

# Module 6

## Workers Compensation

## Workers Compensation

### Module 6 Chapter 6

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### Learning Objectives

- ☐ Obj I – Overview of Workers Compensation Statutes
- ☐ Obj II – Workers Compensation Statutes – Additional Concerns
- ☐ Obj III – Workers Compensation Insurance
- ☐ Obj IV – Employers Liability Insurance
- ☐ Obj V – Other States Insurance
- ☐ Obj VI – Workers Compensation Endorsements
- ☐ Obj VII – Rating Workers Compensation Insurance

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## Overview of Workers Compensation Statutes

### Objective I

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### Basic Purpose

- ❑ Before the enactment of workers compensation statutes, workers could sue their employers for damages resulting from injury.
  - ❑ Employee had to establish employer fault.
- ❑ Every state has enacted workers compensation statutes, providing no-fault protection.
  - ❑ Removed employees' right to sue.
  - ❑ Obligated employers to compensate injured.
  - ❑ Employer's liability limited by statute.

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### Benefits Provided

- ❑ Workers compensation statutes cover occupational injury or disease.
  - ❑ Must arise in the course of employment.
- ❑ Workers compensation benefits:
  - ❑ Medical – first-dollar benefits.
    - ❑ No deductible or coinsurance requirement.
  - ❑ Disability income – waiting period.
  - ❑ Rehabilitation – medical and vocational.
  - ❑ Death – funeral and wage replacement.

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### Disability Income Benefits

- ❑ Disability income benefits are meant to compensate an injured employee for wage loss.
  - ❑ Benefits are subject to a waiting period.
  - ❑ Benefit is payable weekly.
- ❑ Types of disability covered:
  - ❑ Temporary partial disability.
  - ❑ Temporary total disability.
  - ❑ Permanent partial disability.
  - ❑ Permanent total disability.

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**Persons Covered**

- ❑ Workers compensation statutes apply to virtually all industrial workers and most other kinds of private employment.
  - ❑ Small employers may be exempt.
- ❑ Individuals often excluded from coverage:
  - ❑ Government workers.
  - ❑ Maritime and railroad workers.
  - ❑ Farm labor.
  - ❑ Domestic workers.

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**Persons Covered**

- ❑ Entitlement to benefits depends on whether a person qualifies as an employee.
  - ❑ Employment status is a question of fact, not of law.
- ❑ Independent contractors are not subject to direction regarding the details of the work.
  - ❑ Not covered under workers compensation.
  - ❑ An independent contractor must provide workers compensation benefits for its employees.

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**Persons Covered**

- ❑ A firm supplying temporary employees provides workers compensation for the temporary employees.
  - ❑ Temporary employee is an employee of the providing firm.
- ❑ Leased employees are subject to control by the firm as if they were its direct employees.
  - ❑ Leasing company is responsible for workers compensation coverage.

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**Practice**

- ❑ Which one of the following employees would fall into the disability classification of temporary total disability?
  - ❑ A. Jay, an employee of ABC Company, is blinded in one eye as a result of an accident, and he returns to work immediately in a lower-paid position.
  - ❑ B. Chuck, an employee of XYZ Company, lost both of his arms as a result of an accident, rendering him unable to work.
  - ❑ C. Valerie, an employee of QRS Company, injured her back as a result of an accident, causing her to work behind a desk for 30 days before returning to her existing job in the warehouse.
  - ❑ D. Marybeth, an employee of DEF Company, breaks her leg as a result of an accident, causing her to miss work for six weeks before she returned to work.

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**Workers Compensation  
Statutes – Additional  
Concerns**

**Objective II**

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**Extraterritorial Provisions**

- ❑ Extraterritorial provisions address situations where workers are working in another state.
  - ❑ May address working in another country.
- ❑ If an employee is working in a different state, they could receive benefits from:
  - ❑ State in which they were hired.
  - ❑ State of their employment.
  - ❑ State of residence.
  - ❑ State where the employer is domiciled.

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### Extraterritorial Provisions

- Employees who are temporarily working outside the U.S. are generally covered by the workers compensation law of the state where they regularly work.
  - Most laws have time limits for how long someone can be out of the U.S.
- Foreign voluntary workers compensation coverage provides home-state coverage.
  - Often includes coverage for repatriation expense and endemic disease.

