

May 9, 2022

Workers' Compensation – Relevant Statutes

This reference document provides the relevant RCW's and WAC's related to workers compensation coverage through the Department of Labor and Industries. This document also contains relevant statutes for other agencies.

"RCW" refers to the Revised Code of Washington, which are laws adopted by the Legislature and can only be changed through additional legislation or the initiative process.

"WAC" refers to the Washington Administrative Code, which are rules adopted by state agencies to implement laws. WAC's require statutory authority in RCW in order to be approved. WAC's can be changed by going through the Administrative Procedures Act, [Chapter 34.05 RCW](#).

- Employments excluded [RCW 51.12.020: Employments excluded. \(wa.gov\)](#)
- Homeowners practical steps to set up a Workers Compensation account and required registration with DOR and L&I
 - [WAC 296-17-31006](#)
- Homeowners reporting requirements to L&I
 - [RCW 51.16.060](#) – Quarterly report of payrolls
 - [RCW 51.16.070](#) – Employers records – Unified business identifier – confidentiality
- How Workers Compensation premiums are calculated and how payment is effected (risk classifications premiums attached to them, multiplied by hours worked by worker, worker contribution rate)
 - [RCW 51.16.035](#) Classifications – Premiums – Rules
 - [RCW 51.16.100](#) – Classification Changes (fund self-supporting requirement)
 - [RCW 51.16.140](#) – Premium liability of worker (deduction of worker contribution)
 - [WAC 296-17-31010](#) – [WAC 296-17-31012](#) – Premium Costs – Classification Assignment
 - [WAC 296-17A](#) – Risk Classifications
 - [WAC 296-17-35201](#): Recordkeeping and retention
- Insurance Principals
 - [WAC 296-17-31029](#)
- How time-loss wages calculated and how pay rate calculated
 - [RCW 51.08.178](#)
 - [WAC 296-14-522](#) – What does "wages" mean?
 - [WAC 296-14-4124](#) – What are considered as "wage replacement benefits"?
 - [WAC 296-14-350](#) – Claim allowance and wage determination in occupation disease cases
- Elective coverage of both types (1) private home employer of domestic worker (RCW 51.12.020) and (2) self-employed domestic worker
 - [RCW 51.12.110](#) – Elective Coverage
 - Currently a homeowner can elect coverage for a domestic worker or day laborer who is working in their home that does not meet the criteria established in [RCW 51.12.020\(1\) or \(2\)](#)
 - An business owner, this would include independent contractors, can also elect workers compensation [WAC 296-17-31007](#):

- This would require them to be a business owner and would have a different risk class than the one for a homeowner.
 - Janitorial housekeeping class 6602
 - Chore services class 6511
 - Landscaping services are 0308
- Independent Contractor Determination
 - **Personal labor test**
 - One of these statements must be true:
 1. The individual brings their own employees to perform the work, and you do not control the individual or their employees.
 2. The individual brings heavy or costly specialized heavy equipment and their expertise to operate it, and you does not control the individual (Examples: MRI machine, earth-moving equipment, ultrasound machine).
 - Independent contractors must be free from direction and control, and meet the other criteria referenced in [RCW 51.08.195](#).
 - This comes into play if the worker does not pass the personal labor test, then L&I would use the 6-part or 7-part test to determine if they are a covered worker.
 - Some examples of direction and control:
 - The individual works with you or your staff.
 - You don't have a contract that establishes the independence, or the contract has provisions that represent control.
 - You set hours or keep timesheets.
 - You pay the individual on a more frequent cycle than you pay your other creditors.
 - You retain the ability to hire and fire within the contract period for reasons other than breach of contract.
 - Our [Independent Contractor's Guide](#) has additional information on this.

Other Agencies' Statutes

Employment Security Department

- [RCW 50.04.160](#) – domestic services performed in a private home are not considered employment unless the person is paid more that \$1,000 in any calendar quarter
- This requirement mirrors the requirement on the federal level

Department of Revenue

- Independent Contractor Registration Requirement, [RCW 82.32.030](#)
 - If **any** of the following apply:
 - Your business is required to collect retail sales tax.
 - Your gross income is \$12,000 per year or more.
 - Your business is required to pay any other taxes or fees to the Department of Revenue.
 - You are considered a business when you engage in any activity, including hobbies, for gain, benefit, or advantage (regardless of profit or loss).

- Homeowner Registration – When hiring domestic employees, be prepared to enter the following information:
 - Will payroll for the household employees exceed \$1000 per calendar quarter? (Threshold based on the ESD requirement.)
 - Will you need optional insurance coverage of these employees?
 - First date of employment
 - First date that the wages to an employee will be paid.
 - Number of employees that you plan to hire.
 - Estimated number of hours that all employees will work in a 3-month period.
 - Describe the primary job responsibilities and duties of the employees.

Internal Revenue Service

[2022 Publication 926 \(irs.gov\)](https://www.irs.gov)

Table 1. Do You Need To Pay Employment Taxes?

IF you ...		THEN you need to ...
A	Pay cash wages of \$2,400 or more in 2022 to any one household employee. Don't count wages you pay to: <ul style="list-style-type: none"> • Your spouse, • Your child under the age of 21, • Your parent (see Wages not counted, later, for an exception), or • Any employee under the age of 18 at any time in 2022 (see Wages not counted, later, for an exception). 	Withhold and pay social security and Medicare taxes. <ul style="list-style-type: none"> • The taxes are 15.3%¹ of cash wages. • Your employee's share is 7.65%.¹ (You can choose to pay it yourself and not withhold it.) • Your share is 7.65%.
B	Pay total cash wages of \$1,000 or more in any calendar quarter of 2021 or 2022 to household employees. Don't count wages you pay to: <ul style="list-style-type: none"> • Your spouse, • Your child under the age of 21, or • Your parent. 	Pay FUTA tax. <ul style="list-style-type: none"> • The tax is 6% of cash wages. • Wages over \$7,000 a year per employee aren't taxed. • You may also owe state unemployment tax.
<p>¹ In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of \$200,000 in a calendar year. You're required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of \$200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the \$200,000 withholding threshold.</p>		
<p>Note. If neither A nor B above applies, you don't need to pay any federal employment taxes. But you may still need to pay state employment taxes.</p>		