



State or Federal 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

The following workers compensation-related bills were enacted within the one-week period ending June 2, 2017.

Nevada

AB 458 was:

- Passed by the first chamber on May 9, 2017
- Included in NCCI's May 19, 2017 **Legislative Activity Report** (RLA-2017-19)
- Passed by the second chamber on May 22, 2017
- Included in NCCI's June 2, 2017 **Legislative Activity Report** (RLA-2017-21)
- Enacted on May 30, 2017, with an effective date of July 1, 2017

AB 458 adds to and revises various provisions of **Chapter 616C—Industrial Insurance: Benefits for Injuries or Death** of the Nevada Revised Statutes as follows:

- **Section 2** of this bill specifies that a physician or chiropractor may use interchangeably certain phrases that relate to a claim for compensation when determining the causation of an industrial injury or occupational disease.
- **Section 3:**
 - Sets forth that an injured employee is entitled to an independent medical examination for a claim for compensation that is open or when the closure of a claim is under dispute
 - Authorizes the injured employee to obtain an independent medical examination:
 - (1) when a dispute arises from a determination issued by the insurer;
 - (2) within 30 days after the injured employee receives a certain report generated by a medical examination; or
 - (3) by leave of a hearing officer or appeals officer
 - Requires an injured employee to select a physician or chiropractor from the panel of physicians or chiropractors established by the Administrator of the Division of Industrial Relations of the Department of Business and Industry
 - Requires the insurer to:
 - (1) pay for an independent medical examination; and
 - (2) upon request, receive a copy of any report or other document that is generated as a result of the independent medical examination
 - Allows the injured employee to obtain only one independent medical examination per calendar year
- **Section 4** provides for a vocational rehabilitation counselor to be appointed by the insurer and injured employee when a written assessment is requested or when a plan for a program of vocational rehabilitation is required.
- Existing law requires, where there is a previous disability, the percentage of disability for a subsequent injury to be determined by deducting from the entire disability of the person the percentage of previous disability as it existed at the time of the subsequent injury (NRS 616C.490). The Division of Industrial Relations of the Department of Business and Industry previously implemented a regulation that required an apportionment to be made by subtracting the percentage of previous disability as it existed at the time of the previous disability from the percentage of present disability as it existed at the time of the present

disability (NAC 616C.490). The Nevada Supreme Court in *Pub. Agency Comp. Trust v. Blake*, 127 Nev. 863 (2011), found this regulation to be invalid since it was in conflict with the existing statute.

- **Section 8** incorporates the substance of the regulation at issue into existing law.
- Existing law authorizes an insurer, after sending notice to the claimant, to close a claim if, during the first 12 months after a claim is opened, the medical benefits required to be paid for the claim are less than \$300. Existing law further requires an insurer to send to a claimant who receives less than \$300 in medical benefits within 6 months after the claim is opened a written notice that explains how the claim may be closed if, during the first 12 months after the claim is opened, the medical benefits required to be paid for the claim are less than \$300 (NRS 616C.235).
- **Section 7.3** increases the amount of medical benefits required to be paid for the claim from \$300 to \$800.
- Existing law sets forth that if an employee's claim is reopened, the employee is not entitled to vocational rehabilitation services or benefits for a temporary total disability if, before the claim was reopened, the employee retired for reasons unrelated to the injury for which the claim was originally made (NRS 616C.390).
- **Section 7.7** defines the term "retired" for the purposes of these existing provisions.
- **Section 9:**
 - Specifies the maximum amount of a lump sum that a person injured on or after July 1, 1995, and before January 1, 2016, on or after January 1, 2016, and before July 1, 2017, and on or after July 1, 2017, may elect to receive as his or her compensation
 - Requires the tables used to calculate the lump sum to be adjusted on July 1 of each year

Oklahoma

HB 2423 was:

- Passed by the first chamber on May 15, 2017
- Passed by the second chamber on May 23, 2017
- Enacted and effective on May 31, 2017

HB 2423 amends *title 40 section 418 Payments to Commission—Refunds—Collection of payments—Disposition of funds* of the Oklahoma Statutes as follows:

§40-418 Payments to Commission—Refunds—Collection of payments—Disposition of funds

