Legislative Activity Report

National Council on Compensation Insurance

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April 29, 2016 RLA-2016-16

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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

The following workers compensation-related bills were enacted within the one-week period ending April 22, 2016.

South Carolina

HB 3576 was:

- Passed by the first chamber on March 4, 2015
- Included in NCCI's March 13, 2015 ***Legislative Activity Report*** (RLA-2015-10)
- Amended and passed by the second chamber on March 10, 2016
- Included in NCCI's March 18, 2016 ***Legislative Activity Report*** (RLA-2016-10)
- Enacted and effective on April 21, 2016

HB 3576 adds new ***section 41-1-120*** to the South Carolina Code of Laws as follows:

Section 41-1-120.

(A) Notwithstanding another provision of law, a written agreement between a nonprofit youth sports organization and a coach which specifies that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and also which otherwise satisfies the requirements of this subsection constitutes conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is that of an independent contractor relationship rather than an employment relationship for the purposes of this section, and that the nonprofit youth sports organization consequently is not obligated to:

(1) secure compensation for the coach pursuant to the workers' compensation law; and

(2) withhold federal and state income taxes from money paid to the coach for services he provides to the organization pursuant to the contract.

(B) A written agreement provided in subsection (A) must contain a conspicuously located disclosure appearing in bold-faced, underlined, or large type. This agreement must be acknowledged by the parties as indicated by their signatures, initials, or other means to evince that the parties have read and understand the disclosure. This disclosure clearly must state that the coach is:

(1) an independent contractor and not an employee of the nonprofit youth sports organization for the purposes listed in (A)(1) and (2);

(2) not entitled to workers' compensation benefits in connection with his or her contract with the nonprofit youth sports organization; and

(3) obligated to pay federal and state income tax on any money paid pursuant to the contract for coaching services, and that as a consequence the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach's income tax liability.

(C) A written agreement between a nonprofit youth sports organization and a coach formed pursuant to this subsection may not, in and of itself, be construed as conclusive evidence that an independent contractor relationship exists for purposes of required coverage under the state unemployment compensation law or any civil action instituted by a third party.

(D) As used in this section, 'nonprofit youth sports organization' means an organization that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is primarily engaged in conducting organized sports programs for persons under twenty-one years of age.

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Tennessee

SB 1758 was:

- Passed by the first chamber on February 29, 2016
- Included in NCCI's March 11, 2016 ***Legislative Activity Report*** (RLA-2016-09)
- Passed by the second chamber on April 7, 2016
- Included in NCCI's April 15, 2016 ***Legislative Activity Report*** (RLA-2016-14)
- Enacted on April 21, 2016, with an effective date of July 1, 2016

SB 1758 adds a new subsection to ***section 50-6-215. Rental and assignment of PPO network rights.*** of the Tennessee Code as follows:

50-6-215. Rental and assignment of PPO network rights. [Applicable to injuries occurring both prior to and on and after July 1, 2014.]

…

(e)(1) A written complaint alleging a violation of this section by individuals or entities licensed by the department of commerce and insurance may be filed with the bureau of workers' compensation. The bureau may investigate complaints made under this subsection (e) and shall direct all such complaints, along with any investigatory materials, to the department of commerce and insurance. The commissioner of commerce and insurance may take appropriate action in accordance with § 56-2-305.

(2) A written complaint alleging a violation of this section by individuals or entities not licensed by the department of commerce and insurance may be filed with the bureau. The bureau may investigate all complaints made under this subsection (e) and shall have the authority to establish and collect penalties for violations of this section in accordance with § 50-6-118.

In addition, **SB 1758** adds the following new appropriately designated subsection to ***section 50-6-118. Penalties.*** of the Tennessee Code as follows:

50-6-118. Penalties. [Applicable to injuries occurring on and after July 1, 2014.]

(a) The bureau of workers' compensation shall, by rule promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, establish and collect penalties for the following:

( ) Any violation of § 50-6-215 by an individual or entity not licensed by the department of commerce and insurance;

SB 1758 also contains the following clause:

This act shall take effect July 1, 2016, and shall apply to all claims submitted to a medical provider on or after that date.

Virginia

HB 1108 was:

- Passed by the first chamber on February 16, 2016
- Included in NCCI's February 26, 2016 ***Legislative Activity Report*** (RLA-2016-07)
- Passed by the second chamber on March 3, 2016
- Included in NCCI's March 11, 2016 ***Legislative Activity Report*** (RLA-2016-09)
- Amended and enacted on April 20, 2016, with an effective date of July 1, 2016

HB 1108 amends ***sections 2.2-4302.1. Process for competitive sealed bidding*** and ***2.2-4302.2. Process for competitive negotiation*** of the Code of Virginia as follows:

§ **2.2-4302.1. Process for competitive sealed bidding.**

The process for competitive sealed bidding shall include the following:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

…

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

For the purposes of subdivision 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of Section 38.2-1913.

Section 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal,

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and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

…

For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of Section 38.2-1913.

In addition, **HB 1108** adds the following new section to read:

§ 11-9.8. Construction of certain terms of offer to contract; use of experience modification factor prohibited.

A. As used in this section:

"Contract" means an agreement for the provision of construction services under which the contractor will be required to have and maintain a policy of insurance as defined in Section 38.2-119.

"Experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of Section 38.2-1913.

"Offer to contract" means a solicitation of bids, Request for Proposals, or similar invitation to enter into a contract that is extended to potential contractors for construction services.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society, or other group or combination acting as a unit; or public body, including but not limited to (i) the Commonwealth; (ii) any other state; and (iii) any agency, department, institution, political subdivision, or instrumentality of the Commonwealth or any other state.

B. A term of an offer to contract issued that requires that the successful bidder have a specified experience modification factor is prohibited.

C. Any contract or offer to contract that requires the contractor or bidder responding to the offer to contract to have a specified experience modification factor is prohibited.

…

HB 1108 also contains the following clause:

That the provisions of this act shall apply to any offer to contract, as defined in § 11-9.8 of the Code of Virginia, as created in this act; Invitation to Bid; or Request for Proposal for construction services issued on or after July 1, 2016.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending April 22, 2016.
Note: Any bill that passes the first chamber and is amended and passed by the second chamber must be returned to the first chamber for concurrence before going to the governor for signature.

Alabama

HB 270 was:

- Passed by the first chamber on March 23, 2016
- Included in NCCI's April 1, 2016 ***Legislative Activity Report*** (RLA-2016-12)
- Passed by the second chamber on April 19, 2016

HB 270 makes various changes to the Alabama Captive Insurers Act including, but not limited to, the following amendments:

Section 27-31B-2 Definitions

As used in this chapter, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

…

~~(11)~~ (12) EXCESS WORKERS' COMPENSATION INSURANCE. In the case of an employer or group of employers that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per-incident or aggregate limit established by the commissioner.

