

# Employer's Guide to the Alaska Workers' Compensation Act



## About this Guide

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The Alaska Workers' Compensation Act affects all employers conducting business operations in the State of Alaska. This information is intended to provide general guidance for practical application of statutes and regulations comprising the Act, to help employers understand their responsibilities and rights under the Act, and to provide answers to employers' common questions about workers' compensation. This guidance is not comprehensive and is not legally binding on the Department of Labor and Workforce Development or the Alaska Workers' Compensation Board. If there is discrepancy or conflict between this general guidance document and the Act, the Act controls.

For additional general guidance information and citations for specific statutes and regulations, contact the Alaska Division of Workers' Compensation Special Investigations Unit at (907) 269-4002, or toll free at (888) 372-8330, or by email at [wcfraud@alaska.gov](mailto:wcfraud@alaska.gov). Please contact an attorney for specific legal advice.

## Table of Contents

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Workers' Compensation Overview .....	4
What is workers' compensation? .....	4
How does workers' compensation benefit employers and employees? .....	4
Are employers required to provide workers' compensation coverage for their employees? .....	4
Workers' Compensation Coverage .....	4
Do licensed business owners have to insure themselves? .....	4
What about LLC members and for-profit corporation officers? .....	4
Can employers charge employees for premiums? .....	4
What if employees agree to waive workers' compensation benefits? .....	4
Non-Profit Organizations .....	4
Are non-profit organizations exempt? .....	4
What about non-profit directors/officers? .....	4
Do non-profit volunteers have to be insured? .....	4
Other Insurance .....	5
What about health or liability insurance? .....	5
Aren't unemployment insurance and workers' compensation insurance the same thing? .....	5
What about "self-insurance"? .....	5
Do workers' compensation policies from other states or countries satisfy the requirement? .....	5
Employees Who Are Required To Be Insured .....	5
What exactly is an "employee"? .....	5
What about family and friends, or "volunteers"? .....	5
Do part-time or temporary employees count? .....	5
Statutory Exemptions .....	5
Which businesses are exempt? .....	5
What are the worker exemptions? .....	5-5
Independent Contractors .....	6
What is an independent contractor? .....	6
But the IRS considers my workers independent contractors? .....	6
Misclassifying Employee Labor & Deceptive Leasing Practices .....	6
Can't employers just give a worker a 1099 at the end of the year instead of paying for workers' compensation? ...	6
What about listing employees as business owners? .....	6
Are there other ways to misclassify employee labor? .....	6
What are deceptive leasing practices? .....	6-6

## Table of Contents (Cont'd)

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Obtaining a Policy & Premium Information .....	7
Does Alaska have a state fund for purchasing coverage?.....	7
What if private commercial carriers refuse to write a policy? .....	7
How are premiums calculated? .....	7
Audits and Disputes.....	7
Can insurers require employers to produce proof of workers' compensation coverage for subcontractors? .....	7
How do we know if subcontractors are insured?.....	7-8
What agency handles premium disputes with insurers? .....	8
Employer Responsibilities .....	8
What do employers have to do no matter what?.....	8
Employer Rights .....	9
Do employers have any rights? .....	9
Benefits Provided to Injured Workers.....	9
What workers' compensation benefits are provided to injured workers?.....	9-10
Failure to Insure.....	10
Why do employers fail to insure? .....	10
What are the consequences for failing to insure? .....	10
What is the statute of limitations? .....	10
How are failure to insure matters handled?.....	10
What if the employer cannot afford to pay workers' compensation premiums? .....	10
Uninsured Injury Claims And Debarment.....	10
How are uninsured injury claims handled?.....	10
What is debarment?.....	10
Other Important Information .....	11
What else should employers know? .....	11
Employer Resources .....	11
What resources are available to employers? .....	11

## **Workers' Compensation Overview**

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### **What is workers' compensation?**

Workers' compensation is a no-fault insurance system that protects workers and employers from some of the losses caused by on-the-job accidents and job-related illnesses.

### **How does workers' compensation benefit employers and employees?**

Workers' compensation is the "exclusive remedy" for work-related injuries and illnesses. This means it protects an employer from civil liability. When an employer is insured, the injured worker may not sue the employer for the injury.

### **Are employers required to provide workers' compensation coverage for their employees?**

Yes. Coverage is mandatory in Alaska, not voluntary. There are no "opt out" provisions under the Alaska Workers' Compensation Act.

