

Workers' Compensation Insurance



EMPLOYERS' FREQUENTLY ASKED QUESTIONS

INTRODUCTION

This information is intended to provide employers with a basic overview of the workers' compensation system in Arizona. The information provided does not cover every aspect of workers' compensation law. There are often exceptions to general rules, unsettled areas of law, and recent changes in the system. Therefore, it is strongly recommended that you consult with an attorney for competent and comprehensive advice based on your individual business or the facts of your particular legal issue. Additionally, information regarding any aspect of other non-workers' compensation law related or applicable to an employer/employee relationship or otherwise enforced by the ICA is not addressed herein.

WHAT ARE THE LAWS AND RULES THAT GOVERN WORKERS' COMPENSATION?

Workers' compensation is governed by the laws found in Article 18, Section 8 of the Arizona State Constitution, Chapter 6 of Title 23 of the Arizona Revised Statutes (A.R.S. § 23-901 et seq., also sometimes referred to as "the Act") and Workers' Compensation Practice and Procedure rules contained in the Arizona Administrative Code (A.A.C. R20-5-101 et seq.). All parties to a workers' compensation claim should familiarize themselves with these provisions of law. You can obtain copies free of charge at either Industrial Commission office. Copies may also be available for the cost of copying at county law libraries and many local libraries including the Maricopa County Superior Court Law Library located at 101 West Jefferson Street, East Court Building, first floor, Phoenix, Arizona. The Arizona State Constitution and statutes are available on-line at www.azleg.state.az.us. The rules are available online at www.azsos.gov.

WORKERS' COMPENSATION INSURANCE

Under Arizona law, it is mandatory for employers to secure workers' compensation insurance for their employees. Workers' compensation is a "no fault" system in which an injured employee is entitled to receive benefits for an industrial injury, no matter who caused the job-related accident. If an illness or injury is job-related, then the injured worker (also known as a claimant or applicant) receives medical benefits and may receive temporary compensation, if eligibility requirements are met. In some cases, a claimant may also receive permanent compensation benefits, "job retraining," and supportive medical care.

WHAT IS A "NO FAULT" SYSTEM?

Workers' compensation is a "no fault" system in which an injured employee is entitled to receive medical and compensation benefits no matter who causes the job-related accident. This means that even if the employee was at fault or partially at fault in causing the industrial injury, he/she will, in most instances, be entitled to benefits under the workers' compensation system. There are some exceptions, however. For example, an employee is not entitled to workers' compensation benefits for injuries that are "purposely self-inflicted."

HOW CAN I OBTAIN WORKERS' COMPENSATION INSURANCE FOR MY EMPLOYEES?

Workers' compensation insurance can be obtained from an insurance company licensed to issue workers' compensation insurance in the State of Arizona. For a listing of these companies you may contact the Arizona Department of Insurance at (800) 325-2548 or www.id.state.az.us. Employers who meet certain requirements can also apply to the ICA for permission to be self-insured for workers' compensation. Once an employer obtains insurance or authority to self-insure, the employer is required to post a notice of workers' compensation insurance advising their employees of the coverage and of the employee's right

to reject this coverage. The employer is also required to supply “rejection” forms for employees who chose to reject their employer’s workers’ compensation coverage.

AM I REQUIRED TO HAVE WORKERS’ COMPENSATION INSURANCE IF I HAVE ONLY ONE WORKER OR PART-TIME WORKERS?

If an employer regularly hires workers in its customary business then the employer is required to carry workers’ compensation insurance regardless of the number of workers they have, whether those workers are part-time, full-time, minors, aliens, or family members. Workers’ compensation insurance is not required for an independent contractor, or a worker whose employment is both casual and not in the usual business of the employer. Also, workers’ compensation insurance is not required for a domestic servant who works in your home.

AM I REQUIRED TO HAVE WORKERS’ COMPENSATION INSURANCE IF I AM A SOLE PROPRIETOR?

Although a sole proprietor having no employees is not required to maintain workers’ compensation insurance on himself/herself, the sole proprietor may elect to secure coverage for himself/herself. However, if there are any employees working for the sole proprietor, the sole proprietor must maintain workers’ compensation insurance on them.

AM I REQUIRED TO HAVE WORKERS’ COMPENSATION INSURANCE IF MY BUSINESS IS A CORPORATION?

