

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*January 2022*

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# Minnesota

## *House File 1203*

On Feb. 3, 2022, Gov. Tim Walz signed [House File 1203](#) into law. This bill reenacts and revives the COVID-19 rebuttable presumption effective the date of enactment through Jan. 13, 2023. Click [here](#) for information regarding Minnesota's workers' compensation COVID-19 presumption.

According to this legislation, employees with dates of injury that occur from Jan. 1, 2022 to the day before enactment and on or after Jan. 14, 2023 are not entitled to the COVID-19 presumption, but are not prohibited from claiming an occupational disease or a personal injury under Minnesota workers' compensation statutes.

The previous presumption was effective April 8, 2020, and expired Dec. 31, 2021.

The bill also adopts the 2022 [Workers' Compensation Advisory Council \(WCAC\)](#) recommendations to clean up technical language. Among the changes, all healthcare provider members of the Medical Services Review Board must now maintain a license in the state of Minnesota to furnish medical or health services under their specific designation throughout their appointment.

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# New Jersey

The 2020-2021 session of the New Jersey legislature adjourned on Jan. 11, 2022, and the time that Gov. Phil Murphy had to sign, veto, comment on, or pocket veto approved legislation has expired. Following is a summary of workers' compensation bills signed into law and other activity impacting the industry.

## *Senate Bill 771/Assembly Bill 6195*

On Jan. 10, 2022, Gov. Murphy approved [Senate Bill 771/Assembly Bill 6195](#), which was passed by the legislature Dec. 20, 2021. The bill expands workers' compensation coverage to parking areas provided by employers effective immediately upon signing by adding the following language to the workers' compensation act:

Employment shall also be deemed to commence, if an employer provides or designates a parking area for use by an employee, when an employee arrives at the parking area prior to reporting for work and shall terminate when an employee leaves the parking area at the end of a work period; provided that, if the site of the parking area is separate from the place of employment, an employee shall be deemed to be in the course of employment while the employee travels directly from the parking area to the place of employment prior to reporting for work and while the employee travels directly from the place of employment to the parking area at the end of a work period.

Unchanged is the provision in the act that commences "when an employee arrives at the employer's place of employment to report for work and shall terminate when the employee leaves the employer's place of employment, excluding areas not under the control of employer."

This bill was first introduced in 2014 and each legislative session thereafter in response to the New Jersey Supreme Court decision in [Hersh v. County of Morris](#). This case involved a county employee who was unable to park in the county-owned lot next to the office building and instead parked in one of the spaces leased by the county in a private parking garage. While crossing the street walking from the private parking garage, the employee was seriously injured after being struck by a vehicle that had run a red light. Reversing the judge of compensation and the Appellate Division, the state high court found that Ms. Hersh was not entitled to workers' compensation coverage because:

- Employment had not commenced as defined by the act at the time of the accident.
- The garage where she parked was "not under the control of the employer."
- Employee was injured on a public street, which was not under the control of the employer.
- The County had no oversight or authority over the route, or over the manner of ingress or egress, to the building where she worked.
- The County did not require employees to enter and exit the building by using specific areas.

- No additional hazards were created for the employee in traversing the public streets.

This legislation was opposed by the [New Jersey Business and Industry Association](#) and others because of anticipated increased workers' compensation claims and costs. Additionally, litigation is anticipated to resolve:

- The factors to be used in determining whether a parking area is "provided" by the employer.
- Whether the new provision applies to all cases filed after Jan. 10, 2022 or to all cases pending with the Division as of Jan. 10, 2022.

While this bill may result in the compensability of more injuries in parking lots, these cases continue to depend on the facts of the claim and a thorough investigation remains important. In the meantime, Sedgwick continues to monitor this issue and will keep you updated.

