

Changes in workers' compensation during 1999

State enactments of workers' compensation laws varied widely, ranging from defining coverage for "volunteer workers" to increasing burial allowances

Glenn Whittington

During 1999, several States focused on providing workers' compensation coverage to "volunteer" workers, while others addressed the issue of a claim being filed by an employee whose use of illegal drugs or alcohol contributed to his or her injury. Seven States also increased their maximum allowances for burial payments.

In Arizona, the rate of compensation for the surviving spouse was increased from 35 percent to 66-2/3 percent of the monthly wage of the deceased spouse in the case of a death claim in which there are no dependent children. In Colorado, permanent partial disability benefits were increased from \$150 per week to \$176 per week. In Georgia, the maximum weekly benefit for temporary total disability was increased from \$325 to \$350 and the minimum, from \$32.50 to \$35. The maximum weekly benefit for temporary partial disability was also increased from \$216.67 to \$233.33.

The maximum compensation in New Mexico was increased from 85 percent to 100 percent of the State's average weekly wage and in North Dakota, the maximum for temporary total and permanent total benefits was increased from 100 percent to 110 percent of the State's average weekly wage.

Maximum burial allowances were increased to \$5,000 in Arizona, to \$7,500 in Georgia, to \$4,000 in Montana, to \$7,500 in New Mexico, to \$6,500 in North Dakota, to \$7,500 in Tennessee, and to \$6,000 in Texas.

In Oregon, as part of a collective bargaining agreement, an employer or groups of employers in the construction industry and a union (as the certified exclusive bargaining representative) may now establish an alternative dispute resolution system. This system may govern disputes in the areas of employer liability,

compensation, and use of medical service providers.

In Arizona, if an employer has established and maintains a policy of drug testing or alcohol impairment testing, an employee's injury or death shall not be considered a personal injury arising out of and in the course of employment if the employee fails to pass or refuses to take a drug test or alcohol impairment test. In Colorado, an injured employee's nonmedical benefits shall be reduced by 50 percent if there is evidence that the employee was intoxicated or had nonmedically prescribed controlled substances in his or her system during working hours. In Utah, a rebuttable presumption was created. It states that the major contributing cause of an employee's injury is intoxication if a chemical test shows that any amount of an illegal substance or drugs in excess of the prescribed therapeutic amounts or a blood or breath alcohol concentration of .08 grams or greater are in the employee's system.

In Delaware, State employees who are injured as a result of their official duties, even if off-duty and off the worksite, are now covered. In North Carolina, the term "employee" now includes members of the National Guard and State Guard while on State active duty under orders of the Governor. In Indiana, a school-to-work student is entitled to medical benefits and permanent partial impairment compensation if injured on the job and in Maryland, a volunteer police officer in Frederick County is a covered employee and is eligible for medical benefits under the Workers' Compensation Act. In Texas, a person who performs volunteer services for the State in a disaster or attends scheduled emergency response training under the direction of an officer or employee of the State is entitled to medical benefits for an injury sustained in the course of providing those services. In Virginia, the definition of "employee" now includes volunteer firefighters when engaged in firefighting activities under the supervision and control of

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the Department of Forestry. In Wyoming, workers' compensation coverage is now provided to volunteers assisting law

enforcement agencies in conducting patrols, reporting suspicious activities, or controlling traffic and crowds.

Arizona

Maximum burial expenses were increased from \$3,000 to \$5,000.

In death claim cases in which there are no dependent children, the rate of compensation for the surviving spouse was increased from 35 percent to 66-2/3 percent of the average monthly wage of the deceased. If there are surviving children, the surviving spouse will receive 35 percent of the average monthly wage of the deceased, and the surviving children, an additional 31 percent, to be divided equally among them.

A claim shall not be reopened because of increased subjective pain if the pain is not accompanied by a change in objective physical findings nor shall a claim be reopened solely for additional diagnostic or investigative medical tests. But, the employer or the employer's insurance carrier shall pay expenses for any reasonable and necessary diagnostic or investigative tests that are causally related to the injury.

