

# Workers' compensation: 1986 State enactments

*The year was particularly busy in the field of workers' compensation legislation; coverage, benefit levels, and funding practices all were subject to change, and a number of States mandated the continued review of their programs by special oversight committees*

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During 1986, regular legislative sessions were held in all States except Arkansas, Montana, Nevada, New Hampshire, North Dakota, Oregon, and Texas. The year was an exceptional one for enactment of State workers' compensation legislation with the passage of 160 laws, compared with 136 enactments in 1984. Traditionally, fewer amendments become law during even-numbered years.

Nineteen laws were changed either to allow coverage of certain persons who were previously excluded or to totally eliminate certain coverages.

The proportion of the State average weekly wage on which benefits are based was changed from 100 percent to 150 percent in Vermont. New Mexico froze its average weekly wage for 2 years. Additionally, Oklahoma enacted legislation which provides for the average weekly wage in the State to be changed once every 3 years, rather than annually.

Arkansas will gradually increase benefit levels beginning July 1, 1986, through December 1988. On January 1, 1989, maximum weekly benefits will change from a statutory amount to  $66\frac{2}{3}$  percent of the State average weekly wage.

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Three States changed their maximum compensation periods for disability. Oklahoma passed an amendment to allow compensation payments for the first 7 calendar days of disability (formerly 3 days), with retroactive benefit payments for disabilities that extend beyond 21 days.

Burial allowances were raised in Arkansas, Colorado, Rhode Island, Tennessee, and West Virginia.

The State of Washington added an offset of temporary and permanent total disability benefits for persons receiving retirement benefits under the Federal Old Age, Survivors, Disability, and Health Insurance Act.

In November 1986, a ratified constitutional amendment in New Mexico changed the workers' compensation program from a court-administered system to an administrative system. Other enactments included changes in medical and vocational rehabilitation benefits and services for injured workers, and penalties and fines to be imposed on employers and carriers, as well as employees, for various violations.

A number of States extended the lives of committees previously formed to review their workers' compensation systems and determine needed reforms. Supplementary funding was also provided for various State funds.

Following is a State-by-State summary of enacted legislation.

## Alaska

Sole proprietors and partners may now elect workers' compensation coverage for themselves. Commercial fishermen and entertainers who are employed on a contractual basis have been eliminated from coverage.

## Arizona

Employers who fail to secure coverage for their employees may be assessed a civil penalty, not to exceed \$500, by the Industrial Commission.

## Arkansas

Municipalities with 70,000 citizens or more now may cover their officials and employees through self-insurance, in addition to insuring with private carriers.

Maximum weekly compensation for total disability and death was increased to \$175 from \$154 on July 1, 1986, and will change again to \$189 for the period July 1, 1987, through December 31, 1988. Beginning January 1, 1989, through December 31, 1989, weekly benefits will be based on  $66\frac{2}{3}$  percent of the State average weekly wage. On January 1, 1990, the percentage will increase to 70 percent. Benefit amounts previously were set statutorily. Minimum weekly compensation for all disability and death was raised to \$20, from \$15.

Time limits on compensation for schedule injuries have been extended. Under certain conditions, additional compensation may be authorized for nonschedule injuries.

The allowance for funerals was increased from \$1,500 to \$3,000.

Awards for total disability where injury was the result of a health or safety violation by the employer will be increased by 25 percent, formerly 15 percent.

The Workers' Compensation Commission was authorized to allocate \$100,000 for a special project with the overall goal of improving workplace safety and reducing the frequency of on-the-job injuries.

Employers' liability for compensation may be discharged by the payment of a lump sum equal to the present value of future payments discounted at 10 percent (formerly 7 percent) annually. No lump-sum settlement will be permitted if the employer's economic viability is adversely affected.

The Commission now has authority to establish maximum fees for medical services.

The penalty assessed against employers who make late compensation payments was raised to 18 percent from 10 percent.

