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Employer Responsibilities and Protecting the Rights of Employees After A Disaster

Presented by:

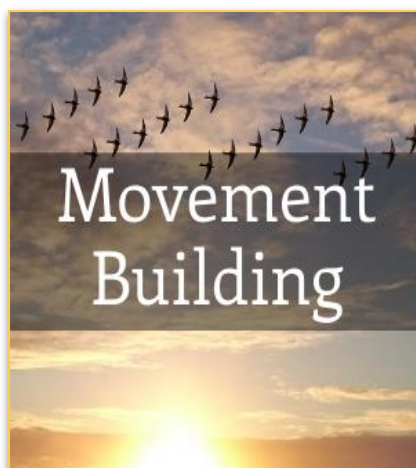
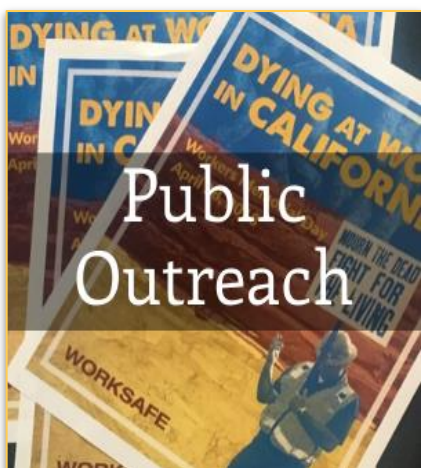
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Preventing worker illness, injury, and death by bringing justice to the workplace.

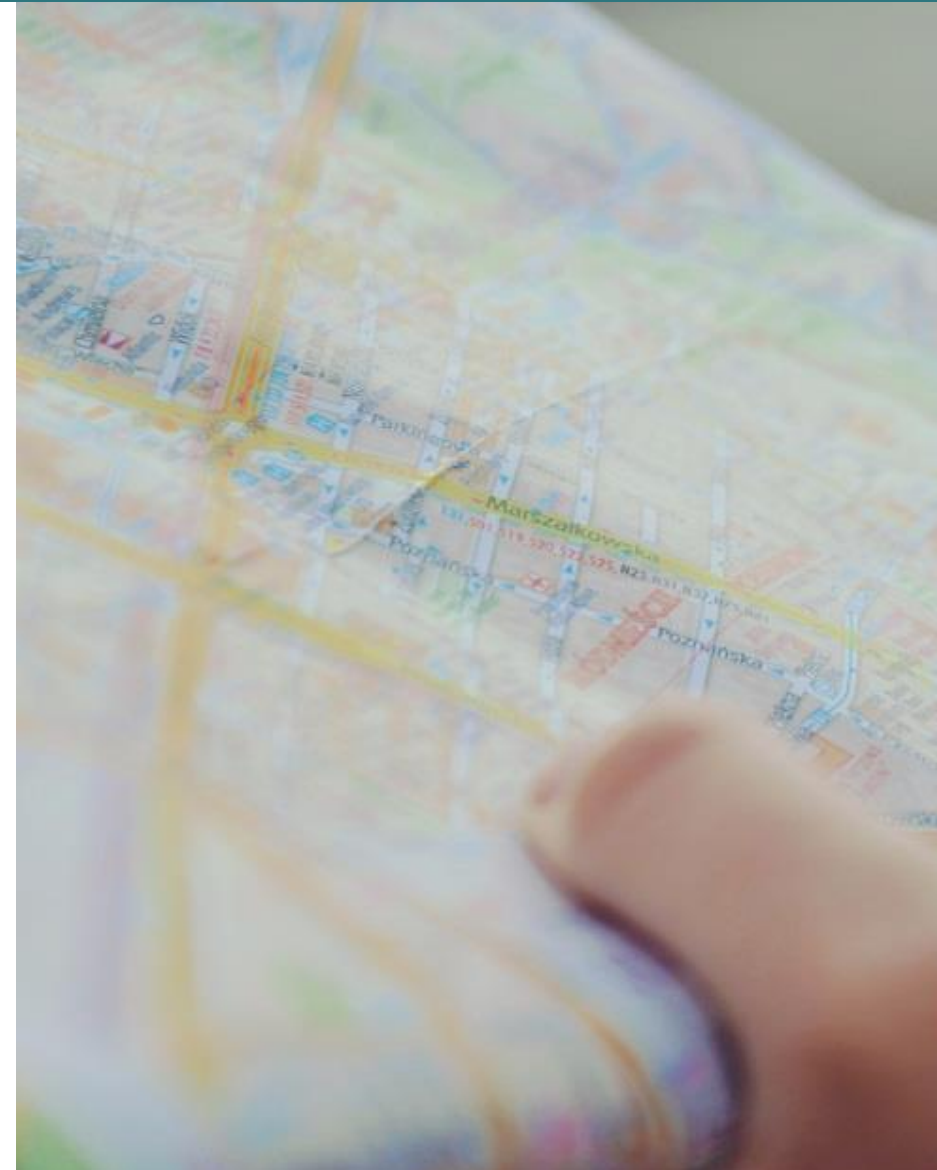
- Increasing worker power
- Supporting more protective laws for workers
- Ensuring just treatment for injured workers
- Raising awareness about occupational safety & health (OSH)

