



2020 Regulatory and Legislative Trends Report





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EXECUTIVE SUMMARY

Overview of 2020 Legislative and Regulatory Activity

The COVID-19 pandemic impacted many state legislative sessions with state legislatures adjourning early, postponing their sessions, or focusing primarily on COVID-19 and state budget-related matters. However, several states recently resumed their legislative sessions or called special sessions. Some of those states considered or are considering workers compensation-related legislation.

Many state legislatures were active in early 2020, prior to the pandemic. In the first half of 2020, NCCI tracked approximately **870** state and federal workers compensation bills. A total of **441** bills were in states where NCCI provides ratemaking services. As of July 31, **77** bills were enacted. Many of the legislative themes were similar to prior years, including first responders, independent contractors, reimbursement/fee schedules, coverage issues, and indemnity benefits.

In addition, NCCI monitored **203** workers compensation-related regulations in 2020. As of July 31, **86** of those regulations were adopted. As in prior years, medical cost containment was the top theme of the regulations adopted to date, including medical fee schedules, reimbursement, and treatment guidelines.

This year, NCCI also monitored COVID-19 legislation and regulations that were insurance-related but not necessarily specific to workers compensation. When factoring in these bills and regulations, NCCI is monitoring over **1,110** state and federal bills. A total of **536** bills are in states where NCCI provides ratemaking services and **105** bills have been enacted. In addition, NCCI is monitoring **252** regulations. As of July 31, **130** of those regulations were adopted.

Legislative Trends and Hot Topics



While the hot topic in 2020 was COVID-19—specifically, workers compensation legislation and regulatory actions related to presumptions of compensability for contraction of or exposure to COVID-19—there was also activity on other hot topics from previous years, including mental injuries, the legalization of marijuana, single-payer health insurance, and independent contractors/gig economy.

COVID-19



NCCI is tracking COVID-19 insurance-related legislation around the country and at the federal level. While many of the bills address health insurance and business interruption coverage, as of July 31, at least 20 states have proposed workers compensation bills related to COVID-19. Many of these COVID-19 bills address benefit compensability determinations for contraction of or exposure to COVID-19 for certain workers (i.e., a presumption that the exposure for certain workers arises out of the course and scope of employment).

In addition, many states have issued executive orders, bulletins, and emergency rules addressing COVID-19, including directives on workers compensation compensability presumptions for certain workers and guidance on issues such as policy cancellation/nonrenewal, premium audits, and telemedicine.

To date, eight states—Alaska, Illinois, Minnesota, New Jersey, Utah, Vermont, Wisconsin, and Wyoming—have passed legislation establishing presumptions of compensability for COVID-19 for certain workers. Other states, including California, Colorado, Kansas, Louisiana, Massachusetts, Michigan, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, and South Carolina, have proposed similar legislation with some states introducing multiple bills addressing the topic.

COVID-19 compensability presumption legislation generally falls into three categories:

- Bills that establish compensability presumptions for **first responders and/or certain healthcare workers**.
- Bills that establish compensability presumptions for **essential or frontline** workers. These proposals cover other occupations that may be exposed to COVID-19, such as grocery store workers and pharmacy workers. Several of these proposals are also applicable to first responders and healthcare workers.
- Bills that establish compensability presumptions for **all employees** in the state.

Eleven states have issued executive orders, directives, or emergency rules related to presumptions and/or compensability—Arkansas, California, Connecticut, Florida, Illinois, Kentucky, Michigan, Missouri, New Hampshire, New Mexico, and North Dakota. We are highlighting COVID-19 regulatory and legislative activity on our Legislative Activity page and COVID-19 Resource Center on [ncci.com](https://www.ncci.com).

Mental Injuries



Workers compensation for workplace-related mental injuries was a hot topic again in 2020. This year, five states—Colorado, Vermont, Virginia, Washington, and Wyoming—enacted legislation addressing workers compensation coverage for mental injuries. Another 16 states considered, or are considering, mental injury legislation in 2020: Alabama, California, Connecticut, Florida, Illinois, Minnesota, Missouri, Nebraska, New Jersey, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, West Virginia, and Wisconsin.

Some of the bills, such as Missouri (HB 2217, SB 545, SB 710) and South Carolina (HB 4777), are specific to first responders with mental injuries. Florida bills HB 415/SB 816, which did not pass this session, proposed that post-traumatic stress disorder (PTSD) suffered by certain correctional officers is a compensable occupational disease.

Virginia introduced several mental injury bills this session, including HB 1596, which provides that an employee who suffers a psychological injury from sudden shock and fright that arises out of and in the course of any employment shall have a compensable claim under the Virginia Workers' Compensation Act. This is regardless of whether the incident that caused the psychological injury is a normal or expected part of the employee's work.

While HB 1596 did not pass, Virginia did enact HB 438/SB 561, which provides that PTSD incurred by a law enforcement officer or firefighter is compensable under the Workers' Compensation Act if certain requirements are met.

Legalization of Marijuana



At the beginning of 2020, issues around the legalization of marijuana were expected to receive a lot of attention. While most states did not debate this issue as much as expected due to the focus on COVID-19, NCCI monitored marijuana-related legislation in 22 jurisdictions this year.

In 2020, nine states (Delaware, Kentucky, Missouri, New Hampshire, New Jersey, New Mexico, New York, Virginia, and West Virginia) considered or are considering bills that would legalize marijuana for recreational purposes; and six states (Alabama, Indiana, Iowa, Kansas, Kentucky, and Nebraska) considered or are considering bills legalizing marijuana for medical purposes. However, as of July 31, no state legislation to legalize recreational or medical marijuana has passed.



Virginia enacted legislation (HB 972) that eliminates certain criminal penalties for the possession of specified amounts of marijuana but did not fully legalize marijuana for recreational purposes in the state.

Utah enacted SB 121, which, in part, amends provisions related to medical cannabis. Utah had previously legalized marijuana for medical purposes.

Eight states considered or are considering legislation regarding reimbursement for medical marijuana for workers compensation purposes.

- Five of those states (Alabama, Indiana, Iowa, Kentucky, and Oklahoma) considered legislation stating that reimbursement for medical marijuana in workers compensation is not required.
- Three states (Kansas, New Jersey, and New York) proposed legislation authorizing reimbursement or coverage for medical marijuana in workers compensation.
- Iowa is the only state to enact marijuana reimbursement legislation so far this year.

Other marijuana-related bills address employment issues, such as terminating an employee or taking adverse action against an employee who is a medical marijuana cardholder or patient. Colorado, Florida, and Kansas considered, but did not pass, this type of legislation. The District of Columbia passed an emergency measure to prohibit the DC government from taking adverse actions against individuals participating in a medical marijuana program.

Single-Payer Health Insurance



This year, 14 states considered legislation to establish a single-payer health insurance program. Four of those states (Maine, Maryland, Massachusetts, and New York) specifically mentioned workers compensation or injured worker's medical benefits. To date, no state has passed single-payer legislation in 2020.

Independent Contractors/Gig Economy

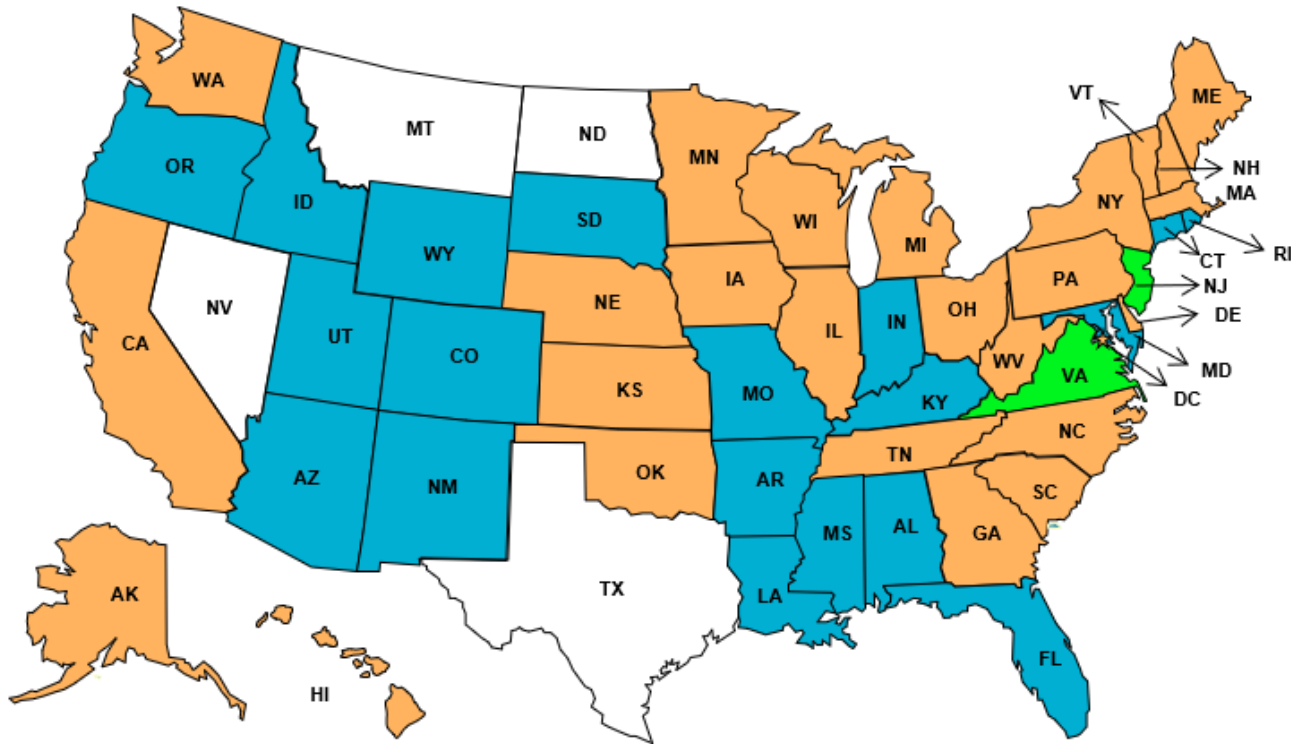


In 2019, California enacted legislation (AB 5), which codified a three-part test (known as the “ABC” test) to determine whether a worker is an employee or an independent contractor. Several bills were introduced in California this year that address the test from California AB 5. Some of the California bills create exceptions to the application of the ABC test for certain workers and/or industry groups, while others propose to repeal the ABC test and replace it with a different test for determining employment status. At this time, none of the California bills have passed.

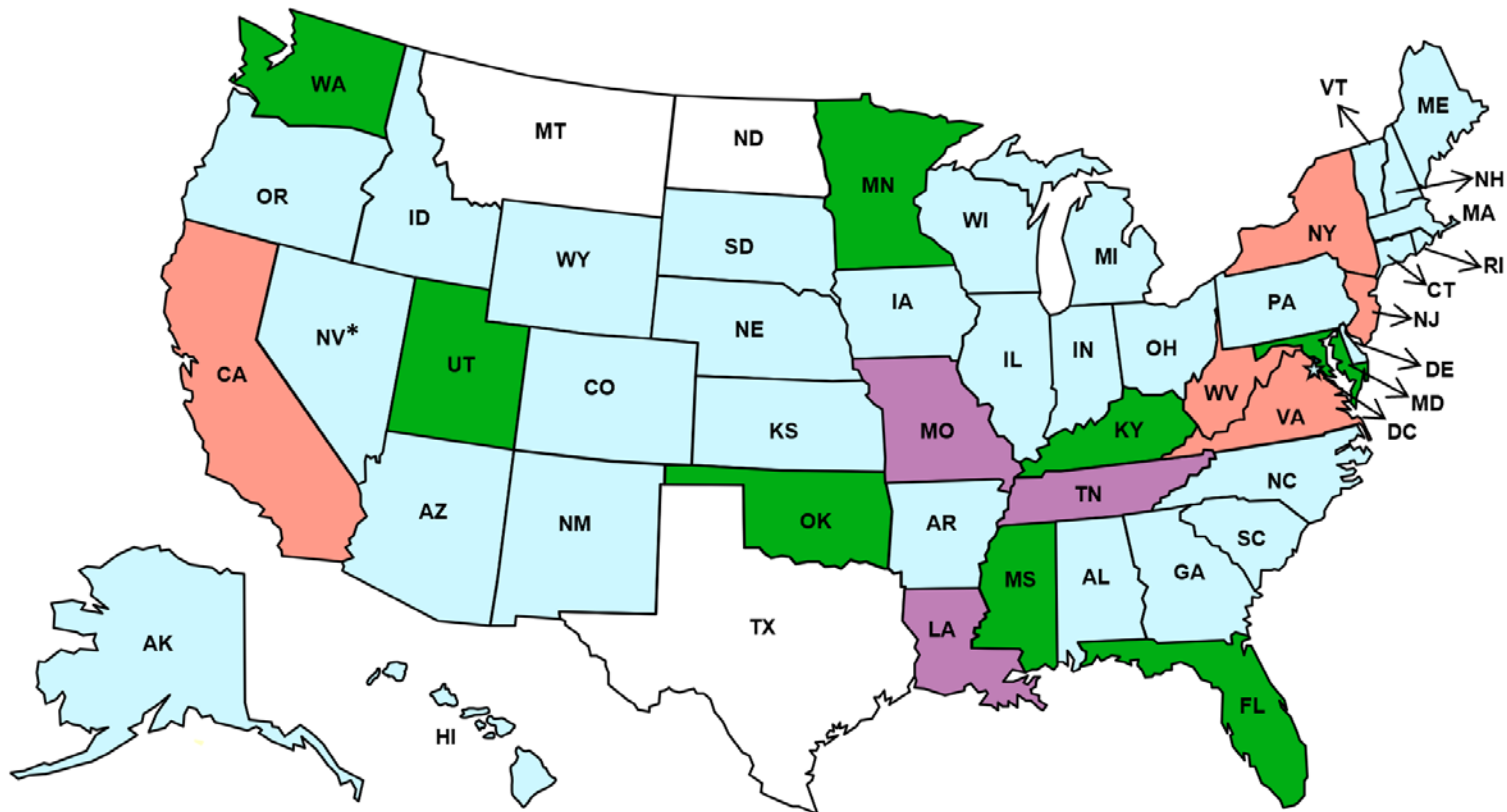
New York also proposed legislation in 2019 to create a three-part test for determining employee/independent contractor status. The New York legislation (AB 8721/SB 6699), which tracks the California three-part test, is still pending in 2020.

Virginia considered several bills this session that address employee misclassification. Virginia ultimately passed HB 1407/SB 744, which provides that the Internal Revenue Service guidelines are applicable for determining whether a worker is an employee or an independent contractor.

2020 LEGISLATIVE SESSIONS



2020 WORKERS COMPENSATION LEGISLATIVE ACTIVITY



Includes bills from special sessions



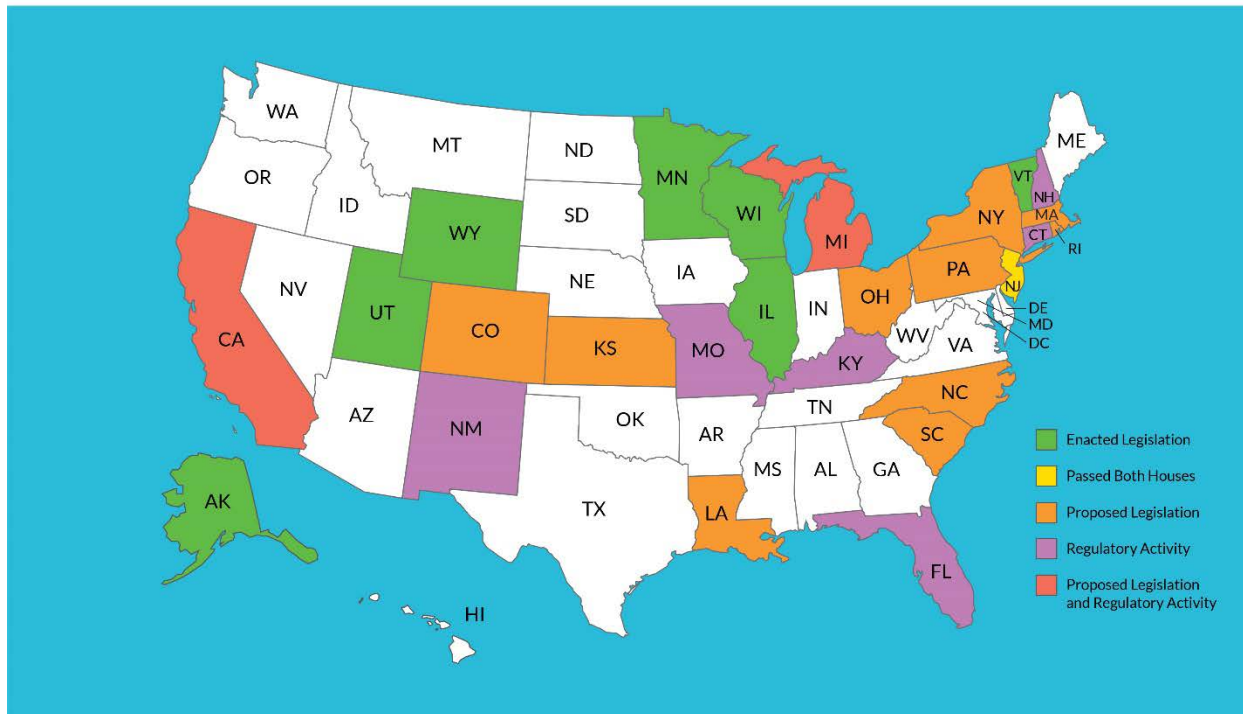
*Special session only



COVID-19 PRESUMPTIONS—STATE ACTIVITY

Presumptions of Compensability—Activity in Over 20 Jurisdictions

As of July 31, 2020



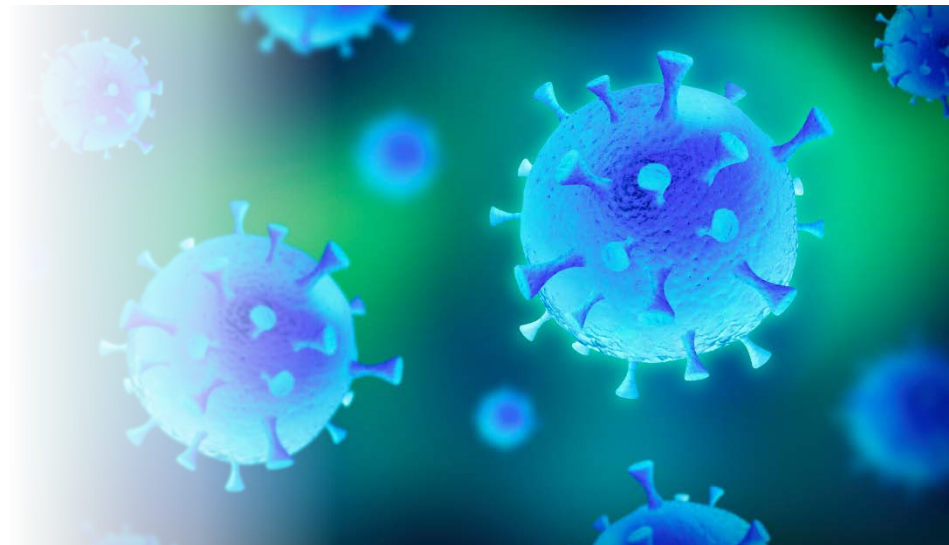
HOT TOPIC—COVID-19

The following states have established, or proposed to establish, workers compensation presumptions of compensability for contraction of or exposure to COVID-19 for certain employees. Many of these new presumptions include a sunset provision and are temporary in nature.

