



Workers Compensation 101

The Basics of Massachusetts WC Insurance

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What is Workers Compensation & Employers Liability Coverage? WC & Employers Liability is a three part coverage, based on Massachusetts General Law 152 which provides insurance for wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory relinquishment of the employee's right to sue his or her employer. It is known as “the sole remedy.”

The 3 part coverages are:

- **Coverage A: WC Insurance** for coverage per the statutory laws of the states listed in this section. Coverage consists of medical payments, lost wages and statutory payments such as funeral costs.
- **Coverage B: Employers Liability** is coverage for employment related injuries to a third party or as compensation for a third party due to their loss from the injury to the employee. This coverage protects employers from litigation by people such as a spouse or child of the injured worker.
- **Coverage C: Other States** is coverage for the statutory requirements of other states.

Why is it known as “The Sole Remedy?” In exchange for carrying WC, the employer cannot be sued by the injured employee for anything more than what is provided under the WC law. There are rare exceptions to this rule. For example, if an employee of a ladder manufacturer was injured while using a ladder made by the manufacturer; the employee could sue the manufacturer (as the employer) under both the WC law and as the manufacturer of a faulty product.

Do I have to carry WC & Employers Liability Coverage? It depends on what type of entity you are and if you have employees. Further, regardless of the law, a hiring party such as a General Contractor may demand you have coverage in order to protect their program.

Entity	If No Employees	If Employees	Ownership Coverage Options
Sole Proprietor (SP)	No coverage required by law	Coverage Required	SP may Opt In for Coverage §
LLC	No coverage required by law	Coverage Required	LLC may Opt In for Coverage §
C or S Corp	Coverage Required	Coverage Required	Owners may Opt Out of Coverage §

§ Opting In or Out requires 25% or greater ownership.

How is payroll for ownership determined? For SP and LLC ownership when opting in, the WC Bureau sets owners’ payroll at \$43,000. This number is subject to change periodically. For C or S Corp the payroll for an owner will be a minimum of \$10,400 and a maximum of \$52,000 per year.

What are the consequences if I do not carry WC? There are several things that can happen:

- 1) If sued for WC Benefits, you may have to pay out of pocket.
- 2) If discovered by the Bureau, you may receive a Stop Work order and a fine.
- 3) If discovered in another state, you may be subject to Department of Labor fines.

How is the cost of this coverage determined? The WC Bureau publishes a classification manual for types of work performed known as Massachusetts Master Alphabetical Classification Index (MACI). Each classification is assigned a rate per hundred of compensation {Example: Plumbers = \$3.50 per hundred of payroll. IE: \$25,000 of plumbing payroll would result in a premium of \$875 (plus fees and taxes)}.

The premium is then subject to two separate rating factors called the Experience Modifier and the All Risk Adjustment Program (ARAP). The Experience Modifier will either credit or debit the premium for prior loss activity. The ARAP is a separate penalty for those who have had a large loss in the past. The two modifiers are designed to reward employers for loss free work places and penalize the employers with losses.

Can I self-insure if I am required to have this coverage? You may be able to join a Self-Insured Group (SIG) that is recognized by the Massachusetts Division of Insurance; otherwise you cannot self-insure.

Can I make my employees cover the cost of the WC paid due to their payroll? No.

Who is included in the payroll calculation? Under Mass General Law 149, everyone is presumed to be an employee unless they can pass a three part test to be proven a sub-contractor. In short, if the person or company you are hiring does not have WC (including the owner being opted in for SP and LLCs) then it is safe to say you should include what you pay them in your payroll calculation. (If you are billed for labor and materials separately, the WC Bureau will allow up to 50% of your payment to be allocated to materials.)

What is included as payroll? The WC Manual Rule IV calls payroll remuneration. Rule IV defines remuneration as money or substitutes for money. Most forms of compensation count as remuneration however there are exceptions such as a company vehicle. This rule is worth further review in a future piece.

If losses make future premiums go up, can I pay for smaller losses out of pocket? I advise against it. All claims should be handled by the carrier. Small claims can quickly turn into big claims. (Think infections). To preserve coverage you must notify your carrier promptly.

How are payments formulated, when a WC or Employ Liability claim is filed? Workers Compensation will pay for medical bills on the first day of when incident occurred and will pay for lost wages starting on day six of continuous absence from the workplace and if, still absent on day twenty-two, lost wages will be retroactively paid for days one through five. Employers Liability insurance will pay once a settlement is made by the insurance carrier or ordered by the Court.

Do all states have the same benefits? No. Therefore it is important to list all states worked in to make sure proper coverage is in place.

What is a Workers Comp Audit? At the beginning of each year, you tell the carrier what the expected payroll is for the year. At the end of the year, the carrier will inquire as to what the actual payroll was. If higher than expected, you will owe additional premium. If lower, the carrier will return premium.

If I hire a sub-contractor, can I be held liable for WC benefits to the sub-contractor? YES, and worse. If you hire a sub without WC, there are 3 negative possibilities to face, at audit, your WC carrier will include amounts paid to the sub (including materials) in your premium calculation, your carrier will have to pay claims arising from WC losses on your behalf and these losses will affect your future premiums and the uninsured sub can also sue you under your general liability coverage. There is no Sole Remedy for non-employees.

How do I avoid falling into this trap? Collect a certificate of insurance showing WC coverage directly from the subs insurance agent for every project. Have the project listed in the remarks / comments section of the certificate and the type of work to be performed listed.

What is the "Pool?" The Pool is the Assigned Risk section of the Massachusetts WC Bureau. There are times when a business cannot find a carrier to offer voluntary coverage. Therefore, an application is made to the pool and a carrier is assigned to the business.

Is the Pool more expensive? For the most part, no. There are some competitive carriers that will offer discounts to their best clients called deviated rates. These are not available when in the pool. Otherwise, the base rates are the same.

Can an Insurance Agent issue a certificate for a policy issued by a pool carrier? No. This is important in that the pool must issue a certificate, and that can take up to a week. This can be a problem for contractors trying to get paid or trying to get a permit.

What is the WC Coverage Contractors Premium Discount Program? The WCCCP is a method to return premium to employers who pay contractors a higher than average rate of pay. Wages over \$21 qualify. The higher the wage, the bigger the credit applied to the policy. This was created to provide relief to employers paying Union wages.