After this learning experience, trainees will:

1. Have an overview of workers' protections related to disaster relief work.
2. Understand and be able to identify common worker issues post disaster.

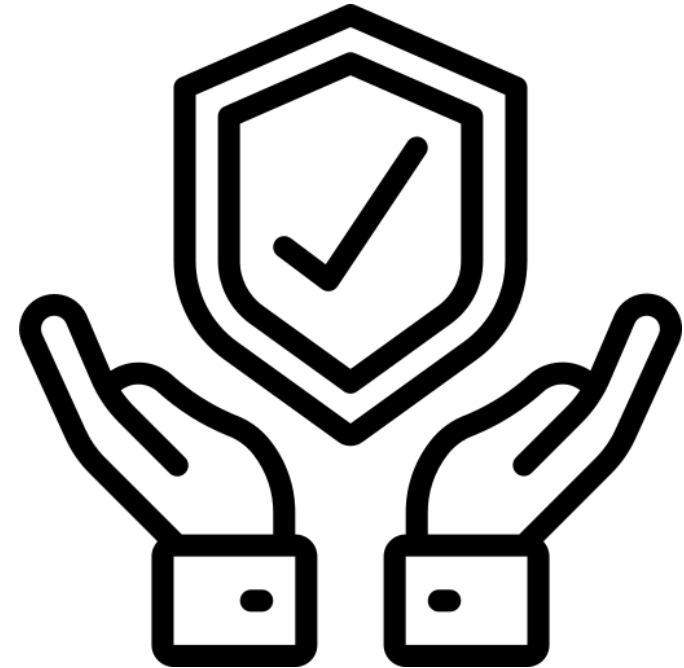


- Unemployment Insurance
- Disaster Unemployment Assistance
- Discharge and Wrongful Termination
- Common Leaves of Absence
- Common Wage and Hour Issues Post-Disaster
- Immigration Status & Workplace Rights
- Workers Compensation



Unemployment Insurance

Unemployment insurance provides temporary and partial wage replacement for workers who become unemployed through no fault of their own.





Unemployment Insurance

Earned enough wages during the base period to establish a claim,

Totally or partially unemployed,

Unemployed through no fault of their own,



Unemployment Insurance

Physically able to work,

Available for work,

Ready and willing to accept work immediately,

Actively looking for work.



Disaster Unemployment Assistance

Disaster Unemployment Assistance (DUA) Eligibility:

- Individual must be out of work as a “direct result” of a major disaster, and
- Must first apply for UI benefits through EDD and be determined ineligible.

Example: A worker is ineligible for UI because they were self-employed or have exhausted the unemployment benefits available to them.



Disaster Unemployment Assistance

DUA begins on the first day of the week following a presidentially declared disaster and ends 26 weeks after disaster was declared.

Both UI & DUA require work authorization; undocumented workers are ineligible.