(1) Each insurance carrier writing workers' compensation insurance in this state and each self-insured employer authorized to make workers' compensation payments directly to employees shall pay to the Oklahoma Tax Commission up to a sum equal to three-fourths of one percent (3/4 of 1%) of the total workers' compensation losses, excluding medical payments and temporary total disability compensation, based on the records of the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission, paid out or payable during each quarter-year period of the calendar year, said percentage to be fixed by the Commissioner of Labor and based upon his the Commissioner's certification that the proceeds thereof are reasonable and necessary to accomplish the objectives of ~~Section 401 et seq. of this title~~ the Oklahoma Occupational Health and Safety Standards Act. Such payments to the Oklahoma Tax Commission shall be made not later than the fifteenth day of the month following the close of the quarter-year in which compensation is paid or becomes payable. Payments made, under the provisions of this section, shall be considered losses for the purpose of computing workers' compensation rates.

(2) The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made under the provisions of ~~this act~~ the Oklahoma Occupational Health and Safety Standards Act.

(3) In making and entering awards for compensation, the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission shall determine and fix the amounts that shall be paid to the Oklahoma Tax Commission under the provisions of this section. The total amount so determined and fixed shall have the same force and effect as an award of the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission for compensation and all provisions of law relating to the collection of awards of said court or Commission shall apply to such judgments or awards.

(4) It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for herein, and said Commission is hereby given authority to bring an action for the recovery of any delinquent and unpaid payment or payments. In the alternative, the Oklahoma Tax Commission may enforce payments by proceeding in accordance with the provisions of Section ~~346 79~~ of Title ~~85 85A~~ of the Oklahoma Statutes.

(5) The Oklahoma Tax Commission shall, monthly, as the same are collected, pay to the State Treasurer of this state, to the credit of the Special Occupational Health and Safety Fund, all monies collected under the provisions of this section. Monies shall be paid out of said Fund exclusively for the operation and administration of ~~Section 401 et seq. of this title~~ the Oklahoma Occupational Health and Safety Standards Act and for other necessary expenses of the Department of Labor pursuant to appropriations by the Oklahoma Legislature.

(6) The Commissioner shall determine the needs of the program, considering statistical data on disabling work injuries, depth and scope of the program as evidenced by the needs and demands of employers and the present, planned and anticipated budgetary needs of the program, and submit same to the Legislature.

Note: HB 2423 was not included in any previous *Legislative Activity Report*.

Texas

HB 1983 was:

- Passed by the first chamber on April 28, 2017
- Included in NCCI's May 5, 2017 *Legislative Activity Report* (RLA-2017-17)
- Passed by the second chamber on May 23, 2017
- Included in NCCI's June 2, 2017 *Legislative Activity Report* (RLA-2017-21)
- Enacted on June 1, 2017, with an effective date of September 1, 2017

HB 1983 adds **Section 504.019. Coverage for Post-Traumatic Stress Disorder for Certain First Responders** to the Texas Labor Code as follows:

Sec. 504.019. Coverage for Post-Traumatic Stress Disorder for Certain First Responders.

(a) In this section:

(1) "First responder" means an individual employed by a political subdivision of this state who is:

(A) a peace officer under Article 2.12, Code of Criminal Procedure;

(B) a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are firefighting and aircraft crash and rescue.

(2) "Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition adopted by the commissioner of workers' compensation.

(b) Post-traumatic stress disorder suffered by a first responder is a compensable injury under this subtitle only if it is based on a diagnosis that:

(1) the disorder is caused by an event occurring in the course and scope of the first responder's employment; and

(2) the preponderance of the evidence indicates that the event was a substantial contributing factor of the disorder.

HB 1983 also amends **Section 408.006 Mental Trauma Injuries** of the Texas Labor Code as follows:

Section 408.006 Mental Trauma Injuries

...

(b) Notwithstanding Section 504.019, a mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

HB 1983 also states the following:

The change in law made by this Act applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before that date is governed by the law as it existed on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

HB 2061 was:

- Passed by the first chamber on April 20, 2017
- Included in NCCI's April 28, 2017 *Legislative Activity Report* (RLA-2017-16)
- Passed by the second chamber on May 12, 2017
- Included in NCCI's May 19, 2017 *Legislative Activity Report* (RLA-2017-19)
- Enacted on May 29, 2017, with an effective date of September 1, 2017

HB 2061 amends **sections 410.253. Service; Notice** and **410.258. Notification of Division of Proposed Judgments and Settlements; Right to Intervene** of the Texas Labor Code as follows:

Sec. 410.253. Service; Notice.

