

Workers' Compensation Laws: Louisiana

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A Q&A guide to workers' compensation law for employers in Louisiana. This Q&A addresses Louisiana laws requiring workers' compensation coverage, including the benefits process, penalties for an employer's failure to obtain workers' compensation coverage, and anti-retaliation provisions. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see [Workers' Compensation Laws: State Q&A Tool](#)).

OVERVIEW OF STATE WORKERS' COMPENSATION LAW

1. Please provide a brief description of employers' obligations under your state's workers' compensation law (for example, obtaining workers' compensation coverage, posting a notice to employees). Please also:

- Identify which employers are covered by the law and whether there are any exemptions.
- Describe any limits or restrictions placed on covered employers (for example, prohibitions on terminating employees while they are receiving workers' compensation benefits or restrictions on when covered employers can use workplace drug tests).
- Identify which employees are covered by the law and whether there are any exceptions. Are independent contractors and interns covered by the law?
- State whether the law provides for a private right of action.
- Identify the state agency or entity that administers the law.

LOUISIANA WORKERS' COMPENSATION ACT: LA. R.S. 23:1020.1 TO 23:1379

Description

Under the Louisiana Workers' Compensation Act (LWCA), all covered employers must carry workers' compensation insurance and provide employees with medical expenses and disability benefits for diseases and accidental injuries arising out of and in the course and scope of employment (La. R.S. 23:1020.1).

Covered Employers

The LWCA applies to all employers in the state, regardless of number of employees.

Limits or Restrictions for Covered Employers

Employers may not retaliate or unlawfully discriminate against any employee or job applicant because the employee or applicant has made a claim for workers' compensation benefits in Louisiana or in any other state. However, employers may discharge employees who are no longer able to perform their duties of employment due to injury. (La. R.S. 23:1361.)

Covered Employees

Under the LWCA, "employee" means any person employed by any private or public employer, including an elected or appointed official.

The LWCA applies to every person performing services arising out of and in the course and scope of employment, except for the following individuals:

- The president, vice-president, secretary, or treasurer of a corporation who owns 10% or more of the stock in the corporation (La. R.S. 23:1035(A)).
- A partner with respect to a partnership employing him (La. R.S. 23:1035(A)).
- A member of a limited liability company who owns at least 10% of the membership interest in the company (La. R.S. 23:1035(A)).
- Employees who work on the premises of a private residential household (La. R.S. 23:1035(B)(1)).

- Employees who work in connection with soil cultivation or raising or harvesting agricultural commodities on private, unincorporated farms, if the employee's annual net earnings amount to \$1,000 or less and the total net earnings of all employees on the farm do not exceed \$2,500 (La. R.S. 23:1035(B)(1)).
- Musicians and performers providing services under a performance contract (La. R.S. 23:1035(B)(2)).
- Employees covered by the Federal Employers' Liability Act, Longshore and Harbor Workers' Compensation Act, or Jones Act (La. R.S. 23:1035.2).
- Employees of railroads in interstate or foreign commerce (La. R.S. 23:1037).
- Real estate brokers or salesmen working under a licensed broker in Louisiana (La. R.S. 23:1047).
- Landmen who are working under an independent or lead broker landman in Louisiana and engaged primarily in negotiations over mineral rights (La. R.S. 23:1048(A)).
- Crew members of any airplane engaged in dusting or spraying operations as independent contractors or employees of agriculture or farming operations, unless the crew members were employed in connection with commercial agricultural, aquacultural, horticultural, silvicultural, floricultural, or agronomic operations or vegetation suppression (La. R.S. 23:1045).

Private Right of Action

Workers' compensation benefits are the exclusive remedy for covered employees, except for rights, remedies, and claims for damages created by statute (La. R.S. 23:1032(A)(1)(a)). However, covered employees have a private right of action against an employer when either:

- The injury resulted from the intentional acts of the employer (La. R.S. 23:1032(B)).
- The direct employer knowingly failed to secure workers' compensation insurance and failed to pay benefits to the injured employee (La. R.S. 23:1032.1).

Administration

Claims under the LWCA are administered through the Louisiana Workforce Commission's Office of Workers' Compensation Administration.

