

# 2015 Workers' Compensation Legislative Recap

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Montana State Fund

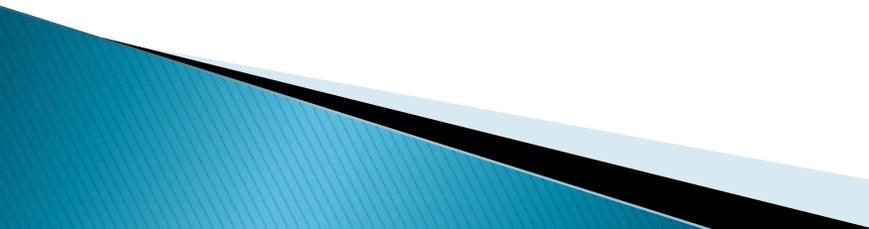
## **HB 90, AN ACT REVISING WORKERS' COMPENSATION LAWS** **(Effective 7/1/15)**

- ▶ Department of Labor and Industry – Housekeeping Bill
- ▶ Amended Section 39–71–107 to require written notice to the claimant when a change is made to the claims examiner that is handling the claim. *The new claims examiner's name and contact information must be sent within 14 days of the change in claims examiner.* (Applies to all claims regardless of DOI).
- ▶ Amended Section 39–71–704 regarding medical fee schedules which will result in one update yearly as opposed to the current timing that results in three updates.

## HB 90, AN ACT REVISING WORKERS' COMPENSATION LAWS

- ▶ Amended 39-71-736 to update terminology regarding vacation/sick leave and the impact those employer provided benefits have on temporary total disability benefits. The changes mean that *any paid time off except for sick leave will not impact a claimant's receipt of temporary total disability benefits.*
- ▶ Amended 39-71-915 to change the subsequent injury fund assessment period from a fiscal year basis to a yearly period starting on 4/1 of the prior year and ending on 3/31 of the current year.

**HB 503, AN ACT REQUIRING WORKERS' COMPENSATION INSURERS TO PROVIDE LOSS RUN INFORMATION TO POLICY HOLDERS**  
**(Effective 4/23/15)**

- ▶ Amended 39-71-606 to require workers compensation insurers to provide to policy holders or to their designated insurance producer certain loss run information.
  - ▶ The insurer must provide the information within 10 days (calendar) of the request.
  - ▶ The policyholder must be a current policyholder or have been a policyholder within 5 years of the request.
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**HB 503, AN ACT REQUIRING WORKERS' COMPENSATION INSURERS TO PROVIDE LOSS RUN INFORMATION TO POLICY HOLDERS**  
**(Effective 4/23/15)**

- ▶ The information provided must include:
  - All date of injury or occupational disease data for the employer's claims;
  - Payment data on the employer's closed claims; and
  - Payment data and loss reserve amounts on the employer's open claims including the compensation benefits that are ongoing and are charged to the employer's account.
- ▶ The information being provided is deemed to be confidential information for internal management use by the employer or for the purpose of procuring insurance products. No other use is allowed without the insurer's written consent.

**HB 538, AN ACT ALLOWING A MONTANA EMPLOYER TO OBTAIN WORKERS' COMPENSATION COVERAGE FROM NORTH DAKOTA FOR WORKERS WHO WORK SOLELY IN NORTH DAKOTA**

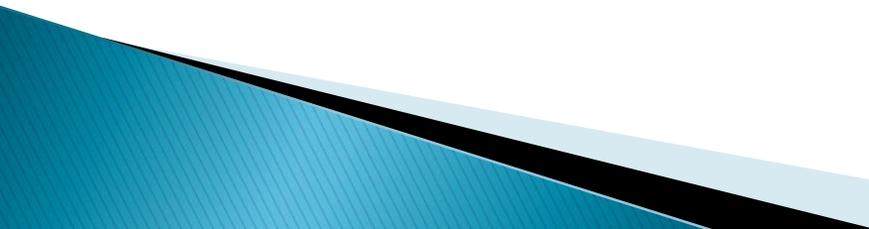
**(Effective 7/1/15—Terminates 6/30/19)**

- ▶ Montana residents who are employed by a Montana employer to work solely in North Dakota and North Dakota requires North Dakota coverage are not considered to be an employee in this state for workers' compensation insurance purposes.
  - Working solely in North Dakota means that the employee does not perform any job duties in the State of Montana.
  - Simply traveling from a location in Montana to a job site in North Dakota does not constitute performing job duties in Montana even if the employer pays for the costs of travel or for the time spent traveling.

