



EARLY CARE & EDUCATION LAW UNIT

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WORKERS' COMPENSATION INSURANCE FOR FAMILY CHILD CARE BUSINESSES

The Workers' Compensation Act entitles employees to receive prompt, effective medical treatment for on-the-job injuries no matter who is at fault. In addition to needed medical care, workers' compensation provides other benefits to employees to encourage them to seek prompt medical assistance, including disability benefits that allows injured employees to receive workers' compensation payments while they are unable to work. This prevents the worker from returning to work injured and potentially making the injury worse. Best for the employer, the Workers' Compensation Act also prohibits employees from suing employers who have workers' compensation coverage because of on-the-job injuries. As a child care provider, you are required by law to obtain workers' compensation coverage for your employees.¹ This handout is intended to provide general information regarding workers' compensation insurance.

AM I REQUIRED TO CARRY WORKERS' COMPENSATION INSURANCE?

If you employ anyone in your family child care business, your employee is entitled to workers' compensation coverage. The term "employee" includes hourly, salaried, part-time, full-time, and temporary employment.² You are not exempt from obtaining workers' compensation coverage even if your employee(s) only works a few hours or occasionally. You are also not exempt from obtaining workers' compensation insurance if your employee is related to you (unless they have an ownership interest in the business).³

Coverage is *optional* for any person who has an ownership interest in the business. A person with ownership interest has the right to both manage the business and sell the part of the business that the person owns. It is important to note that an owner who acts like an employee (takes direction from a superior or is paid a wage or salary) will likely be considered an employee and thus must be covered by workers' compensation insurance.

¹ Labor Code § 3200.

² Please note: an employee's immigration status does not affect his/her right to claim workers' compensation benefits for on-the-job injuries. As an employer you must carry workers' compensation insurance even if your employees do not have legal immigration status.

³ There is a family member exclusion from workers' compensation insurance requirements, but it only applies to persons employed by their parent, spouse or child to perform specific domestic or residential duties. See Labor Code §§ 3351 and 3352.

For example, if your daughter has a five percent ownership interest in the child care business, but she gets a paycheck from the business, you make most decisions, and she works under your direction, she will be considered an employee, and you will need to purchase Workers' Compensation Insurance to cover her. Again, coverage is *required* for all family members with no ownership interest that work in your family child care business, including parents, children, siblings, nieces and nephews, etc.

If a person is considered an *independent contractor* then that person does not need to be covered by your workers' compensation insurance. An independent contractor is a person who you hire for a specific project that is not your primary business. Some factors in the test for determining whether a worker is an employee or independent contractor include whether you control or direct the manner in which they do the work, how long the worker will be working for you, and whether they are doing work that is essential for your business.⁴

For example, a speech therapist hired by a parent to assist a child while in your care might be considered an independent contractor because her purpose is to provide speech therapy as opposed to your purpose of providing quality child care. Also, since a speech therapist is educated specifically for speech therapy, you do not have to tell her how to do her job. Thus, she is more likely to be found to be an independent contractor, as long as you do not have an ongoing relationship with her. On the other hand, if you hire an assistant, her purpose is the same as your purpose: to provide quality care to the children. Thus, she is furthering the essential part of your business for an unspecified amount of time, so she is more likely to be considered an employee, even if she has specialized training.

All workers are automatically assumed to be employees until proven otherwise by the employer. The consequences of not carrying workers' compensation insurance for your employees are very high so if you are at all unsure about whether the person working for you is an independent contractor or an employee, it is best to be cautious and assume that the person working for you is an employee and should be covered by a workers' compensation policy.

If you have questions regarding whether you hired an employee or an independent contractor, see the Department of Industrial Relations information sheet to determine whether a worker is an independent contractor.⁵

HOW DO I ACQUIRE WORKERS' COMPENSATION INSURANCE?

You may contact the State Compensation Insurance Fund at (877) 405-4545, or visit their website at www.statefundca.com. State Compensation Insurance Fund is a private insurance company that California created to ensure that all employers have access to workers' compensation insurance. Additionally, you may contact other private workers' compensation insurance carriers to request an application and a quote. By requesting quotes from multiple insurance providers, you may be able to find a better price. Public Counsel does not endorse or recommend any insurance carriers.

