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Workmen's Compensation and Employer's Liability Insurance for agriculture

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COLORADO STATE UNIVERSITY EXTENSION SERVICE

Effective Jan. 1, 1977, farm and/or ranch employers were required to have a Workmen's Compensation Insurance policy if they have one or more nonfamily-related employees, regardless of the amount of wages paid.

The employers own paid family related employees (usually sons and daughters) also must be covered under the Workmen's Compensation Insurance Policy in order to be able to cover non-family related employees.

The Workmen's Compensation Insurance Policy is designed to cover the employer's liability under the Colorado Workmen's Compensation Act for death, injury or occupational disease which may occur to employees while on the job.

The policy is designed, generally, to pay: 1) the employee's doctor and hospital bills; 2) if unable to work for a prescribed period of time, a specified compensation; 3) benefits for partial or total disability and death also may be paid; 4) costs of rehabilitation and training for another job if required by the injury.

1. Who is an employer?

The act defines an employer as "every person, association of persons, firm, and private corporation... who has one or more persons engaged in the same business or employment..., in service under any contract of hire, express or implied."

However, the act is not intended to apply to employers of casual farm and ranch labor if the amounts expended for wages do not exceed the sum of \$2,000 for any calendar year.

2. What is casual labor?

This is a gray area difficult to define for farms and ranches. The act refers to casual maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the private home or place of business, trade or profession of the employer if such employers have no other employees subject to the act and if such employments are casual and are not within the course of the trade, business or profession of said employers.

3. Who is an employee?

This category includes contract workers, temporary field workers, harvest crews, etc., other than independent contractors. The definition may depend upon the degree of supervision, the right to hire and fire, and the furnishing of tools and/or equipment. Ordinarily, family members of an unincorporated farm or ranch are not considered employees.

4. Does a rancher or farmer need to insure custom operators and/or subcontractors and their employees?

Not necessarily, but the farmer or rancher must be certain that custom operators or subcontractors have a

valid workmen's compensation policy covering their employees. This can be done by requesting a Certificate of Insurance issued by the contractor's carrier prior to any work being performed. If the contractor does not have the insurance as prescribed, the law provides that the farmer can take out the insurance and deduct the cost from the contract price.

Colorado Revised Statute 8-48-101 (3) authorizes an agricultural employer to recover the cost of Workmen's Compensation Insurance from any subcontractor or custom operator and may withhold up to two percent of the total contract price owing or to become due the contractor, subcontractor or custom operator.

CRS 8-48-101 (4) provides that the landowner or lessee at a farm or ranch may elect not to provide workmen's compensation coverage for the employees of any contractor. This election may be made by completing a two-part card and directing it to the Colorado Division of Labor, 1313 Sherman St., Denver, Colo. 80203, who will stamp it as received and it shall be effective at 12:01 a.m. following the date of such receipt.

The election not to provide coverage for any contractor's employees must be made for each and every contractor and such rejection is applicable only for a twelve-month period. However, if an employee of such contractor is injured, the employee is entitled to recover the cost of compensation or medical benefits first against the contractor and thereafter, "only to the extent of any deficiency against said landowner or lessee."

5. Must farm family corporations, corporations or partnerships carry insurance?

Coverage for corporate officers of agricultural operations is optional. Colorado Revised Statute 8-41-105 authorizes such corporate officers as defined by workmen compensation manuals to elect to reject the provisions of the Workmen's Compensation Act. The election to reject coverage for any or all corporate officers shall be made by the farm or ranch employer by completing a two-part card and directing it to the Colorado Division of Labor who will stamp it as received and it shall be effective at 12:01 a.m. following the date of such receipt.

The insurance is optional for members of a partnership or limited partnership, but other employees must be covered.

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6. Where can the insurance be obtained?

Insurance may be obtained from an insurance agent or broker, a farm organization or the state Compensation Insurance Fund offices which are located in Denver, Grand Junction and Greeley.

7. How much does the insurance cost?

The cost varies between carriers and is subject to change each year. There is generally a policy minimum premium, that is, the least cost for which a policy will be issued.

Farming and agricultural operations are classified according to the degree of risk ascertained by the National Council on Compensation Insurance and the Rocky Mountain Rating Bureau. Each classification is assigned a rate per each \$100 of payroll for that classification. An enterprise with more than one classification would need to divide its payroll accordingly.

