

Changes in workers' compensation laws in 2003

New and revised legislation further defined coverage and services under the workers' compensation laws of various States

Glenn Whittington

In 2003, major legislative reforms occurred in California, Florida, Montana, Nevada, and West Virginia. Maximum burial expenses increased from \$5,000 to \$7,500 in Florida and Iowa, and from \$3,200 to \$5,500 in Ohio. In California, the vocational rehabilitation provisions were repealed and replaced with a "supplemental job displacement benefit," up to a maximum of \$10,000. Also, in California, chiropractic and physical therapy treatments were limited to 24 visits for the life of the claim, while Florida increased chiropractic treatment from 18 visits to 24 visits, and the number of weeks of treatments from 8 to 12.

Workers' compensation coverage was expanded to include

search and rescue workers in Maine and members of the State defense force in New Mexico. In Maryland and Massachusetts, students in work-based learning experiences now are covered. In West Virginia, the Second Injury Fund was abolished, and the length of time a person may receive temporary total disability benefits was reduced from 208 weeks to 104 weeks. In Montana, the waiting period for temporary total disability benefits was reduced from 40 hours (or 5 days) to 32 hours (4 days) of wage loss, and the permanent partial disability benefit maximum increased from 350 weeks to 375 weeks.

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

Arizona

Employers no longer have to file a written certification with the Industrial Commission. Also, employers no longer have to notify their employees annually that they have a drug testing and alcohol impairment testing policy.

A person engaged in the business of providing professional employer services is subject to the Workers' Compensation Act, regardless of whether the person uses the term professional employer organization, staff leasing company, registered staff leasing company, employee leasing company, or any other name. The professional employer or-

ganization and its client are considered the employer for the purposes of coverage under the Workers' Compensation Act, and both are entitled to protection of the Act's exclusive remedy provision.

The Special Fund may begin payment of medical or compensation benefits on a claim that involves an employer who has failed to secure workers' compensation coverage.

The civil penalty for an employer not obtaining workers' compensation coverage increased from \$500 to \$1,000. If the Industrial Commission has assessed a civil penalty against an employer within the previous 5 years for failure to secure workers' compensation coverage, an additional civil penalty, not to exceed \$5,000, may be assessed against the employer; for a third or subsequent failure to secure workers' compensation coverage, the employer could be assessed a fine not to exceed \$10,000.

California

The Disaster Service Workers' Compensation Program was restored. This program provides workers' compensation coverage and benefits to workers in volunteer disaster services through the Office of Emergency Services.

The name of the "Uninsured Employers Benefits Trust Fund" was changed to "Uninsured Employers Benefits Trust Fund"; the "Subsequent Injuries Fund" was changed to the "Subsequent Injuries Benefits Trust Fund."

The period of time required to reasonably conduct utilization review will not be considered unreasonable delay in the payment of compensation for purposes of determining "penalty issues."

The 1-year period from the date of death for commencing proceedings for workers' compensation benefits in the case of death from asbestosis was extended to include firefighters who die of asbestosis.

Glenn Whittington is Chief, Branch of Planning, Policy and Standards, Office of Workers' Compensation Programs, Employee Standards Administration, U.S. Department of Labor.

E-mail: gaw@fenix2.dol-esa.gov

The fine for committing workers' compensation fraud increased from \$50,000 to \$150,000.

The vocational rehabilitation provisions were repealed and replaced with a "supplemental job displacement benefit" of up to a maximum of \$10,000 if the injured worker does not return to work within 60 days from the injury.

Employees receiving vocational rehabilitation services prior to January 1, 2004, are entitled to them until those services are concluded. Vocational rehabilitation services will not be provided to any employee on or after January 1, 2004.

On or after January 1, 2004, if an injury causes permanent disability and the injured employee does not return to work to his or her usual or customary job for the employer, the injured employee will be eligible for a supplemental job displacement benefit in the form of a nontransferable voucher for education-related retraining or skill enhancement, or both, at a State approved or accredited school. The amount of the benefit is determined by the degree of permanent partial disability the worker suffers.

