



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 June 14, 2019.

Louisiana

HB 285 was:

- Passed by the first chamber on May 7, 2019
- Included in NCCI's May 17, 2019 **Legislative Activity Report** (RLA-2019-18)
- Passed by the second chamber on June 2, 2019
- Included in NCCI's June 14, 2019 **Legislative Activity Report** (RLA-2019-22)
- Enacted on June 11, 2019, with an effective date of August 1, 2019

HB 285 adds new **section 23:1036.1** to the Louisiana Revised Statutes to read:

§ 1036.1. Reserve police officers and deputies; coverage

A. Any reserve police officer or reserve deputy who volunteers for a law enforcement agency, municipal or parish, and performs law enforcement activities and protective services and is injured in the line of duty may be entitled to medical benefits pursuant to R.S. 23:1203 if the municipality, parish, or public entity, in its own discretion and by using its own funds, elects to provide such coverage. Such benefits shall not be subject to a copayment, deductible, or any other method to shift the cost of compensable medical care to the injured volunteer reserve officer or deputy.

B. No law enforcement agency shall provide indemnity benefits for the volunteer reserve police officer or deputy.

C. No law enforcement agency shall be liable for benefits under this Section for injuries occurring within the course of, or arising out of, the volunteer reserve officer's or deputy's other employment.

D. For the purposes of this Section, the following terms have the meaning ascribed to them:

(1) "Volunteer reserve police officer" means an individual who is carried on the membership list of the municipal organization as an active participant in the normal functions of the law enforcement organization and who receives nominal or no remuneration for his services.

(2) "Volunteer reserve deputy" means an individual who is a part-time, non-salaried, fully-commissioned law enforcement officer who is a volunteer of the parish organization.

SB 88 was:

- Passed by the first chamber on May 8, 2019
- Included in NCCI's May 17, 2019 **Legislative Activity Report** (RLA-2019-18)
- Amended and passed by the second chamber on May 29, 2019
- Included in NCCI's June 7, 2019 **Legislative Activity Report** (RLA-2019-21)
- Enacted on June 11, 2019, with an effective date of August 1, 2019

SB 88 amends **section 23:1203.1** of the Louisiana Revised Statutes to read:

§1203.1. Definitions; medical treatment schedule; medical advisory council

...

K. After the issuance of the decision by the medical director or associate medical director of the office, any party who disagrees with the decision, may then appeal by filing a "Disputed Claim for Compensation", which is LWC Form 1008, within forty-five days of the date of the issuance of the decision. The decision may be overturned when it is shown, by clear and convincing evidence, the decision of the medical director or associate medical director was not in accordance with the provisions of this Section.

...

Nevada

AB 128 was:

- Passed by the first chamber on May 23, 2019
- Included in NCCI's May 31, 2019 *Legislative Activity Report* (RLA-2019-20)
- Passed by the second chamber on May 31, 2019
- Included in NCCI's June 7, 2019 *Legislative Activity Report* (RLA-2019-21)
- Enacted on June 13, 2019, with an effective date of July 1, 2019

AB 128 amends *sections 616C.555, 616C.560, and 616C.595* of the Nevada Revised Statutes to:

- Revise the maximum allowable duration for a program of vocational rehabilitation for an injured employee, upon whose ability to work the treating physician or chiropractor has imposed permanent restrictions
- Eliminate the prohibition, on the appeal of the determination of an insurer, to authorize or deny a third program of vocational rehabilitation
- Provide that a program for vocational rehabilitation may be extended by the insurer or by order of a hearing officer or appeals officer
- Eliminate the limits on the total length of a program
- Eliminate the prohibition, on the appeal of the determination of an insurer, to grant or deny an extension of a program
- Require any payment of compensation in a lump sum, in lieu of the provision of vocational rehabilitation services, to be not less than 55% (current law is 40%) of the maximum rehabilitation maintenance due to the injured employee

SB 377 was:

- Passed by the first chamber on May 30, 2019
- Included in NCCI's June 7, 2019 *Legislative Activity Report* (RLA-2019-21)
- Amended and passed by the second chamber on June 3, 2019
- Included in NCCI's June 14, 2019 *Legislative Activity Report* (RLA-2019-22)
- Enacted on June 12, 2019, with an effective date of July 1, 2019

SB 377 adds a new section to *Chapter 616C*, amends *sections 616A.425, 616A.430, 616C.420, 616C.473, and 232.680*, and repeals *section 616C.453* of the Nevada Revised Statutes as follows:

Section 1 provides that money in the fund may also be used to:

- (1) Reimburse insurers and employers for payments of an annual increase in compensation for permanent total disability to claimants and dependents of claimants who are entitled to such compensation due to an industrial injury or disablement which occurred before January 1, 2004, to the extent income realized on the investment of the assets in the Uninsured Employers' Claim Account in the Fund is sufficient to pay that compensation; and
- (2) Pay the salary and other expenses of administering the payment of increased compensation to claimants and dependents of claimants who are entitled to compensation for permanent total disability caused by industrial injuries and disablements from occupational diseases that occurred before January 1, 2004.

Section 2 eliminates the authority of the administrator of the Division of Industrial Relations of the Department of Business and Industry to make the annual payments from the Uninsured Employers' Claim Account in the Fund for Workers' Compensation and Safety and, instead authorizes the reimbursements authorized by section 2.5 to be paid from the account.

Section 2.5 is a new section and:

- Authorizes an insurer or employer who pays an annual increase in compensation for permanent total disability to a claimant or dependent who is entitled to such compensation due to an industrial injury or disablement which occurred before January 1, 2004, to obtain reimbursement from the administrator of the Division of Industrial Relations of the Department of Business and Industry
- Establishes the procedure for obtaining such a reimbursement
- Requires reimbursements approved by the administrator to be paid from the income realized on the investment of the assets in the Uninsured Employers' Claim Account in the Fund for Workers' Compensation and Safety in the state treasury

- Provides that if the income realized on the investment of the assets in that account is insufficient to fund the annual increase in compensation, the remainder of the reimbursements are required to be paid from certain assessments levied on insurers and employers by the administrator

Section 2.8 incorporates in statute certain provisions from current regulations which contains methods for determining the period of wages earned by an employee that must be used to calculate the average monthly wage.

Section 3 provides for a 2.3% annual increase in compensation for permanent total disability to claimants and dependents of claimants who are entitled to such compensation due to an industrial injury or disablement which occurred before January 1, 2004, with compensation to be increased on January 1, 2020, and on January 1 each year thereafter.

Section 4 provides that assessments against employers who provide accident benefits for injured employees may be used to pay reimbursement to insurers for the cost of the annual increase in compensation payable to claimants and dependents of claimants who are entitled to such compensation due to an industrial injury or disablement which occurred before January 1, 2004, to the extent that the income realized on the investment of the assets in the Uninsured Employers' Claim Account is insufficient to pay that reimbursement.

Section 5 repeals provisions which authorize a single annual payment to claimants and their dependents who are entitled to receive compensation for permanent total disability but are not entitled to the 2.3% annual increase in that compensation.

SB 377 also includes the following language:

Section 5.5

The amendatory provisions of section 2.8 of this act apply prospectively with regard to any claim pursuant to chapters 616A to 616D, inclusive, or 617 of NRS which is open on or filed on or after July 1, 2019.

SB 381 was:

- Passed by the first chamber on June 1, 2019
- Passed by the second chamber on June 3, 2019
- Included in NCCI's June 14, 2019 **Legislative Activity Report** (RLA-2019-22)
- Enacted on June 12, 2019, with an effective date of January 1, 2020

SB 381 adds a new section in **chapter 616C** and amends **sections 616B.527, 616C.050, 616C.055, 616C.090, 616C.260, 616C.475, 616C.490, and 616C.495** of the Nevada Industrial Insurance Act to read, in part, as follows:

Section 1.

NRS 616B.527 Authority of self-insured employers, associations of self-insured employers and private carriers; compliance with certain provisions.