When a notice is issued by an insurance carrier or a self-insured employer of an award for permanent compensation benefits, these benefits shall be paid according to the notice of award and shall not be interrupted if there is a petition for a hearing or an appeal to a higher court. Any resulting overpayment of the benefits shall be credited against any future liability for compensation benefits that may arise out of the same claim.

If an employer has established and maintains a policy of drug testing or alcohol impairment testing, an employee's injury or death shall not be considered a personal injury arising out of, and in the course of employment if the employee fails to pass or refuses to take a drug test or alcohol impairment test.

Requirements for filing a claim for a condition, infection, disease, or disability involving or related to hepatitis C were established.

Arkansas

A claimant shall be allowed to change physicians under an employer-contracted man-

aged care program by petitioning the Workers' Compensation Commission, one time only, for a change of physician. The alternate physician must either be associated with the managed care entity or be the regular treating physician of the employee. If there is no managed care program, a claimant shall be allowed to change physicians by petitioning the commission, one time only, for a physician associated with a managed care entity, or for the physician who regularly treats the employee.

California

If a medical bill or a portion of the bill, is contested, denied, or considered incomplete, the physician shall be notified, in writing, that the billing is contested, denied, or considered incomplete, within 30 working days after receipt of the bill by the employer. A notice that a billing is incomplete shall state all additional information required to make a decision.

Colorado

If a temporarily disabled employee is found responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury. When benefits are awarded for permanent partial disability, the award of benefits shall exclude any previous impairment to the same body part.

Permanent partial disability benefits were increased from \$150 per week to \$176 per week. On July 1, 2000, and each succeeding July 1 thereafter, the compensation rate for permanent partial disability shall be modified for claims arising on that date and after that date by the same percentage increase or decrease as the State average weekly wage. Injuries that are listed on a schedule of injuries shall be compensated according to the schedule and "nonscheduled injuries" shall be compensated as medical impairment benefits. When an injured worker sustains both, the losses shall be compensated accordingly—not combined. Benefits for mental or emotional stress shall not be coupled with those for scheduled or nonscheduled injuries. The mental impairment that is the basis of a claim shall have arisen primarily from

the claimant's then occupation and place of employment in order to be compensable. Mental impairment includes a disability arising from an accidental physical injury that leads to a recognized permanent psychological disability. The 12-week limit on mental impairment shall not apply to the victim of a physical injury or occupational disease that causes neurological brain damage.

Compensation benefits shall be reduced by 50 percent when an employee willfully misleads an employer concerning his or her physical ability to perform a job, and the employee is subsequently injured as a result of the physical ability about which the employee willfully misled the employer. An injured employee's nonmedical benefits shall be reduced by 50 percent when there is evidence that the employee was intoxicated or had nonmedically prescribed controlled substances in his or her system during working hours.

Delaware

State employees who are injured as a result of their official duties, even if the employees are off-duty and off the worksite, are now covered. The Workers' Compensation Fund is recognized now as a party before the Workers' Compensation Board, and as a party, it may appeal to the Superior Court for decisions granting reimbursement. Carriers must pay mileage reimbursement to injured workers who need to travel for doctor's appointments or health care supplies.

HAZMAT team members are now covered under workers' compensation. The number of employees, who are both an officer and stockholder of a corporation, and who may elect to be exempted from workers' compensation coverage was increased from 4 to 8.

A medical examination required by an employer or insurance carrier shall no longer be referred to as an "Independent Medical Examination" or "IME."

Georgia

The maximum weekly benefit for temporary total disability was increased from \$325 to \$350 and the minimum, from \$32.50 to \$35.

The maximum weekly benefit for temporary partial disability was increased from \$216.67 to \$233.33.

Burial expenses were increased from \$5,000 to \$7,500.

