



DEPARTMENT OF

Professional &  
Financial Regulation

STATE OF MAINE

• OFFICE OF SECURITIES  
• BUREAU OF INSURANCE  
• CONSUMER CREDIT PROTECTION  
• BUREAU OF FINANCIAL INSTITUTIONS  
• OFFICE OF PROF. AND OCC. REGULATION

## AN EMPLOYER'S GUIDE TO...

# WORKERS' COMPENSATION INSURANCE IN MAINE

### ***WHAT IS WORKER'S COMPENSATION INSURANCE?***

Workers' compensation provides for benefits for occupational injuries or disease suffered by an employee, regardless of fault. The benefits include payment of medical services and lost wages, subject to a limit set by law. Workers' compensation is the exclusive remedy for the coverage of work related injuries by the employer.

### ***DO I NEED WORKERS' COMPENSATION INSURANCE COVERAGE?***

The law requires almost all public and private employers to have workers' compensation coverage. *The law defines employers as "private employers, the State, counties, cities, towns, water districts, other quasi-public corporations, municipal school committees, and design professionals."*

The Workers' Compensation Board may impose penalties for failure to have coverage when required by law. Failure to obtain coverage does not relieve the employer of their responsibility for payments required due to a workers' compensation claim.

Employers that do not have workers' compensation insurance can be sued by employees for work-related injuries. These employers may be guilty of a Class D crime, subject to a civil penalty of up to \$10,000 or an amount equal to 108% of the premium that should have been paid during the period the employer failed to secure coverage (whichever is larger), and subject to revocation or suspension of their corporate charter and/or license revocation. Also, there is no coverage for legal defense under their business general liability insurance policy.

### **Employers Who are Not Required to Have Workers' Compensation Coverage**

- Employers that have employees engaged in agriculture or aquaculture as seasonal or casual laborers, if the employer maintains at least \$25,000 in employers' liability insurance, with at least \$5,000 in medical payments coverage.
- Employers of six or fewer agricultural or aquacultural laborers, if the employer maintains employers' liability insurance of at least \$100,000 multiplied by the number of full time

equivalent employees and has at least \$5,000 in medical payments coverage.

- Employers of domestic servants in a private home.

### ***Sole Proprietor***

A sole proprietor **without** employees is not required to have coverage under the Workers' Compensation Act. A sole proprietor does not need to fill out waiver forms to be exempt from coverage. A sole proprietor **with** employees is required to carry workers' compensation for those employees.

### ***Corporate Exemption***

A bona fide owner of at least 20% of the outstanding voting stock of a corporation may waive in writing all the benefits provided by workers' compensation for themselves.

### ***Family Member Exclusion***

The parent, spouse, or child of a sole proprietor, partner, or bona fide owner of 20% of the voting stock may waive in writing all the benefits provided by workers' compensation.

### ***Limited Liability Companies***

"Owners" of limited liability companies are not required to be covered by workers' compensation insurance and do not need to fill out waiver forms. The parent, spouse, and/or child of a member of a limited liability company who is employed by that limited liability company may waive in writing all benefits provided by workers' compensation for themselves.

### ***Charitable, Religious, Educational, or Other Nonprofit Corporations***

Duly elected or appointed executive officers of charitable, religious, educational, or other nonprofit corporations are not covered by workers' compensation insurance unless they are specifically included among those for whom workers' compensation insurance has been obtained.

### ***Contractors/Subcontractors***

An independent contractor is a person who performs services for another under contract, but who is not under the essential control of the other person while performing those services.

If you are not certain whether someone working for you is an employee or an independent contractor, you can ask the person you believe to be an independent contractor to provide written proof, in the form of a certificate of coverage, that they have workers' compensation

coverage for their employees OR you and the contractor can submit an application for Predetermination of Independent Contractor Status to Establish Rebuttable Presumption (form WCB-266) to the Maine Workers' Compensation Board. If the application is approved, you will receive a rebuttable presumption that the contractor is an independent contractor. If you don't take these steps, your insurer might consider the employees of the independent contractor to be your employees and take their payroll into account when calculating your premium.

**An exception:** A landowner who contracts for wood harvesting may be liable for benefits to employees of the contractor if a certification of insurance is not provided by the contractor.