WORKERS' COMPENSATION COVERAGE

2. Please state whether an employer can opt out of workers' compensation coverage.

Employers cannot opt out of workers' compensation coverage. The Louisiana Workers' Compensation Act specifically precludes employers from contracting around the liability created by the statute (La. R.S. 23:1033).

3. Please describe an employer's options for obtaining workers' compensation coverage. If an employer can self-insure, please describe the requirements to qualify to self-insure.

OBTAINING WORKERS' COMPENSATION COVERAGE

Employers can obtain workers' compensation coverage by:

- Obtaining insurance from any authorized insurance company licensed to issue such policies in Louisiana.
- Entering into an agreement with a group self-insurance fund consisting of five or more Louisiana employers, all of whom must:
 - have a positive net worth;
 - be financially solvent;
 - be a member of the same trade or professional association; and
 - agree to pool and assume liabilities for the payment of compensation to employees of the fund.
- Entering into an agreement with an interlocal risk management agency.
- Using any combination of life, accident, health, property, or other insurance policies offered by a stock corporation, mutual association, or certain other insurers authorized to transact workers' compensation in Louisiana.
- Furnishing the Office of Workers' Compensation with satisfactory proof of the employer's financial ability to pay compensation. (La. R.S. 23:1168 and 23:1195.)

REQUIREMENTS FOR SELF-INSURANCE

To become self-insured, an employer must submit to the Office of Workers' Compensation:

- A surety bond or other security.
- Written notification of excess coverage.
- Form LWC-WC-2005, which must include details of the self-insured employer's summary loss data and financial statements for the prior three years.

(La. R.S. 23:1168.1.)

4. Please identify which workplace injuries and illnesses are covered by workers' compensation. If there are key terms of art, please define them.

WORKPLACE INJURIES AND ILLNESSES

The Louisiana Workers' Compensation Act (LWCA) covers:

- Injury.
- Personal injuries.
- Occupational diseases contracted during the course of employment.

(La. R.S. 23:1021(8)(a) and 23:1031.1(A).)

The LWCA generally does not cover:

- Heart-related or perivascular injury, illness, or death, unless the employee shows by clear and convincing evidence that:
 - the physical work stress was extraordinary and unusual compared to that experienced by the average employee in that occupation; and
 - the physical work stress was the predominant and major cause of the injury, illness, or death.

(La. R.S. 23:1021(8)(e).)

- Mental injury or illness caused by work-related stress, unless the employee shows by clear and convincing evidence that the mental injury resulted from a sudden, unexpected, and extraordinary stress related to the employment (La. R.S. 23:1021(8)(b)).
- Mental injury or illness caused by physical injury to the employee's body, unless the employee shows by clear and convincing evidence that the mental injury is a personal injury by accident arising out of and in the course of employment (La. R.S. 23:1021(8)(c)).

To receive workers' compensation for mental injury or illness:

- The employee must be diagnosed by a licensed psychiatrist or psychologist.
- The diagnosis of the condition must meet the criteria established in the most current issue of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

(La. R.S. 23:1021(8)(d).)

To receive workers' compensation for an occupational disease, the employee must show that he was engaged in work for the employer for at least 12 months before contracting the disease. If the employee was employed by the employer for less than 12 months, there is a presumption that the disease is not related to the employment. (La. R.S. 23:1031.1(D).)

KEY TERMS OF ART

Injury and Personal Injuries

Injury and personal injuries are defined as:

- Injuries by violence to the physical structure of the body.
- Diseases or infections that naturally result from injuries by violence.

(La. R.S. 23:1021(8)(a).)

Occupational Disease

An occupational disease is a disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process, or employment in which the employee is exposed to such disease. Examples of occupational diseases include:

- Work-related carpal tunnel syndrome (La. R.S. 23:1031.1(B)).
- Diseases, conditions, or poisoning resulting from the nature of a laboratory technician's work (La. R.S. 23:1031.1(C)).

Occupational diseases do not include:

- Degenerative disc disease.
- Spinal stenosis.
- Arthritis of any type.
- Mental illness.
- Heart-related or perivascular disease.
- Noise-induced hearing loss, unless the loss is a result of a single traumatic accident.
- Mesothelioma, if the exposure occurred prior to 1975.

(La. R.S. 23:1031.1(B) and 23:1221(4)(p); *Austin v. Abney Mills*, 824 So.2d 1137 (La. 2002).)

