

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

April 2024

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Arizona

House Bill 2204

On April 10, 2024, Gov. Katie Hobbs signed House Bill 2204. This bill allows an insurance carrier with a program agreement with a membership organization which the insured employer is a member to reduce the amount of premiums paid by an employer by up to 5% if the organization is:

- Composed of persons in a similar or related line of commerce;
- Organized to promote and improve business conditions in that line of commerce;
- The insurance carrier has a program agreement with the membership organization of which the insured employer is a member.

This legislation will go into effect on Sept. 24, 2024, 90 days after the legislative session ends.

Colorado

House Bill 24-1139

Gov. Jared Polis signed [House Bill 24-1139](#) into law on April 4, 2024. This bill provides for the payment of workers' compensation death benefits for life to a surviving spouse of a deceased state employee regardless of remarriage if the employee worked in a job with a high-risk classification. A job with a high-risk classification includes specified positions in the:

- Colorado State Patrol
- Colorado Bureau of Investigation
- Colorado Division of Parks and Wildlife in the Department of Natural Resources
- Colorado Department of Transportation
- Colorado Department of Revenue
- State Institution of Education

According to the [fiscal note](#) prepared by the legislative council staff, extending benefits indefinitely for certain beneficiaries, regardless of remarriage, will increase costs paid by the state for workers' compensation claims. State agencies pay these costs through the workers' compensation pool managed by the Office of Risk Management, and appropriations will be adjusted through the annual budget process, if necessary, to cover any changes in claims costs.

The effective date of this bill is Aug. 7, 2024, which is the day following the expiration of the 90-day period if not petitioned.

Hawaii

House Concurrent Resolution 81/House Resolution 66

On April 22, 2024, the House of Representatives adopted [House Concurrent Resolution 81](#) and [House Resolution 66](#). These resolutions request that the director of labor and industrial relations amend the workers' compensation medical fee schedule to clarify that compensation for advanced practiced registered nurses is distinct from compensation for registered nurses and must be 100% of the fees for providers of service.

Advance practice registered nurses meet the definition of a "provider of service" and are required to:

- Earn a post-graduate degree, and
- Register with the Department of Commerce and Consumer Affairs.

Senate Concurrent Resolution 33/Senate Resolution 22

[Senate Concurrent Resolution 33](#) and [Senate Resolution 22](#) were adopted in its final form on April 23, 2024.

These resolutions request that the Dept. of Labor and Industrial Relations convene an "interagency enforcement task force" to combat the underground economy and the misclassification of employees as independent contractors in the state.

As used in the resolutions, "underground economy" refers to those individuals and businesses that utilize schemes to conceal or misrepresent their employee population to avoid one or more of the employer responsibilities related to wages, payroll taxes, workers' compensation and unemployment insurance, licensing, safety and other regulatory requirements.

Kansas

Senate Bill 430

On April 25, 2024, Gov. Laura Kelly signed [Senate Bill 430](#), a substantial compromise reform measure negotiated by labor and business interests and unanimously endorsed by the House and Senate. This bill:

- Increases the following lifetime maximum caps from July 1, 2024, until June 30, 2027:
 - Death from 300,000 to \$500,000
 - Permanent total disability from \$155,000 to \$400,000
 - Temporary Total Disability \$130,000 \$225,000
 - Permanent Partial Disability \$130,000 \$225,000
 - Temporary Partial Disability \$130,000 \$225,000
 - Functional Only \$75,000 \$100,000

Thereafter, these caps would increase annually by a five-year average of the percentage of change in the state average weekly wage.

- Increases the minimum weekly benefit payment amount from \$25 to \$50.
- Adds “sick, vacation or other paid time off” to the term “money” for purposes of the average weekly wage and excludes the first week of employment from the calculation of the employee’s average weekly wage if the employee worked less than the expected weekly schedule.
- Extends the deadline for an employee to notify an employer of an injury from 20 to 30 calendar days from the injury or 10 to 20 days if the employee is no longer employed, whichever is shorter.
- Requires that an employer provide reimbursement for “reasonable expenses” for overnight accommodations in cases in which the employer requires the employee to seek a medical opinion outside of their town or city of residence.
- Increases the per diem requirement from \$15 to \$30 to help defray the employee’s meal expenses, in addition to transportation costs.
- Increases the amount of medical charges an employer is liable to cover from \$500 to \$800 when an employee consults a healthcare provider for the purpose of examination, diagnosis or treatment without prior application or approval.