1. A self-insured employer, an association of self-insured public or private employers or a private carrier may:

...

(d) Except as otherwise provided in subsection ~~3~~ 4 of NRS 23 616C.090, require employees to obtain the approval of the self-insured employer, association or private carrier.

...

Section 2.

1. The Legislature hereby declares that:

(a) The choice of a treating physician or chiropractor is a substantive right and substantive benefit of an injured employee who has a claim under the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act.

(b) The injured employees of this State have a substantive right to an adequate choice of physicians and chiropractors to treat their industrial injuries and occupational diseases.

2. Except as otherwise provided in this subsection and subsections 3 and 4, an insurer's list of physicians and chiropractors from which an injured employee may choose pursuant to NRS 616C.090 must include not less than 12 physicians or chiropractors, as applicable, in each of the following disciplines and specializations, without limitation, from the panel of physicians and chiropractors maintained by the Administrator pursuant to NRS 616C.090:

(a) Orthopedic surgery on spines;

(b) Orthopedic surgery on shoulders;

(c) Orthopedic surgery on elbows;

(d) Orthopedic surgery on wrists;

(e) Orthopedic surgery on hands;

(f) Orthopedic surgery on hips;

- (g) Orthopedic surgery on knees;
- (h) Orthopedic surgery on ankles;
- (i) Orthopedic surgery on feet;
- (j) Neurosurgery;
- (k) Neurology;
- (l) Cardiology;
- (m) Pulmonology;
- (n) Psychiatry;
- (o) Pain management;
- (p) Occupational medicine;
- (q) Physiatry or physical medicine;
- (r) General practice or family medicine; and
- (s) Chiropractic medicine.

If the panel of physicians and chiropractors maintained by the Administrator pursuant to NRS 616C.090 contains fewer than 12 physicians or chiropractors, as applicable, for a discipline or specialization specifically identified in this subsection, all of the physicians or chiropractors, as applicable, on the panel for that discipline or specialization must be included on the insurer's list.

3. For any other discipline or specialization not specifically identified in subsection 2, the insurer's list must include not fewer than 8 physicians or chiropractors, as applicable, unless the panel of physicians and chiropractors maintained by the Administrator pursuant to NRS 616C.090 contains fewer than 8 physicians or chiropractors, as applicable, for that discipline or specialization, in which case all of the physicians or chiropractors, as applicable, on the panel for that discipline or specialization must be included on the insurer's list.

4. For each county whose population is 100,000 or more, an insurer's list of physicians and chiropractors must include for that county a number of physicians and chiropractors, as applicable, that is not less than the number required pursuant to subsections 2 and 3 and that also maintain in that county:

- (a) An active practice; and
- (b) A physical office.

5. If an insurer fails to maintain a list of physicians and chiropractors that complies with the requirements of subsections 2, 3 and 4, an injured employee may choose a physician or chiropractor from the panel of physicians and chiropractors maintained by the Administrator pursuant to NRS 616C.090.

6. Each insurer shall, not later than October 1 of each year, update the list of physicians and chiropractors and file the list with the Administrator. The list must be certified by an adjuster who is licensed pursuant to chapter 684A of NRS.

7. Upon receipt of a list of physicians and chiropractors that is filed pursuant to subsection 6, the Administrator shall:

- (a) Stamp the list as having been filed; and
- (b) Indicate on the list the date on which it was filed.

8. The Administrator shall:

- (a) Provide a copy of an insurer's list of physicians and chiropractors to any member of the public who requests a copy; or
- (b) Post a copy of each insurer's list of physicians and chiropractors on an Internet website maintained by the Administrator and accessible to the public for viewing, printing or downloading.

9. At any time, a physician or chiropractor may request in writing that he or she be removed from an insurer's list of physicians and chiropractors. The insurer must comply with the request and omit the physician or chiropractor from the next list which the insurer files with the Administrator.

10. A physician or chiropractor may not be involuntarily removed from an insurer's list of physicians and chiropractors except for good cause. As used in this subsection, "good cause" means that one or more of the following circumstances apply:

- (a) The physician or chiropractor has died or is disabled.
- (b) The license of the physician or chiropractor has been revoked or suspended.
- (c) The physician or chiropractor has been convicted of:
 - (1) A felony; or
 - (2) A crime for a violation of a provision of chapter 616D of NRS.

(d) The physician or chiropractor has been removed from the panel of physicians and chiropractors maintained by the Administrator pursuant to NRS 616C.090 by the Administrator upon a finding that the physician or chiropractor has failed to comply with the standards for treatment of industrial injuries or occupational diseases as established by the Administrator.

11. Unless a physician or chiropractor, as applicable, is removed from an insurer's list of physicians and chiropractors pursuant to subsection 10, an injured employee may continue to receive treatment from that physician or chiropractor even if:

- (a) The employer of the injured employee changes insurers or administrators.
- (b) The physician or chiropractor is no longer included in the applicable insurer's list of physicians and chiropractors, provided that the physician or chiropractor agrees to continue to accept compensation for that treatment at the rates which:
 - (1) Were previously agreed upon when the physician or chiropractor was most recently included in the list; or
 - (2) Are newly negotiated but do not exceed the amounts provided under the fee schedule adopted by the Administrator.

Section 5.

NRS 616C.050 Information required to be provided by insurer to claimant.

...

2. The insurer's statement must include a copy of the form designed by the Administrator pursuant to subsection 8 9 of NRS 25 616C.090 that notifies injured employees of their right to select an alternative treating physician or chiropractor. The Administrator shall adopt regulations for the manner of compliance by an insurer with the other provisions of subsection 1.

Section 6.

NRS 616C.055 Use of fee schedules which unfairly discriminate among physicians and chiropractors prohibited; payment for services rendered by physician or chiropractor after removal from panel prohibited.

...

2. ~~If~~ Except as otherwise provided in section 2 of this act, if a physician or chiropractor is removed from the panel established pursuant to NRS 616C.090 or from participation in a plan for managed care established pursuant to NRS 616B.527, the physician or chiropractor, as applicable, must not be paid for any services rendered to the injured employee after the date of the removal.

Section 8.

NRS 616C.090 Selection of physician or chiropractor: Powers and duties of Administrator; selection and alternate selection from established panel or pursuant to contract; responsibility for charges.

1. The Administrator shall establish, maintain and update not less frequently than annually on or before July 1 of each year, a panel of physicians and chiropractors who have demonstrated special competence and interest in industrial health to treat injured employees under chapters 616A to 616D, inclusive, or chapter 617 of NRS. The Administrator shall maintain the following information relating to each physician and chiropractor on the panel:

(a) The name of the physician or chiropractor.

(b) The title or degree of the physician or chiropractor.

(c) The legal name of the practice of the physician or chiropractor and the name under which the practice does business.

(d) The street address of the location of every office of the physician or chiropractor.

(e) The telephone number of every office of the physician or chiropractor.

(f) Every discipline and specialization practiced by the physician or chiropractor.

(g) Every condition and part of the body which the physician or chiropractor will treat.

2. Every employer whose insurer has not entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 shall maintain a list of those physicians and chiropractors on the panel who are reasonably accessible to his or her employees.

~~2-~~ 3. An injured employee whose employer's insurer has not entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 may choose a treating physician or chiropractor from the panel of physicians and chiropractors. If the injured employee is not satisfied with the first physician or chiropractor he or she so chooses, the injured employee may make an alternative choice of physician or chiropractor from the panel if the choice is made within 90 days after his or her injury. The insurer shall notify the first physician or chiropractor in writing. The notice must be postmarked within 3 working days after the insurer receives knowledge of the change. The first physician or chiropractor must be reimbursed only for the services the physician or chiropractor, as applicable, rendered to the injured employee up to and including the date of notification. Except as otherwise provided in this subsection, any further change is subject to the approval of the insurer, ~~which or~~ by order of a hearing officer or appeals officer. A request for a change of physician or chiropractor must be granted or denied within 10 days after a written request for such a change is received from the injured employee. If the insurer takes no action is taken on the request within 10 days, the request shall be deemed granted. Any request for a change of physician or chiropractor must include the name of the new physician or chiropractor chosen by the injured employee. If the treating physician or chiropractor refers the injured employee to a specialist for treatment, the ~~treating physician or chiropractor~~ insurer shall provide to the injured employee a list that includes the name of each physician or chiropractor with that specialization who is on the panel. ~~After~~ Not later than 14 days after receiving the list, the injured employee shall, ~~at the time the referral is made,~~ select a physician or chiropractor from the list.