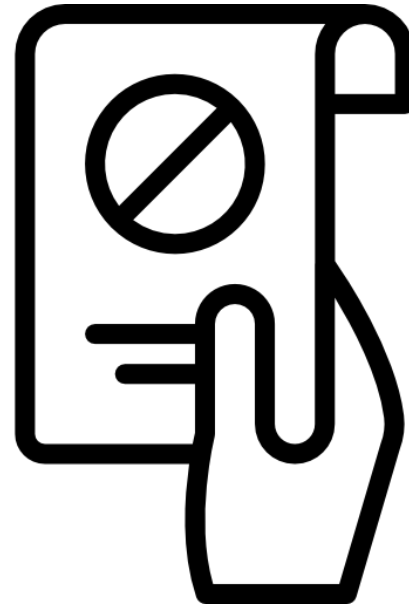
UI and DUA Claims can be filed with the California Employment Development Department (EDD)

Common Leaves of Absences



Discharge & Wrongful Termination

Generally, employees in California are considered “At-Will” meaning they may be disciplined, discharged, or can quit at any time without cause.





By contract (individual employment contracts or CBAs)
By statute/public policy

Retaliation:

- An employer may not take an adverse action against an employee for engaging in a protected activity.
- Retaliation claims can be filed with the California Division of Labor Standards Enforcement and must be filed within 6 months of the retaliatory act.

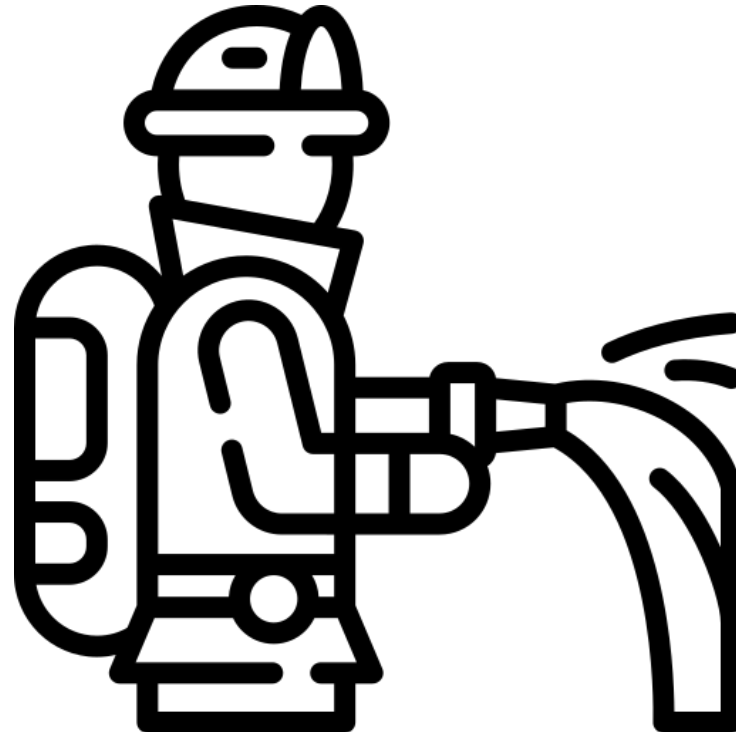


By statute/public policy

Discrimination:

- California's Fair Employment and Housing Act protects individuals from illegal discrimination by employers based on an employee's actual or perceived membership in a protected category. These include race, national origin, religion, age, disability, sex, gender, sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, and military and veteran status.
- Discrimination claims may be filed with the California Department of Fair Employment and Housing

- **Volunteer Firefighter and Emergency Rescue Personnel Leave**
 - California provides job-protected unpaid leave to employees who serve voluntary emergency first responders.





California Family Rights Act & Family Medical Leave Act

CFRA & FMLA provide up to 12 weeks of job protected leave to recover from serious injury or illness or provide care to seriously ill or injured family member

