



Why do I need workers' compensation insurance?

A guide for Oregon employers



Department of Consumer
and Business Services



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Introduction

Why is there workers' compensation insurance?

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

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

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



Workers' compensation: employer information

Who needs it?

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

Am I an employer?

If you employ one or more workers, you are an employer. A worker is anyone you pay to do work for you who is not an independent contractor. You do not have to provide workers' compensation coverage to independent contractors, though you may choose to do so.

The difference between a worker and an independent contractor can sometimes be unclear. One important difference is that to qualify as an independent contractor, a person must be free from direction and control over how they provide their services. In other words, if you have the right to tell someone when, where, and how to do their job, that person is probably a worker.

If you have the right to tell a person what you want done, but not how to do it, they may be an independent contractor instead of a worker. However, a person must also meet other criteria to qualify as an independent contractor, including being engaged in an independently established business and satisfying certain licensing requirements (ORS 670.600 provides a five factor test used to determine whether a person is engaged in an independently established business).

Workers' compensation law, unemployment insurance law, and state tax law all use the same test to determine whether a person is an independent contractor. You can find out more about this test at <https://www.oregon.gov/IC/pages/index.aspx>.

Are my workers exempt?

Some workers do not have to be covered by workers' compensation. Here are some of the most common exemptions:

Partners. Partners are exempt, as long as they are "real" partners with the right to make business decisions.

There are some exceptions to this rule. Partners in construction companies and landscape contracting businesses must have a substantial ownership interest in the business to be exempt. Also, these businesses are usually limited to two exempt members, or one exempt member per 10 employees, whichever is greater. However, this restriction does not apply when all

partners are also members of the same family.

Casual labor. Casual labor is labor that costs less than a certain amount in any 30-day period. As of Jan. 1, 2023, that amount is \$1,062.63. However, the amount changes every July 1 based on Oregon's average weekly wage. You can find the current amount at https://wcd.oregon.gov/Bulletins/bul_387.pdf.

If your total payroll is always below this amount within any 30-day period, your workers are "casual" and don't have to be covered by workers' compensation. However, if your payroll is equal to or greater than the amount within any 30-day period, you must provide workers' compensation coverage.

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

Some corporate officers. Corporate officers do not have to be covered by workers' compensation if they also serve on the board of directors and own at least 10 percent of the stock (or an amount equal to the average amount held by all stockholders).

There are some exceptions to this rule. Construction companies and landscape

contracting companies are usually limited to two exempt officers, or one exempt officer per 10 employees, whichever is greater. However, this restriction does not apply when all officers are also members of the same family. There are also special rules for family-run farm and timber businesses.

Most limited liability company members.

Most members of LLCs are exempt, even if the members do not have substantial ownership.

There are some exceptions to this rule. Members of construction companies and landscape contracting companies must have a substantial ownership interest in the company to be exempt. Also, these companies are usually limited to two exempt members, or one exempt member per 10 employees, whichever is greater. However, this restriction does not apply when all members of the LLC are also members of the same family.

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

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

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

This allows most employers and workers from other states to use their home state coverage when they are temporarily working in Oregon. This does not change the requirement that employers must obtain Oregon coverage for any Oregon subject workers. For more information, go to <https://wcd.oregon.gov/employer/coverage/pages/out-of-state-coverage.aspx>.

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

How do I get workers' compensation coverage?

The insurance policy

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

Insurance companies. You can get insurance from any insurer authorized to provide workers' compensation in Oregon. There are more than 300 such companies registered to write workers' compensation insurance in Oregon. Many of these insurers sell policies through agents. Often, the agency that handles your other business insurance will also help you place your workers' compensation insurance. Some insurers will deal directly with you, and a few have made special arrangements to provide workers' compensation through business organizations or associations. The Department of Consumer and Business Services has an ombudsman who is an advocate for small business and is available to discuss options with you. Call 503-378-4209 for help.

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

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

Self-insurance. If you have the financial ability to pay for major claims and ensure proper processing, you may be able to qualify as a self-insured employer. You must be certified by the Workers' Compensation Division and have a large security deposit to be self-insured, among other requirements.

