

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*March 2020*

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# Alaska

## *Senate Bill 241*

On April 9, 2020, Alaska Governor Dunleavy signed into law [Senate Bill 241](#) that in part creates a **conclusive presumption** that specified employees who contract COVID-19 have contracted an occupational disease arising out of and in the course of employment if, during the public health emergency declared by the governor on March 11, 2020.

This presumption applies to:

- Emergency medical technicians
- Firefighters, including members of a volunteer fire department registered with the state fire marshal
- Health care providers
- Paramedics
- Police officers

This presumption is triggered for these specified workers if exposed to COVID-19 in the course of employment and a COVID-19 diagnosis is received by a physician, a presumptive positive COVID-19 test result or a laboratory-confirmed COVID-19 diagnosis.

This measure additionally includes provisions relating to telehealth, elections, state tax deadlines, as well as legal issues such as evictions, wills and repossessions.

The Alaska Workers' Compensation Division released a [bulletin](#) announcing this bill on April 10, 2020.

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# Idaho

## *Senate Bill 1321*

[Senate Bill 1321](#) was signed into law by Idaho Governor Brad Little on March 19, 2020 and becomes effective July 1, 2020. It was enacted to clarify the intent of the legislature with respect to the "exclusive remedy" in workers' compensation. The Idaho Supreme Court December 20, 2019, decision in [Gomez vs. Crookham](#) noted that the legislature did not define the term "willful or unprovoked physical aggression," which is the exceptions to "exclusive remedy." The state high court in its opinion invited the legislature to clarify the language of the statute.

This bill amends the exclusive remedy provision to require that "physical aggression" must include clear and convincing evidence the employer, its officers, agents, servants or employees either specifically intended to harm the employee or engaged in conduct knowing that injury or death to the employee was substantially likely to occur.

# Indiana

The Indiana General Assembly 2020 session adjourned on March 14, 2020. During the session there were two bills passed impacting workers' compensation.

## *Senate Bill 269*

Indiana Governor Eric Holcomb signed [Senate Bill 269](#) into law on March 21, 2020, which makes several changes to the Workers' Compensation Act of Indiana as follows:

- Requires that an employer or the employer's insurance carrier must file with the Workers' Compensation Board a report of payment of compensation no later than 14 days from the date that the first installment of compensation is due. Currently a compensation agreement is due within 15 days from the date that the first installment of compensation is due.
- Adds that the presentation to the employee or to the employee's dependent a check, draft or electronic payment for the proper amount from the employer or the employer's insurance carrier, drawn upon a bank in which money is on deposit to pay on demand is sufficient tender of compensation.
- Requires that the employer must provide written notice to the injured worker on a form approved by the board, of intent to terminate temporary total disability (TTD) benefits once begun. Currently written notice of the intent to terminate TTD for instances not listed in the statute.
- Provides that an electronic notice of any termination of benefits must be filed with the board.
- Indicates that for workers' compensation and occupational diseases, compensation for injuries occurring on or after July 1, 1991, compensation amounts determined for visual impairments will now be:
  1. Based on the Functional Vision Score (FVS), which assesses the visual acuity and visual field to evaluate any reduction in the ability to perform vision-related activities of daily living (ADL); and
  2. Except in cases of permanent and complete loss of vision by enucleation, be paid as a whole person rating.
- Removes from the compensation schedule for workers' compensation and occupational diseases compensation, for injuries occurring on or after July 1, 1991, that a reduction of vision to 1/10 of normal vision with glasses is 35 degrees of permanent impairment.
- Provides that the board may dispose of all papers for files when compensation has been awarded either by agreement or upon hearing two years after the termination of the compensation period for files related to workers' compensation and workers occupational diseases compensation. Currently the law states one year.
- Requires that all records of insurance coverage related to workers' compensation or occupational disease must be maintained for 35 years, instead of 45 years as currently required.

This measure becomes effective July 1, 2020.

## *Senate Bill 258*

[Senate Bill 258](#) was signed into law on March 18, 2020. This bill requires in part that the board of firefighting personnel standards and education to establish best practices to improve safety and health outcomes for firefighters. Additionally, it is provided that the workers' compensation rating bureau of Indiana may recommend a premium rate discount towards workers' compensation insurance to political subdivisions and volunteer fire departments that implement best practices.