~~3-~~ 4. An injured employee whose employer's insurer has entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 must choose a treating physician or chiropractor pursuant to the terms of that contract. If the injured employee is not satisfied with the first physician or chiropractor he or she so chooses, the injured employee may make an alternative choice of physician or chiropractor pursuant to the terms of the contract without the approval of the insurer if the choice is made within 90 days after his or her injury. Except as otherwise provided in this subsection, any further change is subject to the approval of the insurer or by order of a hearing officer or appeals officer. A request for a change of physician or chiropractor must be granted or denied within 10 days after a written request for such a change is received from the injured employee. If the insurer takes no action on the request within 10 days, the request shall be deemed granted. If the injured employee, after choosing a treating physician or chiropractor, moves to a county which is not served by the organization for managed care or providers of health care services named in the contract and the insurer determines that it is impractical for the

injured employee to continue treatment with the physician or chiropractor, the injured employee must choose a treating physician or chiropractor who has agreed to the terms of that contract unless the insurer authorizes the injured employee to choose another physician or chiropractor. If the treating physician or chiropractor refers the injured employee to a specialist for treatment, the ~~treating physician or chiropractor insurer~~ shall provide to the injured employee a list that includes the name of each physician or chiropractor with that specialization who is available pursuant to the terms of the contract with the organization for managed care or with providers of health care services pursuant to NRS 616B.527, as appropriate. ~~After~~ Not later than 14 days after receiving the list, the injured employee shall, ~~at the time the referral is made,~~ select a physician or chiropractor from the list. If the employee fails to select a physician or chiropractor, the insurer may select a physician or chiropractor with that specialization. If a physician or chiropractor with that specialization is not available pursuant to the terms of the contract, the organization for managed care or the provider of health care services may select a physician or chiropractor with that specialization.

~~4.~~ 5. If the injured employee is not satisfied with the physician or chiropractor selected by himself or herself or by the insurer, the organization for managed care or the provider of health care services pursuant to subsection ~~3, 4,~~ the injured employee may make an alternative choice of physician or chiropractor pursuant to the terms of the contract. A change in the treating physician or chiropractor may be made at any time but is subject to the approval of the insurer, ~~which~~ or by order of a hearing officer or appeals officer. A request for a change of physician or chiropractor must be granted or denied within 10 days after a written request for such a change is received from the injured employee. If no action is taken on the request within 10 days, the request shall be deemed granted. Any request for a change of physician or chiropractor must include the name of the new physician or chiropractor chosen by the injured employee. If the insurer denies a request for a change in the treating physician or chiropractor under this subsection, the insurer must include in a written notice of denial to the injured employee the specific reason for the denial of the request.

~~5.~~ 6. Except when emergency medical care is required and except as otherwise provided in NRS 616C.055, the insurer is not responsible for any charges for medical treatment or other accident benefits furnished or ordered by any physician, chiropractor or other person selected by the injured employee in disregard of the provisions of this section or for any compensation for any aggravation of the injured employee's injury attributable to improper treatments by such physician, chiropractor or other person.

~~6.~~ 7. The Administrator may order necessary changes in a panel of physicians and chiropractors and shall suspend or remove any physician or chiropractor from a panel for good cause shown ~~7.~~ in accordance with section 2 of this act.

8. An injured employee may receive treatment by more than one physician or chiropractor if:

(a) If the insurer provides written authorization for such treatment ~~8.~~ ; or

(b) By order of a hearing officer or appeals officer.

9. The Administrator shall design a form that notifies injured employees of their right pursuant to subsections ~~2, 3, and 4~~ and 5 to select an alternative treating physician or chiropractor and make the form available to insurers for distribution pursuant to subsection 2 of NRS 616C.050.

Section 16.

NRS 616C.260 Fees and charges for accident benefits: Restrictions; establishment and revision of schedule; powers and duties of Administrator; penalty for refusal to provide information; regulations.

...

2. The Administrator shall, giving consideration to the fees and charges being billed and paid in the State, establish a schedule of reasonable fees and charges allowable for accident benefits provided to injured employees whose insurers have not contracted with an organization for managed care or with providers of health care services pursuant to NRS 616B.527. The Administrator shall review and revise the schedule on or before February 1 of each year. In the revision, the Administrator shall adjust the schedule by the corresponding annual change in the Consumer Price Index, Medical Care Component.

...

Section 25.

NRS 616C.475 Amount and duration of compensation; limitations; requirements for certification of disability; offer of light-duty employment.

...

7. A certification of disability issued by a physician or chiropractor must:

...

(c) Be signed by the treating physician or chiropractor authorized pursuant to NRS 616B.527 or appropriately chosen pursuant to subsection ~~3 or 4~~ or 5 of NRS 616C.090.

...

Section 26.

NRS 616C.490 Permanent partial disability: Compensation.

...

2. Except as otherwise provided in subsection 3:

(a) Within 30 days after receiving from a physician or chiropractor a report indicating that the injured employee may have suffered a permanent disability and is stable and ratable, the insurer shall schedule an appointment with the rating physician or chiropractor selected pursuant to this subsection to determine the extent of the employee's disability.

(b) Unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor:

~~(a)~~ (1) The insurer shall select the rating physician or chiropractor from the list of qualified rating physicians and chiropractors designated by the Administrator, to determine the percentage of disability in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment* as adopted and supplemented by the Division pursuant to NRS 616C.110.

~~(b)~~ (2) Rating physicians and chiropractors must be selected in rotation from the list of qualified physicians and chiropractors designated by the Administrator, according to their area of specialization and the order in which their names appear on the list unless the next physician or chiropractor is currently an employee of the insurer making the selection, in which case the insurer must select the physician or chiropractor who is next on the list and who is not currently an employee of the insurer.

3. Notwithstanding any other provision of law, an injured employee or the legal representative of an injured employee may, at any time, without limitation, request that the Administrator select a rating physician or chiropractor from the list of qualified physicians and chiropractors designated by the Administrator. The Administrator, upon receipt of the request, shall immediately select for the injured employee the rating physician or chiropractor who is next in rotation on the list, according to the area of specialization.

4. If an insurer contacts the a treating physician or chiropractor to determine whether an injured employee has suffered a permanent disability, the insurer shall deliver to the treating physician or chiropractor that portion or a summary of that portion of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* as adopted by the Division pursuant to NRS 616C.110 that is relevant to the type of injury incurred by the employee.

...

Section 27.

NRS 616C.495 Permanent partial disability: Payments in lump sum.

...

5. The lump sum payable must be equal to the present value of the compensation awarded, less any advance payment or lump sum previously paid. The present value must be calculated using monthly payments in the amounts prescribed in subsection ~~7~~ 8 of NRS 616C.490 and actuarial annuity tables adopted by the Division. The tables must be reviewed annually by a consulting actuary and must be adjusted accordingly on July 1 of each year by the Division using:

...

SB 381 also includes the following language:

Section 36.

The amendatory provisions of this act apply prospectively with regard to any claim pursuant to chapters 616A to 616D, inclusive, or 617 of NRS which is open on the effective date of this act.

