NEW JERSEY DEPARTMENT OF

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LABOR AND WORKFORCE DEVELOPMENT

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An Employer's Guide to Workers' Compensation in New Jersey

NEW JERSEY DEPARTMENT OF

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AN EMPLOYER'S GUIDE TO WORKERS' COMPENSATION IN NEW JERSEY

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I. WHAT IS WORKERS' COMPENSATION?

Workers' compensation is a "no fault" insurance program that provides medical treatment, wage replacement, and permanent disability compensation to employees who suffer job-related injuries or illnesses. It also provides death benefits to dependents of workers who have died as a result of their employment. An injured employee will receive benefits regardless of who was at fault. In exchange for these guaranteed benefits, the worker does not have the right to bring a civil action against the employer for pain and suffering or other damages, except in cases of intentional acts.

The Division of Workers' Compensation is responsible for the administration of the New Jersey Workers' Compensation Act (N.J.S.A. 34:15-1 *et seq.*). This is accomplished by:

- ensuring that workers receive fair and timely workers' compensation benefits for work-related injuries from their employers and/or insurance carriers;
- enforcing the law that requires employers to secure workers' compensation insurance coverage from commercial insurance carriers or self-insurance programs;
- providing certain benefit payments to injured workers who are totally and permanently disabled as a result of their last work-related injury combined with the worker's pre-existing disabilities. These benefits commence at the conclusion of the payment of benefits from the worker's employer.

The Division of Workers' Compensation does not have jurisdiction over insurance premium rate setting. That responsibility falls under the jurisdiction of the Compensation Rating and Inspection Bureau of the Department of Banking and Insurance.

- **CONTACTS FOR QUESTIONS**

If you have questions about New Jersey's workers' compensation program, please contact:

New Jersey Department of Labor and Workforce Development
Division of Workers' Compensation
P.O. Box 381
Trenton, NJ 08625-0381
(609) 292-2515
Fax: (609) 984-2515
e-mail: dwc@dol.state.nj.us

If you have questions about workers' compensation insurance rates or obtaining coverage, please contact:

New Jersey Compensation Rating and Inspection Bureau
60 Park Place
Newark, NJ 07102
www.njcrib.com
(973) 622-6014

An insurance carrier, drawing on their extensive knowledge of the law and taking into consideration all the pertinent facts of the case, can make a decision to accept or deny a claim. Stay aware of whether claims are investigated timely, whether benefits are being paid on time, and whether claims are being disputed or accepted. The employer plays a key role in working with the carrier and the injured worker to ensure that the system works smoothly and fairly.

VIII. WHAT ELSE DOES AN EMPLOYER NEED TO KNOW?

• DISCRIMINATION COMPLAINTS

It is unlawful for any employer to discharge or otherwise discriminate against an employee because the employee claimed or attempted to claim workers' compensation benefits or because the employee testified or is about to testify in a workers' compensation matter. The Division of Workers' Compensation is responsible for investigating such claims.

• SECOND INJURY FUND

The Second Injury Fund (SIF), which is administered by the Division of Workers' Compensation, makes benefit payments to injured workers who are totally and permanently disabled as a result of work-related injuries combined with pre-existing disabilities.

The Second Injury Fund was established to encourage employers to hire disabled workers. The employer only pays for the work-related aspect of the total disability award.

• DIVISION OF WORKERS' COMPENSATION WEB SITE

The Division of Workers' Compensation maintains an Internet Web site that contains the latest information on New Jersey workers' compensation, including legal and administrative procedures, forms and brochures, statistical data, and program details.

The Web address is *www.nj.gov/labor/wcindex.html.*

II. WORKERS' COMPENSATION BENEFITS

Medical Benefits: Necessary and reasonable medical treatment, prescriptions, and hospital services related to the work injury are paid by the employer's insurance carrier or directly by the employer if self-insured. The employer and/or its insurance carrier have the right to designate medical providers for all work-related injuries.

Temporary Total Benefits: If an injured worker is disabled for a period of more than seven days, he or she will be eligible to receive temporary total benefit, retroactive to the first day of lost time. The benefit will be paid at a rate of 70% of the worker's average weekly wage, not to exceed the statutory maximum rate or fall below the statutory minimum rate established annually by the Commissioner of Labor and Workforce Development. These benefits are provided until the worker has returned to work, has reached maximum medical improvement, or has reached the statutory 400-week maximum.

Permanent Partial Benefits: When a job-related injury or illness results in a permanent bodily impairment, benefits are based on the individual's functional loss. These benefits are paid weekly and are due after the date temporary disability ends.

Permanent Total Benefits: When a work injury or illness prevents a worker from returning to any type of gainful employment, he or she may be entitled to receive permanent total disability benefits. These weekly benefits are provided initially for a period of 450 weeks. Benefits continue beyond the initial 450 weeks provided that the injured worker is able to show that he or she remains totally disabled. The benefits are paid weekly and are based upon 70% of the average weekly wage, not to exceed the statutory maximum or fall below the statutory minimum.

