Workers' compensation: State enactments in 1992

Workers' compensation fraud received considerable attention; some States extended coverage to volunteers and provided alternative sources of coverage through competitive compensation funds

Ruth A. Brown

During 1992, four States provided workers' compensation coverage through alternate sources, other than through workers' compensation insurance. Alabama permitted employers to insure for workers' compensation liability by any combination of life, disability, accident, health, or other insurance as long as coverage did not limit or exclude workers' compensation benefits. California implemented a pilot project under which a participating employer would be authorized to contract with a qualified health care service plan to be the exclusive provider of medical care for work and nonwork injuries and illnesses. Georgia's insurance commissioner was authorized to approve pilot projects which allowed employers and employees to enter into agreements to provide employees with workers' compensation medical benefits through comprehensive health insurance that covers workplace injuries and illnesses. Maine passed legislation requiring the superintendent of insurance to adopt rules to permit employers and employees to enter into agreements to provide the employees with health care benefits covering both workplace and nonworkplace injury and illness.

The number of States allowing workers compensation policies with deductibles continued to increase, as Kentucky, Minnesota, Mississippi, and Missouri instituted such provisions. Colorado increased the amount of the deductible allowed under its statute.

Workers' compensation fraud received considerable attention in 1992, as Connecticut, Minnesota, and Oklahoma established fraud units within their workers' compensation divisions, and Alabama, Missouri, and Rhode Island stiffened their fraud penalty provisions.

Volunteers are now provided workers' compensation coverage under certain circumstances and/or for certain benefits in Alabama, Alaska, Colorado, Indiana, and Minnesota. New legislation in Minnesota, Mississippi, Missouri, Tennessee, and Utah require employers to establish workplace safety programs.

Tennessee established a competitive State workers' compensation insurance fund that would be subject to the same requirements of the law and regulation as any other insurer offering workers' compensation coverage. As a result of reform of Maine's workers' compensation system, legislation was enacted to create an employer's mutual workers' compensation fund to provide a competitive market for coverage; previous legislation relating to a competitive State fund was repealed by the new legislation.

Georgia increased its maximum weekly temporary total disability benefits from $225 to $250, and placed a 400-week cap on such benefits except in catastrophic cases.

Iowa and Ohio now call for garnishment of workers' compensation benefits to pay for child support, and West Virginia allows garnishment for payment of child or spousal support.

Maximum funeral and burial expenses were increased in Alabama from $1,000 to $3,000; Iowa, $1,000 to $5,000; Minnesota, $2,500 to $7,000; and Virginia, $3,000 to $5,000.

Following is a summary of legislation enacted by individual States:

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Alabama

A Workers' Compensation Medical Services Board was established to insure that high quality medical services are provided in a cost-effective manner to employees injured on the job. The board is required to establish a medical fee schedule, although any employer, carrier, self-insurer, or group fund is allowed to contract with physicians, hospitals, and health care providers for medical services to injured employees at any rates, fees, or levels of reimbursements mutually agreed upon.

Employers are permitted to insure workers' compensation liability by any combination of life, disability, accident, health, or other insurance as long as coverages insure without limitation or exclusion of workers' compensation benefits.

The minimum amount of penalty assessment for failure to secure workers' compensation coverage is increased from $25 to $100. The maximum amount remains unchanged at $1,000. The court is permitted to further impose civil penalties not to exceed $100 per day.

Legislation now permits workers' compensation to be offset against other benefit recovery.

Burial expenses were increased from $1,000 to $3,000. In the event there are no dependents, the law now requires an employer to pay a lump-sum payment of $7,500 to a deceased employee's estate.

The law was amended to specify that if an injury occurs from a worker being intoxicated due to the use of alcohol or being impaired by illegal drugs, eligibility for workers' compensation benefits will be forfeited.

The time limit for filing an occupational disease claim is extended from 1 year to 2 years after date of injury or death.

The director of the Department of Industrial Relations is required to develop and issue a standardized claim reimbursement form to be used by the providers, and assist providers in developing a system for electronic reporting, billing, and payment in workers' compensation cases.

