

SPECIAL REPORT

WORKERS' COMPENSATION FOR THE HOMEOWNER FOR INJURY TO DOMESTIC WORKERS

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Should you purchase a Workers' Compensation policy if you have domestic workers?

There is a great deal of confusion surrounding who must secure Michigan Workers' Compensation insurance.

Too often, homeowners and small businesses discover that their liability insurance won't cover claims for worker injuries. These types of losses would only be covered under a Workers' Compensation policy.

In some cases the Department of Labor will assess fines and penalties if they determine that the employer was required to maintain the coverage, but failed to.

The following questions and answers may provide guidance for those individuals trying to sort through these issues.

Question:

What does the law say about who is required to buy Workers' Compensation coverage?

Answer:

The Michigan Workers' Disability Compensation Act mandates that Workers' Compensation insurance must be carried by all private (not municipal) employers with:

1. One or more employees working 35 hours or more per week for 13 weeks or longer during the preceding 52 weeks; or
2. Three or more employees at one time, regardless of the number of hours worked.

Question:

What if I don't have one full-time or three part-time employees described above?

Answer:

If you don't have one full-time or three part-time employees then are you not required by law to purchase a Workers' Compensation policy. However, since there is no grace period, we recommend that you purchase a policy if there is any chance that you might have one full-time or three part-time employees in the near future.

While some homeowners policies provide coverage for medical payments or bodily injury liability, those policies will exclude coverage for injuries sustained by your employees. Moreover, medical payments coverage does not cover lost wages.

The typical homeowners policy does not provide the level of protection necessary to adequately address employee injuries or Workers' Compensation requirements.

Question:

Are domestic workers included as employees for purposes of determining whether coverage is required?

Answer:

The Workers' Compensation law defines a domestic worker as one "who engages in work or activity relating to the operation of a household and its surroundings."

The law excuses employers from providing Workers' Compensation coverage for those domestic workers that satisfy one of the following:

1. If they have worked less than 35 hours a week for 13 weeks or longer during the preceding 52 weeks, or

2. If the person is the wife, child, or other member of the employer's family residing in the home.

The law does allow an employer to voluntarily purchase Workers' Compensation coverage in order to gain the protection of exclusive remedy provision under the Workers' Compensation law. This means that the employee's claim for work-related injuries will be limited to the benefits defined under the Workers' Compensation law and the employee will be barred from suing the employer for non-economic injuries, like pain and suffering.

Question:

Employers are already required to deduct federal, state and local tax withholdings. Doesn't this also include Workers' Compensation?

Answer:

No. Federal Income Tax, Michigan Income Tax and FICA (Social Security) have nothing to do with Workers' Compensation insurance. Workers' Compensation must be purchased separately.

Question:

Can't I just call these workers independent contractors, pay them on a 1099 tax form, and avoid the tort liability and tax consequences?

Answer:

No. Calling someone an independent contractor does not make it so. Courts will look at a number of factors in determining whether an employment relationship exists. True independent contractor status is rare and typically involves a one-time service with little or no input from the owner. One example would be a plumber who is hired to fix a toilet.

The Inevitable Question:

Is Workers' Compensation coverage expensive?

Answer:

A Workers' Compensation policy for one part-time domestic worker can be as little as \$175 annually or \$350 for one full-time worker. Prices vary depending on the description of work and current rates.

SUMMARY

We recommend that domestic employers purchase a Workers' Compensation policy regardless of the number of workers. Given the limited coverage on a homeowners policy, the fluid definition of who is required to maintain coverage, the benefits of voluntary participation, and the minimal premiums, a Workers' Compensation policy is an effective way to manage the domestic aspects of the liability loss exposure.

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