INFORMATION MEMO

LMCIT Workers’ Compensation Coverage Guide

Learn about the workers’ compensation statute and the unique coverage features offered by the League of Minnesota Cities Insurance Trust. Understand premium and deductible options. Includes information on filing a workers’ compensation claim.

RELEVANT LINKS:
See also LMC information memos, LMCIT Property, Crime, Bond, and Petrofund Coverage Guide; LMCIT Liability Coverage Guide; LMCIT Auto Coverage Guide. See also LMC website, LMCIT Eligibility Requirements.

For more information, contact the LMCIT underwriting department 651.281.1200 800.925.1122.

I. About the League of Minnesota Cities Insurance Trust (LMCIT)

LMCIT’s fundamental purpose is to cover the workers’ compensation, property, liability, and auto risks of Minnesota’s cities and to mitigate hazards—not to show a profit for stakeholders. The organization was created by cities, for cities, and makes serving cities a priority. LMCIT funds not needed for claims, expenses, or reserves are returned to members as a dividend.

This Coverage Guide provides a summary of workers’ compensation coverage available through the Trust. LMCIT urges members to examine the coverage document for actual wording. In all cases, the coverage document determines coverage, exclusions, and limitations.

II. Workers’ Compensation Coverage

With certain exceptions, all cities must pay workers’ compensation benefits to its employees for all injuries from accidents arising out of, and in the course of, city employment. The law is designed to ensure the quick and efficient delivery of benefits to injured workers. The law doesn’t require cities to purchase coverage for this purpose, but they should do so, unless the council feels the city is financially able to pay compensation benefits from the city treasury.

A. Injury definition

Workers’ compensation is a “no-fault system.” In other words, regardless of who is at fault, an injured employee is covered under the workers’ compensation statute. However, not all injuries that occur at work or during work hours are compensable. An injury defined by statute as compensable must have the following three elements:
The employee must sustain a personal injury (including mental impairment caused by post-traumatic stress disorder) or occupational disease.

The personal injury or occupational disease must arise out of the employment.

The personal injury or occupational disease must occur in the course of employment.

Examples of non-work-related injuries include:

- Idiopathic injuries, which are injuries caused by a personal condition or where there is no known cause for the injury. An example is an employee who has sudden knee pain when getting up from a chair.
- Injuries that occur while participating in voluntary recreational programs such as a city-sponsored picnic. An employee who injures his or her back while playing volleyball is an example of this type of injury. This does not apply if an employee was ordered or assigned to attend.
- Injuries that occur during unpaid lunch breaks where the employer has no supervision or control during breaks. An example is an employee who injures his or her arm while playing flag football.
- Injuries that do not arise out of the employee’s employment. An example is an employee who breaks his or her tooth while eating an apple at lunch.
- Mental impairment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, or retirement taken in good faith by the employer.

B. Benefits

The goal of the workers’ compensation statute is to assist an injured employee in quickly obtaining appropriate medical care to help the employee return as close as possible to his or her pre-injury condition. If an employee has sustained an injury covered by workers’ compensation, he or she may be entitled to:
• **Medical benefits** come with no cap under the workers’ compensation statute, but medical providers are subject to a maximum fee.

• **Indemnity benefits**, or more commonly known as lost time benefits or wage replacement, are based on the individual’s actual earning from all employment.

• **Temporary total disability** is paid when an employee is completely disabled from work for a temporary period.

• **Temporary partial disability** is paid when an employee receives less than his or her pre-injury wage.

• **Permanent partial disability** is paid when a disability rating is provided by a treating physician.

• **Permanent total disability** is paid when an employee is permanently restricted from employment.

• **Death benefits** are paid when an employee dies because of an injury.

• **Rehabilitation benefits** may be granted if the employee requests and the employer agrees that consultation services of a qualified rehabilitation consultant (QRC) be obtained. If the employee qualifies, rehabilitation services may be provided. Generally, a QRC is required if the employee is not back to work 90 days from the date of injury.

C. **Unique features of LMCIT’s workers’ compensation coverage**

LMCIT provides the same workers’ compensation coverage and benefits as set by statute. However, it also covers some risks that statutory workers’ compensation coverage doesn’t cover.

