

**New Mexico Workers' Compensation Administration**

# **A Guidebook for Employers in New Mexico**



**A guide to your rights and responsibilities  
under the New Mexico workers' compensation law**

2014 Edition

This book is based upon the law and rules in effect in 2014. Laws and rules can change by acts of the Legislature, rulemaking by the Workers' Compensation Administration, or decisions of the higher courts of New Mexico. You can learn about current law affecting your case by contacting the Workers' Compensation Administration.

New Mexico Workers' Compensation Administration  
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## VISION

One team. One goal:  
A better New Mexico  
for  
Workers and Employers.

## MISSION

To assure the quick and efficient delivery  
of indemnity and medical benefits to injured workers  
at a reasonable cost to employers.



The Workers' Compensation Administration was created to assure the timely delivery of benefits to injured workers at a reasonable cost to employers. Workers' compensation is a system of insurance that protects workers and employers from some of the losses caused by on-the-job accidents and job-related illnesses.

The WCA has jurisdiction over almost all businesses in New Mexico. A key objective of the WCA is to educate employers and their workers on best practices for on-the-job safety and accident prevention in order to promote workplace safety. Accident prevention is the key to protecting employees, an employer's most valuable asset. But accidents do happen and should a disabling injury occur a worker should receive medical care and benefits promptly and correctly.

This guidebook is designed to provide employers the basic information they need to help them in the event of a workplace injury. It also explains the rights and obligations of the affected parties. You are encouraged to become familiar with the information in this workbook and hope the information herein can help keep costs down while meeting the needs of injured workers.

As always, the WCA staff stands ready to assist you with any questions you may have concerning the workers' compensation system.

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# Table of Contents

Page

I	<b>WCA Vision / Mission</b>
II	Table of Contents
1	Workers' Compensation Insurance: What It Is, What It's For
2	New Mexico's Workers' Compensation System Compared to Other States
4	Quick Start Summary -
4	- What You Need To Know NOW
5	- What You Need To Know NOW About Accidents, Injuries and Claims
6	About This Book
7	New Mexico Workers' Compensation Administration
8	Your Workers' Compensation Insurance Coverage
9	Coverage Requirements For Certain Classes
10	How to Obtain Workers' Compensation Insurance
12	Illegal Forms Of Coverage And How To Avoid Them
13	Information For Out-of-State Employers With Operations In New Mexico
13	If You Are On Or Near A Reservation: Indian Sovereignty Issues
14	Your Insurance Premium
18	Enforcing The Coverage Requirement
19	Workers' Compensation Fee
20	What To Do As A Covered Employer
21	Safety
23	If Your Employee Has An <u>Accident</u>

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## **Table of Contents (cont.)**

Page

25	Summary Of Responsibilities And Time Lines Within First Days Following An Accident
25	Safety Devices - Effects On Benefits
25	Providing Wage Information To Your Insurer Or Self-Insurance Program
26	Selection Of A Health Care Provider
27	The Ombudsman Program
27	Overview of Indemnity Benefits
29	Medical Benefits
29	What Can You Do For Your Injured Employee?
30	If Your Insurer Denies The Claim
30	Actions To Avoid
31	Fraud
32	Workers' Compensation Dispute Resolution / Adjudication
34	Glossary
38	<b>CONTACTING THE WORKERS' COMPENSATION ADMINISTRATION</b>
39	<b>Annual Safety Inspections</b>
44	<b>The Ombudsman Program</b>
47	<b>If you need a lawyer</b>

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# Workers' Compensation Insurance: What It Is, What It's For

## *What is Workers' Compensation?*

The workers' compensation system exists to provide a standardized solution to a common problem: what to do when a worker is injured at work.

Under workers' compensation law, when a worker is injured on the job or becomes ill as a result of conditions at work, the employer pays the medical bills and provides partial wage support to that worker.

Workers' compensation law removes some of the risk and uncertainty from the relationship between the employer and worker. The worker is guaranteed that necessary care will be provided quickly in almost all cases where the law applies. The employer is protected against excessive liability.

The worker accepts limits on the amount of money he can recover from any injury - no matter how serious or who was at fault - in return for the guarantee of prompt necessary care. Through the "exclusive remedy" doctrine, the worker's recovery is limited to workers' compensation. The worker is barred from suing the employer in tort for an accidental work-related injury.

***Workers' compensation balances the interests of the individuals directly involved and the general welfare of society.***

The employer takes on many responsibilities under the workers' compensation system. The employer is financially responsible in almost every work-related accident covered under the law, because of the "no fault" doctrine, even if it was caused by the worker's error in judgement or by the negligence of another person. The employer also accepts responsibility for providing a safe workplace to prevent accidents.

Employers are encouraged to provide safe workplaces to protect workers and save money through reduced insurance premiums. Workers are encouraged to work safely and avoid injuries because they will earn more by working than by receiving workers' compensation benefits.

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**IT TAKES EVERYONE WORKING TOGETHER TO**

**MAKE NEW MEXICO A SAFER PLACE TO WORK.**



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# **New Mexico's Workers' Compensation System Compared To Other States**

**The New Mexico workers' compensation system is a national model for stability and cost-effectiveness.**

Our workers' compensation system underwent a major legislative reform in 1990 - driven by a unique coalition of business and labor, working together with legislative leaders. Since the reform, New Mexico premiums have come down and remained competitive, year after year.

Based on national statistics, New Mexico insurance premiums have averaged less than half of highest-cost states such as California, supporting economic development for both new and existing business

**The success of our system is based on the law itself. A few highlights:**

***The law discourages frivolous and fraudulent claims.***

Periodic benefit payments are the preferred method of payment while lump-sum settlements to injured workers are allowed in some cases. Instead of settling claims with a single large payment, payers are required to continue making periodic benefit payments and paying medical providers directly unless approved by a workers' compensation judge. This is a powerful deterrent against fraud. It also cuts down the "lottery mentality" of workers who might be encouraged to seek a quick cash settlement. Finally, it ensures that workers do not spend money that they will need for future medical payments.

The New Mexico law does not recognize "stress" claims, which plague many other states. Compensability for "mental impairment" is limited to strictly defined circumstances with a clear causal connection to severe trauma in the workplace.

The Workers' Compensation Administration (WCA) investigates and prosecutes suspected cases of criminal fraud.

***New Mexico reduces reliance on lawyers and litigation.***

Unnecessary litigation is expensive. The New Mexico workers' compensation law is designed to reduce litigation. Injured workers' long-term disability benefits are determined by an objective formula, not by which side has the better lawyer.

The Workers' Compensation Administration ombudsman program helps all parties to understand their rights and responsibilities, and resolve some disputes, so that lawyers are usually not necessary. Many of the problems presented are settled at this informal level. Parties have access to publications published by the WCA, which explain their rights and responsibilities in easy-to-understand language.

When an injured worker files a complaint, mediation is mandatory before access to trial is permitted. The WCA maintains a staff of professional mediators. Most of all disputed cases are settled at mediation, at minimal cost and often without lawyers.

Legal fees for both sides are capped. Workers' attorneys may be paid only after the dispute is resolved when payment is approved by a judge, and usually the worker pays half. This discourages the unnecessary use of attorneys.

***Medical costs are contained.***

Workers' compensation is not a blank check to the doctor.

The medical cost containment provisions address the two basic aspects of medical

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costs: whether a medical procedure is reasonable and necessary, and whether it is fairly priced.

On July 1, 2013, the Work Loss Data Institute's (WLDI) Official Disability Guidelines (ODG) went into effect in New Mexico for the treatment of workers' compensation injuries. All medical services rendered for recommended treatment contained in the most recent edition of Official Disability Guidelines (ODG) are presumed reasonable and necessary.

The Health Care Provider Fee Schedule (HCPFS) is issued annually by the WCA to set costs for medical procedures. Health care providers are normally limited to receiving payments within the range of the HCPFS. Hospital stays require pre-authorization.

***Vocational rehabilitation is provided only when genuinely useful.***

There is no mandate to provide vocational rehabilitation in the New Mexico statute.

Successful vocational rehabilitation requires a motivated worker and a motivated service

provider. Although it is not required, an employer is free to provide it. An extensive statewide network of low-cost community colleges and other educational services provide workers with alternative opportunities to re-educate themselves after injury outside the workers' compensation system.

***Safety and return to work are encouraged.***

The WCA reaches employers around the state with important messages in order to protect workers, reduce costs and allow businesses to thrive.

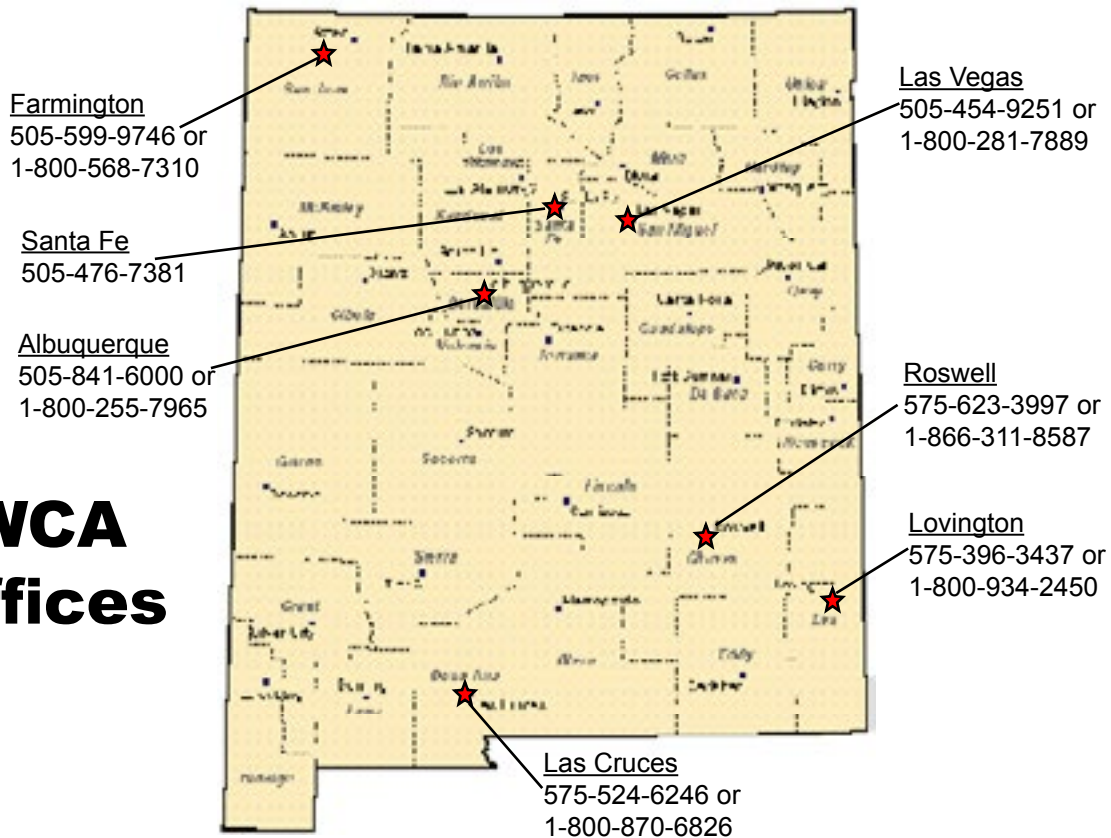
***The first message is workplace safety.***

The safety consultants within the WCA are advisors, educators and inspectors. They provide free services to businesses, including onsite analysis and training.

***The second message is early return to work.***

The Administration encourages employers, adjusters and doctors to save money and increase productivity by returning injured workers to useful employment. Workers earn more money by working, and businesses gain by having a trained worker back supporting the business.

# WCA Offices



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# Quick Start Summary - What You Need To Know NOW

**Almost all employers are required by law to have workers' compensation coverage through a New Mexico insurance policy or a New Mexico certified self-insurance program.**

New Mexico is a private insurance state. Coverage is purchased from private insurance carriers or authorized self-insurance groups through insurance agents. A business may self insure with the approval of the WCA. The WCA does not pay insurance benefits. The WCA provides regulatory, dispute resolution and informational services.

