

Workers' compensation insurance coverage and liability: Temporary and leased employment situations

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.

General coverage requirements

Under Minnesota's workers' compensation law,¹ every employer is liable for workers' compensation benefits whenever an employee's personal injury or death arises out of and in the course of employment.² The law requires each employer to obtain workers' compensation insurance for its employees, unless the employer has been approved to self-insure.³ 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 undocumented workers.

Temporary employment situations

Q. What is a temporary employment agency?

A. A temporary employment agency, also called a temporary help service, means an agency that hires its own employees and assigns those employees to a client for a limited time, usually to address the client's special circumstances, such as temporary skill shortages or temporary special assignments and projects.

Q. If an employee is employed through the services of a temporary employment agency, who is required to obtain workers' compensation insurance coverage for the temporary employee?

A. The courts have interpreted the law to mean a labor pool or temporary employment agency is the "general employer" of this employee and the employer that directs the employee's activities at the location where the employee works is the "special employer." Because both are employers, they are jointly responsible for workers' compensation insurance coverage for the employee.⁴

Between themselves, joint employers may arrange for which of them will obtain workers' compensation insurance coverage for their joint employees, and any workers' compensation benefits owed to the joint employees would be paid by that policy.⁵ Often it is the general employer, or temporary agency, that has contractually agreed to provide the coverage for its temporary employees. However, both employers are liable for the coverage and if the one that agrees to obtain the coverage does not purchase a policy, the remaining employer and its insurer, if insured, will be held liable for the benefits in workers' compensation administrative proceedings.⁶ This does not prevent one employer from suing the other in district court for breach of contract.

Q. Between two liable insured employers, who has the first responsibility to pay benefits?

A. If there is no contract and both employers are insured, the special employer's insurer is looked to first for the payment of benefits because: the special employer controls the premises and the employee; and the special employer is in the best position to prevent an injury.⁷

Employee leasing situations

Q. What is an employee leasing company?

A. An employee leasing company enters into contracts where a client company leases, for a fee, employees from the employee leasing company. Employee leasing arrangements include full-service or long-term leasing arrangements under which the leasing company provides employees to the client company and undertakes some of the employment responsibilities for those leased employees. One responsibility commonly undertaken by the employee leasing company is issuing the leased employees their payroll checks.

Q. If an employee is employed through the services of an employee leasing company, which employer is required to obtain workers' compensation insurance coverage for the leased employee?

A. Employee leasing situations are similar to temporary employment situations. For example, in *Rackow v. Kujak Transport*, the employee (Rackow) was driving a truck for Kujak Transport, but the leasing company, Labor Resources Inc. (LRI), paid and disciplined Rackow.⁸ The court stated Rackow was an employee of LRI as a "general employer" and of Kujak Transport as a "special employer." Because both LRI and Kujak Transport were employers, both were jointly liable for workers' compensation benefits for Rackow.

Note that a person who creates or executes a "fraudulent scheme" to enable the execution of work by another without being responsible for Minnesota workers' compensation benefits for the worker is considered an employer and will be held liable for the worker's benefits.⁹

Q. Must leasing companies meet certain requirements to provide workers to work in Minnesota?

A. Yes, any employee leasing business providing employees in Minnesota must register with the Minnesota Department of Commerce.¹⁰ The Department of Commerce can be contacted at 651-539-1500.

Remedies

Q. What happens if employers that are jointly liable for Minnesota workers' compensation do not obtain coverage?

A. If an employee is injured and the employers have not purchased workers' compensation insurance coverage or followed the proper procedures for self-insurance, the employee may claim workers' compensation benefits from the state Special Compensation Fund.¹¹ The uninsured employers are then jointly responsible to the Special Compensation Fund for:

- reimbursement of all compensation benefits to which the employee is entitled, including the employee's attorney fees and costs;

- reimbursement of the Special Compensation Fund's costs; and
- a penalty in the amount of 65 percent of all compensation benefits paid.

