

# FLORIDA

## EMPLOYMENT LAW

### Workers' Compensation – Employer Responsibilities



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

The Florida Workers' Compensation Law (WCL) defines employer responsibilities in the workers' compensation program. The [Division of Workers' Compensation](#) (DWC), which is part of the Florida Department of Financial Services (DFS), monitors compliance with these requirements throughout the state.

#### STATE RESOURCES

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

**Key Coverage and Exemption Eligibility Requirements**

This DWC [brochure](#) provides detailed information about WCL coverage requirements for employers.

**Workplace Poster**

Employers must display this WCL [poster](#) in their employees' workplaces.

**First Report of Injury**

Employers must use [Form DWC-1](#) to report work-related conditions to their insurance carriers or to the DWC.

#### GENERAL COVERAGE REQUIREMENTS

In general, every Florida employer that has **four or more employees** (full-time or part-time) must secure workers' compensation coverage. However, special coverage requirements apply for employers in the agriculture and construction industries.

##### **AGRICULTURE INDUSTRY**

Agricultural employers must secure workers' compensation coverage if they have:

- **Six or more regular employees;** or
- At least 12 seasonal employees whose agricultural work is completed in less than 30 days and do not perform the seasonal work for more than 45 days in the same calendar year.

##### **CONSTRUCTION INDUSTRY**

Contractors and subcontractors that engage in any public or private construction in Florida are required to secure workers' compensation coverage if they have **one or more employees** (full-time or part-time).

If a contractor sublets any portion of a contract to a subcontractor, all of the contractors' and subcontractors' employees who engage in work under the contract are considered to be employees of the contractor for purposes of the WCL's coverage requirements.

However, a contractor is **not** required to maintain coverage for its subcontractors' employees if the subcontractor already has its own coverage for them. In this situation, the contractor must obtain proof of the subcontractor's coverage. A contractor that fails to obtain evidence of coverage from its subcontractor may be held liable for any work-related conditions sustained by the subcontractor's employees.



### **EMPLOYEES**

For purposes of determining whether an employer must obtain WCL coverage, the term “employee” generally includes any person who is paid to perform work under any appointment or contract for hire or apprenticeship, regardless of whether the employment is lawful. Among others, the term “employee” includes:

- Aliens and minors;
- Corporate officers who perform services for pay for the corporation (regardless of whether the service is continuous);
- Workers who receive pay from a construction contractor as subcontractors (unless they have their own workers' compensation coverage); and
- Independent contractors, sole proprietors and partners of a partnership who work in the construction industry.

### **NOT EMPLOYEES**

Certain types of workers are not considered employees under the WCL. Specifically, an employer is **not** required to provide coverage for:

- Independent contractors who are not engaged in the construction industry (as long as they meet certain criteria);
- Real estate licensees who are paid solely by commission;
- Bands, orchestras and musical and theatrical performers who perform under a written contract evidencing an independent contractor relationship;
- Certain owner-operators of a motor vehicle who transport property under written contracts with a motor carrier;
- Individuals whose work is anticipated to be completed in 10 working days or less, at a total labor cost of less than \$500, and is not in the course of the trade, business, profession, or occupation of the employer;
- Volunteer workers for an entity other than the state or a county, municipality or other governmental entity;
- Exercise riders who do not work for a single horse farm or breeder and are paid for riding on a case-by-case basis under a written contract;
- Certain taxicab, limousine and other passenger vehicle-for-hire drivers;
- Most sports officials for interscholastic or amateur sports events;
- Certain Medicaid-enrolled clients served by Adult Day Training Services under the Home and Community-Based or the Family and Supported Living Medicaid Waiver program; and
- Domestic servants in a private home.

### **VOLUNTARY EXCLUSIONS**

The WCL allows certain individuals to voluntarily exclude themselves from workers' compensation coverage requirements. Under the law, these individuals are considered employees unless they apply for and obtain a [Certificate of Election to be Exempt](#) from the DWC. The option to be exempt from coverage is available only for:

- Corporate officers who own at least 10 percent of the corporation; and
- Members of a limited liability company (LLC) who own at least 10 percent of the business.

### **VOLUNTARY ELECTIONS**

Other individuals are not automatically considered employees under the WCL but may voluntarily elect to provide coverage for themselves. This option is available for sole proprietors and partners of a partnership who:

- Are not engaged in the construction industry;
- Devote full time to the proprietorship or partnership; and
- Elect to be included in the definition of employee by filing a [Notice of Election of Coverage](#) with the DWC.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice.



### OBTAINING COVERAGE

To satisfy the WCL's coverage requirements, an employer must either:

- Secure a workers' compensation insurance policy from a private insurance company licensed to do business in the state;
- Obtain the DWC's authorization to self-insure;
- Participate in a group self-insurance fund; or
- Apply for coverage from the Florida Workers' Compensation [Joint Underwriting Association](#).

### RECORDKEEPING REQUIREMENTS

All employers must maintain certain employment records that may assist the DWC in an investigation under the WCL. Employers must keep these records up to date and maintain them for **at least three calendar years** at their principal places of business or job sites within the state. Employment records that employers must maintain include:

- Business account records (monthly, quarterly or annual);
- Check and cash disbursement journals;
- Complete, executed and written contracts with general contractors, subcontractors, independent contractors and employment leasing companies that specify the terms of reimbursement and performance of any service;
- Documents that may assist to establish an independent contractor's status;
- Employee leasing company, labor pool and temporary labor service records;
- Employee wage payment documents (W-2 forms, 1099 forms and individual tax statements);
- Employment contracts and other documents that describe terms of employment;
- External and internal audit documents;
- Proof of insurance or certificates of exemption;
- Records that identify the employer's business name, registration, business form and Federal Employer Identification Number (IRSA Form 575A);
- Records that identify the employer's occupational and trade licenses, certifications and competency cards;
- State employment and unemployment reports;
- Subcontractor invoices;
- Tax records and all schedules filed with the Internal Revenue Service (IRS); and
- Workers' compensation certificates of insurance or certificates of exemption, along with notices of cancellation, non-renewal, reinstatement and the like.

### INJURY RECORDS

Employers must also keep a record of every work-related injury or disease sustained or reported by their employees. These records must be kept open for the DWC's inspection at all times.

### BENEFIT PAYMENT RECORDS

Self-insured employers and workers' compensation insurance carriers must keep records of all WCL benefit payments they make. These records must include the amount, time and manner of each payment. These records must be available for inspection by the DWC or the Florida Division of Insurance Fraud at all times.

### NOTICE POSTING

Employers that are subject to the WCL must display a workers' compensation [poster](#) in conspicuous locations within their employees' workplaces.

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Employers that are **not** subject to the WCL and have not voluntarily secured workers' compensation coverage must also post a notice in their employees' workplaces. This notice must clearly indicate in writing that the employer does not provide workers' compensation coverage or benefits.

### INJURY REPORTING

An employer that has knowledge of an employee's work-related injury or disease must report it to its workers' compensation insurance carrier within **seven days**. Self-insured employers and insurance carriers must report any work-related conditions that result in four (or more) lost workdays to the DWC within **14 days** after receiving notice.

### PROHIBITED PRACTICES

Florida law prohibits employers from coercing, discharging, disciplining, taking adverse personnel action or refusing to hire any employee or applicant solely because the individual refuses to obtain an exemption, has filed a claim for workers' compensation benefits or has reported a violation (or suspected violation) to appropriate authorities.

### MORE INFORMATION

Contact Biscayne Risk & Insurance Group or visit the DWC [website](#) for more information on workers' compensation laws in Florida.