Workers' Compensation Insurance

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Get Help from TDI

If you have a dispute about workers' compensation benefits, call the **Injured Worker Hotline** at **1-800-252-7031**. To file a complaint about a workers' compensation claim, benefits, or workplace safety, call your local **Division of Workers' Compensation** field office at **1-800-372-7713**.

For questions or complaints about other types of insurance, call the **Texas Department of Insurance Consumer Help Line** at **1-800-252-3439**. You can also visit our website at **tdi.texas.gov.**

Basic Information

Workers' compensation is a state-regulated insurance program that helps people with work-related injuries and illnesses. Employees covered by workers' compensation get medical care necessary to treat their injuries and illnesses. Depending on the type and severity of the injury, workers' compensation may also provide:

- payments to replace some of an injured employee's lost income, up to time and dollar limits set by law;
- compensation for burial expenses for employees killed on the job; and
- death benefits for dependents of employees killed on the job.

Workers' compensation doesn't pay for injuries that:

- are intentional or self-inflicted;
- result from horseplay or voluntary drug or alcohol intoxication;
- are inflicted by someone for personal reasons unrelated to the job;
- result from voluntary participation in off-duty recreational, social, or sports events; or
- result from "acts of God" (like floods or hurricanes), unless the job has a high risk of such injuries.

The Texas Department of Insurance's Division of Workers' Compensation (DWC) regulates the state's workers' compensation system.

Texas doesn't require most private employers to have workers' compensation insurance. However, private employers who work on public projects must have workers' compensation for the employees working on the project. Some contractors may require their subcontractors and independent contractors to have workers' compensation insurance.

Employers may not charge employees for workers' compensation coverage. There are exceptions for independent contractors and some building and construction workers.

Nonsubscribers

Employers who choose not to have workers' compensation insurance are called nonsubscribers. Nonsubscribers must:

- file an annual notice with DWC;
- post notices in their personnel offices and workplaces; and
- tell each new employee in writing that they don't have workers' compensation.

Injured employees can sue nonsubscribers over workplace injuries and illnesses. If they're sued, nonsubscribers can't argue in court that:

- the injured employee's negligence caused the injury;
- another employee's negligence caused the injury; or
- the injured employee knew about the danger and voluntarily accepted it.

Providing Workers' Compensation

Employers can provide workers' compensation by:

- buying a workers' compensation insurance policy from a licensed insurance company;
- self-insuring their worker's compensation claims, if they meet the requirements and are certified by DWC; or
- joining a self-insurance group that's approved by DWC.

Political subdivisions may self-insure, buy coverage from insurance companies, or join with other political subdivisions that self-insure. Emergency service organizations and political subdivisions may cover volunteers – such as volunteer firefighters and emergency medical personnel – with a policy endorsement.

Employers with workers' compensation are protected from most lawsuits by injured employees. If an employer has workers' compensation insurance, an injured employee may sue only after the dispute has been through DWC's dispute resolution process. The court will consider DWC's recommendations, and will address only the issues that were part of the DWC dispute process. The employer's workers' compensation insurance company pays attorneys' fees and other defense costs.

Employers usually must have at least one employee to be able to get workers' compensation insurance. The employee may be part-time. Some insurance companies will sell a policy to cover executive officers of a business that has no other employees. Employers can also buy insurance if they have uninsured contractors working for them.

Certified Self-Insurance

Large private employers may self-insure their workers' compensation claims. To self-insure in Texas, employers must:

- get approval from DWC;
- have an estimated unmodified manual insurance premium of at least $500,000 in Texas, or at least $10 million nationwide;
- provide audited financial statements and other information to DWC;
- provide a security deposit of $300,000 or 125 percent of the employer's existing workers' compensation liabilities, whichever is greater;
- have at least $5 million per occurrence of excess insurance coverage;
- have certified safety programs at all their Texas job sites;
- have a claims administration plan;
- pay fees and taxes to support administration of the program, including a guaranty fund; and
- pay a nonrefundable $1,000 application fee.

Self-Insurance Groups

Private employers also may join a self-insurance group. The group must get approval from TDI.

The get approval, the group must have at least five members and each member must:

- be in the same or similar type of business;
- belong to a trade or professional association in existence in Texas for purposes other than insurance for at least five years before the establishment of the group;
- agree to pool their liabilities for workers' compensation benefits in Texas;
- provide financial information and evidence of the required performance bonds to TDI;
- provide a security deposit;
- have an estimated annual premium, subject to an experience modifier, of at least $250,000 during the group's first year of operation and an annual standard premium of at least $500,000 after;
- have at least $5 million per occurrence of excess insurance; and
- pay fees and taxes to support administration of the program.

