



Regulatory and Legislative Trends Report





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EXECUTIVE SUMMARY

Overview of 2019 Legislative and Regulatory Activity

In the first half of 2019, NCCI tracked approximately **668** state and federal workers compensation bills. A total of **415** bills were in states where NCCI provides ratemaking services. As of the end of June, **84** bills were enacted.

In addition, NCCI monitored **197** workers compensation-related regulations in 2019. As of June 30, **78** of those regulations were adopted. To date, medical cost management is a top theme of the regulations adopted, including medical fee schedules and treatment guidelines.

Legislative Trends and Hot Topics



Legislation impacting first responders continued to be a hot topic this year with 122 related bills considered in 2019. The first responder bills address compensability for certain cancers and other diseases, as well as compensability for post-traumatic stress disorder (PTSD). Other legislative trends include bills addressing medical cost containment measures, such as fee schedules and treatment guidelines; and court/legal issues such as arbitration and subrogation. These trends are very similar to 2018's legislative trends.

First Responders/PTSD



In 2019, at least 26 states considered legislation addressing workers compensation coverage for mental-only injuries, such as PTSD, for first responders. To date, eight states (Connecticut, Idaho, Louisiana, Nevada, New Hampshire, New Mexico, Oregon, and Texas) passed legislation addressing benefits for first responders with PTSD in 2019. In addition, Utah passed legislation establishing a working group to study the compensability of mental stress claims from first responders.

Legalization of Marijuana



In 2019, at least 20 states considered legislation to legalize marijuana for medical and/or recreational purposes. However, as of June 30, only one state—Illinois—passed legislation to legalize recreational marijuana. To date, no states have passed legislation legalizing medical marijuana.

There are now 11 states, plus the District of Columbia, that have legalized the recreational use of marijuana. In addition, the majority of states (33 plus DC) have legalized the medical use of marijuana, while another 14 states have legalized the use of CBD oil/nonpsychoactive forms of marijuana under certain circumstances. As of June 30, only three states (Idaho, Kansas, and Nebraska) do not have any laws legalizing marijuana in some form.

During the 2019 legislative session, several states considered legislation to authorize the reimbursement of medical marijuana in workers compensation. Those states include Hawaii, Kansas, Maine, Maryland, New Jersey, New York, and Vermont. As of June 30, none of the bills passed.

Rhode Island passed legislation that does not prohibit reimbursement but provides that employers and workers compensation carriers are not required to pay for medical marijuana. The Rhode Island legislation also states that an employer may not refuse to employ or otherwise penalize a person solely for their status as a medical marijuana cardholder, with certain exceptions.

Nevada enacted legislation that prohibits an employer from denying employment because a prospective employee tests positive for marijuana in a preemployment drug screening test. The new law contains exceptions for certain prospective employees, including firefighters and emergency medical technicians.

Utah passed legislation that, in part, allows certain insurers to issue workers compensation coverage to a cannabis production establishment or a medical cannabis pharmacy in the state.

Single Payer



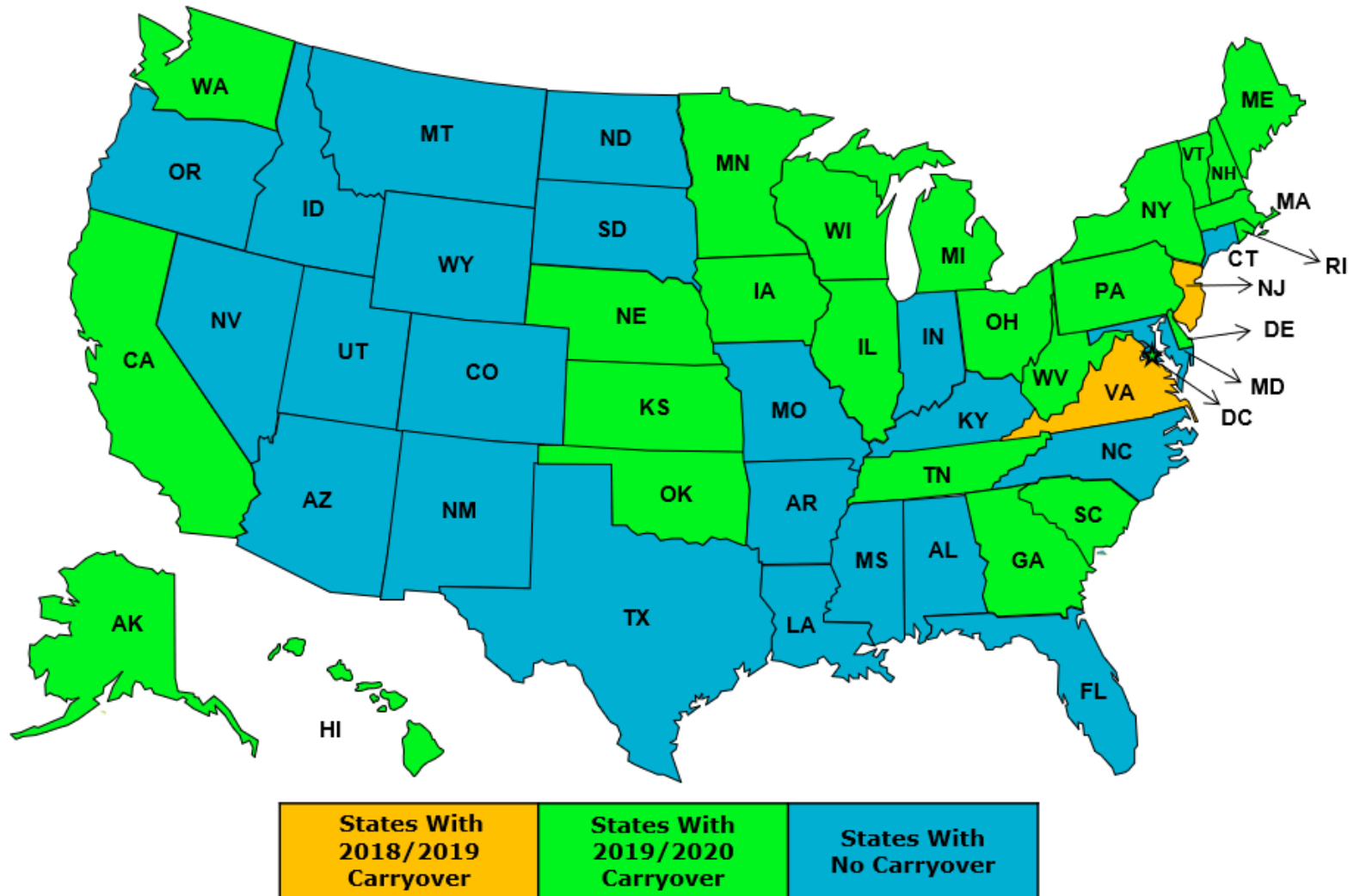
In 2019, NCCI monitored over 40 bills that either propose to implement, or study the issue of, single payer health insurance systems. As of June 30, at least 20 states considered or are considering single payer legislation. In 12 of those states, the legislation specifically references workers compensation or injured worker's medical benefits. To date, two states (Colorado and Vermont) passed bills to study the issue.

Prescription Drugs

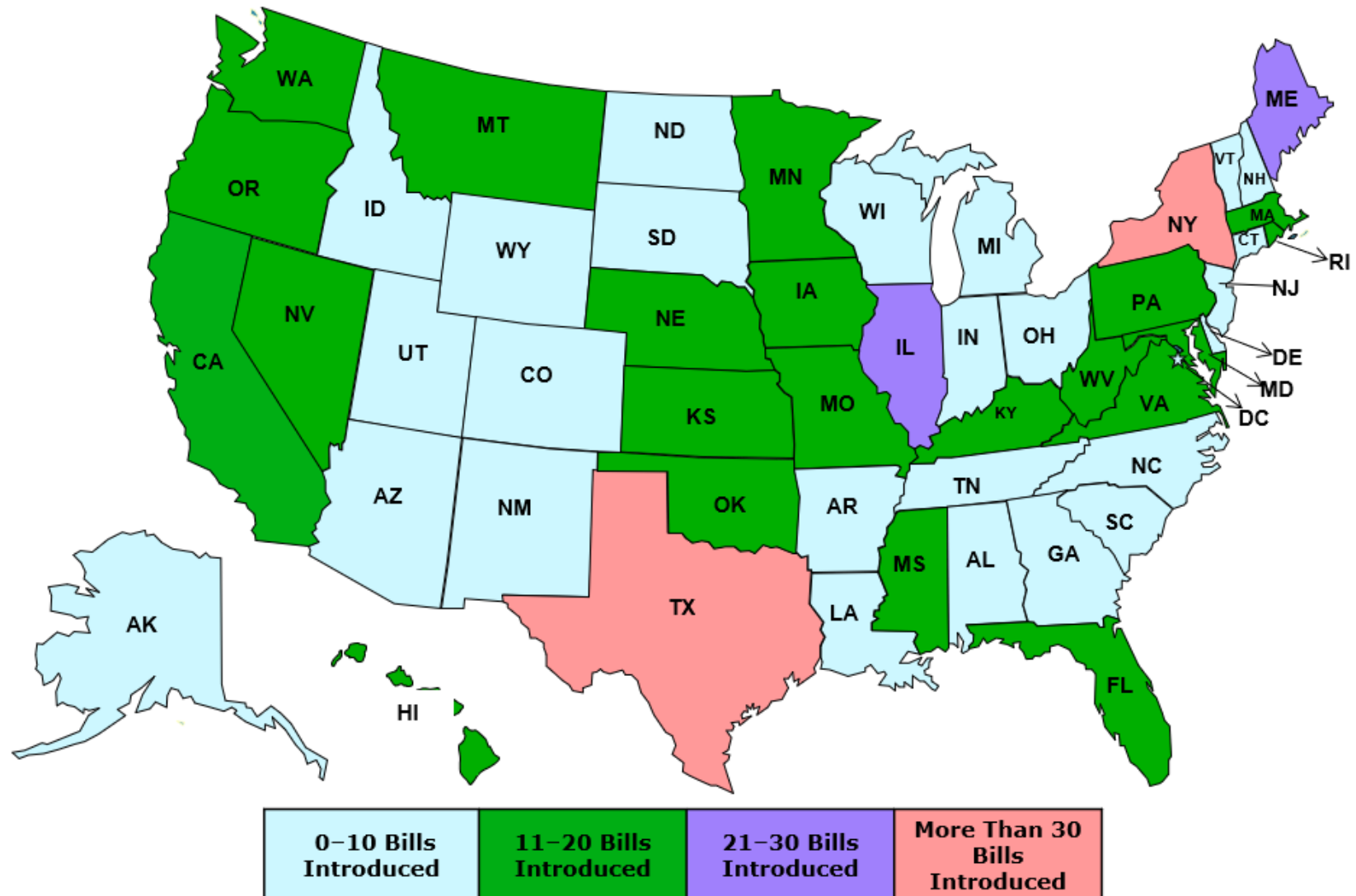


In 2019, nine states considered legislation addressing prescription drugs in workers compensation. At least two states, Illinois and Nebraska, proposed adopting an evidence-based drug formulary. Other states considered legislation to restrict the use of opioids in workers compensation. Legislation proposed in New York would include medical marijuana as a "prescription drug" for workers compensation purposes.

2019 LEGISLATIVE SESSIONS



2019 WORKERS COMPENSATION LEGISLATIVE ACTIVITY





2019 TOP 5 WORKERS COMPENSATION LEGISLATIVE TRENDS



122

First Responder Bills

54

Reimbursement/Fee Schedule Bills

46

Court/Legal Issue Bills

45

Indemnity Benefit Bills

42

Compliance-Related Bills

HOT TOPIC—FIRST RESPONDERS/PTSD

- Connecticut
 - SB 164—Allows police officers, parole officers, and firefighters to receive certain workers compensation benefits for PTSD caused by certain “qualifying events” (Enacted).
- Idaho
 - SB 1028—Provides that certain psychological injuries affecting first responders shall be compensable when certain conditions are met (Enacted).
- Louisiana
 - SB 107—Adds PTSD to the list of injuries that are compensable for certain injured public employees (Enacted).
- Nevada
 - AB 492—Revises the circumstances in which a first responder or an employee of the state or a local government is authorized to receive compensation under industrial insurance for certain stress-related claims; requires an agency that employs a first responder or a volunteer first responder to provide certain educational training concerning mental health issues to the first responder; exempts a claim for certain stress-related injuries suffered by a first responder or an employee of the state or any of its agencies or political subdivisions from certain prohibitions on compensation for an injury and temporary disability (Enacted).



■ New Hampshire

- SB 59—Adds PTSD and acute stress disorder to the definition of “injury” for purposes of workers compensation, if an employee meets the definition of an “emergency response/public safety worker” (Enacted).

■ New Mexico

- HB 324—Adds PTSD to the list of conditions presumed to be proximately caused by employment as a firefighter (Enacted).

■ Oregon

- SB 507—In part, for specified first responder and corrections related occupations who have been employed for at least five years or who experience a single traumatic event--death, disability, or impairment of health is presumed to be a compensable occupational disease following a diagnosis of PTSD or acute stress disorder from a psychiatrist or psychologist (Enacted).

■ Texas

- HB 2143—Adds PTSD caused by one or more events occurring in the course and scope of a first responder’s employment as a compensable injury (Enacted).



HOT TOPIC—LEGALIZATION OF MARIJUANA

- Hawaii
 - HB 1534/SB 1523—Makes medical cannabis reimbursable via the workers compensation system in certain circumstances for patients registered with the department of health’s medical cannabis program (Did not pass).
- Illinois
 - HB 1438—Provides that it is lawful for persons 21 or older to possess, use, and purchase limited amounts of cannabis for personal use (Enacted).
- Kansas
 - HB 2303/SB 195—States that the purpose of the Kansas Safe Access Act is to, in part, “recognize that workers compensation should cover medical cannabis as it would all other medications” (Did not pass).
- Kentucky
 - HB 136/SB 170—A workers compensation carrier or self-funded employer providing workers compensation benefits are not required to reimburse a person for costs associated with the medicinal use of marijuana (Did not pass).
- Maine
 - LD 942—Requires an employer to reimburse an employee eligible for workers compensation benefits for the costs of obtaining a medical marijuana certificate and the costs of medical marijuana (Did not pass).