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### Federal Jurisdiction

- Some occupational injuries are covered under federal law.
  - Most maritime workers, employees of interstate railroads, and certain other workers.
- U.S. Longshore and Harbor Workers' Compensation Act (LHWCA) provides an exclusive remedy to injured maritime workers.
  - Eliminates the right of injured workers to sue their employers in exchange for no-fault coverage.

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### Meeting Employer's Obligations

- Most statutes require employers to demonstrate financial ability to pay any claims that may arise.
  - Voluntary Insurance – purchasing insurance from a private insurer.
  - Assigned Risk Plans – available to employer rejected by private insurers.
  - State Funds – some states (monopolistic) prohibit insurers from selling WC insurance.
  - Qualified Self-Insurance Plans – employers that post a surety bond can self insure.

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**Practice**

- A correct statement regarding a monopolistic state is that:
  - A. Private insurers are not permitted to sell workers compensation insurance in the state.
  - B. The federal government administers the workers compensation program in the state.
  - C. Employers must purchase a surety bond with the state's workers compensation administrative agency.
  - D. Coverage for workers compensation is automatically provided to employers with maritime workers.

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**Workers Compensation Insurance**

**Objective III**

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**Overview**

- The Workers Compensation & Employers Liability (WC&EL) Policy was developed by the National Council on Compensation Insurance.
  - Primarily covers employer's obligation to pay workers compensation benefits.
  - Also covers employer's liability.
- Information page is similar to declarations:
  - Item 1 – insured's information.
  - Item 2 – policy coverage period.
  - Item 3 – WC & EL coverage provided.
  - Item 4 – premium.

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**Part One – Workers Compensation**

- ❑ Part One obligates the insurer to pay benefits required by the workers compensation law.
  - ❑ Coverage applies to states listed in Item 3.A of the Information Page.
- ❑ Coverage applies to bodily injury by accident and disease.
  - ❑ Last exposure to disease must occur during policy period.
  - ❑ Insurer has the right and duty to defend the insured, and agrees to pay additional costs.

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**Part One – Workers Compensation**

- ❑ Insurer will pay benefits based on state law.
  - ❑ No dollar limit for benefits under Part One.
  - ❑ No exclusions under Part One.
  - ❑ If the policy conflicts with state law, state law will prevail.
- ❑ Benefits will be paid to dependents in the case of employee death.
  - ❑ Dependents have a direct right of action against the insurer.

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**Part One – Workers Compensation**

- ❑ The insured must reimburse the insurer for any penalties required as a result of the employer's:
  - ❑ Willful misconduct.
  - ❑ Knowing employment of anyone illegally.
  - ❑ Failure to comply with health and safety laws and regulations.
  - ❑ Discrimination against employees who claim workers compensation benefits.

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**Practice**

- ❑ Which one of the following statements is correct regarding Part One of the Workers Compensation and Employers Liability Policy?
  - ❑ A. The employer is only covered for the operations listed on the Information Page.
  - ❑ B. Dependents of a deceased employee have no right of action against the insurer.
  - ❑ C. No exclusions are contained under Part One of the policy.
  - ❑ D. If Part One conflicts with the applicable workers compensation law, Part One will take precedence over the law.

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**Employers Liability Insurance**

**Objective IV**

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**Insuring Agreement**

- ❑ Part Two of the WC&EL policy is Employers Liability coverage.
  - ❑ Protects employers against liability claims by employees for injuries not covered by WC statutes.
- ❑ Insurer agrees to pay damages the insured is legally obligated to pay.
  - ❑ Insurer also agrees to defend the insured.

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**Insuring Agreement**

- An employer can be held liable for:
  - Third-party claims – employee sues a third-party for an injury, and third-party then sues the employer.
  - Claim for care and loss of services – family member of an injured employee sues the employer for loss of services.
- Same coverage triggers that apply to WC also apply to EL coverage.
  - Bodily injury by accident or disease.

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**Exclusions**

- Employers liability exclusions:
  - Statutory obligations – eliminates coverage for claims covered under various statutes:
    - Workers compensation laws.
    - U.S. Longshore and Harbor Workers' Compensation Act (LHWCA).
    - Federal Employers' Liability Act.
    - Migrant and Seasonal Agricultural Worker Protection Act.