A corporation is an employer under the Act and, therefore, must obtain workers’ compensation insurance for its employees which may include officers, directors or shareholders.

AM I REQUIRED TO HAVE WORKERS’ COMPENSATION INSURANCE IF MY BUSINESS IS A LIMITED LIABILITY COMPANY (L.L.C.)?

If an L.L.C. employs one or more employees, an L.L.C. is required to obtain workers’ compensation insurance for its employees. Employees may include members and managing members.

CAN AN EMPLOYEE ELECT NOT TO BE COVERED UNDER MY WORKERS’ COMPENSATION INSURANCE?

An employer may not require the employee to waive rights to workers’ compensation as a condition of employment, nor require an employee pay any portion of the employer’s workers’ compensation insurance premium. An employee may, however, voluntarily reject workers’ compensation insurance by providing a written notice to the employer which the employer files with his workers’ compensation insurance carrier. In most instances, this rejection must be filed before the employee suffers an industrial injury. An employee may also later rescind that rejection in writing but must do so before the occurrence of an industrial injury.

AM I REQUIRED TO HAVE WORKERS’ COMPENSATION INSURANCE IF I HIRE AN INDEPENDENT CONTRACTOR AND HOW DO I KNOW IF A WORKER IS AN INDEPENDENT CONTRACTOR?

Generally, you do not have to provide workers’ compensation insurance for an independent contractor. But, there are often disputes over whether a worker is an employee or an independent contractor. To resolve these disputes courts consider the “totality of facts” on a case-by-case basis. Some of the factors a court might consider include: the duration of the employment, the method of payment, the right to hire

and fire, the extent to which the employer may exercise control over the work, who supplies the tools, who sets the hours of work, and whether the work was performed in the usual and regular course of the employer's business. There may be other factors the court will consider and no one factor is, in itself, conclusive. Therefore, even if you believe you have an "independent contractor" relationship, a court could still decide that based on the totality of the facts, the worker was an employee entitled to workers' compensation benefits.

WHAT DO I DO IF AN EMPLOYEE IS INJURED ON THE JOB?

Immediately upon notice of an industrial injury, an employer is required to provide certain information to the injured worker who reports the injury. This information includes the name and address of the workers' compensation insurance carrier, the policy number, and the date of expiration of coverage. An employer is also required to notify their workers' compensation insurance carrier and the Industrial Commission of Arizona within ten days after receiving notification of a work related injury or disease using the Employer's Report of Industrial Injury form which is available from the ICA and online at www.ica.state.az.us. For fatalities, an employer is required to notify the ICA Claims Division immediately by telephone or telegraph. Other reporting obligations are required under the Arizona Occupational Safety and Health Act, but are not addressed here.

CAN I TELL MY EMPLOYEE WHICH DOCTOR TO SEE?

An employer can direct an injured employee to a physician of the employer's choice for a one-time evaluation. Following that visit, the injured worker may return to that physician or pursue treatment with a physician of his/her choice. There are exceptions to this rule for a self-insured employer that has complied with the requirements of A.R.S. § 23-1070.

WHAT WILL HAPPEN IF I DO NOT HAVE INSURANCE AND MY EMPLOYEE CLAIMS A WORK RELATED INJURY?

If an employee is injured but you do not carry workers' compensation insurance, your employee can choose to file a civil suit against you or file a workers' compensation claim with the ICA. If the employee files a civil lawsuit, proof of the injury is evidence of negligence on the employer's part. If an employee chooses to file a claim with the ICA, it will be referred to the Special Fund Division/No Insurance Section. The Special Fund will process the injured worker's claim and pay medical and compensation benefits if the claim is accepted. The Special Fund will seek reimbursement from the uninsured employer for any benefits paid to the injured worker plus a penalty of 10% of the benefits paid or \$1,000, whichever is greater (and interest on the total).

IS THERE A FINANCIAL PENALTY IF I DON'T HAVE REQUIRED WORKERS' COMPENSATION INSURANCE?

Subject to limited exceptions, an uninsured employer may be assessed a civil penalty of \$1,000 for failure to obtain workers' compensation insurance, whether or not an employee files a workers' compensation claim. The penalty is increased to \$5,000 for a second instance of being uninsured within a five-year period and \$10,000 for a third instance in a five-year period.

