



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 includes 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 is included in the first report published each month. This report is issued on a weekly basis throughout the legislative season and provides updates on the content of these bills if and when they progress through the legislative process. This report covers 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 20, 2018.

Maine

LD 1888 was:

- Passed by the first chamber on April 17, 2018
- Passed by the second chamber on April 18, 2018
- Enacted on April 19, 2018, with an effective date of July 17, 2018

LD 1888 amends **section 403. Insurance by assenting employer; requirements as to self-insurers** of the Maine Workers' Compensation Act of 1992 to:

- Require a group self-insurer that provides an irrevocable standby letter of credit as security to file with the Superintendent of Insurance a letter of credit and other agreements or documents relating to the employer's reimbursement obligations
- Require a group self-insurer to maintain an actuarially determined fully funded trust as security for self-insurance, except that the Superintendent of Insurance may authorize an affiliated group self-insurer meeting certain requirements to secure the liabilities of each of its members
- Require that if the status of a group self-insurer is terminated, the required security remains subject to the control of the Workers' Compensation Board until claims against the group self-insurer have been discharged
- Remove a requirement that reinsurance contracts name the self-insurer as a coinsured with the Maine Self-Insurance Guarantee Association
- Authorize a member of a group self-insurer and a successor employer of a member to apply for continuing membership in the group self-insurer

Nebraska

LB 953 was:

- Passed by the Legislature on April 18, 2018
- Enacted on April 19, 2018, with an effective date of July 18, 2018

LB 953 amends **sections 48-139, 48-2907, and 48-2911** of the Nebraska Revised Statutes as follows:

48-139 Compensation; lump-sum settlement; submitted to Nebraska Workers' Compensation Court; procedure; filing of release; form; contents; payment; fees.

...

(2)(a) An application for an order approving a lump-sum settlement, signed and verified by both parties, shall be filed with the clerk of the compensation court and shall be entitled the same as an action by such employee or dependents against such employer. The application shall contain a concise statement of the terms of the settlement or agreement sought to be approved with a brief

statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, the nature of the employment, a description of the medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid as part of the settlement which are disputed and for which compensability has been denied by the employer, and such other matters as may be reasonably required by the compensation court. The application shall also include a statement that the parties have considered the interests of medicare and have taken reasonable steps to protect any interests of medicare. The application may provide for payment of future medical, surgical, or hospital expenses incurred by the employee. The compensation court may, on its own motion, and shall, on a motion by one of the parties, hold a hearing on the application at a time and place selected by the compensation court, and proof may be adduced and witnesses subpoenaed and examined the same as in an action in equity.

(b)(i) (b) If the compensation court finds such lump-sum settlement is made in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, the compensation court shall make an order approving the same.

(ii) If the expenses for medical, surgical, or hospital services provided to the employee are not paid by the employer, or if any person, other than medicaid, who has made any payment to the supplier of medical, surgical, or hospital services provided to the employee, is not reimbursed by the employer, it shall be conclusively presumed that the nonpayment or nonreimbursement of disputed medical, surgical, or hospital expenses, as set forth in the application, is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents, if the employee's attorney elects to affirm and does affirm in the application that the nonpayment or nonreimbursement of disputed medical, surgical, or hospital expenses is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances.

(iii) If the employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed, and if the employee's attorney elects to affirm and does affirm in the application that the parties' agreement relating to consideration of medicare's interests set forth in such lump-sum settlement is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, it shall be conclusively presumed that the parties' agreement relating to consideration of medicare's interests set forth in the application is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents.

(iv) If such settlement is not approved, the compensation court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the compensation court.