The numerical exemption from elective compensation was increased from fewer than three employees to fewer than five employees regularly hired under contract for a job other than in construction or assisting on-site in construction of single family, detached residential dwellings. An employer electing not to accept workers' compensation coverage shall notify each employee in writing, and must post, in a conspicuous place, a notice alerting all employees and job applicants that workers' compensation coverage is not available.

New legislation provides coverage for volunteer firefighters and rescue squad members. The regular employer of a volunteer firefighter or rescue squad member is exempt from liability for compensable injury sustained while in voluntary status.

The law now requires that when a job offer is made, the employer shall provide a written warning that the misrepresentation of a preexisting physical or mental condition may void workers' compensation. If the employee knowingly and falsely misrepresents in writing a physical or mental condition and the condition is aggravated or reinjured in a work-related accident, workers' compensation benefits will be prohibited. The burden of proof will be on the employer to establish the defense if an injury occurs because of the preexisting condition.

An "Ombudsman Program" is established to assist injured or disabled employees, persons claiming death benefits, employers, and other persons in protecting their rights and obtaining information available under the workers' compensation law.

Legislation now requires that undisputed medical reimbursements or payments must be paid within 25 working days of receipt of claim. Failure to comply will result in an additional 10 percent to be added to the unpaid balance and, in certain circumstances, the violator will be assessed a civil penalty, not to exceed $500.

New legislation provides that if workers' compensation is payable for pneumoconiosis or radiation, the only employer liable will be the one in whose employment the employee was last exposed in each of the last 12 months within 5 years prior to the date of injury, and any employer who furnished workers' compensation during this period.

Alaska

New legislation provides workers' compensation coverage for State-certified volunteer emergency medical technicians who serve outside an incorporated city or borough.

California

The provision that defines an acupuncturist as a physician for treating employees under the workers' compensation law was extended to remain in effect until January 1, 1997. The Division of Workers' Compensation is required to evaluate the participation of acupuncturists in the treatment of injured workers and report to the legislature by December 31, 1995.

New legislation requires the Division of Workers' Compensation to implement a pilot project under which a participating employer would be authorized to contract with a qualified health care service plan to be the exclusive provider of medical, surgical, and hospital treatment for work and nonwork injuries and illnesses incurred by employees.

The definition of "compensable injury" was amended to include a reaction to prophylactic health care offered by an employer to a health care worker. This prophylactic care must be intended to prevent the development of a bloodborne disease recognized as occupationally incurred, and is provided either because of risk of occupational exposure or after work-related exposure.

Colorado

Legislation now provides workers' compensation benefits to volunteer civil defense workers, not otherwise covered by the State workers' compensation system.

The amount of maximum deductible per claim on workers' compensation insurance policies was increased from $1,500 to $5,000.

Drivers who are independent contractors under lease agreements are excluded from workers' compensation coverage; but, comparable coverage shall be offered by the Colorado Compensation Insurance Authority.

The law now provides that after July 1, 1993, the Subsequent Injury Fund will not accept any new cases and, at that time, any situations in which multiple injuries render a person permanently and totally disabled, any premium increases because of the injury may not fall totally on the subsequent employer, but would allow the insurer to seek proportional indemnification from any previous employer.

The collection of fines for violations of the workers' compensation law will now be divided so that 25 percent is paid into the Subsequent Injury Fund and 75 percent is paid to the aggrieved party instead of the aggrieved party being paid the entire amount.

The law now limits the amount of death benefits deposited by insurers into the Subsequent Injury Fund to the amount of death benefits in no-dependency situations, rather than the previously stipulated amount of $15,000.

Connecticut

Payments are no longer permitted from the Second Injury and Compensation Assurance Fund for dependency allowance because of the failure or inability of the employer to pay.

New legislation created a workers' compensation fraud unit to investigate cases of alleged fraud involving any claim for benefits, any receipt of benefit payments, or the insurance or self-insurance liability.

Georgia

The Insurance Commissioner is now authorized to approve workers' compensation

health benefits pilot projects which will enable employers and employees to enter into agreements to provide employees with medical benefits through comprehensive health insurance that covers workplace injuries and illnesses.

