

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*March 2023*

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# Kentucky

## *Senate Bill 47*

On March 31, 2023, Governor Andrew Beshear signed into law [Senate Bill 47](#), which fully legalizes medical marijuana in the Commonwealth of Kentucky. On Nov. 15, 2022, the Governor [issued](#) an [executive order](#) providing access to medical cannabis for Kentuckians who meet certain specified conditions after Jan. 1, 2023. While Senate Bill 47 does not take effect until Jan. 1, 2025, the governor’s executive order remains in effect, allowing those suffering from some medical conditions the ability to obtain medical cannabis out of state until that time.

This bill establishes a structure to regulate the medical marijuana program, including dispensaries, cultivators, practitioners, processors, products and issuance of identification cards to patients and caregivers. The bill establishes the authorization process for practitioners to recommend the use of medicinal cannabis and establishes the cannabis business license application process and requirements.

This legislation provides that a government medical assistance program, private health insurer or workers’ compensation carrier, or self-funded employer is not required to provide benefits to reimburse a person for costs associated with the use of medicinal cannabis.

38 states, three U.S. territories and the District of Columbia now have laws legalizing the use of medical marijuana, 18 of which have specifically stated in their laws (or the state courts have ruled) that reimbursement for medical marijuana is not required under workers’ compensation.:

Arizona	Kentucky	Montana
Arkansas	Louisiana	North Dakota
Delaware	Maine	Oklahoma
Florida	Massachusetts	South Dakota
Hawaii	Michigan	Utah
Illinois	Minnesota	Vermont

The March 17, 2023 decision by the Commonwealth Court of Pennsylvania in [L. Fegley, as Executrix of the Estate of P. Sheetz v. Firestone Tire & Rubber \(WCAB\) - 680 C.D. 2021 FILED: March 17, 2023](#), and [E. Appel v. GWC Warranty Corp. \(WCAB\) - 824 C.D. 2021 FILED: March 17, 2023](#) added Pennsylvania to the following list of states that have ruled medical marijuana may be reimbursable under workers’ compensation:

Connecticut	New Jersey	New York
New Hampshire	New Mexico	Pennsylvania

Sedgwick continues to closely monitor this issue and its impact on workers’ compensation.

# Montana

## *House Bill 178*

Governor Greg Gianforte signed [House Bill 178](#) into law on March 23, 2023. This measure clarifies that an injury does not arise out of and in the course of employment when the employee is engaged in an unpaid social or recreational activity, regardless of whether the employer pays for any portion of the activity or whether the activity occurs at the worksite of the employer. The exclusion from coverage does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity and whose presence at the activity is required or requested by the employer.

The bill also defines “requested” as well as “social or recreational activity.”

House Bill 178 became effective upon signing.

# New Mexico

## *House Memorial 83*

On March 18, 2023, the House of Representative unanimously passed [House Memorial 83](#), which requests the New Mexico Workers' Compensation Administration (WCA) to convene a task force by May 1, 2023, to complete the following:

- Gather and study information related to workers' compensation attorney fees and fee caps, including how many claims reach the attorney fee cap, average fees per claim and the impact of fee caps on a claimant's ability to obtain legal representation.
- Identify issues related to workers' compensation attorney fees and attorney fee caps.
- Make recommendations to resolve issues identified by the task force related to workers' compensation attorney fees and attorney fee caps.
- Perform any other related work the task force determines is important.

The task force is to be appointed by the director and will consist of the following members:

- The WCA director's designee, if appropriate.
- Four attorneys licensed in New Mexico with practices generally limited to workers' compensation claims, of which two represent workers and two represent employers and insurers.
- Two employer representatives.
- Two insurance representatives, one of whom shall be a representative from a group of self-insured representatives.
- Two labor or union representatives.
- Two workers who have filed workers' compensation claims in New Mexico that have been resolved.

According to the [Fiscal Impact Report](#) prepared by the New Mexico Legislative Finance Committee, the WCA is expected to invite the General Services Department to represent the self-insured employee group because any changes in attorney fee caps could negatively affect entities it insures.

The task force is requested to present a report of its findings and recommendations to the [New Mexico Advisory Council on Workers' Compensation and Occupational Disease Disablement](#) by April 30, 2024. The council reports annually to the governor and legislature concerning the state of the workers' compensation system and makes recommendations regarding rules and regulations.

