

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*February 2024*

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# South Dakota

## *Senate Bill 88*

Gov. Kristi Noem signed [Senate Bill 88](#) on Feb. 15, 2024. This bill allows the South Dakota Department of Labor and Regulation Workers' Compensation Division of Labor and Management to provide information about eligibility for a program offered by a non-profit organization that offers a benefit specific to a work-related to:

- An injured employee.
- A surviving spouse.
- Other dependent of an injured employee.

This legislation specifies that the department may not provide the contact information of any of the above to a non-profit organization without the express written consent of the party.

[Kids' Chance](#) organizations have advocated for legislation that allows them to share information about Kids' Chance scholarships to injured employees and their families, and similar bills have been enacted in Montana and Nevada.

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# Tennessee

## *Senate Bill 1601/House Bill 1744*

On Feb. 21, 2024, Gov. Bill Lee signed [Senate Bill 1601](#), also known as [House Bill 1744](#). This bill extended the sunset of the Bureau of Workers' Compensation from June 30, 2024, through June 30, 2029, and became effective upon being signed into law.

This governmental entity may be continued, reestablished or restructured prior to termination.

# Legislation to Watch

## *Kansas Senate Bill 430*

[Senate Bill 430](#), if enacted, will bring substantial comprehensive reforms to the Kansas workers' compensation system for both employees and employers.

- Entitle 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 workers compensation benefits starting July 1, 2024.
- 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 that before any claim is processed, the member must sign an authorization consenting the release of information pertaining to the federal compensation.
- Require a judicial determination of dependency regarding compensation where death results from injury that would be paid to a dependent.
- Replace 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.
- Require 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.
- Add "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.
- Increase the following lifetime maximum caps:
  - 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
  - Increase the minimum weekly benefit payment amount from \$25 to \$50.
- Beginning on July 1, 2027, establish an adjustment formula that would increase the maximum benefit caps annually by a five-year average of the percentage change in the state average weekly wage.
  - Require an employer to 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.
  - Increase the per diem requirement from \$15 to \$30 to help defray the employee’s meal expenses, in addition to transportation cost.
  - Increase 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.
  - Allow, upon agreement of the parties, for benefit payments to be made by electronic funds transfer or a payment card. Should payment be made in this manner, the bill would require that notification of payment by either electronic funds transfer or payment card be made to the injured worker’s attorney each time a payment is made.
  - 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.

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%.

Like the last major Kansas workers’ compensation reform in 2011, this bill is reportedly the result of many months of negotiations and compromises between business and labor. Proponent testimony was provided before the Senate Committee on Commerce by:

- Kansas Department of Labor
- Representatives of Cooper Law Office
- The Kansas Chamber
- Kansas Self-Insurance Association

- Kansas Society for Human Resource Management (SHRM)
- Kansas AFL-CIO
- Kansas Trial Lawyers Association
- the National Federation of Independent Businesses

It was requested during hearings that the bill not be amended due to its negotiated nature. The bill passed the senate on Feb. 21, 2024, and was introduced in the house. The bill passed the House in an emergency final action on March 27, 2024, and is headed to the governor.

## *Federal — H.R. 7368: COMP Act, 118th Congress (2023-2024)*

On Feb. 15, 2024, the [COMP Act \(Coordination of Medicare Payments and Workers' Compensation Act, H.R. 7368\)](#) was reintroduced in the U.S. House of Representatives. This bipartisan legislation, if passed, addresses the application of Medicare secondary payer rules to certain workers' compensation settlement agreements and qualified Medicare set-aside provisions.

The [UWC \(Strategic Services on Unemployment and Workers' Compensation\)](#) and a coalition of workers' compensation stakeholders have announced support of this bill. This bipartisan legislation was previously introduced as:

- H.R. 4161 on Aug. 2, 2019
- S. 4734 on Sept. 24, 2020
- S. 653 on March 10, 2021

Upon introduction this bill was referred to the Committee on Ways and Means in addition to the Committee on Energy and Commerce. We are closely if this version of the bill will be able to garner enough votes to become law this year.

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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