- **Maryland**
 - SB 854—Includes medical cannabis in the medicine that an employer or its insurer is required to provide to a covered employee under certain circumstances (Did not pass).
- **New Jersey**
 - A 4097—Provides that nothing in current law precludes any employer or workers compensation insurer from reimbursing a person for costs associated with the medical use of marijuana (Pending).
 - A 4505—Provides that personal injury protection automobile insurance benefits and workers compensation benefits must include coverage for costs associated with the medical use of marijuana, provided that the insured or the employee is a qualifying patient authorized for medical marijuana pursuant to the Compassionate Use Medical Marijuana Act, and at least one other medication or treatment has been attempted and found to be unsuccessful in treating the debilitating medical condition that qualified the patient for the medical use of marijuana (Pending).
- **New York**
 - A 2824/S 2054—In part, deems medical marijuana a “prescription drug,” “covered drug,” or “healthcare service” as necessary to authorize coverage under workers compensation and clarifies that it may be covered as a prescription drug under commercial insurance coverage (Pending).
- **Oklahoma**
 - HB 1124—Provides that a compensable injury does not include an accident caused by the use of marijuana without possession of a state-issued medical marijuana license, or testing positive within 24 hours of being injured or reporting an injury without possession of a state-issued medical marijuana license (Did not pass).

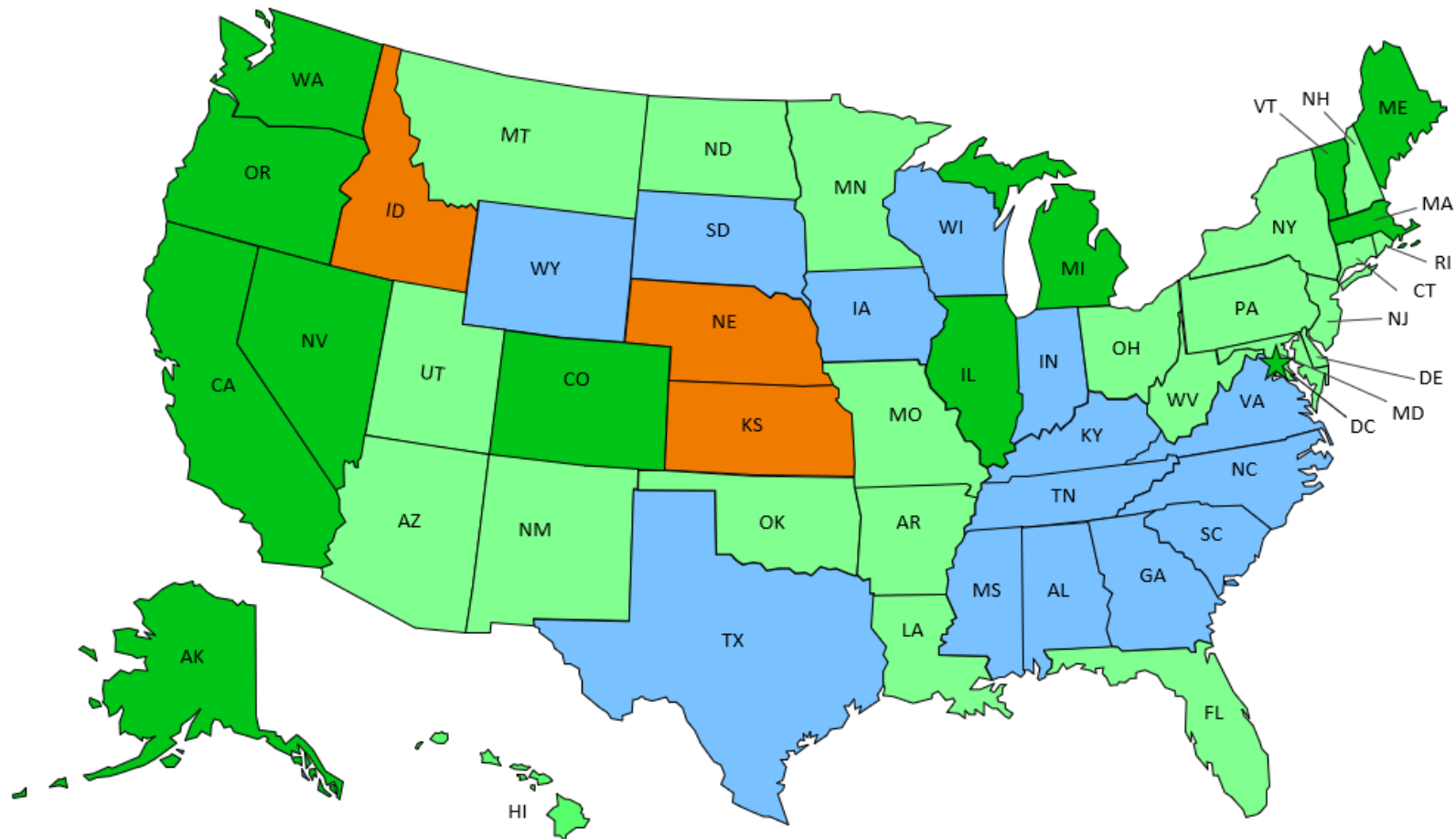




- SB 305—In part, prohibits an employer from penalizing an applicant or employee on the basis of a positive test for marijuana use unless that person is not a medical marijuana license holder, the person is under the influence while at the place of employment, or the position is safety-sensitive (Did not pass).
- Rhode Island
 - HB 5151 Substitute A—Provides that nothing in the state medical marijuana law shall be construed to require a workers compensation insurer, workers compensation group self-insurer, or employer self-insured for workers compensation to reimburse a person for costs associated with the medical use of marijuana. States that an employer may not refuse to employ, or otherwise penalize, a person solely for their status as a medical marijuana cardholder, with certain exceptions (Enacted).
- Utah
 - SB 161—Allows certain insurers to issue workers compensation insurance coverage to an employer located in the state that is a cannabis production establishment or a medical cannabis pharmacy (Enacted).
- Vermont
 - HB 14—Extends benefit payments in workers compensation insurance claims to the prescription of medical marijuana (Did not pass).



MARIJUANA LAWS AS OF JUNE 30, 2019



Recreational Use Legalized	Medical Marijuana Broad Legalization	CBD/Nonpsychoactive Legalized	Marijuana Illegal All Forms
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HOT TOPIC—PRESCRIPTION DRUGS

- Illinois
 - HB 2587—Requires a recipient of certain pain management medication to sign a written agreement with the prescribing physician agreeing to comply with the conditions of the prescription; prohibits additional prescriptions while the recipient is noncompliant; limits the applicability of the lack of pain management as a consideration in awarding benefits; provides for the disclosure of violations of the agreement upon request by the employer; requires a prescribing physician to file quarterly reports to obtain payment (Pending).
 - HB 2794—Amends the Workers' Compensation Act in relation to custom compound medications. Sets forth conditions for approval of payment; provides that charges shall be based upon the specific amount of each component drug and its original manufacturer's National Drug Code number and also upon specified criteria; provides that a provider may prescribe a one-time seven-day supply unless a prescription for more than seven days is preauthorized by the employer (Pending).
 - HB 2795—Provides that the Illinois Workers' Compensation Commission—upon consultation with the Workers' Compensation Medical Fee Advisory Board—shall promulgate an evidence-based drug formulary; requires prescriptions in workers compensation cases to be limited to the drugs on the formulary (Pending).
- Nebraska
 - LB 487—Requires the Nebraska Workers' Compensation Court to adopt an evidence-based drug formulary (Did not pass).
- New Jersey
 - A 1993—Restricts medical expense coverage for opioid drugs unless the prescribing healthcare professional follows certain guidelines (Pending).



■ New York

- A 2824/S 2054—In part, deems medical marijuana a “prescription drug,” “covered drug,” or “healthcare service” as necessary to authorize coverage under workers compensation and clarifies that it may be covered as a prescription drug under commercial insurance coverage (Pending).
- A 5075/S 2061—Creates a presumption that the death of an injured worker from an opioid overdose is compensable if that injured worker was prescribed opioids to treat a workplace injury (Pending).

■ Oklahoma

- HB 2632—Creates the Patient’s Right to Pharmacy Choice Act establishing uniform access to a pharmacy provider (Enacted).





HOT TOPIC—SINGLE PAYER HEALTHCARE

Two states passed legislation to study single payer healthcare systems:

- Colorado
 - HB 1176—Creates the healthcare cost analysis task force to analyze healthcare financing systems in order to give the General Assembly findings regarding the systems' costs of providing adequate healthcare to residents of the state.
- Vermont
 - HB 524—Requires the Agency of Human Services, in consultation with interested stakeholders, to explore the potential for establishing a regional, publicly financed, universal healthcare program in cooperation with other states, including identifying the opportunities and challenges that would be presented by partnering with other states to create such a program.

Twelve states referenced workers compensation or injured worker's medical benefits in proposed legislation:

Arkansas
California
Florida
Iowa
Maine
Maryland
Massachusetts
Minnesota
New Mexico
New York
Oregon
Rhode Island





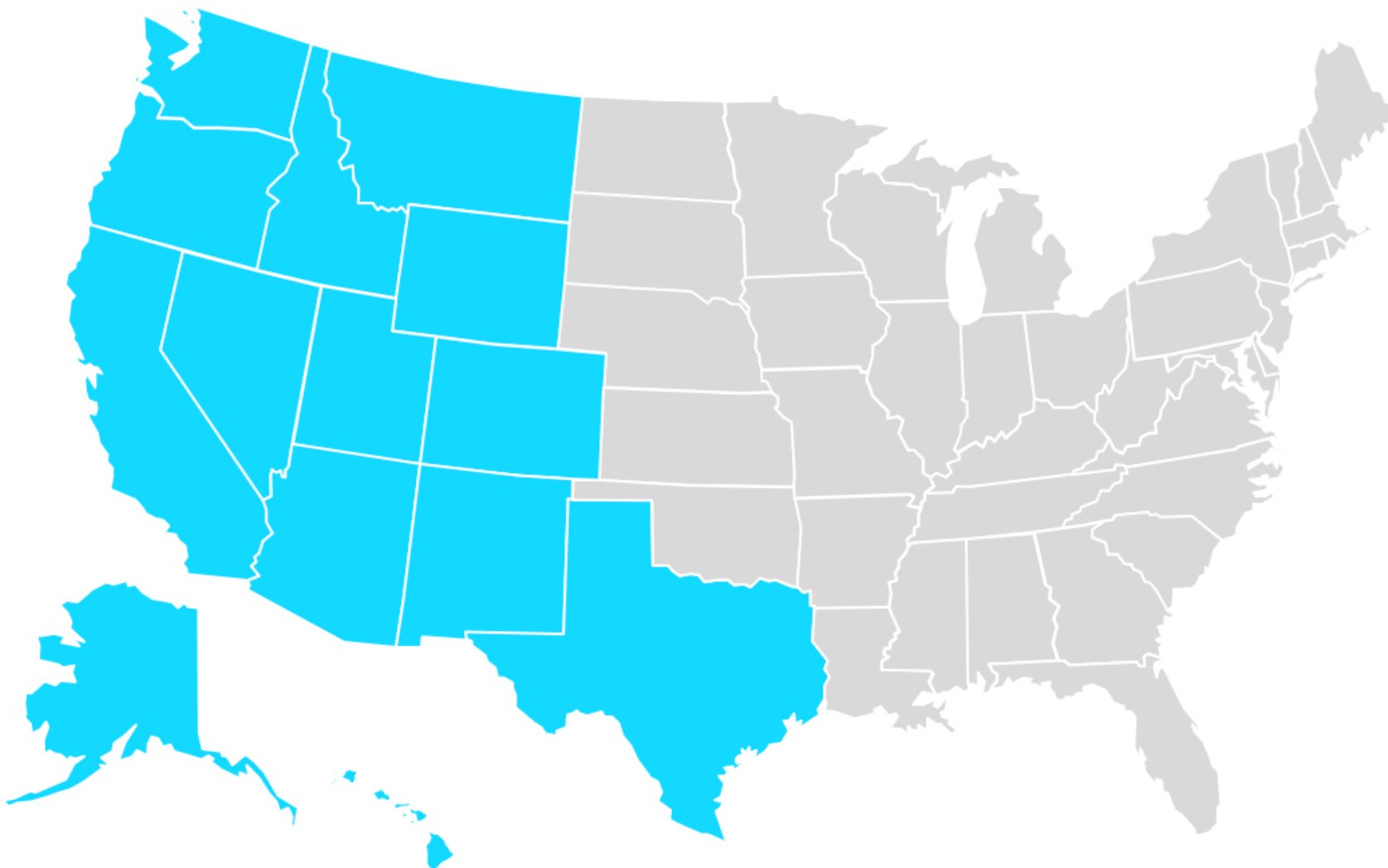
LAW-ONLY FILINGS IN 2019

- Georgia
 - SB 135—Increases the maximum indemnity benefits and exempts certain medical benefits from the 400-week cap for noncatastrophic injuries.
 - An overall average loss cost level increase of 3.5% was approved effective July 1, 2019.
- Nevada
 - AB 370—Applies an annual increase of 2.3% to the fatal benefits paid to any widow, widower, surviving child, or surviving dependent parent. The annual increase in benefits will first take effect on January 1, 2020, and on January 1 of each year thereafter.
 - An overall average loss cost level increase of 3.3% was approved effective September 1, 2019.
- Oklahoma
 - HB 2367—Omnibus reform bill, effective May 28, 2019, makes numerous changes to the Oklahoma workers compensation system.
 - An overall average loss cost level increase of 6.4% was approved effective August 1, 2019.