1. **Exposure testing**

According to Federal and State Occupational Safety and Health Administration (OSHA) requirements, as well as Minnesota statutes, employers are responsible to pay for exposure testing for certain employees if they are exposed to some bloodborne pathogens or infectious diseases.

An employee who is exposed to an infectious disease such as HIV, hepatitis, tuberculosis, or anthrax but hasn’t actually contracted the disease may not have an “injury” for purposes of workers’ compensation. Because there is no injury or occupational disease, a standard workers’ compensation insurance policy won’t pay for diagnostic testing if an individual has been exposed, even though OSHA requires the city to provide that testing.
LMCIT automatically covers this employer responsibility at no additional premium charge. In fact, LMCIT coverage for exposure testing is broader than OSHA or statutory mandates. LMCIT covers the cost to test any city employee who is exposed in the course of his or her employment, not just public safety workers as required by law. The list of bloodborne pathogens and diseases covered by LMCIT is broader than required and includes things like exposure testing for meningitis and anthrax exposures.

When an employee has been exposed to an infectious disease, LMCIT also covers the diagnostic testing of the person or persons who were the source of the disease.

2. **Employer’s liability**

The workers’ compensation statute precludes most tort claims (an injury which arises out of a violation of a duty owed to an injured or damaged plaintiff) against an employer for injuries to an employee, but there are a few ways such claims can occur. For example, if an employee is injured while operating a piece of equipment, the employee may collect workers’ compensation benefits from the city and decide to sue the equipment manufacturer for injuries that may have been caused by poor product design. The manufacturer in turn sues the employee’s supervisor for negligent supervision.

LMCIT covers the city’s potential tort liability for injuries to an employee. City officers, employees, fellow employees and volunteers are named as covered parties; and the limits match the $1.5 million statutory limit on municipal tort liability.

3. **Federal laws**

LMCIT automatically provides coverage for any liability the city may have under the Longshoremens’ and Harborworkers’ Act, the Jones Act, or the Federal Employers’ Liability Act.

These are federal laws governing an employer’s liability for injuries to certain employees. Under some circumstances, a city employee might be entitled to benefits under one of these laws instead of, or in addition to, Minnesota’s workers’ compensation statute.

4. **Obstructing an employee from seeking benefits**

State law allows an injured employee to sue the city and/or a city officer or employee for damages for coercing or obstructing the employee from seeking workers’ compensation benefits. A city with 16 or more employees can also be sued for failing to offer continued “light duty” employment to an injured employee if such employment is available.
LMCIT does not provide coverage for actual damages, but it does pay for defending the city or a city officer or employee on a claim seeking damages under this statute.

5. Elected and appointed officials

LMCIT makes workers’ compensation coverage for elected and appointed officials the default coverage option for members of the workers’ compensation program. That is, elected and appointed officials of covered entities are covered parties for workers’ compensation unless the member specifically elects otherwise. Covered individuals include:

- Mayors
- Councilmembers
- Elected clerks
- Elected treasurers

Members of other administrative boards and committees who have independent authority under law, either alone or with others of equal authority, to determine policy or make a final decision not subject to supervisory approval or disapproval are also covered. Some common examples include:

- Planning commissions
- Utilities commissions
- Park boards
- Hospital or nursing home boards

Workers’ compensation benefits are paid only when the individual’s injury is the result of his or her city-related activity. There can be many borderline situations in which it is debatable whether elected or appointed officers are conducting official business on behalf of and at the request of the city. For example, a mayor might be asked to attend a meeting of the Chamber of Commerce to discuss and explain city policies. Cities might want to consider adopting an ordinance or resolution that specifies whether the city considers such activities to be within the scope of duties.

If an injury is the result of a city-related activity, elected and appointed officials will receive medical and indemnity, or lost time, benefits. Indemnity benefits are based on the individual’s total earnings from regular employment plus the salary (if any) he or she receives from the city.

Workers’ compensation coverage is generally not available for purely advisory boards or members of committees that are not created by state law, such as volunteer members of a Fourth of July planning committee. However, limited medical, disability, impairment and death benefits are covered under the LMCIT volunteer accident coverage.
6. **Separate boards and commissions**

Agencies that are legally separate from the city are not automatically covered by the city’s LMCIT workers’ compensation coverage. Examples include:

- Housing and redevelopment authorities
- Economic development authorities
- Port authorities
- Utilities commissions
- Hospital or nursing home boards
- Joint powers boards

Cities should consider whether these agencies will have their own workers’ compensation coverage or whether these agencies will be part of the city’s workers’ compensation coverage. If the latter is preferred, contact LMCIT to extend coverage to the agency (if coverage extension involves a joint powers board, at least one party of the board must be an LMCIT member).

