

Rights & Obligations under the Nebraska Workers' Compensation Law



What is workers' compensation?

Workers' compensation in Nebraska is designed to provide certain benefits to employees who sustain injury by accident or occupational disease arising out of and in the course of their employment, and who are not willfully negligent at the time of the injury.

It should not be confused with unemployment compensation, Social Security disability benefits, health and accident insurance, or other disability benefit plans provided by the employer.

The Nebraska Workers' Compensation Act, found at *Section 48-101 to Section 48-1,118 of the Nebraska Revised Statutes*, is the exclusive remedy of the injured employee if the employer has satisfied its legal obligation to secure payment of compensation under the act. Typically this is done by obtaining a workers' compensation insurance policy. In exchange for the right to receive workers' compensation benefits from the employer, an employee forfeits his or her right to file a civil action against the employer for damages for work-related injuries or illnesses.

Who is covered by the workers' compensation law?

The Nebraska Workers' Compensation Act applies to the State of Nebraska, to every governmental agency created by it, and to every employer in the state employing one or more employees in the regular trade, business, profession, or vocation of the employer. Thus, virtually all employees are covered by the workers' compensation law including employees of private industry, state and local government, part-time employees, minors, and employees of charitable organizations.

There are a few exceptions:

- (1) Federal employees, railroad employees, most volunteers, and independent contractors are not covered under the Nebraska Workers' Compensation Act.
- (2) Household domestic servants and some employees of agricultural operations are covered under the Nebraska Workers' Compensation Act only if the employer elects to provide worker's compensation insurance for them.

Employers engaged in an agricultural operation are exempt from providing workers' compensation insurance coverage if they employ only related employees. Agricultural employers who employ unrelated employees are also exempt unless in a calendar year they employ 10 or more unrelated, full-time employees, on each working day for 13 calendar weeks (consecutive or not). The act applies to an employer 30 days after the 13th week. An employer exempt from the act may elect to provide workers' compensation coverage for its employees. Every exempt employer who does not elect to provide workers' compensation insurance coverage must give all employees written notice at the time of hiring or at any time more than 30 calendar days prior to the time of injury that they will not be covered by the act, that they will not be compensated under the act if they are injured on the job or suffer an occupational disease, and that they should plan accordingly. The notice must be signed by the unrelated employee and retained by the employer. Failure to provide this notice subjects an employer to liability under the act for any unrelated employee to whom such notice was not given.

- (3) Self-employed individuals, sole proprietors, partners, and limited liability company members who are actually engaged in the business on a substantially full-time basis may elect to be covered under the Nebraska Workers' Compensation Act. To elect coverage such a person must file a written election with the insurer from whom workers' compensation insurance coverage is obtained.

- (4) Executive officers of Nebraska corporations who own 25 percent or more of the corporation's common stock are not considered employees of the corporation under the Nebraska Workers' Compensation Act unless they elect to be covered. To elect coverage, a corporate officer must file such election in writing with the workers' compensation insurer and the corporate secretary (not with the court).
- (5) Executive officers of Nebraska nonprofit corporations who receive annual compensation of \$1,000.00 or less from the corporation are not considered employees of the corporation under the Nebraska Workers' Compensation Act unless they elect to be covered. To elect coverage such officers must file a written election with the workers' compensation insurer and the corporate secretary (not with the court).

When is an employee entitled to Nebraska workers' compensation benefits?

An injured employee who is covered by the Nebraska Workers' Compensation Act may obtain benefits if:

- (1) the injury was caused by an accident or disease that arose out of and in the course of his or her employment;
- (2) the employee was not willfully negligent at the time of the injury;
- (3) the employment was in the usual course of the trade, business, profession, or occupation of the employer; and
- (4) the injury occurred in Nebraska; or
the employer was performing work in Nebraska or the employment was principally localized within this state, whether or not the injury occurred in Nebraska; or
the contract of hire was made in Nebraska and the employer was engaged in business or performing work in Nebraska, whether or not the injury occurred in Nebraska.

If an employee dies as a result of a work-related injury, the employee's dependents may also be entitled to benefits under the act.

To what benefits is an employee entitled?

