

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

March 2021

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Arkansas

House Bill 1488

On March 15, 2021, Governor Asa Hutchinson signed [House Bill 1488](#) into law. This bill provides coverage to employees for illness or injury sustained as a result of the COVID-19 outbreak and applies retroactively to March 11, 2020.

Following are key provisions included in this bill:

- Adds that requiring an employee to perform work when the employer has knowledge that within the normal course and scope of the employee's job performance, exposure to COVID-19 or any of its mutations is possible, likely or certain, is not intentional conduct that would remove the employer from the exclusivity of rights and remedies under Arkansas' workers' compensation law.
- Excludes COVID-19 or any of its mutations from the definition of "ordinary disease of life" for which no compensation is payable.
- Provides that COVID-19 or any of its mutations may be established as an occupational disease if the claimant can establish a causal connection between their occupation or employment by a preponderance of the evidence.

Provisions of this legislation remain in effect for claims filed until May 1, 2023.

Idaho

Senate Bill 1010

On March 17, 2021, Governor Brad Little signed [Senate Bill 1010](#) into law. This bill amends provisions related to burial expenses as follows:

- Removes the term "burial expenses" from the definitions in Section 72-102 of the Idaho Code.
- Incorporates the previous definition of "burial expenses" into the payment requirement in Section 72-436(2) of the Idaho Code that states if death results from the injury within four years, the employer must pay a sum not to exceed \$6,000 for funeral and burial or cremation, together with the actual expenses of transportation of the employee's body to his place of residence within the United States or Canada.

This legislation will be effective July 1, 2021.

Mississippi

The 2021 session of the Mississippi legislature adjourned on April 1, 2021. Any bills that did not pass during this session will have to be reintroduced in 2022. Although not directly related to workers' compensation, following is enacted legislation of interest to public entities in the state.

Senate Bill 2336

On March 17, 2021, Governor Tate Reeves signed [Senate Bill 2336](#) into law, which delays the time by which the state, municipality, county or fire protection district must show proof of insurance coverage that meets the requirements of the Mississippi First Responders Health and Safety Act from no later than Jan. 1, 2023 to Jan. 1, 2024. This legislation also revises the effective date of the Mississippi First Responder Safety Act from July 1, 2021 to July 1, 2022.

The commissioner of insurance will adopt such rules and regulations as are reasonable and necessary to implement the bill. These regulations will include the process by which a first responder files a claim for cancer and the process by which claimants can appeal a denial of benefits.

Montana

House Bill 198

On April 1, 2021, Governor Greg Gianforte signed [House Bill 198](#) into law. This legislation raises the maximum payment for reasonable burial expenses for an employee whose death is the result of an accidental injury arising out of employment from \$4,000 to \$10,000.

The Department of Labor is required to create and then adjust through rule every five years the benefits to be provided to cover burial benefits.

House Bill 198 is effective Oct. 1, 2021.

House Bill 199

Governor Greg Gianforte signed [House Bill 199](#) into law on March 25, 2021. Immediately upon signing, Section 39-71-717 of the Montana Code Annotated (MCA) was amended to state that if a joint petition is filed by the insurer and worker, certain medical and other records need not be submitted. A joint petition reopens medical benefits and may specify the term for which benefits will remain open.

Effective July 1, 2021, this bill also amends Section 39-71-606 of the MCA to allow the Department of Labor and Industry to inform claimants of non-statutory programs or benefits offered to injured workers or the families of injured workers by a nonprofit organization. However, the department may not provide the contact information of an injured worker to such an organization without the express consent of the injured worker.

House Bill 283

[House Bill 283](#), which provides workers' compensation coverage for volunteers enrolled in elementary or secondary school educational institutions, was signed into law by Governor Greg Gianforte on April 1, 2021, and will become effective on Oct. 1, 2021.

According to this bill, an elementary or secondary student who is not paid wages by the business partner or postsecondary educational institution in which the student is enrolled is a volunteer for whom coverage must be provided. The bill provides that the business partner and the educational institution must mutually determine and agree in writing whether the business partner or the educational institution will elect coverage for the student.

Utah

During the 2021 session of the Utah Legislature that adjourned on March 5, 2021, the following bills were enacted that affect public entities and general contractors in the state. Both become effective May 5, 2021.

House Bill 25

Governor Spencer Cox signed [House Bill 25](#) on March 16, 2021. This legislation extends the Mental Health Protections for First Responders Workgroup until 2025.

This workgroup will review and make any legislative recommendations in a report to the Business and Labor Interim Committee on or before Sept. 30, 2021, on the following issues:

- The alleviation of barriers, including financial barriers, to mental health treatment for first responders inside and outside of the workers' compensation system.
- Statutory requirements for compensability of mental stress claims from first responders under Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.
- Improving a first responder's accessibility to mental health treatment.
- Any additional issue that the workgroup determines is an important issue related to workers' compensation for first responders decides to review.

Representatives of the Utah League of Cities and Towns and the Utah Labor Commission spoke in favor of the bill.

House Bill 355

On March 17, 2021, Governor Spencer Cox signed [House Bill 355](#) into law. This bill expands the scope of statutory employer to general contractors for purposes of applying exclusive remedy provisions. House Bill 355 also clarifies third parties against whom an injured employee, the employee's heirs or personal representative may maintain an action for damages.

Virginia

The Virginia General Assembly concluded the work of the 2021 regular session with the adjournment of its 2021 special session on March 1, 2021. Governor Ralph Northam had until midnight on March 31, 2021 to act on the bills passed by the General Assembly. Following is a summary of bills impacting workers' compensation that were signed into law.

