



Vermont Business Owner's Guide to Workers' Compensation Insurance

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1. How workers' compensation insurance came about, and who is covered by it.

The no-fault solution

Before the Worker's Compensation System existed, the only way an injured worker could recover damages sustained in a work-related accident was by suing the employer. In such a lawsuit, the law required the worker to prove that the employer was at fault; that is, that the employer's negligence or willful behavior caused the injury. This is an important principle of tort law. However, the tort system made it difficult for workers to obtain prompt compensation for lost wages and medical care costs and may have deprived the injured worker of access to needed medical care. At the same time, this system left employers open to costly lawsuits.

Worker's compensation insurance offered a trade-off. The insurance system gives workers security by making compensation possible for work-related injuries or occupational diseases whether or not the employer is directly at fault. In return, workers agree to accept the remedies which Vermont worker's compensation law provides them, rather than sue the employer for damages. This reduces the employer's exposure to costly lawsuits and provides benefits to all injured workers. By the early 1900's, most industrialized countries had regulatory systems and insurance programs which brought into place a "no fault" exchange of protections between employers and workers. The principles of worker's compensation laws are similar throughout the United States, but each state has unique laws with different benefits.

Vermont law requires employers to provide worker's compensation coverage. As an employer, you must post a notice of compliance in a conspicuous place advising your employees that you have secured worker's compensation protection for them.

Within each industry, employers with the best safety records pay the least for insurance. (See more details on cost under [What determines your premium rates](#)) this makes good sense because employers themselves are in the best position to control hazards in the workplace.

Who must provide coverage?

Unless you have been approved to self-insure by the Department of Labor, you must buy worker's compensation insurance if:

- You hire one or more employees on a full or part time basis in Vermont, or
- You hire employees outside the state, but they work for you in Vermont.

To find out more about self-insurance, you can call the Vermont Department of Labor, Commissioner's office, at 802-828-2286.

Note: An employer who fails to provide worker's compensation insurance may be assessed a penalty of \$100.00 per day, but not to exceed \$5,000 for the period prior to receiving notice from the Commissioner of Labor & Industry. If you do not provide worker's compensation insurance within 5 days of receiving notice, you may be assessed a penalty of \$250 per day, beginning 5 days after the date on which you received notice. Failure to provide worker's compensation insurance can have other serious consequences. It will have a negative impact on your legal

defenses if you are sued by an injured employee. In extreme cases, it can also lead to a state order closing your business.

Who are your covered employees?

Generally, everyone -- including officers of corporations -- is covered. Some exceptions are as follows:

- If you are the sole proprietor or partner of an unincorporated business, you are not covered, and you are not required to have coverage, but you may choose to have it.
- Officers of a corporation may choose to be excluded from worker's compensation coverage but must obtain prior approval from the Vermont Department of Labor. NOTE: The two provisions above have been modified by Act 132 effective May 26, 2004. See explanatory memos: Memo: June 3, 2004 - Frederick Barrett, Insurance & Market Analyst, DFR (PDF); Memo: June 3, 2004 - Laura Collins, Department of Labor (PDF)
- You may choose to include a family member who lives with you. You should make clear to your agent who is to be covered when the policy is issued. You do not have to obtain approval from the Vermont Department of Labor.

In addition, the following people are not required to be covered by worker's compensation insurance:

- A person whose employment is of a casual nature, and not for the purpose of the employer's trade or business.
- A person engaged in amateur sports, even if an employer contributes to the support of such sports.
- A person engaged in agriculture or farm employment for an employer whose aggregate payroll is less than \$10,000 in a calendar year, unless the employer chooses to provide coverage.
- Certain elected officials are excluded.
- Volunteers.

Help defining independent contractors

If you use independent contractors in your business, make sure you agree up front and in writing who is responsible for carrying worker's compensation insurance. You will be responsible for the insurance if the independent contractor (1) doesn't have coverage, or (2) does not meet the definition of a contractor under law. It is important to understand that the independent contractor needs coverage any time they have a worker on the job, even temporarily.

(1) Does the contractor have coverage?

The law does not require a single individual acting as a contractor to carry worker's compensation insurance, but any contractor with one or more employees must provide coverage for those employees. Contractors who carry insurance should be able to show you a document called a certificate of worker's compensation insurance as verification, as distinguished from many other types of certificates of insurance. Make sure the period of time

covered by the certificate is sufficient to complete the project. If you have any reason to question the certificate, you should call the insurance company that issued it.

