

## Workers' compensation legislation enacted in 1998

*Activity was very light with no sweeping changes; several States enacted or strengthened provisions to protect against fraudulent claims for benefits*

Glenn Whittington

**W**orkers' compensation legislation was very light during 1998, with no sweeping changes occurring in any State.

Fraud provisions were enacted or expanded in Georgia, Kansas, Missouri, and Rhode Island. Maximum burial allowances were doubled in Maryland and Virginia. Missouri

and South Dakota established scholarship funds for dependents of employees who die as a result of a compensable work-related injury. Iowa renamed its Department of Industrial Services to the Division of Workers' Compensation; in addition, it tripled payments to the Second Injury Fund for a compensable injury resulting in death to \$12,000 for cases in which the deceased

has dependents, and to \$45,000 for cases in which there are no dependents. In Kansas, a lump-sum payment will be paid to the deceased employee's legal heirs in a no-dependency death claim, unless a life insurance policy in the amount of at least \$18,500 has been provided by the employer.

For the purposes of workers' compensation, Arizona now considers peace officers and firefighters, injured or killed while traveling to and from work to have been within the course and scope of their employment. Similarly, Ohio extended the definition of "employee" to include off-duty peace officers, firefighters, and emergency medical personnel who respond to an inherently dangerous situation that calls for an immediate response—regardless of whether or not they were within the limits of their jurisdiction of regular employment or voluntary service when responding.

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Following is a summary of significant workers' compensation legislation enacted by individual States during 1998.

### Alaska

A person employed as a player or coach by a professional hockey team is not covered under workers' compensation if the person is covered under a health care insurance plan provided by the team.

### Arizona

For the sole purpose of eligibility for workers' compensation benefits, and provided they are not engaged in any criminal activity at the time, peace officers or firefighters who are injured or killed while traveling directly to or from work are considered within the course and scope of their employment.

### California

Services provided by physician's assistants and nurse practitioners now are included in the schedule of medical fees.

Educational agencies may elect to provide workers' compensation coverage to

students who receive cash wages or salaries from private employers while in supervised work experience education or cooperative vocational education, for a transitional period not to exceed 3 months.

Firefighters employed by private entities are provided workers' compensation coverage.

### Colorado

The Director of the Division of Workers' Compensation may now impose a fine of not more than \$500 per day in lieu of closing a business for not maintaining workers' compensation coverage. When collected, the fines are credited to the Workers' Compensation Cash Fund.

For claims that have a settlement amount of \$75,000 or more, a written notice of the settlement agreement will be provided to the employer.

The Director of the Division of Worker's Compensation and administrative law judges may permit parties to engage in discovery proceedings at hearings.

Procedural requirements were set forth for the selection of an independent medical examiner in disputed cases.

### Connecticut

When an injured employee who has been re-

ceiving disability benefits dies, employers or insurers are required to notify the employee's dependents within 30 days from the last payment of disability benefits that they may be eligible for death benefits.

## Florida

Employers are required, within 14 days of receiving the bill, to pay the funeral expenses of an employee killed on the job; the employer then must file the appropriate report with the Division of Workers' Compensation.

"Corporate officer" or "officer of a corporation" is defined as any person who fills an office provided for in the corporate charter or articles of incorporation. A "partner" is a person who is a member of a partnership formed by two or more persons to conduct business as co-owners of the company, with the understanding that profits and losses will be shared proportionally between the partners. A "sole proprietor" is a natural person who owns a form of business in which that person owns all the assets of the business and is solely liable for all of its debts.

Provisions were established under which employers are exempt from the State Workers' Compensation Act.

The Division of Workers' Compensation is authorized to secure employer compliance with the workers' compensation coverage requirements and to conduct investigations for the purpose of ensuring employer compliance.

The Agency for Health Care Administration is authorized to adopt rules relating to workers' compensation managed-care arrangements.

All investigatory records of the Division of Workers' Compensation are deemed confidential and information can be released only under certain conditions.

