TAKING CARE OF BUSINESS

THE SMALL BUSINESS GUIDE TO WORKERS’ COMPENSATION INSURANCE
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INTRODUCTION: WHAT IS WORKERS’ COMPENSATION INSURANCE?

Even in the most innocuous workplaces, potential dangers are everywhere. A consultant could trip over a rogue computer cord. Your firm’s technical writer could develop carpal tunnel syndrome. Accidents and injuries can happen to anyone, which is why most states require employers to create a safe work environment. This includes having Workers’ Compensation Insurance.

Workers’ Compensation Insurance (also known as “Workman’s Comp” or “Workers’ Liability Insurance”) provides coverage for your employees’ workplace injuries and illnesses. Generally, an employee with a work illness or injury can receive Workers’ Comp benefits regardless of who was responsible for the incident (e.g., the employee, the employer, a coworker, or a customer). As long as the injury is job-related, your insurance benefits can cover your employee’s medical bills and partial salary. This can include injuries that happen while on business trips, running work errands, or attending a professional social function.

So that’s the short explanation. Unfortunately, Workers’ Comp is one of the most complex and misunderstood small business insurance policies. Small-business owners – who might be on the verge of hiring their first employees – may not understand exactly how this coverage works or what an employer’s obligations are.

That’s why we’ve created this guide. In it, you’ll learn…

• How Workers’ Compensation Insurance came to be.
• Which benefits this coverage provides.
• How Workers’ Compensation Insurance protects employers.
• How to handle a Workers’ Comp claim.
• What happens when you don’t carry Workers’ Comp.
• The differences between Workers’ Comp and Health Insurance.
• …And more.

Keep reading to get started, or jump to our FAQ section to get the fast answers you need about Workers’ Compensation Insurance.
CHAPTER 1

WORKERS’ COMPENSATION INSURANCE: THE BASICS
Workers’ Compensation Insurance is a unique and complex insurance policy. In order to understand it, it’s best to start at the beginning. In this chapter, you’ll learn how Workers’ Compensation Insurance came to be and the benefits that are standard in modern policies. In Chapter 1, we’ll look at the following topics:

PART 1: A BRIEF (NON-BORING) HISTORY OF WORKERS’ COMPENSATION

PART 2: WHAT DO WORKERS’ COMP BENEFITS COVER?
PART 1: A BRIEF (NON-BORING) HISTORY OF WORKERS’ COMPENSATION

Ever wonder how Workers’ Compensation Insurance came to be? Let’s take a brief tour through the coverage’s history and discover why it’s a necessary mainstay in American workplaces.

WORKERS’ COMPENSATION’S ANCIENT ROOTS

Though Workers’ Compensation Insurance may seem like an entirely modern construct, you may be surprised to learn its roots trace back to ancient Sumer (present-day Iraq). According to Gregory Guyton’s A Brief History of Workers’ Compensation, in 2050 B.C., the ancient Sumerian law outlined compensation for injury to a worker’s specific body parts. For example, the loss of a thumb was worth half the value of a finger.

Ancient Greek, Roman, and Chinese laws also implemented similar “schedules” for specific injuries and the monetary compensation the maimed parts deserved. Their distinction between “impairments” (the loss of function of a body part) and “disabilities” (the loss of ability to perform certain tasks) still informs our Workers’ Comp laws today.

THE EVOLUTION OF WORKERS’ COMP

The rise of the Industrial Revolution meant extreme working conditions in early factories. Hazards were plenty, and injury rates were colossal. Though hurt workers rarely received compensation, they could turn to the courts for help.

However, the legal framework for compensating injuries was exceptionally restrictive – so restrictive that the following principles became known as the “unholy trinity of defenses.” If the employer could prove these to be true about the injury, the worker couldn’t claim a farthing:

• **Contributory negligence.** The employer wouldn’t be held liable if the worker was responsible for his own injury, regardless of how hazardous the machinery or work environment was. So if a worker slipped and lost a hand, they wouldn’t receive compensation.
• **The “fellow servant” rule.** If a fellow employee caused the worker’s injuries, employers were not held liable.

• **Assumption of risk.** This doctrine held that employees accepted the hazards of their work when they signed their contracts. To make matters worse, many industries had employees sign contracts that relinquished their right to sue for injuries. That’s why these unfair documents earned the grim moniker “death contracts.”

Luckily, the rise of Realpolitik in Prussia would usher in the end of these dark times for workers. Chancellor Otto von Bismarck implemented a system of social insurance, known as the Employers’ Liability Law of 1871. This provided some social protection for workers in certain factories, quarries, railroads, and mines.

In 1884, Bismarck championed Workers’ Accident Insurance, which laid the groundwork for today’s Workers’ Compensation Insurance.

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**WORKERS’ COMP TRICKLES TO AMERICA**

Unfortunately, the trend toward compensating workers for their occupational injuries was a little slower to hit the United States. It took Upton Sinclair’s shocking 1906 novel *The Jungle*, which details the horrors workers experienced in Chicago slaughterhouses, to stir the public’s outrage.

Eventually, Congress passed the Employers’ Liability Acts of 1906 and 1908, which made contributory negligence doctrines less restrictive. Between 1898 and 1909, New York, Maryland, Massachusetts, and Montana attempted and failed to pass workers’ compensation acts.

Wisconsin passed the first comprehensive workers’ compensation law in 1911, while Mississippi was the last state to jump onboard.
in 1948. These early laws required employers to provide medical and wage replacement benefits for injured workers. If the injured employee accepted these benefits, they forfeited their right to sue the employer.

Today, this basic structure for Workers’ Comp is essentially the same. Most states require employers to carry Workers’ Compensation Insurance for their full- or part-time employees.

THE OCCUPATIONAL SAFETY AND HEALTH ACT: A VERY AMERICAN LAW

Other countries, such as the United Kingdom, have laws that govern occupational safety across the entire country (or, in the case of the UK, several countries). The United States doesn’t have one neat and tidy law. Most of our health and safety laws – including those that regulate Workers’ Compensation Insurance systems – are dictated by the states.

This freedom was spelled out in the Occupational Safety and Health Act (OSHA) in 1970, which says the states could govern workplace safety as long as their programs were as good as the newly minted federal program.

Back in the day, the United States didn’t have much in the way of workplace health and safety laws – and it showed. In 1969 – one year before OSHA was enacted – about 14,000 workers died of workplace injuries and illnesses, while another 2 million workers were non-fatally hurt or disabled on the job.

So OSHA was developed to “assure safe and healthful working conditions for working men and women” by…

• Setting standards.
• Enforcing those standards.

But it also, as we mentioned, encouraged states to create their own plans, which OSHA would approve and monitor. Currently, 22 states have State Occupational Safety and Health Plans for both the public and private sectors. Five more states have plans for public employees only. You can read more about the
State OSHA Program on the OSHA website. To learn more about your state’s regulations, check out our guide to state Workers’ Compensation Insurance laws.

Many states with OSHA programs (but definitely not all!) adopted language identical to that of the federal standards. Below, we take a look at some of the basic requirements that may affect you, the small-business owner.

HOW OSHA AFFECTS SMALL-BUSINESS OWNERS

Not all business owners and employees are covered under OSHA. For example, the following groups may be exempt:

- Self-employed individuals (e.g., freelancers and independent contractors).
- Some types of farm employees.
- Workers in industries that are regulated by other federal agencies, such as those in most manufacturing and transportation industries.

OSHA requirements may vary depending on the industry you work in. However, many industries operate under similar provisions, such as ensuring employees have access to…

- Medical and exposure records.
- Personal protective equipment.
- Hazard communication.
- Paperwork to file OSHA complaints.
- Notices (posters, brochures, etc.) about workplace health and safety.

For a complete rundown of OSHA’s basic provisions, visit this guide on the OSHA website. Additionally, most employers are required to keep OSHA injury and illness records relating to…

- Employee deaths.
- Missed days of work.
- Restricted work / job transfers.
- Medical treatment (beyond first aid).
- Loss of consciousness.
- Work injuries and illnesses.
- Other conditions, such as tuberculosis infection or hearing loss.

Though employers must report injuries, illnesses, and fatalities to OSHA, the precise procedure for doing so often varies by state.

Small businesses with 10 or fewer employees don’t have to keep OSHA records unless instructed to do so by a federal department (e.g., Bureau of Labor Statistics). However, small businesses are still required to report fatalities and hospitalizations.
PART 2: WHAT DO WORKERS’ COMP BENEFITS COVER?

As you know, Workers’ Compensation Insurance is one of the few insurance policies regulated by the states. The other odd thing about this small business insurance policy is that it primarily benefits your employees. Of course, because your employees are the backbone of your business, the coverage indirectly benefits you, too. Let’s take a look at how Workman’s Comp protects your employees, and in turn, your business.

