

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*December 2021*

**TABLE OF CONTENTS**

Colorado ..... 3

    Adopts permanent rule changes effective January 1, 2022 ..... 3

Michigan ..... 5

    House Bill 4171..... 5

    House Bill 4172..... 5

    House Bill 4247..... 6

    Amendments to General Rule adopted ..... 6

New York..... 8

    Senate Bill 946B..... 8

Legislation to Watch ..... 10

    Wisconsin ..... 10

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# Colorado

## *Division of Workers' Compensation adopts new rules*

On Dec. 10, 2021, adopted amendments to Rules 3, 5 and 18 of the Workers' Compensation Rules of Procedure were published in the Colorado Register.

The adopted amendments to [Rule 3](#) updates regulations concerning the reporting of insurance policies to the Colorado Division of Workers' Compensation by insurers and allows for the imposition of penalties against insurers who fail to do so.

The adopted amendments to [Rule 5-6](#) reflect the new requirements for timely payments imposed by House Bill 21-1050.

The amendments to [Rule 18](#) complete the required annual review of the Colorado workers' compensation medical fee schedule and provide guidance for conservator/GAL fees required by House Bill 21-10-50. Noteworthy changes include:

- Allows an independent medical examination (IME) to refer the psychological component of the IME to a psychologist and incorporate that evaluation into the IME report.
- Indicates that the IME physician be level I or level II accredited in some circumstances.
- Requires that all IME reports include an attestation that the billed charges comply with § 8-42-101(3)(a)(I) and Rule 16-8, as well as document the total time spent.
- Auto-shipping of monthly durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) is disallowed and an affirmative request by the injured worker or prescribing provider is required.
- For inventorial items, "invoice" means a statement given to the provider by its supplier showing the provider's cost of obtaining the item.
- Prohibits providers from charging a fee for a records search and retrieval for the production of the injured worker's medical record.
- Requires that for interpreters performing interpreting services at a medical treatment appointment be listed as certified on the [Certification Commission for Healthcare Interpreters](#) (CCHI) or the [National Board of Certification for Medical Interpreters](#) (National Board) website directory. Certifiable languages include:
  - Arabic
  - Cantonese
  - Korean

- Mandarin
  - Russian
  - Spanish
  - Vietnamese
- For all other languages, or in the event a certified interpreter is unavailable, the interpreter shall be qualified. “Qualified” means the interpreter has documentation showing completion of at least 40 hours of healthcare interpreter training.
  - Adds that when reasonably necessary for employees who are legally incapacitated as a result of a work-related injury or occupational disease, guardian ad litem, conservators and attorneys/paralegals are allowed reasonable fees and costs as agreed upon by the parties:
    - The parties may submit an invoice or other agreed upon form for these services. If the parties are unable to agree on a reasonable fee, the parties may bring the matter before the director for resolution.

These rule changes were effective Jan. 1, 2022. Click [here](#) to review a summary of this bill included in our June 2021 update.

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# Michigan

Gov. Gretchen Whitmer recently signed the following three bills supporting Michigan first responders.

## *House Bill 4171*

On Nov. 30, 2021, Gov. Whitmer signed [House Bill 4171](#). This bill expands eligibility for benefits under the First Responder Presumed Coverage Fund to forest fire officers and fire/crash rescue officers who are:

- In active service.
- Exposed to hazards incidental to fire suppression, rescue or emergency medical services in the performance of his or her work-related duties.
- Has 60 months or more in active service at the time cancer of the respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicular, prostate or lymphatic cancer manifests itself.

The First Responder Presumed Coverage Fund was created in 2014 to pay claims made in connection with a presumption of work-relatedness of various cancers contracted by firefighters serving on a full-time basis with a fire department or public fire authority. The specified cancers are presumed to arise out of and in the course of employment only with respect to a claim against the fund and in the absence of non-work-related causation or specific incidents that establish a cause independent of the employment.

Under the law, an application for benefits from the state's First Responder Presumed Coverage Fund suspends the employee's workers' compensation claim against his or her employer.

