

WORKER'S COMPENSATION INSURANCE POLICY FILING REQUIREMENTS IN WISCONSIN

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

Under s. 102.04(1)(b) of the Wisconsin Worker's 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.

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. The policy must be endorsed to name Wisconsin as a covered state in section 3-A of the policy. The insurance company must file the properly endorsed policy with the Wisconsin Compensation Rating Bureau (WCRB). The WCRB is located at 20700 W. Swenson Drive, Suite 100, Waukesha, WI 53186. The telephone number is (262) 796-4540.

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 the parties voluntarily sign a contract to provide the coverage. Every employer (as described in section 102.04(1) of the Wisconsin Statutes) is required under section 102.28(2) to have a worker's compensation insurance policy in the name of the employer, owner or business entity.

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

Yes, an out-of state employer who is subject to the Act under s. 102.04(1) of the Wisconsin Statutes, and has 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 and filed with the WCRB.

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, the employer 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, the employer must obtain a policy from a Wisconsin licensed insurance company to cover the employer's Wisconsin exposure. The insurance company must file the properly endorsed policy with the WCRB.

3. What's the penalty for failure to carry worker's compensation?

Under s. 102.82(2)(a) of the Wisconsin Statutes, 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.

The penalty is twice the amount of the premium not paid during an uninsured time period, or \$750, whichever is greater. Under certain circumstances, an employer who has a lapse in worker's compensation coverage of 7 days or less can be subject to a penalty of \$100 for each day he or she is uninsured, up to a total of 7 days (\$700).

In addition, 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). The penalties and reimbursements to the Fund are mandatory and non-negotiable.

4. Where in the law does it say an employer must have a worker's compensation Insurance policy?

Sections 102.04, 102.28(2) and 102.31 of the Wisconsin Statutes, define when an employer is required to have a worker's compensation insurance policy in Wisconsin.

Section 102.04 of the Wisconsin Statutes, Definition of employer.

Section 102.04(1). The following shall constitute employers subject to the provisions of this chapter, within the meaning of s. 102.03:

Section 102.04(1)(a). The state, each county, city, town, village, school district, sewer district, drainage district, family care district and other public or quasi-public corporations therein.

Section 102.04(1)(b)1. Every person who usually employs 3 or more employees, whether in one or more trades, businesses, professions or occupations, and whether in one or more locations.

Section 102.04(1)(b)2. Every person who usually employs less than 3 employees, provided the person has paid wages of \$500 or more in any calendar quarter for services performed in this state. Such employer shall become subject on the 10th day of the month next succeeding such quarter.

Section 102.04(1)(c). Every person engaged in farming who on any 20 consecutive or nonconsecutive days during a calendar year employs 6 or more employees, whether in one or more locations. The provisions of this chapter shall apply to such employer 10 days after the twentieth such day.

Section 102.28(2) of the Wisconsin Statutes, Required insurance; exceptions.

Duty to insure payment for compensation. 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)

Section 102.31 of the Wisconsin Statutes, Worker's compensation insurance; policy regulations.

Section 102.31(1)(a). Every contract for the insurance of compensation provided under this chapter or against liability therefor is subject to this chapter and provisions inconsistent with this chapter are void.

Section 102.31(1)(e). An insurer who provides a contract under par. (a) shall file the contract as provided in s. 626.35.

5. Where in the law does it say an insurance carrier has to file a copy of a worker's compensation policy with the Wisconsin Compensation Rating Bureau?

Sections 102.31, 626.03, 626.32 and 626.35 of the Wisconsin Statutes, define where and when a worker's compensation policy covering Wisconsin exposure must be filed in Wisconsin.

Section 102.31 of the Wisconsin Statutes, Worker's compensation insurance; policy regulations.

Section 102.31(1)(a). Every contract for the insurance of compensation provided under this chapter or against liability therefor is subject to this chapter and provisions inconsistent with this chapter are void.

Section 102.31(1)(e). An insurer who provides a contract under par. (a) shall file the contract as provided in s. 626.35.

Section 626.03 of the Wisconsin Statutes, Scope of application.

This chapter applies to all worker's compensation insurance written on risks or operations in this state, employers' liability insurance when written in connection with worker's compensation insurance or insurance covering any part of the liability of an employer exempted from insuring the employer's liability for compensation under s. 102.28.

Section 626.32 of the Wisconsin Statutes, Development of rates by bureau.

Section 626.32(1). Acquisition of information. (a) General. Every insurer writing any insurance specified under s. 626.03 shall report its insurance in this state to the bureau at least annually, on forms and under rules prescribed by the bureau. The bureau must file, pursuant to rules adopted by the department of workforce development, a record of such reports with the department. No such information may be made public by the bureau or any of its employees except as required by law and in accordance with its rules.

Section 626.35 of the Wisconsin Statutes, Worker's compensation insurance contracts.

Section 626.35(1) Filing. An insurer who provides a contract under s. 102.31(1)(a) shall file with the bureau a copy of the contract, or other evidence of the contract as designated by the bureau, not more than 60 days after the effective date of the contract.