Death Benefits: Dependents of a worker who dies as a result of a work-related injury or illness may be eligible to receive death benefits and funeral expenses up to $3,500. The weekly benefits are 70% of the wage of the deceased worker, not to exceed the statutory maximum.

III. INSURANCE REQUIREMENTS

- **TYPES OF COVERAGE**

New Jersey law requires that all New Jersey employers not covered by federal programs have workers' compensation coverage or be approved for self-insurance. Even out-of-state employers may need workers' compensation coverage if a contract of employment is entered into in New Jersey or if work is performed in New Jersey. Coverage may be obtained in one of two ways:

> **Workers' Compensation Insurance Policy** written by a mutual or stock carrier authorized to write insurance in New Jersey. Premiums for such insurance are based on the classification(s) of the work being performed by employees, the claims experience of the employer, and the payroll of the employer.
>
> **Self-Insurance** through application to and approval by the Commissioner of the Department of Banking and Insurance. Approval for self-insurance is based upon the financial ability of the employer to meet its obligations under the law and the permanence of the business. The posting of security for such obligations may be required.
>
> A self-insured employer has the option of administering its own workers' compensation claims or contracting with a third-party administrator (TPA) to provide these services. For more information about self-insurance, please refer to N.J.S.A. 34:15-77 of the New Jersey Workers' Compensation statute or contact the Department of Banking and Insurance at (609) 292-5350, ext. 50099.

Note: Governmental agencies are required to provide workers' compensation benefits to their employees but are not required to purchase insurance or receive approval as a self-insurer. They generally either 1) obtain an insurance policy, 2) participate in an insurance pool, or 3) maintain a separate appropriation for workers' compensation.

Studies have shown that prior communication and post-injury demonstrations of concern by the employer can result in higher levels of worker satisfaction and reduced time lost from work — factors that contribute to lower program costs.

- **ENSURE PROMPT TREATMENT FROM THE RIGHT MEDICAL PROVIDERS**

Helping the injured worker get immediate medical attention pays off for both worker and employer on several levels. Typically, the sooner injured workers receive proper treatment, the sooner they may return to work.

Under the New Jersey workers' compensation law, the employer and/or its insurance carrier select the medical providers to treat injured workers for work-related injuries. Such control of medical treatment is an important employer right and obligation.

When a workplace accident or occupational exposure occurs, the injured worker should be offered prompt medical treatment. Employers should keep in mind that providing medical coverage is not considered an admission of liability (N.J.S.A. 34:15-15).

VII. CLAIM PETITIONS IN WORKERS' COMPENSATION

Employees who are injured on the job may file a workers' compensation claim petition with the New Jersey Division of Workers' Compensation. Issues may include compensability of the claim (whether the injury/illness is considered work related), the type and extent of medical treatment, and/or the payment of temporary disability benefits. Further, a claim petition may seek permanent disability benefits and, in cases of alleged job-related death, dependency benefits. Workers are generally represented by an attorney but they may file a claim petition on their own (pro se). An insurance carrier will usually provide a legal defense on behalf of a covered employer. If you are a self-insured corporation, it is required that you or your third-party administrator obtain legal representation to defend your interests.

The vast majority of claim petitions are settled by mutual agreement as to the amount of benefits due and extent of disability. In cases where an agreement is not reached, a workers' compensation judge will resolve the disputed issues.

- **ESTABLISH RETURN-TO-WORK PROGRAMS**

Creating return-to-work programs that include appropriate light-duty or modified jobs can encourage workers to return to employment sooner and lower business costs.

In addition, employers can partner with medical professionals and managed care specialists to design jobs that will not aggravate or re-injure workers who have recovered enough to return to work, but need additional time before resuming regular duties. The employer should provide an injured worker's job description to his or her medical care provider. Such information may facilitate early release of the worker to some type of modified duty.

Researchers have found that in companies offering return-to-work programs, workers felt more satisfied with the care they received.

- **ESTABLISH AND MAINTAIN GOOD COMMUNICATION WITH INJURED EMPLOYEES**

Pre-Injury:
Frequently communicate workers' compensation-related information to employees in plain, straightforward language. Publicize company procedures for job-related injuries or illnesses and encourage early reporting of such injuries. Let workers know which doctors they must see for work-related claims. When workers receive prior communication about what to do when a work-related injury or illness occurs, they are more likely to follow the employer's established procedures.
When the same information is received after an injury has already occurred, employee reaction and response may be less positive.

Post-Injury:
Employers should actively become involved in every workers' compensation case. Communicate on a regular basis with your employees who are disabled with work related injuries. The communication, whether it is by telephone or in person, should be positive and upbeat.

