

QUESTIONS & ANSWERS REGARDING WORKER'S COMPENSATION INSURANCE REQUIREMENTS IN WISCONSIN

1. What is worker's compensation?

Worker's Compensation is a system of no fault insurance that provides wage replacement and medical benefits to employees for accidental injuries or diseases related to the employee's work.

2. Where did worker's compensation come from?

Before 1911, a worker who was injured in the course of his or her employment could sue his or her employer in a civil or "tort" action, which was the same remedy available to a person injured under other circumstances. The tort remedy, however, had certain problems. It required the worker to prove that the injury occurred because the employer was negligent and the employer had three important defenses: (1) that the worker was also negligent, (2) that the worker knew of the dangers involved and "assumed the risk," or (3) that the injury occurred because of the negligence of a "fellow employee." Under this system it was very difficult for workers to recover against their employers. If they did win, however, there were no dollar limits on what a jury could award.

In 1911, Wisconsin adopted a Workmen's Compensation Act. The new remedy is essentially a "no-fault" system under which a worker no longer has to prove negligence on the part of the employer, and the employer's three defenses were eliminated. The intent of the law is to require an employer to promptly and accurately compensate a worker for any injury suffered on the job, regardless of the existence of any fault or whose it might be.

In return, the Act limits the amount that a worker can recover. Workers are only entitled to (1) certain wage loss benefits, (2) the cost of medical treatment, and (3) certain disability payments. Under the old system, workers were able to recover for pain and suffering, loss of enjoyment of life, and other damages that a jury might award. Recovery under worker's compensation is limited to these three areas, no matter how serious the injury.

3. What benefits are payable under a worker's compensation insurance policy?

A Worker's Compensation insurance policy covers an employer's liability to its employees under the Worker's Compensation Act for compensation and medical expense. Worker's Compensation insurance provides distinct benefits for employees who have injuries or illnesses related to employment:

- 1) Coverage of all reasonable and necessary medical costs.
- 2) Benefits for temporary wage loss (Temporary Partial Disability (TPD) or Temporary Total Disability (TTD)) sustained by an employee while recovering from an injury. Eligibility for temporary disability benefits are determined and must be documented by a doctor. Benefits for temporary wage loss due to disability are based on two-thirds of the employee's wage rate up to a specified maximum amount.
- 3) Benefits for permanent disability (Permanent Partial Disability (PPD) or Permanent Total Disability (PTD)) if the employee does not fully recover from the injury. Permanent disability is awarded for the potential, or actual, loss of earning capacity. The amount of benefit payment for permanent disability depends on the seriousness of the permanent disability.
- 4) Vocational Rehabilitation.
- 5) If a death occurs to an injured employee, death benefits and burial expense will be paid up to specific limits.

4. Who is an employee under the Worker's Compensation Act?

Under section 102.07(4)(a) of the Wisconsin Worker's Compensation Act (Act), an employee is defined as "[e]very person in the service of another under any contract of hire, express or implied, all helpers and assistants of employees, whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer, including minors, who shall have the same power of contracting as adult employees...but not including (1) domestic servants, (2) any person whose employment is not in the trade, business, profession or occupation of the employer,...unless the employer elects to cover them."

5. What is the definition of "...any contract of hire..."?

A contract of hire means that the person performs services for which he or she is compensated. Compensation is something of value and may be cash or in-kind. (See section 13 for wage information.)

6. Who is a domestic servant?

Although neither the statutes nor the case law provide a definition of "domestic servant" as it is used in s. 102.07(4) of the Act, the department has consistently ruled that persons hired in a private home to perform general household services such as nanny, baby-sitting, cooking, cleaning, laundering, gardening, yard and maintenance work and other duties commonly associated with the meaning of domestic servant, meet the definition of domestic servant intended by the Act.

7. What is the definition of "...trade, business, profession or occupation of the employer..."?

Cornelius v. Industrial Commission, 242 Wis. 183, 185 (1943) defines a trade or business as an occupation or employment *habitually engaged in for livelihood or gain*. If a person's employment is in the trade, business, profession or occupation of the employer, he or she is an employee, no matter how casual or isolated the employer's trade, business, profession or occupation may be. For example, typically a home-owner who hires someone to mow his or her lawn is not an employer subject to the Act because being a home-owner is not associated with a trade, business, profession or occupation.

8. When is an employer required to have a worker's compensation policy under the Act?

Under s. 102.04(1)(b) of the Act, an employer becomes subject to the Act and must carry a worker's compensation insurance policy if:

- 1) The employer usually employs three or more persons full-time or part-time. This employer needs insurance immediately upon employing a third person.
- 2) The employer has one or more full-time or part-time employees and has paid gross combined wages of \$500 or more in any calendar quarter for work done in Wisconsin. This employer must have insurance by the 10th day of the first month of the next calendar quarter. (There are four calendar quarters in a calendar year; the 1st quarter is January through March, the 2nd quarter is April through June, the 3rd quarter is July through September; and, the 4th quarter is October through December.)
- 3) The farm (farmer) employs 6 or more employees (at one or more locations) on the same day for 20 days (consecutive or non-consecutive) during a calendar year. A calendar year is January through December. This farmer must have insurance within 10 days after the 20th day of employment. Some relatives of the farmer are not counted towards the 6 employees, but will be covered under a policy if one is purchased. (See section 32 for farming information.)

Wisconsin law requires that a subject employer with employees working in Wisconsin must have a worker's compensation insurance policy with an insurance company licensed to write worker's compensation insurance in Wisconsin. Each individual employer must provide a worker's compensation insurance policy for its employees. One employer cannot provide worker's compensation insurance coverage for another employer's employees even if they voluntarily sign a contract to provide the coverage. Every employer, as described in s. 102.04(1), Wis. Stats., is required under s. 102.28(2), Wis. Stats., to have a worker's compensation insurance policy in the name of the employer/owner or in the name of the business entity.

9. What is the definition of “...usually employs three or more persons...”?

Stapleton Cheese Co. vs. Industrial. Comm., 249 Wis. 133 (1947) defines “usually employs three or more persons,” as employment of three persons for a *single moment*, (even though some of these employees may have been only casual employees) this is sufficient to make the employer subject to the Act. Based on the holdings in *Stapleton*, an employer is subject to the Act immediately upon the employment of three or more employees.

