



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 bill was enacted within the one-week period ending February 15, 2019.

### Virginia

**SB 1030** was:

- Passed by the first chamber on January 25, 2019
- Included in NCCI's February 1, 2019 **Legislative Activity Report** (RLA-2019-03)
- Amended and passed by the second chamber on February 4, 2019
- Included in NCCI's February 15, 2019 **Legislative Activity Report** (RLA-2019-05)
- Enacted on February 15, 2019, and not effective unless reenacted by the 2020 session of the General Assembly

**SB 1030** amends and reenacts **section 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer** of the Virginia Workers' Compensation Act as follows:

**§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.**

...

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian-~~or~~, breast, colon, brain, or testicular cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed 12 years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian-~~or~~, breast, colon, brain, or testicular cancer.

...

**SB 1030** also includes the following language:

That the provisions of this act shall not become effective unless reenacted by the 2020 Session of the General Assembly.

That the 2020 Session of the General Assembly, in considering and enacting any legislation relating to workers' compensation and the presumption of compensability for certain cancers, shall consider any research, findings, and recommendations of the Joint Legislative Audit and Review Commission from the Commission's review of the Virginia Workers' Compensation program.

**Note: SB 1030** is identical to **HB 1804**.

## BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending February 15, 2019.

### Utah

**SB 76** was:

- Amended and passed by the first chamber on February 5, 2019
- Included in NCCI's February 15, 2019 *Legislative Activity Report* (RLA-2019-05)
- Passed by the second chamber on February 13, 2019

**SB 76** repeals and reenacts **section 34A-1-309** of the Utah Labor Code as follows:

**34A-1-309. Attorney feesAdd-on fees.**

~~For an adjudication of a workers' compensation claim where only medical benefits are at issue, reasonable attorney fees may be awarded in accordance with and to the extent allowed by rule adopted by the Utah Supreme Court and implemented by the Labor Commission.~~

(1) As used in this section:

(a) "Carrier" means a workers' compensation insurance carrier, the Uninsured Employers' Fund, an employer that does not carry workers' compensation insurance, or a self-insured employer as defined in Section 34A-2-201.5.

(b) "Indemnity compensation" means a workers' compensation claim for indemnity benefits that arises from or may arise from a denial of a medical claim.

(c) "Medical claim" means a workers' compensation claim for medical expenses or recommended medical care.

(d) "Unconditional denial" means a carrier's denial of a medical claim:

(i) after the carrier completes an investigation; or

(ii) 90 days after the day on which the claim was submitted to the carrier.

(2) (a) The commission may award an add-on fee to a claimant to be paid by the carrier if:

(i) a medical claim is at issue;

(ii) the carrier issues an unconditional denial of the medical claim;

(iii) the claimant hires an attorney to represent the claimant during the formal adjudicative process before the commission;

(iv) after the carrier issues the unconditional denial, the commission orders the carrier or the carrier agrees to pay the medical claim; and

(v) any award of indemnity compensation in the case is less than \$5,000.

(b) An award of an add-on fee under this section is in addition to:

(i) the amount awarded for the medical claim or indemnity compensation; and

(ii) any amount for attorney fees agreed upon between the claimant and the claimant's attorney.

(c) An award under this section is governed by the law in effect at the time the claimant files an application for hearing with the Division of Adjudication.

(3) If the commission awards an add-on fee under this section, the commission shall award the add-on fee in the following amount:

(a) the lesser of 25% of the medical expenses the commission awards to the claimant or \$25,000, for a case that is resolved at the commission level;

(b) the lesser of 30% of the medical expenses the Utah Court of Appeals awards to the claimant or \$30,000, for a case that is resolved on appeal before the Utah Court of Appeals; or

(c) the lesser of 35% of the medical expenses that the Utah Supreme Court awards to the claimant or \$35,000, for a case that is resolved on appeal before the Utah Supreme Court.

(4) If a court invalidates any portion of this section, the entire section is invalid.

### Virginia

**HB 1804** was:

- Passed by the first chamber on February 5, 2019
- Included in NCCI's February 15, 2019 *Legislative Activity Report* (RLA-2019-05)
- Passed by the second chamber on February 15, 2019

**HB 1804** amends and reenacts **section 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer** of the Virginia Workers' Compensation Act as follows:

**§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.**

...

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast, colon, brain, or testicular cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of

Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed 12 years of continuous service who has a contact with a toxic substance encountered in the line of duty shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian, ~~or~~ breast, colon, brain, or testicular cancer.

...

**HB 1804** also includes the following language:

That the provisions of this act shall not become effective unless reenacted by the 2020 Session of the General Assembly.

That the 2020 Session of the General Assembly, in considering and enacting any legislation relating to workers' compensation and the presumption of compensability for certain cancers, shall consider any research, findings, and recommendations of the Joint Legislative Audit and Review Commission from the Commission's review of the Virginia Workers' Compensation program.

