



A GUIDE to WORKERS' COMPENSATION for MARYLAND AGRICULTURAL EMPLOYERS

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Workers' compensation is a type of insurance that compensates employees for lost wages and medical bills due to a work-related accidental injury or an occupational disease. The compensated injuries are those that are incurred due to an accident occurring on the job. In Maryland, workers' compensation is governed by the Maryland Workers' Compensation Act ("the Act"), which was first passed by the Maryland Legislature in 1914 and has been subsequently amended several times.ⁱ The purpose of the Act is to "protect workers and their families from hardships inflicted by work-related injuries."ⁱⁱ The Act outlines which employers are required to have workers' compensation insurance, who and what injuries are covered by workers' compensation, what benefits are provided by workers' compensation, employer and employee obligations, the role of the Maryland Workers' Compensation Commission ("Commission"), and penalties for violating the Act.

Who is required to have workers' compensation insurance?

Under Maryland law, employers are required to purchase workers' compensation insurance if the employer has at least one "covered employee." Some agricultural employers are exempt from this requirement. Agricultural employers are exempt from the state workers' compensation requirement if the employer's annual payroll is less than \$15,000 for full-time employees or the employer has less than three full-time employees.ⁱⁱⁱ

Who is covered by workers' compensation?

To be eligible for Maryland workers' compensation benefits, a claimant must be a "covered employee." Under Maryland law, a covered employee is an individual that is "in the service of an employer under

an express or implied contract of apprenticeship or hire."^{iv} Minors are covered employees under Maryland law.^v Additionally, undocumented workers are also covered and entitled to benefits under Maryland workers' compensation laws.^{vi} Sole proprietors are not considered covered employees unless the sole proprietor elects to be covered by submitting a written notice to the Commission.^{vii}

Which injuries are covered by workers' compensation?

Workers' compensation provides benefits for accidental personal injuries and occupational diseases that arise out of, and in the course of, employment. For an injury to be considered an accidental personal injury, the injury must meet one of three criteria:

1. "An accidental injury that arises out of and in the course of employment;

2. An injury caused by a willful or negligent act of a third person directed against a covered employee in the course of the [covered employee's] employment ... ; or
3. A disease or infection that naturally results from an accidental injury that arises out of and in the course of employment.”^{viii}

Under Maryland law, an occupational disease is “a disease contracted by a covered employee as the result of and in the course of employment; and that causes the covered employee to become temporarily or permanently, partially or totally incapacitated.”^{ix} Examples of occupational diseases that occur “out of the course of employment” include asbestosis, skin cancer, chemical poisoning from pesticides, and heatstroke.

Accidental personal injuries and occupational diseases must arise out of and in the course of employment for the covered employee to be eligible for workers’ compensation benefits. For an injury to occur “out of the course of employment,” the injury must have occurred “because of conditions required by the employer for doing the job.”^x For example, injuries caused by slippery or muddy surfaces, or falling ladders at the work location. For an injury to occur “in the course of employment,” the injury must have occurred during the employee’s working hours.^{xi}

Workers’ compensation benefits do not apply to injuries that occur outside the scope of employment, occur because the employee was under the influence of drugs or alcohol, or that are intentionally self-inflicted.

Are injuries sustained during employee travel covered by workers’ compensation?

Many of the injuries associated with crop and animal production are transportation incidents, which can occur on or off the farm.^{xiii} Employees injured while traveling in a vehicle are generally compensated for the injury if the travel is required by the employer and the employee is not on a personal errand. The Maryland Courts have developed an exception to this general principle called the “going and coming rule.” The going and coming rule provides that injuries sustained by employees commuting to and from a fixed site of employment, “are generally not considered to arise out of and in the course of

employment and are, therefore, not compensable under the Act.”^{xiii} However, if the employee is injured while traveling for an errand requested by the employer, and which is in furtherance of the employer’s business, then the injury would be compensable.^{xiv}

The Maryland courts also developed an exception to the “going and coming rule,” called the positional risk test. Under the test, when employees are “en route from a work-related activity to a site where [they were] to engage in a work-related act,” the coming and going rule would not apply and the injury would likely be compensable.^{xv} Under the positional-risk test, an injury “arises out of employment” if the injury would not have occurred but for the employee’s job requiring the employee to be in the place where the employee was injured.

