

WORKERS' COMPENSATION: WHAT EVERY SMALL BUSINESS OWNER SHOULD KNOW

SUMMARY

Every state, as well as the federal government, has workers' compensation (W.C.) laws. While there are variations among those statutes, there are many more similarities that apply to all employers. What injuries are covered under W.C. laws? What benefits are provided? Does an employer have a choice whether to carry insurance protection for employees? What is the typical insurance offered by employers? How are payments to injured employees determined?

These critical questions affect the metalworking business owner at one time or another. This BMA gives you the answers, as well as the standard guidelines in most states. However, any final determination as to how workers' compensation laws apply to your business should be checked with your attorney or the consultant who should be familiar with the statutes in your state.

At the present time each of the 50 states and the federal government have workers' compensation laws.

INJURIES COVERED

W.C. Acts impose upon the employer a limited form of absolute liability for accidental injuries if such injuries arise out of and occur during employment. It is not necessary for the employee to prove negligence on the part of the employer. This person needs prove only that an accidental injury was suffered in the course of and arising out of employment.

All states also impose liability for occupational disease. Some states impose upon the employer liability for any disease arising from employment. Other states impose liability for certain diseases only. Such liability may be imposed under the W.C. Act or a separate occupational disease act.

BENEFITS PROVIDED

W.C. laws usually provide the following benefits for covered employees who have suffered injuries or disease:

1. **Death Benefits.** Most acts provide a specified amount of funeral expenses, plus a weekly income for dependents. The income benefit is usually for a specified number of weeks, and varies with the income of the decedent.
2. **Medical Benefits.** All of the acts cover medical expenses incurred by the employee as a result of a covered injury. Most states cover all expenses without limit as to

time or amount. In other states, medical expense benefits are limited to a specified dollar amount, or must be incurred within a specified period of time after the injury. However, additional medical expense can be purchased.

3. **Disability Benefits.** All of the acts provide a weekly benefit for the employee while unable to work because of a covered injury. The disability benefits are usually stated in the act as a specified percentage of the injured person's average wage. Such benefits are usually payable for the duration of the disability or a specified number of weeks, whichever is less. A few states provide for disability benefits for life if the disability is permanent. When a disability which prevents an employee from working is temporary, it is called temporary total disability. Disability benefits do not normally begin after the injury. There is usually a waiting period of from two to seven days. Benefits for the waiting period are paid in some states if the disability continues for a specified length of time.
4. **Dismemberment Benefits.** All states provide for benefit payments if an employee loses parts of his or her body in a covered accident. These benefits are usually referred to as permanent partial disability benefits. The body members for which such benefits are usually payable are fingers, toes, hands, feet, arms, legs, eyes and ears. The benefits are usually stated as a specified percentage of

average wage for a specified number of weeks. Permanent partial disability benefits are payable in addition to temporary total benefits in a few states. In other states, they are paid in lieu of temporary total benefits.

EXTRA-TERRITORIAL COVERAGE

The state W.C. laws were designed primarily to cover accidents which occur within a given state. However, the mobility of modern business requires that coverage of the act be extended beyond state boundaries on occasion.

For example, Harry Careless is an employee of the Build More Die Company in Pennsylvania. He travels to Ohio on business. He is injured while in Ohio and is entitled to compensation. Build More is a Pennsylvania corporation, and has no employees or operation in Ohio - therefore, it is not covered under the Ohio Act.

To provide coverage under such situations, most states have adopted extra-territorial provisions in their W.C. Acts. Under these provisions, employees who are covered within a state are also covered while temporarily outside that state.

REQUIREMENTS

All states require employers subject to that state's W.C. Act to provide some form of protection to assure the payment of benefits to employees. This requirement may be satisfied by the purchase of a bond which is evidence of self-insurance. The purchase of an insurance policy is an additional protection for the employee, since compensation benefits can be claimed from either the insurance company or the employer.

An employer may obtain this insurance from an insurance company, or in some states, from a state-administered fund. Most of the state insurance funds are competitive funds, that is, they must compete with insurance companies for the W.C. business. The employer then has the option to buy either from the fund or from an insurance company. Six states (Nevada, North Dakota, Ohio, Washington, West Virginia and Wyoming) have monopolistic state funds from which all covered employers must buy their W.C. insurance. Insurance companies cannot write W.C. insurance in monopolistic state fund states.