Oregon

SB 507 was:

- Passed by the first chamber on May 15, 2019
- Included in NCCI's May 24, 2019 **Legislative Activity Report** (RLA-2019-19)
- Passed by the second chamber on June 4, 2019
- Included in NCCI's June 14, 2019 **Legislative Activity Report** (RLA-2019-22)
- Enacted on June 13, 2019, with a projected effective date of September 29, 2019

SB 507 amends **section 656.802** of the Oregon Workers' Compensation Law to read:

Section 1.

656.802 Occupational disease; mental disorder; proof.

...

(7)(a) As used in this subsection:

(A) "Acute stress disorder" has the meaning given that term in the DSM-5.

(B) "Covered employee" means an individual who, on the date a claim is filed under this chapter:

(i) Was employed for at least five years by, or experienced a single traumatic event that satisfies the criteria set forth in the DSM-5 as Criterion A for diagnosing post-traumatic stress disorder while employed by, the state, a political subdivision of the state, a special government body, as defined in ORS 174.117, or a public agency in any of these occupations:

(I) A full-time paid firefighter;

(II) A full-time paid emergency medical services provider;

(III) A full-time paid police officer;

(IV) A full-time paid corrections officer or youth correction officer;

(V) A full-time paid parole and probation officer; or

(VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator; and
(ii) Remains employed in an occupation listed in sub-subparagraph (i) of this subparagraph or separated from employment in the occupation not more than seven years previously.
(C) “DSM-5” means the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.
(D) “Post-traumatic stress disorder” has the meaning given that term in the DSM-5.
(E) “Psychiatrist” means a psychiatrist whom the Oregon Medical Board has licensed and certified as eligible to diagnose the conditions described in this subsection.
(F) “Psychologist” means a licensed psychologist, as defined in ORS 675.010, whom the Oregon Board of Psychology has certified as eligible to diagnose the conditions described in this subsection.
(b) Notwithstanding subsections (2) and (3) of this section, if a covered employee establishes through a preponderance of persuasive medical evidence from a psychiatrist or psychologist that the covered employee has more likely than not satisfied the diagnostic criteria in the DSM-5 for post-traumatic stress disorder or acute stress disorder, any resulting death, disability or impairment of health of the covered employee shall be presumed to be compensable as an occupational disease. An insurer or self-insured employer may rebut the presumption only by establishing through clear and convincing medical evidence that duties as a covered employee were not of real importance or great consequence in causing the diagnosed condition.
(c) An insurer’s or self-insured employer’s acceptance of a claim of post-traumatic stress disorder or acute stress disorder under this subsection, whether the acceptance was voluntary or was a result of a judgment or order, does not preclude the insurer or the self-insured employer from later denying the current compensability of the claim if exposure as a covered employee to trauma that meets the diagnostic criteria set forth as Criterion A in the DSM-5 for post-traumatic stress disorder or acute stress disorder ceases being of real importance or great consequence in causing the disability, impairment of health or a need for treatment.
(d) An insurer or self-insured employer may deny a claim under paragraph (c) of this subsection only on the basis of clear and convincing medical evidence.
(e) Notwithstanding ORS 656.027 (6), a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter that is not subject to this chapter, when accepting and processing claims for death, disability or impairment of health from firefighters and police officers covered by the disability or retirement system, shall apply:
(A) The provisions of this subsection; and
(B) For claims filed under this subsection, the time limitations for filing claims that are set forth in ORS 656.807 (1) and (2).

Section 2.

The amendments to ORS 656.802 by section 1 of this 2019 Act apply only to claims for benefits that are filed on or after the effective date of this 2019 Act.

Texas

HB 387 was:

- Passed by the first chamber on April 16, 2019
- Included in NCCI’s April 26, 2019 **Legislative Activity Report** (RLA-2019-15)
- Passed by the second chamber on May 20, 2019
- Included in NCCI’s May 31, 2019 **Legislative Activity Report** (RLA-2019-20)
- Enacted on June 10, 2019, with an effective date of September 1, 2019

HB 387 amends **section 408.025** of the Texas Workers’ Compensation Act as follows:

Sec. 408.025. Reports and Records Required from Health Care Providers.

...
(a-1) A treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204, Occupations Code, or an advanced practice registered nurse who is licensed to practice in this state under Chapter 301, Occupations Code, the authority to complete and sign a work status report regarding an injured employee’s ability to return to work. The delegating treating doctor is responsible for the acts of the physician assistant or advanced practice registered nurse under this subsection.
...

HB 2143 was:

- Passed by the first chamber on May 10, 2019
- Included in NCCI’s May 17, 2019 **Legislative Activity Report** (RLA-2019-18)
- Amended and passed by the second chamber on May 22, 2019
- Included in NCCI’s May 31, 2019 **Legislative Activity Report** (RLA-2019-20)
- Amended and passed by the conference committee on May 26, 2019
- Enacted on June 14, 2019, with an effective date of September 1, 2019

HB 2143 amends **section 504.019** of the Texas Labor Code to read:

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

...

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

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

(2) the preponderance of the evidence indicates that the event or events were ~~was a substantial contributing factor producing cause~~ of the disorder.

(c) For purposes of this subtitle, the date of injury for post-traumatic stress disorder suffered by a first responder is the date on which the first responder first knew or should have known that the disorder may be related to the first responder's employment.

HB 2143 also includes the following language:

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

HB 2503 was:

- Passed by the first chamber on May 8, 2019
- Included in NCCI's May 17, 2019 **Legislative Activity Report** (RLA-2019-18)
- Passed by the second chamber on May 22, 2019
- Included in NCCI's May 31, 2019 **Legislative Activity Report** (RLA-2019-20)
- Enacted on June 10, 2019, with an effective date of September 1, 2019

HB 2503 amends **section 408.183** of the Texas Labor Code to read:

Sec. 408.183. Duration of Death Benefits.

...

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commissioner rule.

(b-1) Notwithstanding Subsection (b), an eligible spouse who remarried is eligible for death benefits for life if the employee was a first responder, as defined by Section 504.055, or an individual described by Section 615.003(1), Government Code, or Section 501.001(5)(F), who suffered death in the course and scope of employment or while providing services as a volunteer. This subsection applies regardless of the date on which the death of the first responder or other individual occurred.

...

HB 2503 also includes the following language:

The change in law made by this Act to Section 408.183(b-1), Labor Code, applies only to an eligible spouse who remarries on or after the effective date of this Act. An eligible spouse who remarried before that date is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SB 1336 was:

- Passed by the first chamber on April 26, 2019
- Included in NCCI's May 3, 2019 **Legislative Activity Report** (RLA-2019-16)
- Passed by the second chamber on May 22, 2019
- Included in NCCI's May 31, 2019 **Legislative Activity Report** (RLA-2019-20)
- Enacted without the governor's signature, with an effective date of September 1, 2019

SB 1336 amends **sections 2051.157, 2053.001, 2053.051, and 2053.056** of the Texas Insurance Code and **section 407A.351** of the Texas Labor Code as follows:

Sec. 2051.157. Penalty for Certain Violations.

An officer or other representative of an insurance company is subject to a fine of not less than \$100 or more than \$500 if the officer or other representative violates any provision of the following relating to the company's business:

...

(5) Section 2053.051, 2053.052, ~~2053.053~~, or 2053.055.

Sec. 2053.001. Definitions.

In this subchapter:

...

(5) "Supplementary rating information" means any manual, rating plan or schedule, plan of rules, rating rule, classification system, territory code or description, or other similar information required to determine the applicable premium for an insured. The term includes increased limits factors, ~~classification relativities~~, deductible relativities, and other similar factors and relativities.

...

Sec. 2053.051. Hazard Classification System.

(a) For workers' compensation insurance, the department shall:

...

~~(2) establish classification relativities applicable to an employer's payroll in each of the classes at levels adequate to the risks to which the relativities apply.~~

~~(b) The classification relativities established under Subsection (a)(2):~~

~~(1) must be designed to encourage safety;~~

~~(2) may be territorially based; and~~

~~(3) may reflect a difference in losses between employers of high wage earners and employers of low wage earners within the same class.~~

~~(c) The department shall revise the classification system as necessary to carry out the purposes of this chapter at least once every five years.~~

(b) A stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state may not use hazard classifications other than the classifications established by the department.

