

# **Workers' Compensation Buying Guide**

## **Introduction to Workers Compensation**

The realm of workers compensation (wc) is constantly evolving. The interaction of workers compensation insurance with state workers compensation and federal workers compensation laws is unique in the insurance industry, and changes in these acts or the regulations implementing them have profound affects on the insurance line. Additionally, lawsuits related to employee injuries—whether covered by workers compensation or not—continue to grow. Lastly, since this is the most costly property and casualty insurance coverage for most contractors, as well as most other types of businesses, the insurance products and methods of handling this risk have evolved and grown accordingly.

## **What is Workers Compensation Coverage?**

Workers compensation insurance (WC) is a state-mandated form of insurance that provides compensation medical care, part or lost wages and permanent disability for employees who are injured in the course of employment, in exchange for mandatory relinquishment of the employee's right to sue his or her employer for negligence.

While plans differ between jurisdictions, provision can be made for weekly payments in place of wages (functioning in this case as a form of disability insurance), compensation for economic loss (past and future), reimbursement or payment of medical and like expenses (functioning in this case as a form of health insurance), and benefits payable to the dependents of workers killed during employment (functioning in this case as a form of life insurance). General damages for pain and suffering, and punitive damages for employer negligence, are generally not available in worker compensation plans.

## **Do I need Workers Compensation Insurance?**

Employers have a legal responsibility to their employees to make the workplace safe. However, accidents happen even when every reasonable safety measure has been taken.

To protect employers from lawsuits resulting from workplace accidents and to provide medical care and compensation for lost income to employees hurt in workplace accidents, in almost every state, businesses are required, by law, to purchase workers compensation insurance. *Workers compensation insurance covers workers injured on the job, whether they're hurt on the workplace premises or elsewhere, or in auto accidents while on business. It also covers work-related illnesses.*

Workers compensation provides payments to injured workers, without regard to who was at fault in the accident, for time lost from work and for medical and rehabilitation services. It also provides death benefits to surviving spouses and dependents.

Each state has different laws governing the amount and duration of lost income benefits, the provision of medical and rehabilitation services and how the system is administered. For example, in most states there are regulations that cover whether the worker or employer can choose the doctor who treats the injuries and how disputes about benefits are resolved.

Workers compensation insurance must be bought as a separate policy. Although in-home business and businessowners policies (BOPs) are sold as package policies, they don't include coverage for workers' injuries.

It is mandatory in the state of Illinois to obtain workers compensation benefits if you employ at least one (1) employee other than yourself.

## **What could happen if I do not have WC insurance?**

If your company does not have Workers Compensation insurance, your employee can choose to file a civil suit. If the employee files a civil lawsuit, proof of the injury is evidence of negligence on the employer's part.

To compel compliance with the workers compensation fund, most states can and will issue fines between \$10,000 and \$100,000 along with any civil lawsuits imposed by the injured employee, however some states allow for the possibility of criminal penalties as well. Under Illinois Law Section 4(d), an employer that knowingly and willfully fails to obtain insurance may be fined up to \$500 for every day of noncompliance, with a minimum fine of \$10,000.

Corporate officers can be held personally liable if the company fails to pay the penalty. Since 2006, the Illinois Industrial Commission has collected over \$13 Million in fines, while providing workers the proper legal protection and other employers a more fair competitive arena. In addition, corporate officers who are found to have negligently failed to obtain insurance are guilty of a Class A misdemeanor; if they are found to have knowingly failed to obtain insurance, they are guilty of a Class 4 felony.

An employer that knowingly fails to obtain insurance loses its protections under the Workers' Compensation Act. An employee who is injured during the time the employer was uninsured may sue the employer in civil court, where benefits are unlimited. In addition, during the trial the burden will be upon the employer to prove it was not negligent.

On top of the fines, fees and possible criminal charges, the Commission can issue work-stop orders on any employer that has been found to have knowingly failed to provide insurance.

In many cases, these scenarios have completely bankrupt companies.

## **What's protected? What's not protected?**

Nearly all state workers compensation laws designate a few types of injuries as not compensable. For example, the majority of states stipulate that neither intentionally self-inflicted injuries nor injuries sustained in an attempt to injure someone else are compensable. Some states prohibit compensation for injuries sustained while the employee was committing a crime. The purpose of exclusions such as these is to remove from coverage injuries that are not truly the result of the employment.

Significant to the construction industry, some states provide that injuries suffered as a result of the employee's willful failure to use a safety device are not compensable. This provision may be inapplicable if the use of the safety device was not actively and consistently enforced.

Occupational disease is a workers compensation protected coverage, but it can be difficult at times. It is often difficult to determine when the injury took place (some diseases, such as asbestosis and silicosis, are latent, and may not produce symptoms until after the employment was terminated) and whether the illness is really the result of the occupation or the result of other factors. A majority of states have specific provisions relating to asbestosis, silicosis, and pneumoconiosis. Some have specific provisions relating to occupational hearing loss.

## **How to shop for Workers Compensation**

**Step 1.** Learn your state's workers' compensation insurance regulations. Each state has different requirements and restrictions. There are a few states, called monopolistic states that require all employers to purchase insurance from the state itself. Illinois is ***NOT*** a monopolistic state. Only North Dakota, Ohio, Washington, West Virginia, and Wyoming are states that require employers to purchase their workers compensation policies via state programs.

**Step 2.** Obtain a quote through Hebert Insurance Agency by calling 1-888-215-7190 and speaking to someone in the Customer Service or New Business departments. Our Representatives will provide you with at least 3 quotes from our carriers to offer you the most affordable coverage for your industry.