8. What is considered as payroll?

Payroll includes all forms of remuneration, including the value of housing, utilities, bonuses, wages and other benefits.

9. What benefits does the Workmen's Compensation Insurance provide farm employees?

Effective July 1, 1977, the weekly insurance compensation collectible for employees is 66 2/3 percent of the employee's average weekly wage, subject to a maximum of 80 percent of the state's average weekly wage, or \$201.79. The maximum weekly compensation benefit is \$161.42. Briefly, some of the other benefits are:

Medical maximum	\$20,000.00
(May include rehabilitation expenses)	
Funeral maximum	1,000.00
Facial and bodily disfigurement maximum	2,000
Maximum disability benefits	
Temporary partial	none
Permanent partial	\$26,292.00
Permanent total - lifetime benefits up to a maximum benefit of	\$161.42 per week
Fatal cases - lifetime benefits for widows and widowers	\$161.42 per week

10. What is the possible penalty for non-covered farm employers?

In the event of liability without coverage, the employer is liable for payment of medical benefits plus 150 percent of the allowed compensation benefits for each employee's uninsured accident or occupational disease.

11. Is there any possible penalty for covered employers or employees for failure to report a work-related accidental injury or illness?

Yes. CRS 8-52-102 provides that employees must give notice of injury resulting from accident to an employer within two days of its occurrence. Failure to do so may result in the loss of one day's compensation for each day's failure to do so.

CRS 8-52-105 provides that notice of an injury, for which compensation and benefits are payable, shall be given by the employer to the Colorado Division of Labor within ten days after the injury; and, in the case of the death of any employee resulting from any such injury or any accident in which three or more employees are injured, the employer shall give immediate notice thereof to the director.

CRS 8-53-126 gives the amount of the penalty as \$100 per day. Section 8-53-127 states that each day constitutes a separate offense and penalties are cumulative.

12. Does a property owner have liability if the property is under lease?

CRS 8-48-103 exempts from the Workmen's Compensation Act any lessor or sublessor of real property who leases or rents real property to any lessee "for the purpose of conducting any agricultural production business." In essence, this article relieves any farm or ranch lessor from being the employer of any lessee under the provisions of the Workmen's Compensation Act.

Therefore, a sharecropper, any lessee or lessor of real property who conducts an agricultural production business, does not come under the provisions of the act as of July 1, 1977, unless they are employers in their own right as defined in other sections of the act.

13. Can an employee be borrowed from a neighbor without liability?

No. Generally, one employer's coverage will not extend to another employer.

14. Can neighbors trade their own services?

There is no clear answer to this question. A technical interpretation is that trading of services constitutes remuneration for services rendered; thus, a contract is created and liability ensues.

15. Will an accident and health policy be accepted in place of Workmen's Compensation Insurance policies?

No. Most health policies usually contain an exclusion for any accident arising out of the course of an employee's job. Another reason is that a health policy does not offer the same benefits.

16. Are children ages 12 and 13 covered by Workmen's Compensation Insurance?

Yes, as long as they are considered as employees. There is no age limit, no exclusion for illegally employed persons, no exclusion for blood relationship. However, other laws govern the legality of employing persons under 18 years of age in agriculture.

17. Are field labor contractors subject to the Workmen's Compensation Act?

Yes. House Bill 1559, Section 1, Article 8-4-101 (Agricultural Law) provides that field labor contractors who contract with an employer to provide migratory labor for agricultural purposes must comply with the Workmen's Compensation Act effective July 1, 1977.

This section requires that field labor contractors prove to the Colorado State Director of Labor that they have met the provisions of the Colorado Workmen's Compensation Act before they are issued a license to operate within the limits of the State of Colorado. A field labor contractor is anyone who contracts with an employer to recruit, solicit, hire or furnish migratory labor for agricultural purposes.

18. Is there anything else important to know?

This fact sheet contains only the questions most frequently asked. The answers have been obtained from sources believed to be reliable. The authors do not represent any insurance institution or rule-making authority. The material is presented for general information purposes only and is subject to change. No warranty, guaranty or other representation is made as to its sufficiency or accuracy. The appropriate agency should be consulted for official interpretations of relevant laws, regulations and coverage.