The law now permits the right of action in court against some person other than the employer who is liable for an employee's injury or death.

A trial division and appellate division within the Workers' Compensation Board were created to handle judicial functions of the Board.

New legislation requires employers to display a summary of the rights, benefits, and obligations under the workers' compensation law in locations accessible to employees. Failure to comply will result in an administrative fine not to exceed $1,000.

The maximum weekly benefit for temporary total disability was increased from $225 to $250; and the total number of weeks was limited to 400, but in catastrophic cases, benefits will be paid until the employee undergoes a change in condition for the better.

The total maximum death benefit payable to a surviving spouse as a sole dependent at the time of employee's death was increased from $65,000 to $100,000.

The American Medical Association's Guide to the Evaluation of Permanent Impairment is now the sole reference used for rating the percentage of disability or bodily loss in workers' compensation cases.

Although hearings are required to be held as soon as practical, the law now specifies that hearings shall be scheduled no less than 30 days nor more than 60 days from the date of hearing notice.

Hawaii

The method for determining permanent partial disability was changed to the State's average weekly wage multiplied by the number of weeks specified for the schedule award and the resulting amount paid in weekly installments equal to 66-2/3 percent of the worker's average weekly wage. Previously, the method required multiplying the worker's average weekly wage, subject to a maximum weekly restriction, by the number of weeks specified in the schedule.

Idaho

The law now provides an alternative penalty for any employer who fails to secure workers' compensation insurance by assessing an employer either $2 each day for each employee or $25 each day the failure continues, whichever is greater.

New legislation prohibits an employer from declaring that an injured employee is an independent contractor if the employee is covered by the employer's workers' compensation policy.

Indiana

The law now provides that a volunteer working as an authorized emergency management worker, a police reserve officer, or a member of a hazardous materials response team may be covered by the medical treatment and burial expense provisions of the workers' compensation law and the occupational disease law.

Iowa

The garnishment of workers' compensation benefits is permitted for the payment of child, spousal, or medical support obligations.

Legislation provides that in a dispute between an employer, a carrier, or a provider regarding the reasonableness of a fee for medical services, payment cannot be sought from the injured employee.

Burial expenses were increased from $1,000 to $5,000.

Kansas

The date each workers' compensation pool is required to submit a certified financial statement will be 90 days after the end of the pool's fiscal year, rather than on or before March 31 of each year.

Kentucky

Insurers are permitted to offer optional workers' compensation deductibles to policyholders for the payment of benefits; and, policyholders who select a deductible policy may be granted a premium reduction by the insurer. If the insurer determines that the policyholder is not financially able to comply with the terms and conditions, the insurer is not required to offer the deductible.

To receive payment, medical providers are required to submit a statement for services within 45 days of initial treatment and every 45 days thereafter as long as medical services are rendered.

Louisiana

Legislation now provides for benefits to be paid to survivors of a job-related death that occurs within 2 years of the last treatment resulting from the accident, rather than 2 years after the accident.

Foreign corporations operating in the United States are required to apply for a certificate of compliance with the Office of Workers' Compensation; within 10 days of receipt of the application, either a certificate must be issued or the application rejected.

The law now requires that to resolve disputed claims, an informal conference must be scheduled with a dispute resolution officer within 15 days from receipt of the disputed claim; within 5 days after a conference is held, the officer must issue a report. If the report states that the parties were unable to resolve the dispute, the director of the office of workers' compensation administration shall then serve notice on any named defendant in any manner provided by law or by certified mail.

The annual assessment against insurers and self-insurers for payment into the Second Injury Fund was increased from 2 percent to 2-3/4 percent.

Legislation now provides an alternative penalty that if compensation or medical benefits are not paid within the requisite time period, there shall be a penalty of 12 percent of the amount due or $50 per calendar day not to exceed $2,000, whichever is greater. An additional 24 percent of the amount due or $100 per day not to exceed $3,000 shall be added if benefits are not paid within 30 days of final judgment.

Maine

The law now permits the establishment of a benefits pilot project to provide coverage for nonworkplace injury, illness, and other health care benefits, allowing for case management and cost control mechanisms, including the use of preferred provider organizations. The premium must be paid entirely by the employer and the deductible for health care may not exceed $50 per injury or illness, and the co-insurance may not exceed $5 per treatment.

