

Employer's Guide to the Alaska Workers' Compensation Act



About this Guide

The Alaska Workers' Compensation Act affects many employers. This information is intended to provide general guidance on practical application of the Act and regulations, help employers understand their responsibilities and rights under the Act, and provide answers to employers' common questions about workers' compensation. This guidance is not binding on the Department of Labor and Workforce Development or the Alaska Workers' Compensation Board, and is not comprehensive. If there is discrepancy or conflict between this guidance and the Act, the Act controls.

For additional information, contact the Alaska Division of Workers' Compensation Special Investigations Unit at (907) 269-4002, or toll free at (888) 372-8330, or by email at wcfraud@alaska.gov.

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Workers' Compensation Overview

What is workers' compensation?

Workers' compensation is a no-fault insurance system that protects workers and employers from some of the losses caused by on-the-job accidents and job-related illnesses.

How does the workers' compensation system benefit employers and employees?

Workers' compensation benefits are the "exclusive remedy" for work-related injuries and illnesses. This means workers' compensation insurance protects an employer from potentially extreme civil liability. When an employer provides coverage for prompt, necessary medical treatment and wage-loss benefits to an injured worker for a work-related injury, the injured worker receiving the benefits waives the right to sue the employer.

Are employers required to provide workers' compensation coverage for their employees?

Yes. Coverage is mandatory in Alaska, not voluntary. There are no "opt out" provisions under the Alaska Workers' Compensation Act.

Workers' Compensation Coverage

Do business owners have to insure themselves?

Sole proprietors and partners are not legally required to have coverage if they are the only individuals performing the work for the business. These business owners may wish to explore "opting in" to insure themselves for workers' compensation liability, because the policies provide substantial benefits without deductibles or cost sharing, and other insurance policies may exclude coverage for work-related injuries.

What about LLC members and for-profit corporation officers?

Prior to August 1, 2019, limited liability members are not considered employees and are not legally required to have coverage if they are the only

individuals performing the work for the business. Corporate officers (President, Vice-President, Secretary and Treasurer) of S and C corporations are considered employees and must be insured under the workers' compensation policy unless they obtain an executive officer waiver from the Alaska Division of Workers' Compensation. **Effective August 1, 2019**, only LLC members and corporate officers and directors with a minimum 10% ownership interest in the business will be considered exempt and the executive officer waiver will no longer be an acceptable way to demonstrate that workers' compensation coverage is not required. **Exception regardless of effective date:** the members of an LLC that is the registered owner of another LLC, or listed as 100% shareholder of a corporation, **are** considered employees of the owned company LLC or corporation, and must be insured.

Can employers charge employees for premiums?

No. It is a misdemeanor crime in Alaska for employers to withhold money from employee wages or otherwise charge employees to offset the employer's cost of workers' compensation premiums.

What if employers and employees agree to waive workers' compensation benefits?

Employees cannot legally waive the right to workers' compensation benefits. Any verbal or written agreements attempting to waive the right to employee workers' compensation benefits are considered invalid agreements.

Non-Profit Organizations

Are non-profit organizations exempt?

No. Non-profit organizations must purchase and maintain workers' compensation insurance for their employees just like any other for-profit employer.

What about the officers, directors, and executive director of non-profit organizations?

Executive officers and directors of legally registered non-profits are not considered employees and are automatically exempt. "Executive officer" is defined as "the president, vice-president, secretary, treasurer, or a corporate employee who is responsible for the corporation's affairs generally, has a close connection with the board of directors and other officers and who

is specifically designated as an executive officer by the articles of incorporation or corporation bylaws.” An executive director who is documented and visible in the corporate structure, and who meets this criteria, is exempt. The organization may elect to cover the executive director.

Do non-profit volunteers have to be insured?

Generally, no. Bona fide volunteers who are not compensated in any way, and who do not otherwise personally benefit from volunteer services provided to the organization (such as stipends, free access to activities and services, lodging in return for services, etc. which could potentially be considered compensation) are typically not considered employees.

