



Workers' Compensation Basics

What is work comp and what does it cover?

Workers' compensation coverage is an employee benefit that is mandated by law, which differs by each state, and covers employees for injuries or occupational diseases incurred only in the "course and scope" of their employment regardless of fault. Workers' Compensation is the "exclusive remedy" for accidents- employers are protected from lawsuits by employees. Mediation and Workers' Compensation Court exist for disagreements. In general, benefits cannot be denied based on the accident being the employee's "fault" but this may vary some in different states. In Montana, work comp may be obtained in three ways: self-insurance, private company, or from Montana State Fund.

Premiums

Work comp is solely funded by premiums paid by employers based on the amount of payroll they pay in the various job categories or *class codes*. Each class code has a work comp rate associated with it. Premium is also determined by the "**Experience Modification Factor**" which is a numerical comparison of the claim performance of an employer compared to other employers with similar types of work. 1.0 is average; greater than 1.0 is worse and a premium debit; less than 1.0 is better and a credit. The E-Mod is based on three full work comp policy years of loss experience excluding the current and most recent full policy year. Additionally, premiums are impacted by *scheduled credits or debits* used by the underwriter, and employer safety performance may have an impact on these.

$$\begin{aligned} \text{payroll} \times \text{rate per class code} &= \text{manual premium} \\ \times \text{experience modification factor} &= \text{standard premium} \\ \times \text{Scheduled Rating Credit or Debit} &= \text{modified standard premium} \\ + \text{Adjustments or other premium} &= \text{final premium} \end{aligned}$$

Work Comp Claims

Most Montana work comp claims post 7/1/2011 are statutorily closed at 5 years from the date of injury, though an injured employee may appeal this with the Montana Department of Labor. Work comp benefits include the following.

Medical payments	Doctor, hospital, physical therapy, etc.
Indemnity payments	(Lost wages) 2/3 of average weekly wage, takes effect only after the employee misses 4 shifts (or 32 hours) of work (retroactively repaid after 21 missed days). Maximum TTD rate as of 7/1/17 is \$768/week (2/3 for about \$1,152/wk or about \$28.80/hr).
Impairment awards	Permanent impairments. Minor impairments without wage loss are not compensable in MT.
Vocational benefits	Occupational counseling or retraining under qualifying circumstances
Survivor benefits	Minors till 18; spouse 500 weeks
Does not cover	Stress, employer health insurance payments, retirement matches, or time away from work for medical appointments

Claim reporting

- An employee has a right to file a work comp claim, and should, if they feel they have legitimately been injured while performing their job duties.
- Claim reporting is accomplished by submitting a First Report of Injury or “FROI” to the work comp carrier.
- “Zero dollar” claims do not affect premium and medical only claims are discounted in the e-mod calculation. Early medical attention may reduce the severity of a condition. *If in doubt, err on the side of reporting.*
- Legally, the employee has 30 days to notify the employer of an injury and one year from the injury/disease date to file a claim.
- An *occupational disease* is incurred over more than one work shift and an employee has one year from when they know of it to notify the employer and file a claim.
- Legally, the employer has six days from the day of its notification to file a claim.

Best practices

These legal timeframes far exceed best practices and organizational policy should be stricter. Employees should notify supervisor *immediately* of any injury and the first report of injury should be filed within 24 hours.

Montana State Fund Work Comp Claims Process

- First Report of Injury (FROI) received. A Customer Service Specialist (CSS) will follow up if the FROI is incomplete, such as a missing signature of the injured employee (IE).
- Generation of claim number
- Assignment either to a Claims Examiner (CE) or placed into auto adjudication (AA). AA is an automated system that manages less complex claims, paying for treatment without accepting liability.
- The system will generate a letter to IE that explains the coverage available, with a copy to the employer. It will also give instructions regarding what to do in the event there are any changes in the status of the injured employee.
- CE’s make contact with the IE and employer within 24 hours from assignment.
- Compensability of a claim is typically determined within 30 days; however, this is largely dependent upon the information provided and whether there are questions surrounding the incident. In some cases a claim may be placed into a temporary status (“615” or “608”) until compensability can be determined. Compensability decisions are based upon medical evidence which supports the reported mechanism of the incident, medical history, probability of injury and facts, prior claim history, witness statements, and activities outside of work. An injury must be incurred within the “course and scope” of the job duties to be compensable.
- Duties of a Claims Examiner include: making compensability determinations, authorizing payment of medical and wage loss benefits, authorizing and monitoring medical treatments/procedures, and assisting with Return to Work (RTW) opportunities.
- A variety of tools are available to Claims Examiners, such as: independent medical examinations, peer reviews, managed care organizations, vocational rehabilitation, fraud investigation unit, legal counsel, medical case managers, and safety management consultants; all of which assist them in the successful resolution of a claim.

