



Legislative Activity Report

National Council on Compensation Insurance

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Regulatory Services

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State Issues Contacts: Please refer to the list of State Relations Executives at the end of this report.

LEGISLATIVE ACTIVITY—LEGISLATIVE SESSION UPDATES

This report contains descriptions and/or excerpts of relevant bills that passed the first chamber, passed the second chamber, or were enacted during the specific periods. In addition, a recap of significant legislative and judicial activity impacting the workers compensation system will be included in the first report published each month. This report is issued on a weekly basis throughout the legislative season, and it provides updates on the content of these bills if and when they progress through the legislative process. This report includes bills from states where NCCI provides ratemaking services (see state list under Contact Information) and the US Congress.

BILLS ENACTED

There were no relevant workers compensation-related bills enacted within the one-week period ending February 5, 2016.

BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending February 5, 2016.

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending February 5, 2016.

Arizona

HB 2114 adds new *sections 23-1601. Declaration of independent business status* and *23-1602. Determination of employment relationship: prohibition* to the Arizona Revised Statutes as follows:

23-1601. Declaration of independent business status

A. Any employing unit contracting with an independent contractor may prove the existence of an independent contractor relationship for the purposes of this title by the independent contractor executing a declaration of independent business status, as provided by this section, and by the employing unit and the independent contractor acting in a manner consistent with the declaration. To the extent allowed by federal law, a declaration of independent business status executed in compliance with this subsection creates a rebuttable presumption of an independent contractor relationship between the independent contractor and the employing unit with whom the independent contractor contracts. Any declaration of independent business status shall be signed by the independent contractor, be dated and, unless otherwise provided by law, substantially comply with the following form:

This declaration of independent business status is made by (contractor) in relation to services performed by the contractor for (contracting party). The contractor states and declares the following:

1. The contractor operates the contractor's own independent business and is providing services for the contracting party as an independent contractor.
2. The contractor understands that the contractor is not an employee of the contracting party and the services rendered for the contracting party do not establish any right to unemployment benefits or any other right arising from an employment relationship.
3. The contractor understands that the contractor is not insured under the contracting party's health insurance coverage or workers' compensation insurance coverage.
4. The contractor understands that the contractor is responsible for any and all tax liability associated with payments received from the contracting party and that the contracting party will not withhold any taxes from payments to the contractor.
5. The contractor understands that the contracting party does not restrict the contractor's ability to perform services for other parties. The contractor is authorized to accept work from and perform work for other businesses and individuals besides the contracting party.
6. The contractor acknowledges that the contracting party expects that the contractor provides services for other parties and is therefore not economically dependent on the services performed for the contracting party.
7. The contractor has the right to accept or decline requests for services by the contracting party.

8. The contractor has the right to subcontract the services provided to the contracting party to qualified employees or subcontractors of the contractor.

9. The contractor recognizes that the contracting party does not dictate the time of performance or the methods or process the contractor uses to perform services for the contracting party. The contracting party has the right to impose quality standards or a deadline for completion of services performed, or both, but the contractor is authorized to determine the days worked, the time of work and other aspects of performance.

10. The contractor recognizes that the contractor is responsible for obtaining and maintaining any required registration, licenses or other authorization necessary for the services rendered by the contractor.

11. The contractor understands that the contractor will be paid by the contracting party based on the work the contractor is contracted to perform and that the contracting party is not guaranteeing or otherwise providing the contractor with a regular salary or any minimum, regular payment.

12. The contractor understands that the contractor is responsible for providing and maintaining all tools and equipment associated with the services performed for the contracting party.

13. The contractor understands that the contractor is responsible for all expenses incurred by the contractor in performing the services for the contracting party.

14. The contractor acknowledges that the terms set forth in this declaration apply to the contractor, the contractor's employees and the contractor's independent contractors.

B. This section does not require an independent contractor to execute a declaration of independent business status to be considered an independent contractor. Any employing unit or independent contractor may rely on any provision in this title for the purposes of establishing an employment or independent contractor relationship.

C. The execution of a declaration of independent business status and compliance with the declaration pursuant to this article shall operate to the same effect as a declaration executed pursuant to section 23-902, subsection d.