Other Insurance

What about health or liability insurance?

Workers’ compensation policies are separate and cannot be “bundled” with any other types of insurance. General health and liability insurance policies do not cover workplace injuries or illnesses.

Aren’t unemployment insurance and workers’ compensation insurance the same thing?

No. Unemployment insurance provides benefits to individuals who become unemployed for reasons other than work-related injury or illness.

What about “self-insurance”?

Employers wishing to self-insure must go through a detailed qualification process to obtain a certificate of self-insurance from the Alaska Workers’ Compensation Board. Review the criteria at <http://labor.state.ak.us/wc/self.htm> for more information.

Do workers’ compensation policies from other states or countries satisfy the requirement?

No. Alaska has not entered into any reciprocity agreements with any other states or countries. Non-Alaska workers’ compensation policies, even those

purporting to pay for injuries occurring in Alaska, do not satisfy Alaska’s statutory requirements. All labor occurring in Alaska, including that performed by non-resident employees, must be insured by a workers’ compensation policy bound in Alaska and produced by an insurer authorized through the Alaska Division of Insurance to write workers’ compensation insurance in the State of Alaska. Foreign businesses are required to purchase and maintain Alaska coverage just like Alaska employers.

Employees Who Are Required To Be Insured

What exactly is an “employee”?

An employee is generally defined as an individual who is not an independent contractor as defined in AS 23.30.230 and who, under a contract of hire, express or implied, is employed by an employer.

What about family and friends, or “volunteers”?

There are no exemptions for family, friends, or “volunteers” for a for-profit business. All individuals performing work for the business who are not legally named as owners with adequate ownership interest, and who are not bona fide independent businesses, are employees who must be insured.

Do part-time or temporary employees count?

Yes. There are no exemptions for a certain number of employees or for the number of days or hours worked by employees. All employees who do not fall within a statutory exemption must be insured.

Statutory Exemptions

Which businesses are exempt by statute?

There are no business industries that are exempt from the requirement to insure employees for workers’ compensation liability. Exemptions apply only to individual workers performing specific exempt duties, or to individuals who meet the Independent Contractor criteria.

What are the worker exemptions?

Generally speaking, non-commercial part-time baby-sitters; cleaning persons who clean personal dwellings and are hired directly by the personal dwelling's resident (this does not apply to business or commercial units); harvest help and similar part-time/transient help (performing work that is not an integral part of the business on an intermittent, non-regular basis, and who do not have a permanent work address); sports officials; contracted entertainers; commercial fishermen as defined in AS 16.05.940; some taxi cab drivers; some individuals on certain types of public assistance; some real estate agents; and ride share transportation network company drivers who transport passengers (this does NOT include couriers, personal shoppers, and food delivery persons).

Independent Contractors

What is an independent contractor?

Prior to November 22, 2018, whether or not an individual was an employee or independent contractor was determined by a complicated multi-factor balancing test. Effective November 22, 2018, an independent contractor is defined as an individual who collectively meets all criteria in (1) – (7):

- (1) has an express contract to perform services;
- (2) is free from direction and control over the means and manner of providing services;
- (3) incurs most of the expenses for tools, labor, and other operational costs;
- (4) has an opportunity for profit and loss from the services performed,
- (5) is free to hire and fire employees to help perform the services for the contracted work;
- (6) has all business, trade, or professional licenses required by federal, state, or municipal authorities of an individual or business engaging in the same type of services;
- (7) follows Internal Revenue Service requirements by obtaining an employer identification number and filing business income appropriately;

AND who also meets at least two of the following criteria:

- (A) is the person responsible for completion of the

work and subject to liability for the work, or maintains liability or other insurance policies necessary to protect the employees, financial interests, and customers of the business,

(B) maintains a separate business location or business mailing address from the individual or entity for which services are performed;

(C) provides contracted services for two or more different customers within a 12-month period or engages in business advertising, solicitation, or other marketing efforts to obtain new contracts.

