

ALABAMA UNEMPLOYMENT AND WORKERS' COMPENSATION MANUAL

A GUIDE TO SIMPLIFYING
ALABAMA'S EMPLOYMENT RELATED LAWS

2009



A Publication of the Alabama Department of
Industrial Relations

TABLE OF CONTENTS

PREFACE	3
PHONE DIRECTORY	4
FAQ	4

Part I - UNEMPLOYMENT COMPENSATION

ALABAMA UNEMPLOYMENT COMPENSATION LAW	6
INTRODUCTION	6
SUMMARY OF THE LAW	7
COVERAGE	7
EMPLOYER TAXES	7
EMPLOYMENT SECURITY ASSESSMENTS	8
EXPERIENCE RATINGS	8
ELIGIBILITY OF BENEFITS	8
DISQUALIFICATION FOR BENEFITS	9
PROCEDURES RELATING TO EMPLOYEE BENEFITS	10
PROCEDURES RELATING TO EMPLOYER TAX RATES	11
COMPLIANCE BY EMPLOYERS	12
CONTESTING A CLAIM	12
PARTIAL UNEMPLOYMENT COMPENSATION CLAIMS	12
WAGE AND CONTRIBUTION REPORT	12
RECORD KEEPING	13
POSTING REQUIREMENTS	13
PRACTICAL SUGGESTIONS FOR EMPLOYERS	13

Part II - ALABAMA WORKERS' COMPENSATION LAW

ALABAMA WORKERS' COMPENSATION LAW	15
INTRODUCTION	15
SUMMARY OF THE LAW	16
REQUIRED COVERAGE	16
INSURANCE OPTIONS	17
COMPENSABLE INJURIES AND DISEASE	17
BENEFITS	17
TIME LIMITATIONS	19
HEARING, AWARDS, AND APPEALS	20
TERMINATION OF EMPLOYMENT FOR FILING A CLAIM	20
COMPLIANCE BY EMPLOYERS	21
REPORTS OF INJURY	21
REPORTING OF SETTLEMENT	21
SUPPLEMENTARY REPORTS	21
PRACTICAL SUGGESTIONS FOR EMPLOYERS	22
SUMMARY	24
APPENDIX	25

Preface

This publication has been prepared by the Alabama Department of Industrial Relations to provide a current, brief outline of Alabama's Unemployment and Workers' Compensation laws. The information in this manual is provided for the employers of the State of Alabama. The information included defers to the Unemployment Compensation Laws of Alabama. Detailed information as to laws and regulations should be addressed to the Alabama Department of Industrial Relations, Industrial Relations Building, 649 Monroe Street, Montgomery, AL 36131. Additional information may also be viewed at www.dir.alabama.gov.

The information contained in this booklet is not intended to be legal advice and should not be construed in that manner. This booklet is for informational purposes only and any conflict between the information contained herein and the statutory law should be construed in favor of the statute.

Phone Directory

Department of Industrial Relations: 334-242-8055
Unemployment Comp: 334-242-8025
Workers Comp: 334-242-2868 or 1-800-528-5166
To file an unemployment claim: 1-866-234-5382

Frequently Asked Questions

Unemployment Compensation

1. What is the purpose of Unemployment Compensation?

Unemployment Compensation serves to provide an income for involuntary unemployed workers during their unemployment.

2. What is the Unemployment Compensation Trust Fund?

All UC contributions collected at the state level are deposited in the UC Trust Fund and can be used only for the payment of UC benefits. They payments are collected from employers based on their experience rating.

3. What is the role of the State Government regarding Unemployment Compensation?

The State is charged with regulating benefit amounts, eligibility, disqualifications, duration of benefits, and an employer's experience rating.

4. What is the role of the Federal Government regarding Unemployment Compensation?

The Federal Government prescribes the standards for state unemployment compensation and levies the federal unemployment insurance tax.

5. How is the State Unemployment Insurance Program financed?

The program is financed primarily by a payroll tax based on the first \$8,000 paid in a calendar year to each employee.

6. What is an experience rating?

The UC tax system is designed to replenish the Trust Fund for every dollar of benefits paid. In other words, every dollar of benefits is charged to an employer account or a shared account. As of June 30 of each year, DIR calculates the benefits ratio for each employer by taking the sum of total benefits for each employer for the last three years divided by the employer's total payroll for the last three years. The ratio is then compared to the chart location in Section 25-4-54 to determine which one of the twenty-six rates will be used. The lowest experience rating is 0.2% in Schedule A and the higher is 6.8% in Schedule D.

7. How do new employers establish an experience rating?

It takes an average of seven to ten quarters to establish an experience rating. Therefore, all new businesses begin with a 2.7% UC tax until a rating can be established.

Worker's Compensation

1. *How many employees must an employer have to provide workers' compensation insurance?*

All private employers are obligated to provide workers' compensation insurance if they employ five or more persons.

2. *What are the insurance options for employers?*

- A. Voluntary Market: Local insurance agents provide this insurance through an admitted insurance company.
- B. Assigned Risk Plan: Local insurance agents provide this insurance to employers who cannot get voluntary market insurance.
- C. Self-Insurance Group Funds: Local insurance agents quote coverage with the seventeen group funds.
- D. Self-Insured: Coverage is assumed for a business that meets certain qualifications.

