State workers' compensation: legislation enacted in 1990

Now that more workers are protected against work-related accidents and illnesses, States are developing policy and programs for safety and for a drug-free workplace

LaVerne C. Tinsley

General legislative sessions were held in 44 States, Puerto Rico, and the District of Columbia during 1990. Although the Texas legislature was not scheduled for a general assembly in 1990, it conducted a special session and generated a piece of legislation which made significant changes such that it has become one of the most talked about enactments in State workers' compensation this year. Major reforms occurred in a few other State workers' compensation systems as expected, and in some instances, reforms will continue for several more years.

Maximum weekly compensation rates were increased in every State, except for two. One State raised the percentage of the State average weekly wage upon which benefits are based for total disability and death, from 75 percent to 100 percent, and provided for other benefit increases through 1992. Another law changed maximum and minimum weekly benefits from a statutory amount to a percentage of the State average weekly wage.

In Arizona, the additional monthly allowance payable to dependents for temporary total disability was raised from $10 to $25.

Several jurisdictions established coverage for the human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS) and related complexes as an occupational disease. Injuries diagnosed as carpel tunnel syndrome are now covered in Louisiana.

One jurisdiction increased the compensation payable for a serious facial or head disfigurement from $10,000 to $20,000.

The allowance for burial was raised in four States. One State eliminated the statutory amount payable for funeral expenses and authorized preparation of a fee schedule for funeral services.

A few laws established new requirements concerning drug-free workplace programs. An amendment in one State authorizes the creation of a toll-free hotline for reporting safety violations.

Following is a State-by-State summary of the many developments that occurred during the year.

Arizona

The additional compensation for dependents in cases of temporary total disability was increased to $25 per month from $10 per month. Dependent children are now entitled to receive death benefits through age 22 if they are enrolled as full-time students in an accredited educational institution.

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New requirements were enacted relative to claims for testing positive for human immunodeficiency virus (HIV) or for being diagnosed with acquired immunodeficiency syndrome (AIDS). Employers or insurers charged with violating any procedure in the processing or handling of a workers' compensation claim are now subject to pay a fine based on 25 percent of benefits due, or $500, whichever is larger.

California

Coverage was newly extended to firefighters who are not covered by the public employees' retirement system, or a county employee's retirement system or a county employee's retirement law, at the option of the governing body. Additionally, if a firefighter becomes totally disabled or killed in the performance of duty, his or her dependents are now entitled to receive a scholarship from appropriated funds. An amendment prohibits physicians and specialists from billing an injured worker directly for medical services and fees, unless proper notification has been filed by the employer rejecting any liability for the injury.

Colorado

Two new funds were created, the guaranty fund and an immediate payment fund, to assist

Table 1. **Jurisdictions which increased maximum weekly temporary total disability benefits during 1990**