WORKERS’ COMPENSATION BENEFITS

Workers’ Compensation Insurance offers four major categories of coverage:

• Medical treatment.
• Wage replacement.
• Vocational rehabilitation.
• Death benefits.

Below, we’ll discuss each of these benefits in more detail.

MEDICAL CARE BENEFITS

So long as your employee’s injury or illness is related to their work, your business’s Workers’ Compensation policy should cover the medical costs. This may include…

• Surgeries.
• Hospital stays.
• Doctor visits.
• Treatment.
• Medications.
• Medical equipment (e.g., a wheelchair or crutches).

The treatment has to be reasonable, necessary, and related to the work injury in order for the insurer to cover the costs. Generally, this excludes investigative treatment or therapy. Also, your policy will usually stipulate which healthcare provider your employee must go to for covered treatment.
WAGE REPLACEMENT BENEFITS / DISABILITY BENEFITS

If an injury keeps your employee out of work, they may qualify for wage replacement benefits, so long as they fall into one of the following types of disability:

- **Temporary total disability.** This happens when an injury prevents an employee from working at all, but only for a certain amount of time.
- **Temporary partial disability.** This prevents an employee from doing some of their work duties for a brief amount of time.
- **Permanent total disability.** To fall into this category, the employee must not be able to work at their current job or similar jobs anymore.
- **Permanent partial disability.** In this case, the damage is permanent, but it only partially impedes an employee’s ability to work.

The amount an eligible employee receives is based on what they earned before their injury. Usually, they can receive two-thirds of their wages. Plus, they won’t have to pay state or federal income taxes on that amount.

VOCATIONAL REHABILITATION BENEFITS

These benefits pay for therapeutic care (e.g., physical therapy) so your employees can make a full recovery from their occupational injuries or illnesses. If your employee needs special training to help them return to work or to become qualified for a different job, these benefits can cover those costs, too.

DEATH BENEFITS

If an occupational injury or illness results in an employee’s death, their family or dependents can receive certain benefits. These include…

- Funeral and burial expenses.
- Financial support (i.e., a percentage of the deceased worker’s earnings).

Some states place restrictions on the relationships that qualify for these benefits. For example, partners must be married in some states to receive death benefits. In others, stepchildren or children born outside of marriage might not be eligible for benefits.

WAGE REPLACEMENT BENEFITS USUALLY COMPENSATE EMPLOYEES FOR 2/3 OF THEIR PRE-INJURY WAGES.
EMPLOYER’S LIABILITY INSURANCE: THE OFT-OVERLOOKED PERK OF WORKERS’ COMP COVERAGE

Workers’ Compensation Insurance policies are (usually) two-part plans. The first part of your policy fulfills statutory obligations under Workers’ Compensation laws. The second part of your policy, known as “Employer’s Liability Insurance,” covers liability arising out of employees’ work injuries that aren’t covered by the first part. Specifically, we’re talking about lawsuits.

Let’s take a more in-depth look at how Employer’s Liability Insurance protects your small business.

HOW EMPLOYER’S LIABILITY COVERAGE WORKS

Employer’s Liability Insurance usually covers all types of employer’s liability claims unless the policy specifically excludes them. However, some claims are more common than others. Employer’s liability lawsuits typically involve one or more of the following four claims:

- **Third party over actions.** Another party that was held liable for your employee’s injury files this kind of lawsuit against your business. So say, for example, you own a small construction business. One of your employees was injured using a piece of machinery that you had not properly maintained. The employee sues the manufacturer of the equipment, and the manufacturer turns around and sues you for contributory negligence. (Note: in these cases, the employee can still collect Workers’ Comp benefits and file a lawsuit against the third party.)

- **Loss of consortium.** An injured employee’s spouse files this type of lawsuit. They sue your business because their spouse is no longer able to “engage” in marital relations after their work injury.

- **Dual-capacity suits.** An employee can file this type of lawsuit against their employer when a product the employer manufactures is the cause of their injury. That means you would be liable as both an employer and as a manufacturer.

- **Consequential bodily injury.** If your employee’s family members suffer bodily injuries as a consequence of the employee’s injury, they could sue your business. For example, say your roofer’s wife suffered an aneurysm from high blood pressure / stress after he fell off a roof and became paralyzed. She could sue you for medical damages.
When these claims happen, Employer’s Liability Insurance can cover your business’s...

- Legal defense fees.
- Settlements.
- Damages or judgments.
- Other court costs.

Usually, you don’t pay extra for Employers’ Liability coverage, unless you live in a state where you have to purchase Workers’ Comp through the state’s fund. In those states (known as “monopolistic fund states”), you’ll need to add Employer’s Liability coverage to your plan.

(To learn more about monopolistic state funds, jump to Chapter 2.)

EMPLOYER’S LIABILITY INSURANCE TAKEAWAYS

Here are some final notes about Employer’s Liability Insurance:

- Be sure your limits are adequate.
- If you need extra Employer’s Liability coverage, consider purchasing Umbrella Liability Insurance. This cost-effective policy allows you to draw on more coverage when your EL limits have been reached.
- Unless you have operations in a monopolistic fund state, your Workers’ Comp policy should include Employer’s Liability coverage.
- If you do live in a monopolistic fund state, you can add Employer’s Liability Insurance to your plan.

Now that you know what to expect from your Workers’ Comp policy, let’s explore some of its nuances in more detail.
HOW WORKERS’ COMP INSURANCE WORKS

Because Workers’ Comp is a state-mandated policy, it’s extremely important that small-business owners understand not only their coverage obligations, but also how this coverage works. So let’s dig in. In this chapter, we’ll cover the following topics:

DEMYSTIFYING THE POLICY: THE INNER WORKINGS OF WORKERS’ COMP

WHEN DO SMALL BUSINESSES NEED WORKERS’ COMP?

HOW DOES WORKERS’ COMP PROTECT A BUSINESS?
DEMYSTIFYING THE POLICY: THE INNER WORKINGS OF WORKERS’ COMP

The mechanisms behind Workers’ Comp coverage are similar to those of other small business insurance policies. Take a look:

• **The contract.** Workers’ Comp is still an insurance policy, i.e., a contact between you and your insurance provider. It outlines the obligations of your insurer (such as the types of claims it covers) as well as your obligations (such as how much time you have to file a claim).

• **Coverage limit.** No insurance policies offer unlimited coverage. Your Workers’ Compensation Insurance policy will outline the maximum amount of money that your insurer can pay for insurance claims. This number changes depending on your business’s needs. However, a common limit among our clients is $500,000.

• **Premium.** This is the amount of money you agree to pay in exchange for your coverage benefits. Depending on the terms of your policy, you may pay this monthly, annually, or biannually. The cost of your premium is dependent on several factors, which we outline below.

A “LOSS COST” HELPS ESTIMATE THE COST OF WORK INJURY CLAIMS ASSOCIATED WITH YOUR INDUSTRY.

HOW ARE YOUR WORKMAN’S COMPENSATION INSURANCE PREMIUMS CALCULATED?

The National Council on Compensation Insurance (NCCI) and your state’s Compensation Insurance Rating Board influence what your Workman’s Compensation premiums cost. Both entities calculate rates based on your business’s industry classification.

Each type of industry has a certain “loss cost.” These estimate the cost of claims associated with businesses similar to yours. Businesses that tend to have more Workers’ Compensation Insurance claims end up paying higher rates for coverage; those with fewer claims usually pay less.

Sometimes, your employees fall into different classes based on their position in your business. For example, if you own a construction business, most of your workers likely fall under a classification that accounts for the occupational hazards of the job. But your bookkeeper, who is exposed to far less risk, might be classified under a clerical code. (These classification codes are discussed in more detail in the next section.)
These costs and your payroll are plugged into an equation to determine your insurance rate. If your premium is over a certain amount (for New York, it’s $5,000 or more a year), your insurance provider may adjust the premium based on your business’s specific claims history (rather than the history of businesses that share your classification code). Therefore, a clean claims history may reduce your insurance costs.

WHAT ARE WORKERS’ COMP CLASSIFICATION CODES?

Workers’ Comp class codes are three- or four-digit codes created by the NCCI, an organization that gathers data and prepares objective Workers’ Comp Insurance rates. In order to provide objective rates, the NCCI created a standard classification system for over 700 industries.

These 700+ codes not only distinguish different job duties performed by employees, they also denote the amount of risk and type of hazard each job or work environment may entail. Each class code assigns a certain “value” based on these conditions. Your insurance provider then uses these classifications to price your Workers’ Compensation Insurance.

