Workers' compensation: State enactments in 1991

Major changes in benefit provisions were made in several States; State insurance funds were established in three; and some now offer medical deductibles to policyholders

Charles A. Berreth

Legislative sessions were held in all States in 1991, with the exception of Kentucky. Substantial changes were made in the workers' compensation laws of Colorado, Connecticut, Indiana, Maine, Montana, New Hampshire, and North Dakota.

Louisiana, Maine, and Texas enacted measures to establish competitive State-operated insurance funds to provide coverage for employers; however, the establishment of Louisiana's fund was subject to a referendum which was approved in the gubernatorial primary election. Maine's fund will become operational only if the premium volume in the voluntary market is less than 20 percent of the total statewide premium volume by July 1, 1994, or less than 25 percent by December 31, 1995.

Connecticut became the fourth State to change its method of computing benefits, from 66-2/3 percent of the employee's weekly wage to 80 percent of spendable earnings.

Florida reenacted the reform measure passed in 1990 after it was declared unconstitutional because it dealt with more than one subject. Arkansas established a plan to assure coverage for employers who are entitled to but unable to procure workers' compensation insurance coverage.

California placed a 6-month employment requirement on the filing of stress-related claims, while Virginia changed its administrative agency's name from Industrial Commission to Workers' Compensation Commission.

Alabama, Indiana, Kansas, Maine, Maryland, and New Hampshire authorized insurers to offer medical deductibles to policyholders while Montana revised its deductible provisions. North Dakota enacted legislation making employers responsible for reimbursing the first $250 of medical expenses for each compensable injury to the Workers' Compensation Bureau.

The following States increased maximum funeral and burial expenses: Colorado, $2,000 to $4,000; Indiana, $4,000 to $6,000; New Hampshire, $3,000 to $5,000; New Jersey, $2,000 to $3,500; and Tennessee, $3,000 to $4,500.

Following is a summary of legislation enacted by individual States:

Alabama

Insurers are now authorized to offer workers' compensation deductibles to policyholders in $100 increments up to $500, and $500 increments up to a maximum of $2,500 per compensable claim. The amount of premium reduction for deductibles is now determined before the application of any experience-rating modification, premium surcharge, or discounts. Deductibles shall not apply to self-insurers or group self-insurance funds.

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Alaska

An additional sanction was added for an employer who fails to provide workers' compensation protection for its employees, by imposing a civil penalty of up to three times the rate that would have been charged for the employer's insurance premium during the period the employer failed to obtain insurance.

Except for medical records released to the employer, carrier, rehabilitation provider, rehabilitation administrator, or person selected by the employee, the employee's medical records, while in the possession of the Division of Workers' Compensation, are confidential and are not subject to public records inspection requirements.

The definition "arising out of and in the course of" now excludes recreational activities sponsored by the employer that are performed at facilities not provided by the employer, unless participation is required as a condition of employment.

Arkansas

The Arkansas Workers' Compensation Insurance Plan was created to provide coverage for employers who in good faith are entitled to, but unable to obtain, workers' compensation insurance. The new plan is operated and regulated by the Insurance Commission and all State-licensed insurers are required to participate.

The Commission is now authorized to recognize an entity, formed under the Arkansas Nonprofit Corp. Act, to function as the guaranty fund for workers' compensation self-insurance in the private sector. Legislation gives the Commission authority to assess self-insurers to pay benefits and defray expenses.

California

New legislation clarifies that the established requirement that an employer approve family counseling treatment shall not be construed to preclude reimbursement for self-procured treatment (not approved by the employer), which the appeals board finds to be otherwise compensable.

Six months of employment (not necessarily continuous) with a particular employer is now required before a psychiatric injury is covered, unless caused by a sudden and extraordinary employment condition, distinguished from a regular and routine event. A regular and routine event includes, but is not limited to, a lawful, nondiscriminatory, good faith personnel action, such as discipline, evaluation, transfer, demotion, layoff, or termination.

Provisions were added to the California Insurance Code to increase the penalties for fraudulent acts in the workers' compensation system. The provisions established an employer assessment for deposit in a separate account in the Insurance Fund for investigation and prosecution of fraudulent workers' compensation claims.

A penalty was provided for any person who willfully misrepresents any fact in order to obtain workers' compensation insurance at less than a proper rate. The penalty consists of imprisonment up to 5 years, or a fine not exceeding $50,000, or double the value of the fraud, whichever is greater, or by both imprisonment and a fine.

Any advertisements with respect to industrial injuries or illnesses that are false or mislead the public with respect to workers' compensation are now precluded.

The law now provides a penalty of 1 year in jail or a fine not to exceed $10,000, or both, for any person receiving money or other consideration as an inducement for referring claimants to a particular service, and prohibits the award of legal fees to certain nonattorney claimant representatives.

Colorado

New requirements were enacted providing that if a claimant or dependent is receiving Social Security disability benefits, and a deduction is made from Colorado workers' compensation benefits as an offset, and the claimant is subject to Colorado benefits being further reduced because of contributory negligence (failure to use safety devices or follow reasonable safety instructions, or being intoxicated), such reduction shall be computed on the amount after, not before, the Social Security disability benefits offset is made.

Death benefits were capped at 91 percent—instead of 80 percent—of the Colorado average weekly wage, for accidents occurring after July 1, 1989.

Children of a decedent are now presumed wholly dependent if, either at the time of the decedent's death or at the time they attained the age of 18, they were engaged in study courses as full time students at any accredited school. The period of presumed dependency continues until they attain the age of 21 or until they are no longer full-time students, whichever occurs first.

