

The New York State Workers' Compensation Employer Issues

New York has had a no-fault workers' compensation system for nearly a century. Before enactment of the Workers' Compensation Law, when a worker was injured, the only remedy was to sue in the courts. When that happened, the employer could always raise an objection that the worker had assumed the risk of employment, or the injury was caused by the worker's negligence or that of another worker.

Today, the workers' compensation system guarantees both medical care and weekly cash benefits to eligible people defined as employees who are injured on the job. Weekly cash benefits and medical care are paid by the employer's insurance carrier, as directed by the Workers' Compensation Board. Employers pay for this insurance and may not require the employee to contribute to the cost of compensation.

Workers' Compensation Benefits

Workers' Medical Care

Medical care includes:

- Medical, Dental, Surgical, Optometry, Medically necessary drugs, Assistive devices

Except for emergency cases, the health care provider who treats you must be authorized by the Workers' Compensation Board to treat injured workers.

Workers' Compensation Lost Wage Benefits

You are entitled to a portion of your lost wages, which must be paid promptly, if your injury or illness affects you in one or more of the following ways:

- It keeps you from work for more than seven days.
- Your pay is reduced because you now work fewer hours or do other work.

If you are totally or partially disabled and unable to work for more than seven days, you may receive lost wage benefits. Necessary medical care is provided no matter how short or long the length of the disability.

Degree of Disability

The rate at which benefits are paid is based upon the level (or "degree") of disability on your medical reports subject to a determination by the WCB.

The benefit rate an injured worker receives is determined by the date of injury and does not increase if new maximum benefits are adopted into law.

Date of Accident	Weekly Maximum Total / Partial
July 1, 2024 - June 30, 2025	\$1,171.46 / \$1,171.46
July 1, 2023 - June 30, 2024	\$1,145.43 / \$1,145.43
July 1, 2022 - June 30, 2023	\$1,125.46 / \$1,125.46

- **The Total Disability rate is Two-Thirds of your Average Weekly Wage (AWW).** Your average weekly wage is based on your earnings for the 52 weeks prior to the date of injury.
- Your AWW is based on your gross earnings, not your take-home pay, and includes overtime.

Generally, the degrees of disability range from total (100%), marked (75%), moderate (50%), or mild (25%) and various levels in between. Anything less than a total disability is called a partial disability.

WHEN IS WORKERS' COMPENSATION COVERAGE REQUIRED?

For Profit Businesses generally include, but are not limited to, sole proprietors, partnerships, LLCs, LLPs, and most corporations.

Under the Workers' Compensation Law (WCL) most individuals providing services to a for-profit business will be considered employees of that business.

An **employee** is a person (including family members) who performs under the supervision, direction, and control of an employer either on or off their premises. This applies whether the worker is:

- Part-time, Full-time, Temporary, Seasonal, Casual/ Day Labor, Leased, Borrowed, Unpaid - including volunteers and family members

These employees must be covered by the employer for workers' compensation insurance.

Workers' compensation coverage IS NOT required for partnerships, LLCs, and LLPs that do not have employees. However, owners may voluntarily cover themselves under a workers' compensation policy.

Workers' compensation coverage is not required for a sole proprietor who does not have employees. However, a sole proprietor may voluntarily cover themselves under a workers' compensation policy.

Workers' Compensation coverage is required if the corporation has more than two corporate officers or more than two shareholders, or where the one or two corporate officers do not own all the shares of stock (each owning at least one share).

PENALTIES FOR BEING UNINSURED

Failure to Secure Coverage

Criminal Penalty (*WCL §52 [1] (a)*)

- **For five or fewer employees**

Failure to secure workers' compensation coverage for five or fewer employees within a 12-month period is a misdemeanor punishable by a fine of between \$1,000 and \$5,000.

- **For more than five employees**

Failure to secure workers' compensation coverage for more than five employees within a 12-month period is a class E felony punishable by a fine of between \$5,000 and \$50,000 and is in addition to any other penalties that may apply.

Civil Penalty (*WCL §52 [5]*)

- An employer who doesn't provide coverage for 10 or more consecutive days could receive a penalty up to \$2,000 for each 10-day period of non-compliance, or no more than two times the cost of compensation for its payroll for the period of such failure.
- This is in addition to all other penalties, fines or assessments.
- When an employer fails to provide sufficient business records for the Chair to determine the employer's payroll for the period requested for the calculation of the penalty, the claimed weekly payroll for each employee, corporate officer, sole proprietor, or partner will be the New York State average weekly wage, multiplied by one-and-a-half.

If the employer is a corporation, the president, secretary and treasurer will be liable for the penalty. There are additional penalties for failure to maintain accurate payroll records and misrepresentation of the number, class, wages and accidents of employees.

Employer's obligations and methods of coverage

Every employer in New York with one or more employees, with certain limited exceptions noted below, is required to provide coverage for its employees for workers' compensation benefits for their disability or death resulting from an injury which arises out of and in the course of the employment. Coverage can be provided by one of three methods. The employer can:

- Purchase an insurance policy from an insurance company authorized by the Superintendent of Financial Services to provide workers' compensation insurance in New York; or
- Purchase an insurance policy from the State Insurance Fund;[6](#) or
- Be authorized by the Workers' Compensation Board Chair to self-insure the obligation.

