

WORKERS' COMPENSATION COMPLIANCE

# Summary of legislative and regulatory changes

*August 2022*

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# California

The 2022 session of the California State Legislature adjourned on Aug. 31, 2022. Following is an overview of the bills that have been passed by the state Assembly and Senate. Gov. Gavin Newsom has until Sept. 30, 2022, to either sign or veto measures passed by the state legislature.

## *Assembly Bill 2848*

Gov. Gavin Newsom approved [Assembly Bill 2848](#) on Sept. 13, 2022. This legislation requires the administrative director to contract with an outside independent research organization to evaluate and report on the impact of the provision of medical treatment within the first 30 days after a claim is filed for those claims filed between Jan. 1, 2017, and Jan. 1, 2021.

A provision of Senate Bill 1160 enacted in 2016 authorized certain medical treatments within the first 30 days after the date of injury without prospective utilization review (UR) for compensable body parts or conditions addressed by the medical treatment utilization schedule. This applied to all dates of injury occurring on or after Jan. 1, 2018, and was intended to speed delivery of medical care.

A [2019 study by the California Workers' Compensation Institute](#) (CWCI) measured the impact of the 30-day rule and found that for physical medicine (physical therapy, chiropractic and acupuncture) there was a slight increase in the proportion of services performed within the first 30 days.

In 2021 key findings by the [Workers' Compensation Insurance Rating Bureau \(WCIRB\) California in a report monitoring legislative cost of Senate Bill 1160 UR provisions](#) during the two years after the effective date of the bill found that:

- Number of physical therapy visits per claim increased in the first 30 days while utilization of other types of medical services decreased during the same period.
- Physical therapy services were provided earlier.
- There was less utilization of physical therapy services five months after the first 30 days.

The new report, to be completed before July 1, 2023, will include two additional years of data.

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# Colorado

## *Emergency Rule adopted in response to Senate Bill 22-35*

The Colorado Division of Insurance adopted an [emergency regulation](#) to establish the minimum coverage requirements for insurance carriers offering occupational accident insurance coverage instead of workers' compensation coverage effective Aug. 9, 2022.

As required by [Senate Bill 22-35](#) an occupational accident insurance policy must provide a minimum aggregate policy limit of \$1,500,000 for all benefits paid for the benefit of the operator, including medical, temporary and permanent disability, death and dismemberment, and survivor benefits.

An insurer with an accident and health line of authority may issue this coverage.

Click [here](#) to view a summary of Senate Bill 22-35 published June 2022.

# Florida

## *Rule regarding compensation notice amended*

The Florida Division of Workers' Compensation has amended the [rule regarding the compensation notices, commonly referred to as the "broken arm poster."](#) This rule has been amended to allow the notice to be electronically sent to the employer and to allow the notice to be posted separately or as a part of a state and federal law poster.

The amendments became effective Aug. 22, 2022.

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# New York

On Sept. 9, 2022, ahead of the 21<sup>st</sup> anniversary of the 9/11 attacks, Gov. Kathy Hochul signed legislation intended to help remove barriers and delays in paying workers' compensation and Victim Compensation Fund benefits to survivors, their families and the families of victims. Following is an overview of the legislation.

## *Senate Bill 9370/Assembly 9922A*

[Senate Bill 9370/Assembly 9922A](#) adds a new section to the workers' compensation law in relation to presumptive medical evidence for individuals who participated in the World Trade Center rescue, recovery and clean-up operations. This bill provides that the state Workers' Compensation Board must accept the [Centers for Disease Control and Prevention World Trade Center Health Program Certification](#) as presumptive evidence of causation of certified illnesses for claims filed for conditions of impairment of health or death.

This legislation became effective immediately and any claimants who filed a claim or claims that were denied prior to the effective date of this bill may refile their claim within two years of the effective date of this bill.

## *Senate Bill 9294/Assembly 10416*

[Senate Bill 9294/Assembly Bill 10416](#) amends the New York City Retirement and Social Security Law (RSSL) to extend the deadline for filing a Notice of Participation under the WTC Disability Law from Sept. 11, 2022, to Sept. 11, 2026, for certain members who participated in the rescue, recovery or clean-up operations related to the World Trade Center attack on Sept. 11, 2001.

This bill also amends the workers' compensation law to allow a claim by a participant in the World Trade Center rescue, recovery or clean-up operations whose disablement occurred between Sept. 11, 2017, and Sept. 11, 2021, if such claim is filed on or before Sept. 11, 2026. Claims previously filed and denied will be reconsidered by the board.

This legislation became effective immediately and is to be deemed to have been in full force and effect on Sept. 11, 2001.

## *Senate Bill 6810/Assembly 7425*

[Senate Bill 6810/Assembly Bill 7425](#) establishes an alternative method of compromising an award issued by the September 11th Victim Compensation Fund awards consisting solely of non-economic losses such as emotional damages.

## *Senate Bill 6812/Assembly 7426*

[Senate Bill 6812/Assembly Bill 7426](#) allows a duly appointed personal representative of the estate of a victim of the September 11, 2001 terrorist attacks to file a claim with the September 11<sup>th</sup> Victim Compensation Fund regardless of the victim's cause of death if a compensable injury was sustained.

## *Senate Bill 8273/Assembly 7057*

[Senate Bill 8273/Assembly Bill 7057B](#) designates a portion of the State Highway System as the "Port Authority Police Officer James W. Kennelly Memorial Highway." James Kennelly was a volunteer firefighter and Massapequa resident who assisted in the search, rescue and recovery efforts at Ground Zero at age 20. He passed away at 37 from 9/11-related cancer.

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# Legislation to Watch

## *H.R. 8442 – Worker Flexibility and Choice Act*

On July 20, 2022, the [Worker Flexibility and Choice Act](#) was introduced in the U.S. House of Representatives with bipartisan sponsorship.

As introduced this bill:

- Defines the term “worker flexibility agreement.”
- Amends the Fair Labor Standards Act of 1938 to provide that the worker flexibility agreement supersedes all federal, state and local laws relating to wages and other monies paid, hours worked, documentation and recordkeeping, and applicable taxes, benefits and contributions insofar as they apply to the employment relationship between the parties covered under the “worker flexibility agreement.”
- Amends the Internal Revenue Code to indicate that individuals performing services under a worker flexibility agreement will not be treated as an employee and the person for whom such services are performed will not be treated as an employer.

The [Coalition of Workforce Innovation \(CWI\)](#) endorsed the bill. The [National Employment Law Project \(NELP\)](#) opposes the bill. While it is not likely this legislation will pass during this session, the ongoing worker-classification issue that also impacts workers’ compensation is highlighted.

This bill is currently pending with the Committee on Education in addition to the Committee on Ways and Means.

## *Michigan House Bill 6360*

On Aug. 17, 2022, [House Bill 6360](#) was introduced to clarify eligible individuals for the 2014 firefighter cancer presumption effective Jan. 1, 2022.

If the bill is passed as introduced, the firefighter cancer presumption applies to:

- A full-time member of a fire department or public fire authority.
- A part-time, paid on-call or former member of a fire department or public fire authority.
- A full-time, part-time, paid on-call, volunteer or former forest fire officer.



A covered individual (as listed above) must have 60 months or more of active service as a covered individual at the time the cancer manifests itself and the individual is exposed to hazards incidental to firefighting.

The bill was sent to the state House of Representatives Rules and Competitiveness Committee.

The Information contained within this document is intended to provide summary level information on proposed or enacted laws related to workers' compensation. It is not intended to provide guidance on the application of these legal requirements or as an update to your Company's workers' compensation policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to Company Policy.

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