Under new legislation, contingency fees to attorneys cannot be predicated upon medical fees actually paid. Further, contingency fees in excess of 20 percent of an unappealed contested benefit award shall be presumed unreasonable. (Prior provision presumed a fee to be reasonable if it did not exceed 20 percent.)

The Division of Workers' Compensation was granted authority to approve "reasonable" attorney fees under certain conditions and subject to specified guidelines. Agreements relative to attorney fees must be in written form, in easy to understand language, and must disclose the full text of relevant statutory provisions governing fee agreements.

The term "emotional or mental stress" was changed to "mental impairment," which is defined as a disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in similar circumstances. Mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar goodfaith action by the employer. Benefits for mental impairment shall be limited to 12 weeks in an amount not less than $150 per week and not more than 50 percent of the State average weekly wage.

The Division of Workers' Compensation, on January 1, 1992, will establish a system for determining medical treatment guidelines and utilization standards and medical impairment rating guidelines for impairment ratings at a percent of the whole person or affected body part, based on the revised third edition of the American Medical Association Guides to the Evaluation of Medical Impairment, in effect as of July 1, 1991.

A Medical Care Accreditation Commission was created in the Division of Workers' Compensation to advise the Director on medical protocol, and to establish a two-tier system of accreditation.

Injured employees are precluded from receiving concurrent permanent total disability payments from injuries occurring in Colorado or in any other State.

Legislation now requires that compensation be paid no later than 14 days after the employer has received notice or knowledge of a claim. It further provides that temporary disability compensation is not payable when the employee's attending physician cannot verify the employee's inability to work, unless the situation is beyond the employee's control, or the physician fails to submit verification. Failure to appear for a scheduled medical appointment may result in suspension of temporary disability benefits.

When a dispute arises over when an injured employee has reached maximum medical improvement or the degree of medical impairment, the parties may select an independent medical examiner by mutual agreement, or the Division of Workers' Compensation may select one, whose findings shall be binding on the parties and the Division.

Medical impairment benefits will be determined by a combination of factors, including the medical impairment rating, an age factor, and the temporary total disability benefit rate. No claimant whose impairment rating is 25 percent or less may receive more than $60,000 from combined temporary disability and permanent partial disability payments. No claimant whose impairment rating is greater than 25 percent may receive more than $120,000 from combined temporary and permanent partial disability payments.

A premium dividend of up to 10 percent is now provided to employers who reemploy employees at preinjury wages, including any wage increases to which such employee would have been entitled had the employee not been injured.

Funeral and burial expenses were increased from $2,000 to $4,000. The Division of Workers' Compensation was created within the Department of Labor and Employment to administer the workers' compensation act.

The definition of "employment" was revised to exclude an employee's participation in a voluntary recreational activity or program, regardless of whether the employer promoted, sponsored, or supported the recreational activity or program.

An exemption for certain employers of farm and ranch labor was deleted from the definition of "employer."

The aggregate of all lump-sum payments was increased for permanent total disability or death benefits from $26,292 to $37,560.

Legislation now mandates the use of mediation in a case involving a dispute as to a claimant's average weekly wage, change of health care provider, or authorized medical benefits. At any time following the mediation conference, but prior to a hearing, the parties may agree to submit a dispute to binding arbitration before an administrative law judge.

Connecticut

Licensed real estate brokers, salespersons, and appraisers will not be considered employees, and will generally be exempt from workers' compensation coverage.

New legislation makes comprehensive revisions to the administrative structure of the workers' compensation program. Employers may establish a plan to provide medical care for workers' compensation injuries or illnesses, to be submitted to the workers' compensation commission for approval 120 days before the proposed effective date and resubmitted for reapproval every 2 years thereafter. An injured employee covered by the plan must submit to examination by a physician or surgeon, other

than one listed in the plan, to determine the nature of the injury and the incapacity due to injury. The injured employee may have in attendance at the examination a physician or surgeon obtained and paid for by the employee. Refusal to submit to the examination will suspend an employee's right to compensation. A review board is established within the workers' compensation commission to review appeals of decisions made by commissioners. In any informal workers' compensation hearing held by the commissioners, recommendations shall be written, and, if the parties accept the recommendations, they shall be binding upon both parties as an award by the commissioner. Such informal hearing shall not be postponed if one party fails to attend, unless both parties agree to a postponement.

The method of computing benefits for total disability was changed from 66-2/3 percent of the injured employee's gross income to 80 percent of spendable earnings after such earnings have been reduced by any deductions for Federal taxes and for the Federal Insurance Contributions Act (FICA).

The method of computing benefits for partial incapacity was also changed from 66-2/3 percent of the employee's gross income to 80 percent of the difference between what the employee was earning before the injury and what the employee is currently earning. This compensation is not to exceed 100 percent of the average weekly earnings of production and related workers in manufacturing in the State. Benefits for specific injuries are also recalculated from 66-2/3 percent of the employee's gross income to 80 percent of the employee's spendable earnings.

Florida

Chapter 90-201, Laws of Florida, as it relates to workers' compensation was reenacted. The original Chapter 90-201, enacted in 1990, was ruled unconstitutional because it dealt with more than one subject—workers' compensation and economic development. Following recommendations of the Florida Attorney General's office, the subjects were separated.