10. What is the definition of wages?

Wages encompass almost anything of value received, accepted or expected as compensation by a worker in exchange for his or her services. If something of value is received, accepted or expected as compensation by a worker in exchange for his or her services, an employee-employer relationship exists. While compensation is a necessary part of an employee-employer relationship for worker’s compensation purposes, compensation need not be money. Compensation is a broader term than salary or wages and may include almost anything of value. When things of value are received as wages, they are deemed a part of the earnings and computed at the value thereof to the employee. Things of value include room and board, rent credits, training, tuition, discounts, certificates, credits, vouchers and any other type of credit or reimbursement.

11. Are out-of-state employers who have employees working in Wisconsin required to have a worker’s compensation insurance policy in Wisconsin?

Yes, out-of-state employers with employees working in Wisconsin must have a worker’s compensation policy with an insurance company licensed to write worker’s compensation insurance in Wisconsin.

Wisconsin Statute 102.28(2) requires that an employer subject to the Act with employees working in Wisconsin must have a worker’s compensation insurance policy with an insurance company licensed to write worker’s compensation insurance in Wisconsin. The policy must be endorsed to name Wisconsin as a covered state in section 3-A of the policy. If an out-of-state employer has a worker’s compensation insurance policy with an insurance company licensed to write worker’s compensation insurance in Wisconsin, they may simply add Wisconsin coverage by name to section 3-A of the policy by endorsement. If an out-of-state employer has a worker’s compensation insurance policy with an insurance company *not licensed* to write in Wisconsin, they must obtain a policy from a Wisconsin licensed insurance company to cover their Wisconsin exposure. The insurance company must file the properly endorsed policy with the Wisconsin Compensation Rating Bureau. The Bureau is located at 20700 W. Swenson Drive - Suite 100, Waukesha, Wisconsin 53186. The mailing address is P.O. Box 3080, Milwaukee, Wisconsin 53201-3080. The telephone number is (262) 796-4540.

12. Must employers purchase worker’s compensation insurance?

The law requires that every employer subject to the Act must provide some way of assuring that it can pay benefits to its workers should they become injured. Most employers in Wisconsin provide this security by purchasing an insurance policy from a private insurance company. The insurance company then reports to the State of Wisconsin Department of Workforce Development (DWD) that it is providing coverage for the employer. Some employers, however, are “self-insured”.

13. What is self-insurance?

Some employers who are financially sound (and usually quite large) are “self-insured”. An employer can only be self-insured if it obtains permission from the State of Wisconsin Department of Workforce Development (DWD). DWD requires employers to demonstrate a very sound financial condition in order to be self-insured.

14. Are workers protected if a self-insured employer or an insurance company goes bankrupt?

There are two provisions in the law to protect workers in the event of bankruptcies. The Self-Insurers’ Security Fund is funded by assessments, on other self-insured employers. Should a self-insured employer go bankrupt, the Self-Insurers’ Security Fund has the responsibility for making payments to injured workers. Should this occur, it is very important that the injured worker give notice of their claim to the Self-Insurers’ Security Fund immediately. There is also a guaranty fund which assumes responsibility if an insurance carrier becomes bankrupt.

15. Who pays for worker's compensation insurance?

The employer is responsible to pay for worker's compensation insurance. An employer subject to the Act may not withhold or collect any money from employees or *any other person* to pay for worker's compensation insurance. To do so is illegal and involves monetary penalties. (ss. 102.16(3), 102.16(4), and 102.85(1), Wis. Stats.)

16. What will worker's compensation insurance cost?

The cost of insurance will vary depending on how hazardous jobs in your business classification are, based on the basis of the past experience in your industry and your gross payroll. It will, for example, cost more to insure blasters than it will barbers. There are approximately 650 separate job classifications for premium purposes.

It is the business of the employer that is classified and not the specific job. For example, in a manufacturing risk situation, the product manufactured determines the business of the insured employer. In other words, General Motors would be classified as an automobile manufacturer. There are several different kinds of jobs involved in the manufacturing of automobiles, some of which are more hazardous than others. Nonetheless, all of these jobs are performed for an employer engaged in the business of manufacturing automobiles, and therefore, all of the employees' payrolls would be classified in the same classification.

Three occupations are common to so many businesses that special classifications have been established for them. These "standard exception" classifications cover clerical office employees, outside sales people, and drivers. The standard exception classes are the only classifications that are not related to the business of the employer. Instead they are related to the job as these jobs are fairly common to all employers.

The Wisconsin Compensation Rating Bureau sets the premium rate for each class with the approval of the Commissioner of Insurance. If an employer feels that they are not properly classified or the premium charge is not proper, they can appeal to the Rating Bureau.

17. Who is covered by the Worker's Compensation Act?

Nearly all employers in Wisconsin are covered by the broad requirements outlined in section 8. This includes both public and private employers. Nearly all private and public employees in Wisconsin are employees covered under the Act, including employees who are family members (except for farmers in some cases), minors, part-time employees and corporate officers.

18. Are there any exceptions?

There are a few classes of workers who are covered by federal laws and are not covered by the Act. Employees of the federal government (such as postal workers, employees at a veterans administration hospital, or members of the armed forces) are covered by federal laws. People who work on interstate railroads are covered by the Federal Employers Liability Act. Seamen on navigable waters are covered by the Merchant Marine Act of 1920, and people loading and unloading vessels are covered by the Longshoremen's and Harbor Worker's Compensation Act.

The only employee exceptions to the Act's insurance requirement are: (1) domestic servants, (2) any person whose employment is not in the trade, business, profession or occupation of the employer, (3) some farm employees, (4) volunteers, including volunteers of non-profit organizations that receive money or other things of value totaling not more than \$10.00 per week, (5) religious sect members that qualify and are certified for an exemption, (6) employees of Native American tribal enterprises (including casinos), unless the tribe elects to waive its sovereign immunity and voluntarily become subject to the Act. Virtually all other workers and employers are subject to the Act.

19. Can an employee waive his or her right to worker's compensation coverage?

No. No agreement to waive the right to compensation is valid under s. 102.16(5), Wis. Stats. Even if an employee signs a waiver, it is not valid and would have no effect on the validity of a worker's compensation claim.