CAN MY BUSINESS BE SHUT DOWN IF I DON'T HAVE REQUIRED WORKERS' COMPENSATION INSURANCE?

An employer that fails to obtain the required workers' compensation insurance is subject to an action by the ICA for an injunction (Superior Court Order) that will require the employer to cease the operation of

business until the employer complies with the requirement to maintain workers' compensation insurance for its employees.

AM I COMMITTING A CRIME IF I DON'T HAVE REQUIRED WORKERS' COMPENSATION INSURANCE?

An employer that does not carry workers' compensation insurance is guilty of a Class 6 felony. A.R.S. § 23-932.

CAN AN EMPLOYEE SUE ME IN CIVIL COURT IF HE/SHE IS INJURED ON THE JOB?

In most instances, workers compensation is the exclusive remedy against an employer that is insured for workers' compensation. However, if an employee has rejected workers' compensation coverage prior to their injury or if the employer fails to post the notice advising an employee of the right to reject workers' compensation, then the employee retains the right to pursue a civil lawsuit against the insured employer. Additionally, if an employee is injured through the "willful misconduct" of the employer or a co-worker, then the injured worker has the right to file a civil lawsuit against the employer and the co-worker who injured them. If the employer was uninsured for workers' compensation at the time of the work injury, then the injured employee has the option to file a civil lawsuit against the uninsured employer.

WHAT IS THE DIFFERENCE BETWEEN A CIVIL LAWSUIT AND A WORKERS' COMPENSATION CLAIM?

There are many differences between a civil lawsuit and a workers' compensation claim. For example, in a workers' compensation claim, an injured employee is entitled to lifetime medical and compensation benefits but the compensation for lost wages is capped by law. If you are sued in civil court, there is no cap on the amount of damages an injured worker can claim. Under the workers' compensation system, an injured worker cannot seek compensation for "pain and suffering" or "punitive" damages such as can be sought in a civil lawsuit. A workers' compensation dispute is decided by an administrative law judge whereas civil lawsuits are usually decided by a jury. A workers' compensation claim also has rules of procedure and evidence that differ from those that apply in a civil lawsuit. Certain legal principles such as "contributory negligence" that may apply in a civil lawsuit do not apply in a workers' compensation claim. An attorney can advise you regarding the many other differences between a civil lawsuit and a workers' compensation claim.

WHAT CAN I DO IF I DO NOT BELIEVE MY EMPLOYEE'S WORKERS' COMPENSATION CLAIM IS VALID?

If you doubt the validity of a workers' compensation claim, then you may state your reasons on the Employer's Report of Industrial Injury form. You may also provide your insurance carrier with any information or documentation you have to support your position. As a general rule, any action or determination taken or made by the insurance carrier is binding upon the employer, except if the employer provides written notice to the carrier and the Commission within the applicable protest period that it disagrees with the carrier's determination. If you were uninsured for workers' compensation at the time of the workers' injury, then you may provide information or documentation regarding the validity of the claim to the Special Fund Division/No Insurance Section. If you disagree with an acceptance of a claim by the Special Fund, then you only have 30 days from the notice accepting the claim to file your protest with the ICA. Other notices issued by the Special Fund may carry a shorter protest period.

SHOULD I HIRE AN ATTORNEY TO REPRESENT ME?

You should consult an attorney to answer any question you have concerning your liabilities and obligations under the Workers' Compensation Act. If you have workers' compensation insurance, then you should contact your insurance carrier to determine if they have assigned an attorney to handle a particular workers' compensation claim. If a claim is processed as a "no insurance" claim, then the employer will be required to hire an attorney if the employer is a corporation or limited liability company. Corporations and limited liability companies may not practice law in Arizona, nor be represented by an officer or agent who is not otherwise an attorney licensed to practice in Arizona. The appearance and practice before the ICA constitutes the practice of law.

WHAT IS THE INDUSTRIAL COMMISSION OF ARIZONA?

The Industrial Commission of Arizona (ICA) was created in 1925 as a result of legislation implementing the constitutional provisions establishing Arizona's workers' compensation system. The ICA divisions administer and enforce all applicable laws and regulations not specifically delegated to others, relative to the protection of life, health, safety, and welfare of employees within the State. The ICA does not issue workers' compensation insurance policies. The ICA's general number is (602) 542-4411. Additional information and forms are available online at www.ica.state.az.us.