Separate legislation made changes applicable to the construction industry, as follows: No more than three officers of a corporation who are actively engaged in construction may elect exemption from provisions of workers' compensation law by filing written notice of exemption; provides that an employee does not include a sole proprietor or officer of a corporation actively engaged in construction who elected to be exempt; every construction contractor or subcontractor must, as a condition for receiving a building permit, show proof of workers' compensation coverage for employees or, if applicable, provide a written certificate of exemption; a subcontractor may also be required to show his contractor either proof of coverage or an exemption from coverage; if a contractor or third-party payer becomes liable for the payment of compensation to a subcontractor's employee, who holds an exemption which is invalid, the contractor may recover all benefits paid or payable, plus interest, unless otherwise agreed to in writing.

Other legislation provides broader confidentiality protection for certain workers' compensation documents, including medical information.

Georgia

One enactment creates a legislative Joint Workers' Compensation Task Force to study the workers' compensation system and recommend improvements. The law now clarifies workers' compensation coverage for certain volunteers (firefighting, law enforcement, civil defense, emergency medical, and rescue services). An employee who is disabled with work-related asbestosis or mesothelioma shall have 1 year from the date of first disablement following diagnosis to file a claim.

Hawaii

New legislation requires that in death cases, where there are no eligible dependents, the employer shall pay for any one death an amount equal to 25 percent of 312 times the effective maximum weekly benefit rate to nondependent parents. If the deceased claimant had left no parents, the amount shall be paid to the Special Compensation Fund. Formerly, $8,775 was paid to the Fund, with no benefits to surviving parents.

Idaho

New legislation provides that if income benefits have been paid and discontinued more than 4 years from the date of accident, or date of first manifestation of an occupational disease, the claimant has 1 year from the last benefit payment to request a hearing for additional benefits. The payment of medical benefits beyond 5 years from the accident or manifestation date will not extend the time limitation for requesting a hearing.

Another enactment increases total disability compensation from 60 percent to 67 percent of the employee's average weekly wage for the first year, and thereafter from 60 percent to 67 percent of the average weekly State wage. Partial disability compensation was increased from 60 percent to 67 percent of the decrease in wage-earning capacity. Further, the legislation eliminated augmented payments for each dependent child. New provisions were made for lump-sum payments to spouses upon remarriage.

Indiana

The Workers' Compensation Board is now authorized to establish and maintain a list of independent medical examiners.

The law now requires employers subject to the provisions of the workers' compensation law to post a notice to inform employees of coverage.

The first weekly installment of compensation for temporary disability is due 14 days after the disability begins. No later than 15 days after the first installment is due, the employer or carrier shall provide the employee with a compensation agreement prescribed by the Workers' Compensation Board. Denial of liability by employer must be in writing and must be mailed to the Board and to the employee no later than 29 days following employer's notification of injury. Noncompliance subjects employer to a civil penalty of $50, assessed and collected by the Board. The Board may waive penalty if the employer establishes that a delay of no more than 30 days was caused by an inability to obtain medical information necessary to determine the employer's liability.

The permanent impairment schedule was altered, including increasing benefits from 60 percent to 66-2/3 percent of the employee's average weekly wage, and increasing the maximum length of benefits from 78 weeks to 125 weeks.

The average weekly wage used in determining compensation for permanent partial impairment was changed to $492 for injuries occurring on or after July 1, 1991, and before July 1, 1992; $540 for injuries occurring on or after July 1, 1992, and before July 1, 1993; $591 for injuries occurring on or after July 1, 1993, and before July 1, 1994; and, $642 for injuries occurring on or after July 1, 1994.

The credit ceiling of the Second Injury Fund was increased from $400,000 to $500,000; and funeral and burial allowance was increased from $4,000 to $6,000, including occupational disease deaths.

Under new legislation, the maximum amount of compensation, exclusive of medical benefits, for injuries occurring on or after July 1, 1991, is $164,000; on or after July 1, 1992, $180,000; on or after July 1, 1993, $197,000; and on or after July 1, 1994, $214,000.

Insurers entering into or issuing a workers' compensation insurance policy are now permitted to offer deductibles or coinsurance, or both.

Groups of employers, authorized to form mutual insurance associations or reciprocal or interinsurance exchanges for the purpose of complying with liability coverage requirements, are now subject to the regulatory authority of the Department of Insurance.

Iowa

If an employer becomes insolvent under Chapter 11 of the Bankruptcy Act, the Insurance Commissioner may now request the Industrial Commissioner to commute all future payments of workers' compensation benefits, medical expenses, or other payments to a lump sum; and the Insurance Commissioner shall be discharged from all further liability for the commuted claim upon payment of the lump sum to either the claimant, or a licensed insurer, for purchase of an annuity or other periodic payment plan for the benefit of the claimant.

A surcharge on self-insurers and insurers was assessed for the second injury fund not to exceed $400,000 and $870,000 for the 1990-91 and 1991-92 fiscal years, respectively.

Under new rules, a motor carrier who contracts with an owner-operator who is acting as an independent contractor, shall not be required to insure the motor carrier's liability for the owner-operator. A motor carrier may procure compensation liability insurance coverage for an owner-operator and may charge the owner-operator for the costs of the premiums. A motor

carrier shall require the owner-operator to provide and maintain a certificate of workers' compensation insurance covering the owner-operator's employees.

Kansas

Insurers are now authorized to offer workers' compensation policies with deductible options. Employer is now obligated to pay for transportation expenses incurred by injured employee, including expenses during period of rehabilitation.

Self-insurance requirements now state that a private firm shall not be eligible to apply to become a self-insurer unless it has been in continuous operation for at least 5 years, or is purchasing an existing self-insured firm, plant, or facility in the State that meets certain requirements.