20. What about relatives?

A member of a family who works for the employer is considered an employee and is covered by the Act. With the exception of farmers, an employee's relationship to the owner has no bearing on the requirement to carry worker's compensation insurance. (See section 32 for farming information.)

21. What about minors?

A minor is an employee and is covered by the Act. A person's age has no bearing on the requirement to carry worker's compensation insurance.

22. What about part-time employees?

A part-time employee is an employee and is covered by the Act. Whether an employee works part-time or full-time has no bearing on the requirement to carry worker's compensation insurance.

23. What about the owners of sole-proprietorships, partnerships and limited liability companies?

Sole proprietors, partners and members of limited liability companies are exempt from coverage under the Act, but may elect to cover themselves. The employees of sole proprietorships, partnerships and limited liability companies are covered by the Act. A sole proprietorship, a partnership or a limited liability company that has no employees, is not required to carry a worker's compensation insurance policy.

All worker's compensation policies *exclude* the sole proprietor, partners and members of limited liability companies unless *specifically endorsed to include them*. Sole proprietors, partners and members of limited liability companies may voluntarily purchase worker's compensation insurance to cover their own work-related injuries and illnesses. Employers who have an existing worker's compensation insurance policy may add themselves by endorsement to that policy by notifying their agent and paying the additional premiums. To be covered under the policy, the policy must be endorsed to name the sole proprietor, partner or member of limited liability companies as a covered employee.

24. What about corporate officers?

A corporate officer is considered an employee and is covered by the Act. All worker's compensation policies covering corporations *include* corporate officers. However, in a closely-held corporation (a corporation with not more than 10 stockholders), 1 or 2 officers may exclude themselves from coverage. If the corporation *has other employees or officers, an insurance policy is required* and the exclusion for officers must be made by an endorsement on the corporation's worker's compensation policy. The name of each excluded officer must be specified on the policy. The exclusion will remain in effect for the policy period. An officer who elects to exclude himself or herself is still an employee of the corporation. An excluded officer is still counted as an employee and his or her wages are included for the purposes of determining whether the corporation has three or more employees or has paid gross combined wages of \$500 or more in a calendar quarter under s. 102.04(1)(b) of the Act.

If a closely held corporation has *1 or 2 corporate officers* and has *no other employees or officers*, a worker's compensation policy is not required if each officer elects not to be subject to the Act by filing the Notice of Corporate Officer Option with the Worker's Compensation Division. A corporation with *more than 2* corporate officers or *any other employee or employees is not eligible* to file a Notice of Corporate Officer Option and must maintain a worker's compensation insurance policy.

25. What about shareholders?

The owner of one or more shares of stock in a corporation is a shareholder (also commonly called a "stockholder.") A shareholder is not considered an employee of the corporation unless he or she performs work for the corporation customarily performed by an employee.

26. What about members of a board of directors?

A member of the governing board of a corporation or association elected at annual meetings of the shareholders or association's members is a member of the board of directors. A director who sits on a board is considered an employee if he or she receives any kind of pay, compensation, directors' fee or something of value for his or her services or if he or she performs work customarily performed by an employee.

27. Who is a volunteer?

Although the statutes do not provide a definition of “volunteer” as it is used in s. 102.07(11) of the Act, the department has consistently ruled that a person who provides services of his or her own free will to or on behalf of an organization or entity, who neither receives nor expects to receive any kind of pay or compensation for his or her services, meets the definition of volunteer intended by the Act.

Volunteers cannot be covered under a worker’s compensation policy and cannot collect worker’s compensation benefits if they incur an injury or illness during the course of their voluntary service. The Act has no jurisdiction over any other form of relief that may be available to a volunteer.

28. When and how does a volunteer evolve into an employee?

The primary test in determining when, how and if a volunteer evolves into an employee is “does the worker receive or expect to receive compensation (almost anything of value including discounts, certificates, credits, vouchers or any other type of reimbursement) in exchange for his or her services?” If not, the worker is probably a volunteer. If the answer is yes, he or she is most likely an employee.

The situation gets murky when the volunteer worker is a member of an organization that receives compensation for providing the services of the volunteer worker. A general “rule of thumb” is, if nothing of value changes hands from the recipient of services to the worker (the provider or performer of services) this is probably a volunteer situation. However, if something of value is received, accepted or expected by the worker (the provider or performer of the services) or the organization in exchange for the work performed, an employee-employer relationship may exist. Any claim filed by a worker (the provider or performer of services) injured while performing services under these conditions is determined on a case-by-case basis according to the facts and circumstances at the time of injury.

29. What about a volunteer working for a non-profit organization who receives money or other things of value totaling not more than \$10.00 per week?

Under s. 102.07(11m) of the Act, a volunteer for a non-profit organization that is exempt or eligible for exemption from federal income taxation under the Federal Internal Revenue Code, who receives nominal payments of money or other things of value totaling not more than \$10.00 per week, is not considered an employee of the non-profit organization under the Act unless the non-profit organization elects to cover the “nominally paid” volunteer under its policy.

30. What about a volunteer firefighter or a volunteer member of a rescue squad?

Under s. 102.07(7)(a) of the Act, a volunteer firefighter or member of a rescue squad is considered an employee and is covered by the Act. If the fire company, fire department or squad does not have a worker’s compensation insurance policy, the municipality or county within which the company, department or squad was organized is liable for worker’s compensation coverage.

Under s. 102.07(2) of the Act, any peace officer while engaged in the enforcement of peace or in the pursuit and capture of those charged with a crime is considered an employee and covered by the Act.

31. What about volunteer members of a non-profit organization’s or non-profit association’s board of directors?

Although the statutes do not provide a definition of “volunteer” as it is used in s. 102.07(11) of the Act, the department has consistently ruled that a volunteer director of a non-profit organization or non-profit association who provides services of his or her own free will to or on behalf of an organization or entity, who neither receives nor expects to receive any kind of pay or compensation for his or her services, meets the definition of volunteer intended by the Act.

Volunteers cannot be covered under a worker’s compensation policy and cannot collect worker’s compensation benefits if they incur an injury or illness during the course of their voluntary service. The Act has no jurisdiction over any other form of relief that may be available to a volunteer.