WHAT ARE SOME OF THE DIFFERENT DIVISIONS AT THE ICA?

Ombudsman

The Ombudsman is available to offer assistance to injured workers in processing workers' compensation claims and to make referrals to other agencies when appropriate. The Ombudsman does not provide legal advice.

Claims

The Claims Division regulates workers' compensation insurance carriers and self-insured employers to ensure that workers receive those benefits to which they are entitled under the Arizona Workers' Compensation Act. The Claims Division also maintains the "file of record" for Arizona workers' compensation claims, and in certain circumstances, is involved in claims processing (e.g. issuance of Average Monthly Wage and Loss of Earning Capacity Awards).

Legal Division

The Legal Division represents the ICA in all legal matters affecting the agency in order to ensure that the agency's regulatory, enforcement and quasi-judicial mandates and functions are carried out in accordance with all applicable laws.

The Special Fund

The Special Fund is a "trust fund" legislatively created for the express purpose of providing workers' compensation benefits in limited areas. For example, the Special Fund Division/No Insurance Section processes and pays workers' compensation claims involving an uninsured employer. In certain cases, the Special Fund may also provide vocational rehabilitation benefits, supportive care, and apportionment benefits.

Administrative Law Judge Division (ALJ)

The ALJ Division resolves disputes in cases referred to it, including workers' compensation and occupational safety and health matters.

Occupational Safety and Health (ADOSH)

The Arizona Division of Occupational Safety and Health (ADOSH) enforces state occupational safety and health regulations for both public and private employers within the state. ADOSH also provides free consultation services for both public and private employers upon request.

CAN THE ICA GIVE ME LEGAL ADVICE?

No one at the ICA can give you legal advice. This includes ALJs, their secretaries, and other ALJ Division staff. If an employee or a worker needs assistance regarding the processing of their claim, they can contact the Ombudsman's Office at (602) 542-4538. If you wish to obtain legal advice, then you should consult a private attorney.

WHO CAN GIVE ME LEGAL ADVICE?

You may wish to consult a lawyer licensed to practice law in Arizona for legal advice about a workers' compensation case. To find a lawyer, you can call the Maricopa County Lawyer Referral Service at 602-257-4434 or the Pima County Lawyer Referral Service at 520-623-4625. The State Bar of Arizona does not have a lawyer referral service but it can send you a list of lawyers who are certified as specialists in workers' compensation law. Specialists have been certified after an investigation of their qualifications and experience. You can search for a certified specialist on the State Bar of Arizona's web site at www.azbar.org or by calling the Hotline for Certified Specialists at (602) 340-7300. You can also look in the Yellow Pages of your telephone book under Attorneys or ask friends, family members, co-workers, or colleagues who may have used a lawyer in the past.

HELPFUL CONTACT INFORMATION

Industrial Commission of Arizona

Website Address: www.ica.state.az.us

Phoenix Office: 800 West Washington St.
P.O. Box 19070
Phoenix, Arizona 85005-9070

Claims: Main Number (602) 542-4661
Fax Number (602) 542-3373

Hearings (ALJ): Main Number (602) 542-5241
Fax Number (602) 542-4135

Ombudsman: Main Number (602) 542-4538
Toll Free (800) 544-6488

Safety & Health: Main Number (602) 542-5795

Labor: Main Number (602) 542-4515

Tucson Office: 2675 East Broadway Blvd.
Tucson, Arizona 85716-5342

Hearings (ALJ): Main Number (520) 628-5188

Safety & Health: Main Number (520) 628-5478

Arizona Department of Insurance

www.id.state.az.us

Phoenix Area: (602) 364-2499

Tucson Area: (520) 628-6370

Statewide: (800) 325-2548

State Bar of Arizona

www.azbar.org

4201 N. 24th Street, Suite 200

Phoenix, Arizona 85016-6288

602-252-4804

1-866-48-AZBAR (outside Maricopa County)

Maricopa County Lawyer Referral Service

www.maricopabar.org

602-257-4434

Pima County Lawyer Referral Service

520-623-4625

Arizona State Legislature

www.azleg.state.az.us

Arizona Secretary of State

www.azsos.gov

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