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GOVERNOR

State of New York
WORKERS' COMPENSATION BOARD
20 Park Street
Albany, New York 12207



ROBERT E. BELOTEN
CHAIR

IMPORTANT INFORMATION FOR EMPLOYERS OPERATING IN NEW YORK STATE

Workers' Compensation Insurance Requirements

New York State workers' compensation insurance covers employees for work-related accidents, injuries or illness.

If you have one or more employees working in New York State (NYS), you are required to obtain NYS workers' compensation insurance coverage. **The workers' compensation insurance policy must be effective no later than the first day you have employees.**

Disability Benefits Insurance Requirements

NYS statutory disability benefits (DB) insurance coverage is totally different from and is not included in NYS workers' compensation insurance coverage. Statutory NYS disability benefits insurance covers employees for off-the-job accident, injury or illness.

If you have one or more employees for 30 days in a calendar year, you are required to obtain NYS disability benefits insurance coverage. Such insurance must be effective no later than four weeks after the 30th day you have employees. However, if you have purchased a business whose employees had already been covered by the Disability Benefits Law, the effective date of coverage must be no later than the day you purchased the business.

Purchasing Workers' Compensation and Disability Benefits Insurance

Both workers' compensation and disability benefits coverage can be obtained through private insurance carriers authorized to write such coverage in NYS, the New York State Insurance Fund, or Board-approved self-insurance. (Special note regarding disability benefits insurance: -- Please check with your broker, agent or carrier to ensure that your disability benefits policy complies with Disability Benefits Law requirements since many typical long-term and short-term policies are not statutory.)

Workers Compensation and Disability Benefits Coverage Situations

The following is provided for informational purposes only. For more thorough information, please see the Board's website at www.wcb.state.ny.us or call the Bureau of Compliance at 866-298-7830.

1. Corporate Officers - For Profit Corporations

Workers' compensation and disability benefits coverage is required for corporate officers with the following exceptions:

- A single corporate officer, who owns all shares of the corporation and holds all the offices.
- Two corporate officers, who between them own all shares and hold all the offices of the corporation. Each officer must own at least one share of stock.

Other employees of a corporation must be covered by a workers' compensation and disability benefits policy.

If there are three or more corporate officers and/or three or more stockholders, all corporate officers in a for-profit corporation must be covered by a workers' compensation and disability benefits policy. There are no exceptions.

2. Not-for-Profits

Unsalaries executive officer(s) of a not-for-profit unincorporated association or not-for-profit corporation may be excluded from workers' compensation coverage if the corporation or association elects to exclude that person from the coverage. These officers are automatically excluded from disability benefits coverage.

Religious, Educational or Charitable not-for-profits according to IRS guidelines 501(c)(3):

- Teachers (and other employees engaged in a non-manual capacity) do **NOT** have to be covered by a workers' compensation policy. All other employees must be covered by a workers' compensation policy.
- Employees in a teaching or religious capacity do not have to be covered by a disability benefits policy. All other employees must be covered by a disability benefits policy, if the nonprofit has employees for 30 or more days in a calendar year.

If the 501(c)(3) organization is not a religious, educational or charitable 501(c)(3) organization, all employees must be covered by both a workers' compensation insurance policy and a disability benefits insurance policy.

3. Legal Partnerships

Partners in a legal partnership do not need to be covered by a workers' compensation or disability benefits policy. However, coverage is required for employees of the partnership.

4. Limited Liability Companies (LLC) and Limited Liability Partnerships (LLP)

Members of an LLC and LLP are considered partners of a partnership and do not need to be covered by a workers' compensation or disability benefits policy. However, coverage is required for employees of the LLC or LLP.

5. Part-time Employees

Part-time employees must be covered by a workers' compensation and disability benefits policy with one exception for disability benefits coverage. Any person in regular attendance during the day time as a student in an elementary or secondary school who works during all or any part of the school year or regular vacation periods is automatically excluded from disability benefits coverage.

6. Out of State Employers

Employers located out of state who have employees working within New York State must obtain a New York State workers' compensation insurance policy. When purchasing a workers' compensation policy, please tell your broker, agent or carrier that New York must be listed in section 3a of the information page of your policy. (Effective September 9, 2007, New York coverage in Section 3c is no longer valid.)

Employers located out of state who have employees working within New York State must also obtain a New York State Statutory disability benefits insurance policy if the employer has employees working in NYS for 30 or more days in a calendar year.

7. Family Members

Family members, who work for the business, including spouses, are considered employees (even if they do not receive a salary). Therefore, they must be covered by a workers' compensation and disability benefits policy with the following exceptions:

- Spouses of sole proprietors and legal partnerships may be excluded from disability benefits coverage (workers' compensation coverage is still required). Notice of Election to Voluntarily

- Exclude Spouse from Coverage (Form DB-212.5) must be filed with the appropriate entity.
- Minor children of the employer may be excluded from disability benefits coverage. However, workers' compensation coverage is required.
- Spouses and minor children of farmers are not required to be covered for workers compensation or disability benefits.
- Corporate officers – one or two officers of a corporation who between them own all of the stock and hold all of the offices, and there are no other employees.
- Legal Partnerships – those family members who are partners in a legal partnership (including LLCs and LLPs).

8. Domestic and Home Health Aides

Employers of domestic workers and home health aides must provide workers' compensation if their employee(s) work forty or more hours a week or live on premises. A workers' compensation rider to a homeowner's policy does not provide workers' compensation coverage for these employees. Rather, a separate workers' compensation policy must be obtained.