A word of caution: If the coverage lapses before a project is finished, the contractor must renew it, or else responsibility for the coverage will default to you. You would not necessarily know about any lapse, but you would then be liable for any penalties connected to failure to provide coverage. (See [box](#) regarding penalties.) Since these penalties can be serious, to be safe, you may simply want to purchase coverage for all your contractors while they are on the job. This may also be wise if you have any uncertainty about whether someone qualifies by definition as an independent contractor.

(2) Does the independent contractor qualify by definition?

Calling someone a contractor doesn't automatically relieve you of the responsibility to carry worker's compensation insurance. The law places the burden of proof on the employer to show that the injured person qualifies as an independent contractor vs. an employee. A good rule of thumb is to regard anyone you pay as an employee. However, the law does look at specific circumstances in favor of one definition or the other. In a contested case, the following test factors would influence a court's decision:

The person working for you is more likely to be regarded as your employee (vs. a contractor) if:

- You have the right to control the way the work is done
- You supply the tools and equipment for the work
- You direct the scheduling of the work
- You pay according to time worked, rather than cost per job
- The work being performed is the type normally carried out by an employee in the usual course of business
- The work activities are an integral part of the employer's regular business

The person working for you is more likely to be regarded as a contractor (rather than an employee) if:

- The person is engaged in a distinct occupation or business of his or her own
- The work being performed is different from your normal line of business

(If you sell a product, its installation is not necessarily a different line of business.)

NOTE: The provisions regarding contractor definitions have been modified by Act 132 effective May 26, 2004. See explanatory memos: Memo: June 3, 2004 - Frederick Barrett, Insurance & Market Analyst, DFR (PDF); Memo: June 3, 2004 - Laura Collins, Department of Labor (PDF)

A word of caution: With some short-term contracts, the cost of coverage may seem high relative to the size of the job. But, without coverage, just one worker injury could open you to a lawsuit, which would be far more costly.

If you have questions about covering contractors, you may want to consult an attorney. You can also contact the Workers' Compensation Division at 802-828-2286.

2. Purchasing insurance and controlling costs

Leasing

If you lease employees, either you or the leasing company may provide coverage. If the leasing company provides it, make sure that the coverage protects you as the employer of its workers. If the leasing firm does not provide the coverage, you are responsible for providing it. The rates will depend on the risk factors involved in the work that your company does.

Explanations of the "voluntary market" and the "assigned risk plan"

Since worker's compensation insurance is mandatory, all employers must be able to obtain coverage. In a statistical light, insurers regard some kinds of businesses as greater risks than others. These include new businesses (which have not yet established a safety record), very small businesses, those with poor claims histories and those involving especially hazardous work. Such employers who have been unable to find a willing insurer in the open or general market (called the voluntary market) are placed in the assigned risk market, also known as "the pool". The pool is actually divided into two pieces, direct assignment, and the pool.

What determines your premiums?

The workers' compensation system aims to distribute the costs of the program fairly among all employers. The following factors influence your costs:

1. Which market you are in

The cost to employers in the assigned risk plan is higher because they do not have access to the discounts and choices available in the voluntary market. More competition in the voluntary market drives lower rates. (See box; [Getting Out of the Assigned Risk Plan.](#)) Employers in the assigned risk plan who have an especially high record of injury costs may also pay a surcharge (See section 4 ahead.)

2. The size of your payroll

When you complete your application for insurance, you will be asked to estimate your total annual payroll. Payroll means all money paid to your employees except tips, group health or group life insurance benefits, and reimbursements for expenses. Your premium cost is your individual rate multiplied for every \$100 of payroll. The primary factors governing your rate are the standard rate for the type of work you do or the industry you are in, and the experience rate for your company. These factors are explained in the next two sections.

Since the premium is based in part on payroll, which is estimated at the beginning of the policy year, the final premium could be more or less, depending on your actual payroll expenses reported at the end of the year. Adjustments are made at that time, resulting in either a refund or an additional bill.

