

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*June 2022*

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# Delaware

The State of Delaware Industrial Accident Board (IAB) approved amendments to its [regulation](#), specifically Rule 3. Rule 3 governs the filing of papers for actions before the board, and the following requirements were added:

- Requires that when a petition is filed and the petitioner is aware that the respondent is represented by counsel, the petitioner must provide the respondent's counsel with a copy of the petition and all attachments at the time it is filed with the IAB.
- Requires any party challenging a utilization review determination to attach a copy of the determination in dispute when filing the petition. If such utilization review determination is not attached, it must be produced by the petitioner within 15 days of a request by a party or the board.

These amendments became effective June 10, 2022.

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# District of Columbia

## *Bill 22-0841*

On June 28, 2022, Mayor Muriel Bowser signed [Bill 24-0841](#), titled the “Parity in Workers’ Compensation Recovery Emergency Act of 2022” with Act Number A24-0453.

Effective on the date signed, this bill amends the District of Columbia Workers’ Compensation Act of 1979 on an emergency basis as follows:

- Payment or award of compensation under the workers’ compensation law of any other state does not bar a claim for compensation under the district’s workers’ compensation law for the same injury or death.
- Any such award under the district’s workers’ compensation law must be reduced by the amount of compensation received or awarded under the workers’ compensation law of any other state.

The provisions in this bill apply to all claims that are pending and all claims filed after the effective date of the bill. This bill expires on Sept. 26, 2022, unless extended.

This is a major change as the law in District of Columbia has been interpreted for many years to provide that an employee that obtains benefits in another jurisdiction, primarily in Maryland or Virginia, is not entitled to seek additional benefits in the District of Columbia.

Click [here](#) to view the Resolution R24-0497 declaring the existence of an emergency.

Click [here](#) to view the letter to Mayor Bowser from the Association of Compensation Insurance Attorneys (ACIA).

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# Florida

## *Senate Bill 156*

On June 24, 2022, Gov. Ron DeSantis approved [Senate Bill 156](#) related to loss run statements for all lines of insurance. While many of the amendments relate to group health insurer loss run statements, following are other key changes:

- Requires that each insurer designate an individual or entity to receive written requests for loss run statements from insureds.
- Requires that the personal lines insurer provide the insured a loss run statement within 15 calendar days after receiving the insured's written request subsequent to the insured providing the insurer with information on obtaining a loss run statement from a consumer reporting agency.
- Exempts life insurers from the requirements for loss run statements.

This bill became effective upon being signed by the governor.

## *Senate 2516*

On June 2, 2022, Gov. DeSantis approved [Senate Bill 2516](#), which removed the requirement that the Office of the Judges of Compensation Claims (OJCC) maintain 17 district offices, 31 mediators and 31 judges of compensation claims.

By allowing the OJCC this flexibility, district offices can be combined and consolidated based on case workloads and technological efficiencies to the adjudication processes can be realized.

Click [here](#) to view the OJCC June 2022 Consolidation Update.

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# Hawaii

The Hawaii 2022 legislative session adjourned May 5, 2022, after which the legislature certified the bills and transmitted to Gov. David Ige. Following are the bills affecting workers' compensation

## *Senate Bill 3142/House Bill 2174*

On June 17, 2022, Gov. Ige signed [Senate Bill 3142/House Bill 2174](#) into law. This bill adds reserve public safety law enforcement officers to the list of volunteer occupations covered under the workers' compensation law if injured under specific conditions.

Additionally, the average weekly wage for public safety law enforcement officers is computed the same as other listed volunteer occupations.

"Reserve public safety law enforcement officer" for the purpose of this bill is defined as a member of the authorized volunteer law enforcement force of the department of public safety who performs services in a volunteer and unpaid capacity under the authorized direction of an officer of the department of public safety.

This legislation became effective upon its signing.

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# Iowa

The Iowa legislature adjourned its 2022 session on May 25, 2022. Following is the summary of a workers' compensation bill signed into law by Gov. Kim Reynolds.

## *House File 2411*

On June 14, 2022, Gov. Reynolds approved [House File 2411](#) relating to the replacement of permanent prosthetic devices for injured workers.