House Memorial 83 relates to [House Bill 455](#), which sought to amend Section 52-1-54 1978 with regards to the existing attorney fee cap of \$22,500, among other changes. House Bill 455 did not pass. The last time the attorney fee cap was updated was in 2013.

# Nevada

## *Assembly Bill 165*

On March 22, 2023, Governor Joe Lombardo approved Assembly Bill 165. This bill amends the law to again authorize employees injured on or after July 1, 2017, who incur a permanent partial disability (PPD) that does not exceed 30%, to elect to receive compensation in a lump sum.

As reported in the [December 2022 issue](#), Nevada Division of Industrial Relations (DIR), Workers' Compensation Section (WCS) issued a [memorandum on Dec. 1, 2022](#), advising that the language of the law did not provide for a PPD award to be paid in a lump sum for any disability of 30% or less if the claimant was injured on or after July 1, 2017. Former Governor Steve Sisolak approved an [emergency regulation](#) of the Nevada DIR/WCS on Dec. 5, 2022, to address the disruption to the payment of PPD that does not exceed 30% in a lump sum for employees injured on or after July 1, 2017. The emergency regulation was set to expire on April 4, 2023.

Assembly Bill 165 became effective upon signing.

# Utah

## *Senate Bill 159*

Governor Spencer Cox signed [Senate Bill 159](#) on March 17, 2023. This bill addresses provisions related to occupational injuries and diseases in the state as follows:

- Modifies requirements for calculating add-on fees for medical expenses awarded as part of a medical claim.
- Revises the circumstances under which a firefighter is presumed to have contracted specified cancers during the course of their employment.
- Requires the Division of Industrial Accidents to conduct a study to determine whether cancers other than those currently specified are commonly contracted in the course of a firefighter's employment. The division must provide this report before Nov. 30, 2024.
- Makes technical changes.

Senate Bill 159 becomes effective May 3, 2023.



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# Virginia

## *Senate 904/House Bill 1775*

The governor approved [Senate Bill 904/House Bill 1775](#) on March 22, 2023. This bill provides that an anxiety or depressive disorder, as both are defined in the bill, incurred by a law enforcement officer or firefighter is compensable under the Virginia Workers' Compensation Act on the same basis as post-traumatic stress disorder.

A mental health professional must diagnose the covered individual as suffering from anxiety disorder or depressive disorder because of a qualifying event, defined in the bill as an incident or exposure occurring in the line of duty on or after July 1, 2023, in addition to other conditions for compensability.

According to the [Department of Planning and Budget 2023 Fiscal Impact Statement](#), this legislation will result in more workers' compensation claims being accepted.

## *Senate 906/House Bill 1408*

On March 22, 2023, the governor approved [Senate Bill 906/House Bill 1408](#). The bill expands the workers' compensation presumption of compensability for certain cancers causing the death or disability of certain employees who have completed five years of service in their position to include bladder and thyroid cancer. The presumption for these cancers does not apply to any individual diagnosed with such a condition before July 1, 2023.

According to the [Department of Planning and Budget 2023 Fiscal Impact Statement](#), the extension of the presumption and the additional employees covered by it may result in an increase to an agency's workers' compensation premium.

## *Senate 1038/House Bill 1410*

The governor signed [Senate Bill 1038/House Bill 1410](#) into law. This legislation expands the workers' compensation presumption of compensability for specified cancers causing the death or disability of the following persons who have completed five years of service in their position to include:

- Arson investigators or bomb investigators employed by the Department of State Police.
- Members of the State Police Officers' Retirement System who collect, analyze or handle hazardous materials, infectious biological substances and radiological agents, fentanyl or methamphetamine, its salts, isomers, or salts of its isomers.

The specified cancers currently eligible for the presumption include leukemia or pancreatic, prostate, rectal, throat, ovarian, breast, colon, brain or testicular cancers.

According to the [Department of Planning and Budget 2023 Fiscal Impact Statement](#), this measure is expected to have a fiscal impact for the for the Department of State Police (VSP). The number of workers' compensation claims filed by VSP is expected to increase.

## *House Bill 2418*

On March 23, 2023, the governor signed [House Bill 2418](#) into law. This bill provides that subject to approval of the State Corporation Commission, two or more workers' compensation group self-insurance associations may merge if the resulting group self-insurance association assumes in full all obligations of the merged group self-insurance associations.

This bill becomes effective July 1, 2023.

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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