A few words of caution: An employer who makes a false statement for the purpose of obtaining a lower worker's compensation premium, or who refuses to comply with rules and regulations, may be assessed an administrative penalty (not more than \$5,000.) Accurate payroll estimates are important. If you underestimate your annual payroll, you could receive a large, unexpected audit premium after the policy expires.

3. The rate for your industry or type of work

Employers are assigned rates, which are specific to Vermont according to industrial categories called classifications. Classifications tie to risk factors, or the recognized potential for loss within a particular industry. There are over 600 classifications.

Because they entail similar risks or hazards, certain varied businesses are grouped together within the same classification, for example, stone polishing and granite cutting. Within a single business, some types of employers may be exposed to lesser risks than others, but the classification covers all employees of the business, except for classifications called standard exceptions, involving occupations common to many businesses. These include clerical, office and drafting employees, drivers, chauffeurs, and their helpers, outside salespeople, collectors, and messengers.

There is an established minimum premium, which varies according to employer classification. It is the lowest premium an insurance company will accept to provide worker's compensation insurance. As of mid-2002, the minimum premium ranged from \$218 per year to \$750. Very few businesses will see their rate determined by the minimum premium. They are likely to be small companies who employ one or two part-time workers.

4. The experience rating for your company

If your annual insurance premium is \$4000 or more, your rates will be affected by the number and severity of work injuries experienced by your workers. This adjustment is called an experience rating. It results in an experience modification factor, which adjusts your company's standard industry rate up or down. If you have lower than average injury costs, you receive a premium reduction. Higher than average costs result in a premium surcharge.

Effective 4/1/03 a Merit Rating Plan was approved for risks at \$4,000 and lower for smaller risks that are in the "pool". A 5% credit or debit will be applied to those risks depending on that risk's preceding three years of experience.

If you purchase insurance through the assigned risk plan and your experience is poorer than average, you will be levied an additional surcharge through the Assigned Risk Adjustment Program (ARAP). ARAP surcharges apply on a sliding scale to a maximum of 25% of the modified premium. The combination of experience modification factor and an ARAP surcharge could cost you twice the normal rate per \$100 of payroll, or more.

How long does an accident affect your experience modification factor?

The period used to calculate an experience modification factor is three years, ending one year prior to the anniversary rating date, which is generally the same as the insurance policy renewal date. For example:

If the policy renewal date is January 1, 2003...
the experience modification period is January 1, 2000 through December 31, 2002. The modification applies for one year. A new modification is issued for each succeeding year.

Worth the cost

The cost of even one employee injury (and the possible legal expenses connected with determining who was at fault) could easily bankrupt a small employer who didn't have worker's compensation insurance.

How large a business expense is it? Among Vermont employers, 44.8% pay less than \$1,000 per year, 62.5% pay less than \$2,000 per year, and 72.4% pay less than \$3,000 per year. 2001 reports indicate that the average net cost of worker's compensation insurance for manufacturing classes in Vermont came to 4.26% of the payroll. For small businesses, one serious claim could exceed ten years of paying premiums.

Getting out of the assigned risk plan

If your company does dangerous work or has a poor individual safety record, you are not likely to find coverage in the voluntary market. However, you could also find yourself in the assigned risk plan if you're simply a small business or a new company that has not yet established a safety record.

Vermont has a "take-out" program aimed specifically at smaller companies (those with an annual worker's compensation premium of less than \$10,000) who achieve good safety records. Under this program, insurers who take such companies out of the assigned risk plan and place them back into the voluntary market can earn credits against the normal assessment they pay to support the assigned risk plan.

To see if your company is eligible for take-out, check with your agent or broker. You don't have to wait for your policy to come up for renewal.

Ways to control your costs

Rates are sensitive to safety records

The experience rating system acts as an economic incentive for employers to create safer working environments for their workers. Below are two examples that show how injury records can dramatically alter premium rates.