- Alaska
 - SB 241—Presumption is applicable to firefighters, emergency medical technicians, paramedics, peace officers, and healthcare providers (Enacted).

- California
 - AB 196—Presumption is applicable to an “essential occupation or industry” as defined in CA Executive Order N-33-20. The bill specifies that it is not applicable to first responders and certain healthcare workers (Pending).
 - AB 664—Presumption is applicable to certain firefighters, peace officers, healthcare employees who provide direct patient care in an acute-care hospital, and fire and rescue services coordinators (Pending).
 - SB 893—Presumption is applicable to hospital employees who provide direct patient care in an acute-care hospital (Pending).
 - SB 1159—Presumption is applicable to “an employee” when certain conditions are met. When introduced, this bill applied to a “critical worker,” defined as a public or private sector employee who is employed to combat the spread of COVID-19 (Pending).

- Colorado
 - SB 20-216—Presumption is applicable to “essential workers” (Pending).





- Illinois
 - HB 2455—Presumption is applicable to first responders or frontline workers (Enacted).
- Kansas
 - HB 2007—Presumption is applicable to all employees under certain circumstances (Did not pass).
 - HB 2018—Presumption is applicable to all employees under certain circumstances (Did not pass).
 - SB 1—Presumption is applicable to all employees under certain circumstances (Did not pass).
- Louisiana
 - SB 475—Presumption is applicable to “essential workers” (Pending).
- Massachusetts
 - H 4739—Presumption is applicable to “essential workers” (Pending).
 - H 4749—Presumption is applicable to emergency medical technicians, emergency room and urgent care medical personnel, and emergency room and urgent care nonmedical staff (Pending).
- Michigan
 - HB 5743—Presumption is applicable to “emergency first responders” exposed to an infectious disease in the performance of their duties during an emergency declared by the governor (Pending).
 - HB 5758/SB 928—Presumption is applicable to an “essential employee” (Pending).
 - SB 906—Presumption is applicable to “emergency first responders” who contract COVID-19 during an emergency declared by the governor (Pending).
- Minnesota
 - HF 4537—Presumption is applicable to a licensed peace officer, firefighter, paramedic, nurse, or healthcare worker, correctional officer, or security counselor employed by the state or a political subdivision at a corrections, detention, or secure treatment facility; emergency medical technician; healthcare provider, nurse, or assistive employee employed in a healthcare, home care, or long-term care setting with direct COVID-19 patient care or ancillary work in COVID-19 patient units; and workers required to provide child care to first responders and healthcare workers under certain executive orders (Enacted).

- New Jersey
 - AB 3999—Establishes COVID-19 presumption of compensability for an “essential employee” (Pending).
 - SB 2380—Establishes COVID-19 presumption of compensability for an “essential employee” (Passed Both Houses).

- New York
 - A 10172/S 8041-A—Presumption is applicable to volunteer firefighters and volunteer ambulance workers (Pending).
 - A 10391/S 8117-A—Presumption is applicable to an “essential employee during COVID-19 outbreak” (Pending).

- North Carolina
 - HB 1056—Presumption is applicable to law enforcement officers, jailers, prison guards, firefighters, emergency medical technicians, and paramedics employed by a state or local government, including volunteer firefighters and healthcare workers (Pending).
 - HB 1057—Creates COVID-19 presumption of compensability for a “covered person.” “Covered person” is defined as a law enforcement officer, jailer, prison guard, firefighter, or an emergency medical technician or paramedic employed by a state or local governmental employer, including certain volunteer firefighters; a healthcare worker; or an employee required to work during the pandemic for businesses declared essential by executive order of the governor or by order of local governmental authority, including food service, retail, and other essential personnel (Pending).





■ Ohio

- HB 571—Presumption is applicable to peace officers, firefighters, and emergency medical workers (Pending).
- HB 573—Provides that COVID-19 contracted by an employee who was required to work by the employee’s employer outside of the employee’s home during the emergency declared by executive order 2020-01D constitutes a presumption that COVID-19 was contracted in the course of and arising out of the employee’s employment (Pending).
- HB 605—Presumption is applicable to an employee of a retail food establishment or food processing establishment (Pending).
- HB 633—Presumption is applicable to employees at nursing homes, residential care facilities, and healthcare facilities (Pending).
- HB 667—Presumption is applicable to corrections officers (Pending).
- HB 668—Presumption is applicable to peace officers, firefighters, and emergency medical workers (Pending).

■ Pennsylvania

- HB 2396—Presumption is applicable to an “Individual employed by a life-sustaining business or occupation” who is required to work (Pending).
- HB 2485—Presumption is applicable to employees of healthcare providers who provide in-person care to patients involving exposure to COVID-19 or employees of the provider who may have had exposure to COVID-19 (Pending).
- HB 2486—Presumption is applicable to professional and volunteer emergency responders, police, corrections workers, and others who deal with inmates (Pending).




■ Rhode Island

- H 8066—Presumption is applicable to public safety officials, including, but not limited to, police, fire, EMS, medical facility workers, correctional officers, dispatchers, paramedics, pharmacists, pharmaceutical technicians, grocery or retail workers, essential state and municipal employees, public transportation employees, parcel and freight delivery employees, truck drivers, and utility workers (Pending).






- South Carolina
 - HB 5482—Presumption is applicable to first responders, healthcare providers, and correctional officers (Pending).
- Utah
 - HB 3007—Presumption is applicable to “first responders.” The definition of “first responder” includes emergency responders and healthcare providers (Enacted).
 - HB 5006—Moves the provisions related to coverage for first responders diagnosed with COVID-19 from the Workers Compensation Act to the Occupational Disease Act; and modifies the definition of “first responder” (Enacted).
- Vermont
 - S 342—Applicable to “frontline workers.” However, the presumption is also applicable to employees who are not “frontline workers” if certain conditions are met (Enacted).
- Wisconsin
 - AB 1038—Presumption is applicable to “first responders.” The definition of “first responder” includes an employee or volunteer for an employer who provides firefighting, law enforcement, or medical treatment of COVID-19 and who has regular, direct contact with, or is in regular close proximity to, patients or other members of the public requiring emergency services, within the scope of the individual’s work for the employer (Enacted).
- Wyoming
 - SF 1002—Presumption is applicable for the period January 1, 2020, through December 30, 2020, to any employee covered by the state workers compensation act infected with COVID-19 (Enacted).

COVID-19 PRESUMPTIONS—LEGISLATIVE ACTIVITY

Presumptions of Compensability—Legislative Activity		
As of July 31, 2020		
Worker Category	Jurisdiction	Legislative Status
 First Responders & Healthcare Workers	Alaska Utah Wisconsin	Enacted
	California Massachusetts Michigan New York North Carolina Ohio Pennsylvania South Carolina	Proposed
 Essential Employees	Illinois Minnesota	Enacted
	New Jersey	Passed Both Houses
	California Colorado Louisiana Massachusetts Michigan New York North Carolina Ohio Pennsylvania Rhode Island	Proposed
 All Employees	Vermont Wyoming	Enacted
	California Kansas	Proposed

COVID-19 PRESUMPTIONS—REGULATORY ACTIVITY

Presumptions of Compensability—Regulatory Activity	
As of July 31, 2020	
Worker Category	Regulatory Activity
 <p>First Responders & Healthcare Workers</p>	Florida Directive 2020-05
	Michigan Executive Order 2020-128
	Missouri Emergency Rule 8 CSR 50-5.005
	New Hampshire Emergency Orders 36 and 53
 <p>Essential Employees</p>	Connecticut Executive Order 7JJJ
	Illinois Emergency Regulation Amendment Section 9030.70 Rules of Evidence; regulation withdrawn on April 27
	Kentucky Executive Order 2020-277
	New Mexico Executive Order 2020-025
 <p>All Employees</p>	California Executive Order N-62-20

HOT TOPIC—MENTAL INJURIES

- Colorado
 - SB 20-026—Concerns eligibility for workers compensation benefits for workers who are exposed to a psychologically traumatic event; establishes that a worker’s visual or audible exposure to the serious bodily injury or death, or the immediate aftermath of the serious bodily injury or death, of one or more people as the result of a violent event, the intentional act of another person, or an accident, is a psychologically traumatic event for the purposes of determining the worker’s eligibility for workers compensation benefits (Enacted).

- Florida
 - HB 415/SB 816—Provides that, under certain circumstances, post-traumatic stress disorder suffered by a correctional officer is a compensable occupational disease eligible for workers compensation benefits. Specifies that certain benefits do not require a physical injury (Did not pass).

- Missouri
 - HB 2217—Allows firefighters and first responders to receive workers compensation for certain conditions and recognizes mental disorders as occupational diseases if the psychological stress or mental disorder arises from their employment (Did not pass).





- SB 545—Considers post-traumatic stress disorder (as well as diseases of the lungs or respiratory tract, hypertension, and cardiovascular-renal disease) as an occupational disease for firefighters, police officers, emergency medical technicians, or other first responders of any political subdivision, if certain conditions are met (Did not pass).
- SB 710—Creates a rebuttable presumption that mental impairment constitutes an occupational disease that arose out of and in the course of employment for first responders who have been diagnosed with mental impairment, if certain conditions are met (Did not pass).

- South Carolina
 - HB 4777—Provides a definition of first responder and modifies the requirements of a first responder seeking workers compensation for personal injury caused by stress, mental injury, or mental illness; and adds mental illness to related conditions that may be compensable if resulting from a significant traumatic experience (Pending).

- Vermont
 - S 108—Requires the Agency of Administration, Office of Risk Management, in consultation with the Agency of Human Services, the Department for Children and Families, and the Departments of Human Resources and of Labor, to submit a written report on the workers compensation claims submitted by state employees in relation to post-traumatic stress disorder and other mental conditions to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs on or before January 15, 2021 (Enacted).





- Virginia
 - HB 438/SB 561—Provides that post-traumatic stress disorder (PTSD) incurred by a law enforcement officer or firefighter is compensable under the Virginia Workers' Compensation Act if a mental health professional examines the worker and diagnoses them as suffering from PTSD as a result of the individual undergoing a qualifying event, and certain other conditions are met (Enacted).
 - HB 1596—Provides that an employee who suffers a psychological injury from sudden shock and fright that arises out of and in the course of any employment shall have a compensable claim under the Virginia Workers' Compensation Act regardless of whether the incident that caused the psychological injury is either a normal or expected part of the employee's work (Did not pass).
- Washington
 - HB 2758—Recognizes post-traumatic stress disorders of 911 emergency dispatch personnel as an occupational disease (Enacted).
- Wyoming
 - SB 117—Specifies when mental injury is considered a compensable injury for first responders (Enacted).

HOT TOPIC—LEGALIZATION OF MARIJUANA

- Alabama
 - SB 165—Legalizes marijuana for medical use. Provides that the bill does not impact the workers compensation premium discount available to employers that establish a drug-free workplace policy and does not impact an employer’s right to deny workers compensation benefits to an employee based on a positive drug test or refusal to submit to or cooperate with a drug test (Did not pass).

- Colorado
 - HB 1089—Prohibits an employer from terminating an employee for the employee’s lawful off-duty activities that are lawful under state law even if those activities are not lawful under federal law (Did not pass).

- District of Columbia
 - B23-0755/B23-0802—Amends the District of Columbia Government Comprehensive Merit Personnel Act to prohibit the District of Columbia government from taking adverse employment actions against individuals for participating in a medical marijuana program; amends the Department of Corrections Employee Mandatory Drug and Alcohol Testing Act to do the same (Enacted).

- Florida
 - SB 962—Prohibits an employer from taking adverse personnel action against an employee or job applicant who is a qualified patient using medical marijuana (Did not pass).





■ Illinois

- SB 3433—Establishes standards with respect to cannabis for impairment sufficient to bar compensation for injuries to employees who are intoxicated. Provides that the presence of 5 nanograms of tetrahydrocannabinol in the blood or 10 nanograms of tetrahydrocannabinol in other bodily substances shall create a rebuttable presumption that intoxication is the proximate cause of the injury. Contains the statement: “Authorized use may be evidenced only by written consent by the employer to the employee, which consent shall not be unreasonably withheld” (Pending).

■ Indiana

- HB 1359—Establishes the medical cannabis pilot program and provides that nothing in the law may be construed to require a government medical assistance program, employer, property and casualty insurer, or private health insurer to reimburse a person for costs associated with the medical use of cannabis (Did not pass).

■ Iowa

- HF 2589—Concerns the Medical Cannabidiol Act and provides that nothing in the law shall require a government medical assistance program, private health insurer, workers compensation carrier, or self-insured employer providing workers compensation benefits to reimburse a person for costs associated with the medical use of marijuana (Enacted).

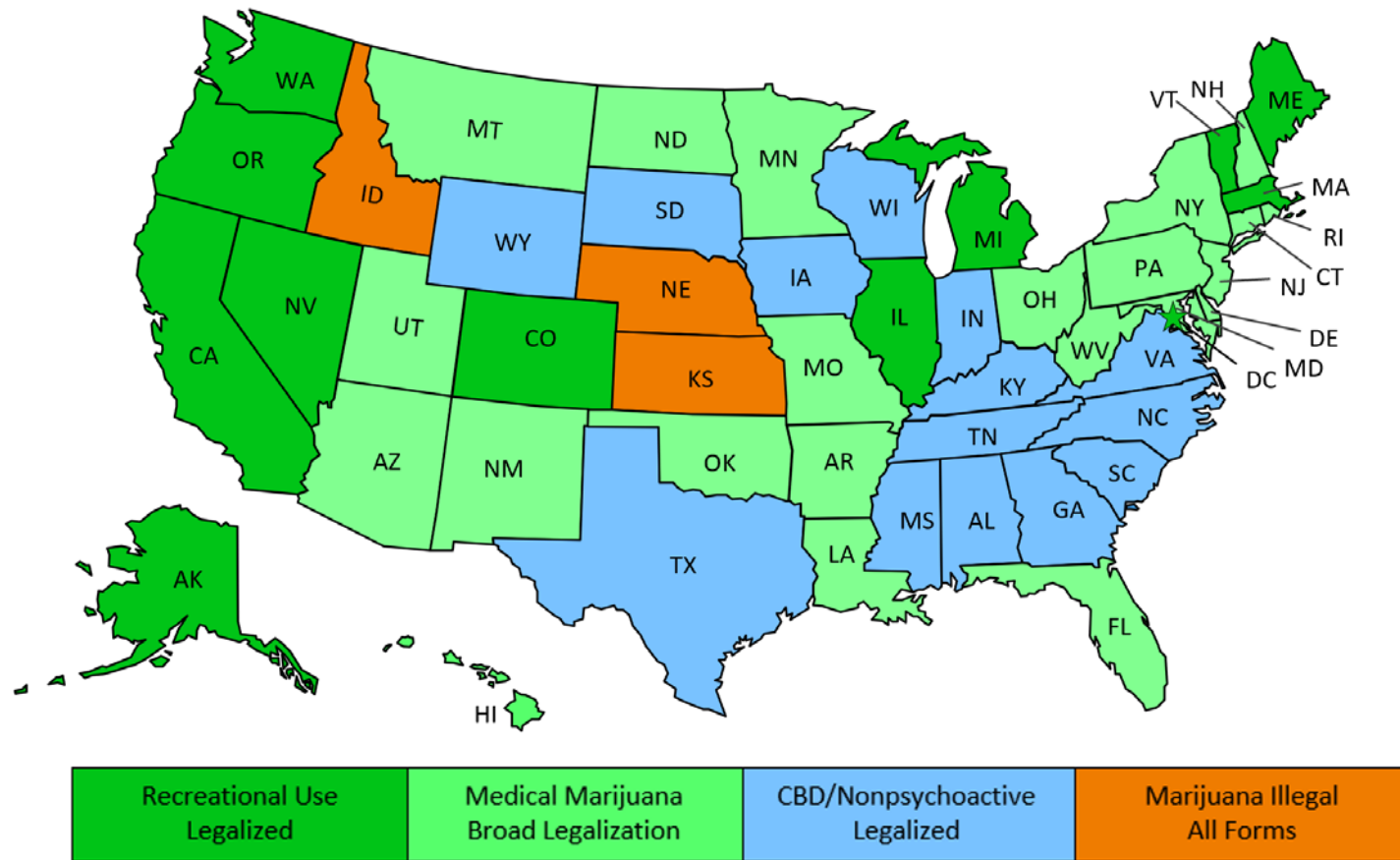
■ Kansas

- HB 2017/HB 2740/HB 2742—Authorizes the use of medical marijuana. Provides that workers compensation shall not be denied if the employee is a registered medical marijuana patient, the cannabis was used in accordance with the state medical marijuana act, and there has been no prior incidence of the employee’s impairment on the job as a result of the use of such cannabis within the previous 24 months (Did not pass).
- HB 2303/SB 195—Recognizes that workers compensation should cover medical cannabis as it would all other medications (Did not pass).



- Kentucky
 - HB 136—Legalizes the medical use of marijuana. Provides that nothing shall require a governmental medical assistance program, private health insurer or workers compensation carrier, or self-funded employer providing workers compensation benefits to reimburse a person for costs associated with the medical use of marijuana (Did not pass).
- New Jersey
 - A 1708—An employer, workers compensation insurance carrier, or private passenger automobile insurance carrier shall provide coverage for costs associated with the medical use of cannabis except that an employer or carrier shall not be required to provide coverage for costs associated with the medical use of cannabis upon intervention by the federal government to enforce the Controlled Substances Act (Pending).
- New York
 - A 2824—Deems medical marijuana a “prescription drug” as necessary to authorize coverage under workers compensation (Pending).
- Oklahoma
 - HB 1124—Amends definition of “compensable injury” to exclude an injury where the accident was caused by using marijuana without possession of a state-issued medical marijuana license in certain circumstances (Did not pass).
 - SB 305—Provides that a workers compensation carrier or self-insured employer providing workers compensation benefits is not required to reimburse a person for the costs associated with the use of medical marijuana (Did not pass).
- Utah
 - SB 121—Amended medical cannabis provisions (Enacted).
- Virginia
 - HB 972—Decriminalized marijuana possession (Enacted).