# Minnesota

## *House File 4537*

On April 7, 2020, Minnesota Governor Tim Walz signed [House Bill 4537](#) into law, which creates a rebuttable presumption that for certain specified employees who contract COVID-19 have an occupational disease arising out of and in the course of employment.

This presumption applies to:

- Licensed peace officers
- Firefighters
- Paramedics
- Nurses or health care workers
- Correctional officers or security counselors employed by the state or a political subdivision at a corrections, detention or secure treatment facility
- Emergency medical technician
- A health care provider
- Nurse or assistive employee employed in a health care, home care or longer-term care setting with direct COVID-19 patient care or ancillary work in COVID-19 patient units
- Workers required to provide childcare for first responders and health care workers under Executive Orders 20-02 and 20-19

The contraction of COVID-19 by any of the above employees must be confirmed by a positive laboratory test or, if a laboratory test was not available for the employee, as diagnosed and documented by the employee's treating medical provider based on the employee's symptoms.

The presumption is only rebuttable if the employer or insurer shows the employment was not a direct cause of the disease. This bill is effective for employees who contract COVID-19 on or after April 8, 2020 and sunsets on May 1, 2021.

Prior to April 8, 2020, individuals who by nature of their position provide emergency medical care, or an employee who was employed as a licensed police officer; firefighter; paramedic; state correctional officer; emergency medical technician; or licensed nurse providing emergency medical care; and who contracts an infectious or communicable disease are presumed to have an occupational disease due to the nature of employment.

A summary of the law and FAQs have been posted on the Department of Labor and Industry's [updates related to COVID-19 webpage](#).

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# Ohio

## *House Bill 197*

On March 27, 2020, Ohio Governor Mike DeWine signed [House Bill 197](#). Although the primary intent of this bill is to clarify Ohio's tax code, it also provides emergency relief to Ohioans during the COVID-19 pandemic.

Specific to workers' compensation, Section 22 (A)(1)(c) of the bill will toll the statute of limitations for any applicable administrative action or proceeding as provided under the Revised Code or the Administrative Code that are set to expire between March 9, 2020 and July 30, 2020. This provision is retroactive to March 9, 2020.

This change will impact several key events in the workers' compensation claim process. For example, in Ohio the statute of limitations for an injured worker filing a claim is typically one year from the date of injury. With the enactment of House Bill 197, if an injury occurred in the timeframe of March 9, 2019 through July 30, 2019, a claimant's deadline to file a claim application is extended to at least July 30, 2020. This also applies to the refiling of a dismissed claim or filing additional allowance motions.

It should be noted that on March 27, 2020, the Supreme Court of Ohio also issued an order tolling all deadlines established by the Ohio Rules of Court, with limited exceptions.

Although statutory deadlines are affected by HB 197, at this time the [Ohio Industrial Commission](#) continues to conduct limited telephonic hearings on the issues of allowance of a claim, additional allowance motions, requests for temporary total disability, termination of temporary total disability, requests for wage loss compensation and permanent total disability until further notice.

# Utah

## *House Bill 11*

Governor Gary Herbert signed [House Bill 11](#) into law on March 24, 2020 and becomes effective July 1, 2020. This bill in relation to workers' compensation claims reduces the blood or breath alcohol concentration threshold from .08 to .05 or greater at which:

- An employer's permitting, encouraging or having actual knowledge of an employee's intoxication from alcohol may affect compensation provided under the Utah Workers' Compensation or Occupational Disease Acts;
- It is presumed that the major contributing cause of an employee's injury is the employee's intoxication from alcohol; and
- The termination of an employee from reemployment for the employee's use of alcohol may affect the employee's disability compensation for a disability claim.

Although the Utah State Legislature adjourned on March 12, 2020, it has been announced that a virtual special session is being convened on April 16, 2020, to discuss COVID-19 and related issues.

# Wyoming

## *Senate File 117*

[Senate File 117](#) was enacted March 26, 2020, without the signature of the governor and specifies when mental injury is considered a compensable injury. This measure becomes effective July 1, 2020.