Jurisdiction	Former maximum	New maximum
Alabama	$357.98	$369.00
Arkansas	209.08	226.11
California	224.00	266.00
Colorado	371.21	379.61
Connecticut	$693.00 plus $10 for each dependent under 18 years of age, up to 50 percent of basic benefit, not to exceed 75 percent of employee's wage	$719.00, plus $10 for each dependent under 18 years of age, up to 50 percent of basic benefit, not to exceed 75 percent of employee's wage
Delaware	$280.64	$297.21
District of Columbia	513.00	551.46
Florida	362.00	382.00
Georgia	175.00	225.00
Hawaii	358.00	383.00
Idaho	$290.10 to $403.75, according to number of dependents, plus 7 percent of State's average weekly wage for each child	$300.60 to $417.50, according to number of dependents, plus 7 percent of State's average weekly wage for each child
Illinois	$610.97	$618.23
Indiana	274.00	294.00
Iowa	684.00	703.00
Kansas	271.00	278.00
Kentucky	343.02	353.24
Louisiana	276.00	282.00
Maine	471.83	493.28
Maryland	407.00	432.00
Massachusetts	$474.47, plus $6 for each dependent, if weekly benefits are below $150	$490.57, plus $6 for each dependent, if weekly benefits are below $150
Michigan	$409.00	$427.00
Minnesota	413.00	428.00
Mississippi	206.60	212.58
Missouri	298.13	391.50
Montana	318.00	[1]299.00
Nevada	368.82	402.43
New Hampshire	600.00	619.50
New Jersey	342.00	370.00
New Mexico	283.70	291.75
New York	300.00	340.00
North Carolina	376.00	390.00
North Dakota	$313.00, plus $10 for each dependent; aggregate not to exceed worker's net wages	$321.00, plus $10 for each dependent; aggregate not to exceed worker's net wages
Oklahoma	$231.00	$246.00
Ohio	400.00	419.00
Oregon	388.99	406.54
Pennsylvania	399.00	419.00
Rhode Island	$386.00, plus $9 for each dependent; aggregate not to exceed 80 percent of worker's average weekly wage	$403.00, plus $9 for each dependent; aggregate not to exceed 80 percent of worker's average weekly wage
South Carolina	$334.87	$350.19
South Dakota	289.00	297.00
Tennessee	252.00	273.00
Texas	238.00	252.00
Utah	$347.00, plus $5 for dependent spouse and each dependent child up to 4 children, but not to exceed 100 percent of State's average weekly wage	$364.00, plus $5 for dependent spouse and each dependent child up to 4 children
Vermont	$544.00. plus $10 for each dependent under age 21	$559.00, plus $10 for each dependent under age 21
Virgin Islands	$214.00	$218.00
Virginia	393.00	404.00
Washington	389.32	415.45
West Virginia	367.89	376.44
Wisconsin	363.00	378.00
Wyoming	359.00	388.00

NOTE Most benefit increases are based on the applicable jurisdiction's average weekly or monthly wage. However, statutory amounts are prescribed in eight States (Alaska, Arizona, California, Georgia, Indiana, Nebraska, New York, and Tennessee) and Puerto Rico. Two States (Alaska and Arizona) and Puerto Rico made no changes in maximum weekly benefit amounts for temporary total disability during 1990.

[1] Montana raised its maximum weekly benefit to $318 on January 1, 1990 (the benefit was formerly frozen at $299); in July 1990, it was changed back to $299 until July 1, 1991.

employees with their claims for workers' compensation against self-insured employers that might otherwise be unreasonably delayed, or not paid at all, if the proceeds of the self-insurer's bond are delayed, if the self-insurer declares bankruptcy, or has insufficient reserves to cover a claim.

The Director of the Division of Labor is now required to maintain a list of physicians who will serve on a medical review panel, and perform independent medical examinations of injured workers, upon request.

Connecticut

Weekly compensation will now be based on 100 percent (previously 75 percent) of the employee's average weekly wages, if an injury or illness is caused by a health and safety violation that the employer has already been cited for and was not corrected in the time allowed by the citation.

Legislation provided for regulations to establish a uniform system for determining the degree of physical impairment of persons eligible for workers' compensation benefits. From July 1, 1990, through June 30, 1992, a pilot program was approved to resolve any disputed medical determinations between independent medical experts relating to compensation for permanent disability.

Another piece of legislation revised the assessment procedures for financing administrative costs of the Workers' Compensation Commission and stiffened the penalties against persons who make or attempt to make a fraudulent claim for workers' compensation benefits.

Delaware

The Delaware Compensation Rating Bureau is now required to file (with the Industrial Accident Board) a new method for computing insurance premiums for each classification of risk in the construction industry that will not impose higher insurance costs solely because of the level of wages or salaries paid by the employer.

Florida

Coverage was amended by raising the numerical exemption from three to four or more employees and by requiring that all construction employees and volunteer firefighters be covered. Certain owner-operators of motor vehicles have been eliminated from coverage. Further, injuries

that are sustained in recreational or social activities are covered only if such activity is required by the employer or is of direct benefit to the employer. Injuries received by an employee while traveling to and from work are compensable only when the employee is on a special mission for the employer.

