



June 2019

Employer Quick Reference Guide

Visit mywsi.workforcesafety.com for all of our online services or call 800-777-5033 or 701 328-3800 for assistance.

Employers required to obtain coverage

Under the North Dakota Century Code, workers' compensation provides workers with wage loss and medical benefits for injuries sustained in the course of employment. General liability, health, and accident insurance are not substitutes for workers' compensation insurance. North Dakota law, with limited exceptions, requires all employers to secure workers' compensation insurance to cover their full-time, part-time, seasonal, or occasional employees prior to hiring. To be insured, you must submit an Application for Insurance to WSI. WSI coverage is effective upon receipt of a completed application and approval by Policyholder Services.

Obtaining coverage

An Application for Insurance is available online and is the most efficient way to apply for coverage. You may also download our Application for Insurance, complete it and either fax it to 701-328-3750 or mail it. You will be contacted as soon as possible by telephone to review your application. Once your application has been processed, WSI will calculate your premium based on the payroll estimate you have provided and mail you a statement.

If you have immediate needs such as a letter of good standing to the Secretary of State or a Certificate of Payment as proof of coverage, or if you have a general question on the underwriting of your coverage, email Policyholder Services at wsiemployerservices@nd.gov. You may also call Customer Service at 800-777-5033 and request the assistance of a Policyholder Services Underwriter.

Manual premium calculation

The WSI classification system groups together businesses of similar types to ensure that costs are distributed fairly. A rate is calculated for each classification based on the premium and loss experience of all insured North Dakota employers in each occupational classification.

The manual premium is calculated by multiplying the rate (per \$100 of payroll) and the amount of payroll (subject to the annual statutory wage cap). This wage cap changes each year with the state's average weekly wage calculation.

Wage cap:

- For the period July 1, 2018 - June 30, 2019, each employee's wages will be capped at \$35,500.
- For the period July 1, 2019 - June 30, 2020, each employee's wages will be capped at \$36,400.

The annual minimum premium charge is \$250. The initial minimum payment due at the time of application/renewal may not be less than \$250 unless the balance owing is less than \$250.

Net actual premium

The net actual premium calculation is a result of applying the experience rating or small account credit/debit and safety discounts to the manual premium. This represents each employer's unique exposures, loss experience, and active participation in approved safety programs.

Payroll reporting

WSI requires employers to report payroll information as requested, usually on an annual basis. Effective August 1, 2019 all employers will be required to submit their payroll data electronically.

Payroll reporting for new policyholders

When a new account is established, premium is billed based on an estimate provided by the employer. Fifteen days prior to the expiration date of the policy, an annual notification letter is sent to the employer requesting actual wages be reported to WSI. Report the actual wages paid through our online payroll reporting system.

Payroll reporting for existing policyholders

Each year upon the renewal of the policy, an annual payroll report letter is mailed to the employer indicating the due date, along with instructions on how to file online through our payroll Reporting system. On the 16th day of the month of your account's renewal, your account information is available online.

- Your new online access code (a new one is issued each policy period) is printed on the payroll notification letter. You may also contact Customer Service to obtain your code by calling 800-777-5033.
- If you fail to submit your payroll report by the due date, you will be penalized \$50. Continued failure to submit the payroll will lead to additional penalties and possible forfeiture of the dividend.
- If you estimated more payroll than your actual wages, your billing statement will reflect the appropriate credit, just as an understated estimate will generate additional premium. We use your submitted actual payroll figures to bill an estimated premium for the next 12-month payroll cycle.
- If you anticipate a significant increase or decrease in payroll for the upcoming policy period, note this change on your payroll report or contact Policyholder Services, and an adjusted premium billing statement will be generated.

In addition to gathering annual payroll information, the payroll report reflects coverage in place for owners, spouses, and/or family members. Refer to our Elective Coverage section for more details.

Premium and payroll

Your workers' compensation premium is based on the amount of remuneration paid to workers during the 12-month policy period. Remuneration means money or substitutes for money. North Dakota law prohibits employers from deducting wages or otherwise billing workers for any part of the premium.

Remuneration includes:

- Commissions
- Bonuses
- Extra pay for overtime
- Reportable tips
- Pay for holidays, vacations, or sick leave
- Cafeteria plans, 401K's, Annuity plans, Davis-Bacon wages, etc.
- Value of meals, lodging (rent value of a house or apartment), or other gratuities received by a worker as part of pay.