The Board of Workers' Compensation shall have the authority to review the self-insured status of an employer after a merger or acquisition involving an employer.

Procedures were established for appointing a temporary guardian for a minor or legally incompetent person.

Idaho

An insurer issuing a workers' compensation insurance contract may include, as part of the contract, an option allowing a policyholder to reimburse the insurer for compensation in amounts not to exceed \$1,000 per claim.

Workers' compensation coverage excludes a member of an employer's family, including a grandchild or the spouse of a grandchild.

For each workers' compensation policy issued or renewed on or after July 1, 1999, a reduction in the premium may be granted if the insurer determines that the insured has established and maintains an alcohol and drug-free workplace program.

Indiana

A school-to-work student is entitled to medical benefits and permanent partial impairment compensation if injured on the job. In case the student dies from the injury, death benefits in a lump-sum amount of \$175,000 are payable to any dependents of the student. If the student has no dependents, the student's parents will receive the death benefit, plus burial compensation.

Louisiana

The provision terminating temporary total disability benefits after 6 months, unless an extension was filed, was repealed.

Upon extinguishment of the full faith and credit guarantee of the State, the Louisiana Workers' Compensation Corporation shall comply with reserve requirements for a domestic mutual insurer. The Corporation shall seek the approval of the United States De-

partment of Labor by obtaining a rating of "A," or better from A.M. Best, so that it can provide coverage under the United States Longshore and Harbor Workers Compensation Act.

Administrators of the workers' compensation system will provide reasonable access to medical information for all parties in order to coordinate and manage the care for the injured worker and to facilitate his or her return to work. Administrators shall provide a list of individuals who shall receive the injured workers' medical information from the health care provider.

In the determination of "wages" and the average weekly wage at the time of the accident, no amount shall be included for any benefit or form of compensation which is not taxable to an employee for Federal income tax purposes. However, any amount withheld by the employer to fund any nontaxable or tax deferred benefit provided by the employer shall be included in the calculation of the employee's wage and average weekly wage.

A premium audit must be conducted within 4 months after an employer terminates participation in a group self-insurance fund.

Workers' compensation is the exclusive remedy when an employee of the State or a political subdivision incurs a compensable claim on the premises of another political subdivision that is required by law or cooperative endeavor agreement to provide the employer with the premises or amenities of the workplace.

The requirements and eligibility for an ad hoc officer to preside over a workers' compensation adjudicatory hearing shall be the same as that for a workers' compensation judge.

An employee who is incarcerated, but is later found to be not guilty of felony criminal charges or against whom all felony charges have been dismissed by the prosecutor shall have the prescriptive period for filing a claim, extended by the number of days he or she was incarcerated.

When a political subdivision elects to provide workers' compensation for its officials, workers' compensation becomes the exclusive remedy for any injury, illness, or disease incurred.

Maine

The Workers' Compensation Board is to provide an interpreter for any employee

whose native language is not English, during all workers' compensation proceedings before the board or a hearing officer. The provision was repealed that permitted compensation in a death claim to be reduced by one-half if the dependent is an alien residing outside the United States.

Persons engaged in harvesting forest products are required to secure workers' compensation coverage, unless employed by a private employer. An employee includes any person engaged in harvesting forest products, unless they meet the criteria for obtaining a certificate of independent status or a pre-determination of independent contractor status.

The duration of benefits for partial disability was extended from 260 weeks to 312 weeks. A licensed chiropractor may provide a second opinion when the initial opinion was given by a chiropractor. Physicians, surgeons, and chiropractors conducting second-opinion examinations must have an active practice or have discontinued an active practice not more than 2 years before the date of the examination.

An employer is required to report the average weekly wages of an employee within 30 days after the employer receives notice or has knowledge of a claim for compensation. An employer is liable to pay a civil penalty of up to \$10,000 or an amount equal to 108 percent of the premium that should have been paid during the period the employer failed to secure coverage, whichever is larger.