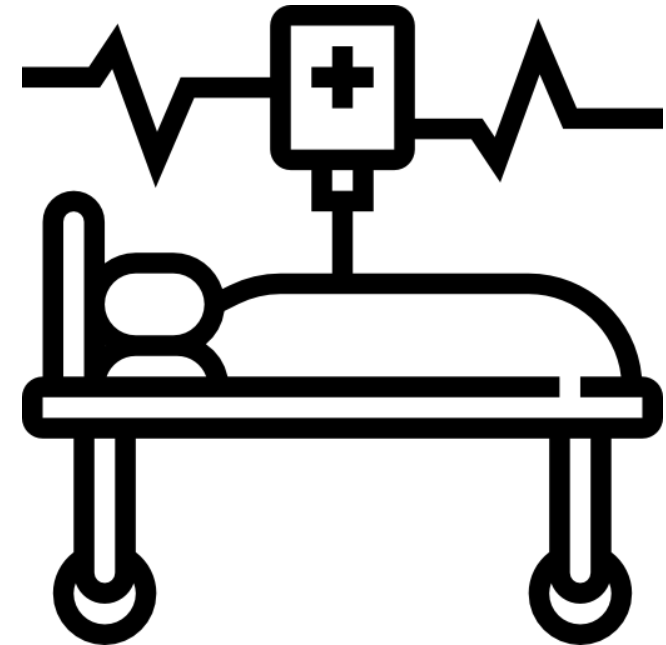
Applies to employers with 50+ employees

You can use these programs along with Disability Insurance or Paid Family Leave.

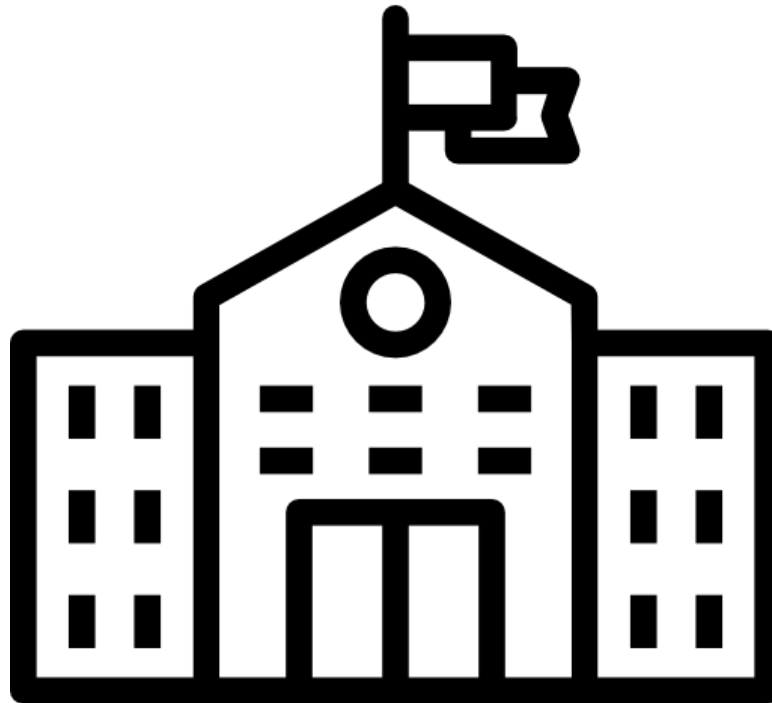
Distinctions

- Federal v. State
- FMLA additions
- CFRA 2021 changes

- **Paid Sick Leave**
 - California requires that employers provide a minimum of 3 days (or 24 hours) of paid sick leave per year.
 - Employees may use such leave to seek care or recover from illness or provide care to a sick or injured family member.



- **California Child-Care & School Emergency Leave**
 - 40 hours job-protected unpaid leave per year
 - Applies to employers with 25+ employees