Most employers have two or more class codes on their policy. For example, a construction business may have its roofers categorized under class code 5551. But it might also have a couple of employees classified under 8810, the code for clerical work.

As you might have guessed, the clerical work code denotes less work risk, and it usually costs less to insure these types of employees. On the other hand, construction work is almost always considered high-risk, and its code assigns a higher rate.

DO ALL STATES USE NCCI CLASS CODES?

Though most states do use the NCCI classification system, not all do. The following states use their own class codes:

- California.
- New Jersey.
- New York.
- Delaware.
- Pennsylvania.
- Texas (for certain classifications).
Additionally, some states create special classifications that may vary from the NCCI standard codes. The best way to ensure you’re using the correct codes is to check out your state’s Department of Insurance and look for information about Workers’ Compensation.

You can also purchase the Scopes Manual, the NCCI’s classification codebook, which includes each state’s special Workers’ Comp codes.

WHEN YOU NEED TO RECLASSIFY EMPLOYEES

When your employees take on new jobs or their job duties expand, they might need to be reclassified. Even a temporary shift in work duties may require a new or split code (usually used when employees perform dual roles). Sometimes small details can make a big difference in your rates and premium.

For example, if a clerical employee’s role now requires them to leave the office to make sales calls, they are exposed to a slew of new risks. Depending on how much time they spend away from the office, you may have to utilize a split code (one for clerical work and another for outside sales).

THE HIGH COST OF MISCLASSIFYING EMPLOYEES

Though it may be tempting to misclassify employees to reduce your Workers’ Comp premiums, know that this dirty deed will surely be caught in an annual premium audit. The audit (sometimes called the “payroll audit”) is used to give an accurate Workers’ Comp premium for your policy period.

If you do accidentally make a classification error, you’ll be responsible for paying the outstanding amount you owe once the premium has been recalculated. Not to mention, if you inadvertently misclassify employees, you may end up spending more on premiums than you need to.

For example, if you go through your nonprofit’s payroll and classify all of your employees under the same code, you could miss the chance to take advantage of other lower-risk codes. Though your annual audit will catch the error, you could save yourself some money upfront by taking the time to properly classify your employees from the start.

Also, be aware that classifying your employees as independent contractors to try to reduce your premiums is illegal. Depending on where you live, you could face a misdemeanor or felony charge (with possible jail time). Plus, you’ll have to pay serious fines and penalties.

In Missouri, for example, knowingly misclassifying employees as independent contractors means an employer could face penalties of $50 to $1,000 per day per misclassified worker and up to six months in jail per violation.
WHEN DO SMALL BUSINESSES NEED WORKERS’ COMP?

A recent survey found that 35 percent of small-business owners are more concerned about workplace safety issues than they are about any of their other risks (including professional and cyber liability).

Perhaps this fear stems from the realization that employees are a small business’s most valuable asset. Not to mention, employee injuries can lead to an avalanche of medical bills and lost productivity. All it takes is a small slip, trip, or fall to put your employees out of commission.

Consider the following stats, courtesy of the U.S. Bureau of Labor Statistics:

- **Slips, trips, and falls** account for 15 percent of fatal workplace accidents and 25 percent of all nonfatal workplace injuries.
- **Transportation incidents** cause 41 percent of work injuries.
- **Equipment malfunctions** account for 16 percent of incidents.

Between all these risks that put your employees in jeopardy, it’s no wonder that small-business owners are concerned about workplace safety. Luckily, that’s why Workers’ Compensation Insurance was created – to help employers address the cost of injured workers.

Though employers are wise to carry the coverage, it’s not just a savvy business move. Most states require employers to have a Workman’s Comp policy in force once they hire employees.

The laws vary depending on where you live, but the majority of states mandate that you cover any full- or part-time employee.

Some exceptions apply. For example, Texas is the only state where Workers’ Comp is optional. Other states, such as Florida and South Carolina, require that you carry coverage once you have four employees. Many states exempt farm workers, domestic employees, and seasonal or casual workers from the mandate.
In short, when you need Workers’ Comp is variable. We suggest that you…

- **Check your state’s Workers’ Comp laws.** You’ll need to find out your legal obligations, including which employees you must cover and how much coverage you need.

- **Err on the side of caution.** Even if you don’t have to offer Workers’ Comp benefits, you could still be held liable for your employees’ occupational injuries. Workers’ Comp coverage allows you to look after your employees and help avoid a lawsuit against your business.

If you have more questions about your Workers’ Comp options, feel free to talk to an insureon agent. They can help you make sense of your state’s laws and connect you with a policy that can fulfill your legal obligations.

WHERE DO SMALL BUSINESSES GET WORKERS’ COMPENSATION INSURANCE?

There are two ways to purchase Workers’ Compensation Insurance:

- **Through a private insurer.** At insureon, we specialize in helping small-business owners find policies tailored to the needs of their business. We’ve sold Workers’ Compensation Insurance to a variety of different businesses across the country. All you need to do is fill out our online insurance application to receive free quotes via email.

- **Through your state’s Workers’ Compensation Insurance fund.** Not all states have Workers’ Compensation Insurance funds. (We go into more detail about this below.) But if you live in a state that does, you’ll either be required to purchase insurance through the state, or you’ll have a choice between the state fund and a private insurer.

As you can see, your purchasing options are dependent on your state’s laws. Below, we discuss the different types of state funds in more detail.

WHAT IS A STATE COMPENSATION INSURANCE FUND?

So you’re on the market for Workers’ Compensation Insurance. Depending on where you live, you may have a sea of options – or
you may only be allowed to purchase coverage through the state’s insurance fund.

About 20 states have their own competitive Workers’ Comp fund, which means you can purchase from a private insurance provider or through the state program. According to A.M. Best, state funds write approximately 25 percent of all Workers’ Compensation Insurance policies. California’s and New York’s funds are the sixth and seventh largest writers in the United States, respectively.

COMPETITIVE STATE-RUN WORKERS’ COMP FUNDS

The state’s department of labor, commerce, or industrial relations usually operates Workers’ Comp funds. Though these funds are often considered “insurers of last resort,” many of these state systems are A-rated insurance providers (meaning they are financially solvent).

Small-business owners are guaranteed a policy from these funds if they can’t receive coverage from private insurers (whose rates are typically more competitive). But state funds can compete in private markets, too. Some funds are fully independent, while others opt for the nonprofit status and tax breaks that come with it. Some nonprofit funds return surplus money to policyholders after paying off claims and operating costs.

Currently, there are 22 states with state-run Workers’ Comp funds:

- Arizona State Compensation Fund.
- California State Compensation Insurance Fund.
- Colorado Pinnacol Assurance.
- Hawaii Employers’ Mutual Insurance Company.
- Idaho State Insurance Fund.
- Kentucky Employers’ Mutual Insurance Authority.
- Louisiana Workers’ Compensation Corp.
- Maine Employers’ Mutual Insurance Co.
- Maryland Chesapeake Employers’ Insurance.
- Minnesota State Fund Mutual Insurance Company.
- Missouri Employers Mutual Insurance Company.
- Montana State Fund.
- New Mexico Mutual.
- New York State Insurance Fund.
- CompSource Oklahoma.
- Oregon SAIF Corporation.
- Pennsylvania State Workers’ Insurance Fund.
- Rhode Island Beacon Mutual Insurance Co.
- South Carolina State Accident Fund.
- Texas Mutual Insurance Company.
- Utah Workers’ Compensation Fund.
- West Virginia BrickStreet Insurance.

Note: most of these funds only write Workers’ Compensation polices for employers in their home state. If a claim is made on your state-provided Workers’ Comp plan, benefits are paid out by the state department responsible for administering the fund.
MONOPOLISTIC WORKERS’ COMP FUNDS

If you live in Ohio, North Dakota, Washington, or Wyoming, know that your state’s laws require you to purchase Workers’ Compensation Insurance from their designated programs. In other words, you can’t purchase insurance through private companies.

Employers who live in these four states can purchase coverage from their respective funds:

- Ohio Bureau of Workers’ Compensation.
- North Dakota Workplace Safety and Insurance.
- Washington Department of Labor and Industries.
- Wyoming Department of Workforce Services’ Workers’ Compensation.

Monopolistic programs can run into solvency issues because they don’t necessarily have to maintain surplus funds as private companies do. Instead, these programs rely on a “pay as you go” system because they can fall back on taxpayers’ money and other state resources if the pool runs low.

Here are a few other issues you may run into when you must purchase Workers’ Comp from a monopolistic state fund:

- **Red tape.** Most claims are handled by the state agencies that administer the Workers’ Comp coverage, which means the process may be time-consuming.

- **Customer service problems.** State agencies must process a high volume of claims, which means employers and workers can expect longer waits.

