



## Legislative sessions have adjourned in 39 states this year. How has workers' compensation been impacted?

In 2013 workers' compensation remained a hot topic in many state capitals as legislators focused on policies to improve their business climates in a still sluggish economy. Much of the legislation was geared towards cost containment and some states increased benefits for injured employees for the first time in many years which may result in increased costs for payors.

Now that 39 of the 50 state legislatures in session this year have adjourned, this issue of "Spotlight" will review legislative changes to workers' compensation enacted this year.

### 2013 State Legislation

The long-anticipated workers' compensation legislation in Oklahoma, Florida and Missouri was finally passed and signed into law this year.

#### Oklahoma

Oklahoma has been considering legislation to enact an alternate benefits plan since 2010, when House Bill 2881 was introduced. The bill was refiled as House Bill 1286 in 2011, but again did not pass. In 2012, House Bill 2155 passed the House and then the Senate with additional amendments. The bill was killed when the House failed to concur with the Senate amendments.

On May 6, 2013, Oklahoma Governor Mary Fallin signed [Senate Bill 1062](#) into law, which completely over hauls the current workers' compensation system. This bill includes three acts and provides Oklahoma employers the flexibility to elect which to participate:

1. The "Administrative Workers' Compensation Act" (AWCA) in Sections 1 through 106 and 150 through 168 replaces the current Oklahoma Workers' Compensation Court and will be overseen by a three-member Workers' Compensation Commission.
2. The "Workers' Compensation Arbitration Act" in Sections 121 through 149 of this bill allows an employer covered by AWCA to develop an alternative dispute resolution program that must be filed with the commission and subject to the Federal Arbitration Act.
3. The "Oklahoma Employee Injury Benefit Act" (OEIBA) described in sections 107 and 120 of this bill allows an employer to voluntarily elect to be exempt from the AWCA.

"Sedgwick was very supportive of the Oklahoma legislation giving employers an alternative coverage option," said David North, president and CEO of Sedgwick. "For many years, we have handled claims for non-subscribers in Texas, and their programs have consistently yielded good outcomes. We will work diligently to help interested clients implement the Oklahoma option and help them provide successful programs for their employees."

Oklahoma employers now have the option to choose the workers' compensation alternatives that best fit the needs of their business. Sedgwick is here to help whether a business decides to:

- Choose to remain under AWCA,
- Require arbitration to resolve disputes, or
- Provide non-occupational and occupational benefits under a single plan.

Employers that elect exemption must follow a series of requirements to implement their program, but importantly their protection under exclusive remedy is preserved. The benefits provided to injured employees under OEIBA must be equal to or better than those provided under the AWCA. To further explain the implications of OEIBA, Sedgwick sponsored a white paper authored by Peter Rousmaniere and Jack Roberts of the New Street Group. Click [here](#) for a complimentary copy of the white paper.

Under AWCA, the amounts and duration of indemnity benefits to injured employees for injuries on or after February 1, 2014, are changed or reduced. Click [here](#) for a comparison of benefits prepared by the Oklahoma Department of Insurance.

The National Council on Compensation Insurance (NCCI) estimates that the legislation will save Oklahoma employers \$110–\$120 million dollars.

Click [here](#) for a summary of Senate Bill 1062 prepared by the Oklahoma Workers' Compensation Court. Most provisions of this bill are effective February 1, 2014, but several of the sections are effective August 23, 2013.

## Missouri

On July 10, 2013, Missouri Governor Jay Nixon signed [Senate Bill 1](#), which finally resolves the following unintended consequences of reform legislation passed in 2005.

- The 2005 workers' compensation reform legislation unintentionally excluded the specific term "occupational diseases" from the exclusive remedy provision of Section 287.120 resulting in court decisions that allowed employers to be sued in civil court for financial damages by employees and former employees or their families.
- Workers' compensation reform legislation in 2005 capped the fees businesses paid into the second injury fund. According to a [report released January 2013](#), the fund had a balance of \$3.2 million at the end of 2012 and unpaid obligations of \$28.1 million.

Senate Bill 1 restores funding and limits benefits payable by the Second Injury Fund as well as places occupational diseases back within the workers' compensation system.

Similar legislation that addressed occupational disease claims was passed in 2012. However, Governor Nixon vetoed that bill citing its intent to minimize the legal rights of employees suffering from serious and deadly occupational diseases. He agreed to sign this bill upon the expansion of benefits for ten occupational diseases due to toxic exposure including mesothelioma. Click [here](#) for a summary of the other provisions of Missouri Senate Bill 1.

