

## Changes in workers' compensation laws during 2000

*About half of all States changed their workers' compensation laws to some extent, with most of them increasing benefits for both disability and death*

Glenn Whittington

**A** number of States increased their maximum workers' compensation rates for disability and /or death in 2000.

For example, Alaska's maximum weekly compensation benefit for disability or death changed to 120 percent of the State's average weekly wage from \$700, and the maximum permanent impairment compensation benefits increased to \$177,000 from \$135,000 to be multiplied by the employee's percentage of permanent impairment of the whole person. In Georgia, the weekly maximum benefit for temporary total disability increased to \$375 and the minimum to \$37.50 (up from \$350 and \$35 respectively). Also in Georgia, the weekly maximum benefit for temporary partial disability increased to \$250 from \$233.33, and the maximum death benefit to \$125,000 from \$100,000. In Indiana, the maximum compensation, exclusive of medical benefits, that may be paid for an injury on and after July 1, 2000, and before July 1, 2001, may not exceed \$254,000. On October 1, 2000, Minnesota's maximum weekly compensation increased to \$750 per week from \$615, and the minimum increased to \$130 per week from \$104. In Rhode Island the maximum rate for

weekly compensation for total disability changed to 110 percent (previously 100 percent) of the State's average weekly wage.

Examples of coverage changes included extending presumptions of coverage for certain diseases suffered by law enforcement officers or firefighters, or both, in California, Maryland, and Virginia; and redefining the term "employee" in Arizona, Georgia, Rhode Island, and Virginia.

In Nebraska, the Second Injury Fund was renamed the Workers' Compensation Trust Fund, and all monies in the Second Injury Fund were transferred to the Workers' Compensation Trust Fund. The Second Injury Fund had previously been eliminated for injuries occurring on or after December 1, 1997. An Uninsured Employers' Fund was established in Tennessee to ensure the timely provision of workers' compensation benefits to workers injured during periods when an employer has no insurance.

Maximum burial allowances increased to \$5,000 in Alaska, to \$7,000 in Colorado, and to \$15,000 in Minnesota.

The following is a State-by-State summary of significant changes to workers' compensation laws.

### Alaska

An employer must have paid its assessed annual service fees before receiving a self-insurance certificate.

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Upon notification of eligibility, an employee now has 15 days (formally, 10 days) to give written notice, to the employer that he or she has selected a rehabilitation specialist. Failure to give such notice constitutes noncooperation. A reemployment plan must require continuous participation by the employee and must maximize the use of the employee's transferable skills. Compensation paid before completion or termination of a reemployment plan, but after exhaustion

of temporary total and permanent impairment benefits, increased to 70 percent from 60 percent of the employee's weekly wages. The maximum amount allowable is now 105 percent of the average weekly wage, up from \$525. The maximum allowed under a reemployment plan increased to \$13,300 from \$10,000. The maximum weekly compensation rate for disability or death changed to 120 percent of the State's average weekly wage (previously, it was \$700). If an

employee's spendable weekly wages are less than 22 percent of the maximum compensation rate (previously \$154), the employee will receive his/her spendable weekly wage. Permanent impairment compensation benefits increased to \$177,000 from \$135,000 to be multiplied by the employee's percentage of permanent impairment of the whole person. The maximum burial allowance is now \$5,000, up from \$2,500. The percentage of death benefits to a widow or widower and children also increased. A death benefit payment of \$5,000 is now made to a surviving widow or widower, or equally divided among surviving children of the deceased if there is no widow or widower. The period a widow or widower may receive death benefits is now 12 years (previously 10 years) following death of the deceased employee.

### Arizona

Persons placed in level three or four of the Arizona works program or the temporary assistance for needy families program now are considered employees for workers' compensation purposes.

### California

A physician seeking appointment as a qualified medical evaluator on or after January 1, 2001, must complete, prior to the appointment, a course on disability evaluation report writing approved by the Industrial Medical Board.

For certain State and local firefighting and law enforcement personnel, the term "injury" now includes hepatitis that develops or manifests itself while the person is in the service of that office, division, department, or unit. The presumption is extended to a covered person following termination of service for a period of 3 months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

The provision allowing certain peace officers, firefighters, and other specified State and local public employees to a leave of absence without loss of salary while disabled, in lieu of temporary disability payments, was extended to specified airport law enforcement officers, harbor and port police officers, wardens, and special officers.

### Colorado

The reference to a specific age of retirement for purposes of an offset against permanent total disability benefits was deleted.

Persons who provide host home services to persons with developmental disabilities, pursuant to a contract with a community-centered board, or a contract with a service agency, are not considered employees of the community-centered board or the service agency.

The maximum burial allowance increased to \$7,000 from \$4,000 for deaths occurring on or after February 1, 2000.