Sec. 2053.056. Rate Hearings.

...

~~(c) The commissioner shall review the information submitted under Subsection (b) to determine the positive or negative impact of the enactment of workers' compensation reform legislation enacted by the 79th Legislature, Regular Session, 2005, on workers' compensation rates and premiums. The commissioner may consider other factors, including relativities under Section 2053.051, in determining whether a change in rates has impacted the premium charged to policyholders.~~

...

Sec. 407A.351. Rates.

(a) Except as provided by Subsection (b), each group shall use the uniform classification system and ; experience rating plan, ~~and rate relativities~~ of the department.

(b) A group may :

~~(1) use the relativities promulgated by the department modified to produce rates in accordance with the group's historical experience; or~~

~~(2) file its own rates with the department, including any reasonable and supporting information required by the commissioner.~~

...

SB 1336 also includes the following language:

Effective July 1, 2020, Sections 2053.053 and 2054.354(b), Insurance Code, are repealed.

Sections 2051.157, 2053.001(5), 2053.051, and 2053.056(c), Insurance Code, as amended by this Act, and Sections 407A.351(a) and (b), Labor Code, as amended by this Act, apply only to an insurance policy that is delivered, issued for delivery, or renewed on or after July 1, 2020. A policy delivered, issued for delivery, or renewed before July 1, 2020, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SB 2551 was:

- Passed by the first chamber on May 7, 2019
- Included in NCCI's May 17, 2019 **Legislative Activity Report** (RLA-2019-18)
- Amended and passed by the second chamber on May 21, 2019
- Included in NCCI's May 31, 2019 **Legislative Activity Report** (RLA-2019-20)
- Amended and passed by the conference committee on May 26, 2019
- Enacted and effective on June 10, 2019

SB 2551 amends various sections and adds **section 504.074** to the Texas Statutes to read:

Section 1.

Sec. 607.055. Cancer.

(a) A firefighter or emergency medical technician who suffers from cancer resulting in death or total or partial disability is presumed

to have developed the cancer during the course and scope of employment as a firefighter or emergency medical technician if:

(1) the firefighter or emergency medical technician:

(A) regularly responded on the scene to calls involving fires or fire fighting; or

(B) regularly responded to an event involving the documented release of radiation or a known or suspected carcinogen while the person was employed as a firefighter or emergency medical technician; and

(2) the cancer is ~~known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen,~~ as described by Subsection (b).

(b) This section applies only to:

(1) cancer that originates at the stomach, colon, rectum, skin, prostate, testis, or brain;

(2) non-Hodgkin's lymphoma;

(3) multiple myeloma;

(4) malignant melanoma; and

(5) renal cell carcinoma a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer.

Section 2.

Sec. 607.058. Presumption Rebuttable.

(a) A presumption under Section 607.053, 607.054, 607.055, or 607.056 may be rebutted through a showing by a preponderance of the evidence that a risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter or emergency medical technician was a substantial factor in bringing about ~~caused~~ the individual's disease or illness, without which the disease or illness would not have occurred.

(b) A rebuttal offered under this section must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a firefighter or emergency medical technician was a substantial factor in bringing about ~~caused~~ the individual's disease or illness, without which the disease or illness would not have occurred.

(c) In addressing an argument based on a rebuttal offered under this section, an administrative law judge shall make findings of fact and conclusions of law that consider whether a qualified expert, relying on evidence-based medicine, stated the opinion that, based on reasonable medical probability, an identified risk factor, accident, hazard, or other cause not associated with the individual's service as a firefighter or emergency medical technician was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred.

Section 3.

Sec. 409.021. Initiation of Benefits; Insurance Carrier's Refusal; Administrative Violation.

...

(a-3) An insurance carrier is not required to comply with Subsection (a) if the claim results from an employee's disability or death for which a presumption is claimed to be applicable under Subchapter B, Chapter 607, Government Code, and, not later than the 15th day after the date on which the insurance carrier received written notice of the injury, the insurance carrier has provided the employee and the division with a notice that describes all steps taken by the insurance carrier to investigate the injury before the notice was given and the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury. The commissioner shall adopt rules as necessary to implement this subsection.

...

Section 4.

Sec. 409.022. Refusal to Pay Benefits; Notice; Administrative Violation.

...

(d-1) An insurance carrier has not committed an administrative violation under Section 409.021 if the carrier has sent notice to the employee as required by Subsection (d) of this section or Section 409.021(a-3).

Section 5.

Sec. 415.021. Assessment of Administrative Penalties.

...

(c-2) In determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided notice under Section 409.021(a-3), the commissioner shall consider whether:

(1) the employee cooperated with the insurance carrier's investigation of the claim;

(2) the employee timely authorized access to the applicable medical records before the insurance carrier's deadline to:

(A) begin payment of benefits; or

(B) notify the division and the employee of the insurance carrier's refusal to pay benefits; and

(3) the insurance carrier conducted an investigation of the claim, applied the statutory presumptions under Subchapter B, Chapter

607, Government Code, and expedited medical benefits under Section 504.055.

...

Section 6.

Sec. 504.053. Election.

...

(e) Nothing in this chapter waives sovereign immunity or creates a new cause of action, except that a political subdivision that self-insures either individually or collectively is liable for:

(1) sanctions, administrative penalties, and other remedies authorized under Chapter 415;

(2) attorney's fees as provided by Section 408.221(c); and

(3) attorney's fees as provided by Section 417.003.

Section 7.

Sec. 504.074. Self-Insurance Account for Death Benefits and Lifetime Income Benefits.

(a) A pool or a political subdivision that self-insures may establish an account for the payment of death benefits and lifetime income benefits under Chapter 408.

(b) An account established under this section may accumulate assets in an amount that the pool or political subdivision, in its sole discretion, determines is necessary in order to pay death benefits and lifetime income benefits. The establishment of an account under this section or the amount of assets accumulated in the account does not affect the liability of a pool or political subdivision for the payment of death benefits and lifetime income benefits.

(c) Chapter 2256, Government Code, does not apply to the investment of assets in an account established under this section. A pool or political subdivision investing or reinvesting the assets of an account shall discharge its duties solely in the interest of current and future beneficiaries:

(1) for the exclusive purposes of:

(A) providing death benefits and lifetime income benefits to current and future beneficiaries; and

(B) defraying reasonable expenses of administering the account;

(2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;

(3) by diversifying the investments of the account to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the documents and instruments governing the account to the extent that the documents and instruments are consistent with this section.

(d) In choosing and contracting for professional investment management services for an account established under this section and in continuing the use of an investment manager, the pool or political subdivision must act prudently and in the interest of the current and future beneficiaries of the account.

SB 2551 also includes the following language:

Section 8.

Sections 607.055 and 607.058, Government Code, as amended by this Act, apply only to a claim for workers' compensation benefits filed on or after the effective date of this Act. A claim filed before that date is governed by the law as it existed on the date the claim was filed, and the former law is continued in effect for that purpose.

Section 9.

The commissioner of workers' compensation shall adopt rules as required by or necessary to implement this Act not later than January 1, 2020.

Section 10.

(a) Section 504.053(e)(1), Labor Code, as added by this Act, applies only to an administrative violation that occurs on or after the effective date of this Act. An administrative violation that occurs before the effective date of this Act is governed by the law applicable to the violation immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 504.053(e)(2), Labor Code, as added by this Act, applies only to a claim for workers' compensation benefits filed on or after the effective date of this Act. A claim filed before the effective date of this Act is governed by the law in effect on the date the claim was filed, and the former law is continued in effect for that purpose.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bill passed the second chamber within the one-week period ending June 14, 2019.

Maine

LD 756 was passed by the first and second chamber on June 14, 2019.