23-1602. Determination of employment relationship; prohibition

Any supervision or control exercised by an employing unit to comply with any statute, rule or code adopted by the federal government or this state or a political subdivision of this state or any professional licensing requirement may not be considered for the purposes of determining the independent contractor or employment status of any relationship or individual for the purposes of this title.

Georgia

HB 402 adds several new sections to the Official Code of Georgia Annotated as follows:

33-9-40.3

(a) For each policy of workers' compensation insurance issued or renewed in the state on and after July 1, 2016, there may be granted by the insurer up to a 5 percent reduction in the premium for such policy if the insured has been certified by the State Board of Education to the State Board of Workers' Compensation as a work based learning employer pursuant to Article 12 of Chapter 9 of Title 34 and has notified its insurer in writing of such certification.

(b) If granted, the premium discount provided by this Code section shall be applied to an insured's policy of workers' compensation insurance pro rata as of the date the insured receives such certification and shall continue for as long as the insured maintains the certification; provided, however, that an insurer shall not be required to credit the actual amount of the premium discount to the account of the insured until the final premium audit under such policy. Certification of an insured shall be required for each year in which a premium discount is granted.

(c) If it is determined that an insured misrepresented its qualifications for certification pursuant to Article 12 of Chapter 9 of Title 34, the workers' compensation insurance policy of such insured may be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount and to cancellation in accordance with the provisions of the policy.

(d) Each insurer shall make an annual report, in accordance with guidelines established by the Commissioner, to the rating and statistical organization designated by the Commissioner illustrating the total dollar amount of the premium discounts applied pursuant to this Code section.

(e) The Commissioner shall conduct a study to determine the impact of the premium discounts provided pursuant to this Code section in encouraging employers to provide work based learning opportunities for students age 16 or older.

(f) The Commissioner shall be authorized to promulgate rules and regulations necessary for the implementation and enforcement of this Code section.

34-9-2.4

(a) As used in this Code section, the term:

(1) 'Work based learning placement' or 'placement' shall have the same meaning as in Code Section 34-9-430.

(2) 'Work based learning student' or 'student' shall have the same meaning as in Code Section 34-9-430.

(b) Notwithstanding the provisions of paragraph (2) of Code Section 34-9-1:

(1) A work based learning student in a paid work based learning placement for an employer shall be deemed an employee of such employer for purposes of workers' compensation coverage; and

(2) A work based learning student in an unpaid work based learning placement for an employer shall be deemed an employee of such employer for purposes of workers' compensation coverage unless all of the following conditions apply:

(A) The placement, even though it includes actual operation of the facilities of the employer, is similar to training which would be

given in an educational environment;

(B) The placement is for the benefit of the student;

(C) The student does not displace regular employees, but works under close supervision of existing staff;

(D) The employer that provides the training derives no immediate advantage from the activities of the student; and on occasion its operations may actually be impeded;

(E) The student is not necessarily entitled to a job at the conclusion of the placement; and

(F) The employer and the student understand that the student is not entitled to wages for the time spent in the placement.

34-9-430

As used in this article, the term:

(1) 'Employer' means a person or entity that is subject to the provisions of this chapter but shall not include the state or any department, agency, or instrumentality of the state; any county; any county or independent school system; any municipal corporation; or any employer which is self-insured for the purposes of this chapter.

(2) 'Employer member of a group self-insurance fund' means any employer who is a member of a fund certified pursuant to Code Section 34-9-153.

(3) 'Self-insured employer' means any employer certified pursuant to Code Section 34-9-127.

(4) 'Work based learning coordinator' means a school employee who coordinates and supervises students in work based learning placements.

(5) 'Work based learning employer' means an employer who provides work based learning placements in accordance with this article.

(6) 'Work based learning placement' or 'placement' means an arrangement between a business or industry partner and a local school system in which students are released for a portion of the school day for structured learning at an employer's job site in either a paid or unpaid position while receiving academic credit. Work based learning placements include, but are not limited to, employability skill development, service learning, cooperative education, internship, youth apprenticeship, and clinical experiences.

(7) 'Work based learning student' means a student age 16 or older in a work based learning placement for an employer.

34-9-431

(a) A work based learning employer that has been certified pursuant to this Code section may be eligible for a premium discount under such employer's workers' compensation insurance policy pursuant to Code Section 33-9-40.3.

