

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

June 2023

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Colorado

The Colorado General Assembly adjourned on May 9, 2023. Gov. Jared Polis had until June 7, 2023, to sign veto or let the bills passed during the session become law without his signature. Following is an overview of two bills impacting workers' compensation signed into law prior to the deadline.

House Bill 23-1076

On June 5, 2023, Governor Jared Polis signed [House Bill 23-1076](#). This bill will make changes concerning workers' compensation benefits administered by the Division of Workers' Compensation (DOWC) and the Division of Independent Medical Examiner (DIME) in the Department of Labor and Employment (CDLE).

Specifically, this bill:

- Increases the duration of workers' compensation medical impairment benefits for mental impairment from 12 to 36 weeks.
- Removes the option for employees to petition the DOWC for a replacement of prosthetics, eyeglasses, hearing aids and similar products on grounds that the employee has undergone an anatomical change since the previous device was furnished or for other good cause.
- Allows an employee to request an expedited hearing to resolve three specific issues within 45 days after temporary total disability (TTD) benefits are terminated due to a release to return to regular employment. The employee will have the burden of proving by a preponderance of the evidence an inability to return to regular employment as a proximate result of the claimed injury or disease.
- Specifies that reasonable and necessary medical benefits by an authorized treating physician after maximum medical improvement (MMI) are not limited to any specific medical treatment.
- Clarifies that the copy of all medical records provided to the independent medical examiner (IME) be relevant to the injury. Currently the law requires provision of records pertaining to the injury.
- Provides rulemaking authority to the DOWC to determine the amount and allocation of costs to be paid by the parties for an independent medical examination (IME).
- Expands the authority of the DIME prehearing administrative law judges to resolve disputes regarding indigency status of a requesting party, the allocation and format of independent medical examiner costs, content, volume or relevance of the medical records packet submitted to the IME.
- Increases the contingency fee percentage for attorney fees presumed to be reasonable from 20% to 25%.

This bill is currently pending before the House Appropriations Committee.

House Bill 23-1196

If signed into law, [House Bill 23-1196](#) will amend the Colorado Youth Employment Opportunity Act of 1971 to provide that aggrieved parties, including parents of children protected by the act, may pursue remedies in tort or under workers' compensation.

This bill is currently pending a second reading before the House.

Click [here](#) to review the 2023 Legislative Update prepared by the Colorado Division of Workers' Compensation.

Connecticut

The last day of the Connecticut General Assembly was June 7, 2023. Below is a summary of legislation impacting workers' compensation that has been signed into law.

Senate Bill 913

On June 12, 2023, Gov. Ned Lamont signed [Senate Bill 913](#). This legislation expands eligibility for workers' compensation benefits for post-traumatic stress injuries (PTSI) to all employees covered by the workers' compensation law on or after Jan. 1, 2024.

The PTSI benefits provided to all employees will be subject to the same 52-week cap and procedures that current law applies to the benefits for first responders (e.g., police officers, firefighters, emergency medical service personnel and emergency 9-1-1 dispatchers). The employee must be diagnosed with PTSI as a direct result of one of the following qualifying events arising out of and in the course of employment:

- (i) Views a deceased minor;
- (ii) Witnesses the death of a person or an incident involving the death of a person;
- (iii) Witnesses an injury to a person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause;
- (iv) Has physical contact with and treats an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause;
- (v) Carries an injured person who subsequently dies before or upon admission at a hospital as a result of the injury and not as a result of any other intervening cause; or
- (vi) Witnesses a traumatic physical injury that results in the loss of a vital body part or a vital body function that results in permanent disfigurement of the victim;

While the legislation is expected to increase workers' compensation costs in the state, the list of qualifying events that a worker has to witness and benefit limitations may reduce the impact.

House Bill 6797

[House Bill 6797](#) was signed by Gov. Lamont on June 12, 2023. This bill makes the following changes affecting workers' compensation:

- Requires the Workers' Compensation Commission (WCC) chairperson, in setting standards for approving employer or insurer medical plans, to include whether the plan has an administrative process that permits an employee to seek, without limitation, a determination of the necessity or appropriateness of medical and health care services recommended by providers of a medical care plan and the payment for such appropriate, medically necessary health care services
- Requires the Judiciary Committee chairpersons or their designees, by August 15, 2023, to convene two working groups.