**You are required to post the Workers' Compensation Act poster where employees will have access to it. The posters and Notice of Accident forms are provided free by the WCA and are also available online at the WCA website.**

You must:

- ◆ fill in the blank information on the poster, giving the name of the in-state contact for workers' compensation claims (the insurance carrier, self-insurance program or third party administrator) and an in-state telephone number.

- ◆ provide a supply of Notice of Accident forms (available online at the WCA website, printed by the WCA or supplied by insurers) on or adjacent to the poster.

**You are required to accept Notice of Accident forms as the preferred method for a worker to notify you that an accident has occurred. You or a designated person (supervisor or human resources officer) should:**

- ◆ sign and date the form.

- ◆ keep one copy and give a signed and dated copy back to the worker.

- ◆ You may not impose other methods of notification as mandatory except with the approval of the Director of the WCA.

- ◆ You may also be considered to have actual notice of an accident in other ways (for example, if you witness the accident).

**If your workers' compensation premium with a commercial carrier or group self-insurance fund is \$15,000.00 or greater, or if you are self-insured or a member of a pool, you must have an annual safety inspection that meets the minimum inspection standards of the WCA.** This inspection can be done by:

- ◆ a safety consultant employed by the WCA (this is a free service)

- ◆ yourself, if done properly

- ◆ a safety professional you hire

- ◆ a safety specialist from your insurance carrier or self-insurance program

**You must pay the quarterly workers' compensation assessment fee.** This quarterly fee supports the operations of the WCA, which provides a number of services that help reduce your insurance costs. The fee is paid to the state, and is *not* your insurance payment.

If you don't have coverage, and you are required by law to have it, the WCA will take steps to enforce coverage or have your business closed. If your employee is injured while you are illegally without coverage, you can be held financially responsible, through the Uninsured Employer's Fund, for the entire cost of the claim plus a substantial penalty.

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# Quick Start Summary - What You Need To Know NOW About Accidents, Injuries And Claims

**Be prepared to respond to a medical emergency. Identify the nearest emergency medical facility and develop a plan in advance to get injured workers to the facility.**

When a worker reports an accident or injury, you are required to accept the report.

Report the accident to your insurer or self-insurance program within 72 hours. Your provider should have given you instructions on how to make the initial report. You should know whether your insurer requires you to file the "Employer's First Report of Injury or Illness," Form E1.2, with the WCA, or whether the insurer will file this for you. If you are responsible for filing, you must do so in compliance with the WCA filing deadlines. There are penalties for not promptly reporting accidents to your insurer or if required, submitting the report to the WCA.

If the worker requires follow-up medical care after an emergency room visit, you are required to notify the worker of your policy regarding choice of health care provider - whether you will select the health care provider or let the worker select first. You must establish this policy in advance and inform all your employees in writing of the policy.

You should report all workers' compensation claims even if you disagree with their legitimacy. If you have concerns, tell your insurer and indicate your concern on the Employer's First Report form but do not interfere with your employee's right to file the claim. You may confer with your insurer and provide insight relevant to efficient management of the claim.

Your insurer has the right to manage your claims - not you (unless you are individually self-insured). You should report all injuries promptly and let your insurer take over the management and pay the bills - even if you have a deductible policy.

It is a violation of law to fire or otherwise punish or threaten an employee for filing or attempting to file a workers' compensation claim. However, you do have the right to replace or dismiss an employee who cannot work due to an injury. You will be required to rehire such an employee under certain circumstances.

Workers' compensation private insurance pays 100 percent of the authorized medical expenses for a worker injured on the job or as a result of occupational disease. The worker is not to pay anything. Your workers' compensation insurer or self-insurance program pays these expenses.



*Be prepared to respond to a medical emergency.*

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## About this book

This Guidebook is written as a general guide to the workers' compensation system for employers. It focuses on issues that are commonly of interest to employers, such as coverage, costs, regulatory requirements and the first steps in claims processing.

In addition to this **Guidebook for Employers**, the New Mexico WCA publishes the companion, **Workbook for Injured Workers in New Mexico**.

**Other publications available on the WCA website [www.workerscomp.state.nm.us](http://www.workerscomp.state.nm.us):**  
(Go to Quick Links on the Homepage)

- Annual Safety Inspections
- Develop a Safety Program
- Stay at Work / Return to Work Program Guide and Brochure
- FAQs
- Information About the Assessment Fee
- Report an Employer Who Doesn't Have Coverage
- Workers' Compensation Act Poster and Notice of Accident Form

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### ***Important:***

## **Laws can change, because of acts of the Legislature or decisions of the higher courts.**

Before relying on this or any other publication for critical decisions, please make sure you have current information. Some options include: contacting a WCA Ombudsman, consult an attorney who specializes in workers' compensation, contact your insurance carrier, attend seminars sponsored by the Workers' Compensation Administration, the State Bar of New Mexico, or private companies regarding workers' compensation or join organizations such as the Workers' Compensation Association of New Mexico.

# New Mexico

## Workers' Compensation Administration

The New Mexico WCA is a state agency that helps to keep the workers' compensation system in balance, providing services that meet the needs of the employers, workers and other stakeholders.

The vision statement for the WCA is:

*“One team. One goal: A better New Mexico for workers and employers.”*

By law, the mission of the WCA is:

*“To assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers.”*

Below is a summary of WCA functions and services.

### **Information and assistance**

◆ **Safety assistance for employers:**

At no charge to employers, a wide range of safety services, from safety presentations or consultations to help with developing major safety programs.

◆ **Ombudsman program:** On-staff claims experts who provide personalized guidance to unrepresented workers, employers and anyone else who calls.

◆ **Publications and web site:** The WCA publication series includes, in addition to this book and a **Workbook for Injured Workers**, the Workers' Compensation Act Poster, Notice of Accident Forms, Stay at Work / Return to Work brochure and guidebook, and Advisory Council brochure. WCA publications are provided free of charge. The WCA web-site carries copies of publications plus additional information for the public.

◆ **Seminars, speaking to groups:** WCA staff members conduct public training and information seminars for new businesses and are also available to speak to established business and groups.

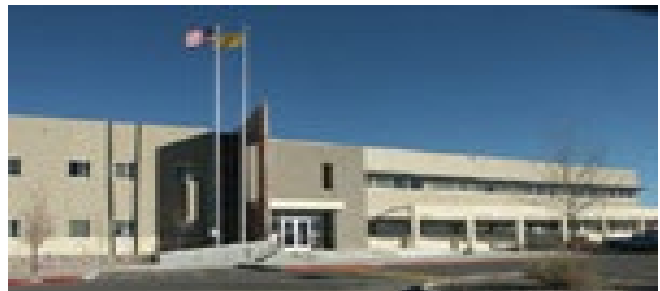
◆ **Statistics and Annual Report:** The Economic Research Bureau tracks injuries, claims, costs and other critical factors in great depth and publishes its findings to inform employers, insurers and public policy makers so the data can be used for future policy decisions.

### **Regulation**

◆ **Enforcement** of the insurance coverage requirement.

◆ **Medical cost containment:** annually publishing a schedule of maximum charges for medical care, providing utilization review and case management.

◆ **Administrative enforcement:** investigation and imposition of civil penalties for violations of the law by anyone (employer, worker, etc.).



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### **Regulation (continued)**

- ◆ **Fraud investigation and prosecution.**

- ◆ **Self-insurance:** certification and auditing of self-insured employers, groups and pools.

### **Dispute Resolution**

The WCA is the administrative forum of special jurisdiction for resolving workers' compensation claims disputes, providing an efficient adjudicatory system that minimizes legal expenses.

- ◆ **Mediation:** most disputes go through professional mediation before they are allowed to go on to formal trial; most are resolved at mediation, often without need for attorneys.

- ◆ **Formal trials:** WCA judges are legal experts on workers' compensation issues, providing an efficient and predictable environment for resolving disputes.

- ◆ **Court Clerk:** the WCA keeps its own claim records in-house.

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## **Your Workers' Compensation Insurance Coverage**

**All employers who employ three or more workers are required by law to have workers' compensation coverage, except:**

- ◆ all employers engaged in activities required to be licensed under the Construction Industries Licensing Act must have coverage, **regardless of the number of employees;**

- ◆ coverage is not required for household servants;

- ◆ coverage is not required for real estate salespersons;

- ◆ coverage is not required for farm and ranch laborers.

For the purpose of determining "three or more," every person who does the work of the business entity is considered an employee of the business. This includes the owner of the business, if the owner works in the business.

**If you suspect or have reasonable cause to believe another business does not have workers' compensation coverage for its employees - call: 1-866-WORKOMP (1-866-967-5667).**

**These businesses hurt you  
and  
they hurt New Mexico.**

# Coverage Requirements for Certain Classes

## ***Executive employees***

**Employees of a corporation who are also officers or executives of the corporation may choose to exempt themselves from coverage. This exemption is limited to the chairman of the board, president, vice president, secretary, treasurer or other executive officer; and only if that employee owns 10 percent or more of the stock of the corporation. These individuals can exempt themselves by filing an Executive Employee Exemption form with the WCA.**

Executive employees of a limited liability company may also exempt themselves under this provision. The exemption applies to members who have a 10 percent or greater ownership in the limited liability company.

In counting the number of employees of the corporation or limited liability company to determine whether it must have coverage, officers or executives who have exempted themselves must be counted. For example, if a company has three employees including one exempted executive employee, the company must acquire coverage for the other two employees. The salaries of the exempted individuals are not counted in determining the premium.

This exemption means that the exempt executive would not be able to make a claim for benefits if he or she were injured at work.

In the construction industry, the executive employee exception does not exempt the company from the coverage requirement.

This exemption must be arranged with the insurance company. A form certifying the exemption must be filed with the WCA. Usually this filing is done by the insurance company.

When this exemption has been taken, the exempted individual does not have to be counted for the workers' compensation assessment fee. However, the business still has to file for payment of the fee.

## ***Self-employed business owners***

The self-employed owner of a business, who works in the business, is not required to be covered by the business' policy. When purchasing a policy, the self-employed business owner should make certain that it is clearly indicated whether he or she is covered or not.

## ***Family members***

No special exemption is made for family members who are employees. Coverage is required for family members just as for any other employees. If family members are executive employees, they may exempt themselves if they qualify as described above.

## ***Part-time workers***

Part-time workers must be counted for the coverage requirement. An employer who has three part-time workers is required to have coverage.

## ***Non-profit organizations***

Non-profit, charitable and religious organizations are not exempt. They must have coverage and should follow the same safety practices as any other employer.

## ***Farm and ranch exemption***

Farm and ranch laborers are specifically exempted from mandatory coverage if they spend the majority of their time in actual growing and harvesting produce, meat or dairy products. **However, other workers, such as those who pack, process and transport farm produce, are required to be covered if the farm or ranch employs three or more workers.** Farm and ranch

employers who use both farm and non-farm labor may wish to seek advice on the effect of this ruling for their businesses.

***For those exempt from mandatory coverage - how do you decide if you need coverage?***

It's a question of risk. The WCA strongly advises all employers to protect their workers and their business with workers' compensation coverage.

If your business is exempt from the requirement, you may choose to come under the protection of the Workers' Compensation Act voluntarily and acquire coverage. This is to protect your workers in case of injury, and to protect your business from unlimited lawsuits through the "exclusive remedy" doctrine of workers' compensation.

Employers without workers' compensation coverage do not enjoy any special protection in case of a workplace injury. An employee who is injured at work is free to file a tort liability lawsuit, with no limits on the damage award, against an uninsured employer. Most business liability policies exclude coverage for employee injury, based on the assumption that employers also carry workers' compensation coverage. An employer who goes without coverage is exposed to all the risk that workers' compensation is intended to prevent.

An employer in an exempt category who chooses to have coverage must file an **Election to be Subject** form with the WCA. This will usually be done by the insurance agent if you request it.

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## **How To Obtain New Mexico Workers' Compensation Insurance**

### ***Voluntary insurance market***

This is provided by private insurance companies. The insurance carrier must be licensed to issue workers' compensation insurance by the New Mexico Insurance Division, and its premium rates must also be approved by that department.