If your company conducts an accident investigation, keep in mind that an important purpose of such an investigation should be to determine how the accident occurred so that such occurrences can be prevented in the future.

The following types of employers must have workers' compensation coverage, with the exceptions as outlined:

Corporations – All corporations operating in New Jersey must obtain workers' compensation insurance or be approved for self-insurance as long as one or more individuals, including corporate officers, receives compensation for services to the corporation. There is no minimum payroll or single-officer exemption.

Partnerships/LLCs – All partnerships and Limited Liability Companies (LLCs) operating in New Jersey must obtain workers' compensation insurance or be approved for self-insurance as long as one or more individuals, excluding partners or members of the LLC, receives compensation for services. There are no exclusions for family members or minimum payroll. *Note:* A partnership or LLC may opt to cover partners or members with insurance.

Sole Proprietorship – All sole proprietorships operating in New Jersey must obtain workers' compensation insurance or be approved for self-insurance as long as any one or more individuals, excluding the business owner, receives compensation for service. There are no exclusions for family members or minimum payroll. *Note:* A sole proprietor may opt to cover himself/herself with insurance.

- **DEFINITION OF "EMPLOYEE"**

The New Jersey Workers' Compensation Act is liberally interpreted with respect to the definition of "employee" and is broader than the Internal Revenue Code and Unemployment Compensation statute. A variety of working relationships have been determined to be that of an employer-employee, including some that would not appear to be a typical employment situation. Further, a contract or other agreement as to whether an individual is an employee is not binding in determining whether an employee–employer situation is present.

New Jersey courts, in deciding this issue, have developed two tests: the "control test" and the "relative nature of the work test."

Under the "control test," the relationship between a business and the individual is reviewed. There is employment if the business retains the right to supervise the individual and control what is done as well as how it shall be done.

Under the "relative nature of the work test," there is employment if an individual relies on income from the business and the work performed by the individual is an integral part of the activities of the business.

If any or both of these tests are met, an employee–employer relationship is established.

- **OBTAINING WORKERS' COMPENSATION COVERAGE**

The New Jersey Compensation Rating and Inspection Bureau (NJCRIB), an agency in the New Jersey Department of Banking and Insurance, is responsible for establishing and maintaining regulations and premium rates for workers' compensation and employers' liability insurance.

Workers' compensation insurance coverage can be obtained from any of the more than 400 private licensed insurance companies authorized to sell workers' compensation policies in New Jersey. A policy can be purchased directly from an insurance carrier, an insurance agent, or an insurance broker. For assistance with obtaining coverage, please contact:

New Jersey Compensation Rating and Inspection Bureau
60 Park Place
Newark, NJ 07102
www.njcrib.com
(973) 622-6014

Note: If you are a self-administered self-insurer or governmental entity, you will be required to file these two reports directly with the state. For more information on how to file, please visit the Division of Workers' Compensation's Electronic Data Interchange (EDI) Web page at *www.nj.gov/labor/wc/wcedi.html.*

VI. HOW TO REDUCE WORKERS' COMPENSATION COSTS

- **ESTABLISH A SAFETY PROGRAM**

The best way for an employer to lower workers' compensation costs is to prevent injuries from happening in the first place. Involve your employees in identifying hazardous work practices and potentially harmful situations, areas, or equipment. Safety teams and company incentives play a role in reducing costs. Most importantly, management must be willing to listen and put into practice appropriate recommendations.

Many insurance companies offer free advice to policyholders about how to establish and maintain safe workplaces. You can also use the New Jersey Department of Labor and Workforce Development's free On-Site Consultation Service to find out about potential hazards at your worksites and improve your occupational safety and health management systems. Information on this service can be obtained by contacting:

New Jersey Department of Labor and Workforce Development
Division of Public Safety and Occupational Safety and Health
P.O. Box 953
Trenton, NJ 08625
www.nj.gov/labor/lsse/lsonsite.html
(609) 984-0785

- **ESTABLISH CLEAR PROCEDURES FOR EMPLOYEES AND MANAGERS**

At the time of hire and periodically thereafter, employees should be provided the following information:

- An explanation of their workers' compensation coverage and benefits
- How, when, and to whom to report an injury
- Where to go for medical treatment if injured while working

The Division of Workers' Compensation has a general brochure on workers' compensation available for injured workers, called "A Worker's Guide to Workers' Compensation." The brochure, which can be downloaded for distribution to employees from the division's Web site *(www.nj.gov/labor/wc/wcindex.html)*, is available in English and Spanish.

V. REPORTING WORK ACCIDENTS AND OCCUPATIONAL EXPOSURES

Every work accident or occupational exposure should be recorded on an accident report form. Such documentation should prompt an immediate investigation, which not only assists in determining the cause of the accident or exposure, but is also important in the prevention of future accidents.