Oregon proof-of-coverage filing

Once you have insurance, is there anything else you need to do? Yes. It is the employer's responsibility to make sure the insurer files proof of coverage with the State of Oregon's Workers' Compensation Division. Filing a

workers' compensation insurance policy as proof of coverage is the insurer's promise to provide appropriate benefits for your workers if they are injured. The insurer files proof of coverage on behalf of the employer for each new or renewed policy issued by the insurer. The workers' compensation coverage is effective when the application for coverage, together with any required fees or premium, is paid and accepted by the insurer representative or on the date specified in writing. The coverage continues until the expiration of the policy or earlier when proper notice of an earlier cancellation is given by the insurer or the employer obtains and files new coverage.

Worker leasing

If you arrange for workers and coverage through a worker leasing company, also known as a professional employer organization (PEO), the leasing company will handle your payroll, your workers' compensation, and most other paperwork. Worker leasing companies must be licensed with WCD to do business in Oregon. You can call WCD at 503-428-8443 or visit wcd.oregon.gov and click on "Worker leasing" under "Employers" to check the licensing status of a worker leasing company.

Temporary staffing

Businesses that have one or more subject workers must have workers' compensation insurance to cover the workers and protect the business from on-the-job injuries.

Businesses that do not have subject workers may need more help upon occasion under special situations and can turn to temporary staffing companies to fill that special need. The temporary service provider is responsible for the workers and workers' compensation coverage in that instance. If the business routinely has need for more workers, the business needs to obtain workers' compensation insurance directly from an Oregon-authorized insurer or obtain workers through an Oregon-licensed worker leasing company that provides the required insurance. Obtaining temporary workers requires special documentation before work starts. Using leased workers requires an agreement in place with a licensed worker leasing company.

What if I do not comply?

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

If you continue to employ workers without coverage, WCD will assess an additional penalty of up to \$250 per day for each day you do not have the required coverage, with no limit on the total fine. By law, bankruptcy may not reduce this debt. In addition, WCD will request a permanent court injunction to force you to comply. If you disobey an injunction, you are in contempt of court and subject to other types of sanctions, including jail time.

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

Also, lawsuit protection does not apply to noncomplying employers. So, an employee can file suit against a noncomplying employer, in addition to having a legitimate workers' compensation claim. Carrying workers' compensation insurance is vital to your business.



Frequently asked questions

Do I need workers' compensation coverage on family members?

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

What if someone works for me in exchange for rent?

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

Can I make my employees independent contractors?

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

The circumstances of each work relationship determine whether a person is an independent contractor or employee. Someone who in one case might be

considered self-employed could, in another case, be an employee. The main thing to remember: do not try to circumvent the law by calling employees independent contractors.

If you contract with an established company to do a job that is not in your normal line of work, you are likely in the clear. Otherwise, be careful. If you have questions, contact WCD's Employer Compliance Unit, 888-877-5670 (toll-free). Another great resource on independent contractors and the laws you may need to consider is at <https://www.oregon.gov/IC/pages/index.aspx>.

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

If you subcontract, you are considered a "prime contractor" with special responsibilities under workers' compensation law. You must make sure your subcontractors have workers' compensation coverage when work on the project begins. Otherwise, you are responsible for providing the coverage and, without it, can be found to be a noncomplying employer.

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

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

Doctors and hospitals are required to

report job-related injuries to your workers' compensation insurer within three working days. If you do not have an insurer, those reports go directly to WCD.

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

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

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

Workers' compensation rates in Oregon are reasonable compared with other states. A 2022 study showed Oregon had the 10th lowest workers' compensation costs in the nation. In addition, the study showed that Oregon's costs were lower than neighboring states California, Washington, and Idaho.

If you have questions about your premiums, it is usually best to contact your agent or insurer first for an explanation of how your premium was computed. If you dispute how your premium was calculated or how you were classified, then contact the small business ombudsman for WCD at 503-378-4209. The ombudsman can explain your options and your appeal rights.

How do I reduce cost?

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

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

No. The Worker Benefit Fund (WBF) assessment paid with the Oregon quarterly tax reporting form (Form OQ) is a tax assessed and equally shared by workers

and employers. The assessment pays for specific programs that benefit injured workers and the employers who hire them. The assessment is based on the number of hours worked. The employer collects half the WBF assessment amount from the workers and supplements that amount with an employer contribution, submitting the full payment with the Oregon quarterly tax reporting. This WBF assessment does not pay for nor purchase the required workers' compensation insurance. Workers' compensation insurance must be purchased separately from an insurer authorized to sell that insurance in Oregon.

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

SAIF Corp. is a state-owned insurance company that provides workers' compensation insurance. WCD is part of the Department of Consumer and Business Services, a state regulatory agency. WCD and the Division of Financial Regulation regulate SAIF, as they do other workers' compensation insurers.



