

Workers compensation provides valuable protection to workers and their employers in the event of a workplace-related injury or illness. Through workers compensation, injured workers can receive weekly payments to cover loss of earning capacity, payment of medical expenses and vocational rehabilitation expenses, where necessary, to assist with their return to work.

All NSW employers must have a workers compensation policy to insure themselves against compensation claims for workplace injuries.

Who is covered by workers compensation insurance?

Currently all employers in New South Wales are required to provide workers compensation insurance cover for their workers. This applies even if you are a small company, partnership or sole trader with only one or more workers or contractors who are deemed to be workers. This also includes private households employing workers to carry out domestic duties, for example, a gardener or cleaner.

Under existing NSW law, employers must have a workers compensation policy to cover their workers. A 'worker' is any person who has entered into, or who works under, a contract of service or apprenticeship with an employer (whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, and whether the contract is oral or in writing).

However, some people working as contractors are also treated as workers for workers compensation purposes, depending on the individual circumstances. This means that if there is a workplace injury the contractor may be entitled to receive workers compensation for a work-related injury. For this reason, their employer (or principal) must cover them for workers compensation and declare any payments made to them as wages. The law refers to these contractors as 'deemed workers'. This law has been in place for many years.

Who should have a policy?

- If a business employs or hires workers on a regular, casual or contract basis, they are considered to be an employer and must have a workers compensation insurance policy.
- From 4pm on 30 June 2008 employers will no longer be required to obtain a workers compensation insurance policy for workers if they pay, or expect to pay \$7,500 or less in annual wages. This includes private households employing domestic staff and paying \$7,500 or less in annual wages. However, a workers compensation insurance policy will still be required if you engage an apprentice or trainee, or are a member of a Group for workers compensation purposes regardless of the amount of wages paid.
- Homeowners who are building their own homes should take out a workers compensation insurance policy to make sure they are fully covered. Any contractors engaged by an owner-builder may be deemed to be a worker of that owner-builder.
- If you employ or hire people to work at your home you should take out a domestic workers compensation insurance policy. Domestic workers compensation covers any domestic workers employed within the home. It does not cover home-based businesses or strata titles.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

Sole traders and partnerships

If a sole trader or partnership has workers they must take out a workers compensation insurance policy. However, the sole trader and partners would not be covered by this insurance. Sole traders and partnerships should consider taking out a personal accident and illness policy or an income protection policy, in case they are injured and unable to work (Note: this is not a WorkCover requirement).

Companies

A proprietary limited company ('Pty Ltd') must have a workers compensation insurance policy to cover all its workers. Working directors (directors undertaking employee-type duties) are considered workers of the company. Dividends paid to working directors in lieu of wages may also be deemed to be wages.

Deemed workers

Many people are treated as workers for workers compensation purposes. The law refers to them as 'deemed workers'. If someone is 'deemed' to be a worker, their employer (or principal) must have a workers compensation insurance policy. People working as contractors (including subcontractors) may also be 'deemed workers'. Workers compensation law does not rely on the tax status of the person carrying out the work to determine whether that person is a worker, deemed worker or contractor.

From 1 July 2003, principal contractors should ensure that their subcontractors have taken out appropriate workers compensation coverage for their workers and have paid all workers compensation premiums associated with that work.

Principal contractors should check that their subcontractors:

- are classified in the correct industry
- have declared an appropriate amount of wages for their insurance cover
- have signed a statement that there are no outstanding liabilities and that all workers compensation premiums applicable for that work have been paid.

Apprentice Wages

Apprentice wages are excluded from your wages calculation. To be eligible for the apprentice premium exemption you must have a valid workers compensation policy and have entered into a NSW Department of Education and Training (NSW DET) approved 'Training Contract' with the apprentice in a designated trade vocation.

For policies commenced or renewed on or after 31 December 2007, the apprentice premium exemption will be applied to your premium at the start of the policy period. This means that the premium exemption will reduce your initial invoiced premium. The exemption will be applied again when your final premium is calculated at the end of the policy period.

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What counts as wages?

'Wages' includes total ordinary times earnings of employees (before tax) and some payments that are not generally thought of as wages.

It includes:

- salary / wages
- overtime, shift and other allowances
- over-award payments
- employer paid or payable superannuation contributions (including the superannuation guarantee levy)
- bonuses, commissions
- payments to working directors (including directors' fees), or amounts received instead of wages (including payments to family members)
- payments to pieceworkers
- payments for sick leave, public holidays and the associated leave loadings
- value of any substitutes for cash
- grossed-up value of fringe benefits
- long service leave payments (including lump sum payments instead of long service leave)
- termination payments (lump sum payments in respect of annual leave, long service leave, sick leave and related leave loadings)
- trust distributions to workers where the distribution is in lieu of wages for work done for the trust.

It does not include:

- payments to non-working directors
- compensation under the *Workers Compensation Act 1987*
- any GST component in a payment to a worker.

For more information please see www.safework.nsw.gov.au

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