

WORKERS COMPENSATION AND INJURY MANAGEMENT FACT SHEET 1

INSURANCE POLICY AND PREMIUMS INFORMATION FOR EMPLOYERS

WHAT IS WORKERS COMPENSATION INSURANCE?

Workers compensation insurance provides protection for both employers and workers. The law in NSW requires all employers to have a current workers compensation policy. In the event of a workplace injury or disease, the policy may provide the worker with:

- weekly benefits
- medical and hospital expenses
- rehabilitation services
- certain personal items (eg clothing, spectacles if damaged in a work-related accident)
- a lump sum payment for permanent impairment and pain and suffering.

The policy must cover all workers for injuries sustained in the course of their employment. Workers are those full-time, part-time or casual people who work for an employer, under an oral or written contract of service or apprenticeship. Some people are deemed to be workers for workers compensation purposes. Examples of deemed workers include outworkers, taxi drivers, entertainers and some contractors. Deemed workers must also be covered by a workers compensation policy taken out by their employer.

If the employer does not have a policy, an injured worker may still be able to claim compensation under the Uninsured Liability and Indemnity Scheme (ULIS). In these cases, WorkCover NSW will recover the cost of the claim from the employer and may prosecute the employer for non-insurance.

HOW DOES AN EMPLOYER GET A WORKERS COMPENSATION INSURANCE POLICY?

To obtain a workers compensation insurance policy employers need to contact one of the seven companies appointed to operate as Scheme Agents for the NSW WorkCover Scheme. The Scheme Agents deliver claims and policy services under commercial contracts. The Scheme Agents calculate an employer's premium, determine the effect, if any, of claims on that premium and issue the workers compensation insurance policy. A list of Scheme Agents is available from the WorkCover website www.workcover.nsw.gov.au or from the WorkCover Assistance Service on **13 10 50**.

WHAT IF AN EMPLOYER DOES NOT HAVE A POLICY?

An employer without a workers compensation policy, or who provides false information is breaking the law and may incur penalties including a fine of up to \$55,000, six months imprisonment, twice the amount of unpaid premium to WorkCover NSW, and compensation to the injured worker.

ARE EMPLOYERS, THEMSELVES, COVERED FOR WORKERS COMPENSATION?

A 'working' director of a company is considered to be a worker and must be covered by a workers compensation insurance policy.

If an employer is a sole trader or in a partnership, they are not considered to be a worker and therefore cannot cover themselves for workers compensation. They should cover themselves by taking out a personal accident and illness policy or an income protection policy in case they are injured and unable to work. However, they are required to take out a workers compensation insurance policy to cover anyone that they employ.

IF AN EMPLOYER ENGAGES ONLY CONTRACTORS, DO THEY NEED A WORKERS COMPENSATION POLICY?

Under the law, some contractors may be deemed to be workers and an employer must cover all workers. For example, someone who works exclusively for an employer for a long period of time but has no employees of his or her own may be a 'deemed worker' and, if injured, could claim compensation. A contractor's status can be ascertained by contacting the Worker Status Rulings Branch (see Worker Status Rulings). Therefore, it is suggested that an employer take out a minimum premium policy (currently \$175 per year) in case there are claims.

WHAT ARE A PRINCIPAL CONTRACTOR'S OBLIGATIONS WHEN HIRING A SUBCONTRACTOR?

If a business hires contractors, it should check that the contractors have their own current workers compensation policy covering themselves and all their workers. The employer should confirm this by requesting a copy of the contractor's Certificate of Currency. Principal contractors

should check that their subcontractors have the proper workers compensation insurance and have paid all workers compensation premiums associated with that work. To protect themselves, principal contractors should receive:

- a copy of the subcontractor's Certificate of Currency
- a written statement by the subcontractor stating that all workers compensation premiums associated with that work have been paid (until the statement is received the principal contractor may, without penalty, withhold payment from the subcontractor).

Otherwise, principals may be liable for insurance premiums owing in connection with the work or service performed on their behalf.

Note: Sole traders and members of partnerships are not covered by their own workers compensation policy. A principal contractor may still be liable for a sole trader or the partners of a partnership should a workplace injury occur.

WORKER STATUS SERVICE

An employer may now ask WorkCover NSW to issue a prospective private ruling as to whether a person is a worker for premium calculation purposes. A private ruling is a binding notice from WorkCover NSW that states whether a person, or group of persons, are workers or contractors for the purpose of including wages for workers compensation premium calculation. However, this ruling does not alter a person's right to lodge a claim for workers compensation, nor can it be used as evidence in any claims proceedings.

For clarification on worker status for premium calculations, employers may contact the WorkCover NSW advisory service by calling the dedicated Worker Status Service hotline on **1800 024 205**. Employers can also use the interactive self-assessment tool on the WorkCover NSW website to help determine the status of their workers or apply to WorkCover to issue a binding prospective private ruling as to whether a person, or class of persons, is a worker for premium calculation purposes.