3. *What do the Workers' Compensation Laws cover?*

The Workers' Compensation laws are designed to reimburse employees who are injured as a result of employment and are therefore unable to perform the work that accompanies their job.

4. *What are the three kinds of Workers' Compensation benefits available?*

There are compensatory benefits, medical benefits, and death benefits. Compensatory benefits compensate for wages lost as a result of injury or disease caused by unemployment. Medical benefits cover the cost of all necessary medical treatment that results from the injury. Death benefits are paid to the dependents of an employee who dies within three years of a work-related accident.

5. *What are the four categories of compensatory benefits?*

Temporary partial benefits are paid to those employees who cannot perform their regular work due to their injury, but are still able to do some work. Temporary total benefits are paid to those employees who are completely disabled temporarily, and are paid two-thirds of their regular weekly earnings. Permanent partial benefits are paid to those who receive specific injuries based on how debilitating the injury is. Permanent total benefits are paid for the duration of an employee's disability and is equivalent to two-thirds of the employee's weekly earnings.

6. *How long can a dependent of an employee who has died as result of an accident on the job receive death benefits?*

The dependant will receive \$3000.00 for funeral expenses, and will continue receiving benefits for 500 weeks or until the remarriage or death of the dependant.

7. *What should an employee do if he or she is injured on the job?*

The employee must provide their employer with a written notification of the injury within five days in order to receive benefits.

Part I: Unemployment Compensation

ALABAMA UNEMPLOYMENT COMPENSATION LAW

A. INTRODUCTION

Alabama's unemployment compensation program is jointly governed by state and federal laws. The state law governs such matters as benefit amounts, eligibility, disqualifications, duration of benefits, and experience rating. Federal laws prescribe standards for state unemployment compensation programs and levy the federal unemployment insurance tax. The unemployment insurance program has two primary goals: (1) to provide partial protection against the loss of wages when an employee is temporarily out of work through no fault of his own, and (2) to promote stable employment by encouraging employers to retain the same employees and minimize separations. The first goal is achieved by eligibility requirements, disqualifications, and other limitations on unemployment compensation. The second goal is achieved through an experience rating system, which gives employers a "dollar and cents" incentive to stabilize employment. For example, under the experience rating system, the unemployment tax increases as the benefits paid to unemployed workers increase for an employer. Therefore, employers who make special efforts to provide steady employment for their employees are rewarded by paying lower tax rates.

The federal law which governs unemployment compensation matters is the Federal Unemployment Tax Act, which is part of the Internal Revenue Code and Social Security Act. The federal government levies taxes on each employer. A portion of this tax is returned to the state each year as federal grants-in-aid to pay the costs of operating unemployment compensation and employment service offices.

The state law, which governs unemployment compensation matters, is the Unemployment Compensation Law. The state unemployment compensation tax is levied on the employer, and is based on an experience rating system. The state tax pays the cost of unemployment benefits; in essence, the state tax is somewhat like a private insurance plan. The state tax represents the premium for the unemployment insurance program. The premiums or tax for the unemployment insurance program is collected and accumulated in a reserve trust fund for the purpose of future benefit payments. An essential component of the unemployment compensation program is the Alabama State Employment Service, which maintains a system of public employment offices to be used in recruiting workers. The Employment Service, along with the Division of Unemployment Compensation, is part of the State Department of Industrial Relations.

B. SUMMARY OF THE LAW

1. Coverage

Generally, the Unemployment Compensation Law covers all private for-profit and most nonprofit employers who employ one or more persons for any portion of a day in each of at least twenty calendar weeks, regardless of the weeks being consecutive or not in either of the current or preceding calendar year, or who have a payroll of \$1,500 or more in any calendar quarter. The rules for coverage vary slightly for certain nonprofit organizations that are tax-exempt under Section 501 (c) (3) of the IRS Code, employers of domestic workers and certain agricultural employers. Included in “employers exempted from coverage” are churches, railroads, employers of newsboys under 18, and employers of purely commission-paid insurance and licensed real estate agents

2. Employer Taxes

An employer pays net federal payroll tax in the amount of 0.8% of the first \$7,000 of annual earnings paid to each employee, providing that the employer’s state tax is paid in full timely. The state employer payroll base tax rate ranges from a minimum of 0.2% in Schedule A to the maximum of 6.8% in Schedule D of the first \$8,000 of each employee’s wages paid in a calendar year, depending on the experience rating of the employer. A new employer’s tax rate is 2.7% (See explanation below.)



The state tax rates are recomputed annually and each employer is notified no later than January 30, but usually prior to January 1, as to what his rate will be beginning January 1 and ending the following December 31. An employer may determine total benefit costs by adding the benefit costs for a three year fiscal period. These costs are then divided by the total timely paid taxable wages for those same three years to obtain the benefit ratio or percentage. This ratio or percentage, in combination with the state schedule, determines the employer’s tax rate. In addition to the computed rate, employers may be taxed in connection with “shared costs” incurred by the system, but not effectively chargeable to a specific employer. Interest earned on the trust fund is used to offset the shared cost, thereby reducing or eliminating the charging of this cost to employers. When applicable, the shared cost percentage shown on the tax rate notice is added to the computed rate percentage to obtain an employer’s total tax contribution rate.