- **Lack of standardization.** In monopolistic states, employee work classification codes or modification factors might not conform to the national norms.

- **Lack of coverage for out-of-state workers.** If you need to cover employees in other states, you may need to purchase a separate policy. This is true for all Workers’ Comp policies, though, as they are usually written for a specific state.

- **No Employer’s Liability Insurance.** Workers’ Comp policies issued by monopolistic state funds don’t include Employer’s Liability coverage. You can usually purchase the policy separately or add it on as an endorsement (called “Stop Gap” coverage) to your General Liability policy.
WHAT ARE YOUR WORKERS’ COMPENSATION INSURANCE RIGHTS & RESPONSIBILITIES?

As we’ve mentioned, employers must follow state laws when they insure employees with Workers’ Compensation coverage. But Workers’ Comp laws entitle employers to certain rights, too.

Because of state Workers’ Comp laws, your responsibilities and rights may vary depending on where you live. For the sake of brevity, we’ll outline the most common particulars below, starting with your Workman’s Comp responsibilities:

- **Provide coverage for eligible employees.** Most states require that you carry Workers’ Compensation coverage as soon as you hire eligible employees. A state’s definition of “eligible employee” may vary, so be sure you understand your local regulations.

- **Post notice.** Your state laws may demand that you “post notice” of your insurance coverage where employees are likely to see it, such as a break room. You must also provide this information to new hires. Additionally, most states require that notices display specific information (e.g., your policy number and your insurer’s contact information).

- **Keep accurate records.** Employers must keep accurate payroll and employee classification records. You must also document all workplace injuries and illnesses – even if the claims were dropped. Your local laws outline the kinds of records you need to keep and for how long.

- **Be transparent.** Your state regulations may permit your local Workers’ Compensation Board to access all your records upon request.

- **Comply with claim filing procedures.** Each state has a slightly different filing procedure that employers must follow. In general, you must be sure to use the proper claims forms, provide necessary and accurate claims information, and file the paperwork according to your state’s deadlines. Your insurance provider usually supplies you with these forms.
Your state realizes that unfounded Workers’ Compensation claims would have a negative effect on your business. That’s why your local regulations detail your rights, too. Generally, you have the right to...

- **Contest a claim.** If you feel that an employee has filed an unfounded claim, you can ask your insurance company to contest it. However, your insurance provider does not have to contest the claim just because you requested it.

- **Access to claims information.** State law usually allows employers to attend claims hearings and access a claim’s case file.

- **Report fraud.** If an employer suspects fraud, they can report it to the proper authorities.

- **Appeal a claims decision.** After you receive a notice of decision, you can file to have that decision reviewed and appealed. However, if you do not have reasonable foundations for doing so, you could be penalized.

- **Secure a reliable workforce.** Your state laws usually protect you when you decide to terminate an employee for filing a fraudulent Workers’ Compensation Insurance claim – as long as the termination is not “retaliatory.”

To get an idea of a state’s specific regulations, check out New York’s Employer’s Handbook. And now that you have an understanding of your responsibilities and rights, let’s take a look at how the claims process works.
HOW DOES WORKERS’ COMP PROTECT A BUSINESS?

Did you know that in 2011, the most disabling workplace injuries and illnesses amounted to $55.4 billion in direct U.S. Workers’ Compensation expenses? The 2013 Liberty Mutual Workplace Safety Index broke down its findings into the most common and costly workplace ailments (ranked from most to least expensive):

1. Overexertion involving outside source ($14.2 billion).
2. Falls on the same level ($8.6 billion).
3. Struck by object or equipment ($5.6 billion).
4. Falls to lower level ($4.9 billion).
5. Other exertions or bodily reactions ($4.2 billion).
6. Roadway incidents involving motorized land vehicles ($2.4 billion).
7. Slip or trip without fall ($2.1 billion).
8. Repetitive motions involving micro-tasks ($2 billion).
9. Struck against object or equipment ($1.6 billion).
10. Caught in / compressed by equipment or objects ($1.6 billion).

It makes you wonder: could your business survive these costs if it didn’t have Workers’ Compensation Insurance to fall back on? For most small-business owners, the answer would be a swift and resounding “no.”

IN 2011, THE MOST DISABLING WORKPLACE INJURIES AND ILLNESSES TOTALED $55.4 BILLION IN DIRECT WORKERS’ COMPENSATION COSTS.

After all, the average cost of a 2010 lost-work claim was $65,000 in California. (Read more in the Sacramento Business Journal’s article.) That number doesn’t even include medical costs.

But if you need a few more reasons to justify Workers’ Compensation Insurance premiums, keep reading. We’ll examine how the coverage protects your employees, your business, and your bottom line.

IN 2010, THE AVERAGE COST OF A CALIFORNIA LOST-WORK CLAIM WAS $65,000.
WHY WORKERS’ COMP MAKES A DIFFERENCE

Occupational injuries are more than just a financial burden. They can hurt employee morale, put your operations behind schedule, and foster an unfriendly work environment.

Here are some ways Workers’ Compensation Insurance can help manage these side effects of workplace injuries and illnesses:

1. **Protecting employees from paying for work ailments.** Imagine how hard it would be to retain your business’s top talent if accepting a position meant they’d also accept any physical risks that come with the job. Most people look at jobs as a means of financial security – not a source for potential economic setbacks. Having adequate occupational injury coverage helps you attract employees and keep your team.

2. **Instilling trust between worker & employer.** When your employees know they can count on your company to help them when an unexpected work injury threatens their health, you build trust between your business and its workforce. Other employees will see how well your company cared for an injured worker, which builds morale – even in the aftermath of a tragic accident.

3. **Preventing business bankruptcy when injuries / illnesses happen.** Workplace accidents are costly for employers, too. In fact, lost productivity from workplace injuries and illnesses totals $60 billion a year. In 2004, approximately 120 million workdays were lost, thanks to on-the-job deaths and injuries. (To learn more about these stats, read The American Society of Safety Engineers’ article Impact of Accident Costs on Businesses.) And what if you had to pay your employees’ medical bills out of pocket, too? According to the National Council on Compensation Insurance, the average medical-only claim cost about $28,000. If you’re like most small-business owners, you may not have that extra money lying around when a sudden slip-and-fall accident lands your employee in the hospital.

4. **Promoting a safe work environment.** Carrying Workers’ Comp is a given for most small businesses with employees.
But every time a claim is made on your policy, your premiums may increase. Because you can’t forgo coverage, but you also don’t want your rates to skyrocket, you have plenty of incentive to create a safer work environment for your employees. This might mean implementing safety-training programs for your subcontractors or purchasing ergonomic gear for your copywriters.

5. **Ensuring your business complies with state laws.** If you live in any state other than Texas, carrying Workers’ Comp isn’t just a wise business move—it’s also your legal obligation as an employer.

**WHAT HAPPENS IF I DON’T HAVE WORKERS’ COMPENSATION INSURANCE?**

When a small-business owner decides not to carry Workers’ Compensation Insurance, they pay the price. Not only are they fined, but also they are still responsible for the costs of workplace injuries and illnesses. Plus, they might have to foot the litigation expenses if they are sued over the accident.

Let’s take a look at these expenses in more detail.

**WORKERS’ COMPENSATION INSURANCE FINES IN NEW YORK**

As you know, every state (except for Texas) requires that employers carry Workers’ Compensation Insurance for their employees.

But because each state’s laws are different, the fines for violating these laws vary, too.

To give you an idea of the nature and cost of these fines, we’ll look specifically at one state: New York. Here is a selection of Workers’ Comp noncompliance fines, as outlined in the state’s **Employer’s Handbook**:

- **Not carrying coverage.** This is considered a criminal offense in New York. If you have five or fewer employees and fail to secure coverage within a 12-month period, your fine will fall between $1,000 and $5,000. If you employ more than five employees, your fine will be between $5,000 and $50,000. It’s also a felony, so you could be on the hook for “other penalties otherwise provided by the law.”

- **Getting busted again.** If you’ve already been caught once without Workers’ Compensation Insurance and get busted again, you’re looking at a class D felony with a fine between $10,000 and $50,000.

- **Misrepresentation.** This offense deals with inaccurate recordkeeping, such as misrepresenting how many people you employ, their wages, their classifications, or their workplace injuries and illnesses. Basically, any inaccuracies that could affect your Workers’ Compensation premiums are considered “misrepresentation.” For a civil offense, the fine is $2,000 for every 10 days of noncompliance or two times the cost of compensation. For a criminal offense, the fine falls between $1,000 and $50,000.

- **Not maintaining an accurate payroll.** If you don’t keep accurate records of your employees, their classifications, their wages,
and their accidents as outlined by the law, you are subject to a fine between $5,000 and $10,000. This also goes for employers who don’t provide records when asked by authorities. If you’ve already been busted once for this and get caught again in the next 10 years, you’ll be slapped with a class E felony and a fine between $10,000 and $25,000.