Common Issues



Common Wage and Hour Issues Post-Disaster

**Reporting Time
Pay for
Nonexempt
Employees**

**Pay for Exempt
Employees**



Common Wage and Hour Issues Post-Disaster

Delays in Wage Payment

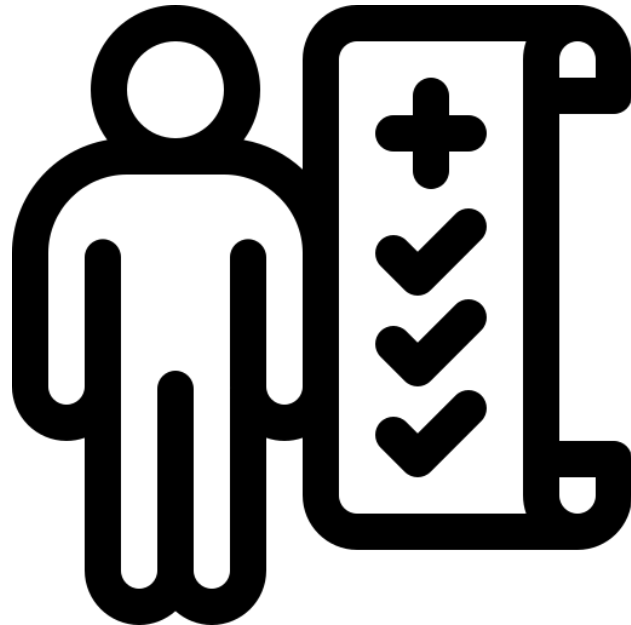
Broader Protections Against Wage Theft

Where to file claims

Common Leaves of Absences

Immigration Status & Workers' Rights

With the limited exception of unemployment insurance and disaster unemployment assistance, **all the workplace rights described are available to workers without regard to immigration status.**





Workers Compensation



What is Workers' Compensation?

It is the *exclusive remedy* for injured workers against their employers

It is a “no-fault” administrative system in which:

- Employers pay to obtain **mandatory** Workers' Compensation Insurance
- Which provides benefits to employees when they are injured for their medical costs and other benefits
- provides benefits for injured workers

- All employers in California are required to have workers' compensation insurance. (LC 3700)
- An employer who has not purchased required workers' compensation insurance could be sued for civil damages.





When an Injury Occurs...

- This is the DWC-1
- ER MUST provide it within *one working day of knowledge of injury or risk* penalty of up to \$5000

State of California
Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION

WORKERS' COMPENSATION CLAIM FORM (DWC 1)

Employee: Complete the "Employee" section and give the form to your employer. Keep a copy and mark it "Employee's Temporary Receipt" until you receive the signed and dated copy from your employer. You may call the Division of Workers' Compensation and hear recorded information at (800) 736-7401. An explanation of workers' compensation benefits is included as the cover sheet of this form.

You should also have received a pamphlet from your employer describing workers' compensation benefits and the procedures to obtain them.

Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony.

Estado de California
Departamento de Relaciones Industriales
DIVISION DE COMPENSACIÓN AL TRABAJADOR

PETITION DEL EMPLEADO PARA DE COMPENSACIÓN DEL TRABAJADOR (DWC 1)

Empleado: Complete la sección "Empleado" y entregue la forma a su empleador. Quédese con la copia designada "Recibo Temporal del Empleado" hasta que Ud. reciba la copia firmada y fechada de su empleador. Ud. puede llamar a la División de Compensación al Trabajador al (800) 736-7401 para oír información gravada. En la hoja cubierta de esta forma esta la explicación de los beneficios de compensación al trabajador.

Ud. también debería haber recibido de su empleador un folleto describiendo los beneficios de compensación al trabajador lesionado y los procedimientos para obtenerlos.

Toda aquella persona que a propósito haga o cause que se produzca cualquier declaración o representación material falsa o fraudulenta con el fin de obtener o negar beneficios o pagos de compensación a trabajadores lesionados es culpable de un crimen mayor "felonía".

Employee—complete this section and see note above

- Name. *Nombre.* _____ Today's Date. *Fecha de Hoy.* _____
- Home Address. *Dirección Residencial.* _____
- City. *Ciudad.* _____ State. *Estado.* _____ Zip. *Código Postal.* _____
- Date of Injury. *Fecha de la lesión (accidente).* _____ Time of Injury. *Hora en que ocurrió.* _____ a.m. _____ p.m.
- Address and description of where injury happened. *Dirección/lugar dónde ocurrió el accidente.* _____
- Describe injury and part of body affected. *Describe la lesión y parte del cuerpo afectada.* _____
- Social Security Number. *Número de Seguro Social del Empleado.* _____
- Signature of employee. *Firma del empleado.* _____

Empleado—complete esta sección y note la notación arriba.