Employee Fraud:

FRAUD = THEFT. THEFT > \$1500 = FELONY CRIME

Work comp fraud is a serious crime! Montana State Fund works closely with the Montana Department of Justice to maintain a zero tolerance fraud policy and investigate suspicious activity. Claims professionals are trained to detect the early warning signs of fraud. Employers and employees alike bear the costs of illegal insurance claims, and those who think they can get away with these types of activities need to recognize that Montana law is very clear. Fraud is theft, and will be prosecuted as such.

Types of employee fraud:

- Faking an injury, symptoms, or impairment
- Getting injured personally but claiming it happened at work
- “Malingering” – drawing out the duration of impairment and benefits
- Secretly working and earning income while on wage loss benefits
- Selling or giving away prescription drugs

Eight signs of possible fraud:

1. The alleged injury occurred early on a Monday morning, or late on a Friday afternoon but was not reported until the following Monday.
2. The accident occurred just prior to a strike, job termination, layoff, at the end of a project or at the end of seasonal work.
3. There were no witnesses to the accident.
4. The claimant has a history of previous claims.
5. The claimant delays reporting the accident.
6. The claimant recently purchased disability policies.
7. The time of the accident was outside normal working hours or on a Saturday or Sunday.
8. The claimant’s attorney notifies you of the injury.

Prevent fraud before it happens.

Prevention is easier than prosecution. Take these simple steps to head off fraudulent activity:

- Inform employees how and when to report accidents (i.e., as soon as possible).
- Prevent “unwitnessed incidents” by paying attention to rumors, such as if an employee wants to go on workers’ compensation. If possible, do not let that person work alone.
- Pay extra attention before strikes, layoffs or seasonal closures.
- Pay extra attention to employees who are otherwise subject to disciplinary action.

What is your role to prevent fraud?

There are many ways to take action when you suspect fraudulent activity. It all starts with a precise and thorough claim process. Montana State Fund recommends that the employer, designated manager or supervisor:

- Meet with the employee making the claim.
- Get a complete accident description.
- Determine which part of the body was injured.
- Ask all the basic questions: **When** did it happen? **Who** was involved? **Who** was a witness? **What** caused the injury? **How** did it happen? **Where** did it happen? And **why** did it happen?
- Do not ask leading questions; always give witnesses the opportunity to tell their stories without interruption or negative comments. Listen carefully and accurately, and document what has occurred.
- Interview all witnesses separately and as soon as possible—their recollection is far more accurate and complete immediately following the incident.
- Make notes or written reports, and ask the witness to verify what you wrote down. You could also ask the witness to write his or her own observations. Sign and date the reports.
- Determine if it was physically possible to have sustained the injury in the fashion described. **If you have doubts, advise the Claims Examiner accordingly.**
- If an accident is not immediately reported, ask for a detailed explanation for the delay.

Return to Work

A Return to Work or RTW program is an employee benefit that transitions injured workers back to full duty by providing *temporary transitional* employment while strictly following medical restrictions

Benefits to Worker

- Reduces financial burden due to loss of wages
- Contributes to quicker recovery from injury
- Helps avoid re-injury
- Maintains social contact
- Increases self-esteem, allows worker to remain productive

Benefits to Employer

- Keeps good workers part of the workforce
- Reduces indemnity costs and effects on the experience modification factor
- Avoids indirect costs of claims such as hiring new employees
- Deters fraud
- Improves morale

Sample Cost Analysis – staffing position with and without RTW

With an RTW program:

Regular wages paid to worker (\$15.00/hr \$600/wk for 6 months)	<u>\$15,600</u>
Total costs	\$15,600

Without an RTW program:

Wages paid to replacement worker	\$15,600
Hiring/training costs	\$ 2,500
Future insurance premiums **	<u>\$20,800</u>
Total costs	\$38,900

**On average, the employer pays *at least* two dollars for each dollar spent on indemnity costs in future insurance premiums. This is reflected in the experience modification factor. In this case, indemnity costs would be 2/3 of \$15,600 or about \$10,400. Thus, future premiums could be expected to increase *at least* \$20,800.