## California

A sum of \$2,287,000 was transferred from the Employment Development Department Contingent Fund to the Uninsured Employers' Fund to cover anticipated deficiencies in workers' compensation benefit payments.

## Colorado

The burial allowance was increased from \$1,000 to \$2,000. Additionally, costs for burial can now be paid directly to the cemetery, to the undertaker, or to anyone who has paid funeral and burial costs.

Disabling mental or emotional stress is not covered unless it can be shown by competent evidence that the stress was brought on solely by the hazards of the employment to which the worker would not have been equally exposed outside the employment.

A convict is ineligible for benefits for any week during which such person is incarcerated, unless benefits have been assigned to the spouse or minor children.

The Industrial Commission was abolished and its functions, powers, and duties have been transferred to the State's Department of Labor and Employment. An Office of Industrial Claims Appeals was established within the Department and will be responsible for conducting administrative appellate reviews of workers' compensation claims.

## Connecticut

Legislation was passed to promote the hiring of workers with permanent vocational disabilities.

The attorney general was given authority to bring a civil action to enjoin employers from entering into employment contracts if they fail to secure compensation payments. Workers' compensation commissioners were also given authority to assess civil penalties of up to \$1,000 when employers fail to comply with insurance requirements.

Assessments charged employers or insurers for funding the Second Injury Fund were increased from 3.5 percent to 5 percent.

Recovery of compensation payments from the Second Injury and Compensation Assurance Fund on behalf of an employer or insurer who fails to make, or who is unable to make, such payments will be made by the same means as provided by law for the collection of taxes due the State.

## Delaware

Injured employees are newly entitled to replacement of hearing aids whenever necessary, as well as to other medical services and supplies.

## Georgia

The State constitution has been amended to provide compensation for any law enforcement officer, firefighter, prison guard, or publicly employed emergency medical technician who is, or at any time in the past was, permanently disabled or killed in the line of duty.

A Workers' Compensation Coverage Study Committee was created to examine coverage and certain other aspects of the workers' compensation law.

## Hawaii

Group self-insured pools may now be established by five or more employers of a nonprofit unincorporated association who are engaged in the same or a similar business, and by members of a bona fide trade or professional association having been in existence for at least 5 years.

## Idaho

Employer payments to the Industrial Special Indemnity Account in nondependency death cases have been increased to \$10,000 from \$5,000.

Foreign or alien insurers who file requests to underwrite workers' compensation insurance are permitted to deposit savings certificates, totaling at least \$25,000, as security with the State treasurer.

## Illinois

A Self-Insurers Advisory Board was created within the Industrial Commission to provide for the continuation of compensation benefits that are unpaid or interrupted because of the insolvency of a private self-insured employer. Further, a Self-Insurers Security Fund was established to compensate injured employees when benefits cannot be paid because of employer insolvency.

## Iowa

Elective coverage was established for a proprietor or partner who is engaged in his or her business full time.

Workers injured while undergoing employment evaluation or training at a rehabilitation facility may receive minimum weekly benefits for disability at an amount equal to 35 percent of the State average weekly wage in effect at the time of the injury.

The provision requiring an employee's most recent employer to pay compensation in cases where exposure to pneumoconiosis occurred for a period of at least 60 days was repealed. The ruling applies to claims filed for compensation on or after July 1, 1986.

The occupational disease medical board was eliminated and the industrial commis-

sioner given authority to designate the industrial hygiene physician and two physicians selected by the dean of the college of medicine of the State University of Iowa to investigate occupational diseases.

## **Kansas**

Coverage was broadened to include persons performing community service work, if a request for so doing is made to and accepted by the workers' compensation director. Qualified real estate agents have been eliminated from coverage.

## **Kentucky**

Volunteer ambulance service personnel are now eligible for workers' compensation coverage.

Beginning July 15, 1986, all claims for asbestos-related disease must be filed within 20 years of exposure.

A task force was formed to conduct a 4-month comprehensive study of the State's workers' compensation system. Findings and recommendations of the task force were to be reported to the Governor and the Legislative Research Commission by October 1, 1986.