**Note:** **HB 1804** is identical to **SB 1030**.

**HB 2022** was:

- Passed by the first chamber on February 5, 2019
- Included in NCCI's February 15, 2019 *Legislative Activity Report* (RLA-2019-05)
- Passed by the second chamber on February 15, 2019

**HB 2022** amends and reenacts **section 65.2-602. Tolling of statute of limitations** of the Virginia Workers' Compensation Act to read:

**§ 65.2-602. Tolling of statute of limitations.**

In any case where an employer has received notice of an accident resulting in compensable injury to an employee as required by § 65.2-600, and, whether or not an award has been entered, ~~such the~~ employer ~~nevertheless~~ has paid compensation or wages to such employee during incapacity for work, as defined in § 65.2-500 or ~~§~~ 65.2-502, resulting from such injury or the employer has failed to file the report of said accident with the Virginia Workers' Compensation Commission as required by § 65.2-900, ~~and such conduct of the employer has operated to prejudice the rights of such employee with respect to the filing of a claim prior to expiration of a statute of limitations otherwise applicable, such statute shall be tolled for the duration of such payment or, as the case may be, until the employer files the first report of accident required by § 65.2-900 or otherwise has under a workers' compensation plan or insurance policy furnished or caused to be furnished medical service to such employee as required by § 65.2-603, the statute of limitations applicable to the filing of a claim shall be tolled until the last day for which such payment of compensation or wages or furnishment of medical services as described above is provided and that occurs more than six months after the date of accident. However, no such payment of wages or workers' compensation benefits or furnishment of medical service as described above occurring after the expiration of the statute of limitations shall apply to this provision. In the case where the employer has failed to file a first report, the statute of limitations shall be tolled during the duration thereof until the employer filed the first report of accident as required by § 65.2-900. In the event that more than one of the above tolling provisions applies, whichever of those causes the longer period of tolling shall apply. For purposes of this section, such rights of an employee shall be deemed not prejudiced if his employer has filed the first report of accident as required by § 65.2-900 or he has received after the accident a workers' compensation guide described in § 65.2-201 or a notice in substantially the following form:~~

**NOTICE TO EMPLOYEE.**

**BECAUSE OF THE ACCIDENT OR INJURY YOU HAVE REPORTED, YOU MAY HAVE A WORKERS' COMPENSATION CLAIM. HOWEVER, SUCH CLAIM MAY BE LOST IF YOU DO NOT FILE IT WITH THE VIRGINIA WORKERS' COMPENSATION COMMISSION WITHIN THE TIME LIMIT PROVIDED BY LAW. YOU MAY FIND OUT WHAT TIME LIMIT APPLIES TO YOUR INJURY BY CONTACTING THE COMMISSION. THE FACT THAT YOUR EMPLOYER MAY BE COVERING YOUR MEDICAL EXPENSES OR CONTINUING TO PAY YOUR SALARY OR WAGES DOES NOT STOP THE TIME FROM RUNNING.**

**Such notice shall also include the address and telephone number which the employee may use to contact the Commission.**

**SB 1729** was:

- Passed by the first chamber on January 25, 2019
- Included in NCCI's February 1, 2019 *Legislative Activity Report* (RLA-2019-03)
- Passed by the second chamber on February 13, 2019

**SB 1729** amends and reenacts **section 65.2-605.1. Prompt payment; limitation on claims** of the Virginia Workers' Compensation Act as follows:

**§ 65.2-605.1. Prompt payment; limitation on claims.**

...

G. No health care provider shall submit, nor shall the Commission adjudicate, any claim to the Commission seeking additional payment for medical services rendered to a claimant before July 1, 2014, if the health care provider has previously accepted payment for the same medical services pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Section 901 et seq.

H. The Commission, by January 1, 2016, shall establish a schedule pursuant to which employers, employers' workers' compensation insurance carriers, and providers of workers' compensation medical services shall be required, by a date determined by the Commission that is no earlier than July 1, 2016, and no later than December 31, 2018, to adopt and implement infrastructure under which (i) providers of workers' compensation medical services (providers) shall submit their billing, claims, case management, health records, and all supporting documentation electronically to employers or employers' workers' compensation insurance carriers, as applicable (payers) and (ii) payers shall return actual payment, claim status, and remittance information electronically to providers that submit their billing and required supporting documentation electronically. The Commission shall establish standards and methods for such electronic submissions and transactions that are consistent with International Association of Industrial Accident Boards and Commission Medical Billing and Payment guidelines. The Commission shall determine the date by which payers and providers shall be required to adopt and implement the infrastructure, which determinations shall be based on the volume and complexity of workers' compensation cases in which the payer or provider is involved, the resources of the payer or provider, and such other criteria as the Commission determines to be appropriate.