…

Section 27-31B-3 Licensing

(a) Any captive insurance company, when permitted by its articles of association, charter, or other organizational document, may apply to the commissioner for a license to do any and all insurance defined in Sections 27-5-2, 27-5-4, and 27-5-5, in subdivisions (1), (2), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) of subsection (a) of Section 27-5-6, in Sections 27-5-7, 27-5-8, 27-5-9, and 27-5-10, and to grant annuity contracts as defined in Section 27-5-3, subject, however, to all of the following:

…

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~~(6)~~ (7) Any captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies~~,~~ and member organizations unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurance company may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies.

New Hampshire

HB 1459 was:

- Passed by the first chamber on March 9, 2016
- Included in NCCI's March 18, 2016 ***Legislative Activity Report*** (RLA-2015-10)
- Passed by the second chamber on April 21, 2016

HB 1459 amends ***sections 412:3. Definitions, 412:15. Rate Standards***, and ***412:16. Rate Filings*** of the New Hampshire Statutes as follows:

412:3. Definitions

…

XI. "Large commercial policyholder" means an insurance contract holder that is a corporation, partnership, trust, sole proprietorship, or other business or public entity and that has certified that it meets:

(a)At least ~~2~~ one of the following ~~3~~ 4 criteria:

(1)A net worth of $10,000,000 as certified by a certified public accountant or public accountant authorized to do business in this state;

(2) Net revenue or sales of $5,000,000 as certified by a certified public account or public accountant authorized to do business in this state; or

(3) A total of more than 25 employees per individual company or more than 50 employees per holding company~~.~~; ~~and~~

(4) Aggregate property and casualty insurance premiums, excluding workers' compensation, medical malpractice, life, health, and disability insurance premiums of $50,000 or more.

(b) ~~The following criteria~~

~~(1) The use of an employed or retained risk manager to procure insurance. For the purposes of this section, "risk manager" means a chartered property and casualty underwriter, a certified insurance counselor, an associate in risk management, a certified risk manager or a licensed insurance consultant; and~~

~~(2) Aggregate property and casualty insurance premiums, excluding workers' compensation, medical malpractice, life, health, and disability insurance premiums of $30,000 or more.~~

~~(c~~) "Large commercial policyholder" also includes a nonprofit or public entity with an annual budget or assets of $25,000,000 or more that meets the criteria listed in subparagraph ~~(b)~~(a)(4), and a municipality with a population of 20,000 or more that meets the premium criteria listed in subparagraph ~~(b)(2)~~(a)(4).

~~(d) A commercial policyholder that meets the premium criteria listed in subparagraph (b)(2), but that does not meet 3 of the qualifying criteria listed in either subparagraph (a) or subparagraph (b)(1) may petition the commissioner for a waiver of the remaining criteria. The commissioner may grant a waiver if the commissioner determines that the applicant for a waiver is sufficiently qualified to act as a large commercial policyholder.~~

(c) In this section, "risk manager" means a chartered property and casualty underwriter, certified insurance counselor, an associate in risk management, certified risk manager or a licensed insurance consultant.

…

412:15. Rate Standards

…

IV. The commissioner may permit insurers to use appropriate systems of schedule rating filed by any insurer or rating bureau approved by the commissioner, subject to rules adopted under RSA 541-A, to assure the uniform and impartial application of such rating. Such ratings shall be:

(a) Based on an insured's management, safety, and loss control policies and record;

(b) No greater than plus or minus 40 percent of the insurer's base rates.

V. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer, advisory organization and statistical agent may exchange information and experience data with insurance supervisory officials, insurers and advisory organizations in other states and may consult with them with respect to the application of rating systems and the collection of statistical data.

412:16. Rate Filings

…

II. Every insurer shall file with the commissioner, except as to inland marine risks which are not written according to manual rates or rating plans, every manual, predictive models or telematics models or other models that pertain to the formulation of rates and/or premiums, minimum premium, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Personal lines filings shall include underwriting rules used by insurers or a group of affiliated insurers to the extent necessary to determine the applicable rate and/or policy premium for an individual insured or applicant. An insurer may file its rates by either filing its final rates or by filing a multiplier and, if applicable, an expense constant adjustment to be applied to prospective loss costs that have been filed by an advisory organization on behalf of the insurer as permitted by RSA

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412:23. Every such filing shall state the effective date, and shall indicate the character and extent of the coverage contemplated. Information contained in the underwriting rules that does not pertain to the formulation of rates and/or premiums shall be identified by the filer as proprietary and shall be kept confidential by the department and shall not be subject to the provisions of RSA 91-A.
…
VII(b) For all commercial risk policies, except policies issued to a large commercial policyholder, and except as provided in this chapter, the rates and supplementary rating information that will be used in this state shall be filed for informational purposes only within 30 days of the effective date.
…
VIII. In a noncompetitive market, subject to the exceptions specified in RSA 412:16, IX and X, and RSA 412:28, each filing shall be on file for a waiting period of 30 days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed ~~30~~ 60 days if written notice is given within such waiting period to the insurer or advisory organization which made the filing that additional time is needed for the consideration of the filing. Upon written application by the insurer, the commissioner may authorize a filing that has been reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof. Failure of the insurer or advisory organization to provide the requested information within the waiting period or the extension thereof shall be deemed a request to withdraw the filing from further consideration. Failure of the commissioner to act within the waiting period or the extension thereof shall result in the filing being deemed to meet the requirements of this chapter. Neither the insurer nor the commissioner may waive the timeliness requirements of the provisions in this section.
…

Oklahoma

HB 2205 was:

- Passed by the first chamber on March 4, 2015
- Included in NCCI's March 13, 2015 ***Legislative Activity Report*** (RLA-2015-10)
- Amended and passed by the second chamber on April 20, 2016

HB 2205 amends numerous sections in ***Title 85A Administrative Workers' Compensation System*** of the Oklahoma Statutes, in part, as follows:

§85A-2. Definitions.

As used in the Administrative Workers' Compensation Act:
…
9. a. "Compensable injury" means damage or harm to the physical structure of the body, or prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, caused solely as the result of either an accident, cumulative trauma or occupational disease arising out of the course and scope of employment. An "accident" means an event involving factors external to the employee that:
…
b. "Compensable injury" does not include:
…
(4) injury where the accident was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. If, within twenty-four (24) hours of being injured or reporting an injury, an employee tests positive for intoxication, an illegal controlled substance, or a legal controlled substance used in contravention to a treating physician's orders, or refuses to undergo the drug and alcohol testing, there shall be a rebuttable presumption that the injury was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. This presumption may only be overcome if the employee proves by objective, clear and convincing evidence that his or her state of intoxication had no causal relationship to the injury,
…
31. a. (1) "Objective findings" are those findings which cannot come under the voluntary control of the patient.
(2) (a) When determining permanent disability, a physician, any other medical provider, an administrative law judge, the Commission or the courts shall not consider complaints of pain.
(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the ~~most current~~ sixth edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment".
(3) (a) Objective evidence necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to, audiological tests that measure air and bone conduction thresholds and speech discrimination ability.
(b) Any difference in the baseline hearing levels shall be confirmed by subsequent testing; provided, however, such test shall be given within four (4) weeks of the initial baseline hearing level test but not before five (5) days after being adjusted for presbycusis.
b. Medical opinions addressing compensability and permanent disability shall be stated within a reasonable degree of medical certainty;
…
40. "Scheduled member" or "member" means ~~hands, fingers, arms, legs, feet, toes, and eyes. In addition, for purposes of the Multiple Injury Trust Fund only, "scheduled member" means hearing impairment~~ the body parts listed in Section 46 of this title which are

