

CALIFORNIA

EMPLOYMENT LAW

Workers' Compensation – Employee Eligibility



COVID-19 UPDATE: California has issued guidance indicating that employees may be eligible for workers' compensation benefits if they are unable to do their usual jobs because they were exposed to coronavirus and contracted COVID-19 during the regular course of their work. More information is available [here](#) (scroll to section titled "Benefits for Workers Impacted by COVID-19").

Workers' compensation is a system of no-fault insurance that provides medical and monetary benefits to employees or their survivors for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The California Workers' Compensation Act (WCA) outlines who is eligible to receive workers' compensation benefits. The [California Division of Workers' Compensation](#) (DWC) resolves any disputes regarding eligibility under the WCA.

In general, a person qualifies for workers' compensation benefits if he or she meets the WCA's definition of a **covered employee** and sustains a **compensable condition**.

COVERED EMPLOYEES

Most workers are covered under the WCA. The WCA generally defines an employee as any person who renders service, other than as an independent contractor, for an employer. Employment may be by appointment, contract or as an apprentice. Conditions for employment may be expressed, implied, written, verbal, lawful or unlawful.

Within this broad definition, the WCA specifically includes the following as covered employees:

- Aliens and minors;
- All elected and appointed paid public officers;
- Officers and members of boards of directors of quasi-public and private corporations while rendering service for pay for the corporations (though these individuals may elect to be excluded);
- Domestic workers (unless an exception applies);
- Inmates of state penal or correctional institutions while engaged in assigned or contractual employment;
- Working members of a partnership or limited liability corporation (LLC) that receive wages irrespective of profits (though general partners and managers may elect to be excluded);

STATE RESOURCES

California Division of Workers' Compensation (DWC) [website](#)

California Office of Self Insurance Plans (OSIP) [website](#)

Workplace Poster
Employers may use this WCA [notice](#) to satisfy their posting obligations.

First Reports of Injury
Employers must report employees' work-related conditions using [Form DWC 1](#) and [Form DLSR 5020](#).

FAQs
The DIR answers these [frequently asked questions](#) about workers' compensation for employers.



- Any person who holds the power to revoke a trust that includes shares of a private corporation or interests of a general partnership or LLC (though these individuals may elect to be excluded);
- Individuals committed to a state hospital facility under the State Department of State Hospitals, while engaged in and assigned work in a vocational rehabilitation program, including a sheltered workshop;
- Any person whose employment training is arranged by the State Department of Rehabilitation with any employer;
- Certain individuals who perform in-home supportive services; and
- Certain individuals who work under a contract or commission for the creation of a work of authorship.

Beginning on July 1, 2020, any individual who provides labor or services for pay is also considered a covered employee – **not** an independent contractor – unless the hiring entity can demonstrate that the person:

- Is free from the hiring entity's control and direction in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- Performs work that is outside the usual course of the hiring entity's business; and
- Is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.

STATUTORY EXCLUSIONS

Certain types of workers are excluded from the WCA's definition of a covered employee. Among others, employers are **not** required to provide coverage for:

- Workers engaged in interstate commerce or otherwise subject to federal workers' compensation laws;
- Certain individuals who officiate or participate in sports or athletic events;
- Domestic workers who work less than 52 hours or earn less than \$100 in the 90-day period immediately preceding an injury;
- Individuals performing services in return for aid or sustenance only from religious, charitable or relief organizations;
- Off-duty ski lift operators and voluntary ski patrol workers;
- Certain volunteer workers receiving no more than meals, lodging, use of the organization's facilities or reimbursement for incidental expenses as compensation;
- An officer or director of a private corporation who is the sole shareholder of the private corporation;
- An owner of a private professional corporation who is the sole shareholder of the private professional corporation; or
- An officer or director of a private cooperative corporation who is the sole shareholder of the private cooperative corporation.

Most excluded individuals may come to an agreement with their employers to receive coverage and waive the exception that applies to them. An employer that agrees to extend coverage to employees who are not otherwise covered by the WCA must file a notice of acceptance with the DWC. The notice of acceptance subjects the employer to WCA provisions for **one year**. If an employer wishes to terminate this election within the one-year period, it must file a notice of withdrawal with the DWC.

VOLUNTARY EXCLUSIONS

The following may voluntarily **elect to exclude** themselves from coverage:

- **General partners** of a partnership;
- **Managing members** of an LLC;
- **Corporate officers and directors** of quasi-public and private corporations who own at least:



- **10 percent** of the issued and outstanding stock of the corporation; or
- **1 percent** of the issued and outstanding stock of the corporation, if they:
 - Have a parent, grandparent, sibling, spouse or child who owns at least 10 percent of the issued and outstanding stock of the corporation; and
 - Are covered by a health care service plan or a health insurance policy through the corporation;
- **Professional corporation owners** who are practitioners rendering the professional services for which the professional corporation is organized and are covered by a health insurance policy or health care service plan; and
- **Officers and board members of a cooperative corporation** who are covered by both a health care service plan or health insurance policy and a disability insurance policy that is comparable in scope and coverage (as determined by the Insurance Commissioner) to a workers' compensation policy.

If an individual is allowed to exclude him- or herself from coverage, he or she may do so by executing a written waiver of his or her rights under the WCA and including a written statement, under penalty of perjury, certifying that he or she qualifies for the exclusion under the law. This waiver generally becomes effective as soon as the employer's insurance carrier accepts it, and the exclusion from coverage remains in effect until the excluded individual provides the insurance carrier with a written withdrawal of the waiver. The table below provides a summary of the recent voluntary exclusion changes.

EXTRATERRITORIAL COVERAGE

Individuals who have been hired or who are regularly employed in California are covered under the WCA when they sustain a compensable condition outside of the state. Individuals hired outside of California but performing work in the state are exempt from WCA provisions if they are covered by the laws of another state.

COMPENSABLE CONDITIONS

In general, a work-related condition is compensable if it:

- Arises out of and in the course of a covered employee's employment; and
- Causes disability from work or the need for medical treatment.

A compensable condition can be specific or cumulative. A specific injury is a condition that results from one incident or exposure. A cumulative injury is a condition caused by repeated incidents or exposure extending over a period of time.

While most compensable conditions are physical in nature, a psychiatric condition may be compensable if specific requirements are met. Among these requirements, an employee must be able to demonstrate that work events or conditions were a predominant or substantial cause (at least 35 to 40 percent of the cause) of a psychiatric condition.

EXCEPTIONS

Under the WCA, a condition is **not** compensable if it was caused by the employee's:

- Willful intention to injure himself, herself or another;
- Participation in a physical altercation that was initiated by the employee;
- Commission of a felony;
- Commission of certain misdemeanors for which he or she has been convicted; or
- Intoxication by alcohol or unlawful use of a controlled substance, as defined in California's Health and Safety Code.



In addition, injuries that occur during recreational and social activities are not compensable unless the employee's participation in the activities was mandatory.

ADDITIONAL EMPLOYEE RESPONSIBILITIES

The WCA sets additional employee expectations and responsibilities. Failing to satisfy these requirements may cause an individual to lose benefits he or she may have otherwise been entitled to receive. Among the duties, employees are expected to:

- Inform a supervisor or manager of work-related conditions **as soon as possible**, but no later than **30 days** of when they happen;
- Report for treatment at a health care provider approved by their employers (unless they require urgent medical care at the nearest health care facility);
- Submit to the employer's written requests for medical examinations; and
- File a claim with the DWC within **one year** after an injury or accrual of the right to WCA benefits.

MORE INFORMATION

Please visit the DWC [website](#) or contact The Team Companies, LLC for more information on workers' compensation laws in California.