

EMPLOYER'S GUIDE
TO
WORKERS' COMPENSATION



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INTRODUCTION

This booklet has been prepared in an effort to assist employers in handling the reporting of employee's on the job injuries or occupational illnesses. Just as your worker has relied upon you for his/her regular paycheck, the injured worker also relies upon your prompt handling of his/her workers' compensation claim so that suitable medical care is not delayed and family income is not interrupted. Therefore, once an injury has occurred, the employer should do everything possible to assure that the provisions of the New Hampshire Workers' Compensation law are carried out. Injuries treated properly and promptly result in the continuation of a good employer-employee relationship and the timely return to work of an experienced employee.

Familiarity with the guidelines presented in this booklet will assist you in meeting your responsibilities as an employer under RSA 281-A, the New Hampshire Workers' Compensation Law. If you have questions about your rights or responsibilities under this law, please contact our staff at the Department of Labor for assistance.

The following information is based upon the provisions of the New Hampshire Workers' Compensation Law, RSA 281-A, and the New Hampshire Code of Administrative Rules, Chapter Lab 300 and 500.

What is Workers' Compensation?

Workers' Compensation is an insurance program that pays medical and disability benefits for work-related injuries and diseases. If injured on the job, an employee's medical treatment costs will be paid by the policy; if disabled following an on the job injury, the employee will also receive weekly income through the policy until able to return to work. All employers must obtain coverage by purchasing an insurance policy through the insurance agent or company of their choice, unless they become licensed to "self-insure" by the Commissioner of Labor. Workers' compensation insurance programs protect both employees and employers. Each covered employee has the right to benefits if injured on the job. In return, the employee forfeits the right to sue the employer for the job related injury.

Purchasing Workers' Compensation Coverage

The primary responsibility for obtaining workers' compensation insurance coverage rests upon employers who must apply for and obtain coverage prior to the hiring of any employee. Insurance agencies and carriers, however, share in this coverage responsibility, beginning with their receipt of an application for coverage. If an agency or carrier refuses to provide coverage on a voluntary basis, they must advise the employer about the availability of coverage under the Assigned Risk Plan of the National Council of Compensation Insurance and must also provide the necessary application form.

After coverage is in effect, the employer will receive from the insurance carrier a NOTICE OF COMPLIANCE, Form No. WCP-1, which needs to be posted in a conspicuous spot in the place of business. This poster contains basic information regarding the rights and responsibilities of both employer and employees, as well as the name of the insurance carrier underwriting the workers' compensation coverage.

The only business exempt from the requirement to purchase workers' compensation coverage are sole proprietorships (self-employed persons), Limited Liability Companies, and corporations which have **only** three corporate officers and **no** employees other than these three officers.

There is often confusion about the respective responsibilities of employers and subcontractors in providing workers' compensation coverage for workers. If you utilize the services of subcontractors in your business, be certain that any subcontractors you use have arranged to provide required workers' compensation coverage for their employees. Otherwise, you may be held liable to the compensation of any injuries that occur to the sub-contractor's employees.

What is the Insurance Company's Responsibility to the Employer?

It is the insurance company's responsibility to provide an employer who has purchased insurance coverage with a poster (Notice of Compliance) and a supply of the forms that will be needed to report and process a claim. These forms include the following:

1) Notice of Accidental Injury or Occupational Disease (Form No. 8aWCA). This form is used by an employee to provide the employer with written notice that s/he has sustained an on the job injury or believes that s/h has developed an occupational illness. This form does not necessarily need to be completed before the Employer's First Report of Injury or Occupational Disease (see below) is filed; an employee's verbal notification to his/her employer that an injury has occurred is sufficient initially.

2) Employer's First Report of Injury or Occupational Disease (Form No. 8-WC). This form is to be completed and returned to the NH Department of Labor by the employer within five **calendar** days (not working days) of learning of an employee's work-related injury or illness and is used to notify the Department of Labor and the insurance company that an employee injury has been reported. The employee's report may be either verbal or written. If the employer considers the claim to be questionable, the employer must still file the report promptly, but may wish to outline his concerns about the legitimacy of the claim in a note attached to the insurance company's copy of this report. (See below for a further discussion of this matter.)

