

# WORK INJURY CLAIM FORM

Failure to complete this form in its entirety may result in a delay in processing the claim.

FOR (check all that apply):

<input type="checkbox"/> Injury With Disability	<input type="checkbox"/> Injury With Hospitalization	<input type="checkbox"/> Deceased - Date of Death
Short-Term Disability Policy Number	Hospital Indemnity Policy Number	Hospital Intensive Care Policy Number

Information. If you are filing for disability benefits, please complete Section D: Employer's Information.



# Hurt on the Job

## What Restaurant Owners Should Understand About Workers' Compensation

By Richard M. Escoffery, Esq.

**A**s anyone who has worked in the hospitality industry can attest, restaurants — kitchens, in particular — can be dangerous places. In an average workday, cooks, dishwashers, servers and other restaurant employees face numerous hazards.

Restaurant employees risk getting burned by hot surfaces, hot oil and grease, and hot liquids or steam. They risk slipping and falling on wet or greasy floors. They risk getting cut by knives or mechanical slicers. And they risk straining their backs from lifting heavy objects, such as bags of potatoes or kegs of soda or beer. Considering also that this is a fast-paced industry in which customer service is critical, it is easy to see how an employee's focus might get diverted during the busy lunch or dinner hour, resulting in an accident. Not surprisingly, a 1993 study published in the *Journal of Hospitality & Tourism Research* found that the hospitality industry has an extraordinarily high rate of costly workers' compensation claims.

Due to the industry's unique safety concerns, new restaurant owners should familiarize themselves with the workers' compensation systems in the states in which they operate. Restaurant owners need to understand workers' compensation, how the system works, and the practical steps they can take to limit their costs. Armed with this knowledge, restaurants can limit the number of injuries to their employees and avoid unnecessary costs. Restaurants that fail to comply with the states' requirements, however, can literally face financial ruin.

### What is Workers' Compensation?

Simply put, workers' compensation is a state-mandated insurance system that provides benefits for employees who are injured, or become ill, on the job. Before the workers' compensation system was developed, an employee who was injured on the job had to sue his employer to receive compensation, making it difficult for him to receive needed medical care and obtain compensation for his injuries. Employers, meanwhile, were subject to potentially devastating financial judgments in the courts. In the early 20th

century, the states addressed these concerns by adopting a workers' compensation insurance system.

Under this system, employees receive prompt medical care and financial compensation for their injuries and illnesses, regardless of who was at fault. As long as the injury arises out of and in the course of employment, the injured worker will likely be entitled to benefits. Workers' compensation generally covers an employee's medical expenses, lost wages and additional benefits if the disability becomes permanent. It also provides benefits for the dependents of workers who suffer fatal injuries. In exchange, employees' ability to sue their employers for on-the-job injuries is greatly reduced, thereby making employers' costs more predictable and affordable.

While there are federal workers' compensation statutes for very specific types of workers, for most employers, including restaurants, workers' compensation laws are state-specific. Thus, there is no single set of rules governing coverage or benefits issues. Because workers' compensation laws vary from state to state, employers with operations in multiple states need to familiarize themselves with the different requirements of each state in which their restaurants are located. That said, there are significant similarities in how the various state systems work.

### Who Needs Workers' Compensation Insurance?

Technically, not every business is required to buy workers' compensation insurance. Some sole proprietors and partnerships, for example, are not required to buy it. And in a small number of states, purchasing workers' compensation insurance is actually optional, although employers must still compensate injured workers under the state's workers' compensation laws. As a general matter, however, businesses that have employees who are not owners of the company, including most restaurants, must buy workers' compensation insurance.

So what will happen if an employer does not maintain the required insurance? It will not only be required

to compensate injured employees out of pocket, which could cost hundreds of thousands of dollars, but it will also be assessed penalties for its failure to comply with the state's requirements. Therefore, every restaurant employer should familiarize itself with its state's requirements and comply with them.

### How Do You Purchase Workers' Compensation Insurance?

In most states, employers purchase workers' compensation insurance from an insurance company. In a few states, however, employers must purchase the insurance through a fund that is operated by the state itself.

The standard workers' compensation insurance policy is different from many other types of insurance policies, in that there is no maximum dollar amount limit for its primary coverage. This is a significant benefit for employers from a budgeting perspective. While it is impossible for a restaurant to predict in advance the workers' compensation benefits for which it will be responsible in a given year, it can budget for the predictable cost of the insurance policy. And, importantly, once the company pays the premium, the insurance company is responsible for the employer's full statutory liability, regardless of the amount.

### What Should You Do When an Employee is Injured?

When an employee is injured, you should first get the employee appropriate medical treatment. If the injury is serious, you may need to call 911. If possible, have a manager take the employee to the doctor. The employee will likely appreciate the personal attention, and you will be able to learn about the injury, the recommended treatment and how long it might be before the employee can return to work.

Next, investigate the accident to determine its cause. Speak with other employees who witnessed the accident, and consider taking photographs of the accident scene. If someone from outside of the company may have contributed to the accident, get that person's name and employer's information.

