

Changes in workers' compensation laws during 2001

Workers' compensation coverage was extended to certain law enforcement and public safety officers, but excluded from some sports officials, inmates, musicians, and horse trainers

Glenn Whittington

The issue of coverage under workers' compensation laws received a great deal of attention in 2001. For example, extending presumptions of coverage for certain diseases suffered by law enforcement officers or firefighters, or both, occurred in Arizona, California, Florida, Maryland, and Virginia. On the other hand, sports officials, State prisoners and county inmates in Florida, musicians in Louisiana, horse trainers in Montana, and soccer referees in Oregon were excluded from coverage.

In gearing up for the Winter Olympic games, Utah is providing workers' compensation coverage for law enforcement/public safety volunteers and paid officers who provide public safety services.

In Idaho, infectious hepatitis and tuberculosis are now considered "occupational diseases" in any occupation involving exposure to human blood or body fluids.

In Nevada, if a person contracts a contagious disease during the course and scope of his employment that results in a

temporary or permanent disability or death, the disease is deemed to be an occupational disease and compensable if certain conditions are met.

In Georgia, the weekly maximum benefit for temporary total disability increased to \$400 and the minimum to \$40 (up from \$375 and \$37.50, respectively). Also in Georgia, the weekly maximum for temporary partial disability was increased to \$268 from \$250. In Louisiana, the amount of benefits paid to each surviving parent in a no-dependency death claim was increased to \$75,000 from \$20,000. In Wyoming, the amount of permanent total disability and death benefits awarded to dependent children was increased to \$150 from \$100 per month. Future payments are to be adjusted annually for inflation.

Maximum burial allowances increased to \$3,500 in North Carolina.

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

Arizona

Any party to a claim for partial disability and permanent total disability now has 90 days (previously 60 days) from the time the Commission mails a copy of its determination to all parties to request a hearing.

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Any disease, infirmity, or impairment of a firefighter's health that is caused by brain, bladder, rectal or colon cancer, lymphoma, leukemia, or aden carcinoma or mesothelioma of the respiratory tract that results in disability or death is presumed to be an occupational disease and is deemed to arise out of the employment if certain requirements are met. Among them are that the firefighter must have passed a physical examination before employment and that the examination did not indicate evidence of cancer; the firefighter was as-

signed to hazardous duty for at least 5 years; and that the firefighter was exposed to a known carcinogen as defined by the International Agency for Research on Cancer, informed the department of this exposure, and the carcinogen is reasonably related to the cancer.

Arkansas

Personnel assigned to the Workers' Compensation Fraud Investigation Unit, upon meeting the qualifications established by

the Arkansas Commission on Law Enforcement Standards and Training, shall have the powers of specialized law enforcement officers of the State for the purpose of conducting investigations.

The burden of proof connecting employment with an occupational disease is now established by a "preponderance" of evidence rather than "clear and convincing" evidence.

A hospital, physician, or healthcare provider is prohibited from billing or attempting to collect any fee for services rendered to an employee due to a workers' compensation injury when a claim has been filed and notification of filed claim has been provided. Such provider is also prohibited from reporting to any credit reporting agency the employee's failure to make the payment. When an injury has been found to be non-compensable, any unpaid portion of a bill may then be pursued.

The schedule for attorneys' fees was changed from the sliding scale, based on the amount of compensation awarded, to a set 25 percent of compensation for indemnity benefits payable to the injured employee or dependents of a deceased employee.

California

The presumption that a hernia, heart trouble, or pneumonia arose out of and in the course of employment was extended to members of the California Highway Patrol. For law enforcement officers and fire department employees, the definition of "injury" was extended to include a blood-borne infectious disease.

For active lifeguards employed for more than 3 consecutive months in a calendar year by certain local agencies and the Department of Parks and Recreation, the term "injury" now includes skin cancer that develops or manifests itself during the period of the lifeguard's employment.

A healthcare provider or licensed healthcare facility can now contract with a contracting agent, employer, or insurance carrier for reimbursement rates that are different from the official medical fee schedule.

