



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 28, 2019.

#### Florida

**HB 983** was:

- Passed by the first chamber on April 17, 2019
- Included in NCCI's April 26, 2019 **Legislative Activity Report** (RLA-2019-15)
- Passed by the second chamber on April 26, 2019
- Included in NCCI's May 3, 2019 **Legislative Activity Report** (RLA-2019-16)
- Enacted and effective on June 25, 2019

**HB 983** ratifies adopted rule 69L-3.009, F.A.C. that specifies the types of third-party injuries qualifying as grievous bodily harm of a nature that shocks the conscience, for the purposes of allowing wage replacement benefits for first responder post-traumatic stress disorder.

#### Oregon

**HB 2788** was:

- Passed by the first chamber on June 10, 2019
- Included in NCCI's June 21, 2019 **Legislative Activity Report** (RLA-2019-23)
- Passed by the second chamber on June 17, 2019
- Included in NCCI's June 28, 2019 **Legislative Activity Report** (RLA-2019-24)
- Enacted on June 25, 2019, with an effective date of January 1, 2020

**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 ~~# the committee~~ 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.

#### **BILLS PASSING SECOND CHAMBER**

The following workers compensation-related bills passed the second chamber within the one-week period ending June 28, 2019.

#### **Rhode Island**

**HB 5151** was:

- Passed by the first chamber on June 22, 2019
- Passed by the second chamber on June 27, 2019

**HB 5151 Substitute A**, in part, amends **sections 21-28.6-4** and **21-28.6-7** of the Rhode Island Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act to read:

**§ 21-28.6-4. Protections for the medical use of marijuana.**

...

(e) No employer may refuse to employ, or otherwise penalize, a person solely for his or her status as a cardholder, except:

(1) To the extent employer action is taken with respect to such person's:

(i) Use or possession of marijuana or being under the influence of marijuana in any workplace;

(ii) Undertaking a task under the influence of marijuana when doing so would constitute negligence or professional malpractice or jeopardize workplace safety;

(iii) Operation, navigation or actual physical control of any motor vehicle or other transport vehicle, aircraft, motorboat, machinery or equipment, or firearms while under the influence of marijuana; or

(iv) Violation of employment conditions pursuant to the terms of a collective bargaining agreement; or

(2) Where the employer is a federal contractor or otherwise subject to federal law such that failure of the employer to take such action against the employee would cause the employer to lose a monetary or licensing related benefit.

...

**§ 21-28.6-7. Scope of chapter.**

...

(b) Nothing in this chapter shall be construed to require:

(1) A government medical assistance program or private health insurer or workers' compensation insurer, workers' compensation group self-insurer or employer self-insured for workers' compensation under § 28-36-1 to reimburse a person for costs associated with the medical use of marijuana; or

...

**HB 6134** and **SB 909** are identical bills.

**HB 6134** was:

- Passed by the first chamber on June 18, 2019
- Included in NCCI's June 28, 2019 **Legislative Activity Report** (RLA-2019-24)
- Passed by the second chamber on June 26, 2019

**SB 909** was:

- Passed by the first chamber on June 11, 2019
- Included in NCCI's June 21, 2019 **Legislative Activity Report** (RLA-2019-23)
- Passed by the second chamber on June 24, 2019

**HB 6134/SB 909** amend **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.~~

**BILLS PASSING FIRST CHAMBER**

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending June 28, 2019.

**BILLS VETOED BY GOVERNOR**

The following workers compensation-related bill was vetoed by the governor within the one-week period ending June 28, 2019.

**New Hampshire**

**SB 151-FN** was:

- Passed by the first chamber on February 14, 2019
- Included in NCCI's February 22, 2019 *Legislative Activity Report* (RLA-2019-06)
- Passed by the second chamber on May 2, 2019
- Included in NCCI's May 10, 2019 *Legislative Activity Report* (RLA-2019-17)
- Vetoed by the governor on June 25, 2019

**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.

**FEDERAL ISSUES**

Issue	Update
<b>TRIPRA Reauthorization</b>	The US Senate Committee on Banking, Housing, and Urban Affairs (Committee), held a hearing on the reauthorization of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA). Absent congressional action, the Terrorism Risk Insurance Program (TRIP) will expire on December 31, 2020. This hearing was the first in either congressional chamber regarding the future of TRIPRA in the 116th Congress. The Committee received testimony from the Congressional Research Service, a representative from Marsh McLennan Companies, and an academic from the Wharton Risk Management and Decision Processes Center.