Workers' compensation coverage is now provided for forest fire wardens and laborers hired by municipalities for forest fire-fighting activities.

New legislation requires employers to pay into the Employment Rehabilitation Fund 100 times the average weekly wage in death cases in which there are no beneficiaries or dependents.

Irrevocable standby letters of credit issued by a qualified financial institution are now allowed to be used by employers as proof of solvency and financial ability to pay workers' compensation benefits.

Legislation was enacted resulting in a major reform of the workers' compensation system, based on recommendations of a Blue Ribbon Commission. Some of the changes instituted by the reform plan include: creating an eight-member board representing labor and management to manage the system; creating an Employers' Mutual Workers' Compensation Fund to provide a competitive market for coverage; reducing the dura-

tion of benefits for less seriously permanent partial injuries from 500 to 260 weeks; requiring injured workers to now pay their attorneys' fees; reducing the maximum weekly benefit from $536 to $441 or 90 percent of the State average weekly wage; extending the waiting period for workers' compensation benefits from 3 to 7 days; and, eliminating the annual inflation adjustment for permanent total disability and death benefits.

Minnesota

The definition of "employee" was amended to include a voluntary uncompensated worker in the building and construction industry who renders services for joint labor-management nonprofit community service projects.

New legislation limits the payment of temporary partial compensation to not more than 225 weeks, or after 450 weeks after the date of injury, whichever occurs first.

Effective October 1, 1992, the maximum weekly benefit payment for temporary total disability was increased from 100 percent to 105 percent of the State average weekly wage, and the minimum weekly benefit payment was decreased to 20 percent from 50 percent of the State average weekly wage, or the employee's actual wage, whichever is less.

Burial expenses were increased from $2,500 to $7,500.

Legislation was enacted to establish a workers' compensation fraud unit to investigate fraudulent and other illegal practices of health care providers, employers, insurers, attorneys, employees, and others.

New legislation requires employers of 25 or more workers to establish and administer a joint labor-management safety committee, and those with fewer than 25 employees must also establish a safety committee if they have a high workers' compensation premium rate or high loss workday incidence rate.

New legislation provides for the establishment of a small claims court within the Department of Labor and Industry for the purpose of settling small claims for rehabilitation and medical benefits totaling $5,000 or less.

Legislation was enacted to require an insurer, including assigned risk plan insurers, to make a workers' compensation policy with a deductible available to an employer upon request. The premium amount, to be paid by an employer selecting a policy with a deductible, shall be reduced based upon a rating schedule or rating plan filed with and approved by the Commissioner of Commerce.

New legislation requires the commissioner to adopt permanent rules regulating medical fees and to develop a relative value fee schedule to become effective on October 1, 1993, which reflects an overall 15-percent reduction from the most recent medical fee schedule. The fee schedule will be adjusted each year by the change in the State average weekly wage.

Mississippi

The law now exempts workers' compensation liability for any purchaser of timber products who is not liable for unemployment tax on the person who harvests and delivers the timber.

New legislation requires each insurance carrier or commission approved self-insured employer to maintain a workers' compensation claims office beginning July 1, 1993.

The Commissioner of Insurance is authorized to require each insurer to establish a safety program for the health and benefit of the employees of the insured employer.

Insurers are now allowed to offer workers' compensation deductibles which shall be collected from the employer pursuant to the contract between the employer and insurer.

New legislation requires the Workers' Compensation Commission to establish a medical fee schedule, medical cost containment system, and utilization review.

Missouri

Provisions are added that would prohibit a workers' compensation claim for mental injury from work-related stress unless the stress was extraordinary and unusual.

New legislation requires the Department of Labor and Industrial Relations to establish standards for certified safety programs that would enable employers to receive a one-time premium credit of up to 10 percent in the second year after the employer establishes a safety program and had at least 50 percent decreases in both injuries and lost work days, or has no injuries or lost work days.