Rate Differences: A Tale of Two Companies	
Company #1 , a manufacturer of woodenware in the assigned risk market has a worker's compensation rate of \$8.59 per \$100 of payroll. They have a poor safety record resulting in an experience modification factor of 1.6 (1.0 is the baseline and there is no maximum.) Their worker's compensation rate computes as follows:	Company #2 , also manufacturer of woodenware, is able to purchase insurance in the voluntary market. Their worker's compensation rate is \$5.94. Because of their good safety record, their experience modification factor is .94 (with 1.0 as the baseline). Their worker's compensation rate computes as follows:

Base rate: \$8.59 <u>Experience modification factor x 1.60</u> 13.74 <u>ARAP surcharge x 1.25</u> Premium per \$100 of payroll \$17.18	Base rate: \$5.94 <u>Experience modification factor x .94</u> 5.58 No ARAP surcharge Premium per \$100 of payroll \$5.58
<p><i>Note: in this example, company #1's labor costs per \$100 of payroll are \$11.60 higher than its competitor's costs due to a much higher than average experience modification factor and the required ARAP surcharge.</i></p>	

The best way to control costs is through safety

The best way to control your worker’s compensation costs is to maintain the safest workplace possible so you can minimize the risk of on-the-job injuries. To do so, you should focus not only on your physical worksite, but also on the way your employees do their jobs. Make sure your employees receive full and proper training in safe work practices. Are your safety appliances well maintained and readily available, and do you stress the importance of their use? Do certain jobs put your employees at risk for developing repetitive motion or gradual onset injuries such as carpal tunnel syndrome? Have you instructed them on safe lifting techniques to reduce the risk of low back injuries? Do you emphasize wellness among all your employees?

Consider creating health and safety committees in your workplace. Have routine safety meetings with staff. When accidents happen, assess the cause and eliminate it. Put safety first and make sure your employees know it.

If you obtain insurance in the voluntary market, most insurers will perform a safety inspection on request, which may alert you to unknown hazards. Your insurance agent or broker can also refer you to private safety engineering or consulting services.

If you are in the assigned risk plan, the insurance companies that service this plan provide high quality safety consulting services to their covered employers.

If you have a small business under 250 employees in a high hazard industry (such as construction or manufacturing) the Vermont Occupational Safety and Health Division (VOSHA) also offers free consultations and walk-through inspections. VOSHA will also provide guidance to any employer on any workplace safety issue. The service helps promote better VOSHA compliance (thus helping to avoid fines) as well as helping, potentially, to hold down insurance costs. For further information, call 1-800-287-2765 or 802-828-2765.

If you would like to obtain a list of representative rates used to calculate worker’s compensation insurance premiums for Vermont employers, you may call the Vermont Insurance Division at 802-828-4841 or go to the Loss Cost Report on the [Workers Compensation Information Resources Page](#)

3. What to do when an accident happens

Things you must do

No employer ever expects an accident, but it's important to be prepared. Legally there are certain actions you must take when an accident happens. They are:

- Make sure employees are told to report work injuries promptly.
- Make sure the injured worker receives immediate medical attention and any other critical services.
- File a form called a First Report of Injury, (Form 1), any time a work injury or incident results in the employee requiring medical care or treatment or absence of work for one day or more with the Department of Labor. You must do this within 72 hours of the injury and send copies to the employee and the insurer. Reporting an injury in no way jeopardizes an employer's ability or right to challenge a claim. Some insurers will handle the reporting for you. Find out how your insurer's system works. If you, as the employer, neglect or refuse to file the form, your injured employee can file a similar form to report the accident.) *Note: It's important to report even small accidents.*
- Give the insurer the names and addresses of injured workers, any witnesses, and all other information the insurer requires. Upon receipt of the First Report of Injury, your insurance carrier will investigate the accident to determine whether the claim is compensable or not. This investigation should include collecting all relevant medical records and taking statements from the injured worker, co-workers, supervisor, and other witnesses. The injured worker must cooperate with this process or risk losing his or her entitlement to worker's compensation benefits.
- Promptly provide the insurer all legal papers relating to the injury, claim or suit.
- Cooperate and communicate with the insurer. Assist in the investigation, settlement or defense of any claim. If the injury results in lost time, you will also be asked to provide a wage statement verifying the employee's gross wages for the 12-week period preceding the injury, so that the proper compensation rate for disability benefits can be calculated.

Things you must not do

- Do not do anything which could interfere with the insurer's right to recover costs from others.
- Do not make advance payments, assume obligations or expenses in expectation of reimbursement, unless you understand that you run the risk of footing these expenses yourself. You cannot anticipate exactly what costs will be covered by a claim.