1. A group to review medical records-related statutes and develop legislative recommendations on streamlining third-party record requests to health care providers in order to timely get record copies and setting reasonable fees for expenses when responding to these requests, including requests for electronic records.
2. A group to review the level of partial permanent disability (PPD) payments available to injured employees under the workers' compensation laws to assess whether existing laws adequately protect all injured employees in the state and if the laws on benefit levels should be revised.

These working groups must submit a report on its findings and legislative recommendations no later than Feb. 1, 2024.

This legislation is effective Oct. 1, 2023, except the working group provisions became effective upon signing.

House Bill 6721

Gov. Lamont signed [House Bill 6721](#) on June 27, 2023. This measure extends portal-to-portal workers' compensation coverage to telecommunicators (i.e., 9-1-1 emergency dispatchers) in three situations.

- (i) when they are subject to emergency calls while off duty by the terms of their employment,
- (ii) when they are responding to a direct order to appear at their work assignment when nonessential employees are excused from working, or
- (iii) after working two or more mandatory overtime shifts on consecutive days.

With "portal-to-portal" coverage, an employee's travel from home to the workplace or from the workplace to home is considered to be in the course of the employee's employment. Current law provides portal-to-portal coverage to police officers and firefighters and, under limited circumstances, to Department of Correction employees.

The bill is effective on Oct. 1, 2023. There is potential for increased claim and premium costs by the state and self-insured municipalities to the extent that telecommunicators meeting the specified conditions apply for workers' compensation benefits.

Delaware

The Delaware General Assembly adjourned on June 30, 2023. Following is a workers' compensation bill enacted during the session.

House Bill 144

Gov. John Carney signed [House Bill 144](#) on June 30, 2023, and it was effective upon signature. This bill increased the numbers of members of a limited liability corporation (LLC) who are eligible for exemption from workers' compensation reimbursement from four to eight.

Florida

Senate Bill 914

On June 16, 2023, Gov. Ron DeSantis signed [Senate Bill 914](#) related to suicide prevention. This bill, in part, permits diagnosis of posttraumatic stress disorder in first responders via telehealth for the purposes of obtaining worker's compensation benefits effective July 1, 2023.

Maine

Legislative Document 1803

On June 16, 2023, Gov. Janet Mills signed [Legislative Document 1803](#), which amends the Maine Workers' Compensation Act. Key provisions of this bill include:

- Allows a worker to file with the Workers' Compensation Board (Board) on approved forms a statement that the worker performs work as an independent contractor thus creating a rebuttable presumption valid for one year that the worker is an independent contractor in any later claims for benefits.
- Allows a person to file with the Board on approved forms a statement that the person performs construction work in a manner that would not make the person an employee of a hiring agent thus creating a rebuttable presumption valid for one year that the worker is a construction subcontractor.
- Requires the Board to post information on its website pertaining to independent contractor and construction subcontractor statements filed.
- Streamlines the process for individuals for the predetermination of independent contractor status.
- Revises the reimbursement rate if the executive director fails to annually update the medical fee schedule.
- Simplifies the calculation of the after-tax benefit owed during an incapacity period when an employee also receives certain pension and disability benefits.
- Clarifies that an insurer may seek penalty reimbursement from the insured's employer whose failure to provide information to the insurer is the cause of the insurer's failure to file or complete a form as required by law.

This bill takes effect 90 days after adjournment on June 29, 2023.

Nevada

The 2023 session of the Nevada legislature adjourned on June 6, 2023. Following is a summary of the workers' compensation bills enacted.