**Step 3.** Evaluate the various workers' compensation insurance carriers. Consider the following factors in making your decision: costs, claims process, adjuster experience and value added services such as risk management assistance. Remember, that no insurance agency can quote you higher or lower than any other agency, and it is unlawful to do so.

Hebert Insurance Agency has been handling all of your Personal and Business insurance needs since 1976. Do not take just anyone's word for it – Let Us Earn Your Business. Our knowledgeable and experienced representatives are available to offer you education and product knowledge, as well as step-by-step specifics of the Workers Compensation process, while taking every initiative to save you and your business money on your policy.

Give us a call at 1-888-215-7190, or visit us online at [www.HebertInsurance.com](http://www.HebertInsurance.com)  
We'll be happy to provide you with a free quote.

## How is My Premium Determined?

Workers compensation insurance premiums are unwieldy to compute, and variations in methods exist across states. However, the basics are similar and worthy discussion. Premiums are based on covered payroll, covered employees' risk classifications, and usually an experience modifier.

The NCCI (The National Council on Compensation Insurance) keeps records of the payroll and loss experienced by all risk classifications and determines the amount of expected losses per \$100 of payroll for each classification. Other insurer costs and profits can then be added to these loss costs to develop a rate for each classification. The standard rates can be modified to reflect specific risk characteristics of the insured as well as its past loss history (through experience modification). This rate is then multiplied by the exposure base (payroll divided by 100) to determine the premium to charge.

**Payroll** – An estimated payroll amount, based on historical records or expectations for the current period, is used to determine an estimated premium at the beginning of the policy period. At policy expiration, the insured's actual payroll records are audited to determine the final premium. *You will usually pay an additional premium or receive a premium refund at that time.*

**Classification** – This process is used to determine the operation of the employer, which in turn will determine the classification of your employees. Once the appropriate classification is determined, the corresponding rate can then be found. Because there can be substantial variations in the rate applicable to one classification as opposed to another, time spent by you and your insurance representative to assure the proper classifications are being used to rate its insurance is generally a very worthwhile investment. Improper classification is a tool used by untrustworthy insurance agencies – Initially the improper classification can lower your annual premium, making the agent appear to have found you the best possible rate, however at your mandatory annual audit the proper classification will be used by the auditing firm and you will regrettably owe your insurance carrier the additional premium which can range in the thousands of dollars and more, depending on your classification and payroll.

Hebert Insurance Agency aids all of our clients before audit time comes around. Our helpful education packets, notification for pre-audits, and proper communication throughout the year regarding payroll and types of work performed allow our clients to be prepared and receive the best information tailored to their policy.

## State Minimum Requirements

Currently, in the state of Illinois, there are no state minimum requirements.

## The Audit Process

The first thing you need to know is why an audit is being requested. Workers compensation premium is determined by exposures.

The two basic exposures for a workers compensation policy are payroll (remuneration) and cost of uninsured subcontractors. Audited premiums are, in whole, based on: Rates, Payrolls, Classifications, Experience Modifications, Discounts and Credits. When a workers compensation policy is first set up the premium is based on estimated exposures, or best estimates of the future. After the policy expires the actual exposure for the policy period will be determined by the audit. Once the audit is completed the insurance carrier will prepare and send a final audit statement. This statement will indicate any additional premium you owe or any credit due as determined by the Auditor.

## 5 Steps to the Audit Process

### Step 1

#### **Scheduling:**

You will be contacted in advance by a letter or phone call to schedule an audit appointment.

When making your appointment, obtain the auditor's name and phone number. If you need to cancel your audit appointment, please call the auditor as soon as possible. You'd give the auditor another appointment date at that time. If an appointment is not made within a reasonable time period, an estimated audit will be used by the auditing firm in determining your premium, which could turn out to be much higher.

### Step 2

#### **Financial Records:**

The financial records which should be available at the auditor's request, include:

- Payroll Records – YTD (Year to Date) payroll registers
- Quarterly Payroll Tax Reports
- Cash Disbursement Journal or Business Checkbook
- Job Contracts
- General Ledger

### Step 3

#### **Remuneration:**

Remuneration means money or substitutes for money. (Premium = Rate × Remuneration)

Remuneration excludes - Severance pay, business expense reimbursements, uniform allowance, payments for active military duty, employer-provided prerequisites (perks) such as: use of an auto.

Exclusion of overtime payroll - the extra pay for overtime shall be excluded from the payroll on which premium is computed, as long as it is kept separate in the payroll records.

**Example:** An employee's hourly wage is \$8.00, their overtime is \$12.00/hour, the extra \$4.00/hour is excluded.

## Step 4

### **Classification:**

The auditor will review your job contracts to determine which classification codes are pertinent to the policy period. Each job may be subject to an individual classification code. If your job contracts are not available, the auditor will review your invoices. If you were involved in a wrap-up project, the auditor will need a copy of the contract and the actual payroll for the wrap-up job.

## Step 5

### **Subcontractors:**

The auditor will review your cash disbursements journal to account for payments made to your subcontractors.

For each subcontractor you hire, the auditor will look for: A Certificate of workers compensation insurance, Notice of Independent contractor, General Liability Certificate, and a Business Invoice.

All subcontractors and independent contractors that have not provided the requested documentation will be included on the audit and billed for premium charge.

Hebert Insurance Agency has been handling all of your Personal and Business insurance needs since 1976. Do not take just anyone's word for it – Let Us Earn Your Business. Our knowledgeable and experienced representatives are available to offer you education and product knowledge, as well as step-by-step specifics of the Workers Compensation process, while taking every initiative to save you and your business money on your policy.

Give us a call at 1-888-215-7190, or visit us online at [www.HebertInsurance.com](http://www.HebertInsurance.com)  
We'll be happy to provide you with a free quote.