'Alternative' Policies

Texas law doesn't consider alternative policies bought from unlicensed insurance companies as workers' compensation. This include coverage bought from surplus lines companies. An injured employee covered by an alternative policy may sue the employer for damages resulting from a work-related injury.

Alternative policies have dollar and time limits. If expenses exceed the limit, the employer might have to pay the remainder.

Accident Prevention Services

Workers' compensation insurance companies must provide the following free accident prevention services to their policyholders:

- safety surveys, recommendations, and training programs;
- safety consultations, including analysis of accident causes; and
- industrial hygiene information and industrial health services.

Insurance companies must print a notice on the front of each Texas workers' compensation policy telling the employer about its accident prevention services.

Required Claim Information to Policyholders

Insurance companies must tell policyholders about claims against their workers' compensation policies. Policyholders can waive the requirement. Policyholders may ask the insurance company to tell them about settlement proposals and any proceedings to resolve claims. Policyholders may also ask for information about individual claims.

Policyholders may also ask companies for a list of claims against their policies, payments made or reserves established for those claims, and a statement of the effect on the policy's premium.

Shopping for Workers' Compensation Insurance

Employers should shop around to find the best rate. Use the Texas Workers' Compensation Rate Guide at www.tdi.texas.gov/wc/regulation/rcomp.html to learn companies' rate levels, schedule ratings, and contact information.

Buy only from licensed insurance companies. The Texas Property and Casualty Guaranty Association pays claims for licensed insurance companies that become insolvent. Claims against unlicensed insurance companies could go unpaid. To learn whether a company is licensed, call TDI's Consumer Help Line or view company profiles at tdi.texas.gov.

If you can't find a company willing to sell you a policy, contact Texas Mutual Insurance Company. Texas Mutual is the workers compensation insurer of last resort in Texas. For more information, contact **Texas Mutual** at **1-800-859-5995** or visit **texasmutual.com**.

Workers' Compensation Rates

An insurance company may base its rates on:

- workers' compensation classification relativities established by the commissioner of insurance;
- the company's own independent relativities filed with TDI; and
- loss costs filed by the National Council on Compensation Insurance (NCCI), which is an advisory organization to TDI.

Relativities represent the relationship between employer classifications. Insurance companies that use the relativities file a deviation factor with TDI that is then multiplied by the relativity to determine the rate. The relativities are intended to cover indemnity and medical benefits, as well as profits, taxes, and expenses for the insurance company.

The NCCI loss costs are intended to cover indemnity and medical benefits, as well as associated expenses. Insurance companies that use loss costs file a multiplier. The multiplier includes other expenses associated with providing workers' compensation insurance, such as agent commissions, profits, and taxes. The loss cost is multiplied by the multiplier to determine the rate.

The insurance company assigns policyholders to one or more classifications based on the policyholder's type of business. The company then determines the employer's payroll for each classification.

The total payroll for each classification is multiplied by the company's rate for that classification (rate per $100 payroll). The employer's premium is the sum of the premiums for the individual classifications, plus fees and credits.

Deductibles

Employers with estimated annual premiums over $5,000 may choose a deductible plan to reduce their premiums.

The standard deductible plans are:

- **Per accident deductible.** This option offers deductibles of $1,000, $2,500, $5,000, $10,000, and $25,000 per accident, not to exceed 50 percent of the employer's estimated annual premium.
- **Per claim deductible.** This option offers deductibles of $1,000, $2,500, $5,000,

$10,000, and $25,000 per claim, not to exceed 50 percent of the employer's estimated annual premium.

- **Medical only.** This option offers deductibles of $500, $1,000, $1,500, $2,000, and $2,500 per medical-only claim.

Employers might be able to negotiate different deductibles.

For all deductible plans, the insurance company pays the claims, and the policyholder reimburses the company up to the amount of the deductible. An insurance company may require the employer to provide security for the deductible amount.

Group Purchase

Employers in similar lines of business or who are members of the same trade association may ask for TDI's approval to form a group to buy workers' compensation insurance.

Each group member will buy its own individual policy and retain its own experience modifier. However, the insurance company will base premium discounts on the total premium for the group. In addition, group members might get additional savings through group safety programs and dividends.

Workers' Compensation Health Care Networks

Insurance companies, political subdivisions, and self-insurance groups can set up workers' compensation health care networks or contract with existing networks. TDI must certify the network. The premium costs are usually lower for employers who have coverage with a network. Because the networks specialize in treating injured employees, they can help them return to work more quickly.

For more information about workers' compensation health care networks, visit the workers' compensation networks page on TDI's website at www.tdi.texas.gov/wc/wcnet/indexwcnet.html.

Premium Incentive for Small Employers

Employers with a premium too low to qualify for experience rating may benefit from the premium incentive plan.