Senate Bill 1351

This bill was signed into law by Governor Ralph Northam on March 31, 2021. Passed unanimously by both the Senate and House, [Senate Bill 1351](#) provides that an order issued by the Workers' Compensation Commission awarding or denying benefits does not bar by *res judicata* any claim by an employee or cause a waiver, abandonment or dismissal of any claim by an employee if the order does not expressly adjudicate such claim. This legislation becomes effective July 1, 2021.

House Bill 1818/Senate Bill 1275

Governor Northam signed [House Bill 1818](#) into law on March 30, 2021, and it is effective July 1, 2021. This bill adds "salaried or volunteer emergency medical services personnel" who have at least five years of service to those employees eligible to a presumption that death or disability from hypertension or heart disease is an occupational disease suffered in the line of duty. This presumption can be rebutted by a preponderance of competent evidence to the contrary.

To be eligible for the presumption, listed eligible employees must operate in a locality that has legally adopted a resolution declaring that it will provide such presumption. This presumption does not apply to "salaried or volunteer emergency medical services personnel" diagnosed with hypertension or heart disease before July 1, 2021.

House Bill 2207/Senate Bill 1375

On April 7, 2021, the Virginia General Assembly adopted the governor's recommendations provided on March 31, 2021. As enacted, [House Bill 2207](#) establishes a presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, correctional officers and regional jail officers is an occupational disease compensable under workers' compensation, unless the presumption is overcome by a preponderance of competent evidence to the contrary.

To be eligible for the presumption, the claimant must either receive a diagnosis of COVID-19 from a licensed physician, after either a presumptive positive test or a laboratory confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment. As recommended by Governor Northam, the presumption is retroactively applicable to any death or disability occurring on or after July 1, 2020 (rather than Sept. 1, 2020) and prior to Dec. 31, 2021.

House Bill 1985

On March 31, 2021 Governor Northam signed [House Bill 1985](#) into law. This bill establishes a presumption that COVID-19 causing the death or disability of healthcare providers who, as part of their employment are directly involved in diagnosing or treating persons known or suspected to have COVID-19, is an occupational disease compensable under workers' compensation.

The presumption applies for any death or disability caused by infection from the COVID-19 virus occurring on or after March 12, 2020, when Virginia declared a state of emergency due to COVID-19, when the following criteria is met:

- Prior to July 1, 2020, the claimant received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner, or physician assistant after either (i) a presumptive positive test or a laboratory-confirmed test for COVID-19 and presenting with signs and symptoms of COVID-19 that required medical treatment, or (ii) presenting with signs and symptoms of COVID-19 that required medical treatment absent a presumptive positive test or a laboratory-confirmed test for COVID-19.
- On or after July 1, 2020, and prior to Dec. 31, 2021, the claimant received a positive diagnosis of COVID-19 from a licensed physician, nurse practitioner or physician assistant after a presumptive positive test or a laboratory-confirmed test for COVID-19 and presented with signs and symptoms of COVID-19 that required medical treatment.

This presumption does not apply to any person offered a vaccine for the prevention of COVID-19 by their employer unless the person is immunized or the person's physician determines in writing that immunization would pose a significant risk to the person's health.

House Bill 2134

[House Bill 2134](#) was signed by the governor on March 30, 2021, and is effective July 1, 2021.

This bill provides that in any civil action for employment misclassification, unemployment compensation and workers' compensation, the fact that the hiring party provided an individual with personal protective equipment (PPE) in response to a disaster caused by a communicable disease for which a state of emergency has been declared, may not be considered to determine whether an individual is an employee or independent contractor.

Legislation to watch

Pennsylvania — Senate Bill 319/House Bill 922

On March 10, 2021, [Senate Bill 319](#) was re-introduced to clarify language in the Workers' Compensation Act in light of the Pennsylvania Supreme Court's 2018 decision in [Whitmoyer v WCAB \(Mountain Country Meats\)](#). This decision held that future workers' compensation medical expenses paid by a third party could not be recouped by employers and insurers because such payments are not paid in "installments." The Court interpreted "installments of compensation" to only include wage-loss benefits. As a result of this ruling, an employee can receive a large verdict or settlement in a lawsuit from the third party responsible for the injury, and also continue to require the employer or insurer to pay for the employee's ongoing medical costs.

Prior to the Whitmoyer decision, the employer credit was interpreted to include both future wage loss and future medical benefits. If passed as currently written, this bill would simply strike the phrase "installments of" to restore the prior interpretation to include both future wage loss and medical benefits.

This legislation was introduced as Senate Bill 922 last session. The current bill is assigned to the Senate Labor and Industry Committee.

Case law focus

Recent state court decision on medical marijuana reimbursement

Whether medical marijuana expenses must be reimbursed to an injured employee if recommended by the treating physician for a compensable injury varies by state. Another state court recently addressed this issue.

On April 13, 2021, the New Jersey Supreme Court held in [Hager v. M&K Construction](#) that an employer must reimburse a workers' compensation claimant for the costs of purchasing medical marijuana. Affirming the New Jersey Court of Appeals' decision, the state high court ruled that:

- Workers' compensation insurers do not fit within the mandatory reimbursement exception in New Jersey's Compassionate Use Medical Marijuana Act (MMA) applicable to private health insurers and government medical assistance programs.
- Medical marijuana may be found to constitute reasonable and necessary care under the Workers' Compensation Act, which includes chronic pain as a qualifying medical condition.
- The MMA is not preempted by the federal Controlled Substances Act (CSA), which is "effectively suspended" with respect to this issue.
- The employer "does not face a credible threat of federal criminal aiding-and-abetting or conspiracy liability."

Click [here](#) to review a summary of three other state court decisions over the past six months. Sedgwick will continue to monitor this topic and provide updates to aid in navigating this state-by-state patchwork of laws.

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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