

Workers' compensation insurance coverage: General information

This document contains general information. It is not legal advice. Every situation is different and other laws might apply to your situation. If you have questions, contact an attorney, visit the Department of Labor and Industry website at www.dli.mn.gov/business/workers-compensation-businesses or call the workers' compensation hotline at 800-342-5354 and press 3.

Coverage requirements

Every employer is required to provide workers' compensation insurance coverage for its employees under Minnesota's workers' compensation law, unless there is a specific exception in the law. An employer must purchase workers' compensation insurance coverage for its employees unless the employer has been approved for self-insurance under the law. Employers are generally defined as those who hire others to perform services. Employees are generally defined as persons performing services for another for hire, including minors and workers who are not citizens.

Penalties for failing to have workers' compensation insurance

The Department of Labor and Industry (DLI) has the authority to penalize uninsured employers for failing to insure employees, regardless of whether an injury has occurred.¹ DLI can order the employer to: pay a penalty of up to \$1,000 per employee per week for the entire time the employer was not insured; purchase the necessary insurance coverage; and refrain from employing any person at any time without insuring the employee. Additional penalties apply if a worker is injured while the employer is uninsured. The employer will not only be responsible for the benefits owed to the worker but will also have to pay a penalty to the state of 65 percent of these benefits.²

Exclusions

Workers' compensation insurance is not required for persons who are excluded under the law. The workers' compensation law states certain categories of workers are excluded from workers' compensation coverage or may be excluded from coverage. These categories are numerous and detailed. You should thoroughly review the workers' compensation law to determine whether any of these categories apply to your particular situation.³ These exclusions include the following.

1. **Sole proprietorships:** A sole proprietor is excluded. The sole proprietor's immediate family members (spouse, parents and children, regardless of age) are also excluded.

2. **Partnerships:** Partners in business and partners in farm operations are excluded. Each partner's spouse, parents and children, regardless of age, are also excluded.
3. **Closely held corporations:** The workers' compensation law defines a closely held corporation as a corporation whose stock is owned by 10 or fewer people.⁴ Executive officers of closely held corporations having less than 22,880 hours of payroll the preceding calendar year are automatically excluded if the officer owns at least 25 percent of the stock of the corporation. The officer's spouse, parents and children, regardless of age, are also automatically excluded.

Employees of such a corporation who are more distantly related to the executive officer may also be excluded if the corporation files a written election to exclude with DLI. This applies to individuals who are related to the executive officer by blood or marriage to the third degree of kindred.⁵

4. **Limited liability companies:** Managers of limited liability companies (LLCs) having 10 or fewer members and having less than 22,880 hours of payroll the preceding calendar year are automatically excluded if the manager owns at least 25 percent of the interest in the LLC. The manager's spouse, parents and children, regardless of age, are also automatically excluded.

Employees of such an LLC who are more distantly related to the manager may be excluded if the LLC files a written election to exclude with the Department. This applies to individuals who are related to the manager by blood or marriage to the third degree of kindred.⁶

5. **Family farm operations:** The farmer-employer and their spouse, parents or children, regardless of age, are automatically excluded. The executive officers of a family farm corporation and the executive officer's spouse, parents and children, regardless of age, are automatically excluded. Farmers or their family members exchanging work within the same community with a farmer-employer of family farm corporation operator are also excluded.

Persons employed by a family farm that paid or was obligated to pay cash wages in the preceding calendar year of less than \$8,000 are excluded, except that if the operation has liability insurance coverage of at least \$300,000 and at least \$5,000 in medical insurance for farm laborers, the excludable wage amount rises to less than the statewide average annual wage. This average annual wage is calculated from the statewide average weekly wage, which is adjusted every year.⁷

6. **Casual employees:** An employee is excluded if the employee is not working in the usual course of the trade, business, profession or occupation of the employer and their employment is meant to be one time or sporadic rather than permanent or periodically regular.
7. **Household workers:** This includes a domestic, repair, groundskeeper or maintenance worker at a private household. his person is excluded if the worker earns less than \$1,000 cash during a three-month period, *unless* more than \$1,000 was earned in a three-month period within the previous year at that household.
8. **Other exclusions:** Other exclusions include: independent contractors as defined by statute and rule⁸; a veterans organization officer or a member attending meetings and conventions; nonprofit associations that

do not pay more than \$1,000 in salary or wages in a year; persons covered under the Domestic Volunteer Service Act of 1973 (Vista volunteers, foster grandparents); and certain railroad employees.⁹