The employer will not be liable for the supplemental job displacement benefit if, within 30 days of the end of temporary disability, the employer offers modified or alternative work, and the employee rejects or fails to accept the offer.

By July 1, 2004, the Commission of Health and Safety and Workers' Compensation is required to conduct a survey and evaluation of existing medical treatment utilization standards. By October 1, 2004, the Commission will issue a report of its findings and recommendations to the Administrative Director of the Division of Workers' Compensation for purposes of the adoption of a medical treatment utilization schedule.

The Industrial Medical Council was eliminated; its functions were transferred to the Division of Workers' Compensation.

The workers' compensation provision was repealed which allowed a collective bargaining agreement between private employers in the aerospace and timber industries and a recognized or certified exclusive bargaining representative establishing a dispute resolution process for workers' compensation claims. A new provision established such a collective bargaining agreement for any industry, except construction, which is covered separately.

Dispensers of workers' compensation prescription drugs must dispense generic drugs, unless a brand name has been specifically prescribed.

The time limit for paying medical bills was reduced from 60 working days from date of complete billing to 45 working days. The penalty for late payment was increased from 10 percent to 15 percent. All employers are required to accept electronic billing by July 1, 2006.

For injuries occurring on or after January 1, 2004, chiropractic treatment and physical therapy treatments are limited to 24 visits for the life of the claim. However, an insurer may authorize supplemental treatments in writing.

All employers are required to adopt utilization review systems consistent with the utilization review schedule. Cases involving spinal surgery denials will go through an expedited second-opinion process.

The administrative director of the Division of Workers' Compensation fund now is required to adopt and revise periodically a medical fee schedule for various services, drugs, fees, and goods, as specified, other than physician services. The rates and fees established by the medical fee schedule must be adequate to ensure a reasonable standard of services and care for injured employees.

Colorado

If a party to a workers' compensation case requests an independent medical examination, the other parties are required to negotiate and select an independent medical examiner no earlier than 14 days after receiving the request for such examination. If the parties cannot agree on the selection of an independent medical examiner, the Division of Workers' Compensation is to provide a panel of three physicians from which the parties may select a physician to conduct the examination. The requesting party is allowed to strike one physician from the list; the opposing party then is given the same opportunity. The remaining physician then is designated by the Division to conduct the examination. If either party does not strike a physician from the list, the Division will select the independent medical examiner from the remaining physicians on the list. The insurance company is required to provide all medical records to the independent medical examiner within 14 days prior to the scheduled examination.

For purposes of workers' compensation coverage, the definition of employee excludes persons who perform services for more than one employer at a race meet or horse track.

The rejection for technical errors by the Division of Workers' Compensation of any document, form, or notices that is filed elec-

tronically will not affect the validity of the notice to the claimant or any other party.

In case of an on-the-job injury or death caused by a third party not in the same employ, the claimant is allowed to collect workers' compensation and to sue the third party for any economic and noneconomic damages not covered under workers' compensation. When the insurer pays workers' compensation benefits to a claimant, the insurer can recover the amount from the third party, regardless of whether the damages are economic or noneconomic, excluding reasonable attorney fees and costs paid by the injured employee or his or her dependents in pursuing the action against the third party. The claimant must notify the insurer, the third party, and the Division of Workers' Compensation of any third party claim and must receive written approval from the liable insurance carrier.

Florida

To be eligible for permanent total disability benefits, an employee must have either a catastrophic injury or be unable to uninterruptedly engage in at least sedentary employment. The definition of "catastrophic injury" was revised to eliminate the Social Security eligibility standard and to provide limited inclusion for certain injuries, such as loss of both hands, both arms, both feet, both legs, or both eyes, or any two thereof, or paraplegia or quadriplegia. Permanent total disability benefits are payable until the employee reaches age 75; however, if an employee is injured on or after age 70, benefits are payable for a maximum of 5 years following the determination of permanent total disability.