3) Employer's Supplemental Report of Injury (Form No. 13 WCA). The employer uses this form to report to the Labor Department and the insurance carrier that an employee's occupational illness or injury has resulted in lost time from work (disability) of four or more days. It is also used when an employee who was disabled by a work-related injury or illness returns to work. It should be used to clarify lost time if the First Report of Injury is not clear.

4) Wage Schedule (Form No. 76 WCA). In the event that an employee becomes disabled from a work-related injury or illness, this form will need to be completed and both copies mailed to the insurance carrier so that the injured employee's workers' compensation rate can be properly calculated. Wage information from the 26 to 52 weeks prior to the injury, or the rate of hire for employees who have not worked a full 26 to 52 weeks, should be used to complete this form.

An employee who is employed by two or more employers in the State of New Hampshire at the time of injury may be subject to the combined earnings provision of the statute. If one of your employees was hurt while working at their other employers, s/he may request that you complete a wage schedule for the calculation of their wages by the carrier covering the other employer and paying workers' compensation benefits.

5) Supplemental Wage Schedule (Form No. 76 WCA 1). If requested by the insurance carrier, this form should be completed by the employer and signed by the employee. This form is necessary for the calculating of "after tax earnings".

Please be certain to keep a supply of these forms on hand at all times so that they are readily available when you need them. Forms are available through your insurance carrier; your supply should also be renewed any time that you change insurance carriers. (A complete explanation of when and how to file each form follows in the next section, "What to do When An Employee Is Injured".)

Additionally, the insurer is also responsible for keeping its insured employers informed of the address of the nearest insurance claims office. Upon receipt of employers' reports, the insurer must also review each claim promptly and critically to determine, as soon as possible after the onset of the disability, if the reported claim is compensable.

What To Do When An Employee Is Injured

It is important that, as an employer, you inform your employees about their rights and responsibilities under the New Hampshire workers' compensation law. We suggest that you clearly identify for your employees the individual(s) within your company to whom you want any on-the-job injuries to be reported; this will help avoid confusion when an injury occurs.

*First Aid Log

"First Aid" is defined as any one-time treatment that generated a bill less than \$2000.00 and results in no lost time. These "first aid only" injuries **must** be reported to the Labor Department on the Employer's First Report of Occupational Injury or Disease (Form 8WC) within five calendar days as explained in the "Employer's First Report of Injury or Occupational Disease" section below.

Check with you insurance carrier to find if they require a report for first aid injuries. If the employer contests the "first aid only" injury, it must be reported to both the Labor Department and the insurance carrier.

***Employer's First Report of Injury or Occupational Disease (Form No 8WC).**

The employer or their insurance carrier must send the Employer's First Report of Injury (Form No. 8WC) to the Department of Labor within five **calendar** days of the employee's notice to the employer that an incident has occurred.

***Notice of Accidental Injury or Illness (Form No. 8aWCA)**

The employer must, additionally, have the employee fill out Form No. 8aWCA, the Notice of Accidental Injury or Illness, at the earliest opportunity. It is, of course, not always practical to have the employee fill out this form immediately; but at the earliest reasonable time, the employee should be provided with a form to complete for his/her and the employer's records.

Absence of this written notice of an injury or illness does not excuse the employer from reporting the injury within the prescribed time frame.

The employer's copies of these two forms, No. 8 WC and No. 8aWCA, are to be kept on file by the employer for five years from the date of injury.

***Employer's Supplemental Report of Injury (Form No. 13WCA)**

If an employee's work-related injury or illness results in disability of four or more calendar days, the employer needs to notify the Labor Department and insurance carrier of this disability by filing Form No. 13 WCA, the Employer's Supplemental Report of Injury. When mailing the canary/yellow copy of this supplemental report to the insurance carrier, the employer needs to attach Form No. 76 WCA, the Wage Schedule (see below).

