



STATE OF NEW MEXICO

# Workers' Compensation Administration

**ONE TEAM | ONE GOAL**

A Better New Mexico for Workers and Employers

**Below is a list of “frequently asked questions” pertaining to workers’ compensation coverage of agricultural laborers under the Workers’ Compensation Act. *Published July 19, 2016.***

1. I am an agricultural employer. Am I required to have workers’ compensation insurance coverage for my employees?

**A: Yes, if you have three or more employees. The New Mexico Supreme Court ruled on June 30, 2016, that the provision of the Workers’ Compensation Act, Section 52-1-6(A), which excluded agricultural laborers is unconstitutional.**

2. Are part-time or seasonal workers counted as employees for purposes of determining whether my agricultural operation employs three or more employees?

**A: Yes.**

3. Are family members counted as employees for purposes of determining whether my agricultural operation employs three or more employees?

**A: On pages 41-42 of the New Mexico Supreme Court’s opinion, the Court addressed “children or other family members performing farm and ranch duties or chores” suggesting that, under these circumstances, family members would be volunteers and not employees. However, if the family member is paid wages for services performed, they may be counted as an employee for purposes of determining whether workers’ compensation coverage is required.**

4. Are neighbors counted as employees for purposes of determining whether any agricultural operation employs three or more employees?

**A: Again, on pages 41-42 of its opinion, the New Mexico Supreme Court, addressed the “culture of neighboring” (where “farmers and ranchers help perform work on their neighbors’ farms and ranches”). The court’s opinion suggests that, under these circumstances, those who perform work on their neighbors’ agricultural operation would be volunteers and not employees. However, just as with family members, if the neighbor is paid wages for services performed, the neighbor may be counted as an employee for purposes of determining whether workers’ compensation coverage is required.**

5. Will the owner(s) of an agricultural operation be counted as an employee for purposes of determining the mandatory insurance coverage requirements?

**A: Yes, if the business is a corporation, limited liability company, or professional association. Under Section 52-1-7, “executive employees” are included in the headcount of three or more employees. An “executive employee” means the “chairman of the board, president, vice president, secretary, treasurer or other executive officer, if [he or she] owns 10 percent or more of the outstanding stock, of the professional or business corporation or a 10 percent ownership interest in the limited liability company.”**

6. Will an employer that is an owner or executive employee have the option to be excluded from coverage?

**A: Yes. Although an executive employee may elect to be excluded from coverage, they are still counted in determining whether the business employs three or more employees.**

7. Is my business responsible for having workers’ compensation insurance for the employees of an independent contractor (1099-contractor)?

**A: No. However business owners should verify that the independent contractor maintains required coverage before hiring such contractors.**

8. How do I determine whether my workers are employees or independent contractors?

**A: Calling a “worker” an “independent contractor”, signed contracts designating a “worker” as an “independent contractor” or the fact that a 1099 is filed does not conclusively determine whether a “worker” is an “independent contractor” to be excluded from coverage requirements. There is no bright test to distinguish between an independent contractor and an employee. It is a case-by-case determination that depends upon the working relationship between the employer and the “worker” and is determined by who has the “right to control the work” and the degree that “right to control” extends to the details, means or methods of performance. If you are unsure how to classify workers employed by your business, you should consult an attorney.**

9. How will the classification codes and insurance premiums be determined?

**A: The Workers’ Compensation Administration does not determine classification codes or premiums. Insurance classification codes and insurance premiums have already been determined by insurance company underwriters. Additional questions may be directed to your insurance agent or to the Office of the Superintendent of Insurance.**

10. What is the guideline for employees hired in the state of New Mexico when an employer has ranch or farm land in an adjoining state and that employee goes into the adjoining state?

**A: The provisions of the WC Act apply to employees working in the state of New Mexico. If the worker is hired in New Mexico but does work outside of New Mexico, where (s)he is injured, the worker can file a claim in New Mexico, or in the state where the injury occurred. If the employer is an out-of-state employer with three or more total employees but just one employee in New Mexico, the employer is required to obtain a New Mexico policy.**

11. How do I obtain a worker's compensation policy?

**A: An insurance agent can assist you with obtaining a policy. If you do not have an insurance agent, you can contact the Independent Insurance Agents Association for a list of licensed insurance agents in your area.**

12. What will happen if I am required to obtain workers' compensation coverage for my employees but I do not?

**A: Your business will be in violation of the mandatory insurance provisions of the Workers' Compensation Act and you could be subject to damages in district court, including compensatory and punitive damages, and fees and costs.**

**A compliance officer with the WCA will work with you to allow your business sufficient time to obtain a policy. If your agricultural operation nonetheless fails to obtain a policy, the WCA may seek a temporary restraining order to prevent you from operating your business until a workers' compensation policy has been obtained. Your business could also face penalties of up to \$1,000 per day that the business is in violation of the mandatory insurance coverage requirements.**

**If one of your employees is injured when you do not have workers' compensation coverage in place, the employee can file a claim with the Uninsured Employers' Fund (UEF). If the Uninsured Employers' Fund pays benefits to the injured employee on your behalf, your business will be ordered to reimburse the Uninsured Employers' Fund for all benefits paid, plus penalty (between 15% and 50%), interest, and fees.**