32. What about the religious sect exemption?

Employers may apply for an exemption from the duty to insure workers who belong to a religious sect, such as Amish or Mennonites, whose tenets and teachings oppose accepting benefits of any public or private insurance payments for death, disability, old age or retirement, or that makes payments towards the cost of medical care, including federal social security benefits.

The exemption is not automatic. It applies only if all the following occur: (1) the employer applies for an exemption; (2) the religious sect has a long standing history (25 years is presumed to be long-standing history) of providing its members who become dependent on the sect as a result of work-related injuries, with a standard of living and medical treatment that are reasonable when compared to the general standard of living and medical treatment for members of the religious sect; (3) the worker waives his or her rights to worker's compensation and requests an exemption; and, (4) the religious sect agrees to pay benefits at a reasonable standard of living and medical treatment when compared to the general standards for members of the sect. To qualify for this exemption, employers must apply to the Worker's Compensation Division.

33. What about Native American tribal enterprises and casinos?

Native American tribal enterprises (including casinos) are not required to comply with any of the provisions of the Act. Tribes are sovereign nations, covered by sovereign immunity. The Act does not apply to tribal enterprises. The Department has no jurisdiction over tribal enterprises, including whether or not a tribe covers its employees with worker's compensation insurance or pays worker's compensation benefits, *unless a tribe elects to waive its sovereign immunity*. The Department has long held that a tribal enterprise can waive its immunity by voluntarily purchasing a worker's compensation insurance policy. In that case, pursuant to s. 102.05(2) of the Act, the tribal enterprise, like any other enterprise that is not subject to the law, has elected to accept the provisions of the Act by voluntarily purchasing a policy.

If you have questions regarding tribal enterprises and injury claims not covered by the Act, you may contact the following offices; (1) United States Department of the Interior - Bureau of Indian Affairs Great Lakes Agency, 615 Main Street, Ashland, WI 54806. The telephone number is (715) 682-4527. (2) United States Department of the Interior - Bureau of Indian Affairs Office of Public Affairs, 1849 C Street, NW, Washington, DC 20240-0001. The telephone number is (202) 208-3711.

34. What about independent contractors?

If one company hires another company to come in and do some work for it, the second company is ordinarily an "independent contractor" and not an employee of the first company. Sometimes, however, a company hires one person to come in and perform a specific job and disputes arise as to whether or not that person is an employee or an independent contractor.

There are specific statutory conditions under s. 102.07(8), Wis. Stats., that must be met before a worker in the service of another person is considered not to be an employee. There is a nine-part test that establishes whether independent contractors are employees. Any owner/operator or independent contractor who does not meet and maintain *all of the nine specific tests* of independence in the Wisconsin law (and who is not an employer himself or herself) is an employee of any employer they are working under in Wisconsin. Independent contractors who have no employees or who are not required to be insured may buy a policy to cover themselves.

35. What is the nine-part definition of an independent contractor under the Act?

Under s. 102.07(8)¹ of the Act, a person is required to meet a nine-part test before he or she is considered an independent contractor rather than an employee. A person is not an independent contractor for worker's compensation purposes just because the person says they are, or because the contractor over them says so, or because they both say so, or even if other regulators (including the federal government and other state agencies) say so. The nine-part statutory test set forth under s. 102.07(8) of the Act, must be met before a person working under another person is considered not to be an employee. To be considered an independent contractor and not an employee, an individual must meet and maintain all nine of the following requirements:

The worker's compensation employment relationship will be determined, in each case, solely by the evidentiary facts relating to the nine-point statutory test. Any worker's compensation claim filed by an independent contractor injured while performing services under these conditions is determined on a case-by-case basis according to the facts and circumstances at the time of injury. To be considered an independent contractor and not an employee, an individual must meet and maintain all nine of the following requirements:

1. Maintain a separate business.
2. Obtain a Federal Employer Identification number from the Federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on the work or service in the previous year. (A social security number cannot be substituted for a FEIN and does not meet the legal burden of s. 102.07(8) of the Act.)
3. Operate under specific contracts.
4. Be responsible for operating expenses under the contracts.
5. Be responsible for satisfactory performance of the work under the contracts.
6. Be paid per contract, per job, by commission or by competitive bid.
7. Be subject to profit or loss in performing the work under the contracts.
8. Have recurring business liabilities and obligations.
9. Be in a position to succeed or fail if business expense exceeds income.

¹ Except as provided in par. (b), every independent contractor is, for the purpose of this chapter, an employee of any employer under this chapter for whom he or she is performing service in the course of the trade, business, profession or occupation of such employer at the time of the injury.

(b) An independent contractor is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:

1. Maintains a separate business with his or her own office, equipment, materials and other facilities.
2. Holds or has applied for a federal employer identification number with the federal internal revenue service or has filed business or self-employment income tax returns with the federal internal revenue service based on that work or service in the previous year.
3. Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work.
4. Incurs the main expenses related to the service or work that he or she performs under contract.
5. Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for a failure to complete the work or service.
6. Receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis.
7. May realize a profit or suffer a loss under contracts to perform work or service.
8. Has continuing or recurring business liabilities or obligations.
9. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

(c) The department may not admit in evidence state or federal laws, regulations, documents granting operating authority or licenses when determining whether an independent contractor meets the conditions specified in par. (b) 1 or 3. [s. 102.07(8), Stats.]

36. Are farms and farm workers covered?

Farmers are covered if they have 6 or more employees (at one or more locations), working on the same day for 20 days (consecutive or non-consecutive) during a calendar year.

There is no wage threshold for farmers. It doesn't matter how much a farmer pays in wages. What matters is the number of employees (after excluding certain employees who are family members, relatives or "exchanged workers" as described in more detail below).

For farmers, the threshold is 6 employees, not 3. However, farmers are not required to obtain insurance unless they have 6 or more employees on at least 20 days during a calendar year. After the 20th day, farmers have 10 days to obtain insurance.

- A calendar year starts on January 1st and ends on December 31st.
- The 20 days do not have to be consecutive.
- On each of the 20 days, it can be the same 6 employees or 6 different people.
- The 6 employees may be full-time or part-time.
- The 6 employees may be at more than one location within the state.
- Certain relatives are not counted in determining whether there are 6 employees.