WESTERN ZONE





WESTERN ZONE

The Western Zone is comprised of the following states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

New Administrators

Alaska—Grey Mitchell, Director, Division of Workers' Compensation

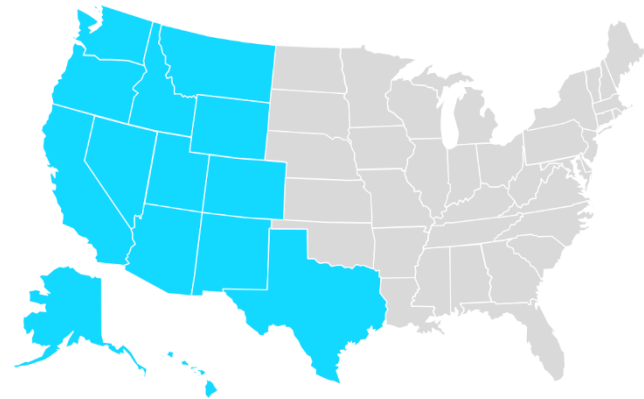
Arizona—Keith Schraad, Director, Department of Insurance

Colorado—Michael Conway, Insurance Commissioner

Hawaii—Colin Hayashida, Insurance Commissioner; Scott Murakami, Director, Department of Labor and Industrial Relations

Idaho—Jani Revier, Director, Idaho Department of Labor

New Mexico—Verily Jones, Acting Director, Workers Compensation Administration



Highlights From the Western Zone

Of the seven states that passed legislation addressing benefits for first responders with PTSD, five of them—Idaho, Nevada, New Mexico, Oregon, and Texas—were in the Western Zone. In addition, Utah passed legislation establishing a working group to study the compensability of mental stress claims from first responders. Montana, Nevada, Texas, and Washington also passed legislation addressing presumptions and compensability for first responders with certain cancers and other diseases.

Two states in the Western Zone passed marijuana-related legislation. Utah passed Senate Bill 161, that allows certain insurers to issue workers compensation coverage to a cannabis production establishment or a medical cannabis pharmacy in the state. Nevada passed Assembly Bill 132, that prohibits an employer from denying employment because a prospective employee tests positive for marijuana in a preemployment drug screening test.



Hawaii considered, but did not pass, legislation that would have required reimbursement for medical marijuana in workers compensation.

Idaho remains one of three states that have not enacted any laws legalizing marijuana in some form.

Recently Enacted Workers Compensation-Related Legislation in the Western Zone

■ Arizona

■ HB 2137—Excess Insurance Policies

The Special Fund is the successor in interest to all excess insurance policies assigned to the Fund due to a self-insured employer's failure to pay workers compensation benefits in compliance with the law; excess insurer payments shall be made directly to the Fund for all covered amounts.

■ Colorado

■ HB 1105—Nurse Practitioner Accreditation

Allows advanced practice nurses to obtain a level I accreditation in the Colorado workers compensation system.

■ Idaho

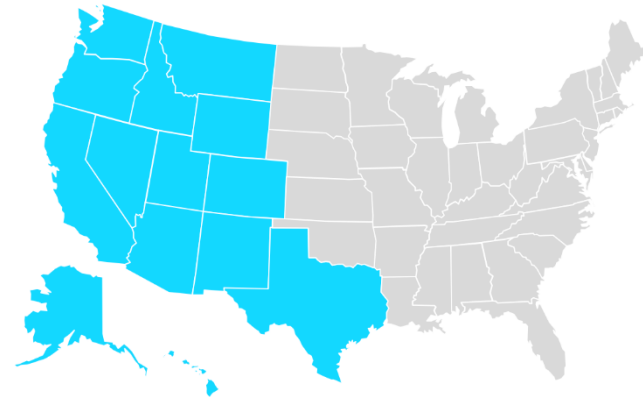
■ SB 1028—First Responders/PTSD

Provides that certain psychological injuries affecting first responders shall be compensable if certain conditions are met.

■ Montana

■ SB 160—Presumptive Occupational Disease for Firefighters

- Provides that several types of cancers are presumed to be related to a firefighter's employment. The presumption is rebuttable.
- Provides an opt-in choice for volunteer firefighting entities.
- Applies to presumptive occupational diseases diagnosed on or after July 1, 2019.





■ Nevada

■ AB 128—Vocational Rehabilitation

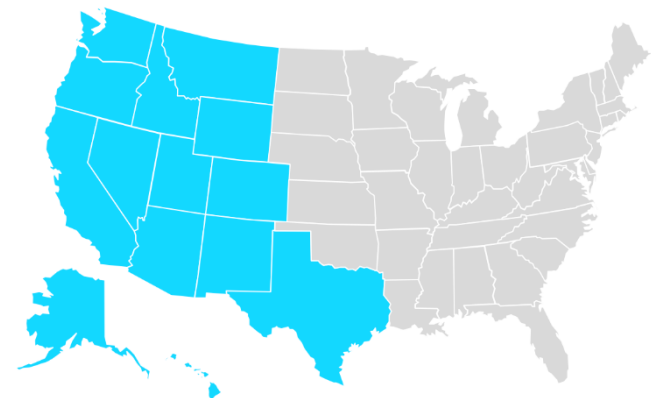
Revises provisions governing the length of a program of vocational rehabilitation and job placement assistance and increases the amount of lump-sum payments in lieu of vocational rehabilitation services.

■ AB 370—Death Benefits

Applies an annual increase in death benefits of 2.3% for any widow, widower, surviving child, or surviving dependent parent. The annual increase in benefits will first take effect on January 1, 2020, and on January 1 of each year thereafter.

■ AB 455—Notification

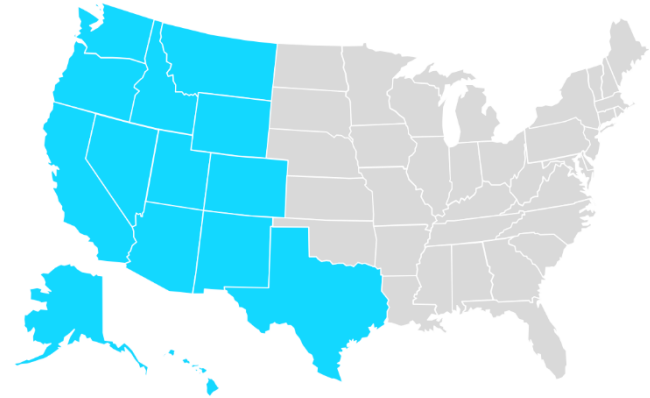
Provides that the Division of Industrial Relations and the administrator of the division are not prohibited from notifying an injured employee or the surviving spouse or dependent of an injured employee of certain benefits those persons may be entitled to outside of the workers compensation system if the notification is solely to inform the recipient of benefits that are available to the recipient; and the content of the notification is limited to information concerning services that are offered by nonprofit entities.



■ AB 492—Stress-Related Injuries/Average Monthly Wages

- ❑ Revises the circumstances when a first responder or an employee of the state or a local government is authorized to receive compensation under industrial insurance for certain stress-related claims.
- ❑ Requires an agency that employs a first responder or a volunteer first responder to provide certain educational training concerning mental health issues to the first responder.
- ❑ Exempts a claim for certain stress-related injuries suffered by a first responder or an employee of the state or any of its agencies or political subdivisions from certain prohibitions on compensation for an injury and temporary disability.
- ❑ Requires the administrator of the Division of Industrial Relations of the Department of Business and Industry to include concurrent wages of an injured employee in the calculation of average monthly wage under certain circumstances.

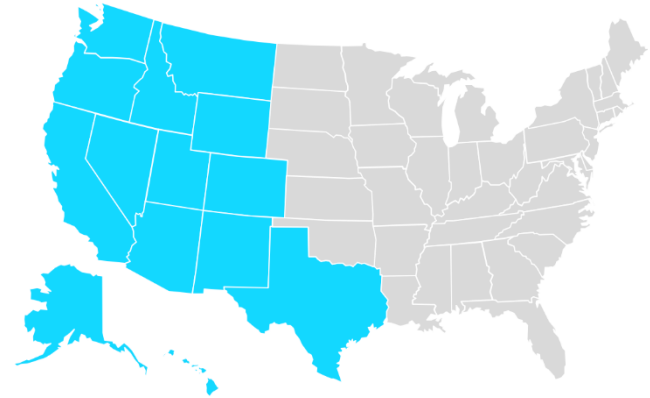
- **SB 215—Firefighters/Cancer**
Revises provisions governing compensation for a full-time firefighter, investigator of fires or arson, or instructor or officer who provides training concerning fire or hazardous materials or has been acting as a volunteer firefighter who develops cancer as an occupational disease.
- **SB 377—Cost of Living Adjustment**
Provides for a 2.3% annual COLA for permanent total disability for workers injured before January 1, 2004, instead of the current annual lump-sum payment.
- **SB 381—Choice of Provider**
 - Establishes the substantive right of an injured employee to choose a treating physician or chiropractor under the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act.
 - Revises provisions governing the panel of treating physicians and chiropractors established by the administrator of the Division of Industrial Relations of the Department of Business and Industry to require the inclusion of certain physicians and chiropractors.
 - Authorizes the administrator to select a rating physician or chiropractor for an injured employee upon request.
- **New Mexico**
 - **HB 324—PTSD as Firefighter Employment Condition**
Adds PTSD to the list of conditions that are presumed to be caused by a firefighter's employment.
- **Oregon**
 - **SB 507—First Responders/Stress-Related Disorders**
In part, for specified first responder and corrections related occupations who have been employed for at least five years or who experience a single traumatic event—death, disability, or impairment of health is presumed to be a compensable occupational disease following a diagnosis of PTSD or acute stress disorder from a psychiatrist or psychologist.





■ Texas

- HB 2143—First Responders/PTSD
Adds PTSD caused by one or more events occurring in the course and scope of the first responder's employment as a compensable injury.
- HB 2503—Death Benefit Eligibility for Certain Spouses of Certain Employees Killed in the Line of Duty
Makes a remarried eligible spouse of certain classes of workers eligible for death benefits for life under the Texas Workers' Compensation Act.
- SB 1336—Classification System/Rate Filings
Eliminates the Texas Department of Insurance's statutory obligation to develop workers compensation classification relativities.
- SB 2551—First Responders/Political Subdivisions Liability
 - Clarifies the types of cancers suffered by firefighters and emergency medical technicians to which the presumption of compensability will apply.
 - Confirms that political subdivisions that self-insure workers compensation are subject to sanctions, administrative penalties, attorneys fees, and other remedies authorized by Chapter 412.



■ Utah

- HB 232—State National Guard Coverage
Provides that members of the Utah National Guard are covered under workers compensation if injured or disabled while on state active duty.
- SB 161—Cannabis Coverage
Allows certain insurers to issue workers compensation insurance coverage to an employer located in the state that is a cannabis production establishment or a medical cannabis pharmacy.

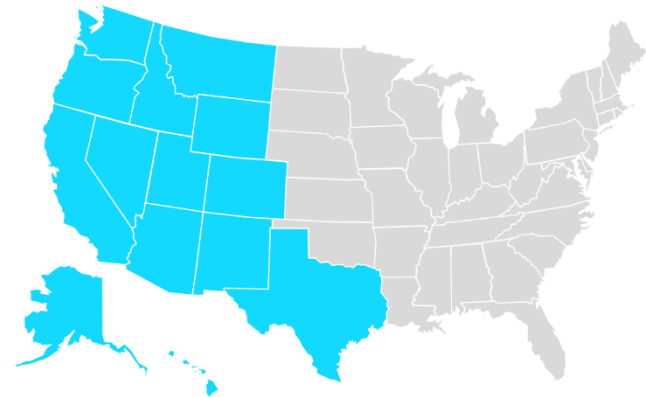


- Washington
 - HB 1913—Occupational Disease Presumption

Makes the occupational disease presumptions for firefighters applicable to certain emergency medical technicians and public employee fire investigators and adds additional cancers to the cancer occupational disease presumption. Creates an occupational disease presumption for heart problems and infectious diseases for law enforcement officers. Requires the director of the Department of Labor and Industries to create an advisory committee on occupational disease presumptions, made up of specified scientists.

Workers Compensation Judicial Decisions of Interest

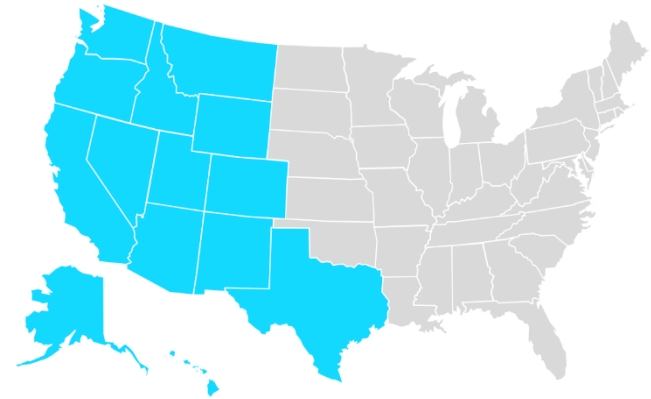
- Oregon—Compensable Medical Services
 - *Matter of Compensation of Garcia-Solis v. Farmers Insurance Co.* (Oregon Supreme Court, May 2019): Held that the term “injury”—as used in the first and second sentences of section 656.245(1)(a) of the Workers Compensation Statutes—means the workplace accident that created the need for medical treatment, as opposed to an accepted condition. The court reversed the appellate court’s decision upholding the 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.
- Texas—Trial Court Jurisdiction
 - *Texas Mutual Insurance Co. v. Chicas* (Texas Supreme Court, April 2019): Found that judicial appeals from decisions by the Division of Workers Compensation appeals panel, which are filed with the trial court past the 45-day statutory filing deadline, do not automatically divest the trial courts of jurisdiction. This decision clarified how existing precedent applies in workers



compensation appeals and overruled conflicting appellate decisions which held that the failure to meet the 45-day deadline divests trial courts of jurisdiction. The case was remanded to the trial court for further proceedings.

