THE FIVE THINGS I WOULD MOST LIKE TO CHANGE ABOUT THE GEORGIA WORKERS' COMPENSATION SYSTEM

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INTRODUCTION

There are three ways the rights of employers and the rights of injured workers are changed for better or worse. The first is legislative. The Workers Compensation Act was created in 1920, and has been amended extensively and regularly since its enactment. The second way is through the State Board of Workers' Compensations authority to "make rules…for carrying out this chapter", O.C.G.A. § 34-9-60. The Board does not, however, have authority to make rules that are inconsistent with the Act. In others when a rule conflicts with the statute then the statute trumps the rule. The last means of change is through case law from the Court of Appeals and the Supreme Court of Georgia. Although case decisions of the Appellate Division of the State Board of Workers' Compensation do not have legal authority as precedent they, nonetheless, influence the trial divisions' application of the law.

Virtually all legislative changes which become law are first passed through the Advisory Council of the State Board of Workers' Compensation, which is also referred to as the Chairman's Advisory Council. The Chairman's Advisory Council had its origin following the 1992 legislative changes which imposed radical reform on the rights of injured workers. The Chairman's Advisory Council is a de facto institution since there is no law creating it. The Chairman of the State Board of Workers' Compensation chooses the members who serve on the Council. Each year, after consultation with the Advisory Council, the Chairman of the SBWC submits a legislative package to be introduced by a state legislator, usually the chairman of

the Industry and Labor Committee of the Georgia House of Representatives. Rogue workers' compensation legislation which does not first come through the Advisory Council does not usually become law. The Chairman of the SBWC also passes rules each year with consultation from the Advisory Council.

1.) COMPENSATION RATE INCREASES SHOULD BE AUTOMATICALLY TIED TO GEOGIA DEPARTMENT OF LABOR'S AVERAGE WAGE FOR ALL INDUSTRIES STATEWIDE

The workers' compensation rate is not tied to any kind of automatic indexing to keep pace with inflation and cost of living increases. The lack of indexing is the biggest threat to injured workers' rights by far and away. Every time there is a raise in the cost of living for the compensation rate the claimants are forced to trade away their rights under the Act in exchange—as if the claimants were somehow, individually and collectively, responsible for global and national inflation.

In 1992 the compensation rate was $225.00. Since that time there have been 13 raises in the compensation rate, which is currently at $575.00. But to get the cost of living adjustments the insurance companies and self-employers want something in return. Since 1992 there have been 46 significant amendments eliminating and or reducing injured workers' rights. The list of changes is attached herewith (appendix page 7). By comparison, if you exclude changes for cost of living raises, there have only been 14 significant amendments to the Act which benefited injured workers. And when we say "significant", we use the word liberally because the changes which benefited claimants were not big changes and pail in comparison to

the type of changes the insurance companies and self-insurers have accomplished since 1992.

Each year the Georgia Department of Labor publishes the average wages for all Georgia workers' statewide (see appendix page 5). The statewide average wage for Georgia for 2016 was $975.00, and two thirds of that is $650.00. Therefore, the maximum compensation rate for Georgia of $575.00 does not even meet the statewide average wage. To add insult to injury, Georgia has the second lowest compensation rate in the nation, only Mississippi is worse (see appendix page 7).

2.) O.C.G.A. § 34-9-104 SHOULD BE REPEALED OUTRIGHT OR AT LEAST REVISED. THE REDUCTION FROM TTD TO TPD SHOULD NOT BE AVAILABLE UNLESS THE EMPLOYER HAS OFFERED SUITABLE LIGHT DUTY WORK AT LEAST ONCE EVERY 12 MONTHS, AND THERE SHOULD BE NO 2 YEAR STATUTE OF LIMITATIONS FOR CATASTROPHIC CASES

In 1992 the law was amended to create an artificial change in condition for a claimant who was unable to return to light-duty work after 52 weeks. His weekly checks are automatically reduced from his TTD rate (currently $575.00 max) to the TPD rate, which is currently $383.00 maximum. And this reduction in pay can occur without any attempt by the employer to accommodate the claimant's restrictions. This is particularly unfair when the employer can easily make accommodations but refuses to do so. Instead, the employer hires new employees. This change in the law happened at a time when Georgia still had a Subsequent Injury Trust Fund, but the SITF has since been abolished. It is virtually impossible

for older workers, with little education, and a pre-existing condition to find new employment. Employers prefer hiring healthy people—no surprise.