MYWSI – Employer account

Payments can be made at mywsi.workforcesafety.com by Automated Clearing House (ACH) or credit card. You may make a single payment or set up payments in monthly installments using AutoPay. If you choose to make installment payments, interest is charged on the outstanding balance. The interest rate equals the base rate posted by the Bank of North Dakota plus 2.5%. Installment payments are limited to prepaid premiums only. Premiums in default are assessed penalty interest at 2% per month or 24% annually. The minimum charge for an account is \$250 per year, even if you have no employees. This rate is subject to change on an annual basis.

Users will be able to access and view/print the following documents related to their account:

- Billing statements
- Certificate of Payment
- Experience Rate letters/Small account debit/credit letter
- No EMR letter
- Statement of Benefit Payments
- Loss run report
- Safety audits

Proof of insurance

After either full payment of your premium or your first monthly installment, your proof of insurance is a Certificate of Payment mailed by WSI.

- North Dakota law requires the Certificate of Payment be posted at your place of business.
- You may make copies of the Certificate or access your WSI account online at mywsi.workforcesafety.com. You may also request a duplicate certificate by calling 800-777-5033 or by email at wsiemployerservices@nd.gov

Elective coverage

Coverage for the owners, partners, or corporate officers of a business corporation, partnership, or limited liability company is optional. An employer may elect to purchase elective coverage for themselves, their spouse, children younger than 22 years old, and for most workers otherwise exempt under Title 65. This coverage is not required by law. Coverage becomes effective upon WSI's approval of a completed and signed optional coverage contract.

- Coverage for an owner, partner, corporate officer, or spouse will be charged an annual premium based upon the appropriate class rate multiplied by the maximum taxable payroll cap.
- Coverage for the employer's children younger than 22 years old is based upon the appropriate class rate multiplied by the actual wages paid.

- Coverage for the employer's children 22 years and older is mandatory and based upon the appropriate class rate multiplied by the actual wages paid up to the maximum taxable payroll cap.

Experience Rating

- Experience rating is a projection of future losses using the employer's past claims history. Your individual experience rate directly impacts the amount of premium you will be charged. While the rate classification system provides for the distribution of premium to various industries and exposures, WSI offers an experience rating program to further focus premium load within a given industry. Generally, employers with a good loss history are rewarded with premium discounts. Employers with a poor loss history are charged premium above the manual rates. Surcharges have no limits.

Qualifications for experience rating:

- Beginning with an employer's fifth year of North Dakota operations, accounts may be experience rated.
- Have a minimum aggregate premium of \$15,000 over the 3-year experience-rating period.

Small Account Credit/Debit Program

WSI's Small Account Credit/Debit program is applicable to all policyholders that do not qualify for experience rating. The goal of the program is to create incentives for small businesses to manage their claims and implement safety programs. An account must be in their fifth year of operation in order to qualify for this program and cannot have a total premium of \$15,000 or more during the 3-year look back period. If an account has total premium of \$15,000 or more it would qualify for experience rating.

- Annually, WSI will automatically identify qualifying policyholders based on established premium and policy periods.
- Any claim under \$250 will not have an effect on the premium.
- If there are no claims over \$250, the account will receive a 10% discount (credit).
- If there is one claim over \$250, no discount or surcharge will be applied.
- All additional claims over \$250 will result in a debit (surcharge) of 5% per claim up to a maximum of 25%.
- Discounts may not reduce the premium below the statutory minimum premium of \$250.

Early claim reporting incentive - Medical Assessment Information

An employer is responsible for the first \$250 or \$350 of medical expenses for each worker's compensation claim filed with WSI. Employers are billed monthly for assessable claims costs paid during the previous month. WSI offers an early reporting incentive and may waive the assessment charge.

Assessment Fee

- WSI Waives Assessment Fee
 - If a claim is filed with WSI by midnight (central time) of the next WSI business day following the injury date, the assessment fee is waived by WSI.
 - Incident Report: If a worker reports an incident, but does not seek immediate medical attention, the employer should file an Incident Report online on WSI's website. In order to qualify for the \$250 waiver, the incident should be filed by midnight (central time) of the next WSI business day following the injury date. If

that worker later seeks medical attention and a claim is received by WSI within 14 calendar days of the incident, the \$250 assessment charge will be waived. Without the filing of the Incident Report, the \$250/\$350 medical assessment will still be charged if a claim is eventually filed.

- Employer pays \$250
 - If an injury occurs and the claim is received by WSI or filed by a medical facility within 2-14 calendar days after the injury date, the employer is responsible for the first \$250 of medical expenses.
- Employer pays \$350
 - If an injury occurs and the claim is received by WSI or filed by a medical facility more than 14 calendar days after the employer notification date, the employer will be charged the first \$350 of medical expenses.