WORKERS' COMPENSATION BENEFITS

5. Please briefly describe the workers' compensation benefits process. Please include information on:

- When an employee must notify his employer of an injury or illness.
- When an employer must submit information about an injury or illness to its carrier or the state agency or entity.
- When a decision on compensation must be made.
- The standard of review for determinations on compensation.
- If a decision can be appealed, how a party appeals.

BENEFITS PROCESS OVERVIEW

The benefits process begins when an employee or a representative of the employee notifies the employer of a workplace injury and makes a claim for benefits. The employer sends a notice of the initial payment to the employee on the same day that the first payment of compensation is made. If the injury led to death or lost time of over one week, the employer must submit a report to the insurer within ten days of learning about the injury. The insurer submits the injury report to Louisiana's Office of Workers' Compensation Administration (OWCA). The OWCA has exclusive and original jurisdiction over workers' compensation disputes.

NOTIFYING THE EMPLOYER

Generally, an employee or a person acting on behalf of the employee claiming workers' compensation benefits must provide the employer with notice of the injury within 30 days after the date of injury or death (La. R.S. 23:1301). The notice must:

- Be in writing.
- Contain the name and address of the employee.
- State in ordinary language the time, place, nature, and cause of the injury.
- Be signed by the person giving or making the notice.

(La. R.S. 23:1303.)

Under Section 23:1302 of the Louisiana Revised Statutes, however, employers must post a sign informing their employees of this 30-day notice requirement in a convenient and conspicuous point in the place of business. If an employer fails to post the sign, his employees are given 12 months from the date of injury to provide notice. (La. R.S. 23:1302.)

WHEN TO SUBMIT INFORMATION

Using the OWCA's First Report of Injury or Illness Form, the employer must submit a report to the insurer within ten days of actual knowledge of injury resulting in death or in lost time of over one week after the injury. The report must provide the following information:

- The name, address, and business of the employer.
- The name, Social Security number, street, mailing address, telephone number, and occupation of the employee.
- The cause and nature of the injury or death.

- The date, time, and the particular locality where the injury or death occurred.
- The wages the employee earned when the injury occurred.

The insurer or the administrator of the employer's workers' compensation claims then transmits the information to the OWCA. (La. R.S. 23:1306.)

Employees who receive weekly workers' compensation benefits (also known as "indemnity benefits") within 30 days of their job-related injury must file Form LWC-WC-1020, Employee's Monthly Report of Earnings, with the employer's insurer, and continue to do so every 30 days for as long as they receive benefits. Failure to file the form may result in the suspension of benefits.

WHEN A DECISION MUST BE MADE

The first installment of temporary total disability, permanent total disability, or death benefits is due on the fourteenth day after the employer or insurer has knowledge of the injury or death.

If an employer refuses to pay the workers' compensation claim, the OWCA recommends that the employee first attempt to resolve the issue with the employer or insurer. When the dispute cannot be resolved informally, the employee, employer, or insurer may request a conference with an OWCA mediator. (Office of Workers' Compensation Administration: Rights and Responsibilities for Employees and Employers: What if a Problem Develops with a Claim?) If the mediation is unsuccessful, the employee may file a Disputed Claim for Compensation form with the OWCA (La. R.S. 23:1310). The employer or insurer may also file a claim if it seeks to challenge a medical director decision, alleges fraud on the injured employee's part, or alleges a cause of action against a party other than the injured employee (La. R.S. 23:1314(E)).

After the Disputed Claim for Compensation form is filed, the OWCA serves the defendant with the claim. The defendant then has 15 days after service of process to file an answer, although it may request an extension of up to an additional ten days. (La. R.S. 23:1310.3(B).) The answer may request a preliminary determination hearing, which generally must be held within 90 days. A workers' compensation judge issues a preliminary determination within 30 days of the hearing, which the losing party must accept or challenge within ten days after receipt of the determination. (La. R.S. 23:1201.1.)

If the losing party challenges or fails to comply with the judge's preliminary determination within ten days, the dispute goes to trial before a workers' compensation judge (La. R.S. 23:1201.1(K)). Typically, the OWCA issues orders, decisions, or awards no later than 45 days after the conclusion of trial, submission of all evidence, or filing of post-trial or hearing briefs, whichever occurs latest (Louisiana Workers' Compensation Administration Hearing Rules, Tit. 40, Ch. 63, § 6303).