LD 756 amends *sections 102, 152, 205, 211, 212, 213, 215, 221, 301, and 325* of the Maine Workers' Compensation Act of 1992 to read:

§102. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

...

4. Average weekly wages or average weekly wages, earnings or salary. The term "average weekly wages" or "average weekly wages, earnings or salary" is defined as follows.

...

H. "Average weekly wages, earnings or salary" does not include any fringe or other benefits paid by the employer that continue during the disability. Any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 2/3 of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death. For injuries occurring on or after January 1, 2020, any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of 125% of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 2/3 of 125% of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death.

...

§152. Authority of board; administration

...

5. Employment of and contracts with administrative law judges and mediators. The board shall obtain the services of persons qualified by background and training to serve as administrative law judges, who are authorized to take action and enter orders consistent with this Act in all cases assigned to them by the board, and mediators. Beginning January 1, 2020, except for the reappointment of administrative law judges appointed prior to that date, the board may not contract for the services of or employ administrative law judges without a vote supported by 5 of the 7 members of the board notwithstanding section 151, subsection 5. In the exercise of its discretion, the board may obtain the services of administrative law judges and mediators by either of the 2 following methods:

...

§205. Benefit payment

...

2. Time for payment. ~~The~~ Unless otherwise provided in this subsection, the first payment of compensation for incapacity under section 212 or 213 is due and payable within 14 days after the employer has notice or knowledge of the injury or death, on which date all compensation then accrued must be paid. Subsequent incapacity payments must be made weekly and in a timely fashion. Every insurance carrier, self-insured and group self-insurer shall keep a record of all payments made under this Act and of the time and manner of making the payments and shall furnish reports, based upon these records, to the board as it may reasonably require.

A. There is no penalty for a failure to make a timely payment under this section if the first payment cannot be paid within 14 days due to an act of God, to a mistake of fact or to unavoidable circumstances. An employer's failure to timely report an injury for which proper notice was given is not an excuse for the insurer.

B. If the end of the 14-day period the employer has not filed a notice of controversy, the employer shall begin payments as required by this subsection.

C. An employer may cease payments as required under this subsection and file a notice of controversy with the board no later than 45 days after the employer has notice or knowledge of the injury or death. Payments may be made without prejudice under this paragraph and, if so made, do not constitute a compensation payment scheme. If the employer does not file a notice of controversy prior to the expiration of the 45-day period, payments may be discontinued or reduced only in accordance with subsection 9, paragraph B, subparagraph (1) unless the failure to file a notice of controversy within 45 days is due to an act of God.

D. The penalty for the failure to make timely payment under this subsection is limited to the penalty established in subsection 3, and further consequences for the failure to make timely payment under this subsection are not a subject for rulemaking.

...

§211. Maximum benefit levels

Effective January 1, 1993, the maximum weekly benefit payable under section 212, 213 or 215 is \$441 or 90% of state average weekly wage, whichever is higher. Beginning on July 1, 1994, the maximum benefit level is \$441 or 90% of the state average weekly wage as adjusted annually utilizing the state average weekly wage as determined by the Department of Labor, whichever is higher. If the injured employee's date of injury is on or after January 1, 2013, the maximum benefit level is \$441 or 100% of the state average weekly wage as adjusted annually utilizing the state average weekly wage as determined by the Department of Labor, whichever is higher. If the injured employee's date of injury is on or after January 1, 2020, the maximum benefit level is \$441 or 125% of the state average weekly wage as adjusted annually utilizing the state average weekly wage as determined by the Department of Labor, whichever is higher.

§212. Compensation for total incapacity

...

4. Annual adjustment. For dates of injury on or after January 1, 2020, beginning after the receipt of 260 weeks of benefits under this section, for an injury or injuries that contribute to benefits under this section, weekly compensation benefits under this section must be adjusted annually. The adjustment is equal to the actual percentage increase or decrease in the state average weekly wage, as computed by the Department of Labor, for the previous year or 5%, whichever is less.

The annual adjustment must be made after the receipt of 260 weeks of benefits under this section and on each succeeding anniversary date of the injury, except that when the effect of the maximum benefit under section 211 is to reduce the amount of compensation to which the claimant would otherwise be entitled, the adjustment must be made annually on July 1st.

§213. Compensation for partial incapacity

1. Benefit and duration. While the incapacity for work is partial, the employer shall pay the injured employee a weekly compensation as follows.

...

B. If the injured employee's date of injury is on or after January 1, 2013 but before January 1, 2020, the weekly compensation is equal to 2/3 of the difference, due to the injury, between the employee's average gross weekly wages, earnings or salary before the injury and the average gross weekly wages, earnings or salary that the employee is able to earn after the injury, but not more than the maximum benefit under section 211. An employee is not eligible to receive compensation under this paragraph after the employee has received a total of 520 weeks of compensation under section 212, subsection 1-A, this paragraph or both. The board may in the exercise of its discretion extend the duration of benefit entitlement beyond 520 weeks in cases involving extreme financial hardship due to inability to return to gainful employment. This authority may be delegated by the board, on a case-by-case basis, to an administrative law judge or a panel of 3 administrative law judges. The board, administrative law judge or panel shall make a decision under this paragraph expeditiously. A decision under this paragraph made by an administrative law judge or a panel of 3 administrative law judges may not be appealed to the board under section 320, but may be appealed pursuant to section 321-A.

Orders extending benefits beyond 520 weeks are not subject to review more often than every 2 years from the date of the board order or request allowing an extension.

C. If the injured employee's date of injury is on or after January 1, 2020, the weekly compensation is equal to 2/3 of the difference, due to the injury, between the employee's average gross weekly wages, earnings or salary before the injury and the average gross weekly wages, earnings or salary that the employee is able to earn after the injury, but not more than the maximum benefit under section 211. An employee is not eligible to receive compensation under this paragraph after the employee has received a total of 624 weeks of compensation under section 212, subsection 1-A, this paragraph or both. The board may in the exercise of its discretion extend the duration of benefit entitlement beyond 624 weeks in cases involving extreme financial hardship due to inability to return to gainful employment. This authority may be delegated by the board, on a case-by-case basis, to an administrative law judge or a panel of 3 administrative law judges. The board, administrative law judge or panel shall make a decision under this paragraph expeditiously. A decision under this paragraph made by an administrative law judge or a panel of 3 administrative law judges may not be appealed to the board under section 320, but may be appealed pursuant to section 321-A. Orders extending benefits beyond 624 weeks are not subject to review more often than every 2 years from the date of the board order or request allowing an extension.

...

1-B. Long-term partial incapacity; date of injury on or after January 1, 2013 but before January 1, 2020. After the exhaustion of benefits under subsection 1, paragraph B for an injury occurring on or after January 1, 2013 but before January 1, 2020, if the whole person permanent impairment resulting from the injury is in excess of 18% and if the employee is working and the

employee's earnings, as measured by average weekly earnings over the most recent 26-week period documented by payroll records or tax returns, is 65% or less of the preinjury average weekly wage, the employer shall pay weekly compensation equal to 2/3 of the difference between the employee's average weekly wage at the time of the injury and the employee's postinjury wage, but not more than the maximum benefit under section 211. In order for the employee to qualify for benefits under this subsection, the employee's actual earnings must be commensurate with the employee's earning capacity, which includes consideration of the employee's physical and psychological work capacity as determined by an independent examiner under section 312. In addition, in order for the employee to qualify for benefits under this subsection, the employee must have earnings from employment for a period of not less than 12 months within a 24-month period prior to the expiration of the 520-week durational limit under subsection 1, paragraph B. Compensation under this subsection must be paid at a fixed rate.

...

§215. Death benefits

...

