

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*July 2023*

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# California

The 2023 session of the California State Legislature is scheduled to adjourn on Sept. 14, 2023. Below is an overview of the workers' compensation legislation that has already been passed and signed into law to date.

## *Assembly Bill 489*

Governor Gavin Newsom approved [Assembly Bill 489](#) on July 13, 2023. This bill extends the sunset date until Jan. 1, 2025, on an existing pilot program that allows workers' compensation indemnity payments due to employees to be deposited on a prepaid card or prepaid card account. California lawmakers in 2018 enacted Senate Bill 880 that defined "prepaid card" or "prepaid card account" and permitted their use if specific requirements were met until Jan. 1, 2023. Assembly Bill 489 did not modify other provisions from the 2018 bill.

# Hawaii

The last day of the regular session of the Hawaii State Legislature was May 4, 2023. Below is a workers' compensation bill signed into law by Governor Josh Green prior to the deadline.

## *Senate Bill 696/House Bill 57*

[Senate Bill 696/House Bill 57](#) became effective upon approval on July 3, 2023. This legislation details the following:

- Authorizes the wages of other employees in comparable employment to be considered when computing the average weekly wages (AWW) of an injured public board member, reserve police officer, police chaplain, sheriff's chaplain, reserve public safety law enforcement officer, volunteer firefighter, volunteer boating enforcement officer or volunteer conservation and resources enforcement officer.
- Clarifies the computation of the AWW of an injured public board member, reserve police officer, police chaplain, reserve public safety law enforcement officer, sheriff's chaplain, volunteer firefighter, volunteer boating enforcement officer or volunteer conservation and resources enforcement officer. Specifically, the person in no event will be considered to have earned less than the state minimum hourly wage, and the person's income from self-employment will be considered wages.

This measure is intended to ensure that those who volunteer for the listed volunteer positions are fairly compensated with sufficient coverage under workers' compensation laws for the services they perform.

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# Maine

The First Special Session of the 131st Maine State Legislature was held from April 5, 2023, through July 6, 2023. The general effective date for nonemergency laws passed in the First Special Session of the 131st Legislature is Oct. 25, 2023.

## *Legislative Document 1123*

The governor signed [Legislative Document 1123](#) on July 26, 2023. This legislation creates a rebuttable presumption that a cardiovascular injury or disease or pulmonary disease suffered by an active member of a law enforcement agency occurred in the course of employment if:

- The law enforcement officer has been an active member of a law enforcement agency at least two years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease; and
- The disease developed or the injury has occurred within six months of having participated in law enforcement activities or in a training or drill that involved law enforcement activities; or
- The law enforcement officer developed the disease or suffered the injury that resulted in death within six months of having participated in law enforcement activities or in a training or drill that involved law enforcement activities.

For the purpose of this bill, “law enforcement officer” means an active member of a law enforcement agency, if the person is vested by law with the power to make arrests for crimes or serve criminal process, whether that power extends to all crimes or is limited to specific crimes and if the person holds a current and valid certificate issued by the Board of Trustees of the Maine Criminal Justice Academy.

## *Legislative Document 53*

[Legislative Document 53](#) was passed by the Maine legislature and became law on June 4, 2023, without the governor’s signature. This bill changes workers’ compensation exemptions for intentional torts of sexual harassment or sexual assault.

With the enactment of Legislative Document 53, an employee, supervisor, officer or director of an employer is liable for sexual harassment, sexual assault or an intentional tort “related to” sexual harassment or sexual assault. However, employers remain exempt as the bill indicates that this provision “may not be construed to impose liability on an employer for sexual harassment, sexual assault or an intentional tort related to sexual harassment or sexual assault committed by an employee, supervisor, officer or director of the employer.

Finally, the bill clarifies that an action alleging employment discrimination under the Maine Human Rights Act or the federal Civil Rights Act section is not prohibited or limited by this change to the law.

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# Missouri

The Missouri General Assembly adjourned on May 12, 2023. The governor had until July 14, 2023, to act on substantive bills. Signed bills without an emergency clause become effective Aug. 28, 2023. The following is a summary of enacted legislation impacting workers' compensation.

## *Senate Bill 24*

On July 6, 2023, Governor Mike Parsons signed [Senate Bill 24](#) into law. This is an expansive bill with the following provisions affecting workers' compensation:

- Substitutes references to “emergency telecommunicators” with “telecommunicator first responders” in various statutes.
- Classifies “telecommunicator first responders” as “first responders” in various provisions of law.
- Allows each political subdivision by a majority vote of its governing body to elect to cover telecommunicator first responders as public safety personnel.
- Establishes post-traumatic stress disorder (PTSD) as a compensable occupational disease under workers' compensation not contingent on the presence of a physical injury and not subject to any pre-existing PTSD when diagnosed in first responders if:
  - Demonstrated by clear and convincing evidence that PTSD has resulted from the course and scope of employment, and
  - The first responder is examined and diagnosed with PTSD by an authorized treating physician due to the first responder experiencing one of the specified qualifying events.
- Requires any claim for compensation for PTSD injury be properly noticed within 52 weeks after the qualifying exposure or the diagnosis of the disorder, whichever is later, measured from exposure to one of the qualifying stressors or the diagnosis of the disorder, whichever is later.
- Changes the name of the “voluntary firefighter cancer benefits pool” to the “voluntary critical illness benefits pool” and defines “critical illness” as one of the following:
  - In the case of a cancer claim, exposure to an agent classified as a group 1 or 2A carcinogen or classified as a cancer-causing agent.
  - In the case of PTSD, such injury that is diagnosed by a licensed psychiatrist or psychologist and established by a preponderance of the evidence to have been caused by the employment conditions of the first responder.
- Provides that payment may be made from the pool to a covered individual for the actual award of up to \$10,000 for seeking treatment with a licensed psychiatrist or psychologist and any subsequent courses of treatment recommended by such licensed individuals.
- Allows a covered individual who returns to the same position of employment after a PTSD diagnosis to receive benefits from the pool for the continued treatment of such injury or any subsequently covered PTSD diagnosis.
- Repeals sunset date of June 30, 2023, of the provision that allows the State Fire Marshal to disburse grants to voluntary critical illness pools.
- Decreases the supplemental Second Injury Fund surcharge from 3% to 1% for calendar years 2014 to 2026.

