**Workers' Compensation and OSHA FAQ**

Workers Compensation/Safety

1. **Who is required to have Workers’ Compensation coverage?**

The requirements vary by state. In NC employers with three or more employees are required to carry coverage. This number does not include owners/partners. In SC, employers with four or more employees are required to carry coverage. Sole proprietors, LLC members and partners are no required to be covered. There are some exceptions to these rules; however, you can contact Catapult Advisors if you have a specific concern related to your industry. It is always important when you hire employees out of state or have them working on a job site out of state to talk to your carrier about state requirements for coverage.

1. **When and how do I report workplace injuries and illnesses to the state?**

Keep in mind that your Workers’ Compensation carrier should be able to help you through the process and may even take care of sending any required forms. You should check with them first to understand what your responsibilities are. However, in general, the requirements are as follows:

**NC:** If the employee is misses more than 1 day or work due to the injury, *or*, if the employee’s medical expenses exceed $4000, a [form 19](http://www.ic.nc.gov/forms/form19.pdf) should be filed [online](http://www.ic.nc.gov/forms.html) within 5 days of learning about the injury or allegation of injury. A copy of this form 19 must be provided to the employee together with a blank [form 18](https://www.ic.nc.gov/forms/form18a.pdf) . A good summary can be found here: <https://ic.nc.gov/employers.htm>

**SC:** SC has its own reporting [form](https://wcc.sc.gov/sites/default/files/Documents/Main/Claims/Claims_Forms/Form12A.pdf) (12 A First Report of Injury) which [must be retained for a period of two years](https://www.law.cornell.edu/regulations/south-carolina/S-C-Code-Regs-67-411) when an injury causes more than 1 lost workday or less then $500 in medical treatment IF the employer pays the costs. Fatalities must be reported as well. In an injury exceeds $2500 in medical treatments or results in compensable lost time, the form 12A must be sent to the commission within 10 days. . If the form was sent previously, it should be resent and marked “Previously Processed As Medical Only”. You may file certain forms via EDI/electronically, and this document provides specific email addresses for each form: <https://wcc.sc.gov/sites/default/files/Documents/Main/Claims/Email_Guide.pdf>

You can also find good information about SC’s Workers’ Compensation program here: [website](https://www.wcc.sc.gov/).

1. **Who are ‘employees’ under Workers’ Compensation regulations?**

This varies from state to state. However, it is best to talk to your carrier about your state’s rules. In general, anyone compensated directly by your organization who is not correctly classified as an independent contractor. (Example: W2 employees, paid interns, and in North Carolina unpaid interns. Generally unpaid student interns performing non-manual labor are not covered under workers compensation). Again, if you have specific questions, it is best to call an advisor.

Correct classification of employees/independent contractors/volunteers is very important. If a volunteer is compensated in any way (housing, etc.) they may be covered. Volunteers are generally not covered otherwise. Temporary agency employees are not covered; however, they need to be considered for OSHA logs. In some cases, if a sub-contractor does not cover their organization, you may be required to cover under your insurance, so it is best to make sure you require proof of workers compensation coverage for sub-contractors.

1. **What is a work-related injury or illness?**

Generally, it is an illness or injury which arises out of the course of employment. There are exceptions in each state. For example, choking on food even if it is while working, may be excluded, but having a car accident in a company owned parking lot on a break may be covered. Contact your Workers Compensation Administrator before automatically ‘declining’ a case due to not being work-related. Your carrier can analyze the situation and determine the correct course.

1. **What kind of notification/training do I need to provide employees?**

* Workers’ Compensation and OSHA notices must be posted; each state has different requirements so you can either use a poster such as Catapult’s for your state (an all-in-one) or review the DOL page in each state for such posters.
* Initial and ongoing safety training is helpful and should be recorded. It is required in certain cases under OSHA.
* Employees should be notified clearly and trained in orientation on how to report an injury or illness. Late reporting can result in inability to research the incident properly, or an employee going to his/her doctor versus a workers’ compensation authorized health care provider.
* Managers should be trained on reporting procedures.
* Consistently discipline employees and supervisors who deliberately are unsafe or who do not follow work rules, including reporting incidents (make sure they are well trained first).

1. **What do I do when someone is injured?**

* The employee should be trained to immediately report the injury to a member of management.
* If there is an emergency, the manager should be trained to contact 9-1-1, and they should know when to ask an employee to go for medical treatment, what forms they should take with them and whether to drug test.
* The manager should complete a form of some kind which can help you complete reporting requirements and submit immediately to HR/safety.
* Report the injury/illness to your Workers Compensation Carrier/state as required by your carrier. (See state law question above.)
* If you have no separate safety/OSHA department, begin gathering evidence (witnesses/video) to help support or refute the employee’s claims.
* If an employee dies, loses an eye, has an amputation or is hospitalized, immediately call your local OSHA office to report the incident.
* Record the information in your OSHA records if appropriate and keep them updated.