MARIJUANA LAWS AS OF JULY 31, 2020



HOT TOPIC—SINGLE-PAYER HEALTHCARE

- **Maine**
 - LD 1611—Establishes the Maine Health Plan to provide universal healthcare coverage to all residents of the state. Includes the medical components of workers compensation as a collateral source (Pending).

- **Maryland**
 - HB 1648/SB 1064—Establishes the Healthy Maryland Program. Includes language that the board shall develop a proposal for coverage of healthcare services currently covered under the state workers compensation system, including whether and how to continue funding for those services under the workers compensation system, and incorporate an element of experience rating (Did not pass).

- **Massachusetts**
 - SB 683—Establishes Medicare for all. Includes the medical components of workers compensation as a collateral source (Did not pass).





- Missouri
 - HJR 92—Ballot initiative to amend the Missouri constitution to provide that all persons have a fundamental right to choose lawful healthcare products or services and to make and enforce private agreements regarding compensation for those products or services and to prohibit the government from requiring participation in a public healthcare system (Did not pass).

- New York
 - AB 5248/SB 3577—Establishes the New York Health program, a comprehensive system of access to health insurance for state residents. Provides that the board of trustees of the New York Health program shall develop a proposal for New York Health coverage of healthcare services covered under the workers compensation law, including whether and how to continue funding for those services under that law and whether and how to incorporate an element of experience rating (Pending).

- Virginia
 - HB 529—Requires the Secretary of Health and Human Resources to enter into a contract with a qualified entity to study options for financing universal healthcare in the commonwealth (Did not pass).

HOT TOPIC—INDEPENDENT CONTRACTORS/GIG ECONOMY

- California
 - AB 1925—Expands the exemptions to the three-part ABC test to include small businesses (Pending).
 - AB 1928—Repeals the ABC test and proposes a multifactor test for determining whether workers are employees or independent contractors (Pending).
 - AB 2489—Prohibits application of the ABC test to certain medical personnel and would instead require the application of a multifactor test during the timeframe in which a state of emergency is in effect due to COVID-19, and 90 days thereafter (Pending).
 - SB 806—Proposes a new test for determining worker status (Pending).
 - SB 997—Provides that the holding in the *Dynamex* decision (which established the ABC test) does not apply to any work performed prior to April 30, 2018 (Pending).
 - SB 1039—Enacts the Independent Worker Rights Act (Pending).
 - SB 1423—Establishes an alternative test for determining whether an individual having a contractual relationship with a contracting entity or through a platform is an employee or an independent contractor. Requires the independent contractor to be covered by a policy for occupational accidents, including medical coverage. Requires the contracting entity or platform to maintain a policy against discrimination against an independent contractor on the basis of various protected classes recognized under state law (Pending).





- Illinois
 - HB 4051—Amends the Transportation Network Providers Act. Provides that, notwithstanding any laws to the contrary, a transportation network company and a driver may establish by contract that the driver is an independent contractor and not an employee (Pending).
- Missouri
 - HB 2071—Provides that the workers compensation divisions, commissions, and boards shall defer to guidance issued by the Internal Revenue Service when determining whether a person or entity is an employee or independent contractor (Did not pass).
- New York
 - AB 8721/SB 6699—Establishes a three-part test for determining employment status. Provides that the hiring entity must demonstrate that all of the following conditions are met for a worker to be considered an independent contractor: (1) the person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (2) the person performs work that is outside the usual course of the hiring entity's business; and (3) the person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed (Pending).
- Vermont
 - S 108—Authorizes the Attorney General to investigate complaints of employee misclassification under the workers compensation and unemployment insurance laws (Enacted).
- Virginia
 - HB 1407/SB 744—Prohibits an employer from classifying an individual as an independent contractor if they are an employee. The Department of Taxation must determine whether an individual is an independent contractor by applying Internal Revenue Service guidelines. Violators are subject to civil penalties and debarment from public contracts (Enacted).

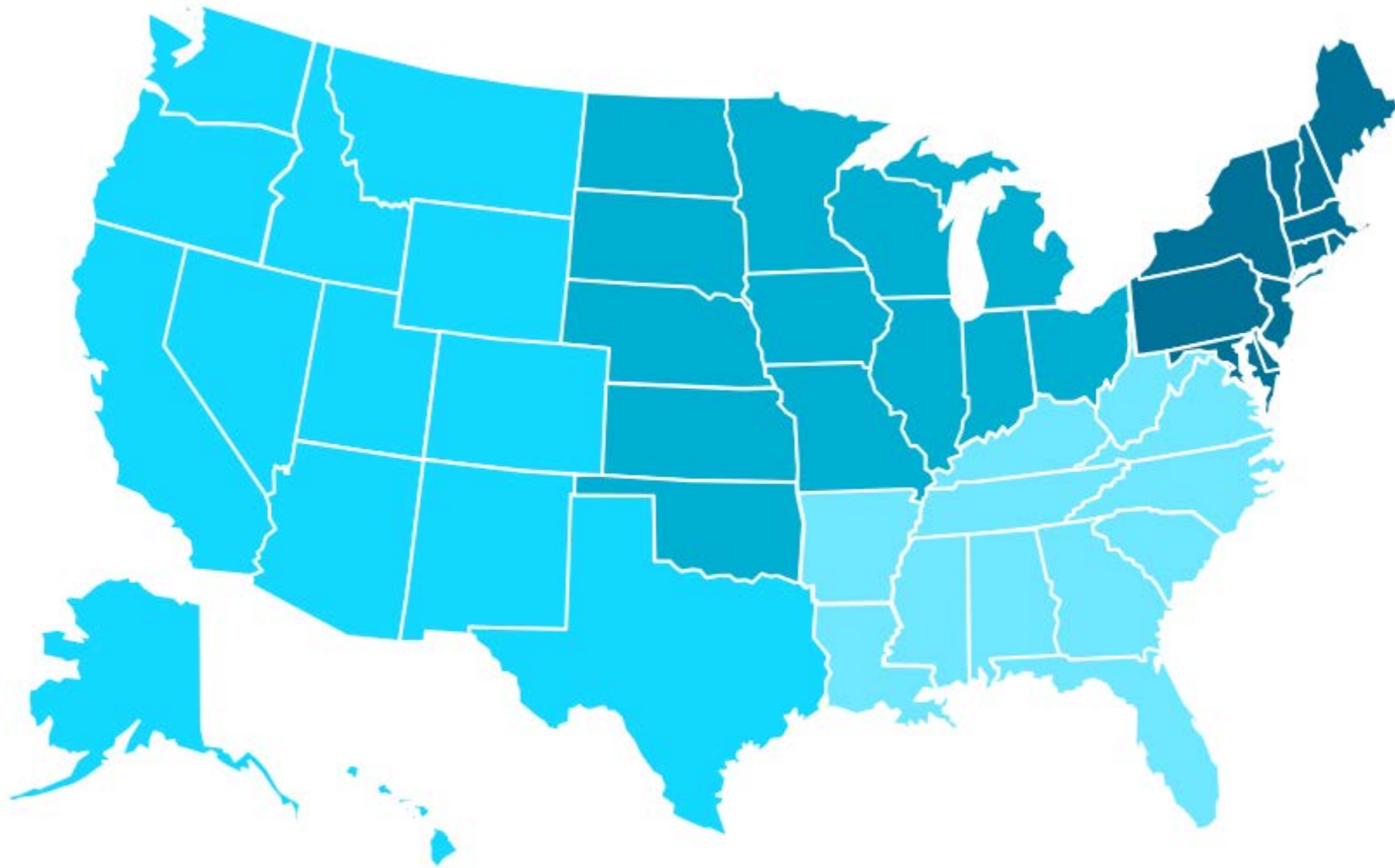
LAW-ONLY FILINGS IN 2020

- **Maine**
 - LD 756—Omnibus reform bill, effective January 1, 2020. The main provisions of the omnibus bill included an increase in the maximum indemnity benefit from 100% to 125% of the state average weekly wage, establishment of a cost of living adjustment for section 212 (total incapacity) benefits, an increase in section 213 (partial incapacity) maximum duration from 520 to 624 weeks, and the establishment of parental death benefits in the event of no dependents.
 - An overall average loss cost level increase of +3.9% was approved effective January 1, 2020.
- **Nevada**
 - AB 458—Requires the Nevada Division of Industrial Relations (DIR) to adjust the actuarial annuity tables used to calculate the present value of PPD benefits for lump-sum payments on July 1 of each year. In accordance with this requirement, the DIR adopted the 2020 Actuarial Annuity Table, effective July 1, 2020, incorporating the parameters mandated in Nevada Revised Statutes (NRS) 616.495(5).
 - An overall average loss cost level increase of +3.1% was approved effective September 1, 2020.



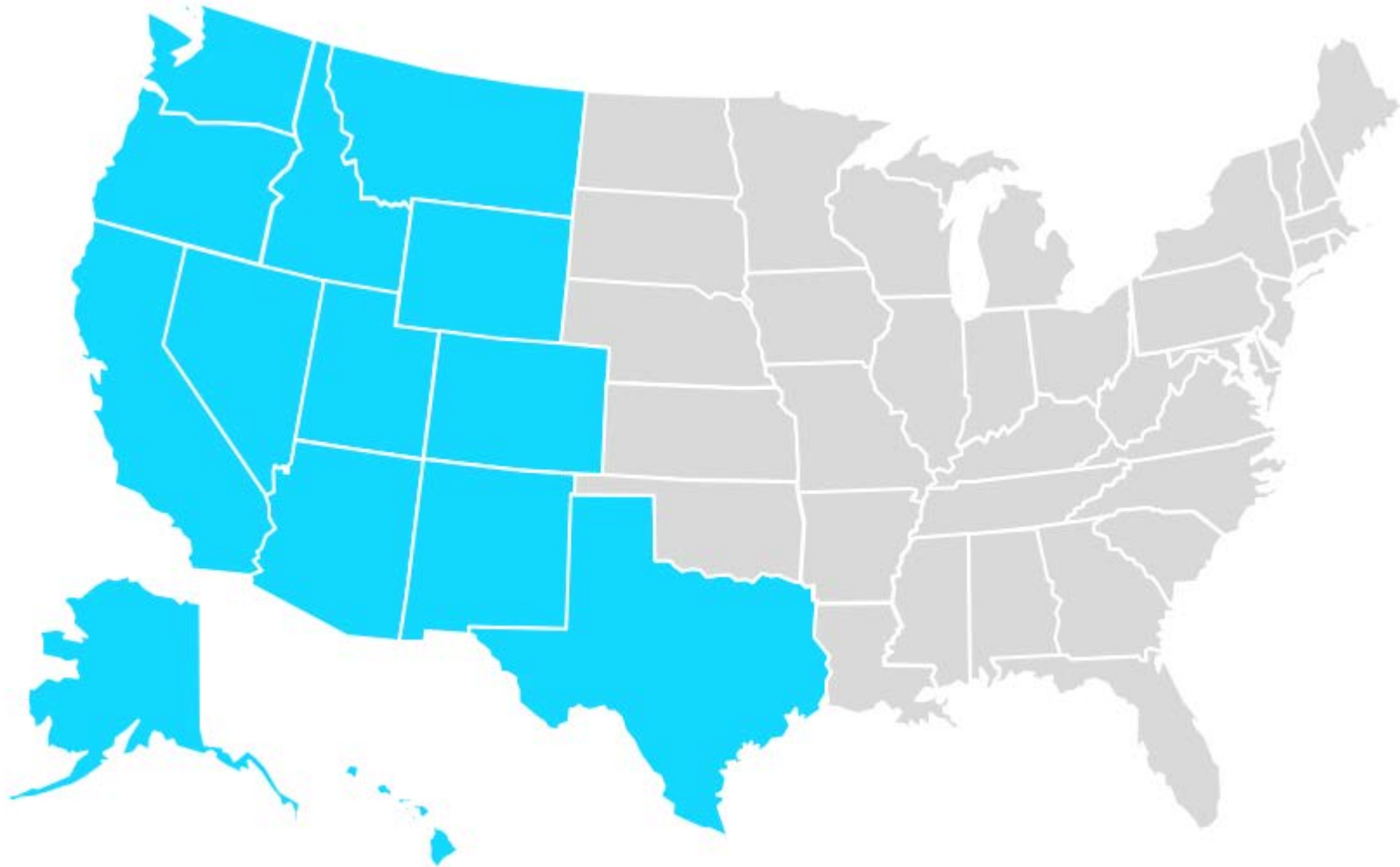


LEGISLATIVE, JUDICIAL, AND OTHER ACTIVITY BY ZONE





WESTERN ZONE



WESTERN ZONE

The Western Zone includes the following states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

New Administrators

Alaska—Joseph Knowles, Acting Director, Division of Workers’ Compensation

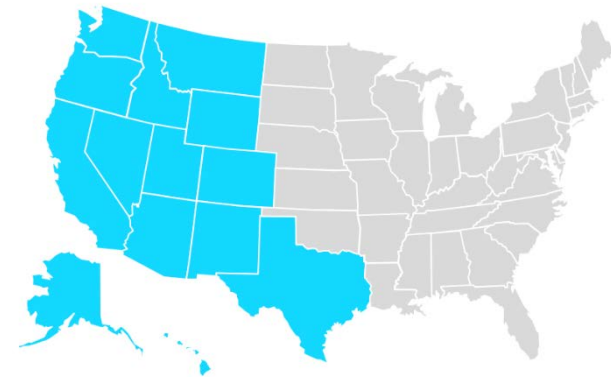
Arizona—Evan Daniels, Director, Department of Insurance and Financial Institutions

Nevada—Victoria Carreón, Administrator, Department of Business and Industry, Division of Industrial Relations

New Mexico—Loretta Lopez, Director, Workers’ Compensation Administration; Russell Toal, Superintendent, Office of the Superintendent

Oregon—Andrew Stolfi, Director, Department of Consumer and Business Services; Sally Coen, Administrator, Workers Compensation Division

Texas—Cassie Brown, Workers Compensation Commissioner, Division of Workers’ Compensation



Highlights From the Western Zone

This year, three states in the Western Zone enacted legislation addressing workers compensation presumptions of compensability for contraction of or exposure to COVID-19—Alaska, Utah, and Wyoming.

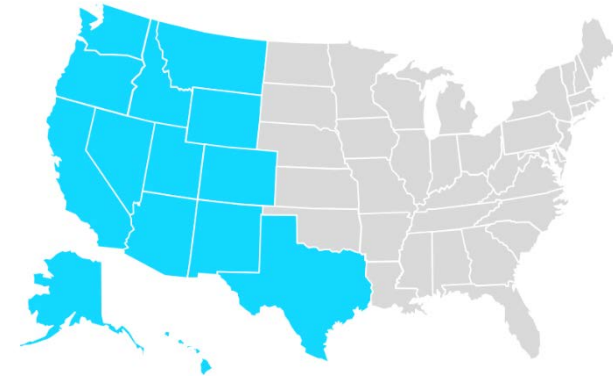
Alaska was the first state in the country to enact workers compensation presumption legislation (SB 241) for COVID-19, creating a presumption of compensability for first responders and healthcare workers. Utah also enacted legislation (HB 3007) establishing a presumption for first responders and healthcare providers and passed another bill (HB 5006) that made additional modifications to the presumption established in HB 3007, including moving the presumption provision from the workers compensation act to the Utah occupational disease law and modifying the definition of “first responder.”



In addition, Wyoming passed SF 1002. Under Wyoming’s new law, the presumption is applicable to any employee covered by the state workers compensation act infected with COVID-19 for the period January 1, 2020, through December 30, 2020.

Two states in the Western Zone, California and New Mexico, issued executive orders regarding compensability for COVID-19. New Mexico’s order created a compensability presumption for certain employees, including first responders, law enforcement officers, volunteer and paid medical personnel, and administrative and custodial staff at COVID-19-specific care centers.

California issued Executive Order N-62-20, which created a presumption of compensability that is applicable to any employee diagnosed with COVID-19 within 14 days after a day that the employee performed labor or services at the employee’s place of employment at the employer’s direction. This does not include work done at the employee’s home or residence. California also introduced several bills regarding compensability for COVID-19.



On the judicial front, the Texas Supreme Court ruled in *Texas Mutual Insurance Co. v. PHI Air Medical, LLC* that the federal Airline Deregulation Act did not preempt the Texas state workers compensation law “fair and reasonable reimbursement” standard for air ambulance fees.

Recently Enacted Workers Compensation-Related Legislation in the Western Zone

- Alaska
 - **SB 241—COVID-19 Presumption of Compensability**
Establishes a workers compensation presumption of compensability due to COVID-19.

- Arizona

- **SB 1040—Notices and Methods of Delivery**

- Creates a new section in the insurance code on sending notices and correspondence. If a notice or correspondence is sent by mail, the sender must send the notice or correspondence to the recipient's last known mailing address on file with the insurer. If the notice or correspondence is sent by electronic means, the sender must send the notice or correspondence to the recipient's last known email address as provided by the recipient to the insurer.

- Colorado

- **SB 20-026—Workers Compensation for Audible Psychological Trauma**

- Concerns eligibility for workers compensation benefits for workers who are exposed to a psychologically traumatic event.

- Idaho

- **HB 373—Idaho Correctional Industries Act**

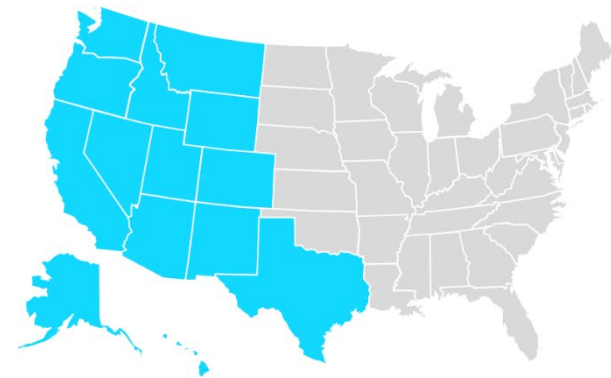
- Amends the Idaho Correctional Industries Act to provide that trainees engaged in a correctional industries training program are not entitled to workers compensation benefits except as may be required for training programs certified by the prison industry enhancement certification program.

- **SB 1263—Repeal of Sunset Provision in Occupational Disease Law**

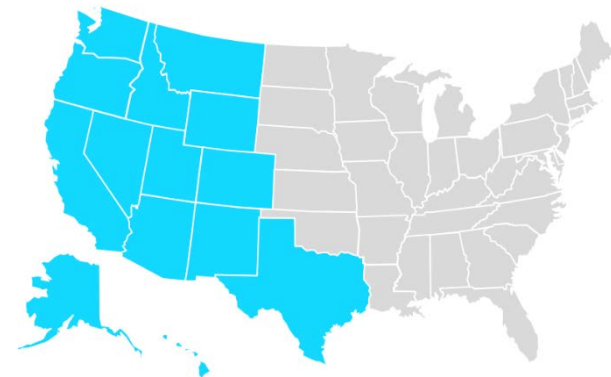
- Eliminates the July 1, 2021 sunset provision in the occupational disease statutes, which includes eliminating the sunset provision for firefighter presumption claims.

