

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

June 2021

TABLE OF CONTENTS

Colorado 3

 House Bill 21-1050 3

Connecticut..... 6

 Senate Bill 660..... 6

Nevada..... 7

 Senate Bill 289..... 7

 Senate Bill 295..... 8

Oklahoma..... 9

 House Bill 2026..... 9

 House Bill 2236..... 9

 Senate Bill 472..... 9

 Senate Bill 1013..... 10

 Senate Bill 674..... 10

Pennsylvania 11

 Senate Bill 147..... 11

Texas 12

 Senate Bill 22..... 12

 House Bill 1752..... 13

 House Bill 1753..... 13

Colorado

The 2021 Colorado legislative session adjourned on June 8, 2021. In addition to the workers' compensation legislation summarized in [last month's update](#), the following workers' compensation bill was signed into law by Governor Jared Polis on June 30, 2021.

House Bill 21-1050

[House Bill 21-1050](#) makes various changes and clarifications to the Workers' Compensation Act of Colorado as summarized below:

- Adds guardian ad litem and conservator services that are reasonably necessary to the list of medical aid that an employer is required to furnish to an employee who is legally incapacitated as a result of a work-related injury or occupational disease.
- Requires an injured worker who is claiming mileage reimbursement for travel related to obtaining compensable medical care to submit a request to the employer or insurer no later than 120 days after the expense is incurred, unless good cause for later submission is shown, including failure by the employer or insurer to provide the notice in the brochure. The employer or the employer's insurer must pay the mileage expense reimbursement or, if denying the request, provide written notice to the claimant stating the reason the request was denied within 30 days after submittal of the request.
- Clarifies that reductions or offsets only apply to disability or retirement benefits granted by the federal Social Security Administration or employer-paid retirement benefits if the employee was not receiving the benefits at the time of the work-related injury.
- Prohibits the reduction of an employee's temporary total disability, temporary partial disability or medical benefits based on apportionment under any circumstances; limits apportionment of permanent impairment to specific situations; and declares that the employer or insurer has the burden of proof, by a preponderance of the evidence, at any hearing regarding apportionment of permanent impairment or permanent total disability benefits.
- Adds the following conditions that must be met for an employer or insurer to request the selection of an independent medical examiner (IME) when an authorized treating physician has not determined that the employee has reached maximum medical improvement (MMI):
 - A physician other than the authorized treating physician must have examined the employee at least 20 months after the date of the injury.
 - The examining physician must have determined that the employee has reached MMI and provided a written report to the authorized treating physician and all other parties specifying that the employee has reached MMI.
 - The authorized treating physician must have responded that the employee has not reached MMI or must have failed to respond within 15 days after service of the written report. (Section 4).

- Lowers the whole person impairment rating threshold applicable to an injured worker from 25% to 19% for purposes of determining the maximum amount of combined temporary disability and permanent partial disability payments an injured worker may receive, which will increase benefit payouts.
- Clarifies that monetary benefits or penalties required to be paid to an injured worker are deemed timely paid as of the date of receipt or three days after mailing if postmarked at least three business days prior to the payment due date.
- Prohibits an employer or insurer from withdrawing a filed admission of liability on the issue of compensability if two years or more have passed since the date the initial admission of liability was filed with the division, except in cases of fraud.
- Prohibits the director of the division of workers' compensation or an administrative law judge from determining issues of compensability or liability unless specific benefits or penalties are awarded or denied at the same time.
- Clarifies the scope of authority of prehearing administrative law judges.
- Updates the appeal process for dissatisfied parties in a workers' compensation case.
- Increases the threshold of earnings required for ceasing permanent total disability (PTD) and ending entitlement from \$4,000 to \$7,500 per year. Additionally, on July 1, 2022, and each July 1 thereafter, for injuries sustained on or after Jan. 1, 2022, the director will adjust the amount of earnings required for ceasing PTD by the percentage of the adjustment made by the director to the state average weekly wage.
- Clarifies the orders that are subject to review or appeal.

The bill takes effect 90 days following adjournment or Sept. 6, 2021, assuming no referendum petition is filed, and applies on or after this date to workers' compensation claims pending or filed, applications for hearings regarding apportionment filed, initial admissions of liability on the issue of compensability filed and to injuries that occur.

