

WORKERS' COMPENSATION

PROTECTING YOUR WORKFORCE AND YOUR BUSINESS



Montana Department of
LABOR & INDUSTRY

ASSISTANCE *for*
BUSINESS CLINIC

DISCLOSURES

- I do not work for Montana State Fund or any other insurer
- I am not a lawyer or claims adjuster
- **Every** claim is fact specific



PRESENTATION OUTLINE

- Workers' Compensation Insurance
- Uninsured Employers Fund
- Montana's Public Policy
- Extra Territorial Agreements
- Course and Scope of Employment
- Reporting Requirements
- How to File a Claim
- Benefits Provided
- *New* Presumptive Firefighter Law
- 5yr Closure Rule
- Benefit Dispute Resolution
- Stay at Work/Return to Work



WORKER'S COMPENSATION INSURANCE

- Workers' Comp insurance – **MANDATORY** if you have employees
 - Includes undocumented workers, minors, part-time or full-time (**MCA 39-71-118**)
 - Not intended to make injured worker whole
- WC is **ONLY** remedy available to injured workers - cannot sign away their rights – bound by **Exclusive Remedy Principle**
 - **Goal:** Provide benefits to workers injured on the job and death benefits to families of workers killed on the job

The Workers' Compensation Act (**MCA 39-71-105**)

- **No Fault System** - Eliminates the need to determine who is at fault
- Ensures workers who are injured or suffer occupational disease will have benefits to assist their recovery
- Limits employer's liability to their injured workers
- Protects employers from costly and unpredictable lawsuits

EXEMPT EMPLOYMENT (MCA 39-71-401)

Most Common:

- Household or domestic employment
- Dependent member or spouse of an employer

Others:

- Freelance correspondent, newspaper carrier
- Licensed cosmetologists and barbers
- Official, timer, referee, umpire, or judge, at an amateur-athletic event
- Companionship services or respite care
- Real estate or insurance salesperson paid solely by commission
- Service performed by an ordained, commissioned or licensed minister
- **Independent contractor working under an ICEC**
- Casual Labor (Employment not in the usual course of the trade, business, profession or occupation of the employer)

COVERAGE OPTIONS

Plan 1 - Self Insurance – Must obtain authorization from DLI and maintain minimum security deposit of \$250,000

Plan 2 - Private Carrier – Can choose who they want to insure

Plan 3 – Montana State Fund – Quasi government agency providing coverage in MT

- Costs vary between carriers – benefits are identical as defined under statute

UNINSURED EMPLOYER'S FUND (MCA 39-71-503 & 39-71-504)

- Created to provide benefits to employees injured on the job while working for uninsured employer
 - Employer is 100% liable for medical & wage loss
 - Medical benefits are capped at \$100K
 - Could face civil action by injured employee as well
 - Limits employer's defense
- An uninsured employer will be subject to \$200 fine or 200% of what the premium would have been for uninsured period, whichever is greater
 - Additional penalties, late fees, interest and liens may apply
 - Possible cease & desist order issued
 - Responsible for medical and indemnity claims
 - Uninsured employers will be billed by DLI

MONTANA'S PUBLIC POLICY (MCA 39-71-105)

- Provides medical and wage-loss benefits to injured workers
- Return the worker to work as soon as possible – utilizing Stay At Work/ Return to Work program
- Reasonable and constant rates for employers
- Minimize reliance on lawyers and the Courts – **Exclusive Remedy Principle**
- Construed according to its terms and not in favor of either party
- Benefits not available for stress claims – “mental-mental” and “mental-physical claims”
- Occupational Disease (OD) recognized with different reporting requirements because of nature of exposure
 - Caused by events occurring on more than a single day or work shift
 - Requirements for filing OD claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease

EXTRA-TERRITORIAL AGREEMENTS (MCA 39-71-402)

- Montana businesses that contract with out-of-state businesses to perform work in Montana
 - Allows employer to bring/send employees to another state without being required to purchase WC insurance in the other state
 - Montana has reciprocity agreements with 7 states
 - WA, OR, UT, WY, ND, SD & ID
- Construction industry is **NOT** eligible for coverage
 - Must purchase WC policy & register with DLI Contractor Registration
 - **Exception:** Wyoming construction contractors

COURSE & SCOPE OF EMPLOYMENT (MCA 39-71-407)

- Injury must arise out of employment
- Occurs on the employer's premise or job site during working hours
- Montana's Supreme Court applies a four-factor analysis to determine if activities were prescribed by the employer:
 1. Whether the activity was undertaken at the employer's request
 2. Whether the employer, directly or indirectly, compelled the employee's attendance at the activity
 3. Whether the employer controlled or participated in the activity
 4. Whether the employer and the employee mutually benefited from the activity