Permanent partial disability benefits were increased from 50 percent of the employees' temporary total disability benefits to 75 percent, and the duration of benefit was changed from 3 weeks for each percent of impairment to a sliding scale based on the percent of impairment. Supplemental benefits which were paid only to employees who had at least a 20-percent impairment and who were unable to earn at least 80 percent of their pre-injury wage were eliminated.

The cap on chiropractic treatments was increased from 18 visits to 24 visits, and the number of weeks of treatments from 8 weeks to 12 weeks.

The maximum benefit for funeral expenses increased from \$5,000 to \$7,500; death benefits for dependents increased from \$100,000 to \$150,000.

An "accidental compensable injury"

must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury, compared with all other causes combined, as demonstrated by medical evidence only. In cases involving occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence.

For mental and nervous injuries, a physical injury that requires medical treatment must be the major contributing cause; the injury must be demonstrated by clear and convincing evidence.

An employer and employee are limited to one independent medical examination per accident, rather than one per medical specialty; the carrier is required to pay for only one independent medical examination. If an injured worker prevails in a medical dispute, he or she is allowed to recoup the costs of the independent medical examination. As an alternative, both parties may agree to the use of a consensus medical examination that would be binding on both parties.

Physician fees increased to 110 percent of Medicare reimbursement schedules, and surgical procedures to 140 percent.

The Department of Insurance may provide confidential information to any law enforcement agency or administrative agency for use in the performance of its official duties and responsibilities. The receiving agency must maintain the confidentiality of such information.

Hawaii

“Medical care, medical services, or medical supplies” now includes such care, services, and supplies rendered by occupational therapists, certified occupational therapy assistants and licensed massage therapists.

Iowa

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

Louisiana

The catastrophic injury sunset provision payment of \$30,000 within 1 year of injury in cases involving anatomical loss of use or amputation was extended to July 1, 2006.

Regardless of whether a judgment rendered by the workers' compensation judge is in favor of the employer or the employee, if the judge has made a specific finding that further delay for surgery would, more likely than not, result in death, permanent disabil-

ity, or irreparable injury to the claimant, any appeal of the judgment will be entitled to preference and priority and handled on an expedited basis. In such cases, the record will be prepared and filed within 15 days of the granting of the order of appeal. The court of appeal will hear the case within 30 days after the filing of the appellee's brief.

The provision was repealed which allowed a notice filed with the compensation insurer of such employer to constitute a claim for disability in an occupational disease case.

The provision was repealed which allowed for the reduction of workers' compensation benefits when a claimant was receiving old-age benefits under the Social Security Act.

If an employee is treated by any physician to whom he or she is not specifically directed by the employer or insurer, that physician will be regarded as his or her choice of treating physician. If the employee is specifically directed to a physician by the employer or insurer, that physician also may be deemed the employee's choice, if the employee has received written notice of his or her right to select one treating physician in any field or specialty, and then chooses to select the employer's referral as the treating specialist.

If a dispute arises concerning the work of a vocational counselor, the employee may file a claim asking the Office of Workers' Compensation to review the quality of services being provided. An employee has no right of action against a vocational counselor for tort damages related to the performance of vocational services, unless and until he or she has exhausted the administrative remedy provided.

Failure to provide payment or to consent to the employee's request to select a treating physician or to change physicians when such consent is required will result in the assessment of a penalty. The penalty will be an amount up to the greater of 12 percent of any unpaid compensation or medical benefits or \$50 per calendar day for each day in which any and all compensation or medical benefits remain unpaid or such consent is withheld, together with reasonable attorney fees for each disputed claim. However, the \$50 per-calendar-day fine may not exceed a maximum of \$2,000 in the aggregate for any claim.

