

WHAT IS A LAPSE IN COVERAGE?

A workers' compensation policy is considered "lapsed" when an insured located in a state that requires WC coverage has no active policy but continues to operate with employees.

WHEN DO LAPSES HAPPEN?

There are a several reasons why a lapse in coverage may occur including:

- An insured's policy may be cancelled for nonpayment.
- An insured may not accept their renewal policy in time.
- An insured doesn't bind an alternate market option in time after non-renewal by their incumbent carrier.
- An insured may have started their business and never secured WC coverage prior to hiring employees.

CURRENT LAPSE VS. HISTORICAL LAPSE

A current lapse refers to an insured currently experiencing a lapse in coverage. A historical lapse is when an insured has experienced a prior lapse in coverage, often referred to as a "gap" in coverage. For example, an insured may have a current policy now, but previously allowed coverage to lapse for a period of time.

While a historical lapse is less difficult to place than a current lapse, there are still some carriers that require consecutive prior coverage in order to consider the risk.

WHY ARE LAPSES A PROBLEM FOR CARRIERS?

Since workers' compensation coverage is statutorily mandated to operate a business as an employer in most states, it is seen as a red flag for an insured to be operating without WC coverage. Many carriers will not consider businesses with a current lapse in coverage. This raises concerns about past claims during that period, management focus, lack of controls, etc. However, some carriers may still consider the risk, but only up to a certain time limit; for example, 30 days, 45 days, 60 days.

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For more information, please contact your local RT Specialty WC broker or underwriter.

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WHAT DO CARRIERS REQUIRE FOR NEW POLICIES AFTER A LAPSE OCCURS?

A signed No Known Loss Letter will be required at time of binding, noting the last date of coverage to the date coverage is bound. No Known Loss Letters attempt to protect the carrier against any potential losses stemming from incidents that occurred during the period of lapse.

Possible outcomes in gap situations include: the incumbent carrier may consider reinstatement, they may be willing to backdate coverage, or rewrite a new policy leaving a gap in coverage. Another possibility is that a new carrier writes the risk with the same outcomes just noted for the incumbent. Carrier underwriters will review each scenario and explanation for the nonconcurrent coverage, and make a decision based off of their underwriting guidelines. A signed No Known Loss Letter would still be required, regardless of the reason for the lapse.

IF A CARRIER CAN CONSIDER A LAPSE, WILL THE PREMIUM BE HIGHER?

If a carrier can consider a lapse, they may quote at a higher rate by debiting the account to make up for any additional exposure related to the lapse in coverage, or perceived lack of organization / bookkeeping. Coupled with limited market options, the insured can expect to pay higher rates for their WC coverage than if they'd kept their policy current.

WHAT CAN INSUREDS EXPECT WHEN COVERAGE IS REPLACED?

Once coverage is replaced, the insured's annual effective date may change. This could potentially affect their [experience mod](#) anniversary rating date or result in a split mod rating for the policy term until the mod date and policy dates are matched up again. For example, if the insured previously had all their lines of coverage renewing on the same day, they may not be able to line up policies again right away.

WHAT ARE CONSEQUENCES FOR FAILING TO KEEP ACTIVE WC COVERAGE?

Failure to keep active workers' compensation coverage may result in penalties, lawsuits, or revocation of licenses needed to operate a business.

State insurance departments have determined direct penalties for failure to provide WC coverage. Some states consider this a criminal offense, others a misdemeanor, and in some cases, intentional unwillingness to provide WC coverage is considered a felony. Penalties include a fine determined by the state and in some cases, potential jail time. Fines can be upwards of \$100,000 depending on the state. The harshness of the penalties reflects the importance of prioritizing workers' compensation coverage for employees.

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Additionally, certain state licensing divisions, such as contractors license boards and motor carrier divisions, require proof of WC coverage to keep an insured's license active. Once a lapse is reported to that entity, the insured's license to operate may be suspended or revoked, until proof of coverage is submitted again.

IF A POLICY LAPSES, WHAT HAPPENS IF AN EMPLOYEE IS INJURED?

The most likely scenario is litigation. Workers' compensation policies are written on essentially an occurrence form, meaning the policy in force at the time of incident is responsible for the claim. If there is no policy in place, the insured may sue the employer as an alternate remedy.

HOW CAN INSUREDS AVOID A LAPSE IN COVERAGE?

Insureds should plan to stay up to date on their insurance payments to avoid a lapse in coverage.

Many of RT Specialty's WC carriers offer direct draft or ACH options so insureds can set up recurring payments at time of binding. Direct draft options are available for most installments plans and most monthly [payroll reporting](#) options.

In the case that a payment is missed for whatever reason, the carrier would issue a Notice of Cancellation directly to the insured and to their agent of record. This notice gives the insured a time frame to catch up on payments before the policy is fully cancelled. This is a prime example of why it's so important for insureds to pay attention to all correspondence from their carrier.

Additionally, it is important for insureds to make a decision on their renewal placement before the requested effective date. Some carriers require written confirmation of binding prior to 12:01am on the date coverage becomes active. Renewals come up annually on the same date, therefore both insureds and the agent of record can plan ahead for coverage placement each year.

WHAT DOES A LAPSE IN A BUSINESS' COVERAGE MEAN TO EMPLOYEES?

Before WC coverage was statutorily mandated, many employees had to sue their employer in the event of injury or illness. This was a costly, time-consuming process and rarely resulted in an outcome that satisfied all parties.

Workers' compensation is intended for employees injured at work, as this type of coverage was created with the understanding that workplace injuries are likely to happen. When an injury occurs, employees count on an employer having WC coverage in place to take care of paying for medical bills, lost time at work, rehabilitation, etc.

When an employer allows a WC policy to lapse, they expose their employees to uncovered injuries and expose themselves to an increased potential for lawsuits, which completely defeats the purpose of this line of coverage.

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