**It is important to note the Alaska Workers' Compensation Act requirements are completely independent from those of the Internal Revenue Service or any other federal, state, or local regulatory agency. It is possible for the same workers to be considered independent contractors under one or more laws, but employees under other laws. There are significant financial risks to incorrectly classifying an employee as an independent contractor. If there are any doubts, it is in an employer's best interest to ask for guidance.

Misclassifying Employee Labor & Deceptive Leasing Practices

Can't employers just give a worker a 1099 at the end of the year instead of paying for workers' compensation?

No. Employers cannot change an employee into an "independent contractor" by issuing a 1099 form, by verbal or written agreement, or by forcing the worker to get a business license.

What about listing employees as business owners?

Employers that add employees to their licensing or entity information solely for the purpose of avoiding workers' compensation premiums may be subject to civil and criminal punishment for misclassifying employee labor.

Are there other ways to misclassify employee labor?

Yes. Misclassification occurs when employers knowingly falsify or misrepresent (1) employee job duties, (2) amount of compensation paid to

employees, (3) number of employees, or (4) an employee as an independent contractor, for the purpose of avoiding workers' compensation premiums.

What are deceptive leasing practices?

Deceptive leasing practices occur when employers knowingly misrepresent or conceal the (1) employer's true identity, (2) nature of the business, or (3) employer's history of injuries or deaths by creating alternate businesses to "lease back" their own employees. The "leased" employees are insured under the alternate business structure specifically for the purpose of avoiding the correct workers' compensation premiums.

Obtaining a Policy & Premium Information

Does Alaska have a state fund for purchasing coverage?

No. Alaska does not administer a state workers' compensation insurance plan. Unless approved to be self-insured, businesses must purchase workers' compensation policies through private commercial insurance carriers that are specifically authorized by the Alaska Division of Insurance to write workers' compensation policies in Alaska. Employers can inquire about which carriers are authorized to write workers' compensation in Alaska by calling the Alaska Division of Insurance at (907) 269-7900.

What if commercial carriers refuse to write a policy?

The Alaska Workers' Compensation Division contracts with the National Council on Compensation Insurance ("NCCI") to administer an Assigned Risk Pool. Employers unable to find a commercial carrier willing to write coverage voluntarily can obtain coverage through NCCI and the Assigned Risk Pool. Insurance agents and brokers can assist employers with the application process. Employers can also contact NCCI directly through its website www.ncci.com or by calling (800) 622-4123.

How are premiums calculated?

Estimated premiums for the upcoming policy year are calculated using the NCCI classification codes that most closely represent employee duties, anticipated payroll, number of employees, and accident history. Estimated premiums are paid in advance of a policy period. Insurers audit policies at the end of the policy period to reflect actual payroll, actual number of employees, and actual class codes representing employee duties. Premiums are then recalculated based on the updated information. Employers may receive a partial premium refund or an invoice for additional premium, depending on the audit result. The audit refund or additional premium invoice for one policy period should not be confused with any other policy period.

Audits and Disputes

Can insurers require employers to produce proof of workers' compensation coverage for subcontractors?

Yes. Under NCCI policies approved by the Alaska Division of Insurance, contracting businesses "must furnish satisfactory evidence that the subcontractor has workers' compensation insurance in force" while performing work for the contractor. For each subcontractor not providing evidence of workers' compensation insurance, insurers must charge an additional premium on the contractor's policy for the uninsured subcontractor's employees. Insurers are not tasked with deciding which, if any subcontractors (at all tiers) are exempt. Contracting businesses wishing to reduce their liability and premiums should require proof of coverage from all subcontractors (at all tiers). Contractors may also wish to consider establishing clear documentation for subcontractors (at all tiers) to separate payroll costs from other costs and to make that documentation available to the insurer, as this may help minimize workers' compensation premium liabilities if questions arise at the time of audit. If a contractor fails to maintain the necessary documentation for all subcontractors, the insurer is likely to base the premium audit amount due on the total contract price for the work.

What agency handles premium disputes with insurers?