To receive an Application for Predetermination of Independent Contractor Status to Establish Rebuttable Presumption (WCB-266) or to obtain an Application for Waiver (WCB-2C) contact:

The Coverage Unit  
Workers' Compensation Board  
27 SHS Augusta ME 04333  
Telephone: (207) 287-3751

### ***HOW DO I BUY WORKERS' COMPENSATION COVERAGE?***

As a business owner you have several ways to secure workers' compensation insurance. You can obtain it through the following ways:

- From a licensed producer who sells property and casualty insurance and who specializes in or is familiar with business insurance
- Self-Insurance

### **Insurance Market**

Currently the insurance market is competitive for employers who have had either no losses or very few losses and who have a good attitude about implementing and maintaining safety programs.

Other insurance, such as general liability, business owners, or commercial package policies do not cover injuries to employees. Most health insurance policies specifically exclude injuries to workers while they are working for their employer. Besides legal requirements, buying a workers' compensation policy can be one of the best benefits an employer can buy for both themselves and their employees.

A first time business owner with no record of claims experience, some smaller businesses, high risk enterprises, and business owners with accident frequency or severity problems, sometimes

have difficulty obtaining workers' compensation coverage. Maine Employers' Mutual Insurance Company (MEMIC) allows these types of entities to obtain coverage. MEMIC is required to provide workers' compensation coverage to employers who cannot obtain insurance elsewhere.

MEMIC specializes in loss control, risk management, returning employees to work, and assisting employers with their workers' compensation safety programs. This high level of service helps employers become aware of steps they can take to reduce lost time accidents and overall claims cost. MEMIC also insures in the regular (voluntary) market competing with other insurers.

### **Self-Insurance**

In Maine, employers who qualify may also self-insure their workers' compensation exposure on either an individual or group basis. Self-insurance gives the employer more control over their workers' compensation program; however, the employer is also more at risk for costs because a self-insured employer is responsible for **all** workers' compensation losses as long as the employee is unable to work or continues to need medical treatment. Individual self-insurance is normally advisable only for large employers.

### ***Group Self-Insurance***

An alternative to commercial insurance is group self-insurance. This method allows smaller entities to band together and agree to pay for each other's losses. Group self-insurance is regulated by the Bureau of Insurance and members pay a premium to the group. If the experience of the group is good, rates can be lower and surplus funds can be returned. If the experience of the group is not good, the rates are higher, and additional assessments may have to be paid. Members of the group are responsible for the claims of **all** member employers.

### ***Corporate Self-Insurance***

For a corporation to individually self-insure its workers' compensation risk, approval is required from the Self-Insurance Division of the Maine Bureau of Insurance. To qualify for approval, an employer must be financially sound and must post enough security to guarantee the payment of claims and administrative expenses.

For more information and self-insurance application forms, contact:

The Maine Bureau of Insurance  
Self-Insurance Division

34 State House Station  
Augusta ME 04333  
Tel. (207) 624-8475 or (800) 300-5000 (in Maine)

## ***SHOPPING TIPS***

Over 327 companies are now authorized to sell workers' compensation insurance in Maine. Cost and services vary from company to company. The following shopping tips may help you to explore what is available in the marketplace to meet your particular needs.

- ◆ Get proposals for insurance at least 90 days before your policy expires. It usually takes an insurance company at least 30 days to review and evaluate an application. It also takes time for the insurance producer to prepare applications and submit them to the company.
- ◆ Your producer should ask for proposals from several companies and present them to you. There are a number of companies that specialize in certain types of risks and offer very competitive pricing.
- ◆ Request information from your producer about the rating, loss control services, and reputation of the prospective insurer if you are thinking about changing companies.

To get the best proposals you will need:

- Loss runs from your insurer(s) showing losses for the past four years;
- A complete listing of current classifications and corresponding payrolls;
- A description of operations; and
- A copy of the most recent premium audit summary.

## ***HOW IS THE PREMIUM CALCULATED?***

The cost of workers' compensation insurance is based on the hazards associated with the type of jobs related to the employers' business classification. Each business has a major classification or governing class that identifies it as a certain type of business.

***General Rule:*** the business is classified, not the individual jobs within the business.

For example, a manufacturing operation has one major governing class assigned to the type of manufacturing that is done (e.g., die casting, clock manufacturing, or lime manufacturing). Each of these types of manufacturing has different and unique characteristics associated with the manufacturing process. These classifications take into account the varied duties of employees in the respective manufacturing types.