Additionally, New York employers who fail to secure coverage are responsible for all legal expenses for defending themselves against Workers’ Comp claims (a cost usually covered by Workers’ Comp policies). These employers are also responsible for paying all medical and wage benefits that are awarded to injured employees. There is no cap to these charges, as you’ll learn in the next section.

THE HIGH COST OF MEDICAL AND LEGAL BILLS FOR SMALL-BUSINESS OWNERS WITHOUT WORKERS’ COMP

Without a Workers’ Comp policy, chances are you’ll end up paying for your employees’ occupational injuries in some form. For starters, a judge will probably find you liable for your employees’ medical and wage replacement expenses. You’ll also have to pay your legal defense costs all by yourself.

To paint a picture of these staggering expenses, take a look at the following numbers:

• $2,000 to $3,000: Average cost of legal fees (not including defense costs) for a misdemeanor trial (pulled from Nolo.com).

• $50,000 to $100,000: Average cost of civil case litigation (without appeals or the cost of judgment) for small businesses (pulled from SBA.gov).

• $87,435: Average cost of a lost-time claim in New York in 2009 (pulled from Oliver Wyman).

• $1,037: Average cost of a medical-only claim in New York in 2009 (Oliver Wyman).

• $27,933: Average total Workers’ Comp claim cost in New York in 2008 (Oliver Wyman).

As a final example, let’s imagine that you run a business in New York. An employee files a Workers’ Compensation claim for an occupational accident only to find out you don’t have coverage.

You have seven employees, which translates to $15,000 in fines for not carrying coverage. Your employee sues for medical expenses and lost time. All told, your trial costs $60,000 and the judge awards the injured employee $28,000 for medical and lost-wage benefits. Your total out-of-pocket cost? $103,000.

That’s a lot of money for a small business. While those costs would be handled by a Workers’ Comp policy, an even better scenario would be to prevent claims from happening in the first place. Read on for tips on minimizing your exposure to workplace injuries and accidents.
CHAPTER 3

EVERYTHING YOU NEED TO KNOW ABOUT WORKERS’ COMP CLAIMS
EVERYTHING YOU NEED TO KNOW ABOUT WORKERS’ COMP CLAIMS

No employer wants to hear that their employee has been injured or made sick by work. But sometimes, accidents happen. This chapter outlines what small-business owners need to know about handling Workers’ Compensation Insurance claims. Read on for details on the following:

WHAT CONSTITUTES A WORKERS’ COMPENSATION CLAIM?

HOW DO I HANDLE A WORKERS’ COMP CLAIM?

HOW TO PREVENT WORKERS’ COMP CLAIMS

DO I NEED A WORKERS’ COMP LAWYER?
WHAT CONSTITUTES A WORKERS’ COMPENSATION CLAIM?

When an employee is injured on the job or develops an occupational illness, they have two options: sue the employer (in some cases) or file a Workers’ Compensation claim. Filing a claim means the employee can receive medical coverage, wage replacement, and other benefits. To access these benefits, both the employee and employer must follow certain steps to ensure the injury is compensable.

The claims-filing process can be a bit complex because there are several parties involved: the employee, the employer, the insurance company, doctors, and the state’s Workers’ Compensation Board, to name a few. Read on for more details about how this process works and how statutes of limitations affect that process.

WHEN TO FILE A WORKERS’ COMP CLAIM

Your employee is eligible for Workers’ Comp benefits so long as the following statements are true:

- The injured worker is an employee of your small business (not an independent contractor).
- You, the employer, have Workers’ Comp Insurance.
- The employee was hurt as a result of job-related duties.

Most injuries that occur on the job or fall within the scope of employment can be covered by Workers’ Comp. This includes occupational accidents, diseases, trauma injuries, or illnesses caused by exposure to work activities or chemicals.

On the other hand, Workers’ Comp generally doesn’t cover...

- Stress or other psychiatric injuries.
- Self-inflicted injuries.
- Injuries caused by fighting or horseplay.
- Injuries that happen on the commute to or from work (aka the “Coming and Going rule”).
- Injuries incurred while committing a crime, while under the influence of drugs or alcohol, or while violating company policies.
As soon as an employee suffers a covered occupational injury, the clock is ticking. Workers’ Comp claims are time-sensitive, which means your employee has a limited number of days to report the incident and collect benefits.

Typically, as soon as the worker suffers an occupational injury, they should report it to you. If they delay filing the report, your Workers’ Compensation Insurance provider could potentially deny your employee their compensation benefits. The delay may also give your carrier the impression that the claim isn’t legitimate.

For cumulative work injuries or illnesses, the area gets a little grayer. For example, say a technical writer develops carpal tunnel syndrome over time. Generally, the clock starts ticking on this claim when:

- The writer took time off work because of the injury.
- They knew that the injury was caused by their work.

WORKERS’ COMPENSATION STATUTE OF LIMITATIONS

Different states also have different statutes of limitations for filing Workman’s Comp claims. That means depending on where you live, your employees will have a specific deadline for filing a claim (which may vary based on the type of injury). For example, in Maryland, the statute of limitations for filing a Workers’ Comp claim is two years from the date of the injury.

Another deadline is the amount of time an employee has to notify their employer about the injury. In most cases, they must notify you within 30 to 45 days of their injury. For example, in Missouri, employees who fail to notify their employer within 30 days of the injury can jeopardize their ability to receive Workers’ Compensation benefits.

The notification can be formal (e.g., a letter or email detailing the work injury) or informal (e.g., an employee mentioning that their wrist hurts from typing all day). To err on the side of caution, always ask your hurt employee to submit a written notification of their injury, detailing the nature of the ailment and when, how, and where it occurred.
WHAT HAPPENS WHEN AN EMPLOYEE FILES FOR WORKERS’ COMP?

When an employee suffers a work injury or illness, it is their responsibility to notify you, their employer, as soon as possible. But as we discussed in the previous section, their benefits are time-sensitive. Therefore, you should be ready to supply injured workers with the following:

- **Access to an approved medical practitioner.** Except in the event of an emergency, a medical professional approved by your state’s Workers’ Compensation Board must treat all workplace injuries and illnesses. Once your employee reports an injury, refer them to an approved healthcare provider. (If an employee goes to an out-of-network healthcare professional, they may not receive coverage.) The approved doctor will fill out the appropriate paperwork to file with the claim. If granted compensation, your employee may be required to get their prescriptions filled at an approved pharmacy.

- **Information about your Workers’ Comp policy.** In a pamphlet, outline the name of your insurance provider and details about your policy. This includes your employees’ rights, the types of injuries / illnesses covered by your policy, and the benefits your policy offers.

- **A claims form.** When an employee notifies you of an eligible injury, you should send them the appropriate claims form within the next 24 hours. Your state board can provide you with more information about the types of forms. As an example, take a look at the U.S. Department of Labor’s Notice of Occupational Disease and Claim for Compensation form.

- **Compensation for minor injuries.** If the injury in question is minor (as defined by your state’s regulations), employers can choose to pay for treatment out of pocket and avoid filing a claim with their insurance company.

After an employee notifies you of an injury or illness, they then receive their first medical treatment by an approved healthcare provider who fills out a medical report. This report must be sent to all relevant parties (i.e., you, your insurer, the appropriate state office, and the employee). Meanwhile, the employee may file their claim with the appropriate state board.

From there, it’s up to you to file the claim with your insurance provider and verify that the case is properly investigated, documented, and reported. Your insurer then decides whether the employee is eligible for benefits. If the employee’s injury / illness is covered, payments begin.

To make sure you understand all the details of your state’s system, contact your state’s employment department or the U.S. Department of Labor’s Office of Workers’ Compensation Programs page.
WHY EMPLOYERS MUST FOLLOW PROPER REPORTING PROCEDURES

As we’ve mentioned, each state has a slightly different way of handling Workers’ Compensation Insurance claims. But following the correct procedure – and supplying employees with the proper information so that they may do the same – is of utmost importance. Why? Because employers can be fined for Workers’ Comp transgressions, such as...

- Not carrying Workers’ Compensation Insurance.
- Not supplying employees with accurate information.
- Failing to report injuries or file claims on time.
- Misclassifying employees and / or injuries.
- Influencing a medical practitioner’s diagnosis.
- Appealing a claim without probable cause.

Need a real-world example? Check out how much Jim Carrey was fined for allegedly violating New York’s Workers’ Compensation laws (though he was later cleared of wrongdoing).
HOW DO I HANDLE A WORKERS’ COMP CLAIM?