- **SB 1321—Intent to Harm**

- Amends existing law to provide for a clear and convincing evidentiary standard to establish intent to harm in a case involving physical aggression by an employer, its officers, agents, servants, or employees.



- Utah
 - **HB 11—Blood Alcohol Limits**
Amends provisions of the Workers Compensation Act regarding an employee’s blood or breath alcohol concentration level.
 - **HB 15—Labor Commission**
Amends provisions of the Utah Labor Code regarding the Workers’ Compensation Advisory Council and the Labor Commission’s Appeals Board.
 - **HB 37—Loss Adjustment Expense Factors**
Amends requirements for the loss and loss adjustment expense factors included in rates filed in relation to workers compensation.
 - **HB 3007—COVID-19 Workers Compensation for First Responders**
Amends the Workers’ Compensation Act to provide a workers compensation presumption under certain circumstances to first responders diagnosed with COVID-19.
 - **HB 5006—COVID-19 Workers Compensation Modifications**
Moves provisions related to coverage for first responders diagnosed with COVID-19 from the Workers’ Compensation Act to the Utah Occupational Disease Act. Modifies the definition of first responder.

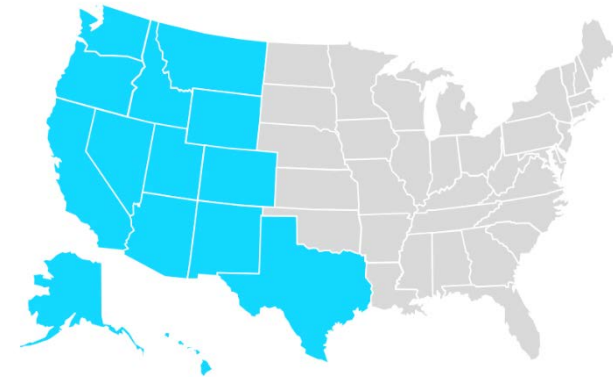


Workers Compensation Judicial Decisions of Interest

- Arizona—Compensability Standards for Post-Traumatic Stress Disorder
 - *France v. The Industrial Commission of Arizona* (Arizona Court of Appeals, February 2020): Clarified the standard for determining whether a mental injury is eligible for workers compensation under Arizona statute 23-1043.01(B), which denies workers compensation for mental injuries “unless some unexpected, unusual or extraordinary stress related to the employment...was a substantial contributing cause of the mental injury, illness or condition.” The court ruled that “unexpected, unusual or extraordinary stress related to the employment” must be read to mean that the injury-inducing stress imposed on a claimant because of the employment was sufficiently significant and noteworthy to differentiate it from noncompensable, general stress caused by the claimant’s work regimen.

■ Colorado—Determination of MMI

- *Destination Maternity v. Burren* (Colorado Supreme Court, May 2020): Held that an Administrative Law Judge (ALJ) may determine the maximum medical improvement (MMI) status of a claimant as a question of fact once the employer/carrier has overcome the independent medical examination (IME) doctor’s MMI opinion. In this case, the ALJ ruled that a claimant had reached MMI and had no permanent impairment after finding that the employer/carrier presented clear and convincing evidence that an IME doctor’s conclusion that the claimant’s injuries had not reached MMI was incorrect. The court affirmed the ALJ’s decision, reasoning that an IME doctor’s opinion is treated as presumptively correct, but a party may overcome the presumption with clear and convincing evidence.

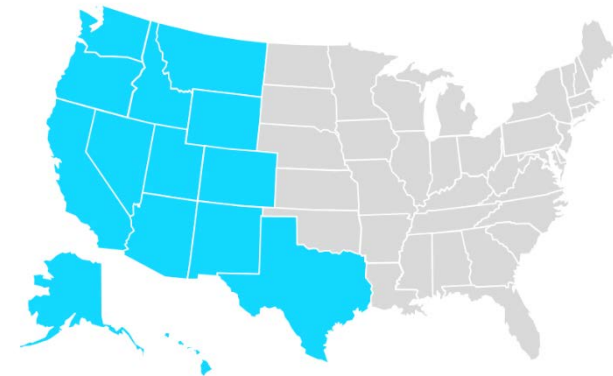


■ Hawaii—Presumption of Compensability

- *Cadiz v. QSI, Inc.* (Hawaii Supreme Court, June 2020): Found that the employer’s independent medical examination (IME) reports failed to meet the burden to produce evidence that, if true, would overcome the statutory presumption that the injury is work-related. In this case, the claimant filed a workers compensation claim stemming from exposure to mold in the workplace. The Hawaii Supreme Court relied on workers compensation statute 386-85, which provides that in a proceeding for a claim of compensation, it shall be presumed, in the absence of substantial evidence to the contrary, that a claim is for a covered work injury. The court reasoned that, because the claimant presented laboratory evidence of elevated levels of mycotoxins in his body, and the evidence was never rebutted in the employer’s IME reports, the employer had failed to meet its burden of production and thus did not overcome the presumption of compensability.

■ New Mexico—Injuries Occurring on Tribal Lands

- *Mendoza v. Isleta Resort and Casino* (New Mexico Supreme Court, January 2020): Held that an employee who was injured while working for the Pueblo of Isleta Indian tribe casino could not file a workers compensation claim before the state Workers’ Compensation Administration (WCA). The court ruled that, since the Pueblo enjoyed sovereign immunity, jurisdiction over a workers compensation claim originating on tribal land could not shift to the state WCA.



■ Texas—Air Ambulance

- *Texas Mutual Insurance Co. v. PHI Air Medical, LLC* (Texas Supreme Court, June 2020): Held that the Texas Workers’ Compensation Act’s “fair and reasonable reimbursement” standard, which governs workers compensation reimbursement of air ambulance fees, was not preempted by the federal Airline Deregulation Act (ADA). The court distinguished this case from other prior federal decisions that have found ADA preemption of state workers compensation laws regarding reimbursement for air ambulance services. It did so by reasoning that in Texas, the standard is generally “fair and reasonable” reimbursement, whereas in other decisions that found ADA preemption, the state laws expressly referenced air ambulance prices or established a maximum fee cap, which is prohibited by the ADA.

■ Texas—Exclusive Remedy

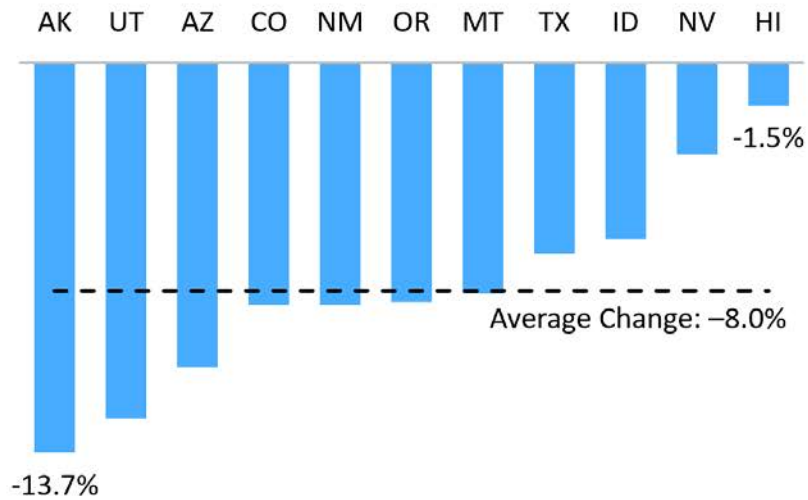
- *Mo-Vac Service Co. v. Escobedo* (Texas Supreme Court, June 2020): Held that for the intentional tort exception to workers compensation exclusive remedy to apply, an employer must believe that its actions are substantially certain to result in a particular injury to a particular employee and not merely highly likely to increase the overall risk of injury.



WESTERN ZONE

Latest Approved Loss Cost/Rate Changes

NCCI States
Based on the 2019–2020 Rate Filing Season*



*Refer to the endnotes

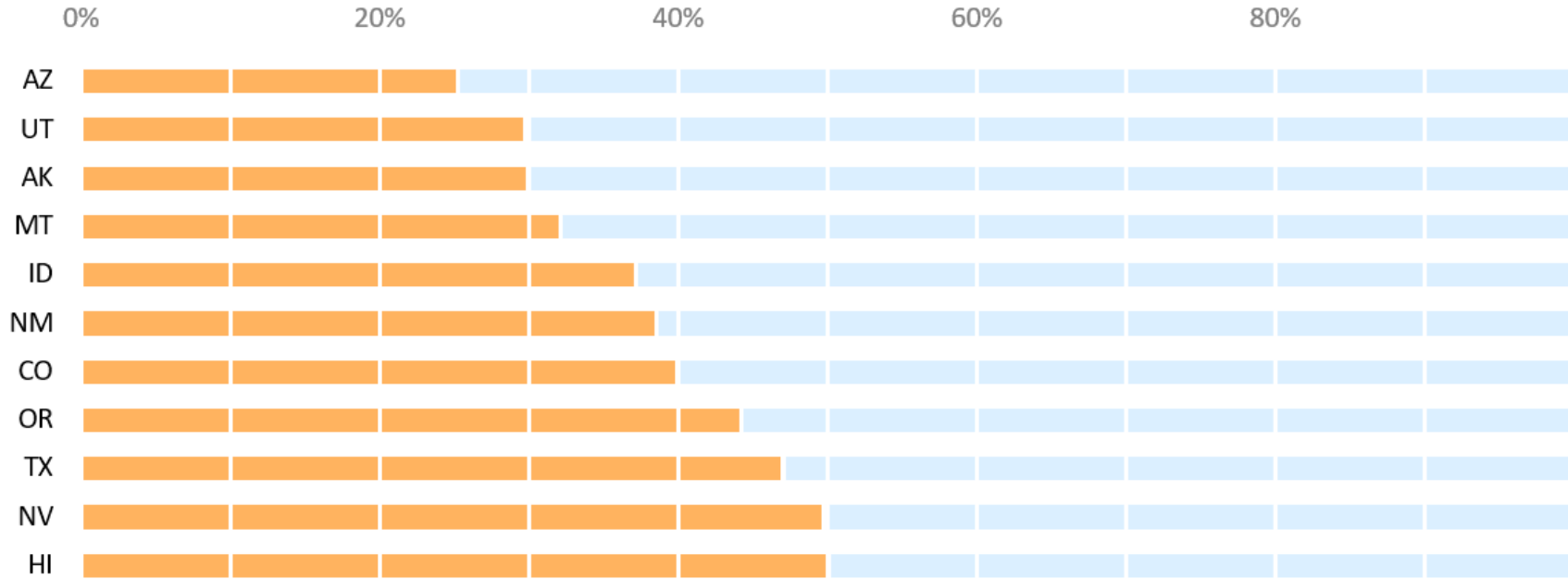


WESTERN ZONE

Percentage of Total Benefit Costs

Indemnity vs. Medical

NCCI States
Based on the 2019–2020 Rate Filing Season*

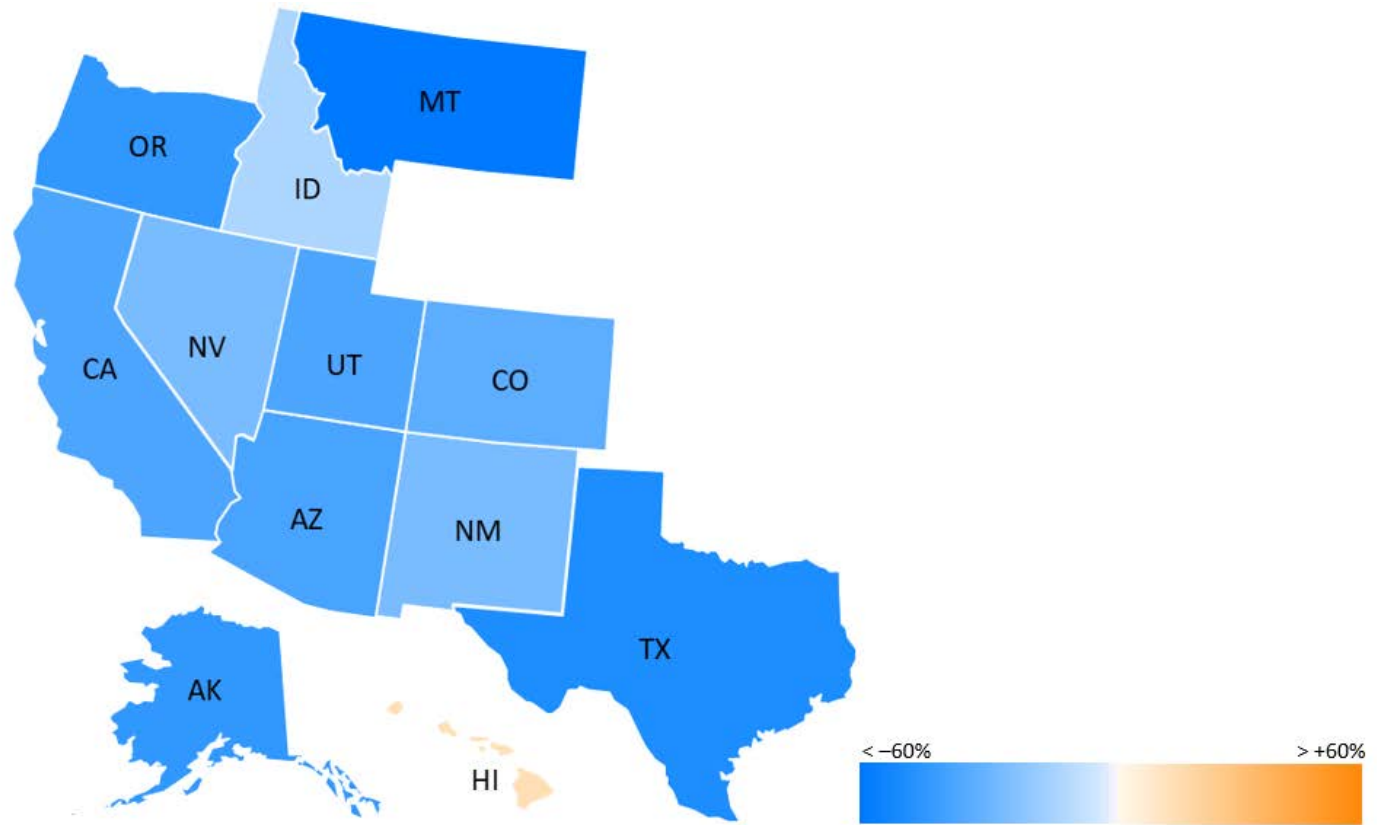


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WESTERN ZONE

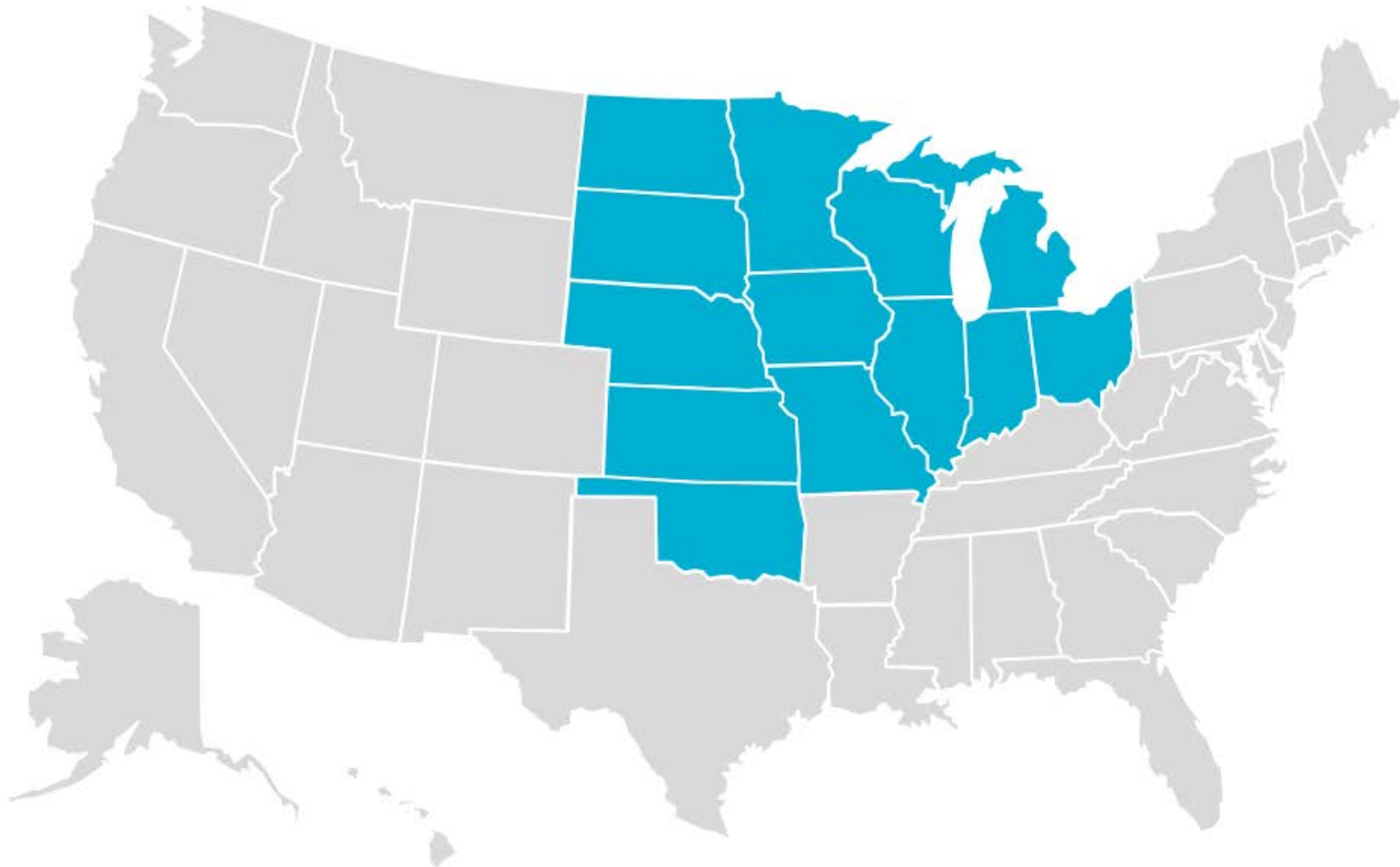
Cumulative Premium Level Change Since 2010*



*Refer to the endnotes



MIDWESTERN ZONE



MIDWESTERN ZONE

The Midwestern Zone includes the following states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin.