Employers or insurers who at any time discontinues payment of claims due, when such discontinuance is found to be arbitrary, capricious, or without probable cause, will be subject to payment of a penalty not to exceed \$8,000, and a reasonable attorney fee

for the prosecution and collection of such claims.

Maine

In partial incapacity claims, the authority to extend the duration of benefit entitlement beyond 260 weeks in cases involving extreme financial hardship due to inability to return to gainful employment has been delegated by the Workers' Compensation Board, on a case-by-case basis, to a hearing officer or a panel of three hearing officers.

As an alternative to obtaining a reinsurance contract providing coverage against losses arising out of one occurrence, a group of self-insurers may participate in a group self-insurance reinsurance account. The law details requirements for setting up such an account.

The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than two-thirds of the State's average weekly wage at the time of injury does not apply if the injury results in the employee's death.

Self-insuring employers and employer groups are prohibited from using workers' compensation trust funds to make contributions to political candidates or political action committees.

The definition of “employee” was expanded to include qualified search and rescue workers while performing a search and rescue activity requested by a State, county, or local governmental entity.

Maryland

The presumption of a compensable occupational disease under the workers' compensation law was extended to include Baltimore City deputy sheriffs who suffer from heart disease or hypertension that result in partial or total disability or death. Workers' compensation benefits received are in addition to any benefits that the individual is entitled to receive under their retirement system, except that the workers' compensation benefits may be adjusted if the combined benefits exceed the employees' weekly salary.

A student placed with an employer in an unpaid work-based learning experience coordinated by a county board is considered a covered employee of that employer for workers' compensation purposes. If the county board chooses to secure the workers' compensation coverage, the participating employer is to reimburse the county board in an amount equal to the lesser of the

cost of the premium for workers' compensation coverage, or a fee of \$250.

Massachusetts

Students participating in a work-based experience as part of a school-to-work program who are injured arising out of and in the course of such participation at or with particular employers, are considered employees of such employers for workers' compensation purposes.

Mississippi

The event that triggers the obligation of the Self-Insurer Guaranty Association was changed from a determination of the insolvency of a self-insurer to the default of the self-insurer. The default of a self-insurer means a self-insurer that has failed for any reason to satisfy his or her obligations for payment of compensation benefits, medical care, and funeral expenses.

The Workers' Compensation Commission will, upon the request of the Self-Insurer Guaranty Association or of any other party or without any request on its own motion, enter an appropriate order finding a member self-insurer to be in default and will determine the date of such default.

The Self-Insurer Guaranty Association may recover from the self-insurer in default all amounts paid by the association on account of covered claims of employees of the self-insurer in default and all expenses incurred by the association in evaluating, adjusting, defending, and settling covered claims of the employees of the self-insurer in default.

Missouri

For purposes of providing funds for the administration of the workers' compensation division, the division's director will impose an annual administrative surcharge upon every workers' compensation deductible plan policyholder. The surcharge will apply to all workers' compensation policies with a deductible option that are written or renewed on or after January 1, 2004.

Montana

The provisions were eliminated which limited a worker's permanent total disability benefits to a maximum of 10 adjustments, and which limited the adjustment percentage increase to 3 percent.

Unless an employer elects coverage and an insurer allows an election, the Workers'

Compensation Act does not apply to the employment of a person who is not an employee or worker in the State.

The length of an exemption from workers' compensation coverage by an independent contractor was reduced from 3 years to 2 years before a renewal application is required.

If parties fail to reach a settlement through the mediation process, a petition to the workers' compensation court must be filed within 60 days of the mediator's report.

The Board of Investments shall invest the money of the industrial accident rehabilitation account, and the investment income must be deposited in the industrial accident rehabilitation account.

The co-pay does not apply if the injured employee visits a medical service provider in a managed care organization or preferred provider organization, as requested by the insurer.

An employee who suffers an injury or dies while traveling is not covered unless, among other things, the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement. Payment made to an employee that is not wages but designated as an incentive to work at a particular jobsite is not considered reimbursement for the costs of travel, gas, oil, or lodging; thus the employee would not be covered while traveling.