The losing party may file an appeal of an OWCA ruling to the appropriate circuit court of appeal.

STANDARD OF REVIEW

Appellate courts review OWCA decisions using a manifest error or clearly wrong standard (*Freeman v. Poulan/Weed Eater*, 630 So.2d 733, 737 (La. 1994)). The appellate court will only set aside the workers' compensation judge's findings of fact if there is manifest

error or the findings are clearly wrong. Where there is conflict in the testimony, the appellate court will not substitute its own evaluations or inferences if the trial court's evaluations of credibility and inferences of fact are reasonable. (*Rosell v. ESCO*, 549 So.2d 840, 844 (La.1989).)

APPEALING A DECISION

An aggrieved party may appeal a decision from a workers' compensation judge to the circuit court of appeal for the judicial district where the compensation claim is pending. An appeal that seeks to suspend the judgment or order from being executed or coming into effect must be filed within 30 days from the later of:

- The day after the judgment was signed.
- The day after the notice of judgment is mailed.

(La. R.S. 23:1310.5(B).)

6. Please state whether the employer or employee has the right to choose the treating physician.

An employee has the right to select one treating physician in any necessary field or specialty. The employer may likewise select a physician to examine an employee for the purposes of providing a second medical opinion. (La. R.S. 23:1121.) If there is a dispute between the recommendations of the employee and employer's providers, the Office of Workers' Compensation Administration must select and appoint a physician to provide an additional medical opinion regarding the examination of the employee (La. R.S. 23:1123).

If an employee refuses to undergo, or obstructs, an additional medical opinion regarding a medical examination at the behest of the employer or the Office of Workers' Compensation Administration, the employer may suspend the employee's right to compensation until the examination occurs (La. R.S. 23:1124).

7. If an employee can be required to submit to a medical examination, please identify which party is responsible for the cost of the examination.

The employer is obligated to pay for necessary medical treatment and for reasonable and necessary mileage that the employee travels to obtain medical treatment. There is no limitation on the cost of the medical services. (La. R.S. 23:1203.)

8. Please describe the types of benefits available to injured employees. For each, please:

- State whether there is a waiting period before an employee is eligible to receive the benefit. If there is a waiting period, please identify the timeframe.
- Provide a brief description of how the benefit is calculated.

BENEFITS AVAILABLE TO INJURED EMPLOYEES

Injured employees are eligible for:

- Medical benefits.
- Temporary total disability benefits.
- Permanent total disability benefits.
- Supplemental earnings benefits.

- Permanent partial disability benefits.
- Death benefits.

WAITING PERIOD AND TIMEFRAME

Medical Treatment Benefits

Medical treatment benefits cover necessary and reasonable treatment for injured employees, including:

- Drugs.
- Supplies.
- Hospital care and services.
- Medical and surgical treatment.
- Nonmedical treatment recognized as legal in Louisiana.

(La. R.S. 23:1203(A).)

The employer is also liable for actual expenses that the employee reasonably and necessarily incurs in traveling to obtain medical services, medicines, prosthetic devices, or vocational rehabilitation-related mileage the employer directed the employee to take (La. R.S. 23:1203(D)).

Medical benefits are generally due within 60 days after the employer receives written notice, unless the medical service provider uses the electronic billing scheme under Section 23:1203.2 of the Louisiana Revised Statutes Annotated. In that case, the medical benefits are due within 30 days after the employer receives a complete electronic medical bill. (La. R.S. 23:1201(E).)

Temporary Total Disability Benefits

Temporary Total Disability (TTD) provides a means of support for an injured employee who shows by clear and convincing evidence, without the presumption of disability, that he is physically unable to engage in any employment or self-employment, regardless of the nature or character of the employment (La. R.S. 23:1221(1)(c)).

The employee is no longer entitled to TTD benefits when his physical condition has improved to the point that:

- A reasonably reliable determination of the disability's extent can be made.
- Continued and regular treatment from a physician is no longer required.

(La. R.S. 23:1221(1)(d).)