New Administrators

Kansas—Jeffrey King, Director, Workers' Compensation Division

South Dakota—Amber Mulder, Director, Division of Labor and Management

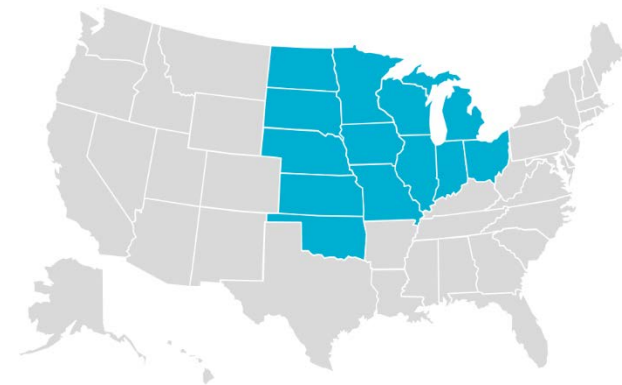
Highlights From the Midwestern Zone

In the Midwestern Zone, Illinois, Minnesota, and Wisconsin enacted legislation addressing workers compensation presumptions of compensability for contraction of or exposure to COVID-19, and Michigan and Ohio proposed presumption legislation. In addition, three states adopted emergency regulations addressing compensability for COVID-19—Illinois, Michigan, and Missouri.

In Illinois, the Workers' Compensation Commission (IL WCC) first adopted an emergency amendment creating a presumption of compensability for COVID-19 exposure for first responders and essential frontline workers. The Circuit Court of Sangamon County, Illinois, entered a temporary restraining order enjoining implementation of the amendment, and the IL WCC ultimately withdrew the amendment on April 27.

In May, the Illinois legislature passed HB 2455, which established a presumption for first responders and essential frontline workers. The legislative presumption does not apply to employees in essential businesses if they are not required to encounter members of the general public by their employment and work in locations with fewer than 15 employees. The Illinois governor signed HB 2455 into law on June 5.

Medical marijuana reimbursement in workers compensation was also an issue in the Midwestern Zone. So far this year, Iowa is the only state to pass legislation impacting reimbursement for medical marijuana as a workers compensation treatment. Iowa enacted HF 2589, which does not prohibit, but also does not require, reimbursement for medical marijuana in workers compensation.

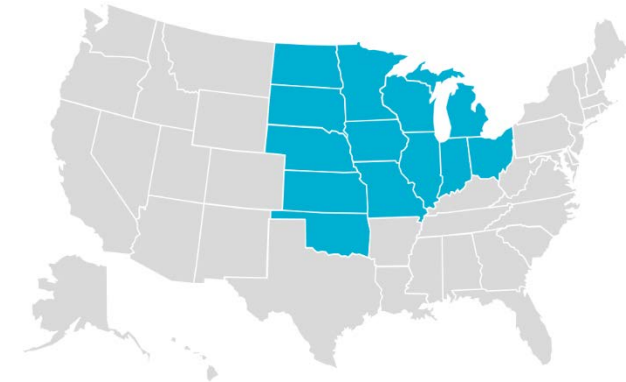


Recently Enacted Workers Compensation-Related Legislation in the Midwestern Zone

- Illinois

- **HB 2455—COVID-19 Presumption of Compensability**

Amends the Workers’ Occupational Diseases Act with respect to claims related to COVID-19. Provides that there is a rebuttable presumption that contraction of COVID-19 by a first responder or frontline worker arises out of and in the course of the first responder or frontline worker’s employment and that the injury or occupational disease shall be rebuttably presumed to be causally connected to the hazards or exposures of the first responder or frontline worker’s employment.



- Indiana

- **SB 258—Firefighters**

Requires the Board of Firefighting Personnel Standards and Education to establish best practices to improve safety and health outcomes for firefighters. Provides that Indiana’s Compensation Rating Bureau may recommend a premium or rate discount toward workers compensation insurance to political subdivisions and volunteer fire departments that implement best practices.

- **SB 269—Omnibus Bill**

Makes numerous technical changes to the workers compensation and occupational disease provisions. Modifies provisions regarding workers compensation coverage for visual impairment.

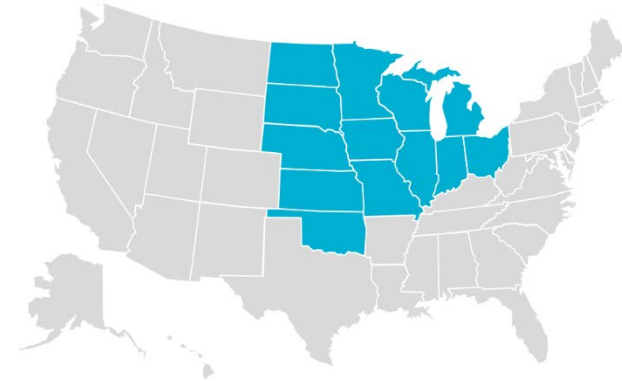
- Iowa

- **HF 2589—Medical Cannabidiol Act**

- Amends the Medical Cannabidiol Act to state that nothing in the Act requires a workers compensation carrier or self-insured employer providing workers compensation benefits to reimburse for costs associated with the medical use of marijuana as a workers compensation treatment. Nothing in the Act prohibits employers from establishing and enforcing a zero-tolerance drug policy or drug-free workplace by use of a drug-testing policy and other procedures.

- **SF 2296—Independent Contractors**

- Defines the meaning of “owns” in the workers compensation act, which generally provides that an owner-operator who owns a vehicle licensed and registered as a truck, truck-tractor, or road tractor is an independent contractor if certain conditions are met.



- Oklahoma

- **HJR 1028—Fee Schedule**

- Approves the proposed fee schedule for maximum reimbursement rates paid to medical providers as required by statute.

- **SB 1375—Medical Treatment; Chiropractors**

- Relates to medical treatment and certified workplace medical plans; adds chiropractic services to allowable medical treatment; authorizes selection of chiropractors to provide certain services.

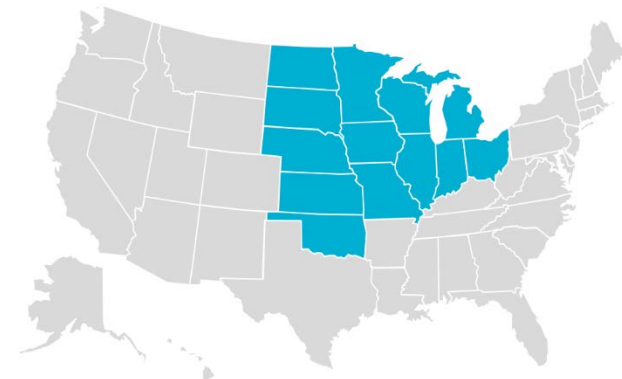
Workers Compensation Judicial Decisions of Interest

- Illinois—COVID-19

- *Illinois Manufacturers' Association v. Illinois Workers' Compensation Commission* (Illinois Circuit Court, April 2020):

On April 24, 2020, the circuit court entered a temporary restraining order enjoining the Workers' Compensation Commission from implementing an emergency amendment to the Illinois Workers' Compensation Act, which created a rebuttable presumption that a first responder's or frontline worker's exposure to COVID-19 arises in and out of the course of employment and is causally connected to the hazards of the employment.

After the court's decision, the Workers' Compensation Commission withdrew the emergency amendment. On April 30, 2020, a motion to dismiss and dissolve the temporary restraining order was filed in the case.



- Missouri—Enhanced Mesothelioma Benefits

- *Hegger v. Valley Farm Dairy Co.* (Missouri Supreme Court, February 2020): Held that a workers compensation insurer was not liable to provide enhanced mesothelioma benefits pursuant to a 2014 statute, where the insured employer ceased to exist 16 years prior to the statute's effective date. The court reasoned that Missouri statute 287.200.4(3)(a), which allows for recovery of enhanced mesothelioma benefits against employers that elect to accept mesothelioma liability by insuring their liability, requires an affirmative act by an employer with respect to obtaining coverage for the enhanced benefits. The court found that a business that ceased its operations before enactment of the statute could not be liable because it did not affirmatively elect to accept such liability under the statute.

- Nebraska—Attorney Fees

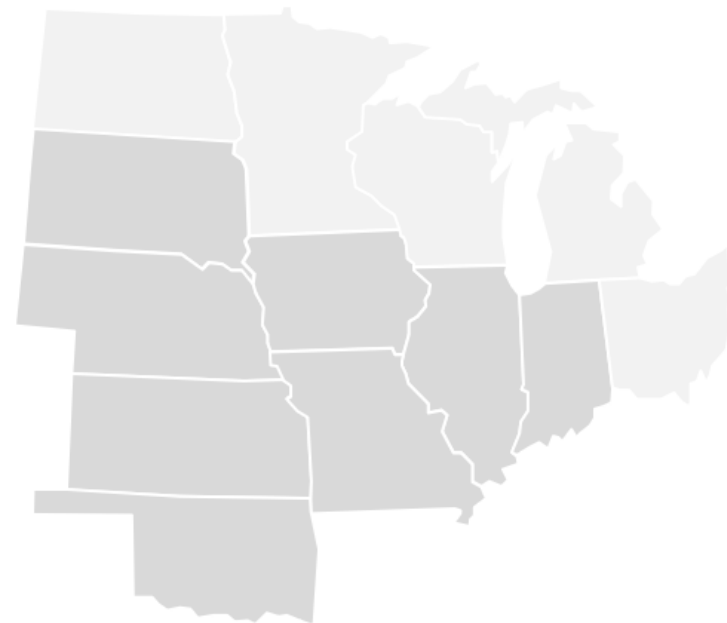
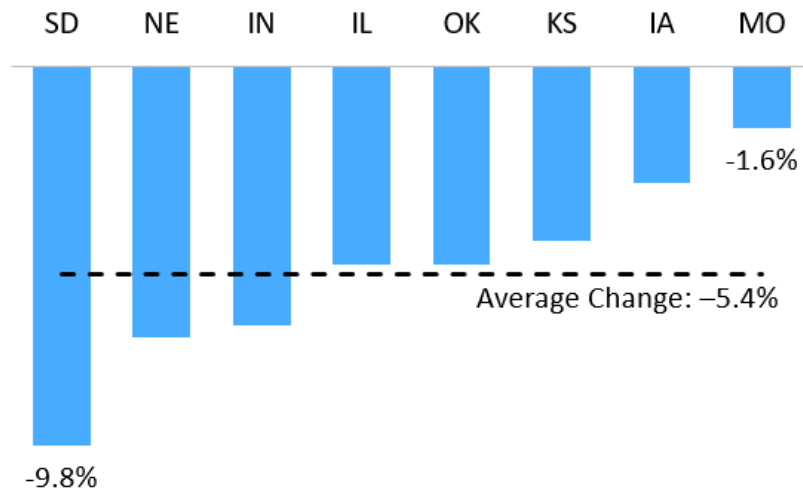
- *Sellers v. Reefer Systems, Inc.* (Nebraska Supreme Court, May 2020): Held that under Nebraska statute 48-125(4)(b), the details of the attorney-client fee agreement in a workers compensation case is not a necessary component of the affidavit required by Supreme Court rule 2-109(F), which establishes the procedure for attorney fees in appellate cases. Nebraska statute 48-125(4)(b) states that reasonable attorney fees will be allowed for the employee by the appellate court if the employer appeals a workers compensation award and fails to obtain a reduction in the awarded amount. The court concluded that reasonable attorney fees mandated by 48-125(4)(b), as a matter of public policy, do not depend on the terms of the fee agreement.