Workers’ Compensation Insurance claims often make a small-business owner’s blood run cold because they could mean one of two things:

- An employee has been made hurt or sick by their job.
- Someone might be trying to take advantage of the system.

No one wants to see their employees suffer. And no employer wants one questionable claim to open the floodgates for more questionable claims. Earlier this year, The Workers Comp Resource Center discussed this fear of injury / illness claims and explained why effective communication is the best way to handle any sort of Workers’ Compensation issues.

We have to agree. Below, we dispel a few misconceptions about Workers’ Comp claims and explain why communication is key.

WHY YOU SHOULD ALWAYS TALK TO YOUR EMPLOYEES ABOUT WORKMAN’S COMP

According to the Workers Comp Resource Center, “88 percent of employers and others involved in the claim process wrongly thought that communicating with employees caused them to file a Workers’ Comp claim.”

In fact, the opposite is true. The article explains that injured workers often hire lawyers because they can’t get adequate information about their benefits from their employers – not because they wish to swindle their boss. The article suggests that if employers opened a strong line of communication about Workers’ Comp, employees might not feel the need to hire lawyers.

Below, we offer some tips on how to keep that line of communication open.
TIPS FOR COMMUNICATING WITH EMPLOYEES ABOUT WORKMAN’S COMP

So you want to be honest and open with your employees about Workers’ Compensation Insurance. This dialogue should start from the moment you decide to hire.

Though most states require you to supply the following information in event of a claim, it’s never a bad idea to get a jumpstart:

• **Offer informational brochures.** When you hire a new employee, include a brochure in your employment packet that explains the benefits of your Workers’ Compensation Insurance. It should detail the types of covered injuries and diseases and a breakdown of how the benefits are received. You can also explain the claims process and give a contact number that the employee can call with questions. Do note: in the event of a claim, you may be required to supply your employee with your insurance policy number and your provider’s contact information.

• **Conduct regular safety training.** Your business should hold regular safety training sessions with employees that answer questions such as, “How can I prevent workplace injuries?” and “What do I do in the event of an accident?” Reinforcing this protocol helps ensure the best possible outcomes after an accident. And remember: it’s never a good idea to underestimate the risks of your workplace. Do your accountants know how to recognize the signs of carpal tunnel? Are your copywriters aware of proper posture and the ergonomic devices available to reduce back problems?

• **Foster formal and informal communication.** Make sure that your employees have easy access to the Workers’ Compensation information they need. For instance, you may appoint a person to handle all claims communication and direct inquiries to the proper source. Also, don’t avoid employees after they suffer an occupational injury or illness. A phone call or get-well card from an employer can go a long way toward maintaining a productive working relationship. Experts recommend more formal contact during the recovery process, such as checking in with an injured employee once a week or after medical appointments.

During all of your communication, be sure to emphasize how important it is that your employees notify you of an injury or illness as soon as possible. All states have reporting deadlines, and if they wait too long to report, they may not be able to receive benefits. If you fail to supply the information your employees need to report an injury in a timely fashion, your business could be fined.
DO I NEED A WORKERS’ COMPENSATION LAWYER?

You may be wondering whether or not you need a Workers’ Compensation lawyer to protect your business’s interests throughout the claims process. After all, there is a lot of money at stake, and a single claim involves several entities.

The good news is that small-business owners rarely need to hire a lawyer for Workers’ Compensation claims because claims rarely turn into lawsuits. Usually, your injured employee is simply exercising their right to compensation, and your insurance provider will decide whether they are eligible for benefits.

However, it’s not uncommon for employees to hire Workers’ Compensation lawyers to help them through the claims process. And of course, claims don’t always unfold so smoothly.

WHAT DOES A WORKERS’ COMPENSATION LAWYER DO?

Though employees don’t necessarily need a lawyer when filing a claim for Workers’ Comp benefits, they may feel more comfortable hiring one if...

- They don’t understand how the claims process works.
- They want to make absolutely sure they are filing correctly.

Workers’ Compensation lawyers usually help employees, not employers.

- They feel a lawyer can help them prepare their case better than they could alone.

Speaking openly to employees about their Workers’ Compensation benefits may reduce the likelihood that they will involve lawyers in a claim. But even if they do, filing for Workers’ Comp benefits is much different than negotiating a settlement, defending a person in court, and other areas of a lawyer’s expertise. Workers’ Compensation lawyers help employees...

- Navigate Workers’ Compensation laws. As you know, every rule must be followed in order to be eligible for benefits. Employees may feel more comfortable working with a local lawyer who thoroughly understands the state’s law.
• **Build their case.** A lawyer will be able to analyze the details of a particular case to make sure an employee receives proper benefits. They might look over medical records to determine the extent of the injury in question. They might also look at your business’s records to see if you’ve had any previous safety violations.

• **Determine a rightful benefit.** Lawyers help employees assess the cost of their injury or illness to determine how much money they should receive (based on your state’s law). In order to do so, they will consider the employee’s medical costs, rehabilitation costs, and type of disability.

Lawyers can also advise employees after your insurance provider decides whether or not to grant the employee benefits. If the claim is denied or the payout is unsatisfactory, the employee’s lawyer may encourage them to appeal the decision. In this case, you might need a lawyer of your own.

• **Your employee rejects their right to benefits.** When employees file a Workers’ Comp claim, they are no longer able to sue your business over their occupational injuries. However, they can reject these benefits from the outset and sue your business instead. (This is where your Employer’s Liability Insurance kicks in.)

• **You don’t carry Workers’ Compensation Insurance.** If you decide to break the law and forgo Workers’ Compensation Insurance, you’ll definitely need a lawyer to represent you when OSHA comes knocking at your door. If an employee is injured and you don’t carry proper insurance, you can be found liable for penalties and the cost of the lawsuit. Additionally, you probably won’t be able to use certain defenses in your case.

Now that you understand some of the finer points of Workers’ Comp claims, let’s explore how to prevent workplace accidents from happening.

**WHEN DO SMALL-BUSINESS OWNERS NEED A WORKERS’ COMP LAWYER?**

Despite the fact that the majority of Workers’ Compensation Insurance claims can be resolved without the help of an attorney, there are a couple instances when small-business owners benefit from legal counsel:

• **Your employee appeals your insurer’s claim decision.** Usually this happens when a benefits claim is denied. If employees are dissatisfied with the claim decision, they can appeal. In this case, your insurance provider will likely appoint you an attorney.
HOW TO PREVENT WORKERS’ COMP CLAIMS

It’s no secret that Workers’ Compensation Insurance claims cost employers big time. According to the National Council on Compensation Insurance’s most recent numbers, the average indemnity claim for 2011 was predicted to reach $223,000 (which includes both medical and lost-time costs).

And while some occupational injuries and diseases will inevitably fall outside your realm of control, you can beef up your risk management strategies to prevent as many as you can. Below, we offer some tips on how to make your workplace safer. But first, let’s take a look at some of the most high-risk occupations.

SMALL-BUSINESS OWNERS: DO YOU KNOW YOUR WORKPLACE RISKS?

Every workplace has its risks, but some are more hazardous than others. Take a look at the occupations that had the most Workers’ Comp claims in 2012 (via the Insurance Information Institute):

1. Laborers (non-construction) – 60,640 incidents.
2. Drivers (heavy trucks) – 40,440 incidents.
5. Drivers (light trucks) – 24,620 incidents.

6. Retail salespersons – 24,520 incidents.
8. Janitors and cleaners – 21,970 incidents.

Even if you don’t employ one of the above workers, you can still be on the hook for Workers’ Compensation claims. After all, the most common occupational injuries can happen to anyone. The Bureau of Labor Statistics’ Injuries, Illnesses, and Fatalities page reports that of the 2,976,400 non-fatal workplace incidents in 2012…

• 340,900 involved sprains, strains, or tears.
• 219,630 involved slips, trips, and falls.
• 177,580 involved back injuries.

Just because you and your employees work in a relatively safe environment doesn’t mean you are without risk. Read on to learn three ways that all small-business owners can reduce the risk of occupational hazards.
3 TIPS TO HELP BUSINESS OWNERS REDUCE WORKERS’ COMP RISKS

No matter your line of work, the following three tips can help keep you and your employees healthy and productive:

1. HIRE SMART.

One of the best ways to prevent workplace injuries and illnesses is to properly screen new hires. This may seem like a no-brainer, but verifying that your potential employees have the educational background and/or physical acumen to do the job right can go a long way toward minimizing Workers’ Compensation Insurance claims.

So, if the position you are trying to fill requires a certain amount of physical labor, be sure to include a functional capacity physical evaluation (which can be performed at an occupational therapy clinic). Make sure the candidate has enough experience to do the job safely and effectively, especially if the open post requires...

