

EMPLOYER WITHDRAWAL PROVISIONS UNDER THE WISCONSIN WORKER'S COMPENSATION ACT

1. Once an employer is required to get insurance, how long does he or she have to keep it?

Quite a while. Once an employer becomes subject to the Wisconsin Worker's Compensation Act (Act), he or she remains subject to the Act unless the employer withdraws from the provisions of the Act under s. 102.05(1) of the Act.

Under s. 102.04(1)(b) of the Act, an employer becomes subject to the Act and must carry a worker's compensation insurance policy if:

- 1) The employer usually employs three or more persons full-time or part-time. This employer must get insurance on the day they employ the third person.
- 2) The employer has one or two full-time or part-time employees and has paid gross combined wages of \$500 or more in any calendar quarter for work done in Wisconsin. This employer must have insurance by the 10th day of the first month of the next calendar quarter. (There are four calendar quarters in a calendar year; the 1st quarter is January through March, the 2nd quarter is April through June, the 3rd quarter is July through September; and, the 4th quarter is October through December.)
- 3) The farm (farmer) employs 6 or more employees (at one or more locations) on the same day for 20 days (consecutive or non-consecutive) during a calendar year. A calendar year is January through December. This farmer must have insurance within 10 days after the 20th day of employment. Some relatives of the farmer are not counted towards the 6 employees, but will be covered under a policy if one is purchased. (See section 6 for farmer withdrawal information.)

Once an employer is subject to the Act, the employer is required to have a worker's compensation policy as long as he or she has one or more part-time or full-time employees. Even if a subject employer has only one part-time employee making less than \$500 per quarter, the employer must maintain the insurance for the remainder of that calendar year--and for the next calendar year--(a calendar year is January through December) before he or she is eligible to withdraw from being subject to the provisions of the Act.

Once a farmer is subject to the Act, the farmer is required to have a worker's compensation policy as long as he or she has one or more part-time or full-time employees. Even if a subject farmer has only one part-time employee, the farmer must maintain the insurance until he or she has gone a full calendar year without employing 6 or more employees on 20 or more days before he or she is eligible to withdraw from being subject to the provisions of the Act.

2. When and how can an employer withdraw from the provisions of the Act?

Under s. 102.05(1)¹ of the Act, an employer who has not usually employed 3 employees and who has not paid wages of at least \$500 for employment in Wisconsin in any calendar quarter in a calendar year--(a calendar year is January through December) may file a withdrawal notice with the department. *Stapleton Cheese Co. vs. Industrial. Comm.*, 249 Wis. 133 (1947) defines “usually employs three or more persons,” as employment of three persons for a *single moment*. The withdrawal takes effect 30 days after the date the notice is filed or at such later date as is specified in the notice.

Once the employer has gone a full calendar year without employing 3 or more employees or paying combined gross wages of \$500 or more in any calendar quarter, the employer may drop insurance coverage by first filing a notice of withdrawal with the Worker’s Compensation Division, and then waiting 30 days. If the withdrawal is approved by the Department, the employer must notify the insurance carrier of the date he or she wants the coverage cancelled. If, for some reason, the employer wants to drop coverage more than 30 days later, the later date should be specified in the notice of withdrawal. Employers should contact the Worker’s Compensation Division for the necessary withdrawal forms.

Example: On June 8, 2016, Employer Kelly drops from 3 employees to 1 employee. During the rest of 2016 Kelly does not employ 3 or more employees and in the 3rd and 4th quarters of 2016 Kelly does not pay combined gross wages of \$500 or more. In 2017, Kelly does not employ 3 or more employees and does not pay gross combined wages of \$500 or more in any of the 4 calendar quarters of the 2017 calendar year. What is the earliest date Kelly can drop the insurance coverage?

Analysis: 2016 is irrelevant. What matters is that during 2017 Kelly did not employ 3 or more employees or pay combined gross wages of \$500 or more in any calendar quarter during the 2017 calendar year. The earliest Kelly is eligible to file a notice of withdrawal is January 1, 2018. January 1st is a holiday and state offices are closed. The earliest the notice can be received by the Worker’s Compensation Division is January 2, 2018. The earliest the insurance coverage can be cancelled is 30 days later, or February 1, 2018.

¹ 102.05, Wis. Stats., Election by employer, withdrawal.

(1) An employer who has had no employee at any time within a continuous period of 2 years shall be deemed to have effected withdrawal, which shall be effective on the last day of such period. An employer who has not usually employed 3 employees and who has not paid wages of at least \$500 for employment in this state in every calendar quarter in a calendar year may file a withdrawal notice with the department, which withdrawal shall take effect 30 days after the date of such filing or at such later date as is specified in the notice. If an employer who is subject to this chapter only because the employer elected to become subject to this chapter under sub. (2) cancels or terminates his or her contract for the insurance of compensation under this chapter, that employer is deemed to have effected withdrawal, which shall be effective on the day after the contract is canceled or terminated.