Senate Bill 274

On June 16, 2023, Gov. Joe Lombardo approved [Senate Bill 274](#) that makes significant changes to the workers' compensation system. Set forth below is a high-level summary of this legislation:

Out-of-State Adjusters/Claims Administration/Access to Records

- Allows an employee of a private carrier licensed as a company adjuster or a third-party administrator (TPA) for a private carrier to administer claims from a location inside or outside of the state of Nevada. All records concerning these claims must be maintained at one or more offices located in the state or by computer in an electronic format.
- Requires a private carrier that administers a claim from a location outside of the State to be available to communicate in real time with the claimant or a representative of the claimant Monday through Friday, 9 a.m. to 5 p.m. local time in the state of Nevada, excluding any day declared to be a legal holiday.
- Eliminates the requirement that certain entities maintain a telephone service to accept collect calls from injured employees.
- Requires an employee of a private carrier not licensed as a company adjuster or a TPA for a self-insured employer or an association for a self-insured employer or an association of self-insured public or private employers to administer claims from one or more locations located in the state of Nevada. All records concerning those claims must be maintained in those offices in the state.
- Permits the Commissioner to waive requirements related to claims handling inside or outside of the state under exceptional circumstances.

Panel Physicians and Chiropractors

- Expands the circumstances under which a physician or chiropractic physician may be involuntarily removed from an insurer's list of approved doctors.
- Specifies that the panel must not include a physician or chiropractor who does not accept and treat injured employees for industrial injuries in a discipline or specialization if that physician does not accept and treat injured employees for industrial injuries or occupational diseases in that discipline or specialization.
- Requires the Workers' Compensation Section to investigate notice that a physician or chiropractic physician does not accept and treat injured employees for certain disciplines or specialization and publish the results on the Division's website no later than 90 days after the results of the investigation is determined.
- Permits listed physicians and chiropractic physicians to decline evaluations if they do not feel qualified to rate the specific injury.

Independent Medical Examinations

- Allows an injured employee to request an IME to determine if there is a ratable impairment or to obtain a second rating to dispute an initial rating.
- Establishes rates of reimbursements for IMEs requested by the injured employee.

Lump-sum payments

- Requires an insurer to use the actuarial annuity tables adopted by the Division that are in effect on the date on which the claimant elects payment in a lump sum to calculate the present value of the lump sum payable.

Administrative Fines and Penalties

- Increases the benefit penalty that may be imposed and payable to an injured from an amount that is not less than \$5,000 and not greater than \$50,000, to an amount that is not less than \$17,000 and not greater than \$120,000.
- Extends the time in which a benefit penalty must be paid to a claimant after the Administrator determines the amount of the benefit penalty from 10 days to 15 days.
- Provides that a party who unsuccessfully appeals the imposition of a benefit penalty pay a claimant double the amount of the benefit penalty initially imposed if an appeals officer or district court renders a decision upholding the imposition of a benefit penalty.
- Requires that if an insurer organization for managed care, health care provider, third-party administrator, employer or professional employer organization (PEO) is ordered to pay a benefit penalty, the benefit penalty information must be published on the Internet website of the Division.

Investigation of Complaints

- Broadens the circumstances under which a complaint for a violation must be investigated by the Division.

This bill became effective upon approval by the governor for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of the bill, but is effective January 1, 2024, for all other purposes.

Senate Bill 283

Gov. Lombardo approved [Senate Bill 283](#) on June 12, 2023. This bill requires an insurer, third-party administrator or employer to furnish any health care records to the injured employee or his or her legal representative upon request.

Additionally, the law prescribes the maximum amounts of fees for furnishing health care records in response to such a request, which depends on whether the records are furnished by electronic mail, through a secure electronic method of file sharing or in a nonelectronic format.

The law becomes effective upon enactment for purposes of developing regulations, but generally becomes effective Oct. 1, 2023.

Assembly Bill 410

On June 6, 2023, Gov. Lombardo approved [Assembly Bill 410](#). This bill expands the stress-related injuries deemed to be compensable for first responders under workers' compensation to include witnessing a series of events during the course of employment and involved:

- (i) the death, or aftermath of the death, of a person as a result of a violent event; or
- (ii) an injury, or the aftermath of an injury, that involves grievous bodily harm of a nature that shocks the conscience.

Before this legislation, a first responder could prove by clear and convincing medical or psychiatric evidence that stress was primarily caused by witnessing "an event" as specified during the course of his or her employment.

The bill is effective upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions and on Jan. 1, 2024, for all other purposes.