3. Employment Security Assessments

During the Regular Session of 1995, the Legislature enacted a change in the Alabama Unemployment Compensation Law which required a 0.06% Employment Security Enhancement Assessment (ESA). This assessment is effective for calendar quarters beginning April 1, 1995, and ending March 31, 2010.

Quarterly ESA payments are deposited in the employment security administration fund in the state treasury. The monies in the ESA fund are used in a special claimant placement program and to supplement basic employment security services with special job search and job placement assistance designed to help unemployment compensation claimants in obtaining employment more quickly.

4. Experience Ratings

The experience rating system provides that the tax rate paid will vary with the risk of unemployment for each employer. The employer's tax rate is recomputed each year in accordance with a formula that measures the amount of unemployment among his current and former employees. In order to maintain a trust fund adequate to pay benefits, the annual recomputation of tax rates is made on one of four schedules: Schedule A, Schedule B, Schedule C or Schedule D, and includes recovery of shared cost. Employers who are able to provide relatively steady work for their employees will usually earn a computed tax rate at the lower range of each schedule.

New employers are not subject to shared cost or ESA and are assigned a tax rate of 2.7% until an experience rating is established, which is two full calendar years of experience. A successor employer, however, adopts the unemployment experience rating of its predecessor for tax rate purposes.



5. Eligibility for Benefits

In order to qualify for benefits, an unemployed worker must meet the following prerequisites:

- a. He must have prior employment with a “covered” employer.
- b. He must have received wages during at least two quarters of the “base period” provided by law, with total earnings of at least \$1167.01. During the highest quarter in the base period, the employee must have been paid at least \$583.51, with at least half of that amount paid to him in one or more of the other three quarters. Also, if he established a benefit year and was paid benefits, and at the expiration of that benefit year filed a new claim, he must have earned at least eight (8) times that weekly benefit amount in insured employment subsequent to establishing the prior claim.

- c. He must have filed a claim for benefits in accordance with the prescribed rules.
- d. He must be physically and mentally able to work.
- e. He must be actively seeking work and be registered for work with an Employment Service office.

6. Disqualification for Benefits

An otherwise eligible individual may be disqualified from receiving all or part of his unemployment insurance benefits if the individual:

- a. Voluntarily quit his last job without good cause connected with the work.
- b. Is unemployed directly due to a labor dispute in active progress at his place of employment.
- c. Was discharged from his work for acts of misconduct committed in connection with the work, actual or threatened misconduct connected with the work repeated after previous warning, or for a dishonest or criminal act, sabotage or an act endangering the safety of others committed in connection with the work.
- d. Is an employee of an educational institution during a paid vacation or holiday recess or between two successive academic years or between two regular terms, whether or not successive, or during a period of sabbatical leave if he has a contact or reasonable assurance to return to work after such period.
- e. Is receiving a company pension, retirement pay, or some other similar payments based on previous work.
- f. Is receiving Workers' Compensation for a temporary disability or receiving Workers' Compensation for a permanent disability if the amount of compensation for such permanent disability equals or exceeds the amount of weekly unemployment benefits.
- g. Is self-employed.
- h. Fails to apply for or accept available suitable work.
- i. Tests positive due to the use of illegal drugs in accordance with the U.S. Department of Transportation in 49 CFR Part 40 and Code of Alabama §25-4-78 (3)a.(i).



7. Procedures Relating to Employee Benefits

(a) Filing of Claims

An unemployed individual files a claim for unemployment compensation by calling a toll free number or by accessing the internet claims filing system at www.dir.alabama.gov. The agency then sends a Notice of Claim and Request for Separation Information, to the claimant's most recent employer. The determination of a claim is made by an examiner, who sends the employer a notice advising of the action taken, the weekly benefit rate and maximum benefits, and any period of disqualification that applies.

(b) Appeals to Hearing Officer

Either party may appeal the determination of the claims examiner, which will be received by the employer on an "Employer Notice of Determination". Appeals must be received by the agency within 15 days from the date the form was mailed to the employer. No special form is necessary; the appeal may consist merely of a letter, specifying the name of the claimant, his social security number, the employer account number, and the reason for appealing the determination. The request for appeal may result in a redetermination of the initial decision made by the claims examiner, or a hearing that will be scheduled by a hearing officer. A written notice of the hearing must be mailed to each party at least seven days prior to the scheduled date. The hearing is an informal procedure, held by telephone, during which all testimony is taken under oath. Both parties have an opportunity to question witnesses. The claimant and the employer have the right to be represented by counsel.



(c) Appeals to Board of Appeals

Either party may appeal the hearing officer's decision by sending a brief informal statement setting forth the reasons for appeal to the department within 15 calendar days after the date the hearing officer's decision was mailed. The appeal of the hearing officer's decision will be directed to the three member Board of Appeals appointed by the Governor. The Board of Appeals may deny the appeal without a hearing or accept the appeal and limit itself to examining the evidence submitted by the parties; or it can agree to hear oral arguments in a more formal setting. The Board has the option of taking additional evidence; remanding the case to a hearing officer for taking additional evidence, affirming, modifying, or setting aside the findings of the hearing officer. A decision of the Board becomes final ten days after it is mailed.

