

Worker's Compensation Insurance

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Accidents can cause serious injuries, sometimes death, to farm employees. As employers of farm labor, farmers may be liable for injuries to employees arising from farm accidents. This guide describes general aspects of the Missouri worker's compensation law as it affects farmers' liability to employees injured or killed in work-related accidents. Consult your lawyer for competent advice for specific situations.

What is Worker's Compensation?

Worker's compensation is insurance designed to compensate an employee for a loss in earning power incurred during disabilities caused by accidents or occupational diseases "arising out of and in the course of employment." It covers injuries or death of employees resulting from work-related accidents or occupational diseases. Compensation depends on the seriousness of the injury and the employee's wage level at the time of the accident.

When worker's compensation is carried, it is the only remedy the employee or his or her spouse and dependents have against the employer in the case of a job-related injury or death of the employee. Normally, the employer's liability is defined under the standardized worker's compensation policy. Even though the employee's benefits under worker's compensation are almost guaranteed, there are certain instances when the employee's compensation will be limited or denied for even a job-related injury.

Who is Required to Carry Worker's Compensation?

Missouri, in 1978, amended its worker's compensation statutes to exempt farm labor employers from mandatory participation. Before this amendment, employers of farm labor were required to carry this insurance if they had more than five employees and a total payroll in excess of \$2,500. Under the 1978 amendment, employers of farm labor do not have to carry worker's compensation. Employers of non-farm labor are required to carry worker's compensation insurance if they have five or more employees. An employee is defined as a person in the service of any employer, including executive officers of corporations. Family labor, including minors, may be counted.

In deciding whether an employee is a farm laborer and hence exempt from mandatory worker's compensation coverage, the whole character of the work the employee is required to perform will determine whether he is a farm laborer. In other words, the entire nature of the employment is decisive for this determination, and this is not simply a consideration of what the employee was doing at the time of the accident, the place of the accident, or the general nature and scope of the employer's business. Thus, a

laborer must be performing farm-related tasks in order to be a farm laborer. The fact that a laborer is employed by a farmer, or is injured while working on a farm does not itself make him a farm laborer. Normally, employees hired to care for farm animals are deemed farm laborers, because these tasks are specifically related to farming. On the other hand, employees hired to do general maintenance work on farm buildings are not normally classified as farm laborers, because their tasks are not specifically related to farming. The term "farm laborer" is usually given its ordinary or customary meaning when trying to determine who is or is not a farm laborer.

Are Farm Partnerships and Corporations Exempt?

The broad exemption from mandatory coverage under worker's compensation insurance is for "farm labor." This would apply to any employer of farm labor whether the employer be an individual, partnership, or corporation. Family members of family farm corporations are specifically referred to in the Missouri statutes as being exempt from mandatory worker's compensation insurance coverage. Presumably, family farm partnerships have the same exemption for employed family members.

Advantages and Disadvantages of Coverage

The Farmer-Employer. By voluntarily choosing to carry worker's compensation insurance, farmers are offering their employees the fringe benefit of assured compensation for farm accidents. The opportunities for a farm laborer to suffer serious injuries on the job are numerous. By offering worker's compensation, farmers are making their job offers more attractive, and thus should be able to hire better laborers.

The farmer is also getting the benefit of limited liability for farm accidents. The farmer's liability is limited to the coverage under the insurance policy, and no further action against the farmer-employer can be taken. However, if the employee's injury or death is caused by the employer's failure to comply with any safety statute, then the compensation or death benefits may be increased by 15 percent.

A farmer-employer, by statute, cannot have his employees pay the worker's compensation insurance premiums. Thus, the cost of the insurance must be borne by the employer; but this cost is an income tax deduction. The premiums are approximately four to six percent of the total payroll.

For example, consider the farmer-employer with one full-time employee and four part-time helpers who qualify as employees. If the farmer raised crops or cattle, his cost would be approximately

\$3.74 per \$100 annual payroll. (Estimated for 1981.) The minimum premium is \$256. Assuming an annual payroll of \$15,000, the farmer would pay slightly over \$560 yearly in premiums. In light of the liability limitation protection for the employer, this cost may be reasonable. Thus, employers may want to consider voluntary coverage of farm laborers by worker's compensation.

The Employee. Under worker's compensation insurance, the primary disadvantage to the employee is that compensation is limited to the maximum set out by the policy. But this is offset by the advantage to the employee of usually assured compensation for job injury. However, if the employee willfully inflicts injury or commits suicide, compensation will be denied. Also, if the employee's injury is caused by his or her willful failure to use safety devices provided by the employer or by his or her failure to obey work rules that the employer has posted conspicuously, the compensation or death benefits will be reduced by 15 percent.

