

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

May 2021

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Alaska

House Bill 76

On May 1, 2021, Gov. Mike Dunleavy signed [House Bill 76](#) into law. This bill extends to **Dec. 31, 2021** the declaration of a public health disaster emergency issued by the governor retroactive to Feb. 15, 2021, the date it expired. Additionally in Section 11, the conclusive presumption of compensability for COVID-19 was extended retroactive to its November 15, 2020 expiration date for employees employed as a firefighter, emergency medical technician, paramedic, peace officer or healthcare provider who had contact with a member of the public outside of the employee's home within 14 days before receiving the diagnosis.

House Bill 76 in Section 8 also extends the provisions related to telehealth to **Dec. 31, 2021**.

Under the authority granted in HB 76, the governor signed a [proclamation on April 30, 2021 ending the COVID-19 Disaster Declaration](#).

Colorado

The 2021 Colorado legislative session adjourned on June 8, 2021. Following is an overview of a workers' compensation bill that has been signed into law and the status of a closely watched bill.

House Bill 21-1207

On May 17, 2021, Governor Jared Polis signed [House Bill 21-1207](#) into law. This bill defines "overpayments" of workers' compensation benefits as money received by a claimant that:

- Is a result of fraud;
- Is the result of an error due only to miscalculation, omission or clerical error asserted in a new admission of liability;
- Is paid in error or excess of an admission order that exists at the time that the benefits are paid to a claimant; or
- Duplicate benefits that result from offsets that reduce disability or death benefits paid to a claimant.

By limiting the definition of "overpayment," employees will be allowed to keep other additional payments. However, this bill clarifies that this limit does not prevent an insurance carrier from receiving a credit against permanent disability benefits for temporary disability benefits paid beyond the date of maximum medical improvement (MMI) or an administrative law judge from determining overpayments and requiring repayment of overpayments.

The bill takes effect 90 days following adjournment or Sept. 6, 2021

Senate Bill 21-197

[Senate Bill 21-197](#) failed this session due to the efforts by the business community and insurers. The House Committee on Business Affairs and Labor postponed further action on this bill indefinitely on May 27, 2021. If passed, this bill would have changed the manner in which an injured worker in Colorado selects a physician following a workers' compensation injury.

It's anticipated that the choice of physician issue bill will be reintroduced in a future session. We will keep you posted.

Connecticut

House Bill 5596

On May 10, 2021, Gov. Ned Lamont signed [House Bill 5596](#), allowing the relaxed telehealth rules originally established by [Executive Order No. 7G](#) to remain in place through at least June 30, 2023. The extended services include:

- Allows expanded types of providers and licensed professionals to provide telehealth services, such as dentists, behavioral analysts, music therapists, art therapists, physician assistants, physical therapist assistants and occupational therapy assistants.
- Permits the use of telehealth services by audio-only without requiring video for certain telehealth providers.
- Permits licensed providers in other states to provide telehealth services to Connecticut residents as long as they have the minimum professional liability insurance or other indemnity against liability for professional malpractice in an amount that is equal to or greater than that required for similarly licensed, certified or registered Connecticut healthcare providers.

This bill became effective immediately upon signing.

Senate Bill 907

On May 26, 2021, the governor signed [Senate Bill 907](#), which makes technical changes to the Workers' Compensation Act.

Among the most significant change is the elimination of obsolete provisions regarding:

- The transfer of certain cases to the Second Injury Fund, which has not been allowed since 1995.
- A medical panel of occupational lung disease physicians that has not met since the 1980s.
- The destruction of old workers' compensation agreements filed in Superior Court, which has been obsolete since the creation of the Compensation Review Division in 1980 and the subsequent Compensation Review Board.

Other changes include:

- Retitles the workers' compensation commissions as "administrative law judges."
- Reduces the frequency with which the advisory board must meet from twice to once each quarter.
- Eliminates a requirement for the commission's statistical division to be administered by a full-time, salaried director appointed by the Workers' Compensation Commission's chairperson.
- Eliminates a requirement that the audio records of formal hearings be provided to parties on cassette.
- Removes a provision that currently places the Workers' Compensation Commission with the Department of Labor for administrative purposes.

This bill becomes effective on Oct. 1, 2021

Nebraska

Following are two workers' compensation bills approved by Gov. Pete Ricketts on May 21, 2021.

Legislative Bill 256

[Legislative Bill 256](#) changes a provision relating to lump-sum settlement approval and the filing of releases.

Under current law, when an employer and an injured employee or their dependents agree that an amount due should be paid in a lump-sum payment, the settlement must be submitted for approval to the Nebraska Workers' Compensation Court if the employee is eligible or will soon become eligible for Medicare. This bill removes the need to submit a settlement for approval of lump-sum payments if future healthcare services are specifically excluded from the settlement.

Legislative Bill 407

[Legislative Bill 407](#) amends the Workers' Compensation Act to add certain high-population county correctional officers among those employees for whom job-related mental injuries and mental illness unaccompanied by physical injury are compensable injuries.

This bill defines "high-population county" as a county with more than 300,000 inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Census Bureau.

Both of the above bills become effective three months following legislative adjournment.

Oregon

House Bill 2039

On May 12, 2021, Gov. Kate Brown signed [House Bill 2039](#), which makes the following amendments related to workers' compensation:

- Allows records to be stored outside of Oregon as long as the records are made available at the in-state place of business for examination by the Department of Consumer and Business Services, claimants and claimant attorneys.
- Repeals redundant penalty statutes specific to recordkeeping by self-insured employers.
- Provides that a person that awards a contract to another person is not responsible for providing workers' compensation insurance coverage for individuals who perform labor under contract if the other person:
 - Has a construction contractor license issued by the Construction Contractors Board, and performing the work of the contract requires a construction contract license; or
 - Has a landscape contracting business license issued by the State Landscape Contractors Board, and performing the work of the contract requires a landscaping contracting business license.

