

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

May 2020

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Illinois

House Bill 2455 — COVID-19 rebuttable presumption

On June 5, 2020, Governor J.B. Pritzker signed [House Bill 2455](#) into law. This measure provides that for specified first responders and front-line workers, there is a rebuttable presumption that an injury or occupational disease resulting from exposure to and contraction of COVID-19 arose out of and in the course of employment and is causally connected to the hazards or exposures of their employment. This presumption applies from March 9, 2020 through December 31, 2020.

The workers covered by this rebuttable presumption are:

- all individuals employed as police, fire personnel, emergency medical technicians or paramedics;
- all individuals employed and considered as first responders;
- all workers for health care providers, including nursing homes and rehabilitation facilities and home care workers;
- corrections officers; and
- any individuals employed by essential businesses and operations as defined in [Executive Order 2020-10 dated March 20, 2020](#), as long as they are required by their employment to encounter members of the general public or to work in employment locations of more than 15 employees.

An aspect of this bill that differs from the withdrawn Illinois Workers' Compensation (IWCC) rule is the guidance on evidence to rebut the presumption of compensability including:

- The employee was working solely in their home, except for home care workers, or was on leave for at least 14 days immediately prior to the employee's injury, occupational disease or period of incapacity;
- The employer was using or enforcing, to the fullest extent possible, industry-specific workplace sanitation, social distancing and health and safety practices based on guidance issued by the federal Centers for Disease Control and Prevention or Illinois Department of Public Health, or was using a combination of certain controls and equipment to reduce COVID-19 transmission for at least 14 consecutive days prior to the employee's injury, occupational disease or period of incapacity; or,
- The employee was exposed to COVID-19 by an alternate source.

This bill also provides that an employer is entitled to credit against liability for temporary total disability (TTD) due to an employee as a result of COVID-19 for any sick leave benefits or extended salary benefits paid to the employee by the employer under the Emergency Family Medical Leave Expansion Act, the Emergency Paid Sick Leave Act of the Families First Coronavirus Response Act and any other credit to which an employer is entitled under the Workers' Compensation Act.

An employee who contracts COVID-19 but fails to establish the rebuttable presumption is still allowed to file for workers' compensation benefits. According to a provision of this legislation, under no circumstance will any COVID-19 case increase or affect any employer's workers' compensation insurance rating or modification.

Details of the bill, the employer's responsibilities along with how we've prepared our team to support clients and handle new claims are included in this [FAQ document](#).

Maryland

Senate Bill 784 — hernia claims

On May 8, 2020, [Senate Bill 784](#) was enacted without the signature of Governor Larry Hogan. This measure increases the time limit — from 30 days to 45 days — within which an employee must report an accidental personal injury or strain that causes or exacerbates a preexisting hernia to ensure receipt of workers' compensation benefits for the hernia. The bill also allows an employee to file a workers' compensation claim for a hernia up to two years after the injury or strain occurred, unless the employer or its insurer has been prejudiced by the failure to do so.

According to a [Fiscal and Policy Note](#) prepared by the Maryland General Assembly Department of Legislative Services, this change is not anticipated to materially affect employer and insurer operations or finances for two primary reasons:

- Hernia-related claims are relatively rare in the state compared to other types of claims.
- The timing for an injured employee to report the injury for a hernia claim is generally not an issue when claims are denied.

This bill applies prospectively and may not be applied or interpreted to have any effect or application to any claim arising from events occurring before the October 1, 2020 effective date.

New York

Amendment to 12 NYCRR 324.2 — new medical treatment guidelines

On May 19, 2020, the New York Workers' Compensation Board (WCB) [announced](#) the adoption of the amendment of 12 NYCRR 324.2 that incorporates new medical treatment guidelines (MTG) for:

- Elbow injuries
- Foot and ankle injuries
- Hip and groin injuries
- Interstitial lung disease

The MTG are standards of medical treatment that serve several important functions within the workers' compensation system. The guidelines seek to do the following:

- set a single standard of medical care for injured workers;
- expedite quality care for injured workers;
- improve the medical outcomes for injured workers;
- speed return to work by injured workers;
- reduce disputes between payers and medical providers over treatment issues;
- increase timely payments to medical providers; and
- reduce overall system costs.