What benefits are provided by workers’ compensation?

Workers’ compensation coverage will provide wage benefits, medical benefits, vocational rehabilitation benefits, death benefits, and funeral benefits to covered employees who sustain a personal accidental injury or suffer from an occupational disease. The amount of wage benefits provided under the workers’ compensation insurance policies depends on the duration and severity of the employee’s injury. For example, if the covered employee is temporarily totally disabled, the employee is entitled to two-thirds of their average weekly wage, as long as the payment does not exceed the state of Maryland’s average weekly wage.^{xvi} Workers’ compensation benefits for volunteer workers, family members, and undocumented workers are the same as employees, as long as the injured person meets the definition of a covered employee.

How to obtain insurance coverage?

Employers in the state of Maryland are required to obtain workers’ compensation insurance from an insurance company licensed to write workers’ compensation insurance in the state of Maryland or from the Chesapeake Employers’ Insurance

Company. Chesapeake Employers' Insurance Company operates as a guaranteed market for employers who cannot get coverage through another insurance company. Workers' compensation coverage can be purchased through an independent agent or directly from the insurance company.

Employers may also apply to become a self-insured employer, which requires prior approval from the Commission. The employer must receive approval for the self-insurance plan of the employer or governmental self-insurance group. If the commission denies the use of a self-insured plan, the employer may apply to the commission for approval to use another self-insured plan.

An employer should make sure that if the employee works out of the state of Maryland, they have coverage for any and all states that the employee could sustain a compensable claim in. An "all states" endorsement to the Maryland workers' compensation policy is available with most insurance companies to provide coverage for this.

Why should agricultural employers get insurance?

Agriculture can be a dangerous occupation. In 2022, according to the Bureau of Labor Statistics, there were approximately 300 fatal injuries, and 26,000 nonfatal injuries associated with crop and animal production in the United States. While some agricultural employers are not required to purchase workers' compensation insurance under Maryland law, employers should consider adding this coverage to their risk management portfolios. Workers' compensation insurance policies protect both the employer and employee. Workers' compensation insurance protects a business and its owner(s) by paying for claims by employees who experience a work-related injury, illness, or disease either sustained on business premises or due to business operations. Also, in exchange for such compensation, the employee forfeits the right to sue the employer in court for damages related to work injuries. Workers' compensation protects employees and their families by providing compensation to an injured employee for medical expenses, a portion of lost wages, rehabilitation costs, and funeral expenses.

What are the employer's obligations in the event of a claim?

The primary responsibility of employers when an employee is injured is to notify the Commission. If the employee misses more than three days of work or dies due to an accidental personal injury that causes a disability, the employer must file an accident report with the Commission. It is recommended, but not required, for an employer to file an employer's first report for any accident regardless of the time lost. The accident report must be filed within 10 days of learning of the accident.^{xvii} If the employer learns or receives notice that an occupational disease has disabled the employee, the employer must promptly report the disability to the Commission.^{xviii} The report to the Commission must include:

1. "Whether the accidental personal injury or occupational disease arose out of and in the course of employment;
2. The time, cause, and nature of the disability, and the accidental personal injury or occupational disease;
3. The probable duration of the disability; and
4. Any other information that the Commission may require by regulation."^{xix}

Employers are prohibited from deducting workers' compensation premium payments from employee's salaries or wages.^{xx} Additionally, employers are prohibited from discharging an employee solely for filing a workers' compensation claim.^{xxi}

What are the employee's obligations in the event of a claim?

Employees have reporting requirements to both the employer and the state. For accidental personal injuries that do not result in death, the injured employee must notify their employer either orally or in writing within 10 days of the injury.^{xxii} For accidental personal injuries that result in death, the family must notify the employer within 30 days of the employee's death.^{xxiii} If the notice to the employer is in writing, the writing must include:

1. The name and address of the injured employee;

2. The time, place, nature, and cause of the injury; and
3. Signature of the employee or someone on their behalf.^{xxiv}

For occupational diseases, the employee must notify the employer within one year of when the employee knew or should have known that they suffered from the occupational disease.^{xxv} If the occupational disease causes death, the employer must be notified within one year of the employee's death.^{xxvi}

The employee must also file the Employee Claim Form C-1, and a physician's report, if available with the Commission. The form can be completed online, or the employee can request a printed form from the Commission. For most accidental injuries that do not result in death, employees must file a claim form with the Commission within 60 days.^{xxvii} For an accidental injury that results in death, the employee's family must file the claim form with the Commission within 18 months of the employee's death.^{xxviii} For occupational diseases, the injured employee or employee's family must file the claim form with the Commission within two years.^{xxix} However, if the employee suffers from pulmonary dust disease, the employee or their family has three years to file the claim form with the Commission.^{xxx}

What is the role of the Commission?

