

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

February 2023

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Idaho

House Bill 18

On Feb. 23, 2023, Governor Brad Little signed [House Bill 18](#) which goes into effect on July 1, 2023. This bill repeals the July 1, 2023, sunset clause included in the 2009-enacted [Senate Bill 1028](#) that made Post Traumatic Stress Injury (PTSI) suffered by specified first responders a compensable injury or occupational disease when certain conditions are met. Click [here](#) to review a summary of that bill published February 2019.

In the [fiscal note](#) for House Bill 18, it is reported that the anticipated increase to workers' compensation premiums did not occur during the three years in which these injuries have been eligible for coverage.

Removal of the sunset clause makes this statute permanent.

Wyoming

Senate File 4

Governor Mark Gordon signed [Senate File 4](#) on Feb. 15, 2023. This legislation amends the extrahazardous industries codes to conform with changes to the most recent edition of the [North American Industry Classification System \(NAICS\)](#) manual for 2022.

All employers doing business in Wyoming must register with the Wyoming Department of Workforce Services. From this registration, it is then determined which NAICS code the employment falls under and whether workers' compensation coverage is required or optional.

Legislation to watch in Colorado

The first regular session of the 74th Colorado General Assembly convened on Jan. 9, 2023. Following is an overview of bills impacting workers' compensation claims that have been introduced to date.

House Bill 23-1076

If passed as introduced, [House Bill 23-1076](#) will make changes concerning workers' compensation benefits administered by the Division of Workers' Compensation (DOWC) and the Division of Independent Medical Examiner (DIME) in the Department of Labor and Employment (CDLE).

Specifically, this bill would:

- Increase the duration of workers' compensation medical impairment benefits for mental impairment from 12 to 36 weeks.
- Remove the option for employees to petition the DOWC for a replacement of prosthetics, eyeglasses, hearing aids and similar products on grounds that the employee has undergone an anatomical change since the previous device was furnished or for other good cause.
- Allow an employee to request an expedited hearing to resolve three specific issues within 45 days after temporary total disability (TTD) benefits are terminated due to a release to return to regular employment. The employee will have the burden of proving by a preponderance of the evidence an inability to return to regular employment as a proximate result of the claimed injury or disease.
- Specify that reasonable and necessary medical benefits by an authorized treating physician after maximum medical improvement (MMI) are not limited to any specific medical treatment.
- Clarify that the copy of all medical records provided to the independent medical examiner (IME) be relevant to the injury. Currently, the law requires provision of records pertaining to the injury.
- Provide rulemaking authority to the DOWC to determine the amount and allocation of costs to be paid by the parties for an independent medical examination (IME).
- Expand the authority of the DIME prehearing administrative law judges to resolve disputes regarding indigency status of a requesting party, the allocation and format of independent medical examiner costs, content, volume or relevance of the medical records packet submitted to the IME.
- Increase the contingency fee percentage for attorney fees presumed to be unreasonable from 20% to 25%.

This bill is currently pending before the House Appropriations Committee.

House Bill 23-1196

If signed into law, [House Bill 23-1196](#) will amend the Colorado Youth Employment Opportunity Act of 1971 to provide that aggrieved parties, including parents of children protected by the act, may pursue remedies in tort or under workers' compensation.

This bill is currently pending a second reading before the House.

Legislation to watch in Florida

The 2023 Florida legislative session convened at noon on March 7, 2023, and is scheduled to remain in session until May 5, 2023. Following is an overview of bills impacting workers' compensation that we are closely monitoring during this session.

Senate Bill 1344/House Bill 1299

If passed as introduced on March 7, 2023, [Senate Bill 1344](#)/[House Bill 1299](#) would:

- Increase the maximum amounts of certain witness fees to any health care provider giving a deposition from \$200 to \$300.
- Increase the maximum reimbursement for a licensed physician from 110% to 200% of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of Jan. 1, 2003, whichever is greater.
- Increase the maximum reimbursement for surgical procedures from 140% to 200% of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of Jan. 1, 2003, whichever is greater.

These bills have been referred to multiple Senate and House Committees for review.