(a) A party seeking judicial review shall simultaneously:

(1) file a copy of the party's petition with the court;

(2) serve any opposing party to the suit; and

(3) provide a copy written notice of the party's petition ~~suit or notice of appeal~~ to the division.

(b) A party may not seek judicial review under Section 410.251 unless the party has provided the copy written notice of the petition ~~suit~~ to the division under Subsection (a)(3) as required by this section.

Sec. 410.258. Notification of Division of Proposed Judgments and Settlements; Right to Intervene.

(a) The party who initiated a proceeding under this subchapter or Subchapter G must file any proposed judgment or settlement ~~made by the parties to the proceeding~~, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.
(a-1) If the terms of the proposed settlement or proposed agreed judgment, including all payments to be made, are not described in the proposed settlement or proposed agreed judgment, the party must also file with the division at the time of filing the proposed settlement or proposed agreed judgment a separate document that fully describes the terms of the proposed settlement or proposed agreed judgment.

(a-2) The proposed judgment or settlement or proposed agreed judgment and any separate document described by Subsection (a-1) must be mailed to the division by certified mail, return receipt requested.

(a-3) The separate document filed with the division under Subsection (a-1) is not subject to disclosure under Chapter 552, Government Code.

HB 2061 also states the following:

Section 410.253, Labor Code, as amended by this Act, applies to a petition for judicial review filed on or after the effective date of this Act.

Section 410.258, Labor Code, as amended by this Act, applies to a proposed judgment or settlement related to a proceeding under Subchapter F or G, Chapter 410, Labor Code, initiated on or after the effective date of this Act.

SB 877 was:

- Passed by the first chamber on April 26, 2017
- Included in NCCI's May 5, 2017 **Legislative Activity Report** (RLA-2017-17)
- Passed by the second chamber on May 17, 2017
- Included in NCCI's May 26, 2017 **Legislative Activity Report** (RLA-2017-20)
- Enacted on May 29, 2017, with an effective date of September 1, 2017

SB 877 amends **section 504.053 Election** of the Texas Labor Code as follows:

504.053 Election

...

(e) Nothing in this chapter waives sovereign immunity or creates a new cause of action, except that a political subdivision that self-insures either individually or collectively is liable for attorney's fees as provided by Section 417.003.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending June 2, 2017.

Illinois

HB 2525 was:

- Passed by the first chamber on April 27, 2017
- Included in NCCI's May 5, 2017 **Legislative Activity Report** (RLA-2017-17)
- Amended and passed by the second chamber on May 26, 2017

HB 2525, in part, makes the following changes to the Illinois Compiled Statutes Annotated:

- Requires that every manual of classifications, every manual of rules and rates, every rating plan, and every modification of the foregoing must be prefiled with the Director at least 30 days before they become effective.
- Provides that a company may satisfy its obligation to make such filings by adopting the filing of a licensed rating organization of which it is a member or subscriber, provided that if a company chooses to deviate from such filing, it must get approval from the Director by submitting supporting information that specifies the basis and justification for the deviation.
- Provides that a filing must not be effective, nor used, unless approved by the Director. A filing must be deemed approved if the Director fails to disapprove within 30 days after the filing.
- Provides that the Illinois Workers' Compensation Commission, in consultation with the Workers' Compensation Medical Fee Advisory Board, must establish an evidence-based drug formulary.
- Requires an annual investigation of procedures covered for ambulatory surgical centers and the establishment of a fee schedule.
- Changes a waiting period for benefits for certain firefighters, emergency medical technicians, and paramedics.
- Changes compensation computations for subsequent injuries to the same part of the spine.
- Provides that accidental injuries sustained while traveling to or from work do not arise out of and in the course of employment.
- Defines "in the course of employment" and "arising out of the employment."

- Permits an employer to file with the Illinois Workers' Compensation Commission a workers compensation safety program or a workers compensation return-to-work program implemented by the employer.
- Provides that the Commission may certify any such safety program as a bona fide safety program after reviewing the program.
- Provides that, in a provision concerning compensation for the period of temporary total incapacity for work resulting from an accidental injury, (i) injuries to the shoulder must be considered injuries to part of the arm and (ii) injuries to the hip must be considered injuries to part of the leg.
- Contains, among other things, provisions concerning:
 - Repetitive and cumulative injuries
 - Permanent partial disability determinations
 - Electronic claims
 - Annual reports by the Commission concerning the state of self-insurance for workers compensation in Illinois
- Duties of the Workers' Compensation Premium Rates Task Force

Nevada

AB 267 was:

- Passed by the first chamber on April 25, 2017
- Included in NCCI's May 5, 2017 **Legislative Activity Report** (RLA-2017-17)
- Amended and passed by the second chamber on May 31, 2017

AB 267 amends various provisions of the Nevada Revised Statutes as follows:

Section 1. 616C.400 Minimum duration of incapacity.