Other contracting classifications classify **each** job separately. A contractor may have carpentry, concrete construction, masonry, and roofing rated separately on their policy; however, to rate each job separately, payroll must be tracked for each class.

There are exceptions to the general rule which classifies the business. These are called *standard exception classifications* and are common to many business types. In this situation the individual employee, and not the business, is classified.

The standard exception classifications are: clerical office - 8810; drafting employees - 8810; salespersons or collectors - outside - 8742; drivers, chauffeurs, messengers and their helpers NOC -commercial - 7380. These positions are not related to the specific business of the employer as they are common to all employers.

Workers' compensation insurance costs are determined by multiplying a rate that is assigned to a specific classification for every \$100 of payroll to the payroll in that classification. Manual premium is computed based on the total remuneration paid or payable by the employer for services of individuals who could receive workers' compensation benefits for work-related injuries based on the policy.

### ***Factors Which Affect Premium Calculation***

#### **Remuneration**

Remuneration includes wages, salaries, commissions, bonuses, pay for holidays, vacations, periods of sickness, piecework, profit sharing, incentive plans, and payment or allowance for hand tools or power tools.

To calculate the premium, remuneration excludes tips, gratuities, payments by an employer to group insurance or group pension plans for employees, dismissal or severance payments, and expense reimbursements to employees if an employer's records prove that the expense was incurred as a valid business expense.

#### **Overtime Pay**

Overtime pay is additional pay for hours worked over an employee's normal work week. The extra pay for overtime (but not the standard rate pay) is excluded from the payroll on which the premium is computed; however, the employer's books and records must be maintained to show overtime pay separately by employee and in summary by classification.

#### **Rates**

Rates vary by classification and by insurer. Many insurers have more than one rate level. The lower rates are used for employers with good safety plans and better claims experience than other employers.

### **Experience Modification**

Experience rating is a procedure that modifies an employer's premium to reflect expected experience based on the employers prior workers' compensation claim history. This procedure compares an employer's loss history to what was "expected" for that type of business based on the reported payrolls. The experience rating calculation gives more weight to the frequency of injuries, but does not overly penalize an employer for the seriousness of one particular claim.

A risk qualifies for experience rating if it develops premium of at least \$9,000 within the most recent 24 months of the experience period. If it has more than the 24 months experience, the risk must develop an average annual premium of at least \$4,500 to qualify.

**Note: The previous description of what is included and excluded in the calculation of your premium is not all inclusive.** When you have questions, it is important to contact your insurance producer for help. Your producer will also be able to provide you with a copy of your business's experience rating worksheet which provides the basis of the insurance company's experience rating.

### ***Managing Your Workers' Compensation Costs***

You can control some of your workers' compensation costs. Good management practices are essential to keep costs as low as possible.

#### **Management Practices**

Loss control and safety can only be successful if it is part of the management structure and responsibilities of the organization. Managing losses is key to controlling insurance costs.

- Include upper management in the safety program.
- Report injuries promptly to the insurance company.
- Request summaries of losses on a regular basis.
- Institute safety programs to include monthly safety meetings with employees.
- Use return to work programs offered by insurance companies.
- Keep equipment in good condition and replace as necessary.
- Initiate special programs for employees who have received a back injury where they can work in light duty or part-time job assignments until they are ready to return to full-time duty.

- Use written job descriptions that establish physical requirements for each position when a large amount of physical activity is required. Make these descriptions available to the health care provider treating an injured employee.
- For work-related injuries, designate your health care professionals in advance. Maine law allows the employer to select the injured worker's health care provider for the first ten days after the inception of health care.

### ***Loss Runs***

Loss runs are reports generated by your insurance company that establish a record of your job-related accidents and claims. They are available free of charge from your insurer. The loss runs are your record of account activity. These are similar to a bank statement or an account balance from a creditor. The insurer may send loss runs to its producer instead of sending them to the employer.

- Request loss runs from your insurance producer or insurance company at least annually. Maine law requires loss runs to be available on request.
- Ask your producer to review the loss runs with you, explaining what the paid and incurred losses mean along with the significance of the reserved amount.
- Review the runs for accuracy.
- Keep a file of loss information to use to obtain competitive proposals from insurance companies on future years policies.
- Monitor loss reserves and watch for large fluctuations in the amount of an individual claim.
- Be sure that closed claims are recorded properly by your insurer.