■ Washington—State Compensability Presumptions for Federal Workers

- *United States of America v. State of Washington* (Federal District Court for the Eastern District of Washington, June 2019): Upheld the constitutionality of a Washington workers compensation statute that creates a presumption of compensability for certain types of illnesses suffered by federal contractors working at the Hanford federal nuclear cleanup site. The court rejected the federal government’s challenge that the state law violated the Supremacy Clause of the US Constitution.

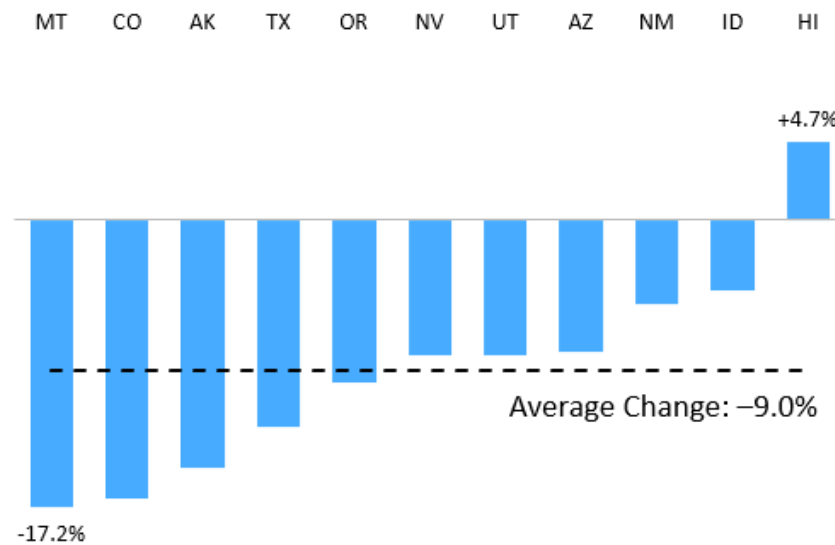




WESTERN ZONE

Latest Approved Loss Cost/Rate Changes

NCCI States
Based on the 2018–2019 Rate Filing Season*



*Refer to the endnotes

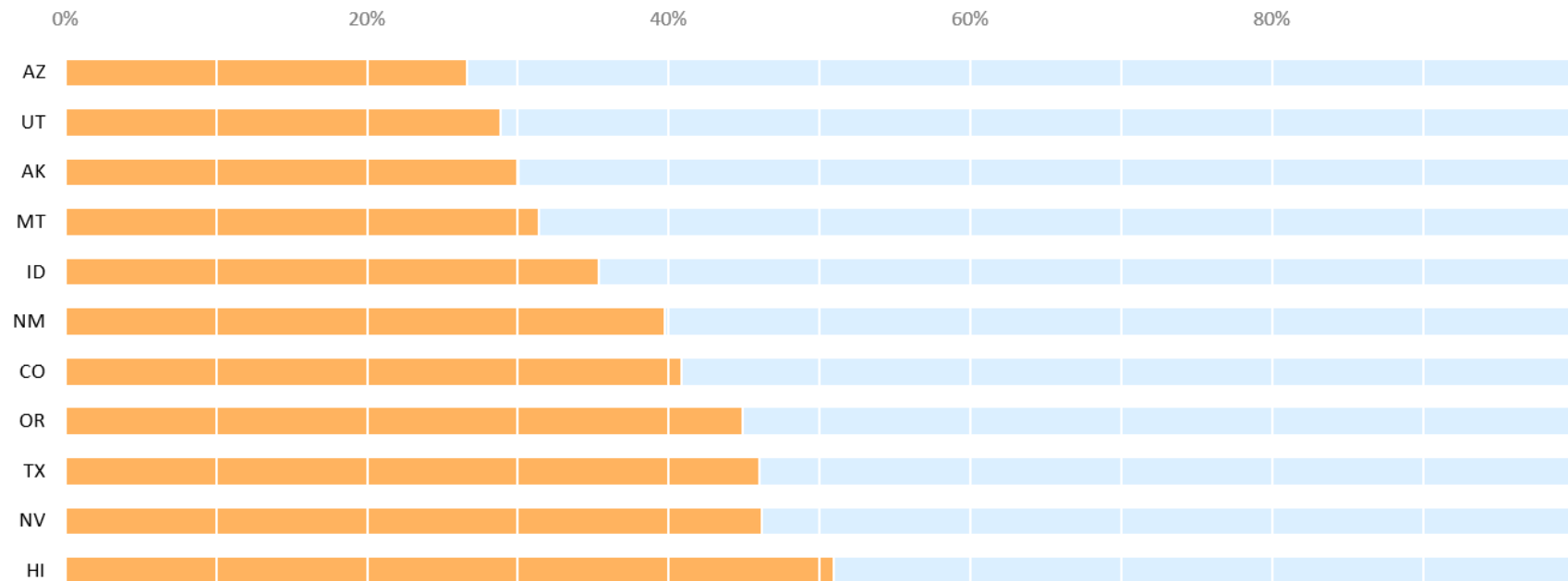


WESTERN ZONE

Percentage of Total Benefit Costs

Indemnity vs Medical

NCCI States
Based on the 2018–2019 Rate Filing Season*

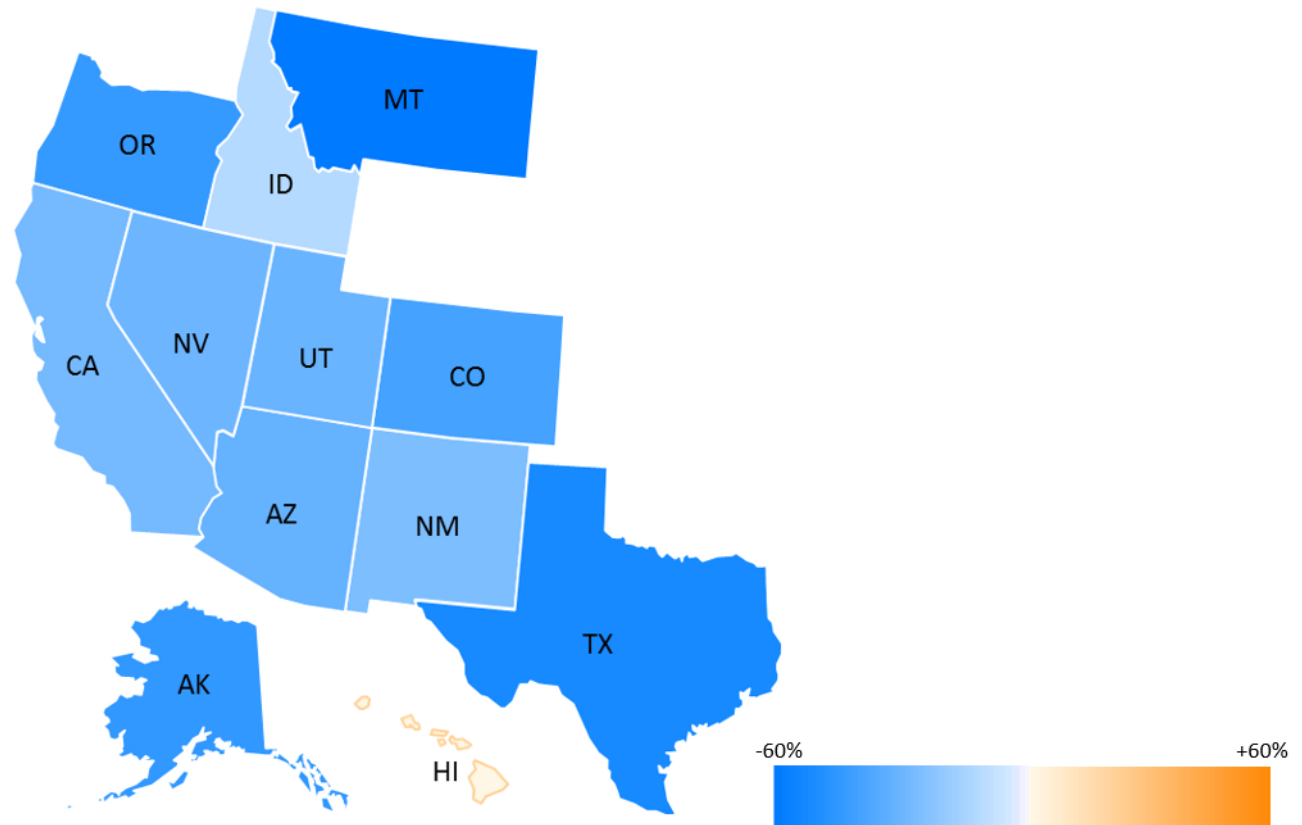


*Refer to the endnotes



WESTERN ZONE

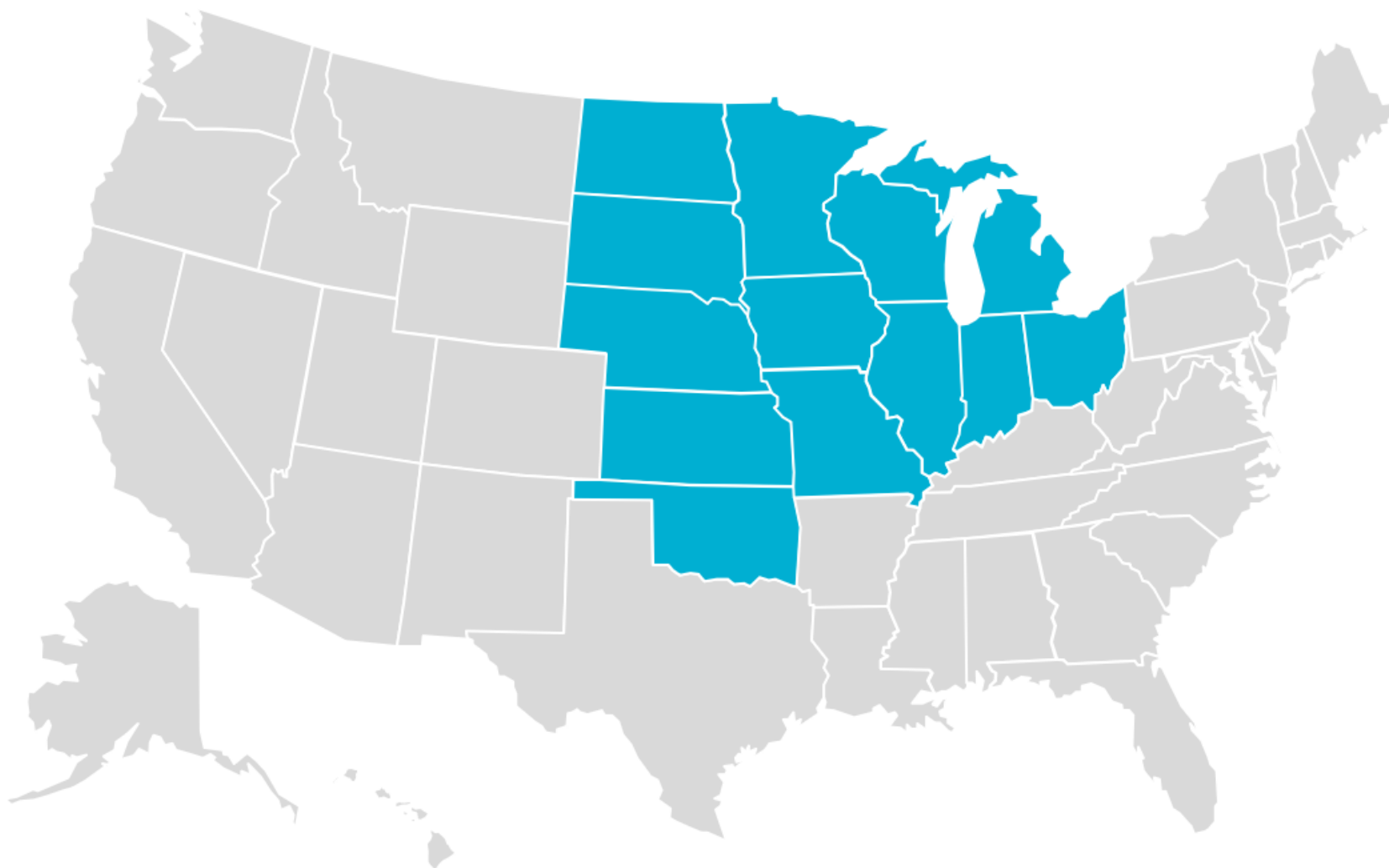
Cumulative Premium Level Change Since 2009*



*Refer to the endnotes



MIDWESTERN ZONE





MIDWESTERN ZONE

The Midwestern Zone is comprised of the following states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin.

New Administrators

Illinois—Robert Muriel, Director, Department of Insurance; Michael Kleinik, Acting Director, Department of Labor

Kansas—Vicki Schmidt, Insurance Commissioner

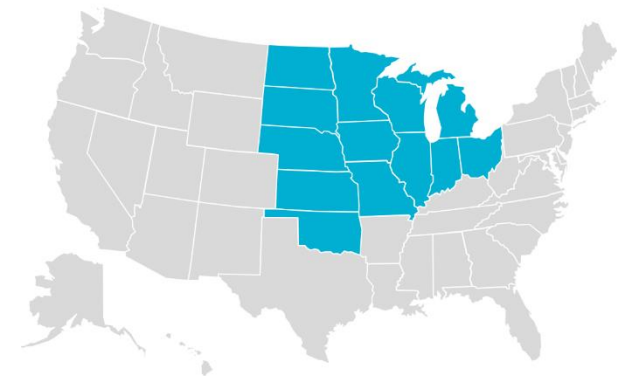
Oklahoma—Glen Mulready, Insurance Commissioner; Leslie Osborn, State Labor Commissioner

Highlights From the Midwestern Zone

One state in the Midwestern Zone—Oklahoma—passed comprehensive workers compensation reform legislation (House Bill 2367). Some of the key elements in the bill include increasing the maximum weekly benefit for PPD and TTD; increasing the number of weeks of PPD benefits for nonscheduled injuries; increasing the maximum duration of TTD benefits; making several changes to the Multiple Injury Trust Fund; and broadening compensability for workplace injuries in several ways. The governor signed House Bill 2367 into law on May 28, 2019.