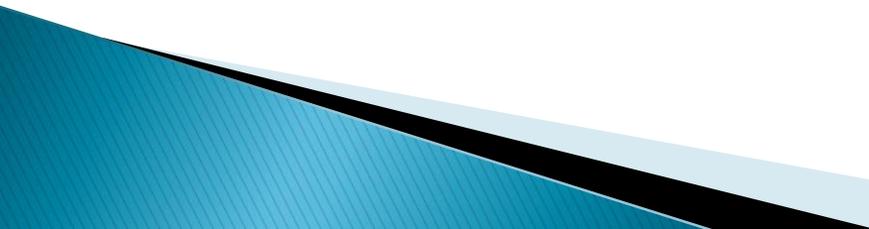
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- ▶ A Montana insurer can require use of *a verification form* developed by DLI to request an attestation from the employer that the exempted workers are performing work solely in North Dakota.
  - Amended 39-71-401 to recognize the exception for North Dakota coverage of Montana workers as identified above.
  - Montana employers can still request a certificate of extraterritorial reciprocity from North Dakota for MT employees temporarily working in ND for a period not to exceed one year. If granted, ND coverage won't be required for those workers.

**SB 4, SUBSTITUTE JUDGE FOR THE WORKERS'**  
**COMPENSATION COURT**  
**(Effective 10/1/15)**

- ▶ Addresses the situation we experienced in 2014 when the office of the Judge of the WC Court became vacant when Judge Shea was appointed to the Supreme Court.
  - ▶ Creates a stop-gap measure to have a temporary appointment prior to a permanent appointment under Title 3.
  - ▶ The Chief Justice of the MT Supreme Court will select a person from the list of people who are interested in serving as a substitute judge; or from the pool of retired state district court judges.
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**SB 4, SUBSTITUTE JUDGE FOR THE WORKERS'**  
**COMPENSATION COURT**  
**(Effective 10/1/15)**

- ▶ The appointment may be for a part or entirety of the duration of the vacancy.
  - ▶ More than one substitute judge can be selected.
  - ▶ The substitute must be appointed within 30 days of receipt of the notice of vacancy.
  - ▶ A vacancy can be temporary due to a sitting judge having a disability that precludes the judge from performing the duties of office for more than 60 days. A substitute judge who is sitting for a judge suffering from a disability may not serve for more than 90 days.
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# **SB 123, REVISES THE REGULATORY AUTHORITY OVER THE STATE FUND**

**(Effective 1/1/16 and applies to rates that are effective on or after 7/1/16)**

- ▶ SB 123 provides that the State Fund is subject to most of the provisions of the insurance code (Title 33) that are generally applicable to workers' compensation insurers in MT.
  
- ▶ There are some exceptions that include:
  - The Commissioner of insurance shall issue a certificate of authority to MSF given its guaranteed market role.
  - MSF is not subject to paying a premium tax as it remains a state entity that is not subject to paying taxes and continues to serve as the guaranteed market.
  - MSF is not subject to the formation requirements of Title 33 as MSF already exists and is created by statute.
  - MSF's certificate of authority is not subject to revocation or suspension due to MSF's guaranteed market role.
  - MSF is not a participant in the guaranty association as MSF cannot be dissolved except through legislative action.
  - MSF's Board of Directors is not responsible for investment of assets (provided by Montana Board of Investments—addressed in Constitution in Article VIII §13).
  - MSF is not subject to punitive or exemplary damages (maintains status quo as a state entity).
  - MSF is not subject to liquidation or dissolution (Guaranteed Market).
  - MSF can continue to use special class codes for agriculture; municipalities; towns; cities; counties; and state agencies. MSF can also continue to use an e-mod threshold that is higher than the one in use by NCCI.

# **SB 123, REVISES THE REGULATORY AUTHORITY OVER THE STATE FUND**

**(Effective 1/1/16 and applies to rates that are effective on or after 7/1/16)**

- ▶ The change in regulatory oversight carries with it some additional burdens that other insurers do not have:
  - MSF is subject to *higher risk based capital thresholds*. (Requires greater financial solvency 2X the capital for the company action level and 2X the capital for the regulatory action level).
  - MSF is *subject to supervision* by the insurance commissioner *for violation of any lawful order* by the insurance commissioner. Supervision may include orders to correct or abate, or could appoint a supervisor to enforce orders.
  - MSF must *pay for the staffing and expenses* for a full time attorney and a full time examiner that are employees of the insurance commissioner.
  - Continued legislative audit division annual financial and compliance audits.
  
- ▶ New regulatory oversight requirements:
  - *Subject to market conduct examinations*. (Anticipate first one in 2017)
  - Rates are subject to review (includes rating tiers, groups, construction credit program, etc.).
  - Financial examinations.
  - Calendar year reporting.
  - Forms review/approval. (Application and Policy forms)
  - Unfair Trade Practices Act (statutory bad faith).
  - NCCI Basic Manual (where applicable).
  
- ▶ MT State Fund is under regulation by the State Auditor's Office as of January 1, 2016 and rate review will occur for rates that go into effect on July 1, 2016.