- Allows, upon agreement of the parties, for benefit payments to be made by electronic funds transfer or a payment card. However, if payment is made in this manner, notification of payment by either electronic funds transfer or payment card must be sent to the injured worker’s attorney each time a payment is made.
- Requires a judicial determination of dependency regarding compensation where death results from injury that would be paid to a dependent.
- Replaces the term “minor child” with “wholly dependent child” and require benefit payments to continue until the latest of the following dates:
 - The wholly dependent child, who is not enrolled in high school, becomes 18 years of age;
 - If enrolled in high school, May 30 of the wholly dependent child’s senior year in high school or until the child becomes 19 years of age, whichever comes first; or
 - The wholly dependent child’s 23 birthday, if such child is a student enrolled full-time in an accredited institution of higher education or vocational education.
- Requires a 50% reduction of any compensation benefit payable for permanent partial disability (PPD) or permanent total disability (PTD) that the employee is eligible to receive under the Workers’ Compensation Act if the employee receives retirement benefits under the federal Social Security Act, with exceptions.
- Amends eligibility requirements for an employee to receive permanent partial general disability compensation to employees who suffer an injury that, among other things, has a functional impairment caused solely by the injury that is equal to or exceeds 7.5% to the body as a whole.
- Requires injured workers to provide clear and convincing evidence of the need for future medical treatment to rebut a presumption that the employer’s liability for medical ends when a worker reaches maximum medical improvement.
- Streamlines the workers’ compensation process by:
 - Limiting the use of independent medical exams.
 - Requiring the timely exchange of medical records.
- Entitles members of the Kansas National Guard, who are eligible to receive workers’ compensation benefits under the current program, to receive their benefits under the general worker’s compensation benefits starting July 1, 2024.
- The average weekly wage of a member of the National Guard would be the member’s current military earnings, the amount of federal compensation received would be deducted from the amount otherwise

due from the State of Kansas, and before any claim is processed, the member must sign an authorization consenting the release of information about the federal compensation.

According to the [fiscal note for Senate Bill 430](#), the National Council on Compensation Insurance (NCCI) estimates an overall effect on the potential benefit increase on workers' compensation benefits costs of between 0.5% and 0.9%.

This bill becomes effective July 1, 2024.

Kentucky

House Bill 401

On April 4, 2024, Gov. Andy Beshear signed [House Bill 401](#). This legislation:

- Expands the definition of physician to include physicians and surgeons, psychologists, optometrists, dentists, podiatrists and osteopathic and chiropractic practitioners acting within the scope of their license or other credentials required by his or her specialty of practice in the United States jurisdiction in which he or she is authorized to practice.
- Adds that for purposes of workers' compensation proceedings in general and for giving testimony in a workers' compensation administrative hearing, the expanded definition of physician also includes any retired physician previously authorized to practice in the Commonwealth of Kentucky, who surrendered his or her license while in good standing with their respective licensing board and was not subject to an ongoing investigation for improper practices.
- Revises the method for calculating the average weekly wage (AWW) if at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease, the wages were determined by the day, hour or by the output of the employee, and the employee received unemployment benefits during the first, second, third or fourth period of 13 consecutive calendar weeks in the 52 weeks immediately preceding the injury. The unemployment benefits received must be added to the wages earned during the 13-week period and divided by 13.
- Provides that the AWW must be the result most favorable to the employee.

The provision of the bill becomes effective July 15, 2024, which is 90 days following the end of the session.

House Bill 829

The governor signed [House Bill 829](#) on April 17, 2024, which makes changes to certain provisions of Kentucky's medical marijuana law, including:

- Shortening the timeline for issuance of new medical cannabis licensing of medical marijuana businesses in the state from Jan. 1, 2025, to July 1, 2024.
- Provides that local governments have until Jan. 1, 2025, to pass local measures that may restrict or prohibit the operation of cannabis businesses in their jurisdictions.

While these businesses may take steps to become operational, dispensaries may not open to the public until Jan. 1, 2025.

[Click here](#) to review a summary of the provisions of Senate Bill 47, which last year legalized medical marijuana for Kentucky patients with qualifying medical conditions.

Maryland

House Bill 584/Senate Bill 476

Gov. Wes Moore approved [House Bill 584](#) on April 9, 2024. This bill adds thyroid, colon and ovarian cancers to the list of occupational diseases presumed, under certain circumstances, to have been suffered in the line of duty and compensable under workers' compensation law if employed as:

- Paid or volunteer firefighters;
- Paid or volunteer fire fighting instructors;
- Paid or volunteer rescue squad member;
- Paid or volunteer advanced life support unit member; or
- Sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality or the State.

According to the [fiscal summary prepared by the Maryland General Assembly Dept. of Legislative Services](#), local expenditures are likely to increase beginning as early as fiscal 2025 because counties and municipalities, many of which are self-insured, employ the majority of the public safety personnel who may be affected by the bill.

This legislation become effective Oct. 1, 2024.

House Bill 669/Senate Bill 843

[House Bill 669](#) was approved by the governor on April 25, 2024. This bill modifies the way occupational deafness and hearing loss must be determined and calculated for purposes of workers' compensation benefits by:

- Requiring hearing loss at a frequency of 4,000 hertz to be included in the calculation and average, in addition to the four existing frequency thresholds of 500, 1,000, 2,000 and 3,000. However, the employer is not liable for compensation for occupational hearing loss, unless the covered employee worked for the employer in employment that exposed the covered employee to harmful noise.
- Requiring, for the nonoccupational hearing loss offset, that the average decibel loss calculated for an individual subtract the lesser of one-half of a decibel for (1) each year of the covered employee's age over 50 or (2) for each year subsequent to the date of the covered employee's last injurious exposure to industrial noise.