1-B. Death of employee; date of injury on or after January 1, 2020. If an injured employee's date of injury is on or after January 1, 2020, if death results from the injury of the employee and if the employee has no dependents, the employer shall pay or cause to be paid to the parents of the employee during the parents' lifetime a weekly payment equal to 2/3 of the employee's gross average weekly wages, earnings or salary, but not more than the maximum benefit under section 211, for a period of 500 weeks from the date of death. This subsection does not apply to an injury or death of an employee occurring before January 1, 2020, except that for a death of an employee resulting from an injury the date of which is on or after January 1, 2019 but before January 1, 2020, payment made to the Treasurer of State under section 355, subsection 14, paragraph F must be transferred to the parents of the deceased employee. For the purposes of this subsection, "parent" means a natural or adoptive parent, unless that parent's parental rights have been terminated.

...

§221. Coordination of benefits

1. Application. This section applies when either weekly or lump sum payments are made to an employee as a result of liability pursuant to section 212 or 213 with respect to the same time period for which the employee is also receiving or has received payments for:

...

B. Payments under a self-insurance plan, a wage continuation plan, paid time off or a disability insurance policy provided by the employer; or

...

3. Coordination of benefits. Benefit payments subject to this section must be reduced in accordance with the following provisions.
A. The employer's obligation to pay or cause to be paid weekly benefits other than benefits under section 212, subsection 2 or 3 is reduced by the following amounts:

...

(2) The after-tax amount of the payments received or being received under a self-insurance plan, paid time off or a wage continuation plan or under a disability insurance policy provided by the same employer from whom benefits under section 212 or 213 are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy. If the self-insurance plans, paid time off, wage continuation plans or disability insurance policies are entitled to repayment in the event of a workers' compensation benefit recovery, the insurance carrier shall satisfy the repayment out of funds the insurance carrier has received through the coordination of benefits provided for under this section;

...

H. An employer may not offset paid time off under this subsection if the use of paid time off is mandated by the employer or if it is paid upon separation from the employer.

...

§301. Notice of injury within 90 days

For claims for which the date of injury is prior to January 1, 2013, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 90 days after the date of injury. For claims for which the date of injury is on or after January 1, 2013 and prior to January 1, 2020, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 30 days after the date of injury. For claims for which the date of injury is on or after January 1, 2020, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 60 days after the date of injury. The notice must include the time, place, cause and nature of the injury, together with the name and address of the injured employee. The notice must be given by the injured employee or by a person in the employee's behalf, or, in the event of the employee's death, by the employee's legal representatives, or by a dependent or by a person in behalf of either.

...

§325. Costs; attorney's fees allowable

...

6. Attorney's fees for lump-sum settlement in cases in which the injury occurred on or after January 1, 2020. In cases in which the injury to the employee occurred on or after January 1, 2020, attorney's fees for lump-sum settlements must be determined as follows:

A. Before computing the fee, reasonable expenses incurred on the employee's behalf must be deducted from the total settlement, including:

- (1) Medical examination fee and witness fee;
- (2) Any other medical witness fee, including cost of subpoena;
- (3) Cost of court reporter service; and
- (4) Appeal costs.

B. The computation of the fee, based on the amount resulting after deductions according to paragraph A, may not exceed 10%.

C. If a lump-sum settlement includes any amount that is allocated for past due benefits, the administrative law judge shall review the allocation to make sure that it is not for an amount that is greater than what the employee is claiming.

LD 756 also includes the following language:

Workers' Compensation Board; rulemaking. The Workers' Compensation Board may consider adopting a rule to establish time frames for the filing of any petition related to a controversy with the board if a full agreement is not reached by the parties after conclusion of any mediation pursuant to the Maine Revised Statutes, Title 39-A, section 313.

Study of advocate pay. No later than January 1, 2020, the Workers' Compensation Board shall study the advocate program established pursuant to the Maine Revised Statutes, Title 39-A, section 153-A, including the salary paid to advocates, and make recommendations for any changes to improve the advocate program and its representation of injured workers. The Joint Standing Committee on Labor and Housing may report out legislation to the Second Regular Session of the 129th Legislature based on the board's report.

Workers' Compensation Board to establish working group on certain issues; report. The Workers' Compensation Board shall convene a working group of stakeholders to evaluate issues related to work search and vocational rehabilitation requirements for injured workers and protections for injured workers whose employers have wrongfully not secured workers' compensation payments. On behalf of the working group, the Workers' Compensation Board shall report to the Joint Standing Committee on Labor and Housing by January 30, 2020 with recommendations and any draft implementing legislation to address these issues. The Joint Standing Committee on Labor and Housing may report out legislation to the Second Regular Session of the 129th Legislature related to the report and recommendations.

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending June 14, 2019.

Oregon

HB 2788 amends *sections 656.506* and *656.790* of the Oregon Workers' Compensation Law to read:

656.506 Assessments for programs; setting assessment amount; determination by director of benefit level.

...

(2) Every employer shall retain from the moneys earned by all employees an amount determined by the Director of the Department of Consumer and Business Services for each hour or part of an hour the employee is employed and pay the money retained in the manner and at such intervals as the director of the Department of Consumer and Business Services shall ~~direct~~ specify .

(3) In addition to all moneys retained under subsection (2) of this section, the director shall assess each employer an amount equal to that assessed pursuant to subsection (2) of this section. The assessment shall ~~must~~ be paid in such manner and at such intervals as the director may ~~direct~~ specify .

(4) The Department of Consumer and Business services shall deposit moneys collected pursuant to subsections (2) and (3) of this section, and any accrued cash balances, ~~shall be deposited by the Department of Consumer and Business Services~~ into the Workers' Benefit Fund. Subject to the limitations in subsections (2) and (3) of this section, the amount of the hourly assessments provided in subsections (2) and (3) of this section annually may be adjusted to meet the needs of the Workers' Benefit Fund for the expenditures of the department in carrying out ~~its~~ the department's functions and duties pursuant to subsection (7) of this section and ORS 656.445, 656.622, 656.625, 656.628 and 656.630. Factors to be considered in making such adjustment of the assessments shall ~~must~~ include, but not be limited to, the cash balance as determined by the director and estimated expenditures and revenues of the Workers' Benefit Fund.

(5) ~~It is the intent of~~ The Legislative Assembly intends that the department set rates for the collection of assessments pursuant to subsections (2) and (3) of this section in a manner so that at the end of the period for which the rates ~~shall be~~ are effective, the ~~cash balance shall be of the Workers' Benefit Fund~~ is an amount of not less than ~~six~~ 12 months of projected expenditures from the ~~Workers' Benefit~~ fund in regard to ~~its~~ the department's functions and duties under subsection (7) of this section and ORS 656.445, 656.622, 656.625, 656.628 and 656.630, in a manner that minimizes the volatility of the rates assessed. If the department determines that the balance of the fund will fall below the balance required under this subsection, the department shall devise and report to the Workers' Compensation Management-Labor Advisory Committee a plan to increase the balance to the required amount. The department may set the assessment rate at a higher level if the department determines that a higher rate is necessary to avoid unintentional program or benefit reductions in the time period immediately following the period for which the rate is being set.

(6) Every employer required to pay the assessments referred to in this section shall make and file a report of employee hours worked and amounts due under this section upon a combined report form prescribed by the Department of Revenue. The report ~~shall~~ must be filed with the Department of Revenue:

...

(7) There is established a Retroactive Program for the purpose of providing increased benefits to claimants or beneficiaries eligible to receive compensation under the benefit schedules of ORS 656.204, 656.206, 656.208 and 656.210 ~~which that~~ are lower than currently being paid for like injuries. However, benefits payable under ORS 656.210 ~~shall~~ may not be increased by the Retroactive Program for claimants whose injury occurred on or after April 1, 1974. Notwithstanding the formulas for computing benefits provided in ORS 656.204, 656.206, 656.208 and 656.210, the increased benefits payable under this subsection ~~shall~~ must be in such amount as the director considers appropriate. The director annually shall compute the amount which may be available during the succeeding year for payment of such increased benefits and determine the level of benefits to be paid during such year. If, during such year, it is determined by the director that there are insufficient funds to increase benefits to the level fixed by the director, the director may reduce the level of benefits payable under this subsection. The increase in benefits to workers ~~shall be~~ is payable in the first instance by the insurer or self-insured employer subject to reimbursement from the Workers' Benefit Fund by the director. If the insurer is a member of the Oregon Insurance Guaranty Association and becomes insolvent and the Oregon Insurance Guaranty Association assumes the insurer's obligations to pay covered claims of subject workers, including Retroactive Program benefits, ~~such the~~ benefits shall be are payable in the first instance by the Oregon Insurance Guaranty Association, subject to reimbursement from the Workers' Benefit Fund by the director.