WORKERS' COMPENSATION INSURANCE

W.C. insurance is written under the Standard Workers' Compensation and Employers' Liability Policy. The policy has two insuring agreements, Coverage A covers the insured's liability under the W.C. laws of the states listed in the policy. Coverage is not provided under the act of any state not listed. With the exception noted above, the policy should list any state in which the insured has employees on a regular basis. Coverage cannot be provided in Nevada, North Dakota, Ohio, Washington, West Virginia, or Wyoming, which have monopolistic state funds. Coverage B covers the insured's liability under the employers' liability law.

COVERAGE A. The workers' compensation insuring agreement covers all of the insured's liability under the W.C. Acts of states listed in the policy. There is no policy limit

applicable to the W.C. insuring agreement. The insurer must pay all benefits for which the insured is liable, without limit as to amount. The insurer also agrees to pay legal defense costs.

There are only two minor exclusions applicable to the W.C. insuring agreement. First, there is no coverage for any workplace not described in the policy if the insured has other W.C. insurance at that location. This exclusion applies only if the insured has other insurance at the location. Secondly, domestic or agricultural employees are not covered unless: (1) the law requires them to be covered; or (2) they are described in the policy.

The W.C. insurer is directly liable to the injured employee for W.C. benefits. That is, the injured employee can proceed directly against the insurer without first obtaining a judgment, or award, against the employer. This contracts with other liability policies, which require the claimant to obtain a judgment against the insured before he or she can proceed against the insurer.

COVERAGE B. Under Coverage B the insurer agrees to pay, subject to a specified limit of liability, all sums for which he or she is liable due to bodily injury to employees as a result of accidents arising out of and in the course of the employment occurring in the United States, its possessions, and Canada. The usual defense costs are also covered.

The exclusions under Coverage B are:

1. Liability assumed by the insured under contract.
2. Punitive or exemplary damages on account of bodily injury to or death of any employee who is employed in violation of the law.
3. Liability for injury to any employee employed in violation of the law with the knowledge or acquiescence of the injured or any executive officer.
4. Any claim caused by disease unless written notice of such claim is received within the policy period or within 36 months after the expiration of the policy.
5. Any obligation for which the insured or any carrier as the insurer may be held liable under any Workers' Compensation Law, unemployment compensation law, disability benefit law, or any similar law.

Coverage B has a basic limit of \$100,000 per accident, This limit can be increased, and in some states must be increased.

RATING

BASIS OF PREMIUM

The basis of premium is payroll, and the unit of exposure is \$100 of annual remuneration.

Remuneration includes payroll, commissions, bonuses, overtime pay, holiday and vacation pay, piecework payments, incentive pay, profit sharing payments, payments or allowances to employees for hand or power tools furnished by employees. Remuneration shall not include payments by the employer for group insurance or pensions, special rewards for individual invention or discovery.

The extra pay for overtime work, in excess of the regular rate, shall not be included in remuneration, provided the insured's payroll records are maintained so that the amount of extra pay can be accurately determined. The maximum remuneration for any one employee or active executive officer of a corporation may be subject to a weekly maximum payroll which varies by state. The entire payroll of offices shall be assigned to the classification for the operations in which they are primarily engaged. However, if an officer regularly performs duties usually performed by superintendent, foreman or worker then this payroll shall be assigned to the governing classification.

CLASSIFICATION

The payroll must be assigned to an occupational classification. Job or activity determines the classifications. Various rates apply depending on hazards of the job, and the loss experience for that industry. If the job or activity is a single operation or a number of separate operations which are combined in the business described in a single classification, the single classification which best describes the entire operation shall be used. No division of payroll shall be made except for the General Exclusions and Standard Exceptions stated in the Workers' Compensation Manuals.

General Exclusions are not included in any other classifications. Payrolls of persons engaged in General Exclusion operations should be assigned to the classification which most accurately describes the operation in which they are engaged. For example, Aircraft Operations includes all members of the flying crew. Payroll of the crew could not be included in the governing classification of a tool manufacturing operation.