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amputated or have permanent loss of use;
…

§85A-7. Discrimination or retaliation.
A. An employer may not discriminate or retaliate against an employee when the employee has in good faith:
1. Filed a claim under this act;
2. Retained a lawyer for representation regarding a claim under this act;
3. Instituted or caused to be instituted any proceeding under the provisions of this act; or
4. Testified or is about to testify in any proceeding under the provisions of this act.
B. ~~The Commission shall have exclusive jurisdiction to hear and decide claims based on subsection A of this section.~~
~~C. If the Commission determines that the defendant violated subsection A of this section, the Commission may award the employee back pay up to a maximum of One Hundred Thousand Dollars ($100,000.00)~~ If a district court of this state determines that an employer violated a provision of this section, such employer shall be liable for reasonable compensatory damages suffered by an employee as a result of the violation. The employee shall have the burden of proof to show such violation by a preponderance of the evidence. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall reduce the ~~back pay~~ compensatory damages otherwise allowable.
…

§85A-45. Temporary Total Disability—Temporary Partial Disability—Permanent Partial Disability—Permanent Total Disability.
A. Temporary Total Disability.
…
2. When the injured employee is released from active medical treatment by the treating physician for all body parts found by the Commission to be injured, or in the event that the employee~~, without a valid excuse,~~ misses ~~three consecutive medical treatment~~ two or more appointments as prescribed under Section 57 of this title, fails to comply with medical orders of the treating physician, or otherwise abandons medical care, the employer shall be entitled to terminate temporary total disability by notifying the employee, or if represented, his or her counsel. If, however, an objection to the termination is filed by the employee within ten (10) days of termination, the Commission shall set the matter within twenty (20) days for a determination if temporary total disability compensation shall be reinstated. The temporary total disability shall remain terminated unless the employee proves the existence of a valid excuse for his or her failure to comply with medical orders of the treating physician or his or her abandonment of medical care. The administrative law judge may appoint an independent medical examiner to determine if further medical treatment is reasonable and necessary. The independent medical examiner shall not provide treatment to the injured worker, unless agreed upon by the parties.
B. Temporary Partial Disability.
1. If the injured employee is temporarily unable to perform his or her job, but may perform alternative work offered by the employer, he or she shall be entitled to receive compensation equal to ~~the greater of~~ seventy percent (70%) of the difference between the injured employee's average weekly wage before the injury and his or her weekly wage for performing alternative work after the injury, but only if his or her weekly wage for performing the alternative work is less than the temporary total disability rate. However, the injured employee's actual earnings plus temporary partial disability shall not exceed the temporary total disability rate.
2. Compensation under this subsection may not exceed fifty-two (52) weeks.
3. If the employee refuses to perform the alternative work offered by the~~employee~~ employer, he or she shall not be entitled to benefits under subsection A of this section or under this section.
C. Permanent Partial Disability.
1. A permanent partial disability award or combination of awards granted an injured worker may not exceed a permanent partial disability rating of one hundred percent (100%) to any body part or to the body as a whole. The determination of permanent partial disability shall be the responsibility of the Commission through its administrative law judges. Any claim by an employee for compensation for permanent partial disability must be supported by competent medical testimony of a medical doctor, osteopathic physician, or chiropractor, and shall be supported by objective ~~medical~~ findings, as defined in this act. The opinion of the physician shall include employee's percentage of permanent partial disability and whether or not the disability is job-related and caused by the accidental injury or occupational disease. A physician's opinion of the nature and extent of permanent partial disability to parts of the body ~~other than scheduled members~~ must be based solely on criteria established by the ~~current~~ sixth edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment". A copy of any written evaluation shall be sent to both parties within seven (7) days of issuance. Medical opinions addressing compensability and permanent disability must be stated within a reasonable degree of medical certainty. Any party may submit the report of an evaluating physician.
2. Permanent partial disability shall not be allowed to a part of the body for which no medical treatment has been received. A determination of permanent partial disability made by the Commission or administrative law judge which is not supported by objective ~~medical~~ findings provided by a treating physician who is a medical doctor, doctor of osteopathy, chiropractor or a qualified independent medical examiner shall be considered an abuse of discretion.
3. The examining physician shall not deviate from the Guides except as may be specifically provided for in the Guides.
4. In cases of permanent partial disability, the compensation shall be seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Twenty-three Dollars ($323.00) per week, for a term not to exceed a total of three hundred fifty (350)

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weeks for the body as a whole.
5. ~~Except pursuant to settlement agreements entered into by the employer and employee, payment of a permanent partial disability award shall be deferred and held in reserve by the employer or insurance company if the employee has reached maximum medical improvement and has been released to return to work by his or her treating physician, and then returns to his pre-injury or equivalent job for a term of weeks determined by dividing the total dollar value of the award by seventy percent (70%) of the employee's average weekly wage.~~
~~a. The amount of the permanent partial disability award shall be reduced by seventy percent (70%) of the employee's average weekly wage for each week he works in his pre-injury or equivalent job.~~
~~b. If, for any reason other than misconduct as defined in Section 2 of this act, the employer terminates the employee or the position offered is not the pre-injury or equivalent job, the remaining permanent partial disability award shall be paid in a lump sum. If the employee is discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct.~~
~~c. If the employee refuses an offer to return to his pre-injury or equivalent job, the permanent partial disability award shall continue to be deferred and shall be reduced by seventy percent (70%) of the employee's average weekly wage for each week he refuses to return to his pre-injury or equivalent job.~~
~~d. Attorney fees for permanent partial disability awards, as approved by the Commission, shall be calculated based upon the total permanent partial disability award and paid in full at the time of the deferral.~~
~~e. Assessments pursuant to Sections 31, 98, 112 and 165 of this act shall be calculated based upon the amount of the permanent partial disability award and shall be paid at the time of the deferral.~~
…