• Handling dangerous equipment, including heavy trucks.

• Exposure to hazardous materials, including pesticides, chemical solvents, etc.

• Performing specialized tasks, whether that’s rewiring a house or drawing blood.

• Repetitive or strenuous physical activity, whether that’s eight hours a day of typing or rolling sod.

And if you have a choice between a candidate with a varied skill set and one that only meets the requirements of the job, consider the former. In the event of an occupational injury, these employees are more likely to find another job in a different line of work, which could lower the overall cost of a claim.

Note: There is a difference between “hiring smart” and actions that could lead to discrimination charges. For example, if your employees must be physically able to perform certain tasks, limit your testing to new hires and employees that return after an extended leave of absence. Testing current employees, especially older ones, could result in claims of discrimination.

2. COMMUNICATE FREQUENTLY & EFFECTIVELY.

Don’t underestimate the power of effective communication. Many occupational injuries and illnesses can be prevented through an established communication system. For example, employers in the transportation sector might train their dispatch team in safety and company procedure.

For other industries, creating written protocol for the different tasks associated with a job can go a long way toward reducing accidents. These safety policies should also outline what to do when something goes wrong. Employees should be trained and given a copy of these procedures. You may even pair certain tasks with checklists that must be turned in to a supervisor once the job is complete.
Finally, try to create a work culture that promotes active communication. In this type of environment, a computer programmer’s occasional wrist pain could be treated before it turns into full-blown carpal tunnel syndrome that necessitates surgery and several days off work.

3. GIVE PROPER SAFETY & HEALTH TRAINING.

Most small-business owners probably include some kind of safety training for their new hires, but safety awareness is something to be cultivated over the course of a career. In other words, you should meet with employees regularly to discuss safety – even if you only employ three or four workers. You can also encourage (or require) that employees attend industry safety workshops and classes, which are often held by professional organizations in your field.

Think about your current employees. Could they…

• **Identify the top three occupational hazards** in their line of work?
• **Detail how they actively prevent accidents from happening?**
• **Explain the proper procedure** for handling workplace accidents?

You can also provide your workers with information about a healthy lifestyle – and then practice what you preach. Allow your clerical staff to take a short walk after lunch. Stock the break room with healthy snacks. Invite a healthcare professional to speak with your staff about ways to reduce stress or balance their work-life routines. A healthy workforce is less likely to sustain injuries and more likely to recover quickly when they do.
WORKERS’ COMPENSATION VS. HEALTH INSURANCE

Workers’ Compensation Insurance and health insurance are different things, but where one coverage ends and the other begins can be a bit confusing. This is especially true when you are an independent contractor or a small-business owner trying to determine whether or not to offer health insurance (particularly disability benefits) to employees. This chapter discusses the similarities and differences between the two types of coverage. This chapter covers the following topics:

WHAT’S THE DIFFERENCE BETWEEN WORKERS’ COMP AND DISABILITY INSURANCE?

FUNERAL INSURANCE, ACCIDENT INSURANCE, & CRITICAL ILLNESS INSURANCE

DO FREELANCERS & INDEPENDENT CONTRACTORS NEED WORKERS’ COMP OR HEALTH INSURANCE?
WHAT’S THE DIFFERENCE BETWEEN WORKERS’ COMP AND DISABILITY INSURANCE?

Before we begin, let’s take a moment to review a few key terms:

- **Workers’ Compensation Insurance.** A type of business insurance that pays for an employee’s workplace injury or illness. As you know, this coverage is regulated by the state, and employers are often required to carry coverage, no matter the size of their workforce.

- **Health Insurance.** A type of insurance that benefits individuals by helping them pay for medical expenses not related to work. As of 2014, almost all Americans are required to carry health insurance. Many employers offer health insurance to their employees as part of a benefits package, but individuals can purchase plans on their own.

- **Disability Insurance.** A type of health insurance that helps pay an individual’s lost income if they become disabled and are unable to work. In most states, short- and long-term Disability insurance policies are voluntary. However, a few states, such as California, have state disability programs that offer mandatory coverage to all eligible employees. Disability insurance compensates employees for non-work injuries that prevent them from working.

As you may have gathered from these definitions, one major difference between the two coverages is that Workers’ Compensation Insurance applies only to workplace injuries, while health insurance (and therefore disability insurance) only applies to non-work injuries. In fact, most health insurance providers exclude coverage for injuries and illnesses that are covered by Workers’ Compensation Insurance.

Additionally, Workers’ Compensation Insurance is often a mandatory coverage for employers, while disability insurance is not. Even if you work in a state with a statuary disability program, you don’t have to pay into it on behalf of your employees (unless you want to, of course). Employees make tax-deductible contributions to fund these programs unless their employer offers to cover the cost as a benefit.
DOES THE AFFORDABLE CARE ACT (OBAMACARE) REQUIRE EMPLOYERS TO OFFER HEALTH INSURANCE TO EMPLOYEES?

Not exactly. While the Affordable Care Act (Obamacare) requires individuals to carry health insurance coverage, it does not require businesses to offer coverage to their employees. However, larger businesses may be required to make an Employer Shared Responsibility Payment (ESRP). For this requirement to kick in, your business must…

• Employ 50 or more full-time employees.
• Fail to offer health insurance that meets the “minimum essential coverage” requirements.

If you have fewer than 50 full-time employees or already offer adequate health insurance, you do not have to make any payments to the government. You can learn more by reading “Do I Have to Offer Health Insurance to My Employees?” on HealthCare.gov.

Note: Disability insurance is not part of the minimum essential coverage requirements outlined by the ACA. Therefore, no business is ever legally obligated to offer this additional health insurance coverage to employees.

DOES OBAMACARE AFFECT WORKERS’ COMP REQUIREMENTS?

Though Workers’ Comp may seem like health insurance for employees (albeit only for workplace ailments), it’s important to know the difference – especially now that the Affordable Care Act is in place.

THE SHORT ANSWER: OBAMACARE DOES NOT DIRECTLY AFFECT WORKERS’ COMP

Obamacare only affects health insurance, which, as we learned in the previous section, only provides coverage for non-work injuries and illnesses. This is why the healthcare reform stipulations have no direct impact on Workers’ Compensation Insurance.

The ACA does not make any changes to Workers’ Comp programs – those are still controlled and run by the state.

But now that everyone is required to carry health coverage, people are starting to wonder if health insurance will pay for workplace injuries and illnesses. After all, freelancers, independent contractors, and other small-business owners are typically excluded from the mandates of state Workers’ Comp laws and therefore lack coverage.

IF YOU EMPLOY 50 OR MORE FULL-TIME EMPLOYEES AND DON’T OFFER HEALTH INSURANCE, YOU MAY BE REQUIRED TO PAY THE ESRP.
Will health insurance pay for their injuries? Probably not. Most health insurance policies exclude coverage for occupational injuries and diseases and will continue to do so. But what’s concerning some experts is the indirect affects that Obamacare may have on Workers’ Comp.

THE LONG ANSWER: EXPERTS PREDICT OBAMACARE WILL AFFECT WORKERS’ COMP

Some folks in insurance circles do think Obamacare may have (perhaps unintentional) effects on Workers’ Comp. While none of the following is a direct result of the legislation, we thought small-business owners might be interested in hearing the common speculations:

- **Decrease in fraudulent Workers’ Comp claims.** The theory is that if a larger percent of the population has access to healthcare, there will be fewer reasons for employees to blame the back injury they sustained while doing yard work on the labors of their job. These folks argue that Workers’ Compensation has always paid for “questionable” work-related injuries, especially from those employees with preexisting conditions or those who didn’t have health insurance. Now that no one can be denied health coverage, experts believe that many of these claims will be filed under health insurance, not Workers’ Comp.

- **Reduction in Workers’ Comp claims frequency.** If access to healthcare makes for a healthier U.S. population, it stands to reason that the number of Workers’ Compensation Insurance claims may decrease. Additionally, healthier individuals often recover quicker, which may mean less expensive Workers’ Comp payouts.

- **Delays in Workers’ Compensation treatment.** There is already a physician shortage in the United States, and this deficit is expected to increase over the next several years – especially now that more people will be seeking care. Because the Workers’ Compensation system often demands more paperwork and justification from treating practitioners, more doctors may shy away from Workers’ Compensation cases. These delays could potentially increase the cost of claims.

Obviously, it’s still too soon to tell if Obamacare will have any real effect on Workers’ Compensation Insurance. But as soon as those numbers are available, we’ll keep you posted.
FUNERAL INSURANCE, ACCIDENT INSURANCE, & CRITICAL ILLNESS INSURANCE

Funeral insurance, accident insurance, and critical illness insurance – you’ve probably heard all these terms before. But did you know these insurance coverages mean different things inside and outside of your business?