4. Types of Benefits for Injured Employees

Medical benefits

Workers' compensation provides coverage for all reasonably necessary medical services and supplies related to an on-the-job injury or occupational disease. This may include not only coverage for doctors' visits and hospital treatment, but also coverage for physical therapy, medication, chiropractic treatment and psychological counseling. There is no time limit on the duration of this coverage as long as the treatment is a direct result of the work injury or occupational disease.

As the employer, you have the right to designate the treating health care provider who will initially treat an injured worker. If your worker is dissatisfied with your choice, he or she may choose another provider, but must notify you in writing of the change, the reason the employee was dissatisfied, and the name of the medical provider the worker has selected.

An injury may include an aggravation of an old injury or pre-existing condition. Benefits are not allowed if an injury (a) resulted from a worker's willful intent to harm himself or someone else, (b) occurred as a result of a worker's intoxication, or during it, or (c) occurred because an employee failed to use a safety device provided for the purpose.

An occupational disease is one "due to causes or conditions which are characteristic of and peculiar to a particular trade, occupation, process or employment, and to which an employee is not ordinarily subjected or exposed outside of or away from his employment, and which arises out of and in the course of employment." [21 V.S.A. § 1002]

In the case of occupational disease, the date of disability and the right to benefits start on the date your worker's physician states in writing that the employee is disabled because of the disease. To be eligible for benefits, the worker must file the physician's opinion with the Department of Labor within 30 days of the written opinion. The worker must also notify you of the disability as soon as possible.

If you have questions or concerns about the possibility of occupational diseases in your business, call the Department of Labor (802-828-2286) as soon as possible for information.

Income replacement benefits

While recovering from a work-related injury, a worker may be entitled to either temporary total disability compensation or temporary partial disability compensation.

Temporary total disability compensation

An employee who is totally disabled from work and has not yet reached the end of a recovery process may be eligible for temporary total disability compensation. During the period, your employee is entitled to receive weekly disability benefits based on two-thirds of his or her average weekly wage. A small supplement for each dependent child is provided, but total income is capped at the employee's net income. The payment is also capped at 150% of the state average weekly wage.

Temporary partial disability

If the doctor releases the employee to return to part time or light duty work during recovery, but due to the injury the employee will earn less money than before, he or she may be entitled to temporary partial disability compensation. This is equal to two-thirds of the difference between the employee's former average weekly wage and the average weekly wage the employee will earn doing light duty or part time work.

If the doctor says the employee can return to part time or light duty work, the employee is expected to do so. As the employer, it's generally in your interests to find suitable work for such

an employee. (See [box](#): It pays you to accommodate employees who could work on a limited basis.)

Payment for temporary total disability stops when an employee can return to work or when a doctor finds that the worker's injury has finished healing, or the medical recovery has plateaued such that significant further improvement is not expected. Before temporary total disability benefits may be stopped, the employee must be notified of the date and the reasons that the payments will end. If, when notified that the temporary benefits will end, an employee claims that he or she is still temporarily unable to work, the employee must contact the insurance company and the Department of Labor immediately.

If the employee has been receiving temporary partial disability because of a return to limited work, such compensation also stops when the employee can return to normal duty, or when a doctor finds that the injury has finished healing.

Permanent impairment

If the employee is left with a permanent impairment following recovery, the employee may receive additional compensation (related to loss of function) once temporary disability compensation ends. The law provides a schedule for calculating benefits based on the body part injured and the degree of functional loss.

If the employee is treating with a physician of their own choosing, then the insurer may choose a doctor to render a second opinion on the issue of permanent impairment. The employee must cooperate with this examination, or the employee's entitlement to benefits could be jeopardized. A claimant who willfully makes a false statement or representation for the purpose of obtaining any type of benefit or payment may be assessed an administrative penalty (not more than \$1,000) and will forfeit some or all rights to compensation.

It pays for you to accommodate employees who could work on a limited basis

- Speedier transition -- Studies have shown that employees who maintain this type of connection to the workplace during recovery tend to return to their normal jobs sooner.
- It probably costs you less in the end -- Another fact to bear in mind is that the less time your employee spends collecting benefits, the less impact you're likely to see on your claims experience rating.
- It's not forever -- You may fear that once you make temporary or part time disability arrangements for an employee, you will be "stuck with them" if the employee can never return to work. The fact is you are not required to retain an employee in a limited duty position you provided for the period of recovery. If the employee has reached an "end result" in the recovery process and is still unable to return to his or her original job, you are not obligated to keep the employee on the payroll. Your insurance carrier will arrange for the employee to receive vocational rehabilitation services.