Procedures were modified and costs adjusted for those employers who carry their own risks and pay maintenance fund taxes.

## **Louisiana**

Chiropractors now have the same rights as other medical doctors to recover fees for services rendered to injured workers. Medical doctors and chiropractors may recover payment of fees for services provided injured workers in the same way that hospitals do, upon compliance with certain procedures.

Injured employees are allowed to be examined by a physician of their choice and at their own expense. Any medical report provided by a private physician in such cases must also be considered in determining the employee's fitness to return to work.

Any facts or documents contained in an employee's medical records must be made accessible to the employee or, on behalf of the employee, to his or her representative.

## **Maine**

Participants in sheltered workshops at facilities certified by the U.S. Department of Labor under regulations covering employment of handicapped clients are excluded from the minimum compensation for total disability under the State's workers' compensation law.

Costs for medical aids must be paid within 90 days after a request for payment has been made.

Full-time firefighters who file a claim for

an occupationally related cancer and whose last injurious exposure was to a carcinogen are exempt from the 3-year statute-of-limitations for claim filing.

The Workers' Compensation Commission was required to conduct a study regarding delays in the workers' compensation system and the psychological and financial harm suffered by injured workers and their families as a result of any delay in receiving benefits.

## **Maryland**

Compensation awards may be paid from the Uninsured Employers' Fund if the employer does not make such payments when due or does not apply for review before the Workmen's Compensation Commission.

Insurers are required to give claimants written notification concerning the termination of their temporary total disability benefits.

The provision which prohibits payment of compensation in a lump sum after \$45,000 in compensation has been paid was deleted from the law.

## **Minnesota**

For coverage purposes, the earnings of household workers during a 3-month period must be at least \$1,000, previously \$500. Independent contractors may be charged a fee for coverage under certain conditions.

"Daily wage" was changed to "weekly wage" for computing death benefits.

## **Mississippi**

The insurance premium charged employers for funding the Second Injury Fund was increased from one-half of 1 percent to 1 percent of the total compensation actually paid during the previous calendar year.

## **Nebraska**

The name of the Nebraska law was changed from "Workmen's Compensation Act" to "Workers' Compensation Act," and "workmen's" was changed to "workers'" throughout the law.

## **New Jersey**

Coverage was broadened to include members of first aid or rescue squads when responding to and returning from an emergency. Formerly, only travel by police officers and firefighters was covered.

## **New Mexico**

A resolution was enacted to establish a workers' compensation administrative body in place of the court-administered system for determining the rights and liabilities of

employers and of employees who sustain work-related injuries.

The State average weekly wage (\$308.28) has been frozen through June 30, 1987.

New procedures have been established concerning enforcement mechanisms in cases where benefit payments are in default.

Employers may require an employee to submit to a physical examination at any time during his or her employment.

Third-party suits are permitted for injuries caused by negligence, and the employer has subrogation rights in such cases.

Attorneys' fees are restricted to 20 percent of the first \$5,000, 15 percent of the next \$5,000, and 10 percent of any remaining benefits secured.

## **New York**

Elective coverage is allowed for members of auxiliary police organizations at the option of the municipal corporation and for employees of registered voluntary ambulance services. Corporate officers are allowed coverage if an election is made in the insurance contract. Under certain conditions, a professional musician or a person otherwise engaged in the performing arts may be covered. Licensed real estate brokers or sales associates are excluded from coverage.

The Workers' Compensation Board has authority to impose penalties on carriers or employers for engaging in dilatory tactics or for exhibiting an unjustified lack of preparedness regarding hearings. If good cause is shown by the employer or carrier, the penalty may be excused.

Employers seeking to become self-insurers may be required to deposit cash in an amount not exceeding \$100,000 as an alternative to certain securities, or to deposit a surety bond.

Hospitals or health maintenance organizations with certain credentials for providing outpatient medical care must be approved by the Chairman of the Workers' Compensation Board.

