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Workers' Compensation

An employer who fails to obtain coverage may be ordered to stop doing business.

The workers' compensation laws provide for the payment of compensation to workers who are injured on the job in Arizona. These laws provide an insurance fund and a schedule of benefits for workers engaged in manual or mechanical labor who are injured in the course of their employment. Employers subject to the workers' compensation laws are required to provide workers' compensation insurance to their employees.

Liability for Injuries

Except as discussed below, an employer who provides workers' compensation insurance is not liable for damages for injury or death of an employee, unless the employee rejected the workers' compensation coverage. If an employee rejects the employer's workers' compensation coverage, that employee retains the right to sue the employer for workplace injuries. To reject the coverage and retain the right to sue, an employee must give written notice to the employer *before* the injuries are sustained by him. An employer who receives such a notice from an employee must file it with his insurance carrier within five days.

An employer who fails to provide workers' compensation insurance may be sued for work injuries. In any action brought by an injured employee, proof of the injury will be

evidence of negligence on the part of the employer and *the burden will be on the employer to show freedom from negligence resulting in the injury.*

Every employer, except those in exempt occupations, must post and keep posted in a conspicuous place upon his premises, in English and Spanish and available for inspection by all workers, a notice advising employees of their right to reject the provisions of the compulsory compensation law. An employer must also advise employees that blank forms of notice are available to all employees at the office of the company. The required notice forms are available from any Arizona workers' compensation insurance carrier.

If an employer fails to post and keep posted the notice required by law, or fails to keep available at the place where the employees are hired the blank forms of notice to be signed by the employee, it will be optional for an injured employee to accept compensation under the workers' compensation law or to sue the employer in court for personal injury damages.

Payments from the Special Fund

An injured worker may file a claim for workers' compensation benefits with the Industrial Commission of Arizona (ICA). If the employer is not insured, the employee will be paid benefits identical to those paid by insurance carriers from the ICA's Special Fund. The employer will be notified by the ICA of his liability to the Special Fund, and this notice will include a penalty of 10% of the amount paid from the Special Fund or \$1,000, whichever is greater, plus interest on the amount expended. The payments made from the Special Fund and penalty act as a judgment against the employer.

Sanctions for Failure to Secure Coverage

An employer who fails to obtain coverage for his employees may be ordered by the court to stop doing business until he complies with the law and provides workers' compensation coverage. In addition, the ICA may assess a civil penalty on an employer who is not insured as required by law.

Employer's Duties after Injury or Death

Every employer who is required to furnish workers' compensation insurance must file with the ICA and his insurance carrier a written report of every injury or death. In the case of death, the report must be filed within 24 hours. In the case of injury or disease, the report must be filed within 10 days after receiving notice of the accident. The report form may be obtained from the workers' compensation carrier or the ICA. (It can also be downloaded from the ICA's Web site, www.ica.state.az.us.)

Upon learning of an accident resulting in injury to an employee, the employer must provide the employee with the name and address of the employer's insurance carrier, the policy number, and the expiration date.

Inspection of Records

The employer's books, records and payrolls must always remain open to the ICA or its assistants, in order for it to administer the law. An employer who refuses to submit his books, records and payroll for inspection may be penalized in the amount of \$500 for each offense. A commissioner may enter any place of employment to collect facts and statistics, and his admittance may not be refused by an employer.

Unfair Claim Processing and Bad Faith

The ICA has authority to investigate complaints of unfair claim processing practices or bad faith by an employer. If the ICA finds that unfair claim processing or bad faith occurred in the handling of a claim, it will award the claimant, in addition to any benefits it finds are due and owing, a benefit penalty of 25% of the benefit amount ordered to be paid or \$500, whichever is more. If the ICA finds that an employer has a history or pattern of repeated unfair claim processing practices or bad faith, it may impose a penalty of up to \$1,000 for each violation.