This bill becomes effective January 1, 2014.

## Florida

The enactment of [Senate Bill 662](#) finally ends the battle over reimbursement for repackaged drugs. In 2010, then-Governor Charlie Crist vetoed House Bill 5306, which contained a provision limiting reimbursement for repackaged drugs to an amount not to exceed the amount paid to a pharmacy for the same drug. Similar bills were filed in 2011 and 2012, but both died in state Senate committees.

Senate Bill 662 did not limit the reimbursement for repackaged drugs dispensed by physicians to the amount paid to a pharmacy for the same drug as hoped. The maximum reimbursement rate for physician-dispensed medication is now 112.5 percent of the average wholesale price, plus an \$8 dispensing fee. Nevertheless, the National Council of Compensation Insurance (NCCI) recommended a rate reduction of 0.7 percent, which was adopted effective July 1, 2013, based on estimates of the reduction in overall workers' compensation costs that will result from the provisions in SB 662.

This legislation became effective as of July 1, 2013. The Florida Division of Workers' Compensation is considering rule revisions to implement the changes made in the bill. Click [here](#) to view the Frequently Asked Questions (FAQ) document prepared by the Florida Division of Workers' Compensation.

Governor Scott also signed [House Bill 553](#) into law on June 7, 2013. This bill was filed at the request of state Chief Financial Officer Jeff Atwater on behalf of the Department of Financial Services (DFS) and the Division of Workers' Compensation (DWC) to streamline regulations and clean up statutory conflicts.

This bill also became effective July 1, 2013. Click [here](#) for a summary of House Bill 553.

### **Major Workers' Compensation Reform**

As described below significant workers' compensation reform bills were also passed this year in New York, Georgia, Tennessee, Indiana, Minnesota and Delaware.

#### **New York**

On March 29, 2013, New York Governor Andrew Cuomo signed the state's 2013–2014 budget bills into law. [Part GG of Senate 2607-D and its House companion, Assembly 3007-D](#), included provisions impacting workers' compensation. Click [here](#) for a summary of provisions impacting workers' compensation included in the budget bills.

According to the [governor's office](#), these changes were projected to save New York employers as much as \$800 million in loss costs. Despite these projected savings, on May 14, 2013, the New York Compensation Insurance Rating Board (NYCIRB) recommended a rate increase of 16.9 percent. After a public hearing, the New York Department of Financial Services in an Opinion and Decision dated July 11, 2013, disapproved the request. The board's revised filing recommended a 9.5 percent increase in loss costs effective October 1, 2013, but contemplates a 6.7 percent reduction in assessments, which will hold the overall increase in employer costs to only 2.8 percent.

A key provision of the bill that the governor's office indicated would significantly reduce assessments and save employers about \$300 million a year is the closure of the Section 25-A fund to new claims on January 1, 2014. Section 25-A of the workers' compensation law allows claims to be transferred to the Fund for Reopened Cases if at least seven years have passed since the date of injury and at least three years have passed since the date of the last indemnity payment.

On July 30, 2013, 20 workers' compensation carriers filed suit in the New York Supreme Court seeking a permanent injunction against closing the fund to old injuries and requesting the court to assess the state agencies for the costs of the lawsuit.

The lawsuit contends that closing the fund to old claims:

- Serves no public purpose,
- Constitutes an unconstitutional taking of property,
- Impairment the contracts carriers have with New York employers, and
- Violates the due process included in the New York and U.S. constitution.

A copy of the complaint is [here](#).

## Delaware

On June 27, 2013, Delaware Governor Jack Markell signed into law [House Bill 175 \(HB 175\)](#). This bill implements the legislative recommendations of the Workers' Compensation Task Force, which was created by House Joint Resolution 3 and charged with recommending improvements to Delaware's workers' compensation system that will stem rising premiums. The bill became effective upon signing.

Workers' compensation rates in Delaware have increased more than 30 percent over the past two years. According to the Delaware Compensation Rating Bureau, although claims frequency is on the decline, both medical and indemnity costs are increasing.

The provisions of HB 175 are intended to:

- Place stricter controls on workers' compensation medical costs,
- Make improvements to the state's workplace safety program, and
- Encourage individuals to return to work.