LEGISLATIVE CHANGES TO COURSE & SCOPE (MCA 39-71-407)

- Injury does **NOT** arise out of employment when the employee is:
 - On a paid or unpaid break
 - Is not on worksite of employer
 - Is not performing any specific tasks for the employer during the break; **OR**
 - Engaged in a social or recreational activity, regardless of whether the employer pays for any portion of the activity
- Does **NOT** apply if employee is injured on paid time or whose attendance is required or requested by employer

COURT CASES EFFECTING COURSE & SCOPE

COMINGS & GOINGS: MCA 39-71-407 (4)(a)

- “An employee who suffers an injury or dies while traveling is not covered unless”:
 - the employer furnishes the transportation **OR**
 - the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee’s benefits **OR** employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; **OR**
 - the travel is required by the employer as part of the employee’s job duties

PREMISES RULE: *Massey v Selensky 1987 (Montana Supreme Court)*

- Once an employee has arrived at the employer’s premises within a reasonable time before their shift, they are no longer going to work and are in the course of employment

BREAKS: MCA 39-71-407 (2)(a) & *Holtz vs Indemnity Insurance 2016*

- An injury does not arise out of and in the course of employment when the employee is:
 - “...not performing any specific tasks for the employer during the break”
 - Legislature did not limit the statute to short breaks; thus, it applies to all breaks, regardless of duration

TRAVEL: *Correa v Rexroat 1985 (Montana Supreme Court)*

- “It is well-established in Montana that traveling employees are not covered 24 hours a day, without limitation, regardless of the conduct or activity in which they are involved. The employee must remain in the course and scope of employment while traveling in order for the injury to be compensable.”
- “A traveling employee is not within the course of employment merely by staying in a city away from home”

REPORTING REQUIREMENTS

- Injured employee must notify employer or employer's insurer within **30 days** of the accident that caused the injury (**MCA 39-71-603**)
 - Oral or written to supervisor or manager – **NOT** co-worker
 - Time and place where accident occurred and nature of injury
 - Actual knowledge of accident or injury by the employer at the time of injury is equivalent to notice
- Employers have **6 days** from the date of notification of injury or OD to notify insurer or DLI (**ARM 24.29.801**)
- Injured worker has **12 months** from the date of injury to file a FROI with employer, insurer or DLI (**MCA 39-71-601**)
- Claims for Occupational Disease compensation must be filed within **1 year** from the date the worker knew or should have known the condition resulted from an OD (**MCA 39-71-601**)
- Insurers shall accept or deny a claim within **30 days** of receipt of signed claim for compensation (**MCA 39-71-606**)
 - Reservations of Rights:
 - Payments w/in 30 days w/out admission of liability (**MCA 39-71-608**)
 - Payment of medical claims w/out acceptance of liability (**MCA 39-71-615**)

WHEN ARE YOU ELIGIBLE FOR BENEFITS

Injury (MCA 39-71-119): Physical harm or death caused by an accident established by objective medical findings. Harm to specific part of the body caused by a specific event

- Injury must arise out of work, is job-related and occurred on employer's premises or job site
- Employee must meet burden of proof
- Legal standard: more probable than not

Occupational Disease (MCA 39-71-105): Harm, damage or death, established by objective medical findings, arising out of or contracted in the course of employment. Occurs over more than a single day or shift and is the major contributing cause

HOW TO FILE A CLAIM

<http://erd.dli.mt.gov/work-comp-claims/data-management>



Data Management

The **Data Management Section** is responsible for the collection, data quality and maintenance of workers' compensation claim and injury information. The unit uses the claim data and other information sources to complete a comprehensive annual report on workers' compensation for the Governor and the legislature, along with performing varied research on the workers' compensation system and related topics. Section staff work directly with insurers and third party administrators to ensure compliance with Montana claim reporting requirements and adherence to national standards.

Contact Information

Data Management Manager

- Doug Roope (doug.roope@mt.gov or 406-444-1600)

Related Links

[Data Management Forms](#)

[Data Reporting](#)

[Workers' Compensation Claim Reporting by Insurers](#)

[Electronic Prior Claim \(EPC\) History System](#)

[Notice Entry Access](#)

FIRST REPORT OF INJURY (FROI)

OSHA Log Case #

First Report
of Injury or Occupational Disease
Montana Department of Labor and Industry
PO Box 8011, Helena, MT 59604-8011

Adjuster Date Stamp

Worker

Last Name		First Name		M.I.	Date of Birth		Social Security Number	
Mailing Address				City		State	Postal Code	
Phone Number	Education	<input type="checkbox"/> Less Than High School <input type="checkbox"/> GED or High School Diploma <input type="checkbox"/> Beyond High School	Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Unknown	Marital Status		Number of Dependents	
					<input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Widowed, Divorced, Single, Unmarried <input type="checkbox"/> Unknown			