## Georgia

Criminal penalties are established for fraudulent retention of income benefits to which an employee is not entitled.

The provision requiring injured employees to change physicians within 60 days of their first treatment for the injury was repealed.

No compensation for death or disability is payable to an employee if the cause is due to a subsequent nonwork-related injury that breaks the chain of causation between the compensable injury and the employee's disability. A provision prohibiting compensation if the employee re-

fused or neglected surgical treatment for an injury was repealed.

The basis for computing workers' compensation benefits for Georgia National Guard members was amended to (1) the greater of seven-thirtieths of the monthly pay and allowances, or (2) if the injured member worked at the time of injury in any employment, the average weekly wage of the individual in such other employment.

The Commissioner of Insurance is authorized to contract with private examiners to conduct examinations of group self-insurance funds.

## Hawaii

A claim for mental stress resulting solely from disciplinary action taken in good faith by the employer will not be allowed.

In cases in which the compensability of the claim is not contested by the employer, the medical provider has 2 years to bill the responsible party. Failure to do so will result in the forfeiture of the medical provider's right to payment. The medical provider will not charge the injured employee for treatment.

## Idaho

During the first 52 weeks of total disability, if the maximum benefit of 90 percent of the employee's average weekly wage is less than 15 percent of the currently applicable average weekly State wage, the employee must receive no less than 15 percent of the currently applicable average weekly State wage.

## Iowa

The Department of Industrial Services has been renamed the Division of Workers' Compensation. Payment of workers' compensation benefits will begin on the first day of disability after the injury, instead of on the date of injury.

Workers' compensation coverage is provided to students enrolled in a community college who are participating in a school-to-work program.

Employer or carrier payments to the Second Injury Fund for compensable injury causing death have been increased from \$4,000 to \$12,000 in cases in which there are dependents, and from \$15,000 to \$45,000 in those in which there are no dependents. To ensure that sufficient funds are available to cover liabilities of the Second Injury Fund, a surcharge is imposed against employers for each of the next two fiscal years, beginning on or

after July 1, 1999. Guidelines are provided to the Commissioner of Insurance for determining and assessing the surcharge. Finally, the provision was repealed that had based payments into the Second Injury Fund on the Fund's balance.

## Kansas

An individual who is an owner-operator and the exclusive driver of a motor vehicle that is leased or contracted to a licensed motor carrier is not considered a contractor or an employee of the licensed motor vehicle carrier if the owner-operator is covered by an occupational accident insurance policy, and if he or she is not treated as an employee for the purposes of the Federal Insurance Contribution Act, under either the terms of the lease agreement or the contract with the licensed motor carrier. A licensed motor carrier may, however, by lease agreement or contract, secure workers' compensation insurance for an owner-operator and then charge the owner-operator for the cost of the premium for such insurance.

For workers' compensation purposes, the definition of "worker" does not include individuals who are self-employed subcontractors. In a no-dependency death case involving such subcontractors, a lump-sum payment of \$25,000 is made to the subcontractor's legal heirs. No such payment is required, however, if the employer has procured a life insurance policy providing coverage of at least \$18,500. The Director of Worker's Compensation will not assess a fine against a self-employed subcontractor for not personally securing workers' compensation coverage, but the subcontractor will be fined for failing to obtain workers' compensation coverage for any other person employed by the subcontractor.

In any proceeding for a change of medical benefits, all reports, information, statements, memoranda, proceedings, findings, and records will be admissible at the hearing before the administrative law judge on the issue of the medical benefits to which an employee is entitled. The penalty for fraud was increased from \$1,000 to \$2,000 for each act, but the penalty may not exceed \$20,000 in any 1-year period.

## Kentucky

The Employers' Mutual Insurance Authority is recognized as a corporate structure, which will enable it to be managed in an entrepreneurial and business-like manner in operating a competitive state fund.