(c) Every such lump-sum settlement approved by order of the compensation court shall be final and conclusive unless procured by fraud. An order approving an application under this subsection shall, in any case in which the employee is represented by counsel and in which the application contains a description of the medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid as part of the settlement which are disputed and for which compensability has been denied by the employer, provide that the employer is not liable for such expenses. Upon paying the amount approved by the compensation court, the employer ~~(i)~~ shall be discharged from further liability on account of the injury or death, other than liability for the payment of future medical, surgical, or hospital expenses if such liability is approved by the compensation court on the application of the parties, ~~and (ii) shall be entitled to a duly executed release. Upon filing the release, the liability of the employer under any agreement, award, finding, or decree shall be discharged of record.~~

(d) An exclusion from coverage in any health, accident, or other insurance policy covering an employee which provides that coverage under such insurance policy does not apply if such employee is entitled to workers' compensation coverage is void as to such employee if his or her employer is not liable for medical, surgical, or hospital expenses incurred for treatment of an injury that will remain unpaid as part of the settlement pursuant to an order entered under subdivision (2)(c) of this section.

...

(4) Upon the entry of an order of dismissal with prejudice, a A release filed with the compensation court in accordance with subsection (3) of this section shall be final and conclusive as to all rights waived in the release unless procured by fraud. Amounts to be paid by the employer to the employee pursuant to such release shall be paid within thirty days of filing the release with the compensation court. Fifty percent shall be added for payments owed to the employee if made after thirty days after the date the release is filed with the compensation court. Upon making payment owed by the employer as set forth in the release and upon the entry of an order of dismissal with prejudice, as to all rights waived in the release, such release shall be a full and complete discharge from further liability for the employer on account of the injury, including future medical, surgical, or hospital expenses, unless such expenses are specifically excluded from the release, and the court shall enter an order of dismissal with prejudice as to all rights waived in the release.

...

48-2907 Fines.

(1) In addition to any other fines or penalties provided by law, if the commissioner finds, after notice and hearing, that a contractor has violated the Employee Classification Act, the contractor shall be assessed, by the commissioner, a five-hundred-dollar fine per each misclassified individual for the first offense and a five-thousand-dollar fine per each misclassified individual for each second and subsequent offense.

(2) Any contractor who has unpaid fines for a violation of the Employee Classification Act shall be barred from contracting with the state or any political subdivision until such fines are paid.

48-2911 Contracts; affidavit required; rescission.

Any contract between the state or a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the state or political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with section 4-114, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to section 48-2907 or 48-2912. Such contract shall also require that the contractor follow the provisions of the Employee Classification Act. A violation of the act by a contractor is grounds for rescission of the contract by the state or political subdivision.

LB 957 was:

- Passed by the Legislature on April 18, 2018
- Enacted on April 19, 2018, with an effective date of July 18, 2018

LB 957 amends **section 48-125** of the Nebraska Revised Statutes as follows:

48-125 Compensation; method of payment; delay; appeal; attorney's fees; interest.

(1) ~~(1)(a)~~ Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death or by a method of payment as provided in subsection (2) of this section. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149 or subsection (2) of this section.

(2)(a) After an injury or death subject to the Nebraska Workers' Compensation Act, the employer, workers' compensation insurer, or risk management pool and the employee, the other person entitled to compensation, or a legal representative acting on behalf of such employee or other person entitled to compensation may enter into a written or electronic agreement that periodic or lump-sum payments to the employee or other person entitled to compensation may be made by check or by direct deposit, prepaid card, or similar electronic payment system.

(b) Payments made by direct deposit, prepaid card, or similar electronic payment system pursuant to this subsection shall not be subject to attachment or garnishment or held liable in any way for any debts, except as provided in section 48-149; and an agreement pursuant to this subsection shall include notice of this fact. If an amount is withheld pursuant to section 48-149, sufficient information to identify the jurisdiction, the case number or similar identifying information, and the amount withheld shall be provided to the employee or other person entitled to compensation or his or her legal representative at or near the time of withholding.

(c) Prior to entering into an agreement pursuant to this subsection for payment by prepaid card, the employer, workers' compensation insurer, or risk management pool shall provide to the employee or other person entitled to compensation information regarding the locations where such card may be used by the employee or other person.

(d) Pursuant to an agreement under this subsection, compensation may be transferred by electronic funds transfer or other electronic means to the trust account of an attorney representing the employee or other person entitled to compensation, for the benefit of such employee or other person. The payment or transfer shall include or be accompanied by information sufficient to identify the nature of the payment being made, including the employer, workers' compensation insurer, or risk management pool and the employee or other person entitled to compensation.

