

Workers' compensation insurance coverage: Corporations and limited liability companies

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

Employers, including corporations and limited liability companies (LLCs), are required to provide workers' compensation coverage for their employees, unless there is a specific exception in the law. The exceptions are discussed below in more detail. For example, an "employer" could be a corporation, an LLC, a partnership or an individual. "Employees" are defined by the Minnesota workers' compensation law, generally, as persons performing services for another for hire. Executive officers are also "employees," unless an exception is listed in Minnesota Statutes section 176.041.

Workers' excluded from coverage

The workers' compensation law states certain categories of workers are excluded from coverage or can be excluded from coverage. There are many of these categories, known as "exclusions." You should thoroughly review the statute to determine whether any of these categories applies to your particular situation.¹

Persons in these categories are not covered by the workers' compensation law. Examples include individuals associated with the following types of businesses.

1. **Family farm corporations²:** executive officers of family farm corporations and their spouses, parents or children, regardless of age. Family farm corporations must be founded for agricultural purposes, most of the shareholders must be relatives or spouses, and one of these relatives or spouses must be actively farming.
2. **Closely held corporations:** executive officers owning at least 25 percent of the stock of closely held corporations if the corporation has 10 or fewer shareholders and had less than 22,880 hours of payroll in the preceding calendar year.
 - a. Spouses, parents and children: These officers' spouses, parents and children, regardless of age, are also automatically excluded.
 - b. More distant relatives: These officers' relatives who are related by blood or marriage within the third degree of kindred can be excluded but only if the corporation files a written election with the

department to exclude these individuals.³ A written election is not required for the officers and their spouses, parents and children.

3. **Limited liability companies:** managers of LLCs having 10 or fewer members and having less than 22,880 hours of payroll in the preceding calendar year, if that manager owns at least a 25 percent interest in the company.
 - a. Spouses, parents and children: These managers' spouses, parents and children, regardless of age, are also automatically excluded.
 - b. More distant relatives: These managers' relatives who are related by blood or marriage within the third degree of kindred can be excluded but only if the LLC files a written election with the department to exclude these individuals.⁴ A written election is not required for the managers and their spouses, parents and children.

A form for an election to exclude relatives of executive officers of a closely held corporation and a form for election to exclude relatives of managers of an LLC can be found at the department's website at www.dli.mn.gov/business/workers-compensation/work-comp-forms. Instructions for filing the form with the department are included on the form. A copy of the form must be provided to the workers' compensation insurance company.

Election of coverage

While the workers' compensation law lists categories of workers who are excluded from coverage or who can be excluded, the workers' compensation law also describes how employers can extend the coverage to individuals who would otherwise be excluded. The officers, managers and close family members listed above, who are automatically excluded under the workers' compensation law, may be included at the election of the employer. Any such person is then included within the meaning of the term "employee" for purposes of the workers' compensation law. Coverage may be extended to the spouses, parents and children whether or not coverage is elected for the related officer or manager. A written Notice of Election of Coverage form, or its termination, must be provided to the workers' compensation insurer. The coverage or termination becomes effective the day after the insurer receives the notice, unless the notice states a later effective date. The election should not be filed with the department.

Independent and general contractor considerations

Corporations, LLCs, individuals and other business entities may elect to cover independent contractors for a fee only if: the independent contractor elects to be covered in writing; and the workers' compensation insurer issues the independent contractor an endorsement describing the terms of coverage.⁵

If your business functions as a general contractor or otherwise contracts with subcontractors, you need to consider having workers' compensation insurance to cover your potential liability for a subcontractor's employees. Under the workers' compensation law, a general contractor is liable for the injured employee of a subcontractor if the subcontractor does not have workers' compensation insurance. Therefore, when a

corporation analyzes its insurance needs, it should consider its potential exposure for injuries to a subcontractor's employees, even if the corporation is not otherwise required to have workers' compensation insurance for its officers and employees.⁶

Personal liability of owners and officers

Corporate status does not necessarily protect the owners and officers from personal liability when the corporate employer is neither insured nor self-insured for workers' compensation liability. Under the workers' compensation law, "employer" includes any owners or officers of a corporation who direct and control the activities of the employees. When an uninsured corporation is named as an employer in a petition for benefits, all of these owners and officers are automatically named.

Penalties for failing to have workers' compensation insurance

The department has the authority to penalize uninsured employers for failing to insure employees, regardless of whether an injury has occurred.⁷ The department 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.⁸

Additional resources

- Workers' compensation insurance coverage: General information – www.dli.mn.gov/sites/default/files/pdf/infosheet_coverage_general.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-faqs
- 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

Relevant Minnesota Statutes

See generally:

- Minnesota Statutes Chapter 176, The Workers' Compensation Act at www.revisor.mn.gov/statutes/?id=176. Paper copies are also available from Minnesota's Bookstore at 651-297-3000, 800-657-3757 or www.minnesotasbookstore.com.

Statutes relevant to workers' compensation insurance coverage:

- 176.021, subd. 1 – Basic requirement for insurance coverage by employers – www.revisor.mn.gov/statutes/?id=176.021
- 176.011 – Definitions, including “employee” (subds. 9 and 9a), “employer” (subd. 10), “executive officer of a corporation” (subd. 11), “family farm” (subd. 11a), “family farm corporation” and “closely held corporations” (subd. 2a) – www.revisor.mn.gov/statutes/?id=176.011
- 176.041, subds. 1 and 1a – Exclusions; and Election of coverage – www.revisor.mn.gov/statutes/?id=176.041
- 176.183 – Uninsured employers, liability of owners and officers, Special Compensation Fund – www.revisor.mn.gov/statutes/?id=176.183
- 176.215 – Liability for payment of compensation when subcontractor fails to comply with Chapter 176 – www.revisor.mn.gov/statutes/?id=176.215

¹The exclusions are listed in Minnesota Statutes § 176.041, subd. 1.

²A “family farm corporation” is defined in Minnesota Statutes § 500.24, subd. 2. The workers' compensation law references this definition in Minnesota Statutes § 176.041, subd. 1(8).

³See Minnesota Statutes § 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:

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

⁴See Minnesota Statutes § 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, nephews and all of their current spouses;
- the current spouses of the manager's parents and children; or
- the manager's spouse's parents, grandparents, grandchildren, great-grandparents, great-grandchildren, brothers, sisters, aunts, uncles, nieces, nephews and all of their current spouses.

⁵See Minnesota Statutes § 176.041 subd. 1a(f).

⁶See Minnesota Statutes § 176.215.

⁷Minnesota Statutes § 176.181.

⁸See Minnesota Statutes § 176.183, subd. 2.