This bill clarifies that an employer is not required to furnish more than one set of permanent prosthetic devices, but provides that limitation does not apply if:

- A permanent prosthetic device is a replacement of a permanent prosthetic device that is medically necessary as a result of the compensable injury that occurred while the employee was employed for the employer.
- The replacement of the prosthetic device would be considered reasonable medical care.

This legislation also requires that a settlement involving a claim that results in the need of a medically necessary permanent prosthetic device or an alteration of an existing medically necessary prosthetic device must describe the medically necessary permanent prosthetic device and identify which portion of the settlement proceeds are for the purpose of covering the estimated cost of future repair or replacement.

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# Louisiana

The 2022 regular session of the Louisiana legislature adjourned on June 6, 2022. Following is an overview of bills signed into law by Gov. John Bel Edwards that impact workers' compensation.

## *House Bill 93*

On June 15, 2022, Gov. Edwards signed [House Bill 93](#) into law. This legislation provides that if the parties, whether represented or unrepresented, agree to a continuance of a mediation, hearing or trial by filing a joint motion to continue or an uncontested motion to continue, the workers' compensation judge must grant the continuance.

## *House Bill 239*

On June 15, 2022, Gov. Edwards also signed [House Bill 239](#). This bill provides that upon an uncontested motion to stay of the parties, the workers' compensation judge must order a stay of the proceeding on a claim, and the stay remains in effect as long as the parties jointly agree.

If the motion to stay is granted, a telephone status conference must be set at such intervals occurring at least every six months as directed by the workers' compensation judge. This bill prohibits dismissal of any matter subject to a stay order due to abandonment.

## *House Bill 854*

On June 16, 2022, Gov. Edwards signed [House Bill 854](#) into law. This legislation amends provisions relative to the rebuttable presumption for cancer developed by members in the classified fire service.

This bill increases the period after employment during which a cancer diagnosis is presumed to be connected with the duties of a firefighter from three months for each full year of service up to a maximum of 60 months to 120 months for firefighters who leave service on or after Jan. 1, 2023, subject to restrictions on age, years of service and/or disability retirement. In addition, this bill eliminates the presumption period for cancer diagnoses made after these former fighters reach the age of 65.

The bill also limits payments for medical care to 1.5 times the Medicare reimbursement rate or the actual charge for the service, whichever is less. If there is no Medicare fee schedule reimbursement for a medical expense, the reimbursement will be made in accordance with the workers' compensation reimbursement schedule.

Each of the above bills becomes effective Aug. 1, 2022.

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# Ohio

## *House Bill 447*

On June 24, 2022, Gov. Mike DeWine signed into law [House Bill 447](#) that addresses eligibility for workers' compensation benefits when an employee sustains an injury working from home.

This bill excludes from the definition of "injury" an injury or disability sustained by an employee who is performing their job duties in a work area inside their home that is separate and distinct from the location of the employer, unless all of the following apply:

- The employee's injury or disability arises out of the employee's employment.
- The employee's injury or disability was caused by a special hazard of the employee's employment activity.
- The employee's injury or disability is sustained in the course of an activity undertaken by the employee for the exclusive benefit of the employer.
- As with all workers' compensation claims, the compensability determination will be very fact specific, and a thorough investigation will be required.

This legislation also includes the following provisions:

- Allows, rather than requires as under former law, the Bureau of Workers' Compensation (BWC) to schedule a recipient of temporary total disability (TTD) compensation for a medical examination after 200 weeks to evaluate whether the disability is permanent.
- Allows, rather than requires as under former law, a self-insuring employer to request that BWC schedule such an examination when the self-insuring employer's employee has received 200 weeks of TTD.
- Eliminates a requirement that an application for a lump sum payment under the Workers' Compensation Law be notarized.

The bill becomes effective Sept. 23, 2022.

# Legislation to Watch

## *New York*

Before adjournment of the 2022 New York legislative session on June 4, 2022, four workers' compensation bills passed both the Assembly and the Senate that will impact workers' compensation. These bills have not yet been presented to Gov. Hochul for approval or veto, so there is still time for action.