### ***Self insurance***

Some large businesses and government entities are permitted to provide their own coverage. The rules for qualifying as a self-insured employer are set by the Director of the WCA. Every company that wishes to self-insure must apply to the WCA and receive written approval from the Director before it can self-insure.

### ***Group self-insurance***

A group of employers in the same or similar business may join together for group self-insurance coverage. This is typically done

through an industry association. Approval of the Director of the WCA is required, based on standards set by law and regulation.

Many businesses consider group self-insurance to be to their advantage because group members may enjoy significant cost savings. However, group members take on a major responsibility called "joint and several liability." All members of the group may be legally responsible for losses within the group.

### ***Assigned risk pool***

Employers with poor safety records or in high-risk industries, who cannot get coverage on the commercial market, may acquire coverage from the state assigned risk pool. The pool also provides coverage for many new small businesses until they can acquire coverage on the commercial market. Coverage in the pool is more expensive than in the voluntary market.

Insurance coverage in the pool is provided by several insurance companies designated by the Superintendent of Insurance as “servicing carriers.” Policies in the pool are acquired through New Mexico insurance agents. Any business person who cannot find insurance coverage on the voluntary market should contact an insurance agent about coverage in the pool.

### **High deductible policies**

Some employers in the voluntary market may be eligible for “large deductible” or “high deductible” policies. Under such policies, the employer has a deductible that has been agreed to between the employer and the insurer.

With such a policy, the insurance carrier is responsible for managing the claim and paying all benefits, just as if the policy had no deductible. The employer then **reimburses** the insurance carrier for the agreed deductible. A high deductible allows the employer to save money on premiums in return for assuming a greater degree of the risk. It does not give the employer control of the claim. Employers must report claims just as if there were no deductible, and must not attempt to manage claims or pay bills or benefits themselves. Benefit payments must come from the insurance carrier.

### **Employee leasing**

Employee leasing organizations and professional employment organizations (PEOs) are arrangements under which a business contracts with an employee leasing company or PEO to handle the administrative obligations of being an employer. The employees may be nominally employees of the leasing company or PEO, even though they work full-time for the client business. Recent New Mexico court cases have classified them as employees of both parties.

Under such arrangements, the leasing company or PEO may help to acquire a

workers’ compensation insurance policy for its client businesses. However, the client is responsible and should make sure that proper coverage is in force with the client business as the named insured.

Leasing companies and PEOs generally do not self-insure in New Mexico. Legitimate leasing companies and PEOs that provide workers’ compensation insurance do so through insurance policies with commercial insurance carriers. If you use a leasing company or PEO, it is prudent to find out the name of the insurance carrier and obtain clear and specific information as to what you should do and who will manage the claim in case of an injury.

Under the rules of the Insurance Division, the insurance premium for the leased employees is based on the experience modifier (safety and claims history) of the client business. Employee leasing companies and PEOs are not to be used for a business with a poor safety record to reduce its premiums.

Employee leasing is regulated by the Employee Leasing Bureau of the Construction Industries Division (a division of the Regulation and Licensing Department of the State of New Mexico), under a law enacted in 1993. Leasing contractors must be registered with that Department and must have workers’ compensation policies in accordance with the law.

Prospective leasing contractors and employers who wish to check whether their leasing contractor is properly registered, may contact the Employee Leasing Bureau at (505) 476-4853 or check the web site at [www.rld.state.nm.us](http://www.rld.state.nm.us).

Employers may also wish to check with the WCA Employer Compliance Bureau to make sure the leasing contractor has a workers’ compensation insurance policy in effect.

## **Illegal Forms Of Coverage and How To Avoid Them**

**Certain insurance products or benefit plans are sometimes offered to businesses as alternatives to workers' compensation insurance coverage. Employers should be very cautious when any alternative is offered that seems "too good to be true," or at a much lower price than genuine workers' compensation insurance.**

Alternative benefit plans tend to proliferate when insurance premiums are rising. They are sometimes intentional scams; they are usually illegal.

Sellers of alternative benefit plans may falsely say that these plans are legal because they come under federal laws that supersede New Mexico law, and therefore are beyond state jurisdiction.

The fact is that no alternative (except federal government coverage and special tribal programs operating on sovereign tribal land) can place a New Mexico employer outside the jurisdiction of New Mexico law. If you are an employer operating in New Mexico, you are subject to New Mexico law.

Legitimate insurance companies are regulated and audited by the Insurance Division in New Mexico and its counterparts in other states in which they operate to ensure that they are financially sound and able to pay their claims. They are required to contribute to state-regulated "guarantee funds" to provide a backup in case a company fails.

Alternative programs are not covered by state law or regulated by the state. There is no guarantee that they will deliver what they promise. Therefore, employers should be very cautious and investigate such alternative plans carefully.

An insurance policy or benefit plan that does not meet the requirements of law is far more than just a technical violation. It may place the employer (or the client business, in employee leasing arrangements) seriously at risk and leave injured workers unprotected.

**NEW MEXICO  
WORKERS' COMPENSATION ADMINISTRATION  
Helpline - Hotline  
1-866-WORKOMP / 1-866-967-5667**

The workers' compensation law of New Mexico provides specific protection for employers who come under its jurisdiction - the protection from tort liability lawsuits under the "exclusive remedy" doctrine. No such protection exists under alternate coverage.

If you are approached by someone selling an attractive alternative, you are encouraged to telephone the WCA Employer Compliance Bureau for information (see page 38). The WCA can analyze the product and find out if it is legitimate; if it is not, your call may benefit you and help protect other employers who could have bought a worthless plan.

***Both New Mexico state courts and federal courts have upheld that alternative plans are not an acceptable substitute for New Mexico workers' compensation coverage.***



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## **Information For Out-Of-State Employers With Operations in New Mexico**

**If you have just one employee in New Mexico (a sales rep, for example), and two employees or more outside of New Mexico, and even if your work in New Mexico is short-term, you must have New Mexico workers' compensation insurance. You must also have insurance if you have only one employee in New Mexico and your company is required to be licensed by the New Mexico Construction Industries Licensing Act.**

If you are insured in another state and your insurance carrier is also licensed in New Mexico, you can get an "endorsement" from your carrier to cover your New Mexico employees. If your insurer is not licensed in New Mexico, you will have to obtain a New Mexico policy.

If you prefer to self-insure your New Mexico operations, you can apply to the WCA to be a certified self-insurer. Financial and other requirements must be met.

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## **If You Are On Or Near A Reservation: Indian Sovereignty Issues**

**If you are operating on an Indian reservation, does Indian sovereignty make you immune from the New Mexico workers' compensation law? Generally, the answer is no.**

The general guideline is that tribal sovereignty primarily applies to economic enterprises of the tribe, particularly on tribal land.

Numerous tribes have chosen to have New Mexico workers' compensation coverage for their tribal enterprises. Other tribes have chosen to require private businesses located on their land to provide New Mexico workers' compensation coverage. This coverage protects the workers and greatly reduces risks for the employer.

The New Mexico WCA does not have enforcement authority on tribal land. However, the tribal government may choose to enforce the requirement.

If you have a private business located on tribal land, and a workers' compensation claims or coverage dispute occurs, it may be resolved in tribal court or in the WCA administrative law court depending on the circumstances. You may contact the General Counsel's office for more information.



*Operating on an Indian Reservation may not make you immune from New Mexico Workers' Compensation law.*

# Your Insurance Premium

**The premium for a workers' compensation insurance policy is set to match the risk of claims against that policy and the likely cost of those claims, based upon state and national averages.**

The premium is determined by several factors:

- ◆ the number of employees and how much the employees are paid, as expressed by actual payroll;
- ◆ the type of work the employees do and how hazardous that work is, according to national averages (job classifications); and
- ◆ the claims and safety history of the company, expressed as an "experience modifier."

An application for insurance is evaluated by an agent and then an underwriter who assigns ratings to the job classifications of the employees.

The amount of premium billed at the beginning of a policy year is an estimate which may be changed if circumstances change during the policy year. Once your policy is in place, it covers all employees who are working for you. If you hire additional employees during the policy year, those employees are automatically covered. Your insurance premium will change to reflect changes in your payroll.

The insurance company can be expected to audit the payroll at the end of a policy year and to adjust the final bill for the amount of premium owed based upon actual total payroll and actual type of work performed. If you add employees or otherwise experience growth or change, remember that the insurance premium might increase and be prepared for that possibility. When you

consider adding employees to your workforce, remember to consider the additional premium as part of your cost. Also see page 16 concerning coverage issues for independent contractors.

If your annual workers' compensation insurance premium is greater than \$5,000 and you have three or more years of experience, your business will be assigned an experience modifier.

The experience modifier is a number that expresses how good or bad a risk a specific employer is, compared to the average of other employers in the same industry, based on the frequency and severity of claims. A modifier of "1.0" means the employer is exactly average for the industry. New businesses start with a modifier of 1.0. A business that has a better safety and claims record than average will have its modifier lowered below 1 (.80 or .70, for example). A high-risk business will have its modifier increased (to 1.20 or 1.30, for example). That number is used as a multiplier on the total premium.

## ***Lowering your premium expense: SAFETY***

The experience modifier shows that safety pays on the bottom line. An employer with a good safety record may enjoy a significantly lower premium than an unsafe employer in the same industry. A good safety record becomes a competitive and financial advantage for the safety-conscious employer.

Safety also pays in other measurable ways, such as lower employee turnover and training costs and less time lost responding to accidents and injuries. Safety awareness is part of a productive, quality-oriented workplace and helps make business more profitable. See information about the free and professional safety services of the WCA on page 22.

### **Rates in the Assigned Risk Pool**

Insurance costs more in the assigned risk pool than it does in the voluntary market.

All insureds in the pool must pay a 10 percent surcharge on the base premium rate (the base rate is called the manual premium).

Another surcharge may be added to businesses in the pool. This is called the Assigned Risk Adjustment Program (ARAP). It is based upon severity of losses as measured by the total claim cost. The ARAP may be applied when a business has an experience modifier greater than 1.0.

It is recognized that these extra costs create a competitive disadvantage for businesses in the pool, especially small businesses.

If your business is in the pool, your long-term goal should be to get out of the pool by finding coverage in the voluntary market or with a self-insured group. Just staying in business for a few years and establishing your record as a safe and responsible employer will help.

You can reduce your premium in the pool by reducing both the frequency and severity of your claims. Workplace safety to reduce all accidents to a minimum is the first step. The second step, if a workplace injury has occurred, is to reduce the cost of the claim by cooperating with the insurer to help the injured worker return to work quickly.

The State of New Mexico helps small businesses with good safety records to move out of the assigned risk pool, through activities of the WCA and the Insurance Division. The state's goal is to provide a stable workers' compensation system and reasonable cost controls, so that insurance companies will be attracted to New Mexico and will offer competitive rates to small businesses.

### **Do's And Don'ts in insurance premiums (avoiding errors and fraud)**

Your insurer is providing coverage for all your employees. The insurer has the right to receive premium for the entire risk being covered. Failure to disclose your payroll honestly, or deliberately trying to deceive your insurer about the number of employees, is fraud.

Some employers try to keep their premiums down by artificially reducing their experience modifier - paying claims out of pocket and not reporting them to their insurer. This practice could also be fraud. Payment of benefits out of pocket may not prevent the worker from later filing a workers' compensation claim or tort action against the employer.

Paying claims out of pocket is dangerous for another reason: it deprives your injured employee of benefits that may be important. Occasionally, what appears to be a minor injury develops serious and costly complications over time. You have insurance coverage to pay the worker's indemnity and all future medical costs. When a claim is established, the injured worker has rights and benefits that are guaranteed by law. If you have not established a claim with your insurer, the worker may eventually have expenses that are beyond your means - and a very difficult situation could follow. The purpose of your insurance is to provide coverage when it's needed and lifetime medical benefits for treatment related to the injury - so don't deprive your employee of that coverage or expose your business to possible financial ruin.

### ***What about covering independent contractors?***

A person who has been injured while working for or with your business might attempt to claim workers' compensation benefits under your coverage even if you did not consider that person to be your employee.

Insurance companies know that this can happen. They prepare for this possibility by charging premium to cover the risk. Insurers base their decisions on their knowledge of previous claims filed by persons in similar situations. If a person claiming to be an employee in a certain situation had claimed benefits in the workers' compensation hearing, and the judge had found that the insurer was responsible to pay the claim, then they reason that they will be responsible in the future for similar cases.