## **SB 258, REVISE DEFINITION OF EMPLOYER FOR RELIGIOUS ORGANIZATIONS**

**(Effective on 10/1/15)**

- ▶ The definition of employer includes a religious organization that receives remuneration from nonmembers for manufacturing and construction activities conducted by its members on or off the religious organization's property. (Current law)
- ▶ SB 258 limits the coverage requirement in agriculture to include only the performance of agricultural labor and services occurring off the property owned or leased by the religious organization.
- ▶ SB 258 includes a limiting clause to have the employer definition be included for the purposes of Title 39, Chapter 71 only.

## **SB 259, REVISE ADMINISTRATIVE AND SAFETY ASSESSMENTS** **(Effective 7/1/15 and 7/1/16)**

- ▶ SB 259 increases the cap on the administrative assessment that provides the funding for DLI and its WC claims assistance and regulatory functions; safety function in part and the WC Court. The cap is increased from 3% of benefits paid in the preceding year to 4% of benefits paid in the preceding year. (7/1/15)
- ▶ SB 259 separates the assessment for occupational safety and places a cap of 2% of benefits paid in the preceding year. (7/1/16)

**SB 347, REVISE COVERAGE FOR VOLUNTARY EMERGENCY MEDICAL  
TECHNICIANS AND AMBULANCE SERVICES**  
(Effective 7/1/15)

- ▶ SB 347 amends 39–71–118 to allow volunteer EMTs and ambulance services not otherwise required to be covered to elect coverage from any one of the three plans of insurance.
- ▶ Premium and benefits are to be based on the number of volunteer hours (capped at a maximum of 60) times the state's average weekly wage divided by 40.
- ▶ Volunteer hours include training time, response time and time spent at the employer's premises.

**SB 379, REQUIRE MONTANA STATE FUND TO SUBMIT A REPORT ON ITS BUDGET TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE**  
**(Effective April 27, 2015)**

- ▶ SB 379 requires the Montana State Fund to annually submit a report on its board approved budget to the economic affairs interim committee.
  - ▶ Replaced the prior requirement that the Montana State Fund's approved budget be submitted to the legislative fiscal analyst for review as that requirement was eliminated in SB 123.
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## **OTHER NOTABLE LEGISLATION THAT FAILED TO PASS OR WAS VETOED**

- ▶ HB 271, Physician Dispensing of Drugs. Would have allowed physicians to dispense prescriptions so long as the dispensing is in accordance with the labeling requirements by the board of pharmacy. (Died in House Human Services 9-8)
- ▶ HB 299, Increase Notice of Penalties for WC Fraud. Would require DLI and the insurer to notify the claimant of penalties for fraud as a preventative measure. (Died in Senate Business and Labor)
- ▶ HB 362, Expand Workplace Safety and Health for Public Sector Employees. Gives DLI authority to investigate occupational diseases experienced by public sector employees. Expands public sector employee's rights regarding workplace dangers and exposures. (Died in House Human Services)

## OTHER NOTABLE LEGISLATION THAT FAILED TO PASS OR WAS VETOED

- ▶ HB 413, Provide Enabling Legislation to Create a State Based OSHA Program. Provided the authority to create a private sector state based OSHA program. (Died on the House floor)
- ▶ HB 500, Provide Authority for Claimants to Choose Their Treating Physician. Reverses the HB 334 choice of treating physician provisions by authorizing the claimant to choose/designate their treating physician. (Died in House Business and Labor)
- ▶ HB 622, Provide Authority for Claimants to Choose Their Treating Physician. A different twist on the treating physician where the claimant chooses their initial treating physician; the insurer can change to another; then the claimant can go back to the first one or choose another treating physician. (Bill withdrawn by sponsor)
- ▶ SB 288, Subrogation. Would have allowed an insurer to have a right of subrogation for all medical benefits paid irrespective of the “made whole” analysis. (Vetoed by the Governor on 4/29/15)

## OTHER NOTABLE LEGISLATION THAT FAILED TO PASS OR WAS VETOED

- ▶ SB 3, Revise Impairment Rating for Access to Vocational Rehabilitation Benefits. Reduced the current 15% whole person impairment rating qualifier for vocational rehabilitation benefits to 10%. (Died in Senate Business and Labor)
- ▶ SB 103, Presumptive Disease for Firefighters. Provides a presumption that numerous diseases (heart, lung, 10 communicable diseases and 15 cancers) were caused by work; with certain qualifications. (Died in Senate Business and Labor)
- ▶ SB 254, Require Montana State Fund to Pay \$50mm to the Old Fund. Require a one-time transfer of \$50 million to the Old Fund account. Precluded raising of rates to pay for the transfer. (Died on the Senate Floor)
- ▶ SB 292, Establish a Prescription Drug Formulary For WC. Require the Department of Labor and Industry to establish a Prescription Drug Registry and may establish a maximum morphine equivalent dosage. (Died in House Business and Labor)

▶ **QUESTIONS?**