# South Dakota State Postings

Always Designing for People®

## SOUTH DAKOTA

### An Employee's Guide to the

## SOUTH DAKOTA WORKERS' COMPENSATION SYSTEM

*This poster briefly outlines South Dakota Workers' Compensation Law and how it applies to work-related injuries or illnesses. This is not a complete description of the workers' compensation system.*

SOUTH DAKOTA DEPT. OF LABOR & REGULATION

Division of Labor and Management
123 W. Missouri Ave.
Pierre, SD 57501
Tel: 605.773.3681
dlr.sd.gov

**IMPORTANT INFORMATION**

You may want to list names and telephone numbers here.

Your supervisor at work _____

Employer's telephone number (  ) _____

Insurance company name _____

Claim adjuster's name _____

Claim adjuster's phone number (  ) _____

Your insurance claim number _____

Medical practitioner's name _____

Medical practitioner's phone number (  ) _____

Other names and phone numbers _____

**HELPFUL HINTS FOR INJURED WORKERS**

- Read and save this information.
- Save copies of all letters, forms, compensation checks and medical bills.
- Save notes of phone conversations.
- Put your social security number and date of injury or state file number on all papers and forms sent to the Division of Labor and Management.
- Stay in touch with your employer about your progress and plans to return to work.

### WORKERS' COMPENSATION

Workers' compensation provides benefits if you become injured or ill from your job. Workers' compensation covers injuries or illnesses caused or made worse by work or the workplace.

Workers' compensation insurance coverage provided by your employer is intended to:

- Pay medical and disability benefits for work-related injuries and diseases.
- Help you return to work as soon as possible.

Many employers in South Dakota purchase workers' compensation insurance policies from commercial insurance companies. Some employers are self-insured and pay all the benefits themselves. The insurance company or self-insured employer pays the medical costs to the health care providers who treat the injured worker. It is not required by state law that employers have workers' compensation insurance, but if they do not, the employer can be sued civilly.

State law sets the benefit amounts. The Division of Labor and Management checks the benefits paid by the insurance company or self-insured employer to make sure the injured worker is receiving all benefits to which that worker is entitled.

### COVERAGE

If your employer carries workers' compensation insurance, you would be covered for qualifying injuries.

The South Dakota Workers' Compensation Law does not apply to farm or agricultural laborers, or domestic servants unless they are working more than 20 hours in a calendar week and for more than six weeks in any 13 week period; or to independent contractors who are certified as exempt by the department and workfare participants.

Benefits are not allowed when injury is due to willful misconduct, intoxication, illegal drug use or failure to use a furnished safety appliance. Also, a false representation as to health at the time of obtaining employment may result in a denial of benefits.

Any injury arising out of and in the course of employment, everything from first aid type injuries to serious accidents and death. Also, the Workers' Compensation Law provides coverage for occupational diseases. The key is whether or not the injury or illness is caused by your job. Medical evidence of causation is usually necessary.

You are protected from the first minute you are on the job, and that protection continues anytime you are working. State law requires a worker receive workers' compensation benefits for a work-related injury or illness.

**YOUR EMPLOYER CANNOT**

- Take the cost of workers' compensation insurance from your wages.
- Prevent you from filing for workers' compensation benefits.
- Threaten you or take action against you for filing for benefits.

### INJURY REPORTING

**Do not wait.** To protect your rights, report your injury to your supervisor as soon as possible and in writing if possible.

- Make sure you tell your supervisor you were injured. Remember: what, where, when and how. Also inform your supervisor of any witnesses.
- Get prompt medical attention from a health care provider.
- Inform your employer about your medical condition and when you can return to work.
- Call the Division of Labor and Management if you have any questions or concerns.
- If the employer will not fill out a First Report of Injury form, please contact the Division of Labor and Management.

Prompt reporting is the key. Nothing can happen until your employer is informed about the injury. Ensure your right to benefits by written notice of every injury, no matter how slight.

### ROLES OF OTHERS

**MEDICAL CARE**

You may make the initial selection of your medical practitioner from all licensed health care providers in the state.

- Prior to treatment, or as soon as reasonably possible after treatment has been provided, notify the employer of your choice of medical practitioner. The medical practitioner selected may arrange for a consultation, referral or other specialized medical services as the nature of the injury requires.
- If you decide to change your choice of medical practitioner, you should obtain approval in writing from your employer.
- You may seek a second opinion at your own expense without the employer's approval.

**EMPLOYERS**

- Your employer should make sure you receive immediate medical attention to treat your injury.
- Your employer reports the injury to the insurance company, or the administrator if self-insured, within seven days of the date of the injury or knowledge of injury.

