Workers’ Compensation – Employer Penalties

The Illinois Workers’ Compensation Act (IWCA) determines the penalties employers may face if they fail to comply with state workers’ compensation requirements. The Illinois Workers’ Compensation Commission (IWCC) has the authority to enforce compliance with the IWCA throughout the state.

GENERAL VIOLATION PENALTY

Generally, any violation because of neglect, refusal to or failure to comply with the IWCA is a petty offense, punishable by a fine of up to $1,000 and possibly an order to pay restitution to the victims of the violation.

FAILURE TO SECURE WORKERS’ COMPENSATION COVERAGE

Employers that fail to secure workers’ compensation coverage for their employees lose the protections of the IWCA and face possible criminal and civil penalties.

Without the protection of the IWCA, injured employees can sue their employers for work-related injuries. In these cases, employee injuries are a presumption of employer negligence and employers cannot claim third-party responsibility.

Criminal Penalties

Employers that knowingly or intentionally fail to obtain coverage for their employees commit a class 4 felony, punishable by a fine of up to $25,000 per offense ($50,000 for corporations), imprisonment between one and three years or both. Each day of non-compliance is a separate offense.

In addition, the IWCC considers knowingly failing to obtain appropriate coverage a serious danger to public health, safety and welfare. This provides sufficient justification for the IWCC to issue a work-stop order to require offending employers to cease all operations until appropriate coverage is secured. Employers can appeal these orders to a state circuit court.

Employers that negligently fail to obtain adequate coverage for their employees commit a class A misdemeanor, punishable by a fine of up to $2,500, imprisonment for up to one year or both. Each day of non-compliance is a separate offense.

Criminal penalties do not apply if there is a good faith dispute as to the existence of an employment relationship between the employer and the injured worker.

Civil Penalties

Employers are also subject to civil penalties of up to $500 per day, for each day of non-compliance, with a minimum of $10,000 if they:

- Knowingly and willfully fail or refuse to obtain adequate employee coverage; or
- Fail or refuse to comply with any order issued by the IWCC to correct coverage deficiencies.

Enforcement

The IWCC can appoint investigators to ensure that employers are in compliance with the IWCA. Investigators have the authority to assess additional fines of between $500 and $2,000 to employers that do not comply with an IWCC citation within 10 days.
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The IWCC will hold the officers and directors of corporations personally liable for any fines that remain unpaid after 30 days. The IWCC can also seek reimbursement from an non-compliant employer if, during the time the employer did not have adequate coverage, the IWCC had to use funds from the Injured Workers’ Benefit Fund to provide benefits for the non-complying employer’s workers.

FAILURE TO PROVIDE MEDICAL BENEFITS

Employers must provide adequate and prompt medical care to treat their employees’ work-related injuries. Employers that unreasonably, frivolously or intentionally delay or underpay medical compensation may be ordered to pay up to 50 percent of the amount of compensation that should have been paid.

Employers are exempt from this penalty if they deny medical compensation because the extent and scope of the proposed or rendered medical treatment is excessive and unnecessary. Determining whether medical treatment is excessive and unnecessary requires an assessment of the injury and its treatment through an accredited utilization review program. For more information on utilization review programs, visit the Illinois Department of Insurance website.

FRAUD

Employers that intentionally make a false statement or representation regarding a material fact in the course of an investigation, injury report or benefit claim adjustment to avoid paying a claim or benefit face the possibility of criminal charges, restitution and civil penalties.

Criminal Charges

Under the IWCA, the severity of the charges and the penalties (fine, imprisonment or both) associated with them depends on the amount of benefits obtained through fraud, as shown in the table below:

<table>
<thead>
<tr>
<th>FRAUDULENT COMPENSATION</th>
<th>CRIMINAL CHARGES</th>
<th>FINE</th>
<th>IMPRISONMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>$300 or less</td>
<td>Class A misdemeanor</td>
<td>Up to $2,500 per offense</td>
<td>Less than 1 year</td>
</tr>
<tr>
<td>$300 - $10,000</td>
<td>Class 3 felony</td>
<td>Up to $25,000 per offense ($50,000 for corporations)</td>
<td>2 – 5 years</td>
</tr>
<tr>
<td>$10,000 - $100,000</td>
<td>Class 2 felony</td>
<td>Up to $25,000 per offense ($50,000 for corporations)</td>
<td>3 – 7 years</td>
</tr>
<tr>
<td>$100,000 or more</td>
<td>Class 1 felony</td>
<td>Up to $25,000 per offense ($50,000 for corporations)</td>
<td>4 – 15 years</td>
</tr>
</tbody>
</table>

In addition, individuals who intentionally seek to avoid payment of workers’ compensation benefits to an injured employee or the employee’s dependents by transferring, selling, encumbering, assigning, disposing of, concealing or destroying any employer property commit a class 4 felony, punishable by a fine of up to $25,000 per offense ($50,000 for corporations), imprisonment between one and three years or both.

Monetary Restitution

In addition to criminal charges, employers may also be required to compensate their insurance carriers, employees or any other party that sustained a financial loss through fraud. Monetary restitution includes:

- Medical evaluation or treatment costs;
- Court costs; and
- Attorney’s fees.
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Civil Penalties

Parties that suffered a financial loss because of fraud can sue employers in civil court and receive compensation equal to three times the value of the benefits or insurance coverage obtained through fraud. If the fraud in question results only in an attempt to increase financial gain or reduce the payment of benefits, wronged parties can recover up to twice the amount of compensation that would have been gained or lost. In addition, wronged parties can also obtain reasonable attorneys’ fees and expenses.

MORE INFORMATION

Please contact The Insurance House for more information on Illinois’ workers’ compensation requirements.