When an employer receives notice about a work-related accident or occupational exposure, it should notify its insurance carrier or third-party administrator (TPA) immediately so that a First Report of Injury form can be filed by the carrier or TPA with the state of New Jersey. This form, which is filed electronically, gives the Division of Workers' Compensation initial information about the work accident or exposure and any resulting injuries. A copy of this report is sent by the carrier or TPA to the employer for verification of the information submitted.

Within 26 weeks after the worker has reached maximum medical improvement or has returned to work, the insurance carrier or TPA must electronically file a second report, called a Subsequent Report of Injury, with the state. Information from this report, including an explanation of any benefits paid on the claim, is also sent to the injured worker.

- **INSURANCE PREMIUM RATES**

The primary device used to determine workers' compensation insurance premiums is the classification system, which groups New Jersey businesses into various classifications. The purpose of this system is to bring together, within each classification, employers engaged in the same type of business. Accompanying each classification is a rate that represents the average work-injury experience for that classification. This rate is adjusted annually according to the latest available work-injury experience data.

It is also recognized that no two employers, although they may be in the same business, have exactly the same operations or identical conditions of employment. Within any given classification, there are employers with better-than-average work injury experience and those with worse-than-average work injury experience. To account for such differences, an additional refinement to the classification system is offered through another program known as the Experience Rating Plan. In this plan, an employer's own work injury experience is used to modify its premium, higher or lower, by comparing it to the average work-injury experience of all employers in the classification to which the employer is assigned.

For more information on how rates are established, you may wish to read the WC Reference Guide available on NJCRIB's Web site *(www.njcrib.com/ReferenceGuide/cribcnst.asp).*

- **WHAT A WORKERS' COMPENSATION POLICY COVERS**

A workers' compensation policy covers the following:

For injured employees:

- Reasonable medical services necessary to treat the job injury or illness
- Temporary disability benefits to help replace lost wages up to statutory maximum
- Permanent disability benefits to compensate for the continued effects of the injury
- Burial and death benefits for dependents in cases of fatal injury

For employers:

- Coverage of financial liabilities for work-related injuries and illnesses
- Legal representation

- **PENALTIES FOR FAILURE TO INSURE**

The consequences for failure to provide workers' compensation coverage can be very significant, even without a work-related injury. Specifically, the law provides that failing to insure is a disorderly persons offense and, if determined to be willful, a crime of the fourth degree. Moreover, penalties for such failure can be assessed up to $1,000 for the first 20 days with additional assessments of $1,000 for each 10-day period of failure to insure thereafter. In the case of a corporation, liability for failure to insure can extend to the corporate officers individually. Penalties assessed for failure to insure are not dischargeable in bankruptcy.

Where a work-related injury or death has occurred, the employer, including individual corporate officers, partners or members of an LLC, is directly liable for medical expenses, temporary disability, and permanent disability or dependency benefits. In addition to awards for medical expenses and other benefits, New Jersey law also provides for civil penalties against the employer and its officers where failure to insure is determined. Awards and penalties arising from these claims can become liens against the uninsured employer and its officers, which are generally enforceable in the New Jersey Superior Court against any assets belonging to the uninsured employer and its officers.

HOW UNINSURED EMPLOYERS ARE IDENTIFIED

State employer records are compared, or "cross-matched," with the database at the Department of Banking and Insurance's Compensation Rating and Inspection Bureau (NJCRIB) on a regular basis to identify uninsured employers.

When an employer is identified through this cross-match as a possibly uninsured employer, a letter and a *cross-match response* form is issued. Mandatory insurance should be immediately obtained if an employer is uninsured and verification of insurance must be provided. Penalties may still be assessed for failure to have insurance at the time of the cross-match.

If you are an employer that has insurance and has received this form, you should provide the information requested about your workers' compensation coverage as soon as possible to ensure that penalties are not improperly assessed against you.

Also, if you are aware of an uninsured employer, you may provide this information to the Division of Workers' Compensation by e-mail (oscf@dol.state.nj.us), by calling (609) 292-0165 or by completing and submitting a "Report of Non-Compliance" form, available on the Web site of the Division of Workers' Compensation. You need not identify yourself but you should be prepared to provide the name and exact address of the employer and, if possible, the names of the principle operators of the business.

IV. BEFORE AN INJURY OCCURS

- **POSTING NOTICE**

New Jersey law requires every employer to post and maintain, in a conspicuous place or places in and about the worksite, a form prescribed by the Commissioner of the Department of Banking and Insurance, stating that the employer has secured workers' compensation insurance coverage or has qualified with the Department of Banking and Insurance as a self-insured employer.

For insured employers, the notice must include the name of the insurance carrier and other items as required by the Department of Banking and Insurance. To obtain copies of this notice, employers should contact their insurer.