Wages

Date Hired	Gross earnings for four pay periods preceding the injury						
Date/Amount /		Date/Amount /		Date/Amount /		Date/Amount /	
Employment Status		Number of Days worked per week		Wage	Wage Period		
<input type="checkbox"/> Full-Time <input type="checkbox"/> Part-Time <input type="checkbox"/> Piece Worker <input type="checkbox"/> Seasonal <input type="checkbox"/> Volunteer <input type="checkbox"/> Other					<input type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Month <input type="checkbox"/> Day <input type="checkbox"/> Bi-Weekly		
In addition to gross earnings cited above worker received				Estimated value if any		Time Employee began work	
<input type="checkbox"/> Room & Board <input type="checkbox"/> Overtime <input type="checkbox"/> Bonus <input type="checkbox"/> Commissions <input type="checkbox"/> Other:							
Worked next scheduled shift	Off work more than 4 work days	Date Last Worked	Date of Return to Work	Full wages paid for date of injury	Salary Continued		
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Sure			<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Accident Description

Job Title	Description of Accident						
Cause of Injury	Cause Code	Part of Body	Part Code	Nature of Injury	Nature Code	Date of Injury	Time of Injury
Date Disability Began	Date of Death	Names of Witnesses					
		1)		2)		3)	
Accident on Employer's Premises	Accident Address or Location						
<input type="checkbox"/> Yes <input type="checkbox"/> No	City		State	Postal code			
Date Employer Notified	Accident Reported to			Safety Equipment Provided	Safety Equipment Used		
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Medical

MEDICAL BENEFITS (MCA 39-71-704)

- Reasonable and necessary to treat the injury or OD
- Ensures the most appropriate medical care is being provided
- Claims on or after 7-1-2011 are subject to Utilization and Treatment Guidelines
 - **Evidence-Based:** what has been demonstrated to work, not what they think will work
 - Insurers are not responsible for treatment or services outside Guidelines
- Travel Expenses – Insurer reimburses injured worker for reasonable travel, lodging, meals, and misc. expenses incurred in travel to healthcare provider

CHOICE OF PHYSICIAN (MCA 39-71-1101)

- Injured worker has right to choose initial treating physician
 - Must be a physician licensed in Montana
 - Treating physician is responsible for the management and coordination of medical care
- Treating physician may refer the employee to other healthcare providers for treatment of injury
- After accepting liability insurer:
 - Must authorize any changes to designated treating physician
 - Pays for reasonable and necessary medical care related to the injury/OD

WAGE LOSS BENEFITS (MCA 39-71-736)

- 66 $\frac{2}{3}$ of average weekly wage (AWW) at time of injury
- Subject to state's average weekly wage (SAWW) - \$849
 - Waiting period: 32 hours or 4 days – whichever comes first
 - Compensation begins on 33rd hour or 5th day
 - Retroactive payments if total disability is 21 days or longer
 - Employee cannot double-dip
- If employee took sick leave during waiting period, may elect:
 - Repay employer for sick leave
 - Waive the retroactive payment for receipt of sick leave
 - Does not apply if vacation or PTO time is taken

DEATH BENEFITS (MCA 39-71-721)

- 66 $\frac{2}{3}$ of salary at time of death time
 - At least 50% of SAWW, but cannot exceed actual wages
- Paid to spouses, children and beneficiaries
- One-time payment of \$3,000 to parents of deceased worker with no beneficiaries
- Burial Expense – One-time payment up to \$4,000 (MCA 39-71-725)

VOCATIONAL REHAB BENEFITS (MCA 39-71-1006)

- Eligible for rehab benefits if:
 - Disabled Worker – Permanent impairment that precludes return to TOI job **AND** has an actual wage loss;
 - OR**
 - Has a 15% or greater impairment rating and no actual wage loss
- A vocational rehabilitation provider develops written plan for return to work or retraining
- Benefits paid for specified period in plan up to 104 weeks

NEW PRESUMPTIVE FIREFIGHTER COVERAGE (MCA 39-71-1401)

- Applies to firefighters covered under a current work comp policy:
 - Effective 7/1/19 for firefighters w/ at least 1 year experience
 - Presumed to have a claim for occupational disease caused by firefighting activities
 - Disease must manifest w/in 10 years of the last date engaged in firefighting activities
 - Capped at \$5M for each claim

NOTE: Only available to volunteer firefighter if employer elects coverage

5-YEAR CLOSURE RULE (MCA 39-71-717)

