

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*January 2023*

## TABLE OF CONTENTS

Kentucky.....	3
Senate Bill 10.....	3
North Dakota .....	4
House Bill 1279 .....	4
Legislation to watch.....	5
Illinois .....	5
House Bill 1065.....	5
House Bill 1543.....	5
House Bill 1544.....	6
House Bill 1545.....	6
House Bill 1546.....	7
House Bill 1547.....	7
House Bill 1548.....	7
House Bill 1549.....	7
House Bill 1550.....	7
Senate Bill 0154.....	7
Senate Bill 1305.....	8
Washington .....	8
Senate Bill 5524/House Bill 1521 .....	8
Senate Bill 5217.....	8

# Kentucky

## *Senate Bill 10*

[Senate Bill 10](#) became effective upon the approval of Gov. Andy Beshear on Jan. 6, 2023. This emergency legislation, in part, delays the registration period with the Department of Workers' Compensation for professional employer organizations (PEOs) to July 15, 2024.

House Bill 506 enacted in 2022 gave PEOs a deadline of Jan. 10, 2023. Click [here](#) to view a summary of House Bill 506 published April 2022.

There are reportedly 60 PEO firms in Kentucky that serve more than 1,500 employers and cover approximately 30,000 worksite employees.

# North Dakota

## *House Bill 1279*

On Feb. 6, 2023, Governor Doug Bergum signed [House Bill 1279](#) into law. This bill expands workers' compensation coverage for full-time firefighters and law enforcement officers to:

- Modify the five years of continuous service requirement for certain conditions presumed to have been suffered in the line of duty to include full-time paid service outside the state.
- Add coverage for heart attacks, strokes, vascular rupture or other similar cardiac events that occur within 48 hours after a full-time firefighter or law enforcement officer engages in a strenuous physical activity related to their job, regardless of their length of service if a successfully passed medical examination failed to reveal any evidence of a cardiovascular condition.

This bill applies retroactively to claims for workers' compensation benefits filed after Oct. 1, 2021, regardless of the date of injury. The retroactive clause was included to cover the case of a West Fargo police officer and two firefighters who were previously denied coverage due to the length of service requirement.

# Legislation to watch

## *Illinois*

On Jan. 11, 2023, the Illinois legislature convened its 103rd General Assembly. Following is an overview of bills impacting workers' compensation claims that have been introduced to date. These bills are currently awaiting committee assignment, unless otherwise indicated.

### **House Bill 1065**

[House Bill 1065](#) was pre-filed Dec. 29, 2022, and is currently assigned to the Labor and Commerce Committee. This bill would provide that the rebuttable presumption established for the specified conditions or impairments of health of an employee employed as a firefighter, emergency medical technician, emergency medical technician-intermediate, advanced emergency medical technician or paramedic is intended to shift the burden of proof to the employing entity.

To rebut the presumption, the bill provides that any party would have to:

- Establish by clear and convincing evidence an independent and non-work-related cause for the condition or disability; and
- Prove that no aspect of the employment contributed to the condition.

If passed, the rebuttable presumption relating to hearing loss could no longer be overcome with evidence allegedly showing that the injured employee did not meet specified exposure thresholds.

### **House Bill 1543**

[House Bill 1543](#), if passed as introduced, would amend the Workers' Compensation Act to:

- Clarify the burden of proof to show an accidental injury arose out of and in the course of employment is by a preponderance of credible evidence, rather than a preponderance of evidence.
- Provide that accidental injuries will be considered to be arising out of and in the course of employment only if the accident significantly caused or contributed to both the resulting condition and disability.
- Provide that accidental injuries will not be considered to be arising out of and in the course of employment if:
  - The hazard or risk was not incidental to employment and was a hazard or risk to which the general public are also exposed;

- The injury did not occur at a time and place and under circumstances reasonably required by the employment; or
- The medical condition or disability for which compensation is sought resulted from a personal risk.
- Provide that an injury due to repetitive or cumulative trauma is compensable only if the repetitive or cumulative trauma significantly caused or contributed to both the resulting medical condition and disability.
- Provide that “ordinary, gradual deterioration or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living will not be compensable.”
- Provide that an injury, its occupational cause and any resulting manifestation of disability must be established to a reasonable degree of medical certainty, based on objective relevant medical evidence.

#### **House Bill 1544**

[House Bill 1544](#), filed Jan. 30, 2023, would amend the Workers’ Compensation Act in relation to “custom compound drugs.” If passed, this legislation would:

- Define “custom compound drugs.”
- Limit prescription of custom compound drugs to a one-time, seven-day supply unless a prescription for more than seven days is pre-authorized.
- Establish the charges allowed for custom compound drugs.
- Set forth the condition for approval of payment for custom compound medication for longer than a one-time, seven-day supply.

This bill has been referred to the Rule Committee.