When someone talks about funeral, accident, and critical illness insurance in relation to your employees, they are usually referring to Workers’ Compensation Insurance. Workers’ Comp can offer all of these protections to your workers – as long as their condition is related to their work.

Outside your business, these coverages may refer to specific types of health or life insurance. We'll discuss the differences below.

FUNERAL INSURANCE: WORKERS’ COMP BENEFIT VS. LIFE INSURANCE POLICY

Let’s begin by exploring what funeral insurance means in terms of your Workers’ Compensation Insurance policy. Most Workers’ Comp policies provide two types of benefits in the event that a workplace injury or illness causes the death of an employee:

- Funeral expenses to help pay for the ceremony and burial.
- Survivor support to financially compensate spouses or dependents for their loss.

Outside of the workplace, funeral insurance most likely refers to a type of specialized life insurance policy that helps individuals plan and pay for their inevitable demise. This type of coverage is also called “burial insurance” and “final expense insurance.”

Like the Workers’ Comp benefit, this coverage can help pay for funeral expenses. Some policies also offer benefits that pay for the deceased’s outstanding medical bills and other debts.

The big difference is that the Workers’ Compensation benefit is offered by an employer and is only valid if the cause of death is related to the employee’s work. The other kind of funeral insurance is a personal policy bought by individuals, and the cause of death does not necessarily need to be work-related.
ACCIDENT INSURANCE: WORKERS’ COMP BENEFIT VS. HEALTH INSURANCE POLICY

Accident insurance may refer to an employee benefit included in your Workers’ Comp policy. As you know, injuries are covered by this policy as long as they are work-related, which includes most on-the-job accidents. However, there are usually exclusions for accidents connected to workplace fighting or drug use.

Outside of work, accident insurance may refer to a type of health insurance rider. A “rider” is special coverage that can be added on to your primary policy. This type of coverage helps individuals pay for unexpected physical traumas, such as a broken bone caused by a ski accident. It can also pay for accidental death expenses.

Some insurance agents recommend this rider if an individual’s health insurance has a high deductible. Accident insurance can usually be tailored to cover the cost of your health insurance deductible so you don’t have to worry about paying a large out-of-pocket sum on top of other medical expenses.

Like all health insurance policies, accident insurance excludes coverage for workplace injuries. This policy is not a substitute for Workers’ Compensation Insurance, even if workers can purchase it through an employer-based health insurance program.

CRITICAL ILLNESS INSURANCE: WORKERS’ COMP BENEFIT VS. HEALTH INSURANCE POLICY

In terms of Workers’ Compensation, the critical illness benefit refers to the fact that employees can be compensated for diseases they develop as a result of their job. For example, if a lawn maintenance professional develops skin cancer as a direct result of his outdoor job, his recovery may be financed by his employer’s Workers’ Compensation policy.

Outside of the workplace, critical illness insurance probably refers to another type of health insurance rider. This coverage helps individuals pay for the high cost of life-threatening diseases (e.g., cancer and heart disease).

Critical illness policies are different from regular health insurance policies because the benefits can be applied to expenses beyond healthcare. These benefits are usually paid directly to the policyholder and can be used to pay bills, tuition, business expenses, and other debts.

Both accident insurance and critical illness insurance can be offered to employees as an option if your business uses a health insurance program. And like other personal health insurance policies, critical illness insurance cannot be used in place of Workers’ Compensation Insurance.

OFFERING PERSONAL ACCIDENT INSURANCE POLICIES THROUGH YOUR BUSINESS’S HEALTH INSURANCE PROGRAM DOESN’T FULFILL YOUR WORKERS’ COMP OBLIGATIONS.
DO FREELancers & INDEPENDENT CONTRACTORS NEED WORKers’ COMP OR HEALTH INSURANCE?

After reading about the differences between Workers’ Comp and health insurance, independent contractors and other “one-person shows” might be wondering about their insurance obligations.

In short, all independent contractors are required to carry health insurance – or else pay a fine – thanks to the stipulations of the ACA. Your Workers’ Compensation obligation, on the other hand, isn’t so cut and dry.

HERE’S WHAT YOU NEED TO KNOW:

• **Most Workers’ Comp laws pardon business owners.** This means that if you are an independent contractor, freelancer, or another type of business owner with no employees, you are generally not legally required to carry Workers’ Comp for yourself. However, there are exceptions. For example, California roofers with no employees are still required to carry coverage.

• **Most health insurance plans exclude work injuries and illnesses.** This is definitely a gray area that requires a conversation with your health insurance provider. Most health insurance policies contain language that excludes coverage for occupational injuries and illnesses. But some policies say that coverage is only excluded when the injury or illness can be covered by a Workers’ Comp policy – which is most of the time, unless you are an independent contractor. In some states, you may be covered under a client’s Workers’ Compensation policy because laws consider contractors to be employees. In other states, you are on your own. Be sure to talk with your insurance agent in order to understand your exposures.

• **Some states consider subcontractors employees.** Perhaps you don’t technically have employees, but you do occasionally hire out your work to a subcontractor or seasonal part-time help. In some states, these workers would be considered “employees” and necessitate Workers’ Comp coverage. We can’t stress enough how important it is to understand your state’s laws!

In summary, independent contractors may be able to forgo Workers’ Compensation Insurance, but they have to carry health insurance. Depending on where you live and the type of work you do, you may be on the hook for both types of coverage.
CONCLUSION

Navigating Workers’ Compensation Insurance laws can be tricky – especially if you are a small-business owner who is planning to hire their first employee. Your insurance requirements depend on how many employees you have and where you live. Not fulfilling these requirements can be devastating to small-business owners. Without insurance, you could face lawsuits, fines, and even criminal charges. But with the appropriate Workers’ Compensation Insurance policy, you’ll be able to protect your employees – and your business.
WORKERS’ COMPENSATION INSURANCE

QUICK RESOURCES

WORKERS’ COMPENSATION INSURANCE FAQ

Not every small-business owner has the time to read through an entire eBook about Workers’ Compensation Insurance. That’s why we’ve taken the most frequently asked Workers’ Comp questions and answered them here – as concisely as possible – for your reference. Take a look:

DO I NEED TO COVER ALL EMPLOYEES WITH WORKMAN’S COMP?

Generally speaking, yes. Most individuals providing services to a for-profit business are considered employees under Workers’ Comp laws and must be insured. However, these stipulations vary based on where your business is located. For example, some states don’t require you to cover farm workers, domestic employees, and seasonal or casual workers. But if you employ full- or part-time employees or subcontractors, know that most states require you to provide adequate Workers’ Comp coverage.

WHICH OCCUPATIONAL INJURIES AND ILLNESSES ARE COVERED?

Workman’s Comp covers most occupational injuries and illnesses, but there are some exceptions.

Benefits may be denied in situations involving...

- Injuries that happened while the employee was intoxicated.
- Self-inflicted injuries (e.g., an employee who starts a fight and gets wounded).
- Injuries suffered while an employee was not working.
- Illnesses unrelated to the employee’s work (e.g., hereditary diseases).
- Injuries suffered while an employee was violating company policy.
CAN AN EMPLOYEE COLLECT WORKERS’ LIABILITY BENEFITS AND SUE ME?

An injured employee can only sue you if they waive their Workers’ Comp benefits offered by your business. If they do sue you for punitive damages, pain and suffering, and mental anguish, your Employer’s Liability Insurance (included in most Workers’ Compensation plans) covers your business’s legal expenses.

WHY DO I HAVE TO CARRY WORKERS’ COMP?

Unlike other small business insurance policies, Workers’ Compensation Insurance is regulated at the state level. So while you may be able to (legally) forgo General Liability Insurance, chances are that if you have employees, your state requires you to carry Workers’ Compensation coverage. Failure to adhere to your state’s Workers’ Comp laws can lead to expensive fines and, in some states, criminal charges.

WHICH STATES REQUIRE EMPLOYERS TO CARRY WORKERS’ COMPENSATION INSURANCE?

All states require employers to have Workers’ Comp coverage except for Texas. For some states, the mandate doesn’t kick in until you hire a certain number of employees (e.g., in Florida, you must carry coverage if you have four or more employees). In other states, you must have the coverage in force if you hire a single employee (e.g., California). To learn more about your state’s regulations, check out our guide Workers’ Compensation Insurance Laws by State.

WHERE CAN I PURCHASE WORKERS’ COMP INSURANCE?

Some states run monopolistic insurance pools, which means you must purchase your Workers’ Comp coverage through the state fund (as in Ohio). Other states give you the option of purchasing from their fund or a private insurance company. You can find insurance for your business by contacting one of insureon’s specialized small-business agents.