Click here to view the [2021 Legislative Update](#) on the Colorado Division of Workers' Compensation website that briefly highlights some of the key substantive and procedural changes that these bills address, anticipated rule changes, form and publication updates and additional pertinent changes affecting workers' compensation in Colorado.

Colorado Division of Workers' Compensation adopts new rules

The Colorado Division of Workers' Compensation adopted amendments to 7 CCR 1101-3, Rules 5, 6 and 7 that became effective July 1, 2021. Following is an overview of key changes to each rule.

[Rule 5](#) changes to claims adjusting requirements include:

- Requires that admissions, petitions to modify, terminate, suspend or request for lump sum payments and motions to close for lack of prosecution to be filed electronically.
- Changes the reporting requirements to within three days of notice to the insurance carrier or the self-insured for fatalities and for when more than three people are injured in the same accident.
- Changes to final admissions required attachments. The [Physician's Report of a Workers' Compensation Injury](#) (WC 164) is no longer required unless concurrently provided.

[Rule 6](#) related to modification, termination or suspension of temporary disability benefits adds to the [Petition to Suspend, Modify, or Terminate, Form WC54](#), the ability to allow for retroactive changes to temporary benefits so long as it is requested within 30 days of the first indemnity admission.

[Rule 7](#) related to closure of claims and petitions to reopen, removes a step in the reopening process. Parties should now file an [application for hearing](#) with the Office of Administrative Courts instead of a Petition to Reopen, Form WC37.

Connecticut

Senate Bill 660

Governor Ned Lamont signed [Senate Bill 660](#) into law on June 30, 2021, and it became effective immediately.

This bill expands eligibility for workers' compensation benefits for post-traumatic stress injuries (PTSI) to the following eligible employees:

- Emergency medical services (EMS) personnel.
- Department of Correction employees.
- Telecommunicators (i.e., 9-1-1 emergency dispatchers).
- Healthcare providers.

With the exception of healthcare providers, these new classes of employees are subject to the same qualifying events currently applicable to police and firefighters. The qualifying events for healthcare providers relate to engagement in activities dedicated to mitigating or responding to the COVID-19 public health emergency.

For EMS personnel, Department of Corrections employees and telecommunicators, qualifying events occurring in the line of duty **on or after July 1, 2019**, are covered.

For eligible healthcare providers engaged in activities dedicated to mitigating or responding to the COVID-19 public health emergency, PTSI benefits apply retroactive to events arising out of and in the course of employment **on or after March 10, 2020**.

Nevada

The 2021 Nevada legislative session adjourned on May 31, 2021. Following is an overview of two workers' compensation bills approved by Governor Steve Sisolak on May 31, 2021.

Senate Bill 289

[Senate Bill 289](#) revises various revisions concerning workers' compensation. Among the significant changes enacted:

- Revises how apportionment of prior permanent partial disability (PPD) works by prohibiting:
 - (1) An apportionment of percentages of disabilities where no rating evaluation was performed for the previous disability, unless the insurer proves by a preponderance of the evidence that certain specified medical evidence supports a specific percentage of previous disability.
 - (2) Any reduction of the percentage of present impairment if no medical documentation or healthcare records of a preexisting impairment exists.
- Requires an insurer to commence making installment payments to an injured employee within a specified period of time and without requiring the employee to elect a method of payment for that portion of an award for permanent partial disability (PPD), which is not in dispute.
- Authorizes a physician assistant (PA) or an advance practice registered nurse (APRN), in addition to a physician or chiropractor, to examine and treat an injured employee and file a claim for compensation (Form C4) for an industrial injury or occupational disease.
- Allows a claim for compensation to be signed with the original or an electronic signature of the treating healthcare provider and the injured employee and requires that a copy of the completed form be provided to the injured employee at the time of discharge.
- Provides that failure to retain proof of a successful transmission and receipt of the facsimile or other electronic transmission that is readily verifiable is deemed to be a failure of the insurer to send.
- Requires an insurer to send its written determination by facsimile or other electronic transmission, if requested by the claimant or someone acting on the claimant's behalf and provides for the tolling of certain periods within which a notice or appeal or notice of a contested claim must be filed if the insurer fails to send a determination regarding a claim for compensation.
- Allows a person's compensation payable or paid for an industrial injury or occupational disease to be subject to an attorney's lien.
- Provides that if a claimant prevails in litigation, certain fees, costs and reasonable and necessary expenses may be awarded against the opposing party by an appeals office, District Court, Court of Appeals or Supreme Court and sets forth the procedure for requesting costs and adjudicating disputes for such costs.