## **Ohio**

An International Tort Fund was established under the custody of the State Treasurer. All employers are required to make annual payments to the Fund at a rate set by the Industrial Commission. The Commission is required to make rules governing claims against and disbursements from the Fund. The Self-Insuring Employers' Surety Bond Fund was created and is also under the custody of the State Treasurer and the control of the Commission. Monies for the Fund will come from self-insuring employers who purchase bonds to secure the pay-

ment of workers' compensation benefits.

## Oklahoma

Mandatory coverage of an owner-operator who owns or leases a truck-tractor was removed; however, such persons may elect coverage under the law.

Benefit payments may now be received for the first 7 calendar days of disability, formerly 3 days. If disability continues beyond the 21st calendar day, formerly the third day, benefit payments will be computed from the date of such disability.

The maximum period for payment of temporary total disability and temporary partial disability was reduced from 300 weeks to 150 weeks. An extension may be granted by the court.

The definition of persons considered as "physically impaired" now specifically includes those persons who have suffered the loss of sight in one eye, or the loss by amputation of the whole, or a part, of a major member of the body. Previously, injury to any part of the body or a specific member was covered. Permanent partial disability from more than one injury must result in the loss of more than 17 percent of body function before compensation may be received from the Special Indemnity Fund. A new schedule was established for use in determining costs for medical treatment and services.

The penalty for untimely temporary total disability benefit payments will now be computed as 15 percent of the award in certain cases. Penalties were modified for wrongful discharge of an employee who has filed a claim for compensation. Employers who fail to secure required insurance coverage will now be subject to a fine.

The Workers' Compensation Court is required to adopt rules governing group self-insurance associations that pool their liabilities to provide specific and aggregate excess insurance for workers' compensation.

## Rhode Island

In cases of death, dependent children are each entitled to \$15 weekly, formerly \$9. Surviving spouses are entitled to annual cost-of-living raises of 4 percent, effective on the anniversary date of the initial benefit payment.

The allowance for burial was raised from \$3,000 to \$5,000.

A Special Legislative Commission was authorized to continue studying the feasibility of creating a State-controlled workers' compensation program. A report on the study must be submitted to the general assembly on or before May 1, 1987.

## South Carolina

Minimum weekly compensation for temporary and permanent total disability was increased from \$25 to \$75; however, benefits may not exceed the employee's average weekly wages.

A provision was added to the law which prohibits an employer from dismissing or demoting an employee who has instituted any claims proceedings in good faith, or who has taken part in any claims proceedings.

Appointment of a guardian *ad litem* is allowed for a minor or mentally incompetent person who is a party in a proceeding before the Workers' Compensation Commission.

The name of the South Carolina Industrial Commission was changed to "South Carolina Workers' Compensation Commission."

Employers or carriers who refuse or neglect to submit any required forms, records, or reports that are necessary for proper adjudication of a claim will be subject to a \$100 fine for each offense, formerly \$50.

## South Dakota

Defendants who are sentenced to community service restitution are exempt from coverage.

Permanent hearing loss caused by excessive noise exposure on the job is now covered. New standards have been set for determining percentage of hearing loss. The law now provides that no compensation is payable for temporary total or temporary partial hearing loss and for tinnitus, or if the employee has failed to use protective devices provided by the employer.

The maximum compensation period for job-related total hearing loss is 150 weeks, and for partial losses in proportion to 150 weeks. Claims for hearing loss after July 1, 1974, where the employee has been removed from the injurious exposure for more than 6 months, must be made within a specified 2-year period or be barred forever.

## Tennessee

The maximum allowance for burial was raised from \$2,000 to \$3,000.

An enactment replaced the *American Medical Association Guides to the Evaluation of Permanent Impairment* with the *Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment* or the *American Medical Association Guides to the Evaluation of Permanent Impairment* as a basis for determining the impairment rating of a claimant.