#### **BILLS PASSING FIRST CHAMBER**

The following workers compensation-related bills passed the first chamber within the one-week period ending February 15, 2019.

#### **Arizona**

**HB 2137** amends **section 23-966** of the of Arizona Revised Statutes to read:

**23-966. Failure of employer to pay claim or comply with commission order; reimbursement of funds**

...

C. The special fund is the successor in interest to all excess insurance policies in effect at the time of an assignment under subsection a of this section that insure any part of the self-insured employer's financial obligations under the workers' compensation laws. The special fund's recovery rights under this subsection are subject to applicable coverage terms and policy limits in the excess policy. The excess insurer shall make payment directly to the special fund for all covered amounts spent under this section, including administrative costs, necessary expenses and attorney fees to the extent covered by the excess policy. Unless recovered from an excess insurer, the special fund shall have a claim against the employer for all monies that are spent or anticipated to be spent under this section, including administrative costs, necessary expenses and attorney fees. Any claim by the special fund shall be made on the cash, securities or bond filed under section 23-961 or applicable rules or on any other asset of the employer.

#### **Colorado**

**HB 1105** amends **section 8-42-101** of the Workers' Compensation Act of Colorado, in part, as follows:

**8-42-101. Employer must furnish medical aid—approval of plan—fee schedule—contracting for treatment—no recovery from employee—medical treatment guidelines—accreditation of physicians and other medical providers—rules—repeal**

...

(3.5) (a) (I) (A) "Physician" means, for the purposes of the level I and level II accreditation programs, a physician licensed under the "Colorado Medical Practice Act", Article 36 of Title 12. For the purposes of level I accreditation only and not level II accreditation, "physician" means a dentist licensed under the "Dental Practice Act", article 35 of title 12; ~~C.R.S.~~; a podiatrist licensed under article 32 of title 12; ~~C.R.S.~~; and a chiropractor licensed under article 33 of title 12; ~~C.R.S.~~ and an advanced practice nurse with prescriptive authority pursuant to section 12-38-111.6.

...

#### **Idaho**

**SB 1028** amends **section 72-451** of the Idaho Worker's Compensation Law to read as follows:

**72-451. Psychological Accidents and Injuries.**

(1) Psychological injuries, disorders or conditions shall not be compensated under this title, unless the following conditions are met:  
(~~±~~ a) Such injuries of any kind or nature emanating from the workplace shall be compensated only if caused by accident and physical injury as defined in section 72-102(18)(a) through (18)(c), Idaho Code, or only if accompanying an occupational disease with resultant physical injury, except that a psychological mishap or event may constitute an accident where:

(i) ~~It~~ results in resultant physical injury ~~so~~ as long as the psychological mishap or event meets the other criteria of this section,  
~~and~~ ;

(ii) ~~It~~ is readily recognized and identifiable as having occurred in the workplace; ~~;~~ and

(iii) ~~It~~ must be the product of a sudden and extraordinary event; ~~and~~

(2 ~~b~~) No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from a personnel-related action including, but not limited to, disciplinary action, changes in duty, job evaluation or employment termination; ~~and~~

(3 ~~c~~) Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence for which benefits are claimed under this section; ~~and~~

(4 ~~d~~) Where psychological causes or injuries are recognized by this section, such causes or injuries must exist in a real and objective sense; ~~and~~

(5 ~~e~~) Any permanent impairment or permanent disability for psychological injury recognizable under the Idaho worker's compensation law must be based on a condition sufficient to constitute a diagnosis using the terminology and criteria of the American psychiatric association's diagnostic and ~~statistics~~ statistical manual of mental disorders, third edition revised, or any successor manual promulgated by the American psychiatric association, and must be made by a psychologist, or psychiatrist duly licensed to practice in the jurisdiction in which treatment is rendered; and

(6 ~~f~~) Clear and convincing evidence that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease as contemplated in this section is required.

(2) Nothing herein in subsection (1) of this section shall be construed as allowing compensation for psychological injuries from psychological causes without accompanying physical injury.

(3) The provisions of subsection (1) of t This section shall apply to accidents and injuries occurring on or after July 1, 1994, and to causes of action for benefits accruing on or after July 1, 1994, notwithstanding that the original worker's compensation claim may have occurred prior to July 1, 1994.

(4) Notwithstanding subsection (1) of this section, post-traumatic stress injury suffered by a first responder is a compensable injury or occupational disease when the following conditions are met:

(a) The first responder is examined and subsequently diagnosed with post-traumatic stress injury by a psychologist, a psychiatrist duly licensed to practice in the jurisdiction where treatment is rendered, or a counselor trained in post-traumatic stress injury; and

(b) Clear and convincing evidence indicates that the post-traumatic stress injury was caused by an event or events arising out of and in the course of the first responder's employment.

(5) No compensation shall be paid for such injuries described in subsection (2) of this section arising from a personnel-related action including, but not limited to, disciplinary action, changes in duty, job evaluation, or employment termination.

