

Whom do I call?

Construction registration requirements:

Who is registered, and how?

Construction Contractors

Board 503-378-4621

Coverage: Who can tell me if I need workers' compensation coverage?

WCD Employer

Compliance 503-947-7815

Toll-free.....888-877-5670

Insurance: Where do I learn more about workers' compensation insurance options? Who can talk to me about getting a better price on my insurance?

Small Business Ombudsman

for Workers' Compensation 503-378-4209

Notice of Compliance: What if I haven't gotten a Notice of Compliance, and it's more than 30 days since I bought a new workers' compensation insurance policy?

WCD Employer Compliance 503-947-7814

Oregon Insurance Plan: Whom do I or my insurance agent contact if other insurers won't write my coverage?

National Council on Compensation Insurance

(NCCI) – ask for the Oregon desk...800-622-4123

Payroll assessment: How do I calculate and submit the workers' compensation payroll assessment?

DCBS Fiscal Section.....503-378-2372

Premium audit: Where do I go if I don't agree with the premium my insurer charged after auditing me?

Insurance Division.....503-947-7235

Premium calculation: How does my insurance company know how much premium to charge me?

Small Business Ombudsman

for Workers' Compensation 503-378-4209

Benefit Services Section: Who can explain how payroll assessments can benefit me if I hire a worker who was injured on the job?

WCD Employment

Services.....503-947-7588

Toll-free.....800-445-3948

Self-insurance: What are the requirements for getting certified as a self-insured employer?
WCD Self-Insurance
Certification 503-947-7716

Worker leasing companies: Where do I get a list of licensed worker leasing companies so I can lease employees?
WCD Worker Leasing Company
Licensing 503-947-7544
www.wcd.oregon.gov and click on worker leasing companies

For more information, call the Workers' Compensation Division, Employer Compliance 503-947-7815

or write to:
Department of Consumer and Business Services
WCD Employer Compliance
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405

Our e-mail address:
wcd.employerinfo@state.or.us

Coverage information among jurisdictions:
www.wcd.oregon.gov/compliance/ecu/etmap.html

Employer Workers' Compensation Coverage:
www4.cbs.state.or.us/ex/wcd/eds_company_search/

Visit the WCD website: www.wcd.oregon.gov

Workers' Compensation Division
www.wcd.oregon.gov

Ombudsman for Injured Workers
egov.oregon.gov/DCBS/OIW/

Workers' Compensation Board
www.wcb.oregon.gov

Workers' Compensation Division
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405

WCD receptionist 503-947-7810

Services Directory

Workers' Compensation info line
(toll-free in Oregon) 800-452-0288
or send e-mail to: workcomp.questions@state.or.us

General questions 503-947-7585
(toll-free in Oregon) 800-452-0288

WCD Employer Index
(to verify employer's insurance)..... 503-947-7814

Investigations — Fraud Hotline
(toll-free in Oregon) 800-452-0288

Managed care organization
(MCO) questions 503-934-6049

Medical fee, medical treatment,
curative care, palliative care disputes,
and interim medical benefits..... 503-934-6049

Reconsideration of claim closures 503-947-7816

Employment Services Team 503-947-7588
or (toll-free in Oregon)..... 800-445-3948

Medford region 541-776-6032
or (toll-free in Oregon) 800-696-7161

Vocational eligibility/assistance,
return-to-work plans,
and vocational disputes..... 503-947-7816

Workers' Compensation Board (WCB) (and Hearings Division)

2601 25th St. SE, Suite 150
Salem, OR 97302-1282
503-378-3308

Ombudsman for Injured Workers (OIW)

350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405
503-378-3351 or 800-927-1271

continued

Small Business Ombudsman (SBO) for Workers' Compensation

For employers with questions relating to workers' compensation policies and claims

350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405
503-378-4209

Oregon Occupational Safety and Health Division (Oregon OSHA)

Consultative Services

(toll-free in Oregon) 800-922-2689
Salem Central Office 503-378-3272

Field offices:

Bend 541-388-6068
Eugene..... 541-686-7913
Medford 541-776-6016
Portland 503-229-6193
Salem..... 503-373-7819

No-cost on-site consultations in safety, industrial hygiene, ergonomics, occupational safety and health programs, and new business assistance

Insurer/Self-Insured Loss Prevention Program

Portland 503-229-5910

Ensures that workers' compensation insurance companies provide occupational safety and health loss-prevention services at no charge



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**Visit us on the Internet,
www.wcd.oregon.gov**



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