Oregon

Senate Bill 418

Gov. Tina Kotek signed [Senate Bill 418](#) on June 1, 2023. This bill modifies the provision allowing an injured worker with an accepted disabling compensable injury to receive temporary disability benefits when required to leave work to receive compensable medical services. It is no longer required that the injured worker leave work for a period of four hour or more to receive temporary disability benefits.

An insurer may require a worker to confirm the period during which the worker is absent from work to receive compensable medical services.

These benefits are not payable if wages are paid for the period of absence by the employer.

The bill becomes operative on January 1, 2024.

Rhode Island

The Rhode Island General Assembly adjourned June 30, 2023. Following is a summary of bills signed by Gov. Dan McKee impacting workers' compensation.

House Bill 5710

Rhode Island enacted [House Bill 5710](#) on June 22, 2023. This bill modifies the filing of the notice of designation as independent contractor to allow the form to be filed electronically as well as in writing with the director of the Department of Labor. Additionally, this form must be filed annually, regardless of how many forms are filed.

By April 1 of each year, the department of labor and training will send a list of all individuals who have filed a designation form to the Rhode Island department of taxation.

The workers' compensation court may still, upon petition of an employee, the dependents of a deceased employee or any other party in interest at any time, vacate any "notice of 18 designation" if the "notice of designation" has been improperly procured. The provisions of this bill only apply to injuries occurring on or after January 1, 2001.

The bill takes effect Jan. 1, 2024.

House Bill 5564

Rhode Island enacted [House Bill 5564](#) effective June 22, 2023. This bill now includes "employees whose position directly involves work with students" in addition to teachers or any supervisor that school committees and the board of regents must provide immunity from liability and compensation when an assault occurs while acting within their duties.

The bill became effective upon passage.

House Bill 6461

Rhode Island has enacted [House 6461](#), its annual omnibus bill from the Workers' Compensation Advisory Council process. Among key provisions of this bill:

- Removes the requirement that an employer must obtain permission from the workers' compensation court, the employer, or the insurance carrier involved prior to paying a fee for an employee's major surgery.
- Provides, in the event that an overpayment of weekly benefits was paid, the employer is entitled to credit for any payment of compensation made against future compensation benefits and/or specific compensation benefits payable directly to the employee, as agreed to by the parties, or determined by the court.
- Requires payment to be mailed within 14 days of the entry of a decree, order, or agreement of the parties and assesses a penalty of \$100 for every day that the payment is delinquent.

This bill took effect June 21, 2023.

Texas

The 2023-2024 session of the Texas legislation adjourned May 29, 2023. Following is an overview of bills impacting workers' compensation signed into law by Gov. Gregg Abbott.

Senate Bill 1122

Gov. Abbott signed [Senate Bill 1122](#) on June 18, 2023. This legislation exempts medical examinations or services performed under the designated doctor (DD) program from sales and use tax.

On October 20, 2022, the Texas Comptroller [Private Letter Ruling No. PLR20220516113922](#). The ruling states that charges for designated doctor exams performed under Texas Labor Code Section 408.0041 are considered "insurance services" and are subject to Texas sales and use tax. This ruling imposed an unanticipated requirement for doctors to collect sales tax when performing exams that are ordered by DWC. On Nov. 10, 2022, the comptroller issued a [memo](#) delaying implementation of the guidance provided in the private letter ruling until after the 2023 legislative session to allow DWC and workers' compensation system participants time to seek this legislative change.

This legislation became effective immediately as it received a vote of two-thirds of all the members elected to each house.

House Bill 3335

Gov. Abbott signed [House Bill 3335](#) on June 13, 2023. This legislation amends current law to extend workers' compensation coverage to peace officers responding to an emergency call if seriously injured during such travel. Prior to passage of this bill, only firefighters or emergency medical personnel were provided this coverage if injured while traveling to an emergency call.

This change in law is made prospectively and becomes effective Sept. 1, 2023.

House Bill 2314

Texas [House Bill 2314](#), signed by Gov. Abbott on June 10, 2023, authorizes a claimant or an eligible parent to file a death benefit claims with either a workers' compensation insurer or the Texas Division of Workers' Compensation ("DWC"). If a claimant files a death benefit claim with an insurer, the insurer must maintain a record of the claim and provide written notification to the DWC.