**INSURANCE COMPANY**

Insurance companies or self-insured employers report the injuries electronically to the Division of Labor and Management via the division's web application. Also, the insurance company or self-insured employer pays for medical costs incurred from the injury and makes temporary total payments if seven consecutive days of work are missed due to an injury.

### PROBLEMS AND DISPUTES

Most injuries are handled routinely. If you think you have not received all the benefits due you, or you have not received any benefits, follow these steps:

- Call the claim's adjuster at the insurance company or the administrator of self-insured employer. Write down the date, time and adjuster's name for your records. Explain the problem and try to work it out. Many problems are resolved with a telephone call.
- Call 605.773.3681 to discuss your problem with the Division of Labor and Management specialist.

If a problem cannot be resolved, you may wish to take advantage of the mediation process provided by the Division of Labor and Management. The mediation is held by telephone with the Division representative, the employee or their representative, and a representative of the employer or insurance company.

If a dispute remains unresolved after the mediation process or the employee chooses to forgo the mediation process, the employee may file a petition for hearing. The petition must be filed within two years of the date of denial of benefits. The Division of Labor and Management may provide information, answer questions and assist persons on a limited basis. However, because the Division is the administrative agency that decide disputed cases, the office must remain impartial and cannot represent any party.

Your employer or its insurance company can answer most questions about your injury. For additional information, contact the Division of Labor and Management at the following number:

Tel: 605.773.3681
Fax: 605.773.4211

### BENEFIT TYPES

South Dakota law provides several kinds of workers' compensation benefits:

**Medical care to treat the injury**

All reasonable and necessary treatment is covered. The employer/insurer has the right to contest the reasonableness and necessity of any medical treatment. Failure or refusal to follow a medical practitioner's advice, without a valid second opinion, may result in denial of your claim for benefits.

**Temporary Total Disability**

After an injured employee has missed seven consecutive days, the insurer is required to pay a weekly benefit equal to 66⅔ of the employee's earnings. Payments are subject to maximum and minimum amounts set by statute and administrative rules.

**Temporary Partial Disability**

An injured worker who is able to return to work but cannot work the same number of pre-injury hours may be entitled to addition benefits. The payment is based on a percentage of the difference between pre-injury wages and post-injury wages.

*Example: If an employee worked 35 hours a week and is only able to work 15 hours a week after an injury, an insurer may be required to compensate that employee for part of the difference.*

**Permanent Partial Disability**

South Dakota law provides for a set amount to be paid for impairment of certain body parts. A medical practitioner must determine a percentage of impairment.

**Permanent Total Disability**

In the case of total disability, the injured worker is entitled to receive his/her weekly benefits for life.

**Death Benefits**

South Dakota law provides compensation for any spouse, child or children, parents, grandparents, or other lineal heirs of any employee whose death occurs as a result of an injury.

**Rehab/Retraining**

Injured employees may be eligible for rehabilitation or retraining benefits. Five criteria must be met to qualify:

1. The employee must be unable to return to his usual and customary line of employment.
2. Rehabilitation must be necessary to restore the employee to suitable, substantial and gainful employment.
3. The program of rehabilitation must be a reasonable means of restoring the employee to employment.
4. The employee must file a claim with his employer requesting the benefits.
5. The employee must actually pursue the reasonable program of rehabilitation.

### PAYMENT OF BENEFITS

Generally benefits are paid in the same time frame as you received your paychecks from employer. If this is not feasible, then benefits shall be paid on a weekly basis.

There is a 10 percent **penalty** if benefits are not paid within 10 days of the date they were due and the delay was unreasonable.

### SAFETY

Each insurance company is required by law to provide, upon request of the employer, safety engineering services to that employer. Most employers who take advantage of this program's services see a reduction in workplace injuries, and for many of them, the reduction is significant.

Providing a safe workplace for employees requires sincere commitment from management. It also requires a strong commitment from employees. Understand the safety controls, requirements and policies of your employer. It is not only the employer's responsibility to maintain a safe workplace but also yours.

### FRAUD WARNING

It is a crime for any person, including employers, employees, medical providers, insurance companies, insurance agents, lawyers or any other person, to lie or give false or fraudulent information in order to receive any benefit, payment or financial advantage that the person is not entitled to under the South Dakota Workers' Compensation Law. An Insurance Fraud Unit has been established within the Division of Insurance to prosecute fraudulent insurance acts through either civil or criminal action.

To report any fraudulent activity concerning the collection of workers' compensation benefits, contact the Insurance Fraud Unit at 605.773.3331.