As of June 30, Illinois was the only state to legalize marijuana in some form this year by passing House Bill 1438, which legalizes the recreational use of marijuana. The bill also makes Illinois the first state to legalize both the sale and possession of marijuana via legislation. (Last year Vermont was the first state to legalize recreational marijuana via legislation, but that bill did not legalize sales.)

Illinois also passed Senate Bill 1596, which allows claimants, whose workers compensation claims are barred by the statute of repose, to now bring civil suits against their employers. Senate Bill 1596 allows employees, their heirs, and others with legal standing to bring a civil suit against the employer for work-related injuries or death, including from occupational diseases, when the statute of repose would otherwise preclude recovery of workers compensation benefits. The bill was signed into law on May 17, 2019 and went into effect the same day.



Recently Enacted Workers Compensation-Related Legislation in the Midwestern Zone

■ Illinois

- SB 1596—Permitted Civil Actions

■ Indiana

- HB 1182—Coverage of Volunteer Firefighters
Provides that an employee who leaves work to serve as a volunteer firefighter or member of a volunteer emergency medical services association (volunteer member) is considered an employee of the firefighting unit while in the performance of duties as a volunteer firefighter or volunteer member.

■ Iowa

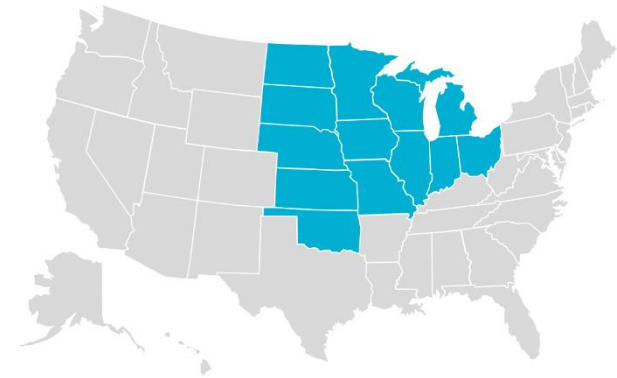
- HF 327—Franchisor-Franchisee Relationship
- SF 507—Definition of Personal Injuries
Provides that personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable.

■ North Dakota

- HB 1072—Cease and Desist Orders
- HB 1073—Dispute Resolution/TTD and PTD Benefits

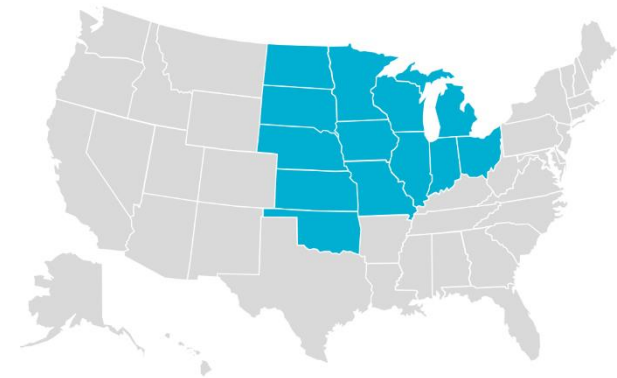
■ Nebraska

- LB 418—Debt Collection
Prohibits debt collection while a case is pending in the Nebraska Workers' Compensation Court.



■ Oklahoma

- HB 2367—Omnibus Workers Compensation Reform
- HB 2632—Choice of Pharmacy
Creates the Patient’s Right to Pharmacy Choice Act establishing uniform access to a pharmacy provider.
- SB 274—Self-Insurance Guaranty Fund
Reduces the balance of the Self-insurance Guaranty Fund at which the Workers’ Compensation Commission may levy an assessment against each private self-insurer and group self-insurance association from below \$2 million to below \$750,000. Increases the maximum assessment rate from 1% to 2% of actual paid losses of the preceding calendar year.



■ South Dakota

- SB 36—State Workers’ Compensation Advisory Council
Revises the membership of the State Workers’ Compensation Advisory Council.

Workers Compensation Judicial Decisions of Interest

■ Kansas—Idiopathic Causes of Injury

- *Estate of Graber v. Dillon Companies* (Kansas Supreme Court, April 2019): Ruled that a worker’s injuries from a fall down a workplace stairway—where the cause of the fall was unknown— did not arise from an “idiopathic cause” to preclude compensability under workers compensation. In an issue of first impression, the court clarified that noncompensable injuries from “idiopathic causes” are medical conditions or medical events of unknown origin that are peculiar to an injured individual, as opposed to a broader definition that would exclude injuries from *all* unknown causes. In this case, the court found that, absent evidence to the contrary, the worker’s injury could not be excluded as idiopathic solely based on the fact that the cause of the fall was unknown.



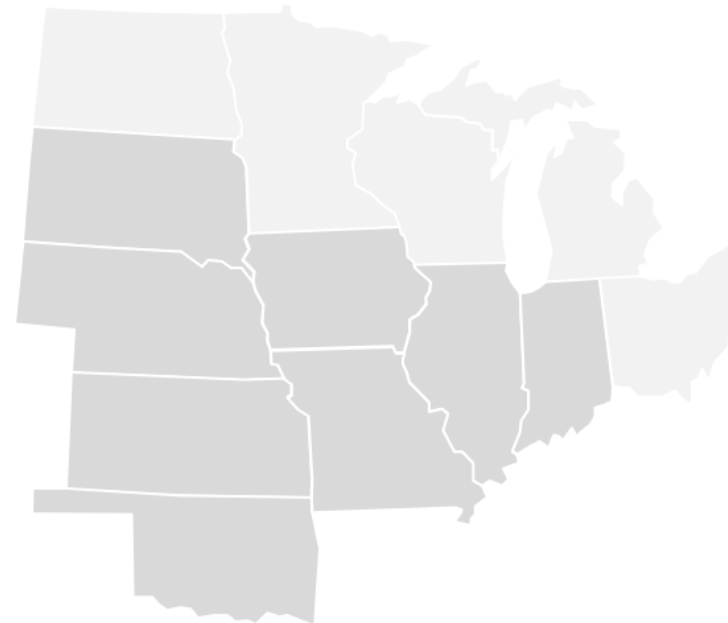
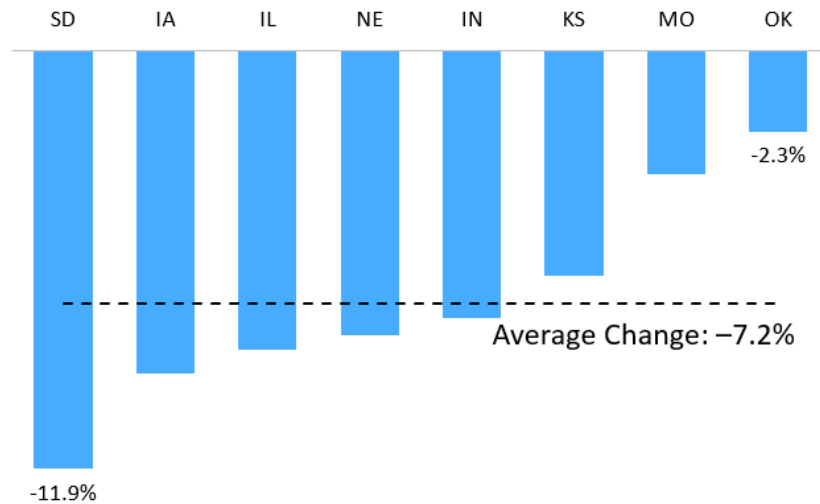
- Missouri—Second Injury Fund
 - *Cosby v. Treasurer of Missouri* (Missouri Supreme Court, June 2019): Found that section 287.220.2 of the workers compensation law applies to all PPD claims against the Fund, when both the initial and subsequent injuries occurred before January 1, 2014, and section 287.220.3 applies to PPD claims against the Fund where at least one injury occurred after January 1, 2014. Accordingly, the court found section 287.200.3 precluded a PPD claim against the Fund brought by a worker who suffered a work-related knee injury in 2014, but had other preexisting work-related injuries predating January 1, 2014.
- Missouri—Mesothelioma Benefits
 - *Hegger v. Valley Farm Dairy Co.* (Missouri Court of Appeals for the Eastern District, May 2019): Ruled that a workers 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. 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 Workers' Compensation Act and that, although the statute did not exist when the insurer wrote the policy, compensable benefit amounts are determined by the statutory benefit levels in effect on the date of the injury, not the time that the policy is written.
- Oklahoma—Intentional Tort
 - *Wells v. Oklahoma Roofing & Sheet Metal* (Supreme Court of Oklahoma, June 2019): Ruled that injuries that are *substantially certain* to occur are considered intentional torts by an employer and are not subject to the exclusive remedy protection of Oklahoma's Workers' Compensation Act. The court determined that "specific intent" and "substantial certainty" are both nomenclatures of an intentional tort.
- Oklahoma—Marijuana and Workers Compensation
 - *Rose v. Berry Plastics Corp.* (Oklahoma Court of Appeals, November 2018): Ruled that the presence of THC in an employee's blood after a workplace accident does not automatically mean that the employee was intoxicated so as to deny workers compensation benefits.