- Reserves the right of the claimant to conclude or resolve any contested matter that is pending at the time that the claimant executes the election to receive payment for PPD in a lump sum with specified exceptions.
- Requires the insurer to include at least three vocational rehabilitation counselors who are each employed by different organizations or entities.

Senate Bill 295

[Senate Bill 295](#) prohibits an insurer from terminating, suspending, withholding, offsetting, reducing or otherwise halting, restricting or limiting the payment of compensation for a permanent total disability for certain public sector employees who are or were firefighters, arson investigators, police officers, emergency medical attendants or their dependents on the basis that the injured employee earns an income.

Oklahoma

The second regular session of the 57th legislature adjourned on May 28, 2021. Following is a summary of workers' compensation legislation enacted and monitored during this session.

House Bill 2026

Governor Kevin Stitt approved [House Bill 2026](#) on April 21, 2021. This legislation amends the definition of "employee" as used in the Oklahoma Administrative Workers' Compensation Act to no longer exclude persons who provide services in a medical care or social services program or participants in a work or training program administered by the Department of Human Services.

This bill becomes effective Nov. 1, 2021.

House Bill 2236

On May 7, 2021, Governor Stitt signed [House Bill 2236](#). This legislation:

- Creates a new felony for failing to report any earned income to an employer, insurance carrier or third-party administrator while receiving temporary total disability (TTD) benefits.
- Changes the qualifications for the Workers' Compensation Fraud Investigation Unit specialized law enforcement officers to require certification as a peace officer by the Oklahoma Council on Law Enforcement Education, in lieu of a minimum of three years of law enforcement experience or its equivalent in national or military law enforcement experience.

This bill also becomes effective Nov. 1, 2021.

Senate Bill 472

[Senate Bill 472](#) was approved by Governor Stitt on May 28, 2021, and became effective immediately. This bill includes the following key provisions:

- Modifies apportionment of workers' compensation insurance premium taxes to \$1.75 million payable in equal monthly installments to the credit of the Workers' Compensation Administrative Fund for the fiscal year ending June 30, 2022, and all subsequent years during the existence of the Workers' Compensation Court of existing claims.
- Provides that subject to the availability of funds, the judge of the Court of Existing Claims is authorized to employ one at-will full- or part-time special workers' compensation judge.

According to the Oklahoma Tax Commission Impact Statement, the measure is revenue neutral, with the effect of increasing apportionments to the Workers' Compensation Administrative Fund and decreasing apportionments to the Multiple Injury Trust Fund (MITF), which would otherwise have received the apportionment.

Senate Bill 1013

On May 28, 2021, Governor Stitt approved [Senate Bill 1013](#), which provides that litigation files and investigatory reports of the Workers' Compensation Commission arising from enforcement of the provisions requiring employers secure compensation required under the Administrative Workers' Compensation Act are to be considered confidential.

This measure clarifies that testimony by an attorney of the Compliance Division of the Workers' Compensation Commission or an investigator of the division called to provide testimony is not prohibited from providing testimony. It also allows an attorney of the compliance division of the commission or an investigator of the division to provide testimony on matters the employee has received through the performance of the employee's duties

This bill became effective upon being approved on May 28, 2021.

Senate Bill 674

[Senate Bill 674](#), which creates parity between virtual and in-person healthcare was signed into law on May 5, 2021. This means health benefit plans must provide patients and providers equal access to and funding for telehealth visits compared to in-person visits.

This bill was monitored this session for its impact on workers' compensation; however, the term "health benefit plans" as used in this bill does not include workers' compensation insurance coverage.