Whenever an employer or insurer employs an individual or contracts with an entity to conduct a review of a billing submit-

ted by a physician or medical provider, the employer or insurer must make available to that individual or entity all documentation submitted together with that billing by the physician or medical provider.

Medical treatment for a work-related injury may be provided by a State-licensed physician assistant or nurse practitioner. This includes the authority to authorize the patient to receive time off from work for a period not to exceed 3 calendar days if that authority is included in a standardized procedure or protocol approved by the supervising physician.

Connecticut

The mileage reimbursement rate for the use of a privately owned vehicle necessary for an employee to receive medical attention will now be at the rate equal to the Federal mileage reimbursement rate.

The State's Attorney General is now authorized to bring action in Superior Court against any employer, carrier, or risk management agency that fails to comply with the Second Injury Fund reporting requirements.

An employer- or insurer-sponsored medical plan must contain a list of all pharmacies that will provide services under the plan.

The time limit for appealing a commissioner's decision was extended to 20 days, up from 10.

Delaware

The time for either party to appeal a notice of award was increased to 30 days from 20.

The "cap" on attorneys' fees that can be awarded by the Industrial Accident Board was changed from \$2,250 to a sliding scale based upon the average weekly wage as announced annually by the State's Secretary of Labor. This presently places the "cap" at \$6,744.

An employer or its carrier is to notify the Department and claimant, in writing, of its acceptance or denial of an employee's claim within 15 days from the date of its receipt of knowledge that the employee sustained a work-related injury. Also, all medical expenses are to be paid by the employer or carrier within 30 days of receipt unless notification is provided that the expenses are being contested or further verification is required.

Florida

The definition of "employee" excludes a person who performs services as a sports official for interscholastic sports events, or amateur sports events sponsored by nonprofit organizations. The term "employment" excludes services performed by state prisoners or county inmates, except those performing services for private employers.

For a public employer to be eligible for special premium rates, they must have a workplace safety program. If authorized by the employee, compensation payments may be deposited directly into the employee's account at a financial institution. Upon written request, the employee is entitled to one change of physician during the course of treatment for any one accident.

If lost wages from concurrent employment are used in calculating the average weekly wage, the employee is responsible for providing information concerning the loss of earnings from the concurrent employment.

A claimant, represented by counsel, may waive all rights to benefits by entering into a settlement agreement releasing the employer and carrier from liability in exchange for a lump-sum payment to the claimant. In such settlements, only the attorney's fee is subject to approval by the judge of compensation claims. The exemption of workers' compensation claims from creditors does not extend to claims based on an award of child support or alimony.

An injury to a law enforcement officer while on duty or while going to or coming from work in an official law enforcement vehicle shall be presumed to be an injury arising out of and in the course of employment unless the injury occurred during a distinct deviation for a non-essential personal errand.

Georgia

The weekly maximum for temporary total disability benefits increased to \$400 from \$375, and the minimum to \$40 from \$37.50. The weekly maximum for temporary partial disability was increased to \$268 from \$250.

Upon determining that proceedings were brought, prosecuted, or defended without reasonable grounds, the administrative law judge or the board may, in addition to reasonable attorney's fees, award to the adverse party reasonable litigation expenses against the offending party.

The list of physicians the employer must maintain who are reasonably accessible to employees increased to 6 from 4. All reasonable charges for medical, surgical, hospital, and pharmacy goods and services are payable by the employer or its workers' compensation insurer within 30 days from the date the employer or insurer receives the charges and reports.

Idaho

Infectious hepatitis and tuberculosis are now considered "occupational diseases" in any occupation involving exposure to human blood or body fluids.

Iowa

A limited liability partner may elect to be covered by the workers' compensation law.

Kansas

"Usual charge" means the amount most commonly charged by healthcare providers for the same or similar services while "customary charge" means the usual rates or range of fees charged by healthcare providers in a given locale or area.