## Maine

If an employee suffers a work-related injury that aggravates or combines with the effects of a previous work-related injury that occurred prior to January 1, 1993, and for which compensation is still payable under the law that was in effect on the date of the prior injury, the employee's rights and benefits for the portion of the resulting disability that is attributable to the prior injury must be determined by the law in effect at the time of the prior injury.

Before approving any lump-sum settlement, the Workers' Compensation Board will determine whether the person receiving the settlement is on the list of persons owing the Department of Human Services child support debts that have been liquidated by judicial or administrative action. If the person is on the list, the board will notify the Department of the pending settlement and inform the person of the notification.

## Maryland

Domestic servants and their employers jointly may elect for the employee to be covered under workers' compensation, even if the individual does not meet the earnings requirement of \$750 in a calendar quarter.

The maximum amount payable for funeral expenses increased from \$2,500 to \$5,000. The maximum death benefit payable for partial dependency increased from \$17,500 to \$45,000, for any death occurring on or after October 1, 1998.

Before terminating the payment of medical benefits, an insurer or self-insurer must give the covered employee and the employee's treating physician or health-care provider written notice of the date that the benefits are to be terminated. Medical records or reports relied upon in making the termination must be attached to the notice.

## Minnesota

Compensation paid by the special compensation fund will no longer be reimbursed from general fund appropriations. Compensation paid will remain a liability of the special compensation fund and will be financed by employer assessments. Photocopied reports now may be submitted to the Commissioner of Labor and Industry, as long as they are clear and suitable for imaging.

## Missouri

For workers' compensation purposes, a limited-liability partnership or company now is considered an employer.

Contractors in the construction industry now must submit a certificate of coverage before being issued an occupational or business license.

A person, insurance carrier, or health-care provider who commits fraud for the second time will be guilty of a class D felony.

The Director of the Division of Workers' Compensation must establish a procedure for reactivating a claim after a settlement has been completed.

The waiting period was changed from the "first three regularly scheduled work days" to the "first three days during which the employer is open for business."

Employers will be credited fully for any unemployment compensation paid for an employee while the employee was in a period of temporary total disability.

The duration of benefits was increased to 49 weeks (previously, 40) for total occupational deafness in one ear, and to 180 weeks (previously, 148) for total occupational deafness in both ears.

With the approval of an administrative law judge, legal advisor, or the Workers' Compensation Commission, parties may enter into a compromise lump-sum settlement in permanent-total or permanent-partial disability cases.

Employer groups qualified to insure their liability are required to utilize a Uniform Experience Rating Plan promulgated by an approved advisory organization. In addition, no group self-insurance entity may authorize total discounts exceeding 25 percent for any individual member.

A written award will be issued within 90 days of the last day of the hearing, and the hearing must be concluded within 30 days of the date of its commencement, except in extraordinary circumstances. An application for review or notice of appeal can now be filed with the Division of Workers' Compensation by facsimile, with the original and required number of copies sent by mail on the same day. An uninsured employer may file an application for review if it is accompanied by a bond for the satisfaction of the award in full.

A "Kids" Chance Scholarship Program was established to provide scholarships for the children of workers who were seriously injured or killed in a work-related accident or occupational disease.

## Nebraska

An executive officer of a nonprofit corporation who receives annual compensation of \$1,000 or less from the corporation will not be deemed to be an employee unless the executive officer elects to be covered under the workers' compensation provisions.

## New Jersey

The definition of *employee* in the horse-racing industry now includes assistant trainers, stable workers, and any other licensed person who is an employee of an owner or trainer and is engaged in performing services for an owner or a trainer in connection with the exercising or racing of a horse in New Jersey.

## New York

Confidentiality rules were established for workers' compensation records.

## Ohio

The definition of "employee" now includes off-duty peace officers, off-duty firefighters, and off-duty emergency medical personnel, when such persons are responding to an inherently dangerous situation that calls for an immediate response, regardless of whether the person was within the limits of the jurisdiction of his or her regular employment or voluntary service when responding.