⁴ Note that there are additional factors that may be considered by the Department of Labor Standards Enforcement. You can find all of the factors that are considered in this FAQ sheet:

www.dir.ca.gov/dlse/faq_independentcontractor.htm.

⁵ www.dir.ca.gov/dlse/faq_independentcontractor.htm.

HOW IS THE WORKERS' COMPENSATION INSURANCE RATE DETERMINED?

There are three factors that determine your Workers' Compensation Insurance rate:⁶

1) First, the insurance company classifies your business based on the industry and the type of work your employees do. Child care is a physical job and the workers' compensation rate assigned by the insurance company will, in part, reflect the risk that your employees will get injured. The insurance company determines this rate using injury information gathered from the entire state;⁷

2) Second, the insurance company will look at your expected payroll.⁸ The insurance company multiplies the above classification by each \$100 of your payroll. You can manage some of your insurance costs by keeping your payroll lower;

3) Last, the companies factor in your experience modifier. The experience modifier is a change in the premium based on your business's history of claims. New businesses generally have an experience modifier of 1.00. This means that a new businesses' base rate before the experience modifier is the same as their rate after factoring in the experience modifier. After a certain number of years with workers' compensation insurance from one insurance company, the company will adjust your rate based on the number of accidents reported. This could mean you get a discount—if your experience modifier is lowered—or are charged an extra premium—if your experience modifier is raised and this is all based on what has happened throughout your enrollment in that company's workers' compensation program.⁹

Many child care providers will have to pay a *minimum premium*; this is the amount under which the insurance company will not provide you with a workers' compensation policy. Even if you hired an assistant to help with your child care for only a few hours a week, you would still need to pay the insurance company's minimum premium.¹⁰

WHAT HAPPENS IF AN EMPLOYEE GETS INJURED AT WORK?

When an employee is injured on the job, you must provide a workers' compensation claim form¹¹ to the employee. You need to provide this form within one day of finding out about the injury. The form has an "employer" section that should be filled out before giving it to the employee. The employee must

⁶ See the frequently asked question "How is workers' compensation premium calculated?":

www.statefundca.com/home/StaticIndex?id=http://content.statefundca.com/about/FAQs.asp.

⁷ The classification code for child care centers is 9059, which, as of July 1, 2015, has a pure premium rate of \$4.79.

See www.wcirb.com/content/day-care-centers. The pure premium is the amount that the state advisory board believes that insurance would cost without overhead or other charges. www.wcirb.com/guide-to-workers-compensation/rates/pure-premium-rates. Insurance rates are typically more expensive than the pure premium rate. www.wcirb.com/guide-to-workers-compensation/rates/insurer-rates.

⁸ State Fund will evaluate your actual payroll at the end of the year to finalize the insurance bill. Then, they will issue a refund if you overpaid, or an additional bill if your payroll was higher than expected.

⁹ www.wcirb.com/guide-to-workers-compensation/experience-rating.

¹⁰ www.insurance.ca.gov/0100-consumers/0010-buying-insurance/0080-compare-premiums/0010-workers-comp-rate-comp.

¹¹ You can find the form on the Department of Industrial Relations' website: www.dir.ca.gov/dwc/dwcform1.pdf.

return the form to you. Once it is returned and signed by both parties, you must provide a copy to both the employee and the insurer within one working day of your receipt of the form.

In addition, you must submit an Employer's Report of Occupational Injury or Illness¹² form to your insurance company's claims administrator within five days of finding out about the illness or injury.

The best way to ensure that your employee gets the care that he or she needs, and to prevent any adverse action against you is to keep an open line of communication between you and your employee. You should keep in communication with the employee to ensure that the insurance agency is taking care of the claim.