(e) If an employer, workers' compensation insurer, or risk management pool imposes any fees or other charges relating to payment by direct deposit, prepaid card, or a similar electronic payment system, prior to entering into an agreement pursuant to this subsection the employer, workers' compensation insurer, or risk management pool shall disclose such fees or charges to the employee or other person entitled to compensation.

(f) Any payment or transfer made pursuant to this subsection by direct deposit, prepaid card, or similar electronic payment system shall be in the full amount of the lump-sum or periodic payment awarded or paid pursuant to section 48-121 to the employee or other person entitled to compensation.

(g) A prepaid card offered by the employer, workers' compensation insurer, or risk management pool shall:

(i) Allow the employee or other person entitled to compensation to apply, initiate, transfer, and load payments with no charge by the employer, workers' compensation insurer, or risk management pool;

(ii) For the initial prepaid card, be distributed or delivered to the employee or other person entitled to compensation with no charge by the employer, workers' compensation insurer, or risk management pool; and

(iii) Provide the employee or other person entitled to compensation, with respect to each payment made to the prepaid card in accordance with this subsection, at least one method of accessing the full payment without fees.

(h) An employee, another person entitled to compensation, or a legal representative acting on behalf of such employee or other person entitled to compensation may elect at any time to rescind the agreement under this subsection regarding the method of payment by providing written or electronic notice of such rescission to the employer, workers' compensation insurer, or risk management pool that is a party to such agreement. If such election is made, the employer, workers' compensation insurer, or risk management pool shall change the method of payment to the method of payment of wages of the employee at the time of the injury or death under subsection (1) of this section as soon as practicable after receiving the information necessary to do so and in a manner that allows the employer, workers' compensation insurer, or risk management pool to comply with the requirements of subsection (3) of this section without making a delinquent payment. The employer, workers' compensation insurer, or risk management pool is not required to rescind any payment transaction already made or made to comply with subsection (3) of this section.

(i) An employer, a workers' compensation insurer, or a risk management pool or an agent of any such entity shall not engage in unfair, deceptive, or abusive practices in relation to the method of payment. No employer, workers' compensation insurer, risk management pool, or agent of any such entity shall discharge, penalize, or in any other manner discriminate against any employee or other person entitled to compensation because such employee or other person has not consented to receive payments by check or by direct deposit, prepaid card, or a similar electronic payment system.

(j) An employer, workers' compensation insurer, or risk management pool that elects to make payment using a prepaid card shall comply with the requirements of 12 C.F.R. part 1005, as such part existed on April 1, 2018.

(3) ~~(b)~~ Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the Nebraska Workers' Compensation Court, except that for any award or judgment against the state in excess of one hundred thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars.

(4)(a) ~~(2)(a)~~ Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the compensation court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers.

...

(5) ~~(3)~~ When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, until the date payment is made by the employer. For any injury occurring prior to August 30, 2015, the interest rate shall be equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. For any injury occurring on or after August 30, 2015, the interest rate shall be equal to six percentage points above the bond investment yield, as published by the Secretary of the Treasury of the United States, of the average accepted auction price for the first auction of each annual quarter of the twenty-six-week United States Treasury bills in effect on the date of entry of the judgment. Interest shall apply only to those weekly compensation benefits awarded which have accrued as of the date payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

(6) For purposes of this section:

(a) Direct deposit means the transfer of payments into an account of a financial institution chosen by the employee or other person entitled to compensation; and

(b) Prepaid card means a prepaid debit card that provides access to an account with a financial institution established directly or indirectly by the employer, workers' compensation insurer, or risk management pool to which payments are transferred.

Tennessee

HB 2304 was:

- Passed by the first chamber on March 26, 2018
- Included in NCCI's April 6, 2018 *Legislative Activity Report* (RLA-2018-14)
- Passed by the second chamber on April 2, 2018
- Included in NCCI's April 13, 2018 *Legislative Activity Report* (RLA-2018-15)
- Enacted and effective on April 18, 2018

HB 2304 amends *section 50-6-226* of the Tennessee Workers' Compensation Law as follows:
50-6-226. Fees of attorneys and physicians, and hospital charges.

...