(6) As used in subsection (4) of this section:

(a) "Post-traumatic stress injury" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder or post-traumatic stress injury specified by the American psychiatric association's diagnostic and statistical manual of mental disorders, fifth edition revised, or any successor manual promulgated by the American psychiatric association.

(b) "First responder" means:

(i) A peace officer as defined in section 19-5101(d), Idaho Code, when employed by a city, county, or the Idaho state police;

(ii) A firefighter as defined in sections 59-1391(f) and 72-1403(A), Idaho Code;

(iii) A volunteer emergency responder as defined in section 72-102(32), Idaho Code;

(iv) An emergency medical service provider, or EMS provider, certified by the department of health and welfare pursuant to sections 56-1011 through 56-1018B, Idaho Code, and an ambulance-based clinician as defined in the rules governing emergency medical services as adopted by the department of health and welfare; and

(v) An emergency communications officer as defined in section 19-5101(f), Idaho Code.

(7) Subsections (4) through (6) of this section are effective for first responders with dates of injury or manifestations of occupational disease on or after July 1, 2019.

## Indiana

**HB 1182** amends *sections 22-3-3-21* and *22-3-7-15* and adds new *section 36-8-12-10* to the Indiana Code to read as follows:

**22-3-3-21. Burial expenses**

Sec. 21. In cases of the death of an employee from an injury by an accident arising out of and in the course of the employee's employment under circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding ~~seven~~ twelve thousand five hundred dollars ~~(\$7,500).~~ (\$12,500).

**22-3-7-15. Death benefits; burial expenses**

Sec. 15. In cases of the death of an employee from an occupational disease arising out of and in the course of the employee's employment under circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding ~~seven~~ twelve thousand five hundred dollars (~~\$7,500~~). (\$12,500).

**36-8-12-10. Volunteers; medical treatment and burial expense coverage; determinations; premium expenses**

Sec. 10. (a) A:

- (1) volunteer firefighter, a member of the emergency medical services personnel, or an emergency medical technician working in a volunteer capacity for a volunteer fire department or ambulance company is covered; and
  - (2) volunteer working for a hazardous materials response team may be covered; by the medical treatment and burial expense provisions of the worker's compensation law (IC 22-3-2 through IC 22-3-6) and the worker's occupational diseases law (IC 22-3-7).
- (b) Subject to section 10.3 of this chapter, if compensability of the injury is an issue, the administrative procedures of IC 22-3-2 through IC 22-3-6 and IC 22-3-7 shall be used to determine the issue.

...

**36-8-12-10.3**

Sec. 10.3. (a) This section applies to an employee of a private employer who:

- (1) is a volunteer firefighter or volunteer member; and
  - (2) has notified the employee's employer in writing that the employee is a volunteer firefighter or volunteer member, regardless of whether the employer rejected the notification under section 10.7(c) of this chapter.
- (b) An employee described in subsection (a) who leaves the employee's duty station to respond to a fire or emergency call after the employee has reported to work shall, for worker's compensation purposes, be considered an employee of the unit while in the performance of the duties of a volunteer firefighter or volunteer member.
- (c) The employee described in subsection (a) shall, for worker's compensation purposes, be considered as having entered in and acted in the regular course and scope of the employment with the unit when the employee responds to the fire or emergency call as a volunteer firefighter or volunteer member, regardless of whether the employee responds by traveling:
- (1) to a fire station or other place where firefighting equipment that the company or unit is to use is located; or
  - (2) to perform any activities that the employee may be directed to do by the chief of the fire department or, in the absence of the chief, the ranking officer.
- (d) The employee described in subsection (a) shall, for worker's compensation purposes, be considered an employee of the unit until the employee returns to the location from which the employee was originally called to active duty, or until the employee engages in an activity beyond the scope of the performance of the duties of the volunteer firefighter or volunteer member, whichever occurs first.

**SB 289**, in part, creates new ***section 22-3-1-6*** in the Indiana Code to read:

**22-3-1-6**

Sec. 6. (a) The worker's compensation board shall report before November 1 of each year to the interim study committee on employment and labor (established under IC 2-5-1.3-4) for the immediately preceding state fiscal year:

- (1) the number of employers that the worker's compensation board determined during the immediately preceding state fiscal year improperly classified at least one (1) worker as an independent contractor;
  - (2) the total number of improperly classified workers employed by the employers described in subdivision (1);
  - (3) based on the findings reported under subdivision (2), a calculation of actual additional costs to the state that the worker's compensation board attributes to the improperly classified workers;
  - (4) the amount of the penalties and interest assessed against the employers described in subdivision (1) by the worker's compensation board, and the amount of the penalties and interest assessed that has been collected; and
  - (5) the classification criteria used by the worker's compensation board to classify workers.
- (b) The information required by subsection (a)(1) through (a)(4) must be in the form of aggregate statistics. The report must not include information that can be used to identify specific employers or workers.
- (c) This section expires December 31, 2021.

