



Workers' Compensation Insight

Workers' Compensation News & Case Law

September 3, 2014

Quick Facts:

- Louisiana and New York are the two top narcotics-prescribing states while Missouri and Iowa are the two lowest.
- The Alabama Court of Appeals held that an injured employee of a corporation may file for workers' compensation benefits in the county where the accident occurred, where the corporation's principle place of business is located, or where the employee resides if the corporation conducts business in that same county.
- California's WCIRB released its Report on the state of the CA Workers' Compensation Insurance System.
- Colorado workers' compensation carriers must now provide injured workers with a list of four physicians to choose from.
- Idaho firefighters are fighting to have smoke inhalation-related diseases covered under workers' compensation law.
- A Florida court has held that cumulative trauma claims are timely if reported within 30 days of the first symptom or within 30 days of last exposure to the cause of the cumulative trauma. On August 13, 2014 a lower court judge in Miami-Dade County found Florida's Workers' Compensation Act unconstitutional as long as it contains the section making the Act the exclusive remedy for injured workers.
- The Hawaii State Department of Labor and Industrial Relations (DLIR) partnered with the National Council on Compensation Insurance to create and implement an automated, electronic system that will help ensure compliance with workers' compensation law.
- The Louisiana Workforce Commission opened a Workplace Safety office in Lafayette, Louisiana that provides free aid to small business in setting up a health and safety program.
- The New Mexico Workers' Compensation Administration has been ordered by a judge to take the position that farm and ranch exclusion in the New Mexico Workers' Compensation Act is unconstitutional and must enforce the requirement of carrying workers' compensation insurance against such employers.
- Effective July 1, 2014 the New York maximum weekly benefit rate increased to \$808.65 for workers' compensation claims between July 1, 2014 and June 30, 2015.
- The Texas Department of Insurance has adopted the National Council on Compensation Insurance Inc.'s statistical plan.
- An amendment to the Virginia Workers' Compensation Act became effective July 1, 2014 that increased the penalty for employers who are uninsured for workers' compensation.



Workers' Compensation Research Institute

The Workers' Compensation Research Institute released a study on narcotic use in the workers' compensation system. Louisiana and New York continued to be the states with the highest rate of narcotic prescription and Missouri and Iowa were the states with the lowest rate with a fourfold variation between the high and low states. The study also found large difference across regions but a similar prescribing pattern within states. The data came from 264,000 workers' compensation claims from 25 states through the period of October 2007 to September 2010.

http://www.painmedicineneeds.com/ViewArticle.aspx?d=Clinical%2BPain%2BMedicine&d_id=82&i=August+2014&i_id=1092&a_id=27866

Alabama

The Alabama Court of Appeals held that an injured employee of a corporation may file for workers' compensation benefits in the county where the accident occurred, where the corporation's principle place of business is located, or where the employee resides if the corporation conducts business in that same county. However, employers who subcontract for large corporations are not automatically subject to jurisdiction for workers' compensation claims in every county in which the larger corporation does business.

<http://www.workerscompensation.com/compnewsnetwork/workers-comp-blogwire/19452-principal-doing-business-in-alabama-county-does-not-mean-venue-is-proper-against-its-agent.html>

California

On August 5, 2014 the Workers' Compensation Insurance Rating Bureau (WCIRB) released its Report on the State of the California Workers' Compensation Insurance System. Some key findings are as follows:

- Workers' compensation premiums have grown steadily over the last several years. There was an 18% increase between 2012 and 2013.
- California workers' compensation premiums now comprise one-fourth of nationwide workers' compensation premium.
- California rates are consistently higher than other states. This is largely due to a higher frequency of permanent disability claims, higher medical costs per indemnity claim, and higher costs of administration of claims.
- The largest increase in frequency of indemnity claims was found in the agricultural and mining, manufacturing, and hospitality and entertainment sectors.

http://www.wcirb.com/sites/default/files/documents/state_of_the_wc_system_report_140815.pdf



Colorado

Colorado's General Assembly wrapped up their 2014 session and two bills affecting workers' compensation were passed.

[Senate Bill 14-118](#): Colorado state law definitions of "disability" and "qualified individual with a disability" are now defined the same way as under the Americans with Disabilities Act. The Governor signed this bill on May 22, 2014 and went into effect August 6, 2014.

[House Bill 14-1383](#): The number of physicians or corporate medical providers that an insurer must provide an injured worker has been changed from "at least 2 physicians or 2 corporate medical providers or one physician and one corporate medical provider" to "4 physicians and corporate medical providers." The Governor signed this bill on June 5, 2014 and it will go into effect April 1, 2015.