§85A-46. Permanent partial disability schedule.
A. ~~An~~ In lieu of compensation provided pursuant to paragraph 4 of subsection C of Section 45 of this title, an injured employee who ~~is entitled to receive permanent partial disability compensation under Section 45 of this act~~ suffers amputation or permanent loss of use of a scheduled member shall receive compensation for each part of the body ~~in accordance with~~ equal to seventy percent (70%) of the employee's average weekly wage, not to exceed Three Hundred Twenty-three Dollars ($323.00) multiplied by the number of weeks for the scheduled ~~loss~~ member set forth ~~below.~~ as follows:
1. Arm amputated at the elbow, or between the elbow and shoulder, two hundred seventy-five (275) weeks;
2. Arm amputated between the elbow and wrist, two hundred twenty (220) weeks;
3. Leg amputated at the knee, or between the knee and the hip, two hundred seventy-five (275) weeks;
4. Leg amputated between the knee and the ankle, two hundred twenty (220) weeks;
5. Hand amputated, two hundred twenty (220) weeks;
6. Thumb amputated, sixty-six (66) weeks;
7. First finger amputated, thirty-nine (39) weeks;
8. Second finger amputated, thirty-three (33) weeks;
9. Third finger amputated, twenty-two (22) weeks;
10. Fourth finger amputated, seventeen (17) weeks;
11. Foot amputated, two hundred twenty (220) weeks;
12. Great toe amputated, thirty-three (33) weeks;
13. Toe other than great toe amputated, eleven (11) weeks;
14. Eye enucleated, in which there was useful vision, two hundred seventy-five (275) weeks;
15. Loss of hearing of one ear, one hundred ten (110) weeks;
16. Loss of hearing of both ears, three hundred thirty (330) weeks; and
17. Loss of one testicle, fifty-three (53) weeks; loss of both testicles, one hundred fifty-eight (158) weeks.
…

§85A-62. Nonsurgical soft tissue.
A. Notwithstanding the provisions of Section 45 of this act, if an employee suffers a nonsurgical soft tissue injury, temporary total disability compensation shall not exceed eight (8) weeks, regardless of the number of parts of the body to which there is a nonsurgical soft tissue injury. An employee who is treated with an epidural steroid injection ~~or injections~~ shall be entitled to an extension of an additional eight (8) weeks total, regardless of the number of injections. An employee who has been recommended by a treating physician for surgery for a soft tissue injury may petition the Workers' Compensation Commission for one extension of temporary total disability compensation and the Commission may order an extension, not to exceed sixteen (16) additional weeks. If the surgery is not performed within thirty (30) days of the approval of the surgery by the employer, its insurance carrier, or an order of the Commission authorizing the surgery, and the delay is caused by the employee acting in bad faith, the benefits for the extension period shall be terminated and the employee shall reimburse the employer any temporary total disability compensation he or she received beyond eight (8) weeks. An epidural steroid injection, or any procedure of the same or similar physical invasiveness, shall not be considered surgery.
…

§85A-68. Rebuttable presumption injury not work-related.
A. Unless an employee gives oral or written notice to the employer within ~~thirty (30)~~ fifteen (15) days of the date an injury occurs,

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the rebuttable presumption shall be that the injury was not work-related. Such presumption ~~must~~ may be overcome by a preponderance of the evidence. If the notice of injury is not timely given but the employee overcomes the presumption, no compensation shall be due for the time period prior to the date notice was given. In no event shall compensation be allowed if notice is not given within one hundred twenty (120) days after the date of the injury.
B. Unless an employee gives oral or written notice to the employer within thirty (30) days of the employee's separation from employment, there shall be a rebuttable presumption that an occupational disease or cumulative trauma injury did not arise out of and in the course of employment. Such presumption ~~must~~ may be overcome by a preponderance of the evidence.

§85A-201. Definitions.
A. As used in the Oklahoma Employee Injury Benefit Act:
1. "Benefit plan" means a written plan established by a qualified employer under the requirements of ~~Section 110 of this act~~ the Employee Injury Benefit Act;
2. "Commission" means the Workers' Compensation Commission under the Administrative Workers' Compensation Act;
3. ~~"Commissioner" means the Insurance Commissioner of the State of Oklahoma~~ "Claimant" means a covered employee or his or her representative or beneficiary who claims benefits under the Employee Injury Benefit Act;
4. "Covered employee" means an employee whose employment with a qualified employer is principally located within the state;
5. "Department" means the Insurance Department of the State of Oklahoma;
…
8. "Fully insured plan" means insurance coverage of one hundred percent (100%) of an employer's statutory benefit liability, which may include a self-insured retention of up to Twenty-five Thousand Dollars ($25,000.00) per person, per occurrence;
~~7.~~ 9. "Occupational ~~injury~~ disease" ~~means an injury, including death, or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment~~ shall have the same meaning provided pursuant to Section 65 of this title;
~~8.~~ 10. "Qualified employer" means an employer ~~otherwise subject to the Administrative Workers' Compensation Act~~ that ~~voluntarily elects~~ is approved to be exempt from ~~such act~~ the Administrative Workers' Compensation Act by satisfying the requirements under ~~this act~~ the Employee Injury Benefit Act; and
~~9.~~ 11. "Surviving spouse" means the covered employee's spouse by reason of a legal marriage recognized by the State of Oklahoma or under the requirements of a common law marriage in this state.
B. Unless otherwise defined in this section, defined terms in the Administrative Workers' Compensation Act shall have the same meaning in ~~this act~~ the Employee Injury Benefit Act.

§85A-202.Voluntary election—Qualified employer status.
A. Any employer may ~~voluntarily elect~~ apply to ~~be exempt from the Administrative Workers' Compensation Act and~~ become a qualified employer ~~if the employer~~ by submitting to the Department:
1. ~~Is in compliance with the notice requirements in subsections B and H of this section~~ A qualified employer election form published by the Department; ~~and~~
2. ~~Has established a written~~ A benefit plan ~~as described in Section 110 of this act~~ and its proposed effective date, subject to the Department's approval;
3. An annual nonrefundable fee of One Thousand Five Hundred Dollars ($1,500.00);
4. The notice to employees required by subsection G of this section; and
5. Any additional information required pursuant to rules promulgated by the Department.
B. ~~An employer that has elected~~ The Department shall notify an employer whether it has met the requirements to become a qualified employer ~~by satisfying the~~ . If such requirements ~~of this section shall notify the Insurance Commissioner in writing of the election and the date that the election is to become effective, which may not be sooner than the date that the qualified employer satisfies the employee notice requirements in this section. Such qualified employer shall pay to the Commissioner an annual nonrefundable fee of One Thousand Five Hundred Dollars ($1,500.00) on the date of filing written notice and every year thereafter~~ have been met, the Department shall issue a certificate of qualified employer to the employer. If such requirements have not been met, the notice shall contain a description of the deficiencies and how such deficiencies may be resolved.
C. The ~~Commissioner~~ Department shall collect and maintain the information required under this section and shall monitor compliance with the requirements of this section. The ~~Commissioner~~ Department may ~~also~~ require ~~an~~ a qualified employer to provide information periodically to confirm ~~its qualified employer status. Subject to subsection D of this section, the Commissioner~~ that it is still in compliance with the requirements of a qualified employer. The Department shall adopt rules designating the methods and procedures for confirming whether an employer ~~is~~ has met and continues to meet the requirements to become a qualified employer, notifying an employer of any ~~qualifying~~ deficiencies, and the consequences ~~thereof~~ of noncompliance with the requirements of the Employee Injury Benefit Act. The ~~Commissioner~~ Department shall record the date ~~and time each notice of qualified employer~~ that an employer is approved as a qualified employer and the date that such status ~~is received and the~~ becomes effective ~~date of qualified employer election~~. The ~~Commissioner~~ Department shall maintain a list on its official website accessible by the public of all qualified employers and the date ~~and time~~ that such ~~exemption~~ status became effective.
D. ~~Except as otherwise expressly provided in this act, neither the Workers' Compensation Commission, the courts of this state, or any state administrative agencies shall promulgate rules or any procedures related to design, documentation, implementation, administration or funding of a qualified employer's benefit plan~~ If the Department determines that a qualified employer is deficient in any requirements, it shall provide written notice of the deficiency to the employer. Within ten (10) days, the qualified employer