The waiting period for temporary total disability benefits was reduced from 40 hours of wage loss (5 days) to 32 hours (4 days).

A signed claim for workers' compensation or occupational disease benefits now serves as authorization for the disclosure of information relevant to the claimant's condition to the workers' compensation insurer or to the agent of a workers' compensation insurer by the healthcare provider.

A provision was added that an award for permanent partial disability may not be based exclusively on complaints of pain. Also, effective July 1, 2003, the permanent partial disability benefit maximum increased from 350 weeks to 375 weeks.

The Montana Heritage Preservation and Development Commission is to provide workers' compensation coverage for its volunteers.

If an employer misrepresents an employee's status as an exempt independent contractor, the department may impose a civil penalty of \$1,000 on the employer, in addition to any other penalties provided in the law.

Nebraska

Workers' compensation coverage is now provided to volunteer firefighters, volunteer ambulance drivers, and volunteer emergency care providers from the instant that such persons begin to respond to a call to active duty until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first.

For workers' compensation purposes, an employer of any number of related employees and less than six unrelated employees engaged in agricultural pursuits are not exempt from the Workers Compensation Act. An employer who is exempt may elect to bring his or her employees under the Act.

Nevada

A person convicted of knowingly failing to comply with an order issued by the administrator of the Division of Industrial Insurance Relations to cease immediately all business operations will be guilty of a misdemeanor.

A periodic cost-of-living increase was established for injured workers who become permanently totally disabled. For any injury or disability occurring on or after January 1, 2004, the cost-of-living increase will be 2.3 percent.

For workers' compensation coverage purposes, the term "employee" excludes persons who perform services as a sports official for a nominal fee at an amateur, intercollegiate, or interscholastic sporting event and is sponsored by a public agency, public entity, or private nonprofit organization. Sports official includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a neutral participant in a sporting event.

A self-insured employer, an association of self-insured public or private employers, or a private carrier cannot enter into a contract with an organization for managed care unless the organization's proposed plan for providing medical and healthcare services provides all medical and healthcare services that may be required for industrial injuries and occupational diseases in a manner that ensures the availability and accessibility of adequate treatment to injured employees.

If a person wishes to contest a decision of the administrator of the Division of Industrial Insurance Relations to impose an administrative fine, he or she must file a notice of appeal with an appeals officer within 30 days after the date on which the notice of the administrator's determination was mailed.

If an employer offers temporary, light-duty employment to an employee, the employer must confirm the offer in writing within 10 days after making the offer. The making, acceptance, or rejection of an offer of temporary light-duty employment does not affect the eligibility of the employee to receive vocational rehabilitation services, including compensation, and does not exempt the employer from complying with the regulations adopted by the division governing vocational rehabilitation services.

"Medical facility" is a hospital, clinic, or other facility that provides treatment to an employee who is injured by an accident or contacts an occupational disease, arising out of and in the course of his employment.

A physician or chiropractor who has a duty to file a claim for compensation may delegate this duty to a medical facility. If this duty is delegated, the delegation must be in writing and signed by the physician or chiropractor and an authorized representative of the medical facility.

The definition of "accident benefits" was expanded to include preventative treatment for hepatitis administered as a precaution to certain local police officers. A "police officer" is a sheriff, deputy sheriff, officer of a metropolitan police department, or city police officer. The hepatitis is presumed to have arisen out of and in the course of employment if the employee has been continuously employed for 5 years or more as a police officer.

An injury sustained by a member of the Nevada legislature is deemed to have arisen out of and in the course of his or her employment as a legislator if, at the time of the injury, he or she was performing any act or engaging in any event that was reasonably related to the legislative office or public service as a legislator. It does not matter whether or not the legislator was receiving remuneration from the State while performing the act or engaging in the event at the time of the injury. An injury sustained while campaigning for any legislative or other elective office is not covered.