Example #1: Farmer Pat had 5 employees every day in January and February. Pat had 6 employees on 17 dates in March and 5 employees every day April through December.

Analysis: In January, February and April through December Pat had 5 employees every day, but none of those days count toward the 20-day threshold because there is no day that Pat had 6 employees. Pat had 6 employees on only 17 days during the calendar year and therefore, is not required to obtain a worker's compensation insurance policy.

Example #2: Farmer Chris had no employees in January or February. Chris had 6 employees (4 worked full-time and 2 worked part-time) on 3 dates in March, on 7 dates in April, on 9 dates in May, and on 10 dates in June, starting on June 3rd.

Analysis: In March, April and May there were 19 total days on which Chris had 6 employees. Any combination of new, old, part-time or full-time employees are counted the same way. June 3rd is the 20th day during the calendar year on which Chris had 6 employees. This means that 10 days later, on June 13th, Chris is subject to the Worker's Compensation Act. Chris must have a worker's compensation policy in force by June 13th.

37. Who is a farmer?

The statutory definitions of farming,² farm premises,³ farm operations⁴ and farmers⁵ are extremely broad. The law has a long list of farm operations related to plant and animal commodities that cover everything from cultivating, breeding, tending, raising, training, managing and harvesting--to processing, drying, packing, packaging, freezing, grading, storing, delivering, distributing, or marketing. The law also says that farming shall also include “any other activities commonly considered to be farming whether conducted on or off (farm) premises.”

38. What if a farmer rents the farm premises?

It makes no difference whether the farmer owns or rents the farm premises. The same broad exemptions from the requirement to obtain insurance apply.

39. What if a farmer doesn't make a profit?

It does not matter. There is no requirement that the farmer actually succeed in raising any crop, animal, animal product, or commodity.

40. What about logging?

“Logging, lumbering or wood cutting” operations are not, *by themselves* considered farm operations. However, if they are done as part of other farm operations, they are considered farm operations for all worker’s compensation purposes. On the other hand, clearing farm premises, salvaging dead timber and managing and using wood lots are, *by themselves*, considered farming. They are not considered “logging, lumbering or wood cutting.”

41. What about people who provide services to farmers?

Commercial threshers, clover hullers, silo fillers, corn shredders, and other employers who work for farmers are not considered to be engaged in farming operations. These contractors become subject to the Worker’s Compensation Act like any other *non-farm* employer. These employers and their employees are not counted for purposes of determining whether a farmer has 6 employees.

² “Farming” means the operation of farm premises owned or rented by the operator. [s. 102.04(3), Stats.]

³ “Farm premises” means areas used for operations listed in footnote 3 but does not include other areas, greenhouses or similar structures unless used principally for the production of food and farm plants. [s. 102.04(3), Stats.]

⁴ Operation of farm premises shall be deemed to be the planting and cultivating of the soil thereof; the raising and harvesting of agricultural, horticultural or arboricultural crops thereon; the raising, breeding, tending, training and management of livestock, bees, poultry, fur-bearing animals, wildlife or aquatic life, or their products, thereon; the processing, drying, packing, packaging, freezing, grading, storing, delivering to storage, to market or to a carrier for transportation to market, distributing directly to consumers or marketing any of the above-named commodities, substantially all of which have been planted or produced thereon; the clearing of such premises and the salvaging of timber and management and use of wood lots thereon, but not including logging, lumbering or wood cutting operations unless conducted as an accessory to other farming operations; the managing, conserving, improving and maintaining of such premises or the tools, equipment and improvements thereon and the exchange of labor, services or the exchange of use of equipment with other farms in pursuing such activities. The operation for not to exceed 30 days during any calendar year, by any person deriving the person’s principal income from farming, of farm machinery in performing farming services for other farms for a consideration other than exchange of labor shall be deemed farming. Operation of such premises shall be deemed to include also any other activities commonly considered to be farming whether conducted on or off such premises by the farm operator. [s. 102.04(3), Stats.]

⁵ “Farmer” means any person engaged in farming as defined in footnotes 1 to 3. [s. 102.04(3), Stats.]

42. What about relatives of a farmer?

A. **Eligibility for benefits.** The most important thing to remember is that the special rules for relatives relate only to *counting*, not to *benefits* or insurance *premiums*. Put simply, all these rules mean is that certain relatives are not counted when deciding whether a farmer has crossed the 6-employee threshold.

However, once it is determined that a farmer is subject to the Worker's Compensation Act--at which time the farmer must obtain insurance--then *all* employees of the farmer (including *all* the relatives who were not counted for purposes of determining whether that insurance was required) are covered under that policy. This means, quite properly, that the farmer's insurance premiums will be based on *all* wages paid by the farmer to *all* employees--including these relatives.

B. **Counting toward the 6-employee threshold.** When determining whether a farmer has 6 or more employees, the law says that certain direct ancestors and descendants of the farmer ("lineal" relatives) and certain more distant familial relatives and in-laws ("collateral" relatives) shall not be counted. The list in Table 1 applies to all farmers. For purposes of counting, these relatives are not employees.

Table 1-Farmers

Farmer's Relatives That Are Not Counted as the Farmer's Employees	
Parent	Spouse
Child	Sister-in-law or Brother-in-law
Brother	Daughter-in-law or Son-in-law
Sister	Mother-in-law or Father-in-law

If the farm operation is a ***sole proprietorship***, the relatives of the owner listed in Table 1 are not counted when counting the number of employees.

If the farm operation is a ***partnership***, the relatives of a partner listed in Table 1 are not counted when counting the number of employees.

If the farm operation is a ***limited liability company***, the relatives of a member of the limited liability company listed in Table 1 are not counted when counting the number of employees.

If the farm is a ***family farm corporation***,⁶ relatives of a shareholder listed in Table 1 are not counted when counting the number of employees.

Important Note: If the farm is a ***corporation***, (where all shareholders are not related as lineal ancestors or descendants) all employees including the relatives of a shareholder listed in Table 1 are counted when counting the number of employees.

⁶ A "family farm corporation" means a corporation engaged in farming ***all*** of whose shareholders are related as lineal ancestors or lineal descendants, or as spouses, brothers, sisters, uncles, aunts, cousins or in-laws (listed in Table 1) of such lineal ancestor or descendant. [s. 102.04(5)(c) , Stats.]