#### **House Bill 1545**

On Jan. 30, 2023, [House Bill 1545](#) was filed. If passed as introduced, this bill will codify when injuries sustained by travelling employees arise out of and in the course of employment, as follows:

- Accidental injuries sustained while traveling to or from work do not arise out of and in the course of employment, except under specified circumstances.
- An accidental injury arises out of and in the course of employment if it is sustained by an employee who is required by the employer to travel away from the employer’s premises to perform his or her job, and the conduct in which the employee is engaged at the time of the accidental injury was:
  - An act the employer instructed the employee to perform;

- An act the employee had a common law or statutory duty to perform while performing duties for his or her employer; or
- An act the employee might be reasonably expected to perform incident to his or her assigned duties.

#### **House Bill 1546**

[House Bill 1546](#) would require the Illinois Workers' Compensation Commission (IWCC), in consultation with the Workers' Compensation Medical Fee Advisory Board, to adopt by rule an evidence-based drug formulary by Sept. 1, 2023. The IWCC would also adopt rules necessary for the administration of the formulary.

#### **House Bill 1547**

[House Bill 1547](#) would make changes to the compensation periods for accidental injuries resulting in the loss of or the permanent and complete loss of use of the thumb, fingers or toes; the amputation of an arm, foot or leg; the enucleation of an eye; and other injuries. The changes would roll back the compensation to the amounts in effect for injuries occurring before Feb. 1, 2006.

#### **House Bill 1548**

If passed as introduced, [House Bill 1548](#) would make the existing medical fee schedules inoperative active Aug.31, 2024, and require the IWCC to establish new medical fee schedules in accordance with specified criteria effective Sept. 1, 2024. The bill would also require annual updates to the fee schedule beginning Sept. 1, 2025, that would be equal to exactly half the increase in the Consumer Price Index.

#### **House Bill 1549**

[House Bill 1549](#) declares that for purposes of loss of use awards, injuries to the shoulder must be considered injuries to part of the arm and injuries to the hip must be considered injuries to part of the leg.

#### **House Bill 1550**

[House Bill 1550](#) would change how compensation for any permanency award or settlement is computed to be paid to an employee who, before the accident for which the employee is claiming compensation, sustained an injury resulting in a permanency award or settlement.

#### **Senate Bill 0154**

[Senate Bill 0154](#) was introduced Jan. 25, 2023. If passed, this bill would waive the three-day waiting period and provide that compensation for temporary total incapacity will commence on the day after the accident for an employee who is a volunteer, paid-on-call or part-time firefighter, an emergency medical technician or a paramedic.

### **Senate Bill 1305**

[Senate Bill 1305](#) was filed on Feb. 3, 2023, and assigned to the Judiciary Committee on Feb. 14, 2023. If enacted, this legislation provides that an accidental injury resulting from repetitive or cumulative trauma and occurring within six months after the employee begins employment will not be considered by a workers' compensation insurer in setting the premium rate for the employer.

Additionally, if an award is made for benefits in connection with repetitive or cumulative injury resulting from employment with more than one employer, the employer liable for the award is entitled to contributions or reimbursement from each of the employee's prior employers.

## *Washington*

### **Senate Bill 5524/House Bill 1521**

[Senate Bill 5524](#), as introduced on Jan. 23, 2023, would have imposed a duty of good faith and fair dealing on all self-insured employers and third-party administrators. A substitute bill passed by the Labor and Commerce Committee on Feb. 16, 2023, narrowed the legislation to only self-insured "municipal employers and their third-party administrators."

Despite this change, the question remains whether this bill is necessary given that:

- The Department of Labor & Industries (L&I) already has authority to regulate self-insured employers and their third-party administrators, including the authority to impose penalties if workers' compensation benefits are unreasonably delayed or denied.
- Self-insurers cannot reject or close claims without L&I approval.
- Enactment of House Bill 2409 in 2020 and rules adopted to implement it, in part, requires the licensing of third-party claims administrators with a dispute resolution process that can result in license revocation, certification of claims handlers and increased penalties.

[House Bill 1521](#) with identical language is advancing in the House.

Both bills are currently pending before their Rules Committee.

### **Senate Bill 5217**

[Senate Bill 5217](#), if passed, would reinstate the Department of Labor & Industries (L&I) authority to adopt ergonomic regulations or otherwise regulate working practices. Initiative 841, passed by Washington voters Nov. 4, 2003, repealed ergonomic regulations in existence at the time and prohibited L&I from regulating work practices to prevent musculoskeletal disorders, until and to the extent required by the federal government.



Click [here](#) to review a report prepared by L&I and [SHARP \(Safety & Health Assessment & Research for Prevention\)](#) regarding work-related musculoskeletal disorder claim rates by Washington Risk Classification and the North American Industry Classification System 2016-2020 to accompany discussions of this bill.

The bill provides that standards may only be adopted for industries or risk classes where compensable workers' compensation claims involved musculoskeletal injuries and disorders at a rate greater than two times the overall state workers' compensation compensable claim rate for musculoskeletal injuries and disorders over a recent five-year period.

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.

© 2023 Sedgwick

800.625.6588  
*Sedgwick@sedgwick.com*  
**SEDGWICK.COM**