Idaho

Currently Idaho's workers' compensation law does not cover illness such as cancer caused by chemicals in smoke and the Professional Firefighters of Idaho are working to change this. Coverage for such illness would be covered under "presumptive illness" and would allow firefighters to be covered under workers' compensation laws for medical treatment related to the time they spent fighting fires. Over 40 states currently have a law similar to this in place. The bill the Idaho firefighters are pushing for would require them to take annual physical exams, have no family history of their condition, not smoke, and be a full-time firefighter for at least five years. A draft version of this bill passed the Idaho Senate last session but did not get a hearing in the House. The Idaho firefighters are now pushing to reintroduce this bill.

<http://www.ktvb.com/story/news/local/2014/08/07/firefighters-battle-works-compensation/13747533/>

Florida

A Florida Court of Appeal ruled that for a claim for cumulative trauma to be timely, the injured worker needs to report the injury within 30 days of *either* the date of the manifestation of the cumulative trauma symptoms or the last date of exposure to the cause of the cumulative trauma, regardless of which happened first.

<http://opinions.1dca.org/written/opinions2014/06-03-2014/13-5653.pdf>

On August 13, 2014 a lower court judge in Miami-Dade County found Florida's Workers' Compensation Act unconstitutional as long as it contains the section making the Act the exclusive remedy for injured workers. The judge based her ruling on the fact that the benefits provided by the Act have decreased to the point where it is no longer a comparable and reasonable alternative to suing in civil court. This decision is likely to be appealed.

<http://www.businessinsurance.com/article/20140815/NEWS08/140819897?tags=58|380|338|92|84|75|59>



Hawaii

The Hawaii State Department of Labor and Industrial Relations (DLIR) partnered with the National Council on Compensation Insurance to create and implement an automated, electronic system that will help ensure compliance with workers' compensation law. The system will provide compliance information through daily electronic transmittals into the DLIR's workers' compensation database. <http://labor.hawaii.gov/wp-content/uploads/2014/05/WC-Certificate-Automation20140530.pdf>

Louisiana

The Louisiana Workforce Commission opened a Workplace Safety office in Lafayette. The office will provide free assistance to small business (500 or fewer employees) to help them build, implement, and maintain effective safety and health programs. This aid encompasses free training regarding slip/fall protection, recording keeping, etc. The mission of the office is to help businesses identify workplace hazards and ways to prevent them. <http://www.workerscompensation.com/compnewsnetwork/news/19280-new-workplace-safety-office-in-lafayette-la-offers-free-help-to-small-business.html>

New Mexico

A district court judge announced that the New Mexico Workers' Compensation Administration (WCA) is in violation of a previous ruling of hers from 2011. In 2011 the judge found the section of the Workers' Compensation Act that excludes employers of farm, dairy, and ranch workers from having to carry workers' compensation insurance to be unconstitutional. The New Mexico Court of Appeals upheld this decision. On August 13, 2014 the district court judge issued an injunction prohibiting the WCA from taking any position contrary to her 2011 ruling. As such, the WCA must take the position that farm and ranch exclusion is unconstitutional and must enforce the requirement of carrying workers' compensation insurance against such employers. <http://nmpoertylaw.org/WP-nmclp/wordpress/WP-nmclp/wordpress/wp-content/uploads/2014/07/Press-release-NMCLP-Court-Issues-Injunction-Against-WCA-2014-07-14.pdf>

New York

Effective July 1, 2014 the maximum weekly benefit rate increased to \$808.65 for workers' compensation claims between July 1, 2014 and June 30, 2015. http://www.wcb.ny.gov/content/main/SubjectNos/sn046_674R.jsp

The New York Appellate Court held that insurance companies cannot claim attorney-client privilege for communications with outside counsel engaged in the process of determining whether to pay claims. This is because the attorney-client privilege cannot be claimed when there is no anticipation of litigation and when determining whether to pay a claim there is no anticipation of litigation. <http://www.businessinsurance.com/article/20140807/NEWS06/140809862?tags=|65|329|75|76|340|302|83|87>



Texas

Texas's Department of Insurance has adopted the National Council on Compensation Insurance Inc.'s statistical plan. This plan will be effective for all Texas workers' compensation policies issued on or after January 1, 2015. The current statistical plan for Texas includes minimal statistical reporting requirements for each workers' compensation policy issued by a carrier. The new National Council on Compensation Insurance (NCCI) plan requires carriers to report more detailed information. Texas has previously adopted the NCCI basic manual in March 2014. The manual includes classification codes and endorsements for workers' compensation policies.

<http://www.businessinsurance.com/article/20140806/NEWS08/140809893?tags=%7C63%7C305%7C73%7C340%7C304%7C92>

Virginia

An amendment to the Virginia Workers' Compensation Act became effective July 1, 2014 that increased the penalty for employers who are uninsured for workers' compensation. Now an uninsured employer may be assessed a civil penalty of not more than \$250 per day of noncompliance up to a maximum penalty of \$50,000 plus collection costs. By Virginia law, an employer is required to carry workers' compensation insurance when they regularly employ more than two part-time or full-time employees.

<http://www.vwc.state.va.us/content/special-notice-new-penalty-uninsured-employers>

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