Disability benefits coverage is required for domestics and home health aides working forty or more hours a week or living on premises for 30 or more days in a calendar year.

9. Independent contractors and subcontractors

The Workers' Compensation Board strongly recommends that all general contractors carry a workers' compensation insurance policy if they are hiring subcontractors. If an individual is truly independent, the individual works under his/her own operating permit, contract or authority. In many instances, individuals alleged to be subcontractors have been determined by the Board, acting in its adjudicatory capacity, to be employees when such individuals have been injured and have filed claims against the general contractor. You may want to consult an attorney to review your status.

In addition, under Section 56 of the Workers' Compensation Law, the general contractor is liable for payment of claims of all uninsured subcontractors. Therefore, without a policy, the general contractor would be personally liable for compensation and medical payments for the life of the claim.

Failure to Obtain a Workers' Compensation and Disability Benefits Policy when It is Required

Failure to obtain a workers' compensation policy when it is required constitutes a class E felony if you have more than five employees. If you have fewer than five employees, such failure shall constitute a misdemeanor. However, subsequent criminal violations constitute a felony. If a work-related injury occurs while you do not have workers' compensation coverage, you will also be liable for the entire cost of the claim (compensation payments and medical costs), and penalties, if a law judge so rules.

Failure to obtain a disability benefits policy constitutes a misdemeanor. If a non-work-related disability occurs while you do not have disability benefits coverage, you will also be liable for the cost of the claim and penalties.

In addition, the Board is required to impose penalties in an amount fixed by Law (see page 4) against employers who fail to maintain a workers' compensation policy and disability benefits policy when required by law.

Questions?

If you have any questions, please check the Workers' Compensation Board's website (www.wcb.state.ny.us) or address your inquiries to:

Workers' Compensation Board
Insurance Compliance Unit
100 Broadway-Menands
Albany, NY 12241
1-866-298-7830

SEE REVERSE FOR IMPORTANT INFORMATION

PENALTIES UNDER THE WORKERS' COMPENSATION LAW ARE AS FOLLOWS:

- (1) Failure to carry Workers' Compensation Insurance for 5 or less employees within a twelve month period is a misdemeanor punishable by a fine not less than \$1,000 nor more than \$5,000 [Section 52(1) (a)].
- (2) Failure to carry Workers' Compensation Insurance for more than 5 employees within a twelve month period is a class E felony and is punishable by a fine not less than \$5,000 nor more than \$50,000 [Section 52(1)(a)].
- (3) Subsequent convictions within a 5 year period shall constitute a class D felony and fines not less than \$10,000 nor more than \$50,000 [Section 52(1) (b)].
- (4) Any employer who fails to maintain a workers' compensation policy when it is required or owes a fine or assessment to the Board may be issued a stop-work order, meaning the business must shut down all activity until the order is lifted [Section 141-a (4)].
- (5) A penalty in the sum of \$2,000 for each ten-day period of non-compliance or a sum not in excess of two times the cost of compensation for the period of such failure may be imposed [Section 52 (5)].
- (6) Where the employer fails to carry the required insurance and an employee is disabled due to a work-related injury, an award will be made against the non-insured employer for all medical and wage benefits awarded [Section 26-a(1)(a)]. An assessment of \$1,000 for every ten days they are found to have failed to secure compensation for their employees or two times the cost of compensation shall also be imposed [Section 26- (2)(b)].
- (7) Every employer is required to keep records of the number of employees, classification of employees, wages paid and accidents that occur on the job [Section 131(1)]. Failure to do so may result in criminal prosecution and fines of not less than \$5,000 nor more than \$10,000 and additional civil fines of \$1000 for every ten day period for which they fail to keep records [Section 131(3)]. Subsequent violations are class E felonies subject to a fine of not less than \$10,000 nor more than \$25,000 [Section 131(1)].
- (8) Any employer found to have intentionally misrepresented the size of his payroll or employee classifications for the purpose of manipulating or avoiding premiums is deemed to have failed to secure compensation [Section 52 (1) (d)] and will be subject to a penalty in the sum of \$2,000 for each ten day period of noncompliance or a sum not in excess of two times the cost of compensation for the period of such failure [Section 52 (5)].
- (9) Any employer subject to a final assessment of civil fines or penalties or issued a stop work order is barred from any State, municipal or public contract for a period of one or five years (Section 141-b).
- (10) Civil judgments may be filed by the Board in State Supreme Court with no notice to employers and act as a lien on both real and personal property of the employer, including corporate officers, who are personally liable for debt to the Board [Section 141-a (6)].

PENALTIES UNDER THE DISABILITY BENEFITS LAW ARE AS FOLLOWS:

- (1) Failure to carry Disability Benefits Insurance is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or imprisonment for not more than one year, or both, with increased monetary penalties for second and third or subsequent violations (Section 220),and
- (2) Where an employee of a non-insured employer is disabled due to an off-the-job injury or illness, the noninsured employer will be responsible for payment of the amount of benefits to which the employee is entitled or for payment of 1% of his/her payroll for the period of non-compliance, whichever is greater (Section 213). And
- (3) Where an employer fails to carry Disability Benefits Insurance, the Chair will impose a penalty not in excess of ½ of 1% of the employer's weekly payroll for the period of non-compliance and a further amount not in excess of \$500 (Section 220).