3.) THE 400 WEEK CAP ON MEDICAL SHOULD BE REPEALED OR AT A MINIMUM NOT APPLICABLE TO JOINT REPLACEMENTS

Georgia is the only state besides Montana (which followed Georgia's lead) to limit medical as they did. O.C.G.A. § 34-9-200(a)(2 provides:

> "For all injuries occurring on or after July1, 2013, that are not designated as catastrophic injuries pursuant to subsection (g) of Code Section 34-9-200.1, the employer shall, for a maximum period of 400 weeks from the date of injury, furnish the employee entitled to benefits under this chapter such medical, surgical, and hospital care and other treatment, items, and services which are prescribed by a licensed physician, including medical and surgical supplies, artificial members, and prosthetic devices and aids damaged or destroyed in a compensable accident, which in the judgement of the State Board of Workers' Compensation shall be reasonably required to effect a cure, give relief, or restore the employee to suitable employment."

4.) DENIAL OF MEDICAL TREATMENT BASED ON UTILIZATION REVIEW SHOULD BE STRICTLY PROHIBITED

How long do you think the peer review doctor, who is an employee of the insurance company, would keep his job if he agreed with the authorized treating physician's recommendations for treatment? It is an incestuous relationship which is problematic to say the least.

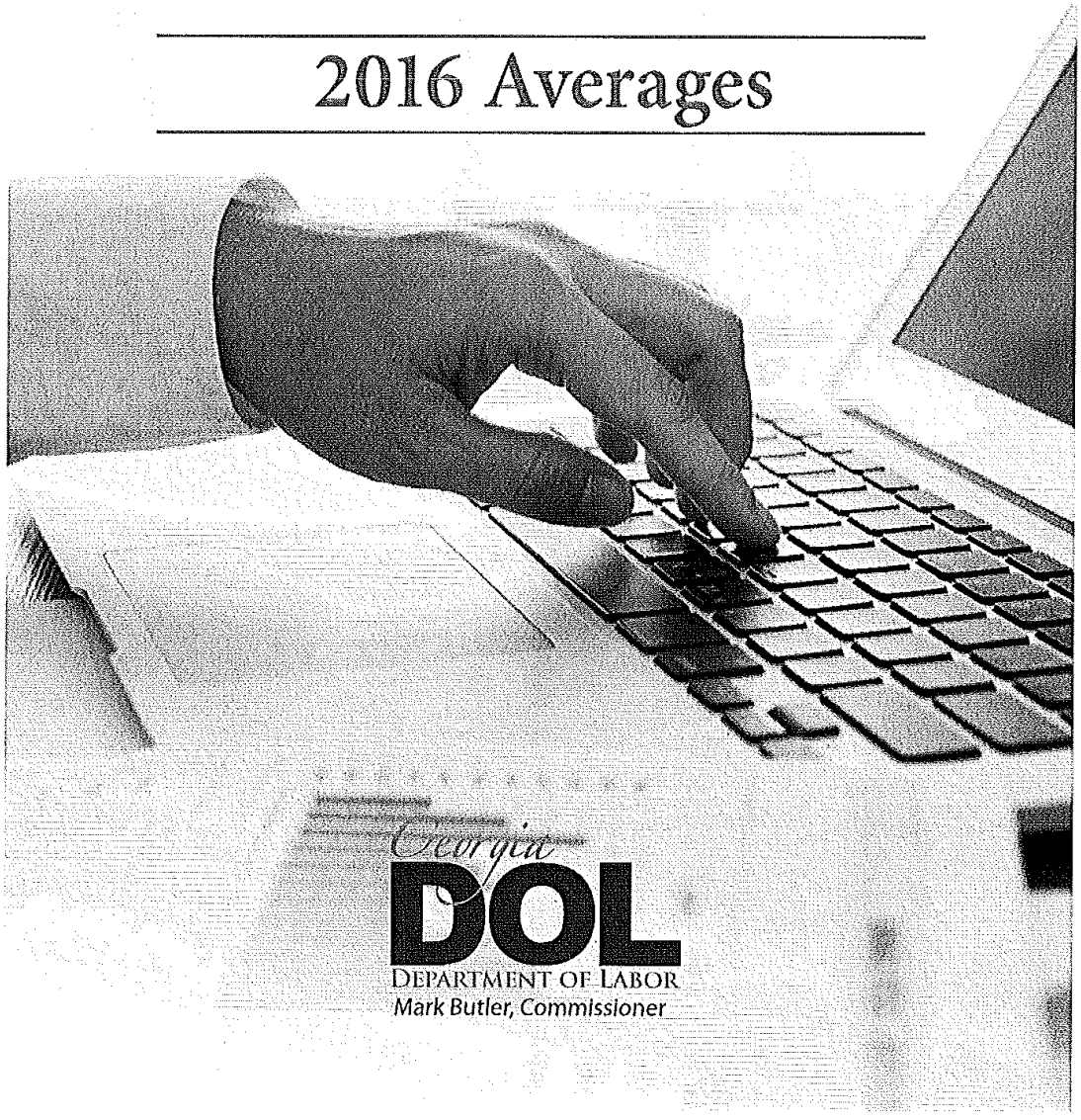
5.) LIBERAL INTERPRETATION OF THE WORKERS' COMPENSATION ACT SHOULD BE RE-INSTATED

