



Workers' Compensation Insight

Workers' Compensation News/Case Law

November 4, 2014

Quick Facts:

- All employers must file a detailed report with OSHA within eight hours of fatal workplace accidents and must file within 24 hours reports of severe injuries that require hospitalization of any length.
- The U.S. Department of Labor's Wage and Hour Division has signed a memorandum of understanding with the Alabama Department of Labor on classification of employees.
- Arizona's minimum wage for the 2015 calendar year is set to increase to \$8.05/hour.
- The California Office of Administrative Law has approved the Division of Workers' Compensation's final version of Medical Provider Networks regulations which went into effect August 27, 2014.
- Governor Brown signed into law AB 1897 on September 28, 2014 creating California Labor Code Section 2810.3 which requires employers and staffing companies to share all legal responsibility for the payment of wages and the provision of workers' compensation.
- OSHA has levied proposed fines of \$81,000 on a Colorado commercial roofer company.
- A New London, Connecticut police officer has resigned following his arrest on charges of fraudulent collection of more than \$50,000 in workers' compensation benefits.
- The National Council on Compensation Insurance filed for a 3.3 percent rate decrease in Florida workers' compensation insurance advisory rates.
- Under the Georgia Workers' Compensation Act, death benefits may only be paid to a legal dependent and the Georgia Supreme Court upheld this provision.
- The National Council on Compensation Insurance filed for a 3.2 percent rate increase in Hawaii workers' compensation insurance advisory rates.
- The U.S District Court for the Northern District of Illinois, Eastern Division ruled that Illinois employers can't require workers to provide notice prior to seeking medical treatment for workplace injuries.
- The number of work-related fatalities in Louisiana declined to 114 in 2013 from 116 in 2012.



- The Albuquerque Journal surveyed New Mexico voters recently and 67 percent of those surveyed said they would back a law that would deny or significantly curtail workers' compensation payments in cases where alcohol or drug use led to an employee's injuries or death.
- The New York Workers' Compensation Board is billing hundreds of small businesses in an attempt to recoup millions of dollars the Board spent on workers' compensation payments made on behalf of the businesses' bankrupt self-insured group trusts.
- Oregon ranks ninth lowest according to a 2013 report released by the Oregon Department of Consumer and Business Services that compares the average rate of workers' compensation premiums across all states.
- Dollar Tree Stores, Inc. has been cited by OSHA in the amount of \$262,500 for willful and repeated exposure of workers at the Watauga, Texas store due to serious hazards.
- The Washington Department of Labor & Industries proposed an average 1.8 percent rate increase for 2015 workers' compensation premiums.
- Two Virginia workers, in two separate lawsuits, are alleging wrongful termination for filing a workers' compensation claim.

Federal

The federal government has tightened regulations related to workplace accidents effective January 1, 2015. Previously, OSHA regulations required employers to file a report with OSHA only if three or more workers were killed or hospitalized for more than one day as a result of a workplace accident. Now, employers must file a detailed report with OSHA within eight hours of fatal workplace accidents and must file within 24 hours reports of severe injuries that require hospitalization of any length.

<http://www.washingtontimes.com/news/2014/sep/11/feds-tighten-rules-on-workplace-death-reporting/>

Alabama

The U.S. Department of Labor's Wage and Hour Division has signed a memorandum of understanding with the Alabama Department of Labor on classification of employees. The purpose of the memorandum is to protect the rights of employees by preventing their misclassification – as independent contractors in particular. The agreement will allow the Wage and Hour Division to better coordinate compliance with federal and state laws.

The Labor departments of Colorado, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, New York, Utah and Washington have also signed similar memoranda with the Wage and Hour Division.

<http://www.workerscompensation.com/compnewsnetwork/news/19914-us-labor-dept-signs-agreement-with-alabama-labor-dept-to-reduce-misclassification-of-employees.html>



Arizona

Arizona's minimum wage for the 2015 calendar year is set to increase to \$8.05/hour. This is up from \$7.90/hour currently.

http://www.ica.state.az.us/PublicNotices/LABOR_MinimumWagePressRelease_2015.pdf

California

The California Office of Administrative Law (OAL) has approved the Division of Workers' Compensation's (DWC) final version of Medical Provider Networks (MPN) regulations which went into effect August 27, 2014. These regulations improve access to medical care with new MPN Medical Access Assistants designed to aid workers with finding and scheduling appointments with MPN physicians. The regulations also improve access by requiring an MPN to offer at least three available physicians.