Maryland

A paid law enforcement employee of the Department of Natural Resources is presumed to have a compensable occupational disease, suffered in the line of duty, if the employee is suffering from lyme disease and was not suffering from the disease before the assignment to an outdoor wooded environment.

For an employee with permanent partial disability, arising from an event occurring on or after January 1, 2000, and lasting for less than 75 weeks, the compensation shall be paid by the employee's employer or its insurer, equal to one-third of the average weekly wage of the employee, but not exceeding \$114 per week.

A volunteer police officer in Frederick County is considered a covered employee and eligible for medical benefits under the Workers' Compensation Act.

Montana

The posting of managed care or preferred provider requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice, such information must be provided to the worker in written form by mail or in person. The notice must advise the worker of his or her right to choose the initial treating physician.

Exclusive jurisdiction over compensation and benefit issues was transferred from the Department of Labor and Industry to the Workers' Compensation Court. The Department of Public Health and Human Services shall provide workers' compensation coverage for participants in the Families Achieving Independence in Montana project who are placed at public or private worksites. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

Beginning July 1, 2000, an insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the Department of Labor and Industry in the preceding calendar year shall submit the reports, and any other reports related to the reported claims, electronically in a nationally recognized format.

The Uninsured Employers' Fund now pays the costs of investigating and prosecuting workers' compensation fraud and the expenses incurred by the department in administering the fund.

Burial expenses were increased from \$1,400 to \$4,000.

Nebraska

The waiting period has changed from the "first seven calendar days after disability begins" to the "first seven calendar days of disability."

If an employer fails to secure the required payment of workers' compensation, the Workers' Compensation Court may order such employer to pay a penalty of not more than \$1,000 for each violation. Each day of noncompliance con-

stitutes a separate violation.

Nevada

An insurance company now may provide industrial insurance, as a part of a homeowner's policy of insurance, to a person who employs a domestic worker for the term of that worker's employment. A "domestic worker" is a person who is engaged exclusively in household or domestic service, performed inside or outside of a person's residence. The term includes a cook, housekeeper, maid, companion, babysitter, chauffeur, or gardener.

If the injured employee is not satisfied with the first physician or chiropractor he or she chooses in a managed care facility, he or she may make an alternative choice of physician or chiropractor if the choice is made within 90 days of the injury. To determine the necessity of treatment, for which authorization for payment has been denied, a hearing officer may refer the employee to a physician or chiropractor who has demonstrated special competence to treat the particular medical condition of the employee.

If a physician or chiropractor, selected to make a second determination, finds a higher percentage of disability than the first physician or chiropractor, the injured employee may request a hearing officer or appeals officer to order the insurer to reimburse the employee for the second examination. The length of time that an employee may receive vocational rehabilitation assistance, in certain circumstances, was expanded from 90 days to 6 months from the date the employee was notified that he or she was eligible for job placement assistance. Vocational rehabilitation services may be offered out of State to an injured employee who lives within 50 miles from any border of this State, or who was temporarily employed in this State. If the administrator determines that an insurer, organization for managed care, health care provider, third-party administrator, or employer has, through fraud, coercion, duress, or undue influence, committed certain violations against a claimant, the administrator shall order the party to pay a benefit penalty that is not less than \$5,000 and not greater than \$25,000. Formerly, such penalty was

an amount equal to 50 percent of the compensation due or \$10,000, whichever was less.

New Mexico

Effective January 1, 2000, an injured worker shall receive 66-2/3 percent of his or her average weekly wage, not to exceed a maximum compensation of 100 percent of the State's average weekly wage.

The funeral allowance was increased from \$3,000 to \$7,500.

New Hampshire

The Commissioner of Labor shall review a managed care program at least once every 5 years, following initial review, to ensure that the program continues to comply with required standards. If the commissioner determines that a managed care program failed to comply with required standards, the commissioner may assess a penalty of not more than \$100 for each violation.