Pennsylvania

Senate Bill 147

On June 30, 2021, Pennsylvania Governor Tom Wolf signed [Senate Bill 147](#) into law. This legislation requires employers who have a certified safety committee as part of the worker's compensation program to include information about the risks associated with substance abuse, including opioid painkiller use.

Currently, the Pennsylvania Workers' Compensation Law allows employers to receive a 5% discount on their workers' compensation insurance premium if they establish a [certified safety committee](#) within their workplace for the purpose of hazard detection and accident protection.

The department is required to notify, develop, and make available the resources for employers to comply with the requirement to provide this information within 21 days of this bill's enactment. The remainder of the bill takes effect in 120 days from enactment or on Oct. 29, 2021.

Texas

The regular biennial session of the Texas Legislature adjourned on May 31, 2021. Following is an overview of workers' compensation legislation enacted:

Senate Bill 22

[Senate Bill 22](#), which creates a rebuttable presumption that a severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) injury or death is work-related for certain first responders, was signed into law by Governor Abbott on June 14, 2021. The provisions of this bill became effective immediately:

- This bill applies to any new claim filed by a covered employee on or after June 14, 2021, and is retroactive to March 13, 2020.
- The rebuttable presumption applies to “covered employee(s)” including peace officers, firefighters, EMTs, custodial officers and detention officers.
- The presumption may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard or other cause not associated with the individual’s job service was a substantial factor in bringing about the disease or illness without which the disease or illness would not have occurred.
- Through Sept. 1, 2023, a rebuttal offered may not be based solely on evidence relating to the risk of exposure with whom the “covered employee” resides.
- If a covered employee was diagnosed with COVID-19 on or after March 13, 2020, or contracted COVID-19 between March 13, 2020 and June 14, 2021, the covered employee is entitled to pursue a claim under this presumption regardless of whether the claim was filed timely. However, such claims must be filed on or before Dec. 14, 2021.
- If a covered employee filed a claim between March 13, 2020 and June 14, 2021, and the claim was denied, the covered employee is entitled to request the claim be reprocessed under the presumption. The deadline to request the reprocess is June 14, 2022.
- Employees/beneficiaries may seek reimbursement for COVID-19 under new §409.0092. Within 45 days of receiving a written request, carriers shall reimburse or deny reimbursement for healthcare received, including deductibles and co-pays. Employees/beneficiaries may seek medical dispute resolution (MDR) of any denial by filing a request within 120 days of the carrier’s denial for reimbursement.

On June 21, 2021, the [Texas Division of Workers’ Compensation \(DWC\)](#) proposed the following new forms and an existing form update to implement Senate Bill 22:

- A new draft Sample Request to Reprocess a SARS-CoV-2 or COVID-19 Claim that injured employees or beneficiaries may use.
- A new draft PLN that insurance carriers must use when reprocessing COVID-19 claims.

- Update of PLN-14, Notice of Continuing Investigation to update the font type and instructions to show that the notice applies to claims subject to SB 22.

The period to review and comment closed on July 12, 2021.

House Bill 1752

[House Bill 1752](#) became effective immediately upon Governor Abbott's approval on June 4, 2021. This bill expressly allows the Texas Division of Workers' Compensation (DWC) to conduct benefit review conferences (BRC) by video conference and telephonically without the injured employee's consent.

The DWC may still conduct BRCs in person on showing of good cause as determined by the DWC; however, a BRC may not be conducted at a site more than 75 miles from the claimant's residence at the time of injury unless there is good cause.

To implement House Bill 1752, the DWC is working to update rules and revise the BRC request forms and plain language notices that insurance carriers must send to injured employees when taking actions on their claim.

House Bill 1753

[House Bill 1753](#) was signed by Governor Abbott on June 15, 2021, and became effective the same day. This measure changes the frequency with which the Texas Workers' Compensation Research and Evaluation Group is to issue consumer report cards to biennially, or by Dec. 1 of each even-numbered year.

Prior law required the group to issue these reports annually. H-1753 also repeals provisions requiring other evaluations, reports and studies regarding the state workers' compensation system.

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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