The average gross weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, ambulance attendant and driver, or firefighter, who receives no wages for such services, or who receives wages that are substantially less than the usual wages paid for such services, is now computed on the basis of the dollar amount closest to but not exceeding 112.5 percent of the State average weekly wage. The average weekly wage of any other volunteer who receives no wages for such services, or who receives wages that are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, are to be computed on the basis of the usual wages paid by the employer for such services to employees who are not volunteers.

Louisiana

The amount of benefits to be paid to each surviving parent in a no-dependency

death claim was increased to \$75,000 from \$20,000.

If upon release by a physician to return to work, the employee fails a drug test, benefits, with the exception of reasonable and necessary medical treatment, may be terminated subject to the terms and conditions established in the employer's promulgated drug testing policy and program.

In calculating an employee's wage, any amount withheld by the employer to fund any health insurance benefit provided by the employer, and which was elected by the employee in lieu of taxable earnings, is to be included.

Constitutional challenges to the Workers' Compensation Act are now recognized if they meet established filing procedures. An award of temporary total disability benefits may be modified by the filing of a motion for modification with the same court that awarded the benefits and under the same caption and docket number without the necessity of filing a new dispute and appearing at a mediation conference.

The time limit for filing a claim for disability arising from an occupational disease was increased to 1 year from 6 months.

Musicians and performers who are rendering services pursuant to a performance contract are exempt from workers' compensation coverage.

For purposes of determining an employee's average weekly wage in an occupational disease claim, the date of the "accident" shall be the date of the employee's last employment with the employer from whom benefits are being claimed or the date of last injurious exposure to employment conditions, whichever date occurs later.

Maine

The amount of medical insurance coverage required for an agricultural employer to be exempt from workers' compensation coverage was increased to \$5,000 from \$1,000.

The Supplemental Benefits Fund was created to provide reimbursement for the payment of workers' compensation benefits in excess of 260 weeks. Previously,

these reimbursements were made from the Employment Rehabilitation Fund.

Maryland

A decision rendered by the Workers' Compensation Commission is to be sent to each party's attorney of record or, if the party is unrepresented, to the party.

For purposes of workers' compensation coverage, the definition of "public safety employee" was expanded to include a Prince George's County deputy sheriff.

If an award of permanent partial disability compensation is reversed or modified by a court of appeal, the payment of any new compensation awarded shall be subject to a credit for compensation previously awarded and paid.

Each employer that self-insures must establish a toll-free telephone number through which an employee or claimant, or a representative of an employee or claimant, may make direct telephone inquiries during regular business hours.

Michigan

In response to a request that pertains to a specific employer and includes the employer's address and the date of injury of the claim for which information is requested, the bureau may disclose the name and address of the insurer that, according to the records of the bureau, provided coverage on the date of injury, but shall not disclose the effective date or expiration date of the policy.

Montana

The Workers' Compensation Act does not apply to employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet.

The waiting period for receiving temporary total disability benefits was reduced from 6 to 5 days, and for shift work from 48 to 40 hours.

A worker requalifies for temporary total disability benefits if a modified or alternative position is no longer available to the

worker for any reason, except for the worker's incarceration, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment.

If an employee is intentionally injured by an intentional and deliberate act of the employee's employer or by the intentional and deliberate act of a fellow employee while performing the duties of employment, the employee or, in case of death, the employee's heirs have a cause of action for damages against the person whose intentional and deliberate act caused the intentional injury.

Nevada

An officer or manager of a quasi-public or private corporation, or a limited liability company who owns the entity, operates it exclusively from his primary residence, and receives pay for services performed, may elect to reject coverage for himself by filing written notice with the insurer.

If a person employed in the State contracts a contagious disease during the course and scope of his employment that results in a temporary or permanent disability or death, the disease is deemed to be an occupational disease and compensable if certain conditions are met. "Contagious disease" means hepatitis A, B, and C, tuberculosis, the human immunodeficiency virus or acquired immune deficiency syndrome.

If a treating physician or chiropractor refers an injured employee to a specialist for treatment, the treating physician or chiropractor must provide to the injured employee a list that includes the name of each physician or chiropractor with that specialization who is available pursuant to the terms of the contract with the organization for managed care or with providers of healthcare services. The injured employee may select someone from that list.