New York

The New York Black Car Operators' Injury Compensation Fund was established to provide benefits to black car operators.

North Carolina

The definition of "managed care organization" was extended to mean a preferred provider benefit plan of an insurance company, hospital, or medical service corporation in which utilization review or quality management programs are used to manage the provision of health care services and benefits.

The term "employee" includes members of the National Guard and State Guard while they are on State active duty under orders of the Governor.

The provision requiring the Industrial Commission to adopt rules governing methods of communication between an employer and medical care providers was repealed.

North Dakota

Maximum burial expenses were increased from \$5,000 to \$6,500. The lump-sum payment to the decedent's spouse or the guard-

ian of the children of the decedent was increased from \$600 to \$1,200, and the lump-sum payment to each dependent child was increased from \$200 to \$400. The Workers' Compensation Bureau may now grant scholarships to injured workers when determined to be beneficial and appropriate due to exceptional circumstances.

The bureau shall create and operate work safety and loss prevention programs to protect the health of covered employees and the financial integrity of the fund, including programs promoting safety practices by employers and employees through education, training consultations, grants, or incentives.

The office of independent review replaces the workers' adviser program in assisting injured workers who have been aggrieved by a decision on their claim made by the bureau.

The sole exception to an employer's immunity from civil liability is an action for an injury to an employee caused by an employer's intentional act, done with the conscious purpose of inflicting the injury. If the premium due exceeds \$500, the penalty for willful failure to secure coverage is a class C felony. Money in the workers' compensation fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud.

The method for calculating the average weekly wage for seasonal employment during the first 28 days of disability was revised. The term "employee" means a person who performs hazardous employment for another in exchange for remuneration. This does not apply if the person is working as an independent contractor.

The term "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.

Before the effective date of any adoption of, or change to a fee schedule, the bureau shall hold a public hearing. A managed care program shall now include utilization review and bill review.

An injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The permanent impairment rating schedule was revised. The decision of an independent doctor or doctors chosen to rate the degree of permanent impairment is presumptive evidence, which can only be rebutted by clear and convincing evidence.

The maximum for temporary total and permanent total disability benefits was increased from 100 percent to 110 percent of the State average weekly wage. The length of time a claimant must receive permanent total disability benefits or death benefits before being eligible for supplementary benefits was decreased from 10 years to 7 years.

Ohio

Information contained in a vendor's application (for certification in the health partnership program) and other information furnished to the bureau by a vendor (to obtain certification or to comply with performance and financial auditing requirements established by the administrator) is for the bureau's use exclusively; not open to the public.

Oklahoma

A State entity is not required to obtain workers' compensation insurance coverage from the State Insurance Fund if the entity can obtain coverage at the same cost or at a lower cost from another insurance carrier licensed in the State.

The Special Indemnity Fund was renamed the Multiple Injury Trust Fund.

Oregon

When the medically stationary date in a disabling claim is established by the insurer or self-insured employer and is not based on the findings of the attending physician, the insurer or self-insured employer is responsible for reimbursement to affected medical service providers for otherwise compensable services rendered until the insurer or self-insured employer provides the attending physician with a written notice explaining the worker's medically stationary status.

The lump-sum final payment that a surviving spouse receives, upon remarriage, was increased to 36 times (previously 24 times) the monthly benefit. If a deceased worker is survived by a spouse, monthly benefits also shall be paid in an amount equal to 4.35 times 25 percent of the average weekly wage for each child of the deceased who is not substantially dependent on the spouse for support, until the child becomes 18 years of age.

As part of a collective bargaining agree-

ment, an employer or groups of employers in the construction industry and a union (as the certified exclusive bargaining representative), may establish an alternative dispute resolution system. Such a system can govern disputes in the areas of employer liability, compensation, and use of medical service providers. To qualify for the system, the employer or groups of employers must meet certain fiscal requirements.