5. Getting your employee back to work

Monitoring your employee's recovery

Let your employee know you are concerned about his or her progress. Stay in touch and monitor the success of treatment. If the employee is not healing, let your insurance carrier know of your concerns.

You have a right to monitor the medical progress of an injured employee. If requested, your employee is required to give your insurance carrier an authorization of release of medical records. Your carrier should be monitoring your employee's recovery regularly and provide you updates on request, especially as the time nears for your employee to return to work.

You may not dock an employee's pay for time spent seeing a doctor or at rehabilitation sessions for work related injuries.

When an employee returns to work

When the doctor releases your employee to return to work, either full or part-time, the employee is expected to contact you immediately to see if a suitable position is available. If there is one suited to the employee's condition, he or she must take the position or risk losing a right to further compensation and/or vocational assistance.

The law does not require you to hold an injured worker's job open until he or she can return to work. If your business operations require you to hire a replacement, you may do so.

If you regularly employ 10 or more employees, and if your worker recovers from his or her work-related injuries within two years, you must offer reinstatement in the first available, suitable job. This means that if you hired someone else to take the injured worker's place, you need not discharge that person. However, the next suitable position that comes open must be offered first to the injured worker. To ensure a safe, successful return to work, you should work closely with your employee, his or her doctor and vocational rehabilitation counselor. They can help determine what jobs may be suitable, given the employee's skills and physical capabilities. (See [box](#), Guidelines for suitable work.)

Upon reinstatement, the employee regains seniority and any unused benefits he or she was entitled to prior to the interruption of employment, minus any leave time used during this interruption.

State and federal fair employment laws, including those that prohibit discrimination against people with disabilities, may also affect an employee's right to reinstatement following a work-related injury. Check with your personnel office or attorney if you have questions in this area. or you may wish to call the Vermont Office of Aging and Disabilities. Their address is listed at the end of this booklet.

What if an employee is unable to return to work?

If your employee is unable to return to suitable employment using his or her previous training and experience, you are not required to rehire the person, but your worker's compensation insurance will pay for vocational rehabilitation services. These services must aim towards a

return to work, training, or self-employment. You and your insurer will have an opportunity to review and approve the plan for services.

The Workers' Compensation Division will settle claims disputes

If the insurance adjuster denies a claim or there is a disagreement about the types or levels of compensation, the employee has the right to contest that decision before the Worker's Compensation Division of the Department of Labor. Specialists work closely with the insurance claims adjuster and claimant. They will see that the adjuster completes the necessary paperwork and ensure that medical examinations are performed as required. These specialists may also serve as mediators, helping the parties resolve conflicts over care issues. Further, they act in a regulatory capacity and may issue interim orders when an employer or insurance company disagrees with the Division's interpretation of statute.

A prehearing conference is held in all cases in which a hearing has been requested. The purpose of the prehearing conference is to clarify the issues, disclose evidence, and identify witnesses who will testify. The parties may settle the dispute at this level.

Employees may retain an attorney to represent them at the hearing--especially for presenting any sophisticated medical evidence. If an employee prevails on the claim, reasonable attorney fees may be assessed against the employer or the insurer. As an employer, you will not need to hire an attorney. The insurer provides you one.

How often do claims require intervention by the Workers' Compensation Division?

In fiscal year 2001, of the over 25,000 First Reports of Injury, about 12,000 involved some intervention by the Workers' Compensation Division. Of these, about 1,500 requested adjudication and a final order by the commissioner of Labor & Industry. There are 1,500 requests for hearing each year and approximately seventy cases are adjudicated at formal hearing each year. Historically, about half the decisions favor the employer and half favor the worker. A party dissatisfied with a hearing decision has further recourse to the Superior and Supreme Courts.

Guidelines for suitable work:

Your objective is to return an employee to a work situation which is at least comparable to the employee's former position from the standpoint of salary, commuting distance, shift, etc. This may not be possible or reasonable in every case. However, as the employer, you should strive for the closest match using these guidelines and be prepared to justify exceptions.