Louisiana

The State now permits employers who are members of professional associations or engaged in similar businesses to self-insure their common liabilities; a precise definition of "trade or professional association" was also added.

A new law created the Louisiana Workers' Compensation Corp. as a private, nonprofit corporation to operate as a domestic mutual insurer to provide workers' compensation insurance, a residual market, and related services to Louisiana employers.

The corporation will provide workers' compensation insurance to a residual market of employers who have been unable to obtain insurance from private insurers; also, will provide a competitive market for preferred risk policies. The enactment provides that premium rates charged by the corporation must be adequate to provide solvency and self-funding. The legislation pledges the full faith and credit of Louisiana for any debt incurred by the corporation for 5 years or until the U.S. Department of Labor exempts the corporation from a need for State protection to ensure compensation of maritime workers. (Maritime insurance accounts for 30 percent of the workers' compensation market in Louisiana.)

Discounts on workers' compensation rates are now allowed for high risk employers who implement safety programs. While the statute contained similar provisions, the new law greatly expands the principle with a formal cost containment program, including informal meetings with employers, an occupational safety and health program, incentive discounts for employers who participate, and procedures for evaluating the program.

Regarding seasonal employment, new rules provide that if an injured employee was not engaged in seasonal employment in the year prior to injury, average annual income would be computed by taking the average annual income of other employees in the same or most similar class of employment in the geographic area.

Maine

As part of an employer's worker's compensation policy, insurance carriers must now offer workplace health and safety consultation services to advise and assist the employer in the identification, evaluation, and control of existing and potential accident and occupational health problems.

Insurers are now permitted to offer deductibles of between $250 and $500 for medical expenses.

New legislation requires the Superintendent of Insurance to adopt rules to encourage carriers to take workers' compensation policies out of the residual market by establishing credits applicable to any assessments. The new residual market plan must have a procedure to handle appeals. In a residual market rate proceeding, the Superintendent is allowed to order payment of dividends to those in the safety pool.

The Superintendent is required to adopt rules establishing dividend plans and premium credits of between 5 and 15 percent of net annual premiums for employers who establish and maintain qualifying safety programs.

The Department of Labor is now permitted to award contracts to public and private nonprofit organizations as seed money to develop programs that will serve in the development of long-term improvements in occupational health and safety.

Fringe benefits are now excluded from the calculation of average weekly wage.

A pilot program was established which enables employers and employees to enter into agreements to provide the employees with workers' compensation medical payment benefits through comprehensive health insurance that covers workplace injury and illness. The comprehensive health insurance may provide for health care by a health maintenance organization or a preferred provider organization, however, the premium must be paid entirely by the employer. The program may use deductibles, coinsurance, and copayment by the employees not to exceed $5 per visit or $50 maximum per occurrence.

Health care providers are now required to submit a diagnostic medical report to the employer and to the employee within 5 business days from completion of an examination or from the date of employer's notice of injury, whichever is later. An insurer may withhold payment of medical fees when a provider fails to submit timely reports. Furthermore, in order for a health care provider to qualify for reimbursement, charges for treatment and services cannot be more than what is charged private third-party payers for similar treatment and services.

If an employee who has a permanent impairment, from any origin, that is an obstacle to employment, sustains another injury on the job which, in combination with the preexisting injury, results in total permanent incapacity, the employer or insurer is now liable for all compensation. However, the employer must be reimbursed by the Employment Rehabilitation Fund for compensation payments not attributable to the second injury. The employer must establish knowledge of the impairment at the time the employee was hired in order to qualify for reimbursement from the Fund.

The carrier is now permitted to file a notice of automatic discontinuance if the employee refuses or neglects to submit to any reasonable examination or declines a service, such as vocational rehabilitation, the employer is required to provide.

Legislation calls for the gradual termination of the Second Injury Fund and transfer of remaining funds to the Employment Rehabilitation Fund.

For employers with more than 200 employees (previously 250), the time period during which an employer is obligated to reinstate an employee is extended from 2 years from maximum medical improvement to 3 years from date of injury.

The Medical Coordinator is required to establish treatment protocols and employees are required to purchase generic drugs, if available, and if the prescribing physician indicates that generic drugs may be used.

The workers' compensation commission is now required to maintain a toll-free telephone number for the convenience of employees and employers in obtaining information.

The Maine Employers' Mutual Insurance Co. is established as a competitive State fund and a domestic mutual insurance company which must participate in the residual market. The fund is not to be a guaranty fund. There are two prerequisites to its operation. The first is that on July 1, 1994, if the premium volume in the voluntary market is less than 20 percent of the total statewide premium volume, or, if by December 31, 1995, it is less than 25 percent, the operations of the fund may be initiated. The second prerequisite is that there be an appropriation of no more than $20 million to start the fund, which is to be repaid over a 10-year period.

Maryland

The Annotated Code of Maryland pertaining to labor and employment, including workers' compensation, was revised, restated, and recodified without any substantive changes. However, other enactments made significant changes to workers' compensation provisions. The two-part assessment imposed against an uninsured employer when the Workers' Compensation Fund renders an affirmative decision on a claim for compensation was increased. The first part of the assessment goes from $150 to a range of $150 to $500; the second part—15 percent of the award up to a maximum of $1,500—was increased to $2,500.

The Workers' Compensation Commission is required to levy a 6-1/2 percent assessment on all awards rendered against employers, insurers, and the insured Workers Insurance Fund for permanent disability and death, disfigurement and mutilation, payable to the Subsequent Injury Fund.