## Utah

The Workers' Compensation Fund of Utah was established to insure employers against liability for compensation when work-related injuries and diseases occur, and to assure payment of benefits to qualifying employees. Previously, employers were insured through the State Insurance Fund.

New assessments have been authorized for all self-insured employers to cover costs of benefits paid to employees of insolvent self-insured employers.

The Default Indemnity Fund has been redesignated as the "Uninsured Employers' Fund."

## Vermont

The percentage of the State average weekly wage upon which benefits are based was raised to 150 percent from 100 percent.

In case of death, the surviving spouse is entitled to compensation of at least 330 times the maximum weekly benefit amount. Dependent children are entitled to unlimited death benefits during dependency; formerly, their benefits were limited to 330 weeks.

Burial expenses are permitted up to a maximum of \$2,000, previously \$1,000.

New legislation stipulates that no person may be discharged from or discriminated against in his or her employment because a claim for benefits has been filed.

The fine was raised from \$100 to \$150 for each day of neglect after 30 days that an employer fails to secure his or her workers' compensation insurance liability.

## Virginia

Occupational disease coverage was broadened to include diseases not ordinarily considered job related if it can be established by clear and convincing evidence that such a disease arose out of and in the course of employment.

The method used in determining cost-of-living supplementary benefit payments for recipients of total disability benefits was changed under both the Workers' Compensation Act and the Federal Old Age, Survivors, Disability, and Health Insurance Act for cases in which disability or death occurred on or after July 1, 1975.

For purposes of establishing a valid claim, "sexual assault" now includes the criminal law definitions of "aggravated sexual battery" and "sexual battery."

## Washington

For coverage purposes, the definition of "child" was modified to include a child born after the employee's injury where conception occurred prior to injury.

Self-insurers are required to pay \$10,000

**Table 1. Jurisdictions which increased maximum weekly temporary total disability benefits during 1986**

Jurisdiction	Former maximum	New maximum	Jurisdiction	Former maximum	New maximum
Alabama	\$303.00	\$319.00	Nevada	\$332.46	\$341.95
Arkansas	\$154.00	\$175.00	New Hampshire	\$462.00	\$492.00
Colorado	\$336.00	\$351.68	New Jersey	\$269.00	\$284.00
Connecticut	\$397.00, plus \$10 for each dependent under 18 years of age, up to 50 percent of basic benefit, not to exceed 75 percent of employee's wage	\$408.00, plus \$10 for each dependent under 18 years of age, up to 50 percent of basic benefit, not to exceed 75 percent of employee's wage	New Mexico	\$298.63	\$308.38
Delaware	\$235.69	\$244.22	North Carolina	\$280.00	\$294.00
District of Columbia	\$413.26	\$431.70	North Dakota	\$291.00, plus \$5 for each dependent; aggregate not to exceed worker's net wages	\$296.00, plus \$9 for each dependent; aggregate not to exceed worker's net wages
Florida	\$307.00	\$315.00	Ohio	\$354.00	\$365.00
Georgia	\$155.00	\$175.00	Oregon	\$334.58	\$344.77
Hawaii	\$291.00	\$299.00	Pennsylvania	\$336.00	\$347.00
Idaho	\$260.00 to \$361.23, according to number of dependents, plus 7 percent of State's average weekly wage for each child up to 5 children	\$269.00 to \$373.75, according to number of dependents, plus 7 percent of State's average weekly wage for each child up to 5 children	Rhode Island	\$307.00, plus \$9 for each dependent; aggregate not to exceed 80 percent of worker's average weekly wage	\$320.00, plus \$9 for each dependent; aggregate not to exceed 80 percent of worker's average weekly wage
Illinois	\$511.81	\$525.45	South Carolina	\$287.02	\$294.95
Indiana	\$178.00	\$190.00	South Dakota	\$254.00	\$262.00
Iowa	\$598.00	\$613.00	Tennessee	\$168.00	\$189.00
Kansas	\$239.00	\$247.00	Texas	\$217.00	\$224.00
Kentucky	\$304.80	\$316.54	Utah	\$323.00, plus \$5 for dependent spouse and each dependent child up to 4 children, but not to exceed 100 percent of State's average weekly wage	\$329.00, plus \$5 for dependent spouse and each dependent child up to 4 children, but not to exceed 100 percent of State's average weekly wage
Louisiana	\$254.00	\$261.00	Vermont	\$293.00, plus \$10 for each dependent under age 21	\$465.00, plus \$10 for each dependent under age 21
Maryland	\$327.00	\$344.00	Virgin Islands	\$183.00	\$187.00
Massachusetts	\$360.50, plus \$6 for each dependent, if weekly benefits are below \$150	\$357.00, plus \$6 for each dependent, if weekly benefits are below \$150	Virginia	\$311.00	\$326.00
Michigan	\$358.00	\$375.00	Washington	\$260.00	\$269.70
Minnesota	\$342.00	\$360.00	West Virginia	\$332.83	\$343.06
Mississippi	\$133.00	\$140.00	Wisconsin	\$321.00	\$329.00
Missouri	\$233.84	\$243.78	Wyoming	\$353.00	\$376.80
Montana	\$292.00	\$299.00			
Nebraska	\$200.00	\$225.00			