Therefore, if there are people working for or with you who may even remotely be considered employees, the insurer may insist on charging you premium for those individuals. By purchasing coverage for these workers, you eliminate that potentially devastating financial hardship on your business from a lawsuit.

### ***Insurance audit dispute resolution process***

A disagreement over premium may arise because the carrier claims that certain individuals were covered employees and that the employer owes premium for them, but the employer believes these individuals were not employees but were independent contractors. If the disputed individuals were independent contractors, then the covered employer may not have to pay premium for them.

This can become a serious matter because the insurer has the power to cancel the coverage if the employer refuses to pay the retroactive premium.

To make a legal determination about whether the disputed individuals were employees or independent contractors, a review of the facts may be necessary. In such disputes, the parties may submit the issue to the WCA for a fact-finding hearing.

For more information, contact the General Counsel of the WCA.

### ***Special issues for the construction industry***

All employers in the construction trades are required to have coverage. The workers' compensation law says that coverage is required for "all employers engaged in activities required to be licensed under the provision of the Construction Industries Licensing Act, **regardless of the number of employees.**"

Employers affected by the special requirement are all those who are required by law to have a license under the New Mexico Construction Industries Licensing Act. This includes all types of work for which construction licenses are required. It covers companies that perform both new construction and remodeling, in the areas of general, electrical, mechanical, LP gas, boilers and pressure vessels and other construction work as defined in that Act. This provision applies to out-of-state contractors working in New Mexico as well as domestic contractors.

Under the Construction Industries Licensing Act, the Construction Industries Division is authorized to revoke or suspend a license for failure to maintain coverage as required by law.

A construction business must have coverage even if the business owner is the only person doing the work of the business. In this case, the owner may choose to exempt himself and purchase a "minimum premium" policy.

### **Inactive licenses**

Some licensed businesses wish to maintain their contractor's license in reserve even though they are not currently active. This can include construction licensees who are maintaining a license while not doing any work at all, and companies that are active in business but not currently active in construction.

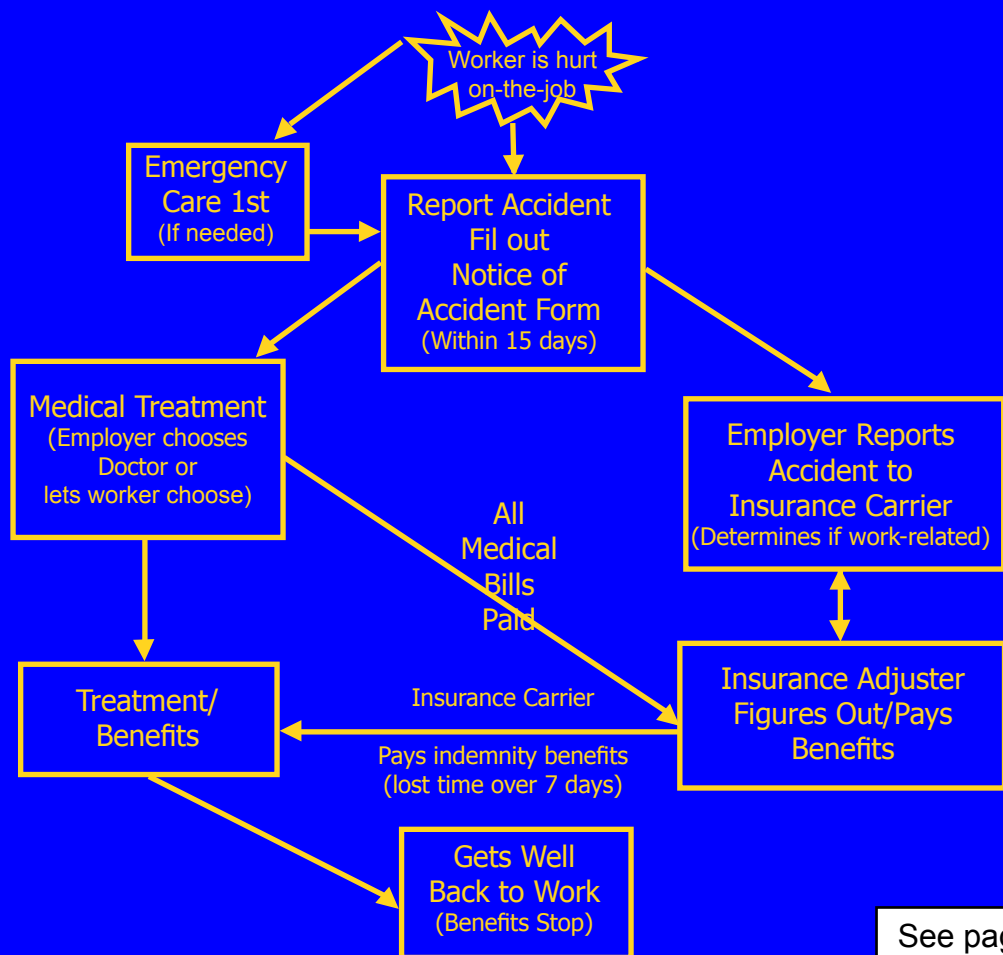
A business that is not doing any work in construction is not required to have workers' compensation insurance to renew its construction license. However, if the business is active in other areas, it comes under the general requirement for all employers and must have coverage if it has three or more employees.

### **Insurance audits**

As stated in an earlier section, you can expect to have your payroll audited every year. Insurers do this routinely to ensure that they are receiving premium to compensate for the risk they are insuring. If you have more employees than the number originally given when you bought your policy, or if they are more highly paid, the insurer has the right to require you to pay additional premium retroactively.

It is important to remember this when you are adding employees or expanding your business. Budget for the additional cost of premium. It's a good idea to keep in touch with your insurance agent about these matters so you are not surprised by an unexpected addition to your premium.

## A Workers' Compensation Claim without Dispute



See page 23

# Enforcing The Coverage Requirement

**If you don't have coverage, penalties will be imposed.**

If you are required to have workers' compensation insurance coverage and you don't, you will be contacted by the Employer Compliance Bureau of the WCA. If you refuse to obtain coverage, you will be summoned for a Director's Hearing at which a designated hearing officer will hear the evidence showing that your business comes under the coverage requirement. That evidence can then be taken by WCA staff to a district court judge to issue a restraining order against your business, requiring law enforcement personnel to close your business.

The WCA always prefers to have businesses obtain coverage rather than going through the enforcement process.

If you don't have coverage and your employee is injured, your employee could sue you in district court, where there is no limit on damages.

## ***Uninsured Employer Fund***

The Uninsured Employer Fund is a program started by law in 2003. This program exists to increase penalties against uninsured employers and provide a temporary source of medical and indemnity benefits for injured workers whose employers were illegally uninsured. The funds in the program are limited. Penalties against uninsured employers are designed to be severe.

If you are uninsured and your employee is injured, your employee may apply to the Fund for benefits. If benefits are paid, the WCA will file civil action against your business to recover all the money paid by the Fund, plus a significant penalty.

Any business that is illegally uninsured will be required to obtain insurance coverage or it may be closed.

## ***To report another business that doesn't have coverage***

If you know of another business that should have coverage but does not, you are encouraged to contact the Employer Compliance Bureau or the nearest WCA regional office.

A business that does not comply with the workers' compensation coverage requirement is cheating not only its employees and competitors but also its community. You are doing a service to your law-abiding neighbors by helping the WCA to enforce the law on non-compliant employers.

When the WCA receives a report of a non-compliant business, the first step is checking the WCA data base, which has a record of all covered businesses. If the business is covered and the report was in error, nothing further is done. If the report is correct, the uninsured business will be prosecuted to the full extent of the law.

# Workers' Compensation Fee

**Employers covered by the workers' compensation law are required to pay a quarterly fee, similar to a tax, called the workers' compensation fee.**

The workers' compensation fee is \$4.30 per employee per calendar quarter. The employee contribution is \$2.00, which should be taken as a payroll deduction. The employer contribution is \$2.30 for each covered employer. Base the payment on the number of employees employed by your business on the last working day of the quarter.

As stated on page 9, executive employees who have exempted themselves from coverage are not counted for this fee. The quarterly fee is paid to the Taxation and Revenue Department (TRD) on a WC-1 Form and is separate from other fees or taxes. Registered businesses will receive pre-printed forms twice a year.

New businesses required to pay the fee must register with TRD using the Application for Business Tax Identification Number Form (line 13). Existing businesses will use the Business Registration Update Form (line 9) found in the CRS packet. All forms are available in the TRD website at [www.tax.state.nm.us](http://www.tax.state.nm.us) under Forms/CRS Tax Forms.

If you need to make changes or if you cease doing business in New Mexico and wish to stop receiving forms, contact the Taxation and Revenue Department or the Assessment Bureau of the Workers' Compensation Administration (WCA) at [www.workerscomp.state.nm.us](http://www.workerscomp.state.nm.us). The toll-free number is listed on bottom of this page.

The quarterly workers' compensation fee is **not** the same as a workers' compensation insurance premium. It is not a substitute for workers' compensation insurance and does not provide any coverage. It is simply an administrative fee.

Starting in January 2006, there is a dual reporting requirement;

- File the WC-1 and pay the fee to the Taxation and Revenue Department
- ES-903A is a form employers file quarterly with the New Mexico Department of Workforce Solutions (formerly Department of Labor). The form has been redesigned with a WC-1 column. Indicate on the column whether or not you paid the fee on behalf of each employee by filling in either \$4.30 or zero. Zero is for an employee who was no longer employed by your business on the last working day of the quarter.



*Employers covered by the workers' compensation law are required to pay the Workers' Compensation Fee.*

*Published by the New Mexico Workers' Compensation Administration, a state agency.*

*Publication date: 2014. Laws can change. Check for new information by calling 1-866-WORKOMP or 1-866-967-5667 or look on the Internet at [www.workerscomp.state.nm.us](http://www.workerscomp.state.nm.us)*

# What To Do As A Covered Employer

## ***Workers' Compensation Act poster and Notice of Accident form***

**You are required by law to post the Workers' Compensation Act poster in a location where your employees will have access to it and be able to read it, such as an employee break room. You are required to post a supply of Notice of Accident (NOA) forms either right on the poster in the space provided, or close by - for example, next to the poster on a bulletin board.**

The NOA form allows employees to report any accidents or occupational diseases they have had at work. NOA forms are printed by the WCA as a two-part carbonless form and are available online at the WCA website. You may receive a supply of posters and forms from your insurer or self-insurance program. If you don't, you can obtain them free of charge from the WCA or online. **The two part carbonless form is no longer required as long as both employer and injured worker get a copy of the signed NOA.**

The purpose of the workers' compensation poster is:

- ◆ to inform your employees that you have workers' compensation insurance or self-insurance coverage, and that they have certain rights if they are injured;
- ◆ to provide a way for your employees to notify you in writing if they have an accident, with a copy that the employee may keep for his or her own records.

By law, you must allow your employees to report accidents verbally or in writing using the NOA form. It is not legal for you to require employees to report by another method, unless you have received written approval from the Director of the WCA. You

can also receive legally acceptable notice of accident in other ways (for example, if you witness the accident yourself).

The intention of the law is for workers to have free and easy access to the forms. If the forms are stored in a supervisor's desk, for example, so that the worker has to ask the supervisor in order to fill out the form, that is contrary to the purpose of the law.

## ***Name your insurer and in-state adjuster***

The poster provides a blank space for you to fill in the name of your insurer or self-insurance program's phone number or, in some cases, the number of the claims adjustment firm that works with the insurer. Claims adjustment firms are also called third party administrators or TPAs. TPAs are used by some self-insurance programs and also by insurance companies that do not have their own claims staff in New Mexico.

New Mexico law requires insurance companies to have in-state adjusters to adjust their claims. If your insurer cannot provide you with an in-state telephone number, contact the WCA.

## ***What is the consequence if you do not post the poster?***

The legal requirement that the injured worker notify you of the accident and make a claim within 15 days is extended to 60 days.