## **Workers' Compensation Coverage**

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### **Do licensed business owners have to insure themselves?**

Sole proprietors and partners are not legally required to have coverage if they are the only individuals performing the work for the business. These business owners may wish to explore "opting in" to insure themselves.

### **What about LLC members and for-profit corporation officers?**

LLC members and corporate directors/officers with a minimum 10% ownership interest in the business are automatically exempt. LLC members and corporate directors/officers with less than 10% ownership interest are considered employees who must be insured. Individual ownership interest in a parent company transfers to the subsidiary company.

### **Can employers charge employees for premiums?**

No. It is a misdemeanor crime for employers to charge employees for any portion of workers' compensation premiums.

### **What if employees agree to waive workers' compensation benefits?**

They can't. A verbal or written agreement purporting to waive an employee's workers' compensation benefits is considered an invalid agreement.

## **Non-Profit Organizations**

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### **Are non-profit organizations exempt?**

No. Non-profit organizations must purchase and maintain workers' compensation insurance for their employees just like any for-profit employer.

### **What about non-profit directors/officers?**

Executive officers and directors of legally registered non-profits are not considered employees and are automatically exempt. "Executive officer" is defined as "the president, vice-president, secretary, treasurer, or a corporate employee who is responsible for the corporation's affairs generally, has a close connection with the board of directors and other officers and who is specifically designated as an executive officer by the articles of incorporation or corporation bylaws." An executive director who is documented and visible in the corporate structure, and who meets this criteria, is exempt. The organization may elect to cover the executive director.

### **Do non-profit volunteers have to be insured?**

Generally, no. Bona fide volunteers who are not compensated in any way, and who do not otherwise personally benefit from volunteer services provided to the organization (stipends, free access to activities, services lodging in return for services, or anything that could be considered compensation) are typically not considered employees.

## Other Insurance

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### What about health or liability insurance?

Workers' compensation policies are separate and cannot be "bundled" with any other types of insurance. General health and liability insurance policies do not cover workplace injuries or illnesses.

### Aren't unemployment insurance and workers' compensation insurance the same thing?

No. Unemployment insurance provides benefits to individuals who become unemployed for reasons other than work-related injury or illness.

### What about "self-insurance"?

Employers wishing to self-insure must go through a detailed qualification process to obtain a certificate of self-insurance from the Alaska Workers' Compensation Board. Review the criteria at <http://labor.state.ak.us/wc/self.htm> for more information.

### Do workers' compensation policies from other states or countries satisfy the insurance requirement?

No. Alaska has not entered into any reciprocity agreements with any other states or countries. Non-Alaska workers' compensation policies, even those purporting to pay for injuries occurring in Alaska, do not satisfy Alaska's statutory compliance requirements. All labor occurring in Alaska, including that performed by non-resident employees, must be insured by a workers' compensation policy bound in Alaska and produced by an insurer authorized through the Alaska Division of Insurance to write workers' compensation insurance in the State of Alaska. Foreign businesses are required to purchase and maintain Alaska coverage just like Alaska employers.

## Employees Who Are Required To Be Insured

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### What exactly is an "employee"?

An employee is generally defined as an individual who is not an independent contractor as defined in AS 23.30.230 and who, under a contract of hire, express or implied, is employed by an employer.

### What about family and friends, or "volunteers"?

There are no exemptions for family, friends, or "volunteers" for a for-profit business. All individuals performing work for the business who are not legally named as owners with adequate ownership interest, and who are not bona fide independent businesses, are employees who must be insured.

### Do part-time or temporary employees count?

Yes. There are no exemptions for a certain number of employees or for the number of days or hours worked by employees. All employees who do not fall within a statutory exemption must be insured.

## Statutory Exemptions

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### Which businesses are exempt?

There are no business industries that are exempt from the requirement to insure employees for workers' compensation liability. Exemptions apply only to individual workers performing specific exempt duties, or to individuals who meet the Independent Contractor definition criteria.

### What are the worker exemptions?

Generally speaking, non-commercial part-time babysitters; cleaning persons who clean personal dwellings and are hired directly by the personal dwelling's resident (this does not apply to business or commercial units); harvest help and similar part-time/transient help (performing work that is not an integral part of the business on an intermittent, non-regular basis, and who do not have a permanent work address); sports officials; contracted entertainers; commercial fishermen as defined in AS 16.05.940; some taxi cab drivers; some individuals on certain types of public assistance; some real estate agents;

and ride share transportation network company drivers who transport passengers (this does NOT include couriers, personal shoppers, and food delivery drivers).