MIDWESTERN ZONE

Latest Approved Loss Cost/Rate Changes

NCCI States
Based on the 2019–2020 Rate Filing Season*



*Refer to the endnotes

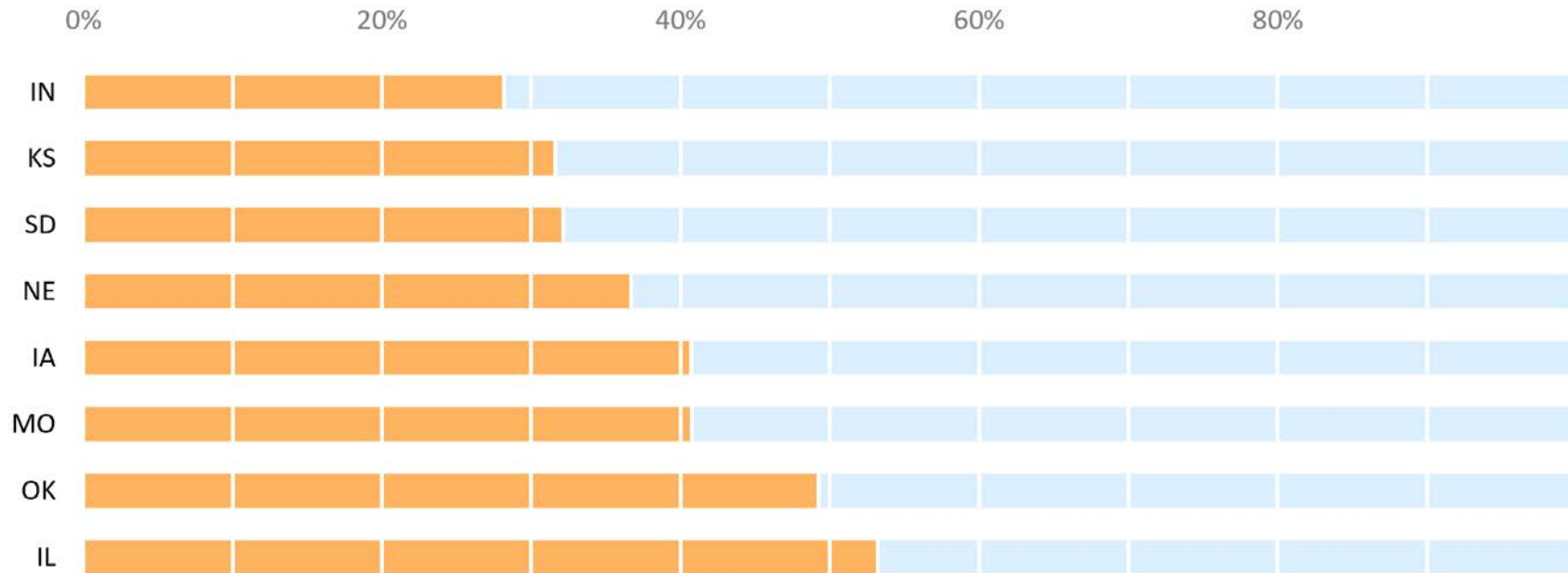


MIDWESTERN ZONE

Percentage of Total Benefit Costs

Indemnity vs. Medical

NCCI States
Based on the 2019–2020 Rate Filing Season*

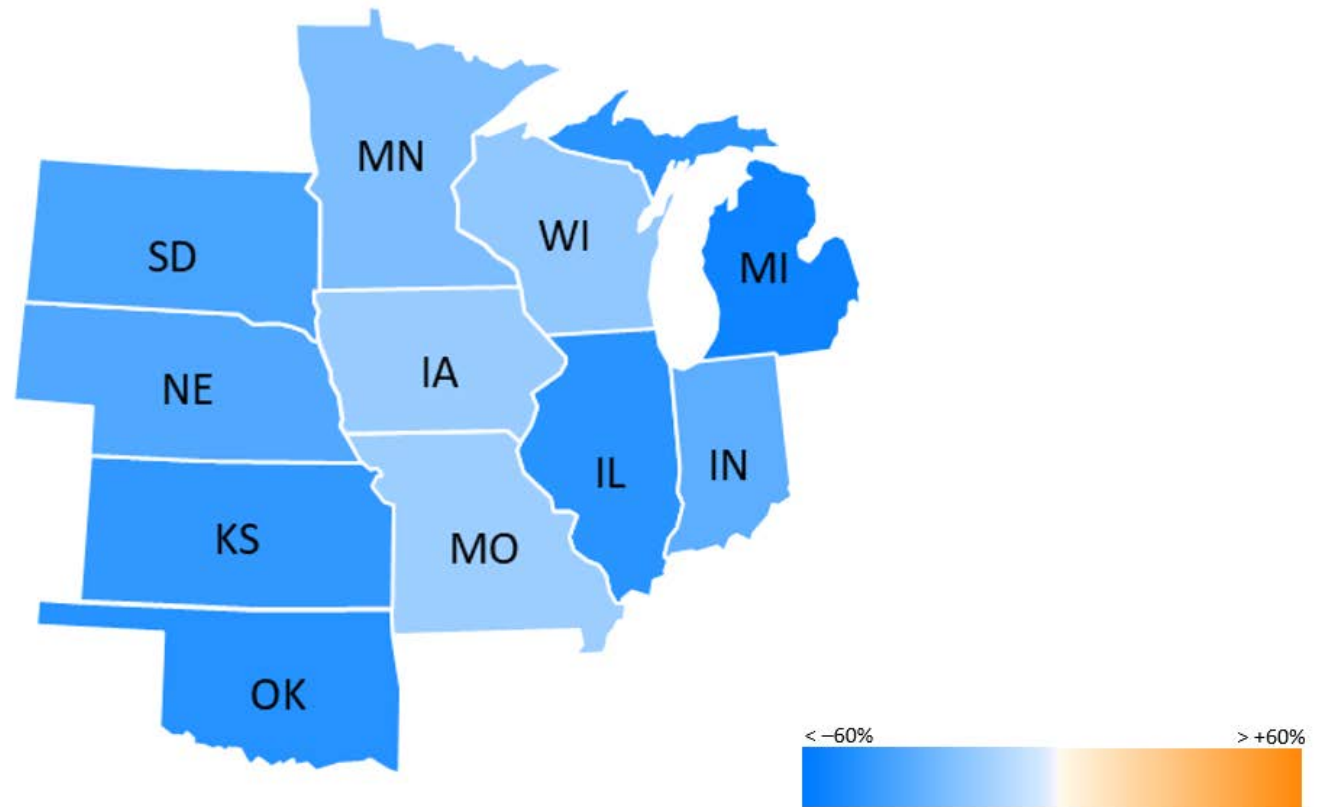


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MIDWESTERN ZONE

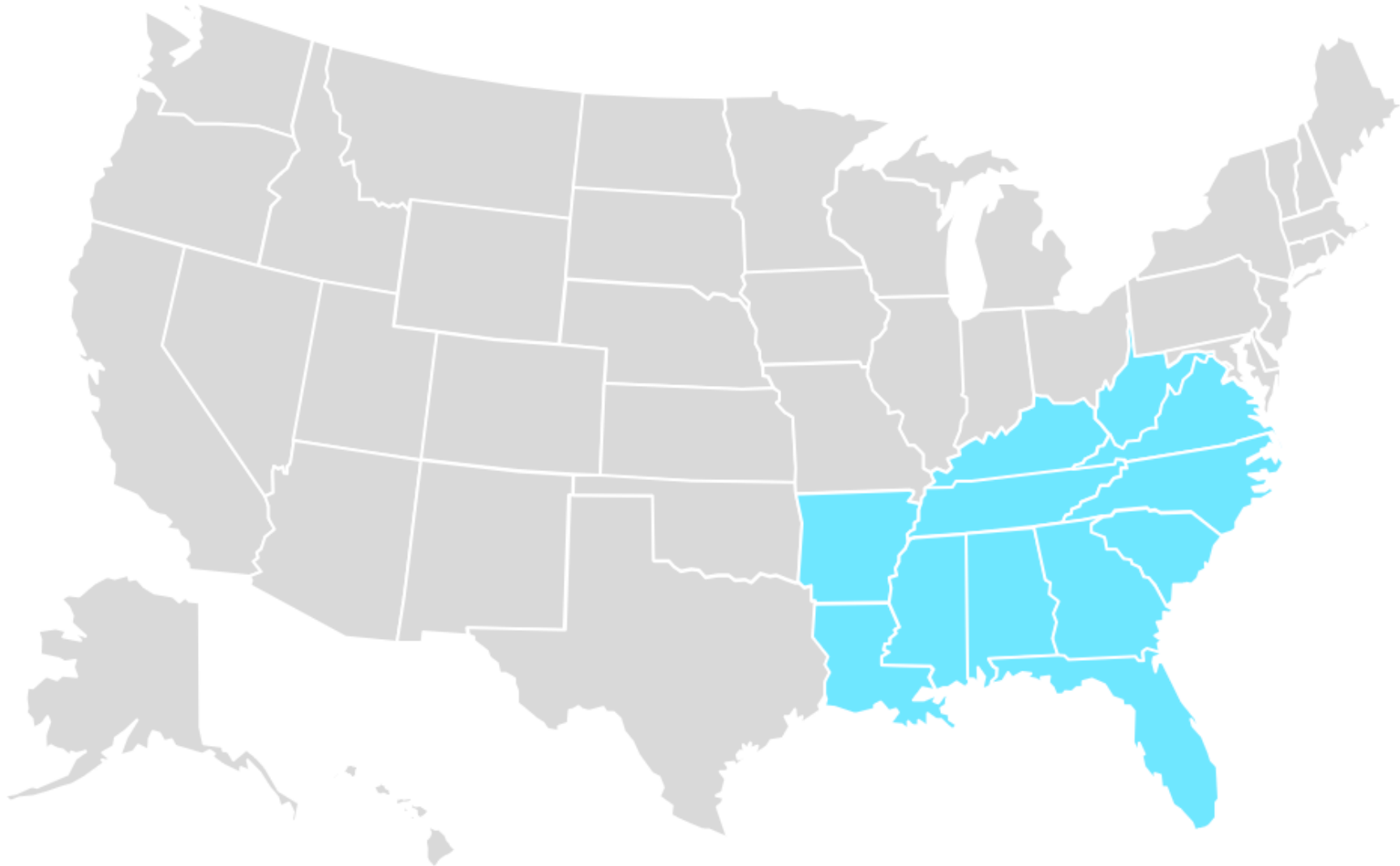
Cumulative Premium Level Change Since 2010*



*Refer to the endnotes



SOUTHEASTERN ZONE



SOUTHEASTERN ZONE

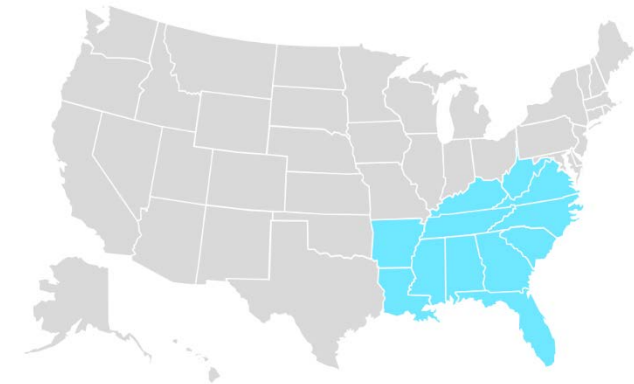
The Southeastern Zone includes the following states: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

New Administrators

Arkansas—Alan McClain, Commissioner, Insurance Department

Kentucky—Sharon Clark, Commissioner, Department of Insurance

Tennessee—Hodgen Mainda, Commissioner, Department of Commerce and Insurance



Highlights From the Southeastern Zone

Three states in the Southeastern Zone—Louisiana, North Carolina and South Carolina—proposed legislation addressing workers compensation presumptions of compensability for contraction of or exposure to COVID-19. In addition, Arkansas, Florida, and Kentucky issued directives or executive orders addressing workers compensation compensability for COVID-19.

Several states in the Southeastern Zone had active legislative sessions this year. Virginia and West Virginia adjourned their legislative sessions as regularly scheduled before COVID-19 began to impact state legislative sessions.

Florida completed most of its legislative session before COVID-19 hit and then extended the 60-day regular session one-week to address budget-related matters; while Georgia suspended its legislative session in mid-March and reconvened June 15 to complete the remaining 11 days of the session.

Louisiana had an active session and introduced numerous bills addressing COVID-19 and insurance-related matters. Several of the COVID-19 bills impacted workers compensation.

SOUTHEASTERN ZONE

Recently Enacted Workers Compensation-Related Legislation in the Southeastern Zone

- Florida

- **HB 437—Nurse Registries**

Authorizes a workers compensation insurer or employer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker.

- **SB 292—Insurance Claims Data**

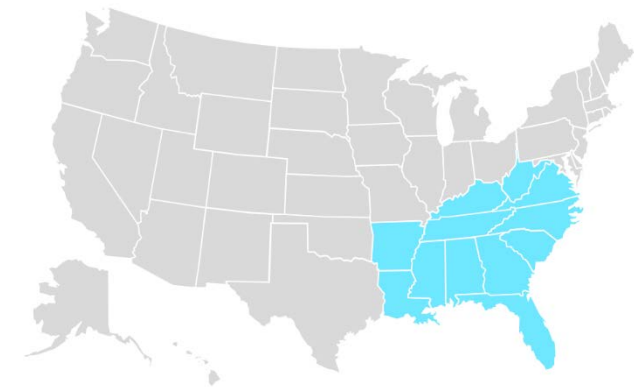
Requires surplus lines and authorized insurers to provide insureds either a loss run statement or certain information within a certain time frame after receipt of the insured’s written request; requires insurers to provide notice to the agent of record after providing a loss run statement; specifies the required claims history in a loss run statement; provides that insurers are not required to provide loss reserve information; prohibits insurers from charging a fee to prepare and provide one loss run statement annually.

- **SB 540—Insurance Guaranty Associations**

Authorizes certain guaranty association employees to adjust losses for the Florida Insurance Guaranty Association if certain conditions are met; redefines the term “net direct written premiums” as “direct written premiums;” deletes a calculation of initial estimated assessments levied by the Office of Insurance Regulation on insurers in the Florida Insurance Guaranty Association; deletes a calculation of initial estimated assessments levied by the office on insurers in the Florida Workers’ Compensation Insurance Guaranty Association.

- **SB 1606—Insurance Administration**

Authorizes the payment of certain workers compensation benefits to be transmitted to the employee’s account with a licensed money transmitter.

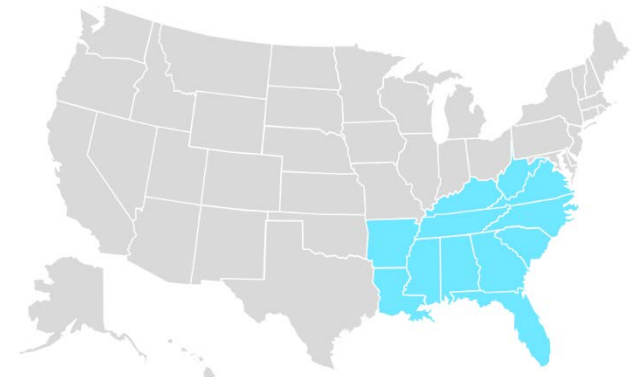




- Kentucky
 - **HB 186—Direct Sellers**
Exempts direct sellers from coverage under the workers compensation act.
 - **SB 263—Coal Workers’ Pneumoconiosis Fund**
Sets forth the process to refund excess assessments to coal employers.

- Louisiana
 - **HB 826—Limitations of Employer Liability Due to COVID-19**
Provides for limitations of liability due to the COVID-19 public health emergency. An employee whose contraction of COVID-19 is determined to be compensable under the Workers Compensation Act shall have no remedy based in tort against their employer for such exposure unless the exposure was intentional.
 - **SB 373—Claims History**
Revises the time period in which an insurer must provide an insured loss claims history upon request.
 - **SB 517—Weekly Death Benefit**
Upon remarriage, provides for continuation of the weekly death benefits for the surviving spouse of a law enforcement officer killed in the line of duty.

- Tennessee
 - **HB 2257/SB 2190—Extension of Time Period for Certain Claims and Notices**
Extends the deadline for an injured employee to file a claim for increased benefits with the bureau of workers compensation; lengthens the period of time following an injury that an employee has to provide notice to the bureau of an injury; eliminates certain provisions addressing the Uninsured Employers Fund.
 - **SB 1649—Advisory Council**
Extends the termination date of the Advisory Council on Workers’ Compensation to June 30, 2021.
 - **SB 2189—Workers Compensation Coverage of Construction Services Providers**
Excludes construction services providers performing work in the state from certain provisions of the workers compensation law; requires construction services providers to maintain workers compensation insurance coverage while working in the state; and imposes liability on a successor in interest of a penalized construction services provider.





■ Virginia

■ **HB 46—Employer Statement of Intent**

Requires that, when an employee makes a claim under section 65.2-601 of the Virginia Workers' Compensation Act, the Commissioner shall order the employer to advise the employee whether it intends to accept or deny the claim or is unable to make such a determination because it lacks sufficient information from the employee or a third party.

■ **HB 169—Presumption of Compensability for Certain Diseases**

Adds correctional officers and full-time sworn members of the enforcement division of the Department of Motor Vehicles to the list of public safety employees who are entitled to a presumption that certain infectious diseases are compensable occupational diseases.

■ **HB 438/SB 561—Compensability of Post-Traumatic Stress Disorder**

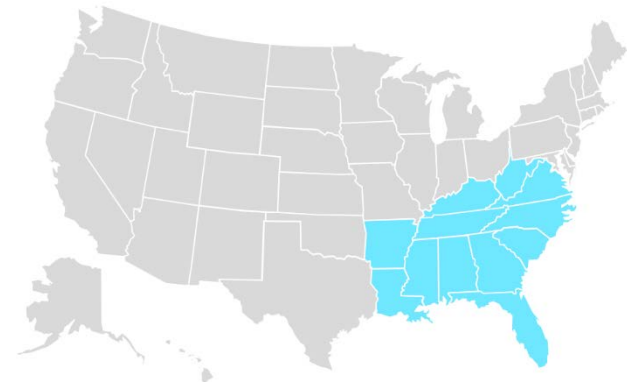
Provides that post-traumatic stress disorder (PTSD) incurred by a law enforcement officer or firefighter is compensable under the Virginia Workers' Compensation Act if a mental health professional examines the worker and diagnoses them as suffering from PTSD as a result of the individual undergoing a qualifying event, and certain other conditions are met.

■ **HB 617—Repetitive Motion Injuries**

Directs the Virginia Workers' Compensation Commission to engage an independent and reputable national research organization to examine the implications of covering, through the Virginia workers compensation system, workers' injuries caused by repetitive motion.

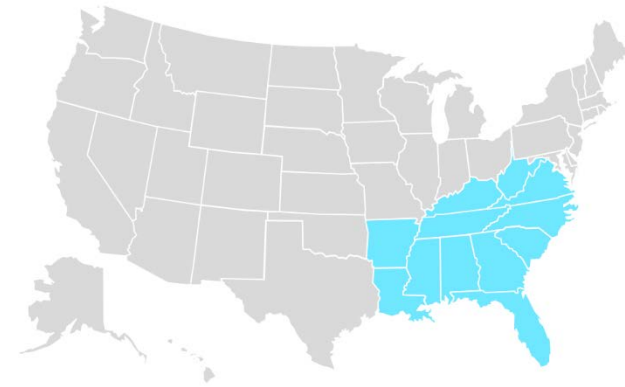
■ **HB 783/SB 9—Presumption of Compensability for Certain Diseases**

Adds cancers of the colon, brain, or testes to the list of cancers that are presumed to be an occupational disease covered by the Virginia Workers' Compensation Act when firefighters or certain employees develop the cancer. The measure removes the compensability requirement that the employee who develops cancer had contact with a toxic substance encountered in the line of duty.



■ **HB 1407/SB 744—Misclassification of Employees**

Prohibits an employer from classifying an individual as an independent contractor if they are an employee. An individual must be considered an employee of the party that pays the remuneration for purposes of Titles 40.1 (Labor and Employment), 58.1 (Taxation), 60.2 (Unemployment Compensation), and 65.2 (Workers’ Compensation) unless it is demonstrated that such individual is an independent contractor. The Department of Taxation must determine whether an individual is an independent contractor by applying Internal Revenue Service guidelines. Violators are subject to civil penalties and debarment from public contracts.



■ **HB 1558—Creation of Ombudsman Program**

Authorizes the Virginia Workers’ Compensation Commission to create an Ombudsman program and appoint an ombudsman to administer such program. The program’s purpose will be to provide neutral educational information and assistance to persons who are not represented by an attorney, including those persons who have claims pending or docketed before the Commission.

■ **SB 345—Presumption of Compensability for Certain Diseases**

Adds correctional officers and full-time sworn members of the enforcement division of the Department of Motor Vehicles to the list of public safety employees who are entitled to a presumption that certain infectious diseases are compensable occupational diseases. The presumption does not apply to correctional officers and full-time sworn members of the enforcement division of the Department of Motor Vehicles who were diagnosed with such infectious diseases before July 1, 2020.

■ **SB 804—Employees Providing Domestic Service**

Eliminates the exclusion in the Virginia Minimum Wage Act for persons employed in domestic service. The bill requires the Secretary of Commerce and Trade to convene a work group that includes, in part, representatives from the Department of Labor and Industry and the Workers’ Compensation Commission. The group is charged with making recommendations, including any necessary statutory and regulatory changes, such as protecting employees from loss of income as a result of unemployment or employment-related injury, by including coverage of employees in the Virginia Unemployment Compensation Act and the Virginia Workers’ Compensation Act.

- West Virginia

- **HB 4361—Insurance Law Violations**

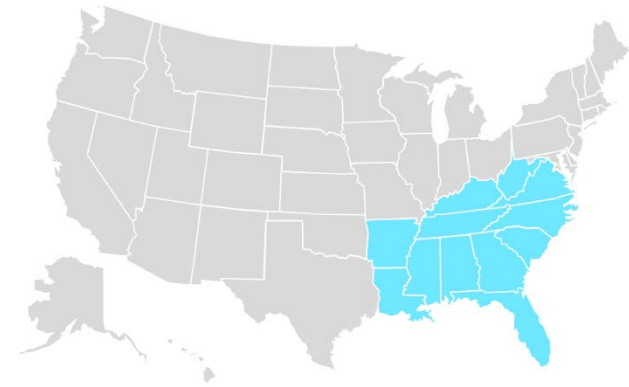
- Includes numerous provisions related to insurance fraud and insurance law violations; defines “fraudulent insurance act;” permits the insurance fraud unit to participate in the prosecution of workers compensation fraud.

- **HB 4409—Volunteer Fire Department Workers Compensation Premium Subsidy Fund**

- Transfers remaining funds from the Volunteer Fire Department Workers’ Compensation Premium Subsidy Fund, at its existing sunset date of June 30, 2020, to the Fire Service Equipment and Training Fund and the State Auditor’s Chief Inspector’s Fund.

- **SB 545—Workers’ Compensation Old Fund**

- Authorizes the insurance commissioner to transfer moneys from the Insurance Commission Fund, also known as the Commissioner’s Operating Fund, into the Workers’ Compensation Old Fund to reduce any deficit balance of the Old Fund.



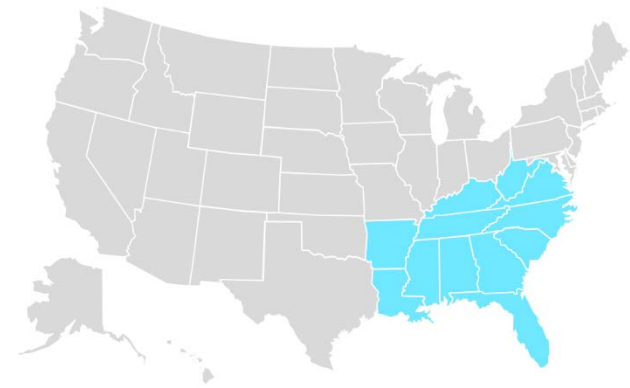
Workers Compensation Judicial Decisions of Interest

- Arkansas—Independent Contractor

- *Davis v. Ed Hickman, P.A.* (Arkansas Court of Appeals, March 2020): Held that an injured worker could not receive workers compensation benefits because he was an independent contractor, and not an employee, despite the fact that the employer’s workers compensation insurer required the employer to pay workers compensation premium based on the injured worker’s earnings. The court reasoned that whether the employer had a workers compensation policy that covered the employee was only one element to consider in the independent contractor analysis and concluded that other factors weighed more in the determination that the worker was an independent contractor.

■ Arkansas—Marijuana and Workers Compensation

- *Blair v. American Stitchco Inc.* (Arkansas Court of Appeals, January 2020): Held that a claimant was not entitled to workers compensation benefits because she failed to rebut the statutory presumption that her injury was substantially occasioned by the use of marijuana, which is an illegal drug in the state.
- *Allen v. Employbridge Holding Co.* (Arkansas Court of Appeals, February 2020): Held that a worker who suffered workplace injuries was not entitled to workers compensation benefits because he could not prove, by a preponderance of the evidence, that the accident that caused his injuries was unrelated to his marijuana use.



■ Florida—Attorney Fees

- *Zenith Insurance Co. v. Cruz* (Florida First District Court of Appeal, February 2020): Held that an employer/carrier was liable to a claimant for attorney fees under Florida statute 440.34 (which provides that an employer/carrier can avoid attorney fees if the claim is accepted or benefits are provided within 30 days of receipt of the claimant’s petition) when the statutory 30-day period expired on a Saturday, but the employer/carrier accepted the claim and issued payment for benefits the following Monday. The court reasoned that the statutory grace period of 440.34 is not extended by Rule 60Q-6.109 of the Rules of Procedure for Workers Compensation Adjudications, which extends deadlines to perform required acts to the next working day, when such deadline falls on a weekend or a holiday.