New Hampshire

Scheduled permanent impairment awards can now be given for an injury to the brain or from scarring, disfigurement, or other skin impairment resulting from a burn or burns.

A mental injury is not compensable under the Workers' Compensation Act if such mental injury results from any disciplinary

action, work evaluation, job transfer, lay-off, demotion, termination or similar action, taken in good faith by the employer.

Any State employee injured in the line of duty by a hostile or overt act that causes hospitalization or renders the employee temporarily unable to perform the duties of his or her position shall remain on active payroll and not be charged annual or sick leave for the time lost due to the injury.

When an insurance carrier, self-insurer, or payor, acting on behalf of such carrier or self-insurer, disputes the causal relationship of a medical bill to the claimant's injury, and denies payment of such bill, and is after a hearing ordered to pay or reimburse the bill by the Commissioner, the employee shall be entitled to reimbursement of reasonable counsel fees and costs as approved by the Commissioner.

North Carolina

Burial expenses were increased to \$3,500 from \$2,000.

An insurer that covers an employee under a health benefit plan, a disability income plan, or any other health insurance plan is not a real party in interest and shall not participate in any proceeding or settlement agreement to determine compensability of a claim. The insurer that covers an employee under a health benefit plan or any other health insurance plan may seek reimbursement from the employee, employer, or carrier that is liable or responsible for the specific medical charge according to a final adjudication of the claim or an order of the Commission approving a settlement.

North Dakota

The bureau may now pay for preventative treatment for significant exposures documented by emergency medical service providers or employees of licensed facilities, and for exposure to rabies occurring in the course of employment.

An employer may not require an employee to use sick or annual leave, or other employer-paid time off work, before applying for or receiving workers' compensation benefits. However, an employer may allow an employee to use sick or annual leave to make up the difference

between the employee's wage-loss benefits and the employee's regular pay.

For purposes of workers' compensation, a "preferred worker" means a worker who has incurred a compensable injury that resulted in a disability that poses a substantial obstacle to employment. The bureau may provide assistance as deemed appropriate to employers who employ a preferred worker, and employers who apply for and are approved as a preferred worker employer may not be assessed premiums on a preferred worker's salary for 3 years from the date of hiring. Also, the bureau may not charge claims costs incurred as a result of an injury sustained by a preferred worker against the account of the preferred worker's employer during the first 3 years after the worker is hired.

The award for the amputation of more than one finger on one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot.

An employer may not employ any person, or receive the fruits of the labor of any person, in a hazardous employment, without first applying for workers' compensation insurance coverage by notifying the bureau of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming 12-month period. An employer who willfully misrepresents the amount of payroll upon which a premium is based, or who willfully fails to secure coverage for employees, is liable to the State in the amount of \$2,000 plus three times the difference between the premium paid and the amount of premium the employer should have paid.

Oklahoma

The name of State Insurance Fund was changed to "CompSource Oklahoma."

Oregon

A person serving as a referee or assistant referee in a youth or adult recreational soccer match whose services are retained on a match-by-match basis is exempt from workers' compensation coverage. Firefighters and police employees of any city having a popu-

lation of more than 200,000 that provides a disability and retirement system by law are also exempt from coverage.

“Preexisting condition” means, for all occupational disease claims, any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment and that precedes the onset of the claimed occupational disease.

For purposes of determining entitlement to temporary disability or permanent total disability benefits, “worker” does not include a person who has withdrawn from the workforce during the period for which such benefits are sought.

The maximum for temporary total disability was increased to 133 percent of the State’s average weekly wage, up from 100 percent. For workers employed in more than one job at the time of injury, all the worker’s earnings will be considered in determining the temporary total disability compensation rate. For the permanent loss of use or function of an injured member of the body, benefits for each degree of disability was increased to \$511.29 from \$454. Beginning January 1, 2002, through December 31, 2004, the worker will receive \$559 for each degree of disability.

An offer of modified employment may be refused by a worker, without the termination of temporary total benefits, if the offer does not meet an established set of requirements.