**SB 289** also includes the following language:

- (a) The legislative council is urged to assign to an appropriate interim study committee the task of studying the topic of uniformity in definitions across the Indiana Code for the terms "employee" and "independent contractor".
- (b) This SECTION expires January 1, 2020.

An emergency is declared for this act.

## Montana

**SB 160** establishes the Firefighter Protection Act and amends *sections 39-71-105, 39-71-124, and 39-71-407* of the Montana Workers' Compensation Act as follows:

### Section 1

#### **Presumptive occupational disease for firefighters—rebuttal—applicability—definitions.**

(1) (a) A firefighter for whom coverage is required under the Workers' Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers' Compensation Act if the firefighter meets the requirements of [section 2] and is diagnosed with one or more of the diseases listed in subsection (2) within the period listed.

(b) Coverage under [section 2] and this section is optional for the employer of a firefighter for whom coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under 7-33-4109 or 7-33-4510 may elect as part of providing coverage under the Workers' Compensation Act to additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide presumptive coverage.

(2) The following diseases are presumptive occupational diseases proximately caused by firefighting activities, provided that the evidence of the presumptive occupational disease becomes manifest after the number of years of the firefighter's employment as listed for each occupational disease and within 10 years of the last date on which the firefighter was engaged in firefighting activities for an employer:

(a) bladder cancer after 12 years;

(b) brain cancer of any type after 10 years;

(c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is not known to be associated with a genetic predisposition to breast cancer;

(d) cardiovascular disease after 10 years;

(e) colorectal cancer after 10 years;

(e) esophageal cancer after 10 years;

(f) kidney cancer after 15 years;

(g) leukemia after 5 years;

(h) mesothelioma after 10 years;

(i) multiple myeloma after 15 years;

(j) non-Hodgkin's lymphoma after 15 years; and

(k) pulmonary or respiratory disease after 4 years.

(3) For purposes of calculating the number of years of a firefighter's employment history under subsection (2), a firefighter's employment history after July 1, 2014, may be calculated.

(4) The beneficiaries of a firefighter who otherwise would be eligible for presumptive occupational disease benefits under this section but who dies prior to filing a claim, as provided in [section 2], are eligible for death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries under this subsection (4) are similarly bound by the provisions of exclusive remedy as provided in 39-71-411 and subject to the filing requirements in 39-71-601.

(5) (a) An insurer is liable for the payment of compensation for presumptive occupational disease benefits under this chapter in the same manner as provided in 39-71-407, including objective medical findings of a disease listed in subsection (2) but excluding the requirement in 39-71-407(10) that the objective medical findings trace a relationship between the presumptive occupational disease and the claimant's job history. For pulmonary or respiratory diseases under subsection (2), the diseases must be the type that can reasonably be caused by firefighting activities.

(b) An insurer under plan 1, 2, or 3 that disputes a presumptive occupational disease claim has the burden of proof in establishing by a preponderance of the evidence that the firefighter is not suffering from a compensable presumptive occupational disease. An insurer that disputes the claim may pay benefits under 39-71-608 or 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71, part 24. Nothing in this section limits an insurer's ability to assert that the occupational disease was not caused by the firefighter's employment history as a firefighter.

(c) A firefighter or the firefighter's beneficiaries may pursue the dispute remedies as provided in Title 39, chapter 71, part 24, if an insurer disputes a claim.

(6) The use of the term "occupational disease" includes a presumptive occupational disease when used in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical services", and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601, 39-71-604, 39-71-606, 39-71-615, 39-71-703, 39-71-704, 39-71-713, 39-71-714, 39-71-717, 39-71-1011, 39-71-1036, 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, 39-71-2311, 39-71-2312, 39-71-2313, 39-71-2316, and 39-71-4003.

(7) [Section 2] and this section:

(A) Apply only to presumptive occupational diseases for firefighters; and

(B) Do not apply to any other issue relating to workers' compensation and may not be used or cited as guidance in the administration of title 33 or 37.

(8) For the purposes of [section 2] and this section, the following definitions apply:

(a) "Firefighter" means an individual whose primary duties involve extinguishing or investigating fires, with at least 1 year of firefighting operations in Montana beginning on or after July 1, 2019, as:

(i) a firefighter defined in 19-13-104;

(ii) a volunteer firefighter defined in 7-33-4510, but only if the volunteer firefighter's employer has elected coverage under Title 39, chapter 71, with an insurer that allows an election and the employer has opted separately to include presumptive occupational disease coverage under [section 2] and this section; or

(iii) a volunteer described in 7-33-4109 for a firefighting entity that has elected coverage under Title 39, chapter 71, with an insurer that allows an election and that has opted separately to include presumptive occupational disease coverage.