Click [here](#) for a synopsis of the bill prepared by the Delaware legislature.

The Delaware Department of Insurance (DOI) has issued [Domestic/Foreign Insurers Bulletin No. 64](#) to notify workers' compensation insurers about their statutory duties with respect to the Delaware Workplace Safety Program, which underwent changes by House Bill 175 and eligibility for the workplace safety credit.

The DOI is expected to issue additional bulletins on the remaining regulatory requirements in H-175.

In addition to workers' compensation reform, Governor Markell on May 7, 2014, also signed [House Bill 75](#), which repealed the prohibition on same-gender marriage that was enacted in 1996. The bill became effective July 1, 2013.

This legislation impacts workers' compensation because it provides that all laws of the state applicable to marriage or married spouses or the children of married spouses—whether derived from statutes, administrative rules or regulations, court rules, governmental policies, common law, court decisions, or any other provisions or sources of law, including in equity—apply equally to same-gender and different-gender married couples and their children.

## Georgia

On May 6, 2013, Georgia Governor Nathan Deal signed [House Bill 154](#) into law. This legislation was promoted by the State Board of Workers' Compensation Legislative Advisory Committee and endorsed by the Georgia Self-Insurers Association, defense attorneys and claimants' attorneys. House Bill 154 became effective July 1, 2013, and includes the following changes:

- Limits medical benefits to 400 weeks, except for claims designated as catastrophic.
- Shortens mileage reimbursement payment schedule.
- Reduces the interest rate used for discounting Board directed lump sum payments from 7 percent to 5 percent per annum.
- Modifies rules governing return to work.
- Increases the maximum benefits for temporary total disability to \$525 and for temporary partial disability to \$350. These were the first legislative increases of temporary disability since July 1, 2007.

NCCI, in an analysis of the bill, estimated that provisions in the bill will result in workers' compensation system savings that range from \$45 to \$27 million for employers and insurers.

## Minnesota

On May 16, 2013, Minnesota Governor Mark Dayton approved [Senate File 1234](#), considered the most significant workers' compensation reform to that system in 18 years. The provisions of this bill were proposed by the Workers' Compensation Advisory Council (WCAC) that consists of 12 voting members—six representing organized labor and six representing Minnesota businesses.

Among the key provisions included in Senate File 1234 are:

- **Mental-Mental Claims:** Expands definition of occupational disease and personal injury to include mental impairment for employees with dates of injury occurring on or after October 1, 2013. This change arose from the Red Lake school shootings in 2005. Several teachers at the school were diagnosed with PTSD, but denied workers' compensation benefits as physical injuries were not sustained.
- **Attorney fees:** The maximum attorney permissible is increased.
- **Compensation rates:** Beginning October 1, 2013, and each October 1 thereafter, the maximum compensation rate will increase to 102 percent of statewide average weekly wage (SAWW).
- **Prevailing charge determination:** Changes the determination of the prevailing charge for treatment, articles and supplies effective October 1, 2013.
- **Cost of living adjustments (COLA):** Provides that the adjustment will not exceed 3 percent or be less than 0 percent for injuries occurring on or after October 1, 2013.
- **Pain contract:** Requires the commissioner to adopt rules establishing the standards and procedures for health care provider treatment criteria for the long-term use of opioids or other scheduled medications to alleviate intractable pain and improve function. This provision is effective October 1, 2013, and applies to employees with all date of injury who receive treatment after the rules are adopted.
- **Patient advocate pilot program:** Requires the commissioner of labor and industry to implement a two-year patient advocate program for employees with back injuries who are considering back fusion surgery.

In addition to the above workers' compensation reform legislation, Governor Dayton signed [House File 1054](#) on May 14, 2013, which authorizes same-sex marriages effective August 1, 2013.

On July 31, 2013, [Administrative Bulletin # 2013-3](#) was issued to advise property and casualty insurers that beginning August 1, 2013; any policy issued in Minnesota that provides dependent coverage for spouses must make that coverage available on the same terms and conditions regardless of the sex of the spouse. The bulletin reminds insurers that defining a spouse in a way that limits coverage to an opposite-sex spouse would be discriminatory and unfair, and a violation of Minnesota Statutes section 72A.20, subdivision 16.