Following is an overview of each bill and potential impacts:

### *Assembly Bill A01118/Senate Bill 00768*

Of the four bills, [Assembly Bill A1118](#), which passed June 3, 2022 following the passage of [Senate Bill 00768](#) on May 24, 2022, is the most consequential.

This bill as currently written amends the statutory language pertaining to temporary total disability (TTD) to indicate that it "shall consist of the injured employee's inability to perform his or her pre-injury employment duties or any modified employment offered by the employer that is consistent with the employee's disability."

Currently, TTD is not defined in the New York Workers' Compensation law. Case law and board policy require that a finding for TTD be based on medical evidence showing a claimant's inability to perform any type of employment, not just the claimant's pre-injury or at-injury job.

Some of the anticipated consequences of this bill if signed into law include:

- Injured workers who retain significant work capacity may still be deemed TTD if found unable to return to their pre-injury employment or modified work offered by the employer.
- Reduced incentive for injured workers to attempt to return to work.
- Significant reduction in the application of the attachment to the labor market defense since the claimant is only required to demonstrate attachment to the labor market if under a partial disability status and it will be easier for injured workers to continue TTD.
- An increase of potential "protracted healing period" and scheduled loss of use (SLU) awards to claimants with SLU body parts/conditions who remain TTD in excess of the established "normal healing period."
- Increased litigation costs for employers and carriers.

This bill would become effective upon signature of the governor. Accordingly, New York employers should begin to prepare for the possibility of enactment by evaluating their return-to-work programs.

## *Assembly Bill 7178-A/Senate Bill 8271A*

On June 1, 2022, [Senate Bill 8271A](#) was passed and [Assembly Bill 7178A](#) passed on June 3, 2022.

If signed into law as written, this bill changes the minimum indemnity compensation to no less than one-fifth of the New York state average weekly wage (SAWW). If the employee's weekly wage is equal to or less than one-fifth the state's average weekly wage, the employee will receive their full wage.

The New York SAWW for injuries occurring on or after July 1, 2022, is \$1,688.19, so the minimum weekly indemnity rate will increase from \$150 to \$337.64.

Interestingly, versions of this bill were introduced during the 2017-2018 and 2019-2020 legislative sessions.

## *Assembly Bill A02020/Senate Bill 06373B*

[Assembly Bill A02020](#) passed on June 3, 2022, following passage of [Senate Bill 06373B](#) on May 3, 2022, which amends the workers' compensation law related to claims for mental injury.

If the bill is signed by the governor as written, the board may not disallow a worker's claim for mental injury due to extraordinary work-related stress incurred based upon the finding that that the stress was not greater than that which usually occurs in the normal work environment.

In 2017, the law was amended to address mental injury claims for only police officers, firefighters, emergency medical technicians, paramedics, emergency dispatchers or other persons certified to provide medical care in emergencies if the stress was incurred in a work-related emergency. This bill eliminates the requirement that the stress be related to a "work-related emergency."

It is anticipated that this bill will result in litigation concerning questions such as what is considered "extraordinary" if it cannot be based on that which occurs in the normal work environment

This law would go into effect on Jan. 1 in the year following its enactment.

## *Assembly Bill 10349/Senate Bill 9149*

[Assembly Bill A10349](#) passed on June 2, 2022, and [Senate Bill 9149](#) passed on June 3, 2022. This bill titled Justice for Injured Workers Act Bill provides that any findings made in a workers' compensation proceeding will not have a collateral estoppel impact on any other related proceeding outside the board, except for the determination of an employer-employee relationship.

This legislation addresses a 2013 New York Court of Appeals ruling in [Augui v. Seven Thirty-One Ltd.](#), 22 NY 3d 246, 25557 that held that the collateral estoppel doctrine should not be applied, unless there is identity of issue between the prior administrative proceeding and the subsequent litigation.

At this juncture, Gov. Hochul can negotiate amendments to these bills prior to signing as she did in February of this year (Click [here](#) to view the February 2022 issue of the Workers Comp Law Update) or veto the bills.

Those with interest in these bills should write to their elected officials.

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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