(b) The State Board of Education shall certify to the State Board of Workers' Compensation that a work based learning employer meets the following requirements:

(1) Enters into a training agreement with one or more work based learning students, the student's parent or guardian, and the school's work based learning coordinator;

(2) Develops, in conjunction with the school's work based learning coordinator, a detailed training plan for the work based learning student that focuses on development of technical skills and employability skills;

(3) Assigns a mentor to the work based learning student and assist in monitoring the progress of such student;

(4) Provides workers' compensation insurance coverage for the work based learning student;

(5) Complies with all federal, state, and local laws and regulations regarding the employment of students; and

(6) Complies with the rules and regulations of the State Board of Education.

34-9-432

A self-insured employer or an employer member of a group self-insurance fund that provides work based learning placements for one or more work based learning students substantially in accordance with Code Section 34-9-431 and that complies with all other provisions of this article required of employers in order to qualify for insurance premium discounts may be certified by the State Board of Education to the State Board of Workers' Compensation as a work based learning employer in compliance with this article.

New Mexico

HB 63 amends sections 52-1-11 and 52-1-12.1, and repeals section 52-1-12 of the New Mexico Statutes Annotated as follows:

52-1-11. Injuries due to intoxication caused by the willfulness or intention of worker are noncompensable.

No compensation shall become due or payable from any employer under the terms of the Workers' Compensation Act in the event such injury was occasioned by the intoxication of such worker or willfully suffered by him the worker or intentionally inflicted by himself the worker.

52-1-12.1. Reduction in compensation when alcohol or drugs contribute to injury or death.

The compensation otherwise payable a worker pursuant to the Workers' Compensation Act shall be reduced ten percent in cases in which the injury to or death of a worker is not occasioned by the intoxication of the worker as stated in Section 52-1-11 NMSA 1978 or occasioned solely by drug influence as described in Section 52-1-12 NMSA 1978, but voluntary intoxication or being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug, Device and Cosmetic Act or under the influence of a narcotic drug as defined in the Controlled Substances Act, unless the drug was dispensed to the person upon the prescription of a practitioner licensed by law to prescribe the drug or administered to the person by any person authorized by a licensed practitioner to administer the drug, is a contributing cause to the injury or death. Test results used as evidence of intoxication

or drug influence shall not be considered in making a determination of intoxication or drug influence unless the test and testing procedures conform to the federal department of transportation "procedures for transportation workplace drug and alcohol testing programs" and the test is performed by a laboratory certified to do the testing by the federal department of transportation.

A. As used in this section, "intoxication" or "influence" means a temporary state or condition of impaired physical, mental or cognitive function by means of alcohol, a drug, a controlled substance or a combination of two or more substances at the time of injury or death. "Drug" or "controlled substance" pursuant to this section does not include medications prescribed to a worker by the worker's licensed health care provider and taken in accordance with directions of the prescribing health care provider or dispensing pharmacy, unless such medication is combined with alcohol or a non-prescribed drug or controlled substance to cause intoxication or influence.

B. Compensation benefits otherwise due and payable from an employer to the worker under the terms of the Workers' Compensation Act shall be reduced by the degree to which the intoxication or influence contributes to the worker's injury or death; provided that the reduction shall be a minimum of ten percent but no more than ninety percent, subject to the other requirements of this section.

C. Test results relied on as evidence of a worker's intoxication or influence shall not be considered in making a reduction in compensation determination unless the test and testing procedures conform with standard testing procedures generally accepted in the medical community and the test is performed by a laboratory certified to do the testing by an organization nationally recognized to do such certification. Testing may include testing methods for urine, breath or blood.

D. The director shall adopt rules regarding tests, testing and the cutoff levels for intoxication or influence.

E. If a post-accident test pursuant to Subsection C of this section is required of a worker and the worker refuses to submit to the test or to release the post-accident test results to the employer, no compensation otherwise payable from an employer under the terms of the Workers' Compensation Act shall be paid to the worker claiming compensation.

F. Testing shall be at the employer's expense and shall not be used as evidence in a criminal proceeding against the worker. Test samples shall be taken as a split sample. One part of the sample shall be held by the testing facility for twelve months from the date of the original test. Within this twelve-month period, the worker has the right to request a second test of the original sample at the worker's expense.