These new guidelines will be effective for care provided on or after January 1, 2021.

On June 10, 2020, the chair of the New York WCB issued a [notice of proposed rulemaking](#) to amend 12 NYCRR 324.2 to add two new MTGs for hand, wrist and forearm injuries and occupational/work-related asthma. The proposed hand, wrist and forearm injuries MTG contain treatment recommendations for carpal tunnel syndrome and will replace the current carpal tunnel syndrome MTG upon becoming effective. Comments on the proposal rule will be accepted for 60 days.

Oklahoma

The regular session of the Oklahoma legislative session adjourned effective May 29, 2020. Following is an overview of the workers' compensation bills enacted.

Senate Bill 1375

On May 18, 2020, Oklahoma Governor Kevin Stitt signed [Senate Bill 1375](#) into law. This bill adds chiropractic services to allowable medical treatment to be provided to employees with compensable injuries. It also updates statutory language.

The provisions of this legislation will become effective November 1, 2020.

House Joint Resolution 1028

The proposed new workers' compensation medical fee schedule submitted by the Oklahoma Workers' Compensation Commission (WCC) was approved by joint resolution of both houses of the legislation. On May 18, 2020, the governor also approved [House Joint Resolution 1028](#).

This is the first update of Oklahoma's fee schedule since 2012. The commission worked with consulting firm, FAIR Health, to review and update the fee schedule, which sets the maximum allowable rates for health care providers, including hospitals and ambulatory surgical centers rendering health care services to injured workers.

Of interest, the 2020 Medical Fee Schedule Pharmaceutical Services Ground Rules indicate that the definitions of nonprescription drugs or over-the-counter medications, prescription or prescription drugs do not include medical marijuana for purposes of reimbursement under this medical fee schedule.

The 2020 Medical Fee Schedule is available on the WCC's website [2020 Medical Fee Schedule](#). The new fee schedule applies to all health care services rendered after July 1, 2020, regardless of the employee's date of injury.

Puerto Rico

Senate Bill 1540

Puerto Rico Governor Wanda Garced signed [Senate Bill 1540](#) into law on June 1, 2020, and the provisions became effective immediately.

This legislation amends Section 3-A of Act No. 45 of April 18, 1935 — known as the Work Accident Compensation System Act — to ensure coverage of benefits to any public or private employee that is infected with COVID-19 while providing an authorized service during the validity of the emergency declared by the Governor of Puerto Rico, as a result of the pandemic.

The Puerto Rico State Insurance Fund Corporation (SIFC) is the sole monopolistic workers' compensation insurance provider and claims administrator.

Wyoming

Senate File 1002

On May 20, 2020, Wyoming Governor Mark Gordon signed [Senate File 1002](#) that was passed during the 2020 Special Session of the legislature. In part, this bill provides that for the period beginning January 1, 2020 through December 30, 2020, if any employee in an employment sector for which coverage is provided by the Workers' Compensation Act is infected with the COVID-19 coronavirus, it will be presumed that the risk of contracting the illness or disease was increased by the nature of employment.

This legislation also provides that an employer's experience rating will not be charged for any injury related to COVID-19 for which coverage is provided under the Workers' Compensation Act and for which a claim was filed on or before December 30, 2020.

This legislation became effective immediately.

Legislation to watch

California

Senate Bill 1159

This [bill](#), if passed, would create a rebuttable presumption for illness or death resulting from exposure to COVID-19 for critical workers who directly interact or previously directly interacted with the public during the COVID-19 pandemic. This presumption would remain in effect until expiring at a date unspecified at this time, while the Executive Order issued by Governor Newsom was retroactive to March 19 and will expire July 5, 2020.