### ***Premium Audits***

Workers' compensation premium is calculated based on the wages actually paid in each job classification. Since an accurate calculation cannot be made until after the end of the policy year, premiums initially collected are based on an estimate. After the policy year closes, every insured employer's payroll is audited to determine the actual premium amount owed. The employer will then receive either an additional bill or a refund.

The premium audit process is similar to the income tax collection process. Payments are made or withheld on an estimated basis during the year with a final reconciliation after the year ends. Employers whose payroll increases during a policy year should expect a bill for additional



premium after the audit.

When an audit is completed by the insurance company, the employer is entitled to a copy of the audit worksheets. The insurance company **must** complete the audit and bill the insured for any additional premium due within 120 days after the policy expiration date, provided the employer has cooperated with the insurer to allow timely access to the required information.

The employer should request the information when the audit is complete. Examine the information immediately to make sure it agrees with your records. It is critical that you express any concerns about the audit immediately to the insurance company.

Audit bills are premiums that are due the insurer like any other premium bill. Failure to either pay the audit, or agree to pay the audit can cause the audit bill to either be turned over to a collection agency or may cause a report to be filed with a credit reporting agency. The disputed amount could show up unfavorably on a credit report and you may lose your eligibility for continued workers' compensation coverage until payment is made.

Many insurance companies will conduct a mid-term audit and correct any deficiencies that might occur in the estimated payroll figures. This keeps bills accurate and avoids large, unexpected audit adjustments.

- Ask for copies of the audit of payrolls that the insurance company used to determine the final insurance premium.
- Verify that the payroll and rating classifications used are correct.
- Notify the insurer of any changes that occur in your operation during the policy period such as:
  - the addition or deletion of classifications
  - or**
  - increase or decrease in your payroll.
- Obtain certificates of insurance from subcontractors or other businesses that are doing work for you.

### ***WHAT IS IN A WORKERS' COMPENSATION POLICY?***

The policy contains six numbered parts and is a contract between the employer and the insurer. The first three parts identify the coverage.

### ***PART ONE - Workers' Compensation Insurance***

In this part of the contract the insurer agrees to promptly pay benefits mandated by the Maine workers' compensation law. Coverage in other states is limited to incidental exposure unless the Policy Information Page (also called the Declaration Page), which is located at the very beginning of the policy lists specific states where claims are also covered.

#### Part One:

- Explains the requirements for an injury to be covered.
- Fixes the carrier's duty when benefits are claimed.
- Establishes the rights and duties of the carrier.
- Discusses claim associated costs.
- Limits payments when other insurance is available.
- Provides for reimbursement by the employer under certain conditions.
- Concerns the carriers right to recover payments from a liable third party.
- If required, brings the policy into necessary conformity with the laws of the covered states. There are no dollar limits on benefits payable under this section.

#### ***PART TWO - Employers' Liability Insurance***

Protects the employer from liability imposed by law that is **not** compensable under the workers' compensation policy. This coverage is similar to other forms of liability coverage in other policies. See the policy for specific information on this coverage.

#### ***PART THREE - Other State Insurance***

Provides coverage in states not listed on the Information Page of the policy provided that you give 30 days' notice to the insurer after the work begins.

#### ***PART FOUR - Insured's Duties If Injury Occurs***

This part of the policy explains the insured's obligations under the policy when an accident occurs.

#### ***PART FIVE - Premium***

Presents the seven conditions that relate to the development of premium.

#### ***PART SIX - Conditions***

This part of the policy governs the different relationships between the insured and the insurer.

It consists of the following five provisions:

- Allows inspection of insured's workplaces.
- Covers situations where the policy term extends beyond one year.
- Prohibits assignment of the policy to others without the insurer's written consent.
- Explains how to cancel the policy.
- Identifies which insured in a multiple employer policy is authorized to act on behalf of the others.

### ***Maine Employer's Mutual Insurance Company's (MEMIC) Rates***

The Bureau's website includes the following link to [MEMIC's rates](#), charged per \$100 of payroll for all classifications:

Some employers may be able to get a lower rate through MEMIC or by comparison shopping with other companies.