43. Once a farmer is required to get insurance, how long does he or she have to keep it?

Quite a while. Once a farmer is required to obtain insurance, even if he or she permanently drops below 6 employees, the farmer must maintain the insurance for the remainder of that calendar year--and for the next calendar year--before he or she is eligible to withdraw from being subject to the provisions of the Act.

Once the farmer has gone a full calendar year without employing 6 or more employees on 20 days, the farmer may drop insurance coverage by first filing a notice of withdrawal with the Worker's Compensation Division, and then waiting 30 days. If the withdrawal is approved by the Department, the farmer must notify the insurance carrier of the date he or she wants the coverage cancelled. If, for some reason, the farmer wants to drop coverage more than 30 days later, the later date should be specified in the notice of withdrawal. Farmers should contact the Worker's Compensation Division for the necessary withdrawal forms.

Example: On July 8, 2002, Farmer Pat drops from 25 employees to 5 employees. During the rest of 2002 there are 23 dates on which Pat has 6 or more employees. In 2003, there are only 19 days on which Pat has 6 or more employees. What is the earliest date Pat can drop the insurance coverage?

Analysis: The 23 days in 2002 after July 8th are irrelevant. What matters is that during 2003 Pat did not have 6 employees on 20 days. The earliest Pat is eligible to file a notice of withdrawal is January 1, 2004. January 1st is a holiday and state offices are closed. The earliest the notice can be received by the Worker's Compensation Division is January 2, 2004. The earliest the insurance coverage can be cancelled is 30 days later, or February 1, 2004.

44. Once an employer is required to get a worker's compensation insurance policy, how long does the employer have to keep it?

Quite awhile. Once an employer becomes subject to the Act, the employer is required to have a worker's compensation policy as long as he or she has one or more part-time or full-time employees. Even if a subject employer has only one part-time employee making less than \$500 per quarter, the employer must maintain the insurance for the remainder of that calendar year--and for the next calendar year--(a calendar year is January through December) before he or she is eligible to withdraw from being subject to the provisions of the Act.

Once the employer has gone a full calendar year without employing 3 or more employees or paying combined gross wages of \$500 or more in any calendar quarter, the employer may drop insurance coverage by first filing a notice of withdrawal with the Worker's Compensation Division, and then waiting 30 days. If the withdrawal is approved by the Department, the employer must notify the insurance carrier of the date he or she wants the coverage cancelled. If, for some reason, the employer wants to drop coverage more than 30 days later, the later date should be specified in the notice of withdrawal. Employers should contact the Worker's Compensation Division for the necessary withdrawal forms.

Example: On June 8, 2002, Employer Kelly drops from 3 employees to 1 employee. During the rest of 2002 Kelly does not employ 3 or more employees and in the 3rd and 4th quarters of 2002 Kelly does not pay combined gross wages of \$500 or more. In 2003, Kelly does not employ 3 or more employees and does not pay gross combined wages of \$500 or more in any of the 4 calendar quarters of the 2003 calendar year. What is the earliest date Kelly can drop the insurance coverage?

Analysis: 2002 is irrelevant. What matters is that during 2003 Kelly did not employ 3 or more employees or pay combined gross wages of \$500 or more in any calendar quarter during the 2003 calendar year. The earliest Kelly is eligible to file a notice of withdrawal is January 1, 2004. January 1st is a holiday and state offices are closed. The earliest the notice can be received by the Worker's Compensation Division is January 2, 2004. The earliest the insurance coverage can be cancelled is 30 days later, or February 1, 2004.

If a subject employer lays off all his or her employees, the employer may drop their worker's compensation insurance while they have no employees, however, the employer remains subject to the Act. Therefore, because the employer has already become subject to the Act, if the employer hires an employee at a later date, the employer must have a worker's compensation insurance policy in place on the date any employee begins working, unless the employer has withdrawn from the Act.

Corporations can not withdraw from the provision of the Act. Closely held corporations (a corporation with not more than 10 stockholders) that have no more than two corporate officers and no other employees, may elect not to be subject to the Act by completing and filing with the Department a *Corporate Officer Option Notice*. A corporation with more than two corporate officers or any other employee is not eligible to file a Corporate Officer Option Notice and must obtain and/or maintain a worker's compensation insurance policy.

45. Are there penalties if an employer does not maintain insurance or permission to be self-insured?

We must and do enforce mandatory penalties if an employer does not obtain and maintain a worker's compensation insurance policy when required to have one. If an employer does not comply, the employer risks one or all of the following:

- A penalty of twice the amount of premium not paid during an uninsured time period or \$750, whichever is greater. Under certain circumstances, an employer may be subject to a penalty of \$100 for each day they're uninsured up to 7 days. (ss. 102.82(2)(a) and 102.82(2)(ag), Wis. Stats.)
- Closure of his or her business, including a suspension of all operations until the employer is in compliance with the insurance requirements of the Act. (s. 102.28(4), Wis. Stats.)
- An uninsured employer is personally liable for reimbursement to the Uninsured Employers Fund for benefit payments made by the Fund under section 102.81(1) of the Wisconsin Statutes to an injured employee (or the employee's dependents) of the uninsured employer. (See section 102.82(1) of the Wisconsin Statutes.) The penalties and reimbursements to the Fund are mandatory and non-negotiable.
- The employer is personally liable for uninsured benefit claims for which his or her injured employees are eligible. (s. 102.28(5), Wis. Stats.)

46. What happens if a person is injured and there is a dispute as to whether or not the person is an employee covered by the Act?

Generally, if there is a dispute regarding insurance coverage, remuneration or benefits, it is adjudicated by the Worker's Compensation Division on a case-by-case basis according to the facts and circumstances at the time of injury.

If an employer has a worker's compensation policy in this situation, the policy will cover any person working under the employer if he or she is found to be an employee at the time of injury.

An employer who does not have a worker's compensation insurance policy when he or she is subject to the Act, is subject to monetary penalties.

Employers who are not subject to the Act and do not carry worker's compensation insurance may be sued in a civil action for damages by an employee who is injured while at work.