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shall provide proof to the Department that it has cured the deficiency or it shall automatically lose status as a qualified employer and become subject to the provisions of the Administrative Workers' Compensation Act. An employer that has lost status as a qualified employer may reapply for such status.
E. The ~~Commissioner~~ Department may designate an information collection agent, implement an electronic reporting and public information access program, and adopt rules as necessary to implement the information collection requirements of this section.
F. ~~The Commissioner may prescribe rules and forms to be used for the qualified employer notification and shall require~~ ~~the~~ A qualified employer ~~to~~ shall provide ~~its~~ the Department with:
1. Its name, address, contact person and phone number, federal tax identification number, number of persons employed in this state as of a specified date~~,~~ ;
2. The name, title, address and telephone number of the person to contact for claim administration ~~contact information,~~ ; and ~~a~~
3. A listing of all covered business locations in the state. The ~~Commissioner~~ Department shall notify the ~~Commissioner~~ Workers' Compensation Commission and the Department of Labor of all qualified-employer notifications. ~~The Department of Labor shall provide such notifications to other governmental agencies as it deems necessary.~~
G. ~~The Commissioner may contract with the Oklahoma Employment Security Commission, the State Treasurer or the Department of Labor for assistance in collecting the notification required under this section or otherwise fulfilling the Commissioner's responsibilities under this act. Such agencies shall cooperate with the Commissioner in enforcing the provisions of this section.~~
~~H. A qualified employer shall notify each of its employees in the manner provided in this section that it is a qualified employer, that it does not carry workers' compensation insurance coverage and that such coverage has terminated or been cancelled.~~
~~I. The~~ A qualified employer shall provide written notification to covered employees ~~as required by this section~~ that it does not carry workers' compensation coverage at the time the covered employee is hired or at least five (5) days before the effective time of ~~designation as a qualified employer~~ the benefit plan, as applicable. The notice shall contain the name, title, address and telephone number of the person to contact for claim administration. A qualified employer shall post the employee notification required by this section at conspicuous locations at the qualified employer's places of business as necessary to provide reasonable notice to all covered employees. The ~~Commissioner~~ Department may adopt rules relating to the form, content, and method of delivery of the employee notification required by this section.
H. Two or more employers who are members of a controlled group may apply to the Department for approval as a single qualified employer and be listed on a single qualified employer certificate. The first member of the controlled group shall pay to the Department an annual nonrefundable fee as required by paragraph 3 of subsection A of this section. Each additional participating member of the controlled group shall:
1. If the controlled group is fully insured, pay to the Department an annual nonrefundable fee of Two Hundred Fifty Dollars ($250.00) on the date of filing written notice of election and every year thereafter; or
2. If the controlled group is self-insured, pay to the Department an annual nonrefundable fee of Seven Hundred Fifty Dollars ($750.00) on the date of filing written notice of election and every year thereafter.

§85A-203. Written benefit plan.
A. An employer ~~voluntarily~~ electing to become a qualified employer shall adopt a ~~written~~ benefit plan that complies with the requirements of this section. ~~Qualified employer status is optional for eligible employers. The benefit plan shall not become effective until the date that the qualified employer first satisfies the notice requirements in Section 202 of this title.~~
B. The benefit plan shall provide for payment of the same forms of benefits included in the Administrative Workers' Compensation Act for ~~temporary total disability, temporary partial disability, permanent partial disability, vocational rehabilitation, permanent total disability, disfigurement, amputation or permanent total loss of use of a scheduled member, death and medical benefits as a result of an occupational~~ compensable injury, on a no-fault basis, with the same statute of limitations, notice of injury reporting, and with dollar, percentage, and duration limits that are at least equal to ~~or greater than~~ the dollar, percentage, and duration limits contained in ~~Sections 45, 46 and 47 of this title. For this purpose, the standards for determination of average weekly wage, death beneficiaries, and disability under the Administrative Workers' Compensation Act shall apply under the Oklahoma Employee Injury Benefit Act; but no~~ such Act. Benefit plans shall not be subject to other ~~provision~~ requirements of the Administrative Workers' Compensation Act ~~defining covered injuries, medical management, dispute resolution or other process, funding, notices or penalties shall apply or otherwise be controlling under the Oklahoma Employee Injury Benefit Act,~~ unless expressly incorporated.
C. ~~The benefit plan may provide for lump-sum payouts that are, as reasonably determined by the administrator of such plan appointed by the qualified employer, actuarially equivalent to expected future payments. The benefit plan may also provide for settlement agreements; provided, however, any settlement agreement by a covered employee shall be voluntary, entered into not earlier than the tenth business day after the date of the initial report of injury, and signed after the covered employee has received a medical evaluation from a nonemergency care doctor, with any waiver of rights being conspicuous and on the face of the agreement. The benefit plan shall pay benefits without regard to whether the covered employee, the qualified employer, or a third party caused the occupational injury; and provided further, that the benefit plan shall provide eligibility to participate in and provide the same forms and levels of benefits to all Oklahoma employees of the qualified employer. The Administrative Workers' Compensation Act shall not define, restrict, expand or otherwise apply to a benefit plan.~~ Regardless of whether such provisions are incorporated into a benefit plan, qualified employers and their covered employees shall be subject to the provisions of the Administrative Workers' Compensation Act related to:
1. Compensable injury, as defined pursuant to paragraph 9 of Section 2 of this title;
2. Course and scope of employment, as defined pursuant to paragraph 13 of Section 2 of this title;

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3. Fraud, pursuant to Section 6 of this title;
4. Discrimination or retaliation, pursuant to Section 7 of this title;
5. Liability other than immediate employer, pursuant to Section 36 of this title; and
6. Failure to appear for scheduled appointments, pursuant to Section 57 of this title.
D. ~~No~~ A qualified employer shall not charge any fee or cost to an employee ~~shall apply~~ related to a qualified employer's benefit plan.
E. ~~The qualified employer shall provide to the Commissioner and covered employees notice of the name, title, address, and telephone number for the person to contact for injury benefit claims administration, whether in-house at the qualified employer or a third-party administrator.~~
~~F.~~ Information submitted to the ~~Commissioner~~ Department as part of the application for approval as a qualified employer, to confirm eligibility for continuing status as a qualified employer, or as otherwise required by the Oklahoma Employee Injury Benefit Act may not be made public by the ~~Commissioner or by an agent or employee of the Commissioner~~ Department without the written consent of the applicant or qualified employer, as applicable, except that:
1. The information may be discoverable by a party in a civil action or contested case to which the employer that submitted the information is a party, upon a showing by the party seeking to discover the information that:
a. the information sought is relevant to and necessary for the furtherance of the action or case,
b. the information sought is unavailable ~~for~~ from other non-confidential sources, and
c. a subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the ~~Commissioner~~ Department; ~~and~~
2. The ~~Commissioner~~ Department may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:
a. the public officer agrees in writing to maintain the confidentiality of the information, and
b. the laws of the state in which the public officer serves require the information to be kept confidential; and
3. A qualified employer's benefit plan and employee notice shall be open to the public.
F. A qualified employer's insurance coverage pertains only to covered employees in this state. An employer with employees in other states shall obtain insurance coverage in compliance with the laws of that state; provided:
1. A qualified employer's benefit plan and insurance coverage may apply to an employee who is employed outside of this state on temporary assignment;
2. A qualified employer's insurance policy may include an endorsement that provides coverage for employees working in other states in compliance with the laws of such states; and
3. If an employee is not principally employed in this state but is injured in this state, the employee shall be subject to the provisions of the Act under this title under which the employer provides coverage.