(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:

...

(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.~~

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending April 20, 2018.

Colorado

HB 1308 was:

- Passed by the first chamber on April 3, 2018
- Included in NCCI's April 13, 2018 *Legislative Activity Report* (RLA-2018-15)
- Passed by the second chamber on April 19, 2018

HB 1308 adds new **section 8-41-212** to the Workers' Compensation Act of Colorado as follows:

8-41-212. Exemptions—laws of other state furnish exclusive remedy—definitions.

(1) An employee who was hired or is regularly employed outside of Colorado by an out-of-state employer and the out-of-state employer of the employee are exempt from Articles 40 to 47 of this Title 8 while the employee is temporarily working for the out-of-state employer within Colorado if:

(a) The out-of-state employer has furnished coverage pursuant to the workers' compensation laws of the state in which the employee was hired or is regularly employed, which coverage applies to the employee while temporarily working in Colorado; and

(b) The state in which the employee is furnished coverage:

(I) Is contiguous to Colorado; and

(II) Recognizes this section and provides the same exemption from the application of its workers' compensation laws for Colorado employers whose employees are temporarily working in the contiguous state.

(2) For an out-of-state employee and out-of-state employer to which this section applies, the benefits provided under the workers' compensation laws of the state in which the employee is furnished coverage are the exclusive remedy against the out-of-state employer for any injury, whether resulting in death or not, that the employee incurs while working for the out-of-state employer in Colorado.

(3) The division may enter into an agreement with any workers' compensation division or similar agency of a contiguous state to promulgate rules consistent with this section to carry out the extraterritorial application of the workers' compensation or similar law of the agreeing state.

(4) Nothing in this section contravenes the legal obligations of Colorado employers to provide workers' compensation to their employees in compliance with articles 40 to 47 of this title 8.

(5) As used in this section:

(a) "Out-of-state employer" means an employer that is domiciled in another state.

(b) "Temporarily" or "temporarily working" means:

(i) A period of sustained work that does not exceed six months; or

(ii) Engaging in the interstate movement of goods or commodities.

SB 178 was:

- Passed by the first chamber on March 27, 2018
- Included in NCCI's April 6, 2018 *Legislative Activity Report* (RLA-2018-14)
- Passed by the second chamber on April 19, 2018

SB 178 amends **section 40-11.5-102** of the Colorado Revised Statutes as follows:

40-11.5-102. Lease provisions—definitions—rules.

...

(5) (a) Any lease or contract executed pursuant to this section shall ~~shall~~ **must** provide for coverage under workers' compensation or a private occupational accident insurance policy that provides similar coverage.

(a.5) If an operator of a commercial vehicle, as defined in section 42-4-235 (1)(a)(I)(b), obtains similar coverage pursuant to this subsection (5), then the operator:

(I) Is excluded from the definition of employee for purposes of section 8-40-202 (2);

(II) Shall notify the division of workers' compensation in the department of labor and employment of the election, in a manner determined by the director of the division of workers' compensation by rule; and

(III) Shall, along with the motor carrier and contract carrier, provide proof of the similar coverage upon request to interested parties, including the carrier's workers' compensation insurance provider, the division of workers' compensation, and the division of insurance.

(b) for purposes of this subsection (5), "similar coverage":

(I) Means disability insurance for on and off the job injury, health insurance, and life insurance benefits designed for independent contractors and sole proprietors who reject workers' compensation coverage and elect, pursuant to this subsection (5), coverage providing medical, temporary and permanent disability, death and dismemberment, and survivor benefits that are subject to regulation by the division of insurance in the department of regulatory agencies. The specifications of such the insurance, including the amount of any deductible, shall coverages, exclusions, policy limits, and the amount, if any, of any deductibles or copayments, must be filed with the division of insurance. The specifications must meet or exceed standards set by the division of insurance in the department of regulatory agencies, and such the standards shall must specify that the benefits offered by such the insurance coverage shall must be at least comparable to the benefits offered under the workers' compensation system.