**a. Deciding whether boards and commissions should have stand-alone coverage**

In some cases, a city may prefer that agencies managed by a separate administrative board or commission have their own workers’ compensation coverage separate from the city for a couple reasons. First, it may be easier to allocate costs between the two entities’ budgets. Second, for purposes of LMCIT’s experience modification calculation (a tool used to calculate premiums), each entity would stand on its own. For example, with separate coverage, losses experienced by employees of the utilities commission won’t affect the city’s experience modification, and vice versa.

Every city must weigh whether separate coverage is preferable. One downside is that the city may lose some benefit of the volume discount on premiums. A premium discount applies when the total standard premium equals $5,000 or more.

**b. Officers of boards and commissions**

As is the case for elected and appointed city officials, officers of covered boards and commissions are also covered parties for workers’ compensation unless the member specifically elects otherwise. Workers’ compensation benefits are applicable only when the individual’s injury is the result of his or her activities as an officer of the board or commission.
7. **City volunteers**

Emergency volunteers are covered by workers’ compensation, while other types of volunteers are afforded alternative protections under the LMCIT volunteer accident coverage.

**a. Emergency volunteers**

The following types of volunteers are defined by statute as “employees” for purposes of workers’ compensation. LMCIT automatically includes these volunteers under the city’s workers’ compensation coverage:

- Volunteer firefighters
- Volunteer ambulance attendants
- Volunteer first responders
- Law enforcement assistance volunteers
- Emergency management volunteers
- Disaster assistance volunteers
- Civil defense volunteers

These volunteers are entitled to receive workers’ compensation benefits if they are injured while performing volunteer services for the city, so long as they are registered with and work at the direction and control of the city. If these types of volunteers are organized independently of the city and aren’t employees for purposes of workers’ compensation, they would not be entitled to benefits.

**b. Inmates on work release**

Inmates of state, regional, or local correctional facilities or county jails may be conditionally released and ordered to perform compensated or uncompensated work for various types of agencies. If an inmate is injured or causes damage during her or his work, cities are precluded from being sued. Claims of $7,000 or less are submitted to the State Department of Corrections. Claims over $7,000 are submitted to the Legislature.

**c. All other volunteers**

The LMCIT volunteer accident coverage is a standard coverage feature to all members of the workers’ compensation program. It provides benefits to volunteers who work under the city’s direction and control. Examples of city volunteers include:
• Coaches and instructors in recreation programs.
• Volunteers working on a city sponsored festival or celebration.
• Volunteers working on city construction and demolition projects.
• “Clean-up day” volunteers.
• Volunteer members of advisory boards or committees that do not exercise independent decision-making authority.

Individuals who are eligible for workers’ compensation pursuant to the Minnesota workers’ compensation statute, including emergency volunteers, are not covered persons under this coverage. Rather, they are automatically covered under the city’s workers’ compensation coverage.

Like workers’ compensation, the volunteer accident coverage protects city volunteers on a no-fault basis. Benefits are payable if the injury occurs while the volunteer is performing services for the city, regardless of fault. Benefits include:

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Description</th>
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<tbody>
<tr>
<td>Disability benefit</td>
<td>$900 per week is provided for up to 26 weeks if the volunteer is unable to work in his or her normal occupation.</td>
</tr>
<tr>
<td>Death benefit</td>
<td>$200,000 is provided if the volunteer dies because of an injury.</td>
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<tr>
<td>Impairment benefit</td>
<td>Up to $200,000 is provided if the volunteer is permanently disabled, either fully or partly, by an injury.</td>
</tr>
<tr>
<td>Medical benefit</td>
<td>$2,500 is provided to help cover medical costs that the individual might otherwise be responsible for under the deductible on his or her health coverage.</td>
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The per accident limit for the volunteer accident coverage is $500,000, which applies regardless of the number of volunteers who are injured in a single accident.