Volunteer advanced life support units are now included within the definitions of "on duty" and "volunteer company" as the terms are used in connection with coverage of volunteer fire or rescue companies throughout Maryland.

The Maryland Insurance Code was amended to provide for deductibles in workers' compensation insurance policies, and to require the employer to reimburse any deductible amount to the insurance company.

Montana

A new enactment limits workers' compensation payments for prescription drugs to the purchase of generic products unless a physician specifies no substitutions, or the generic drug is unavailable. The enactment further requires pharmacists to bill only for the cost of the generic product except when purchase of the brand-name drug is otherwise allowed.

The offer of a medical deductible in workers' compensation insurance issued by the State Fund or a private insurer is now mandatory. The new rules continue the requirement that the deductible be offered in amounts of at least $500, but delete the requirement that any deductible must be offered in additional increments of $500, up to a total of $2,500 per claim.

The definition of "employer" was amended to include an organization placing a person who performs community service and to include in the definition of "employee," a person who performs community service.

Now, investment income earned or realized by certain workers' compensation insurers must be considered when determining premium rates. Further, legislation requires a method of computing workers' compensation premium rates for the construction industry that does not impose a higher premium solely because of an employer's higher rate of wages.

A workers' compensation judge may now increase by 20 percent the full amount due a claimant when an insurer agrees to pay benefits, but unreasonably delays or refuses to make the agreed-upon payments to the claimant.

New language provides that if the treating physician releases a worker to return to the same, a modified, or an alternative position that a worker is able to and qualified to perform with the same employer at an equivalent or higher wage than received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though he or she has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled.

The State now requires that employee physical examinations be administered as close to the employee's residence as is practical, and that the written report of the examination be sent to the claimant and to the insurer, instead of the Department of Labor and Industry. The party requesting the examination shall pay the physician directly, rather than reimbursing the Department after it pays.

Legislation deleted the use of a relative value fee schedule and the California Relative Value Studies in favor of the Department of Labor and Industry establishing its own schedule of fees for medical nonhospital services. It also limits the percentage increase in medical costs to the annual percentage increase in the State's average weekly wage.

Impairment ratings by chiropractors are now limited to injuries falling within the scope of chiropractic practice.

Legislation was enacted to place time requirements on applying for certification of vocationally handicapped status—within 60 days of employment or reemployment and before a covered injury occurs.

The Department of Labor and Industry is authorized to use its discretion and require a deposit larger than that specified in the law as evidence of a self-insured's ability to pay claims—$250,000 or a 3-year average of an employer's workers' compensation liabilities.

Certain employee expense reimbursements (meals, lodging, travel) may now be excluded in calculating wages for workers' compensation purposes.

Employee and insurer may now stipulate, in advance of a third-party settlement, the portion of settlement to be allocated under subrogation; however, following approval of agreement by the Department of Workers' Compensation, the issue may not be reopened.

Definitions for "permanent partial disability" and "permanent total disability" were revised and new criteria was provided for establishing permanent partial disability.

Eligibility requirements were redefined for an injured worker to apply for rehabilitation benefits.

Legislation was enacted authorizing Montana to issue $220 million in bonds, payable by the employer's payroll tax, to pay off the unfunded liability of Montana's workers' compensation insurance program for injuries occurring prior to July 1, 1990. The new law provides that during the period beginning October 1, 1991 and ending September 30, 1992, a workers' compensation claimant and the State Fund may, regardless of the lump-sum law in effect on the date of injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law that is in effect on the date of the injury applies.

Nevada

The definition of "police officer" in the occupational disease statute was amended to include parole and probation officers among those for whom certain diseases are presumed to be employment related.

The monthly wage of volunteer firefighters was increased from $900 to $2,000 as a basis for computing certain workers' compensation benefits. A similar change was made for real estate brokers and salespersons, from $900 to $1,500 per month. The minimum monthly compensation for an injury or occupational disease which occurred prior to July 1, 1975, was increased to $400.

The Department of Industrial Relations is now required to develop medical care standards for injured employees. The standards must include guidelines for reviewing diagnostic procedures; treatment and expected duration; medications, including narcotic drugs; second opinion referrals; and multiple health care providers. The Department further requires that standards be periodically reviewed after consultation with organized labor, employers, insurers, and health care providers.

A nonprofit corporation may now reject workers' compensation coverage for its unpaid officers by filing written notice to that effect.

Provisions for elective coverage of sole proprietors were revised to allow payment of additional premiums for increased benefits at least 90 days prior to an injury.

Any physical examination administered to firefighters and police officers, relating to occupational diseases, must now include a hearing test, paid for by the employer.

New Hampshire

"Date of maximum medical improvement" is now defined as the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability.

The definition of "injury" now includes accidental injury or death or any occupational disease or death arriving out of and in the course of employment, including disability in due to radioactive properties or substances or exposure to ionizing radiation. It excludes diseases or death resulting from stress without physical manifestation, and death or injury proximately caused by the employee's willful intention to injure himself or another. Conditions of the aging process are compensable only if aggravated or accelerated by the injury. Further defines "intoxication," "health care provider," "rehabilitation provider," and "gainful employment."

Any employer who is required but fails to secure payment of compensation is now guilty of a misdemeanor with a fine up to $2,500 (formerly $500).

The earnings period prior to an injury was extended from 12 weeks to 26 weeks for the purpose of establishing an average weekly wage.