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**Exclusions**

- Employers liability exclusions:
  - Injury Outside the U.S. or Canada – coverage does not apply to injury that occurs outside the U.S., its territories, and Canada.
  - Employment practices – coverage does not apply to damages from employment practices.
    - Demotion, evaluation, harassment, discrimination, and termination.
  - Liability assumed under contract.
    - May be covered by CGL policy.

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### Exclusions

- Employers liability exclusions:
  - Punitive damages for injury or death of any illegally employed person.
  - Bodily injury to employees employed in violation of the law with insured's knowledge.
  - Bodily injury intentionally caused by the insured.
  - Fines or penalties imposed for violation of federal or state law.

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### Limits of Liability

- Employers liability coverage limits:
  - Bodily injury by accident – most the insurer will pay for bodily injury resulting from one accident, regardless of number of employees.
  - Bodily injury by disease – policy limit – most insurer will pay for bodily injury by disease, regardless of the number of employees.
  - Bodily injury by disease – each employee – most the insurer will pay for bodily injury by disease to any one employee.

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### Limits of Liability

- Defense costs and supplementary payments are covered in addition to the limits of liability.
  - Expenses the insurer incurs.
  - Cost of bail bonds.
  - Cost of bonds to release attachments.
  - Reasonable expenses incurred by the insured.
  - Court costs taxed against the insured.
- Insurer has no duty to pay defense costs or supplementary payments after it has paid damages equal to the limit of insurance.

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**Practice**

- ❑ Which one of the following statements is correct regarding the limits of liability applicable to the employers liability coverage in a Workers Compensation & Employers Liability (WC&EL) policy?
  - ❑ A. Supplementary payments are only covered up to the limits of liability.
  - ❑ B. The insurer has no duty to pay defense costs after it has paid damages equaling the applicable limit of insurance.
  - ❑ C. Punitive damages are covered, even if the injury occurred to an illegally employed person.
  - ❑ D. The bodily injury by disease – policy limit is the most the insurer will pay for bodily injury by disease to any one employee.

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**Other States Insurance**

**Objective V**

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**Other States Insurance**

- ❑ Employers need additional coverage if they expand their operations into states not listed in Item 3.A of the Information Page.
  - ❑ Mechanism for extending insurance to cover such operations is known as “other states” insurance.
- ❑ Item 3.A of Information Page represents states the insured currently conducts business.
  - ❑ Item 3.C represents states where insured expects to conduct business in the future.

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**Other States Insurance**

- ❑ If insured begins operations in a state listed in Item 3.C, the policy provides the same coverage as if that state were listed in Item 3.A.
  - ❑ Insured must notify insurer at once when business operations begin.
- ❑ If the insured has operations in a state on the policy's effective date, but that state is not listed in Item 3.A, the insured must notify the insurer within 30 days.
  - ❑ Otherwise, no coverage will apply.

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**Other States Insurance**

- ❑ The wording used in Item 3.C often reads:
  - ❑ "All states except those listed in Item 3.A and ND, OH, WA, and WY."
  - ❑ Protects the insured if it begins operations in any state other than those listed in Item 3.A.
- ❑ Workers compensation policies issued by some monopolistic state funds do not include employers liability insurance.
  - ❑ Many employers purchase separate liability insurance, called stop gap coverage.

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**Practice**

- ❑ Malibu Warehouse is currently insured under a Workers Compensation and Employers Liability Insurance Policy. Item 3.A of the policy Information Page lists the following states:
  - ❑ California, Oregon, Utah
- ❑ Item 3.C reads as follows: "All states except those listed in Item 3.A and ND, OH, WA, and WY." Malibu purchased a new warehouse in Texas, and the next day, sent a letter to the insurer informing them of the expanded operations. An employee of Malibu is injured in the Texas warehouse the day prior to the insurer receiving the letter. How will the insurer respond to the injury?
  - ❑ A. No coverage would be provided because the letter was not received by the insurer until after the injury.
  - ❑ B. No coverage would be provided because Texas is not listed in Item 3.A of the Information Page.
  - ❑ C. Coverage would be provided based on workers compensation law in Texas.
  - ❑ D. Coverage would be provided based on the average limits of coverage in California, Oregon, and Utah.

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**Workers Compensation  
Endorsements**

**Objective VI**

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**Voluntary Compensation & EL**

- ❑ Most state WC laws exempt some types of employment from statutory workers compensation benefits.
  - ❑ Farm labor and domestic employees.
- ❑ Voluntary Compensation & Employers Liability Endorsement amends the WC&EL policy.
  - ❑ Obligates insurer to pay the benefits that would be payable to such employees if they were subject to the workers compensation law designated in the endorsement.