8. **Firefighters**

In general, workers’ compensation for firefighters is the same as workers’ compensation for other employees. However, there are some special provisions, including how indemnity benefits are calculated for volunteer firefighters, how certain diseases are presumed to be job-related for all firefighters, when a firefighter is considered on duty for workers’ compensation purposes, and LMCIT’s unique premium rating system for firefighters.
a. Firefighter definition

Firefighters in Minnesota may be employees or volunteers for a city. Volunteer firefighters are defined by statute as “employees” for purposes of workers’ compensation. They are entitled to receive workers’ compensation benefits if they are injured while performing volunteer services for the city, so long as they are registered with and work at the direction and control of the city. LMCIT automatically includes volunteer firefighters, as well as fire relief associations, under the city’s workers’ compensation coverage and does not charge an additional premium for this exposure.

b. When coverage applies

Injuries sustained while a firefighter is engaged in firefighter activities is covered by workers’ compensation. A firefighter is also covered from the time they respond to a fire alarm, a pager, or other device until the time they return home. Travel from home to the fire hall and directly home again is covered in a fire call or other emergency. In contrast, travel from home to a firefighter meeting, fire drill, or other type of training is not covered.

If a firefighter does not go straight home from the fire hall after responding to a fire call or other emergency, the scope of employment ends at the fire hall. For example, if the firefighter went to a friend’s house instead of going home, it would be considered “detour and frolic.” Injuries sustained during “detour and frolic” are not within the scope of employment and therefore not covered by workers’ compensation.

Minnesota statute also excludes workers’ compensation coverage for injuries sustained while an employee is participating in voluntary recreational programs sponsored by an employer, such as athletic events or picnics (this rule applies to all employees, not just firefighters). The exception to this rule is if an employer requires its firefighters to attend these activities. In that case, a compensable injury would be covered.

c. Indemnity benefits for volunteer firefighters

A volunteer firefighter who is unable to work in his or her normal occupation because of an injury sustained while volunteering for the city may be entitled to indemnity benefits. If the firefighter only receives an expense reimbursement from the city, indemnity benefits are based on the greater of his or her regular employment earnings or an imputed full-time firefighter wage. If the firefighter receives a wage from the city, benefits are based on the total wage plus the firefighter’s regular employment earnings. The firefighter may have the right to instead base benefits on an imputed full-time firefighter wage if it would result in a higher benefit.
d.  **Benefits for heart and lung diseases**

The workers’ compensation statute establishes statutory presumptions for the following diseases.

- Myocarditis
- Coronary sclerosis
- Pneumonia
- Many types of cancer
- Infectious diseases (e.g., HIV or hepatitis)

If a firefighter contracts one of these, it is presumed job-related unless the employer can prove the disease was not work-related (e.g., the employee smokes cigarettes). It is also presumed job-related if certain conditions are met, as outlined in the following sections.

1. **Heart and lung disease**

   For a heart or lung disease to be presumed job-related, the employee must have had a physical examination at the time he or she was first employed, and a written report of that examination showing the employee was free of the disease. This report must have been filed with the fire department. (Police officers also qualify for this presumption.)

2. **Cancer**

   For firefighters who entered service before Aug. 1, 1988, a prior examination is not required to be entitled to the cancer presumption. However, if the firefighter entered service after Aug. 1, 1988, was examined prior to employment, and the exam showed evidence of cancer, that cancer is not presumed to be job-related.

3. **Infectious diseases**

   The presumption that an infectious disease is job-related applies only if the firefighter was exposed to the disease while performing his or her duties. Ordinary diseases of life, to which the general public is equally exposed outside of employment, such as colds and flu, are generally not covered by workers’ compensation. Police officers, EMT’s, ambulance attendants, and any other employee whose job involves providing emergency medical care outside of a hospital are also covered by this presumption.

e.  **Non-smoker credit for peace officers and firefighters**
A fire or police department with very few smokers represents a smaller risk of a workers’ compensation claim for heart disease, lung disease, or cancer. Any city that can certify that no more than 10 percent of its fire or police department are smokers qualifies for a rate that is 10 percent lower than LMCIT’s standard rate for firefighters and police.

To qualify for the credit, the city must obtain written statements from at least 90 percent of each department’s employees. The statement must be signed and dated and must state that the individual does not smoke and has not smoked within the previous six months. These statements, along with a roster of current department members, must be submitted to LMCIT to qualify for the credit.

