

Division of Workers' Compensation

Frequently Asked Questions

Employer FAQs

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Who needs Workers' Compensation coverage?

- If you are in an industry, other than construction, and have four (4) or more employees, full-time or part-time, you are required to carry workers' compensation coverage (an exempted corporate officer does not count as an employee).
- If you are in the construction industry, and have one (1) or more employees (including yourself), you are required to carry workers' compensation coverage (an exempted corporate officer or member of a limited liability company does not count as an employee).
- If you are a state or local government, you are required to carry workers' compensation coverage.
- If you are a farmer, and have more than five (5) regular employees and/or twelve (12) or more other workers for seasonal agricultural labor lasting thirty (30) days or more, you are required to carry

workers' compensation coverage.

If you have additional questions, contact the Customer Service Unit at (850)413-1601.

- Reference: Section [440.02](#)(17), Florida Statutes.

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[How does an employer obtain workers' compensation insurance?](#)

You have several options:

- By purchasing a policy from an insurance agent that represents approved insurance companies.
- From the Joint Underwriting Association (JUA), <http://www.fwcjua.com/locator.asp>
- By qualifying as an individual self-insured; for additional information, contact the Division of Workers' Compensation at (850)413-1784.
- Or, an employer may contract with a professional employer organization (employee leasing) that has secured workers' compensation coverage.
- Reference: Section, [440.02](#), Florida Statutes

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[Where do I get a supply of the injury report forms that I am required to complete when one of my employees is injured?](#)

Your insurance carrier is required to provide you a supply of the Form DWC-1 First Report of Injury or Illness. Forms can also be downloaded from the Florida Workers' Compensation web site [Rules & Forms](#) page.

- Reference: Rule 69L-3.003(5), [Florida Administrative Code](#)

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[Who can I contact with questions or concerns regarding risk classification codes and premium amounts?](#)

Call your insurance carrier or service representative. If you have a dispute regarding the risk classification codes, you can call the [National Council on Compensation Insurance](#) (NCCI) at 1-800-622-4123.

- Reference: NCCI 1-800-622-4123

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[Does the injured worker pay any part of my workers' compensation insurance premium?](#)

The law is very specific on this point. It is the employer's responsibility to pay the entire premium for workers' compensation insurance coverage.

- Reference: Section [440.105](#)(4)(a)(2), Florida Statutes

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[What kinds of employee injuries are covered?](#)

The law covers all accidental injuries and occupational diseases arising out of and in the course and scope of employment. This includes diseases or infections resulting from such injuries. The law also covers death resulting from such injuries within specified periods of time. Even if you do not think an injury is covered, you must still file the First Report of Injury or Illness (DWC-1) with your insurance carrier for determination of responsibility within 7 days of your first knowledge of the accident/injury.

- Reference: Section [440.02\(1\)](#) & [440.16](#), Florida Statutes

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[What injuries are not covered?](#)

The law does not provide compensation for the following conditions:

- a mental or nervous injury due to stress, fright, or excitement;
- a work related condition that causes an employee to have fear or dislike for another individual because of the individual's race, color, religion, sex, national origin, age, or handicap;
- "pain and suffering" has never been compensable in Florida, nor is it compensable in any other state. The employer may not sue an injured worker for causing a catastrophe nor can the injured worker sue the employer for their injury. This trade-off makes it possible for injured workers to receive immediate medical care, at no cost to the injured worker, without any consideration for who was at fault, the employer or the employee. In civil law, negligence must be established through litigation before any compensation is awarded.
- Reference: Section [440.02\(1\)](#), Florida Statutes

Compensation will not be paid in several other instances:

- if the injury is caused by the employee's willful intention to injure or kill himself or another;
- if the injury is caused primarily because the employee is intoxicated or under the influence of drugs;
- if the injury or death of the employee is covered by the Federal Employer's Liability Act, the Longshore and Harbor Workers' Compensation Act, or the Jones Act (if the injured worker is a "seaman" or member of a crew).
- Reference: Section [440.09](#), Florida Statutes

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[Can an employer be liable for double compensation?](#)

An employer can be liable for double compensation if a minor child is injured while employed in violation of any of the conditions of the child labor laws of Florida. The employer alone, not the insurance carrier, is liable for up to double the normal compensation as provided by the Workers' Compensation Law. To receive further information regarding the Child Labor Law, call the Child Labor Office at (800)226-2536.

- Reference: Section [440.54](#), Florida Statutes

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[As a small business owner, I fail to see how I can be sued by an injured worker if I provide all the necessary care, light duty work, and offer to retrain the employee.](#)

Under the provisions of Chapter 440, Florida Statutes, an injured worker has two years from the date of the accident to file a petition for benefits with the [Division of Administrative Hearings](#). If an employer is providing benefits and return to work options, that should be sufficient to meet the ultimate goal of returning an injured worker to gainful employment. However, an employer/carrier's definition of "necessary care" and that of an injured worker may differ. When that happens, the injured worker has no remedy except to file a petition for benefits and have a judge of compensation claims determine whether the benefits that are being provided are sufficient, or if additional benefits not being provided are required by Florida law. If the employer is providing benefits, all expenditures must be reported to the employer's workers' compensation insurance carrier for statistical purposes.

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[If I suspect an employer should have Workers' Compensation insurance coverage, but does not, or if I suspect fraudulent activity in a workers' compensation claim, where do I report this?](#)

Suspected workers' compensation fraud can be reported directly to the Department of Financial Services, Bureau of Workers' Compensation Fraud, 200 E. Gadsden Street, Suite 100A, Tallahassee, Florida 32301, or to the bureau's toll free hotline number at 1-800-378-0445. Suspected fraud can also be reported to the Florida Workers' Compensation, [Bureau of Compliance](#)'s toll free hotline at 1-800-742-2214. Anonymous calls are accepted. You can also fill out the Non-Compliance Referral Form to report employer's who do not have workers' compensation insurance coverage. This form can be accessed at the Division's website at www.myfloridacfo.com/wc/databases.html.