Employers should first ask the insurer to explain how the premium was calculated and which class codes were used and why. If the employer and carrier cannot agree about the class codes used and premium calculation, the National Council on Compensation Insurance (NCCI) administers a dispute resolution process through the Alaska Workers' Compensation Review and Advisory Committee. Employers can visit https://www.ncci.com/Articles/Pages/UW_disputeresolutionprocess.aspx or call NCCI at (800) 622-4123 for assistance. The dispute resolution process has specific deadlines that must be met. It is best to research and initiate the process as soon as possible to avoid cancellation and preemption from coverage reinstatement.

Employer Responsibilities

What do employers have to do no matter what?

- Maintain coverage without lapse. This should be a first priority. Seasonal businesses are strongly encouraged to keep coverage current for the entire year to avoid inadvertent lapses. (Remember, premiums are based on payroll, so your costs shouldn't change to keep the policy in effect during periods of inactivity.)
- Immediately review and timely respond to all policy correspondence and audits.
- Report coverage to the Alaska Workers' Compensation Division. (Typically, this is the insurance carrier's responsibility.)
- Post notice of insurance for employees in three conspicuous places. Notices must be current and contain the policy number, effective dates, and contact information for both the insurer and adjuster. Notices are included with policies and also available on the Alaska Division of Workers' Compensation website.
- Report any injury, death, disease, or infection alleged by or on behalf of an employee to have arisen out of and in the course of employment to the Alaska Workers' Compensation Division within 10 days from the date of knowledge of the injury, death, disease, or infection. Employers may not

pre-determine the validity of an injured worker's injury or illness, or attribute fault of an injured worker's injury or illness to a third party. Insured employers must report all injuries to the insurer's claims administrator, who then files the report of injury with the Alaska Division of Workers' Compensation. Uninsured employers are personally responsible for filing the required report of injury to the division. Injured employees may also file their own reports of injury when employers fail or refuse to do so. (Please note that in the case of a workplace fatality or an accident that results in an overnight hospital stay, loss of an eye, or amputation, notice must be provided to the Alaska Occupational Safety and Health section at (800)770-4940 within 8 hours.)

- Properly identify and classify employees. As previously noted, it is a felony crime for an employer to knowingly misclassify employees or engage in deceptive employee leasing practices for the purpose of avoiding workers' compensation premiums.
- Maintain accurate records and provide information. Alaska labor laws require employers to maintain accurate employee and payroll records, and to provide those records to department representatives on request. Insurers also require these records in response to policy audits within certain time constraints. Inability or failure to provide such records can result in failure to insure penalties, policy cancellation, and significantly increased policy premiums.
- Pay premiums on time and in amounts required. Insurers will cancel coverage for nonpayment of premiums in the amounts due for current policies or for audited policies. Employers may not reinstate coverage until payment of all premiums due or upon initiation of a formal dispute.
- Inform insurers of changes in mailing address, contact information, and entity status. Failing to do so can cause immediate policy cancellation.
- Pay for compensable injury claims – whether insured or not. Employers are liable for compensable occupational injuries. If insured, the policy will pay. If not insured, employers must pay related treatment costs, compensable disability benefits, and possibly reemployment training benefits and employee attorney fees. It is a felony crime for an uninsured employer to fail to pay compensable benefits to an injured worker.

- Comply with workers' compensation laws in all other states and countries to which they send employees to work. Even if an Alaska policy guarantees coverage, that may not be enough to satisfy laws in other states or countries.

Employer Rights

Do employers have any rights?