## Independent Contractors

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### What is an independent contractor?

An independent contractor is defined as an individual who **collectively meets all criteria** in (1) – (7):

- (1) has an express contract to perform services;
- (2) is free from direction and control over the means and manner of providing services;
- (3) incurs most of the expenses for tools, labor, and other operational costs;
- (4) has an opportunity for profit and loss from the services performed,
- (5) is free to hire and fire employees to help perform the services for the contracted work;
- (6) has all business, trade, or professional licenses required by federal, state, or municipal authorities of an individual or business engaging in the same type of services;
- (7) follows Internal Revenue Service requirements by obtaining an employer identification number and filing business income appropriately;

### AND who also meets at least two of the following criteria:

- (A) is the person responsible for completion of the work and subject to liability for the work, or maintains liability or other insurance policies necessary to protect the employees, financial interests, and customers of the business,
- (B) maintains a separate business location or business mailing address from the individual or entity for which services are performed;
- (C) provides contracted services for two or more different customers within a 12-month period or engages in business advertising, solicitation, or other marketing efforts to obtain new contracts.

### But the IRS considers my workers independent contractors...?

The Alaska Workers' Compensation Act requirements are completely independent from those of the Internal Revenue Service or any other federal, state, or local

regulatory agency. Since each agency has its own laws for determining the employer/employee relationship, it is possible for the same workers to be considered independent contractors under some agencies, but employees under other agencies. There are significant financial risks for incorrectly classifying employees as independent contractors in Alaska. It is the employer's responsibility to comply with the laws of each different agency.

## Misclassifying Employee Labor & Deceptive Leasing Practices

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### Can't employers just give a worker a 1099 at the end of the year instead of paying for workers' compensation?

No. Employers cannot "make" an employee an independent contractor by issuing a 1099 form, by verbal or written agreement, or by forcing the worker to get a business license.

### What about listing employees as business owners?

Employers that add employees to their licensing or entity information solely for the purpose of avoiding workers' compensation premiums may be subject to civil and criminal punishment for knowingly misclassifying employee labor.

### Are there other ways to misclassify employee labor?

Yes. Misclassification occurs when, for the purpose of avoiding workers' compensation premiums, employers knowingly (1) falsify or misrepresent employee job duties, (2) misrepresent an employee as an independent contractor, (3) conceal some or all compensation paid to employees, or (4) designate an employee as a partner, LLC member, director or officer without the employee having documented ownership interest, sharing in profits and losses, or having decision-making authority.

### What are deceptive leasing practices?

Deceptive leasing practices occur when, for the purpose of avoiding workers' compensation premiums, a person, business, or professional

employer organization engaged in the business of leasing employee labor (1) purports to be the sole employer of the leased employee, and (2) fails to report client names and effective coverage dates to the carrier and division.

## **Obtaining a Policy & Premium Information**

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### **Does Alaska have a state fund for purchasing coverage?**

No. Alaska does not administer a state workers' compensation insurance plan. Unless approved to be self-insured, businesses must purchase workers' compensation policies through private commercial insurance carriers that are specifically authorized by the Alaska Division of Insurance to write workers' compensation policies in Alaska. Employers can inquire about which carriers are authorized to write workers' compensation in Alaska by calling the Alaska Division of Insurance at (907) 269-7900.

### **What if private commercial carriers refuse to write a policy?**

The Alaska Workers' Compensation Division contracts with the National Council on Compensation Insurance ("NCCI") to administer an Assigned Risk Pool. Employers unable to find a commercial carrier willing to write coverage voluntarily can obtain coverage through NCCI and the Assigned Risk Pool. Insurance agents and brokers can assist employers with the NCCI application process. Employers can also contact NCCI directly through its website [www.ncci.com](http://www.ncci.com) or by calling (800) 622-4123.

### **How are premiums calculated?**

Estimated premiums for the upcoming policy year are calculated using the NCCI classification codes that most closely represent employee duties, number of employees, anticipated payroll, and accident history. Estimated premiums are paid in advance of a policy period. Insurers audit policies at the end of the policy period to reflect actual job duties, actual number of employees, and actual payroll for the previous policy period. Premiums are then recalculated based on the updated information. Employers may receive a partial premium refund or an invoice for an additional premium amount, depending on the audit result. It is

important to read and understand insurance communications. The audit refund or additional premium invoice for one policy period should not be confused with any other policy period. Employers cannot reinstate coverage of a cancelled policy or purchase a new policy until all previous audits are complete and all premiums due are paid.