Liberal interpretation of the Workers' Compensation Act was one of the essential elements of the Grand Bargain in 1920 when injured workers' gave up their right to sue the employer under tort law.

GEORGIA

Employment & Wages

2016 Averages



State Totals	Yearly Average, 2016		
	Average Number of Establishments	Average Monthly Employment	Average Weekly Wages
Goods-Producing	**36,496**	**591,994**	**$ 1,068**
Agriculture, Forestry, Fishing & Hunting	2,569	25,388	650
Mining	229	5,037	1,317
Construction	23,459	175,661	1,074
Manufacturing	10,239	385,907	1,089
Apparel	122	2,406	673
Beverage and Tobacco Product	169	6,229	1,107
Chemical	747	20,705	1,385
Computer and Electronic Product	408	9,623	1,731
Electrical Equipment, Appliance, and Component	212	12,890	1,459
Fabricated Metal Product	1,330	28,883	929
Food	800	66,015	1,066
Furniture and Related Product	636	10,946	774
Leather and Allied Product	24	268	681
Machinery	672	20,605	1,096
Miscellaneous	841	12,288	1,123
Nonmetallic Mineral Product	658	15,826	1,056
Paper	257	19,130	1,373
Petroleum and Coal Products	59	976	1,304
Plastics and Rubber Products	434	22,539	956
Primary Metal	126	7,242	1,030
Printing and Related Support Activities	971	13,017	882
Textile Mills	237	19,451	803
Textile Product Mills	481	28,342	852
Transportation Equipment	488	51,065	1,299
Wood Product	567	17,462	827
Service-Providing	**235,507**	**3,008,223**	**973**
Utilities	522	20,019	1,836
Wholesale Trade	23,638	218,506	1,448
Retail Trade	34,568	490,093	567
Transportation and Warehousing	7,731	186,157	1,147
Information	5,360	110,658	1,745
Finance and Insurance	15,906	165,684	1,671
Real Estate and Rental and Leasing	12,491	63,887	1,078
Professional Scientific & Technical Svc	40,044	259,927	1,627
Management of Companies and Enterprises	1,675	67,795	2,002
Admin., Support, Waste Mgmt, Remediation	18,786	321,920	715
Education Services	3,410	69,071	1,000
Health Care and Social Assistance	26,386	465,916	951
Arts, Entertainment, and Recreation	3,663	49,005	630
Accommodation and Food Services	21,265	415,041	339
Other Services (except Public Admin.)	20,062	104,544	662
Unclassified - industry not assigned	**23,413**	**19,388**	**1,204**
Total - Private Sector	**295,416**	**3,619,605**	**989**
Total - Government	**8,833**	**642,666**	**897**
Federal Government	2,055	100,479	1,427
State Government	2,808	141,056	884
Local Government	3,970	401,131	769
ALL INDUSTRIES	**304,249**	**4,262,271**	**975**