To be eligible for TTD, an employee must not have worked for a period of at least seven days. If the disability continues for two weeks or longer after the date of the accident, then the employee receives benefits for the first week of temporary total disability after the initial two weeks have passed. (La. R.S. 23:1224.)

The first installment of Temporary Total Disability is due on the fourteenth day after the employer receives knowledge of the injury (La. R.S. 23:1201(B)).

Permanent Total Disability Benefits

Permanent Total Disability (PTD) provides an injured employee with compensation for a final and permanent disability.

To be eligible for PTD, an employee must prove by clear and convincing evidence, without the presumption of disability, that he is physically

unable to engage in any employment or self-employment, regardless of the nature or character of the employment (La. R.S. 23:1221(2); *Young v. City of Gonzales*, 166 So.3d 1070, (La.App. 1 Cir. 2015)). Before ruling whether an employee is entitled to PTD, the workers' compensation court must determine whether:

- There is a reasonable probability that the employee may be rehabilitated, through appropriate training or education, to the extent that he can achieve suitable gainful employment.
- It is in the best interest of the employee to undertake this training or education.

(La. R.S. 23:1226(D).)

The first installment of Permanent Total Disability is due on the fourteenth day after employer receives knowledge of the injury (La. R.S. 23:1201(B)).

Supplemental Earnings Benefits

Supplemental Earnings Benefits (SEB) are designed to compensate an injured employee for wage earning capacity lost as a result of the work accident. The benefits are determined by comparing the injured employee's wages before the injury against what he is able to earn after the injury. To be eligible for SEB, an employee must be:

- Able to return to some form of work.
- Unable to earn wages equal to at least 90% of his pre-injury wages.

(La. R.S. 23:1221(3)(a).)

It is employer's burden to show suitable alternate employment before an employee may be converted from TTD to SEB (*Olivier v. City of Eunice*, 66 So.3d 1244, 1248 (La.App. 3 Cir. 2011)).

The first installment of Supplemental Earnings Benefits is due on the fourteenth day after the employer has received knowledge of the compensable earnings loss entitling the employee to SEB (La. R.S. 23:1201(C)).

SEB terminates at the expiration of 520 weeks. However, SEB may terminate sooner in certain circumstances, including when:

- Two years have elapsed after the termination of TTD payments, unless the employee received at least 13 consecutive weeks of SEB payments during that two-year period.
- The employee retires.
- The employee is able to earn 90% of pre-injury wages.
- The employee is cleared to return to work, but fails an employer-required drug test prior to returning.

(La. R.S. 23:1221(3)(d), (g).)

Permanent Partial Disability Benefits

In some cases, a work accident may not result in a wage loss beyond the period of the workers' temporary total disability. However, it may still leave the employee with some disfigurement or loss of use of a body part, entitling the injured employee to permanent partial disability benefits. (La. R.S. 23:1221(4).)

Permanent Partial Disability benefits are due on the thirtieth day after the employer receives a medical report giving notice of the permanent partial disability (La. R.S. 23:1201(D)).

Death Benefits

If an injury at work causes death to an employee within two years after the last medical treatment for the job injury, the dependents (or, in the absence of dependents, adult children or surviving parents) of the employee are entitled to receive death benefits (La. R.S. 23:1231).

The first installment of death benefits is due on the fourteenth day after the employer receives knowledge of the death (La. R.S. 23:1201(B)).

CALCULATION OF BENEFITS

A determination of the employee's average weekly wage is calculated prior to the payment of benefits. The average weekly wage is computed in various ways depending on the type of employment, for example, hourly employment, seasonal employment, monthly employment, or annual employment (La. R.S. 23:1021(13)).

Once the average weekly wage is determined, benefits are paid as follows:

- **Temporary Total Disability** is calculated as 66.66% of the pre-accident average weekly wage (La. R.S. 23:1221(1)(a)).
- **Permanent Total Disability** is calculated as 66.66% of the pre-accident average weekly wage (La. R.S. 23:1221(2)(a)).
- **Supplemental Earnings Benefits** are paid monthly and calculated as 66.66% of the difference of the average monthly wage at the time of the injury and the average monthly wage the employee is able to earn in any month after the accident. Average monthly wages are calculated by multiplying the employee's average weekly wages by 52 and then dividing by 12. (La. R.S. 23:1221(3)(a).)
- **Permanent Partial Disability** is generally calculated as 66.66% of wages for a certain number of weeks, which varies according to the specific body part or system that is lost. Section 23:1221(4) of the Louisiana Revised Statutes sets forth a schedule of body parts and systems and the PPD calculation for each part or system. If an employee suffers the partial loss, but not total loss, of a scheduled member, he is entitled to compensation that is calculated by multiplying the 66.66% of wages by the percentage of loss of use of the member (La. R.S. 23:1221(4)(o); see *Falgoust v. Maryland Casualty Co.*, 22 So.2d 312, 316-17 (La. Ct. App. Or. 1945)). Percentage loss is determined by a medical professional in accordance with American Medical Association guidelines (La. R.S. 23:1221(4)(q)). An employee who is seriously and permanently disfigured or suffers permanent hearing loss due to a single incident is entitled to 66.66% of wages for a period of up to 100 weeks (La. R.S. 23:1221(4)(p)).
- **Death Benefits** are calculated at 32.5% to 65% of wages. The exact amount varies according to the relationship between the beneficiary and the deceased employee and the overall number of beneficiaries. The amount of death benefits calculated is split evenly between the beneficiaries. (La. R.S. 23:1232.)

Employees are entitled to receive an additional \$50,000 on top of any other workers' compensation benefits if, as the result of an accident arising out of and in the course and scope of employment, they suffer any of the following:

- Paraplegia.
- Quadriplegia.

- Third-degree burns on 40% percent or more of the total body surface.
- Total anatomical loss of:
 - both arms;
 - both hands;
 - both feet;
 - both legs;
 - both eyes;
 - one hand and one foot; or
 - any two of the body parts listed above.

This sum is due within one year after the date of the injury. (La. R.S. 23:1221(4)(s).)

PENALTIES

9. Please describe the possible penalties, both civil and criminal, for an employer's failure to obtain workers' compensation coverage or post a required notice.

CIVIL PENALTIES

A direct employer loses the exclusive remedy protections of the Louisiana Workers' Compensation Act and may be liable for a tort claim if:

- The employer knowingly failed to obtain workers' compensation insurance or the proper certification for self-insuring status.
- The employer failed to pay a final judgment for 60 days after the parties have exhausted their rights of appeal.
- No other insurance policy or workers' compensation coverage contract has paid the injured employee the benefits owed. (La. R.S. 23:1032.1.)

Failure to Secure Workers' Compensation

If an employer fails to secure workers' compensation insurance under Section 23:1168 of the Louisiana Revised Statutes Annotated:

- The employer is liable for a civil penalty of up to:
 - \$250 per employee, up to a total amount of \$10,000, for a first offense; and
 - \$500 per employee for a second or subsequent offense. (La. R.S. 23:1170(A).)
- The amount of weekly compensation owed to the injured employee is increased by 50% (La. R.S. 23:1171.2).

Failure to Post Notice

If an employer fails to post a required workers' compensation notice in a conspicuous place, the timeframe for an employee reporting an injury is extended from 30 days to 12 months from the date of injury (La. R.S. 23:1302).

Failure to Provide Payments or Consent to a Physician Request

An employer that fails to provide workers' compensation payments or to consent to the employee's request to select or change a treating

physician is subject to a civil penalty in an amount that is up to the greater of:

- 12% of any unpaid compensation or medical benefits.
- \$50 for every day that the owed compensation or benefits remain unpaid or consent for the choice of physician is withheld, up to \$2,000.00.

(La. R.S. 23:1201(F).)

If the employer is fined for multiple violations, the maximum penalty that may be imposed is \$8,000.00 (La. R.S. 23:1201(F)).

Arbitrary or Capricious Termination of Payment

An employer that discontinues payment of workers' compensation claims without probable cause or in an arbitrary or capricious manner is subject to a penalty of up to \$8,000.00 and reasonable attorneys' fees (La. R.S. 23:1201(I)).

Failure to Provide Employee with Medical Examination Report

An employee who is required by the employer to submit to a medical examination, or who has accepted treatment from the employer's chosen health care provider, is entitled to a free copy of the written examination results or medical records within 30 days after the employer receives the results or records. An employer that fails to provide the employee with the written report or records within the 30-day period is subject to a penalty of \$250 plus reasonable attorneys' fees. (La. R.S. 23:1125.)