Compensation for disability or other benefits is now barred unless a claim is filed within 3 years following the date of injury. If the nature of the injury and its possible relationship to the employment are unknown to the employee, the date for filing a claim will not begin until the employee knows, or by reasonable diligence should know, the nature of the injury and its possible relationship to employment; or in the event of death, the date any dependent knows, or by reasonable diligence should know, of the nature of the injury and its possible relationship to employment, whichever is earlier.

The waiting period before benefits are due for the first 3 days of disability is extended from 7 days to 14 days. With certain exceptions, a health care provider is prohibited from referring an injured worker for medical care or related services to any other health care provider in which the referring provider has a financial interest, unless it is ethically appropriate and medically indicated. The Commissioner of Labor may now assess a civil penalty of up to $2,500 on any health care provider who bills an injured employee or employer for services covered by insurance, without sufficient cause. Except for first aid, there will be no reimbursement for services unless the health care provider furnishes the required report within 10 days of the first treatment. The employer or insurer is now required to pay the health care provider within 30 days of receipt of a bill for

services. An employer, insurer, or injured employee who receives a medical report which includes information relative to remedial treatment is required to file the report with the Commissioner within 15 days after receipt of report. Failure to provide these reports may result in a fine of up to $2,500.

An amendment requires development and implementation of a medical and rehabilitation fee schedule by July 1, 1993; establishes a peer review panel to perform utilization reviews; and allows a fine of up to $2,500 for improper overutilization, inappropriate medical treatment, or inappropriate reimbursement.

Funeral and burial expenses were increased from $3,000 to $5,000.

For temporary and permanent total disability, the maximum allowable compensation rate may not exceed 100 percent of the employee's after-tax earnings.

The maximum period for receipt of temporary partial and permanent partial disability benefits was increased from 341 weeks to 350 weeks.

The Compensation Appeals Board was established, administratively attached to the Labor Department, and empowered to hear appeals anew from decisions of hearing examiners. Appeals from decisions of the Board will go directly to the New Hampshire Supreme Court.

Reimbursement was provided from the Second Injury Fund of 50 percent after the first $10,000, paid prior to the first 104 weeks of disability on all compensations for all injuries and deaths occurring on or after January 1, 1991.

Employers who provide job modification may be reimbursed from the Second Injury Fund for 50 percent of the cost of the modification, up to $5,000 per employer per year.

New legislation increases the interest payable on controverted claims from 6 percent to 10 percent, computed from the date of injury.

All insurance carriers authorized to write workers' compensation insurance will provide, at the employer's request, a workers' compensation insurance rate containing a deductible provision which shall bind the employer to pay, at a minimum, 100 percent of the first $500 of benefits awarded an employee, whether these benefits are medical or indemnity. The Insurance Commissioner may approve deductibles greater than $500.

New Jersey

In the case of death benefits for a surviving spouse who remarries prior to receiving total compensation for death, the law now provides that such spouse upon remarriage is entitled to receive the remainder of compensation due, or $2,500, whichever is less. Formerly, such spouse would have been entitled to receive the remainder of compensation due, or $1,000, whichever was less.

Burial and funeral expenses were increased from $2,000 to $3,500.

New York

Limitations on the cost of certain medical services were raised from $150 to $500, for which prior authorization is required from the employer or the Workers' Compensation Board. Also requires that denial of such authorization must be based on a conflicting second opinion rendered by a physician authorized by the Board.

Funeral expenses of firefighters who die in the line of duty may now be paid to the undertaker providing burial unless the claimant has already made payment. Also, funeral expenses will be paid in all cases where all work-related injuries caused death, including cases where there are no persons entitled to other compensation payments.

Newly enacted legislation provides more timely payments to claimants where compensation is awarded and the employer is uninsured. When an uninsured employer is a corporation, the president, secretary, and treasurer thereof shall also be held personally, jointly, and severally liable, along with the corporation, for payment of claim.

Prohibits an employer from inquiring into, or to consider for the purpose of assessing fitness or capability for employment, whether a job applicant has filed for or received benefits, or to discriminate against a job applicant with regard to employment based on claimant having filed for or received benefits.

North Carolina

The assessment against employers or carriers for the Second Injury Fund in cases of permanent partial disability is increased from $50 to $100 for the loss of, or loss of use of, each minor member, and from $200 to $500 for 50 percent or more loss of, or loss of use of, each major member. Workers' compensation coverage is now provided for employees who are injured outside North Carolina but whose principal place of employment is within the State.

North Dakota

The penalty for an employer deducting any portion of the compensation insurance premium from employee wages was upgraded from an "infraction" to a "Class A misdemeanor." Further, employers who willfully misrepresent payrolls are now guilty of a "Class A misdemeanor."

Provides detailed procedures for administering an initial claim or reapplication for benefits. After a claim is filed, the employer has 30 days to respond or claim is automatically accepted by the Workers' Compensation Bureau.

Medical and hospital fee schedules, prepared by the Workers' Compensation Bureau, must now include cost-saving measures and must be approved by the Committee on Administrative Rules prior to publication by the Legislative Council.

Provisions for maximum attorney's fees, waver of such fees, and authority of Job Service to establish hourly fees for legal assistants and court reporters are repealed.

New legislation establishes lists of persons to serve on regional Workers' Compensation Binding Arbitration Panels to hear employee appeals in place of formal administrative hearings or judicial remedies. Lists must include an equal number of representatives from organized labor and employers, together with an equal number of professional arbitrators, with lists being revised every 3 years. Employee and employer select names from the list to make up the panel to hear their case.