§85A-204. Securing compensation.
A. A qualified employer may self-fund or insure benefits payable under the benefit plan, employers' liability under this act, and any other insurable risk related to its status as a qualified employer with any insurance carrier authorized to do business in this state.
B. Insurance coverage or surety bond obtained by a qualified employer shall be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The ~~Insurance~~ Department has no duty to approve insurance rates charged for this coverage. A qualified employer shall secure compensation to covered employees in one of the following ways:
1. Obtaining accidental insurance coverage in an amount equal to the compensation obligation;
2. Furnishing satisfactory proof to the ~~Commissioner~~ Department of the employer's financial ability to pay the compensation. ~~The Commissioner, under~~ Under rules adopted by the ~~Insurance~~ Department ~~or the Commissioner~~ for an individual self-insured employer, the Department shall require an employer that has:
a. less than one hundred employees or less than One Million Dollars ($1,000,000.00) in net assets to:
(1) deposit with the ~~Commissioner~~ Department securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the ~~Commissioner~~ Department which shall be at least an average of the yearly claims for the last three (3) years, or
(2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of this act,
b. one hundred or more employees and One Million Dollars ($1,000,000.00) or more in net assets to:
(1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the ~~Commissioner~~ Department which shall be at least an average of the yearly claims for the last three (3) years, or
(2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of this act; or
3. Any other security as may be approved by the ~~Commissioner~~ Department.
C. The ~~Commissioner~~ Department may waive the requirements of this section in an amount which is commensurate with the ability of the employer to pay the benefits required by the provisions of this act. Irrevocable letters of credit required by this section shall contain such terms as may be prescribed by the ~~Commissioner~~ Department and shall be issued for the benefit of the state by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.
D. An employer who does not fulfill the requirements of this section is not relieved of the obligation for compensation to a covered employee. The security required under this section, including any interest thereon, shall be maintained by the ~~Commissioner~~ Department as provided in this act until each claim for benefits is paid, settled, or lapses under this act, and costs of administration of

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such claims are paid.
E. Any bond shall be filed and held by the ~~Commissioner~~ Department and shall be for the exclusive benefit of any covered employee of a qualified employer.
F. Any security held by the ~~Commissioner~~ Department may be used to make a payment to or on behalf of a covered employee provided the following requirements are met:
1. The covered employee sustained an occupational injury that is covered by the qualified employer's benefit plan;
2. The covered employee's claim for payment of a specific medical or wage replacement benefit amount has been accepted by the plan administrator of the benefit plan or acknowledged in a final judgment or court order assessing a specific dollar figure for benefits payable under the benefit plan;
3. The covered employee is unable to receive payment from the benefit plan or collect on such judgment or court order because the qualified employer has filed for bankruptcy or the benefit plan has become insolvent; and
4. The covered employee is listed as an unsecured creditor of the qualified employer because of the acceptance of such claim by the plan administrator of the benefit plan or judgment or court order assessing a specific dollar figure for benefits payable under the benefit plan.
G. The ~~Commissioner~~ Department shall promulgate rules to carry out the provisions of this section including those establishing the procedure by which a covered employee may request and receive payment from the security held by the ~~Commissioner~~ Department.
H. The benefit plan may provide some level of benefits for sickness, injury or death not due to an occupational injury.
I. A qualified employer shall hold harmless any insurance agent or broker who sold the employer a benefits program compliant with the Oklahoma Employee Injury Benefit Act if the qualified employer is sued in district court for an injury arising in the course and scope of employment.

§85A-205. Oklahoma Option Insured Guaranty Fund—Oklahoma Option Self-insured Guaranty Fund.
…
F. On determination by the ~~Commissioner~~ Department that a self-insurer has become an impaired insurer, the ~~Commissioner~~ Department shall release the security required by paragraph 2 of subsection B of Section 111 of this ~~act~~ title and advise the Guaranty Association of the impairment. Claims administration, including processing, investigating and paying valid claims against an impaired self-insurer under this act, may include payment by the surety that issued the surety bond or be under a contract between the ~~Commissioner~~ Department and an insurance carrier, appropriate state governmental entity or an approved service organization.
…

§85A-206. Annual fee—Assessments.
A. In addition to the premium or surplus lines taxes collected from carriers, the carriers shall pay annually to the Workers' Compensation Commission a fee, at the rate to be determined as provided in Section 115 of this ~~act~~ title but not to exceed three percent (3%), on all written premiums resulting from the writing of insurance under this act on risks within the state.
…
2. Absent a waiver obtained from the Commission for good cause, the failure of the carrier to pay the assessment when due shall be referred to the ~~Commissioner~~ Department for appropriate administrative action against the Oklahoma certificate of authority of the delinquent insurer.
…

§85A-211. Denial of claim—Appeal rights.
A. If ~~an~~ a qualified employer denies a claimant's claim for benefits under ~~this act~~ the Employee Injury Benefit Act, the qualified employer shall notify him or her in writing of the decision ~~or the need for additional information~~ within fifteen (15) days after receipt of the claim, subject to a reasonable extension if the qualified employer requests additional information. Unless otherwise provided by law, the adverse benefit determination letter shall contain an explanation of why the claim was denied, including the benefit plan provision or provisions that were the basis for the denial, and a detailed description of how to appeal the determination. The letter shall also inform the claimant of the right to testify at the hearing, produce witnesses in person or by written statement and submit expert reports. Additional claim procedures consistent with this section may be specified in the benefit plan.
B. ~~The benefit plan~~ Qualified employers and claimants shall ~~provide~~ be subject to the following ~~minimum~~ appeal rights:
1. The claimant may appeal in writing an initial adverse benefit determination to an appeals committee within one hundred eighty (180) days following his or her receipt of the adverse benefit determination. The ~~appeal~~ appeals committee shall ~~be heard by a committee consisting~~ consist of at least three people, none of whom are employees of the qualified employer, ~~that~~ were ~~not~~ involved in the original adverse benefit determination or have any pecuniary interest in the outcome of the appeal. The appeals committee shall conduct a full and fair hearing including, but not limited to, the opportunity to present live testimony, witness statements, briefs, expert reports and oral argument on the merits. The appeals committee shall not give any deference to the claimant's initial adverse benefit determination in its review;
2. The appeals committee may request any additional information it deems necessary to make a decision, including having the claimant submit to a medical exam. The committee shall create a comprehensive record of the hearing and maintain such record for no less than two (2) years from the date the decision on appeal is issued;
3. ~~The committee shall notify the claimant in writing of its decision, including an explanation of the decision and his or her right to judicial review;~~

