

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*December 2022*

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# New Mexico

## *Changes to workers' compensation administrative rules*

The New Mexico Workers' Compensation Administration (WCA) completed the 2022 rule making process [and final versions of the rules](#) are now available.

These changes to the following parts of the New Mexico Workers' Compensation Administration procedural rules became effective Jan. 1, 2023:

- General Provisions
- Claims Resolution
- Enforcement and Administrative Investigations
- Judicial Selection
- Payments for Health Care Services
- Uninsured Employers' Fund
- Controlled Insurance Plans

Click [here](#) for a summary of changes made to the rule prepared by the WCA.

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## New York

### *Senate Bill 9149A/Assembly 10349*

On Dec. 30, 2022, Governor Kathy Hochul signed [Senate Bill 9149/Assembly Bill 10349](#) into law. This bill titled “Justice for Injured Workers Act” provides that any findings made in a workers’ compensation proceeding will not have a collateral estoppel impact on any other related proceeding outside the board, except for the determination of an employer-employee relationship.

This legislation addresses a 2013 New York Court of Appeals ruling in [Auqui v. Seven Thirty-One Ltd Partnership](#) which held that the collateral estoppel doctrine should not be applied, unless there is identity of issue between the prior administrative proceeding and the subsequent litigation.

The bill took effect immediately.

# Oregon

## *Permanent Rules on Disability Rating Standards adopted*

On April 21, 2022, the Oregon Supreme Court in [Johnson v. SAIF](#) determined that an injured worker is entitled to the full value of the total impairment, including the portion of the impairment attributed to certain denied conditions, when a worker's compensable injury is a material cause of the impairment.

Effective Dec. 4, 2022, the Oregon Workers' Compensation Division (WCD) adopted permanent rules to replace temporary rules adopted June 2022 to maintain alignment of the Disability Rating Standards with the Oregon Supreme Court's decision in Johnson v. SAIF.

Specifically, the rules address the issues raised by the decision by amending the rule to:

- Provide that apportionment for a denied condition is no longer allowed unless the denied condition is a combined condition denied for a major contributing cause ("ceases" denial), or a combined condition denied in its entirety.
- Provide that a worker's residual functional capacity cannot be adjusted due to a denied condition unless the denied condition is a denial of combined condition for either major contributing cause or in its entirety.
- Allow for apportionment of irreversible findings of impairment or surgical value(s) if the loss is caused in part by a superimposed or pre-existing condition that is part of a combined condition denial, or a combined condition denied in its entirety.
- Eliminate reductions in hearing loss awards due to age-related hearing loss.

A copy of the Division's amended rules can be found [here](#).

The court's decision and related rule amendments are anticipated to increase costs to insurers and self-insured employers, with a corresponding increase in benefits to workers injured on the job.

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# Texas

## *Update to COVID-19 claims handling for public safety employees*

On Dec. 22, 2022, the Texas Department of Insurance, Division of Workers' Compensation, issued a [memo](#) to announce the lifting of the suspension of Texas Government Code Section 607.002(1) and (2), effective Dec. 21, 2022.

The suspension was imposed [March 30, 2020](#) by Gov. Greg Abbott in response to COVID-19. The suspension allowed public safety employees who contracted COVID-19 during the course of their employment to receive reimbursement for reasonable medical expenses related to their treatment for COVID-19, although an employee's eligibility to workers' compensation benefits were not impacted.

With the lifting of the suspension, a public safety employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

1. the disease is not an "ordinary disease of life," as that term is used in the context of a workers' compensation claim;
2. the exposure to the disease occurs during the course of the employment; and
3. the employee requires preventative medical treatment because of exposure to the disease.

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## Legislation to watch

The Virginia General Assembly convened the 2023 regular legislative session on Jan. 11, 2023. Following are the workers' compensation bills that have been introduced that we are closely monitoring:

### *Virginia Senate Bill 904*

Virginia [Senate Bill 904](#), pre-filed Jan. 5, 2023, provides that an anxiety disorder or depressive disorder, as both are defined in the bill, incurred by a law-enforcement officer, public safety telecommunicator or firefighter is compensable under the Virginia Workers' Compensation Act on the same basis as post-traumatic stress disorder (PTSD). The bill adds correctional officers to the definition of law-enforcement officers for whom the workers' compensation presumption for PTSD, anxiety disorder or depressive disorder applies. The bill provides that a mental health professional must diagnose the covered individual as suffering from anxiety disorder or depressive disorder as a result of a qualifying event, defined in the bill as an incident or exposure occurring in the line of duty on or after July 1, 2023, and includes other conditions for compensability. The bill requires each employer of law-enforcement officers and public safety telecommunicators to provide resilience and self-care technique training beginning July 1, 2023. The bill also adds mental health professionals to certain provisions that currently apply to physicians and surgeons.

This bill was reported from the Senate Commerce and Labor Committee on Jan. 16, 2023, and then referred to the Senate Finance and Appropriations Committee.

### *Virginia Senate Bill 1037*

Virginia [Senate Bill 1037](#), introduced Jan. 8, 2023, would require employers to provide notice to covered workers of the employee's right to dispute the denial of a claim through the Virginia Workers' Compensation Commission. The bill specifies the language of such a notice and provides that an employer that fails to provide such notice may be subject to the civil penalty provisions of the Virginia Workers' Compensation Act.

This bill was reported from the Senate Commerce and Labor Committee on Jan. 16, 2023.

### *Virginia House Bill 1763*

On Jan. 10, 2023, [House Bill 1763](#) was pre-filed and referred to the House Committee on Commerce and Energy. This bill would add that "injuries or diseases from conditions resulting from repetitive and sustained physical stressors, including repetitive and sustained motions, exertions, posture stresses, contact stresses, vibrations or noises" are included in the definition of "occupational disease." The bill also removes the provision that hearing loss and carpal tunnel syndrome are not occupational disease but are ordinary diseases of life.

Virginia is the only state that does not allow for repetitive motion claims. In 2020, the General Assembly passed House Bill 617 directing the Virginia Workers' Compensation Commission to examine the implications of covering repetitive motion injuries. Click [here](#) to view a copy of the report completed Nov. 24, 2020.

## *Virginia House Bill 1966*

On Jan. 10, 2023, [House Bill 1966](#) was pre-filed and referred to the House Committee on Commerce and Energy.

If passed, this bill provides that after the first occurrence of a failure to pay compensation within two weeks after it becomes due and upon the occurrence of any subsequent or successive failure to pay the compensation, there must be added to such unpaid compensation, in addition to the 20 percent penalty imposed, a penalty amount as follows:

1. To the first subsequent failure to pay compensation, a penalty of \$100.
2. To the second subsequent failure to pay compensation, a penalty of \$200.
3. To the third subsequent failure to pay compensation, a penalty of \$300.
4. To the fourth subsequent failure to pay compensation, a penalty of \$400.
5. To the fifth and any other subsequent failures to pay compensation thereafter, a penalty of \$500.

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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