(d) Appeals to Courts

Either party may appeal the decision of the Board of Appeals to the Circuit court within ten days from the date the decision become final. An appeal should be filed in the county of the claimant's residence. As in any court case, the decision of the Circuit Court may be appealed to the Alabama Court of Appeals, after which it may be appealed to the Alabama Supreme Court.

(e) Reopening a Determination

In rare instances, the Director of the Department of Industrial Relations may make a redetermination on a claim if an error in wages, computation, or identity is found to have occurred. Redetermination may be made any time within the benefit year in which the claim was filed, even if the time for making an appeal has lapsed. Such a redetermination will only be made if false information or misrepresentation or an error is involved in the initial determination regarding benefits. This type of procedure is completely within the discretion of the director.

8. Procedures Relating to Employer Tax Rates

a. Review of Tax Rate

An employer may appeal his tax rate by applying for a review to the director within 30 days from the date the tax rate notice was mailed or they were notified. The director will render a decision on the application, which must be in writing and must set forth the grounds for review. If an employer desires to appeal the director's decision, he must file a complaint in Circuit Court in any county in which he engages in business within 30 days after the director's decision is mailed.

b. Appeal Regarding Benefit Charges

Employers may request a review of the benefit charges against their experience rating record if an error is made, by applying for revision of benefit charges within 90 days after the quarterly "Statement of Benefit Charged" is mailed. The application must be made in a letter to the director, setting forth a revision. The employer may protest the decision made by the director on its application by filing a written protest and petition for a hearing within 30 days after receiving the director's decision. The director will specify a time and place for the hearing and render a decision, which may be appealed within 30 days after the decision is mailed by filing an application for review by the Circuit Court in any County in which the employer is engaged in business.

C. COMPLIANCE BY EMPLOYERS

1. Contesting a Claim

After receiving a Notice of claim and Request for Separation Information, the employer must, within six working days of the mailing date, respond with accurate information of the date the claimant last worked and the reason he become unemployed. This form may be used by the employer to state any reasons for denying the claim, i.e., ineligibility or disqualification. If the claims examiner does not disqualify the employee, the determination may be appealed, using the steps previously described.

2. Partial Unemployment Compensation Claims

When, due to lack of work, an employee is employed on his regular job less than full-time and earns wages less than his weekly unemployment benefit amount, he may be eligible for “partial benefits.” His partial benefit will be equal to his weekly unemployment benefit amount, less that part of his earnings in excess of \$15.00.



The employer has the responsibility for initiating claims for partial benefits whenever an employee becomes eligible due to lack of work. This condition only applies if the employee is employed in his regular job less than full-time and earns wages less than his weekly unemployment benefit amount. On a day when an employee is paid weekly earnings less than approximately 70% of his usual pay and less than the highest allowable weekly benefit for total unemployment, the employer should electronically file a “Workers’ Claim for Partial Benefits”. The form must be initiated by the employer or his authorized representative and transmitted electronically to the payment processing center. This form must be issued for each week in which an employee’s earnings are below his weekly benefit amount. Upon receipt of the form, the department will notify the employer of the employee’s weekly unemployment benefit amount and the date his benefit year ends.

3. Wage and Contribution Report

Each employer must pay unemployment compensation taxes quarterly and within one month after the end of each calendar quarter. Tax payments and “Quarterly Wage and Contribution Report” must be filed online at www.dir.alabama.gov or by phone (IVR) by dialing toll free 877-581-5880 and following the prompts. Such reports must be filed for each quarter, even if no wages were paid. Penalties may be assessed for failure to pay taxes or to submit Quarterly Wage Contribution Reports in a timely manner.

4. Record Keeping

The Unemployment Compensation Law requires each employer to maintain records, which are open for inspection by representatives of the department. For each worker, the records must show name, social security number, gross cash wages and any non-cash remuneration, dates of payment, hiring, separation, rehiring, and dates and number of hours worked. Every employee covered by unemployment compensation must have a social security number.

5. Posting Requirements

Employers covered by the Unemployment Compensation Law are required to post and maintain conspicuous printed notices to employees. These notices deal with their liability for contributions to the unemployment compensation fund. The notice must also include information concerning employees' rights to benefits and instruction concerning the procedures for filing claims. The Department of Industrial Relations prepared a poster which is available on our website or may be obtained upon request without charge.

D. PRACTICAL SUGGESTIONS FOR EMPLOYERS

1. The employer can take steps to maintain a favorable experience rating. At a minimum, he should always promptly answer the Request for Separation Information, detailing the facts relating to each employee's separation. The employer should not merely express his opinion or make a general statement that the employee was "discharged" or "quit voluntarily." The employer should state the facts in support of his claim as to why the employee should be disqualified from receiving benefits.



2. Appeals should be filed promptly upon receipt of an Employer Notice of Determination, if the determination is incorrect. The actual basis for the appeal should be explained clearly, including facts to show why the decision made on the claim was in error.