656.790 Workers' Compensation Management-Labor Advisory Committee; membership; duties; expenses.

...

(2) The director may recommend areas of the law which the director desires to have studied or the committee may study such aspects of the law as the committee shall determine require their consideration. The committee shall biennially review the standards for evaluation of permanent disability adopted under ORS 656.726 and shall recommend to the director factors to be included or such other modification of application of the standards as the committee considers appropriate. The committee shall biennially review and make recommendations about permanent partial disability benefits. The committee shall advise the director regarding any proposed changes in the operation of programs funded by the Workers' Benefit Fund and shall review any plan the Department of Consumer and Business Services devises to increase the balance of the fund to meet the requirement set forth in ORS 656.506 (5). The committee shall report ~~its~~ the committee's findings to the director for such action as the director deems appropriate.

...

(4) The members of the committee ~~shall be~~ are appointed for a term of three years and shall serve without compensation, but ~~shall be~~ are entitled to travel expenses. The committee may hire, subject to approval of the director, such experts as ~~it~~ the committee may require to discharge ~~its~~ the committee's duties. All expenses of the committee ~~shall~~ must be paid out of the Consumer and Business Services Fund.

Rhode Island

SB 909 amends *sections 28-33-18, 28-33-22, 28-33-25, 28-33-44, and, 28-35-14* of the State of Rhode Island General Laws as follows:

§ 28-33-18. Weekly compensation for partial incapacity.

(a) While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to seventy-five percent (75%) of the difference between his or her spendable average weekly base wages, earnings, or salary before the injury as computed pursuant to the provisions of ~~§ 28-38-20~~ § 28-33-20, and his or her spendable weekly wages, earnings, salary, or earnings capacity after that, but not more than the maximum weekly compensation rate for total incapacity as set forth in § 28-33-17. The provisions of this section are subject to the provisions of § 28-33-18.2.

...

§ 28-33-22. Minors employed in violation of law.

...

(c) Whenever the workers' compensation insurance carrier for the employer is obligated to pay treble the amount which would have been payable if that minor had been legally employed, the workers' compensation insurance carrier shall have a complete right of indemnification to the extent the additional benefits are paid against the employer for the additional benefits paid above and beyond the usual workers' compensation indemnity benefit.

§ 28-33-25. Settlement for lump sum or structured-type payment.

(a)(1) ~~In case payments have continued for not less than six (6) months, the~~ The parties may petition the workers' compensation court for an order approving a settlement of the future liability for a lump sum or structured-type periodic payment over a period of time.

...

§ 28-33-44. Continuation of health insurance benefits.

...

(b) In the event any employer fails to comply with the provisions of this section, and not its workers' compensation insurance carrier, then the employer shall be liable for hospital and medical costs that would have been paid by the hospital or medical insurance plan afforded the employee had he or she been covered by the plan.

...

§ 28-35-14. Copies of petition to respondents.

Upon filing with the workers' compensation court of any petition, stating the general nature of any claim as to which any dispute or controversy may have arisen, the petitioner shall serve a copy of the petition and its attachments on the respondent or respondents in accordance with the workers' compensation court rules of practice.

SB 909 also repeals the following sections of the Rhode Island General Laws:

~~§ 28-35-46. Notice of intent to discontinue, suspend, or reduce payments — Filing — Form.~~

~~Before an employer may discontinue, suspend, or reduce compensation payments whether they are being received under an agreement, memorandum of agreement, award, order, finding, or decree, or when suitable alternative employment has been offered to the employee pursuant to § 28-33-18.2, the employer shall notify the court and the employee of his or her intention to discontinue, suspend, or reduce payments and the reason for doing so by filing with the court an affidavit setting forth the factual basis for filing the petition to review along with a copy of the medical reports upon which the employer seeks to justify the discontinuance, suspension, or reduction in payments. A copy of the affidavit and medical report shall be forwarded to the employee. The notice of intention to discontinue, suspend, or reduce payments must be given fifteen (15) days prior to the proposed date of discontinuance, suspension, or reduction; provided, that where an employee has returned to work at an average weekly wage equal to or in excess of that which he or she was earning at the time of his or her injury, not including overtime, the notice of intention to discontinue, suspend, or reduce the payments provided for in this section may be given five (5) days prior to the proposed date of discontinuance. Notices shall be in substantially the following form: Notice to Workers' Compensation Court and Employee of Intention to Discontinue, Suspend, or Reduce Payment~~

~~You are hereby notified that the undersigned employer intends on the day of 20....., to discontinue, suspend, or reduce the payments of compensation to the above named employee for the following reasons, to wit:~~

- ~~(1) Employee has returned to work at an average weekly wage equal to or in excess of that which he or she was earning at the time of his or her injury, not including overtime.~~
- ~~(2) Employee has returned to work and is earning wages in the sum of dollars weekly.~~
- ~~(3) Employee has been discharged by his or her treating physician on the day of 20.....~~

~~§ 28-35-47. Wage transcript supporting allegation of return to work.~~

~~Where the notice of intention to discontinue, suspend, or reduce payments of compensation alleges that the employee has returned to work at an average weekly wage equal to or in excess of that which he or she was earning at the time of his or her injury, not including overtime, or has returned to work for wages less than he or she was earning at the time of the injury, the notice shall contain a signed wage transcript signed by the treasurer of the employer, or other appropriate official, setting forth the number of hours worked, the rate of pay, and the wages earned during the period relied upon corroborating the allegation. Provided, that indemnity benefits may be discontinued if the employer files with the department of labor and training a wage transcript showing that the employee has returned to work for at least two (2) consecutive weeks at a salary equal to or in excess of that which he or she was earning, not including overtime, at the time of his or her injury. Notice of the filing shall be sent to the employee and/or the employee's legal representative. If the employee files an objection within two (2) weeks, the matter shall be referred to the court for disposition pursuant to § 28-35-51, and the court may order benefits reinstated.~~

~~§ 28-35-48. Medical report on ability to return to work.~~

Where the notice of intention to discontinue, suspend, or reduce payments of compensation alleges that the employee is able to return to work, the notice shall be supported by a report of a treating physician.

§ 28-35-49. Medical examination on ability to return to light work.

Where the notice of intention to discontinue, suspend, or reduce payments of compensation alleges that the employee is able to return to light selected work, the notice shall be supported by a report of a treating physician.

§ 28-35-50. Resumption of payments on change of status.

If subsequent to the filing of any notice provided for in this chapter there is any change of status of the employee which would affect the right to discontinue, reduce, or suspend compensation payments under §§ 28-35-39—28-35-53, such as, the unwarranted discharge of the employee, a reduction of wages suffered by an employee while he or she is still unable to perform the work which he or she did at the time of his or her injury, or the inability of the employee to continue work due to his or her injury, between the time of the filing of the notice and the time of suspension under the notice, or the time of rendering of a decision following a hearing before the workers' compensation court, payments in accordance with the existing agreement, award, finding, or decree shall be resumed or continued.

§ 28-35-51. Review of discontinuance, suspension, or reduction—Disputed cases.

Upon receipt of notice of intention to discontinue, suspend, or reduce compensation payments, the court shall notify the employee that he or she has a right to dispute the claim of the employer or insurance carrier and assign the matter for a mandatory pre-trial conference on the date set forth in the notice pursuant to § 28-35-20.

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
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
CO, 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

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