The period of compensation for temporary total disability was reduced from 350 weeks to 260 weeks.

A new wage loss schedule for compensating permanent impairment was mandated. The formula for computing compensation for wage loss was changed to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other renumeration the employee is able to earn after reaching maximum medical improvement, as compared weekly. (The figures used previously were 95 percent and 85 percent, respectively.) Benefits are limited to 364 weeks for wage loss above 24 percent. Employees entitled to wage loss benefits are newly required to look for at least five jobs every 2 weeks.

In case of death, a surviving spouse who decides to remarry may now elect a lump-sum payment equal to 26 weeks of compensation benefits. A lump-sum payment may also be elected over future benefits by a worker with a minor permanent impairment. Supplemental benefits will now be suspended at age 62, if the claimant is entitled to Social Security benefits. Workers' compensation benefits are now subject to (100 percent) offset against any recovery of benefits under the Migrant and Seasonal Agricultural Worker Protection Act. Also, public sector employers providing workers' compensation benefits and disability pension benefits must now reduce the pension benefits when the employee is eligible for both.

An amendment provides for the development of a new disability rating guide by January 1, 1991, which is more comprehensive than the American Medical Association guide. Other guides or fee schedules are also scheduled to be available at the same time. Another amendment specifies that before claimants are referred to certain medical facilities, any ownership interests in the cases must be disclosed to all parties involved.

Employers with drug-free workplace programs in effect are newly authorized to terminate and deny workers' compensation benefits to any employee who violates program rules. A fine was established for noncompliance with workers' compensation insurance coverage requirements and for late payment of compensation benefits.

An amendment authorized optional insurance deductibles not exceeding $2,500 per claim and up to a maximum of $21,000 above the deductible amount for coinsurance.

New legislation authorizes the creation of a Bureau of Fraud in the Department of Insurance.

Georgia

Coverage was broadened to include volunteer emergency management or civil defense agency employees and employees in emergency medical services and rescue organizations. Farmworkers may now be covered at the option of their employer after the workers' compensation board is notified. Another amendment provides that no compensation is payable for injury to an employee which is the result of intoxication from alcohol or any controlled substance or drug that is not prescribed by a physician. Maximum weekly benefits for disability and death were raised to $225 from $175.

Construction design professionals may now file third-party suits in cases where the responsibility for safety is not assumed by the contractor.

Workers' compensation insurance deductibles may now be taken by employers up to a maximum of $2,500 per claim, except for self-insurers or group self-insurers.

The Self-Insurers Guaranty Trust Fund was established to provide workers' compensation benefits to employees of insolvent self-insured employers with a board of trustees to administer and regulate the operation of the fund.

Idaho

New coverage is provided for acquired immunodeficiency syndrome (AIDS), AIDS-related complexes (ARC), other manifestations of human immunodeficiency virus (HIV) infections, and hepatitis B virus infections in any occupation involving exposure to human blood or body fluids as a compensable occupational disease. Coverage was further extended to include participants in a Federal or State funded youth employment program administered by a government agency or a nonprofit corporation or entity and to certain students in school districts with work experience programs.

The mileage rate was changed for injured employees traveling to and from a medical examination or physical rehabilitation to the same rate authorized for State employees.

Indiana

Volunteer firefighters are newly entitled to receive up to a maximum of $60,000 of benefits for disability or death and additional expenses for burial. Previously, volunteer firefighters were entitled to benefits not exceeding a total of $40,000.

The eligibility requirement established for a surviving husband to be considered wholly dependent upon a deceased wife for compensation and benefit purposes was eliminated. Further, dependent minors may now continue to receive their benefits until age 21 (formerly age 18), if they are physically or mentally disabled.