A. Medical Benefits

The employer/insurer is liable for all reasonable medical and hospital services, appliances, prescribed drugs, prosthetic devices, and other supplies that are necessary as the result of a work-related injury. Expenses for medical travel may be paid in some instances.

There are rules about whether the employee or employer chooses the doctor. The employee has the right to select a physician who has maintained the medical records of the employee (or an immediate family member) when the employer notifies the employee of this right. If the employee does not have or does not choose such a physician, then the employer may select the physician. The initial choice of physician, when chosen by the employee or employer after the employer notifies the employee of the right to choose, can only be changed when both the employee and the employer agree on the change or the Nebraska Workers' Compensation Court orders the change. If the employer does not give proper notice to the employee regarding the right of selection, then the restrictions on changing physicians do not apply and the employee has the right to select any physician. The employee also may select a physician to perform a major surgical operation or in cases involving dismemberment. "Physician" means any person licensed to practice medicine and surgery, osteopathic medicine chiropractic, podiatry, or dentistry in the State of Nebraska or in the state in which the physician is practicing. Please refer to the court's pamphlet, *Choosing a Doctor for a Work-Related Injury*, for more detailed information.

An employer/insurer may request that an injured employee submit to a medical examination by a doctor of its choice at the company's expense.

An employee or an employer may use the court's informal dispute resolution process or independent medical examiner system to try to resolve a disagreement over a medical issue.

An employee may be required to receive medical services under a managed care plan if the employer has given the employee proper notice about the plan.

If an employee unreasonably refuses medical treatment, his or her compensation may be reduced, limited, or suspended.

Expenses for medical care should be submitted to the employer or to the insurer for payment.

B. Indemnity (Wage Loss) Benefits

Benefits are paid at the same interval as wages were paid at the time of the injury. Payments must be sent directly to the person entitled to compensation or his or her designated representative except where there is an attorney's lien or where child support is due. Benefits are not taxable and not assignable to another person.

Compensation benefits begin on the eighth calendar day of disability due to the injury. Compensation for the first seven days of disability is not paid unless the employee's disability lasts six weeks or more. The first day of disability is included in the seven-day waiting period and a partial day of disability is considered a full calendar day for purposes of the waiting period. The days of disability need not be consecutive. Time lost from work for less than a day to seek medical care, including physical or medical rehabilitation, is compensated as temporary partial disability.

1. Total Disability Benefits

Benefits may be either:

- (a) temporary total disability; or,
- (b) permanent total disability.

Total disability entitles the employee to two-thirds of his or her average weekly wage, subject to the maximum and minimum per week, for as long as the physician indicates the employee remains unable to work as a result of the injury.

2. Partial Disability Benefits

Benefits may be either:

- (a) temporary partial; or,
- (b) permanent partial loss of a member; or,
- (c) permanent partial to the body as a whole.

Temporary Partial Benefits. Benefits are paid when the employee is able to return to work but under limited circumstances such as for a few hours a day or at a job which pays less than the job held at the time of the injury. Temporary partial benefits are paid during the period of partial disability, but not beyond 300 weeks. Temporary partial benefits are paid at the rate of two-thirds of the difference between the wages received at the time of the injury and the earning power of the employee thereafter subject to the maximum per week.

Permanent Partial Loss of a Member Benefits. Benefits are paid for the loss or loss of use of a body part such as a leg or hand based upon the statutory value of the various body parts. Benefits are paid at the rate of two-thirds of the employee's average weekly wage, subject to the maximum and minimum per week, times the number of weeks of compensation set out in the statutory schedule for the body part or percentage of loss thereof. The total loss or loss of use of two members in one accident is considered total and permanent disability.

Permanent Partial to the Body as a Whole. Benefits are paid for permanent disability resulting from the injury at a rate calculated upon the percentage of disability suffered times two-thirds of the employee's average weekly wage, subject to the maximum per week. Benefits are limited to a maximum of 300 weeks less the number of weeks of temporary and permanent disability previously received.