The Commission consists of 10 members who are appointed by the governor. They each serve a 12-year term.^{xxxi} The Commission's primary duties are to "administer the Act, and adjudicate claims for compensation arising under that law."^{xxxii} Either the employer or employee may request a hearing from the Commission to investigate a claim. The hearing may involve witnesses and medical examinations of the employee to determine the severity of the injury. Employees have a right to be represented by an attorney at a Commission hearing, however, attorneys cannot charge or collect a fee for legal services unless approved by the Commission.^{xxxiii} In most situations, attorney's fees awarded by the Commission are based on a percentage of the award of compensation.^{xxxiv}

The Commission will approve or deny a claim within 30 days of either the filing of a claim or the hearing.^{xxxv} Once the Commission denies or approves the claim, either the employer or employee may appeal the decision to the Circuit Court in the county where the employee resides, the employer has its principal place of business, or where the injury occurred.^{xxxvi} An appeal must be filed within 30 days from when the Commission mails the order.^{xxxvii}

The Commission also administers the Uninsured Employer's Fund. The Uninsured Employer's Fund compensates employees who are injured when the employer does not have workers' compensation insurance as required by state law, or has an insolvent self-insurance plan. In other words, if the employer is required to have workers' compensation insurance and does not obtain a policy, or has a self-insurance plan that does not have the funds to pay a claim, an injured employee can still receive compensation through the state.

What are the penalties for violating the Act?

The Act imposes penalties for violations on both the employer and the employee. The Act primarily imposes financial penalties on employers for violating the Act. If an employer "knowingly failed to classify an individual as an employee," the Commission will assess a penalty of no more than \$5,000.^{xxxviii} Additionally, if an employer who is required to carry workers' compensation insurance fails to obtain a workers' compensation policy, the Commission will order the employer to attend a "show cause hearing."^{xxxix} At this hearing, the employer will be required to show why it should not be:

1. Required to secure workers' compensation for all of the employer's covered employees;
2. Found in violation of the requirement to obtain workers' compensation insurance; and
3. Assessed a penalty for noncompliance with the requirement to obtain workers' compensation insurance."^{xl}

If, during a "show cause hearing", the Commission determines that the employer failed to insure all covered employees, the Commission will order the

employer to secure, maintain, and submit proof of insurance coverage from an authorized insurer within 30 days of the order. The employer will also be required to pay a fine up to \$25,000, which will go to the Uninsured Employers' Fund.

Employers are also required to report accidental personal injuries to the Commission. If the employer "knowingly fails to report an accidental personal injury" within the timeframe required, the employer could be found guilty of a misdemeanor and ordered to pay a fine up to \$500.^{xii}

The primary penalty for employees who violate the Act's requirements is a bar on filing a claim against the employer. In other words, if an employee fails to give the employer notice of a claim, the employee

could be prohibited from receiving compensation under the Act.

Conclusion

Workplace injuries can occur in many settings, but they occur at especially high rates on farms. Maryland requires workers' compensation coverage to be purchased by most non-agricultural employers as well as some agricultural employers. Even when coverage is not required, however, agricultural employers should consider obtaining workers' compensation coverage to protect both the employer and their employees.