MIDWESTERN ZONE

Latest Approved Loss Cost/Rate Changes

NCCI States
Based on the 2018–2019 Rate Filing Season*



*Refer to the endnotes

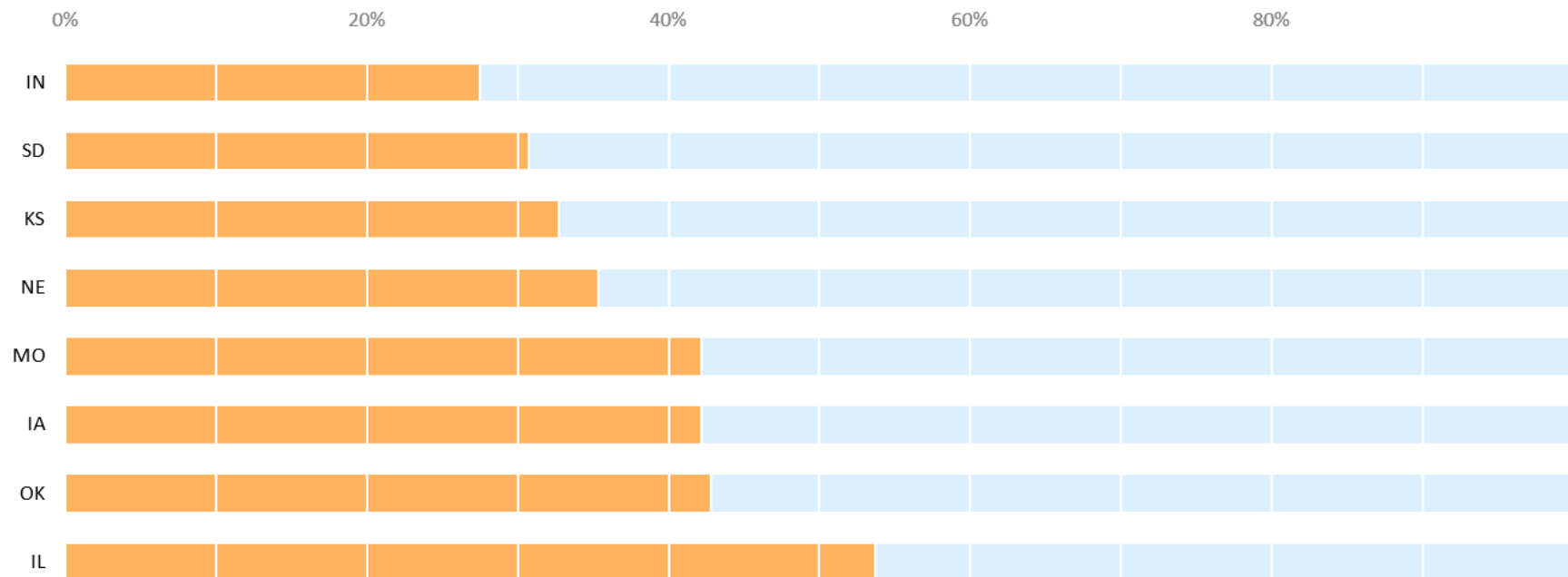


MIDWESTERN ZONE

Percentage of Total Benefit Costs

Indemnity vs Medical

NCCI States
Based on the 2018–2019 Rate Filing Season*

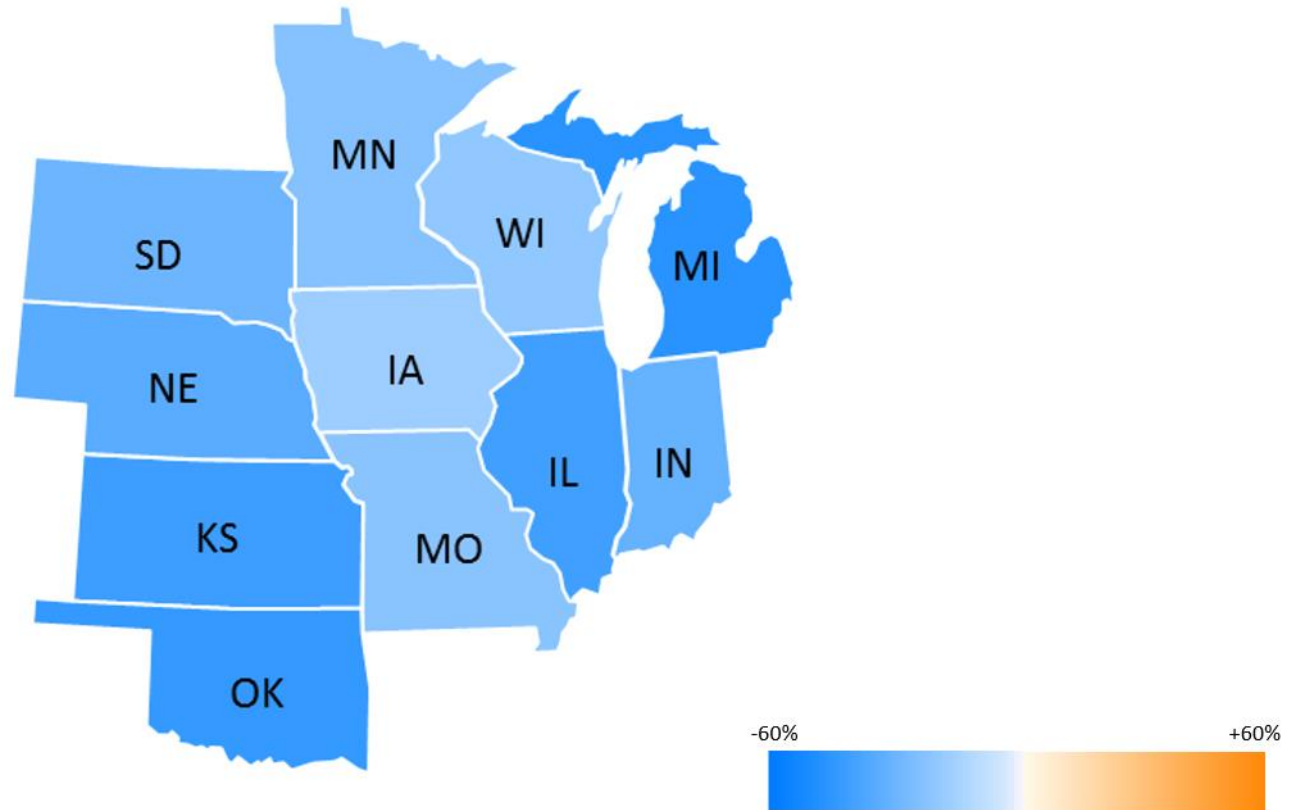


*Refer to the endnotes



MIDWESTERN ZONE

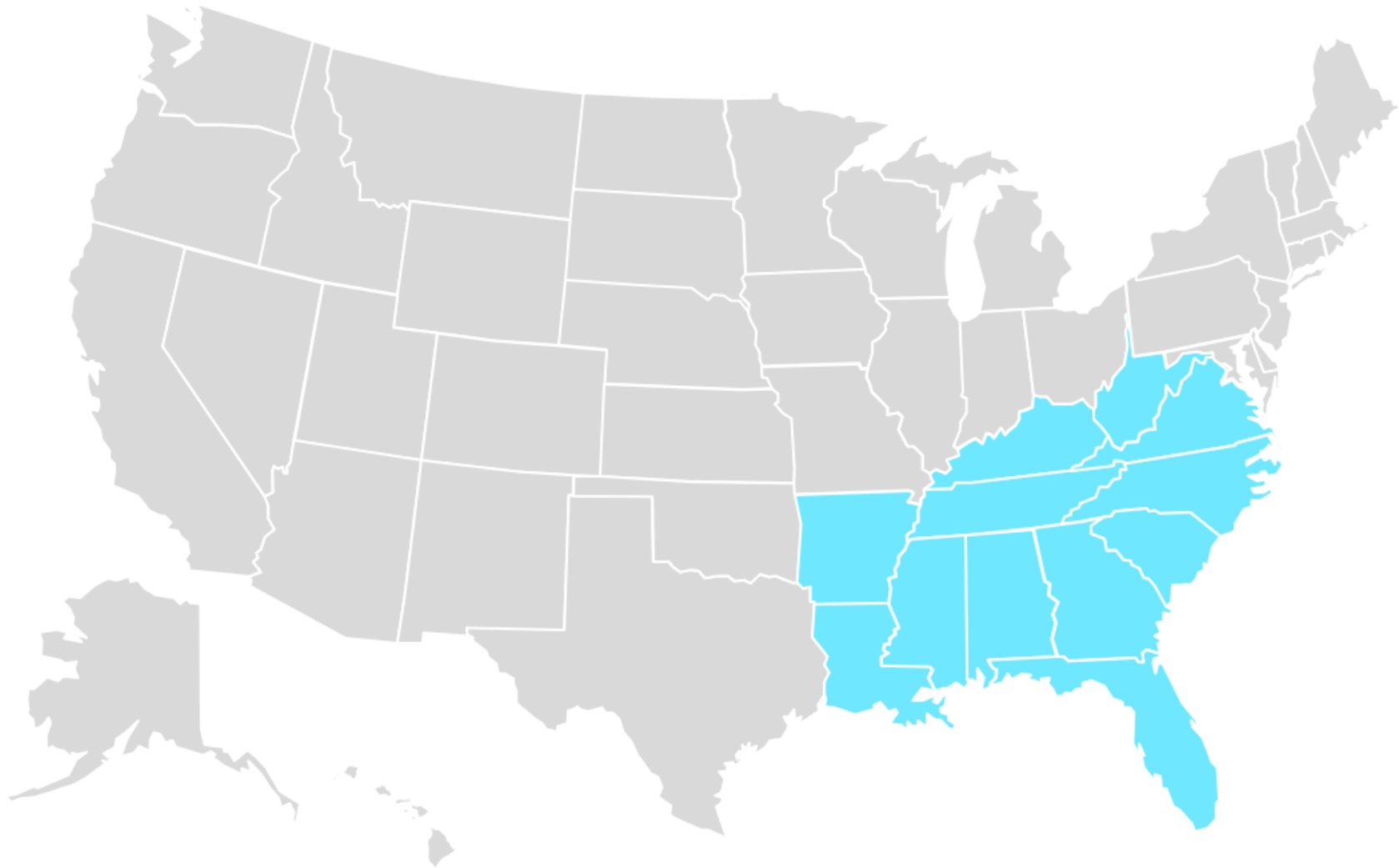
Cumulative Premium Level Change Since 2009*



*Refer to the endnotes



SOUTHEASTERN ZONE





SOUTHEASTERN ZONE

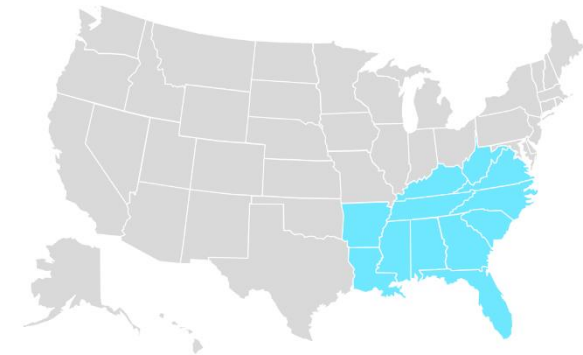
The Southeastern Zone is comprised of the following states: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

New Administrators

Alabama—Steve Garrett, Director, Department of Labor—Workers’ Compensation Division

Georgia—John King, Insurance Commissioner

West Virginia—James Dodrill, Insurance Commissioner



Highlights From the Southeastern Zone

Louisiana passed legislation addressing benefits for first responders with PTSD. Numerous other states in the Southeastern Zone, including Alabama, Florida, Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, considered legislation that would provide workers compensation coverage for first responders with PTSD.

Alabama, Florida, Mississippi, and Virginia passed legislation addressing presumptions and compensability for cancer and other diseases for first responders.

This year Arkansas enacted legislation that codified a 20-factor test from an IRS ruling to determine whether workers are employees or independent contractors. The bill states that the test is applicable to the state workers compensation law. West Virginia considered, but did not pass, legislation impacting independent contractor status.

Recently Enacted Workers Compensation-Related Legislation in the Southeastern Zone

■ Alabama

■ HB 187—Law Enforcement/Firefighter Death Benefits

Provides retroactive effect of payment of benefits for the surviving spouse and dependents of law enforcement officers or firefighters who die on or after January 1, 2018, as a result of injuries received while engaged in performing their duties.

■ Arkansas

■ HB 1850—Empower Independent Contractors Act

Codifies a 20-factor test from an IRS ruling to determine whether workers are employees or independent contractors.

■ Florida

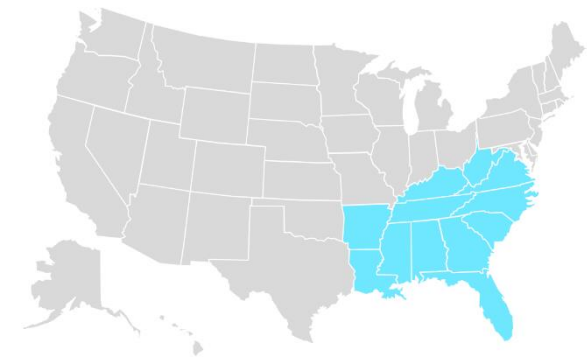
■ SB 426—Firefighters/Cancer

Makes firefighters who are diagnosed with certain cancers eligible to receive certain disability or death benefits. Specifically, in lieu of pursuing workers compensation coverage, a firefighter is entitled to cancer treatment and a one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.

■ Georgia

■ SB 135—Medical Benefit Duration, Indemnity, and Survivor Benefits

Provides that certain care, treatment, services, and items prescribed by an authorized physician for noncatastrophic injuries will not be subject to the 400-week maximum period cap. Increases the compensation benefits for total disability and temporary partial disability. Increases the total compensation payable to a surviving spouse as a sole dependent at the time of death.





■ Kentucky

■ HB 151—Insurance Fraud

Establishes criminal penalties resulting from a conviction of insurance fraud. Requires certain reporting of suspected insurance fraud to the insurance department.

■ Louisiana

■ HB 285—Reserve Officer and Deputy Medical Benefits

Provides medical benefits for injured reserve police officers and deputies under certain circumstances.

■ HB 288—Large Deductible Policies/Collateral

Provides for the right of the receiver or a guaranty association to pursue collateral.

■ SB 107—Public Employees/PTSD

Adds PTSD to the list of injuries which are compensable for certain injured public employees.

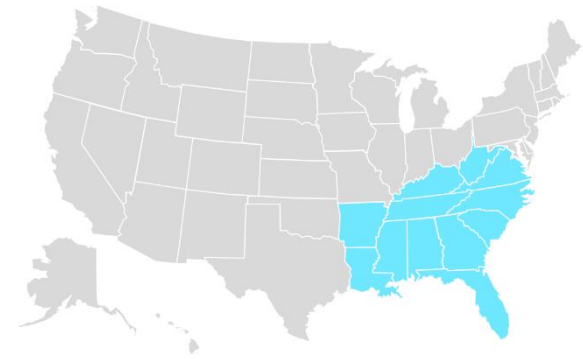
■ Mississippi

■ SB 2835—First Responders Health and Safety Act

Provides that when a first responder who has completed a certain number of years of service is unable to perform regular duties by reason of cancer, the affected first responder or beneficiaries will be entitled to all rights and benefits as granted by this act.

■ SB 2864—Insurance Guaranty Association

Provides that a covered claim under the Mississippi Insurance Guaranty Association law shall not include any claim that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions regarding the insured's net worth. Provides that a covered claim shall not include a claim filed after the final date set by the court for filing claims against the liquidator or receiver of an insolvent insurer.



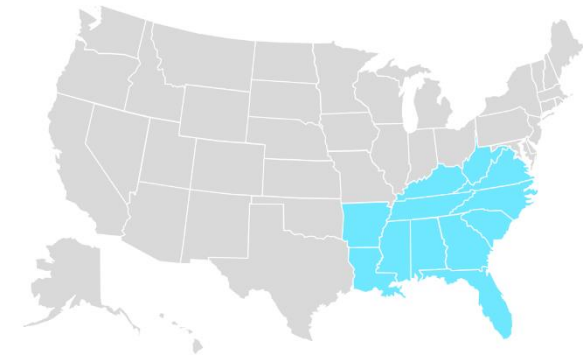


■ Virginia

- HB 1804/SB 1030—Cancer/Occupational Disease Presumption
Adds cancers of the colon, brain, or testes to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act for firefighters and certain employees.
- HB 2022—Filing a Claim/Statute of Limitations

■ West Virginia

- SB 531—Hearing Loss Claims/Compromise and Settlement
Provides that occupational hearing loss and hearing impairment claims are not nonorthopedic occupational disease claims for the purpose of the requirement that a claimant be represented by counsel in a settlement for medical benefits.



Workers Compensation Judicial Decisions of Interest

■ Kentucky—Constitutional Challenge

- *Teco/Perry County Coal v. Feltner* (Supreme Court of Kentucky, June 2019): Reversed a Court of Appeals decision declaring unconstitutional a Kentucky workers compensation statute 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 *AMA Guides*. The court found that there was a rational basis for treating the hearing loss claimant differently from other types of claimants and upheld the statute as constitutional.