### CASE MANAGEMENT Q & A

All workers' compensation insurers have been required to provide managed care services in their policies since January 1, 1995. Self-insured employers were required to have such services as of January 1, 1996. The South Dakota Department of Labor and Regulation adopted rules in 1993 to carry out this law. This section is intended to answer the most commonly asked questions about case management.

**Q: How Do I Choose A Plan?**

A: Workers' compensation insurance companies are required to contract with one or more case management plans. The Department must certify the plans. A self-insured employer may also have its plan certified by the Department.

**Q: How Do I Find Out How A Plan Works?**

A: Case management companies are required to have a system of communicating with employees, employers and medical providers. They must establish a place of business in South Dakota where records are kept and the plan is administered. A plan must have a 24-hour toll-free telephone number for individuals to receive information and advice about medical services. It must also provide employers a monthly report on the employees it is involved with.

**Q: Can Injured Workers Still Choose Their Medical Practitioner?**

A: Workers have the right to choose the first medical practitioner they see. (Seeking emergency room treatment does not count as their choice.) All medical practitioners must follow the rules of the plan, as well as the state's Optimal Recovery Guidelines (ORGs) in providing treatment. The plan also has control over subsequent consultations or referrals.

**Q: Can I Use More Than One Plan?**

A: An insurer of self-insurer can contract with as many certified plans as it chooses.

**Q: Who Is Supposed To Tell The Medical Practitioner That A Claim Is Under Case Management?**

A: Employees are required to tell the treating medical practitioner which plan covers them before treatment is provided. Employers must also report the injury to the plan within 24 hours after it is reported to them. The plan then has to contract the medical practitioner and inform them of its rules.

**Q: Does Every Injury Have To Be Under Case Management?**

A: Every injury has to be reported to the employer's case management plan. However, the insurer may consider some claims to be so minor that management of the treatment is unnecessary, and may elect not to have the claim managed. Employees retain the right, in any case, to have access to medical services within 48 hours after they request them.

### SMALL CLAIMS PROCEDURE

If you have a disputed medical claim of $8,000 or less and DLR signed an order or approved an agreement establishing your right to benefits, you can file a petition for a small claims hearing to resolve the dispute. There is no filing fee required, the hearings are on the telephone, are fairly informal, and your case can be heard quickly.

02/2024

## 2026 South Dakota Minimum Wage Requirement

## $11.85 / Hour

**MINIMUM WAGE**

*See SDCL 60-11-3 and 60-11-3.2.* Employers with tipped employees must pay a cash wage of no less than $5.925 per hour, which is no less than 50% of the state minimum wage. *See SDCL 60-11-3.1.* **South Dakota state minimum requirements apply to all employees;** however, no minimum wage requirements apply to independent contractors.

**CONTACT**

For questions or to report a violation, contact the DLR Division of Labor and Management, Wage and Hour Office at: 123 W. Missouri Ave. Pierre, SD 57501 Phone: 605.773.3681

Additional information from the South Dakota Department of Labor and Regulation available at **dlr.sd.gov/employment_laws.**

## SAFETY

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**AVOID THE WORST**

**T**OGETHER
**E**VERYONE
**A**CHIEVES
**M**ORE

**TEAM WORK MAKES THE DREAM WORK**

**BE PART OF THE SAFETY TEAM**

## Notice to Employees: Availability of Unemployment Compensation

Employees in this establishment are covered under the South Dakota Reemployment Assistance (RA) law. Benefits are available to workers who become unemployed or whose working hours are reduced to less than full-time, if they are:

- Able to work,
- Available for full-time work, and
- Meet certain eligibility requirements.

*Employees who voluntarily quit without good cause, are discharged or suspended for misconduct, or refuse to accept suitable work may be denied benefits.*

You may file an RA claim in the first week employment ends or hours are reduced.

If you have questions about the status of your RA claim, you can call the Customer Service Center at 605.626.2452, email DLRRAClaims@state.sd.us or log in to your account.

**To file a claim online,** visit sd.gov/rabenefits 24 hours a day, seven days a week.

**To file a claim by phone,** call the Claims Call Center at 605.626.3179, Monday through Friday, 8 a.m. to 4:20 p.m. (Central Time). Applicants with speech or hearing impairments can call 711 or 800.877.1113.

You will need to provide the following information for DLR to process your claim:

- Full legal name
- Social Security Number
- Driver's license number or State ID number
- Employment history for the last 18 months
- Authorization to work (if you are not a U.S. citizen or resident)

SOUTH DAKOTA DEPT. OF LABOR & REGULATION

Reemployment Assistance Division
420 S Roosevelt St | PO Box 4730
Aberdeen, SD 57402-4730

**PLEASE POST THIS NOTICE IN A VISIBLE PLACE.** REV 02/2024

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