Any injury sustained by an employee of a school district while engaging in an athletic or social event shall be deemed to have arisen out of and in the course of employment, whether or not the employee received remuneration for participation in the event.

New Hampshire

For the purposes of determining disability rates for scheduled permanent impairment awards, the average weekly wage used will

be the average weekly wage of the employee at the time of injury.

New Mexico

The definition of "permanent total disability" now includes a brain injury resulting from a single traumatic work-related injury that causes, exclusive of the contribution to the impairment rating arising from any other impairment to any other body part or any preexisting impairments of any kind, a permanent impairment of 30 percent or more as determined by the current American Medical Association Guide to the Evaluation of Permanent Impairment.

Attorney fees were increased from \$1,000 to \$3,000 for discovery related to workers' compensation cases. The attorney fee cap for workers' compensation cases was raised from \$12,500 to \$16,500, and a provision adopted for an automatic increase (or decrease) based on the changes in the consumer price index for the immediately preceding calendar year.

An uninsured employers' fund was created in the State treasury and is to be administered by the workers' compensation administration as a separate account. For fiscal year 2004, \$500,000 was appropriated from the workers' compensation administration fund to provide for claims against uninsured employers. Thereafter, the fund will be financed by an assessment on each New Mexico employer of insurance carrier, paid quarterly.

An executive employee of a limited liability company may elect not to accept the provisions of the Workers' Compensation Act.

Compensation benefits are to be paid no later than 14 days after the worker has missed 7 days from work, whether or not the days are consecutive.

Workers' compensation coverage has been extended to members of the State defense force when the members are on State-ordered militia duty. Militia duty is the performance of actual military services for the State in time of need when called by the governor or adjutant general following mobilization of the National Guard.

An owner or the principal contractor of a construction project may establish and administer a controlled insurance plan, provided the covered project is a construction project, a plant expansion, or real property improvements with an aggregate construction value in excess of \$150 million within New Mexico, expended within a 5-year period. Requirements for the operation and administration of such a plan are set forth in the Workers' Compensation Act.

New York

It is unlawful for any employer to refuse to hire, employ, license, or to discharge from employment an employee in order to evade such employer's legal duty to provide workers' compensation coverage for such employee. All employers doing business in the State shall ensure that their employees working in the State are insured for workers' compensation.

North Carolina

It is a rebuttable presumption that the term "employee" does not include persons performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the persons sell newspapers or magazines at a fixed price and the compensation is based on retaining the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person.

Any principal contractor, intermediate contractor, or subcontractor (irrespective of whether such contractor regularly employs three or more employees) who contracts with an individual in the interstate or intrastate carrier industry and who operates a truck, tractor, or truck trailer licensed by a governmental motor vehicle regulatory agency, but has not secured the payment of compensation for himself personally and for his employees and subcontractors (if any) is liable as an employer for the payment of compensation and other benefits resulting from the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by the contract.

North Dakota

The name of the Workers' Compensation Bureau was changed to the Workforce Safety and Insurance Organization.

The term "staffing service" was further delineated to include professional employer organizations' staff leasing companies, employee leasing organizations, and temporary staffing companies. The term is broadly construed to encompass entities that offer services of a professional employer organization, staff leasing company, employee leasing organization, or temporary staffing company, regardless of the term used.

Ohio

Funeral expenses were increased from an amount not to exceed \$3,200 to an amount not to exceed \$5,500.

“Subrogation interest” includes past, present, and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, and any other costs of expenses paid to, or on behalf of, the claimant by the statutory subrogee.

“Net amount recovered” is the amount of any award, settlement, compromise, or recovery by a claimant against a third party, minus the attorney’s fee, costs, or other recovery. “Net amount recovered” does not include punitive damages that may be awarded by a judge or jury.