## **Audits and Disputes**

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### **Can insurers require employers to produce proof of workers' compensation coverage for subcontractors?**

Yes. Under NCCI policies approved by the Alaska Division of Insurance, contracting businesses "must furnish satisfactory evidence that the subcontractor has workers' compensation insurance in force" while performing work for the contractor. For each subcontractor not providing evidence of workers' compensation insurance, insurers must charge an additional premium on the contractor's policy for the uninsured subcontractor's employees. Insurers are not tasked with deciding which, if any subcontractors (at all tiers) are exempt. Contracting businesses wishing to reduce their liability and premiums should require proof of coverage from all subcontractors (at all tiers), regardless of whether or not the subcontractors are legally required by the Act to have coverage. Contractors may also wish to consider establishing clear documentation for subcontractors (at all tiers) to separate payroll costs from other costs and to make that documentation available to the insurer, as this may help minimize workers' compensation premium liabilities if questions arise at the time of audit. If a contractor fails to maintain the necessary documentation for all subcontractors, the insurer is likely to base the premium audit amount due on the total contract price for the work.

### **How do we know if subcontractors are insured?**

The best way to know if a subcontractor is insured is to insist on receiving a certificate of insurance directly from the subcontractor's agent or broker. Follow this up with a request to be notified in advance of cancellation during the dates of the contracted work. Anyone may also verify coverage with the Alaska

Division of Workers' Compensation's Online Employer Coverage Verification Service found here: <https://labor.alaska.gov/wc/exit.html>. This service only verifies coverage by a single specified day. If a business is not found through this service, it does not always mean it is not insured. Please contact the Special Investigations Unit at (907) 269-4002 for a compliance check if you are unable to find coverage.

## What agency handles premium disputes with insurers?

Employers should first ask the insurer to explain in detail how the premium was calculated, including which class codes were used and why. If the employer and carrier cannot agree about the premium calculation, the National Council on Compensation Insurance (NCCI) administers a dispute resolution process through the Alaska Workers' Compensation Review and Advisory Committee. Employers can visit [https://www.ncci.com/Articles/Pages/UW\\_disputeresolutionprocess.aspx](https://www.ncci.com/Articles/Pages/UW_disputeresolutionprocess.aspx) or call NCCI at (800) 622-4123 for assistance.

## Employer Responsibilities

### What do employers have to do no matter what?

- Maintain coverage without lapse. This is a first priority. Seasonal businesses are strongly encouraged to keep coverage current for the entire year to avoid inadvertent lapses.
  - Immediately review and timely respond to all policy correspondence, audits, and invoices.
  - Report coverage to the Alaska Workers' Compensation Division through NCCI or ISO. (This is the insurance carrier's responsibility.)
  - Post notice of insurance for employees in three conspicuous places. Notices must be current and contain the policy number, effective dates, and contact information for both the insurer and adjuster. Notices are typically pre-filled and included with policies. Blank forms are also available on the Alaska Division of Workers' Compensation website.
  - Report any injury, death, disease, or infection alleged by **or on behalf of an employee** to have arisen out of and in the course of employment to the Alaska Workers' Compensation Division within 10 days from the date of knowledge of the injury, death, disease, or infection. **Employers may not pre-determine the validity of an injured worker's injury or illness, or attribute fault of an injured worker's injury or illness to a third party, and refuse to file a report of injury based on their own beliefs.** Insured employers must report all injuries to the insurer's claims administrator, who then files the report of injury with the Alaska Division of Workers' Compensation. Uninsured employers are personally responsible for filing the required report of injury to the division. Injured employees may also file their own reports of injury when employers fail or refuse to do so.
- Properly identify and classify employees and give insurers truthful information.
  - Maintain accurate records and provide information. Alaska labor laws require employers to maintain accurate employee and payroll records, and to provide those records to department representatives on request. Insurers also require these records in response to policy audits. Inability or failure to provide such records can result in failure to insure penalties, policy cancellation, and significantly increased policy premiums.
  - Pay premiums on time and in amounts required. Insurers will cancel coverage for nonpayment of premiums in the amounts due for current policies or for audited policies. Employers may not reinstate coverage until payment of all premiums due or upon initiation of a formal dispute.
  - Inform insurers of changes in mailing address, contact information, and entity status. Failing to do so can result in immediate policy cancellation.
  - Pay for compensable injury claims – whether insured or not. Employers are liable for work-related injuries. If insured, the employer's policy will pay. If not insured, the employer must pay related treatment costs, compensable benefits, reemployment training benefits and employee attorney fees out of pocket. It is a felony crime for an uninsured employer to fail to pay compensable benefits to an injured worker.
  - Comply with workers' compensation laws in all other states and countries to which they send employees to work. Even if an Alaska policy guarantees coverage, that may not be enough to satisfy laws in other states or countries.