Iowa

Beginning on July 1, 1990, elected and appointed officials were given a choice of having their compensation benefits computed based on their weekly earnings, or on 140 percent of the State average weekly wage.

The funding levels of the Second Injury Fund were increased to $1,000,000 (from $500,000) and to $500,000 (from $300,000).

Kansas

Legislation enacted requires the development of a fee schedule covering maximum costs for medical, surgical, hospital, dental, nursing, vocational rehabilitation, or any other treatment or services rendered an injured employee or ordered by a health care provider. The medical provisions were expanded to include definitions for health care provider, utilization review, peer review, and peer review committee. New fines have been established for any violation of compliance with fee schedules and for untimely payment of medical bills.

Employers are now authorized to select the agency or facility from those considered qualified to assess an injured employee's potential for medical and physical rehabilitation. Additionally, a selection may be made for vocational rehabilitation, reeducation or training, if made within 15 days after an order is received.

The name "Workmen's Compensation Act" was changed to "Workers' Compensation Act."

Kentucky

The burial allowance was raised from $2,500 to $4,000.

Every partnership that files an exemption from coverage must now file certain taxpayer identification information annually with the Workers' Compensation Board, or be subject to *prima facie* evidence that the partnership is composed of nonqualified partners. In such cases, a lien will now be placed on the employer's assets.

Income benefits for permanent partial disability will be determined according to the latest edition of the American Medical Association's guidelines for determining partial disability. Any compensation for a preexisting disease or condition of the back or heart that is permanent in nature will be subject to apportionment. No compensation for a prior disabling disease or injury is payable from the Special Fund.

A diagnosis of coal dust exposure may now be validated with two x-rays and other acceptable reports. Previously, guides from the American Medical Association were used. All arrangements involving a medical examination for a workers' compensation recipient and all costs incurred must be assumed by the person requesting such examination.

Procedures regarding claims for income benefits and retraining incentive benefits for occupational pneumoconiosis were revised. The interest assessed as a penalty on income benefits denied, delayed, or terminated without reasonable cause or foundation was set at 18 percent.

The statutory maximum payable for attorney fees was eliminated.

Self-insurance coverage is now permitted between two or more city, county, municipal, or urban county employers of their agencies. In addition, more private employers may now join together to form group self-insurance pools. An insurance carrier or group self-insurance association is newly required to notify the Workers' Compensation Board whenever there is a lapse, termination, expiration due to termination of a policy period, or nonrenewal of any policy issued by it, or upon the termination of any membership agreement.

Louisiana

Carpel tunnel syndrome disease, from repetitive motion, now comes within coverage for workers' compensation. The allowable amount of marijuana in the urine (urinary cannabinoids) was changed for making a determination of passive inhalation of marijuana use as a basis for disqualification from workers' compensation coverage.

A fee was approved and will now be charged in each workers' compensation case to cover administrative costs after the award is finalized.

Another piece of legislation provided for a

constitutional amendment giving direct review of administrative agency determinations by the court of appeals in workers' compensation matters.

The burial allowance was raised from $1,000 to $4,000, and the additional compensation for incidental expenses has been increased from $1,000 to $3,000.

Maryland

Members of volunteer fire departments and rescue squads in Allegany, Garrett, and Somerset counties may now be protected for workers' compensation at the option of their municipality.

The State Accident Fund was renamed the Injured Workers' Insurance Fund.

Employers and insurers now have 45 days, formerly 30 days, to pay costs for medical treatment and services provided an injured employee or be subject to a fine.

New legislation exempts certain counties, municipal corporations, boards of education, and certain self-insurance pools from filing the deposit required for self-insurance protection under the Uninsured Employers' Fund. Another amendment authorized assessments and funding for the State Accident Fund.

Michigan

Legislation was approved to release certain records from protection under the Freedom of Information Act for workers' compensation purposes.

