



Colorado Division of Workers' Compensation

2013

Legislative Advisory

Legislation enacted by the 2013 General Assembly contained amendments to the Colorado Workers' Compensation Act of importance to practitioners. There are also a number of significant procedural changes of which claims handlers will want to take notice. The following reiteration will highlight changes that should be fully considered and implemented to ensure compliance. This is not intended to be an exhaustive summary.

[Senate Bill 13-129](#)

[Signed May 24, 2013: Effective upon signature](#)

- Eliminates the requirement that the State Auditor conduct a performance review of the Office of Administrative Courts handling of workers' compensation disputes every four years, rendering it discretionary for the state auditor to conduct or cause a performance review to be conducted. C.R.S. § 8-47-101(3)(d)(II)

[Applicability:](#) Applies to performance including but not limited to: time elapsed from the date of hearing until decisions are rendered by the administrative law judges; the number of decisions that are reversed upon appeal to the industrial claim appeals panel and to the court of appeals; the number of cases assigned to each administrative law judge; and the public perception of the quality of the performance of the court with respect to workers' compensation matters. The bill is effective immediately upon signature.

[Implementation:](#) No rule making by the Division of Workers' Compensation is anticipated.

[Senate Bill 13-147](#)

[Signed June 5, 2013: Effective upon signature](#)

- Creates a presumption that a "buyer of goods" is excluded from the definition of statutory employer, when a lessee, sublessee, contractor or subcontractor, is injured delivering goods while not on the buyer's premises. This presumption can be overcome if it is shown that the job would normally be performed by an employee of the buyer of goods.
- Does not create a presumption of a statutory employer-employee relationship even if, injury to the lessee occurs on the buyer's premises.
- Reiterates that section 8-41-401(1)(a)(I) defines lessor contractors as "statutory employers" for purposes of establishing liability and responsibility to pay benefits under the workers' compensation act. Specifically, a statutory employer includes individuals or companies (lessor contractors) who conduct business by leasing or contracting out any or all of the work to a lessee, sublessee, contractor or subcontractor.
C.R.S. § 8-41-101(1)(a)(II) and (1)(a)(III)

[Applicability:](#) Applies to all lessor contractors and their statutory employees and is effective immediately upon signature.

[Implementation:](#) No rule making by the Division of Workers' Compensation is anticipated.

Senate Bill 13-249

Signed May 25, 2013: Effective August 7, 2013

- Eliminates confusion over what triggers the start date for an insurer to react to the results of a Division Independent Medical Evaluation (DIME.); shortens the time to admit or appeal the outcome; and establishes a time frame for the physician to correct errors identified by the Division. Specifically:
 - The insurer's action following a DIME is triggered by the date the Division issues a Notice of Dime Report Receipt, and not the date the physician mails the report;
 - The insurer's 30 days to admit liability or request a hearing is reduced to 20 days; and
 - The DIME physician has 20 days to revise the report in the event of noted deficiencies by the Division. C.R.S. §§8-42-107.2(4) and 8-43-203(2)(b)(II)(A)

Applicability: Applies to all Division Independent Medical Evaluations received by the Division on or after August 7, 2013.

Implementation: Minor rulemaking to conform rule requirements to new statutory time frames is anticipated.

Senate Bill 13-285

Signed May 28, 2013: Effective July 1, 2013

- Section 1. Requires that an injured worker or other payer be reimbursed for reasonable, necessary and related medical expenses when an employer fails to provide medical care after receiving notice of a claim that is later found to be compensable. In addition:
 - An insurer or provider may not recover medical costs from an injured worker where the employer has furnished medical treatment except in the case of fraud.
 - An insurer must reimburse an injured worker for the full amount paid. It may however, seek reimbursement from the medical provider for amounts paid in excess of the fee schedule. C.R.S. § 8-42-101(6)(a), and (6)(b)
- Section 2. Sets a 15-day timeframe to recalculate the average weekly wage and begin payment of benefits at the adjusted rate, along with any interest, from the date of notice that a fringe benefit was terminated. Benefits and interest are payable from the date of termination. C.R.S. § 8-42-103(2)
- Section 3. Effects and mirrors the requirement that payment of temporary total benefits at least once every two weeks, apply to the payment of temporary partial benefits. C.R.S. § 8-42-106(1)
- Section 4. Requires the insurer provide a complete copy of the claim file within 15 days after the mailing of a written request by the injured worker/representative. This includes all medical records, pleadings, correspondence, investigation reports/files, witness statements, etc., and wage and fringe benefit information for the twelve months leading up to the date of injury and thereafter. If a privilege or other protection is claimed for any materials, the materials must be detailed in an accompanying privilege log. C.R.S. § 8-43-203(4)
- Section 5. Requires that a party requesting attorney's fees on an issue that is not ripe for adjudication prove they've attempted to have the issue stricken by a prehearing law judge. The potential for imposition of attorney's fees and costs of preparation remains if it can be shown that costs were incurred as the direct result of the listing. Fees and costs may only be imposed on attorneys. C.R.S. § 8-43-211(2)(d)

- **Section 6.** Extends the time from the date of injury (from 18 to 24 months), before an insurer can request a division independent medical examination (DIME) to overrule the treating physician's opinion that the injured worker has not yet reached maximum medical improvement (MMI.) If the DIME physician determines the injured worker has reached MMI, s/he will also determine the injured workers' permanent impairment rating. The DIME physician's findings, both as to maximum medical improvement and permanent impairment, can only be overcome by clear and convincing evidence.
C.R.S. § 8-42-107(8)(b)(II)(A), (8)(b)(III) and (8)(c)

Applicability: Sections 1 through 6 apply to claims in existence on or after July 1, 2013.

Implementation: Rule making may be necessary at a later date. In addition, the Division will revise form WC78, currently titled *Application for "18 Month" Division Independent Medical Examination*, to reflect the legislative changes effective July 1. See Section 6, above.

House Bill 13-1025

Signed April 26, 2013: Effective July 1, 2013

- Changes the maximum deductible from \$5000.00 per claim (on deductible policies) to an amount not to exceed the *split point* approved by the Commissioner of Insurance.
 - For purposes of this section, "split point" means the amount an insurer can claim as a primary loss on each worker's compensation claim.
 - The full amount of primary losses counts in an employer's experience modification for purposes of calculating its credit or surcharge on workers' compensation coverage.
- Reiterates the employer's responsibility to pay the full amount of compensation and benefits due under the statute, rendering it a violation to require an employee pay any part of compensation or benefits provided by the act.
- Makes it a violation for an employer to require that an employee use any other type of insurance or employment benefit to pay compensation or benefits due under the act.
- Does not relieve insurers the obligation to offer no-deductible policies.

C.R.S. § 8-44-111(1)

Applicability: Applies to new and renewing workers' compensation insurance policies on or after July 1, 2013.

Implementation: No rule making by the Division of Workers' Compensation is anticipated.

House Bill 13-1314

Signed May 28, 2013: Effective March 1, 2014

- Updates the statutory reference for persons who provide host home services for individuals with developmental disabilities under the Health Care Policy and Financing Act. No change in coverage occurred as these persons were not previously considered employees of community-centered boards or service agencies for purposes of workers' compensation. C.R.S. § 8-40-301(7)

Applicability: Applies to statutory references only and effects no change to the definition of "employee" under the Colorado Workers' Compensation Act.

Implementation: No rule making by the Division of Workers' Compensation is anticipated.