This bill is effective Oct. 1, 2024.

Senate Bill 216

On April 9, 2024, Gov. Wes Moore approved [Senate Bill 216](#). This bill increases from \$10,000 to \$25,000 the cap on penalties for an employer's failure to secure required workers' compensation insurance or comply with an order of the State Workers' Compensation Commission regarding employer's failure to secure required workers' compensation insurance.

At the request of the governor, this legislation becomes effective July 1, 2024.

Nebraska

Legislative Bill 1017

Gov. Jim Pillen approved [Legislative Bill 1017](#) on April 18, 2024. This bill reverses the Nebraska Supreme Court 2023 decision in [Espinoza v. Job Source USA](#) which allowed employees with injuries to two or more parts of the **same** extremity in one accident, to qualify for permanent disability based on the employee's loss of earning capacity, rather than the schedule of benefits.

Drafted by attorneys for [Nebraskans for Workers' Compensation Equity and Fairness \(NWCEF\)](#), this legislation clarifies that:

- Only employees who have injured two or more parts of different extremities in one accident may qualify for permanent benefits based on their loss of earning capacity where the loss or loss of use results in at least a 30% loss of earning capacity.
- The loss or loss of use of multiple parts of the same arm, including the hand and fingers or multiple parts of the same leg — including the foot and toes — resulting from the same accident or illness, compensation does not qualify for special benefits based on loss of earning capacity.

This measure becomes effective July 18, 2024.

Tennessee

House Bill 2306

On April 9, 2024, Tennessee Gov. Bill Lee signed [House Bill 2306](#), the “Tennessee Self-Insurers Guaranty Association Act.” The act establishes a mechanism for the payment of self-insured workers’ compensation claims to avoid excessive delay in payment and financial loss to injured workers because of the insolvency of a self-insured employer. This measure:

- Creates a non-profit unincorporated legal entity to be known as the Tennessee self-insurers guaranty association.
- Requires all member self-insurers to become and remain members of the association and participate as required in the plan of operation as a condition of their authority to self-insure in the state, but excludes:
 - Self-insured groups organized under agreements to pool their workers’ compensation liabilities for the purpose of qualifying as self-insurers.
 - A governmental entity, or a department or division of a governmental entity, that has elected to self-insure, unless written notification is sent to the commissioner and the association, and the commissioner requesting to be a member of the association and consent in writing is provided.
- Provides that the functions of the association must be performed under a plan of operation established and approved by the commissioner of the Department of Commerce and Insurance (DCI) and exercise its powers through an established board of directors.
- Requires the commissioner to select the five members of the association board of directors.
- Requires the association to perform its functions under a plan of operation established and approved by the commissioner of the DCI and to exercise its powers through a board of directors.
- Duties of the association include:
 - Maintaining cash, readily marketable securities or other assets, or a line of credit, approved by the commissioner, sufficient to immediately continue the payment of the compensation obligations of an insolvent self-insurer pending assessment of the member self-insurers;
 - Providing for a risk-based security program in its plan of operation;
 - Holding individual collateral for member self-insurers who do not participate in full in the risk-based security program;
 - Paying legitimate claims of insolvent self-insurers.

- Requires the association no later than July 1, 2024, and annually thereafter to assess each of its members a pro-rata share of the funding necessary to cover the association's operation costs and the employer's actuarially determined workers' compensation liabilities.
- Requires the DCI to compile and maintain a list of self-insured employers and that list to be published on the department's website.

Senate Bill 2378

On April 29, 2024, the governor signed [Senate Bill 2378](#), which requires the comptroller of the treasury to conduct a study of all insurers, including insurance pools, that provide policies of workers compensation coverage to local governmental entities, including:

- A review of each insurer's solvency,
- A comparative rate study, and
- An analysis of the process to bid out, procure, or otherwise obtain such a policy.

The comptroller is to report the findings of this study to the speakers of the Senate and the House of Representatives no later than Jan. 1, 2025.

A governmental entity, or a department or division of a governmental entity, that has elected to self-insure pursuant to § 50-6-405(a)(2), unless the governmental entity, or department or division of the governmental entity, accepts this part by requesting to be a member of the association by written notification to the commissioner and the association, and the commissioner and the association consent in writing to such acceptance.

Virginia

House Bill 1418

Gov. Glenn Youngkin signed [House Bill 1418](#) on April 5, 2024. This bill exempts certain regulations of the Workers' Compensation Commission from requirements of the Administrative Process Act, provided that the commission provides an opportunity for public comment on the rules prior to adoption.

Senate Bill 241

[Senate Bill 241](#) was also signed on April 5, 2024. This legislation requires that when an employee's workers' compensation claim is denied, an employer or insurer must include in its letter denying benefits a notice that the employee has a right to dispute the claim denial through the Virginia Workers' Compensation Commission.

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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