In a death claim where the deceased is a minor with no persons either wholly or partially dependent upon the deceased, the employer or insurance carrier pays to the parents of the deceased \$15,000, not to exceed 100 percent of the death benefit. In the event that there are no surviving parents, the money is paid to the Division of Workers' Compensation for credit to the Subsequent Injury Fund. In the event there are persons only partially dependent upon the deceased, benefits will first be paid to such partially dependent persons and the balance will be paid to the surviving parents, or in the event there are no surviving parents, the Division for credit to the Subsequent Injury Fund.

### Florida

The Division of Workers' Compensation may specify by rule the amount of the qualifying security deposit required prior to authorizing an employer to self-insure and the amount of net worth required for an employer to qualify for authorization to self-insure.

A Task Force on Workers' Compensation Administration was established to examine the way in which the workers' compensation system is funded and administered.

### Georgia

The parties to a claim may, by agreement and with the approval of the State Board of Workers' Compensation, enter into a compromise lump-sum settlement resolving all issues which prorates the lump-sum settle-

ment over the life expectancy of the injured worker. Benefits may be paid by electronic funds transfer if agreed to by the parties. The weekly maximum for temporary total disability benefits increased to \$375 and the minimum, to \$37.50 (previously, \$350 and \$35 respectively). The weekly maximum for temporary partial disability benefits increased to \$250, from \$233.33. The total for maximum death benefits is now \$125,000, previously \$100,000.

For purposes of workers' compensation coverage, members of the State Defense Force are considered employees of the State. An injury arising in the course of employment includes any injury incurred by a member of the Georgia National Guard or State Defense Force while on active duty in the State or when traveling to and from active duty.

### Indiana

If the treatment or travel to or from the place of treatment causes a loss of work time to the employee, the employer shall reimburse the employee for the loss of wages, using the basis of the employee's average daily wage. Benefits for permanent impairment for injuries occurring on and after July 1, 2000, and July 1, 2001, increased in increments depending on the degree of impairment. The maximum compensation, exclusive of medical benefits, that may be paid for an injury may not exceed \$254,000 on and after July 1, 2000, and before July 1, 2001; \$274,000 on and after July 1, 2001, and before July 1, 2002; and \$294,000 on and after July 1, 2002.

### Iowa

Every corporation, individual, personal representative, partnership, or association that has the necessary minimum contact with the State shall be subject to the jurisdiction of the workers' compensation commissioner. If an employee was absent from employment for personal reasons during part of the 13 calendar weeks preceding an injury, that employee's weekly earnings is the amount that would have been earned had he or she worked when work was available to other employees of a similar occupation.

## Kansas

A list of drugs and their percentage of concentration are now provided, which, if found in an employee, conclusively presumes the employee is impaired due to drugs, thus relieving the employer of liability for injury, disability, or death. The definition of a health care provider now includes a person licensed to practice audiology. In case of death, there is an initial payment of \$40,000 made to the surviving legal spouse or a wholly dependent child or children, or both. The provision which stipulated that death benefits for a surviving spouse be discontinued upon remarriage was repealed, and the total maximum death benefits increased to \$250,000 from \$200,000, which include the initial payment of \$40,000.

## Kentucky

The threshold for considering a case for commuted lump-sum payment increased to \$100 from \$10 per week. The maximum for attorney's fees changed from 20 percent of an award not to exceed \$2,000 to the following sliding scale: 20 percent of the first \$25,000; 15 percent of the next \$10,000; and 5 percent of the award's remainder, not to exceed a maximum of \$12,000. The lump-sum payment made to a deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence is to be made, increased to \$50,000 from \$25,000. The amount of this lump sum now will be adjusted annually based on the State's average weekly wage.

## Maine

Employers of agricultural or aquacultural laborers are not liable for securing compensation payment if the employer has six or fewer laborers or the employer has more than six such laborers, but the total number of hours they worked in a week does not exceed 240, and has not exceeded 240 hours at any time during the 52 weeks immediately preceding the injury.

## Maryland

The presumption of compensability for heart disease or hypertension was extended to Prince George's County Correction Officers.

## Minnesota

Beginning October 1, 2000, the maximum weekly compensation payable increased to \$750 from \$615 per week, and the minimum increased to \$130 from \$104 per week or the employees' actual weekly wage, whichever is less. After an employee has been paid 52 weeks of temporary total compensation, the employer or insurer must notify the employee in writing, with a copy to the Workers' Compensation Division, of the 104-week limitation on payment of temporary total compensation. The benefit amounts specified in the impairment ratings for permanent partial disability increased. For injuries occurring after October 1, 2000, an employee who receives any other service-based Government retirement pension is presumed retired from the labor market. The term "service-based government retirement pension" does not include disability-based government pensions. The time limit for filing a request for retraining increased to 156 weeks from 104 weeks. The minimum amount of dependency compensation that must be paid to entitled persons is \$60,000. The maximum burial allowance increased to \$15,000 from \$7,500. In every case of an employee death arising out of and in the course of employment where there are no persons entitled to monetary benefits of dependency compensation, the employer shall pay \$60,000 to the estate of the deceased employee.