Under new legislation, the Bureau of Workers' Compensation establishes a managed medical care program through a third-party administrator which includes the monitoring of medical treatment of injured employees and the monitoring of payment of medical expenses of all workers' compensation claims.

New legislation makes any officer, director, or employee who has at least 20 percent ownership of a corporation and who is responsible for filing reports and making premium payments, personally liable for failure to file reports, delinquent premiums, or reimbursement, including interest, penalties, and costs. This personal liability survives corporate dissolution, reorganization, bankruptcy, receivership, or assignment to creditors.

The employer is now responsible for reimbursing the Workers' Compensation Bureau for the first $250 of medical expenses for each compensable injury, and is penalized for medical reimbursements not paid within 90 days. The penalty may not exceed 125 percent of the amount owed by the employer. A $100 penalty is imposed on health care providers who fail or refuse without just cause to file reports within 30 days of an examination, treatment, or other services in connection with a compensable injury, or within 30 days of a request for such report by the claimant or the Bureau. Injured workers may not be billed for the imposed penalty.

If the Workers' Compensation Bureau determines that an employee willfully fails to report wages while receiving compensation, the employee forfeits all additional lost-time benefits.

New reporting requirements by physicians are established for verifying a claimant's temporary total disability status.

An employee who has retired or voluntarily withdrawn from the labor force is now presumed retired from the labor market and is ineligible for receipt of disability benefits. This presumption does not apply to any employee who is permanently and totally disabled.

New legislation increased maximum benefits for partial disability to 100 percent of State average weekly wage—from 66-2/3 percent.

Partial disability benefits may not exceed a period of 5 years unless the injury is catastrophic. An employee's earning capacity may now be established by expert vocational evidence; actual post-injury earnings are presumptive evidence of earning capacity unless rebutted by "competent" evidence presented by a vocational expert.

Legislation revises conditions under which lump-sum payments may be made and presents rehabilitation provisions in detail.

Upon determination that the injury is compensable, the Workers' Compensation Bureau may now require the employee to select a second physician from the Bureau's list to replace the initial treating physician selected by the employee, in order to better direct the medical aspects of the claim.

A new enactment provides that if the Workers' Compensation Bureau has not adopted its own fee schedule by February 1, 1992, it may

set fees for medical and hospital care at 110 percent of the amount allowed for that medical or hospital service under the Medicare profile in effect at the time the service is provided. Also requires the Workers' Compensation Bureau to establish a supplemental schedule for services not covered by the profile. Any fee charged in excess of set amount may not be recovered from the employee, employer, or the Bureau.

A new formula is established for calculating employers' premiums to the Workers' Compensation Fund.

Workers' compensation benefits are now provided for a worker whose employment is in North Dakota but who is injured or dies from an accident while working outside the State.

Oregon

Under new legislation, all permanent partial disability awards are now adjusted based on changes in the State average weekly wage. Increases from year to year are restricted to 5 percent. If an attorney is instrumental in obtaining compensation for a claimant and a referee hearing is not held, a reasonable attorney fee is now allowed. This new provision applies to all claims not finalized insofar as attorney fees are concerned prior to June 19, 1991, regardless of date of injury.

Foster parents, volunteers with nonprofit organizations, and home health care workers were added to the list of those exempt from the workers' compensation law.

The workers' compensation corporate officer exclusion was amended to exclude virtually all family-operated corporations in commercial timber or building and construction.

Death benefit provisions were amended to specify that if the surviving spouse dies before all children have reached age 18, any child under age 18 shall be paid $400 a month until that child becomes 18.

Rhode Island

The insurance commissioner was authorized to establish a Workers' Compensation Service Center for assigned risk policies. The center will be responsible for issuing policies, billing, auditing, accounting, and commission payments to agents. The operation of the center may be contracted out.

Employers and Insurers were required to file with the Department of Workers' Compensation within 60 days after discontinuance or suspension of compensation payments, an itemized statement of the total amount of compensation, medical, and other expenses paid.

New legislation transferred the function of the Department of Workers' Compensation to the Department of Labor and provided to the Director of Labor all powers and duties formerly vested in the Director of the Department of Workers' Compensation.

The Workers' Compensation Second Injury Indemnity Fund was renamed Workers' Compensation Administrative Fund, to be administered by the Director of Labor. Monies paid into the Fund shall be used for operation of the Donley Rehabilitation Center, education unit, Second Injury Fund, State compensation insurance fund, and the administration of workers' compensation provisions. In second injury cases, new legislation limits payments to any partially incapacitated employee who has returned to work for at least 13 weeks at earnings less than his or her preinjury earnings, up to 150 percent of the State's average weekly wage.

An insurer's annual payment into the Workers' Compensation Administrative Fund was increased from 2-3/4 percent to 4-1/4 percent of the gross premiums received for workers' compensation or employer's liability insurance. The amount paid for every case, if injury caused death, was increased from $750 to $1,500.

South Carolina

Workers' compensation coverage of county prisoners now applies to all prisoners regardless of the length of sentence to be served (previously applied only to prisoners serving sentences of 90 days or longer). The basis for computing compensation for prisoners and volunteer deputy sheriffs was also changed.

South Dakota

Upon remarriage of the surviving spouse, payment to eligible children may not commence until 2 years from the date of remarriage.

Volunteer firefighters now have workers' compensation coverage under certain conditions.