3. Information that is brought out in the Unemployment Compensation proceedings may be used in other proceedings or court cases, such as EEOC or wrongful discharge or tort claims. Records and transcripts of hearings may be subpoenaed for use in cases filed in federal court. It is especially important, therefore, for employers to document fully, and be accurate and consistent at every step of unemployment proceedings in stating the reasons for terminating an employee.

4. Employers should verify benefit charges and tax rates by carefully reviewing the "Statement of Benefit Charged" to determine if benefit charges were computed accurately. Similarly, the tax rate notice should be checked.

5. An employer who is familiar with the eligibility requirements and grounds for disqualification can reduce his liability for benefits by properly handling terminations. Progressive discipline, which includes written warning procedures should be used, and all facts concerning any misconduct should be recorded in personnel records, along with the names of witnesses. Written statements from witnesses are also helpful. Employees should be disciplined and/or discharged, consistent with disciplinary policies.

6. In “special separation” cases, an employer’s experience rating record may not be charged, and the employee is not disqualified when these two conditions are met: (1) The employee voluntarily quit his interim employment to return to his regular employer or employment in which he had seniority or recall rights; and (2) the return is immediate. The interim employer should not be charged. There are also special provisions in the law for employees who are forced to leave work because of sickness or disability, including pregnancy. The treatment of these cases will depend on whether the employer has a leave of absence policy, and whether the employee follows all the prescribed procedures.

7. The Department of Industrial Relations has several publications that are useful to employers. They include: “The Alabama Unemployment Compensation Law,” “Unemployment Compensation Rules and Regulations,” and the “Employer Information Handbook”.

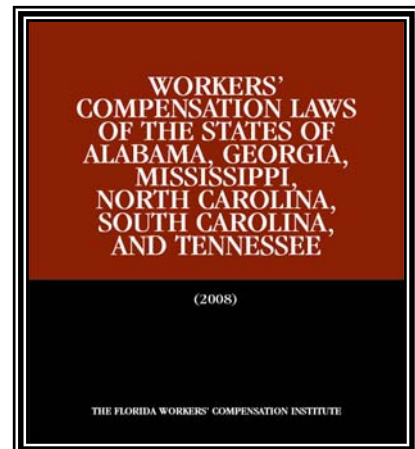
Part II: Workers' Compensation

ALABAMA WORKERS' COMPENSATION LAW

A. INTRODUCTION

The purpose of Alabama's Workers' Compensation Act is to provide benefits to employees who suffer occupational health and injury problems. Typically, the statute limits compensation benefits to personal injury caused by accidents arising in the course of employment. The employee does not have to prove any fault on the part of the employer and his remedy is limited to the amount specified in the law. The act is intended to provide employees an exclusive remedy. **The employee cannot sue the employer for anything other than denial of benefits as long as the occurrence is covered by the Workers' Compensation Act.**

Particularly, this means that the act is compulsory and represents a compromise between the interests of the employee and those of the employer. In effect, the act limits the employer's three common law defenses against liability: (1) assumption of the risk, (2) negligence of fellow employees, and (3) contributory negligence. However, at the same time, it establishes the maximum amount allowable for a given injury. The employee can forfeit his right to compensation by committing several acts of omissions which include intoxication, use of unauthorized drugs, or willfully intending to injure himself or others. All details of the Alabama Workers' Compensation Law are described fully in the Code of Alabama, with supplements, beginning with Volume 15, Section 25-5-1. This statute should be referenced for specific information not contained in this manual.



The 1985 Amendment to the Workers' Compensation Act provided limited immunity to co-employees, compensation carriers, and labor unions; these parties now can only be liable for an injury to a worker for the four categories of willful conduct defined in the act: (1) intentional acts; (2) intentional removal of a safety guard or device; (3) intoxicated employee acts; and (4) willful and intentional violation of written safety rules. A 1992 Amendment to the Workers' Compensation Act provided employers with an 'Employer Bill of Rights.'

B. SUMMARY OF THE LAW

1. Required Coverage

Generally, all private employers in the state must provide workers' compensation insurance if they employ more than four persons, either full-time or part-time. The following exceptions are specified in Code of Alabama 1975, § 25-5-50(a) as amended to read as follows: This article and Article 2 of this chapter shall not be construed or held to apply to an employer of a domestic employee; an employer of a farm laborer; an employer of a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer; an employer who regularly employs less than five employees in any one business, other than the business of constructing or assisting on-site in the construction of new single-family, detached residential dwellings; or a municipality having a population of less than 2,000 according to the most recent federal decennial census.

Pursuant to Code of Alabama 1975, §25-14-9(6)(a), a professional employer organization shall assure to the satisfaction of the director that workers' compensation coverage is provided for all covered employees employed in this state pursuant to the laws of this state. Failure to provide the director with proof of workers' compensation coverage shall subject the professional employer organization to a civil penalty of one thousand dollars (\$1,000). In the event individual coverage is obtained for each client employer, failure to provide proof of coverage for each client employer shall constitute a separate finable offense.