■ Georgia—Arising Out of Employment

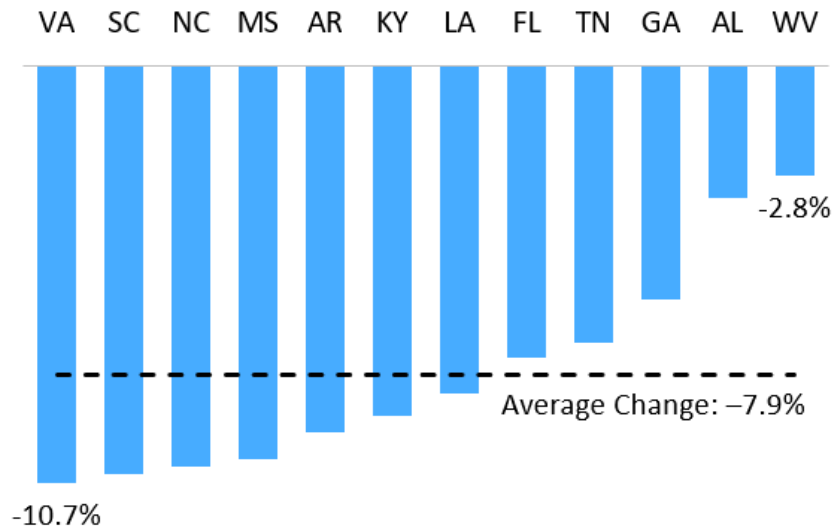
- *Frett v. State Farm Employee Workers’ Compensation* (Georgia Supreme Court, June 2020): Held that injuries suffered by an employee as a result of a slip and fall during a scheduled lunch break were compensable. With this decision, the court reversed an 85-year-old ruling in *Ocean Acc. & Guarantee Corp. v. Farr* that an injury sustained during a lunch break did not arise out of the employment because, at the time it occurred, the employee was engaged in an individual pursuit.



SOUTHEASTERN ZONE

Latest Approved Loss Cost/Rate Changes

NCCI States
Based on the 2019–2020 Rate Filing Season*



*Refer to the endnotes

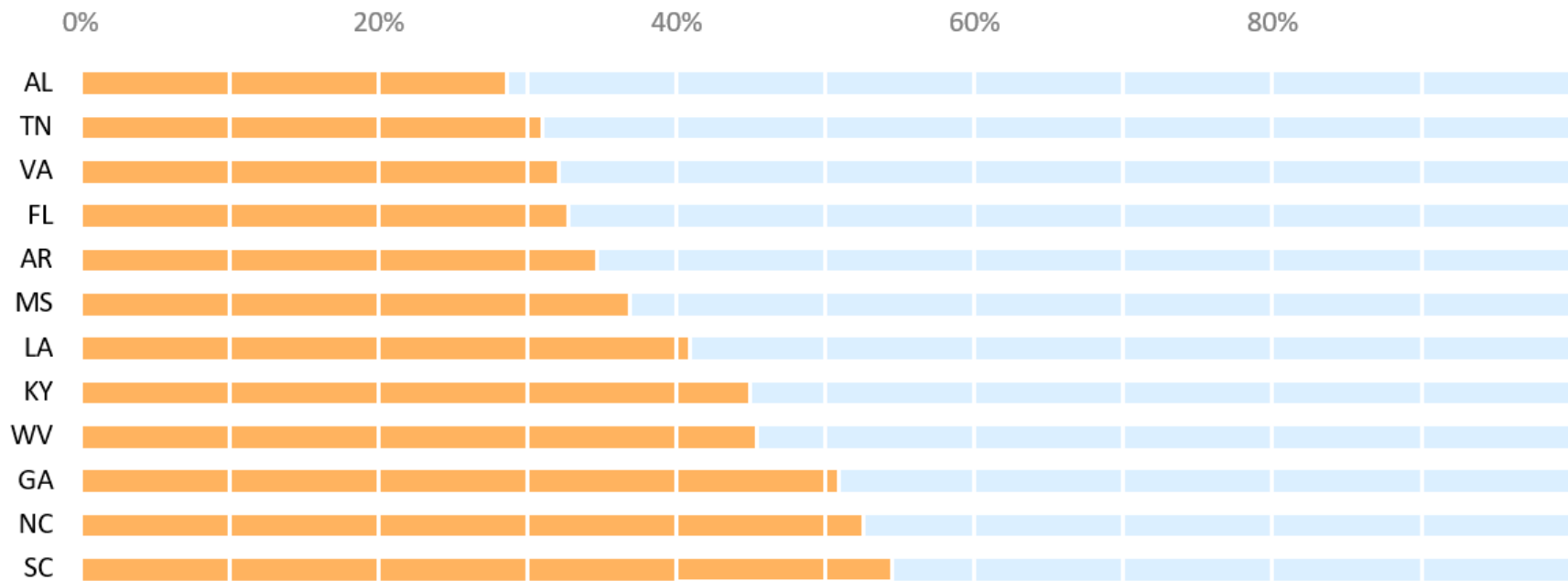


SOUTHEASTERN ZONE

Percentage of Total Benefit Costs

Indemnity vs. Medical

NCCI States
Based on the 2019–2020 Rate Filing Season*

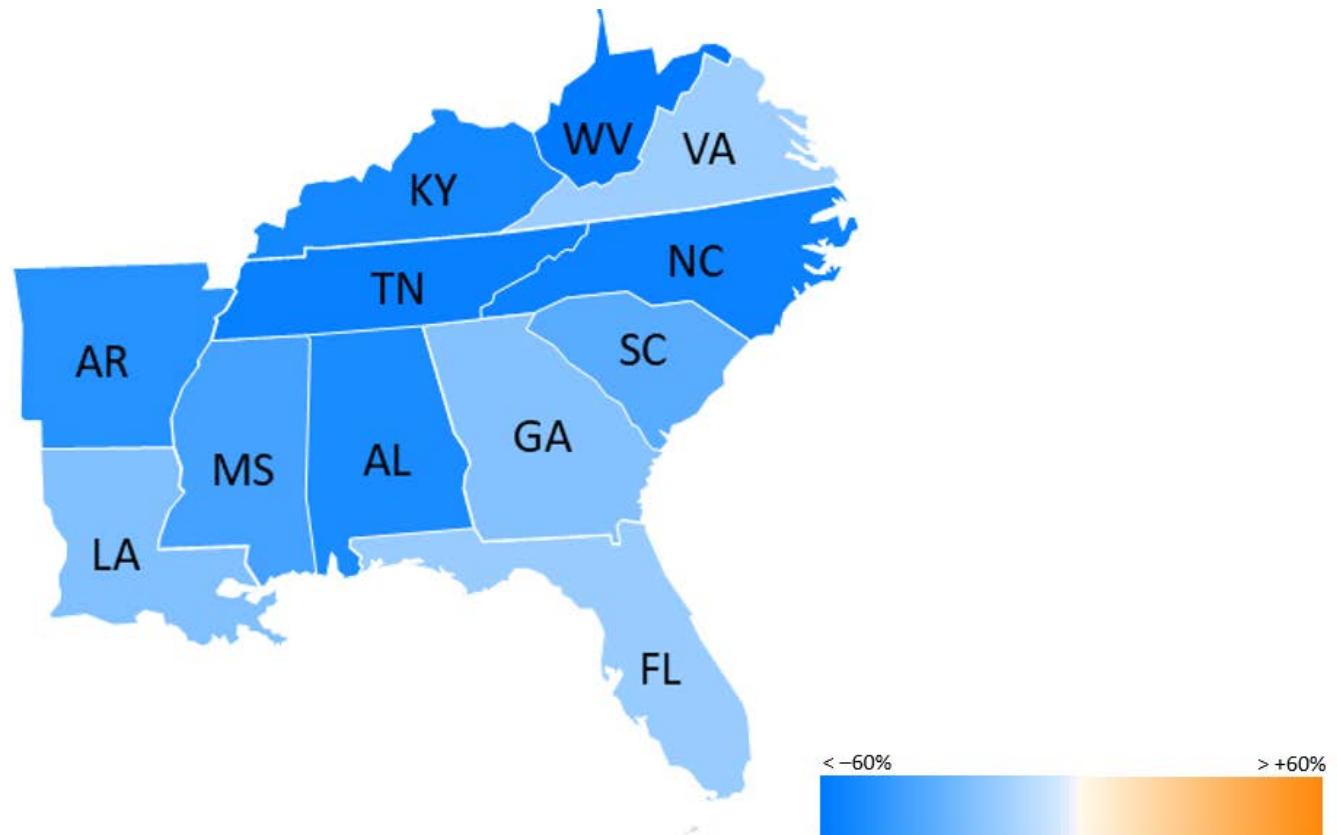


*Refer to the endnotes



SOUTHEASTERN ZONE

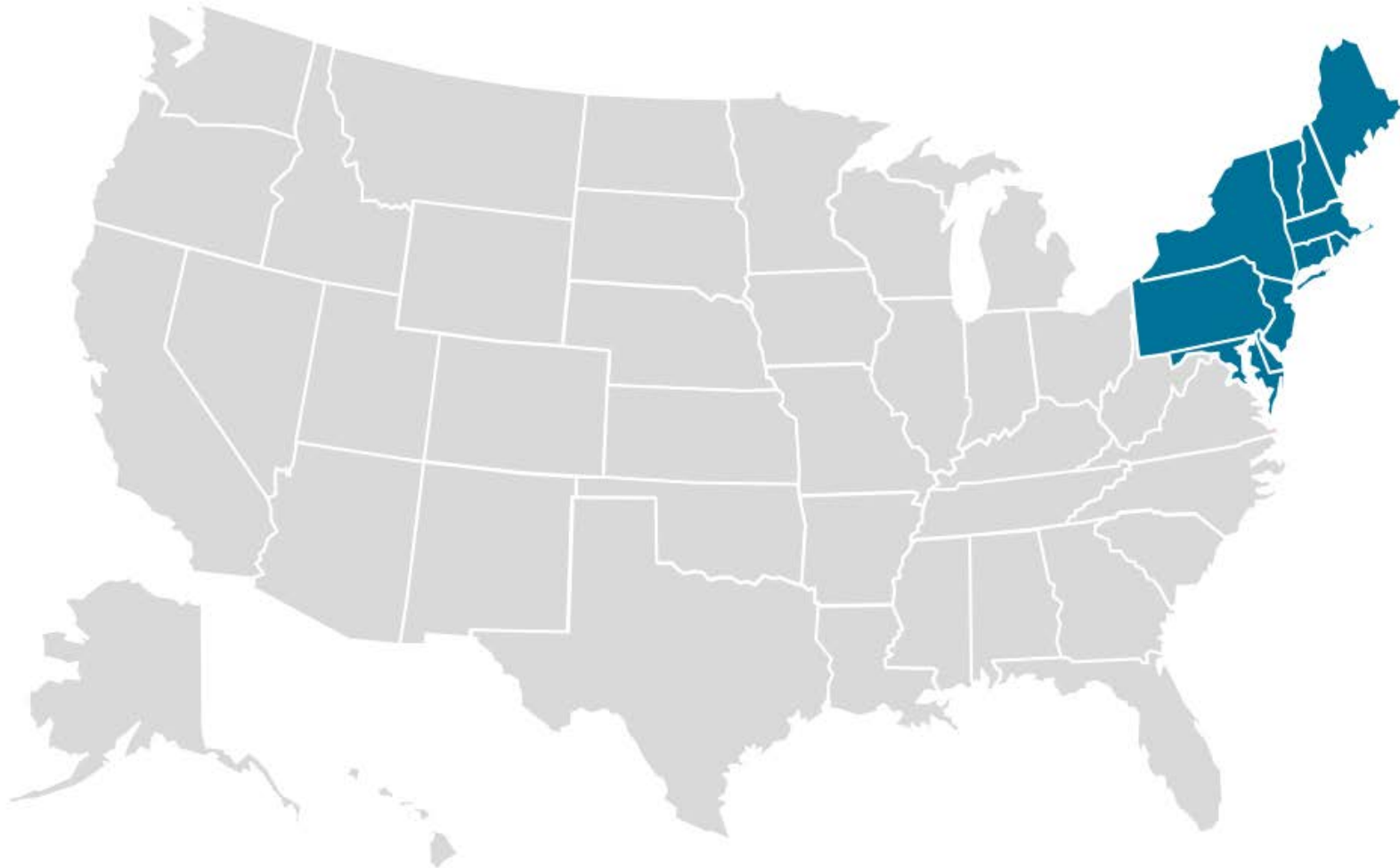
Cumulative Premium Level Change Since 2010*



*Refer to the endnotes

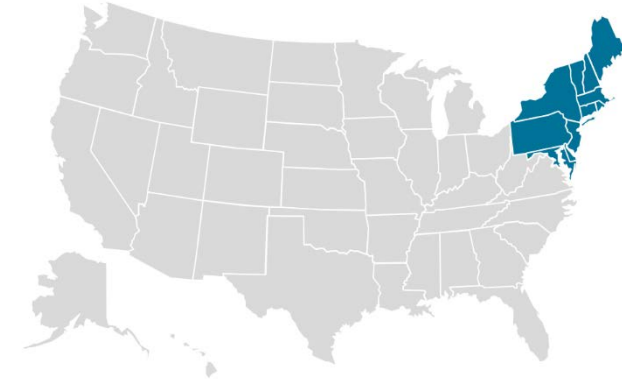


NORTHEASTERN ZONE



NORTHEASTERN ZONE

The Northeastern Zone includes the following jurisdictions: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.



New Administrators

District of Columbia—Karima M. Woods, Commissioner, Department of Insurance, Securities and Banking

Maryland—Kathleen Birrane, Commissioner, Insurance Administration

New Hampshire—Christopher Nicolopoulos, Commissioner, Insurance Department

Vermont—Michael Harrington, Commissioner, Department of Labor

Highlights From the Northeastern Zone

In the Northeastern Zone, many states actively considered, or are considering, legislation addressing workers compensation presumptions of compensability for contraction of or exposure to COVID-19. Vermont enacted legislation establishing a presumption for “frontline workers,” which is also applicable to employees who are not “frontline workers” if certain conditions are met; and New Jersey passed legislation establishing a presumption for “essential employees.” Massachusetts, New York, Pennsylvania, and Rhode Island also proposed presumption bills. In addition, New Hampshire issued emergency orders regarding workers compensation compensability for COVID-19 for first responders; and Connecticut issued an executive order establishing a presumption of compensability for COVID-19 for certain essential workers.

On the judicial side, New Jersey handed down two notable decisions regarding medical marijuana. The New Jersey Supreme Court ruled that a worker who was a state authorized medical marijuana user and was terminated due to a positive drug test for marijuana could bring an action against their employer under the state antidiscrimination law. The New Jersey Superior Court held in *Hager v. M&K Construction* that medical marijuana was a reasonable and necessary medical treatment for workers compensation purposes. The *Hager* case was appealed to the New Jersey Supreme Court.

Recently Enacted Workers Compensation-Related Legislation in the Northeastern Zone

- Maryland

- **HB 99/SB 616—Injured Workers’ Insurance Fund—Revisions**

Requires that the Injured Workers’ Insurance Fund be the third party administrator for the state’s Self-Insured Workers’ Compensation Program for state employees under a contract with the state; authorizes the fund to use nonsupervisory employees of the Chesapeake Employers’ Insurance Company; authorizes nonsupervisory employees of the company to be assigned to perform certain functions under a certain contract; alters the membership of the Board for the Injured Workers’ Insurance Fund.

- **HB 685—Permanent Partial Disability**

Provides for enhanced workers compensation benefits for a Harford County deputy sheriff, correctional officer, and detention officer for a compensable permanent partial disability of less than a certain number of weeks.

- **HB 810—Volunteer Company**

Provides that a member of a volunteer company in Washington County, who is at least 15 years old and is enrolled in the Fire and Rescue Academy Program operated by the Washington County Board of Education, is a covered employee for purposes of receiving workers compensation benefits.

- **SB 8—Subsequent Injury Fund and Uninsured Employers’ Fund**

Alters the percentage of a certain assessment imposed by the Workers’ Compensation Commission payable to the Subsequent Injury Fund; and alters the percentage of a certain assessment imposed by the Commission payable to the Uninsured Employers’ Fund.

- **SB 784—Hernia Claims**

Alters the time period from 30 to 45 days within which a covered employee must report to the employer a hernia caused by an accidental personal injury or by a strain arising out of and in the course of employment for the purpose of filing a claim for compensation; authorizes a covered employee to file a claim for compensation for a hernia caused by an accidental personal injury within two years after the date the accidental personal injury occurred under certain circumstances.



- New Hampshire

- **HB 1245—Auditing Requirements**

- Clarifies the penalty for the failure of an insured to cooperate with the auditing requirements of workers compensation policies.

- Rhode Island

- **HB 8085/SB 2915—Annual Workers Compensation Omnibus Bill**

- Alters the process and type of benefits for which work-related injured employees of uninsured employers may seek compensation. Reduces the frequency with which an employee’s medical provider must render a status report, concerning actual and anticipated medical treatment plans, with an itemization of any of their work restrictions and capabilities and whether they have reached maximum medical improvement.

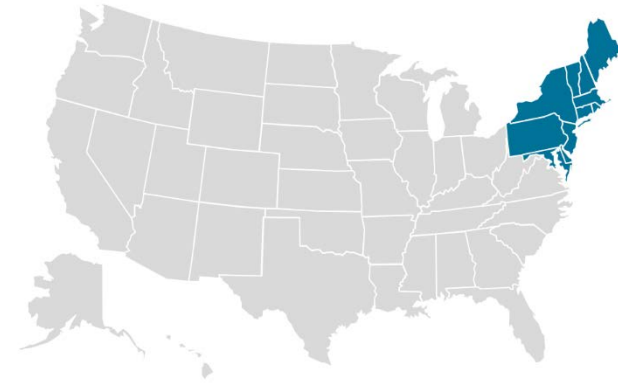
- Vermont

- **S 108—Employee Misclassification**

- Permits the attorney general to investigate complaints of employee misclassification under the workers compensation and unemployment insurance laws.

- **S 342—COVID-19 Presumption**

- Establishes COVID-19 presumption for “frontline workers,” which includes, but is not limited to, firefighters, law enforcement officers, workers in long-term care facilities or residential care facilities, certain child care providers required to provide child care to the children of other frontline workers, and home healthcare workers or personal care attendants. However, the presumption is also applicable to employees who are not “frontline workers” if certain conditions are met.