G. An employer shall be barred from claiming a reduction in compensation pursuant to this section if the employer fails to implement a written policy that declares a drug- and alcohol-free workplace, which may include post-accident testing in accordance with this section, and that gives its employees notice that workers' compensation benefits may be reduced in the event intoxication or influence contributes to a workplace injury.

H. Reduction or denial of compensation benefits authorized under this section shall not affect payment of medical benefits provided for pursuant to Section 52-1-49 NMSA 1978.

I. Reduction or denial of compensation benefits authorized under this section shall not affect payments of benefits to the dependents of a deceased worker pursuant to Section 52-1-46 NMSA 1978.

~~52-1-12. Compensation prohibited when worker under influence of certain drugs.~~

~~No compensation is payable from any employer under the provisions of the Workers' Compensation Act if the injury to the person claiming compensation was occasioned solely by the person being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] or under the influence of a narcotic drug as defined in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] unless the drug was dispensed to the person upon the prescription of a practitioner licensed by law to prescribe the drug or administered to the person by any person authorized by a licensed practitioner to administer the drug.~~

South Dakota

HB 1084 adds and amends various sections of the South Dakota Codified Laws, related to when concurrent employment may be used to calculate earnings in workers compensation cases. The bill amends the following sections to read:

58-20-3.1. Premiums on wages for vacations, holidays, or sick leave prohibited.

Premiums for workers' compensation insurance may not be based on wages paid to employees while they are on vacation, holidays, or sick leave or on wages received from employment not performed for the insured employer.

62-1-1 Definitions

...

(6) "Earnings," the amount of compensation for the number of hours commonly regarded as a day's work for the employment in which the employee was ~~engaged working~~ at the time of his the employee's injury. It includes payment for all hours worked, including overtime hours at straight-time pay, and does not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed by ~~him~~ the employee by the nature of ~~his~~ the employment; wherever allowances of any character made to an employee in lieu of wages are specified as a part of the wage contract, ~~they~~ the allowances shall be deemed a part of ~~his~~ the employee's earnings;...

A new section is added to *Chapter 62-1* to read:

For a workers' compensation claim arising before May 6, 2015, an employee's earnings up to the claimed date of injury are calculated exclusively on the wages earned at the place of employment where the injury occurred.

For a workers' compensation claim arising after May 5, 2015, if an employee was working for more than one employer, the

employee's earnings used to calculate the employee's average weekly wage in §§ 62-4-24, 62-4-25, or 62-4-26 shall include the amount of compensation for the number of hours commonly regarded as a day's work for each employer in which the person was concurrently employed at the time of the person's injury; however, an employee's earnings from concurrent employment are aggregated only if the injury occurred when the employee was actively working in the concurrent employment and when the injury prevents the employee from performing the employee's duties at the employee's other concurrent employment.

A new section is added to *Chapter 62-6* to read:

An employer which complies with this title shall produce, if demanded by any employer or insurer against whom an injured employee has made a workers' compensation claim, the work-related records referring to its employee available for the fifty-two weeks preceding the employee's claimed dates of injury, such as:

- (1) The weeks in which the employee performed services;
- (2) The earnings the employee received for the services, as defined in subdivision 62-1-1(6);
- (3) Interruptions in employment if the employee was rehired or seasonally employed;
- (4) Changes in the employee's grade of employment;
- (5) The employee's job description; and
- (6) Federal or state tax deductions.

The employer receiving this demand shall produce the employee's work-related records in ten business days, and may charge a fee for the production of the records. The fee for the production of the employee's work-related records may not exceed fifteen dollars.

An employee waives any right to privacy to these work-related records when the employee makes a claim for workers' compensation benefits and the employee consents to the release of these work-related records to the employer or insurer against which the employee is making a claim for workers' compensation benefits.

A new section is added to *Chapter 62-2* to read:

The Workers' Compensation Advisory Council shall include in its annual report data about the average amount of disability or fatality benefits paid for a claim over the most recent calendar years, the ratio of disability and fatality benefits to overall benefits paid, and any changes in premium base rates directly attributable to including concurrent earnings in benefits. It shall report to the 2019 Legislature the impact of this Act.