47. Can I voluntarily obtain worker's compensation insurance?

Yes, all employers, including farmers, may voluntarily elect coverage for themselves or their employees. In the event of a work-injury, they are eligible for all medical, wage and other worker's compensation benefits, without regard to who was at fault in causing the injury. The voluntary purchase of a worker's compensation policy also protects the employer from most civil tort actions by employees related to the work-injury. With few exceptions, where the employer has the worker's compensation insurance coverage in place, an injured worker is limited to the benefits to which he or she is legally entitled under the Worker's Compensation Act.

48. Where can I get information about insurance?

Call an insurance agent or company, or the Worker's Compensation Division, Bureau of Insurance Programs. Information about insurance or self-insurance is available from the Worker's Compensation Division, Bureau of Insurance Programs at (608) 266-3046.

Worker's Compensation Insurance is obtained through an insurance agent and/or an insurance company. The State of Wisconsin does not write or provide worker's compensation insurance coverage. If an employer has or knows an insurance agent they may contact them; if not, they can consult a telephone book for a listing of insurance companies in their area.

If an employer is refused insurance by any insurance company, the employer may obtain insurance from the Worker's Compensation Insurance Pool through the Wisconsin Compensation Rating Bureau upon prepayment of the correct premiums, if the employer is in good faith entitled to insurance. Wisconsin Compensation Rating Bureau. The Bureau is located at 20700 W. Swenson Drive - Suite 100, Waukesha, Wisconsin 53186. The mailing address is P.O. Box 3080, Milwaukee, Wisconsin 53201-3080. The telephone number is (262) 796-4540. Note: The Wisconsin Compensation Rating Bureau is not a State agency and is not part of the State of Wisconsin Worker's Compensation Division.

49. What is the Uninsured Employers Fund?

The Uninsured Employers Fund (UEF) pays worker's compensation benefits on valid worker's compensation claims filed by employees who are injured while working for illegally uninsured Wisconsin employers. When a compensable claim is filed, the UEF pays the injured employee worker's compensation benefits as if the uninsured employer had been insured.

50. How is the UEF funded?

It is funded through penalties assessed against employers for illegally operating a business without worker's compensation insurance. The penalties are mandatory and non-negotiable. In addition, the department pursues reimbursement from each uninsured employer of benefit payments made by the UEF under section 102.81(1) or the Wisconsin Statutes, to the employee of that uninsured employer or to the employee's dependents. The UEF uses aggressive collection action (including warrants, levies, garnishment and execution against property) to secure satisfaction of penalty assessments and reimbursement of claims paid by the fund.

51. When was the UEF implemented?

The UEF applies only to injuries occurring on or after July 1, 1996. Uninsured Employers Fund claims filed for injuries occurring prior to July 1, 1996 are not valid and will be denied. (See section 102.81(7) of the Wisconsin Statutes.)

52. Who can I contact for more information regarding the UEF?

Call or write the Wisconsin Worker's Compensation Division, Bureau of Insurance Programs. Our mailing address is P.O. Box 7901, Madison, Wisconsin 53707-7901. Our telephone number is (608) 266-3046 or you can reach us by fax at (608) 266-6827.

53. What is the State of Wisconsin Worker's Compensation Division?

The Worker's Compensation Division is a division of the State of Wisconsin, Department of Workforce Development (DWD). The Worker's Compensation Division is responsible for the administration of the Worker's Compensation Act of Wisconsin, Chapter 102.

The Worker's Compensation Division administers programs to assure that injured workers receive required financial and other benefits from insurers and self-insured employers, to encourage injured workers' rehabilitation and reemployment, and to promote techniques that reduce the number of work-related injuries, illnesses, and death. The Division administers Chapter 102 with respect to enforcement, payment of claims, violations, compliance and enforcement of insurance requirements and other related duties. All claims involving loss of time from work must be reported to the Worker's Compensation Division. Disputed worker's compensation claims are adjudicated by the Worker's Compensation Division.

The Wisconsin Worker's Compensation Division is located at 201 East Washington Avenue, P.O. Box 7901, Madison, Wisconsin 53707-7901. The telephone number is (608) 266-3046.

54. What is the Office of the Commissioner of Insurance?

The State of Wisconsin, Office of the Commissioner of Insurance supervises the insurance industry in Wisconsin. The Office examines industry financial practices and market conduct, licenses agents, reviews policy forms for compliance with state legislation, investigates consumer complaints, and provides consumer information.

The Office of the Commissioner of Insurance licenses the Wisconsin Compensation Rating Bureau and all insurance companies who transact worker's compensation business and all agents or intermediaries who sell worker's compensation insurance in Wisconsin. It regularly examines the Wisconsin Compensation Rating Bureau and insurance companies to make certain that they are meeting their obligations under the law.

The Office of the Commissioner of Insurance is located at The OCI is located in the GEF 3 State Office Building, 2nd Floor, 125 S. Webster Street, Madison, Wisconsin 53702. The telephone number is (608) 266-3585. The complaint telephone number is 1-800-236-8517.

55. What is the Wisconsin Compensation Rating Bureau?

The Wisconsin Compensation Rating Bureau is a licensed rate service organization for Worker's Compensation insurance in Wisconsin. It was created by Wisconsin Law, and while it is regulated by the State of Wisconsin, Office of the Commissioner of Insurance, and works very closely with the Worker's Compensation Division, the Bureau is not a State agency. The Bureau is an unincorporated association of insurers, who by law, must be members of the Bureau.

The Wisconsin Compensation Rating Bureau is responsible for the classification of employers, the rates and rating plans used, all policy forms and endorsements and the collection and analysis of all statistical and other data needed to meet its responsibilities. All rate, rating plans, forms, etc must be filed with and approved by the Office of the Commissioner of Insurance before insurers can use them. Deviations are not permitted. The Bureau assists the Worker's Compensation Division in its enforcement activities. By law, the Bureau receives required information on every worker's compensation policy issued to every employer with operations in Wisconsin and every termination thereof, and transmits this information via computer to the Worker's Compensation Division. The Wisconsin Compensation Rating Bureau also administers the Wisconsin Worker's Compensation Insurance Pool. The Pool is a risk-sharing plan created to provide worker's compensation insurance to any insured who is unable to obtain coverage in the private market and who is, in good faith, entitled to such insurance.