III. Premium options

Cities can tailor their premium options and deductibles in LMCIT’s workers’ compensation program.

A. Regular premium option

If a city chooses the regular premium option, premium payments are the city’s only responsibility or liability. The regular premium option is a “guaranteed cost” option.

Under this option, LMCIT first calculates a city’s premium rate based upon the city’s payroll, according to payroll class (rates for volunteer firefighters are based on the population of the area which the fire department serves rather than payroll). To maintain fairness in setting each city’s premium, the rate is then adjusted by an experience modification factor. The factor looks at each city’s claims experience from the oldest three years during a four-year period. The most recent year isn’t part of the factor because those claims haven’t yet matured.

B. Retrospective rating option

Cities can choose a retrospective rating option, which is an alternate method of determining a city’s premium charge. The city’s final premium under this option reflects the city’s own actual loss experience for the year. With good experience, this option can save a city significant money during the long run. Of course, the city is also subject to possible premium increases if it experiences a lot of injuries or a single big loss. Cities that use retrospective rating—or would like to—should recognize that a strong safety program is an important component of developing good loss experience.
1. **Eligibility**

There are three retrospective rating options available to any city whose standard premiums are $25,000 or more. The election form is automatically sent with the regular premium quotation to qualifying members. A city can select only one premium option. If a city selects a deductible option or the standard premium option, it cannot select a retrospective rating option.

2. **How the retrospective rating option works**

The city pays a deposit premium (net of discounts) to LMCIT at the beginning of the agreement period. The timing and amount of this payment are the same whether a retrospective rating option is selected. At the end of the agreement year, an audit determines the actual payroll for the period and the resulting net actual premium. If a retrospective rating option is not selected, this becomes the city’s final premium.

When a retrospective rating option is selected, the final premium is not known until all claim activity from that agreement period ceases permanently. The final premium reflects the city’s own losses and is subject to minimum and maximum limits. The premium amounts are estimated at the beginning of the agreement period and provided to the city prior to the election of an option. The minimum and maximum premiums are adjusted after the payroll audit is complete, and it reflects the net actual premium for the period.

The final premium equals the minimum premium plus actual incurred losses and loss-related expenses, including assessments due to the state Special Compensation Fund. Unlike typical retrospective plans offered by private insurers, LMCIT’s retrospective rating formula doesn’t use a “loss conversion factor.”

The city is billed or refunded the difference between the net deposit premium and the final premium. This is accomplished by annual adjustments.

a. **Annual adjustments**

Under the retrospective rating option, final premium amounts are determined based on a city’s own losses, which are adjusted throughout the coverage term. The first adjustment is made approximately six months after the expiration of the agreement period, based on the total incurred cost of losses known at that time. Further adjustments are made annually thereafter until all claim activity ceases permanently. This includes activity on claims that reopen and claims for injuries that are filed later for an accident occurring within the retrospective year.

Learn more about the Special Compensation Fund at Minn. Stat. § 176.129.
b. Closing past retrospective years

LMCIT automatically closes retrospective years after 16 years, unless the city specifies it wants to hold the old retrospective year open. LMCIT does this for ease of administration and to help cities avoid surprises for old claims that reopen. Cities are notified of the automatic closure and the option to hold retrospective years open longer.

Cities also have the option to close retrospective years sooner. Beginning five years after the first adjustment is made on a retrospective year, cities can close coverage from previous years. If a city selects this option, no further adjustments are made to the city’s premium for the selected year(s), regardless of future changes that may occur in the city’s paid or incurred losses.

There is an additional charge to close a retrospective rated year, which varies by age—the longer it is after the coverage year, the lower the charge to close it. Cities may elect to close older years by sending a written request to LMCIT. The request must be made within 60 days following its annual workers’ compensation retrospective adjustment invoice letter. A city can choose to close all, some, or none of its retrospective rated policies that are five years old or more.

(1) Advantages of closing past retrospective years

Closing past retrospective years eliminates the risk the city could incur additional charges because a claim from an old injury has reopened or has turned out to be much more serious than previously expected. It also eliminates some accounting and record keeping for the city, since the city will no longer receive annual adjustments on older years.

