

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

August 2024

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Delaware

House Bill 284

[House Bill 284](#) became effective Aug. 2, 2024, upon being signed by Gov. John Carney. This legislation:

- Clarifies that Chapter 25 of the Insurance Code, which generally requires insurance rates to be approved prior to use, does not apply to workers' compensation insurance.
- Recodifies certain provisions governing workers' compensation insurance in Chapter 25 of Title 18 to Chapter 26 of Title 18.
- Makes technical corrections to conform with the Legislative Drafting Manual.

According to the original synopsis, this is a clean-up bill. The changes being made are not expected to affect the substance of the law.

New Jersey

Senate No. 2822

On Aug. 22, 2024, acting Gov. Nicholas Scutari signed [Senate No. 2822](#), which increases the maximum percent of the judgment allowed as a reasonable attorney fee for the party in whose favor judgment is entered from 20% to 25%. The provisions of this bill became effective immediately upon signing and apply to all claims currently pending in the Division of Workers' Compensation (DWC) or filed on or after Aug. 22, 2024.

This increase impacts both an order approving settlements and an order approving settlements with dismissals (Section 20).

- For a Section 20 settlement, the injured worker continues to bear the full cost of the attorney fees, now 25% instead of 20%. On a Section 20 settlement of \$100,000, a petitioner now pays \$25,000 versus \$20,000 which would have been payable prior to Aug. 22, 2024.
- For order approving settlements, the New Jersey Division of Workers' Compensation (DWC) has historically assessed against employers the obligation to pay 60% of the injured workers' attorney's fee and the injured worker being responsible for paying 40% of their own attorney fee, although this is not codified.
- This increased attorney fee percentage will be applied to any order for medical and temporary disability benefits.

Litigation is anticipated to address:

- Whether the judge can assess the higher fee against the employer/carrier when there is a 20% written fee agreement in place between the injured worker and their attorney.
- The assessment of the attorney fees remains within the discretion of the judge and the current practice is the maximum percent being assessed.
- Whether the attorney fee percentage change should also be applied to motion fees, which currently is disputed.

Undoubtedly, this increased attorney fee percentage will likely result in increased settlement demands due to the higher fee the injured worker will owe the attorney as well as an overall increase in claim costs.

Legislation to watch

New York

The second year of the 2023-2024 legislative session convened on Jan. 3, 2024, and adjourned on June 6, 2024. There were three bills pertaining to workers' compensation that passed both the Assembly and Senate but have not yet been sent to Gov. Kathy Hochul.

The governor will have 30 days to make a decision on a bill sent to her when the legislature is out of session and failure to act ("pocket veto") has the same effect as a veto.

Senate Bill 6635

[Senate Bill 6635](#) passed the Senate on April 4, 2024, and passed the Assembly on June 5, 2024. To date this bill has not been delivered to Gov. Hochul.

If this bill becomes law, the provision that the board may not disallow the claim upon a factual finding that the stress was not greater than that which usually occurs in the normal work environment is expanded to all workers in the state who file a claim for mental injury premised upon extraordinary work-related stress incurred at work.

As of enactment as part of the 2017 budget, this provision only applied to specified police officers or firefighters, emergency medical technicians, paramedics or other persons certified to provide medical care in emergencies or emergency dispatchers. Additionally, the extraordinary work-related stress was restricted to a work-related emergency.

Gov. Hochul vetoed a similar bill in 2022 due to its significant cost. Click [here](#) to view Veto 191 of 2022.

Senate Bill 6929

[Senate Bill 6929](#) passed the Senate on June 5, 2024, and passed the Assembly on June 7, 2024. To date this bill has not been delivered to Gov. Hochul.

This legislation, if it becomes law, will:

- Raise the limit for specialist consultations, surgical operations, physiotherapeutic or occupational therapy procedures, x-ray examinations or special diagnostic laboratory tests requiring authorization from \$1,000 to \$1,500.
- Clarifies that the list of pre-authorized procedures issued and maintained by the board is solely for the purpose of expediting authorization of treatment of injured workers and is not to be used as a basis to deny.

- Entitles the provider who is not a member of the carrier's, self-insured's or state insurance fund's diagnostic network or networks that performs any special diagnostic tests, x-ray examinations, magnetic resonance imaging or other radiological examinations or tests costing more than \$1,500 to payment at the negotiated network rate.

This bill will become effective immediately if signed.

Assembly Bill 1204

[New York Assembly Bill 1204](#) was passed by the Assembly on May 23, 2024, and passed by the Senate on June 4, 2024. Click [here](#) to view the senate version. To date, Assembly Bill 1204 has not been delivered to Gov. Hochul.

If approved as currently written, this measure authorizes treatment of workers' compensation injuries by an occupational therapist assistant under the direction and supervision of an authorized occupational therapist and a physical therapist assistant under the direction and supervision of an authorized physical therapist.

This bill requires the record of such care be maintained by the occupational therapist or physical therapist where the care is rendered and by the referring physician, physician assistant, podiatrist and nurse practitioner.

The bill will become effective on the 30th day after it becomes law.

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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