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~~4.~~ Subject to the need for a reasonable extension of time due to matters beyond the control of the benefit plan, the appeals committee shall review the determination and issue a decision no later than forty-five (45) days from the date the notice of contest is received. The committee shall provide written notice of its decision to the claimant and the qualified employer. Such notice shall include a detailed explanation of the decision, analysis of evidence presented and instruction for seeking judicial review of the decision. No legal action may be brought by or with respect to a claimant to recover benefits under the benefit plan before the foregoing claim procedures have been exhausted;

~~5. If any part of an adverse benefit determination is upheld by the committee, the~~4. The qualified employer or claimant may ~~then file~~ appeal the decision of the appeals committee by filing a petition for review with the Commission within one (1) year after the date the ~~claimant receives~~ notice ~~that~~ of the ~~adverse benefit~~ determination~~, or part thereof, was upheld~~ is received. The appeals committee shall provide the record of the hearing to the Commission within seven (7) days of notice from the Commission. If the Commission determines in its sole discretion that the record is deficient, it shall provide written notice to the appeals committee of the defect or defects, after which the committee shall have three (3) days to submit a cured record. If the record is not cured, the administrative law judge shall presume that the defect or defects are unfavorable to the qualified employer. The Commission shall appoint an administrative law judge to hear ~~any~~ the appeal ~~of an adverse benefit determination~~ as a trial de novo. The Commission shall prescribe additional rules governing the authority and responsibility of the parties, the administrative law judge and the Commission during the appeal processes. The administrative law judge and Commission shall act as the court of competent jurisdiction under 29 U.S.C.A. Section 1132(e)(1), and shall possess adjudicative authority to render decisions in individual proceedings by claimants ~~to recover benefits due to the claimant~~ or employers under the terms of the ~~claimant's~~ applicable plan, including the authority to award or deny benefits and otherwise enforce ~~the claimant's~~ rights under the terms of the benefit plan~~, or to clarify the claimant's rights to future benefits under the terms of the plan~~;

~~6.~~ 5. The ~~Commission~~ administrative law judge shall ~~rely on the record established by the internal appeal process and use an objective standard of~~ review ~~that is not arbitrary or capricious~~ the claim de novo. Any party aggrieved by the judgment, decision, or award made by an administrative law judge may, within ten (10) days of issuance, appeal to the Commission. After hearing, the Commission may reverse or modify the decision of the administrative law judge only if it determines that the decision was against the clear weight of evidence or contrary to law. All such proceedings of the Commission shall be recorded by a court reporter. Any judgment of the Commission which reverses a decision of the administrative law judge shall contain specific findings relating to the reversal. Any award by the administrative law judge or Commission shall be limited to benefits payable under the terms of the benefit plan and, to the extent provided herein, attorney fees and costs; and

…

~~C. If any of the provisions in paragraphs 5 through 7 of subsection B of this section are determined to be unconstitutional or otherwise unenforceable by the final nonappealable ruling of a court of competent jurisdiction, then the following minimal appeal procedures will go into effect:~~

~~1. The appeal shall be heard by a committee consisting of at least three people that were not involved in the original adverse benefit determination. The appeals committee shall not give any deference to the claimant's initial adverse benefit determination in its review;~~

~~2. The committee may request any additional information it deems necessary to make a decision, including having the claimant submit to a medical exam;~~

~~3. The committee shall notify the claimant in writing of its decision, including an explanation of the decision and his or her right to judicial review;~~

~~4. The committee shall review the determination and issue a decision no later than forty-five (45) days from the date the notice of contest is received;~~

~~5. If any part of an adverse benefit determination is upheld by the committee, the claimant may then file a petition for review in a proper state district court; and~~

~~6. The district court shall rely on the record established by the internal appeal process and use a deferential standard of review.~~

~~D. The provisions of this section shall apply to the extent not inconsistent with or preempted by any other applicable law or rule.~~

~~E. All intentional tort or other employers' liability claims may proceed through the appropriate state courts of Oklahoma, mediation, arbitration, or any other form of alternative dispute resolution or settlement process available by law.~~

A fee of One Hundred Dollars ($100.00) per appeal to the Supreme Court shall be paid by the party filing the appeal to the Commission and deposited to the credit of the Workers' Compensation Fund as costs for preparing, assembling, indexing and transmitting the record for appellate review. If more than one party to the action files an appeal from the same judgment, decision or award, the fee shall be paid by the party whose petition in error commences the principal appeal.

SB 1083 was:

- Passed by the first chamber on March 8, 2016
- Included in NCCI's March 18, 2016 ***Legislative Activity Report*** (RLA-2016-10)
- Amended and passed by the second chamber on April 20, 2016

SB 1083 amends ***section 1151.22. A. Any contract entered into under the Roofing Contractor Registration Act shall include a statement that all individuals performing work under the contract are covered by workers' compensation insurance*** of the Oklahoma Statutes as follows:

1151.22. A. Any contract entered into under the Roofing Contractor Registration Act shall include a statement that all individuals performing work under the contract are covered by workers' compensation insurance

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…
B. If ~~the individuals performing work under the contract are not covered by~~ an affidavit of exemption for workers' compensation insurance~~, the contractor shall provide a written statement to the homeowner advising that the individuals performing work under the contract are not covered by workers' compensation insurance, which~~ is used by a legitimately exempt person, it shall be ~~signed by all parties to the contract and~~ attached to the contract and it shall be used only for residential construction projects. All commercial projects shall require all individuals performing work on such project to be covered by workers' compensation insurance as employees of the person registered under the Roofing Contractor Registration Act. However, any day laborer who can show proof of being covered by workers' compensation insurance under the temporary labor agency for whom he or she is hired-out may provide an affidavit from the temporary labor agency to meet the requirement of this section for authority to use an affidavit of exemption. No roofing contractor required to be registered under the Roofing Contractor Registration Act shall hire any out-of-state company or person or use any person or independent contractor that is not registered under the Roofing Contractor Registration Act with the required workers' compensation insurance or who is not deemed his or her employee for purposes of workers' compensation insurance.
C. In no event shall a homeowner be held liable in the workers' compensation administrative system for injury or death to any person who performs work under a contract with a person required by law to be registered under the Roofing Contractor Registration Act and have workers' compensation on all persons performing work on the roofing project.