Any officer of a corporation or member of an LLC may elect to be exempt from coverage on a year-by-year basis. The officers/members must file certification such as election with the Department of Industrial Relations and their insurance carrier. At the end of any calendar year, the officer/member can revoke the election and obtain coverage by written certification of this intent with The Department of Industrial Relations. Furthermore, employers who are not required to be covered may also elect to be covered.

2. Insurance Options

The employer has four (4) available options to purchase workers' compensation insurance coverage.

Voluntary Market

The local insurance agents will provide this coverage through an admitted insurance company.

Assigned Risk Plan

The local insurance agent will provide this coverage to employers who cannot obtain

voluntary market coverage.

✓ Self-Insurance Group Funds

The local insurance agents may quote coverage with the seventeen (17) Group Funds. This offers competitive workers' compensation insurance coverage.

✓ Self-Insured

Coverage is assumed individually by a business that meets the self-insured qualifications set forth by the Alabama Workers' Compensation Division. Those qualifications include having a net worth of at least \$5 million, having a current assets to current liabilities ratio of 1.0 or better, and having a positive net income for the latest financial year.

3. Compensable Injuries and Disease

The law compensates for injuries resulting from accidents "arising out of and in the course of employment." If these requirements are met, the employer cannot refuse payment. An occupational disease is defined as a disease "caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of exposure over a period of time to the normal working conditions of such trade, process, occupation or employment." In addition, the act specifically includes occupational pneumoconiosis, a lung disease caused by prolonged inhalation of dust particles and exposure to radiation.



4. Benefits

Three kinds of benefits are available: (A) compensatory, (B) medical, and (C) death.

(A) Compensatory Benefits

Compensatory benefits compensate for lost wages due to occupational injury or disease, and are divided into the following four categories: ¹

(1) Temporary Partial

Here the employee is unable for a period of time to do his normal work, but may be able to do some lesser amount of work, such as in the case of a broken bone. The compensation is for lost wages, and is based on two-thirds of the difference in the employee's earning capacity before and after the accident. Payment for temporary partial disability is limited to a maximum of 300 weeks.

(2) Temporary Total

For injury producing temporary total disability, the compensation equals two-thirds of the average weekly earnings received at the time of the injury for the 52 week period preceding the injury.

(3) Permanent Partial

The amount of compensation paid depends upon the extent of the injury. The statute contains an extensive list of possible injuries and their applicable compensation rates. The maximum amount of permanent partial disability payment is \$220 per week.

(4) Permanent Total

This payment runs for the duration of the disability and is equal to two-thirds of the total weekly earnings at the time of the injury. Any of the compensation benefits may be paid out in a lump sum if both parties agree and the court approves it. No compensation accrues until the fourth day after disability, but if the period runs for 21 days, the first three days are added to the first payment due after the 21 days. Any payments not paid for more than 30 days and without good cause incur a 15% penalty.



(B) Medical Benefits

Medical compensation includes the cost of reasonably necessary treatment. The employer must pay the actual cost of related medical treatment, medicine, medical supplies, crutches, surgical services and supplies, artificial members and other apparatuses that may be obtained by the injured employee. However, the cost of treatment is not to exceed the prevailing rate or maximum schedule of fees as established by the Workers' Compensation Medical Service Board. The employer will also be held liable for any rehabilitative treatment which a vocational rehabilitation specialist and a physician agree will restore the employee to gainful employment. The term "physicians" means medical doctor, surgeon, or chiropractor. If the employee is dissatisfied with the initial treating physician selected by the employer and if further treatment is required, the injured employee may request a change of physician. In such an event, the employer must supply a list of four other physicians from which to choose. If four physicians or surgeons are not available, the employer can include on the list as many as are available that are not members of the same firm or partnership. The injured employee must submit to examination by the employer's physician at all reasonable times. Failure to comply or refusal to accept medical services offered by the employer results in forfeiture of compensation for the period of time of the refusal. The employer's liability is unlimited and begins when the employee first submits to medical treatment.

1. Note: Compensation is subject to a maximum or minimum rate established by law at the time of injury.
http://dir.alabama.gov/docs/guides/wc_weeklywage.pdf

(C) Death Benefits

If death occurs within three years of a work related accident, benefits will be payable to the dependents of the deceased employee according to the following schedule: ¹

1. The deceased employee leaves one dependent, that dependent shall receive 50% of the average weekly earnings.
2. Two or more dependents will share two-thirds of the weekly earnings.
3. The act entitles wholly dependent persons to more compensation than partial dependents and lists the order of preference as wife, child, husband, mother, father, grandmother, grandfather, sister, brother, mother-in-law or father-in-law who was wholly supported by the deceased at the time of the death.

Death benefit payments include up to \$3,000 for burial expenses, and will be made only to dependents who are United States residents. The benefits continue for a period of 500 weeks or cease upon remarriage or death of the dependent, whichever occurs first. The payments will be made at the time and intervals when the earnings were payable, unless the parties agree otherwise. Concerning occupational diseases, only the employer in whose employment the employee was last exposed to the hazard is liable. If no dependents exist, a one-time \$7,500 payment is made to the estate.