■ Louisiana—Exclusive Remedy

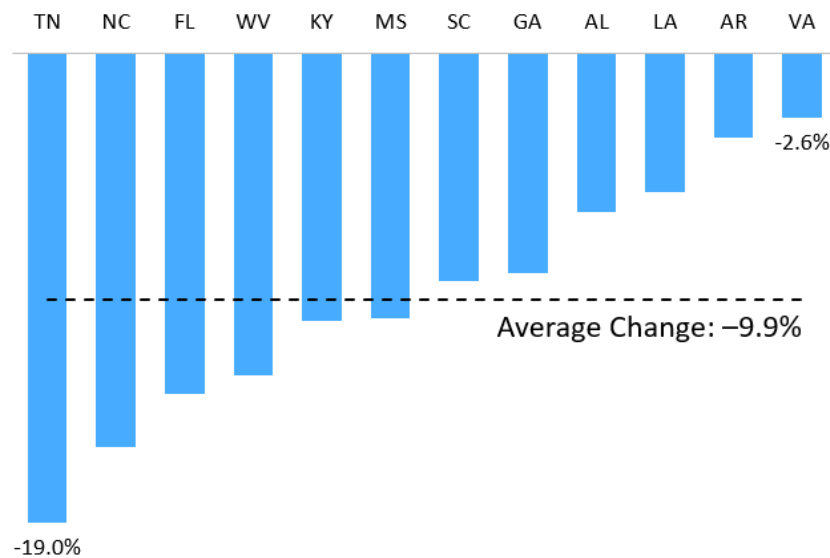
- *Griggs v. Bounce N' Around Inflatables, L.L.C.* (Louisiana Supreme Court, January 2019): Held that minors who are injured while illegally employed or engaged in illegal tasks during the employment are not exempt from the exclusive remedy provision of workers compensation and cannot sue in tort.



SOUTHEASTERN ZONE

Latest Approved Loss Cost/Rate Changes

NCCI States
Based on the 2018–2019 Rate Filing Season*



*Refer to the endnotes

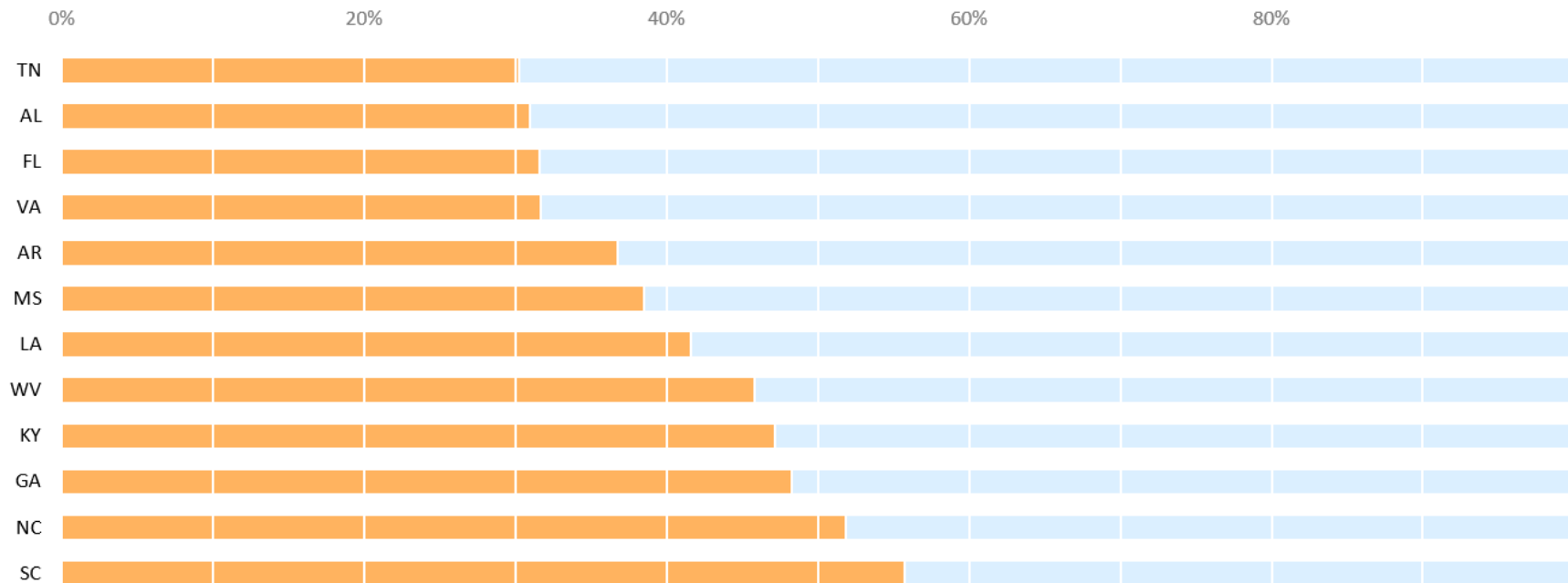


SOUTHEASTERN ZONE

Percentage of Total Benefit Costs

Indemnity vs Medical

NCCI States
Based on the 2018–2019 Rate Filing Season*

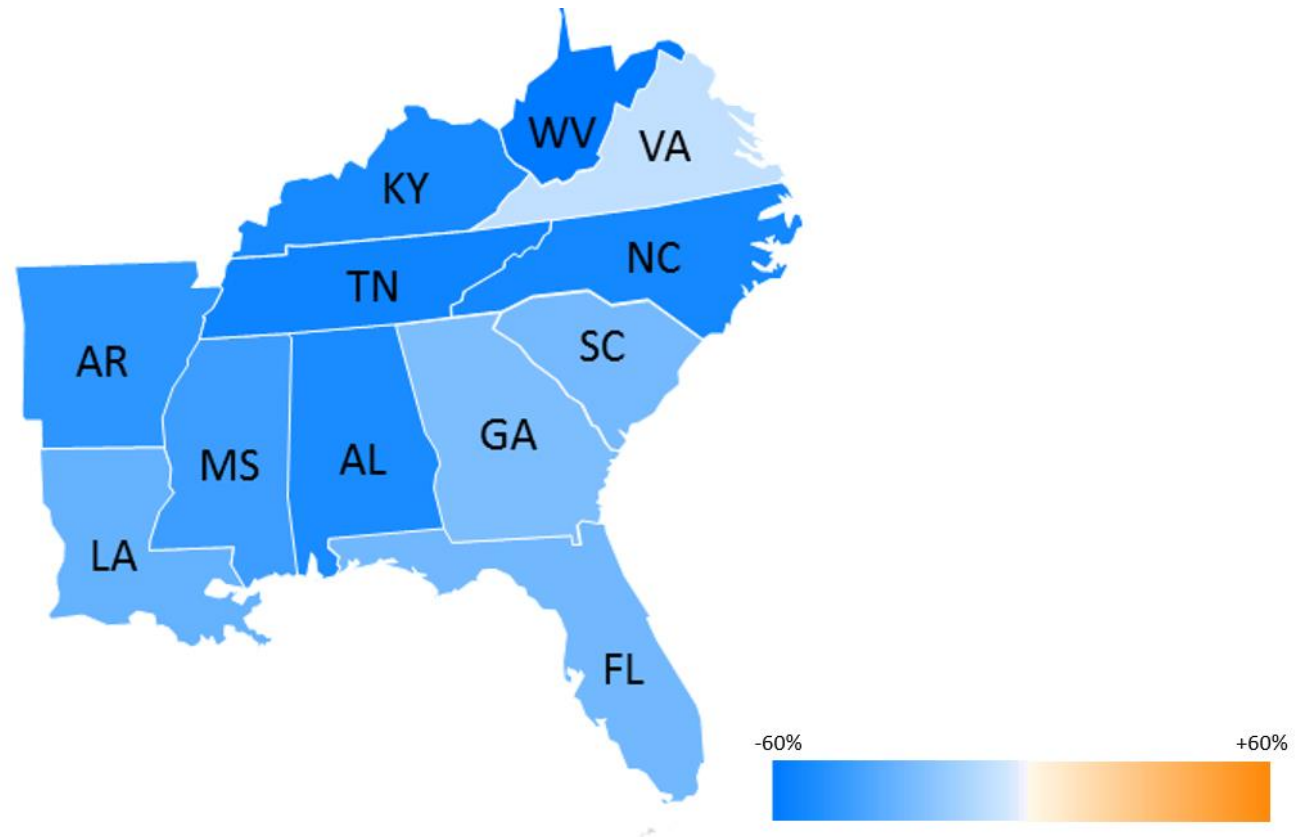


*Refer to the endnotes



SOUTHEASTERN ZONE

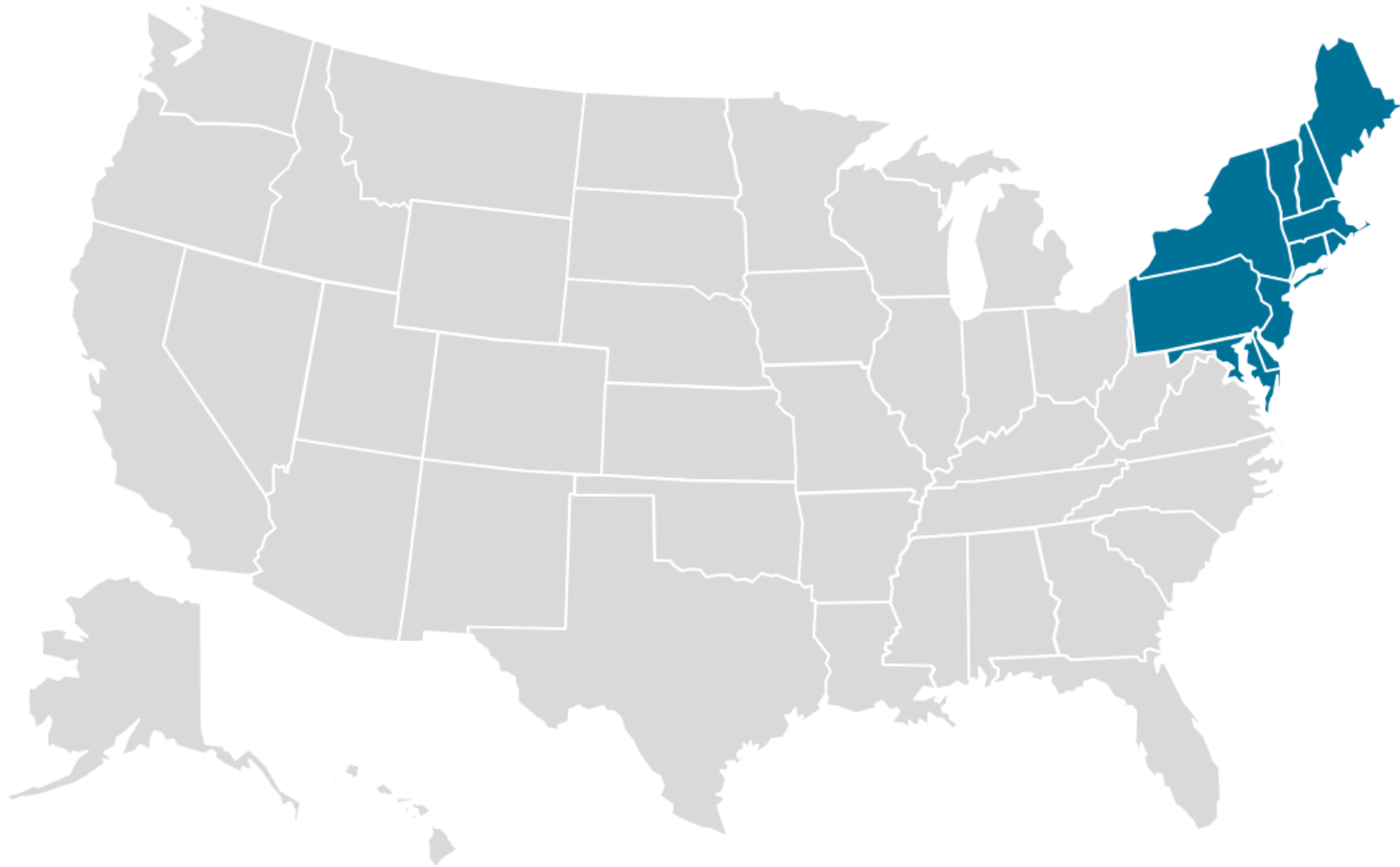
Cumulative Premium Level Change Since 2009*



*Refer to the endnotes



NORTHEASTERN ZONE





NORTHEASTERN ZONE

The Northeastern Zone is comprised of the following states: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.



New Administrators

Connecticut—Andrew Mais, Insurance Commissioner

Maine—John Rohde, Executive Director, Workers Compensation Board

Maryland—James Rzepkowski, Acting Secretary, Department of Labor

Highlights From the Northeastern Zone

This year, Maine enacted an omnibus workers compensation bill (LD 756), An Act to Improve the Maine Workers' Compensation Act of 1992. Some of the key elements in the bill include expanding the amount of fringe benefits or other benefit used in the average weekly wage calculation, increasing the maximum weekly benefit from 100% to 125% of the state average weekly wage, establishing a COLA for certain benefits, increasing the nonlifetime duration from 520 to 624 weeks and removing the objective thresholds for extending benefits, and establishing parental benefits for fatal no-dependency cases. The governor signed LD 756 into law on June 17.

Two states in the Northeastern Zone—Connecticut and New Hampshire—passed legislation allowing first responders to receive certain workers compensation benefits for PTSD. Several other states in the Northeastern Zone (Maine, Massachusetts, New York, and Pennsylvania) considered, but did not pass, similar legislation.

Marijuana continued to be a hot topic in the Northeastern Zone this year. Several states considered marijuana-related legislation in 2019. Maine, Maryland, New Jersey, New York, and Vermont considered legislation to authorize the reimbursement of medical marijuana in workers compensation. As of June 30, the bills in New Jersey and New York were still pending. Legislation in the other states did not advance before the legislative sessions adjourned.



Rhode Island passed legislation providing that nothing in the state medical marijuana law will be construed to require a workers compensation insurer, workers compensation group self-insurer, or self-insured employer to reimburse for costs associated with the medical use of marijuana.

There were also court decisions in the Northeastern Zone regarding marijuana-related issues in workers compensation. Most notably, the New Hampshire Supreme Court ruled, in March 2019, that the state medical marijuana law does not prohibit reimbursement under workers compensation; however, the court did not rule that a worker is actually entitled to reimbursement.