For detailed information on a principal contractor's obligations, and how the worker status ruling process works, refer to the WorkCover NSW website.

HOW ARE WORKERS COMPENSATION PREMIUMS CALCULATED?

An employer's premium is calculated twice for each period of insurance. The initial premium (called the premium estimate) is calculated at the beginning of the policy period. It is based on an estimate of wages that an employer is likely to pay during the policy period.

The final premium (called the hindsight premium) is calculated at the end of the policy period. It is calculated using the actual amount of wages paid by the employer during the policy period. If the hindsight premium is

higher than the initial premium, the employer will need to pay the difference to their Agent. If the hindsight premium is lower than the initial premium, the employer's Agent will repay or credit the employer any overpayment.

The amount an employer pays each year in workers compensation insurance premium will depend upon:

- the size of the business in terms of wages
- employer category – small, medium or large
- WorkCover Industry Classification (WIC) – the industry in which the business operates. Each WIC has its own premium rate based on the risk profile of that industry. Premium rates are reviewed annually
- an experience adjustment formula (for medium and large employers only), which takes into account the cost of the employer's workers compensation claims
- other government costs, such as the Dust Diseases Levy and Mine Safety Fund Premium Adjustment.

Your Scheme Agent will take the following steps when calculating premiums:

1. *Classify the business and assign industry rate*
 - each employer with a NSW workers compensation policy is allocated to an industry class in the WorkCover Industry Classification (WIC) system. This is based on information provided by an employer about their business activities on their wage declaration forms.

How are WIC rates set?

WorkCover reviews industry classifications each year:

- the industry rates are adjusted according to the costs of all the workers compensation claims lodged with employers in a given industry classification.
- industry rates are reviewed annually by the scheme actuaries and gazetted in the Insurance Premiums Order.

To reduce the costs of workers compensation for all, employers in the same industry should share ideas for improving workplace safety and injury management.

2. *Calculate the basic tariff premium, make adjustments as required and issue the Premium Demand Notice*
 - basic tariff premium = wages x WIC rate
 - where the employer has a multi-tariff policy (employees in different industry classifications), the basic tariff premium formula is repeated for each applicable industry class, and the outcomes added together to produce the total basic tariff premium. The minimum premium is \$175, even if the calculation produces a lower amount. For policies covering domestic workers – ie a policy for a householder to cover a person employed to clean a private residence – the minimum premium is \$38.00. Multi-tariff policies may only be held where an employer is operating separate and distinct businesses

- if an employer's basic tariff premium is more than \$10,000 **and** annual wages are more than \$300,000, then an employer will have their premium experience adjusted based on the cost of claims incurred
- the Scheme Agent makes the necessary calculation and issues a Premium Demand Notice, which requires the employer to pay the workers compensation premium by instalments or within a given timeframe
- at the end of the year, the employer provides the Scheme Agent with a declaration of the actual gross wages paid during that year.

3. *Experience adjustment formula for medium and large employers*

- the experience formula compares an employer's claims experience relative to their industry's (WIC's) performance. Experience adjustments will be applied to premiums for those employers with wages greater than \$300,000 **and** a basic tariff premium greater than \$10,000.
- caps have been applied to provide most medium employers with greater protection from significant experience-based premium increases. For experience adjusted employers with a basic tariff premium:
 - greater than \$10,000 but less than \$50,000, the total premium cannot exceed one and half times the basic tariff premium
 - equal to or greater than \$50,000 and less than \$150,000, the total premium cannot exceed two times the basic tariff premium
 - equal to or greater than \$150,000 and less than \$300,000 the total premium cannot exceed two and a half times the basic tariff premium
- if an employer's claims experience is better than their industry's (WIC's) median performance, they should pay a premium that is less than their basic tariff premium and, conversely, if it is performing poorly compared to the industry median, they could expect to pay a premium which is greater than their basic tariff premium
- for the purpose of calculating a medium or large employer's experience premium, claims costs include:
 - all payments made by the Scheme Agent in respect of the claims, including weekly benefits, medical expenses and service provider costs
 - the estimated costs of all future payments arising from the claims, calculated in accordance with WorkCover's Claims Estimation Manual, as at the expiry or renewal date of the policy
- the initial experience premium is calculated using the employer's wages and adjusted claims costs for the two years prior to the commencement of the policy period

- the hindsight experience premium is calculated using the employer's wages and adjusted claims costs for the previous two years, together with the wages and adjusted claims costs for the current year of cover.

4. *Grouping of related employers*

From 30 June 2006, an employer who is part of a group that has combined wages of more than \$600,000 is grouped for the purposes of premium calculation. A common experience adjustment factor (S factor) is used to calculate the premium for all group policies. Members of a group can hold individual policies, however all group policies must be with the same Scheme Agent and have a common renewal date.