An injured worker may pursue a civil negligence action for a work-related injury that has been determined to be not compensable because the worker has failed to establish that a work-related incident was the major contributing cause of the worker’s injury—only after an order determining that the claim is not compensable has become final. Such action must occur within the later of (1) 2 years from the date of injury or (2) 180 days from the date the order affirming that the claim is not compensable on such grounds becomes final.

Rhode Island

Any person who is appointed a corporate officer between January 1, 1999 and December 31, 2001, and was not previ-

ously an employee of the corporation, will not be considered an employee unless a notice is filed to elect coverage by the workers’ compensation provisions.

The penalty for an employer failing to post a summary of the workers’ compensation act provisions was increased to \$250 from \$100. The payment of medical services required by the employer shall not include hearing aids or other amplification devices.

An injured employee who accepts suitable alternative employment will receive a weekly compensation equal to 66 2/3 percent of the difference between the employee’s average weekly wage, earnings or salary before the injury and his/her weekly wages, earnings, or salary from the suitable alternative employment.

For total occupational deafness in one ear, 75 weeks of compensation will be paid; for total occupational deafness of both ears, 244 weeks of compensation will be paid (previously 17 and 100 weeks, respectively).

South Dakota

No local prisoner, State inmate, or Federal inmate providing services to the State or any of its political subdivisions may be considered a volunteer worker for workers’ compensation purposes.

Tennessee

In cases where an injury occurs as the result of gradual or cumulative events or trauma, the injured employee, or representative, needs to provide notice to the employer of the injury within 30 days after the employee knows or reasonably should know that he/she has suffered a work-related injury resulting in permanent physical impairment, or is rendered unable to continue to perform his/her normal work activities as the result of the work-related injury, and the employee knows or reasonably should know that the injury was caused by work-related activities.

Before any proposed settlement is considered final in cases involving benefits from the second injury fund, it must have the written approval of the Commissioner of Labor and Workforce Development.

If an injury or illness requires the treatment of a physician or surgeon who practices orthopedic or neuroscience medicine, the employer may appoint a panel of physicians or surgeons practicing orthopedic or neuroscience medicine for the employee to choose. The injured employee is entitled to have a second opinion on the issue of surgery, impairment, and a diagnosis from that same panel of physicians.

The representative of the employee, employer, or employer’s insurer attending a benefit review conference must have authority to settle any disputes. Failure to provide such a person at the conference, without good cause, by the employer or insurer, shall subject them to a penalty of not less than \$50 nor more than \$5,000.

Texas

The requirements for being on the Commission’s approved list of doctors licensed in the State who are approved to provide healthcare services were significantly revised. Regional Health Care Delivery Networks may now be established by the Commission, as fee-for-service networks designed to improve the quality and reduce the cost of healthcare. An insurance carrier or a self-insurer, certified to provide workers’ compensation coverage in the State, may elect to participate or not participate, by contract, in a regional network. A public employer, with certain exceptions, are required to participate in a regional network.

An employer shall notify an employee, treating doctor, and insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. An insurance carrier shall, with the agreement of a participating employer, provide the employer with return-to-work coordination services as necessary to facilitate an employee’s return to employment.

The Texas Workers’ Compensation Insurance Fund was changed to a domestic mutual insurance company and now operates as the Texas Mutual Insurance Company.

Utah

Law enforcement and public safety volunteers and paid officers who provide public safety services during the Olympic Winter Games of 2002 and the Paralympic Winter Games of 2002 are covered under workers' compensation. For purposes of computing compensation, the average weekly wage rate of a public safety volunteer is considered to be \$400.

Virginia

The presumption as to disability or death from respiratory disease, hypertension or heart disease was extended to special agents of the Department of Alcoholic Beverage Control.

Premium discounts insurers provide to employers for drug-free workplace programs are no longer limited to 4 years.

Wyoming

For purposes of workers' compensation coverage, the definition of "State employee" was clarified.

The amount of permanent total disability and death benefits awarded to dependent children was increased to \$150 per month, up from \$100, for payments made after July 1, 2001. In the future such payments are to be adjusted annually for inflation. □

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