

Failure to provide workers' compensation insurance

This document contains general information. It is not legal advice. Every situation is different and other laws might apply to your situation. If you have questions, contact an attorney, visit the Department of Labor and Industry website at www.dli.mn.gov/business/workers-compensation-businesses or call the workers' compensation hotline at 800-342-5354 and press 3.

General duty to insure

All employers are required by Minnesota Statutes section 176.181, subd. 2, to either: purchase workers' compensation insurance to provide benefits to their employees for work-related injuries; or obtain approval from the Minnesota Department of Commerce permitting self-insurance upon proof of the employer's financial ability to self-insure. There is no minimum number of employees an employer must have before insurance is required. An employer with only one part-time employee generally must provide coverage. Penalties may be assessed against employers that fail to properly insure its employees, regardless of whether an injury has occurred.

Consequences of failure to insure

If an employer fails to properly insure its employees, the commissioner of the Minnesota Department of Labor and Industry (DLI) may order the employer to: provide the required insurance coverage; refrain from employing any person at any time without the required insurance; and pay a penalty of up to \$1,000 for each employee for every week the employee was not insured.

If the DLI commissioner issues an order for failure to maintain workers' compensation coverage, an employer has 10 days to comply with or contest the order. If the employer does not file a written objection with the commissioner within 10 days, the order is considered final and cannot be appealed. If the employer contests the order, the matter will be referred to a workers' compensation judge to decide whether the penalty or other terms of the order are justified. If the employer loses and did not maintain the required workers' compensation insurance coverage while the case was pending, the judge may order the employer to pay additional penalties.

Enforcement

Minnesota Statutes section 176.181 gives the DLI commissioner authority to enforce the laws that require workers' compensation insurance coverage. Minnesota Statutes section 176.184 describes the commissioner's enforcement powers. These include the ability to enter and inspect a business and its records, take depositions, issue subpoenas and order the production of documents to determine whether the employer has the required insurance coverage. If coverage is required and the employer either has no coverage or inadequate coverage, the commissioner's representative will continue the investigation and determine what action, if any, is appropriate.

Employee remedies

If an employee suffers a compensable injury and the employer has not purchased insurance coverage or followed the proper procedures for self-insurance, the employee may ask the state Special Compensation Fund to pay the appropriate benefits. A workers' compensation judge will decide whether the employer is liable for the worker's injury. If so, and if the employer did not have workers' compensation coverage, then the judge will: order the Special Compensation Fund to pay all appropriate compensation benefits to the employee; and order the employer to reimburse the Special Compensation Fund for benefits paid and also pay the Special Compensation Fund a penalty in the amount of 65 percent of those benefits plus costs paid by the Special Compensation Fund.

Instead of requesting payment from the Special Compensation Fund, the employee may elect to sue the uninsured employer for the injury in a civil action for the full amount of the employee's losses. The amount awarded in such a lawsuit may be much higher than the amount of workers' compensation benefits due. In the lawsuit against the uninsured employer, the employer cannot claim the usual common law defenses to a personal injury lawsuit (such as assumption of risk) unless the employer can prove the employee was willfully negligent.