This is considered to be a disadvantage for you, especially if there is any question about whether the claim was valid. It is very hard to investigate an accident when you learn of it 60 days after it happened. You may also be fined for failure to comply with the law.



### ***Prepare for emergencies***

Your business should have emergency preparations in place, including some matters that are specifically related to your workers' compensation coverage.

Ensure that all of your employees know the locations of nearby emergency or urgent care facilities and how to contact local emergency services. Have a transportation plan so that in the event of an emergency not requiring an ambulance, employees know who will transport the injured worker to the emergency or urgent care facility.

### ***Notification of health care provider for post-emergency medical care***

Which doctor should the injured worker see for medical treatment under a workers' compensation claim?

Your responsibility is to give all employees a clear written instruction. This should be set up in advance as a company policy, and you should inform all employees of it through a method such as a posted notice, a wallet card or a slip included with paychecks. You might want to check with your insurer or self-insurance program and get their recommendation as to whether you should select a health care provider or let your employee select one.

Either the worker should be told to go to a particular doctor or facility, or the worker should be told to select his own doctor. Whichever party selects first, the other party will have a right to change the health care provider after 60 days. You have the right to decide whether you or the worker will select first.

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## **Safety**

**The people who work for you are the most valuable assets you have. Whatever you can do to prevent accidents is worth doing. Safety pays on the bottom line.**

When accidents happen, you lose the productivity of the injured worker and perhaps that of other employees who are diverted from their work. You incur administrative costs and your insurance premiums can rise. If you have to train replacement employees, you lose the value of all you have invested in the injured worker. Employee morale may suffer.

When accidents are prevented, all these costs are avoided and your organization will improve.

### ***Requirements for an annual safety inspection***

The workers' compensation law requires every employer to receive an approved annual safety inspection if the employer has an annual insurance premium with a

commercial carrier or group fund of \$15,000.00 or more, or is self-insured or a member of a pool.

The safety inspection can be performed by:

- ◆ A senior manager or dedicated safety professional employed by the business.
- ◆ A third party safety organization.
- ◆ A safety professional from the insurance company.
- ◆ Safety consultants from the WCA may be contacted to provide training to an employer's management staff on how to conduct a proper safety inspection. WCA safety consultants are on staff at all offices of the WCA.

***Your insurer is required by law to provide the safety inspection if you request it.***

### ***WCA's role in reducing costs through safety***

The WCA has a staff of safety consultants who can provide a range of free safety

services at your workplace. You can get as little or as much help as you request - ranging from showing a safety video (from the extensive WCA safety video library) to helping you fashion an in-depth safety program.

**The WCA has two on-line publications devoted to safety.**

**“Annual Safety Inspections,”** is a guide to designing and implementing your own simple safety inspection. According to the Rules of

the WCA, the pamphlet describes the minimum standards for a safety inspection that complies with the requirement. Smaller employers who are not required to have inspections are encouraged to use the booklet to do their own self-inspections.

**“How to Develop a Safety Program for Small Businesses,”** is a guide for business owners and managers to comprehensive safety program planning.

## ***A Safe Workplace is the Best Workplace***

**Employers!  
Sign Up for a Free Safety  
Consultation!**

**Reduce:**  
lost time & loss costs

**Increase:**  
performance & morale

**EVERY INJURY THAT DOESN'T HAPPEN  
IS A COST-SAVING MEASURE**

**The New Mexico  
Workers' Compensation Administration  
CAN HELP YOU  
to reduce work-related injuries.**

**What the WCA Safety Consultants  
CAN DO FOR YOU!**

**Facility Inspections-Safety Consultations-Assist in the  
development of Safety Programs-Safety Training-Accident  
Investigations-Safety video library-Safety Presentations**



**Call the WCA Helpline at 1-866-967-5667  
and ask for a Safety Consultant**

# If Your Employee Has An Accident

## ***First things first - emergency medical care***

In an emergency, your employee has the right to seek medical care at the most convenient location. If you have a preference for one health care facility, you can tell that to your employees but it cannot be imposed as a limitation in an emergency situation. Depending on your business, if employees travel for work-related purposes, covered accidents can occur away from your workplace. Your insurer should cover emergency care no matter where it is delivered.

## ***The Notice of Accident form***

The Notice of Accident (NOA) form serves as a written record that an accident or occupational disease has occurred. Employees should be trained to use NOA forms to report all accidents, including those that did not appear to result in an injury at the time.

Instruct your workers to fill out a NOA form any time there is an accident. If the worker reports to you verbally that an accident has happened, ask the worker to fill out a form.

In case of a dispute, the Notice of Accident provides evidence that the worker reported an accident. The notice is not legal proof that the accident has occurred.

The Notice of Accident form is a two-part carbonless form printed by the WCA or available on the WCA website. You may receive a supply of posters and forms from your insurer or self-insurance program. If you don't, you can obtain them free of charge from the WCA or online.

***The two part carbonless form is no longer required as long as both employer and injured worker get a copy of the signed NOA.***

Supervisors should be instructed that when a worker presents a Notice of Accident form, the supervisor should sign and date the form, keep a copy and give a signed and dated copy back to the worker.

***Don't refuse to accept the report. Your acceptance is not an admission that you agree the worker had a work-related accident.***

Decide where and with whom these forms will be filed. Follow up on every report of accident to determine if there is a safety hazard that could be fixed to prevent future accidents.

## ***Notifying your insurer***

You should notify your insurer within 72 hours when:

- ◆ the worker has received medical care that will require payment; or
- ◆ it appears that the worker is going to miss any work; or
- ◆ the worker has notified you of an occupational disease.

Your insurer has several concerns: to pay the costs, to make sure that notice is sent to the WCA within legal deadlines, and to start managing the claim.

In most cases, the insurer or self-insurance program files the report with the WCA through electronic filing. However, some insurers require their insured employers to file the report with the WCA. If you are required to file, you may do so through the mail using an E1 form.

You may or may not be required to file the report with the WCA. You should know this in advance based on instructions from your insurer or self-insurance program.

### **Using an E1 form**

The form called the Employer's First Report of Injury or Illness is commonly called an E1 form.

You probably received some E1 forms from your insurer or self-insurance program. The blank form can be downloaded from the WCA web site.

### **The worker must receive a paper copy**

By law, you or your insurer or self-insurance program are required to provide a hard paper copy of the E1 to your employee. Make sure you give the worker a copy with both the front and back of the form.

### **If you don't believe the worker's claim**

What if you suspect that the worker is making a false claim?

By law, you should notify your insurer of the claim. You can also tell the insurer about your concerns and let the insurer handle the dispute, if any.

### **If you refuse to file the claim, you are violating the law.**

Your action could be an unfair claims practice. If the claim is fraudulent, the employee can be prosecuted.

### **Post-accident drug and alcohol testing**

Whether to have employees tested for drugs and / or alcohol is up to you. You have the right to require drug / alcohol testing as a condition of employment.

If you choose to have testing, it is prudent to set up a standard procedure in advance, in consultation with your attorney or human resource specialist, so if an accident occurs you will know what to do and what to request.

Under the workers' compensation law, if an employee was intoxicated from drug or alcohol use at the time of the accident, this may constitute a defense to a workers' compensation claim. The defense is legally complex and sometimes difficult to prove.

If the worker was under the influence, but the intoxicated condition was not the cause of the accident, the worker's indemnity benefits can be reduced by 10 percent, leaving the medical benefits intact.

To meet this standard, the law requires that the testing must be done by a laboratory that is certified by the U.S. Department of Transportation.



*Depending on your business, if employees travel for work-related purposes, covered accidents can occur away from your workplace.*

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## **Summary Of Responsibilities And Time Lines Within First Days Following An Accident**

1. The worker has 15 days from the date of accident or knowledge of occupational illness to file the Notice of Accident form and have it signed by a supervisor. The worker keeps a copy and you keep a copy. Do not send this notice to the WCA.

2. You are responsible for instructing the worker on selection of health care provider in writing. (For details see page 26.) This should have been done in advance, but if it was not, you should provide instructions in writing as quickly as possible, or immediately after any emergency medical care.

3. You are responsible for informing your insurer or self-insurance program within 72 hours following the accident if the worker will lose any time from work, if the worker receives medical care, or if the claim is for an occupational disease. Either you or your insurer or self-insurance program must file

the First Report (E1) with the WCA within the statutory deadline. If you are responsible for filing, obtain Booklet E3 (in print or downloadable from the WCA web site) and follow current instructions concerning the statutory deadline.

4. From the time the worker has lost more than seven work days, either consecutively or off and on, your insurer or self-insurance program has 14 days to pay the first indemnity pay check to the worker. Your prompt notice to your insurer or self-insurance program helps the claims representative to meet this deadline.

5. Even if you intend to recommend denial of the claim, you must provide the worker with the identity of the insurance carrier and the source of coverage - enough information so that the worker can contact the insurer or self-insurance program.

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## **Safety Devices - Effect on benefits**

The workers' compensation law requires you to provide whatever types of safety devices are appropriate for your workplace, by establishing a penalty for failure of the employer to supply, or the worker to use, a safety device.

Under the law, if you failed to provide a safety device required by law or commonly accepted in your industry, the workers' indemnity benefits can be increased by 10 percent. If you provide a safety device and the worker failed to use it, the benefits can be decreased by 10 percent.

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## **Providing Wage Information To Your Insurer Or Self-Insurance Program**

If the worker is going to be entitled to indemnity benefits, you are required to provide the worker's wage information for the 26 weeks before the accident to the adjuster.

The worker's indemnity benefit will be based on those wages.

Include extras such as overtime and any non-cash benefits that were part of the wage package - such as living quarters, meals, etc. If the worker has been working for fewer than 26 weeks, provide all wage information for whatever period of time he or she was employed.

## Selection Of A Health Care Provider

**Under the New Mexico workers' compensation law, one party (employer or worker) selects the health care provider who will treat the worker first, following any emergency. The worker must then be treated by that health care provider for 60 days. After 60 days, the party who did not select first has the right to change to a different health care provider, but is not required to do so.**

It's up to you to decide whether to select first or to let your employee select first. You will probably want to confer with your insurer or self-insurance program to get a recommendation. You are responsible for making the decision about your injured employee's medical treatment and communicating the decision to the worker in writing.

You should instruct the injured worker, in writing, stating the name of the health care

provider you selected, or the fact that the worker has first selection. The instruction should have been provided in advance by a notice to all employees.

If you have not provided written instructions in advance, you are considered to have made the first selection, and the injured worker will have the right to make the second selection.

Whichever party makes the first selection, if the worker requires continued care after 60 days of treatment, the other party has an automatic right to make a second selection and choose another health care provider to provide the rest of the worker's treatment for this injury or illness. A certain process must be followed in order to change doctors. By this time, claim management by your insurer or self-insurance program will be in place, and you will probably not be actively involved in the decision.



*Identify the nearest emergency medical facility and develop a plan in advance to get injured workers to the facility.*

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## The Ombudsman Program

The ombudsman program at the WCA is a way of providing a neutral source of information for workers, employers and any other party. This service is free of charge.

The ombudsmen are specialists in the area of workers' compensation claims and can explain how the system works. The ombudsmen can also help to resolve many kinds of disputes.

Usually you can speak to an ombudsman on the telephone. You don't have to come in person. Ombudsmen are on staff at all WCA offices. You can call the office most convenient to you. Some Ombudsmen are bilingual in English and Spanish. If help is

needed in Spanish, you will be connected to a Spanish-speaking ombudsman.

They can explain your rights, responsibilities and options, or they may contact the other party and attempt to resolve your problem. The ombudsmen find that many disputes are really communication problems and can be resolved with a few phone calls.

Ombudsmen are neutral advisors to employers and workers and are not advocates for any party. Occasionally an ombudsman may have to refuse to give you certain advice or opinions. The ombudsman cannot assist any party who is represented by an attorney nor on any claim that is in dispute at the trial level.

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## Overview Of Indemnity Benefits

This section provides a brief overview of the indemnity payments to which an injured worker might be entitled.