An amendment clarifies the grounds for denial of workers' compensation benefits by including illegal drug use as a form of willful misconduct. Benefits can also now be denied if an employee willfully misrepresents his physical condition when hired, the employer substantially relied upon the false representation, and there was a casual relationship between the misrepresentation and the injury.

Workers' compensation benefits must now be paid within 10 days of due date or a 10-percent penalty may be assessed. Health care providers are now prohibited from charging eligible workers' compensation claimants higher prices for goods, care, or services.

Employers may now negotiate a deductible for workers' compensation that is higher than the previous limit of $2,500.

A crime victim's compensation program was created to assist crime victims with medical and hospital expenses, loss of earnings, loss of future earnings, funeral and burial expenses, and loss of economic benefits or support to dependents, including home maintenance and child care expenses.

Tennessee

Reimbursable funeral and burial expenses were increased from $3,000 to $4,500.

Texas

The Insurance Code was amended to establish the Texas Workers' Compensation Insurance Fund, a competitive State-operated entity to insure workers' compensation liability for employers. Fund revenues consist primarily of employer premiums, investments, and income from the issuance of bonds. The total amount of bonds issued may not exceed $300 million and are an obligation of the Fund, not the State of Texas. Although the Fund is competitive, it also is the insurer of last resort for those employers who are unable to obtain workers' compensation insurance. Such risks shall be issued at higher premiums.

Further, the Property and Casualty Insurance Guaranty Act was amended to establish the Texas Property and Casualty Insurance Guaranty Association, as a nonprofit, unincorporated legal entity composed of insurers authorized to transact insurance business in Texas. The Association will function as an insurance fund for workers' compensation, automobile insurance, and certain other lines of insurance, in the event payments of covered claims are excessively delayed in situations involving impaired or insolvent insurers.

An amendment to the workers' compensation law provides that a professional athlete injured under the scope of employment must now elect to receive either workers' compensation benefits or the benefits available under the athlete's contract.

Utah

"Disability" is now defined to mean becoming medically impaired as to function; it can be total or partial, temporary or permanent, industrial or nonindustrial. "Impairment" is now defined as a purely medical condition reflecting any anatomical or functional abnormality or loss; it may be either temporary or permanent, industrial or nonindustrial.

Criteria was revised for receiving hearing loss benefits.

Winter olympic volunteers were provided workers' compensation coverage.

Virginia

Vocational rehabilitation expanded its programs to include vocational evaluation, counseling, job coaching, job development, job placement, on-the-job training, education, and retraining.

For coverage under workers' compensation, volunteer law enforcement chaplains are now considered employees. "Award" is now defined as the "grant or denial of benefits or other relief" under the workers' compensation law. The Industrial Commission was renamed the Workers' Compensation Commission.

By specific reference, casual workers, domestic servants, and farm and horticultural laborers were excluded from coverage. Also excluded were employees of any common carrier by railroad engaging in commerce between States, and employees of any common carrier by railroad engaging in intrastate trade or commerce. Also excluded are employees of any person, firm, or private corporation, including any public service corporation, that regularly has in service fewer than three employees in the same business, unless such employees and their employers voluntarily elect to be covered under the act. This exemption does not apply to operators of underground coal mines or their employees.

The time limit for an employer to furnish medical benefits to an injured employee was changed from "as of" to "15 days prior to" the date of first communication of the diagnosis of an occupational disease to the employee.

Federal employees are now excluded from average weekly wage computations.

The use of nonprescription controlled substances is now an employee action which disallows workers' compensation.

Washington

A surviving spouse may now elect a lump-sum payment equal to 2 years of monthly payments. Also established were procedures to contest orders relating to assessments on overpayment. Employees covered by the Federal Employees' Compensation Act (FECA) are now specifically excluded from coverage if such employees are paid State benefits and are subsequently approved for FECA benefits; State benefits shall be repaid by the employee.

West Virginia

By enactment, elective workers' compensation coverage is now provided for certain corporate or association officers, partners, and owners of sole proprietorships; however, certain officers who also have primary duties ordinarily performed by a worker or administrator, shall not be excluded from workers' compensation coverage by employer election. Employers must notify the Workers' Compensation Division of any decision to exclude certain officers from coverage. Also, elective workers' compensation was provided for officers of nonprofit corporations and elected officials.

Wyoming

Employees are now reimbursed for travel when obtaining medical and hospital care. The maximum total annual premium rate for workers' compensation insurance for any employer was increased from 5.5 percent of payroll to 6 percent, for calendar year commencing January 1, 1992; 7.5 percent for calendar year commencing January 1, 1993; and 8.5 percent for calendar year commencing January 1, 1994, and each year thereafter.

The card system

The 'working card' system was the one method by which the fledgling unions could enforce their agreements with employers and ensure a wholly union crew. The system was based on the issuance of a card denoting paid-up membership in the union. Enforcement was undertaken by so-called "walking delegates," forerunners of the modern business agent. The walking delegates were part-time, usually unpaid, unionists, whose charge was to travel from worksite to worksite observing conditions on the job and checking cards. The steady stream of new workers arriving in Portland almost constantly, and the volunteer status of the walking delegates, made the card system almost impossible to implement thoroughly or to police effectively. With 3,000 unionists in Portland by 1889, not all of whom were always current in their dues payments, the wonder is not that it failed after a sporadic existence of a year or so, but that it was attempted at all.

—CRAIG WOLLNER
The City Builders: One Hundred Years of Union Carpentry in Portland, Oregon, 1883–1983
(Portland, The Oregon Historical Society, 1990), p. 12.