Under the new regulations employers are no longer required to provide the MPN Implementation Notice at the time of implementation or to new employees at the time of hire. Employers are also no longer required to post the MPN Handbook. Employer *are required* to provide the MPN handbook to employees when an injury is reported or an employer has knowledge of an injury that is subject to an MPN or when an employee with an existing injury is required to transfer treatment to an MPN.

The final regulations can be found here:

http://www.dir.ca.gov/DWC/DWCPropRegs/MPNRegulations/MPN_Regulations.htm under the first bullet point named "Clean copy of final text of regulations."

Governor Brown signed into law AB 1897 on September 28, 2014 creating California Labor Code Section 2810.3. This new law states that employers who use workers from staffing agencies must "share with a labor contractor all civil legal responsibility and civil liability" for the payment of wages and the provision of workers' compensation. This law applies to employers with more than 25 employees (including temporary workers) and employers who use more than 5 temporary workers at any one time. Employers and staffing agencies are allowed to form contractual indemnity provisions for violations of the new law but a complete waiver of the new law's requirements is void and unenforceable as contrary to public policy.

http://blogs.orrick.com/employment/2014/10/07/new-law-puts-california-businesses-on-the-hook-for-wage-and-workers-compensation-claims-by-temporary-workers-employed-by-staffing-agencies/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integr

Colorado

OSHA has levied proposed fines of \$81,000 on a commercial roofer company. The fines are a result of citations due to failing to protect workers from exposure to asbestos. The company was cited for four repeat violations and seven serious violations.



Repeat violations occur when an employer has been cited within the last five years for the same or similar violation of a standard, regulation, rule or order at any other facility in federal enforcement states.

Serious violations occur when there is a substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known.

<http://www.workerscompensation.com/compnewsnetwork/workers-comp-blogwire/19889-colorado-worksite-fined-workers-exposed-to-asbestos.html>

Connecticut

A New London police officer has resigned following his arrest on charges of fraudulent collection of more than \$50,000 in workers' compensation benefits. He was treated for five months for a work injury but during this time surveillance showed him doing carpentry work at home. He had previously been fired December 2013 for allegedly leaking a police document but then was rehired.

<http://www.nhregister.com/general-news/20141017/connecticut-police-officer-charged-with-workers-comp-fraud>

Florida

The National Council on Compensation Insurance filed for a 3.3 percent rate decrease in Florida workers' compensation insurance advisory rates. This decrease would translate to a 4 percent decrease for manufacturing classes, 3.7 percent decrease for contracting classes, 2.1 percent decrease for office and clerical classes, 3.4 percent decrease for goods and services classes, and a 2.4 percent decrease for miscellaneous classes. If approved, the rate decrease would take effect on January 1, 2015.

<http://www.insurancejournal.com/news/southeast/2014/10/15/343732.htm>

Georgia

Under the Georgia Workers' Compensation Act, death benefits may only be paid to a legal dependent. This limitation was recently upheld by the Georgia Supreme Court in a case involving a Georgia woman who was denied death benefits when her son was killed in a work accident because she was not a dependent of her son. She argued that limiting death benefits to only legal dependents violated her federal constitutional rights to due process and equal protection. The Georgia Supreme Court affirmed the lower court's ruling that no due process rights are violated by the Act's limitation on death benefit because the limitation is not irrational and serves a legitimate government purpose of workers' compensation.

<http://www.albanyherald.com/news/2014/sep/22/georgia-supreme-court-rules-against-cuthbert/>



Hawaii

The National Council on Compensation Insurance filed for a 3.2 percent rate increase in Hawaii workers' compensation insurance advisory rates. The proposed rate increase is attributed to increases in medical and indemnity expenses – Hawaiian lost-time claims frequency remains higher than the national average.

<http://www.businessinsurance.com/article/20141001/NEWS08/141009982?tags=%7C338%7C256%7C74%7C278%7C73%7C340%7C80%7C91%7C304%7C92>

Illinois

The U.S District Court for the Northern District of Illinois, Eastern Division ruled that Illinois employers can't require workers to provide notice prior to seeking medical treatment for workplace injuries. The Court reasoned that requiring employees to give notice to the employer interferes with the employee's right to seek and obtain medical treatment. Thus, it runs afoul of the Illinois Workers' Compensation Act.