## Employer Rights

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### Do employers have any rights?

Yes. Employers can:

- Participate in and defend against disputed injury claims. Employers should provide all relevant information to claims administrators when they dispute a claim. They may also report suspected fraud to the claim administrator and/or to the Alaska Workers' Compensation Division Special Investigations Unit at (907) 269-4002, (888) 272-8330, or [wcfraud@alaska.gov](mailto:wcfraud@alaska.gov).
- Protect themselves against potential liability and increased premiums for subcontractors. By law, businesses that contract with each other can and will be held jointly liable for uninsured occupational injuries that occur during performance of contracted work. Employers can require all subcontractors to purchase and maintain workers' compensation insurance as a contract condition, even if a subcontractor is not legally required to have coverage under the Act. This can help prevent injuries or illnesses from shifting to the up-line contractor's policy and cause unexpected premium increases following the annual audit process, as well as liability for a subcontractor employee's uninsured injury. Insurers will require this proof of coverage during policy audits. See the [Alaska Division of Insurance/Alaska Division of Workers' Compensation Joint Bulletin 18-01](#) for more information.
- Hire independent legal counsel. The Alaska Workers' Compensation Division maintains a list of attorneys who represent employers in failure to insure cases and injury claims. Call any of the main regional office numbers to obtain a copy of the list.
- Hire an adjuster to handle an uninsured injury claim. Employers can pay compensable uninjured injury costs directly or hire an independent adjuster to handle the uninsured injury claim. Claims adjusters are familiar with workers' compensation procedures, laws, wage reimbursement rates, and medical fee schedule rates.
- Request an informal conference. Employers may request the Alaska Workers' Compensation Division to schedule an informal prehearing

conference with a workers' compensation officer in a failure to insure or injury case. This is an opportunity for the employer to obtain answers to their questions about processes and procedures, such as filing petitions for decisions about various disputes or requesting a formal hearing to resolve matters. Formal hearings are conducted and decided by the Alaska Workers' Compensation Board, which is a three-member panel including a hearing officer and two board members, one who represents labor and one who represents industry.

- Receive copies of documents filed. Employers are named parties in failure to insure and injury cases. Parties are required to provide copies of all documents filed with the Alaska Workers' Compensation Division to all other parties in cases. If employers are not receiving copies of filed documents as required, they may request the Alaska Workers' Compensation Division to provide a complete copy of their case file at any time.

## Benefits Provided to Injured Workers

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### What workers' compensation benefits are provided to injured workers?

Injured workers may be entitled to one or more of the following benefits:

- Reasonable medical care necessary to treat a work injury or illness (doctor and hospital visits, medicine, prosthetic devices, etc.).
- Travel costs to and from medical treatment.
- Temporary Total Disability (TTD) from the time a doctor determines the worker is unable to work due to the injury or illness to the time the worker returns to work or reaches medical stability.
- Temporary Partial Disability (TPD) when the work injury or illness prevents the injured worker from earning full regular wage while recovering from the injury. For example, if the injured worker works fewer hours or at a light duty job that pays less than their regular job, they are entitled to TPD compensation in addition to wages.
- Permanent Partial Impairment (PPI) when the work injury or illness leaves the worker with a permanent impairment. This benefit begins when

a doctor determines the worker has reached medical stability, and compensation is determined based on an impairment rating provided by the physician.

- Permanent Total Disability (PTD) when the injury or illness leaves the worker with limitations that prevent return to any type of work on a consistent, readily available basis.
- Death Benefits when an employee dies as a result of work injury or illness. Coverage pays up to a certain amount for funeral benefits and potentially monthly payments to the deceased worker's spouse and dependents.

## Failure to Insure

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### Why do employers fail to insure?

The most common reasons for coverage lapses are the employer's failure to (1) pay premiums on time; (2) renew policies prior to expiration; (3) maintain adequate records; (4) comply with policy audits; (5) inform the insurer of change in business mailing address; and (6) understand which policy period is at issue when reviewing correspondence, invoices, and refund checks. Some employers deliberately refuse to obtain coverage.