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Annotation

- ⁱ Md. Code Ann., Lab & Empl. §§ 9-101 et seq. (West 2024).
- ⁱⁱ *Roberts v. Montgomery Co.*, 84 A.3d 87, 95 (Md. 2014).
- ⁱⁱⁱ Md. Code Ann., Lab. & Empl. § 9-210(b) (West 2024).
- ^{iv} Md. Code Ann., Lab. & Empl. § 9-202(a) (West 2024).
- ^v Md. Code Ann., Lab & Empl. § 9-202 (West 2024).
- ^{vi} *Design Kitchen and Baths v. Lagos*, 882 A.2d 817, 830 (Md. 2005).
- ^{vii} Md. Code Ann., Lab & Empl. § 9-227 (West 2024).
- ^{viii} Md. Code Ann., Lab. & Empl. § 9-101(b) (West 2024).
- ^{ix} Md. Code Ann., Lab. & Empl. § 9-101(g) (West 2024).
- ^x *Workers' Compensation*, The People's Law Library of Maryland, <https://www.peoples-law.org/workers-compensation> (last updated June 6, 2022).
- ^{xi} *Id.*
- ^{xii} *Injuries, Illnesses, and Fatalities*, U.S. Bureau of Labor Statistics, https://www.bls.gov/iif/fatal-injuries-tables/fatal-occupational-injuries-table-a-1-2022.htm#cfai_at_a1.f.4 (Dec. 2023).
- ^{xiii} *Morris v. Board of Education of Prince George's County*, 339 Md. 374, 379 (1995).
- ^{xiv} *Reisinger-Siehler Co v. Perry*, 167 A.51 (Md. 1995).
- ^{xv} *Calvo v. Montgomery County*, 185 A.3d 146, 156 (Md. 2018) (citing *Roberts v. Montgomery County*, 84 A.3d 87, 97 (Md. 2014)).
- ^{xvi} Md. Code Ann., Lab. & Empl. § 9-621(a) (West 2024).
- ^{xvii} Md. Code Ann., Lab. & Empl. § 9-707(a) (West 2024).
- ^{xviii} Md. Code Ann., Lab. & Empl. § 9-707(b) (West 2024).
- ^{xix} Md. Code Ann., Lab. & Empl. § 9-707(c) (West 2024).
- ^{xx} Md. Code Ann., Lab. & Empl. § 9-1101(a) (West 2024).
- ^{xxi} Md. Code Ann., Lab. & Empl. § 9-1105(a) (West 2024).
- ^{xxii} Md. Code Ann., Lab. & Empl. § 9-704(b) (West 2024).
- ^{xxiii} *Id.*
- ^{xxiv} Md. Code Ann., Lab. & Empl. § 9-704(c) (West 2024).
- ^{xxv} Md. Code Ann., Lab. & Empl. § 9-705(a) (West 2024).
- ^{xxvi} *Id.*
- ^{xxvii} Md. Code Ann., Lab. & Empl. § 9-709 (West 2024) (The Act provides an extension to file a claim for injuries caused by ionizing radiation. If the covered employee is injured due to ionizing radiation, they have two years after the date of disablement or from when the employee knew the disablement was caused by ionizing radiation to file a claim with the Commission.)
- ^{xxviii} Md. Code Ann., Lab. & Empl. § 9-710(b) (West 2024).
- ^{xxix} Md. Code Ann., Lab. & Empl. § 9-711(a) (West 2024).
- ^{xxx} *Id.*
- ^{xxxi} Md. Code Ann., Lab. & Empl. § 9-302 (West 2024).
- ^{xxxii} *State Workers' Compensation Commission*, Maryland Manual On-Line, <https://msa.maryland.gov/msa/mdmanual/25ind/html/8oworkf.html#:~:text=The%20State%20Workers'%20Compensation%20Commission%20administers%20the%20Maryland%20Workers'%20Compensation,Labor%20%26%20Employment%20Article%2C%20secs> (Feb. 28, 2024).
- ^{xxxiii} Md. Code Ann., Lab. & Empl. § 9-731 (a) (West 2024).
- ^{xxxiv} Md. Code Regs. 14.09.04.03 (2024).
- ^{xxxv} Md. Code Ann., Lab. & Empl. § 9-714(b) (West 2024).
- ^{xxxvi} Md. Code Ann., Lab. & Empl. § 9-738(b) (West 2024).
- ^{xxxvii} Md. Code Ann., Lab. & Empl. § 9-737 (West 2024).
- ^{xxxviii} Md. Code Ann., Lab. & Empl. § 9-402.1(d) (West 2024).
- ^{xl} Md. Code Ann., Lab. & Empl. § 9-407 (West 2024).
- ^{xli} Md. Code Ann., Lab. & Empl. § 9-407(a)(1) (West 2024).
- ^{xli} Md. Code Ann., Lab. & Empl. § 9-1102 (West 2024).