

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

January 2024

TABLE OF CONTENTS

District of Columbia 3
 Bill B25-05123
New Jersey 4
 Assembly Bill 5909/Senate Bill 42674
Federal 5
 Final rule on employee or independent contractor classification.....5

District of Columbia

Bill B25-0512

[Bill B25-0512](#), the Parity in Workers' Compensation Recovery Act of 2023, was signed by Mayor Miriam Bowser on Nov. 21, 2023, and enacted with Act Number A25-313.

On an emergency basis, this bill amends the District of Columbia Workers' Compensation Act of 1979 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.

These provisions apply to all claims that are pending as of June 28, 2022, and claims filed after June 28, 2022.

The act was enacted temporarily effective Jan. 23, 2024, and expires on Sept. 4, 2024, unless again extended.

New Jersey

Assembly Bill 5909/Senate Bill 4267

On Jan. 16, 2024, Gov. Phil Murphy approved [Assembly Bill 5909/Senate Bill 4267](#). This pair of bills amends provisions of New Jersey workers' compensation law about the rebuttable presumption of any cardiovascular or cerebrovascular injury or death for certain first responders as follows:

- Expands the list of eligible employees covered by this presumption to include any career emergency medical technician or paramedic employed by the state, county, municipality or a private sector counterpart who is engaged in public emergency medical and rescue services.
- Clarifies that an emergency response that is eligible for the rebuttable presumption of compensability includes engagement in a response to an emergency, including a work effort sufficient to cause certain injuries or death.
- Removes the requirement that the individual must be responding to orders under competent authority in order to recover.
- Specifies that (1) paid, part-paid or volunteer firefighters, or (2) career emergency medical technicians or paramedics, remediating from law enforcement, public safety or medical emergency are employees eligible for this rebuttable presumption if injury or death occurs.
- Defines "remediating from" to mean leaving an emergency in a reasonable period, not to exceed 24 hours from the end of the emergency, to carry out post-incident agency protocols and decompression, including measures such as critical incident stress debriefings.
- Adds that the presumption of compensability is rebuttable using causal factors such as horseplay, skylarking, self-infliction, voluntary intoxication and illicit drug use.
- Provides that rebuttal of the presumption-based medical causation requires clear and convincing medical evidence that the work experience was not a substantial cause of the cardiovascular or cerebrovascular injury.

This legislation was supported by the Professional Firefighters Association of New Jersey (PFANJ) in honor of an emergency medical technician who died eight years ago after responding to a motor vehicle crash involving his daughter.

The bill became effective immediately and applies to all applicable injuries and deaths pending on the date of enactment. According to the [fiscal estimate](#), it is not possible to anticipate how the expanded eligibility rules will impact spending.

Federal

Final rule on employee or independent contractor classification

On Jan. 10, 2024, the U.S. Dept. of Labor (DOL) announced the publication of a [final rule](#) that revises guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA).

This final rule rescinds the Independent Contractor Status Under the Fair Labor Standards Act ([2021 IC Rule](#)) that was published on Jan. 7, 2021, and replaces it with the six-factor analysis used by courts to determine whether a worker is an employee or an independent contractor, including:

- Any opportunity for profit or loss a worker might have.
- The financial stake and nature of any resources a worker has invested in the work.
- The degree of permanence of the work relationship.
- The degree of control an employer has over the person's work.
- Whether the work performed is essential to the employer's business.
- The worker's skill and initiative.

The final rule is supposed to become effective on March 11, 2024; however, the lawsuit over the DOL's delay and attempted withdrawal of the 2021 Independent Contractor Rule is still pending before the U.S. Court of Appeals for the Fifth Circuit.

Additional legal challenges and possibly congressional action is anticipated. The impact, if any, on state workers' compensation is currently uncertain.

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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