(b) "Firefighting activities" means actions required of a firefighter that expose the firefighter to extreme heat or inhalation or physical exposure to chemical fumes, smoke, particles, or other toxic gases arising directly out of employment as a firefighter.

(c) "Presumptive occupational disease" means harm or damage from one or more of the diseases listed under subsection (2) that is established by objective medical findings and that is contracted in the course and scope of employment as a firefighter from either a single day or work shift or for more than a single day or work shift but that is not specific to an accident.

## **Section 2**

### **Conditions for claiming presumptive occupational disease.**

(1) Except as provided in subsection (4), the following must be satisfied for the presumption in [section 1] to apply:

(a) the firefighter must timely file a claim for a presumptive occupational disease under Title 39, chapter 71, as soon as the firefighter knows or should have known that the firefighter's condition resulted from a presumptive occupational disease; and

(b) (i) the firefighter must have undergone, within 90 days of hiring, a medical examination that did not reveal objective medical evidence of the presumptive occupational disease for which the presumption under [section 1] is sought; and

(ii) the firefighter must have undergone subsequent periodic medical examinations at least once every 2 years.

(2) (a) Subsection (1)(b) does not require the employer of a firefighter to provide or pay for a medical examination, either at the time of hiring or during the subsequent term of employment.

(b) If the employer of a firefighter does not provide or pay for a medical examination under subsection (1)(b), the firefighter may satisfy the requirements of subsection (1)(b) by obtaining the medical examination at the firefighter's expense or at the expense of another party.

(3) To qualify for a presumptive occupational disease, a firefighter may not:

(a) be a regular user of tobacco products;

(b) have a history of regular tobacco use in the 10 years preceding the filing of the claim under subsection (1)(a); or

(c) have been exposed by a cohabitant who regularly and habitually used tobacco products within the home for a period of 10 or more years prior to the diagnosis.

(4) A firefighter who, prior to [the effective date of this act], did not receive a medical examination as frequently as the intervals set forth in subsection (1)(b) is not ineligible on that basis for a presumptive occupational disease claim under [section 1] and this section.

## **Section 3**

**39-71-105. Declaration of public policy.** For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

...

(6) It is the intent of the legislature that:

(a) a stress ~~claims claim~~, often referred to as a "mental-mental ~~claims claim~~" and or a "mental-physical ~~claims claim~~", are is not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system. However, it is also within the legislature's authority to recognize the public service provided by firefighters and to join with other states that have extended a presumptive occupational disease recognition to firefighters.

(b) for occupational disease or presumptive occupational disease claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect

consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease or a presumptive occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than a single day or work shift and that ~~it is within the legislature's~~ the legislature has the authority to define an occupational disease or a presumptive occupational disease and establish the causal connection to the workplace."

#### Section 4

**39-71-124. Applicability of Workers' Compensation Act—exceptions.** Except as provided in 39-71-407, 39-71-601, and 39-71-603 and as specified in [section 1], this chapter applies to injuries and occupational diseases.

#### Section 5

**39-71-407. Liability of insurers—limitations.**

...

(3) (a) ~~An~~ Subject to subsection (3)(c), an insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury has occurred and aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(c) Objective medical findings are sufficient for a presumptive occupational disease as defined in [section 1] but may be overcome by a preponderance of the evidence.

...

(10) ~~An~~ Except for cases of presumptive occupational disease as provided in [sections 1 and 2], an employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(11) (a) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

(b) The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee is diagnosed and meets the conditions of [sections 1 and 2].

(12) An insurer is liable for an occupational disease only if the occupational disease:

(a) is established by objective medical findings; and

(b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease. For the purposes of this subsection (12), an occupational disease is not the same as a presumptive occupational disease.

(13) When compensation is payable for an occupational disease or a presumptive occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

(14) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease or presumptive occupational disease was first diagnosed by a health care provider; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease or a presumptive occupational disease.

...

#### Section 6

**Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 2].

#### Section 7

**Contingent voidness.** If a court finds any part of [this act] to be in violation of the equal protection clauses of the U.S. or Montana Constitutions relating to workers' compensation claims or a court applies the presumption in [sections 1 and 2] to another class of occupation other than firefighters, then [this act] is void.

#### Section 8

**Effective date—applicability.** [This act] is effective July 1, 2019, and applies to presumptive occupational diseases diagnosed on or after July 1, 2019.

## New Hampshire

**HB 285** amends *section 412:28. Filing and Approval of Rates and Rating Plans* of *Title XXXVII: Insurance* of the New Hampshire Statutes to read:

**412:28 Filing and Approval of Rates and Rating Plans.—**

...

V. A filing and any supporting information not considered proprietary pursuant to RSA 412:16, II shall be open to public inspection upon approval.