SIGNIFICANT CHANGES FROM 1992 TO 2017 WHICH ELIMINATED OR TRUNCATED INJURED WORKERS' RIGHTS

1.) Temporary Total Disability benefits were capped at 400 weeks except in catastrophic cases. It used to be lifetime TTD benefits (1992).

2.) The employer/insurers received the right to unilaterally and arbitrarily reduce the claimant's weekly TTD checks to the lower TPD after 52 weeks. It is an artificial change in condition (1992).

3.) Twenty five percent add on attorney's fees for rule violations were taken away from the claimant. Employers who violate rules, no matter how egregious, face only quantum merit fees.

4.) Rehabilitation services for injured workers were abolished except in catastrophic cases (1992).

5.) The employer/insurers got a dollar for dollar offset for any money a claimant received under an employer-sponsored disability policy, regardless of whether or not the policy contemplated disability payments as a supplement to workers' compensation (1992).

6.) The "mail-box rule" was abolished, which meant the weekly checks were considered paid when they were mailed instead of when they were received by the claimant. From now on "the check is in the mail," and if you do not receive it too bad for you. It is not late because "we mailed it, so take our word for it" (1992).

7.) The employer/insurers got subrogation against any third-party tort claims (1992).

8.) Impairment ratings had to be done according to the AMA Guidelines instead of the alternative and more liberal orthopedic guidelines (1992).

9.) The claimant has to give a medical record authorization release to the employer/insurer or their counsel (1992).

10.) Certain types of workers, who would otherwise be defined as employees under the case law, were defined as "not employees" by statute (1993).

11.) Individuals who were working in a work release program (even for private companies) would no longer be entitled to WC benefits if they were required to work as part of their punishment (1993).

12.) The employer/insurers redefined pre-existing conditions to make it harder for the Claimant (1998).

13.) The employer/insurers strengthened the "under the influence defense" and got a presumption against the claimant (1994).

14.) The employer/insurers eliminated the requirement that the WC Act be liberally interpreted which was one of the principal considerations for the Grand Bargain in 1920. That is, injured workers gave up their right to sue in exchange for what was supposed to be a liberally construed act that provided quick financial and medical relief. And issues of fault would no longer to be an issue (1994).

15.) The law requiring hearings to take place within 60 days was changed to 90 (1994).

16.) O.C.G.A. § 34-9-240 was created. Before 240 came into existence there was no way for the employer to force the claimant back to the employers "alleged" light duty job, and absent on actual return to work, the burden was on the employer to prove the alleged light duty job was suitable. Arguably the effect on those claimants who are already represented by counsel is negligible. But the 240 process is not obligatory, and for those who are not represented they are not informed of their rights at the time they are told to return to light duty work. And sadly, for too many they are "let go" after the 15 days——for reasons "unrelated" to their injuries of course. At which point the burden has shifted and they are lucky to get a hearing in 6 months, and worse they are under a Maloney burden (1994).

17.) The employer/insurers accomplished the first of their never ending quest to shrink the definition of what constitutes a catastrophic injury. Favorable decisions from the social security administration would no longer be enough to meet the claimants burden of proof (1995).

18.) The natural inference rule was abolished. ALJ's used to be able to use the natural inference rule to find the claimant's heart attack or stroke was caused by his work. In other words, wherever there was strenuous physical activity or stress, the judge could find the injury to be work related. Now you must have medical evidence to prove the connection (1996).

