

CORPORATE OFFICERS AND WORKER'S COMPENSATION IN WISCONSIN

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

Under s. 102.04(1)(b) of the Wisconsin Compensation Act (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 two 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.

2. 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.

A qualified corporation must either file a Corporate Officer Option Notice or maintain a worker's compensation insurance policy or the corporation will be considered uninsured and in violation of the Act.

3. 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.

4. 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.

5. Can a corporation cover its corporate officers under a leasing agreement with an employee leasing company?

Yes, under s. 102.315(8)(b), Wis. Stats, for purposes of worker's compensation in Wisconsin, officers of a corporation can be leased under an agreement with an employee leasing company.

An officer of a corporation is covered for worker's compensation benefits under a policy issued under an employee leasing agreement, unless the officer elects under s. 102.076, Wis. Stats., not to be covered under the policy by an endorsement on the policy naming the officer who has so elected.

6. Can another employer provide worker's compensation insurance coverage of another employer's employee under the Act?

No, a subject employer in Wisconsin is responsible to provide worker's compensation coverage for his or her employees (officers are employees). The law does not allow one employer to provide worker's compensation insurance coverage for another employer's employees.

Under section 102.28(2) of the Wisconsin Statutes, "Unless exempted by the department under par. (b) or sub. (3), every employer, as described in s. 102.04(1), shall insure payment for that compensation in an insurer authorized to do business in this state." (Note regarding "Unless exempted by the department under *par. (b)* or *sub. (3)*": *par. (b)* refers to self-insurance & *sub. (3)* refers to a religious sect exemption) Simply put, s. 102.28(2) requires each subject employer to have a worker's compensation policy in the employer's name, with a carrier licensed to write worker's compensation insurance in Wisconsin.

The combination of two or more entities under a single policy requires common majority ownership. Two or more entities may be combined only if; (a) the same person, group of persons or corporation owns more than 50% of each entity, or (b) an entity owns a majority interest in another entity, which in turn owns a majority interest in another entity. The rules for determining common ownership and the combinability of entities under a single policy are found in the Experience Rating Plan Manual. The Experience Rating Plan Manual and all its contents have been filed with and approved by the Office of the Commissioner of Insurance.

7. How can I get more information about coverage and policy filing requirements under the Act?

1) 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.

2) Contact the Wisconsin Compensation Rating Bureau (WCRB) regarding policy filing requirements. The WCRB 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. By law, all worker's compensation policies, policy endorsements, cancellations, terminations and reinstatements issued to employers with operations in Wisconsin, must be filed with the WCRB.

The WCRB is located at 20700 W Swenson Drive, Suite 100, Waukesha, WI 53186. The telephone number is (262) 796-4540. The WCRB web page is <http://www.wcrb.org>

8. What are some of the key statutes regarding employer liability to carry worker's compensation insurance and policy filing requirements under the Wisconsin Statutes?

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.