Recently Enacted Workers Compensation-Related Legislation in the Northeastern Zone

- Connecticut
 - SB 164—First Responders/Mental Injuries
Allows police officers, parole officers, and firefighters to receive certain workers compensation benefits for PTSD caused by certain “qualifying events.”
- Maine
 - LD 756—Average Weekly Wage/Prompt Pay/COLA/Death Benefits/Attorneys Fees
- Maryland
 - HB 595—Medical presumptions
Establishes additional occupational disease presumptions for specified public safety employees (generally firefighters) who contract bladder cancer or kidney or renal cell cancer that is caused by contact with a toxic substance encountered in the line of duty to encompass individuals with at least 10 years of cumulative service within the state and the cancer or leukemia has resulted in partial or total disability or death.
 - HB 604/SB 646—First Responder Presumptions
Alters the circumstances under which certain firefighters, firefighting instructors, rescue squad members, advanced life



support unit members, and sworn members of the Office of the State Fire Marshal are presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under workers compensation law.

- New Hampshire
 - HB 285—Filing and Approval of Rates and Rating Plans
Declares that when approved by the insurance commissioner, workers compensation rates are open to public inspection.
 - HB 342—Insurance Examinations
Clarifies the disclosure of reports and other information related to workers compensation audits to the department of labor.
 - SB 59—First Responders/Mental Injuries
Adds PTSD and acute stress disorder to the definition of “injury” for purposes of workers compensation, if an employee meets the definition of an “emergency response/public safety worker.”

Workers Compensation Judicial Decisions of Interest

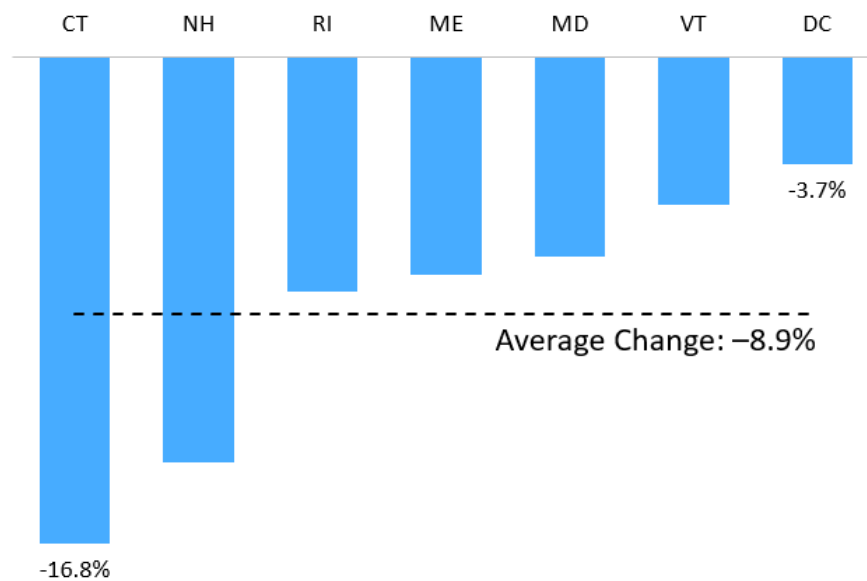
- Massachusetts—Marijuana and Workers Compensation
 - *Wright v. Pioneer Valley* (Massachusetts Department of Industrial Accidents, February 2019): Found that because the state’s medical marijuana law conflicts with the federal Controlled Substances Act, a workers compensation insurer cannot be compelled to reimburse an employee for medical marijuana workers compensation treatment.
- New Hampshire—Marijuana and Workers Compensation
 - *Appeal of Andrew Panaggio* (New Hampshire Supreme Court, March 2019): Held that the state Compensation Appeals Board (Board) erred when it determined that a workers compensation insurance carrier is prohibited by state and federal law from reimbursing an injured worker for the cost of medical marijuana treatment. The court found that the state’s medical marijuana law does not prohibit reimbursement under workers compensation. However, the court did not rule that a workers compensation carrier is required to reimburse. The case was remanded to the Board to provide further legal support as to its determination that federal law would be violated if the insurance carrier is ordered to reimburse for the payment of medical marijuana.



NORTHEASTERN ZONE

Latest Approved Loss Cost/Rate Changes

NCCI States
Based on the 2018–2019 Rate Filing Season*



*Refer to the endnotes

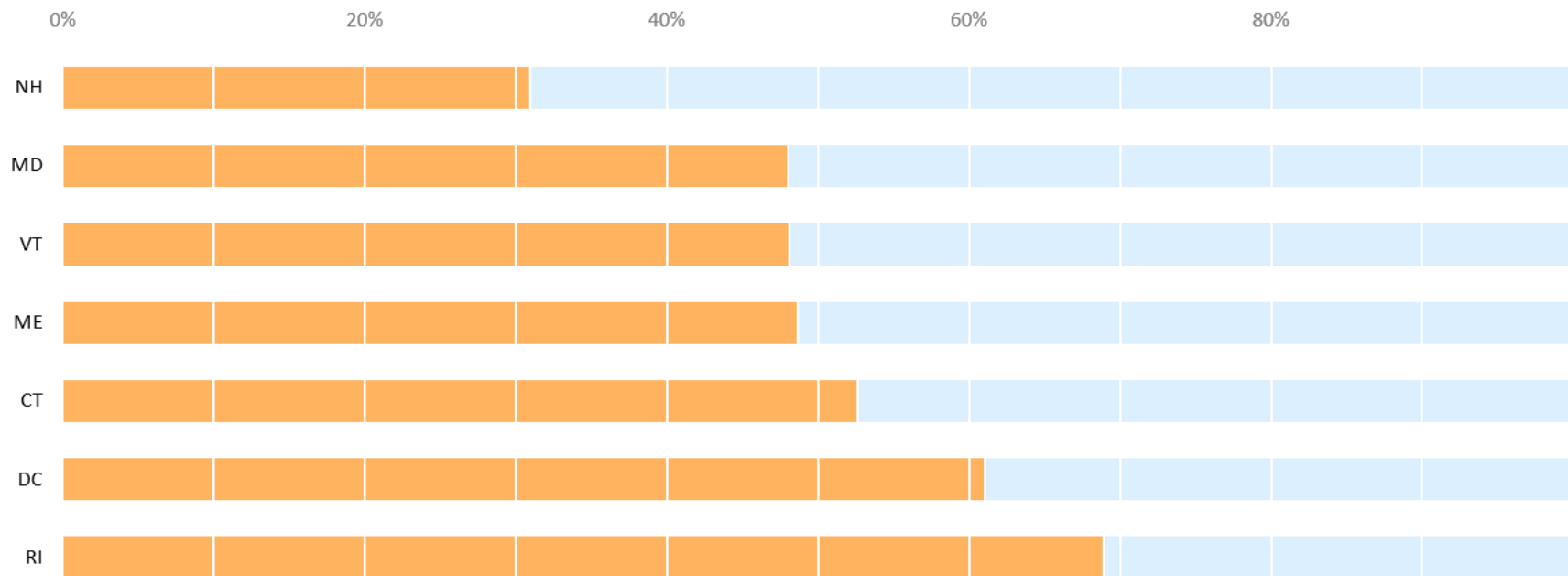


NORTHEASTERN ZONE

Percentage of Total Benefit Costs

Indemnity vs Medical

NCCI States
Based on the 2018–2019 Rate Filing Season*

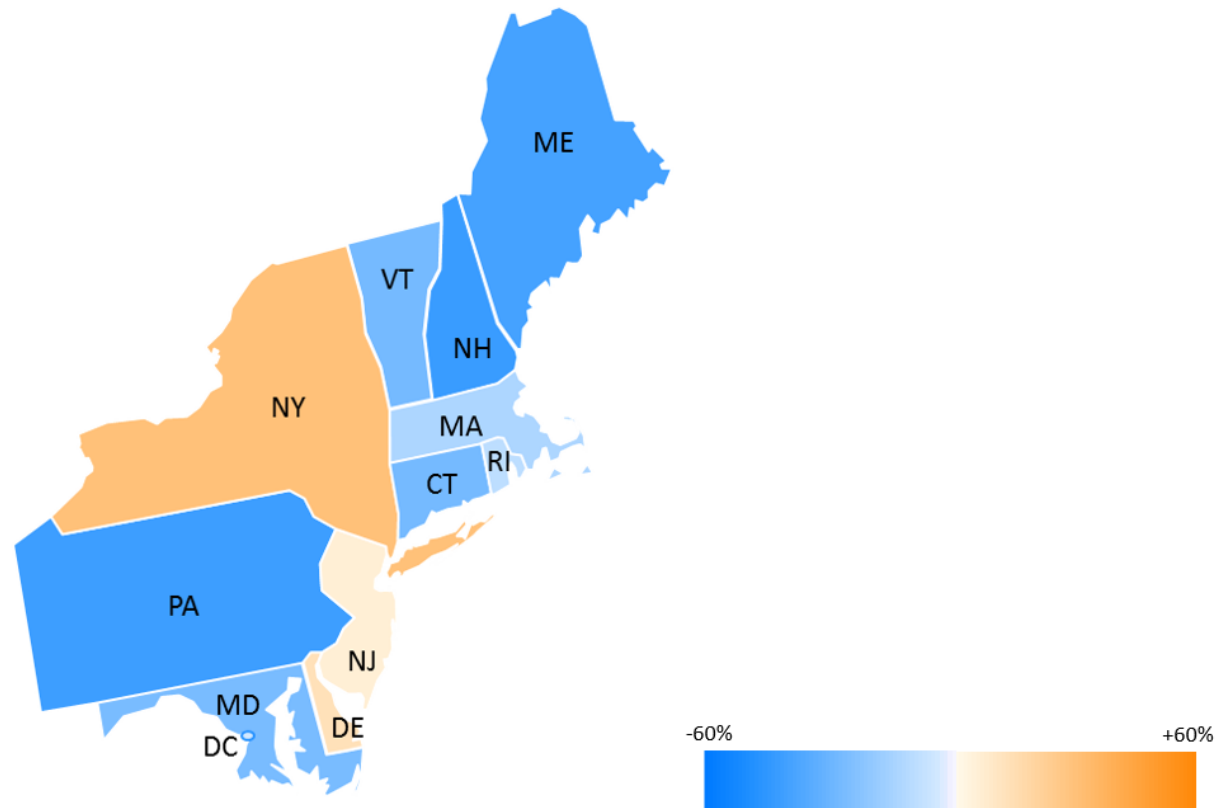


*Refer to the endnotes



NORTHEASTERN ZONE


Cumulative Premium Level Change Since 2009*



*Refer to the endnotes



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Legislative Activity



LEGISLATIVE ACTIVITY WEEKLY REPORT

The **Legislative Activity Report** contains descriptions and/or excerpts of relevant workers compensation-related bills that have passed the first chamber, passed the second chamber, or have been 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. The report includes bills from states where NCCI provides ratemaking services and the US Congress.


The **Legislative Activity Report** is published weekly if and when bills have met the criteria to be included in the report.

- Weekly Report—Legislative Activity—RLA-2019-22 (PDF) **New**

2019 [Archive](#)


2018 [Archive](#)

2017 [Archive](#)



LEGISLATIVE ANALYSIS

One of NCCI's core services is providing cost analyses of proposed legislation. Completed NCCI cost analyses of enacted legislation for states where NCCI provides ratemaking services are available below.

Cost Analysis by state:


Disclaimer
NCCI's estimated cost impact of this enacted legislation or effective change in workers compensation benefit costs is preliminary. NCCI's final estimated impact may differ from what is provided in this analysis based on additional information that becomes available or if data necessary to analyze provisions that were not explicitly quantified previously becomes available.


Related Links

- [State Insight](#)

Submit Questions

Questions regarding any item on the Legislative Activity Page?

Please email: Legislative_Activity@ncci.com



ENACTED LEGISLATION REPORT

The Enacted Legislation Report contains descriptions and/or excerpts of relevant workers compensation-related bills enacted year to date as of the publication date of the report. The report includes bills from states where NCCI provides ratemaking services and the US Congress.

This report will be published monthly throughout the legislative season if and when new bills have been enacted.



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Technology at Work - Wearables in Workers Compensation

Find it at ncci.com/Insights



ENDNOTES

Loss Cost/Rate Changes by Zone

Source: NCCI financial data evaluated as of December 31, 2017.

The 2018–2019 Rate Filing Season refers to experience filings with effective dates between October 1, 2018 and September 1, 2019.

The average loss cost/rate level change for each zone reflects an unweighted average of the respective state-specific approved changes in voluntary market loss costs/rates. The changes for Arizona, Florida, Idaho, Illinois, Indiana, and Iowa reflect approved changes in voluntary rates.

North Carolina and Indiana are independent bureau states where NCCI provides services.

Percentage of Total Benefit Costs by Zone

Source: NCCI financial data evaluated as of December 31, 2017.

The 2018–2019 Rate Filing Season refers to experience filings with effective dates between October 1, 2018 and September 1, 2019.

North Carolina and Indiana are independent bureau states where NCCI provides services.

Cumulative Premium Level Change by Zone Since 2009

Source: NCCI 2019 *Annual Statistical Bulletin*, Exhibit 2, updated to include all approved voluntary market experience and law-only premium level changes effective since January 1, 2009, as of June 30, 2019.

Excludes monopolistic states.



APPENDIX

Below is a list of references where additional information can be found on **ncci.com**.

- Frequency and Severity: Frequency and Severity Results by State
www.ncci.com/Articles/Pages/II_Frequency-Severity.aspx
- Summary of Voluntary Loss Cost/Rate Filing Information by State*
www.ncci.com/Articles/Pages/II_Voluntary_LossCost_RateFiling_Information.aspx
- Underwriting Results by State
www.ncci.com/Articles/Pages/II_Underwriting_Results_by_State.aspx
- Residual Market Management Summary
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