Employers with an estimated annual premium of less than $5,000 are eligible for a 10 percent discount if they had no compensable lost-time injuries during the last year. The discount is 15 percent if there were no compensable lost-time injuries during the last two years. If the employer had two or more lost-time injuries in the previous year, the insurance company may apply a 10 percent surcharge.

Retrospective Rating

Retrospective rating offers employers a potential savings as an incentive for having a safe workplace. Retrospective rating is optional. Employers who want it must choose it within the first 60 days of the policy period.

The insurance company will adjust the employer's premium six months after the end of the policy period, based on the actual claim experience. The company then adjusts premiums each year until all claims for the period are closed or the premium reaches a pre-selected maximum. Premium adjustments reward policyholders when claims are low. If claims are high, however, the employer may pay more than the standard premium.

Employers with a minimum annual workers' compensation premium of at least $15,000 can choose from several plans, including:

- **Option Five.** This plan is available to employers with minimum annual premiums of $25,000. It allows employers to negotiate for both a minimum and maximum premium. In addition, an employer may negotiate a plan that includes other lines of insurance, such as automobile and general liability.
- **The Large-Risk Alternative Rating Option.** This plan is the most common and is for employers with at least $100,000 in estimated annual premiums (or $350,000 for all states where they operate). Policyholders and insurance companies may negotiate retrospective factors under this plan. This plan can't be negotiated to include other lines of insurance.

Experience Rating

NCCI calculates experience modifiers for employers who meet premium eligibility requirements. Experience rating rewards employers with losses that are less than expected and penalizes those with losses that are higher than expected.

The experience modifier is based on an employer's payroll and loss information for a period of 12 to 39 months. The experience period is generally the past four policy years, excluding the most recent policy year. An employer's actual losses are compared with the expected losses for businesses with similar job classifications and payrolls. If losses are less than expected, the employer gets a credit modifier that reduces the employer's premium. If losses are higher than expected, a debit modifier increases the employer's premium.

Experience rating is mandatory for employers with either

- annual workers' compensation premiums of at least $10,000 and a one-year experience history, or
- average premiums of $5,000 and at least two years of experience.

If the experience modifier is calculated during the policy period, here's how the premium will be adjusted:

- Premium decreases will be applied retroactively to the effective date of the policy or to the rating effective date, if different than the policy effective date.
- Premium increases for modifiers issued and endorsed within the first 60 days of the effective date or the rating effective date will be applied retroactively to the effective date of the policy or to the rating effective date, if different than the policy effective date.
- Premium increases for modifiers issued after the first 60 days of the effective date or the rating effective date, if different than the policy effective date, will be computed pro rata from the date the insurance company endorses the policy.
- Premium increases for modifiers for one of the following reasons that occur at any time during the policy period or after the expiration of the policy are applied retroactively to the inception of the policy or as of the rating effective date, if different than the policy effective date:
  - changes in ownership or combinability status;
  - retroactive reclassification of a risk;

- late issuance of an experience rating modification due to an uncooperative employer in completing the final payroll audit; or
- an appeals board or other administration process or judicial decision.

Resolving Premium/Rule Disputes

If a policyholder has a dispute about its policy related to rates or forms, contact the insurance company that issued the policy. If the dispute isn't resolved with the company, the policyholder should contact the National Council on Compensation Insurance to ask for dispute resolution.

Send the request:

- by mail to NCCI, Regulatory Assurance Department – Dispute Resolution Services, 901 Peninsula Corporate Circle, Boca Raton, FL 33487-1362;
- by fax to 561-893-5043; or
- by email to regulatoryassurance@ncci.com.

A policyholder must pay any undisputed premium to the carrier before asking for NCCI's assistance.

NCCI will work with the policyholder and the carrier to resolve the dispute. If the dispute still isn't resolved, it can be heard by the Texas appeals panel.

Within 30 days of the date of the appeal's panel decision, any party to the dispute may appeal the decision to TDI. Send disputes to TDI:

- by mail to Office of the Chief Clerk: Mail Code 113-2A, P.O. Box 149104, Austin, TX 78714-9104;
- by fax to 512-490-1064; or
- by email to chiefclerk@tdi.texas.gov.

Canceling a Policy

A policyholder may cancel a policy before its expiration date by notifying the insurance company and DWC by certified mail. The insurance company must refund any unearned premium. The insurance company can't charge a penalty if an employer cancels a policy unless the policy is subject to retrospective rating.

An insurance company may cancel or refuse to renew a policy. The company must notify the policyholder and DWC by certified mail. Companies must give 10 days' notice if they cancel or nonrenew a policy because of late premium payments or fraud. They must give 30 days' notice if they cancel for other reasons.

Texas Department of Insurance
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