Yes. Employers can:

- Participate in and defend against disputed injury claims. Employers should provide all relevant information to claims administrators when they dispute a claim. They may also report suspected fraud to the claims administrator and/or to the Alaska Workers' Compensation Division Special Investigations Unit at (888) 272-8330 or wcfraud@alaska.gov.
- Protect themselves against potential liability and increased premiums for subcontractors. By law, businesses that contract with each other can be held jointly liable for uninsured occupational injuries that occur during a project or contracted work. Employers legally can require all subcontractors to purchase and maintain workers' compensation insurance as a contract condition, even if a subcontractor is not legally required to have coverage. This can help avoid injuries or illnesses from shifting to the up-line contractor's policy and avoid unexpected premium increases following the annual audit process, as well as liability for a subcontractor employee's uninsured injury. Insurers will require this proof of coverage during policy audits. See the [Alaska Division of Insurance/Alaska Division of Workers' Compensation Joint Bulletin 18-01](#) for more information.
- Hire independent legal counsel. The Alaska Workers' Compensation Division maintains a list of attorneys who represent employers in failure to insure cases and injury claims. Call any of the main regional office numbers to obtain a copy of the list.
- Hire an adjuster to handle an uninsured injury claim. Employers can pay compensable uninjured injury costs directly or hire an independent adjuster to handle the uninsured injury claim. Claims adjusters are familiar with workers'

compensation procedures, laws, wage reimbursement rates, and medical fee schedule rates.

- Request an informal conference. Employers may request the Alaska Workers' Compensation Division to schedule an informal conference with a workers' compensation officer (called a "pre-hearing") in a failure to insure or work-related injury case. This is an opportunity for the employer to obtain answers to their questions about processes and procedures, such as filing petitions for decisions about various disputes or requesting a formal hearing to resolve matters. Formal hearings are conducted and decided by the Alaska Workers' Compensation Board, which is a three-member panel including a hearing officer and two board members, one who represents labor and one who represents industry.
- Receive copies of documents filed. Employers are named parties in failure to insure and work-related injury cases. Parties are required to provide copies of all documents filed with the Alaska Workers' Compensation Division to all other parties in cases. If employers are not receiving copies of filed documents as required, they may request the Alaska Workers' Compensation Division to provide a complete copy of their case file at any time.

Benefits Provided to Injured Workers

What workers' compensation benefits are provided to injured workers?

Injured workers may be entitled to one or more of the following benefits:

- Reasonable medical care necessary to treat a work injury or illness (doctor and hospital visits, medicine, prosthetic devices, etc.).
- Travel costs to and from medical treatment.
- Temporary Total Disability (TTD) from the time a doctor determines the worker is unable to do any work due to the injury or illness to the time the worker returns to work or reaches medical stability.
- Temporary Partial Disability (TPD) when the work injury or illness prevents the injured worker from

earning his or her full regular wage while recovering from the injury. For example, if the injured worker works fewer hours or at a light duty job that pays less than their regular job, they are entitled to TPD compensation in addition to wages.

- Permanent Partial Impairment (PPI) when the work injury or illness leaves the worker with a permanent impairment. This benefit begins when a doctor determines the worker has reached medical stability, and compensation is determined based on an impairment rating provided by the physician.
- Permanent Total Disability (PTD) when the injury or illness leaves the worker with limitations that prevent return to any type of work on a consistent, readily available basis.
- Death Benefits when an employee dies as a result of work injury or illness. Coverage pays up to a certain amount for funeral benefits and potentially monthly payments to the deceased worker's spouse and dependents.

Failure to Insure

Why do employers fail to insure?

The most common reasons for coverage lapses are the employer's failure to (1) pay premiums on time; (2) renew policies prior to expiration; (3) maintain adequate records; (4) comply with audits; (5) inform the insurer of change in business mailing address; and (6) understand which policy period is at issue when reviewing correspondence, invoices, and refund checks. Some employers deliberately refuse to obtain coverage.

What are the consequences for failing to insure?

Employers may be served with a stop work order if they fail or refuse to insure employees. Continuing to utilize employee labor after service of a stop work order results in a mandatory \$1,000 per day penalty for each day of violation. In addition to penalties for violating stop orders, employers can be penalized between \$10 and \$1,000 per employee, for each day each employee worked during lapses in coverage.

What is the statute of limitations?

The statute of limitations for failure to insure actions is six years, which means an employer can be petitioned for penalties related to any lapses in coverage for the previous six years of business operations.