3. Death Benefits

If the injury results in the death of the employee, the widow/widower is paid death benefits for his or her life or until remarriage. Upon remarriage, the widow/widower receives two years benefits in a lump sum. Benefits are calculated at 66 2/3 percent of the employee's average weekly wage at the time of the injury if there are no children, and at 75 percent if there are children, subject to the maximum and minimum per week. Children are entitled to a percentage of the death benefit until they reach age 19, or age 25 if enrolled full time at an accredited educational institution, or until the end of actual dependency. Additionally, burial expenses up to a maximum of \$10,000.00 are paid.

C. Vocational Rehabilitation Benefits

When, as a result of an injury covered under the Nebraska Workers' Compensation Act, an employee is unable to return to suitable employment for which he or she has previous training or work experience, the employee is entitled to vocational rehabilitation services. These services are voluntary and, if not offered by the employer/insurer, the employee can request vocational rehabilitation services. If the parties are unable to agree on the choice of a vocational rehabilitation counselor, the parties can request the court's Vocational Rehabilitation Section to appoint a vocational rehabilitation counselor. If it is determined that the employee will need services, the vocational rehabilitation counselor can submit a plan of vocational rehabilitation services to the court for approval. The employer/insurer pays temporary disability benefits while the employee participates and makes satisfactory progress in the plan. The fee for evaluation and for the development and implementation of the plan will be paid by the employer/insurer. The Workers' Compensation Trust Fund, which is administered by the court, pays for the costs of the vocational rehabilitation plan. Questions concerning vocational rehabilitation services may be directed to a vocational rehabilitation specialist at the court.

What are Second Injury Benefits?

Second injury benefit payments are limited to injuries that occurred before December 1, 1997. To qualify for second injury benefits, an employee must have a prior serious disability documented by the employer through written records when the employee is hired or retained in the employment. If a subsequent injury produces a greater disability than that which would have resulted from the last injury alone, a special trust fund administered by the court will pay for the increased disability and the employer will pay only for the last injury.

How are workers' compensation benefits obtained?

An employee should notify his or her employer immediately of any work-related injury or occupational disease. The employee also should inform the treating physician that it is a work-related injury so that the doctor may comply with the statutory requirement to file a first treatment medical report with the employer/insurer. The employee also should submit charges for medical treatment to the employer/insurer so that they can be promptly paid.

Can an employee obtain the name of the employer's workers' compensation insurer?

This information can be obtained by contacting the employer or the court. Insurance companies are required to report to the court each policy of workers' compensation insurance they issue and are subject to penalties for failure to report.

What should an employer do after receiving notice of an on-the-job injury?

The employer should notify its workers' compensation insurer of the injury or occupational disease and either the employer or the insurer should file a First Report of Alleged Occupational Injury or Illness with the court within 10 days of the date of the notice of injury. The injured employee is not responsible for filing this report.

The insurer investigates the claim and, generally, should begin making compensation payments for lost wages (indemnity) and medical expenses within 30 days of notice of the injury. However, payment of benefits may be delayed if liability for the claim is disputed.

May an employer use the services of a managed care plan?

An employer may use the services of a managed care plan that has been certified by the court. However, an employer may not contract directly with a certified managed care plan unless the employer has been approved as a self-insurer by the court. Other employers may use the services of a certified managed care plan that has contracted with the employer's workers' compensation insurer or intergovernmental risk management pool. Only a plan that has been certified by the court may be used for workers' compensation purposes in Nebraska. When a certified managed care plan is used, the employer must give full notice to each covered employee about how to receive services and the rights of the employee under the plan.

How long does it take to receive compensation after the injury is reported?

The amount of time varies with employers and insurers. However, in certain circumstances, a 50 percent penalty may be added for waiting time if payment is not made within 30 days of the notice of injury. This requires a determination that there is no reasonable dispute regarding the employee's claim for benefits. This determination is generally made by a judge of the court after a hearing on the matter. Waiting-time penalties also apply when there is a failure to pay compensation after 30 days from the entry of a final order, award or judgment of the court.

When are permanent disability benefits paid?

After the employee has been released from medical treatment and is able to return to work, if the medical evidence indicates that the employee has suffered permanent disability due to the injury, the employee is entitled to payment for the degree of permanent disability sustained.

