

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

February 2022

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Florida

Senate Bill 7018

On Feb. 24, 2022, Florida Gov. Ron DeSantis signed [Senate Bill 7018](#) to save from repeal a public records exemption relating to the personal identifying information of an injured or deceased worker contained in reports, notices, records or supporting documentation held by the Department of Financial Services (DFS) pursuant to Florida's Workers' Compensation Law. With the enactment of this bill, this information will continue to be confidential and exempt from public disclosure.

The [DFS recommended that the legislature reenact](#) this public records exemption stating prior to the enactment of this exemption, the Division of Workers' Compensation received approximately 90 public records requests per month for the names and contact information of injured workers that were reported to the Division in the previous month. According to the DFS, the majority of the requesting parties were law firms seeking to market their services to injured workers. The Division would regularly receive communications from injured workers complaining about the solicitations they were receiving and to ascertain how these firms acquired said workers' personal information. In addition, according to the DFS, background check companies would utilize this information to provide their clients with knowledge on whether prospective new hires had sustained a workers' compensation injury and those clients could potentially use such information to make determinations on employment.

The bill becomes effective Oct. 1, 2022.

New Jersey

Amendments to the New Jersey Administrative Code

The New Jersey Department of Labor and Workforce Development has amended [the New Jersey Administrative Code](#) to end the practice of permitting the use of medical monitoring settlements to conclude workers' compensation claims.

Under the amendments, a pre-trial conference or formal hearing cannot be adjourned just because the injury or illness that is the basis for the workers' compensation claim is also the basis for an accidental disability pension application.

Additionally, a new rule was added that:

- Expressly prohibits the approval by a judge of compensation of a continuing medical monitoring settlement (except where the workers' compensation claim petition is for an occupational disease, under the appropriate circumstances based on the facts presented, and when not used in a way to avoid a pension offset).
- Requires that both the workers' compensation petitioner and workers' compensation respondent notify the Division of Pensions and Benefits of the filing of the claim petition with the Division of Workers' Compensation, and that each also notify the Division of Pensions and Benefits that a judge of compensation has granted a judgment, approved a settlement award, or dismissed the petitioner's claim before the Division of Workers' Compensation.

The rule changes became effective on March 7, 2022; however, the anticipated increased exposure to carriers insuring public employees due to this policy change should have been seen starting last year.

The use of monitoring and coverage settlements came under [investigation by the Office of the State Comptroller \(OSC\)](#) after a complaint was received about the improper avoidance of pension offsets. In a report issued Feb. 4, 2021, the OSC concluded that the policy was:

- Inconsistent with the New Jersey Workers' Compensation Act.
- Eliminated the financial incentive for injured employees to pursue a workers' compensation judgment when they receive an accidental disability pension (ADP).
- Shifted the insurance companies' financial obligations to the State and its pension funds.
- Undermined the State's policy on double recoveries.

Immediately following release of the OSC's report and recommendations, the New Jersey Division of Workers' Compensation (DWC) issued a [Memorandum](#) on Feb. 4, 2021 that rescinded memorandums issued in 2006 and 2011 regarding medical monitoring and coverage settlements. Further, the DWC began to require both workers' compensation petitioners and respondents to notify the Division of Pensions and Benefits that a workers' compensation claim is pending when the injured worker receives an ADP.

New York

Senate Bill 7785/Assembly Bill 8726

On Feb. 24, 2022, Gov. Kathy Hochul signed [Senate Bill 7785/Assembly Bill 8726](#) into law. This bill represents a negotiated change to [Assembly Bill 359-A/Senate Bill 6628-A](#) to change when the workers' compensation board is required to appoint the uninsured employers' fund as the responsible party in cases when the identity of the responsible insurance carrier for the employer cannot be determined from within 10 days of the filing of new claims to within 30 days.

This legislation became effective on the same day as Assembly Bill 359-A/Senate Bill 6628-A, which was Feb. 19, 2022.