An employer who, on religious grounds, conscientiously objects to the acceptance of public or private death, disability, old age, retirement, or healthcare benefits is permitted to exempt from coverage under the workers’ compensation law and payment of premiums and assessments under the law, an individual who on religious grounds conscientiously objects to the acceptance of public or private death, disability, old age, retirement, or healthcare benefits.

Special confidentiality provisions were established for records of peer review committees of the Bureau of Workers’ Compensation responsible for reviewing the professional qualifications and the performance of providers conducting medical examinations or file reviews for the Bureau.

Noncertified healthcare providers are prohibited from charging an employee, employer, managed care organization, or the Bureau of Workers’ Compensation any amount for covered services or supplies that are in excess of the allowed amount paid (certified healthcare providers were already so prohibited).

Oregon

The distinction between scheduled and unscheduled awards for permanent partial disability was eliminated. All workers with permanent disability will now receive an impairment benefit, which pays all workers at the same rate, based on the State’s average weekly wage, per percentage of impairment. Workers unable to return to regular work also will receive a work disability benefit based on the impairment, modified by age, education, and adaptability factors and the workers’ earnings at the time of injury. Wage-based work disability benefits will be limited to a wage range between 50 percent and 133 percent of the State’s average weekly wage, and these limits will adjust annually.

The administrative law judge assigned a request for hearing a claim for compensation involving more than one potentially responsible employer or insurer may specify what is required of an injured worker to reason-

ably cooperate with the investigation of the claim.

When a hearing is postponed because of the need to join one or more potentially responsible employers or insurers, the assigned administrative law judge will reschedule the hearing as expeditiously as possible after all potentially responsible employers and insurers have been joined in the proceeding and the medical record has been fully developed.

Attorney’s fees now will be paid for at two levels of representation in workers’ compensation cases that previously did not allow assessed fees: (1) when an insurer or self-insured employer unreasonably delays or unreasonably refuses to pay compensation, or to accept or deny a claim; and (2) in cases involving a dispute over medical or vocational benefits before the Director of the Department of Consumer and Business Services where a claimant prevails. The Director is authorized to adopt administrative rules for determining reasonable attorney’s fees giving primary consideration to the results achieved and the time devoted to the case. A cap of \$2,000 has been placed on such fees absent extraordinary circumstances.

The reporting requirements for workers’ compensation claims by insurers and self-insured employers have been modified. The Director of the Department of Consumer and Business Services is to conduct an evaluation of the requirements for reporting claims to the department and report the results to the Workers’ Compensation Management-Labor Advisory Committee. The Director also now is required to administer supplemental temporary disability benefits in certain workers’ compensation claims.

Rhode Island

When a workers’ compensation insurance carrier is obligated to pay workers’ compensation benefits to the employee of an uninsured subcontractor, the workers’ compensation insurance carrier shall have a complete right of indemnification to the extent benefits are paid against either the uninsured subcontractor, uninsured general contractor, or uninsured construction manager.

South Dakota

In a death claim in which the employee left a child or children not in the custody of the surviving spouse, half of the benefits will be paid to the surviving spouse and the other half to the surviving child or in equal shares to the surviving children, until age 18 years. Payment will be made for life in the case of a

child who is physically or mentally incapable of self-support, or until age 22 years for a child enrolled as a full-time student in an accredited educational institution. When a child is no longer eligible for benefits, his or her share will be paid to the surviving spouse.

Texas

If a person refuses or fails to comply with an interlocutory order, final order, or decision of the Workers’ Compensation Commission, the Commission may bring suit in Travis County to enforce the order or decision. If the Commission brings such suit, it is entitled to reasonable attorney’s fees and costs for the prosecution and collection of the claim, in addition to a judgment enforcing the order or decision and any other remedy provided by law.

An employee can purchase a brand name drug rather than a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a healthcare provider prescribes a generic pharmaceutical medication or an over-the-counter alternative to a prescription medication. However, the employee is responsible for paying the difference in costs.