The Workplace Health and Safety Fund was created to provide benefits to employees of uninsured employers and promote workplace safety. The same enactment established the Uninsured Employer's Security Account within the Workplace Health and Safety Fund to provide for payment of benefits to the dependents of a deceased employee who was employed by an uninsured employer.

Minnesota

By enactment, coverage was established for employees in logging industry businesses.

Employers are now required to cover injuries from exposure to rabies and furnish any preventative treatment when necessary. Injuries causing mental retardation or other related conditions are now covered by workers' compensation.

Mississippi

The State newly authorizes the Board of Supervisors of Hinds County to elect to be self-insured for workers' compensation.

Missouri

Maximum weekly compensation for total disability and death was raised from 75 percent to 100 percent of the State average weekly wage; and on August 28, 1991, the percentage amount will increase to 105 percent. Compensation for permanent partial disability was increased from 45 to 50 percent of the State average weekly wage. In 1991, the weekly benefits for permanent partial disability will increase to 52 percent; and in 1992, to 55 percent.

The burial allowance was increased from $2,000 to $5,000.

Costs for rehabilitation are now limited to a maximum of $5,000 for 26 weeks, plus board, lodging, and travel; however, an additional 26 weeks of benefits may be approved. For injuries resulting in loss of suitable and gainful employment, the injured employee must now begin rehabilitation within 120 days following the accident. An employee's refusal to participate in a program of rehabilitation may cause that employee's compensation to be reduced by one-half as a penalty.

Nebraska

Maximum weekly compensation for disability and death was increased to $255 from $235; and in 1991, benefits will be payable at a maximum of $265 per week.

Insurance carriers are now allowed to offer medical deductibles in increments of $500, up to a maximum of $2,500 per claim. No employer is permitted to pay any part of a deductible.

New Hampshire

Burial benefits for the dependents of a deceased employee were increased from $3,000 to $5,000.

The number of days of disability was increased from 7 to 14, before benefits may be paid retroactively from the day of injury.

Compensation for total disability is now payable at a maximum weekly amount not exceeding 100 percent of the employee's taxes after earnings. In cases of permanent partial disability, benefits may now be received for a maximum of 350 weeks, formerly 341 weeks; and for a spinal column or spinal cord injury, benefits may not exceed 350 weeks. An enactment authorizes the rating of permanent impairment based on American Medical Association guides and development of a fee schedule of costs for medical and rehabilitation services by July 1, 1993. A peer review panel was established to develop procedures and perform utilization review of medical services. Any violation against an employer or insurer for willful or improper billing for medical services is subject to a fine not exceeding $2,500.

Employers with 10 or more full-time employees are now required to prepare an annual safety program for their employees and the commissioner of labor is required to develop a multimedia program on workplace safety and workers' compensation benefits.

New Jersey

The Commissioner of Labor now has authority to transfer monies from the Second Injury Fund to the Division of Workers' Compensation to cover costs of administration.

New Mexico

The Workers' Compensation Division Director may now contract with a peer review organization to provide utilization review and case management services.

New York

Coverage was broadened to allow the services of psychologists to be included with other medical practitioners in the treatment of workers' compensation claimants. The law was further amended to permit coverage of certain jockeys, apprentice jockeys, exercise persons, and owners and trainers in the racing, pari-mutuel wagering and breeding business.

The terms "injury" and "personal injury" will no longer cover work-related stress directly resulting from a lawful personnel decision against the employee.

Maximum weekly compensation for total disability was raised from $300 to $340 and for permanent or temporary partial disability, the weekly maximum was raised from $150 to $280. In July 1991, the weekly compensation for total disability will increase to a maximum of $350 and in July 1992, the maximum will increase to $400. The minimum weekly compensation in such instances will be increased from $30 to $40 as of July 1, 1992. In death cases, a total of $50,000 will be paid to the surviving parents where there is no surviving spouse or children, and if there are no surviving parents, the $50,000 will be paid to the deceased employee's estate.

