

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

September 2022

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California

The 2022 session of the California State Legislature adjourned on Aug. 31, 2022. Following is an overview of the bills passed by the legislature and signed into law by Gov. Gavin Newsom prior to the Sept. 30, 2022 deadline.

Assembly Bill 1643

On Sept. 9, 2022, the governor approved [Assembly Bill 1643](#) that requires the Labor and Workforce Development Agency to establish an advisory committee to study the effects of heat on California's workers, businesses and the economy. This advisory committee will be composed of specified representatives from state agencies, labor and business entities, and academia. The bill authorizes the advisory committee to contract with academic institutions or other researchers to issue a report no later than Jan. 1, 2026.

Assembly Bill 1751

[Assembly Bill 1751](#) was approved by Gov. Newsom on Sept. 29, 2022. This measure extends the sunset date of the workers' compensation COVID-19 presumptions provided in Senate Bill 1159 to Jan. 1, 2024.

This bill also expands the provisions applicable to firefighters and police officers to include active firefighting members of a fire department at the State Department of State Hospitals, the State Department of Developmental Services, the Military Department and the Department of Veterans Affairs and to officers of a state hospital under the jurisdiction of the State Department of State Hospitals and the State Department of Developmental Services.

Assembly Bill 1751 clarifies that an "outbreak" exists if community college district chancellors, school presidents and school superintendents order a school to close due to risk of infection by COVID-19. The presumptions are set to expire at the end of the year if this bill does not pass

Employers opposed earlier versions of this bill that extended the COVID-19 presumptions through Jan. 1, 2025.

Senate Bill 216

On Sept. 30, 2022, [Senate Bill 216](#) was approved by the governor to require all concrete, heating, ventilation and air conditioning (HVAC) and tree service licensed contractors to obtain and maintain workers' compensation insurance even if that contractor has no employees until Jan. 1, 2026.

After July 1, 2023, if the Contractors State License Board registrar finds that a licensee has employees and lacks the proper valid certification, the bill requires the suspension of any active license for that contractor.

Starting in 2026, all contractors will be required to carry workers' compensation coverage, unless organized as a joint venture under Business and Professions Code Section 7029 and have no employees.

Senate Bill 1002

On Sept. 27, 2022, Gov. Newsom approved [Senate Bill 1002](#), which authorizes qualified licensed clinical social workers (LCSW) to assess, evaluate and treat the behavioral and mental health needs of injured workers within the workers' compensation system.

This bill:

- Allows licensed clinical social workers acting within the scope of their practice to join medical provider network (MPNs).
- Defines "licensed clinical social worker" as a person with a master's degree in clinical social work, or a degree deemed equivalent, and who either has two years of clinical experience in a recognized health setting or has met the standards of the Association of Social Work Boards.
- Clarifies that a LCSW is not authorized to determine disability within the workers' compensation system.

According to [an analysis of Senate Bill 1002 prepared for the Assembly Appropriations Committee](#), minor and absorbable costs to the Division of Workers' Compensation (DWC) are anticipated to draft regulations and oversee the availability of LCSWs to treat injured workers. The DWC expects the mandate to lead to disputes and potentially costly litigation over the new requirement for employers to ensure social workers are available for requested treatment.

Senate Bill 1127

[Senate Bill 1127](#) was approved by the governor on Sept. 29, 2022. This legislation:

- Requires that for presumptive injuries for first responders such as hernias, pneumonia or a heart condition, if liability for a claim is not rejected within 75 days, the injury is considered compensable. This presumption is rebuttable only by evidence discovered subsequent to the 75-day period. Currently the decision must be made within 90 days.
- Increases the maximum time specified that firefighters and peace officers can access wage replacement disability benefits for cancer work-related injuries on or after Jan. 1, 2023, from 104 weeks within five years to 240 weeks.
- Requires that when liability has been found to be unreasonably rejected for presumptive injuries, the amount of the penalty shall be five times the amount of the benefits unreasonably delayed due to the rejection of liability but in no case will the penalty exceed \$50,000. Reforms in 2004 reduced penalties for unreasonable denials to only 10% of the value of the benefits actually delayed or denied.
- The question of rejection and the reasonableness of the cause will be determined by the appeals board in accordance with the facts.
- Penalties issued will be reported to the audit unit within the Division of Workers' Compensation.

According to a [report issued by the California Workers' Compensation Institute \(CWCI\)](#) about reducing workers' compensation claim investigation timelines, this bill is unnecessary for accepted claims and unrealistic for litigated and denied claims.

District of Columbia

Bill 24-0842

[Bill 24-0842](#), the Parity in Workers' Compensation Recovery Temporary Amendment Act of 2022 was effective Sept. 21, 2022, following the end of a 30-day Congressional review period and is now D.C. Law 24-183. This bill extends the provisions Bill 24-0841, the Parity in Workers' Compensation Recovery Emergency Amendment Act of 2022 that became effective June 28, 2022 and was set to expire Sept. 26, 2022. Click [here](#) to view a summary of the emergency act in our June issue.

On a temporary basis, this bill amends the District of Columbia Workers' Compensation Act of 1979 as follows:

- Payment or award of compensation under the workers' compensation law of any other state does not bar a claim for compensation under the district's workers' compensation law for the same injury or death.
- Any such award under the district's workers' compensation law must be reduced by the amount of compensation received or awarded under the workers' compensation law of any other state.