Standard Exceptions classifications are subject to division of payroll as described in the Workers' Compensation manuals for the following classifications:

Clerical Office Employees	8810
Draughtsmen	8810
Salespeople, Collectors or Messengers-Outside	8742
Drivers, Chauffeurs and their Helpers	7380

The classification applicable to most operations in the tool, die and precision machining operations are:

Tool Mfg. N.O.C.* - Drop or Machine Forged:	
Machining or finishing of tools or diemaking operations	3114
Tool Mfg. N.O.C.* - Not Drop or Machine Forged	3113
Precision Machined Part Mfg. - N.O.C. & N.P.D.**	3629
Machine Shop N.O.C.*	3632

- * Not otherwise classified
- ** No payroll division

Other classifications may be applicable, based on the type of activity and its physical separation from other activities in the W.C. manuals.

Code numbers are assigned to the classifications for identification and recording of statistics. Code numbers can vary

by state as well as the general description of classifications. Manual variations to either class description or code numbers exist in California, Massachusetts, Michigan and Pennsylvania.

Generally, the business operation can be identified by a classification best describing the activity referred to as the Governing Classification. The Governing Classification of an operation is defined as that classification, other than Standard Exception Classifications, which carries the largest amount of payroll.

WORKERS' COMPENSATION EXPERIENCE RATING

Workers' Compensation Insurance claims occur often enough so that the history of losses over a period of time can make a difference in prices between insurers. The number of claims, and to a lesser extent, the cost of those claims depend largely on the safety record of the insured and the shop employees, and on the loss control programs of the insurance company. Therefore, it is desirable to offer direct financial incentives to reduce accidents.

The experience rating plan is designed to provide this incentive. The plan is applied on a mandatory basis to all covered risks. In most states, the risk must produce an average annual premium of \$750 for a three-year period or an annual premium of \$1,000 for one year.

The experience rating plan involves a comparison of actual losses during the experience period (usually three years) with the expected losses. The "expected losses" are the losses, expressed in dollars, which are expected in the development of the basic classification rate.

The actual losses used in the experience rating plan are modified by the maximum loss amount. For instance, if the insured has one loss in the amount of \$10,000 during the experience period, this loss will be included in the experience rating formula at a lower figure. Generally, the maximum loss varies from a minimum of \$750 to a maximum of approximately \$3,700, depending on the size of the insured.

The ratio obtained from dividing the actual losses (as modified) by the expected losses produces what is generally referred to as an "Experience Modification." This pure modification is, however, further adjusted by what is known as a "credibility factor" - which is based on the average size company's liability.

When the modified losses of the insured exceed the expected losses, the result of the experience rating plan is a debit modification. In other words, the insured pays a rate higher than the basic classification rate. On the other hand, when the actual losses are less than the expected losses, the insured receives a credit and pays a rate less than the basic classification rate.

SAFETY COMMITTEE

Safety Committees can substantially add to a safety program. The basic function of a safety committee is to create and maintain an active interest in safety, thereby reducing accidents. The organization and operation of a safety com-

mittee gives employees a greater opportunity to participate actively in safety procedure and policy formulation.

Safety committee membership can vary, depending on your needs. Safety committees generally consist of a management representative, foremen, and supervisors and workers. There is usually a representative from each major department. Membership on the safety committee is for a definite period and membership rotates periodically. This gives more employees an opportunity to participate. Meetings should be held regularly. Monthly meetings are usually desirable. The safety committee should have clearly defined activities and responsibilities. Some of these are:

1. Conduct regular inspections to detect hazardous conditions and unsafe work practices and recommend corrective action.
2. Act as a clearinghouse for all safety ideas and activities.
3. Study accidents to determine corrective action that can be taken to prevent recurrence.
4. Assist in the development of safety standards and rules.
5. Conduct promotional campaigns to maintain employee interest in safety.
6. Individually promote safety in the area where they work.
7. Maintain records of committee meetings for follow-up actions and keep management informed of progress.
8. Assist new employees with company safety practices and rules.

This BMA was reviewed by NTMA Staff.