## Indiana

Indiana Governor Mike Pence signed [House Bill 1320](#) into law on May 11, 2013. This workers' compensation reform legislation provides for:

- The first benefit increases for injured employees to pass the Indiana General Assembly since 2006 beginning July 1, 2014.
- Limits the maximum reimbursement of repackaged drugs.
- Restricts the payment to a medical service facility after June 30, 2014 to 200 percent of the Medicare rate or the amount negotiated.

Click [here](#) for a summary of the key provisions in House Bill 1320.

## Tennessee

On April 29, 2013, Tennessee Governor Bill Haslam signed into law [Senate Bill 200](#), known as the Tennessee Workers' Compensation Reform Act of 2013. A major legislative priority for Governor Haslam, the bill is expected to make the workers' compensation system more efficient and predictable, thereby improving Tennessee's business climate.

Certain amendments in the bill, including those providing for the adoption of rules and the appointment of personnel to manage the new administrative system, are effective immediately.

- By July 1, 2013, the governor was required to appoint an administrator of the Division of Workers' Compensation (DWC), now an independent unit. As anticipated Governor Haslam appointed Abbie Hudgens on June 28, 2013.
- One of the most significant provisions of Senate Bill 200 is the replacement of its court-based workers' compensation dispute-resolution system with an administrative process. This involves the creation of a new Court of Workers' Compensation Claims to handle disputes involving job-related injuries or illnesses occurring on or after July 1, 2014. The administrator is responsible for the appointment of a court clerk, at least 16 attorneys qualified to serve as workers' compensation judges, and a chief judge on or after July 1, 2013.

The remaining provisions of the bill become effective on or after July 1, 2014. Among them are a rewrite of the definition of causation with regard to injuries, the creation of an ombudsman's office to assist employees without attorneys, and an increase in the maximum benefit duration from 400 to 450 weeks. Click [here](#) for a summary of key provisions of the Tennessee Workers' Compensation Act of 2013.

Since the new law is not effective until July 1, 2014, the Tennessee state legislature will have another session during which to propose further changes if they so choose. Sedgwick's subject matter experts will be closely monitoring for any further activity related to this legislation and will keep you apprised of the situation as it unfolds.

### **Efforts to Repeal Workers' Compensation Reform**

This year saw efforts in some states to repeal workers' compensation reform that was enacted in previous years with mixed results.

#### **Maine**

The November 2012 election resulted in Maine Democrats regaining majorities in both chambers of the state legislature. A major focus of the elected Democrats and organized labor this session was passage of [LD 443](#), which would have rolled back major provisions of the reforms enacted during the last session, when Republicans held the majority. The bill passed out of the legislature by a party line vote, was promptly vetoed by Governor Paul LePage, and a veto override attempt failed.

While LD 443 was unsuccessful several other workers' compensation bills did pass.

#### **North Carolina**

The North Carolina workers' compensation reform bill signed into law by former Governor Beverly Perdue in 2011 placed the Industrial Commission under the state Administrative Procedures Act thus requiring that all of its regulations be submitted for approval by the state Rules Review Commission. Of the rules submitted to the Rules Review Commission, 153 were approved during hearings on October 18 and November 15, 2012. The North Carolina Association of Defense Attorneys (NCADA) and a group of insurance carriers and employers challenged 42 of the rules as vague and requested legislative review.

[Senate Bill 174](#) was signed into law by Governor Patrick McCrory on July 18, 2013. Senate Bill 174 disapproved 36 of the challenged rules and establishes a three-tier system for resolving disputes about medical motions depending upon whether a request for medical treatment:

- Is deemed an emergency,
- Presents an issue that needs to be expedited, or
- Involves a question that warrants neither emergency nor expedited action.

#### **Louisiana**

During the 2010 legislative session, a bill was enacted to require a phased sunset of the Louisiana Second Injury Fund beginning in 2014. [House Bill 410](#) signed into law by Governor Bobby Jindal on June 17, 2013 repealed that provision found in Section 23:1371.2 of the Louisiana Revised Statutes.

Additionally a section of [House Bill 728](#) undoes a provision of the 2012 workers' compensation reforms which allowed payers to file claims against injured workers. Employers will now only be able to file fraud and misrepresentation claims against injured employees.

Both bills became effective August 1, 2013.

## States to Watch

As Chris Mandel, senior VP strategic solutions, indicated in a [recent blog](#) “change seems to be afoot in many jurisdictions.”

Several state legislatures remain in session throughout the year. We will continue monitoring the passage of legislation impacting workers' compensation claim handling and keep you informed.