The bill provides that for a mental injury to be included as an injury it must:

- Be caused by a compensable physical injury and occur subsequent or simultaneously with the physical injury and established by clear and convincing evidence, which includes a diagnosis by a licensed psychiatrist, licensed clinical psychologist or psychiatric mental health nurse practitioner meeting criteria established by the most recent edition of the DSM of mental disorders published by the American Psychiatric Association; or
- Be experienced by a first responder and established by clear and convincing evidence, which includes a diagnosis by a licensed psychiatrist, licensed clinical psychologist or psychiatric mental health nurse practitioner meeting criteria established by the most recent edition of the DSM of mental disorders published by the American Psychiatric Association.

For first responders, the mental injury is not considered compensable if directly attributable to disciplinary action, work evaluation, job transfer, layoff, demotion, termination or similar action taken by an employer.

In no event are benefits for a compensable mental injury payable for more than 36 months after the physical injury has healed, or for first responders, beyond the diagnosis of a compensable injury.

A first responder is defined in this bill as a peace officer or an employee who is employed or volunteers as a firefighter, search and rescue personnel or ambulance personnel.

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# Wyoming

## *House Bill 138*

On March 26, 2020 [House Bill 137](#) was signed into law by Governor Mark Gordon. This bill provides workers' compensation coverage for duly elected or appointed members of the state legislature commencing when the member's term begins if elected, or upon being sworn into office if appointed, until the seat is vacated or the term ends.

Coverage is extended to members of the legislature while engaged in an activity or travelling to or from an activity in the member's official capacity as a member of the legislature.

This legislation is not effective until January 2, 2023.

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# Legislation to watch

## *California*

### **Senate Bill 893**

[This bill](#), if passed, will create a rebuttable presumption that infectious diseases and musculoskeletal injuries developed or manifest in a hospital employee who provides direct care in an acute care hospital arose out of and in the course of employment. “Infectious disease” is defined in the bill as Methicillin-resistant *Staphylococcus aureus* (MRSA), blood borne infectious diseases, tuberculosis and meningitis. Senate Bill 893 would also extend those presumptions after the termination of employment for a period of three calendar months for each full year of employment, not to exceed 120 months, beginning with the last date actually worked in the specified capacity.

This legislation is not the first attempt in California to expand statutory presumptions to include employees in the private sector. Senate Bill 567 introduced in 2019, Assembly Bill 375 introduced in 2011 and Assembly Bill 2616 introduced in 2014 would have created a presumption of coverage for nurses and other hospital workers who work directly with patients and contract MRSA. Assembly Bill 2616 eventually passed but was vetoed by Governor Brown in 2014.

## *Louisiana*

[House Bill 793](#), as introduced, would attach a rebuttable presumption of compensability to a claim 90 days following the date of accident. Currently neither the furnishing of medical services nor payments by the employer or the insurance carrier constitutes an admission of liability for compensation.

[Senate Bill 475](#) was introduced March 31, 2020, and if enacted provides that every essential worker who is disabled because of the of the contraction of COVID-19, or the dependent of an essential worker whose death is caused by COVID-19, is entitled to workers’ compensation benefits under the act.

Under the proposed law, all claims for disability arising from COVID-19 are barred unless filed within one year of the date that the disease manifested itself, or the essential worker is disabled from working as a result of the disease. All claims for deaths are barred unless the dependent or dependents file a claim within one year of the date of death or within one year of the date the claimant has reasonable grounds to believe the death resulted from COVID-19.

This bill would require employers to post information in a conspicuous place about the time limitation for claims to be filed for COVID-19 and would extend the statute of limitations by an additional six months for employers who fail to post the notice.

An essential worker is defined in this bill as a person working in public safety, government, emergency response, health care or private business as designated and deemed necessary or critical for response to the COVID-19 pandemic by their employer or by virtue of their official commission.

## *Massachusetts*

[House Docket 4949](#) as proposed would provide workers' compensation to emergency and medical personnel on the frontlines of the COVID-19 pandemic.

Section 7H of the bill states:

"In any claim for compensation where the employee has been diagnosed with COVID-19, it shall be prima facie evidence that:

- the employee was performing his or her regular duties at the time of contracting COVID-19;
- the claim comes within the provisions of this chapter; and
- sufficient notice of the injury has been given. This section shall apply to persons employed as emergency medical technicians, emergency room and urgent care medical personnel and emergency room and urgent care non-medical staff."

This bill is currently pending further action by the Committee on Labor and Workforce Development.

Sedgwick is closely monitoring the progression of this legislation and will keep you updated.

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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