## *House Bill 4172*

On Dec. 16, 2021, Gov. Whitmer approved [House Bill 4172](#). This bill amends the Workers' Disability Compensation Act to extend eligibility for benefits under the First Responder Presumed Coverage Fund to part-time, paid on-call or volunteer firefighters whether actively serving or retired at the time of their cancer diagnosis, in addition to the full-time firefighters already eligible for coverage. This legislation also adds breast, ovarian and non-HPV cervical cancer to the list of cancers covered by the fund.

To be eligible, part-time, paid on-call or volunteer firefighters — in addition to the full-time firefighter already eligible for coverage — must have or had 60 months or more active service in the department or public fire authority at the time the cancer manifests itself, and have been exposed to hazards incidental to fire suppression, rescue or emergency medical services in the performance of his or her work-related duties with the department or authority.

According to the [Bill Analysis](#) prepared by the Senate Fiscal Committee, this bill increases the population's eligible to file claims from the fund from 7,600 to approximately 30,000 current employees and will likely result in increased costs to support additional claims and administrative costs.

Under House Bill 4172, the First Responder Presumed Coverage Fund is named the Christopher R. Slezak First Responder Presumed Coverage Fund after Christopher Slezak, a former Sterling Heights firefighter and advocate to protect firefighters, who died last year following a battle with cancer.

## *House Bill 4247*

On Dec. 16, 2021, Gov. Whitmer also signed [House Bill 4247](#). This legislation modifies the calculation of grants under the Survivor Tuition Grant (STG), a program that provides tuition assistance to children whose parents were killed in the line of duty in Michigan. Previously, to be eligible for this grant financial need had to be demonstrated. House Bill 4247 eliminates that requirement and makes reimbursement automatic regardless of financial need, allowing more surviving children to access the funds.

## *Amendments to General Rules adopted*

On Dec. 10, 2021, the Michigan Workers' Disability Compensation Agency (Agency) amended the [General Rules governing disability compensation](#). The general purpose of these rules is to provide procedures and guidance for addressing workers' compensation claims, contested hearings and workers' compensation insurance policies, to carry out the provisions of the Workers' Disability Act. Following is a summary of key changes:

- Updates entire rule set for accuracy and procedural consistency.
- Updates language regarding the service of papers, vocational rehabilitation services, as well as general technical updates throughout.
- Revises rules to make necessary updates to facilitate the acceptance of electronic claims, insurance filings and other reporting data, including use of secure and valid electronic signatures.
- Requires increased use of forms to advise injured workers of their rights under the Workers' Disability Compensation Act.
  - It has been confirmed with the Agency that providing the injured worker or their eligible dependent a copy of [A Summary of Your Rights and Responsibilities under the Workers' Compensation](#) satisfies this requirement.
- Adds rule to specify computation of weeks and days for period of disability and of compensation.
- Provides requirements for filing an application requesting a stoppage of compensation.
- Addresses issues raised by case law regarding overpayment reimbursement and clarifies the magistrate authority in deciding claims for overpayment of benefits.

- Clarifies when medical bills become due and payable and when penalties for non-payment of undisputed medical bills or travel allowance must be paid by the carrier.
- Adds that reasonable transportation services may include those provided by an entity licensed under the limousine, taxicab and transportation network company.
- Updates rules regulating attorney fees to reflect statutory changes in rate calculation and in response to case law.
- Allows any hearing to be scheduled by the director in person, by telephone, video conference or other electronic means.
- Provides that small claims matters submitted under the Act must be heard by a magistrate and allows the parties to stipulate that any decision rendered is applicable only to the issues submitted and not controlling in any other proceeding between the parties other than for enforcement of the determinations in the decision.
- Adds new rules to this rule set to establish procedures for submitting and processing requests for review of redemption orders.
- Updates rules regarding vocational rehabilitation to facilitate/provide for job search as required by statutory amendments and case law.
- Provides procedures to implement requests for a determination by the director whether one or more individuals' performing service for the entity in the state are in covered employment.
- Adds new rules to this rule set to establish procedures for submitting and processing requests for review of redemption orders.

The amendments to the General Rule became effective immediately upon adoption of the rules on Dec. 10, 2021, except as otherwise indicated.

# New York

## *Senate Bill 946B*

On Dec. 31, 2021, Gov. Kathy Hochul signed [Senate Bill 946B](#) into law. This legislation requires the New York Workers' Compensation Board (NYWCB) to approve applications for claimant attorney fees in an amount:

- Commensurate with the services rendered and the amount of compensation awarded.
- Having due regard for the financial state of the claimant.
- In accordance with each applicable provision of a new schedule.