The insurer or self-insured employer shall close the worker's claim and determine the extent of the worker's permanent disability when the worker has become medically stationary and there is sufficient information to determine permanent impairment. The claim cannot be closed however, if the worker is enrolled and actively engaged in training.

The provision requiring the director to establish utilization and treatment standards for all medical services was repealed. A new funding and disbursement method was established to reimburse not-for-profit rehabilitation facilities.

In calculating permanent partial disability benefits, for injuries occurring between January 1, 2000 and December 31, 2004, the worker shall receive \$511.29 for each degree of disability. A worker may continue to receive treatment from the attending physician under an expired or terminated managed care organization contract if the physician agrees to comply with the rules, terms, and conditions regarding services performed under any subsequent managed care organization contract to which the worker is subject.

Rhode Island

Any person who, on or after January 1, 1999, is an employee and becomes a corporate officer shall remain an employee, and is covered by workers' compensation, unless and until coverage is waived.

South Dakota

An employer is civilly liable for wrongfully discharging an employee if the employer terminates an employee in retaliation for filing a lawful workers' compensation claim. The burden of proof is on the employee to prove the dismissal was in retaliation for filing a workers' compensation claim. If an employee who has previously sustained an injury, or suffers from a preexisting condition, receives

a subsequent compensable injury, the current employer shall pay all medical and hospital expenses and compensation.

For an injury to be compensable, the employment or employment related activities must have been a major contributing cause of the disabling condition. The term "injury" does not include a mental injury arising from emotional, mental, or nonphysical stress or stimuli. A written report of injury must now be filed with the Department of Labor within 7 days instead of the previous 10-day limit. For cases in which benefits have been paid, any claim for additional compensation must be filed within 3 years from the date of the last payment of benefits. The right to compensation is forever barred if no medical treatment has been obtained within 7 years after the employee files the first injury report.

Tennessee

Psychological treatment is now allowed as part of medical care if rendered by a psychologist and upon referral by a physician.

The Department of Labor is now required to produce, no later than December 31, of each year, a report listing the names of each covered employer that failed to provide workers' compensation coverage or those who qualify as a self-insured employer during the State's preceding fiscal year. The procedures for pursuing an appeal, in case of a dispute over or failure to agree upon compensation, were significantly revised.

In addition to ordering the payment of benefits, a workers' compensation specialist also may order the retroactive payment of benefits if appropriate.

Maximum burial expenses were increased from \$4,500 to \$7,500. The lump-sum amount paid to the estate of an employee who leaves no dependents, was increased from \$10,000 to \$20,000.

Texas

Maximum burial expenses were increased from \$2,500 to \$6,000.

An insurance company shall offer employees, entitled to the payment of benefits for a period of sufficient duration, the option of receiving the payments by electronic funds transfer.

On or after the second anniversary of the date the Workers' Compensation Commis-

sion makes the initial award of supplemental income benefits, an insurance carrier may not require an employee, who is receiving supplemental income benefits, to submit to a medical examination more than annually if, in the preceding year, the employee's medical condition resulting from the compensable injury has not improved sufficiently to allow the employee to return to work.

An employee may elect to use all or any number of weeks of accrued annual leave after his or her accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

An employee is not entitled to temporary income benefits, and an insurance carrier may suspend the payment of such benefits, during and for a period in which the employee fails to submit to an examination. If the report of a doctor, selected by an insurance carrier, indicates that an employee can return to work immediately or has reached maximum medical improvement, the insurance carrier may suspend or reduce the payment of temporary income benefits on the 14th day after the date on which the insurance carrier files a notice of suspension with the commission. The commission will then hold an expedited benefit review conference.

The commission shall establish requirements for agreements under which income benefits, including death benefits, may be paid monthly.

The commission shall implement a program to encourage employers and doctors to discuss the availability of modified duty to encourage the safe and more timely return to work of injured employees.