If one or more of the uninsured employers is organized as a corporation, the owners or officers of the corporation(s) who direct and control the activities of employees are personally liable to the Special Compensation Fund for the above.

Alternatively, the employee may sue the employers in a civil action for the full amount of the employee's losses. Note the uninsured employers' defenses in this civil action are limited.¹² The amount awarded in such a case may be much higher than the amount of workers' compensation benefits due.

Penalties for failure to insure

The Department of Labor and Industry penalizes uninsured employers for failing to insure employees, regardless of whether an injury has occurred.¹³ 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 unless workers' compensation insurance is in place.

Enforcement

The commissioner of the Department of Labor and Industry has the authority to enforce the laws requiring workers' compensation insurance coverage. The commissioner's enforcement powers include the ability to enter and inspect a business and its records, take depositions, issue subpoenas and order the production of documents to determine if insurance coverage as required by law exists.

References

Minnesota Statutes, Chapter 176, the Workers' Compensation Act, and related rules are online at www.revisor.mn.gov and www.dli.mn.gov/business/workers-compensation/work-comp-statutes-and-rules. Paper copies are available from the Department of Administration, Minnesota's Bookstore at 651-297-3000, 800-657-3757 or www.mnbookstore.com.

Relevant Minnesota Statutes

- 79.255 – employee leasing company registration
- 176.011 – provides definitions
- 176.021, subd. 1 – outlines the basic requirement for coverage by employees
- 176.031 – liability of uninsured employers in a civil action
- 176.041 – exclusions, exceptions and election of coverage
- 176.071 – allows joint employers to agree which employer will insure joint employees
- 176.181 – compulsory insurance provisions
- 176.183 – liability of uninsured employers to the Special Compensation Fund
- 176.184 – enforcement powers

- 176.205 – person deemed employer due to fraudulent scheme

¹Minnesota Statutes, Chapter 176 (2016).

²Minn. Stat. § 176.021.

³Minn. Stat. § 176.181, subd. 2.

⁴*Aultman v. Search Resources, Inc.*, 58 W.C.D. 89 (W.C.C.A. 1997), *aff'd mem.*, 575 N.W.2d 106 (Minn. 1998); *Benner v. Essential Nursing Servs., Inc.*, 63 W.C.D. 58 (W.C.C.A. 2002), *aff'd mem.*, 656 N.W.2d 225 (Minn. 2003).

⁵Minnesota Statutes § 176.071 (2016); *Aultman*, 58 W.C.D. 89.

⁶*Benner*, 63 W.C.D. 58; *Drier v. Grounded Air, Inc.*, No. WC12-5424, 2012 WL 6652575 (W.C.C.A. 2012), *aff'd mem.*, 837 N.W.2d 458 (Minn. 2013); *Mironenko v. Grounded Air, Inc.*, No. WC12-5431, 2012 WL 6652575 (W.C.C.A. 2012), *aff'd mem.*, 837 N.W.2d 458 (Minn. 2013) (employee leasing situation).

⁷*Sorensen v. Metro Stucco Systems, Inc.*, 49 W.C.D. 216 (W.C.C.A. 1993), *aff'd mem.*, 507 N.W.2d 7 (Minn. 1993) (table).

⁸*Rackow v. Kujak Transport*, 44 W.C.D. 388 (W.C.C.A. 1991), *aff'd mem.*, 468 N.W.2d 337 (Minn. 1991) (table).

⁹Minnesota Statutes § 176.205 (2016). *See also* *Petterson v. K & C Distributing Co.*, 51 W.C.D 295 (W.C.C.A. 1994), *aff'd mem.*, 520 N.W.2d 747 (Minn. 1994) (table); *Rhoades v. K & C Distributing Co.*, 51 W.C.D 305 (W.C.C.A. 1994), *aff'd mem.*, 520 N.W.2d 747 (Minn. 1994) (table).

¹⁰Minnesota Statutes § 79.255 (2016).

¹¹Minn. Stat. § 176.183.

¹²Minn. Stat. § 176.031.

¹³Minn. Stat. § 176.181.