(II) For services performed by operators of commercial vehicles, as defined in section 42-4-235 (1)(a)(I)(b), means insurance benefits defined in subsection (5)(b)(I) of this section. The specifications of the insurance, including minimum thresholds for coverage and the amount, if any, of any deductibles or copayments, must meet or exceed the standards set, by rule, by the division of insurance in the department of regulatory agencies.

(d) Notwithstanding any other law, if an operator of a commercial vehicle, as defined in section 42-4-235 (1)(a)(I)(b), a motor carrier, or a contract carrier obtains similar coverage pursuant to this subsection (5), articles 40 to 47 of title 8 do not apply.

(e) The commissioner of insurance in the division of insurance in the department of regulatory agencies shall promulgate rules establishing the minimum coverages for benefits under an occupational accident policy under this subsection (5).

New Hampshire

SB 84 was:

- Passed by the first chamber on January 3, 2018
- Included in NCCI's January 12, 2018 *Legislative Activity Report* (RLA-2018-02)
- Amended and passed by the second chamber on April 19, 2018

SB 84 amends **section 281-A:40 Memorandum of Payment** of the New Hampshire Workers' Compensation Law as follows:

281-A:40 Memorandum of Payment.—An employer or the employer's insurance carrier shall make payment of compensation in the amount and manner provided by this chapter. Payment shall be made by direct deposit 6 weeks from the date of disability if the injured worker elects this payment method. The employer or the employer's insurance carrier shall notify the injured worker in writing of his or her right to payment by direct deposit. If no election is made, payment shall be made by paper check mailed to the injured worker. The employer shall file memoranda of such payments with the commissioner in accordance with rules adopted by the commissioner under RSA 281-A:60.

SB 351 was:

- Passed by the first chamber on March 8, 2018
- Included in NCCI's March 16, 2018 *Legislative Activity Report* (RLA-2018-11)
- Amended and passed by the second chamber on April 19, 2018

SB 351 amends **section 281-A:23-a** of the New Hampshire Workers' Compensation Law as follows:

281-A:23-a Managed Care Programs.—...

V. Every managed care program shall include a sufficient number of injury management facilitators, including resident injury management facilitators, who shall be qualified by reason of education, training, and experience to manage the injured employee's medical, hospital and remedial care, vocational rehabilitation, modified duty, and return to work plans. An injury management facilitator shall work with the injured employee, employer, and medical, hospital and other providers to ensure that the injured employee receives effective, timely, and appropriate services in order to achieve maximum medical improvement and an expeditious return to work. Any person employed as an injury management facilitator by a managed care program or operating as an injury management facilitator in conjunction with a managed care program under this section shall be approved by the commissioner with ratification by the workers' compensation advisory council. The commissioner shall, in consultation with the advisory council, by rule determine the number of facilitators which shall be sufficient.

...

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bill passed the first chamber within the one-week period ending April 20, 2018.

Illinois

SB 2863 amends and adds numerous sections to the Illinois Compiled Statutes Annotated to:

- Provide that a rate is excessive if it is likely to produce a long-run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to the services rendered
- Allow an insured to file a request for review of premium with the Director
- Provide that accidental injuries sustained while traveling to or from work do not arise out of and in the course of employment
- Permit 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, requiring recalculation of rates
- Provide that (i) injuries to the shoulder shall be considered injuries to part of the arm and (ii) injuries to the hip shall be considered injuries to part of the leg
- Contain provisions concerning:
 - Repetitive and cumulative injuries
 - Permanent partial disability determinations
 - Annual reports by the Commission concerning self-insurance for workers compensation in Illinois
 - Duties of the Workers' Compensation Premium Rates Task Force
- Provide for an evidence-based drug formulary
- Require an annual investigation of procedures covered for ambulatory surgical centers and establish a fee schedule
- Change a waiting period for benefits for certain firefighters, emergency medical technicians, and paramedics
- Change compensation computations for subsequent injuries to the same part of the spine

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
IN, NC, SC, TN	Amy Quinn	803-356-0851
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DC, MD, NM, VA, WV	David Benedict	804-380-3005
CO, FL	Dawn Ingham	561-893-3165
CT, ME, NH, RI	Justin Moulton	860-969-7903
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This report is informational and is not intended to provide an interpretation of state and federal legislation.