As currently written, critical worker means a public sector or private sector employee who is employed to combat the spread of COVID-19. A hearing on this proposed legislation is scheduled for June 18, 2020 before the Committee on Appropriations.

Nebraska

The Nebraska Legislature plans to reconvene on July 20, 2020, with a scheduled adjournment date of August 13, 2020. Following is an overview of some of the pending workers' compensation bills.

Legislative Bill 846

If passed, [Legislative Bill 846](#), would amend the waiting period under workers' compensation law to receive wage benefits for days away from work due to a workplace injury from seven days to three days. It would also reduce the number of days to receive the retroactive benefits for the waiting period from six weeks to two weeks. This bill remains pending in the Business and Labor Committee.

Legislative Bill 963

If enacted, [Legislative Bill 963](#) would establish qualifications for first responders and front-line state employees to be eligible for workers' compensation due to mental injury and/or illness incurred as a result of trauma experienced on the job. One of the requirements to qualify for workers' compensation is that the employee must have participated in resilience training annually prior to the incident. If the employer does not provide or reimburse the employee for resilience training, then the Department of Health and Human Services will have to reimburse the cost at a rate set by the Critical Incident Stress Management Program. The bill defines first responder as a sheriff, deputy sheriff, police officer, Nebraska State Patrol officer, a volunteer or paid firefighter, or a volunteer or paid emergency medical care worker licensed in Nebraska.

Additionally, this measure would change the burial expenses payable under the Nebraska Workers' Compensation Act from \$10,000 to \$11,000 and annually adjust the dollar limitation beginning in 2023.

Legislative Bill 1126

If enacted, [Legislative Bill 1126](#), would give the compensation court authority to award an attorney's fee for failure to authorize or provide assurance of payment of medical treatment if there is no "reasonable controversy" regarding the treatment within 30 days of the request for authorization or assurance of payment. The bill also would allow the compensation court the discretion to assess a penalty not to exceed \$500 per day for each day the authorization is delayed without reasonable controversy.

The purpose of this proposed bill is to overturn two court cases, *Dawes v. Wittrock Sandblasting & Painting* (2003) and *Armstrong v. State* (2015), which held that benefits can be denied even if there is not a basis in law or fact without a risk of penalty or attorney fees. This bill is also pending in the Business and Labor Committee.

Legislative Bill 1128

If passed, [Legislative Bill 1128](#) provides that an injured employee has a claim for bad faith denial of workers' compensation benefits if the insurer or its agent denied benefits or authorization of benefits without a reasonable basis at the time of the denial, and the insurer or its agent knew or should have known there was not reasonable basis for denial. This bill would allow any claim of bad faith denial of workers' compensation benefits to be brought in any court of competent jurisdiction within five years after the cause of action.

This bill was reportedly introduced to overrule *Ihm v. Crawford Company* (1998), which held that workers' compensation insurers are immune from liability in tort when they commit acts of bad faith in administering workers' compensation claims. This bill also is in the Business and Labor Committee and being strongly opposed by state industry groups.

Federal

House Resolution 6656

On May 1, 2020, [House Resolution 6656](#) was introduced into Congress. If passed, this bill would create a presumption of entitlement to disability compensation, medical services and any other benefits provided under [subchapter I of chapter 81 of title 5](#), United States Code for specified Transportation Security Administration (TSA) employees.

This legislation would cover the following TSA employees:

- 1) A transportation security officer.
- 2) A federal air marshal.
- 3) A canine handler.
- 4) Any employee carrying out duties that require substantial contact with the public.

The Secretary of Labor will also approve any claim of reasonable legal or other services furnished with respect to a case, claim or award for any TSA employee.

Upon introduction, the legislation was referred to the Committee on Homeland Security and to the Committee on Education and Labor.

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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