## Nebraska

The Second Injury Fund was renamed the Workers' Compensation Trust Fund, and all monies in the Second Injury Fund were transferred to the Workers' Compensation Trust Fund. The age of a child who qualifies as a dependent was increased from age 18 to 19. An employer, for purposes of obtaining workers' compensation coverage, now may be a member of a risk management pool

which authorizes and provides group self-insurance of workers' compensation liability, or with approval of the Nebraska Workers' Compensation Court, the employer may self-insure his or her workers' compensation liability.

## New Hampshire

A managed care program under workers' compensation is required to maintain a business office in the State and to have a sufficient number of resident injury management facilitators. Any employee receiving workers' compensation benefits has a duty to report any changes in his or her employment status or earnings, or both, to the carrier or self-insured.

## New Jersey

The coverage previously provided to employees of horse trainers was eliminated.

## New York

Criteria were established for the performance of independent medical examinations.

## Oklahoma

All requests made to the Workers' Compensation Court for information on claims involving a worker, including written inquiries about prior claims and requests to access a worker's claim file, must be in writing on a form prescribed by the workers' compensation Administrator.

## Rhode Island

For workers' compensation purposes, newspaper carriers are considered employees, effective September 1, 2000. The additional benefit for dependent children in death claims increased to \$40 from \$20 per week. Effective September 1, 2000, the maximum rate for weekly compensation for total disability increased to 110 percent of the State average weekly wage (previously, it was 100 percent).

## Tennessee

An Uninsured Employers Fund has been established to ensure the timely provision of workers' compensation benefits to workers injured during periods of employer non-compliance. The Fund will be financed by penalties assessed and collected from employers who fail to provide workers' compensation coverage or who fail to qualify as a self-insurer.

Permanent total disability benefits is now paid until the employee is, by age, eligible for full benefits in the old-age insurance benefit program under the Social Security Act (previously, benefits were paid until employee reached age 65). The Commissioner of Labor and Workforce Development is authorized to refer an employer to the Tennessee Bureau of Investigation for investigation and for appropriate referral for possible prosecution if the commissioner becomes aware the employer had prior knowledge that its employee was subject to the workers' compensation law and the employer failed to secure payment of compensation as required by the workers' compensation law.

If an employee suffers a back injury, the list of three or more physicians from which the employee can choose shall be expanded to four, one of whom must be a chiropractic doctor. However, no more than 12 visits to a chiropractor shall be approved per back injury.

If an employer or insurer fails to reimburse an employee for medical expenses in-

curred within 60 days of a settlement, judgment, or decree, the employer or insurer can be liable for up to an additional 25 percent of such expenses.

## Vermont

If a worker receives a personal injury off the workplace premises while engaged in a recreational activity encouraged by the employer, the injury will not be considered to have occurred in the course of employment, unless the employer derived substantial benefit from the activity, the activity was reasonably a part of the employee's regular duties or undertaken to meet expectations of employer, or the activity was undertaken at the request of the employer. An injury arising from an on-premises recreational activity will be presumed compensable unless the activity is shown to be not reasonably related to employment duties, requirements, or a regular incident of employment.

## Virginia

All members of any panel or committee required to interpret or classify a chest x-ray for purposes of diagnosing a coal worker's pneumoconiosis must be B-readers approved by the National Institute for Occupational Safety and Health.

The list of cancers causing the death of, or any health condition or impairment resulting in total or partial disability of, any

volunteer or salaried firefighter or hazardous materials officer who, having completed 12 years of continuous service, has contact with a toxic substance encountered in the line of duty, now includes ovarian or breast cancer.

The term "employee" now includes volunteer members of regional hazardous materials emergency response teams, and also includes aliens and minors, whether lawfully or unlawfully employed.

The time limit for filing an application for review before the full Commission increased to 45 days, from 20.

Any health care provider attending an injured employee shall, upon request of a certified rehabilitation provider, furnish a copy of any medical report to such provider.

## Wyoming

If the employer objects to a division determination that an injury is compensable and the employee's health care provider has certified the employee as temporarily totally disabled, the injured worker may request an interim benefit while the case is under appeal. The interim benefit will be paid for up to 3 months until a final compensability decision is issued or until the expiration of the period of certified temporary disability, whichever occurs first. The experience rating of the employer against whom a claim is made shall not be charged for the interim benefit if the injury is determined after a hearing to not be compensable.