### What are the consequences for failing to insure?

Employers may be served with a stop work order if they fail or refuse to insure employees. Continuing to utilize employee labor after service of a stop work order results in a \$1,000 per day penalty for each day of violation. In addition to penalties for violating stop orders, employers can be penalized between \$10 and \$1,000 per employee, for each day each employee worked during lapses in coverage.

### What is the statute of limitations?

The statute of limitations for failure to insure actions is six years. Employers can be petitioned for penalties related to any lapses in coverage for the previous six years of business operations.

### How are failure to insure matters handled?

With communication and cooperation, failure to insure matters can be handled quite amicably between the uninsured employer and the Special Investigations

Unit. Disputed cases are decided after formal hearing before the Alaska Workers' Compensation Board.

### What if the employer cannot afford to pay workers' compensation premiums?

There is no forgiveness for inability to pay premiums. One uninsured injury can financially devastate a business.

## Uninsured Injury Claims And Debarment

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### How are uninsured injury claims handled?

Injured workers may file a workers' compensation claim against the uninsured employer and the Alaska Division of Workers' Compensation Benefits Guaranty Fund ("BGF"). The BGF was established by the Alaska State Legislature to pay for uninsured work-related injuries when uninsured employers fail or refuse to do so. If the BGF pays for an uninsured injury claim, it will aggressively pursue full reimbursement from the responsible employer. Avoiding responsibility for an uninsured injury only makes matters worse. Uninsured injury claims can be handled amicably without threat of criminal prosecution as long as uninsured employers report injuries as required, obtain or reinstate coverage immediately, participate in the uninsured injury claim process, and work with the BGF collections officer. Uninsured injury claims are separate from failure to insure cases. It is the employer's responsibility to participate in both matters, or hire an attorney to represent their interest in one or both matters.

### What is debarment?

Debarment occurs when a business is precluded from obtaining government contracts due to aggravated labor violations. A primary contractor may also be referred for debarment when its subcontractor is referred for debarment if the primary contractor knew or should have known the subcontractor had a history of committing labor violations, assisted or abetted the subcontractor in committing a violation, or knew or should have known about the violation but failed to take action to abate or report it.

## Other Important Information

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### What else should employers know?

- *Remote site operations.* When employees are working at remote sites and are unable to go home after the work shift, even “off the clock” injuries may be determined to have occurred out of and in the course of employment.
- *Termination after injury.* An employer that terminates an employee specifically because of a workplace injury may be subject to the Occupational Safety and Health whistleblower laws and a wrongful termination lawsuit.
- *Records retention.* The Alaska Workers’ Compensation Act does not specify the length of time employers must retain employee injury records. Most employers have their own document retention schedules. The Division maintains records of documents filed in injury matters for 60 years.
- *Dual jurisdiction.* Employers with businesses that fall under federal jurisdiction, such as the Jones Act or Longshore & Harbor Workers’ Act, should protect against potential dual jurisdiction liability for employees who also perform land-based duties.
- *Changing businesses.* Dissolving a business and starting a new business does not automatically absolve an employer from responsibility for compensable injuries, penalties and fines.

*If you need clarification of information or have a question not addressed here, please call the Alaska Workers’ Compensation Division Special Investigations Unit at (907) 269-4002.*

## Employer Resources

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### What resources are available to employers?

Employers may wish to access the following resources for additional information, including forms. It is especially important to contact each division within the Department of Labor:

- Alaska Workers’ Compensation Division Forms: [http://labor.state.ak.us/wc/pdf\\_list.htm](http://labor.state.ak.us/wc/pdf_list.htm)
- Alaska Workers’ Compensation Division Online Verification Link: <https://www.ewccv.com/cvs>
- Alaska Workers’ Compensation Division Fraud Email and Hotline: [wcfraud@alaska.gov](mailto:wcfraud@alaska.gov) (888) 792-3862
- Alaska Division of Labor Standards and Safety, Wage and Hour Administration: <http://labor.alaska.gov/lss/whhome.htm>
- Alaska Division of Labor Standards and Safety, Occupational Safety and Health: <http://labor.alaska.gov/lss/oshhome.htm>
- Alaska Division of Labor Standards and Safety, Mechanical Inspection: <http://labor.alaska.gov/lss/mihome.htm>
- Alaska Division of Employment and Training Services, Employment Security Tax: <http://labor.alaska.gov/estax>
- Alaska Division of Employment and Training Services, Job Center Business Connection: <http://www.jobs.state.ak.us/employer.htm>
- Alaska Small Business Development Center: <https://aksbdc.org> (907) 786-7201