## *New Jersey Supreme Court rules on parking lot accident*

On Jan. 18, 2022, just over a week after enactment of [Senate Bill 771](#) that expanded workers' compensation coverage to parking areas provided by employers, the New Jersey Supreme Court issued a decision involving a parking lot accident that reversed the denial by the Appellate Division.

This case, [Diane Lapsley v. Township of Sparta](#), involves an employee of the Township of Sparta Public Library who on Feb. 3, 2014 was struck by a snowplow owned and operated by the Township while walking to her car in the parking lot adjacent to the library. The library and adjacent parking lot were in a municipal complex that included two other parking lots.

The employee suffered significant injuries and filed a lawsuit against the Township, the library, the snowplow operator and the Sparta Department of Public Works. The motion for summary judgment based on the exclusive remedy provision of the workers' compensation act was denied, but a motion to stay the civil matter and refer the claim to the Division of Workers' Compensation (DWC) for a determination of compensability was granted.

Relying on the [Hersh](#) decision, in 2016 the compensation judge found the employee's injuries to be compensable noting that the Township owned, maintained and had the right to control the parking lot. Mrs. Lapsley appealed, and the Appellate Division reversed the finding that the injury did not arise out of and in the course of employment because the Township did not exercise control over the employee's use of the parking lot.

In concluding that the employee's injuries arose out of and in the course of employment, the state high court states:

Unlike in Hersh, where the employee was injured on non-employer owned property, the Township controlled this parking lot adjacent to Lapsley’s place of work. And the lot was available for use by employees of the adjacent library.

Useful information is provided in this decision regarding:

- The legislative intent of the phrase “excluding areas not under the control of the employer.”
- Provides the two pivotal questions under the premises rule to determine whether an injury is compensable:
  - Where was the accident?
  - Did the employer have control of the property on which the accident occurred?
- Factors that establish whether employer control exists.

This ruling is expected to result in the civil matter being dismissed.

## *Executive Orders 280 and 288*

On Jan. 11, 2022, Gov. Murphy reinstated a public health emergency in New Jersey with the issuance of [Executive Order 280](#). On Feb. 10, 2022, Gov. Murphy signed [Executive Order 288](#), which extended the public health emergency another 30 days, unless renewed again.

Reinstatement of the public health emergency reactivates the rebuttable presumption of workers’ compensation coverage for COVID-19 cases for “essential employees.” Senate Bill 2380 signed into law in 2020 defined an “essential employee” as an employee in the public or private sector who, during a state of emergency:

- Is a public safety worker or first responder, including any fire, police or other emergency responders;
- Is involved in providing medical and other healthcare services, emergency transportation, social services and other care services, including services provided in healthcare facilities, residential facilities or homes;
- Performs functions that involve physical proximity to members of the public and are essential to the public's health, safety and welfare, including transportation services, hotel and other residential services, financial services and the production, preparation, storage, sale and distribution of essential goods such as food, beverages, medicine, fuel and supplies for conducting essential business and work at home; or
- Is any other employee deemed an essential employee by the public authority declaring the state of emergency.

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# Pennsylvania

## *House Bill 1837*

On Dec. 22, 2021, Gov. Tom Wolf signed [House Bill 1837](#) into law. Effective Feb. 20, 2022, this bill permanently amends the workers' compensation act to no longer require the claimant's signature before attested before two witnesses or acknowledged before a notary public if the claimant appears before a judge and provides sworn oral testimony that the terms of a Compromise and Release (C&R) agreement are fully understood.

The attestation or notarization of the claimant's signature has been suspended since April 1, 2020 under a temporary extension of the governor's Disaster Declaration that was due to expire March 31, 2022.

In response to the passage of this bill, the Pennsylvania Bureau of Workers' Compensation has revised the Notification of Modification/Suspension form to no longer require notarization. The temporary suspension of requirements to notarize that form expired as of Sept. 30, 2021.

This measure is expected to ease an administrative burden for both claimants and claim examiners.

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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800.625.6588

*Sedgwick@sedgwick.com*

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