An ounce of prevention

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

The cost of noncomplying employer claims is passed on to employers who have insurance. Strict enforcement helps level the playing field and ensures costs are placed on those who should carry that burden.

This is why most employer groups and business associations support and even lobby for strong enforcement of workers' compensation coverage requirements. Combine this with the support of labor unions and other employee groups, and there is a clear mandate for both the Oregon Legislature and WCD to take an aggressive role in enforcing workers' compensation compliance.

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

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

Whom do I call?

Construction registration requirements:

Who is registered, and how?

Construction Contractors

Board 503-378-4621

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

WCD Employer

Compliance..... 503-947-7815

Toll-free 888-877-5670

Insurance: Where do I learn more about workers' compensation insurance options? Who can talk to me about getting a better price on my insurance? How does my insurance company know how much premium to charge me?

Small Business Ombudsman for

Workers' Compensation..... 503-378-4209

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

WCD Employer Compliance ... 503-947-7814

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

National Council on Compensation

Insurance (NCCI) – ask for the

Oregon desk..... 800-622-4123

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

DCBS Fiscal Section 503-378-2372

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

Division of Financial Regulation
dcbs.premiumaudit@dcbs.oregon.gov or
by fax at 503 378-4351

Re-employment services: Who can explain how payroll assessments can benefit me if I hire a worker who was injured on the job?

WCD Employment
Services 503-947-7588
Toll-free 800-445-3948

Self-insurance: What are the requirements for getting certified as a self-insured employer?

WCD Self-Insurance
Certification503-947-7057
or wcd.selfinsurance@dcbs.oregon.gov

Worker leasing companies: Where do I get a list of licensed worker leasing companies so I can lease employees?

WCD Worker Leasing
Company Licensing 503-428-8443
<https://wcd.oregon.gov/employer/worker-leasing/Pages/index.aspx>

or write to:

Department of Consumer and Business
Services

WCD Employer Compliance
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405

Email address:

wcd.employerinfo@dcbs.oregon.gov

Coverage information among jurisdictions:

<https://wcd.oregon.gov/employer/coverage/Pages/out-of-state-coverage.aspx>

Employer workers’ compensation coverage:

<https://wcd.oregon.gov/employer/coverage/Pages/proof-of-coverage.aspx>

Workers’ Compensation Division

wcd.oregon.gov

Ombuds Office for Oregon Workers

oregon.gov/DCBS/OOW

Workers’ Compensation Board

oregon.gov/wcb

Workers’ Compensation Division

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

Toll-free 800-452-0288
General 503-947-7585
Reception 503-947-7810
workcomp.questions@dcbs.oregon.gov



Services directory

Workers' compensation info line

(Toll-free in Oregon)..... 800-452-0288

General questions..... 503-947-7585

workcomp.questions@dcbs.oregon.gov

WCD Employer Index (to verify

employer's insurance)..... 503-947-7814

Managed care organization

(MCO) 503-947-7650

Medical resolution..... 503-947-7840

Reconsideration of

claim closures..... 503-947-7817

Re-employment assistance 503-947-7588

(Toll-free in Oregon)..... 800-445-3948

Vocational/assistance,

disputes..... 503-947-7812

(Toll-free in Oregon)..... 800-452-0288

Southern Oregon (Medford) 541-776-6032

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

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

**Ombuds Office for Oregon Workers
(OOW)**

350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405
503-378-3351 or 800-927-1271 (toll-free)
oregon.gov/DCBS/OOW

**Small Business Ombudsman (SBO)
for Workers' Compensation**

For employers with questions relating to
workers' compensation policies and claims
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405
503-378-4209
oregon.gov/DCBS/SBO

**Oregon Occupational Safety and Health
Division (Oregon OSHA)**

Consultation services

(Toll-free in Oregon)..... 800-922-2689
Salem Central Office503-378-3272
osha.oregon.gov

Field offices:

Bend541-388-6068
Eugene 541-686-7913
Medford541-776-6016
Portland 503-229-6193
Salem503-373-7819

Insurer/Self-Insured Loss Prevention Program

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

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

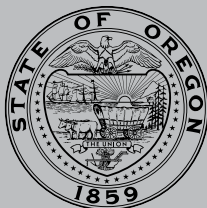
Portland 503-229-5910

Visit us on the Internet,
wcd.oregon.gov

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