

# Workers' Compensation: What Your Small Business Client Should Know

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Small businesses face a multitude of legal issues across many different areas of law, making them a challenge for attorneys that represent them as clients. When a small business owner comes into your office for advice on issues that may arise through the course of conducting his or her business, workers' compensation insurance may not be at the forefront of your mind when considering what advice to give.

As an attorney for injured workers, I am often hired because a small business owner failed to secure workers' compensation insurance or did not understand his or her obligations. A basic knowledge of how workers' compensation claims are handled and some of the intricacies that follow under certain circumstances can go a long way in helping your client avoid some of the pitfalls that many small businesses have experienced by not taking a few simple steps to ensure compliance with the rules and regulations found in KRS 342 and 803 KAR 25.

Hiring employees is a big decision that comes with responsibilities and financial risks. Some employers may see workers' compensation insurance as an overly burdensome expense, but it may become critical to the survival of

the business in the event of a workplace injury. An injured worker is entitled compensation for lost wages, medical expenses, permanent impairments and other qualified expenses. Workers' compensation insurance protects the employer from liability for these expenses by transferring the financial risks of a workplace accident to the insurance company.

The very first thing that your small business client should know and understand about worker's compensation insurance is that it is required by law. Regardless of the number of employees, all employers in the state of Kentucky are required under KRS 342 to obtain workers' compensation coverage from the moment they hire their first employee. This includes both part-time and full-time employees. Although there are some exemptions under KRS 342.650, most employees are going to fall under the Act. It is imperative that your client understands the importance of securing and maintaining coverage.

Once the workers' compensation coverage is secured by the employer, it must afford every employee the opportunity to become informed about its workers' compensation program. Certain information about the coverage must be displayed in the workplace at its principal

office and such other locations where employees customarily report for payroll and personnel matters. This posted notice must include the name of the workers' compensation insurance carrier and policy number, and it must set forth the means to access medical care for injuries, the employee's obligation to give notice of accidents and such other matters concerning the employee's rights under the workers' compensation chapter.

Many employers have had employees moving to work-from-home situations since the COVID-19 pandemic. This has caused some employers to erroneously think they no longer need to carry workers' compensation insurance. However, skipping coverage could result in penalties and fines, as well as open the business up to financial liabilities. Employees in the home environment can still develop a work-related injury or illness.

As a general rule, if an employee is injured while performing any activity for the benefit of the employer, regardless of location, the employee may be entitled to workers' compensation benefits. The underlying question is whether the injury was caused by work activity.

Work accidents are not exclusive to physically demanding jobs. Office workers often suffer work related injuries. Employees can get injured doing the most seemingly mundane of tasks. There is always the possibility of the unpredictable. If the employee does not have proper insurance coverage, the business is put at risk.

A common mistake can be made when an employer hires staff on an independent contractor or 1099 basis. Although an employer is not required to carry workers' compensation insurance on independent contractors, simply labeling someone an independent contractor and giving them a 1099 is not sufficient. The relationship with an independent contractor must be truly independent to avoid liability from a workplace injury.

Under Kentucky workers' compensation law, determining whether a worker is an independent contractor or an employee is fact specific. The distinction between an employee and an independent contractor is made by examining the degree of control a business has over the worker. The courts will look at the nature of the employee's work as related to the business of the employer, the extent of control, the professional skill of the employee and the intentions of the parties.

A general contractor who subcontracts all or any part of a contract is liable for the payment of compensation to an injured employee of a subcontractor unless the subcontractor has already secured the payment of compensation. If your client uses independent contractors or is a general contractor, advise your client to always require proof of coverage from any potential subcontractors and to have an insurance agent that really understands

workers' compensation.

Another mistake that some small businesses make is to assume that an employee who does not have legal immigration status does not qualify for worker's compensation coverage. This is false. Any injured worker, regardless of immigration status, is covered under Kentucky workers' compensation. Your client should report the injury to their carrier just as they would for all other workers.

Your client should always promptly report any workplace injuries to the insurer. After reporting the injury, the employer should continue to cooperate with its carrier as there are specific recordkeeping and reporting requirements in KRS 342.038.

Securing workers' compensation insurance in Kentucky may not be enough if your client has employees who travel outside of Kentucky. Here in Louisville, there are many businesses that perform work in both Kentucky and Indiana. For example, a small business located in southern Indiana that takes on jobs in Kentucky absolutely needs to have coverage in both states. A policy for coverage in Indiana is not going to be sufficient to cover employees injured while working at a job site in Kentucky, and the carrier may deny the injured workers' claim, putting the liability directly on the employer, or seek reimbursement from the employer in a civil action after payment of the claim.

The Kentucky workers' compensation Act also applies to an employee injured while working outside of Kentucky if the principal place of employment is in Kentucky, or in many situations if he/she is working under a contract of hire made in Kentucky.

After explaining the importance of maintaining workers' compensation coverage, your client may ask if the expense can be somehow passed down to the client. Simply put, an employer cannot require the employee to pay any part of the premium for compensation insurance. It should not be taken out of their paycheck or billed to the employee in any manner.

Employees are critical to the success of a small business. Obtaining workers' compensation coverage and staying current on premiums is essential to the safety and health of your client's employees and to shield the employer from incurring a large financial loss in the event of a catastrophic injury to one of its workers. It is also required by law, and a small business operating without the proper insurance is subject to fines and penalties.

Joy Buchenberger, Buchenberger Law Office, is a plaintiff's workers' compensation lawyer licensed in Kentucky and Indiana. She advocates for injured workers so they can focus on healing. ■



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