Election and termination of coverage

The employer can, in many situations, elect to provide workers' compensation coverage for individuals who would otherwise be automatically excluded under the law. When such coverage is elected, the insured person becomes an "employee" as defined in the statute. The employer may also terminate coverage of individuals for whom the employer had elected to provide coverage. When coverage is elected or terminated, the employer must give written notice to the insurer. The coverage elected or the termination of coverage becomes effective on the day after the insurer receives the notice or on a later date stated in the notice. The person for whom coverage is elected will be listed on the workers' compensation insurance policy.¹⁰

An employer contracting with an independent contractor may also provide insurance for that person. The employer may only charge the independent contractor a fee for the coverage if the independent contractor elects in writing to be covered and is issued an endorsement stating the terms of the coverage, the names of the persons covered, the fee charged and how the fee is calculated.¹⁰

Independent contractors

Specific occupations listed in rules

Minnesota Rules Chapter 5224 contains information for determining independent contractor or employee status for 31 categories of occupations. The rules define the particular occupation and list certain criteria that must be substantially met for the person in that occupation to be characterized as either an independent contractor or an employee.¹¹

The occupations identified in the rules include artisans, barbers, bookkeepers, accountants, bulk oil plant operators, collectors, consultants, domestic service, babysitters, industrial homeworkers, laborers, musicians, commission salespeople or manufacturer representatives, traveling salespeople, house-to-house salespeople, agent drivers, photographers' models, professional persons, doctors of medicine – part time for industrial firms, real estate and securities salespeople, registered and practical nurses, unlicensed nurses, taxicab drivers, timber fellers, buckers, skidders, processors, sawmill operators, variety entertainers, sports officials, jockeys and trainers.

Occupations not listed in the rules

If an occupation is not listed in the rules or if the criteria are not substantially met, the rules provide general criteria to determine whether the person is an employee or an independent contractor. These criteria include the following five factors: ¹²

1. the right to control the means and manner of performance;
2. the mode of payment;

3. the furnishing of tools and materials;
4. control over the premises where the work was done; and
5. the right of discharge.

The degree of control one party has the right to exert over another has become the primary factor to consider. Control over, or the right to control, another's job duties is an indication of an employer relationship.¹³

Trucking and messenger/courier industries

Minnesota Statutes section 176.043 is a law enacted specifically for the trucking and messenger/courier industries. This law lists seven factors, *all* of which must be met for the person to be considered an independent contractor. This law is fundamentally different from the rules governing the occupations listed above. Under section 176.043, *unless all seven factors are established*, the individual is an employee. Persons in the trucking and messenger/courier industries need to review this statute in detail.

Building construction and improvement services

Another law applies to individuals performing any commercial or residential building construction or improvement services. To be considered an independent contractor, a person performing these services must meet all nine of the requirements listed in this law.¹⁴

Additionally, the law requires individuals performing building construction or improvement services to register with the Department of Labor and Industry unless an exemption applies.¹⁵ A summary of this law and a link to online registration is at www.dli.mn.gov/business/residential-contractors/contractor-and-remodeler-license. Individuals who do not register, if required, are presumed to be the employees of the construction contractors hiring them.

General contractor liability

If your business functions as a general contractor or otherwise contracts with subcontractors, you should consider having workers' compensation insurance to cover your subcontractor's employees. Under the workers' compensation law, a general contractor is liable to the injured employee of the subcontractor if the subcontractor does not have workers' compensation insurance. Therefore, when a business analyzes its insurance needs, it needs to consider its potential exposure for injuries to subcontractors' employees, even if the business is not otherwise required to have workers' compensation insurance.¹⁶

Additional resources

From DLI

- Workers' compensation insurance coverage: Corporations and limited liability companies – www.dli.mn.gov/sites/default/files/pdf/infosheet_coverage_corps_llcs.pdf