1. **What if the employee can’t return to work?**

Modified “light” duty work should be offered if at all possible. Time away from work can affect your experience modification factor and being at the worksite helps the employee feel valued. Plan on having the employee and supervisor sign off on light duty restrictions with details of what the employee will be doing on the job to comply with the restrictions.

Generally, the employee will be paid by Worker’s Comp at 66 2/3% of their average weekly wages which is generally not taxable income. You will have to support the payments by completing wage forms for your carrier. Time off from work will affect your experience modification rating more than a simple medical cost, so it is ideal to find a way to get them back to work if possible.

If the employee cannot return to work, immediately evaluate for FMLA or other types of leave in your organization. If you have no available leave for this employee, consider a leave accommodation under the ADA. Workers Compensation leaves can run concurrent with leave under the FMLA.

Terminating the employee due to “no leave available” before the case is settled and finalized could adversely affect the results. Time out of work for a terminated employee who is unemployed will generally continue to be paid by Workers Compensation.

Require your employee to send all relevant doctor’s notes regarding work restrictions or time off to you as well as to immediately update the carrier.

1. **What if the employee’s claim is denied?**

* Workers' Compensation Benefits will stop at that time.
* You will consider the employee’s leave or light duty under your other policies (FMLA/ADA, etc.) Short Term Disability may begin to cover denied claims.
* You should take no adverse action against the employee, unless you have clear evidence of deception or fraud.

1. **What are my OSHA responsibilities relating to injuries?**

* OSHA standards are extensive. This guide only focuses on injury reporting.
* OSHA 300 logs must be maintained for five years for each establishment, along with an OSHA 301 incident report form (or equivalent, such as the form 19) for most companies with 10 or more employees. If you have 10 or more employees and are wondering whether you are required to maintain OSHA logs, then this is a [link](https://www.osha.gov/recordkeeping/presentations/exempttable) to let you know which industries are exempt from this requirement. Some industries (mining, railroad) are covered by other agencies and OSHA recording rules may not apply to them.
* Medical records (doctor evaluations or exams) should be retained throughout employment and for thirty years thereafter.
* If your company is required to report injuries on the OSHA 300 log, they should be recorded within seven calendar days. Minor ‘first aid’ injuries as defined by OSHA do not apply.
* If classified as recordable, injuries to temporary employees and other outside employees who are under the direction/control of your company should be recorded in your OSHA logs, even if they are not covered by your Workers Compensation.
* Employers must report worker fatalities within 8 hours and amputation, loss of an eye or hospitalization of a worker within 24 hours (osha.gov includes online and phone reporting methods.
* Records must be maintained at the worksite for at least five years. In some cases, such as in the case of death or a hazardous material, the retention period could be longer. (See record retention guidelines on our website.)
* Each February through April, employers must post a summary (form 300A) of the injuries and illnesses recorded the previous year. In general, there should be one posting per site even if no injuries occurred. Records must be made available upon request to employees, ex-employees and their representatives.
* Unless exempted from this duty based on the regulations, your organization must submit OSHA 300A records online annually.

1. **What does OSHA consider a recordable injury?**

Injuries will be considered recordable if they meet the guidelines set out by the OSHA. Details are available [here](https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.5). In general, minor first aid injuries which do not require prescription medications would not be recordable. (Details on first aid definition [here](https://www.osha.gov/recordkeeping#firstaid_definition).) Injuries which require more than first aid and/or which require time away from work (other than the day of the injury) or modified duty are generally recordable. Remember that Workers’ Compensation compensable injuries are not always OSHA recordable.

1. **Which companies have to report injuries electronically to OSHA?**

Certain employers need to use the OSHA reporting system to report injuries to OSHA by (generally) March 22 of each year for the previous year. <https://www.osha.gov/injuryreporting/>

* If you have 250 or more employees at peak employment during the last calendar year, to include temps and part-timers, you need to electronically submit OSHA 300A information.
* If you have 20 – 249 employees and are in certain [high-risk industries](https://www.osha.gov/recordkeeping/naics-codes-electronic-submission) that have had historically high rates of occupational injuries and illnesses, you will also have to submit electronically. This includes everything from grocery stores to manufacturing.
* Employers with under 20 employees never have to report electronically.

**Catapult has a partnership with Towne Insurance/Emerge Apps and offers members a free online application to manage this process.**

Written by a Catapult Advisor