

WORKERS' COMPENSATION COMPLIANCE

Summary of legislative and regulatory changes

March 2022

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Alaska

Bulletin 22-04 provides guidance on cost-of-living adjustments

On April 1, 2022, the Alaska Workers' Compensation Division issued [Bulletin 22-04](#) to change the sequence of applying a cost-of-living adjustment (COLA) ratio when and if an injured worker chooses to recover from an Alaska injury in another state.

This bulletin was issued as a result of the recent Alaska Supreme Court decision [Roberge v. ASRC Construction Holding Co.](#) This decision overruled the Workers' Compensation Appeals Commission decision in [Northern Construction v. James](#) and held that the COLA factor is to be applied first, then the resultant compensation rate capped at the state's maximum compensation rate. Previously [Bulletin 19-09](#), based on the Commission's decision in James, directed that the COLA factor should be applied to a recipient's weekly compensation rate after the maximum cap had been applied.

This bulletin does not address whether the Roberge decision applies retrospectively or prospectively and suggests that past Alaska Supreme Court decisions should serve as a basis for an informed decision.

Four factors applied by the State High Court applied to determine whether the change should be applied retroactively or only prospectively:

- Whether the holding either overrules prior law or decides an issue of first impression whose resolution was not anticipated.
- Whether the purpose and intended effect of the new rule of law is best accomplished by a retroactive or a prospective application.
- The extent of reasonable reliance upon the old rule of law.
- The effect on the administration of a retroactive application of the new rule of law.

Colorado

House Bill 22-1112

On March 24, 2022, Gov. Jared Polis signed [House Bill 22-1112](#). This measure makes the following changes to requirements pertaining to workers' compensation injury notices:

- Extends the timeline for an employee to notify their employer in writing of an on-the-job injury from four to 10 days.
- Requires an employer who receives written notice of an injury to affix the date and time of the receipt of the notice and make a copy of the notice with the date and time of receipt available to the injured employee within seven days after receiving notice. However, an employer is not subject to penalty for failure to provide the injured employee a copy of the notice.
- Provides that if an employer fails to provide a copy of the notice of the injury to the employee or fails to post the required notice to employees, the time period allotted to the employee is tolled for the duration of the failure.
- Adds that if the employer already has notice of the injury or the employee shows good cause for the failure to report the injury, the employee does not lose compensation for the failure to report.
- Changes the notice that an employer is required to post in the workplace to require that the notice state the name and contact information of the insurer and that the:
 - Employer is responsible for payment of workers' compensation insurance.
 - Injured employee has rights under the law if the employer fails to carry workers' compensation insurance.
 - Employee should seek medical attention.
 - Injury must be reported in writing to the employer.

Regarding occupational diseases, the bill also:

- Repeals the requirement that an employee notify the employer of an occupational disease within 30 days of contraction of the disease, and instead requires an employee to notify the employer upon manifestation of the disease.
- Repeals the provision that states that an employer is deemed to waive a failure to give notice of an occupational disease or death resulting from the disease unless the employer objects at a hearing on the claim prior to any award or decision.

The bill takes effect 90 days following adjournment of the general assembly and applies to claims arising on or after this effective date.

Enactment of this bill is expected to increase the costs of claims paid in the future.

Idaho

House Bill 590

On March 24, 2022, Gov. Brad Little signed [House Bill 590](#) that streamlines the workers' compensation settlement process.

This bill adds a new section to the Idaho Code to allow parties to enter into enforceable compromise or settlement agreements without approval of the industrial commissioners, except if:

- One or both parties are not represented by an attorney.
- A party is a minor child, or
- A legally incompetent person.

In any of the above instances, the Industrial Commission must review compromise or settlement agreements and approve if in the best interests of the parties.

If the commission declines to approve a compromise or settlement agreement, a written decision, including factual findings, conclusions of law and an order declining to approve the agreement must be issued. Such decision and order will be immediately appealable to the Idaho Supreme Court.

Parties are still required to submit information regarding settlements to the Industrial Commission. Additionally, either party may still request the Industrial Commission to review and approve proposed compromise settlement agreements.

This bill is effective July 1, 2022. Enactment is expected to result in a minor reduction of attorney fees for workers' compensation cases.

Indiana

House Bill 1153

The Indiana General Assembly adjourned on March 9, 2022. Following is an overview of [House Bill 1153](#) that was signed into law by Gov. Eric Holcomb on March 18, 2022. Key provisions of this significant workers' compensation legislation include:

- Formalizes the long-standing board practice effective July 1, 2022 related to the statute of limitation if after the occurrence of an accident, compensation is paid for temporary total disability or temporary partial disability.
- Increases the following by 3% each year for four years, beginning on July 1, 2023:
 - Maximum average weekly wage for determining compensation for permanent partial impairment.
 - Minimum and maximum average weekly wage for calculating compensation for temporary total disability, temporary partial disability and total permanent disability.
 - Compensation for each degree of permanent partial disability.
 - Maximum compensation, exclusive of medical benefits.
- Changes rates that ambulatory surgical centers (ASCs) are paid for surgeries under workers' compensation to the rates hospitals and medical centers are currently reimbursed. The National Council on Compensation Insurance, Inc. (NCCI) estimates that the cap on payments to ASCs will reduce annual statewide workers' compensation costs by 4.2%.
- Adds a new section to the Indiana Code regarding the payment of medical bills, effective Jan. 1, 2023:
 - Defines a "clean claim."
 - Amends the definition of "medical service facility" to include ASCs.
 - Establishes that a payer must pay or deny each bill for medical services, or notify the medical service provider of any deficiencies in a submitted bill:
 - a) Not more than **30 days** after the date the claim is received by the payer if the bill is filed electronically.
 - b) Not more than **45 days** after the date the claim is received by the payor if the bill is filed on paper.
 - Requires the payor to describe any necessary remedies, and if the provider is not notified of any necessary remedies, the bill is deemed to have no defect that prevents payment.

- Interest is due if a payer fails to pay or deny a non-deficient bill in the time required and subsequently pays the bill.
- Limits the forms a medical provider can submit for payment by a payor to a CMS 1450 (UB-04), CMS 1500 (HCFA-1500) or the American Dental Association (ADA) claim form.
- Removes outdated language.

Mississippi

House Bill 779

On March 10, 2022, Gov. Tate Reeves signed [House Bill 779](#). This bill will benefit the families of law enforcement officers and firefighters who died due to contracting COVID-19 in the line of duty.

The bill amends the definition of “cause of death” to include any case of death that would be covered under the Safeguarding America’s First Responders Act of 2020.

House Bill 779 allocates \$5 million from the Coronavirus State Fiscal Recovery Fund to the Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund. Any unexpended amounts transferred and remaining in the trust fund at the end of the state fiscal year will lapse into the Coronavirus State Fiscal Recovery Fund.

The Mississippi Department of Public Safety oversees managing the trust fund and disbursing the funds.

This bill became effective upon being signed and ensures families of law enforcement officers and firefighters who pass away from COVID-19 in the line of duty receive the full death benefit of \$100,000.

Oregon

Following is an overview of three additional workers' compensation bills signed into law since the Oregon legislature adjourned March 4, 2022.

House Bill 4138

On March 23, 2022, Gov. Kate Brown signed [House Bill 4138](#). Following are the various changes to workers' compensation law related to temporary disability, recovery of overpayments and medically stationary status.

Temporary total disability

- Expands the window for an attending physician or nurse practitioner to retroactively authorize time loss from 14 to 45 days prior to its issuance.
- The provisions stating that temporary disability compensation is not due and payable for any period not authorized by the attending physician or nurse practitioner does not apply in the following circumstances:
 - During periods in which there is a denial under the jurisdiction of the Workers' Compensation Board that affects the worker's ability to obtain authorization of temporary disability;
 - During periods in which there is a dispute over the identity of, or treatment by, an attending physician or nurse practitioner that affects the worker's ability to obtain authorization of temporary disability; or
 - When written notice has not been mailed or delivered to the worker and the workers' attorney, if the employer is represented that states the reason that temporary disability benefits are no longer due and payable.
- Requires insurer or self-insured employer to mail or deliver written notice to the worker or the worker's attorney prior to ending benefits and requires the notice state the reason benefits are no longer due and payable.
- Allows the worker's attending physician or nurse practitioner to retroactively authorize temporary disability for up to 45 days prior to the date of notice.
- If the notice ending benefits is given more than 45 days after the worker was no longer eligible for benefits, the attending physician or nurse practitioner may retroactively authorize temporary disability back to the date on which the benefits were no longer due and payable, provided the authorization is made within 30 days following the earlier of the date of mailing or delivery of the written notice.

Permanent partial disability benefits

- Establishes that no statement from an attending medical provider may establish medically stationary status more than 60 days prior to its issuance, except in the case of overpayment due to fraud.
- Requires insurers and self-insured employers to mail or deliver written notice within seven days of receipt of information that the worker is medically stationary.

Overpayments

- Limits recovery for overpayments, offsets or credits of wage loss from a worker's permanent partial disability compensation by an insurer or self-insured employer to no more than 50% of the total compensation awarded to the worker, except in the case of fraud.
- Provides that the insurer may not declare an overpayment of any compensation paid more than two years before declaration.

The above provisions of this bill apply to claims or causes of action existing on or arising on or after Jan. 1, 2024, regardless of the date of injury or the date the claim is presented.

The Workers' Compensation Division has invited stakeholders to a preliminary conversation before work begins on proposed rule changes to implement this bill. Click [here](#) to view the posted agenda.

RSVP to WCD.Policy@dcbs.oregon.gov and tell them whether you will attend in person or virtually. If your organization has an internal process for selecting staff members to participate on rulemaking advisory committees, please check with your administration.

Senate Bill 1529

On March 17, 2022, Gov. Brown signed [Senate Bill 1529](#). This bill includes the following provisions impacting workers' compensation:

- Allows the public health director, upon approval of the governor or the designee of the governor to direct and deploy the State Emergency Registry of Volunteers in Oregon (SERV-OR).
- Directs the Oregon Health Authority to provide workers' compensation coverage for registered SERV-OR providers who are injured in the course and scope of performing emergency healthcare services at the direction of the authority.