Wisconsin Compensation Rating Bureau is located at 20700 W. Swenson Drive - Suite 100, Waukesha, Wisconsin 53186. The mailing address is P.O. Box 3080, Milwaukee, Wisconsin 53201-3080. The telephone number is (262) 796-4540.

56. Where can I get more information about coverage under the Act?

Contact the Wisconsin Department of Workforce Development - Worker's Compensation Division, Bureau of Insurance Programs, at (608) 266-3046 or write to P.O. Box 7901, Madison, WI 53707-7901. The Division is located in the GEF 1 State Office Building, Room C100, 201 E. Washington Avenue, Madison.

The Division also has a variety of information on its internet site at: <http://dwd.wisconsin.gov/wc>

DWD is an equal opportunity employer and service provider. If you have a disability and need information in an alternate format, or need it translated to another language, please contact (608) 266-1340 voice or 1-866-265-3142 TTY.

The Division also produces a variety of printed informational materials to help employers and workers better understand and comply with the WC law. Single copies are available for free upon request. Among the most often-requested are these:

- **Facts for Employers About the Wisconsin Worker's Compensation Law** (Publication # WKC-7317-P). This pamphlet is issued by the WC Division.
- **Worker's Compensation Reporting Requirements** (Publication # WKC-7802). This pamphlet is issued by the WC Division.
- **Facts for Injured Workers** (Publication # WKC-18-P). This pamphlet is issued by the WC Division.
- The Commissioner of Insurance (P.O. Box 7873, Madison, WI 53707-7873) also produces the **Consumer's Guide to Worker's Compensation Insurance for Employers** (Publication # PI-065).
- Copies of the **Worker's Compensation Act of Wisconsin** (WKC-1-P) are available for purchase.
- Call (800) DOC-SALE (362-7253) for details.

57. If I have worker's compensation questions, who do I call?

Worker's Compensation Division of the Department of Workforce Development (DWD)

201 East Washington Avenue
P.O. Box 7901
Madison, WI 53707-7901
(608) 266-3046

- All questions relating to the Wisconsin Worker's Compensation Act
- All injury and claim questions
- Compliance questions
- Enforcement questions
- Penalty and penalty payment plan questions
- Corporate Officer options questions
- Withdrawal questions
- Self-Insurance questions
- Divided Insurance questions
- Wrap-up Policy questions

Wisconsin Compensation Rating Bureau (WCRB)

P.O. Box 3080
Milwaukee, WI 53201-3080
(262) 796-4540

- Wisconsin Worker's Compensation Insurance Pool questions
- Rate questions
- Classification questions
- Premium charging questions
- Experience Modification questions
- Audit questions
- Inspection questions
- All questions regarding the proper filing of policies and endorsements pertaining to Wisconsin coverage
- Insurance company filing questions
- Endorsement filing questions
- Questions regarding appeal rights of WCRB decisions

Office of the Commissioner of Insurance (OCI)

125 S. Webster Street
P.O. Box 7873
Madison, WI 53707-7873
1-800-236-8517

- All questions relating to the Insurance laws
- Questions relating to the licensing and regulation of insurance companies
- Worker's Compensation rate regulation questions
- Questions relating to the licensing and regulation of the WCRB
- Unfair claim settlement practices questions
- Unfair marketing practices questions
- Worker's Compensation Dividend Plans questions

58. What are some key statutes regarding employer liability to carry worker's compensation insurance under the Wisconsin Worker's Compensation Act, Chapter 102?

Chapter 102	Worker's Compensation
Wisconsin Statute 102.03	Conditions of liability.
Wisconsin Statute 102.03(2)	Exclusive remedy, prevents an injured employee from suing an employer who has the required insurance in force at the time a work related injury occurs.
Wisconsin Statute 102.04	Definition of employer, when an employer becomes subject to the Act.
Wisconsin Statute 102.04(1)(c)	Definition of when a farmer becomes subject to the Act.
Wisconsin Statute 102.04(3)	Definition of farming.
Wisconsin Statute 102.05	Election by employer, withdrawal.
Wisconsin Statute 102.05(3)	Election by farmer, withdrawal.
Wisconsin Statute 102.07	Definition of an employee.
Wisconsin Statute 102.07(5)	Definition of a farm employee.
Wisconsin Statute 102.07(8)(b)	Definition of an independent contractor.
Wisconsin Statute 102.075	Election by sole proprietor, partner or member of limited liability company.
Wisconsin Statute 102.076	Election by corporate officer, corporate officer option under the Act.
Wisconsin Statute 102.28(2)	Required insurance, subject employers must be insured by an insurance company authorized to write worker's compensation in Wisconsin.
Wisconsin Statute 102.28(3)	Provision of Alternative Benefits, allows an exemption from the duty to insure religious sect members that qualify and are certified for an exemption.
Wisconsin Statute 102.28(4)	Closure Order, orders an employer to cease operations until the employer complies with s. 102.28(2)(a) by obtaining a worker's compensation insurance policy.
Wisconsin Statute 102.28(5)	Employer's liability.
Wisconsin Statute 102.31	Worker's compensation insurance; policy regulations.
Wisconsin Statute 102.80	Uninsured employers fund.
Wisconsin Statute 102.81	Compensation for injured employee of uninsured employer.
Wisconsin Statute 102.82(1)(2)(a) and (2)(ag)	Uninsured employer payments, reimbursement of the UEF for payments made under s. 102.81 and penalty assessed an uninsured employer for a lapse of worker's compensation insurance coverage.
Wisconsin Statute 102.83	Collection of uninsured employer payments.
Wisconsin Statute 102.835	Levy for delinquent payments.
Wisconsin Statute 102.85	Uninsured employers; penalties, penalties and forfeitures for uninsured employers who fail to comply with the Act.
DWD 80.62 (Administrative Code)	Uninsured employers fund.
DWD 80.65 (Administrative Code)	Notice of cancellation or termination.
Chapter 626	Rate regulation in worker's compensation insurance
Wisconsin Statute 626.03	Scope of application.
Wisconsin Statute 626.32	Development of rates by bureau.
Wisconsin Statute 626.35	Worker's compensation insurance contracts.