<http://www.businessinsurance.com/article/20140929/NEWS08/140929863?tags=58|339|338|257|92|91|75|70>

Louisiana

The number of work-related fatalities in Louisiana declined to 114 in 2013 from 116 in 2012. This is a preliminary number released by the U.S. Bureau of Labor Statistics. The 2012 count was the lowest in a decade. The Louisiana Workforce Commission collects data on Louisiana work accidents and reports these numbers to the Bureau.

<http://www.workerscompensation.com/compnewsnetwork/news/19782-work-related-fatalities-in-louisiana-decline-in-2013.html>

New Mexico

The Albuquerque Journal surveyed New Mexico voters recently and 67 percent of those surveyed said they would back a law that would deny or significantly curtail workers' compensation payments in cases where alcohol or drug use led to an employee's injuries or death. Multiple attempts at passing such legislation have previously stalled in the state legislature due to opposition. Concerns over penalizing the family members of an employee and how to define alcohol and drug use were voiced by the opposition.

<http://www.abqjournal.com/466179/biz/a-question-of-compensation.html>



New York

During the administration of New York Governor George Pataki, self-insured group trusts were allowed to administer workers' compensation for small businesses at a discount rate. However many of these trusts went bankrupt and the New York Workers' Compensation Board took the place of these trusts and paid benefits to injured workers. The Board ended up paying \$3.8 million for these trusts and now the Board is billing the hundreds of small businesses who made up these trusts for reimbursement.

http://www.cnycentral.com/news/story.aspx?id=1107150#.VEFGfvnF_Xs

Oregon

The Oregon Department of Consumer and Business Services released its 2013 report comparing the average rate of workers' compensation premiums across all states. Oregon ranks ninth lowest and exhibited a 20 percent decrease in cost per \$100 payroll from the 2012 report – Oregon businesses now pay an average of \$1.37 per \$100 payroll. North Dakota ranked lowest with average rates of \$0.88 per \$100 payroll.

<http://www.statesmanjournal.com/story/money/business/2014/10/10/workers-comp-rates-oregon-among-nations-best/17065707/>

Texas

Dollar Tree Stores, Inc. has been cited by OSHA in the amount of \$262,500 for willful and repeated exposure of workers at the Watauga store due to serious hazards. These hazards included blocked exits and 45 lbs. boxes stacked haphazardly in the storage room. This is not the first citation for Dollar Tree Stores, Inc. recently – in the past five months OSHA has issued more than \$800,000 in fines to Dollar Tree for similar violations and since 2009 OSHA has cited Dollar Tree for more than 200 safety and health violations.

<http://www.workerscompensation.com/compnewsnetwork/news/19987-osha-cites-texas-dollar-tree-stores-for-putting-employees-at-risk.html>

The workers' compensation average weekly wage for Texas for dates of injury between October 1, 2014 and September 30, 2015 has been set to \$860.52.

<http://www.insurancejournal.com/news/southcentral/2014/09/19/341186.htm>

Washington

The Washington Department of Labor & Industries proposed an average 1.8 percent rate increase for 2015 workers' compensation premiums. This increase will help cover wage and disability benefits, medical treatment costs, ensure steady and predictable rates, and slowly rebuild reserves. The increase is slightly less than the current rate of wage inflation.

<http://www.workerscompensation.com/compnewsnetwork/news/19778-wa-l-i-proposes-1-8-average-rise-in-workers-comp-rates-in-2015-slightly-less-than-wage-inflation.html>



West Virginia

Two Virginia workers, in two separate lawsuits, are alleging wrongful termination for filing a workers' compensation claim.

David Query was working as a miner and tripped over a rock. His employer did not report the injury but Query filed a claim for benefits under the West Virginia Workers' Compensation Act. Shortly thereafter he was suspended for alleged misconduct and then terminated a few weeks later. His suit claims that his termination was motivated by his injury and desire to receive benefits.

<http://wvrecord.com/news/269663-miner-says-workers-comp-claim-led-to-firing>

Susan Mays was working as a nursing assistant when she injured multiple body parts during her shift. She did receive workers' compensation benefits but is alleging that during this time she was harassed by her employer about the extent of her injuries and that her employer attempted to coerce her doctor into releasing her to work earlier than appropriate.

<http://wvrecord.com/news/269945-woman-says-she-lost-job-after-filing-for-workers-comp>

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For further information on this or any other topics, please contact your EPIC Workers' Compensation consulting team.

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