The maximum amount payable for funeral expenses has been eliminated. An enactment authorized preparation of a schedule of fees for funeral services; however, firefighters who die from work-related injuries as a direct result of firefighting are not subject to the fee schedule.

The offset of permanent total disability benefits against Federal Social Security disability was eliminated.

Compensation for serious facial or head disfigurement is now authorized up to a maximum $20,000; previously $10,000. The maximum amount allowable for certain x-rays or special diagnostic laboratory tests was raised to $500 from $150.

Several new provisions were enacted pertaining to procedures for prehearing conferences on controverted claims. The same enactment increased the fines to be imposed on the employer or insurer for violating reporting requirements when benefit payments have ceased and if compensation payments are not secured as required by law.

Legislation was approved for consolidating the Stock Workers' Compensation Security Fund and the Mutual Workers' Compensation Security Fund into a single fund known as the Workers' Compensation Security Fund.

Oklahoma

Funeral expenses payable to the estate of a deceased employee of which there are no dependent survivors was increased from $1,000, to $3,000. Physicians are required to use the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the incident for evaluating impairment, in lieu of guides based on race, ethnic origin, or other criteria. Health care providers who knowingly overcharge for medical services will now be penalized by fines.

Injured employees may now use some of their annual or sick leave to supplement their compensation payment up to the extent of receiving full wages.

The Administrator of the Workers' Compensation Court has been authorized to establish an ombudsman program to assist injured workers, employers, and persons claiming death benefits in obtaining benefits under the workers' compensation act. It further requires the administrator to publish rules and regulations governing notices to injured workers about their rights to vocational rehabilitation.

Irrevocable letters of credit are now acceptable as proof of one's financial ability to pay workers' compensation benefits when application is made for self-insurance status.

Rhode Island

A nonprofit State Insurance Fund was created to insure employers for liability under the Workers' Compensation Act. The fund, and all related business, will be administered and implemented by a board of directors. An appropriation up to $5 million dollars was approved as a loan from the Department of Workers' Compensation for initial funding.

The name "Workers' Compensation Commission" was changed to "Workers' Compensation Court;" and all references of "Director" were changed to "Administrator."

Authority over informal workers' compensation hearings are no longer the responsibility of the Department of Workers' Compensation; however, the responsibility for rehabilitation, education, recordkeeping, and monitoring remains with the Department.

Upon reaching maximum medical improvement, compensation of a partially disabled employee may be reduced to 70 percent of the compensation rate for total disability, if a bona fide attempt to obtain employment has not been made. If an attempt is made to obtain employment, then compensation is continued at the rate payable for total disability.

Liability of an employer for compensation in subsequent injury cases is now limited to 26 weeks, previously 52 weeks. Payment of charges for medical care must now be made within 21 days after a bill is issued by the medical provider.

New reporting procedures were enacted that require earnings from any employment be reported for compensation purposes and to aid in reducing some of the fraud and abuses in the workers' compensation system.

Optional insurance deductibles ranging from $250 to $5,000, may now be offered by insurers for medical benefits.

South Carolina

Licensed real estate agents are now exempted from coverage if they declare themselves to be independent contractors.

An enactment provides that in cases of death, any benefits remaining once the decedent's children are no longer fully dependent will now be paid to a surviving spouse or other full dependent. If there are no surviving dependents, the distribution of benefits must be made the same as for cases in which there are no full dependents. Previously, benefits were divided equally among all the children.

A physician or surgeon appointed to examine an employee and testify on the results is now entitled to receive travel expenses and a reasonable fee for providing such services, according to a fee schedule set by the Workers' Compensation Commission.

The Workers' Compensation Insolvency Fund was renamed the Uninsured Employer's Fund. Costs for workers' compensation administration and payment of claims will be made from the fund.

South Dakota

An amendment allows injured employees to choose a medical practitioner or surgeon from among all those licensed doctors or surgeons in the State; however, the treating physician is required to furnish a report of treatment within 14 days after the initial treatment.