1. Temporary compensation benefits must not be paid under chapters 616A to 616D, inclusive, of NRS for an injury which does not incapacitate the employee for at least 5 consecutive days, or 5 cumulative days within a 20-day period, from earning full wages, but if the incapacity extends for 5 or more consecutive days, or 5 cumulative days within a 20-day period, compensation must then be computed from the date of the injury.
2. The period prescribed in this section does not apply to:
 - (a) Accident benefits, whether they are furnished pursuant to NRS 616C.255 or 616C.265, if the injured employee is otherwise covered by the provisions of chapters 616A to 616D, inclusive, of NRS and entitled to those benefits.
 - (b) Compensation paid to the injured employee pursuant to subsection 1 of NRS 616C.477.
 - (c) A claim which is filed pursuant to NRS 617.453, 617.455 or 617.457.

Section 2. 617.420 Minimum duration of incapacity; payment of medical benefits.

1. No compensation may be paid under this chapter for temporary total disability which does not incapacitate the employee for at least 5 cumulative days within a 20-day period from earning full wages, but if the incapacity extends for 5 or more days within a 20-day period, the compensation must then be computed from the date of disability.
2. The limitations in this section do not apply to medical benefits, including, without limitation, medical benefits pursuant to NRS 617.453, 617.455 or 617.457, which must be paid from the date of application for payment of medical benefits.

Section 3. 617.454 Physical examinations: required tests.

1. Any physical examination administered pursuant to NRS 617.455 or 617.457 must include:
 - (a) A thorough test of the functioning of the hearing of the employee; and
 - (b) A purified protein derivative skin test to screen for exposure to tuberculosis.
2. Except as otherwise provided in subsection 8 of NRS 617.457, the tests required by this section must be paid for by the employer.
3. Except as otherwise provided by the provisions governing privacy in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and applicable regulations, or an employee's collective bargaining agreement, whichever is more restrictive:
 - (a) The results of a physical examination administered pursuant to NRS 617.455 or 617.457 may only be provided to:
 - (1) The examining physician;
 - (2) The employee;
 - (3) The employer's officer who is responsible for risk management or human resources or his or her designee; and
 - (4) If the employee has filed a claim pursuant to NRS 617.455 or 617.457, the insurer.
 - (b) A person who receives the results of a physical examination pursuant to paragraph (a) may only use the results for the purposes of:
 - (1) Complying with the requirements of NRS 617.455 or 617.457, as applicable; or
 - (2) Creating a report pursuant to paragraph (c).
 - (c) The employer's officer who is responsible for risk management or human resources or his or her designee may create and release a report that is based on the results of a physical examination administered pursuant to NRS 617.455 or 617.457 to any

person whom the employer's officer determines has a need to know the information in the report. The report must only contain the following information:

(1) The name of the employee who was the subject of the physical examination; and

(2) A statement that the employee, as applicable:

(I) Satisfies the physical qualifications required for his or her employment; or

(II) Does not satisfy the physical qualifications required for his or her employment.

Section 4. 617.455 Lung diseases as occupational diseases of firefighters, police officers and arson investigators.

...

10. The Administrator shall review a claim filed by a claimant pursuant to this section that has been in the appeals process for longer than 6 months to determine the circumstances causing the delay in processing the claim. As used in this subsection, "appeals process" means the period of time that:

(a) Begins on the date on which the claimant first files or submits a request for a hearing or an appeal of a determination regarding the claim; and

(b) Continues until the date on which the claim is adjudicated to a final decision.