Section 626.35(2) Penalty. The bureau may assess a penalty, in accordance with a schedule adopted by the bureau, against an insurer who fails to comply with sub. (1).

6. Why does the State of Wisconsin require worker's compensation policies covering Wisconsin exposure, to list Wisconsin as a covered state in section 3-A of the policy?

Section 3-A of a standard worker's compensation insurance policy lists the specific states covered under the policy. To avoid confusion, questions, disputes and litigation regarding Wisconsin coverage, worker's compensation insurance policies covering Wisconsin exposure are required to list Wisconsin in section 3-A of the policy as evidence of coverage.

Under section 626.35 of the Wisconsin Statutes, an insurer who provides a policy under s. 102.31(1)(a) of the Wisconsin Statutes, must file with the Wisconsin Compensation Rating Bureau (WCRB) a copy of the policy, or other evidence of the policy as designated by the WCRB, not more than 60 days after the effective date of the contract.

Standard insurance industry practice is to file policy cancellation and termination notices only with the states listed in section 3-A of a policy. If a policy with Wisconsin coverage endorsed only in section 3-C (an all states endorsement) was filed and accepted as proof of Wisconsin coverage, it is unlikely that the insurance carrier will send a policy cancellation to Wisconsin when the policy is cancelled.

Under section 102.31(2)(a) of the Wisconsin Statutes, a worker's compensation insurance carrier cannot cancel a policy within the contract period or terminate or not renew it upon the expiration date until a notice in writing is given to the insured fixing the proposed date of cancellation or declaring that the carrier intends to terminate or does not intend to renew the policy upon expiration. A nonrenewal is not effective until 60 days after the insurance company has given written notice of the nonrenewal to the insured employer and the WCRB. Cancellation or termination of a policy by an insurance carrier for any reason other than nonrenewal is not effective until 30 days after the insurance company has given written notice of the cancellation or termination to the insured employer and the WCRB.

Therefore, if a policy with Wisconsin coverage endorsed only in section 3-C (an all states endorsement) is filed and accepted as proof of Wisconsin coverage, the policy remains in effect, until a cancellation or a replacement policy is filed. If the carrier does not file a cancellation, the policy remains in effect and the carrier remains on the risk for all claims until a cancellation notice or a replacement policy is filed with the WCRB.

Wisconsin has long held that requiring all worker's compensation policies covering Wisconsin exposure to list Wisconsin in section 3-A as evidence of coverage under s. 626.35 of the Wisconsin Statutes, reduces confusion, questions, disputes and litigation regarding Wisconsin coverage. In addition, it helps assure prompt delivery of benefits and promotes compliance with the Act.

7. Where in the law does it say an insurance carrier has to file a notice of cancellation or termination of a worker's compensation policy with the Wisconsin Compensation Rating Bureau?

Section 102.31 of the Wisconsin Statutes and DWD 80.65 of the Wisconsin Administrative Code, define where, when and how a worker's compensation policy cancellation or termination must be filed in Wisconsin.

Section 102.31 of the Wisconsin Statutes, Worker's compensation insurance; policy regulations.

Section 102.31(2)(a). No party to a contract of insurance may cancel it within the contract period or terminate or not renew it upon the expiration date until a notice in writing is given to the other party fixing the proposed date of cancellation or declaring that the party intends to terminate or does not intend to renew the policy upon expiration. Except as provided in par. (b), when an insurance company does not renew a policy upon expiration, the nonrenewal is not effective until 60 days after the insurance company has given written notice of the nonrenewal to the insured employer and the department. Cancellation or termination of a policy by an insurance company for any reason other than nonrenewal is not effective until 30 days after the insurance company has given written notice of the cancellation or termination to the insured employer and the department. Notice to the department may be given either by personal service of the notice upon the department at its office in Madison or by sending the notice by facsimile machine transmission or certified mail addressed to the department at its office in Madison. The department may provide by rule that the notice of cancellation or termination be given by certified mail or facsimile machine transmission to the Wisconsin compensation rating bureau rather than to the department. Whenever the Wisconsin compensation rating bureau receives such a notice of cancellation or termination it shall immediately notify the department of the notice of cancellation or termination.¹

Section 102.31(2)(b)1. In the event of a court-ordered liquidation of an insurance company, a contract of insurance issued by that company terminates on the date specified in the court order.

Section 102.31(2)(b)2. Regardless of whether the notices required under par. (a) have been given, a cancellation or termination is effective upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28(2).

DWD 80.65 Notice of cancellation or termination.

Notice of cancellation or termination of a policy under s. 102.31(1)(a), Stats., shall be given by certified mail or personal service to the Wisconsin compensation rating bureau, as defined in s. 626.02(2), Stats., rather than to the department. Whenever the Wisconsin compensation rating bureau receives notice of cancellation or termination pursuant to this section, it shall immediately notify the department of cancellation or termination.

¹ Sec. 102.31(2)(a) provides that the department may provide by rule for notice of cancellation or termination of an insurance policy to be made directly to the Wisconsin compensation rating bureau. See rule DWD 80.65.

8. How can I get more information about coverage and policy filing requirements under the Wisconsin Worker's Compensation 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>

9. 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.