As a condition of a workers' compensation insurance contract, an employer may be required to pay a deductible not to exceed $2,500, towards the total amount of each claim filed for compensation.

Tennessee

Maximum weekly benefits for disability and death were raised from $252 to $273 on July 1, 1990; and on July 1, 1991, the benefits will increase to $294. Total maximum compensation was increased to $109,200 in 1990 and to $117,600 in July 1991.

A total of $300 was set as the limit of an employer's liability for a medical emergency.

Any person who requests that an autopsy be performed in a work-related death case in which the cause is obscure or disputed is responsible for payment of all costs involved.

The trial court is now authorized to determine whether a lump-sum award would be in the best interest of an employee, and whether the employee has the ability to wisely manage and control the lump-sum payment, regardless of need.

Texas[1]

A redraft of the entire workers' compensation code and related laws was enacted in a special session of the 1989 legislature; however, most of the legislation's provisions will not become effective until January 1, 1991, except where another date is specified. The Industrial Accident Board was renamed the Workers' Compensation Commission ("Commission").

Migrant and seasonal farmworkers may now be covered on a phased-in expansion of coverage and employers of certain noncovered workers may now elect to be covered. Heart attacks are now covered if they occur at a definite time and place and are caused by a specific work event where the preponderance of evidence is standard; however, if the heart attack is triggered solely by mental stress, evidence of a sudden stimulus is now required.

Other provisions were amended to specifically exclude coverage of: any injury that occurs while a worker is intoxicated, a self-inflicted injury, or one resulting from horseplay. Additionally, no coverage is provided for injuries caused by a third party for personal reasons, and for voluntary participation in certain off duty recreational social geographic activities, and from an act of God, except where work created a risk greater than a risk to the general public.

Beginning on January 1, 1991, maximum weekly benefits will be increased to 100 percent of the State average weekly wage for disability and death and minimum weekly benefits to 15 percent. Compensation for impairment and supplemental income benefits will be increased to 70 percent of the State average weekly wage and increases in lifetime benefits for permanent total disability have been approved at 3 percent per year.

The compensable period for death benefits was increased to 364 weeks, formerly 360 weeks. Burial allowance remains at $2,500.

A 1-week waiting period was established before any income benefits will be paid retroactively from the day of injury.

Payment of temporary income benefits are now permitted during medical treatment until the employee reaches maximum medical improvement.

The existence and degree of impairment must now be determined according to the American Medical Association's *Guidelines to the Evaluation of Permanent Impairment*, 3rd edition. The present schedule of injury awards, and awards for unscheduled permanent partial disability, will now be based on loss of earning capacity. Compensation for all cases of permanent partial disability will be based on degree of impairment to the person as a whole.

Authority over medical examinations was made the responsibility of the Commission and an insurance carrier may make a request that a medical examination be approved only once in a 100-day period.

Injured workers are permitted to select their initial physician until the end of 1992, but may not change more than once, without approval of the insurer or Commission. On January 1, 1993, the worker must choose a physician from a list prepared by the Commission and any further requests for changes must be approved by the Commission. In addition, no insurer may require any employee to use the pharmaceutical services designated by a carrier. Medical policies and fee guidelines may be revised at least every 2 years if necessary.

Legislation newly requires a report of injury to be filed with the employer within 30 days and all claims for compensation must be filed either within 1 year after the injury and within 1 year from knowledge of an injury in cases of occupational disease. All claims for death must be filed by the first anniversary of the death, excluding a claim for a minor or incompetent person, or for other good cause.

Legislation authorized the creation of an ombudsman program to provide public information and assist workers, employers, insurers, and others in protecting their rights under the workers' compensation law.

Several new Divisions were established in the Workers' Compensation Commission. A Division of Compliance will review the records of insurers and ensure that timely payments are made to medical providers. The Division of Medical Review must develop fee guidelines, medical policies, and enforcement strategies relative to quality medical care and to controlling medical costs.