The Division of Workers' Compensation is now required to establish a toll-free number for injured workers to call and receive information; and, beginning January 1, 1993, employers are required to post a notice of workers' compensation coverage and other information available to the employees. Employers found in willful violation of this provision will be subject to a fine of $50 to $1,000, or up to 6 months imprisonment, or both.

New legislation requires that a fine of up to $10,000 be imposed for providing fraudulent information regarding a workers' compensation claim, for failing to provide workers' compensation coverage, for fraudulently filing a workers' compensation claim, and for making a fraudulent statement regarding a workers' compensation claim or related matter.

Health care providers are now prohibited from charging a fee for services rendered for a workers' compensation injury that is greater than the usual and customary fee received from private patients, as well as being prohibited from billing or attempting to collect from patients for medical charges they know to be a work-related injury. Health care providers are also required to disclose any financial interest they have in facilities to which they refer their patients.

Provisions now permit the employer to begin workers' compensation payments prior to a final ruling or compensability of the injury. If a claim is found to be fraudulent or noncompensable, the employee shall reimburse any amount received either by lump-sum payment, payroll deduction, or garnishment of wages.

The penalty interest imposed for the late payment of weekly benefits was increased from 8 percent to 10 percent a year.

Legislation was enacted to permit insurers to offer workers' compensation deductibles. The employer agrees to pay the deductible amount to the person or health care provider entitled to such payment, however, the insurer must retain ultimate responsibility for the payment of compensation claims. Any losses paid by the employer under the deductible shall be credited against the employer's experience modification, unless otherwise agreed to by the insurer and employer.

The Missouri Private Sector Individual Self-Insurers Guaranty Corporation was created to examine self-insurers to assure their ability to self-insure for workers' compensation. The Corporation will pay claims of injured employees if the self-insurer becomes bankrupt or is unable to pay claims. Self-insurers are initially assessed $200,000 per year.

New legislation requires the Workers' Compensation Division to create a public information program in each area office to assist all parties inflicted by an injury or involved with a claim under the workers' compensation provisions.

The law now provides that if an employer's work force is partly obtained through an employee leasing arrangement, the employer may be required to provide separate workers' compensation coverage on leased and non-leased employees.

Nebraska

Provisions relating to attorney's fees were clarified to limit awarding attorney's fees to those cases in which the employer refuses

payment of compensation or medical payments, or neglects to pay medical payments after 30 days notice of obligation to pay. Attorney's fees allowed can neither be deducted from the amount payable for medical benefits, nor be charged to the medical providers.

Provisions were expanded to permit the court to require the employer or insurer to pay for a court reporter at a hearing; however, reimbursement is provided if the other party is ultimately ruled responsible for such costs.

New Hampshire

The definition of "homogenous" was added to the provision to mean "of a similar kind or nature," "or possessing similar qualities and attributes." Hence, a group of "homogeneous employers" would be employers who have similar trades, business, occupations, professions or functions.

New laws provide for homogenous employers to be subject to the requirements of the workers' compensation law to secure workers' compensation coverage; and also allow any private employer or any group or association of homogenous employers to self-insure for workers' compensation provided certain requirements are met.

New York

Provisions relating to proof of self-insurers' financial ability to pay workers' compensation benefits was amended by deleting the specified amount of cash that can be used as a security deposit.

Law now considers a spouse who is also an employee of a covered employer to be included in the employer's disability insurance plan, unless the employer elects to exclude the spouse from coverage.

Stipulations establishing occupational disease shall also be considered by the referee at a prehearing conference.

Ohio

Legislation was enacted that now permits the garnishment of workers' compensation benefits for child support payments.

Oklahoma

The fine imposed on employers for failure to submit timely accident reports was increased from $500 to $1,000; and the fine imposed on insurers for failure to report the issuance of a workers' compensation policy or guarantee insurance policy increased from $200 to $1,000.

The definition of "injury" or "personal injury" was modified to include job-related stress which causes heart-related injury, illness, or death, and to exclude mental injury unaccompanied by physical injury.

The basis for computing periodic compensation benefits was changed to 70 percent of the employee's average weekly wage instead of 66-2/3 percent; the benefit maximum was increased from 66-2/3 percent to 75 percent of the State average weekly wage; and, the cap on payment for disfigurement was increased from $10,000 to $20,000.