- Workers' compensation liability of contractors – www.dli.mn.gov/sites/default/files/pdf/infosheet_contractor_liability.pdf
- Construction contractor registration – www.dli.mn.gov/business/residential-contractors/residential-contractor-fags
- Workers' compensation: Determining independent contractor or employee status insurance coverage – www.dli.mn.gov/business/workers-compensation/work-comp-independent-contractor-or-employee
- Workers' compensation insurance coverage and liability: Farmer-employer exception – www.dli.mn.gov/sites/default/files/pdf/infosheet_farmer_emp_exception.pdf
- Third degree of kindred chart – www.dli.mn.gov/sites/default/files/pdf/infosheet_3rd_degree_kindred.pdf

Case law

See these Minnesota Supreme Court cases:

- *Guhlke v. Roberts Truck Lines*, 128 N.W. 2d 324 (Minn. 1964)
- *Hunter v. Crawford Door Sales*, 501 N.W. 2d 623 (Minn. 1993)

Minnesota Statutes

See generally, Minnesota Statutes Chapter 176, the Workers' Compensation Act, which is available online at www.revisor.mn.gov/statutes/?id=176. Paper copies are also available from Minnesota's Bookstore at 660 Olive Street, St. Paul, MN 55155; 651-297-3000 or 800-657-3757; and at www.minnesotasbookstore.com.

Statutes relevant to workers' compensation insurance coverage:

- 176.011 – Defines important terms used in the statute – www.revisor.mn.gov/statutes/?id=176.011
- 176.021, subd. 1 – The basic requirement for insurance coverage by employers – www.revisor.mn.gov/statutes/?id=176.021
- 176.041 – Exclusions, exceptions and election of coverage – www.revisor.mn.gov/statutes/?id=176.041
- 176.181 – Outlines the basic requirement for coverage by employers – www.revisor.mn.gov/statutes/?id=176.181
- 176.215 – Liability for payment of compensation when subcontractor fails to comply with Chapter 176 – www.revisor.mn.gov/statutes/?id=176.215
- Minnesota Rules, Chapter 5224 – Independent contractor status – www.revisor.mn.gov/rules/?id=5224

¹Minn. Stat. § 176.181.

²See Minn. Stat. § 176.183, subd. 2.

³See Minn. Stat. § 176.041, subd. 1.

⁴Minn. Stat. § 176.011, subd. 2a.

⁵See Minn. Stat. § 176.041, subd. 1(15). Relatives of an executive officer of a closely held corporation who are related by blood or marriage within the third degree of kindred, and who may be excluded from workers' compensation coverage by filing an election to exclude, are:

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- The *executive officer's* grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nieces and nephews, *and all of their current spouses*.
 - The current spouses of the *executive officer's* parents and children.
 - The executive officer's *spouse's* parents, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nieces and nephews, *and all of their current spouses*.

⁶See Minn. Stat. § 176.041, subd. 1(20). Relatives of a manager of an LLC who are related by blood or marriage within the third degree of kindred, and who may be excluded from workers' compensation coverage by filing an election to exclude, are:

- The *manager's* grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nieces and nephews, *and all of their current spouses*.
- The current spouses of the *manager's* parents and children.
- The manager's *spouse's* parents, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nieces and nephews, *and all of their current spouses*.

⁷Minn. Stat. § 176.011, subd.11a.

⁸Minn. Stat. §§ 176.043 and 181.723, subd.4 and Minn. R. 5224.0320.

⁹The workers' compensation law excludes "a person employed by a common carrier by railroad engaged in interstate or foreign commerce and who is covered by the Federal Employers' Liability Act, United States Code, title 45, sections 51 to 60, or other comparable federal law." Minn. Stat. § 176.041, subd. 1(1).

¹⁰See Minn. Stat. § 176.041, subd.1a.

¹¹Minn. R. 5224.0320.

¹²Minn. R. 5224.0330.

¹³See *Guhlke v. Roberts Truck Lines*, 128 N.W.2d 324 (Minn. 1964); *Hunter v. Crawford Door Sales*, 501 N.W.2d 623 (Minn. 1993).

¹⁴See Minn. Stat. § 181.723.

¹⁵See Minn. Stat. § 326B.701 (2014 Minn. Laws, ch. 305, available at www.revisor.mn.gov/laws/?id=305&doctype=Chapter&year=2014&type=0)

¹⁶See Minn. Stat. § 176.215.