- Reference: Section [440.1051](#), Florida Statutes

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[What is the system used to report an injured worker who wanted to leave his employment because of claiming to be hurt, but was not](#)

What in the system would prevent an injured worker, who wanted to leave his employer anyway, from claiming to be hurt, waiting out the treatment, still claiming to be hurt and then trying to settle? It would not cost him anything but a few hours to do this and he would have nothing to lose.

By law, pain or other subjective complaints alone, in the absence of objective relevant medical findings, are not compensable. However, sometimes these types of claims do occur and they are sometimes settled by insurance carriers for a nominal amount of money to rid the employer/carrier of a nuisance case.

- Reference: Section [440.09\(1\)](#), Florida Statutes

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Is compensation payable if an employee refuses to use a safety appliance like a hard hat, safety goggles or observe a safety rule?

Compensation will still be paid, but indemnity benefits (partial wage replacement) may be reduced by 25 percent if the employee knew about the safety rule prior to the accident and failed to observe the rule, or if the employee knowingly chooses not to use a safety appliance which the employer has directed him to use.

- Reference: Section [440.09\(5\)](#), Florida Statutes

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Will becoming a drug-free workplace save me money on my insurance premiums?

If you implement a drug-free workplace program in accordance with the criteria set forth in s.440.102, Florida Statutes, you may be eligible for a 5 percent premium credit from your insurance carrier to your workers' compensation insurance premium. In addition to the premium credit, having a Workers' Compensation Drug-Free Workplace Program may make your workplace safer, resulting in fewer accidents, which may reduce your workers' compensation costs.

- Reference: Section [440.101](#) & [440.102](#), Florida Statutes

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Am I required to become a carrier certified drug-free workplace?

Becoming a carrier certified drug-free workplace is voluntary. However, without the certification, you would not be eligible for any of the benefits provided under this program.

- Reference: Section [440.101](#) & [440.102](#), Florida Statutes

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Under the Workers' Compensation Drug-Free Workplace Program, can I conduct random drug testing of my employees?

In addition to the situations in which testing is mandatory, the law does not prohibit a private employer from conducting random testing or any other lawful testing of employees. A public employer may institute random testing of employees in "safety sensitive" or "special risk" occupations.

- Reference: Section [440.101](#) & [440.102](#), Florida Statutes

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Can I use a breathalyzer as a valid drug testing method?

Under the Workers' Compensation Drug-Free Workplace Program, the use of a breathalyzer cannot be used as a testing method for initial or confirmation tests.

- Reference: Section [440.101](#) & [440.102](#), Florida Statutes

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What if an employee refuses to take a drug test?

If an injured worker refuses to submit to a test for drugs or alcohol, the employee may forfeit eligibility for medical and indemnity benefits. If an employee or job applicant refuses to submit to a drug test, the employer is permitted to discharge or discipline the employee or may refuse to

hire the applicant (if specified in the written Drug-Free Workplace Policy), since, by law, refusal to submit to a drug test is presumed to be a positive test result.

- Reference: Section [440.101](#), [440.102](#) & [440.09\(7\)\(d\)](#), Florida Statutes

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If a terminated employee files for unemployment compensation benefits, may I inform the adjudicator that the employee was terminated as a result of a positive drug test?

The adjudicator is bound to maintain this information confidential under s.443.1715(3)(b), Florida Statutes, until introduced into the public record pursuant to a hearing conducted under s.443.151(4), Florida Statutes. Under all other instances employers may not release any information concerning drug test results obtained pursuant to section s.[440.102](#)(8), Florida Statutes, unless such release is compelled by an administrative law judge, a hearing officer, or a court of competent jurisdiction or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding.

- Reference: Section [440.101](#) & [440.102](#)(8), Florida Statutes

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Can I post the results of my employees' drug tests?

All information, interviews, reports, statements, memoranda and drug test results, written or otherwise, received by the employer through a drug testing program is confidential and cannot be posted in any public manner.

- Reference: Section [440.101](#) & [440.102](#), Florida Statutes

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Am I responsible for payment for services when my employee participates in an Employee Assistance Program (EAP)?

No, but if you choose to pay for an Employee Assistance Program, you have the right to choose the facility providing treatment. If an employee does participate in an Employee Assistance Program, you, the employer, are required to extend the same considerations as reflected under the federal guidelines established for the Americans with Disabilities Act and the Family and Medical Leave Act.

- Reference: Section [440.101](#) & [440.102](#), Florida Statutes

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How many days does the employee have to re-test the specimen if he or she wishes to contest a positive test result?

During the 180 day period after written notification of a positive test result, the employee who has provided the specimen shall be permitted by the employer to have a portion of the specimen re-tested, at the employee's expense, an Agency for Health Care Administration (AHCA) licensed or a USHHS certified laboratory of his or her choice.

- Reference: Section [440.101](#) & [440.102](#)(5)(g), Florida Statutes

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Who pays for the drug test?

The employer is responsible for payment of all drug tests they may require. However, if an employee wishes to have the specimen re-tested at a laboratory certified by the Agency for Healthcare Administration (AHCA), it will be at the employee's expense. If the workers' compensation insurance carrier uses a positive test result to determine the compensability of a claim, the carrier would be responsible to cover the costs of the test.

- Reference: Section [440.101](#) & [440.102](#), Florida Statutes