



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 July 19, 2019.

#### New Hampshire

**SB 59-FN** was:

- Passed by the first chamber on February 14, 2019
- Included in NCCI's February 22, 2019 **Legislative Activity Report** (RLA-2019-06)
- Amended and passed by the second chamber on May 8, 2019
- Included in NCCI's May 17, 2019 **Legislative Activity Report** (RLA-2019-18)
- Amended and enacted on July 17, 2019, with effective dates of November 1, 2020, for **section 5** of the bill; January 1, 2021, for **section RSA 281-A:17-c**; and July 17, 2019, for the remainder of the bill

**SB 59-FN** amends **sections 281-A:2** and **281-A:17** and adds new **sections 281-A:17-b** and **c** to the New Hampshire Workers' Compensation Law to read:

**Sections 1 and 2.**

**281-A:2 Definitions.—**

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

...

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

...

XI. "Injury" or "personal injury" as used in and covered by this chapter means accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment, including disability due to radioactive properties or substances or exposure to ionizing radiation. "Injury" or "personal injury" shall not include diseases or death resulting from stress without physical manifestation, except that, if an employee meets the definition of an "emergency response/public safety worker" under RSA 281-A:2, V-c, the terms "injury" or "personal injury" shall also include acute stress disorder and post-traumatic stress disorder. "Injury" or "personal injury" shall not include a mental injury if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action, taken in good faith by an employer. No compensation shall be allowed to an employee for injury proximately caused by the employee's willful intention to injure himself or injure another. Conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable only if contributed to or aggravated or accelerated by the injury. Notwithstanding any law to the contrary, "injury" or "personal injury" shall not mean accidental injury, disease, or death resulting from participation in athletic/recreational activities, on or off premises, unless the employee reasonably expected, based on the employer's instruction

or policy, that such participation was a condition of employment or was required for promotion, increased compensation, or continued employment.

...

### **Section 3.**

#### **281-A:17-b Commission to Study the Incidence of Post-traumatic Stress Disorder in First Responders Established.**

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

- (1) One member of the senate, appointed by the president of the senate.
  - (2) Three members of the house of representatives, one of whom shall be from the labor, industrial and rehabilitative services committee, one of whom shall be from the executive departments and administration committee, and one of whom shall be from the state-federal relations and veterans affairs committee, appointed by the speaker of the house of representatives.
  - (3) The labor commissioner, or designee.
  - (4) The commissioner of safety, or designee.
  - (5) The insurance commissioner, or designee.
  - (6) A representative of the New Hampshire Municipal Association, appointed by the association.
  - (7) A representative of the New Hampshire Association of Counties, appointed by the association.
  - (8) A representative of the National Alliance on Mental Illness New Hampshire, appointed by the alliance.
  - (9) A fire chief, appointed by the New Hampshire Association of Fire Chiefs.
  - (10) One member appointed by the New Hampshire Association of Chiefs of Police.
  - (11) One member appointed by the New Hampshire Police Association.
  - (12) A representative of the Professional Firefighters of New Hampshire, appointed by that organization.
  - (13) A representative of the New Hampshire Association of Emergency Medical Technicians, appointed by the association.
  - (14) A representative of the New Hampshire Public Risk Management Exchange, appointed by that organization.
  - (15) An attorney, appointed by the New Hampshire Association for Justice.
- (b) Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

II. (a) The commission shall study:

- (1) The prevalence of post traumatic stress disorder (PTSD) among first responders.
- (2) The prevalence of PTSD, or factors contributing to PTSD, among first responders at the time of hiring.
- (3) The extent to which first responders' employment benefits provide health insurance coverage for treatment of PTSD.
- (4) The degree to which employers who hire first responders are capable of reassigning affected workers to less stressful positions that would allow employees to continue working while receiving mental health treatment.
- (5) The extent to which prior military service may contribute to the rate of PTSD among first responders.
- (6) The difficulty first responders currently have establishing that a PTSD diagnosis is causally related to employment.
- (7) The difficulty employers would have establishing that a pre-employment condition or experience caused PTSD, rather than a first responders' current employment.
- (8) The cost that creating a rebuttal presumption that PTSD was caused uncured during service in the line of duty would impose on public employers, private employers, and taxpayers, and funding solutions to mitigate such cost.
- (9) The causes of high suicide rates of emergency responders, including exposure to occupational stress and emotional trauma, medication, substance abuse, disciplinary action, interaction with criminal and civil court system, and any state policies that emergency responders believe increase stress or suicide risk.
- (10) Other issues the commission deems relevant to its study.

(b) The commission may solicit input from any person or entity the commission deems relevant to its study.

III. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Nine members of the commission shall constitute a quorum.

IV. On or before November 1, 2019, the commission shall submit an interim report of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library and shall submit a final report on or before November 1, 2020.

**281-A:17-c Acute Stress Disorder and Post-Traumatic Stress Disorder; Presumption.** Notwithstanding RSA 281-A:2, XI and XIII, RSA 281-A:16, and RSA 281-A:27, there shall be a prima facie presumption that acute stress disorder and post-traumatic stress disorder in an emergency responder, as defined in RSA 281-A:2, V-c are occupationally caused.

### **Section 6.**

#### **281-A:17 Firefighter and Heart, Lung, or Cancer Disease.—**

...

II. Notwithstanding the provisions of RSA 281-A:2, XI and XIII, 16 and 27, there shall exist a prima facie presumption that cancer disease in a firefighter, whether a regular, call, volunteer, or retired member of a fire department, is occupationally ~~related~~ caused. In order to receive this occupational cancer ~~disability benefit~~ workers' compensation, the type of cancer involved must be a type which may be caused by exposure to heat, radiation, or a known carcinogen, as defined by the International Agency for Research on Cancer. However:

(a) A firefighter who has been a firefighter for 10 years shall have the benefit of this prima facie presumption as follows:

(1) If a fire department follows the medical examination as outlined by the National Fire Protection Association standard 1582, the firefighter shall provide this report as evidence that the firefighter was free of such disease at the beginning of his or her employment and shall guarantee that he or she has lived a tobacco free life lifestyle. The employer of a ~~call or volunteer~~ firefighter shall provide the required reasonable medical evidence to the workers' compensation carrier and to the firefighter to present as part of his or her claim.

(2) If the fire department does not follow the medical examination standard, the firefighter shall guarantee that he or she has lived a tobacco free life lifestyle and has been a firefighter for 10 years and shall be required to present after action reports filed after fire incidents which demonstrate exposure to the known carcinogens as part of the claim, but shall not have the benefit of the prima facie presumption.

(b) A retired firefighter who has been retired between 6 and 20 years who guarantees that he or she has lived a tobacco free life lifestyle and who is receiving a pension subject to RSA 100-A, shall be eligible for medical payments only under this section. If a new claim is being filed, the firefighter shall be responsible for filing applicable data and after action reports if no ~~physical~~ medical examination report can be provided. A retired firefighter who agrees to submit to any ~~physical~~ medical examination requested by the employing city, town, or precinct shall have the benefit of the prima facie presumption for a period of 20 years from the effective date of the firefighter's retirement, during which time the firefighter shall be eligible to have his or her medical expenses paid for this period.

(c) No active or retired firefighter shall receive the presumption benefit unless the employer voluntarily has in effect a policy that follows the fire standards and training commission curriculum requirement for best practices for use and cleaning of equipment.

(d) For active, regular firefighters whose employment began prior to January 1, 1997, a medical examination as outlined by the National Fire Protection Association standard 1582 may be reimbursed by the department of safety, division of fire standards and training and emergency medical services, and provided as evidence that the firefighter was free of such disease.

(e) For the purposes of this section, a person lives a "tobacco free lifestyle" if he or she has not, within the past 6 months, used any tobacco product, including cigarettes, cigars, chewing tobacco, snuff, or pipe tobacco 4 or more times in a week, except in the case of religious or ceremonial use of tobacco, such as by Alaska natives or Native Americans.

SB 59-FN also includes the following language:

**Section 4.**

Membership Continued. To the extent possible, the membership of the commission to study the incidence of post-traumatic stress disorder in first responders and whether such disorder shall be covered under workers' compensation established in section 3 of this act shall remain the same as the commission established in the former RSA 281-A:17-a.

**Section 5.**

Repeal. RSA 281-A:17-b, relative to the commission to study the incidence of post traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation, is repealed.

## Rhode Island

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
- Included in NCCI's July 5, 2019 **Legislative Activity Report** (RLA-2019-25)
- Enacted and effective on July 15, 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
- Included in NCCI's July 5, 2019 **Legislative Activity Report** (RLA-2019-25)
- Enacted and effective on July 15, 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 ~~§ 28-33-20~~ § 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.

**HB 6134/SB 909** also repeal 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 SECOND CHAMBER**

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending July 19, 2019.

**BILLS PASSING FIRST CHAMBER**

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending July 19, 2019.

**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
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CT, ME, NH, RI	Justin Moulton	860-969-7903
VT	Laura Backus Hall	802-454-1800
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This report is informational and is not intended to provide an interpretation of state and federal legislation.