

LEGISLATIVE RECAP – 2023 LEGISLATIVE SESSION

Governor's Conference on Workers' Compensation

Kevin Braun

2023 LEGISLATIVE SESSION

By the Numbers:

- Session started on Jan 2nd, adjourned May 2nd, 87th legislative day.
 - Bill Draft Requests: 4,643 (Ave since 1999 - 2,627)
 - Introduced: 1,698 (Ave - 1,328)
 - Bills Passed: 802; 511 House Bills, 293 Senate Bills (Ave - 568)
 - WC specific: 26 requested, 17 introduced, 6 passed.

Administrative Changes

Personnel

HB 13 - State Employee Pay Plan, Rep. J. Fitzpatrick

- The State Employee Pay Plan Bill.
- Increases reimbursement for in-state meals to \$8.25 for morning meal, \$9.25 for midday meal and \$16.00 for the evening meal. (Mont. Adm. R. 24.29.1409(4)(f)(ii) ties meal reimbursement for injured worker travel to the State reimbursement)
- Bill is effective on 7/1/23 except the meal reimbursement was effective on 4/11/23.

Workers' Compensation Changes

Benefit Related

HB 427 - Revise Military Affairs Laws Regarding Workers' Compensation, Rep. Kerns.

- Requires the employer (Military Affairs) to pay the difference between the workers' compensation benefit and the injured member's pay and allowances under §10-1-502 (pay rate based on comparable active federal military service) when injured in State military service.
- Permanently totally disabled members receive the difference between the workers' compensation benefit and the amount paid to a similarly situated service member who is in the employ of the US for a line-of-duty injury.
- This change *does not* impact the workers' compensation insurance benefit payable for the injury.
- Effective on 10/1/2023.

SB 294 - End of Watch Trust, Sen. Usher

- Creates the “end of watch” trust fund from which benefits are paid to catastrophically injured and killed law enforcement officers and their surviving spouse and minor children for 60 months.
- Initial benefit amount is \$7,000 per month (tax exempt for State purposes) for the first 12 months; thereafter it is \$7,000 per month plus an annual increase of 3% or the CPI whichever is less; minus one-half the WC benefit and one-half the retirement benefit paid.
- Surviving spouse is disqualified after remarriage, then it goes to minor children until the age of 18 or for the remainder of the 60 months.

SB 294 - End of Watch Trust, Sen. Usher (cont.)

- Law enforcement includes police, sheriff, deputy sheriff, undersheriff, highway patrol, DOJ investigator, Fish and Game warden, park ranger or other certified public safety officer.
- Automatic COBRA coverage for four months following the injury or death with the employer paying the premium.
- Does not impact the WC benefit payable. Effective on July 1, 2023.

HB 178 - Revise Workers' Compensation for Social/Recreational Activity, Rep. Walsh

- Bill brought on behalf of ski areas to refine course and scope when an individual is engaged in social or recreational activity.
- Social and recreational activity is defined as that which is undertaken for exercise, relaxation, pleasure or voluntary/optional preparation for employment.
- When an individual is engaging in unpaid social or recreational activity, regardless of whether it is at the worksite, it will not be compensable unless the individual is on paid time and the individual's presence is required or requested by the employer.
- The bill became effective on 3/23/2023.

SB 310 - Revise Presumptive Occupational Disease Laws, Sen. Small

- Adds two new presumptive diseases to the 12 that were originally passed in 2019.
- Testicular cancer after 10 years of firefighting duties.
- Ovarian cancer after 15 years of firefighting duties.
- Effective 10/1/2023

Workers' Compensation

Compliance Changes

HB 636 - Revise Workers' Compensation Relating to Exemptions from the Act, Rep. Kassmier

- Decreases the ownership percentage requirement to be exempt from the Workers' Compensation Act for corporate officers and managers of manager managed LLCs.
- Current law requires a 20% ownership interest to be exempt based on ownership.
 - Does not impact the other exemptions for corporate officers who are not engaged in the ordinary duties of a worker without pay or are engaged in household employment for the corporation.
- HB 636 reduces the ownership amount to 10%.
- Becomes effective on 10/1/23.

SB 22 - Revise Independent Contractor Laws, Sen. Morigeau

- The bill provides a rebuttable presumption that an individual without an Independent Contractor Exemption Certificate (ICEC) is an independent contractor when the individual:
 - represents in writing to the hiring entity that the individual has an ICEC;
 - the person provides a forged or fraudulent ICEC; or
 - the ICEC expired *during the course of the contract* but not for more than 120 days.
- When one of the three situations is present, the Department is to utilize the two-part free-from-control and independent-business test to determine the worker's status.
- Effective on 10/1/2023.

HB 490 - Revise Laws Related to Independent Contractor Tax Evasion and Fraud, Rep. Gist

- Prohibits a construction contractor from hiring an Independent Contractor (IC) without the independent contractor exemption certificate (ICEC).
- Prohibits a construction contractor from hiring an IC when:
 - the ICEC is suspended, revoked or denied;
 - The work is outside of the trade business or occupation; or
 - From classifying an employee as an IC.

HB 490 - Revise Laws Related to Independent Contractor Tax Evasion and Fraud, Rep. Gist (cont.)

- Increases penalties for violations up to \$1,000 for a first offense; up to \$2,500 for a second offense; up to \$5,000 for a third offense; and \$5,000 for each subsequent violation. A fourth and subsequent violation requires suspension or revocation of the ICEC and reporting for WC fraud prosecution.
- Requires DLI to issue a “cease and desist” order upon discovering an uninsured employer.
- Bill became effective on 5/18/2023.

HB 702 - Repeal Termination Relating to Workers' Compensation Programs, Rep. Harvey

- Removes the sunset on a workers' compensation premium-reimbursement program for student learners in a high quality, work-based learning opportunity.
- The funding for the reimbursement comes from the workers' compensation assessment in §39-71-201.
- The program passed in 2019 with HB 732 and was due to sunset on 6/30/23.
- Repeal of the sunset was effective on 5/3/2023.

Insurance Changes

Property and Casualty insurance (WC)

HB 836 - Insurance Regulatory Waivers, Rep. Zolnikov

- The bill allows the insurance commissioner to approve regulatory waivers from property and casualty insurers to allow creative/innovative offerings to insurance consumers that would not otherwise be available.
- Waivers have to be in the public interest and supported with a completed application, along with a fee of \$1,000 or more.
- The request for a waiver must be granted or denied within 90 days.

HB 836 - Insurance Regulatory Waivers, Rep. Zolnikov (cont.)

- Waivers can be extended upon application.
- The maximum time is for three years with a potential extension.
- Bill sunsets on July 30, 2029.
- Effective on 10/1/2023.

Questions?