***Wage Schedule (Form No. 76WCA)**

Both copies of the Wage Schedule must be sent to the insurance carrier who will, in turn, send one copy on to the Department of Labor along with a memorandum noting what amount of compensation has been paid and the date on which it was paid.

The information contained in a completed wage schedule is used to calculate the average weekly wage of the employee; this figure will, in turn be used to compute the rate of the injured workers' compensation benefits. The form asks the employer to provide wage information based upon gross wages, including bonuses for the periods to which such payments apply. When applicable, also include the reasonable value of board, rent, housing, lodging, fuel or other similar advantages that you furnish to your employee as part of the contract of hire.

The intent of this is to generate a representative listing of the employee's wages based upon earnings during the 26 to 52 consecutive weeks preceding the injury. Sometimes, this method of calculating wages does not yield an accurate picture of an employee's earnings. For example, if your employee usually worked eight hours of overtime each week, but six weeks prior to his/her injury all overtime was cut; in such a case, the employee's wages schedule would show lower weekly wages than s/he usually earned. Another example might be a construction worker injured one month after returning to work from winter lay off; this worker's wage schedule would not provide information indicative of his/her usual earnings since he had not worked for the full 26 to 52 week period. In these unusual cases, you may go back 26 to 52 consecutive weeks prior to the date of injury and use wages earned during that entire period of time, as long as the difference in the resulting average weekly wage figure is to the advantage of the employee.

***Questionable Claims**

The employer's filing of these reports shall in no way prejudice the employer's rights to contest the compensability of the claim at a later date. Please remember, the insurance carrier has a responsibility to the employer to investigate each claim thoroughly and promptly to determine whether or not the claim is legitimately compensable. If you, as the employer, believe that a claim is questionable, do not delay in filing the required reports; simply fill out the Employer's First Report of Injury as completely as you can and mail it to the Department and the insurance carrier within the required time limit. Attach a note to your carrier's copy of the report, alerting them to your concerns about the claim. The carrier will carry on from there.

***Temporary Alternative Duty and Reinstatement of Employees Sustaining Compensable Injuries**

Employers are responsible for providing alternative duty for employees injured on the job. Modified work shall be established in accordance with the attending health care provider's form, as completed with each visit.

Employees may be entitled to reinstatement to their regular job when released to full work capacity (in accordance with their regular job) within 18 months of their work related injury or illness.

***Job Modification Reimbursement**

There are occasions when an employee who has filed a First Report may need to have his work station ergonomically adjusted. As an employer, you can request reimbursement for up to 50% of the costs incurred for the job modification for this employee. This process requires the prior approval of a plan for modification by the Department. For an application and further information, please contact the Vocational Rehabilitation staff at the Department of Labor.

***Occupational Safety and Health**

Workers' Compensation reform legislation adopted in 1994 created the Safety Section with the Department to educate and assist employers in workplace safety and health. This law was established to create a more cooperative effort between management and labor in the evaluation and resolution of safety and health concerns in the workplace. RSA 281-A:64 requires the formulation of Joint Loss Management Committees, evaluation and resolution of safety concerns and Written Safety Programs.

Priority inspections will be determined by first visiting those employers who have not submitted the required summary of their written safety program, and secondly, those companies who have a high "experience modification" as determined by National Council of Compensation Insurance (NCCI 1992-1993). Administrative Rules for Safety Inspections in conjunction with this law have been promulgated by a committee representing both public and private employers, as well as labor organizations, state and local government. The rules committee is utilizing injury data from both the public and private sections over the last 3 years to focus their rulemaking on prevention of those injuries and illnesses occurring most frequently.

Employers with 15 or more employees are required to form a joint loss management committee (JLMC) consisting of equal membership from both labor and management staff. Employees choose their own representatives. Committees are to meet at least quarterly and maintain "minutes" of all meetings.

Those employers with 15 or more employees in addition to establishing their joint loss management committee, are required to submit a safety program only once with the Department of Labor. After a written safety summary form has been filed, the safety program shall be reviewed and updated by the employer at least every 2 years. The program must be maintained at the place of business to be in compliance with the workers' compensation law.