

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

August 2021

TABLE OF CONTENTS

Colorado 3

 Emergency Rule 5-6 3

Kentucky 4

 House Joint Resolution 1..... 4

Nebraska 5

 Notice regarding new release of liability option 5

Legislation to watch 6

 Kentucky..... 6

 Texas 6

 Ohio..... 7

Colorado

Emergency Rule 5-6

Effective Sept. 7, 2021

The Colorado Division of Workers' Compensation (DWC) adopted new [Emergency Rule 5-6](#), effective Sept. 7, 2021. This rule change reflects the provision in [House Bill 21-1050](#) that payment of benefits is due in three (3) business days:

- After the order awarding benefits becomes final.
- After the date of admission awarding benefits is filed if initial payment of temporary disability benefits.
 - Acknowledging that in some instances, an employer's First Report of Injury and admission can be timely filed, but the first installment of compensation benefits will be paid more than 20 days after the insurer has notice or knowledge of the injury. The DWC will consider the insurer in compliance if the filings are timely and benefits are timely paid for the entire period owed as of the date of the admission.

Permanent impairment benefits awarded by admission are retroactive to the date of maximum medical improvement (MMI) and must be paid so that the claimant receives the benefits not later than three business days after the date of the admission.

Payments of temporary and permanent disability benefits mailed via the United States Postal Service will be considered timely if postmarked at least three business days prior to the due date.

Subsequent temporary and permanent disability benefits are due at least once every two weeks from the date of the admission. When benefits are continuing, the payment must include all benefits that are due.

This emergency rule expires Dec. 31, 2021 or upon adoption of the permanent rule.

This is a significant change for Colorado and poses penalty risk if injuries are not promptly reported to allow timely issuance of benefit payments.

Kentucky

House Joint Resolution 1

On Aug. 19, 2021, the Kentucky Supreme Court ruled unanimously in [Cameron v. Beshear](#) that the Franklin Circuit Court abused its discretion in issuing a temporary injunction against implementation of the following bills enacted during the 2021 regular session of the Kentucky General Assembly:

- [Senate Bill 1](#) limiting the governor's emergency orders to 30 days unless an extension is approved by the General Assembly.
- [Senate Bill 2](#) giving the legislature more oversight over the administrative regulation process.
- [House Bill 1](#) provides guidelines for reopening of the economy in response to the state of emergency declared beginning March 2020.

The case was remanded to the trial court with instructions to dissolve the injunction. In reaching its conclusion, the State High Court opinion states, "considering that the challenged legislation was lawfully passed, and the governor's complaint does not present a substantial legal question that would necessitate staying the effectiveness of the legislation."

In response, Governor Andy Beshear called for a special session to address executive orders issued in response to COVID-19 and the Kentucky General Assembly convened on Sept. 7, 2021. During this special session, the General Assembly enacted and Governor Beshear signed [House Joint Resolution 1](#). This bill addresses several COVID-19 executive orders and most notably:

- Extends [Executive Order 2020-215](#), which declared a State of Emergency Executive Order until Jan. 15, 2022.
- Extends [Executive Order 2020-277](#) related to the payment of workers' compensation temporary total disability to employees removed from work by a physician due to occupational exposure to COVID-19 until Jan. 15, 2022, but strikes the presumption that removal of certain workers from work by a physician is due to occupational exposure to COVID-19.

The full impact of House Joint Resolution 1 is still being evaluated, as all executive actions and administrative orders not specifically extended by the resolution are no longer in effect.

Nebraska

Notice regarding new release of liability option

On Aug. 12, 2021, the Nebraska Workers' Compensation Court issued a [notice regarding a new option to file a release of liability for workers' compensation claims](#) that became effective Aug. 28, 2021. This follows the passage of [Legislative Bill \(LB\) 256](#), which was approved by Governor Ricketts on May 21, 2021.

Legislative Bill 256 changed a provision relating to lump-sum settlement approval and the filing of releases. Prior to the passage of this bill, when an employer and an injured employee or their dependents agreed that an amount due should be paid in a lump-sum payment, the settlement had to be submitted for approval to the Nebraska Workers' Compensation Court if the employee was eligible or would soon become eligible for Medicare. This bill removes the need to submit a settlement for approval of lump-sum payments if future healthcare services are specifically excluded from the settlement.

The new form, [Release of Liability—Future Medical Liability](#), is to be used in all cases where future medical liability is excluded from the release.

The parties still have the option to file an application for lump-sum settlement rather than a release for any case.

Legislation to watch

Bills addressing workers' compensation for COVID-19 vaccine adverse reactions

Following is an overview of bills that we're currently watching that were recently introduced to address the availability of workers' compensation for adverse reactions to COVID-19 vaccines when employer-mandated.

Kentucky

On Aug. 23, 2021, [Bill Request 353](#) was prefiled for the 2022 legislative session, which establishes a rebuttable presumption that an adverse reaction or sickness, disease, trauma, injury or condition occurred from the vaccine if:

- The adverse reaction or sickness, disease, trauma, injury or condition arising from it was not present prior to the administration of the vaccine; and
- The adverse reaction or sickness, disease, trauma, injury or condition arising from it occurs within 14 days of administration of any dose of the immunization.

This presumption would apply retroactive to claims on or after Dec. 14, 2020, if any Kentucky employer requires any COVID-19 vaccine as a condition of continued or new employment; provides a bonus or other additional compensation to any employee who receives immunization relating to COVID-19; or imposes additional requirements or workplace conditions upon employees who decline to receive a vaccine.

The 2022 session of the Kentucky General Assembly is scheduled to convene on Jan. 4, 2022.

Texas

On Sept. 8, 2021, [Senate Bill 12](#) was introduced for consideration during the 3rd Special Session of the 2021 legislative session.

If passed as written, this bill will create a presumption of compensability for an employee who suffers an injury caused by an adverse reaction to a COVID-19 vaccine resulting in disability or death if the employee was required to receive the vaccine as a condition of employment.

The presumption would only apply to a claim for workers' compensation benefits filed on or after the effective date of the bill.

Ohio

Unlike the bills in Kentucky and Texas, [Ohio House Bill 401](#) introduced Aug. 24, 2021, exempts an injury or disability caused by an employer-mandated COVID-19 vaccination from the workers' compensation law. An employee is allowed to sue the employer for damages caused by a COVID-19 vaccination if:

- The employer required the employee to receive the vaccine as a condition of employment.
- The employee brings the claim within five years after the date on which the employee received the vaccine.

As currently written, the bill would apply to public and private employers. The current session of the Ohio General Assembly convened on Jan. 4, 2021, and is scheduled to adjourn Dec. 31, 2022.

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.

800.625.6588

Sedgwick@sedgwick.com

[SEDGWICK.COM](https://www.sedgwick.com)