## Oklahoma

The test for determining the dependency of a child now will include receiving an education by means other than being enrolled as a full-time student in an accredited educational institution—for example, receiving an education at home.

Employers that qualify as Youth Sports Leagues under the Federal Tax Exemption will be exempt from the Workers' Compensation Act.

When a medical-care provider submits a claim for payment of services to the Workers' Compensation Court, the prevailing party is entitled to a reasonable attorney's fee.

Every policy issued to a sole proprietor, partnership, limited-liability company, corporation, or other business entity must disclose to the potential purchaser in writing the option to elect to include as employees, for the purpose of workers' compensation

coverage, the sole proprietor, any or all of the partnership members, any or all of the limited-liability company members, or any or all stockholder-employees.

## Rhode Island

If an employee returns to employment at an average weekly wage equal to the employee's pre-injury earnings exclusive of overtime, the employee will be presumed to have regained his or her earning capacity.

An employer previously cited for fraud for failing to secure workers' compensation coverage will be guilty of a felony for any subsequent similar violation, and the responsible party or parties will be subject to a 1-year prison term, a fine not to exceed \$10,000, or both.

The provision that excluded overtime pay in determining weekly earnings was repealed.

## South Dakota

Scholarships are provided for spouses and dependent children of employees who die as a result of compensable work-related injuries. Eligible dependents may qualify for a maximum of \$2,000 per year for up to 5 years, payable to accredited post-secondary educational institutions in South Dakota.

## Utah

Detailed criteria are provided for classifying employers as "agricultural."

## Vermont

The Commissioner of Workers' Compensation may require workers' compensation carriers to conduct periodic workplace in-

spections and to provide other safety-related advice to the employers they insure. Any person offering to provide vocational rehabilitation services to workers' compensation recipients must register with the Department of Workers' Compensation and possess appropriate qualifications as established by the Department.

## Virginia

Maximum burial expenses were increased from \$5,000 to \$10,000, and maximum transportation expenses for the deceased were increased from \$500 to \$1,000.

When the Workers' Compensation Commission issues a written notice, opinion, order, or award regarding a specific case, copies must be provided at the same time to the employee, the employer, the compensation carrier, and, if represented, their counsel.

The time limit for submitting an application for review to the Commission was changed from within 20 days from the date of the award to within 20 days from receipt of the notice of the award.

Members of the Virginia Naval Militia are considered employees for workers' compensation purposes.

The recovery method for overpayments made by employers was changed. Instead of shortening the period during which compensation payments are made, the amount of the weekly payment now may be reduced by as much as 25 percent, with the reduced payments continuing until the employer has recovered the amount that was overpaid.

Walkers, canes, and crutches were added to the list of appliances that employers must furnish to injured employees as long as they are medically necessary.

Copies of all medical reports must be

provided to representatives of injured employees, employers, or insurers.

A business license will not be issued or reissued to any contractor who has not obtained or is not maintaining workers' compensation coverage for his employees.

The tax for providing funds for compensation benefits awarded against any uninsured or self-insured employer was increased from 0.0025 percent to 0.0050 percent.

## Washington

Employers who employ workers in the State while not domiciling in the State must secure workers' compensation coverage for their employees when the work requires that the employer register or obtain a license, although they are not domiciled in the State, to pre-qualify as a contractor for electrical installation.

## Wyoming

For workers' compensation purposes, the definition of "employee" includes all adult and juvenile prisoners and probationers when they are performing work pursuant to law or a court order.

Any injured worker who has or is receiving medical services entirely in Wyoming, from a health-care provider based in Wyoming, is eligible for temporary total disability payments. Such payments will be calculated at the rate of 70 percent of the injured worker's actual monthly earnings at the time of the injury, as long as the amount of the payment does not exceed 103 percent of the statewide average wage. An injured worker receiving out-of-State health care at the instruction of the Division of Workers' Compensation may be entitled to the same benefits.