

Chapter 2

Compensability: Covered Employments and Injuries

Workers' compensation statutes require employers to provide a certain amount of economic security to injured workers. In return, workers relinquish the right to sue their employers. Both state and federal statutes protect specific classes of workers but do not cover some employments and injuries; therefore, for some injured workers, suing their employers continues to be their only remedy.

To fully understand workers' compensation, an adjuster must understand which employers and workers fall within the scope of the workers' compensation law. Not everyone who performs work is an employee. Employers can choose to use "other than employees," such as independent contractors, for their businesses. This chapter describes the distinction between employees and independent contractors. Some employments are exempted from the scope of various workers' compensation statutes even though such workers are clearly employees.

Workers' compensation covers most, but not all, work related injuries. Generally, workers' compensation statutes require injuries to be "accidental" to be compensable. This chapter explains how the meaning of this requirement evolved. Workers' compensation statutes give special consideration to some types of injuries for which the accidental nature can be difficult to prove or disprove. These injuries, discussed at the end of this chapter, include occupational disease, cumulative trauma, hernias, hearing loss, and psychological injuries.

THE EMPLOYMENT RELATIONSHIP

Workers' compensation statutes are designed to protect all employees except those specifically excluded by the statutes. Not all workers are employees. A worker's status as an employee depends on the existence of an employer-employee relationship. The employer might be an individual, a partnership, a corporation, or any other entity. The employee is the individual who has consented to perform personal services for the employer in exchange for consideration. This consent implies that the employee has agreed to be under the employer's direction and control.