- Nombre. _____ Hoy's Date. *Fecha de Hoy.* _____
- Dirección Residencial. _____
- Ciudad. _____ State. *Estado.* _____ Zip. *Código Postal.* _____
- Date of Injury. *Fecha de la lesión (accidente).* _____ Time of Injury. *Hora en que ocurrió.* _____ a.m. _____ p.m.
- Dirección/lugar dónde ocurrió el accidente. _____
- Describe la lesión y parte del cuerpo afectada. _____
- Número de Seguro Social del Empleado. _____
- Firma del empleado. _____

Employer—complete this section and see note below

- Name of employer. *Nombre del empleador.* _____
- Address. *Dirección.* _____
- Date employer first knew of injury. *Fecha en que el empleador supo por primera vez de la lesión o accidente.* _____
- Date claim form was provided to employee. *Fecha en que se le entregó al empleado la petición.* _____
- Date employer received claim form. *Fecha en que el empleado devolvió la petición al empleador.* _____
- Name and address of insurance carrier or adjusting agency. *Nombre y dirección de la compañía de seguros o agencia administradora de seguros.* _____
- Insurance Policy Number. *El número de la póliza de Seguro.* _____
- Signature of employer representative. *Firma del representante del empleador.* _____
- Title. *Título.* _____
- Telephone. *Teléfono.* _____

Empleador—complete esta sección y note la notación abajo.

- Nombre del empleador. _____
- Dirección. _____
- Fecha en que el empleador supo por primera vez de la lesión o accidente. _____
- Fecha en que se le entregó al empleado la petición. _____
- Fecha en que el empleado devolvió la petición al empleador. _____
- Nombre y dirección de la compañía de seguros o agencia administradora de seguros. _____
- El número de la póliza de Seguro. _____
- Firma del representante del empleador. _____
- Título. _____
- Teléfono. _____

Employer: You are required to date this form and provide copies to your insurer or claims administrator and to the employee, dependent or representative who filed the claim within one working day of receipt of the form from the employee.

SIGNING THIS FORM IS NOT AN ADMISSION OF LIABILITY

Employer copy/Copia del Empleador Employee copy/Copia del Empleado Claims Administrator/Administrador de Reclamos Temporary Receipt/Recibo del Empleado

7/1/04 Rev.

Empleador: Se requiere que Ud. feche esta forma y que provée copias a su compañía de seguros, administrador de reclamos, o dependiente/representante de reclamos y al empleado que hayan presentado esta petición dentro del plazo de un día hábil desde el momento de haber sido recibida la forma del empleado.

EL FIRMAR ESTA FORMA NO SIGNIFICA ADMISION DE RESPONSABILIDAD



When an Injury Occurs...

ER gives EE a claim form

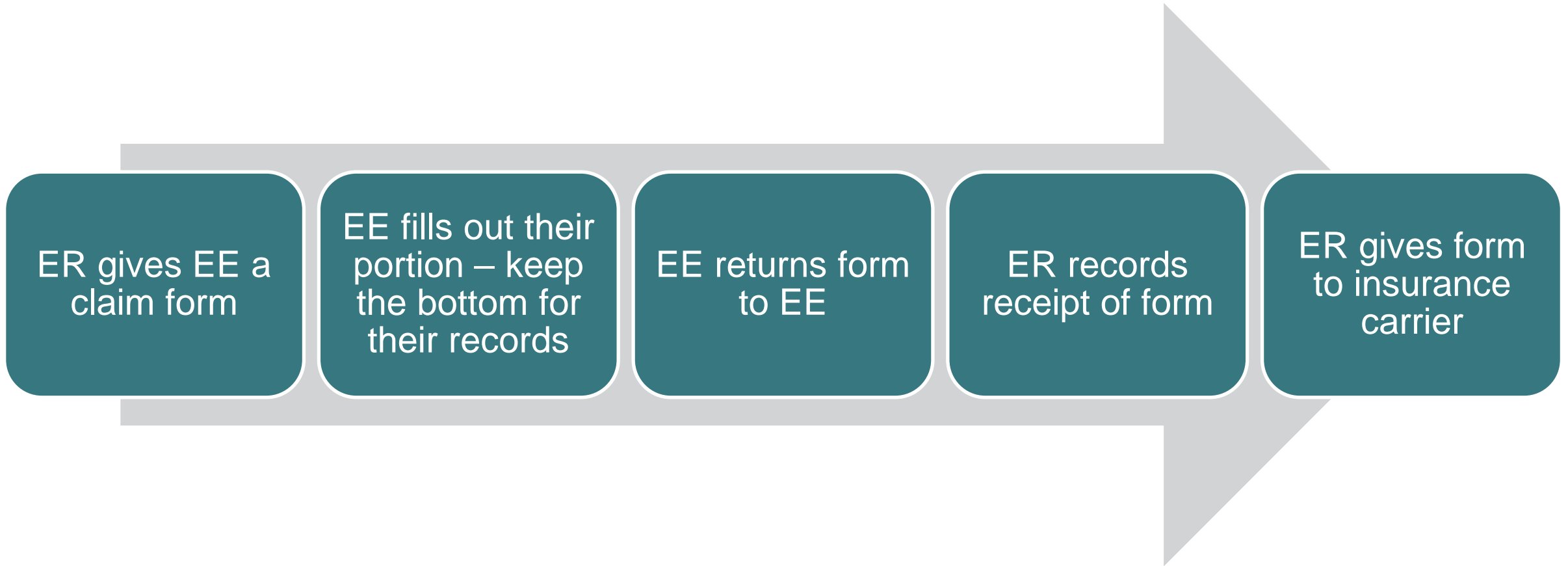
Call I&A officer if ER does not provide a claim form – forms are available at DWC or EDD