11. Except as otherwise provided in this subsection, if an employer, insurer or third-party administrator denies a claim that was filed pursuant to this section and the claimant ultimately prevails, the Administrator may order the employer, insurer or third-party administrator, as applicable, to pay to the claimant a benefit penalty of not more than \$200 for each day from that date on which an appeal is filed until the date on which the claim is adjudicated to a final decision. Such benefit penalty is payable in addition to any benefits to which the claimant is entitled under the claim and any fines and penalties imposed by the Administrator pursuant to NRS 616D.120. If a hearing before a hearing officer is requested pursuant to NRS 616C.315 and held pursuant to NRS 616C.330, the employer, insurer, or third-party administrator, as applicable, shall pay to the claimant all medical costs which are associated with the occupational disease and are incurred from the date on which the hearing is requested until the date on which the claim is adjudicated to a final decision. If the employer, insurer or third-party administrator, as applicable, ultimately prevails, the employer, insurer or third-party administrator, as applicable, is entitled to recover the amount paid pursuant to this subsection in accordance with the provisions of NRS 616C.138.

Section 5. 617.457 Heart diseases as occupational diseases of firefighters, arson investigators and police officers.

...

15. The Administrator shall review a claim filed by a claimant pursuant to this section that has been in the appeals process for longer than 6 months to determine the circumstances causing the delay in processing the claim. As used in this subsection, "appeals process" means the period of time that:

(a) Begins on the date on which the claimant first files or submits a request for a hearing or an appeal of a determination regarding the claim; and

(b) Continues until the date on which the claim is adjudicated to a final decision.

16. Except as otherwise provided in this subsection, if an employer, insurer or third-party administrator denies a claim that was filed pursuant to this section and the claimant ultimately prevails, the Administrator may order the employer, insurer or third-party administrator, as applicable, to pay to the claimant a benefit penalty of not more than \$200 for each day from that date on which an appeal is filed until the date on which the claim is adjudicated to a final decision. Such benefit penalty is payable in addition to any benefits to which the claimant is entitled under the claim and any fines and penalties imposed by the Administrator pursuant to NRS 616D.120. If a hearing before a hearing officer is requested pursuant to NRS 616C.315 and held pursuant to NRS 616C.330, the employer, insurer, or third-party administrator, as applicable, shall pay to the claimant all medical costs which are associated with the occupational disease and are incurred from the date on which the hearing is requested until the date on which the claim is adjudicated to a final decision. If the employer, insurer or third-party administrator, as applicable, ultimately prevails, the employer, insurer or third-party administrator, as applicable, is entitled to recover the amount paid pursuant to this subsection in accordance with the provisions of NRS 616C.138.

AB 267 also includes the following language:

The amendatory provisions of sections 1, 2, 4 and 5 of this act apply only to claims filed on or after October 1, 2017.

New Hampshire

SB 24 was:

- Passed by the first chamber on February 23, 2017
- Included in NCCI's March 3, 2017 **Legislative Activity Report** (RLA-2017-08)
- Passed by the second chamber on June 1, 2017

SB 24 amends **section 400-A:37 Examinations** of the New Hampshire Statutes as follows:
400-A:37 Examinations.

...

(e) In order to assist in the performance of the commissioner’s duties, the commissioner:

...

(4) May disclose the content of an examination report, preliminary examination report or results, or any matter relating thereto relative to workers’ compensation audits, to the department of labor, and all such information disclosed and in the possession or control of the department of labor shall be confidential by law and privileged, shall not be subject to disclosure under RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner of the department of labor shall agree in writing to hold such information confidential and in a manner consistent with this subparagraph.

...

Vermont

SB 135 was:

- Passed by the first chamber on March 31, 2017
- Amended and passed by the second chamber on May 4, 2017

SB 135, in part, amends **Title 21, Chapter 9, Section 711, Workers’ Compensation Administration Fund** of the Vermont Statutes Annotated as follows:

§711 Workers’ Compensation Administration Fund

(a) A Workers’ Compensation Administration Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5 to be expended by the Commissioner for the administration of the workers’ compensation and occupational disease programs. The Fund shall consist of contributions from employers made at a rate of ~~1.75~~ 1.4 percent of the direct calendar year premium for workers’ compensation insurance, one percent of self-insured workers’ compensation losses, and one percent of workers’ compensation losses of corporations approved under this chapter. Disbursements from the Fund shall be on warrants drawn by the Commissioner of Finance and Management in anticipation of receipts authorized by this section.

Note: SB 135 was not included in any previous **Legislative Activity Report**.

BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending June 2, 2017.

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, ID, MT, NV, OR	Peter Burton	610-964-8852
AL, GA, KY, LA, MS	Laura Hart Bryan	225-618-8168
AK, AZ, CO, NM, 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
IA, MO, NE, OK, SD	Carla Townsend	314-843-4001
Federal Issues	Tim Tucker	202-403-8526

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