**SB 59-FN** amends *section 281-A:2* and adds new *section 281-A:17-b* to *Title XXIII: Labor* of the New Hampshire Statutes to read:

**281-A:2 Definitions.—**

Any word or phrase defined in this section shall have the same meaning throughout RSA 281-A, unless the context clearly requires otherwise:

...

V-c. “Emergency response/public safety worker” means call, volunteer, or regular firefighters; law enforcement officers certified under RSA 106-L; certified county corrections officers; emergency communication dispatchers; and rescue or ambulance workers including ambulance service, emergency medical personnel, first responder service, and volunteer personnel.

...

XI. “Injury” or “personal injury” as used in and covered by this chapter means accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment, including disability due to radioactive properties or substances or exposure to ionizing radiation. “Injury” or “personal injury” shall not include diseases or death resulting from stress without physical manifestation, but shall include acute stress disorder and post-traumatic stress disorder. “Injury” or “personal injury” shall not include a mental injury if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action, taken in good faith by an employer. No compensation shall be allowed to an employee for injury proximately caused by the employee’s willful intention to injure himself or injure another. Conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable only if contributed to or aggravated or accelerated by the injury. Notwithstanding any law to the contrary, “injury” or “personal injury” shall not mean accidental injury, disease, or death resulting from participation in athletic/recreational activities, on or off premises, unless the employee reasonably expected, based on the employer’s instruction or policy, that such participation was a condition of employment or was required for promotion, increased compensation, or continued employment.

**281-A:17-b Commission Reestablished.**

I.(a) There is reestablished the commission to study the incidence of post-traumatic stress disorder in first responders and whether such disorder should be covered under workers’ compensation. The members of the commission shall be as follows:

(1) One member of the senate, appointed by the president of the senate.

(2) Three members of the house of representatives, one of whom shall be from the labor, industrial and rehabilitative services committee, one of whom shall be from the executive departments and administration committee, and one of whom shall be from the state-federal relations and veterans affairs committee, appointed by the speaker of the house of representatives.

(3) The labor commissioner, or designee.

(4) The commissioner of safety, or designee.

(5) The insurance commissioner, or designee.

(6) A representative of the New Hampshire Municipal Association, appointed by the association.

(7) A representative of the New Hampshire Association of Counties, appointed by the association.

(8) A representative of the National Alliance on Mental Illness New Hampshire, appointed by the alliance.

(9) A fire chief, appointed by the New Hampshire Association of Fire Chiefs.

(10) One member appointed by the New Hampshire Association of Chiefs of Police.

(11) One member appointed by the New Hampshire Police Association.

(12) A representative of the Professional Firefighters of New Hampshire, appointed by that organization.

(13) A representative of the New Hampshire Association of Emergency Medical Technicians, appointed by the association.

(14) A representative of the New Hampshire Public Risk Management Exchange, appointed by that organization.

(15) An attorney, appointed by the New Hampshire Association for Justice.

(b) Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

II.(a) The commission shall study:

- (1) The prevalence of post traumatic stress disorder (PTSD) among first responders.
  - (2) The prevalence of PTSD, or factors contributing to PTSD, among first responders at the time of hiring.
  - (3) The extent to which first responders' employment benefits provide health insurance coverage for treatment of PTSD.
  - (4) The degree to which employers who hire first responders are capable of reassigning affected workers to less stressful positions that would allow employees to continue working while receiving mental health treatment.
  - (5) The extent to which prior military service may contribute to the rate of PTSD among first responders.
  - (6) The difficulty first responders currently have establishing that a PTSD diagnosis is causally related to employment.
  - (7) The difficulty employers would have establishing that a pre-employment condition or experience caused PTSD, rather than a first responders' current employment.
  - (8) The cost that creating a rebuttal presumption that PTSD was caused uncured during service in the line of duty would impose on public employers, private employers, and taxpayers, and funding solutions to mitigate such cost.
  - (9) Other issues the commission deems relevant to its study.
- (b) The commission may solicit input from any person or entity the commission deems relevant to its study.
- III. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Nine members of the commission shall constitute a quorum.
- IV. On or before November 1, 2019, the commission shall submit an interim report of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library and shall submit a final report on or before November 1, 2020.
- 4 Membership Continued. To the extent possible, the membership of the commission to study the incidence of post-traumatic stress disorder in first responders and whether such disorder shall be covered under workers' compensation reestablished in section 4 of this act shall remain the same as the commission established in former RSA 281-A:17-a.
- 5 Repeal. RSA 281-A:17-b, relative to the commission to study the incidence of post traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation, is repealed.

**SB 151-FN**, in part, adds a new section to the New Hampshire Workers' Compensation Law as follows:

**281-A:7-a Administrative Orders for Employers' Failure to Secure Compensation Coverage.**

I. In addition to the provisions of RSA 281-A:7, the commissioner may issue a stop work order against an employer subject to this chapter that fails to comply with RSA 281-A:5 by not securing payment of compensation, requiring the cessation of all business operations at the place of employment or job site. Such order shall take effect immediately upon its service upon said employer, until such employer provides evidence, satisfactory to the commissioner that the employer has secured any necessary insurance or self-insurance. The commissioner may serve a stop work order at a place of business or employment by posting a copy of the stop work order in a conspicuous location at the place of business or employment.