**Temporary Total Disability (TTD)** benefits are paid to a worker who is temporarily unable to work due to the injury. The benefit is two thirds of the worker's average weekly wage, based on gross wages for the 26 weeks before the accident; subject to a maximum, which is equal to the State Average Weekly Wage as determined annually by the New Mexico Department of Workforce Solutions. The Temporary Total Disability amount is also called the "compensation rate" for this worker.

A worker who loses less than four weeks of work due to an injury is not entitled to indemnity benefits for the first seven lost days. Lost time days do not have to be consecutive.

Temporary Total Disability benefits are paid only until the worker returns to work or reaches Maximum Medical Improvement (MMI) as determined by the treating health care provider, whichever comes first. MMI is the point at which either the worker is fully recovered or no further recovery is likely.

If you keep the worker employed during the temporary disability period, but at a reduced wage, the worker will be entitled to **Temporary Partial Disability (TPD)** benefits - two thirds of the difference between the worker's regular wage and the reduced wage, up to a ceiling on workers' compensation benefits set by law.

**Permanent Partial Disability (PPD)** benefits may be paid to a worker after MMI. These benefits are based on the worker's disability rate and other factors.

***There are three types of PPD benefits:***

◆ **Whole body - impairment only.** If the worker's injury is to "the body as a whole" (usually an injury to the head, neck, shoulder, back or hip) it is considered a "whole body" injury. The physician assigns a "percentage impairment rating" to the worker, based on an American Medical Association standard called the **AMA Guides**.

If the worker is back to work and earning at least the pre-injury wage, the worker is entitled to receive permanent partial disability benefits, at the compensation rate multiplied by the impairment rating.

◆ **Whole Body - impairment with modifiers.** If at the time of MMI the worker cannot medically return to work, or is earning a lower wage, or has not been offered a job he can perform, the worker is entitled to receive a supplement to the impairment-rating benefits. This supplement is based on a formula that considers the worker's age, education, and reduction in physical capacity - all factors likely to affect the worker's ability to recover financially from the effects of the injury. These factors are commonly called "modifiers."

If the total PPD rating is less than 80 percent, the duration for any whole-body PPD injury is 500 weeks including TTD and PPD. If the PPD rating is 80 percent or more, benefits are paid for 700 weeks.

◆ **Scheduled injury** - a scheduled injury is an injury limited to a specific body part, usually part of a limb. The scheduled injuries are listed in a "schedule" in the law, which specifies the number of weeks of benefits to be paid for that particular body part - ranging from seven weeks for the smallest section of the fourth finger to potentially 200 weeks for a whole leg or the "dexterous" arm. The worker receives TTD as for other injuries until he reaches MMI. Thereafter, the worker may

be entitled to benefits for the period specified in the schedule, based on the impairment rating assigned by the physician. In some cases, extra points may be awarded to compensate the worker for "loss of use."

**Permanent Total Disability (PTD)** provides lifetime benefits at the TTD rate. To be eligible for permanent total disability benefits, the worker must have suffered the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both eyes or any two of the listed body parts, or a severe disabling brain injury, as defined by a specific American Medical Association standard.

**Death or survivor benefits** are payable if the worker has died as a result of the injury, within two years of the injury date. The maximum payable, in addition to funeral expenses, is the amount the worker would have received in Temporary Total Disability benefits for 700 weeks. These benefits are paid only to a spouse, dependent children, or other family members who were dependent on the worker, according to a formula.

**Lump sums.** The Workers' Compensation Act allows a worker and the employer to resolve a claim for injury as long as all parties are in full agreement of the appropriateness of the resolution with a lump sum payment and the settlement is approved by a workers' compensation judge. A recent legislative change permits disputed claims to be settled by the agreement of all parties, in a manner that provides certain benefits to the worker while allowing the insurance company to close out the claim at a predictable cost.

Claims that can be settled by mutual agreement avoid the time and cost of litigation. It provides finality and self-determination to workers while still under the jurisdiction of the Workers' Compensation Administration.



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## Medical Benefits

The injured worker is entitled to “reasonable and necessary” medical care related to the work-related condition, for life, if necessary. There is no dollar or time limit on medical benefits. This is one of the many reasons why you must have workers’ compensation coverage as required by law.

### *Travel benefits for medical care*

If the worker must travel 15 miles or more one way from home or work for health care, the expense of travel is part of the workers’ compensation claim.

### *Travel benefits include:*

- ◆ the ticket cost for bus, train or airplane travel; or
- ◆ a mileage rate for miles that the worker drives in his own car; and

- ◆ the costs of staying away from home overnight, if necessary, which includes the actual reasonable costs of a hotel or motel room; and
- ◆ meals or a “per diem” amount to cover these costs.

**Contact an ombudsman  
for current mileage  
and per diem rates.**

### *Time for medical appointments*

If the worker is at work, the law does not require the employer to let the worker use paid work time for medical appointments. If the worker must take unpaid time off from work to go to medical appointments, and if the total time exceeds seven work days, the claim will become an indemnity claim and the worker will be entitled to indemnity benefits. Consult your claims representative for guidance.

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## What Can You Do For Your Injured Employee?

**After an injury has happened and you have notified the insurer or self-insurance program, a claims adjuster takes over management of the worker’s claim.**

You can help the injured worker and possibly reduce your claim cost by staying in touch with the injured worker in a positive manner. The relationship that you develop with the injured worker during the period of injury may have a great effect on the worker’s motivation to return to work. An injured worker who is forgotten by his employer may come to feel alone, confused and resentful. An injured worker treated with personal concern is more likely to be eager to return to work with improved morale and company loyalty.

The law requires you to rehire your injured employee if:

- ◆ you are hiring,
- ◆ the health care provider says the worker is able to perform the job safely, and
- ◆ the worker applies for the job.

**NEW MEXICO  
WORKERS’ COMPENSATION ADMINISTRATION  
Helpline - Hotline  
1-866-WORKOMP / 1-866-967-5667**

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## If Your Insurer Denies The Claim

Your insurer or self-insurance program may deny the worker's claim if the claim is perceived as not valid for any one of a number of reasons.

The worker can respond by filing a complaint with the dispute resolution bureau of the WCA.

Depending on the circumstances, you may agree with the insurer or the worker. Either way, you must still provide the required information to allow the worker to pursue legal action. For more information on fraud, see page 31 of this Guidebook.

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## Actions To Avoid

The law prohibits employers, insurers and other parties from engaging in "unfair claims-processing practices" and "bad faith."

Employers and insurers engaging in these practices are subject to three forms of sanctions:

- ◆ increased ceiling on worker's attorney fees;
- ◆ payment of extra benefits to injured workers, to be determined by a workers' compensation judge - up to a 25 percent increase in the worker's indemnity benefits; and / or
- ◆ investigation and prosecution by the WCA and a civil fine.

You could be penalized for engaging deliberately in any practice that misrepresents to the worker his rights under workers' compensation. For example:

- ◆ **Do not** discourage or prevent an injured worker from filling out a Notice of Accident form.
- ◆ **Do not** advise an injured worker to claim medical benefits for an on-the-job injury on his group health insurance. If the worker claims an injury is the result of an on-the-job

accident, advise the worker to state that to medical care providers.

- ◆ **Do not** refuse to sign Notice of Accident forms or instruct supervisors to refuse to sign them. If you do not believe there was a genuine work-related accident, the law provides you with other opportunities to contest the claim.

- ◆ **Do not** discourage the worker from hiring a lawyer. In this sort of discussion, your appropriate behavior is to present the facts to the best of your knowledge and let the worker make up his own mind.

- ◆ **Do not** withhold from the worker personal information, such as payroll information, or the identity of your workers' compensation insurer or self-insurance program.

- ◆ **Do not** communicate with the worker's doctor unless you have the worker's permission.

- ◆ **Do not** explain the worker's rights or benefits in any way that deliberately misrepresents those rights or benefits.

- ◆ **Do not** pay for work-related medical bills or indemnity benefits out of your own pocket.

### ***Retaliation by the employer***

The law specifically prohibits you from firing a worker or retaliating in any way because the worker made a workers' compensation claim. The civil penalty can be up to \$5,000 for any retaliation, which will be paid by you and not your insurance carrier. The Director of the WCA or a workers' compensation judge has the legal authority to impose a penalty for this activity, over and above additional benefits that may become due to the worker.

The penalty is paid to the State of New

Mexico. The worker does not receive any financial award from the penalty.

The employer is also required to rehire the worker when the doctor states that the worker is medically fit to go back to work and when the employer has an appropriate job available, and if the worker applies.

A worker may also have substantial legal remedies outside the workers' compensation system for a retaliatory firing.

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## **Fraud**

**The WCA Enforcement Bureau investigates cases of suspected fraud for possible criminal prosecution. Developed cases may be turned over to district attorneys for prosecution, or WCA staff may cooperate with district attorneys and prosecute these cases in state district court.**

Many activities that can occur in the workers' compensation system are improper and subject to regulatory penalties, but are not crimes. Some other actions could be crimes.

A worker who deliberately and deceptively pretends to have had an accident in order to collect benefits, who claims workers' compensation benefits for an injury suffered outside of work, or who fakes their employment status to appear to have been a legitimate employee at the time of an injury can be prosecuted criminally for fraud.

A worker who appears to have recovered from an injury, but is still collecting benefits, may or may not be doing anything wrong. This varies from case to case.

In some cases, a worker's claim may have progressed to a point at which benefits could have been stopped but the worker continued to accept benefits. This is not necessarily fraud. A worker may have committed a crime only if he or she misrepresented his or her condition.

***Fraud in workers' compensation can be committed by any party, not just workers.***

***The WCA investigates allegations of fraud by any party from any credible source.***

**To report a case of suspected fraud, call the WCA at 1-866-WORKOMP or 1-866-967-5667 and ask for the Enforcement Bureau.**

# Workers' Compensation Dispute Resolution / Adjudication

**The WCA has its own administrative court to hear cases. The WCA has its own administrative law judges, as well as professional mediators and the official court clerk who keeps records.**

In a complaint concerning benefits, the parties are required by law to have a mediation conference first, then a formal trial before a WCA administrative law judge if the mediation does not settle the dispute. Mediation can save time, money and emotional stress for all the parties involved. Of all the complaints filed with the WCA, most are settled through the mediation process.

Mediation conferences and hearings are generally held at the nearest WCA office, unless all the parties (including the mediator or judge) agree in advance to hold the hearing somewhere else. The WCA has video teleconferencing equipment connecting the WCA headquarters with the WCA field offices so mediations and hearings can be held with parties in two locations.

A mediation conference generally lasts about an hour. Usually only the parties, their representatives, and the mediator are present. Another person may be present if the mediator gives permission.

Sometimes the parties come to an agreement right at the conference. Then the mediator writes up their agreement, and both parties formally accept the agreement. The report is called a recommended resolution.

If the parties do not reach an agreement at the conference, the mediator writes a recommended resolution consisting of the mediator's proposal of how the parties could

resolve the case, based on the facts and the workers' compensation law. The mediator sends the recommended resolution to the worker (or the worker's lawyer) and the claims representative or lawyer for the employer or insurer. Mediators are licensed attorneys professionally trained in workers' compensation law.

Each party can decide to accept or reject the recommended resolution. If both parties accept it, it becomes a binding legal order, just as if it had been decided in court.

No one is required to accept a recommended resolution. Each party has 30 days from receipt of the recommended resolution to reply. A party who fails to reply is considered to have accepted.