Workers Compensation Judicial Decisions of Interest

- Maryland—Death Benefits
 - *In the Matter of Collins* (Maryland Court of Appeals, May 2020): Held that pursuant to Maryland statute 9-722, which governs the settlement of workers compensation claims, a workers compensation claimant lacks the power to release any dependent’s future claim for death benefits. The court also ruled that, in order for the release to be enforceable against a dependent, the dependent must be a party to the settlement agreement.
- New Jersey—Marijuana and Workers Compensation
 - *Hager v. M&K Construction* (Appellate Division of Superior Court of New Jersey, January 2020): Held that a claimant’s medical marijuana use is reimbursable as a “reasonable and necessary” workers compensation treatment. The court determined that the federal Controlled Substances Act (CSA) does not preempt the state’s medical marijuana law because reimbursement under the state medical marijuana law does not require an employer possess, manufacture, or distribute marijuana, which are activities prohibited by the CSA.
- New Jersey—Marijuana and the Workplace
 - *Wild v. Carriage Funeral Holdings, Inc.* (New Jersey Supreme Court, March 2020): Held that a worker, who was a state-authorized medical marijuana user, could proceed with a claim against his former employer under the state’s antidiscrimination law. The employer had terminated the worker for a drug test that was positive for marijuana, and the worker brought an action for failure to accommodate the use of medical marijuana outside of working hours as a treatment for an underlying disability.

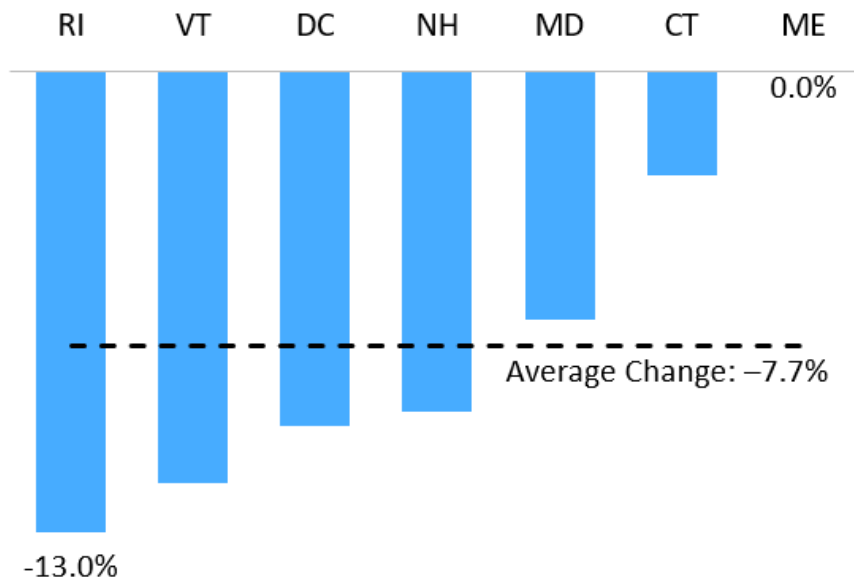




NORTHEASTERN ZONE

Latest Approved Loss Cost/Rate Changes

NCCI States
Based on the 2019–2020 Rate Filing Season*



*Refer to the endnotes

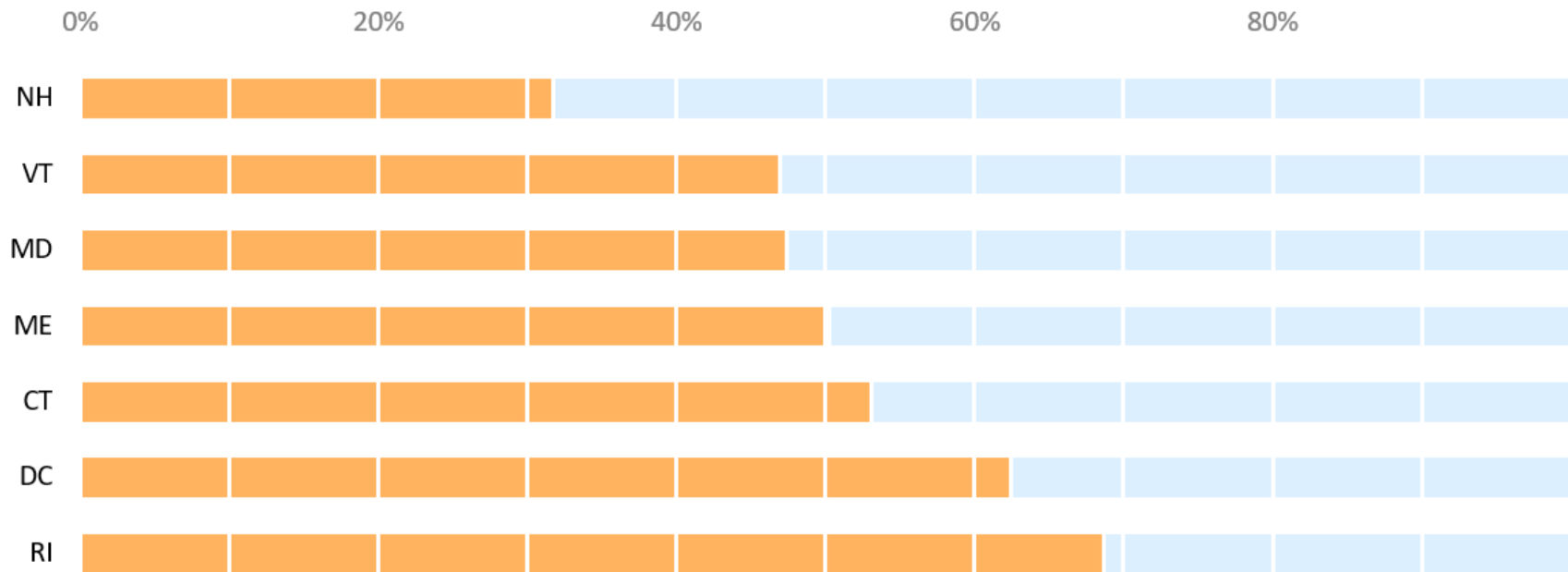


NORTHEASTERN ZONE

Percentage of Total Benefit Costs

Indemnity vs. Medical

NCCI States
Based on the 2019–2020 Rate Filing Season*

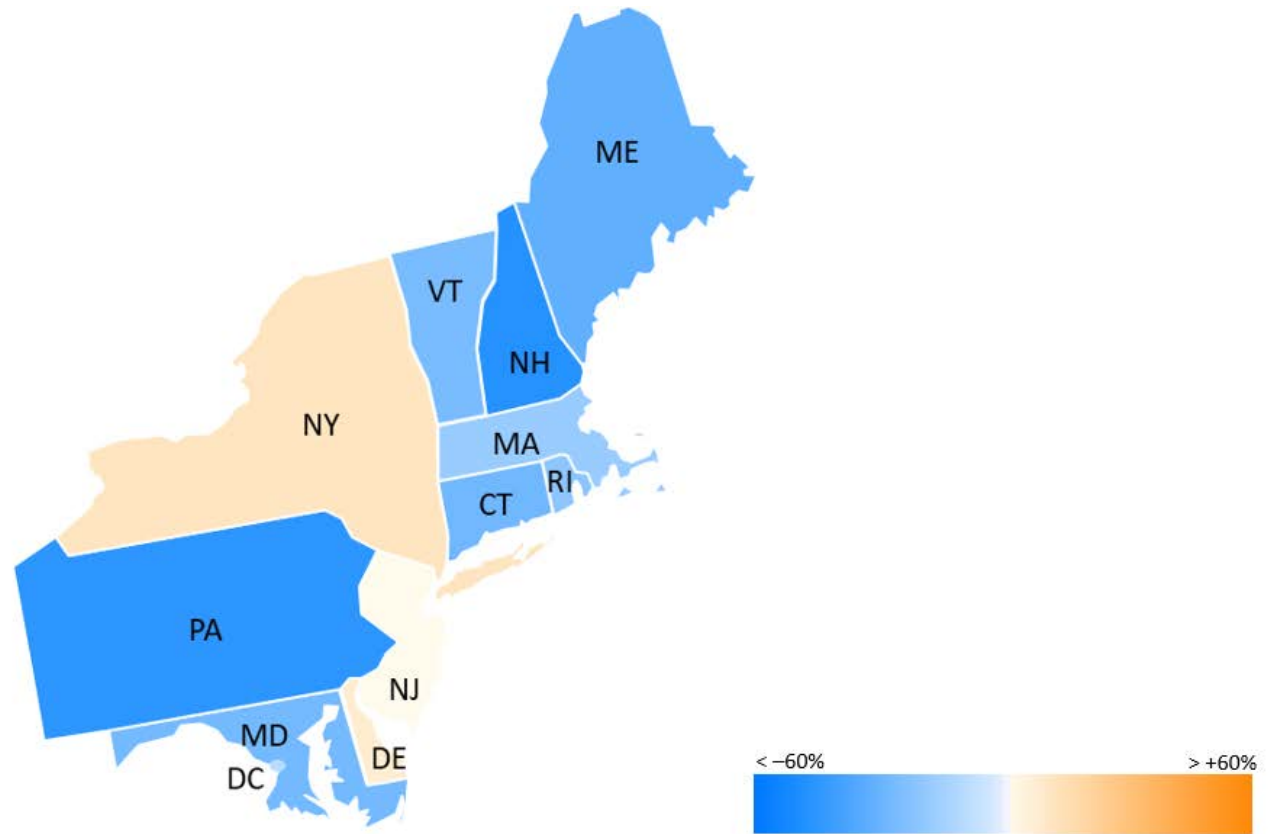


*Refer to the endnotes



NORTHEASTERN ZONE

Cumulative Premium Level Change Since 2010*



*Refer to the endnotes



LEGISLATIVE ACTIVITY ONLINE RESOURCE



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Legislative Activity

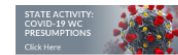
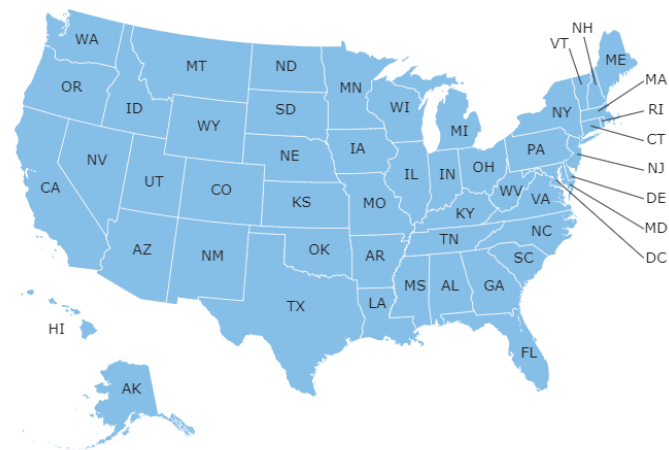


As part of our efforts to provide information on workers compensation legislative activity, NCCI identifies and monitors relevant workers compensation-related bills in all jurisdictions and the federal government.

In addition, one of NCCI's core services is providing cost analyses of proposed legislation. Completed NCCI cost analyses of enacted legislation are available for jurisdictions where NCCI provides ratemaking services.

You can access these bills and cost analysis through the interactive map below by clicking on any specific jurisdiction.

Click here to see items for [Federal](#).



WHAT'S TRENDING

Enacted VT S 342 - Relates to presumption of compensability for certain workers who are diagnosed with COVID-19

Enacted CO SB 20-026 - Relates to workers compensation for audible psychological trauma

In House Committee PA HB 2485 - Relates to COVID-19 presumption for certain employees of health care providers

In House Committee PA HB 2486 - Relates to COVID-19 presumption for certain emergency responders, police, corrections workers, and others who deal with inmates

In Senate Committee US S 3910 - Relates to COVID-19 as a presumptive disease in Wildland Firefighters Act



LEGISLATIVE ACTIVITY ONLINE RESOURCE—STATE PAGE EXAMPLE

Florida—Legislative Activity



Industry Information » Legislative Activity

NCCI's Legislative Activity Page is provided "As Is", solely as a reference tool to be used for informational purposes only. This page contains summaries of various workers compensation related bills as initially drafted, which are subject to change and frequently do. The end user is responsible for ensuring the accuracy of the information contained herein prior to use for any purpose. The information on this page shall not be construed or interpreted as providing legal or any other advice.

COST IMPACT ANALYSIS

Content Requires Authentication

Florida Senate Bill 376 (Final Version) (PDF)—Added on 04/23/18

Florida Medical Fee Schedule (Final Version) (PDF)—Updated on 08/31/17

BILL STATUS

All Bill Types All Bill Status Filter Clear Filter

SB 540 - Enacted

Last Modified: 7/6/2020

In part, authorizes certain guaranty association employees to adjust losses for the Florida Insurance Guaranty Association if certain conditions are met; redefines the term "net direct written premiums" as "direct written premiums" and revising the definition of that term; deletes a calculation of initial estimated assessments levied by the Office of Insurance Regulation on insurers in the Florida Insurance Guaranty Association; deletes a calculation of initial estimated assessments levied by the office on insurers in the Florida Workers' Compensation Insurance Guaranty Association.

HB 437 - Enacted

Last Modified: 7/6/2020

Authorizes a workers compensation insurer to use a licensed nurse registry to place authorized compensable attendant care services for the benefit of an injured worker.

SB 292 - Enacted

Last Modified: 6/23/2020

Defines the terms "loss run statement" and "provide"; requires surplus lines and authorized insurers, respectively, to provide insureds either a loss run statement or certain information within a certain timeframe after receipt of the insured's written request; provides construction; requires insurers to provide notice to the agent of record after providing a loss run statement; specifies the required claims history in a loss run statement; provides that insurers are not required to provide loss reserve information; prohibits insurers from charging a fee to prepare and provide one loss run statement annually.



NCCI'S COVID RESOURCE CENTER

COVID-19 and Workers Compensation: What You Need to Know

RESOURCE CENTER

FREQUENTLY ASKED QUESTIONS

COVID-19 and Workers Compensation: What You Need to Know - Frequently Asked Questions

May 18, 2020

This updated article addresses stakeholder questions regarding COVID-19 and the impact it may have on the workers compensation industry.

REGULATORY, LEGISLATIVE & LEGAL

State Activity: COVID-19 WC Presumptions (PDF)– Updated

July 15, 2020

This report includes state regulatory and legislative activity related to COVID-19 workers compensation compensability presumptions.

COVID-19 Regulatory and Legislative Activity (PDF)– Updated

July 13, 2020

This report includes key COVID-19 related legislation, regulations, bulletins, executive orders, and other relevant activity.

Legislative Activity– Updated

July 10, 2020

Legislative Activity is an online resource for viewing relevant workers compensation-related bills that NCCI monitors for all jurisdictions and the federal government. This important resource includes real-time COVID-19 legislative information.

WHAT'S NEW

[COVID-19 Regulatory & Legislative Update: WC Compensability Presumptions](#)

[NCCI's COVID-19 Hypothetical Scenarios Tool](#)

[NCCI's Compensability—Statutory Survey \(PDF\)](#)

[Briefing—COVID-19 Hypothetical Scenarios Tool](#)

[COVID-19 Court Cases \(PDF\)](#)



Questions or Comments?

[Click Here](#)



INSIGHTS on ncci.com

The screenshot shows the NCCI website's 'INSIGHTS' section. At the top, there is a search bar and navigation links for 'About Us', 'Careers', 'Contact Us', 'Learning Center', 'Log In', and 'My Profile'. Below this is a horizontal menu with categories: 'Data Reporting', 'Industry Information', 'Residual Markets', 'Underwriting', 'Agents/Brokers', and 'Insights' (which is highlighted). The main content area features a large banner with the text 'WORKERS COMPENSATION INSIGHTS' and a background of binary code. Below the banner are five category tiles: 'RESEARCH & BRIEFS', 'REGULATORY & LEGISLATIVE', 'LEGAL', 'ECONOMIC & FINANCIAL', and 'WHAT'S TRENDING'. Each tile contains a representative image and a link to a specific article. The 'LEGAL' tile is currently selected, showing a detailed view of the article 'Court Case Update, Texas - June 2020'. On the left side of this view, there is a 'Topic' filter with checkboxes for Automation, COVID-19, Court Cases, Economics, Financial, and Healthcare. On the right side, there are two additional buttons: 'COVID-19 and Workers Compensation RESOURCE CENTER' and 'Meet Our Authors'.



ENDNOTES

Loss Cost/Rate Changes by Zone

Source: NCCI financial data evaluated as of December 31, 2018.

The 2019–2020 Rate Filing Season refers to experience filings with effective dates between October 1, 2019, and September 1, 2020.

The average loss cost/rate level change for each zone reflects an unweighted average of the respective state-specific approved changes in voluntary market loss costs/rates. The changes for Arizona, Florida, Idaho, Illinois, Indiana, and Iowa reflect approved changes in voluntary rates.

North Carolina and Indiana are independent bureau states where NCCI provides services.

Percentage of Total Benefit Costs by Zone

Source: NCCI financial data evaluated as of December 31, 2018.

The 2019–2020 Rate Filing Season refers to experience filings with effective dates between October 1, 2019, and September 1, 2020.

North Carolina and Indiana are independent bureau states where NCCI provides services.

Cumulative Premium Level Change by Zone Since 2010

Source: NCCI's 2020 *Annual Statistical Bulletin*, Exhibit 2, updated to include all voluntary market experience and law-only premium level changes approved as of June 30, 2020, with effective dates of January 1, 2010, and subsequent.

Excludes monopolistic states.

The premium level changes from Exhibit 2 are attributed solely to the revision of loss costs/rates and rating values, assuming all other variables that may affect premium level, such as payroll, remain equal.



APPENDIX

Below is a list of references for additional information on **ncci.com**.

- Legislative Activity Page
www.ncci.com/Articles/Pages/II_LegislativeActivity.aspx
- COVID-19 and Workers Compensation Resource Center
www.ncci.com/Articles/Pages/COVID-19.aspx
- Frequency and Severity: Frequency and Severity Results by State
www.ncci.com/Articles/Pages/II_Frequency-Severity.aspx
- Summary of Voluntary Loss Cost/Rate Filing Information by State*
www.ncci.com/Articles/Pages/II_Voluntary_LossCost_RateFiling_Information.aspx
- Underwriting Results by State
www.ncci.com/Articles/Pages/II_Underwriting_Results_by_State.aspx
- Residual Market Management Summary
www.ncci.com/Articles/Pages/RM_ResidualMarketManagementSummary.aspx
- Residual Market State Activity Reports
www.ncci.com/Articles/Pages/RM_ResidualMarketStateActivityReports.aspx
- State Insight*
www.ncci.com/ServicesTools/Pages/STATEINSIGHT.aspx
- State Advisory Forums
www.ncci.com/Articles/Pages/II_StateAdvisoryForums.aspx
- Circulars*
www.ncci.com/ServicesTools/Pages/CIRCULARS.aspx

*Content requires authentication.

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