A toll-free hotline was approved for reporting safety violations. Another provision prohibits any discrimination for the reporting of a safety violation. As a result, a worker may not sue for reinstatement, back wages, or seniority.

New rules were established regarding the compensability of accidents that occur away from the premises of the employer. It was also established that workers' compensation is the exclusive remedy against an employer for a work-related accident; however, a surviving spouse of a worker whose death was job-related, can sue in tort for exemplary damages resulting from an intentional

act, omission, or gross negligence of the employer.

Self-insurance coverage will now be available for individual employers upon meeting all financial requirements.

A cap has been placed on self-insurance premiums for 1993 and 1994 at 20 percent of the total unmodified workers' compensation insurance premiums in the State. Another change provided for a 4-percent rate rollback in premium rates for policies issued during 1990; 10 percent for policies issued during 1991, and 15 percent for policies issued during 1992. Also, group self-insurance may now be elected by employers in the same or a similar business. Three optional insurance deductible plans have been approved and are scheduled for availability from insurers on January 1, 1992.

Self-insured employers who have 15 or more employees are newly required to adopt a drug-free workplace policy and provide accident prevention services as a licensing requirement. Also, inspection and monitoring services must be at least every 2 years. The Texas Workers' Compensation Research Center was created as an advisory body to the Commission to perform research pertaining to benefits and their delivery, insurance rates, ratemaking, and rehabilitation.

Utah

An enactment reestablished the Workers' Compensation Fund as the Workers' Compensation Fund of Utah. The fund will operate as a nonprofit, quasi-public corporation that provides workers' compensation coverage for Utah employers and guarantees payment of compensation for work-related injuries and death. The State is in no way responsible for the obligations of the Fund.

Another amendment created the Utah Injured Worker Reemployment program under the Industrial Commission for promoting and monitoring the efficiency in reemploying injured workers and evaluating cost effectiveness of the program. The program is scheduled to continue through June 30, 1994. New legislation prohibits employers from withholding wages from an employee who is receiving medical treatment or attending a medical examination for a work-related injury.

The filing of injury notices and claims for benefits must now be given to the employer or to the Industrial Commission within 180 days, or be barred.

Virginia

The maximum period that an award for a partial disability may be received is set at 500 weeks; formerly the 500 weeks commenced from the day of injury. Benefits for both total and partial disability are now subject to garnishment for spousal and child support.

Coverage was broadened to include volunteer firefighters and lifesaving and rescue squad members when exposed to hazardous materials while responding to a request of the State Department of Emergency Services.

Costs for modifying the home of an injured worker may now be paid by the employer up to a maximum of $25,000, previously $20,000.

In determining first, second, or third stages of coal workers' pneumoconiosis, for benefit purposes, radiographic evidence under the International Labour Office's classification of radiograph must be used. A request was made to the Industrial Commission to study and evaluate dermatitis conditions of persons employed by tire manufacturing companies.

Washington

An amendment authorized the use of irrevocable letters of credit issued by Federal or State chartered commercial banking institutions by employers as proof of financial ability to qualify as a self-insured employer for workers' compensation purposes.

The Labor Director is authorized to appoint an employee to serve as coordinator of vocational rehabilitation and who will provide technical assistance and coordinate the management of return-to-work program claims to State agencies and institutions of higher education.

Wyoming

Payroll and premium payments reports must now be submitted, for workers' compensation purposes, on certain employees in extrahazardous employment. Insurance premiums paid for coverage of an employee under a federally funded program that is administered by a State agency may be paid for out of available Federal funds.

The confidentiality provisions of law now allows the transfer of employee files between Divisions of the Department of Employment as long as the information is not restricted by a Federal law, rule, or contract. Another provision was enacted concerning filing requirements. □

Footnote

[1] The entire section on Texas was adapted from a summary prepared by Eric J. Oxfeld, Counsel, American Insurance Association, Washington, DC.