5. Time Limitations

The act stipulates that an injured employee must furnish the employer with written notification within five days of the occurrence of the accident; however, court action suggests that oral notice is considered sufficient. If the employee fails to report the injury within five days, he forfeits physicians and medical fees, and any compensation that may have accrued during the period between the fifth day and the giving of notice, unless he had good cause, such as physical or mental incapacity. In all cases, no compensation is payable unless written notice is given within 90 days after the accident or death.

Additionally, claims for personal injury and death benefits are barred unless the parties agree on payable compensation, or a verified complaint is filed within two years of accident, or two years from the date of the last compensation payment. In Alabama, the time of the accident means when the event occurred, not when the damage was first realized. In claims for occupational disease, the employee must file within two years of the date of the damage, which is the date of the last exposure to the hazard. If the damage is caused by exposure to radiation, the two-year limitation period runs from the time the employee knew, or should have known of the harm caused.

1. Note: Compensation is subject to a maximum or minimum rate established by law at the time of injury.
http://dir.alabama.gov/docs/guides/wc_weeklywage.pdf

6. Hearing, Awards, and Appeals

An employer and employee, or his beneficiary, have a right to settle workers' compensation claims. If the settlement is for less than the authorized amount, it must be approved by the Circuit Court with jurisdiction over the claim. If a settlement is not reached, either party may file suit in the Alabama Circuit Court in the county with jurisdiction. The act authorizes appeal to the court of Civil Appeals. Once a complaint is filed, the responding party must answer within 30 days. All issues are handled by a judge, except that either party may request a jury to try issues involving willful misconduct of the employee. If the employer defaults on a periodic payment of compensation, the employee may, after 30 days (plus five days notice), have the amount due reduced to present value to be paid in lump sum



Claims occurring on or after January 1, 1993, may be resolved by an Ombudsman in a benefit review conference if both parties concur.

Ombudsman Program: Effective for injuries occurring on or after January 1, 1993, a mediation program was established to help resolve workers' compensation claims. A toll free telephone number is available to assist injured employees, employers or anyone needing assistance. The mediators, called ombudsmen, may conduct benefit review conferences to mediate disputes. Mediation is not mandatory, but will be encouraged. Settlements reached under this process are not required to be court approved, but may be taken by either party to the court for final approval. The Ombudsman program should reduce litigation expenses for all parties. The ombudsman number is 1-800-528-5166.

7. Termination of Employment for Filing a Claim under Workers' Compensation is Prohibited

An amendment to the Workers' Compensation Act of 1985 reads as follows: "No employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits under this chapter or solely because the employee has filed a written notice of violation of a safety rule pursuant to subdivision (c) (4) of Section 25-5-11." While the act specifically prohibits termination of employment, it may apply to other employment actions if a constructive discharge is found.

This amendment does not mean that an employee who files a claim is immune from suspension or firing for good cause; the Act only requires that termination cannot occur in retaliation. For an employee who feels he has been terminated for filing a claim, his remedy is to bring suit against the employer in Alabama Circuit Court.

C. COMPLIANCE BY EMPLOYERS

1. Reports of Injuries

Employers must keep a record of all injuries, fatal and otherwise, for which payment is claimed or made. Within 15 days of knowledge of an injury, an employer must furnish a report to the Department of Industrial Relations. First Report of Injury (FROI) documents are currently being filed by paper or electronically (EDI). Refer to the following link for further information regarding electronic filing and/or claims forms: <http://dir.alabama.gov/wc/EDI/edipg1.aspx>

2. Reporting of Settlements

Within ten days of a settlement of a claim, the employer or his insurance company must make a report in writing giving the details, to include compensation, medical and legal expenses, and submit it to the Department of Industrial Relations.

[http://dir.alabama.gov/docs/forms/wc_combination%20\(rev%201-16-02\)-1.doc](http://dir.alabama.gov/docs/forms/wc_combination%20(rev%201-16-02)-1.doc)



Employer 'Bill of Rights': The 1992 Amendments to the Workers' Compensation Act provided employers with an 'Employer Bill of Rights.' The employer bill of rights provides that insurance carriers and other payers shall, upon the employer's written request, furnish information about claims against the employer and a notice of any proposed settlement of claims. The bill of rights further allows the employer to *terminate the worker in the event the court determines the worker filed a fraudulent claim.*

Fraudulent Claims: Effective April 28, 1994, any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining compensation, as defined in Code of Alabama, 1975, §25-5-1(1), as amended, for himself or herself or any other person is guilty of a Class C Felony, which could result in up to ten years' imprisonment. The Department of Industrial Relations, Workers' Compensation Division, has set up a Fraud Hot Line for your convenience. The number is 1-800 WCFKED or 1-800-923-2533.

3. Supplementary Reports

Upon termination of payment for any reason, the employer must, within ten days, make a report to the Department of Industrial Relations. If the employer is more than 30 days late in make the first payment, he must within ten days making a report explaining the delay.

[http://dir.alabama.gov/docs/forms/wc_combination%20\(rev%201-16-02\)-1.doc](http://dir.alabama.gov/docs/forms/wc_combination%20(rev%201-16-02)-1.doc)

The employer is under no obligation to notify an employee that a particular injury is covered under workers' compensation. Additionally, settlements of claims are encouraged, and advance payments are not construed as an admission of liability by the employer.