The first valid certification of maximum medical improvement and the first valid assignment of impairment rating to an employee are final if not disputed within 90 days after written notification is provided to the claimant or the carrier. The first certification of maximum medical improvement and/or impairment rating may be disputed after the 90-day period if there is compelling medical evidence establishing a significant error on the part of the certifying doctor, a clear misdiagnosis or a previously undiagnosed medical condition, or prior improper or inadequate treatment of the injury that would render the certification of maximum medical improvement or impairment rating invalid.

An insurance carrier is to begin payment of compensation not later than the 15th day (previously, 7th day) after the date on which the carrier receives notice of an injury. An insurance carrier who fails to make timely payment does not waive the right to contest the compensability of the injury, but commits an administrative violation subject to penalties.

Virginia

The definition of “injury” was expanded to include any injury, disease, or condition that (1) arises out of and in the course of employment of an employee of a hospital, employee

of a healthcare provider, employee of any State or local health department, member of a search and rescue organization, salaried or volunteer firefighter, paramedic or emergency medical technician, member of the State Police Officers' Retirement System, member of a local police department, sheriff or deputy sheriff, or Capitol Police Officer; and (2) results from the administration of the vaccinia vaccine, Cidofivir, or Vaccinia Immune Globulin, as part of Federal smallpox countermeasures, or from the transmission of vaccinia in the course of employment from an employee participating in such countermeasures to a co-employee of the same employer.

The 6-month waiting period from the time of pre-employment physical examination, for the presumption as to death or disability from infectious diseases to become effective is waived if such persons entitled to invoke such presumption can demonstrate a documented exposure during the 6-month period.

Washington

Claims for hearing loss due to occupational noise exposure must be filed within 2 years of the date of the worker's last injurious exposure to occupational noise or within 1 year of the effective date of the legislation, whichever is later. A claim for hearing loss that is not timely filed can only be allowed for medical aid benefits.

West Virginia

The Workers' Compensation Division, formerly within the Bureau of Employment Programs, has been renamed the Workers' Compensation Commission and is now an agency of the State under the direction of an executive director. Workers' compensation cases are to be decided on their merits, and a rule of "liberal construction" is not to be used in resolving such cases.

Effective July 17, 2003, no more awards will be paid from the workers' compensation fund to an employee who has become permanently and totally disabled as a result of a previous injury and a second injury.

If a claimant receives benefits from an employer-provided plan to which the employee did not contribute, and that plan does not provide an offset for permanent total disability benefits under workers' compensation, the Workers' Compensation Commission will reduce the permanent total disability benefits provided under workers' compensation by an amount sufficient to ensure that the claimant does not receive monthly benefits in excess of the amount provided by the employer's plan or the permanent total disability benefit, whichever is greater.

Effective July 17, 2003, the rate for temporary total disability was reduced from 70 percent of the State's average weekly wage to 66-2/3 percent, and awards for tempo-

rary total disability will not be subject to annual adjustments resulting from changes in the State's average weekly wage. The amount of time a person may receive temporary total disability benefits under an award for a single injury was reduced from 208 weeks to 104 weeks.

Effective July 17, 2003, the maximum benefit rate for permanent partial disability was reduced from 100 percent of the State's average weekly wage to 70 percent, and the annual adjustment for existing claims was eliminated.

To be eligible to apply for an award for permanent total disability benefits, a claimant must have been awarded the sum of 50 percent in prior permanent partial disability awards or have suffered a single occupational injury or disease which results in a finding by the Workers' Compensation Commission that the claimant has suffered a medical impairment of 50 percent. A claimant will be considered permanently totally disabled only if he or she is unable to work in a position requiring skills or abilities that can be acquired or that are comparable to those of the pre-injury position. The comparability of pre-injury income to post-disability income will not be a factor in determining permanent total disability. Permanent total disability benefits will cease at age 70.

The presumptive 5-percent occupational pneumoconiosis award was eliminated. □