Tennessee

SB 2582 was:

- Passed by the first chamber on April 19, 2016
- Passed by the second chamber on April 20, 2016

SB 2582 amends various sections of the Tennessee Code as follows:

Section 1

50-6-201. Notice of Injury

(a) (1) Every injured employee or the injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has no actual notice, written notice of the injury, and the employee shall not be entitled to physician's fees or to any compensation that may have accrued under this chapter, from the date of the accident to the giving of notice, unless it can be shown that the employer had actual knowledge of the accident. No compensation shall be payable under this chapter, unless the written notice is given to the employer within fifteen (15) ~~thirty (30)~~ days after the occurrence of the accident, unless reasonable excuse for failure to give the notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.
(2) The notice of the occurrence of an accident by the employee required to be given to the employer shall state in plain and simple language the name and address of the employee and the time, place, nature, and cause of the accident resulting in injury or death. The notice shall be signed by the claimant or by some person authorized to sign on the claimant's behalf, or by any one (1) or more of the claimant's dependents if the accident resulted in death to the employee.
(3) No defect or inaccuracy in the notice shall be a bar to compensation, unless the employer can show, to the satisfaction of the workers' compensation judge before which the matter is pending, that the employer was prejudiced by the failure to give the proper notice, and then only to the extent of the prejudice.
(4) The notice shall be given personally to the employer or to the employer's agent or agents having charge of the business at which the injury was sustained by the employee.
(b) In those cases where the injuries occur as the result of gradual or cumulative events or trauma, then the injured employee or the injured employee's representative shall provide notice of the injury to the employer within fifteen (15) ~~thirty (30)~~ days after the employee:
(1) Knows or reasonably should know that the employee has suffered a work-related injury that has resulted in permanent physical impairment; or
(2) Is rendered unable to continue to perform the employee's normal work activities as the result of the work-related injury and the employee knows or reasonably should know that the injury was caused by work-related activities.

Section 2

50-6-226. Fees of attorneys and physicians, and hospital charges. [Applicable to injuries occurring on and after July 1, 2014.]

…
~~(d) In addition to any attorneys' fees provided for in this section, the court of workers' compensation claims may award attorneys' fees and reasonable costs, including reasonable and necessary court reporter expenses and expert witness fees for depositions and trials incurred when the employer fails to furnish appropriate medical, surgical and dental treatment or care, medicine, medical and surgical supplies, crutches, artificial members and other apparatus to an employee provided for in a settlement or judgment under this chapter.~~
(d) (1) In addition to attorneys' fees provided for in this section, the court of workers' compensation claims may award reasonable attorneys' fees and reasonable costs, including reasonable and necessary court reporter expenses and expert witness fees, for depositions and trials incurred when the employer:
(A) Fails to furnish appropriate medical, surgical, and dental treatment or care, medicine, medical and surgical supplies, crutches, artificial members, and other apparatus to an employee provided for in a settlement, expedited hearing order, compensation hearing

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order, or judgment under this chapter; or
(B) Wrongfully denies a claim by filing a timely notice of denial, or fails to timely initiate any of the benefits to which the employee is entitled under this chapter, including medical benefits under § 50-6-204 or temporary or permanent disability benefits under § 50-6-207, if the workers' compensation judge makes a finding that such benefits were owed at an expedited hearing or compensation hearing.
(2) Subdivision (d)(1)(B) shall apply to injuries that occur on or after July 1, 2016, but shall not apply to injuries that occur after June 30, 2018.

Section 3
50-9-101. Legislative Intent.
(a) It is the intent of the general assembly to promote drug-free workplaces in order that employers in this state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace and reach their desired levels of success without experiencing the costs, delays and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. It is further the intent of the general assembly that drug and alcohol abuse be discouraged and that employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits. It is also the intent of the general assembly that employers obtaining certification as a drug-free workplace under rules promulgated by the bureau should be able to renew that certification on an annual basis without requiring repeated annual training of existing employees; provided, however, the employer certifies on a form prescribed by the bureau that all existing employees have undergone training at least once and have acknowledged annually in writing the existence of the employer's drug-free workplace policy.

Section 4
50-9-111. Rules and regulations—Guidelines for state testing program.
…
(d) The administrator is authorized to set education program requirements for drug-free workplaces by rules promulgated in accordance with the requirements of the Uniform Administrative Procedures Act. The requirements shall not be more stringent than the federal requirements for workplaces regulated by the United States Department of Transportation rules. The requirements shall not require an employer to provide annual education or awareness training for each employee if all existing employees have undergone such training at least once and have acknowledged annually in writing the existence of the employer's drug-free workplace policy.

Section 5
50-6-216 Ombudsman program. [Applicable to injuries occurring on and after July 1, 2014.]
…
(e) (1) Any party that is not represented by legal counsel may request the services of a workers' compensation ombudsman by contacting the office of mediation services.
(2) The ombudsman's authority shall include, but not be limited to, the following:
(A) Meet with and provide information to unrepresented parties about the unrepresented party's rights and responsibilities under the law;
(B) Explain the administrative process for resolving workers' compensation claims;
(C) Investigate claims and attempt to resolve disputes without resort to alternative dispute resolution and court proceedings;
(D) Communicate with all parties and providers in the claim;
(E) Assist the parties in the completion of forms; ~~and~~
(F) Facilitate the exchange of medical records~~.~~; and
(G) Approve a settlement between an employer and employee who are not represented by an attorney in the claim as authorized by §50-6-240(f).
~~**(3)** An ombudsman shall not provide legal advice.~~
(3) An ombudsman who is not a licensed attorney shall not provide legal advice; however, an ombudsman who is a licensed attorney may provide limited legal advice but shall not represent any party as the party's attorney. No ombudsman shall make attorney referrals.

SB 2582 also includes the following clause:
This act shall take effect July 1, 2016, the public welfare requiring it, and Sections 1, 2, and 5 shall apply to injuries that occur on or after that date.

Note: SB 2582 was not included in any previous version of NCCI's ***Legislative Activity Report***.

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BILLS PASSING FIRST CHAMBER

The following workers compensation-related bill passed the first chamber within the one-week period ending April 22, 2016.

Colorado

HB 16-1399 amends ***section 8-41-301. Conditions of recovery—definition*** of the Colorado Revised Statutes and makes an appropriation as follows:

Section 8-41-301. Conditions of recovery—definition

(2)(a) A claim of mental impairment must be proven by evidence supported by the testimony of a licensed physician or psychologist. A claim for mental impairment benefits pursuant to this section may not be denied based solely on the occupation of the worker. Each claimant must be evaluated as to that individual's medical condition by a Colorado-licensed, level II fully accredited physician, a licensed psychiatrist, or a licensed psychologist. For purposes of this subsection (2), "mental impairment" means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances. A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. The mental impairment that is the basis of the claim shall have arisen primarily from the claimant's then occupation and place of employment in order to be compensable.

Appropriation. (1) For the 2016–17 state fiscal year, $24,072 is appropriated to the department of labor and employment for use by the division of workers' compensation. This appropriation is from the workers' compensation cash fund created in section 8-44-112 (7) (a), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) $23,787 for personal services related to workers' compensation, which amount is based on an assumption that the division will require an additional 0.3 FTE; and

(b) $285 for operating expenses related to workers' compensation.

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
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This report is informational and is not intended to provide an interpretation of state and federal legislation.

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