Three new medical treatment guidelines adopted

On [Feb. 25, 2022](#), the chair of the New York State Workers' Compensation Board announced amendments to medical treatment guideline (MTG) regulations to incorporate the following three:

- New York Eye Disorders Medical Treatment Guidelines
- New York Traumatic Brain Injury Medical Treatment Guidelines
- New York Complex Regional Pain Syndrome Medical Treatment Guidelines

According to Subject Number 046-1502, the Notice of Adoption was published in the March 2, 2022 edition of the State Register, and the medical treatment guidelines are scheduled to become effective May 2, 2022.

Oregon

The Oregon legislature adjourned March 4, 2022. Following is an overview of two workers' compensation bills enacted to date.

House Bill 4086

On March 2, 2022, Oregon Gov. Kate Brown signed into law [House Bill 4086](#), which amended various workers' compensation provisions including:

- Clarifies that only one person may qualify as a spouse when determining benefits eligibility for a surviving spouse for a death resulting from an accidental injury.
- Provides that Oregon's family law, where the case law is more developed, be used to determine who may qualify as a surviving spouse or cohabitant — a change from previous language that laid out specific relationship parameters.
- Removes a provision allowing the director of the Department of Consumer and Business Services to reduce compensation if the beneficiary is an alien residing outside of the United States or its dependencies.
- Defines "incapacitated" to mean an individual is physically or mentally unable to earn a livelihood and changes the term "invalid" to "incapacitated" throughout all provisions.
- Adds that a person acting on behalf of the employer engages in an unlawful employment practice by discriminating against a worker for engaging in certain workers' compensation activity.
- Removes exemption from the retaliation statute for employers with five or fewer employees.
- Removes the following exclusions from the definition of a beneficiary: a spouse who has been separated from the injured worker for two or more years at the time of injury or an alien who does not reside in the state at the time of the injured workers' accident.
- Modifies the definition of a "dependent" to specify a grandparent of a worker or the grandparent's spouse or domestic partner, a grandchild of a worker or the grandchild's spouse or domestic partner, a sibling or stepsibling of a worker or the sibling's or stepsibling's spouse or domestic partner, and any individual related by blood or affinity whose close association with a worker is the equivalent of a family relationship.
- Removes exclusion from definition of dependent of an alien who does not reside within the United States at the time of the accident, other than a parent, a spouse or children, unless a treaty provides otherwise.

This legislation was reviewed and approved by the [Oregon Management-Labor Advisory Committee \(MLAC\)](#). Click [here](#) to view a bill analysis prepared by the Workers' Compensation Division. **These changes will take effect on Jan. 1, 2023.**

House Bill 4113

On March 2, 2022, Oregon Gov. Kate Brown also signed into law [House Bill 4113](#). This measure adds bladder cancer and gynecologic cancer of the uterus, fallopian tubes, ovaries, cervix, vagina and vulva to the list of cancers that are presumed compensable for non-volunteer firefighters employed by a political division or subdivision for five or more years. As with the other listed cancers, an insurer or self-insured can rebut the presumption by providing clear and convincing medical evidence that cancer was not caused or materially contributed to by the firefighter's employment.

The bill also adds to the responsibility of the Oregon Workers' Compensation Management Labor Advisory Committee review and consideration of reports, findings and analyses made public by the National Institute for Occupational Safety and Health (NIOSH) that are related to cancers associated with non-volunteer firefighters.

These changes will only apply to claims with dates of injury on or after Jan. 1, 2023. According to a report from the Special Districts Association of Oregon, there are approximately 3,700 non-volunteer firefighters currently employed in the state of Oregon and just over 200 are female.

Other bills impacting workers' compensation that are awaiting action by the governor include:

- House Bill 4138
- Senate Bill 1560
- Senate Bill 1585.

Sedgwick will keep you informed as these bills progress.

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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800.625.6588

Sedgwick@sedgwick.com

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