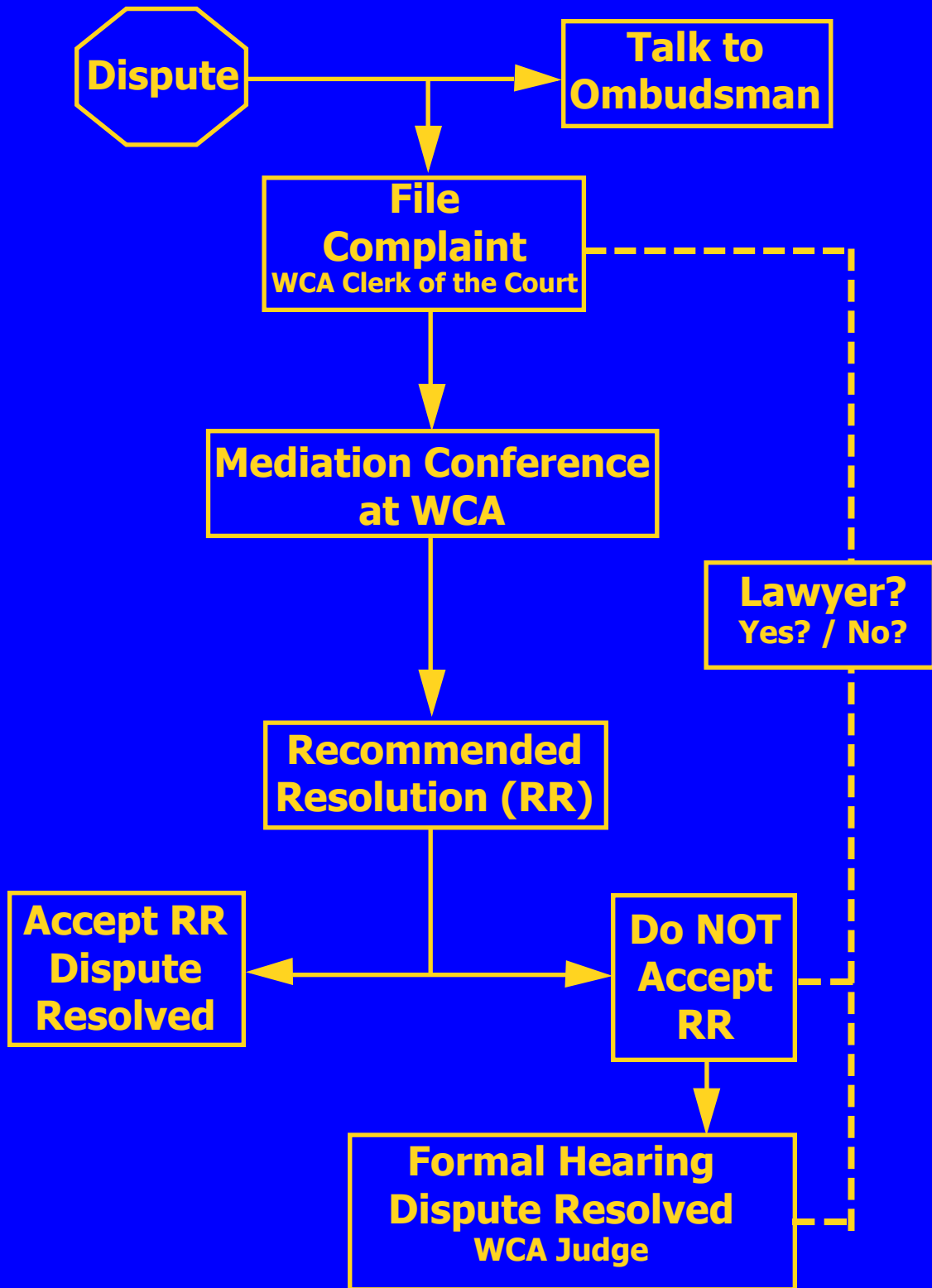
Under New Mexico law, attorney fees for both sides are capped. The cap was increased in 2013 to \$22,500.00 per side. This cap can be increased if parties are found to be acting in bad faith.

In most cases the worker's attorney is paid half by the worker and half by the insurer or self-insurance program. Attorney fees for the worker's attorney must be approved by a worker's compensation judge.



*Workers' Compensation Administration Courtroom 3. Workers' Compensation Judge Shanon Riley (R) and Courtroom Monitor Debbie Bazan (L).*

# Dispute Resolution in Workers' Compensation



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# Glossary

## Adjuster

A person who “adjusts” claims while working for an insurance company, a self-insurance program, or a third party administrator. An adjuster makes decisions about benefit payments and authorizes writing the checks. He / she is one type of claims representative.

## AMA Guides

A book published by the American Medical Association for health care providers, describing how to rate the impairments of injured workers. The AMA Guides is the official standard for rating workers’ compensation injuries in New Mexico.

## Bad Faith

Unreasonable, intentional or malicious denial or refusal to pay a claim without any reasonable basis. Also, intentional conduct in the handling of a claim by any person, including the worker, that amounts to fraud, malice, oppression or willful or reckless disregard of the rights of any party.

## Benefit

Any payment to an injured worker or in behalf of an injured or deceased worker for compensation, medical treatment, legal expenses, funeral or travel costs resulting from a work-related injury, illness or death.

## Claim

A legal demand from the worker to the employer for workers’ compensation benefits.

## Claims Representative

A person from an insurance company, self-insurance program, or third party administrator who works on the worker’s claim. This person is the worker’s contact person for matters concerning the worker’s claim, benefits, payments and other matters.

## Compensation

Payments to an injured or ill worker for lost work time due to a job-related injury or illness.

## Complaint

A legal document filed in a workers’ compensation dispute; it is a special type of lawsuit handled through the Workers’ Compensation Administration.

## Dependents

Children or other family members who qualify to receive workers’ compensation benefits in case of death.

## Disability rating

A percentage value for an injured worker that includes the impairment rating and, if appropriate, factors for age, education, training, and the change in the worker’s physical ability. A disability rating is used to determine PPD benefits for an injured worker who cannot return to work.

## **Employer's First Report of Injury (E1)**

The form that an insurer or self-insurance program is required to file with the WCA to provide a record of a workers' compensation claim. Most E1 forms are filed electronically without use of paper. The employer or insurer is required to provide the worker with a copy of the E1.

## **Exclusive remedy**

A legal term that means workers injured on the job are not allowed to sue their employers in the regular court system when their injury is covered by the workers' compensation system.

## **Health Care Provider (HCP)**

A person or organization that provides health care services. By law, the health care provider may be any person licensed in New Mexico in one of these professions: medical doctors, optometrists, chiropractors, dentists, podiatrists, osteopathic physicians, physician assistants, certified nurse practitioners, physical therapists, occupational therapists, acupuncture practitioners, psychologists, athletic trainers and certified nurse-midwives.

## **Impairment**

Injury-caused mental or bodily damage that is expected to be permanent.

## **Impairment rating**

A percentage number used to "rate" the permanent impairment of an injured worker. An impairment rating can only be given by the treating health care provider or an independent medical examiner and must be based on a reference book called the AMA Guides.

## **Indemnity Payment**

A payment to the injured or ill worker or dependents to compensate for wage loss, functional impairment, or death.

## **Lump Sum Payment**

A single workers' compensation indemnity payment in place of future installment payments.

## **Maximum Medical Improvement (MMI)**

The date after which further recovery from or lasting improvement to an injury can no longer be reasonably anticipated as a result of further medical treatment, based upon reasonable medical probability as determined by a health care provider.

## **Medical benefits**

Payment by the insurer to a health care provider for an injured worker's medical care.

## **Mediation**

An informal meeting involving both sides of a workers' compensation dispute with a WCA mediator to try to resolve the dispute.

**Mediator**

A dispute resolution specialist from the WCA who meets with the disputing parties, out of court, to try to reach an agreement.

**Mental impairment**

A mental condition that was the result of the accident or injury.

**Mileage Rate**

An amount of money paid for every mile approved for travel to get to medical treatment that is required by the workers' compensation claim; paid only if the worker has to travel 15 or more miles each way.

**Modified work**

Work that has been changed to allow an injured worker to do it.

**No-fault**

A concept in the law that says the claim will be covered no matter who caused the accident.

**Occupational Disease**

A disease that is caused or partly caused by the specific job a worker does.

**Occupational Injury**

An injury that happens on the job.

**Party**

The worker or the employer and insurer or self-insurance program. Each is a "party" in a dispute over a claim.

**Per Diem**

An amount of money to cover daily cost of living when the worker is away from home for medical treatment related to the injury.

**Permanent partial disability (PPD)**

A category of indemnity benefit, payable when a worker has a permanent physical impairment after reaching maximum medical improvement. The amount of benefits is determined by the worker's physical impairment, as rated by the AMA Guides, and, if the worker is unable to return to work, by a formula based on the worker's age, education and residual physical capacity.

**Permanent total disability (PTD)**

A category of indemnity benefit, payable when a worker has been left with the permanent and total loss or loss of use of both hands or both arms or both feet or both legs or both eyes or any two of them, or a disabling brain injury.



**Physical capacity (PC)**

A rating of an injured worker's ability to perform physical tasks compared to the physical tasks the worker usually performed in his work before any injury. Also sometimes called "residual physical capacity."

**Pre-existing Condition**

A physical condition that the worker had before the work-related accident.

**Pro Se**

A person representing himself in a legal proceeding without any representation from a lawyer.

**Repetitive motion injury**

An injury caused by doing the same physical motion repeatedly over a long time.

**Retaliation**

Harmful action by one person against another to "repay" perceived wrongdoing.

**Rules**

Additional requirements related to laws. Rules are made by government agencies and add details and definitions to laws.

**Scheduled Injury**

An injury to a specific body part listed in a "schedule" in the statute (paragraph 52-1-43). Benefits for scheduled injuries are based on loss of use rather than the permanent partial disability benefit formula and are paid for a limited number of weeks.

**Temporary total disability**

Indemnity payments made to the worker based on the inability of the worker, by reason of accidental injury arising out of and in the course of his employment, to perform his duties, up to the date of maximum medical improvement.

**Third party administrator (TPA)**

A representative hired by an insurance company or self-insurance program to handle workers' compensation claims.

**Whole body injury**

All other injuries not listed in the scheduled injuries statute.

**NEW MEXICO  
WORKERS' COMPENSATION ADMINISTRATION**

**STATE HEADQUARTERS**

Mailing Address: Workers' Compensation Administration  
PO Box 27198  
Albuquerque NM 87125-7198  
Location: 2410 Centre Avenue SE  
(near Yale-Gibson intersection)

**In-state toll-free phone: 1-800-255-7965**  
**Local phone 841-6000**

**REGIONAL OFFICES** Call the nearest regional office to reach the Ombudsman and Safety programs, and for forms and publications.

**Northwestern regional office at Farmington:**

2700 Farmington Ave., Bldg. E., Suite 2 Farmington, NM 87401  
Telephone: 505-599-9746  
In-state toll-free phone: 1-800-568-7310

**Southwestern regional office at Las Cruces:**

1120 Commerce Dr, Suite B-1, Las Cruces NM 88011  
Telephone: 575-524-6246  
In-state toll-free phone: 1-800-870-6826

**Northeastern regional office at Las Vegas:**

32 NM 65, Las Vegas NM 87701  
Telephone: 505-454-9251  
In-state toll-free phone: 1-800-281-7889

**Southeastern regional office at Lovington:**

100 West Central, Lovington, NM 88260  
Telephone: 575-396-3437  
In-state toll-free phone: 1-800-934-2450

**Roswell Office:**

Penn Plaza Building, 400 N. Pennsylvania Ave, Suite. 425  
Roswell, NM 88201  
Telephone: 575-623-3997  
In-state toll-free phone: 1-866-311-8587

**Santa Fe Office:**

Aspen Plaza Bldg.  
1596 Pacheco St., Suite 202, Santa Fe, NM 87505  
Telephone: 505-476-7381

**Internet web site address:** <http://www.workerscomp.state.nm.us>

**HELP & HOTLINE:**  
**1-866-WORKOMP / 1-866-967-5667**

## Annual Inspections and Proof of Inspections

The New Mexico workers' compensation law (§52-1-6.2 NMSA)<sup>1</sup> requires many employers to perform or receive an annual safety inspection as the first essential step toward eliminating workplace safety hazards. Your workplace is required to have an annual safety inspection if:

- your insurance premium is \$15,000 or more;
- you are a self-insured business; or
- you pay \$15,000 or more as a member of a self-insured group.

The required inspection can be accomplished by four different methods:

- A WCA safety consultant can conduct the inspection.
- The business can conduct a self-inspection using the guide found on the WCA website at [www.workerscomp.state.nm.us](http://www.workerscomp.state.nm.us).
- The businesses insurance company will conduct the inspection when requested by the business.
- A professional independent safety consultant may perform the inspection.

The first three options are all free of charge. If the business decides to self-inspect, they are encouraged to call the WCA and request the services of a Safety Consultant to explain the process and teach them what to look for as they conduct their inspection.