(2) Any employer who shall enter into a contract for the insurance of compensation, or against liability therefor, shall be deemed thereby to have elected to accept the provisions of this chapter, and such election shall include farm laborers, domestic servants and employees not in the course of a trade, business, profession or occupation of the employer if such intent is shown by the terms of the policy. Such election shall remain in force until withdrawn in the manner provided in sub. (1).

(3) Any person engaged in farming who has become subject to this chapter may withdraw by filing with the department a notice of withdrawal, if the person has not employed 6 or more employees as defined by s. 102.07 (5) on 20 or more days during the current or previous calendar year. Such withdrawal shall be effective 30 days after the date of receipt by the department, or at such later date as is specified in the notice. Such person may again become subject to this chapter as provided by s. 102.04 (1) (c) and (e).

3. Can a corporation withdraw from the provisions of Act?

No, corporations can not withdraw from the provision of the Worker's Compensation Act.

Closely held corporations (a corporation with not more than 10 stockholders) may file a "Corporate Officer Option Notice" if they have no more than two corporate officers and no other employees.

If a corporation has more than ten shareholders, more than two corporate officers, or has any other employees, the corporation needs to carry worker's compensation insurance.

A corporate officer is considered an employee and is covered by the Act. All worker's compensation policies covering corporations include corporate officers. However, in a closely held corporation, 1 or 2 officers may exclude themselves from coverage. If the corporation has other employees or officers, an insurance policy is required and the exclusion for officers must be made by an endorsement on the corporation's worker's compensation policy. The name of each excluded officer must be specified on the policy. The exclusion will remain in effect for the policy period. An officer who elects to exclude himself or herself is still an employee of the corporation. An excluded officer is still counted as an employee and his or her wages are included for the purposes of determining whether the corporation has three or more employees or has paid gross combined wages of \$500 or more in a calendar quarter under s. 102.04(1)(b) of the Act.

If a closely held corporation has 1 or 2 corporate officers and has no other employees or officers, a worker's compensation policy is not required if each officer elects not to be subject to the Act by filing the Notice of Corporate Officer Option with the Worker's Compensation Division. A corporation with more than 2 corporate officers or any other employee or employees is not eligible to file a Notice of Corporate Officer Option and must maintain a worker's compensation insurance policy.

4. What if a subject employer lays off all or his or her employees and has no employees, is the employer still subject to the Act?

Yes, once an employer becomes subject to the Act, the employer remains subject unless he or she withdraws from the provision of the Act.

If a subject employer lays off all of his or her employees and has no employees, a worker's compensation policy is not required. However, the employer remains subject to the Act. If, at a later date the employer hires an employee, he or she must have a worker's compensation policy in effect on the first day the employee works.

Under s. 102.05 of the Act, an employer who has had no employee at any time within a continuous period of 2 years is be deemed to have effected withdrawal effective on the last day of the continuous 2 year period. The employer does not have to file notice of withdrawal with the Worker's Compensation Division.

5. What if an employer becomes subject to the Act voluntarily by obtaining a worker's compensation policy even though he or she was not required by the Act to have a policy?

Under s. 102.05(1) of the Act, if an employer that becomes subject to Act only because he or she elected to become subject by obtaining a worker's compensation policy, cancels or terminates the policy, that employer is deemed to have effected withdrawal. The withdrawal shall be effective on the day after the contract is canceled or terminated. The employer does not have to file notice of withdrawal with the Worker's Compensation Division.

6. Once a farmer is required to get insurance, how long does he or she have to keep it?

Quite a while. Once a farmer is required to obtain insurance, even if he or she permanently drops below 6 employees, the farmer must maintain the insurance for the remainder of that calendar year--and for the next calendar year--before he or she is eligible to withdraw.

Under s. 102.05(3)² of the Act, once the farmer has gone a full calendar year without employing 6 or more employees on 20 days, the farmer may drop insurance coverage by first filing a notice of withdrawal with the Worker's Compensation Division, and then waiting 30 days. If the withdrawal is approved by the Department, the farmer must notify the insurance carrier of the date he or she wants the coverage cancelled. If, for some reason, the farmer wants to drop coverage more than 30 days later, the later date should be specified in the notice of withdrawal. Farmers should contact the Worker's Compensation Division for the necessary withdrawal forms.