Then, report the claim. Always strive to report claims within 24 hours, if possible, providing all of the information requested on the First Report of Injury form. Prompt reporting of claims helps ensure that the claims process is a smooth one.

After reporting the claim, begin preparing for the employee to return to work. If she is unable to return to regular duty, determine whether she can be brought back in some sort of modified duty. Your goal should be to bring the employee back to work as quickly as possible, injury permitting.

Throughout the claims process, you should maintain constant communication with all parties. Speak regularly with the employee about his medical treatment, his doctor's appointments, and his work-status reports. And speak with the doctor about the employee's job duties and any modified duty jobs that might be available. The more proactive you are in this process, the better you will be able to control your workers' compensation costs.

### How are Workers' Compensation Premiums Determined?

The cost of workers' compensation insurance is determined by each state's workers' compensation board. While there are variations from state to state, all states follow the same basic process to calculate base rates. Every occupation is assigned a risk classification, which is determined by two factors: the frequency of on-the-job injuries, and the severity of the injuries. Workers' compensation insurers will reduce or increase an employer's rates based on a number of factors, including the company's safety history and whether it offers health insurance to its employees.

### How Can a Restaurant Control Its Workers' Compensation Costs?

As a practical matter, even the most conscientious restaurant cannot prevent all work-related injuries. There are steps that hospitality industry employers can take, however, to help reduce their workers' compensation costs:

- Train your managers. You should train all managers in your restaurants what to do when an employee is injured. By following the proper procedures, your managers can help take charge of workers' compensation claims and thereby reduce costs.
- Provide regular safety training to all team members. Training your managers is not enough. Restaurant managers should constantly discuss safety issues

### **WARNING:** Do Not Retaliate Against Employees Who File Claims

Employers should be careful not to retaliate against employees for reporting workplace injuries or filing workers' compensation claims. Most states prohibit employers from taking any adverse action against employees for exercising their workers' compensation rights. Thus, restaurants should be mindful that if they terminate an employee who recently filed a workers' compensation claim, or if they change the employee's shift, decrease his pay, involuntarily transfer him to another location, or take any other action against him, the employee may file a retaliation claim. If the restaurant has a legitimate reason for taking the action, unrelated to the filing of the claim, that reason should be well-documented so that any retaliation claim can be disproved.

with all team members, explaining why these issues are important, how much workplace injuries cost the company, and how to reduce the number and severity of injuries in the workplace.

- Identify injury trends in your restaurants. Before you can put in place corrective measures, you first need to identify the causes of your employees' injuries. Once you identify that slips and falls are a major problem, for instance, you can then put into place preventive measures such as requiring employees to wear shoes with slip-resistant soles, using slip-resistant floor mats around dish-washing areas and food preparation stations, repairing leaking equipment, and prohibiting running and fast walking.
- Consider an on-site audit. Workers' compensation insurers often offer free on-site safety audits and can provide helpful recommendations to remedy safety hazards. Outside consultants are also available to conduct such inspections.
- Enforce the company's safety policies and procedures. Send the message to your workforce that you take safety issues seriously; consistently discipline employees who violate safety procedures.

### Remember, the Workers' Compensation Laws are State-Specific

In sum, the workers' compensation system provides a number of benefits for restaurant employers, who face unique safety challenges. It also can protect employers from protracted litigation and large settlements and awards.

Because workers' compensation laws vary from state to state, hospitality and service industry employers must understand the specific requirements of the law in each state in which they have operations. Proactive employers can limit their liability for workplace injuries by understanding the workers' compensation system and how it works, by being alert for fraud, and by taking practical steps to limit the number and severity of claims.

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### Be Aware of the Potential for Fraud

Note that while most employees who file workers' compensation claims are sincere, some individuals, unfortunately, try to beat the system by filing fraudulent claims. The National Insurance Crime Bureau estimates that workers' compensation insurance fraud costs the industry \$5 billion per year. This cost, of course, is passed along to the rest of us through increased premiums, which result in an increased cost of doing business. Be alert for red flags that may indicate workers' compensation fraud. Did the employee fail to report the injury in a timely manner? Are there inconsistencies in his story? Is he vague on the details? Are there no witnesses to the accident? Does the employee routinely miss medical appointments? Is he suffering from financial problems? Has he been engaging in activities that are inconsistent with his injury? If several of these signs apply, consider contacting the state workers' compensation board to find out how it handles suspected fraud.

### >>> ADDITIONAL SOURCES

You can find more information on this topic at RestaurantOwner.com. Some of the articles addressing workers' compensation insurance and employee safety include:

**Factoring Insurance Into Your Restaurant's Business Plan**  
[www.restaurantowner.com/members/889.cfm](http://www.restaurantowner.com/members/889.cfm)

**Preventing Restaurant Workplace Hazards**  
[www.restaurantowner.com/members/1286.cfm](http://www.restaurantowner.com/members/1286.cfm)

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