D. PRACTICAL SUGGESTIONS FOR EMPLOYERS

1. The law gives employers the right to select the initial treating physician. In the event an employee reports an injury and uses a physician not designated by the company, those medical bills would be outside of workers' compensation coverage (although they may fall within the coverage of the employer's medical insurance). If an employee is dissatisfied with the initial treating physician selected by the employer and if further treatment is required, the employee may request a list of physicians from which to choose. Under no circumstances does the law require an employer to let employees select their own treating physician. Any physician performing services that are paid for by the employer (or through the employer's workers' compensation carrier) or any physician of the injured employee who treats or is present at the examination of the injured employee, may be required to testify as to any knowledge gained by that physician in the course of such treatment or examination. Upon written request of the employer, and without the consent of or notice to the employee, the physician must furnish the employer with a written statement of his professional opinion as to the extent of the injury and disability. Similarly, employees may obtain medical records.

2. An employee who reports back to work subsequent to an on-the-job injury, but who is unable to perform the full duties of his position, need not be required to return back to work by the employer, unless the employer so desires to place the employee in a position with limited duties consistent with the employee's present ability. Additionally, the vocational rehabilitation requirements of the act require that the employer must only restore an injured employee to his "re-injury" economic status. An employer may not be required to take action that would improve the employee's economic status in life at the expense of the company.

3. The section of the code addressing the issue of retaliation for filing of a workers' compensation claim is limited to "termination." As with other areas of the law, certain employer actions, if deemed to create an unreasonable working atmosphere from the standpoint of a reasonable employee, may constitute constructive discharge and subject an employer to a lawsuit for retaliation.

4. There is an exception to workers' compensation being the exclusive remedy of an employee against his employer. The Alabama Supreme court has held that the tort of outrageous conduct and other nonphysical injuries, such as invasion of privacy, do not fall within the cloak of immunity that is prescribed by the act. Employers or their carriers may be sued for the tort of intentional infliction of emotional distress or outrageous conduct.

5. A revision to Code of Alabama, 1975, §25-5-51, provides that no compensation will be allowed if, at the time of or in the course of entering into employment or at the time of receiving notice of the removal of conditions from a conditional offer of employment, the employee knowingly and falsely misrepresents in writing his or her physical or mental condition and the condition is aggravated or reinjured in an accident arising out of and in the course of his or her employment. In addition, no compensation will be allowed if the employee refused to submit to or cooperate with a blood or urine test after the accident and after being warned in writing by the employer that such refusal would forfeit the employee's right to recover benefits. Note: If drug testing is conducted and evaluated pursuant to standards adopted for drug testing by the U.S. Department of Transportation in 49 C.F.R., Part 40, a positive test shall be conclusive presumption of impairment resulting from the use of illegal drugs.

For further information, contact:

Department of Industrial Relations
Workers' Compensation Division
649 Monroe Street
Montgomery, Al 36131
334-242-2868
1-800-528-5166

Summary

UNEMPLOYMENT COMPENSATION

The purpose of unemployment compensation is to provide an income for involuntarily unemployed workers during their unemployment. It is well understood that the unemployment compensation law was enacted to relieve the consequences and vicissitudes of unavoidable and enforced unemployment which were not brought about voluntarily by the worker. Most employers doing business in Alabama are subject to the State Unemployment Compensation Law. Coverage depends upon the type and nature of the business, the number of workers employed, or the amount of wages paid.

Under Alabama's Unemployment Compensation Law, the unemployment insurance program is financed primarily by a payroll tax based on the first \$8,000 paid in a calendar year to each employee. The rate at which an employer pays the tax varies according to his unemployment history. The employer's compared rate may be as low as 0.2% in Schedule A to as high as 6.8% in schedule D.

A new Alabama employer will pay tax at the rate of 2.7% until an experience rating is established. It will take from seven to ten calendar quarters to establish an experience rating, depending on the time of the year a new Alabama employer issues his first payroll. All unemployment compensation contributions collected at the state level are deposited in the Unemployment Compensation Trust Fund and can be used only for the payment of unemployment compensation benefits.

WORKERS' COMPENSATION

The Alabama Workers' Compensation Law is compulsory for all nonagricultural employers having more than four part-time or full-time employees. These employers are required to provide workers' compensation benefits for injuries arising from or in the course of employment. Workers' compensation insurance may be purchased through a private casualty insurance company licensed to do business in the State of Alabama. As an alternative, employers may qualify with the Department of Industrial Relations to function as self-insured businesses or be accepted as a member of a group self-insurance fund.

Employees injured on the job by accident or disabling occupational diseases are entitled to receive benefits for either temporary or permanent disabilities, for all reasonable and necessary medical expenses, and for vocational rehabilitation in some circumstances. Dependents are entitled to receive compensation in cases where death results. The maximum weekly compensation payable is limited to two-thirds of the employee's average weekly salary, not to exceed 100% of the state's average weekly wage.

Special taxes or assessments for the cost of administering the Alabama Workers' Compensation Law are payable by employers.

APPENDIX