CRIMINAL PENALTIES

An employer that willfully fails to secure compensation for its employees is subject to either:

- A fine of up to \$250 for every day that workers' compensation coverage is not provided.
- Imprisonment, with or without hard labor, for up to one year.
- Both the fine and imprisonment.

(La. R.S. 23:1172(A).)

ANTI-RETALIATION

10. If your state's workers' compensation law prohibits retaliation, please include information on:

- What specific acts are protected.
- How retaliation is defined.
- What elements must be proven for an employee to prevail on a retaliation claim.
- The defenses, if any, that are available to employers.
- The statute of limitations for bringing a retaliation claim.

PROTECTED ACTS

An employer may not refuse to hire an applicant or discharge an employee because that person has made a claim for workers' compensation benefits in Louisiana, in any other state, or under federal law (La. R.S. 23:1361(A), (B)).

An applicant who has been unlawfully denied employment or an employee who has been unlawfully discharged is entitled to recover

a civil penalty of up to one year's earnings, together with reasonable attorneys' fees and court costs. This maximum amount is calculated based on either:

- The starting salary of the position that the applicant sought.
- The earnings of the employee when he was discharged.

(La. R.S. 23:1361(C).)

RETALIATION DEFINITION

Under the Louisiana Workers' Compensation Act (LWCA), an employer retaliates when it refuses to employ a job applicant or discharges an employee because the applicant or employee brought a claim for workers' compensation benefits, either in Louisiana, in any other state, or under federal law (La. R.S. 23:1361(A)).

The LWCA's definition of retaliation does not include the discharge of an employee who is no longer able to perform the duties of employment due to injury (La. R.S. 23:1361(B)).

ELEMENTS OF A RETALIATION CLAIM

Retaliatory discharge claims must be brought in the district courts and not before the Office of Workers' Compensation Administration. To maintain an action for retaliatory discharge or failure to hire, the employee or applicant must prove, by a preponderance of the evidence, that he was terminated or refused employment because he asserted a claim for workers' compensation benefits. The employee or applicant must either present:

- Direct evidence that the reason for the discharge or the failure to hire was the assertion of the workers' compensation claim.
- Circumstantial evidence that is sufficient to establish more probably than not that the reason for the discharge or the failure to hire was the assertion of the workers' compensation claim.

(*Nicholson v. Transit Management of Southeast Louisiana*, 781 So.2d 661, 668 (La. App. 4 Cir. 2001).)

DEFENSE

If a plaintiff provides sufficient circumstantial evidence to prove that he was more probably than not discharged or not hired because he filed a workers' compensation claim, the employer may defend itself by showing, through a preponderance of the evidence, that there was another non-discriminatory basis for the discharge or the refusal to hire. The trial court then ascertains whether the employer's explanation is "merely a guise for retaliatory discharge." (*Nicholson*, 781 So.2d at 668-69.)

STATUTE OF LIMITATIONS

An employee or job applicant has one year from the date of discharge or the refusal to hire to bring a retaliation claim (*Battiste v. Jani King of New Orleans*, 753 So.2d 952, 954 (La. App. 4 Cir. 2000)).

WORKERS' COMPENSATION EXCLUSIVITY

11. Please identify the types of claims that are barred by workers' compensation law. If there are exceptions, please identify them.

INTOXICATION

An employer cannot provide compensation for an injury caused by accident that occurred because the employee was intoxicated at the time of the accident. However, the employer could be liable if either:

- The intoxication was the result of activities performed in pursuit of employer's interests.
- The employer procured or encouraged the use of the intoxicating substance during working hours.

(La. R.S. 23:1081(1)(b).)

INITIAL PHYSICAL AGGRESSOR

An employer cannot provide compensation for injuries suffered by an employee who was the initial physical aggressor in an unprovoked physical altercation, unless the injury resulted from excessive force used in retaliation against the initial aggressor (La. R.S. 23:1081(1)(c)).

WILLFUL INTENTION TO INJURE

An employer cannot provide compensation for injuries caused by the injured employee's willful intention to injure himself or another (La. R.S. 23:1081(1)(a)).