Out-of-state employers working in North Dakota

Unlike other states, North Dakota law does not allow private insurers to underwrite workers' compensation insurance in North Dakota. WSI is the sole provider and regulator of workers' compensation in the state of North Dakota. You will want to be certain you have the proper workers' compensation coverage in place before hiring workers based in North Dakota or before employees begin working in North Dakota.

Any employer whose employment results in significant contacts with North Dakota, or enters into employment agreements in North Dakota must secure coverage with WSI.

An employer has significant contacts with North Dakota when:

- Any employee earns or would have been expected to earn 25% or more of the employee's gross annual wage or income from that employer for services rendered within North Dakota; **or**
- 25% of the employer's gross annual payroll is payable to employees for services rendered in North Dakota
- An employer hires an employee in North Dakota for work in North Dakota

If you come into North Dakota and hire workers here, WSI coverage is required

North Dakota Century Code §65-04-33 states, "An employer may not employ any person, or receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first applying for Workforce Safety and Insurance coverage for the protection of employees by notifying the organization of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming 12-month period."

Reciprocal agreements for out-of-state employers working in North Dakota

The significant contact test does not apply if your business has a reciprocal agreement in place between North Dakota and the state in which the employees are based. If hiring workers in North Dakota, WSI coverage is required. North Dakota has reciprocal agreements, with certain restrictions, with the following seven states: Idaho, Montana, Oregon, South Dakota, Utah, Washington, and Wyoming.

Employers need to contact WSI before assuming they have WSI coverage for their employees working in these states. Reciprocal agreements are available upon request.

In order for your business to have reciprocity with North Dakota, you must request the reciprocal agreement from the appropriate state. A petition will be sent to WSI for review. WSI will respond with confirmation or a denial letter. Reciprocal agreements are for a limited amount of time and must be monitored closely.

If you do not have significant contacts with North Dakota, as defined above in coverage requirements for out-of-state employers, and you can provide proof that your workers' compensation carrier from your home state extends coverage into North Dakota, you are not required to obtain a WSI account. If you open a workers' compensation account with WSI, all payroll earned in North Dakota must be reported annually to WSI.

Reciprocal agreements for North Dakota employees working out-of-state

WSI currently has reciprocal agreements with 7 states: Idaho, Montana, Oregon, South Dakota, Utah, Washington, and Wyoming. These reciprocal agreements allow your North Dakota employees to work in those states on a temporary basis without purchasing workers' compensation coverage in that jurisdiction.

The reciprocal agreements for each state vary and may include exclusions. These agreements must be requested by the employer and be approved before becoming effective. Employers must contact WSI before assuming they have WSI coverage for their employees working in these states. WSI has jurisdiction over a claim arising under a reciprocal agreement.

Complying with other states' workers' compensation requirements

It is the duty of every North Dakota employer whose business operations touch another jurisdiction to inquire into the workers' compensation requirements of that jurisdiction. North Dakota employers who do not ensure their compliance with other states' workers' compensation requirements run the risk of being uninsured while working in that state.

Typically, an employer who does not ensure compliance with other states' workers' compensation requirements is unaware that they would be considered uninsured in another state until an employee files a claim for benefits in another state. If a North Dakota employer is deemed uninsured in that other state, the financial repercussions in premium and penalties are potentially serious.

Extraterritorial coverage

As a general rule, extraterritorial coverage extends to incidental operations lasting fewer than 30 days in a state where the employer has no other significant contacts with that state and those operations do not require the employer to purchase workers' compensation insurance under the laws of that state.

The difficulty in determining which state has jurisdiction in these situations intensifies when defining significant contacts. Each state has different definitions of "significant contacts." In determining if extraterritorial coverage applies to an employer, WSI considers the following:

- What is the nature of the employer's business? Do the employer's employees travel daily to another state to make deliveries or provide services?
- Do the business operations of the employer make the employer's contact with another state more than incidental or occasional?
- In what state was the employment contract entered?

- Does the employer have a physical place of business in this state and do the employees regularly report or work from that place of business?
- What is the employee's state of residence?
- Does the employer's work require the employer to spend 30 or more consecutive days in another jurisdiction?

Temporary and incidental All States Coverage

WSI has a relationship with The Accident Fund of America to provide coverage for all North Dakota employers who have workers traveling outside of North Dakota on a temporary and incidental basis. All active policyholders in good standing with WSI are automatically enrolled and this is included with your account.

