

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

October 2021

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California

On Sept. 10, 2021, the California legislature adjourned from the 2021 session. The deadline for Gov. Newsom to sign or veto bills expired on Oct. 10, 2021. Below are summaries of a bill that clarifies provisions enacted in 2020 to strengthen the reporting requirements that employers must follow on workplace COVID-19 exposures, as well as two notable vetoes by Gov. Newsom of enacted workers' compensation legislation.

Notable vetoes

Reportedly Gov. Newsom vetoed about 8% of the 836 bills passed by the legislature, which is half the rate he did in 2019. Following are two of interest to the workers' compensation community.

Senate Bill 788

[Senate Bill 788](#) would have prohibited the reduction or apportionment of permanent disability benefits on the basis of race, religious creed, color, national origin, gender, marital status, sex, sexual identity or sexual orientation. If enacted, the law would have had significant implications for workers' compensation claims. However, on Sept. 28, 2021, the [Office of the Governor](#) returned the bill to the California State Senate without a signature.

In his statement to the Senate, Gov. Newsom expressed his support for efforts to combat bias within the medical profession, but also noted his concerns that the bill creates confusion with well-settled law, which is likely to result in increased litigation and subsequent delays to much-needed benefits to workers

The veto of this bill was recorded by the [Senate Rules Committee](#) on Oct. 21, 2021.

Assembly Bill 872

On Oct. 8, 2021, Gov. Newsom returned [Assembly Bill 872](#) to the California State Assembly. This bill would have extended a special form of workers' compensation, "4850 time," to rank-and-file and supervisory firefighters at the Department of Forestry and Fire Protection.

In his statement to the Assembly, Gov. Newsom indicated that an extension of "4850" time to this class of employees should be addressed through the bargaining process where consideration of how best to allocate limited resources for this crucial state function is viewed holistically. The veto of this bill was recorded by the [Assembly Rules Committee](#) on Oct. 11, 2021.

It's possible that both bills may be reintroduced in a future legislative session.

Assembly Bill 654

On Oct. 5, 2021, Gov. Newsom signed [Assembly Bill 654](#) into law, which modifies the provisions of Assembly Bill 685 as follows:

- Expands the employers exempt from the COVID-19 outbreak reporting requirement to various licensed entities, including but not limited to, community clinics, adult day health centers, community care facilities and child day care facilities.
- Adds the delivery of renewable natural gas to the list of utilities that the Division of Occupational Safety and Health are not allowed to materially interrupt.
- Clarifies that employers must notify “all employees who were on the premises at the same worksite as the qualifying individual within the infectious period” (not “employees who may have been exposed”) about the exposure, any applicable benefits to which they might be entitled and the cleaning and disinfection plan that the employer has implemented under Cal/OSHA standards. Under existing law, if an employer receives a notice of potential exposure to COVID-19, the employer is required within one business day to provide written notice to all employees on the premises at the worksite that they may have been exposed to COVID-19.
- Requires the employer, when giving notice to the local public health agency of a COVID-19 outbreak, to give that notice within 48 hours or one business day, whichever is later. Previous law required notice within 48 hours.
- Removes the requirement for the California Department of Health to post data on its website that allowed the public to track the number and frequency of COVID-19 outbreaks.

This bill became effective immediately, and as provided in Assembly Bill 685, the notice provisions will expire on Jan. 1, 2023.

New York

Senate Bill 661/Assembly Bill 6424

On Oct. 29, 2021, New York Gov. Kathy Hochul signed [Senate Bill 661/Assembly Bill 6424](#) into law. This legislation allows for the filing of a claim within one year from the effective date of the bill for death benefits due to cancer caused by exposure to diesel exhaust. Enactment of this measure temporarily supersedes other legal provisions that would have barred eligible widows and dependents from filing claims for workers' compensation because the statute of limitations expired.

The justification offered by the sponsors of the legislation is the 2012 [reclassification of diesel exhaust to a Group 1 carcinogen by the International Agency for Research on Cancer \(IARC\)](#) of the World Health Organization, together with other scientific groups. The IARC working group concluded that diesel engine exhaust causes lung cancer in humans based on the scientific evidence studies in highly exposed workers.

This act became effective immediately upon signing.

Tennessee

Adopted rule provides employees a telehealth option

Effective Oct. 19, 2021, the Tennessee Bureau of Workers' Compensation adopted amendments to [Rule TAC 0800-2-31](#) that allow employees who sustained an injury arising out of and in the course and scope of employment to utilize telehealth.

Telehealth is being added as just one of the available options for medically appropriate healthcare services to be provided with the voluntary consent of the agreement of the injured worker and the willingness of the healthcare services provider. The medical fee schedule applies to bills for telehealth services.

As required by the new rules, the bureau has changed the [Tennessee Form C-42, Employee's Choice of Physician](#) to allow the listing of a telehealth medical provider, in addition to three in-person physicians. Use of this new form should begin immediately.

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. Recently, another state court addressed this issue.

On Oct. 13, 2021, the Minnesota Supreme Court issued a pair of rulings overturning prior decisions by the state Workers Compensation Court of Appeals (WCCA) that ordered employers to pay for medical marijuana to treat work-related injuries. The cases decided were [Daniel Bierbach vs. Digger's Polaris and State Auto/United Fire](#) and [Susan Musta vs. Mendota Heights Dental Center and Hartford Insurance](#). In reaching this conclusion, the state high court determined that the WCCA lacked jurisdiction to decide whether federal law preempts Minnesota law that requires an employer to furnish medical treatment when the treatment for which reimbursement is sought is medical cannabis. The court then held that the Controlled Substances Act (CSA) preempts the workers' compensation court's orders mandating the former employers to pay for medical cannabis for injured employees. With this decision, there are now 17 states that have specifically stated in their laws or the state courts have ruled that reimbursement for medical marijuana is not required under workers' compensation.

There are only six states that have ruled that medical marijuana is reimbursable under workers' compensation.

The remaining states are either silent on this issue or include a provision that typically states, "a government medical assistance program, health insurance provider or private health insurer is not required to reimburse a person for costs associated with the medical use of marijuana."

Sedgwick will continue to monitor state reimbursement requirements for medical marijuana 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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