By statute, benefits the employee receives from other sources are no bar to compensation. Thus, an employee has the freedom to cover himself with other types of insurance policies he may so desire, and this will not diminish his worker's compensation benefits.

How Much Compensation Can the Injured Employee Receive?

Worker's compensation insurance is intended to protect the employee against loss of earning power and the expenses of medical care. Compensation will vary depending on whether the injury causes temporary or permanent and total or partial disability. It generally is based on a percentage of the employee's average weekly wage plus hospital and medical expenses. In cases of death, benefits for dependents are set out by statute.

At the present time in Missouri, the date of the accident determines the compensation available to an injured employee. If the accident occurs on or after August 13, 1981, then for a temporary total disability, the employee receives 66 $\frac{2}{3}$ percent of his weekly earnings provided that it shall not exceed 66 $\frac{2}{3}$ percent of the current annual state average weekly wage as determined by the Division of Employment Security on July 1 of every calendar year. The current annual state average weekly wage is \$260.99, as of July 1, 1981. Thus, the maximum benefit for a temporary total disability occurring on or after Aug. 13, 1981, is approximately \$174. Similar schedules are set out in the statute for temporary partial and permanent partial disabilities. (See Chapter 287, Revised Statutes of Missouri, as amended.)

The employee's death benefits are burial expenses, not to exceed \$2,000, plus weekly benefits to survivors. For deaths occurring on or after August 13, 1981, survivors receive 66 $\frac{2}{3}$ percent of the deceased's average weekly earnings, provided that it shall not exceed 66 $\frac{2}{3}$ percent of the current annual state average weekly wage. This figure is currently \$260.99, and thus, the maximum benefit is approximately \$174 per week. These death benefits are available to the surviving spouse and/or dependent minor children. In general, death benefits will cease upon remarriage of a surviving spouse or upon the 18th birthday of the employee's children. However, there are exceptions. For example, if the child is a full-time student at an accredited institution, benefits continue until he or she reaches age 22.

Just because an employee dies at the job site does not mean the spouse or dependents will recover benefits. The employee's survivors may be denied compensation for any natural cause death not due to a job-related accident. For example, suppose a farm employee oversees the work of other employees and generally does errands for the employer. The employee has a history of heart disorder. While checking inventory at the job one day, the employee has a heart attack and dies. Here the spouse and dependents would not be eligible to collect death benefits under worker's compensation insurance for death by such a natural cause, even though the employee dies while at work.

Should You Elect to Carry Worker's Compensation Insurance?

Employers of farm labor are not required to carry this insurance. The main advantage in voluntarily obtaining such insurance, though, is the prevention of personal liability on the employer's behalf for injuries or death to employees arising from work-related accidents. This possible personal liability in the absence of such coverage can be quite large in comparison to the expense of the premiums.

For many non-farm labor employers, coverage is mandatory. If a non-farm employer fails to carry worker's compensation insurance when it is required, he or she may be liable to the full extent of the worker's injury, with no limit by any policy maximum. Furthermore, the non-complying employer loses the traditional legal defenses available to prevent the employee's recovery—namely, assumption of risk and contributory negligence. Thus, in situations where the employer is required to, but does not have coverage, the employee must only prove the employer's negligence was the cause of the accident, and the employee's own negligence will not prevent his or her recovery.

The exempt farmer-employer may buy other types of insurance for protection, such as the comprehensive farm and ranch policy. However, remember that the farm and ranch policy gives the farmer protection only up to the stated limits of the policy. Farm accidents and injuries can easily exceed standard policy limits. Worker's compensation, on the other hand, limits the potential liability of the employer to the statutorily prescribed amounts.

Worker's Compensation Insurance vs. Ordinary Personal Liability Insurance

Worker's compensation is only for injuries to your employees and not for injuries involving farm visitors, such as sales people and neighbors. Furthermore, under worker's compensation, payment is allowed only for injuries from accidents "arising out of and in the course of such employment." While this language would seem to cover employees in most circumstances, interpretation by the courts has not been so liberal.

Because worker's compensation insurance is directed specifically towards work-related accidents involving employees, it is complementary to ordinary liability insurance. By carrying ordinary liability insurance, farmers help protect themselves against liability from injuries to sales people, neighbors, hunters, and other farm visitors.