- Medical benefits terminate 60 months from the date of injury or OD
- A party wishing to reopen medical benefits can submit a petition to DLI
- Medical benefits may be reopened **ONLY** if:
 - Medical condition is direct result of compensable injury or OD
 - IW requires medical treatment to continue to work or return to work
 - Medical benefits closed by settlements or court order not subject to reopening
- Medical benefits may be reopened by Department if:
 - Request to reopen must be within 5 years of termination
 - Preponderance of evidence to support reopening
 - Remain open for two years w/ a review every two years

BENEFIT DISPUTE RESOLUTION (MCA 39-71-2411)

Goal: Resolve disputes at lowest possible level - any WC dispute having to do with a benefit can be appealed

Mediation:

- Mandatory
- Informal
- Non-Binding
- Confidential
- 80% resolution rate

WC Court: Established by Montana Legislature in 1975:

- If unresolved during mediation, dispute can proceed to WC Court
- Eliminates expense and delay of district courts
- Appeals go directly to the Montana Supreme Court

STAY AT WORK/RETURN TO WORK



RETURN TO WORK – GOOD FOR YOUR BUSINESS

- Despite our best efforts, employees get injured
 - What do you do?
 - What is Return to Work?
 - Assisting the injured worker to return as soon as possible after workplace injury to:
 - The same position with the same employer
 - OR**
 - A modified position with the same employer
 - Examples:
 - Working shorter hours
 - More breaks
 - Performing transitional duties
- Program Benefits
 - Employers with fewer injuries pay less
 - Less time off work = less impact on your premiums
 - Returning to work speeds an IW's recovery
 - Reduces the financial impact on worker
 - Reduces physical & emotional health effects
 - May reduce the risk of re-injury

RETURN TO WORK – GOOD FOR YOUR EMPLOYEES

- Effective RTW Strategy:
 - Encourages communication between employer & injured employee
 - Allows a skilled and experienced employee to continue working for you
 - Keeps loss of productivity to a minimum
 - Reduces the costs of training new employees
 - Creates an opportunity to complete work usually left undone
- How your employees benefit:
 - Keeps the employee active and speeds medical recovery
 - Shifts focus from “dis-ability” to ability
 - Provides a sense of job security
 - Allows the employee to maintain contact w/ co-workers
 - Shows you value your employee and their contributions to your company
- How to create a successful RTW strategy:
 - Believe in the program – for your company and your employees
 - Develop a written procedure for returning injured workers to workplace
 - Designate a RTW lead

SAW/RTW PRE-INJURY MODEL

- **BEFORE** injury or illness ever occurs:
 - Establish a strong safety program
 - Be proactive - create a **written** SAW/RTW policy for your place of employment
 - Identify light-duty positions and develop transitional RTW opportunities
 - Report all injuries to your RTW lead
 - Increase awareness of psycho-social barriers that influence absence from work:
 - Loss of contact with co-workers
 - Marital breakdown and bankruptcy
 - Ability to contribute to family and community
 - Substance abuse and addiction
 - Chronic & permanent disability

SAW/RTW POST-INJURY MODEL

- **AFTER** injury or illness occurs:
 - Begin RTW efforts on the first day of injury or within 72 hours of claim
 - Process is triggered when injury or illness occurs in the workplace – submit the FROI
 - Stay in contact with your injured employee
 - Utilize the MSF to determine if light duties are possible & make written job offer
 - Respect the confidentiality and privacy of the injured worker's medical records

- After employee returns to work:
 - Regularly check with the employee to see how recovering is progressing
 - Make certain any restrictions on work tasks are being met
 - Discourage hazing or negativity surrounding injured worker, if necessary
 - Notify claims manager if not able to accommodate ongoing restrictions

SAMPLE LIGHT DUTY JOB DESCRIPTIONS

Job Duties: In a dealer's auto parts department, takes orders from customers, utilizing telephone, fax & Internet. Checks on availability and price of parts, and advises customers. May write up order and invoice as appropriate.

Tools & Equipment: Telephone, computer, desk, chair, paper and pen or pencil

Frequency and Duration of Tasks: Worker can set task and speed level and has the flexibility to stand or sit as needed

Physical demands limited to the following:

1. Frequent – Lift paper & writing implements weighing less than one pound
2. Alternate sitting and standing as needed to write up orders and enter into computer
3. Frequent – Hand and grasp writing implements to organize and record information
4. Frequent – Fine finger manipulation to keyboard and organize paperwork

No additional demands will be required of the worker without approval of the attending doctor. Any reasonable accommodation can be considered.

Employer's Signature: _____

Date: _____

Employee's Signature: _____

Date: _____

Seldom = up to 10% Occasional = 10% - 30% Frequent = 30% to 70% Constant = over 70%

QUESTIONS

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Stay at Work/Return to Work
Employment Relations Division
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