	<p>There was significant discussion on the impacts of TRIP on insurance markets. Those providing testimony acknowledged that TRIP has served to stabilize the marketplace and has allowed for greater availability and affordability of coverage. It was suggested that Congress be mindful that the continued shift of terrorism exposure to the industry by raising the TRIP trigger and deductibles, particularly for small and regional insurers, could be disruptive to the marketplace.</p> <p>The compulsory nature of workers compensation coupled with the inability of carriers to limit or exclude perils was highlighted throughout the hearing. The positive impacts of TRIP on the insurance market were generally discussed, as well as impacts to the workers compensation line of insurance given the unique impact of future terrorist events. While no additional congressional hearings are currently scheduled, it is likely that the House of Representatives Financial Services Committee will conduct hearings later this year.</p>
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## OTHER ITEMS OF INTEREST

State	Update
<b>Kentucky</b>	<p>On June 13, the Kentucky Supreme Court, in <i>Teco/Perry County Coal v. Feltner</i>, reversed an appellate court decision that declared unconstitutional a Kentucky workers compensation statute (Ky. Rev. Stat. Ann. § 342.7305) that excluded permanent partial disability (PPD) benefits for an occupational hearing loss involving both ears, with a resulting total body impairment rating of less than 8% under the <i>AMA Guides</i>.</p> <p>The court found that there was a rational basis for treating hearing loss claimants differently from other types of claimants and upheld the statute as constitutional. The decision affirmed the administrative law judge’s determination that a claimant was not entitled to PPD benefits based on his impairment rating.</p>
<b>Missouri</b>	<p>On May 21, the Missouri Court of Appeals for the Eastern District held, in the case of <i>Hegger v. Valley Farm Dairy Co.</i>, that a worker’s compensation insurer could be held liable to provide enhanced mesothelioma benefits pursuant to a 2014 statute, where the insured employer ceased to exist prior to the statute’s effective date.</p> <p>The court found that the workers compensation policy in place at the time of the injured employee’s last exposure to asbestos in 1984 covered the employer’s entire liability under the Missouri Workers’ Compensation Law. Thus, the court concluded that the now-defunct employer had “insured its liability” and elected to provide the enhanced benefits. The court also determined that, although the statute did not exist when the insurer wrote the policy, state law provides that compensable benefit amounts are determined by the statutory benefit levels in effect on the date of the injury, not at the time that the policy is written.</p>
<b>Missouri</b>	<p>On June 25, 2019, the Missouri Supreme Court, in the case of <i>Cosby v. Treasurer of Missouri, as Custodian of the Second Injury Fund</i>, found that section 287.200.3 of the Missouri Workers Compensation Law precluded a PPD claim against the Fund brought by a worker who suffered a work-related knee injury in 2014, but had other pre-existing work-related injuries predating January 1, 2014. The court ruled that:</p> <ol style="list-style-type: none"> <li>1. Section 287.220.2 applies to all PPD and PTD claims against the Fund for injuries arising in and out of the course of employment when <u>both, the initial and subsequent injury</u>, occurred before January 1, 2014.</li> <li>2. Section 287.220.3 applies to all PPD and PTD claims against the Fund, in which <u>at least one injury</u> arising in and out of the course of employment occurred after January 1, 2014, and</li> <li>3. Section 287.220.3, as applied to Cosby, does not violate the open courts provision, due process, and equal protection rights under the Missouri Constitution.</li> </ol> <p><i>*NCCI is currently undergoing an analysis of the impact of this decision.</i></p>
<b>Oregon</b>	<p>The Oregon Supreme Court ruled on May 31, in <i>Matter of Compensation of Garcia-Solis v. Farmers Insurance Co.</i>, that the term “injury”—as first used in the first and second sentences of section 656.245(1)(a) of the Workers Compensation Statutes—means the workplace accident that created the need for medical treatment, as opposed to an accepted condition. The court reversed the appellate court’s decision upholding the workers compensation board’s finding that the insurer was not required to pay for a claimant’s psychological evaluation because such treatment was not provided for a condition previously accepted by the insurer.</p>

**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.

<b>State</b>	<b>State Relations Executive</b>	<b>Phone Number</b>
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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
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