NOTE: Most benefit increases are based on the applicable jurisdiction's average weekly or monthly wage. However, nine States (Arizona, Arkansas, California, Georgia, Indiana, Mississippi, Nebraska, New York, and Tennessee) and Puerto Rico prescribe statutory amounts. Only two of

the nine States (Arizona and California) made no changes in the benefit amounts. Two States (Maine and Oklahoma) froze benefit levels for a period of 2 and 3 years respectively. In one State (Alaska), the maximum weekly benefit remained the same.

into the Supplemental Pension Fund for no-dependency death cases due to occupational disease, just as they are required to do in cases of injury.

Benefits were increased for losses resulting from amputation. The maximum amount payable for total bodily impairment was increased to \$90,000, previously \$60,000. Compensation for all unspecified permanent partial disability resulting from the same injury was raised from a maximum of \$60,000 to \$90,000 and unspecified injuries to the back resulting from the same injury may not exceed a maximum of \$67,500, formerly \$45,000.

A self-insured employer is permitted to close claims (accepted after June 30, 1986, and before July 1, 1988) involving medical treatment only and/or payment of temporary disability compensation after the worker has returned to work.

By enactment, a regulatory and inspection program covering health services for the industrially injured worker was established. The new law gives the Director of the State Department of Labor and Industries permission to inspect and audit all

medical, dental, vocational, or other health services and records of injured workers.

Authority was given to the Department of Labor and Industries to conduct a study of permanent disabilities and possible methods for restoring an injured worker to self-supporting, able-bodied status.

A Joint Select Committee on Industrial Insurance was established to review and analyze the State's industrial insurance system and to monitor the implementation of recommendations made by previous committees on workers' compensation and industrial insurance.

### West Virginia

Corporate officers are now allowed to elect workers' compensation coverage for themselves.

A statutory limit of 90 days has been placed on awards for temporary total disability.

The allowance for funeral expenses was increased from \$2,500 to \$3,500.

Payment of additional compensation to a recipient of a permanent total disability

award of 85 percent or more is prohibited.

The minimum percentage of disability for total loss of hearing in one ear was decreased from 25 percent to 22½ percent. For total loss of hearing in both ears, the percentage was reduced from 65 percent to 55 percent.

### Wisconsin

No compromise agreement of liability for additional compensation relating to subsequent injury benefits that involves lump-sum compensation payments is permitted.

### Wyoming

An experience rating system was implemented for determining employer premiums for workers' compensation insurance.

Medical consultants may be hired by the Workers' Compensation Division to review claims cases.

An \$800,000 appropriation was authorized for development and implementation of a computer system that can be used to administer the employer classification and rating system and to process claims. □