A person who performs volunteer services for the State in a disaster or in scheduled emergency response training under the direction of an officer or employee of the State is entitled to medical benefits for an injury sustained in the course of providing those services.

Utah

A rebuttable presumption was created which pertains to intoxication and workplace injury. The major contributing cause of an employee's injury is intoxication if it is shown, by a chemical test, that the employee has, in his or her system, any amount of an

illegal substance or drugs in excess of the prescribed therapeutic amounts, or has a blood or breath alcohol concentration of .08 grams or greater.

The Olympic Volunteer Workers' Compensation Act was enacted to provide coverage for volunteers who work for the organizing committee, or who prepare, host, or operate the Olympic Winter Games of 2002 and Paralympic Winter Games of 2002.

Vermont

An employer shall establish direct billing and payment procedures and develop notification procedures as necessary to cover medically necessary prescription medications for chronically injured employees. The definition of injury was expanded to include occupational diseases. An individual who performs services as a real estate broker or real estate salesperson is not considered an "employee."

In the case of occupational disease, if the date of injurious exposure occurs after the employee has ceased all employment, the employee shall be entitled to reasonable and necessary medical treatment necessitated by the injury. The employee also shall be entitled to permanent partial or permanent total disability compensation based on his or her average weekly wage at the time of the last work-related exposure. A claim for occupational disease shall be made within 2 years of the date the occupational disease is reasonably discoverable and apparent.

Virginia

The Virginia Workers' Compensation Commission is authorized to hear and pass upon all claims filed pursuant to the Virginia Birth-Related Neurological Injury Compensation Act. The presumption as to death or disability from respiratory disease, hypertension, or heart disease was extended to Virginia Marine Patrol officers, Capitol Police officers, and game wardens who are full-time sworn members of the enforcement division of the Department of Game and Inland Fisheries.

If an employee has an injury which may be treated within the scope of practice for a chiropractor, then the employer or insurer may include chiropractors on the panel of physicians available to treat the injured worker.

The penalty for late payment can be waived if the Workers' Compensation Commission finds that any required payment has been made as promptly as practicable and there is good cause outside the control of the employer for the delay. In the case of a self-insured employer, a late payment can be waived if the employer has issued the required payment to the employee as a part of the next regular payroll after the payment becomes due.

The definition of "employee" now includes volunteer firefighters when engaged in firefighting activities under the supervision and control of the Department of Forestry.

Liability for compensation may not be imposed against any person who was engaged in the property management business on behalf of the owners of such property.

Washington

Vocational rehabilitation may now include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses, not to exceed

\$4,000 in any 52-week period.

Whenever the Department of Labor and Industries or self-insurer fails to pay benefits because of clerical error, mistaken identity, or innocent misrepresentation, the recipient may request an adjustment of benefits within 1 year from the date of the incorrect payment.

The time limit for demanding or ordering the repayment or recoupment of benefits was extended from 1 year to 3 years of the discovery of the fraud.

If an injured employee dies before receiving any compensation due, and leaves no surviving spouse or children, the award or amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will. If the decedent dies intestate, the funds shall be dispersed consistent with the legal requirements for distribution of real and personal estate. If death results from the injury or occupational disease and the deceased leaves no beneficiaries, a self-insurer shall pay into the supplemental pension fund the sum of \$10,000, less any amount that the self-insurer paid

as payment due for the period of time before the worker's death.

West Virginia

A claimant must be suffering from 40 percent of his or her body's medical impairment in order to be entitled to a rebuttable presumption of permanent total disability. The previous degree of medical impairment was 50 percent.

Wyoming

Firefighters are covered while fighting fires, performing rescue work, participating in a hazardous material response, or responding to any other situation in which the health and safety of the public is at risk.

An advanced practitioner of nursing now is included in the definition of "health care provider."

Workers' compensation coverage now is provided to volunteers assisting law enforcement agencies in conducting patrols, reporting suspicious activities, or controlling traffic and crowds. □