The employer/insurer may offer payment in a one-time lump sum, or over a period of weeks. When the claimant is not represented by an attorney and in some other situations, a lump sum settlement must be approved by the court in order to be binding on the parties and terminate the employee's right to any further benefits. In some cases, the parties may enter into a full settlement by filing a Release rather than a Lump Sum Settlement Application. A Release is not reviewed or approved by the court. The settlements that qualify to be filed as a Release may still be submitted as a Lump Sum Settlement Application for the court's review and approval, but it is not required.

What may an employee do if the employer/insurer does not pay benefits?

The employee may contact the Nebraska Workers' Compensation Court by calling either 800-599-5155 or 402-471-6468. A public information specialist will discuss the situation with the employee and refer him or her for further assistance when it is appropriate. The staff of the court may not provide legal advice or offer a legal opinion.

Any person involved in a workers' compensation claim may request informal dispute resolution to help settle an issue or an entire case without the need for a formal hearing. Neutral mediators can help people resolve their disputes and reach agreements. To request informal dispute resolution, write to the Nebraska Workers' Compensation Court Mediation Coordinator, P.O. Box 98908, Lincoln NE 68509-8908.

The employee may file a petition (lawsuit) with the Nebraska Workers' Compensation Court. Petition forms may be obtained from the Clerk of the Court. The employee may represent himself or herself, or may be represented by an attorney.

A petition must be filed within two years of the date of the accident or the date of last payment of compensation (either medical or indemnity payments) made, or the claim for compensation may be barred by the Statute of Limitations.

Upon receipt of the petition, the court will notify the employer/insurer by summons. The employer/insurer is given 14 days to file an answer. A hearing date then is set. The hearing is held in the county where the injury occurred or in any other county upon which the parties agree.

At the hearing, a judge of the Nebraska Workers' Compensation Court will hear the case and then make a written decision that will be mailed to all parties.

If either party (either the employee or the employer/insurer) is not satisfied with the trial judge's decision, that party may appeal the decision by asking for an appeal to the Nebraska Court of Appeals. In order to request an appeal, a Notice of Appeal document must be filed in the Workers' Compensation Court clerk's office within 30 days of the date of the judge's decision.

How may an employer comply with the statutory requirement that workers' compensation coverage be provided?

Under the Nebraska Workers' Compensation Act, there are only three methods by which employers may fulfill their obligation to secure payment of compensation:

- (1) by purchasing a policy of workers' compensation insurance from a private insurer licensed by the Nebraska Department of Insurance to write workers' compensation insurance;
- (2) by applying to the Nebraska Workers' Compensation Court and obtaining the court's authorization to self-insure; or,
- (3) in the case of an employer who is a lessor of one or more commercial motor vehicles leased to a self-insured motor carrier with its principal place of business in Nebraska, by entering into an effective agreement with the self-insured motor carrier that such carrier will pay workers' compensation benefits to an injured driver. This method will only satisfy the employer's obligation with respect to drivers. Any obligation with respect to other employees must be satisfied under one of the first two methods.

Who may be self-insured?

Employers who satisfy certain requirements and have been approved by the court may self-insure. The employer must be a corporation or political subdivision, with a minimum of five years in business under the present organizational structure, have a minimum of 100 employees, a strong financial base, and a positive program for safety. Once approved, a self-insurer must file a surety bond and excess insurance with the court. Any employer not approved by the court must carry a policy of workers' compensation insurance, or otherwise secure the payment of compensation as required by law.

What are the penalties for an employer's failure to provide workers' compensation insurance coverage?

Any one or more of the following penalties may be applied:

- (1) a fine not to exceed \$1,000.00 for each violation. Each day of continued failure to secure coverage constitutes a separate violation;
- (2) imprisonment for not more than one year;
- (3) enjoinder from doing business in Nebraska until compliance is secured.

Also, an injured employee may sue the employer for damages in district court, and the employer will lose its common law defenses.

This information sheet has been prepared by the Nebraska Workers' Compensation Court to answer some of the commonly asked questions concerning workers' compensation. Further inquiries should be directed to:

Nebraska Workers' Compensation Court

P.O. Box 98908

Lincoln, NE 68509-8908

800-599-5155 or 402-471-6468

<http://www.wcc.ne.gov/>

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