Senate Bill 1158/House Bill 487

[Senate Bill 1158](#)/[House Bill 487](#), if enacted as introduced, would make changes to programs of the Department of Financial Services (DFS), which includes the Division of Workers' Compensation. Following are changes included in the bill that directly impacts workers' compensation:

- Relieves the three-member panel of the responsibility for determining the statewide schedules of maximum reimbursement allowances for medical treatment, care and attendance provided by physicians, work-hardening programs, pain programs and durable medical equipment. The three-member panel would remain responsible for setting the maximum fee schedules for hospitals and ambulatory surgical centers (ASC).
- Provides that the hospital or ambulatory surgical center must be reimbursed either:
 - The agreed upon contract price.
 - If there is no agreed upon contract price, the lesser of the provider's billed charges or the maximum reimbursement allowance in the appropriate schedule.

Current law does not include the "whichever is less" language.

- Adds that effective Jan. 1, 2025, the department must notify carriers and self-insurers of the physician and non-hospital services schedule of maximum reimbursement allowances by July 1 of each year. This schedule will not be subject to approval by the three-member panel and does not include reimbursement for prescription medication.
- Removes reference to the most recent average maximum allowable rate of increase for hospitals determined by the obsolete Health Care Board under Chapter 408 as a criterion used in determining the maximum amount chargeable by hospitals and ASCs.
- Deletes reference to the practice parameters and protocols adopted by the United States Agency for Healthcare Research and Quality in effect on Jan. 1, 2003, as these practice parameters and protocols are no longer in existence.
- Ratifies Rule 69L-7.020 of the Florida Administrative Code filed Oct. 22, 2021, which adopts the 2020 Edition of the Florida Health Care Provider Reimbursement Manual. In Florida, legislative ratification is required for a rule to become effective if the Statement of Regulatory Costs (SERC) for the rule exceeds \$1 million dollars within five years of adoption. National Council on Compensation Insurance (NCCI) estimated on Nov. 16, 2020 that the implementation of this manual will increase workers' compensation system costs by 0.2 percent or \$8 million dollars.

The impact on system costs would likely be incorporated into the next annual rate filing for OIR approval, to become effective Jan. 1, 2024.

Senate Bill 352/House Bill 337

[Senate Bill 352/House Bill 337](#), as introduced, would add 911 public safety telecommunicators and crime scene investigators to the list of first responders eligible for workers' compensation benefits for post-traumatic stress disorder (PTSD), if one of the following qualifying events occurred:

- Directly witnessing a death, including a death due to suicide, that involved grievous bodily harm of a nature that shocks the conscience.
- Directly witnessing the death of a minor.
- Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.
- Directly witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department.
- Verbally aiding a person seeking public safety assistance in the physical treatment of a minor who subsequently dies before or upon arrival at a hospital emergency department.

- Verbally aiding a person seeking public safety assistance in the physical treatment of a person who subsequently dies during a state of emergency declared by the Governor and the person's death occurs because first responders cannot be dispatched.
- Verbally aiding a person seeking public safety assistance in the physical treatment of an injury, including by attempted suicide, to a person who subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing, 35 manslaughter, self-defense, misadventure, and negligence.
- Seeing for oneself a deceased minor.
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.
- Seeing for oneself a decedent who is in an advanced stage of decomposition.

This legislation requires that the 911 public safety telecommunicator or crime scene investigator must report the injury within 90 days of the qualifying event or the manifestation of PTSD, whichever is later. Further PTSD must be demonstrated by clear and convincing medical evidence.

According to the House of Representatives Staff Analysis, this bill has an indeterminate, potentially significant, negative fiscal impact on local governments, but likely a small impact on state government.

[Senate Bill 436](#)/[House Bill 291](#) would only add 911 public safety telecommunicators as first responders eligible for PTSD benefit, and not crime scene investigators.

The information contained within this document is intended to provide summary level information on proposed or enacted laws related to family and medical leave. It is not intended to provide guidance on the application of these legal requirements or as an update to your company's attendance and/or leave policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to company policy.

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