19.) The employer/insurers redefined the definition of "independent contractor" to make it harder to prove the claimant was an "employee" and, therefore, entitled to compensation benefits (1996).

20.) Employer/insurers got a dollar for dollar set off for any unemployment compensation the claimant might have received (1996).

21.) The employer/insurers strengthened the willful misconduct defense by eliminating the requirement that they get prior approval from the board of any rules which they intend to use as a basis to deny compensation to claimants based on willful misconduct. Once again, the fact that claimants were not supposed to be litigating fault was one of the cornerstones of the Grand Bargain. Now the employer need only allege a rule violation which was "reckless and wanton" and they can litigate the injury, Supreme Court of Georgia decision in *Chandler Telecom v. Burdette* (February 2017).

22.) O.C.G.A. 34-9-2.1(a)(3) was amended to allow employers to exempt their employees from workers' compensation coverage by designating up to five employees as "corporate officers" which meant legally there were no "employees" (1996).

23.) In 1996 the employer/insurers shrank the definition of catastrophic again. The law used to provide that if the Claimant could prove he was unable to perform his prior work, he met his burden. This was eliminated. Now he has to prove that there are no jobs that exist in the natural economy in substantial numbers which he is able to perform (1996).

24.) Umpires and referees were defined out of the workers' compensation act (1996).

25.) Penalties for "fraud" by the claimant were bumped from a maximum of $200.00 to $10,000.00. And it was made a misdemeanor. There was no application to adjusters because, apparently, adjusters never commit fraud (1998).

26.) The evidentiary rules for the introduction of alcohol and drug testing were made easier for employers/insurers (1998).

27.) The definition of catastrophic designation was amended a third time. This time they added language to make sure that no presumption was created by a favorable SSDI decision. The employer was also given the right to avoid the rehab division. If the employer requests a hearing on the claimant's RICATEE (petition for CAT), the rehab division cannot rule on it (2003).

28.) The employer/insurers imposed a one-year statute of limitations on medical expenses (2003).

29.) Board rule 240 was changed to add language stating that the claimant's TTD benefits could be suspended without an order to the Board (2003).

30.) The Subsequent Injury Trust Fund was abolished (2004).

31.) Board Rule 263 was amended to remove the employer/insurers obligation to have the claimant rated for a permanent impairment. Now there is only an obligation when the claimant has received TTD or TPD. The adjuster can ignore the claimants who never had a lost time claim, even though they may have a permanent disability (2004).

32.) The employer/insurers amended catastrophic designation for the fourth time in their never ending quest to define O.C.G.A. § 34-9-200.1 (g)(6) out of existence. This time they imposed a presumption that provides when the claimant reaches retirement age (66), then he is presumed not to be catastrophic. Where is the logic that an injured worker whose injury is serious enough to warrant CAT designation will get better when he turns 66? The older you are the greater the impact the injury has on your ability to work. But it appears logic matters not when it comes to creative ways to shrink injured worker's rights (2005).

33.) The Board amended 205(b)(3)(c)(2) to allow for peer on the "necessity" of the treatment. Up to this point in time peer review was only used to review whether the amount charged was reasonable and customary, not whether it was necessary (2005).

34.) Employer/insurers imposed a one year statute of limitation on the claimant's right to medical mileage reimbursement (2006).

35.) Functional Capacity Evaluations were deleted from those things which would be paid for through an IME (2006).

36.) Employers/insurers got an automatic dismissal with prejudice of all-issue cases in which more than five years has passed since an order was last entered (2007).

37.) The employer/insurers expanded the farm worker's exemption to worker's compensation to include more employees who would not have a right to workers' compensation (2007).

38.) The Board created a rule to impose costs for preparing the record for appeal to superior court. There is no statutory authority to impose any expense requirements on a party's right to appeal, and the rule is disproportionately more burdensome on a claimant than an employer, especially a claimant whose all-issues case has been denied (2007).