How are failure to insure matters handled?

As long as uninsured employers maintain communication and are cooperative, failure to insure matters can be handled quite amicably between the uninsured employer and the Special Investigations Unit. Disputed cases are decided after formal hearing before the Alaska Workers' Compensation Board.

What if the employer cannot afford to pay workers' compensation premiums?

There is no forgiveness for inability to pay premiums. Uninsured injuries are far more likely to cause financial devastation than paying the cost of premiums.

Uninsured Injury Claims & Debarment from State Contracting

How are uninsured injury claims handled?

Injured workers may file a workers' compensation claim against the uninsured employer and the Alaska Division of Workers' Compensation Benefits Guaranty Fund ("BGF"). The BGF was established by the Alaska State Legislature to pay for uninsured work-related injuries when uninsured employers fail or refuse to do so. If the BGF pays for an uninsured injury claim, it will aggressively pursue full reimbursement from the responsible employer. Avoiding responsibility for an uninsured injury only makes matters worse. Uninsured injury claims can be handled amicably without threat of criminal prosecution as long as uninsured employers report injuries as required, obtain or reinstate coverage immediately, participate in the uninsured injury claim process, and work with the BGF collections officer. Uninsured injury claims are separate from failure to

insure cases. It is the employer's responsibility to participate in both matters, or hire an attorney to represent their interest in one or both matters.

What is debarment?

Debarment occurs when a business is precluded from obtaining government contracts due to aggravated labor violations. A primary contractor may also be referred for debarment when its subcontractor is referred for debarment if the primary contractor knew or should have known the subcontractor had a history of committing labor violations, assisted or abetted the subcontractor in committing a violation, or knew or should have known about the violation but failed to take action to abate or report it.

Other Important Information

What else should employers know?

- *Remote site operations.* When employees are working at remote sites and are unable to go home after the work shift, even "off the clock" injuries may be determined to have occurred out of and in the course of employment.
- *Termination after injury.* An employer that terminates an employee specifically because of a workplace injury may be subject to the Occupational Safety and Health whistleblower laws and a wrongful termination lawsuit.
- *Records retention.* The Alaska Workers' Compensation Act does not specify the length of time employers must retain employee injury records. Most employers have their own document retention schedules. The Division maintains records of documents filed in injury matters for 60 years.
- *Dual jurisdiction.* Employers with businesses that fall under federal jurisdiction, such as the Jones Act or Longshore & Harbor Workers' Act, should be sure to protect against potential dual

jurisdiction liability for employees who also perform land-based duties.

- *Changing businesses.* Dissolving a business and starting a new business does not automatically absolve an employer from responsibility for compensable injuries, penalties and fines.

Employer Resources

What resources are available to employers?

Employers may wish to access the following resources for additional information, including forms. It is especially important to contact each division within the Department of Labor:

- Alaska Workers' Compensation Division Forms: http://labor.state.ak.us/wc/pdf_list.htm
- Alaska Workers' Compensation Division Online Verification Link: <https://www.ewccv.com/cvs>
- Alaska Workers' Compensation Division Fraud Email and Hotline: wcfraud@alaska.gov (888) 792-3862
- Alaska Division of Labor Standards and Safety, Wage and Hour Administration: <http://labor.alaska.gov/lss/whhome.htm>
- Alaska Division of Labor Standards and Safety, Occupational Safety and Health: <http://labor.alaska.gov/lss/oshhome.htm>
- Alaska Division of Labor Standards and Safety, Mechanical Inspection: <http://labor.alaska.gov/lss/mihome.htm>
- Alaska Division of Employment and Training Services, Employment Security Tax: <http://labor.alaska.gov/estax>
- Alaska Division of Employment and Training Services, Job Center Business Connection: <http://www.jobs.state.ak.us/employer.htm>
- Alaska Small Business Development Center: <https://aksbdc.org> (907) 786-7201

If you need clarification of information or have a question not addressed here, please call the Alaska Workers' Compensation Division Special Investigations Unit at (907) 269-4002.