HB 1084 also includes the following language:

The Legislature finds that the aggregation of wages from concurrent employment was not within the Legislature's intent when it enacted the definition of earnings in subdivision 62-1-1(6). Therefore, the holding in *Wheeler v. Cinna Baker LLC*, 2015, 864 N.W. 2d, regarding the aggregation of wages is abrogated.

Virginia

SB 631 makes various changes to the Code of Virginia, as it relates to workers compensation medical fee schedules, as described below:

- Directs the Workers' Compensation Commission (the Commission) to adopt regulations that will become effective January 1, 2018. It establishes fee schedules setting the maximum pecuniary liability of the employer for medical services provided to an injured person pursuant to the Virginia Workers' Compensation Act, in the absence of a contract under which the provider has agreed to accept a specified amount for the medical service.
- The Commission is required to retain a firm to assist it in establishing the initial fee schedules. It will set amounts based on a reimbursement objective constituting the average of all amounts paid to providers in the same category of providers for the medical service in the same medical community.
- Reimbursements for medical services provided to treat traumatic injuries and serious burns are excluded from the fee schedules, and liability for their treatment costs will be based, absent a contract, on 80% of the provider's charges. However, the required reimbursement will be 100% of the provider's charges if the employer unsuccessfully contests the compensability of the claim.
- The Commission is required to review and revise the fee schedules in the year after they become effective and biennially thereafter.
- The liability of the employer for certain medical services not included in a fee schedule will be set by the Commission.
- A stop-loss feature allows hospitals to receive payments or reimbursements that exceed the fee schedule amount for certain claims when the total charges exceed a charge outlier threshold, which initially is 150% of the maximum fee for the service set forth in the applicable fee schedule. Providers are prohibited from using a different charge master or schedule of fees for any medical service provided for workers compensation patients than the provider uses for health care services provided to patients who are not claimants.
- When determining whether the employee's attorney's work, with regard to a contested claim, resulted in an award of benefits that inure to the benefit of a third-party insurance carrier or health care provider (and in determining the reasonableness of the amount of any fee awarded to an attorney), the measure requires the Commission:
 - To consider only the amount paid by the employer or insurance carrier to the third-party insurance carrier or health care provider for medical services rendered to the employee through a certain date

- Not to consider additional amounts previously paid to a health care provider or reimbursed to a third-party insurance carrier
- The Commission shall have an independent, peer-reviewed study conducted every two years. The existing peer review provisions are repealed.
- The regulations setting fee schedules are exempt from the Administrative Process Act if the Commission utilizes a regulatory advisory panel to assist in the development of such regulations and provides an opportunity for public comment on the regulations prior to adoption.
- The measure prohibits certain practices involving the use by third parties of contracts, such as:
 - When a provider agrees to accept payment of less than the fee scheduled amount—including restricting the sale, lease, or other dissemination of information regarding the payment amounts or terms of a provider contract—without the express written consent and prior notification of all parties to the provider contract
 - When an employer shops for the lowest discount for a specific provider among the provider contracts held in multiple preferred provider organization networks
- The regulatory advisory panel is directed to make recommendations to the Commission prior to July 1, 2017, on workers compensation issues relating to:
 - Pharmaceutical costs not previously included in the fee schedules
 - Durable medical equipment costs not previously included in the fee schedules
 - Certain awards of attorney fees
 - Peer review of medical costs
 - Prior authorization for medical services
 - Other issues that the Commission assigns to it

Contact Information

If you have any questions about the legislation or proposals mentioned, please contact the appropriate NCCI state relations executive (listed below) or a representative of your local insurance trade association.

State	State Relations Executive	Phone Number
CT, ME, NH, RI, VT	Laura Backus Hall	802-454-1800
FL, IA	Chris Bailey	850-322-4047
AL, GA, KY, LA, MS	Cathy Booth	205-655-2699
AZ, CO, NM, NV, UT	Maggie Karpuk	818-707-8374
DC, MD, VA, WV	David Benedict	804-380-3005
HI	Carolyn Pearl	808-524-6239
IN, NC, SC, TN	Amy Quinn	803-356-0851
AR, IL, KS, TX	Terri Robinson	501-333-2835
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