According to the schedule, attorney fees must be awarded as follows:

- When an award is made directing the continuation of weekly compensation benefits for temporary total or partial disability, the attorney's fee will be one-third of one week's compensation.
- When an award is made that increases the amount of compensation awarded or paid for periods of temporary total or partial disability, the attorney's fee will be 15% of the increased compensation.
- When an award is made for schedule loss of use or permanent partial disability, the attorney's fee will be equivalent to 15% of the compensation due in excess of the employer or carrier's previous payments.
- When an award is made for permanent total disability or permanent partial disability, the attorney's fee will be equivalent to 15% of the compensation due in excess of the employer or carrier's previous payments, plus a sum equivalent to 15 weeks of compensation at the rate fixed by the NYWCB.
- When an award is made for death benefits, the attorney's fee will be equivalent to 15% of the compensation due in excess of the employer or carrier's previous payments, plus a sum equivalent to 15 weeks of compensation at the rate fixed by the NYWCB.
- When an award is made pursuant to section 32 of the workers' compensation law, the attorney's fee will be 15% of any benefit to be paid by the employer or carrier under the agreement. However, if the attorney has previously been awarded a fee pursuant to this provision, any un-accrued balance of any attorney fees under the foregoing sections must be waived.

According to the governor's Approval Memorandum 164, this bill was signed based on an agreement secured with the legislature that:

- Extends the effective date to Jan. 1, 2023.
- Excludes future medical payments from the fee calculation in Section 32 agreements.
- Clarifies that written fee applications are required for fees over \$1,000.

Enactment of this legislation follows a Feb. 6, 2020 decision in the [Matter of Oshier v. New York State Dept. of Corr. & Community Supervision](#). In this case, a New York appellate court affirmed a board decision reducing a requested attorney fee of \$18,000, which represented 15% of the compensation awarded to \$8,000.

Acknowledging that the employee had received benefits totaling some \$117,000 and that the claimant had endorsed the attorney's request, the court noted that the board was vested with broad discretion in setting fees and state regulations specifically prohibited an award of counsel fees based upon the amount of the recovery.

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# Legislation to watch

## *Wisconsin*

The Wisconsin legislature convened on Jan. 18, 2022, and is scheduled to adjourn on May 18, 2022. During this session we are closely monitoring the following introduced workers' compensation bills:

- [Senate Bill 721/Assembly Bill 681](#) as introduced provides that for the purposes of workers' compensation an injury caused to an employee by a vaccine against the SARS-CoV-2 coronavirus that the employee was required by or coerced by his or her employer to receive is presumed to be caused by employment. This presumption would require a diagnosis and be rebuttable by specific evidence that the injury was caused outside of employment. A [public hearing](#) was held on Jan. 11, 2022.
- [Senate Bill 680/Assembly Bill 683](#), if passed, changes the liability standard for treatment of post-traumatic stress disorder (PTSD) under workers' compensation for emergency medical responders and emergency medical services practitioners to the same standard used for law enforcement officers and fire fighters. Additionally, this bill would restrict compensation for a mental injury that is not accompanied by a physical injury and that results in a diagnosis of PTSD to three times in his or her lifetime irrespective of a change of employer or employment in the same.
- [Senate Bill 681/Assembly Bill 778](#) are similar to Senate Bill 680/Assembly Bill 683, but adds the change to the liability standard for treatment of PTSD under workers' compensation to correctional officers, public safety answering point dispatchers, coroners, medical examiners, and medicolegal investigation staff members, in addition to eligible for emergency medical responders and emergency medical services practitioners compensation.

Sedgwick is also following the Agreed Upon Bill approved by the [Wisconsin Advisory Council \(WCAC\)](#) for 2022.

Click [here](#) to view the approved statutory changes. Among the agreed upon proposals include:

- An increase in permanent partial disability (PPD) benefit rates to \$415 per week in 2022 and \$430 per week in 2023 in recognition that the last increase occurred in 2017.
- A statutory change to address how the average weekly wage (AWW) is calculated for part-time employees.
- Adoption of proposals by the DWD.

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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