How it works:

- This insurance provides coverage for temporary and incidental exposures in all states except Ohio, Washington, and Wyoming.
- This is coverage for all your North Dakota based employees who travel to other states on temporary incidental business. Temporary and incidental exposure means exposure outside the state of North Dakota for not more than 30 consecutive calendar days. An employer is always responsible for evaluating their exposure in each state in which they conduct business to ensure compliance with the workers compensation law of that state.
- If the employer or employee has a permanent worksite outside the state of North Dakota, or other significant contacts in that state, the employer must obtain workers' compensation coverage in that state.
- It is important for all North Dakota employers to check with the state in which they operate to verify coverage requirements. WSI cannot guarantee that coverage in another state is not required.
- It is the responsibility of every North Dakota employer whose business operations touch another jurisdiction to inquire into the workers' compensation requirements of that jurisdiction. North Dakota employers who do not ensure their compliance with other states workers' compensation requirements run the risk of being uninsured in that state.
- Temporary and incidental All States Coverage does not provide employer liability coverage.

If you have applied for a North Dakota Contractor's License

If you neither employ nor anticipate employing anyone within the state of North Dakota in the near future, and do not meet the tests of significant contact with North Dakota, you are not required to apply for WSI coverage. In order for WSI to send a letter of good standing to the Secretary of State, you must complete a Verification of Non-Employment, which indicates you are not required to apply for workers' compensation at the present time. The verification form is available online Verification of Non-Employment. When the electronic document is received and reviewed at WSI, we will notify the Secretary of State regarding your letter of good standing.

If you have an active account with WSI and are looking to secure or renew a North Dakota contractor's license, you may upload your current WSI Certificate of Payment via the North Dakota Secretary of State website.

General contractor liability

North Dakota Century Code §65-04-26.2 states that an individual employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor is deemed to be an employee of the general contractor if the subcontractor or independent

contractor does not secure coverage as required under Title 65. A general contractor is liable for payment of premium and any applicable penalty for an employee of a subcontractor or independent contractor that does not secure required coverage until the subcontractor or independent contractor has secured the necessary coverage and paid the premium for the coverage.

If you are a principal contractor:

- Obtain a Certificate of Payment verifying that your subcontractor has workers' compensation insurance with WSI for their workers.
- Show proof of a North Dakota contractor's license.
- If requested by WSI, it is the responsibility of the contractor to provide a list of all subcontractors.

Determining independent contractor status

Each person who performs services for another for remuneration is presumed to be an employee of the person for whom the services are performed; unless it is proven that the person is an independent contractor under the "common law" test. The person who asserts that they are an independent contractor under this test rather than an employee has the burden of proving that, see North Dakota Century Code §65-01-03.

A determination under this section that a person is not required to be insured is effective for no more than one year from the date the person is notified of the determination. The organization retains continuing jurisdiction over determinations and may reconsider or revoke its decision at any time, see North Dakota Century Code §65-09-01(2). If any employer or an independent contractor wants to verify independent contractor status, they can contact WSI and an independent contractor verification questionnaire will be provided.

Updating your Account

Contact Customer Service at 701-328-3800 or 800-777-5033 if any of the following changes occur to your operation:

- General nature of operation
- The type(s) of work performed
- Trade name
- Incorporation of business or change in corporate officer status
- Subsidiaries or new locations
- Mailing address
- You cease having workers or are closing your business
- Any of your workers will be working outside of North Dakota
- Change of ownership
- Obtain or cease services of a professional employer organization (PEO)

Canceling coverage

North Dakota law requires employers to carry WSI coverage for their employees up through the last date someone was employed. Until WSI receives a written request to cancel coverage, your policy will remain open. WSI will continue to mail payroll notifications and billing statements.

- All payroll reports must be completed even if you had no employees during this time. If you need to cancel your account at the time your policy is renewing, indicate that when submitting your payroll information.

- When canceling coverage, you must submit a final payroll report and pay any premiums or other assessments due.

Safety incentive programs

Several safety initiatives are offered to North Dakota employers, which have the potential to reduce a qualifying employer's premium by up to 25%. Additional information may be found in the Safety section of WSI's website.

Workers' compensation fraud

WSI has a responsibility to the employers and workers of North Dakota to investigate allegations of fraud. Fraud occurs when someone knowingly lies to obtain a benefit or advantage. If you suspect fraudulent behavior is occurring, contact us. Anyone may leave a confidential and anonymous tip by calling the Fraud Hotline at 800-243-3331.