OTHER WORKERS' COMPENSATION ACT REQUIREMENTS

Every employer must post a notice regarding workers' compensation where employees often go, and that can be easily read by the employees.¹³ The notice must inform the employees of the compensation insurance carrier and the name of the person responsible for adjusting the claims. The notice must also include information on:

1. How to get emergency medical treatment, if needed.
2. The kinds of events, injuries, and illnesses covered by workers' compensation.
3. The injured employee's right to receive medical care.
4. The rights of the employee to select and change the treating physician.
5. The rights of the employee to receive temporary disability indemnity, permanent disability indemnity, supplemental job displacement, and death benefits, as appropriate.
6. To whom injuries should be reported.
7. The existence of time limits for the employer to be notified of an occupational injury.
8. Protections against discrimination.
9. The Internet Web site address and contact information that employees may use to obtain further information about the workers' compensation, including the location and telephone number of the nearest information and assistance officer.

In addition, every employer must give written notice of the employer's workers' compensation insurance to new employees by the end of the first pay period.¹⁴ It should state all of the above information, plus the following:¹⁵

1. Generally, how to obtain appropriate medical care for a job injury.
2. The role and function of the primary treating physician.
3. A form that the employee may use as an optional method for notifying the employer of the name of the employee's physician or chiropractor.

¹² The form is made available by the Department of Industrial Relations:

www.dir.ca.gov/dosh/DoshReg/Form5020.pdf.

¹³ California Labor Code § 3550.

¹⁴ California Labor Code § 3551.

¹⁵ California Labor Code § 3551.

You can find samples of the above documents (sample time-of-hire information sheet and sample posters) at the Department of Industrial Relations website.¹⁶

WHAT ARE THE CONSEQUENCES OF NOT BEING INSURED?

Failure to obtain workers' compensation coverage is a violation of law, subjecting you to possible fines of up to double the amount of the premium, as determined by the court, that would otherwise have been due to secure the payment of compensation during the time compensation was not secured, but not less than ten thousand dollars (\$10,000), or possible imprisonment in the county jail for up to one year, or both.¹⁷ Also a court has the discretion to charge an employer the cost of investigation in addition to any other fines involved.¹⁸

In addition to the possible fines and penalties, if you have no workers' compensation coverage and an employee incurs a job-related injury or illness, you will be personally responsible for the employee's medical expenses.

If an employee makes a claim for an injury that occurred when you lacked coverage, and you thereafter fail to obtain coverage in a timely manner, you could face additional penalties of between \$2,000 and \$10,000 per employee.¹⁹

If the state ever requests that you provide proof of workers' compensation insurance, and you are unable to provide proof, a "stop order" will be issued prohibiting the use of employee labor until the coverage is obtained. In addition to the "stop order," you can be assessed penalties; and if you disobey a "stop order" you could be fined, or imprisoned in the county jail, or both.²⁰

Important note: it is a misdemeanor to fail to post the name of your workers' compensation carrier in a place where your employee(s) can easily see it.²¹

ARE PREMIUMS TAX DEDUCTIBLE?

Yes, workers' compensation insurance premiums are tax deductible as a business expense. For a cash-basis business owner, current or prior-year premiums may be deducted in the year paid. Whether the cash or accrual method of accounting is used, advance payments may be deducted only in the year to which they apply.

DOES MY HOMEOWNER'S INSURANCE COVER MY EMPLOYEES?

It is not likely that your homeowner's insurance will cover someone you have hired to work in your family child care business. Review the coverage limitations under your homeowner's policy. If workers'

¹⁶ www.dir.ca.gov/dwc/dwcrep.htm.

¹⁷ California Labor Code § 3700.5.

¹⁸ California Labor Code § 3700.5(c).

¹⁹ California Labor Code § 3722(d).

²⁰ California Labor Code §§ 3710.1, 3710.2, 3722(a).

²¹ California Labor Code § 3550(b).

compensation claims for your child care employees are not covered, you will need to acquire separate workers' compensation insurance.

ADDITIONAL RESOURCES

For further information regarding workers' compensation insurance, please refer to:

1. State Compensation Insurance Fund:
(877) 405-4545 or www.statefundca.com.
2. California Department of Industrial Relations:
(415) 703-5070 or www.dir.ca.gov.
3. DWC Information & Assistance Unit:
(800) 736-7401 or www.dir.ca.gov/dwc/ianda.html.

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