Under the Workers' Compensation Rules, (11.4.2.9 NMAC), employers required to have an annual inspection must submit proof of the inspection to the WCA within 30 days of the completion of the inspection. Notification can be done by one of the following methods:

- Your insurer or self-insurance program may notify the WCA that it has completed the annual inspection for your business. The notification should include the business name, address, FEIN (federal employer identification number) and date of inspection.
- If you are visited by a WCA safety consultant, you can show the consultant the results of your completed inspection.
- You can fill out an Affidavit and mail it to the WCA. The Affidavit must be notarized. The Affidavit form is in the back of The Workers' Compensation Handbook for New Mexico 2007 Edition Booklet D1: Annual Safety Inspections and can be found on the WCA's web site at [www.workerscomp.state.nm.us](http://www.workerscomp.state.nm.us).

Proof of inspections should be sent to:

Safety Program Manager  
Workers' Compensation Administration  
2410 Centre Ave SE  
Albuquerque, NM 87106

**AFFIDAVIT**

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

To: Safety Program Manager  
Workers' Compensation Administration  
Post Office Box 27198  
Albuquerque, NM 87125-7198

I, \_\_\_\_\_, after having been duly sworn, state and affirm that:

1. I am the \_\_\_\_\_ (job title) of \_\_\_\_\_ (company name).
2. That the company has completed its statutory requirement for an annual safety inspection.
3. We submit the following information per your request:

Name of business: \_\_\_\_\_

Federal Employer Identification Number: \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Date of Safety Inspection: \_\_\_\_\_

Inspection performed by: \_\_\_\_\_

If there are any questions, the WCA should contact \_\_\_\_\_

at the following phone number \_\_\_\_\_.

\_\_\_\_\_  
Signature

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary public

My commission expires:  
\_\_\_\_\_

# The WCA Ombudsman Program (§52-5-1.4 NMSA)

The ombudsmen of the New Mexico Workers' Compensation Administration (WCA) are people who provide information and assistance to injured workers and anyone else who needs help understanding a workers' compensation claim.

WCA ombudsmen are specialists in the workers' compensation claims process, who can explain how the system works and provide information on your rights and responsibilities under the workers' compensation law.

"Ombudsman" is a word from Europe. It means a government official who investigates problems and helps resolve them, without taking one side or another.

If you are having any problem with a workers' compensation claim, you can call the ombudsman program **unless you have a lawyer**. Usually it is best to speak to an ombudsman on the telephone. This service is free. **If you come in person it is best to make an appointment so that you are sure an ombudsman is available to help you.**

The ombudsmen can help to resolve some kinds of disputes, especially if the dispute is mostly a problem of communication. The ombudsmen may be able to tell you what you can do, or they may contact the other party and attempt to resolve your problem. Many disputes are really communication problems and an ombudsman can help to resolve them with a few phone calls.

In the past, a worker who needed help with a workers' compensation claim usually had to hire a lawyer. Since the WCA started the ombudsman program, hiring a lawyer is still necessary sometimes, but not as often.

## Ombudsman calls are confidential

The ombudsmen will contact another party about your case only if you give permission. The ombudsman will not discuss your call with any outside parties unless you give permission.

The ombudsman will ask for your name and other information. But if you want to ask questions without giving your name, you can.

*The WCA treats injured state employees the same as any other workers and treats representatives from the state Risk Management Division the same as any other claims representatives.*

If the ombudsman cannot help you resolve your dispute, your next step may be to file a complaint with the WCA. The ombudsman can provide the forms for you and help you fill them out.

## Before you call an ombudsman

The ombudsman will be able to help you much faster if you have some information available when you call. Go to the "Worker Checklist" below and write down the information you have.

# Worker checklist for contacting an ombudsman

## DO YOU HAVE AN ATTORNEY FOR YOUR CLAIM?

If yes, the WCA ombudsman cannot help you. According to the Workers' Compensation Law an ombudsman can only help people who are not represented. Please contact your attorney for help.

## IF YOU DO NOT HAVE AN ATTORNEY

Before you call an ombudsman to help you with a claim, write down the information on this form so that the ombudsman can answer your questions and help you faster.

1.	Your name		
2.	Date of your accident		
3.	Your social security number		
4.	Your claim number		
5.	Part of body injured		
6.	Nature/Type of injury		
7.	Employer's (company) name		
8.	Name of your manager or supervisor		
9.	Name of employer's workers' compensation insurer		
10.	Name of adjuster (claims representative) handling your claim		
11.	Has the doctor taken you off work because of your injury?	YES	NO
12.	If so, what dates were you off work?		
13.	Has the doctor released you to return to work?	YES	NO
14.	If so, have you returned to work?	YES	NO
15.	Have you been told by the doctor that you have reached maximum medical improvement?	YES	NO
16.	If so, what date?		
17.	Have you been given an impairment rating?	YES	NO

# Ombudsman or lawyer?

When should you call an ombudsman, and when should you look for a lawyer to represent you?

## Reasons to call an ombudsman:

The ombudsman will give you information that might explain your issue and give you guidance as to the simplest way to solve your problem.

If you have a problem that can be solved simply, without any formal legal process, the ombudsman will help you to do that.

The ombudsman services are free of charge.

If you hire a lawyer, the ombudsman will not be allowed to talk to you.

## Reasons to contact a lawyer:

If a lawyer takes your case, the lawyer will interpret the law in the way that is most advantageous for you, and will work on your behalf.

A lawyer can negotiate on your behalf with the insurer or self-insurance program.

If you believe you have a legal right to benefits you are not receiving (medical or indemnity or both) or other serious dispute with your claims representative, a lawyer can act as your representative in resolving the issues.

The lawyer is not allowed to take any money from you until your claim is resolved, except a small amount to cover expenses such as copying and mailing costs.

## Ombudsmen provide help to anyone:

The ombudsmen of the WCA are available to receive calls and answer questions from any party in a workers' compensation matter. They can also answer general questions about workers' compensation claims. While most calls are from injured workers, they also help employers and other parties involved in workers' compensation matters.

The ombudsmen can pass information on to other bureaus of the WCA. Some types of information that could be reported to other bureaus for appropriate action:

- A business that you believe doesn't have workers' compensation coverage even though it is required to;
- An employer or insurance company that you believe may be engaging in unfair practices regarding workers' compensation claims or injured workers;
- A worker who you believe may be committing fraud by claiming workers' compensation benefits to which he is not entitled.

If you need help with any question about workers' compensation and do not know which bureau to call, call the ombudsmen first at the office closest to where you live, or the

**WCA HELPLINE at 1-866-WORKOMP / 1-866-967-5667.**

## If you need a lawyer

If you cannot resolve your dispute with the help of an ombudsman, you may want to consider hiring a lawyer. You can hire a lawyer at any point in the claim to represent your interests.

If your dispute is not resolved through mediation or other settlement, and your claim goes to a formal trial, you probably will need a lawyer at that time.

The WCA and the State can't show any preference by referring anyone to a specific lawyer. To find a lawyer who specializes in workers' compensation: search on the internet or contact the State Bar of New Mexico, [www.nmbar.org](http://www.nmbar.org).

Your lawyer is your "exclusive representative." Your lawyer may tell you not to discuss your case with certain people, and your employer may be told by the employer's lawyer not to discuss the case with you. WCA ombudsmen will not be allowed to discuss your case with you. These restrictions are based on the laws of Attorney–client privilege. This is a legal concept that protects certain communications between a client and his or her attorney and keeps those communications confidential.

### How lawyers are paid in workers' compensation

The law limits the amount of attorney fees that can be paid in workers' compensation cases. The workers' compensation judge sets the amount that the worker's lawyer may be paid, based on the judge's evaluation of the case.

The maximum amount that can be paid for each claim to the lawyer for each side is set by law at \$22,500.00.

### Can you get help from a non-lawyer?

You may have help with your claim from someone who is not a lawyer, but that person is not allowed to act as your legal representative or to accept any money for helping you. For example, if you do not understand English very well you might get help from someone who can translate for you. If you are a union member, you might get help from a union representative. That person would not have the same standing as a lawyer and might be regarded more like a helper than a representative.

If someone other than a lawyer tries to act as your legal representative or get paid for helping you with a workers' compensation claim, that person could be charged with the unauthorized practice of law and be subject to penalties.

### Discovery costs

"Discovery" is a legal term for the process of gathering information in preparation for a trial. Discovery can involve expenses.

For example, some cases require formal, recorded interviews or depositions with one or more health care provider. The health care providers are paid for the time they spend in depositions.



The worker (or the worker's attorney) is entitled to a monetary advance for pre-trial discovery costs, to be paid by the insurer or self-insurance program. The amount of the advance is set by law. For cases in which the worker reached maximum medical improvement on July 1, 2003, or later, and that had not been filed for dispute resolution prior to that date, the maximum advance fee for discovery is \$3,000. As of June 14, 2013, the discovery fee is increased to \$5,000.00.

If the worker is unsuccessful in the case, the worker may be responsible to repay the discovery costs. The workers' compensation judge would approve a payment plan to allow the worker to repay this money over time.

### **Extra attorney fees for bad faith**

"Bad faith" is conduct that amounts to "fraud, malice, oppression, or willful, wanton or reckless disregard of the rights" of the other party.

There is one situation in which a workers' compensation judge can award up to \$2,500 more than the limit on attorney fees. On June 14, 2013, the award for "bad faith" increases to \$5,000.00. If one party has shown "bad faith" in the handling of the claim and the other party has suffered an economic loss as a result, the judge can award this extra amount of fees to the attorney representing the party who suffered the loss.

#### **Employer:**

Your insurance company or self-insurance program is responsible for the full amount of the employer's attorney fees, up to the maximum allowed by law. The amount of the fee is negotiated privately between your insurance company and the lawyer, except that it is limited to the maximum.

Your insurance also covers the portion of the worker's attorney fee that the employer is required to pay, up to the same maximum. Usually this is one-half of the fee. This is paid by your insurance company or self-insurance program as part of the claim.

Your insurance company may be required to pay an advance for the worker's costs of pre-trial discovery.

The maximums for these payments are the same as for workers' attorneys.

#### **Worker:**

If you receive an award of medical or indemnity benefits, you will usually be responsible for paying half of your lawyer's fee, and the employer's insurance will pay the other half. The amount of the fee and your portion of it are set by the judge, limited to the maximum amount.

**Never pay a lawyer in advance for your workers' compensation case!** You pay only amounts awarded by a judge, after the judge has told you. Your lawyer is permitted to ask you in advance for small sums to cover costs, such as copying expenses, and must account to you for those expenditures.

You will be responsible for paying your share of the lawyer's fee after it has been awarded by the judge. Discuss these financial questions thoroughly with your lawyer at the beginning, so you know

what to expect.

## **QUESTION:**

*Q. I hired a lawyer. Then I got my problem resolved without ever filing a complaint. How much do I pay my lawyer?*

*A. Do not pay anything until you receive an order from a workers' compensation judge, except small sums to cover costs.*

*Your lawyer is responsible for filing documentation with the workers' compensation court and must petition the court for an award of attorney fees. If the judge finds that the lawyer should receive a fee, then you will owe the lawyer some money, and the other party will usually owe the lawyer an equal amount of money. You are only required to pay what the judge tells you to pay. Usually that is half of your fees.*

## **Attorney fees in lump sum settlements (§52-5-12 NMSA)**

### **Worker:**

There are two kinds of settlements in which you may receive a large sum of money all at once. These are called "return to work" lump sum settlements and partial lump sum settlements. They are permitted by workers' compensation judges only in very limited circumstances.

In both cases, your lawyer may expect to be paid for your share of his services out of the settlement you receive.

Your lawyer could ask you to agree in advance that you will pay attorney fees out of any lump sum settlement you receive. You should only make such an agreement if you think it is in your best interest.

Before you sign any agreement or contract, be sure you thoroughly understand the agreement and what it could mean for your future.

## **Attorney fees in appeals and reopened cases**

The limit on attorney fees applies to the entire case. If the case is appealed to a higher court, or if the case has to be reopened because new issues arose after it was thought the case was finished, the attorney fees are still limited to the same maximum amount set by law.