This bill becomes effective Jan. 1, 2022.

House Bill 2040

On May 21, 2021, Gov. Kate Brown signed [House Bill 2040](#) into law. This bill authorizes the director of the Department of Consumer and Business Services to specify through rule what claims data must be reported and the methods for reporting claims, denials of claims, and closure of claims related to workers' compensation cases. The bill also specifies that an insurer or a self-insured employer must report a claim for a non-disabling injury to the director in the manner the director prescribes by rule.

The Department of Consumer and Business Services is embarking on a modernization program that will allow computer-to-computer communication, which will eliminate the use of paper forms and data entry currently performed by department employees.

Although amendments become operative July 1, 2023, the director is allowed to adopt rules and take actions prior to the operative date. This bill becomes effective on the 91st day after the legislative session adjourns.

Oregon

House Bill 2915

[House Bill 2915](#), signed into law June 1, 2021, requires that cities (including Portland) that provide police and firefighter disability and retirement system by ordinance or charge to presume that heart and lung diseases are compensable occupational diseases that are the result of a firefighter's employment of five or more years.

The bill also adopts the same conditions, time limitations and claims acceptance criteria on these claims as already exists for firefighters in political divisions already subject to the presumption.

This legislation became effective upon passage and applies to claims made after the effective date.

Washington

On May 11, 2021, Gov. Jay Inslee signed the following two bills that grant presumptive workers' compensation protections to healthcare and frontline workers during a public health emergency, such as the COVID-19 pandemic.

Senate Bill 5115

[Senate Bill 5115](#), known as the Health Emergency Labor Standards Act (HELSEA), adds for "frontline employees" a rebuttable presumption during a public health emergency that any infectious or contagious diseases transmitted by respiratory droplets or aerosol or contact with contaminated surfaces and subject of a public emergency are compensable occupational diseases.

The presumption may be rebutted by a preponderance of the evidence that:

- Exposure to the disease occurred from other employment or non-employment activities; or
- The employee was working from the employee's home or was on leave for a period of quarantine consistent with recommended guidance from state and federal health officials immediately prior to the employee's injury, occupational disease or period of incapacity that resulted from exposure to the disease.

Costs of the payments under the occupational disease presumption do not affect the experience rating of the employers insured by the state fund. When calculating assessments due to L&I, self-insured employers and self-insurance hospital groups may deduct the cost of payments made for the occupational disease presumption from the total of all claim costs reported.

Additionally, during a public health emergency, if an employer receives a notice of potential exposure to the infectious or contagious disease that is the subject of the public health emergency, the employer must provide written notice of potential exposure to employees, and when applicable, to their union and employers of subcontractors who were on the premises at the same worksite.

Senate Bill 5190

[Senate Bill 5190](#) adds for "healthcare worker" a rebuttable presumption during a public health emergency that any infectious or contagious diseases that are the subject of a public health emergency are occupational diseases arising out of employment. The presumption applies to healthcare employees of any healthcare facility or other organization that provides emergency or medical services who has or likely has had direct contact with any person who has been exposed to or tested positive for any infectious or contagious diseases that are the subject of the public health emergency.

In order for a claim to be allowed, the healthcare employee must provide verification to the Department of Labor and Industries or the self-insurer that the employee is in quarantine or has contracted the disease after exposure to the infectious or contagious disease, as well as meet other requirements.

This presumption of occupational disease may be rebutted by clear and convincing evidence that:

- The exposure to the disease occurred from other employment or nonemployment activities;
- The employee was working from their home or other location not under the employer's control; or
- The employee was on leave for the period of quarantine outlined for the disease before the employee's contraction of the disease or period of incapacity resulting from exposure to the disease.

If leave or similar benefits are paid to the worker as part of a federal or state program for these employees during the public health emergency, total temporary disability benefits are not payable for the same period of time covered by this federal or state program.

For more details about these two new laws and their impact on workers' compensation benefits, check out the [frequently asked questions](#) prepared by the Department of Labor & Industries. Further guidance and information about the laws will be released soon. If you have questions about these new laws related to workers' compensation, email HELSA@Lni.wa.gov.

House Bill 1416

On May 3, 2021, [House Bill 1416](#) was signed into law. This legislation relates to enhancements to the collection of past-due child support obligations from those who are due to receive insurance claims payments.

Each insurer is required to exchange information with the Division of Child Support within 10 days after opening a tort liability claim, bodily injury or wrongful death claim, or workers' compensation claim. To determine whether a claimant owes a debt being enforced by the Division of Child Support, all insurance companies doing business in Washington that issue qualifying payments to claimants must provide minimum identifying information about the claimant to:

- An insurance claim data collection organization;
- The Federal Office of Child Support Enforcement or the Child Support Lien Network; or
- The Division of Child Support in a manner satisfactory to the department.

If the Division of Child Support notifies an insurer that a claimant owes debt for the support of one or more children or to a person receiving services from the Division of Child Support, the insurer must upon the receipt of a notice issued identifying the amount of debt:

- Withhold from payment on the claim the amount specified in the notice.
- Remit the amount withheld from payment within 20 days.

The exchange of information required in this bill must comply with privacy protections under applicable state and federal laws and regulations, including the Federal Health Insurance Portability and Accountability Act. Any information obtained pursuant to the provisions of this bill must be used only for the purposes of carrying out those provisions.

House Bill 1416 also provides for civil and criminal liability immunity, applicability and various definitions. The bill becomes effective on Jan. 1, 2022.

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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