This bill expires on May 4, 2023, unless extended.

New Jersey

Senate Bill 2253

On Sept. 22, 2022, Gov. Phil Murphy signed [Senate Bill 2253](#), which limits the fees that hospitals and persons licensed to practice a healthcare profession can charge for copies of medical and billing records requested by patients, patients' legally authorized representatives and authorized third parties.

This bill amends the definitions of "authorized third party" and "legally authorized representative." The patient's automobile insurer and workers' compensation carrier are a "legally authorized representative" if authorized to access the patient's treatment or billing records by contract or law. Workers' compensation access is limited only to that portion of the treatment or billing record relevant to the specific work-related incident at issue in the workers' compensation claim.

The allowable fees for a legally authorized representative under the new law are:

1. The fee for reproduction of patient treatment and billing records regardless of whether such record is stored electronically on microfilm or microfiche or on paper is no more than \$1 per page or \$50 for the entire record, whichever is less. Previously the fee for reproducing medical and billing records stored on microfilm or microfiche was \$1.50 per image and the cap was \$200.
2. No charge for copies of billing records requested by the patient or patient's legally authorized representative.
3. A fee for the reproduction of X-rays or any other material that cannot be routinely copied or duplicated on a commercial photocopy machine shall be no more than \$15 per printed image or \$30 per CD or DVD, plus an administrative fee of \$10.
4. A search fee of no more than \$20 per request, instead of \$10 provided that no search fee is charged to a patient who is requesting their own record.
5. A fee for certification of a copy of a medical record remains no more than \$10 per certification.
6. Delivery fees are at cost plus sales tax, if applicable.

This bill took effect Sept. 22, 2022 and is expected to result in some cost savings.

New York

Bulletin clarifying Section 32 Waiver Agreement/Release of Liability

On Sept. 30, 2022, the New York Workers' Compensation Board issued a [bulletin](#) to clarify and expand on the [Board's Oct. 8, 2021 bulletin regarding Section 32 Waiver Agreements](#). Click [here](#) to review a summary of the previous bulletin included in our September 2021 issue.

The bulletin expounds on:

- Release of related claims, which are outside of the Board's jurisdiction when those other claims arise out of the same nucleus of operative facts as the claim for workers' compensation benefits that is being settled.
- Release of unrelated claims that do not arise out of the same nucleus of operative facts as the workers' compensation claims.
- Agreements to resign and/or to never reapply for employment with the employer.

The Board cautions that even if the terms of a Section 32 Waiver Agreement are consistent with the requirements outlined, the Board may nonetheless find the terms to be unfair, unconscionable, improper as a matter of law or the result of an intentional misrepresentation of material fact, resulting in disapproval.

Accordingly, it continues to be important to work with defense counsel to ensure that a proposed section 32 waiver agreement to be submitted to the Board is consistent with the requirements provided

Wisconsin

Emergency rule adopted to revise part time wage calculation for workers' compensation

On Sept. 22, 2022, Gov. Tony Evers approved an [emergency rule](#) adopted by the Wisconsin Department of Workforce Development regarding the calculation of the weekly wage for part-time employees for workers' compensation benefits. This emergency rule was effective Oct. 15, 2022 and implements a provision of [Assembly Bill 911](#).

Assembly Bill 911 removed a provision in state law regarding employees who are members of a regularly scheduled class of part-time employees. It is replaced with a provision that applies to injuries occurring on or after April 10, 2022, and allows earnings to be based on full-time work if the employee provides required evidence. However, an employer may rebut the employee's evidence by providing evidence that the employee chose to work less than full time. Click [here](#) to review a summary of that legislation in our April 2022 issue.

The requirements in this emergency rule will remain in effect for 150 days or until March 13, 2023. The Department is in the process of promulgating permanent rules.

Legislation to Watch

H.R. 2499 – Federal Firefighters Fairness Act

In [remarks by President Biden at the Summit on Fire Prevention and Control](#), he called on Congress to send to his desk the [Federal Firefighters Fairness Act, H.R. 2499](#).

If enacted, this legislation provides that chronic obstructive pulmonary disease (COPD), mesothelioma and specified other cancers of those employed in fire protection activities for at least five years are presumed to be proximately caused by employment for purposes of a disability or death claim under the federal workers' compensation program. This presumption also applies to federal employees employed in fire protection activities for at least five years who experience a sudden cardiac event or stroke within 24 hours of performing a fire protection activity. If enacted, this bill requires the Department of Labor to conduct a review to determine whether breast cancer, gynecological cancer and rhabdomyolysis should be included under the presumption.

The House of Representatives passed this measure 288-131 on May 11, 2022. The bill is currently before the Senate Committee on Homeland Security and Governmental Affairs.

The current session of the United States Congress ends Jan. 3, 2023, but is likely to be reintroduced during the next congressional session if not passed.

The Information contained within this document is intended to provide summary level information on proposed or enacted laws related to workers' compensation. It is not intended to provide guidance on the application of these legal requirements or as an update to your Company's workers' compensation policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to Company Policy.

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