II. Any employer aggrieved by the imposition of a stop work order shall have 10 days from the date of its service to appeal such order. Any employer who timely files such appeal shall be granted a hearing by the commissioner within 5 days of receipt of the appeal. The stop work order shall not be in effect during the pendency of any timely filed appeal. The commissioner may rescind a stop work order if the commissioner finds at the hearing that the employer has at all times been in compliance with this chapter. If the commissioner finds at the hearing that the employer is not in compliance with this chapter, the stop work order shall be effective immediately on the conclusion of the hearing and shall remain in effect until such time as the employer provides evidence, satisfactory to the commissioner, that the employer has secured any necessary insurance or self-insurance.

III. A stop work order issued under this section against any corporation, partnership, sole proprietorship, or limited liability company shall be effective against any successor entity that has one or more of the same principals or officers as the corporation, partnership, sole proprietorship, or limited liability company against which the stop work order was issued and are engaged in the same or equivalent trade or activity.

IV. An employer who violates an issued stop work order shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

V. Decisions rendered by the commissioner of the department of labor under paragraph II may be appealed pursuant to RSA 541.

### **Rhode Island**

**SB 242** amends *section 28-53-7. Payments to Employees of Uninsured Employers* of the Rhode Island General Laws to provide that payments from the uninsured protection fund to employees of uninsured employers would apply to injuries that occur on or after September 1, 2019.

### **West Virginia**

**HB 2365**, in part, amends and reenacts *section 23-2-1a* of the Code of West Virginia as follows:

**23-2-1a. Employees subject to chapter.**

...

(c) When determining whether an employee is subject to this chapter, the commissioner shall use the following 20 factors to evaluate whether sufficient control is present to establish an employer-employee relationship:

(1) Instructions. A worker who is required to comply with other persons' instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions

(2) Training. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.

(3) Integration. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

(4) Services Rendered Personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

(5) Hiring, Supervising, and Paying Assistants. If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires, supervises, and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status.

(6) Continuing Relationship. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

(7) Set Hours of Work. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.

(8) Full Time Required. If the worker must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

(9) Doing Work on Employer's Premises. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

(10) Order or Sequence Set. If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.

(11) Oral or Written Reports. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

(12) Payment by Hour, Week, Month. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.

(13) Payment of Business and/or Traveling Expenses. If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.

(14) Furnishing of Tools and Materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

(15) Significant Investment. If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship. Special scrutiny is required with respect to certain types of facilities, such as home offices.

(16) Realization of Profit or Loss. A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.

(17) Working for More Than One Firm at a Time. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

(18) Making Service Available to General Public. The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.

(19) Right to Discharge. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

(20) Right to Terminate. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

**SB 74** amends and reenacts **section 23-2-1a** of the Code of West Virginia to read as follows:

**§23-2-1a. Employees subject to chapter; exception.**

(a) Employees subject to this chapter are all persons in the service of employers and employed by them for the purpose of carrying on the industry, business, service, or work in which they are engaged, including, but not limited to:

...

(4) All members of rescue teams assisting in mine accidents with the consent of the owner who, in such case, shall be deemed the employer, or at the direction of the Director of the ~~department of mines~~ Office of Miners' Health, Safety and Training;

(5) All forest firefighters who, under the supervision of the Director of the ~~department of natural resources~~ Division of Forestry or his or her designated representative, assist in the prevention, confinement, and suppression of any forest fire; and

...

(c) Persons who volunteer time or services, without wages, for a ski area operator as defined in §20-3A-2 of this code, or for a ski area sponsored program or activity, are not employees under this chapter, notwithstanding that the persons may receive noncash remunerations.

### 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
SC, TN	Amy Quinn	561-893-3812
HI, NM, NV, UT	Brett Barratt	801-401-6464
IL, MO, OK	Carla Townsend	561-893-3819
AZ, KS, KY	Clarissa Preston	561-945-4517
DC, MD, VA, WV	David Benedict	804-380-3005
CO, FL	Dawn Ingham	561-893-3165
IN, NC	Michelle Smith	561-893-3016
CT, ME, NH, RI	Justin Moulton	860-969-7903
VT	Laura Backus Hall	802-454-1800
AL, GA, LA, MS	Laura Hart Bryan	225-635-4481
IA, NE, SD	Stephanie Paswaters	303-200-6728
AR, TX	Terri Robinson	501-333-2835
Federal Issues	Tim Tucker	202-403-8526
AK, ID, MT, OR	Todd Johnson	561-893-3814

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