A job may be suitable if...

- the employee can physically and mentally do the work and has had relevant work training or experience, or the work interests the employee and the employee can be trained for it
- the new wage is not less than the old. Or, a lesser paying job may be suitable in the following circumstances:
 - a) if the employee's healing has reached an end result, and there is a strong likelihood that the new wage will equal the old wage within 12 months on the job.
 - b) the new wage is acceptable to the claimant.

- c) the new wage is within 80% of the claimant's wage at the time of injury
- d) the job at the time of the injury was a limited term position which paid substantially more than the employee was accustomed to getting.

...the employee returns to the same shift as before, unless:

- a) different shift is acceptable to the employee or
- b) because of the local job market and economic climate, it is reasonable to require a different shift.

6. Frequently Asked Questions

Q. What are the relationships between DFR, Department of Labor and the NCCI?

A. Title 21 V.S.A. governs the Department of Labor. Issues relating to employers, employees, and employee claims are under the jurisdiction of Labor & Industry. Coverage issues, injured workers' claims processing, benefits due, who is required to carry a workers' compensation policy are all items which fall under Title 21.

Title 8 V.S.A. governs DFR (the Department of Financial Regulation). Issues relating to carriers' behavior in the marketplace, rates, forms, and the workers' compensation plan (WCIP) are under the jurisdiction of DFR.

Title 8 V.S.A. directs the Commissioner of Insurance (DFR) to designate an advisory or service organization to assist him in gathering, compiling and reporting relevant statistical information; to develop and file for approval a uniform classification system and a uniform experience rating plan; to develop and file manual rules and a uniform schedule rating plan.

The NCCI (National Council on Compensation Insurance) is our advisory / service organization. It administers the plan under DFR's direction and assists in resolving disputes, which may arise from a carrier's application of the WCIP rules, classifications, and experience modification factors. The great majority of disputes are settled on this level.

If a dispute remains unresolved, employers have the right to a formal appeal before the Vermont Workers' Compensation Appeals Board. The Board consists of five members who are appointed by the Commissioner: 1 from the NCCI, 2 from the private sector, 1 from an insurance carrier and 1 from the agency community.

Such an appeal could be followed by a hearing before the Commissioner and ultimately in a suit brought before the superior court.

7. For More Information

If you have questions about your insurance costs or dealings with your insurance company, and you cannot resolve them with your agent, broker or insurance company, contact:

Consumer Assistance

89 Main St. Drawer 20

Montpelier, VT 05620-3101
TEL: 1-800-964-1784 or 802-828-3301
FAX: 802-828-3306

If you have questions regarding what to do when an employee is hurt, or whether workers' compensation covers a certain injury or condition, contact:

Department of Labor
Workers' Compensation Division
5 Green Mountain Dr, PO Box 488
Montpelier, VT 05601-0488
TEL: 802-828-2286
FAX: 802-828-2195

If you have questions about an employee's right to be rehired or right to reasonable accommodations, contact:

David Sagi
Vocational Rehabilitation Division
190 ASA Bloomer Building
Rutland, VT 05701-948
TEL: 802-786-5930
FAX: 802-786-5078
TTY: 802-786-5866
e-mail: david.sagi@ahs.state.vt.us

To request a free consultation and walk through inspection to improve the safety of your workplace, contact:

Department of Labor VOSHA Project Worksafe
5 Green Mountain Dr, PO Box 488
Montpelier, VT 05601-0488
TEL: 1-800-287-2765
FAX: 802-828-2195

For general information on other business/employer concerns in the state of Vermont, such as wage and salary issues, collective bargaining, etc., contact:

Vermont Department of Employment & Training
5 Green Mountain Dr, PO Box 488
Montpelier, VT 05601-0488
TEL: 802-828-4000
FAX: 802-828-4022
TDD: 802-828-4203

The Department of Economic Development can provide business assistance for any business issue regarding doing business in Vermont. Visit <http://thinkvermont.com> for information and resources.

Department of Economic Development

National Life Building, Drawer 20

Montpelier, VT 05620

800-WE DO BIZ (933-6249)

802-828-3080

info@thinkvermont.com

For an on-line copy of the Vermont Workers' Compensation and Occupational Disease Rules, see: <http://www.labor.vermont.gov/InfoCenter>

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