Legislation provides that during a period of temporary total disability an employee is prohibited from being discharged from employment solely on the basis of absence from work. Legislation strengthens the existing provision that an employer is not required to rehire or retrain an employee physically unable to perform assigned duties.

The impairment threshold for claims against the Special Indemnity Fund was increased from 17 to 40 percent.

A Workers' Compensation Fraud Unit within the Office of the State Attorney General was created to investigate and prosecute suspected workers' compensation fraud. Legislation authorizes the Workers' Compensation Court to impose sanctions and penalties necessary to control fraud and abuse.

After an employer is cited for two offenses of failing to obtain workers' compensation insurance, the Labor Commissioner is authorized to issue a cease and desist order.

Rhode Island

Provisions were expanded to subject an insurance company to prosecution for a misdemeanor, and fined $250 for each offense, for refusing to notify the director of the issuance, cancellation, or renewal of a workers' compensation policy.

The penalty assessment increased from $50 to $100 for employers who refuse to display a copy of the summary of major provisions of the workers' compensation law at place of business.

The definition of "employee" was revised to specifically exclude partners and sole proprietors, and further revised by defining "seasonal occupation" to mean those occupations in which work is performed on a seasonal basis of not more than 16 weeks.

The definition of "earnings capacity" was revised to include the ability to earn, including a determination of the degree of functional impairment and/or disability of an employee; and, "functional impairment" is defined as an anatomical or functional abnormality existing after the date of maximum medical improvement.

"Maximum medical improvement" is defined as a physical or mental impairment that has become stable, and no further treatment is expected to improve the condition.

In an effort to encourage resolution of workers' compensation cases, provisions were added authorizing the court to order "last best offer" procedures in which either party's last best offer would be final and binding.

New legislation created an 11-member medical advisory board that is required to prepare a recommended standard, applicable to proceedings before the Workers' Compensation Court, for consideration and weighing of medical evidence.

New provisions authorize the chief judge of the workers' compensation court to establish a health care arbitration panel and to establish rules and procedures for the panel to make binding decisions in any dispute as to the value of health care services rendered.

Health care providers are now required to provide the insurer with a notice of injury from within 3 days of an employee's initial visit, and a notice of release from 3 days after an employee's release, discharge, return to work, and/or recovery from injury.

Additional legislation requires any qualified physician or other health care professional, treating a person with a compensable injury, to file an itemized bill and an affidavit with the insurer and medical advisory board every 6 weeks.

The additional weekly death benefit for each dependent child was increased from $15 to $20.

The basis for computing weekly benefits for total incapacity and partial incapacity was changed from 66-2/3 percent of an employee's average weekly wage to 75 percent of an employee's average weekly spendable wage, exclusive of overtime pay, but including bonuses averaged over the length of employment up to the preceding 52 weeks of employment. "Spendable earnings" are defined as the employee's average weekly wages, earnings, or salary, including any gratuities reported as income, reduced by Federal and State income taxes.

Dependents of an employee convicted of and imprisoned for a criminal offense are no longer allowed to receive workers' compensation benefits during the employee's imprisonment period.

The Workers' Compensation Court is now authorized to impose sanctions and penalties necessary to control fraud and abuse. If a judge determines that any proceedings have been brought, prosecuted, or defended without reasonable grounds, the entire cost of the proceedings will be assessed against the responsible party, and if additional compensation is paid, a penalty of double the amount of retroactive benefits will be paid and shall not be included in any formula used to establish premium rates for workers' compensation insurance.

An employee receiving weekly workers' compensation benefits 52 weeks after an injury is now required to undergo a review by the court to determine if maximum medical improvement has been reached, the degree of functional impairment, and if the employee is partially or totally disabled, permanently.

The time limit to file suit for an occupational disease was reduced from 36 months to 2 years from the date of disablement.

New legislation authorizes the offset of workers' compensation and retirement benefits. The offset provision will not apply to persons collecting retirement benefits while collecting workers' compensation for an injury sustained before age 55 and more than 5 years before retirement. Neither shall an employee collect indemnity benefits after retirement for an injury sustained fewer than 2 years before retirement.