To implement HB 2314, DWC anticipates rulemaking to create a process for insurance carriers to notify DWC when they get death benefits claim.

House Bill 2468

On June 12, 2023, Gov Abbott signed [House Bill 2468](#). This legislation amends statutes related to lifetime income benefits (LIBs) and creates a new section that only applies to certain first responders who have sustained a serious bodily injury. Among the key provisions in this bill:

- Expands eligibility standard for LIBs to replace “incurable insanity and imbecility” with a traumatic brain injury standard and expands the eligibility criteria for third degree burns.
- Authorizes an insurer to suspend the payment of an employee's LIBs after receipt of a designated doctor's report indicating that the employee is no longer entitled to the benefits.
- Allows LIBs for first responders so severely injured that s(he) is rendered permanently unemployable, regardless of the nature of his/her on-duty injury.
- Requires a first responder receiving these benefits to annually certify to his/her insurance carrier that s(he) was not employed in any capacity during the preceding year.
- Allows an insurer to periodically review an employee's continuing eligibility for lifetime income benefits, but not more than once during any five-year period.
- Authorizes an insurer to suspend an employee's LIBs if the employee fails to annually certify his/her lack of employment during the preceding year, unless the Texas DWC shows there is good cause for the continuation of the employee's benefits.
- Authorizes an accelerated dispute process for qualifying first responder LIBs claims, including contested case hearings (CCH) and appeals.
- The term "first responder" includes a peace officer, a certified emergency care attendant, an advanced emergency medical technician, an emergency medical technician-paramedic, a licensed paramedic, a firefighter, a volunteer firefighter and an emergency medical services volunteer.
- Authorizes the DWC to adopt rules to implement the statute, which should address the deadline for the filing of the annual certification, the insurer's review of the employee's eligibility for benefits, and the suspension, reinstatement and termination of lifetime income benefits.

This legislation is effective September 1, 2023.

Click [here](#) to review a summary prepared by the Texas Division of Workers' Compensation of recent workers' compensation legislation that affect workers' compensation and the individuals and entities they regulate.

Vermont

House Bill 217

On June 20, 2023, the Vermont General Assembly voted to override Governor Phil Scott's veto of [House Bill 217](#). Several substantive changes to workers' compensation statutes are in Sections 26 through 38 of this bill and became effective July 1, 2023. Following is a summary of these changes:

- Changes the method for calculating Temporary Partial Disability Benefits (TPD) is equal to or greater of:
 - Difference between amount injured employee is eligible to receive for temporary total disability (TTD) including dependency benefits, cost of living adjustment (COLA) and actual wages earned during the disability period; OR
 - Two-thirds or .667 of the difference between the injured employee's average weekly wage (AWW) and the amount earned during the period of disability.
- Increases the Dependent Benefits and Expansion of the Dependent Benefit to TPD Payments
 - Benefits for each dependent child under 21 years of age increases from \$10.00 to **\$20.00**.
 - The dependent benefit applies to both TPD as well as TTD.

Note: Payment of dependent benefits for TPD sunsets and the increase of dependent benefits for TTD will return to \$10 on July 1, 2028.

- Requires the Commissioner of Labor to submit a written report regarding the impact of the increase in the dependent benefit on or before January 15, 2027.
- Clarifies limitations on Work Search Requirements as follows:
 - A claimant who is released to return work, with or without limitations, but who cannot return to their former job may be required to conduct no more than 3 work searches a week.
 - A work search is not required if the claimant is already working in another job, or if they have been referred for or are scheduled for a surgical procedure.
- Allows the claimant to dispute the discontinuance of temporary disability benefits with the Commissioner and seek an extension of 14 days. However, the objection to the discontinuance must be specific as to the reasons and include supporting evidence.
- Expands the Preauthorization Process to:
 - Changes requirement for preauthorization to apply to proposed benefits instead of treatment and defines benefits as "medical treatment and surgical, medical, and nursing services and supplies, including prescription drugs and durable medical equipment."
 - Appropriate action must be taken within **14 days** to approve, deny or schedule an independent medical evaluation (IME).

Click [here](#) to view the memo issued by the Workers' Compensation Division on June 22, 2023. A [press release](#) was issued on June 30, 2023 announcing these changes to the public.

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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