WHAT IS INCLUDED AS WAGES ON THE WAGES DECLARATION FORM FOR THE PREMIUM ASSESSMENT?

At the beginning and end of each workers compensation insurance policy period an employer must supply their Scheme Agent with a declaration of their wages. Employers declare their wages on the *Wages Declaration Form* supplied by their Agent.

As a basic principle, wages assessable for workers compensation premium purposes are defined as payments made to, or for the benefit of, a worker. 'Wages' includes salary, overtime, shift and some other allowances, over-award payments, bonuses, commissions, payments to working directors (including directors' fees), payments for public and annual holidays (including loadings), payments for sick leave, value of board and lodging provided by the employer for the worker, employer superannuation contributions, value of any substitutes for cash, long service leave and termination payments and any other consideration given to the worker under a contract of service or apprenticeship. WorkCover publishes a *Wages Definition Manual* (Catalogue No. 49.2) to assist employers and their accountants in deciding what wages to include on the wages declaration forms. It is available from the WorkCover Assistance Service and on the WorkCover NSW website.

WHAT IS THE APPRENTICE INCENTIVE SCHEME?

The new Apprentice Incentive Scheme will mean employers will be exempt from paying the basic tariff premium calculated on the wages paid to apprentices. The amount of premium saved will vary depending on the number of apprentices employed, the apprentice's wage rate, and the employer's WorkCover Industry Classification (WIC). An employer's final workers compensation premium payable cannot be less than the minimum premium payable, currently \$175. The claims costs associated with any apprentice injured at work will still be used to calculate an employer's experience adjustment premium where applicable.

To be eligible for the apprentice premium exemption you must:

- have a valid workers compensation policy and
- have entered into a NSW Department of Education and Training (NSW DET) approved 'Training Contract' with the apprentice in a designated trade vocation. The apprentice must be identified in the training contract.

When renewing or obtaining a new workers compensation policy from 31 December 2006 you will be required to state the amount of wages you pay your apprentice(s) separately from wages paid to other workers, on the wage estimate and declaration forms. This will allow your Scheme Agent to calculate your premium exemption.

You will need to retain your apprentice wages records, as well as your Apprentice Training Contract and letter from the Department of Education and Training advising that the application for the training contract has been approved. These documents will need to be produced in the event of a wage audit. As part of its regular audit program WorkCover will be confirming appropriate use of the apprentice incentive scheme. WorkCover, through its Scheme Agents, conducts audits to ensure that employers are paying the appropriate premium – no more, no less.

WHEN ARE WORKERS COMPENSATION PREMIUMS DUE?

The date workers compensation premiums are due depends on when the insurance policy was taken out. Scheme Agents must offer employers the option of paying their premiums in full in advance, or by monthly or quarterly instalments. All employers paying their premium in full in advance will receive a three per cent discount. The minimum premium of \$175.00 still applies. Instalment options are:

- employers with a basic tariff premium of more than \$1000 will be able to pay by four instalments
- employers with a basic tariff premium of more than \$5000 will be able to pay by either four or 12 instalments.

Disclaimer

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au) or by contacting the free hotline service on 02 9321 3333.

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Payment of any end-of-policy period premium adjustment is payable within one month of the premium demand being issued by a single payment only, as is currently the case.

WHAT CAN AN EMPLOYER DO IF THEY DISAGREE WITH THE AMOUNT OF THEIR WORKERS COMPENSATION PREMIUM?

If an employer disagrees with the Scheme Agent's premium calculation, they should first discuss the matter with their Scheme Agent. If, after those discussions, the employer still believes the premium calculation to be incorrect, the employer may contact WorkCover to review the issue. An appeal must be lodged with WorkCover within one month of the premium being requested by the Scheme Agent, unless WorkCover allows an extension. An employer is not entitled to withhold premium payments owed to their Scheme Agent while WorkCover is considering their application. Overdue payments are subject to a late payment penalty.

CLAIMS EXCESS PAYMENTS

To encourage early reporting and management of claims the following excess arrangements apply:

The claims excess payment will be waived, if the injury is notified to the Scheme Agent within five days of the employer becoming aware of the injury.

The claims excess payment is the equivalent of up to the first week of the injured worker's weekly compensation subject to the maximum amount payable of \$1535.90.

WHAT CAN AN EMPLOYER DO TO REDUCE THEIR PREMIUM?

- Promote a safe workplace.
- Act early if a worker is injured. Report claim promptly to their scheme agent so that the worker's treatment and rehabilitation can commence. Early intervention tends to reduce the cost of a claim.
- Keep in touch with the worker and offer suitable duties to help the worker recover and return to work as soon as possible. See *Fact Sheet 6* for further information regarding services offered by Scheme Agents.

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