South Carolina

The law now requires that a prosthetic device, eyeglasses, or hearing aid of an injured employee damaged in the course of employment is to be replaced or repaired.

South Dakota

The Workers' Compensation Advisory Council was created to review the workers' compensation program and make recommendations for improvement.

New legislation requires employers to display safety posters in the workplace in visible locations throughout the business premises. Insurers are now required to offer annual workplace safety inspections to employers whose policy premium is $5,000 or more.

New legislation requires that premium reductions be given to employers who have not incurred wage-loss claims during the past 3 years, but because of their size do not qualify for experience rating; also, permits premium increases for such employers who do incur wage-loss claims over a 3-year period.

"Permanent partial disability" is newly defined as a partial and permanent loss of use of the body or a member of the body, as determined by a medical impairment rating, expressed as a percentage to the affected body part. Such a rating is determined by using the American Medical Association Guide to the Evaluation of Permanent Impairment. The employee would be entitled to receive up to an additional 50 percent if the impairment rating given does not adequately reflect loss of earning capacity. A presumption exists that the employee has no loss of use beyond the impairment rating if the employee is able to return to his or her usual and customary line of employment.

The time limit in which a subsequent injury claim must be filed was changed from within 2 years of the injury to within 90 days from the date of final decision on, or approval of the second injury claim.

Tennessee

A seven-member Workers' Compensation Advisory Council was created to review workers' compensation and make recommendations for improvement.

No later than January 1, 1993, (1) every employer is required to establish a safety committee in order to promote health and safety in the workplace; and (2) the Commissioner of Labor is required to establish a workers' compensation specialist program that would assist injured or disabled employees, persons claiming death benefits, employers, and other persons in protecting their rights, and in obtaining information available under the workers' compensation law.

The maximum amount of permanent partial disability benefits is limited to two and a half times the specified impairment ratings an eligible employee may receive for injuries occurring on or after August 1, 1992, and who is returned to the job at a wage equal to or greater than the wage at the time of injury, or six times the specified impairment ratings if the employee is not returned to a job that is equal to or greater than the job at time of injury.

Permanent total disability benefits shall be paid during the period of disability until the employee reaches age 65. However, if an injury occurs after age 60, permanent total disability benefits are payable for 260 weeks regardless of age, and benefits subject to Social Security offset.

An employer will now be assessed a $500 fine for intentionally causing a workers' compensation claim to be paid under a health or sickness and accident insurance policy. An employer will be prohibited to offset the payment of any sickness and accident income benefits against temporary total disability benefit payment owed to an employee.

A competitive State Workers' Compensation Insurance Fund is newly established and will be subject to the same requirements of the law and regulation as any other insurer offering workers' compensation coverage.

Utah

Employers are now required to establish a workplace safety program for employees.

Self-insured employers and carriers are now permitted to develop a preferred provider program, so long as the employee is given more than one choice in selecting a physician in any health care specialty. If the employee does not initially seek care from an available preferred provider, the employee may be obligated to pay charges in excess of the preferred provider allowance. If a preferred provider program is not developed, the employee will have free choice of health care provider. Circumstances which would preclude the use of preferred providers include: (1) emergencies; (2) employee believes at first that condition is not work related; or, (3) employee resides in a rural area far from any preferred provider.

The $1,800 cap on providing or replacing each artificial appliance and for burial expenses is removed by authorizing the Workers' Compensation Commission to order the payment of additional sums for these expenses in unusual cases.

Vermont

The law now permits the discontinuance of temporary total disability and temporary partial disability benefits of an employee who has not returned to work, and the employer notifies the Commissioner and the employee of the date of the proposed discontinuance and reasons for it prior to termination.

Virginia

Burial expenses were increased from $3,000 to $5,000.

Washington

Self-insured employers are permitted to purchase an annuity as a method of guaranteeing the payment of permanent total disability or death benefits.

West Virginia

Workers' compensation coverage is now provided for mine rescue crews when engaged in mine rescue operations.

New legislation permits the garnishment of workers' compensation benefits for the payment of child or spousal support. □