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**Voluntary Compensation & EL**

- ❑ If an employee sues under common law, the coverage provided by the endorsement reverts to employers liability insurance.
  - ❑ Insurer will defend against the employee's suit and pay any settlement awarded, subject to the stipulated liability limits.

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**LHWCA Coverage Endorsement**

- Employer may be subject to both the U.S. Longshore and Harbor Workers' Compensation Act and the state workers compensation law.
  - U.S. Longshore and Harbor Workers' Compensation Act endorsement amends the definition of "workers compensation law."
  - Includes the LWHCA with respect to operations in any state designated in the endorsement's schedule.

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**Practice**

- Charlie lives on a farm in Texas. He employs several farm workers, as well as a housekeeper. Charlie is in the process of purchasing a Workers Compensation & Employers Liability (WC&EL) policy. Which one of the following would be the best endorsement to the WC&EL policy for Charlie to purchase?
  - A. Voluntary Compensation and Employers Liability Endorsement.
  - B. Employment Practices Endorsement.
  - C. Qualified Self-Insurance Endorsement.
  - D. United States Longshore and Harbor Workers' Compensation Act Endorsement.

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**Rating Workers  
Compensation Insurance****Objective VII**

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**Rating**

- ❑ Exposure varies considerably according to the size of the employer's workforce and the degree of hazard in the work performed.
  - ❑ Several states have rating bureaus for workers compensation insurance.
- ❑ A class rating system identifies groups of similar employments.
  - ❑ Premiums and losses must be accurately and consistently assigned to the proper classes.

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**Premium Base**

- ❑ The premium base for workers compensation insurance is generally payroll.
  - ❑ Varies directly with the exposure covered.
  - ❑ Relatively easy to determine and verify.
  - ❑ Not readily subject to manipulation.
- ❑ Insured pays an estimated premium based on a payroll estimate at the inception of the policy.
  - ❑ An audit of the actual payroll after policy expiration allows the insurer to determine the final premium.

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**Premium Adjustments**

- ❑ An experience rating plan adjusts the premium for a future period based on the insured's own loss experience for a period in the recent past.
  - ❑ Produces an experience modification, which is a rate multiplier.
  - ❑ Past period is typically the three-year period beginning four years before policy inception.
- ❑ Provides insureds with an incentive to implement risk control measures that reduce workplace accidents.

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**Premium Adjustments**

- ❑ A retrospective rating plan adjusts an insured's premium for a policy period based on the insured's own losses during the same period.
  - ❑ Insured pays an estimated premium at the beginning of the period.
  - ❑ Insured receives either a refund or a bill after the end of the period.

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**Premium Adjustments**

- ❑ Other premium adjustments include:
  - ❑ Premium discount – many of the expenses of providing workers compensation insurance do not increase proportionally with increases in premium.
  - ❑ Expense constant – a flat charge designed to cover administrative expenses.

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**Premium Adjustments**

- ❑ Other premium adjustments include:
  - ❑ Deductible plans – insured can reduce its premium by selecting a deductible plan.
    - ❑ Large deductible plan allows the insured to self-insure most of its claims.
  - ❑ Dividend plans – cost of the insurance can be reduced by dividends declared by the insurer.
    - ❑ Dividends are a return of a portion of the premiums paid.

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**Example**

- ▣ ABC Company has a total payroll of \$500,000.
  - ▣ Rate is 25 cents per \$100 of payroll.
- ▣ Estimated premium:
  - ▣ Base premium = 5,000 x .25 = \$1,250
  - ▣ Experience modification = 1.30 = \$ 375
  - ▣ Estimated premium discount = (\$ 200)
  - ▣ Expense constant = \$ 50
  - ▣ Estimated premium = \$1,475

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**Practice**

- ▣ Which one of the following statements is correct regarding the rating of workers compensation insurance?
  - ▣ A. Several states have independent rating bureaus for workers compensation insurance.
  - ▣ B. The retrospective rating system identifies groups of similar employments whose experience is combined to establish rates.
  - ▣ C. The premium reflected on the Information Page of the policy is the final premium that must be paid by the employer.
  - ▣ D. With only a few exceptions, the premium base for workers compensation insurance is the total number of employees.

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