If ER refuses to provide DWC-1 – ER must file an Application for Adjudication with WCAB within one year of the date of the injury

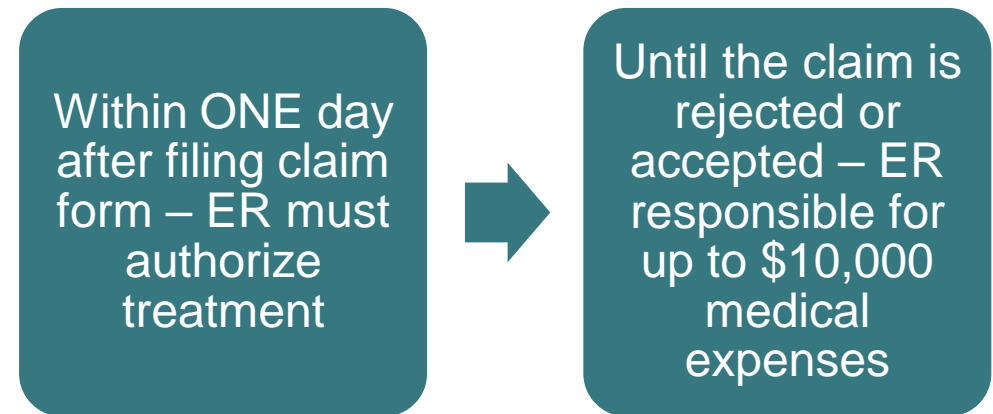


DWC-1 Process Explained

Filling out the DWC-1 starts the clock ticking for payment of benefits



- Provision of treatment must continue until the date that the liability for the claim is accepted or rejected
- If not => ER may have to pay an automatic 10% unreasonable delay penalty
- The EE's injuries are presumed compensable if the claim isn't denied within 90 days of receipt of the DWC-1
- This presumption can only be rebutted with "newly discovered" evidence





Who is an Employee?

YES

- Household domestic workers – but see exception
- A person who works for independent or general contractor
- An **undocumented worker** (but may not get all the WC benefits)
- A temporary worker

NO

- Part-time household domestic workers who are under 52 hrs or \$100
- Independent contractors
- Federal employees fall under the Federal workers' compensation systems
- A worker who is no longer working for the employer – but see exceptions to this rule



Day Laborers

Yes

- Most of the time, individuals that hire day laborers are “employers” for workers’ compensation purposes.

NO

- If they are classified as independent contractors
- If homeowner is hiring day laborer to do household work for limited hours (less than 52 hours) and compensation (less than \$100 from an individual employer in the 90 calendar days before the accident). Labor Code § 3352(h)



What if the Employer is Illegally Uninsured?

- Workers can receive benefits from a special fund called the Uninsured Employers Benefits Trust Fund (UEBTF)
- Filing a workers' compensation claim with the UEBTF is a very complicated process that involves 11 steps!
- The DWC has made information and assistance officer (I&A) officers available to assist applicants
- **1-800-736-7401** * <https://www.dir.ca.gov/dwc>

- Employment Development Department
- Department of Industrial Relation FAQ on Paid Sick Leave
- Legal Aid at Work



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Thank you for joining us

Have a nice day!