Example: On July 8, 2016, Farmer Pat drops from 25 employees to 5 employees. During the rest of 2016 there are 23 dates on which Pat has 6 or more employees. In 2017, there are only 19 days on which Pat has 6 or more employees. What is the earliest date Pat can drop the insurance coverage?

Analysis: The 23 days in 2016 after July 8th are irrelevant. What matters is that during 2017 Pat did not have 6 employees on 20 days. The earliest Pat is eligible to file a notice of withdrawal is January 1, 2018. January 1st is a holiday and state offices are closed. The earliest the notice can be received by the Worker's Compensation Division is January 2, 2018. The earliest the insurance coverage can be cancelled is 30 days later, or February 1, 2018.

7. How can I get more information about coverage under the Act?

Contact the Wisconsin Department of Workforce Development - Worker's Compensation Division, Bureau of Insurance Programs in-person at GEF-1 State Office Building, Room C100, 201 E. Washington Avenue, Madison by mail at P.O. Box 7901, Madison, WI 53707-7901 or by phone at (608) 266-3046. The Division also offers information online at: <http://dwd.wisconsin.gov/wc>

DWD is an equal opportunity employer and service provider. If you have a disability and need assistance with this information, please dial 7-1-1 for Wisconsin Relay Service. Please contact the Worker's Compensation Division at (608) 266-1340 to request information in an alternate format, including translated to another language.

² 102.05 (3), Wis. Stats., Any person engaged in farming who has become subject to this chapter may withdraw by filing with the department a notice of withdrawal, if the person has not employed 6 or more employees as defined by s. 102.07 (5) on 20 or more days during the current or previous calendar year. Such withdrawal shall be effective 30 days after the date of receipt by the department, or at such later date as is specified in the notice. Such person may again become subject to this chapter as provided by s. 102.04 (1) (c) and (e).

8. What are some of the key statutes regarding employer liability to carry worker's compensation insurance under the Wisconsin Worker's Compensation Act?

Chapter 102	Worker's Compensation
Wisconsin Statute 102.03	Conditions of liability.
Wisconsin Statute 102.03(2)	Exclusive remedy, prevents an injured employee from suing an employer who has the required insurance in force at the time a work related injury occurs.
Wisconsin Statute 102.04	Definition of employer, when an employer becomes subject to the Act.
Wisconsin Statute 102.04(1)(c)	Definition of when a farmer becomes subject to the Act.
Wisconsin Statute 102.04(3)	Definition of farming.
Wisconsin Statute 102.05	Election by employer, withdrawal.
Wisconsin Statute 102.05(3)	Election by farmer, withdrawal.
Wisconsin Statute 102.07	Definition of an employee.
Wisconsin Statute 102.07(5)	Definition of a farm employee.
Wisconsin Statute 102.07(8)(b)	Definition of an independent contractor.
Wisconsin Statute 102.075	Election by sole proprietor, partner or member of limited liability company.
Wisconsin Statute 102.076	Election by corporate officer, corporate officer option under the Act.
Wisconsin Statute 102.28(2)	Required insurance, subject employers must be insured by an insurance company authorized to write worker's compensation in Wisconsin.
Wisconsin Statute 102.28(3)	Provision of Alternative Benefits, allows an exemption from the duty to insure religious sect members that qualify and are certified for an exemption.
Wisconsin Statute 102.28(4)	Closure Order, orders an employer to cease operations until the employer complies with s. 102.28(2)(a) by obtaining a worker's compensation insurance policy.
Wisconsin Statute 102.28(5)	Employer's liability.
Wisconsin Statute 102.31	Worker's compensation insurance; policy regulations.
Wisconsin Statute 102.80	Uninsured employers fund.
Wisconsin Statute 102.81	Compensation for injured employee of uninsured employer.
Wisconsin Statute 102.82(1)(2)(a) and (2)(ag)	Uninsured employer payments, reimbursement of the UEF for payments made under s. 102.81 and penalty assessed an uninsured employer for a lapse of worker's compensation insurance coverage.
Wisconsin Statute 102.83	Collection of uninsured employer payments.
Wisconsin Statute 102.835	Levy for delinquent payments.
Wisconsin Statute 102.85	Uninsured employers; penalties, penalties and forfeitures for uninsured employers who fail to comply with the Act.
DWD 80.62 (Administrative Code)	Uninsured employers fund.
DWD 80.65 (Administrative Code)	Notice of cancellation or termination.
Chapter 626	Rate regulation in worker's compensation insurance
Wisconsin Statute 626.03	Scope of application.
Wisconsin Statute 626.32	Development of rates by bureau.
Wisconsin Statute 626.35	Worker's compensation insurance contracts.