39.) Rule 207 was expanded so that the claimant must give a medical authorization not just for records regarding treatment of the injury but anything deemed "related", which for some defense attorneys means anything from the day you were born.

40.) The employer/insurers got to define the relationship between Franchisor and Franchisees out of the compensation act (2011).

41.) Lifetime medical benefits were taken away and limited to 400 weeks (2013).

42.) O.C.G.A. § 34-9-240 was amended so the claimant must now do the 240 job offer for at least 8 hours. There are no exceptions (2013).

43.) "Back door rehab" was legitimized by Board Rule. Instead of rehabilitation suppliers who had to be licensed, registered, and get the claimant's written consent to work the case, the "case manager" can now meet with the doctor without your client's consent in a private meeting with the doctor. Hence, "back door rehab" (2016).

44.) The employer/insurers right to the exclusive remedy defense was made even stronger (2015).

45.) Board Rule 201(a) was amended to eliminate the requirement that panels of physicians consist of only non-associated physicians. And even worse was the "mulligan amendment." If the claimant desires to switch panel doctors, as is his right under the law, and the doctor he picks refuses for whatever reason not to see the claimant then the employer can "fix" the panel to make it valid again.

46.) Board Rule 104 was amended to provide that the effective date of the switch from TTD to TPD for an artificial change in condition is the date the employee was released to work with restrictions. What is implied by the rule change is that no matter how bad the adjuster fails to follow the rules and procedure set forth under 104, the conversion always relates back (2016).

SIGNIFICANT CHANGES FROM 1992 TO 2017 WHICH BENEFITED INJURED WORKERS

1.) O.C.G.A. § 34-9-20 was amended to require the panel of physicians to have at least one orthopedic and not more than two industrial clinics (1992).

2.) O.C.G.A. § 34-9-1 was amended to provide that disability caused by drug addiction to medication prescribed for the injury is compensable (1994).

3.) O.C.G.A. § 34-9-2 was amended to limit the number of corporate officers to five. If a corporation designates all their employees as "corporate officers" they are not subject to the Workers' Compensation Act (1995). This places a limit on it. Otherwise, you could have a company with 1,000 corporate officers.

4.) O.C.G.A. § 34-9-265 was amended so nonresident alien dependents are entitled to death benefits (1995).

5.) O.C.G.A. § 34-9-265 was amended to make it clear that the limitation on burial expenses did not apply to medical benefits incurred at the time of death (1999).

6.) O.C.G.A. § Georgia National Guard members were added as employees under the act O.C.G.A. §34-9-1.

7.) The panel of physicians was increased from four to six, O.C.G.A. § 34-9-201.

8.) The interest rate on final awards was bumped up from seven percent to twelve, O.C.G.A. § 34-9-107 (2001)

9.) The time within which a claimant can ask for an IME was increased from 60 days to 120 days from the date of last payment of income benefits O.C.G.A. § 34-9-201 (2001).

10.) O.C.G.A. § 34-9-203 was amended to provide that late payment for medical expense provisions also apply to reimbursement to the claimant for out of pocket expenses (2003).

11.) O.C.G.A. § Board Rule 240 was amended to require as a pre-requisite to a light duty job offer that the authorized treating physician has seen and examined the claimant within the last 60 days as opposed to merely just signing off on the written job description within 60 days (2003).

12.) Volunteer firefighter were added to the worker's compensation act (2003).

13.) The time period for the employer/insurer to reimburse the Claimant for mileage was shortened from 30 days to 15 days, O.C.G.A. § 34-9-203 (2013).

14.) WC-PMT was created. The Board created a process to help with the systemic delay and denial by the employer/insurers of medical care and treatment to claimants. Until the WC-PMT, the claimant had very limited means to fight delay of care. He could request a hearing which takes 2 to 3 months, at its fastest, and typically 6 months after the perfunctory continuances. The WC-205 form created in 2001 was largely ineffective at fixing the problem because doctors were reluctant to use it (claimant's attorneys could not file the form), and the case of *Selective HR Solutions, Inc. v Mulligan*, 289 Ga. 753 (2011) created an exception big enough for a MacTruck to get through. The Supreme Court said employers can always controvert what they consider to be "not-related" —— even if the employer defaults on the 2015 response.