- Extends the sunset date for the supplemental Second Injury Fund surcharge from Dec. 31, 2023, to Dec. 31, 2026.

## *Senate Bill 186*

Governor Parsons also signed [Senate Bill 186](#), a public safety bill, on July 6, 2023. This bill includes identical provisions as Senate Bill 24 pertaining to the following:

- Classification of “telecommunicator first responders” as “first responders” in various provisions of law.
- Establishment of post-traumatic stress disorder (PTSD) as a compensable occupational disease under workers' compensation with no contingencies on the presence of a physical injury and not subject to any pre-existing PTSD when diagnosed in first responders.
- Changes to the voluntary critical illness benefits pool.

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# New Jersey

## *Senate Bill 3309*

[Senate Bill 3309](#) became effective upon approval of Governor Phil Murphy on July 20, 2023. This bill increases the maximum fee of an evaluating physician for a written opinion regarding the need for medical treatment or providing an estimate of permanent disability from not more than \$600 to not more than \$1,000.

Additionally, this legislation expands the circumstances for which fees may be paid to include a report or testimony by a psychologist, nurse practitioner or licensed clinical social worker concerning that provider's course of treatment of the injured worker.

Typically, in New Jersey, the judge splits the cost evenly, so the respondent/carrier/employer should anticipate contributing up to \$500 for the petitioner's medical expert fee.



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# New York

## *Permanent telehealth rules adopted*

The New York State Workers' Compensation Board has adopted [permanent regulations](#) to provide the option for telehealth visits in certain circumstances. This new regulation became effective July 11, 2023. The Board sent [telehealth guidance to payers](#) on July 13, 2023.

The new telehealth regulation specifies the following:

- Any telehealth appointments scheduled after the July 11, 2023, effective date must conform with this regulation; however, telehealth appointments scheduled prior to the effective date of this regulation do not have to be changed.
- Telehealth must be used in accordance with this regulation and any applicable New York State Medical Treatment Guideline.
- Treatment by Board authorized physicians, podiatrists, nurse practitioners and physician assistants may be rendered by telehealth.
- Following an initial in-person clinical encounter, the use of telehealth is at the discretion of the treating Board authorized physicians, podiatrists, nurse practitioners and physician assistants, except:
- Within the first three months following the date of injury or illness — the acute and subacute phases — at least every third clinical encounter must be in person.
- When more than three months have passed from the date of injury or illness — the chronic phase — there must be an in-person assessment no less than every three months unless or until such provider has determined the patient has reached maximum medical improvement (MMI) and has stated that the impairment or disability is permanent and unlikely to change.
- When MMI is attained and the claimant is in the chronic phase of injury or illness, there must be an in-person assessment by the provider at least annually.
- Treatment by Board authorized psychologists and licensed clinical social workers may be rendered by telehealth when medically appropriate and in accordance with the Medical Treatment Guidelines.
- Remote behavioral health visits should be limited to those situations when there is no benefit to in-person services (versus remote services) or when an in-person office visit poses an undue risk or hardship on the patient, with the reason documented for each use of telehealth.
- Treatment by Board authorized chiropractors, acupuncturists, physical therapists and occupational therapists may not be rendered via telehealth.
- Independent medical examinations (IMEs) may be conducted via telehealth when all parties of interest consent to telehealth examination and the IME is not offering an opinion on permanent impairment.

Read more in [Subject Number 046-1613](#) and watch the Board's website for additional information on telehealth coming soon.

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# Oregon

## *House Bill 3471*

Governor Tina Kotek signed [House Bill 3471](#) into law on July 27, 2023, and it became effective immediately. This legislation makes it an unlawful employment practice for an employer to unilaterally make an offer to negotiate or to make an offer for a settlement agreement conditional upon the worker also entering into an agreement that includes a no-rehire provision with exceptions.

“Settlement agreement” for purposes of this bill means a settlement agreement disposing of all or part of a worker’s claim for workers’ compensation including disputed claim settlement agreements (DCSs) and claim disposition agreements (CDAs).

For a violation, a worker may file a complaint alleging an unlawful employment practice and may bring a civil action to recover a civil penalty of up to \$5,000 and other relief. To avoid violation, consultation with an employment practices attorney familiar with the Oregon Unlawful Discrimination in Employment law is recommended if a no-hire provision is to be included in a workers’ compensation settlement.

This bill is expected to inhibit workers’ compensation claim settlements in Oregon but not impede that ability due to the exceptions provided.

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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