This legislation became effective immediately upon signing.

Senate Bill 1585

Gov. Brown signed [Senate House Bill 1585](#) on March 24, 2022 and the bill became effective immediately upon signing.

- Directs the Department of Consumer and Business Services (DCBS), the Oregon Employment Department (OED) and the Oregon Health Authority (OHA) to enter into an intergovernmental agreement to share information necessary to enable DCBS to inform beneficiaries of employees who died of COVID-19 of their rights to workers' compensation death benefits. Requires the shared information to be the minimum necessary to inform beneficiaries of their rights.
- Limits the shared information to deaths from COVID-19 workplace outbreaks. Limits the data to rights of beneficiaries that arise before the state of emergency as declared by the governor and subsequently extended is no longer in effect.

The DCBS, in consultation with OED and OHA, is required to submit a report to the Legislative Assembly by Dec. 15, 2022 describing the implementation of the intergovernmental agreement.

South Dakota

Senate Bill 17

On March 8, 2022, [Senate Bill 17](#) was signed into law by Gov. Kristi Noem.

This measure amends South Dakota Medical Cannabis law to specify private health insurers, workers' compensation insurance carriers or self-insured employers providing workers' compensation benefits are not required to reimburse a person for costs associated with the medical use of marijuana.

This legislation becomes effective July 1, 2022.

Utah

The Utah State Legislature adjourned on March 4, 2022, and March 24, 2022 was the last day for the governor to sign or veto bills passed. Below are the actions taken on bills impacting workers' compensation.

House Bill 44

On March 15, 2022 Gov. Spencer Cox signed [House Bill 44](#), which removes the various expired reporting requirements. Below is a workers' compensation reporting requirement removed by this bill:

- Studies for hospital costs as they pertain to workers' compensation.

House Bill 23

The governor also signed [House Bill 23](#) on March 22, 2022, which requires every first responder agency within the state to provide or make available mental health resources to:

- All first responders.
- The spouse and children of first responders.
- Surviving spouses of first responders whose death is classified as a line-of-duty death.
- First responders who have retired from the agency.

For the fiscal year beginning July 1, 2022, this bill appropriates monies to the Department of Public Safety for the award of grants to first responder agencies to provide mental health resources. This bill also defines various terms such as first responder, first responder agency, mental health resources and plan.

House Bill 16

On March 22, 2022, the governor signed [House Bill 16](#), which modifies provisions of the Emergency Management Act. A key provision of the bill describes the purposes for which an emergency response team member is considered an employee of the division:

- Receiving workers' compensation benefits, which shall be the exclusive remedy for any injuries or occupational diseases.

- Operating a motor vehicle or equipment if the emergency response team member is properly licensed and authorized to do so.
- Receiving the protection and indemnification normally afforded a division employee.

Each of the above bills become effective May 4, 2022.

West Virginia

House Bill 4296

On March 30, 2022, Gov. Jim Justice approved [House Bill 4296](#) into law. This measure revises outdated and obsolete provisions within Chapter 23 of the West Virginia Code pertaining to workers' compensation. Much of the language predated the 2005/2006 regulatory transition from a state-operated monopolistic system for workers' compensation to a competitive, private market system.

This bill passed March 10, 2022 and becomes effective 90 days from passage.

Insurance Bulletin 22-05 announces increase in funeral expenses

On March 14, 2022, the Insurance Commissioner issued [Insurance Bulletin 22-05](#) to announce an increase in the funeral or cemetery expenses that are considered reasonable as part of workers' compensation claims.

An increase to the amount of funeral or cemetery expenses that must be paid was last made in 2009.

Effective July 1, 2022, in the event of a work-related injury causing death, the amount of funeral or cemetery expenses to be paid by the party responsible for the claim will increase from \$7,000 to \$10,000. Informational Letter 170 issued August 2009 is revoked effective June 30, 2022.

Private carriers and self-insured employers may still choose to pay a greater amount as circumstances dictate should they deem it reasonable or necessary.

Private carriers and self-insured employers may request supporting documentation of expenses.

Wyoming

House Bill 0059

On March 8, 2022, Gov. Mark Gordon signed [House Bill 0059](#) that extends and amends the time period for which compensable injuries related to COVID-19 will not be included in an employer's experience rating from Dec. 30, 2020 to March 31, 2023.

In 2020, Senate File 1002 established that a COVID-19 illness would be presumed to be an injury covered under the worker's compensation program from Jan. 1, 2020 to Dec. 30, 2020, and provided that COVID-19 related claims made on or before Dec. 30, 2020 would not be included in an employer's experience rating.

In 2021, the Legislature passed Senate File 0019, which extended the time period for which a COVID-19 illness would be presumed to be an injury covered under the worker's compensation program to March 31, 2022, but it did not extend the time period for which such claims would not be included in an employer's experience rating.

This bill also repeals language requiring that available federal relief funds be deposited in the workers' compensation fund to cover the estimated cost of the coverage provided for COVID-19 illnesses.

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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