WORKERS COMPENSATION RATE INCREASES IN GEORGIA FROM 1992 TO 2016

Rate Increase	Year
225-250	1992
250-275	1994
275-300	1996
300-325	1997
325-350	1999
350-375	2000
375-400	2001
400-425	2003
425-450	2005
450-500	2007
500-525	2013
525-550	2015
550-575	2016

ALL 50 STATES HAVE AN AUTOMATIC RATE CHANGE SET BY DATE EXCEPT GEORGIA

Jurisdiction	Maximum Benefit Changes
Alabama	July 1st each year
Alaska	January 1st each year
Arizona	The Commission, not later than August 1st of each calendar year, adjusts the amount based upon criteria set forth in statute that is effective for the following calendar year
Arkansas	January 1st each year
California	January 1st each year
Colorado	July 1st each year
Connecticut	October 1st each year
Delaware	July 1 of each year
Florida	January 1st of each year
Georgia	"When legislature decides on a change"
Hawaii	January 1st each year
Idaho	January 1st
Illinois	"January 15th and July 15th each year"
Indiana	July 1st
Iowa	July 1st each year
Kansas	July 1st each year
Kentucky	January 1st each year
Louisiana	September 1st each year
Maine	July 1st each year
Maryland	January 1st each year
Massachusetts	October 1st each year
Michigan	January 1st each year
Minnesota	Annually, on October 1
Mississippi	January 1st each year
Missouri	July 1st each year
Montana	July 1st each year
Nebraska	January 1st each year
Nevada	July 1st each year
New Hampshire	July 1st each year
New Jersey	January 1st each year
New Mexico	January 1st each year
New York	July 1st of each year
North Carolina	Each July 1st to be effective the next January 1st

North Dakota	July 1st each year
Ohio	January 1st each year
Oklahoma	Changes annually effective November 1
Oregon	July 1 of each year
Pennsylvania	January 1st each year
Rhode Island	September 1st each year
South Carolina	January 1st each year
South Dakota	July 1st each year
Tennessee	July 1 each year
Texas	October 1st of each year
Utah	July 1st each year
Vermont	July 1st each year
Virginia	July 1st each year
Washington	July 1st each year
West Virginia	Rate changes with the state's AWW
Wisconsin	January 1st each year
Wyoming	With each quarterly reporting of the statewide average monthly wage

WORKERS' COMPENSATION RATES BY STATE AS OF 2017

Iowa	$1,720.00
New Hampshire	$1,537.50
Illinois	$1,440.60
Washington	$1,375.66
Connecticut	$1,292.00 (DOI on or after 07/11/1993)
Massachusetts	$1,291.74
Vermont	$1,281.00
Oregon	$1,280.00
Alaska	$1,239.00
California	$1,172.57
North Dakota	$1,168.00
Rhode Island	$1,154.00
Maryland	$1,052.00
Minnesota	$1,046.52
Virginia	$1,043.00
Pennsylvania	$995.00
Tennessee	$992.20
North Carolina	$978.00
Wisconsin	$961.00
Colorado	$948.15
Missouri	$923.01

Texas	$912.69
Ohio	$902.00
New Jersey	$896.00
Wyoming	$894.00
Florida	$886.00
Nevada	$874.37
New York	$870.61
Michigan	$870.00
Utah	$855.00
Hawaii	$846.00
Alabama	$843.00
Oklahoma	$841.90
Kentucky	$835.04
Nebraska	$817.00
South Carolina	$806.92
Maine	$804.40 (DOI on or after 01/2013)
New Mexico	$796.77
West Virginia	$783.59
South Dakota	$781.00
Indiana	$780.00
Montana	$768.00
Arizona	$695.68

Delaware	$686.99
Arkansas	$661.00
Idaho	$655.20
Louisiana	$653.00
Kansas	$630.00
Georgia	$575.00
Mississippi	$477.82