The Workers' Compensation Law exempts certain categories of workers from coverage.

Independent Contractor Status

Any worker who was injured on or after October 26, 2010, while performing services for a contractor, is presumed to be the employee of that contractor for the purposes of workers' compensation, disability benefits, and Paid Family Leave, subject to the independent contractor test contained in the statute and outlined below.

Under the Act, a person working for an employer in the construction industry is only an independent contractor if they meet a two-part test:

1. An individual is an independent contractor if an employer can prove ALL three of the following criteria:
 - The individual is free from control and direction in performing their job.
 - The individual is performing services outside the usual course of business for the employer.
 - The individual is engaged in an independently established trade, occupation or business that is similar to the service they perform and
2. There is an additional detailed test to prove Independent Contractor Status

AN INDEPENDENT CONTRACTOR MUST PROVIDE WORKERS' COMPENSATION COVERAGE FOR ITS EMPLOYEES AND AT ITS OWNER'S DISCRETION THE OWNER ALSO

EXCLUSIONS FROM WORKERS' COMPENSATION COVERAGE REQUIREMENTS

In addition to expressly applying the term "employee" in specific contexts, the Workers' Compensation Law expressly excludes certain persons from the statutory definition. For example:

1. Tradesmen- persons' who are hired by a homeowner or the owners of rental or business property to do a specific job in the construction, repair or improvement of a building and in the line of such persons' trade or occupation generally are deemed to be independent contractors rather than employees based upon the criteria stated above.
2. Household employees include certain types of casual labor and domestic workers.

Casual Labor

- Workers' Compensation coverage **is not required** for individuals, including minors, doing yard work or occasional chores in and around a one-family, owner-occupied dwelling.
- Workers' Compensation coverage **is required** if a minor handles power-driven machinery, including a power lawnmower.
- Workers' Compensation coverage **is also required** if the chores or jobs are regularly scheduled.

Domestic Workers

- Domestic workers are defined as chauffeurs, nannies, home health aides, nurses, babysitters, au pairs, maids, cooks, housekeepers, laundry workers, butlers, companions, and gardeners in a private household (12 NYCRR §355).
- Workers' Compensation coverage **is required** if the domestic worker is employed forty or more hours per week by the same employer. Time spent at the residence including sleeping and eating and any additional time spent off premises running errands and performing other duties for the employer count towards the total hours worked per week. Also included in the calculation of hours worked per week are all hours where the employer requires the domestic worker's presence. For example, if the employer goes away for two full days and requires the domestic worker's presence, this counts as 48 hours worked.

Note: Domestic/household workers are not covered under your homeowner's insurance policy's workers' compensation insurance rider. Insurance Law §3420(j)

Workers' Compensation coverage **is not required** if the only people who work for the household are domestic workers in a private household who individually work less than 40 hours per week for that household and they do not live on premises.

Homeowners Liability Insurance May Include Coverage Against Liability

§ 3420. Liability insurance; standard provisions; right of injured person (j)(1)

Notwithstanding any other provision of this chapter or any other law to the contrary, every policy providing comprehensive personal liability insurance on a one, two, three or four family owner-occupied dwelling, issued or delivered in this state on and after the first of March, nineteen eighty-four, shall provide for coverage against liability for the payment of any obligation, which the policyholder may incur pursuant to the provisions of the workers' compensation law, to an employee arising out of and in the course of employment of less than forty hours per week, in and about such residences of the policyholder in this state. Such coverage shall provide for the benefits in the standard workers' compensation policy issued in this state. No one who purchases a policy providing comprehensive personal liability insurance shall be deemed to have elected to cover under the workers' compensation law any employee who is not required, under the provisions of such law, to be covered.

Disability and Family Leave Benefits

Casual Labor

- Disability and Paid Family Leave benefits coverage **is not required** for individuals, including minors, doing yard work or occasional chores in and around a one-family, owner-occupied dwelling.
 - Disability and Paid Family Leave benefits coverage **is required** if the chores or jobs are regularly scheduled for 30 or more days in a calendar year.
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Domestic Workers

Domestic workers include chauffeurs, nannies, home health aides, nurses, babysitters, au pairs, maids, cooks, housekeepers, laundry workers, butlers, companions, and gardeners working in a private household (12 NYCRR §355).

- Disability and Paid Family Leave benefits coverage **is required** if the domestic worker is employed 20 or more hours per week by the same employer (including full-time sitters or companions, and live-in maids) and they work 30 or more days in a calendar year for that employer. Time spent at the residence including sleeping and eating and any additional time spent off premises running errands and performing other duties for the employer, count towards the total hours

worked per week. Also included in the calculation of hours worked per week are all hours where the employer requires the domestic worker's presence. For example, if the employer goes away for two full days and requires the domestic worker's presence, this counts as 48 hours worked.

- Disability and Paid Family Leave benefits coverage is **not required** if the only people who work for the household are domestic workers in a private household who individually work less than 20 hours per week for that household and do not live on premises.