(2) Disadvantages of closing past retrospective years

One disadvantage to closing past years is that there is a cost to the city, at least up until 16 years out. Another potential disadvantage is that closing an old year also eliminates the possibility of receiving money back in a future adjustment in situations where a claim from that year closes for less than the amount for which it was reserved. Additionally, if a city already hit the maximum premium on an old retrospective rated year, there’s no advantage to the city to close that year since there’s no longer any risk that costs for that year will increase.
3. **Effect on experience modification factor**

An experience modification factor is used under the retrospective rating option. The calculation, though, uses several years’ worth of data, unlike the shorter calculation used under the regular premium option. The retrospective rating adjustment has a more immediate reaction to a city’s loss experience, and it can offer larger reductions or additions to the city’s premium.

4. **Loss control**

For cities that choose the retrospective rating option, it is always in the best interest of the city to use LMCIT’s safety and loss control services. Reducing losses and creating a safer working environment not only decreases the city’s experience modification factor, but it also helps lower the overall rates for all cities. Under the retrospective rating option, this becomes even more important. There’s no additional charge for most loss control services.

5. **Deciding whether to choose a retrospective rating option**

Looking at the city’s losses from the past few years can help a city determine whether a retrospective plan makes sense. Key points to keep in mind:

- Workers’ compensation losses can develop adversely. Loss experience that initially looks good can become more expensive by the time those losses are finally closed in the future.
- In any one year, a city’s losses could turn out to be very different from—and possibly much greater than—the pattern for past years.
- A single large loss during the year could be enough to push the city to the maximum premium. Claims from prior years sometimes reopen or increase in cost, which means the city can owe additional amounts for prior years. When retaining risk through the retrospective option, a city should have a plan for where funds will come from to cover the city’s potential obligations according to the retrospective.
- Unlike the way the experience modification formula works, large losses are not discounted for purposes of the retrospective rating formula.
- Cities should consider whether they are comfortable trading off cost certainty for potential savings (i.e., the city is confident that employee injuries will be kept down enough to save money in the coming year).

Cities that use a retrospective should review their decision on an annual basis. This can be done when the city receives its annual adjustment invoice or refund, along with supporting loss and premium data.
C. Deductible option
LMCIT offers several deductible options.

1. Eligibility
All members are eligible to choose their own deductible amount. The deductible options give smaller cities (those with standard premiums less than $25,000 and who are not eligible for the retrospective rating option) a way to reduce their premium costs by retaining some risk. The deductible approach may also be an attractive alternative for larger cities who feel the retrospective rated premium option is too risky. A city can select only one premium option. If a city selects the retrospective rating option or the standard premium option, it cannot also select the deductible option.

2. How the deductible options work
Under a deductible option, the city pays a lower premium in return for agreeing to reimburse LMCIT for paid medical losses up to the deductible. As claims are submitted and medical costs are incurred, LMCIT will pay the medical vendors directly. The city is then billed for medical costs up to its per occurrence deductible. Each occurrence has its own deductible.

3. Effect on the experience modification factor
The experience modification factor would be the same regardless of the deductible option chosen.

4. Loss control
It is always in the city’s interest to use LMCIT’s safety and loss control services. Reducing losses saves the city money by lowering its experience modification factor; it creates a safer working environment for employees; and it helps lower overall rates for all member cities. Under a deductible option, the city stands to benefit even more by avoiding and controlling losses. There’s no additional charge for most loss control services.

5. Deciding whether to choose a deductible option
It is the city’s decision whether to select a deductible option, and it can be helpful to look at the city’s loss history to see how it would have done in past years under a deductible plan. Key points to keep in mind:
A city’s loss experience will vary from year to year. Any one year’s losses could turn out to be very different from—and perhaps much greater than—the pattern of past years.

There’s no theoretical “worst case maximum cost” under a deductible plan. Since the deductible applies to each occurrence, the maximum cost to the city depends on how many occurrences it has that year.

A deductible option can be a good way for the city to save money, but a deductible means the city is retaining risk. Cities that use a deductible option need to consider how they will fund that risk. The deductibles apply per occurrence, which means cities need to be prepared for the possibility that there could be many occurrences during any given year.

IV. Filing a workers’ compensation claim

Claims can be submitted to LMCIT using any of the following methods.

- Online
- Email
- Fax
- Mail
- Phone