

● TEXAS WORKERS' COMPENSATION ACT

STATUTORY CITATION: Tex. Labor Code §§ 401.001 – 419.007, §§ 451.001 – 451.003, and §§ 501.001 – 506.002

GENERAL SUMMARY: In most lawsuits involving damages for an employee's accidental injury on the job, the Texas Workers' Compensation Act abolishes the employer's right to claim as a defense that the accident was due to the employee's own negligence or the negligence of a co-worker, or that the employee had assumed the risk of injury inherent in the employment. To effectuate the Act's primary purpose of providing medical care and income support for job-injured employees without regard to fault and without the need for litigation, offsetting at the same time the substantial loss of legal defenses by employers, the Act strips the employee of the right to sue the employer for damages as long as the employer maintains workers' compensation insurance coverage through a state-licensed insurance company or has a valid certificate of authority to self-insure.

Employees covered by workers' compensation insurance at the time of a work-related injury or onset of an occupational disease are generally entitled to (1) all health care reasonably required by the nature of the injury, as and when needed, and (2) income benefits to compensate for lost wages and certain permanent impairment. In the event of death due to a compensable injury or occupational disease, weekly compensation is payable to the employee's surviving beneficiaries.

Unless they formally opt out, most Texas employers who employ one or more workers are subject to the Act, and their employees are covered unless they request exemption.

PROVISIONS APPLICABLE TO AGRICULTURE

MIGRANT WORKERS — The Workers' Compensation Act applies without exception to workers who are employed in seasonal or temporary agricultural labor and who are required to be absent overnight from their permanent place of residence.

SEASONAL WORKERS — Employees performing farm or ranch work which does not require overnight absence from their permanent residence are covered by the Workers' Compensation Act under any one of the following circumstances:

- (1) While employed in an orchard, in a vineyard, or on a farm primarily devoted to the production of fruit, vegetables, potatoes, sugarbeets, or vegetable seeds.
- (2) While employed by an employer whose gross annual payroll for the preceding year equals or exceeds the state-prescribed adjusted gross annual payroll requirement for coverage of seasonal workers (\$54,783 in 2017).
- (3) While employed by a farm operator or labor contractor who employs migrant workers performing the same work, at the same time, and at the same location.

OTHER AGRICULTURAL WORKERS — For year-round farm employees and other non-seasonal, non-temporary agricultural employees, coverage extends to only those employees employed by an employer for whom either of the following applies:

- (1) Had a gross annual payroll in the preceding year at or above the state-prescribed adjusted gross annual payroll requirement for coverage of seasonal workers (\$54,783 in 2017).
- (2) Employs 3 or more farm or ranch laborers other than migrant or seasonal workers.

As used above, the term "gross annual payroll" includes amounts paid by the farm operator for the services of migrant and seasonal farmworkers and farm labor contractors, but it does not include wages paid to the farmer's family members or business partners.

SPECIAL NOTES OR ADVISORIES

RETALIATION — An employer may not discharge or in any other way discriminate against an employee because the employee has filed a workers' compensation claim or testified in a related proceeding. An employee who is subjected to retaliation may be entitled to damages and reinstatement.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY — *Division of Workers' Compensation, Texas Department of Insurance, Austin, Texas 78744 (512-804-4000)*. The Workers' Compensation Division is responsible for assuring compliance with the Workers' Compensation Act by employers, insurance carriers, and claimants. Whenever an employer secures workers' compensation insurance coverage, the insurance carrier must notify the Division, and employers are required to submit to the Division a report of any accident resulting in injury to an employee which results in absence from work for more than one day. The agency is authorized to resolve all disputes between claimants, employers and insurance carriers regarding eligibility for compensation, duration of benefits, and related issues. As a rule, a job injury must be reported to the employer within 30 days after its occurrence to preserve the validity of a compensation claim based on the injury, and compensation is generally not payable unless a claim has been filed with the Division within one year after the injury or the onset of disability due to an occupational disease.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY — *None*.