FRAUD

An employee forfeits his right to compensation if a workers' compensation judge finds that he has made false statements or representation in order to obtain compensation (La. R.S. 23:1208(E)).

INCARCERATION

An employee forfeits his right to workers' compensation, including medical expenses, while he is incarcerated, unless a workers' compensation judge finds that the employee has dependents who rely on the compensation award for their support. In that case, compensation is paid to the legal guardian of the minor dependent or other person that the workers' compensation judge designates. The employee's right to claim workers' compensation benefits resumes when the period of incarceration ends. (La. R.S. 23:1201.4(A).)

UNAUTHORIZED SETTLEMENT WITH THIRD PARTIES

An employee forfeits his right to future workers' compensation if he enters into an unauthorized settlement with a third party without first obtaining the written approval of the employer or insurer.

The employee may buy back his right to future compensation by paying employer the total amount of the compensation benefits that the employer previously paid to the employee. However, the amount that is paid back to the employer must not exceed fifty percent of what the employee received in the settlement with the third party.

(La. R.S. 23:1102(B)).

JOINT EMPLOYER LIABILITY

12. Please state whether your jurisdiction recognizes joint employment under workers' compensation law. If so:

- Can more than one employer receive the protection of the workers' compensation benefits bar to claims?
- If available, please briefly describe the standard to determine joint employer status.

Louisiana recognizes joint employment for workers' compensation purposes. If a worker is injured while performing services for multiple employers, he may seek compensation benefits from either employer. The amount of benefits that each employer is responsible for is dependent on the nature of the employment.

JOINT OR BORROWED EMPLOYMENT

If the employee is at the time of his injury employed and paid jointly by multiple employers, each employer is liable for his proportional share of compensation payment according to its respective wage liability, though employers may make arrangements for different distribution of the payments between themselves (La. R.S. 23:1031(B)).

However, if an employee is at the time of his injury employed by a borrowing employer (also known as a "special employer"), and the borrowing employer directs and controls the performance of the employee's work, then the employee may seek compensation benefits from:

- Both the borrowing and the lending employers.
- Either one of the employers.

(*Perry v. Perry and Sons Vault and Grave Service*, 872 So.2d 611 (La. App. 3 Cir. 2004).)

Both the borrowing and the lending employers are fully liable to the injured worker, but each employer may seek contribution from the other to share in the compensation payments (La. R.S. 23:1031(C)).

PROTECTION FOR MULTIPLE EMPLOYERS

Borrowing employers and joint employers receive the protection of the exclusive remedy under the Louisiana Workers' Compensation Act.

STANDARD FOR JOINT OR BORROWED EMPLOYER STATUS

Joint employment requires a common enterprise that contemplates the employment and control of the worker for the common benefit of the interested employers (*Kahl v. Baudoin*, 449 So.2d 1334, 1336 (La. 1984), superseded by statute on other grounds, La. R.S. 23:1034(D), as recognized in *Parker v. Cappel*, 500 So.2d 771 (La. 1987); *Perry*, 872 So.2d at 619; *City of Shreveport v. Kingwood Forest Apartments*, 746 So.2d 234, 239 (La. App. 2 Cir. 1999)).

Borrowed employment requires that an employer lent his employee to another employer, who then exercised control over that employee. To determine whether an employee is a borrowed employee, courts consider the following factors:

- The employer that had control over the employee and the work he was performing, beyond a mere suggestion of details or cooperation.
- Whose work the employee was performing at the time of the injury.
- Whether there was an agreement, understanding, or meeting of the minds between the original and the borrowing employer.
- Whether the employee agreed to the new work situation.
- Whether the original employer terminated its relationship with the employee.

- Which employer furnished tools and a place for the employee's performance of the work.
- Whether the new employment took place over a considerable length of time.
- Which employer had the right to discharge the employee.
- Which employer had the obligation to pay the employee.

(*Sanchez v. Harbor Construction Co.*, 968 So.2d 783, 786 (La. App. 4 Cir. 2007).)

ADDITIONAL RESOURCES

13. If the state agency charged with oversight of the workers' compensation law in your state has useful online guidance or forms, please provide the link for those resources and a brief description of them.

The Louisiana Workforce Commission provides useful guidance and forms on Louisiana workers' compensation law on its website.

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