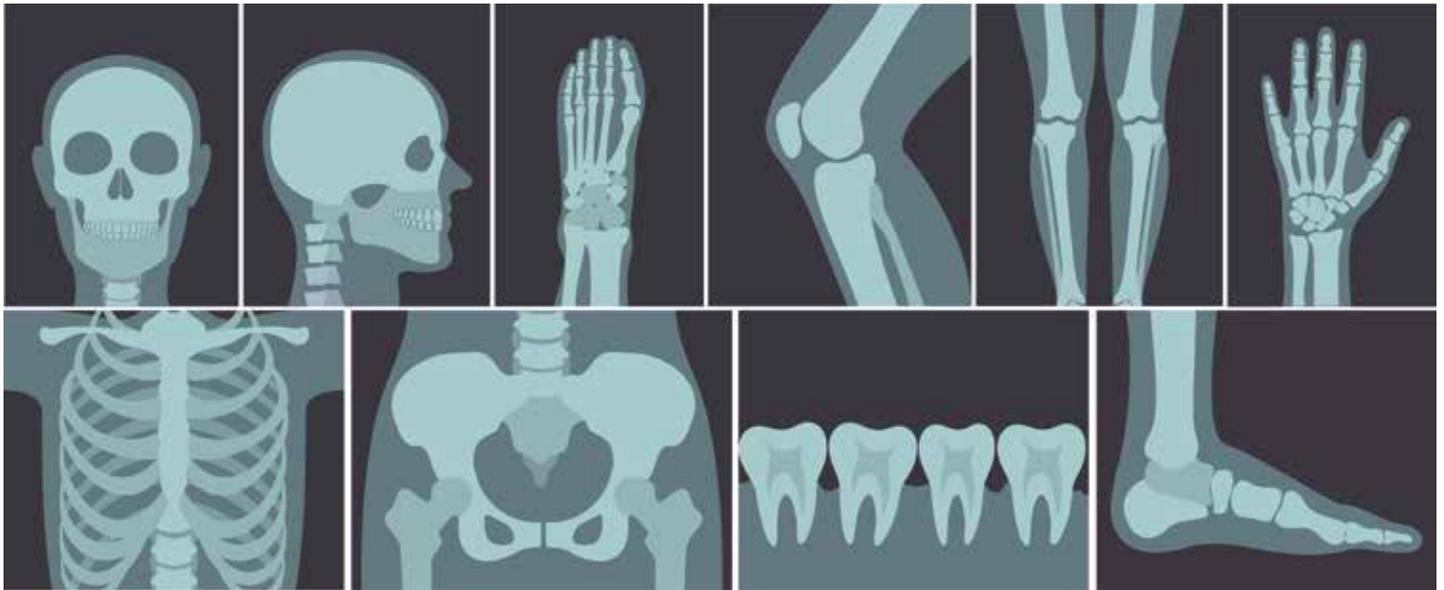


Workers' Compensation

Keeping Injured and Ill Workers in the Workforce



What is Workers' Compensation?

Each year, millions of workers are injured or experience a serious medical illness in their workplace or because of their working environment. In 2017, the [Bureau of Labor Statistics](#) reported over 2.8 million nonfatal workplace injuries and illnesses in the private sector alone. In certain circumstances, these workers may be eligible to receive workers' compensation under federal or state-specific insurance programs. These workers' compensation programs generally provide medical care, rehabilitation and cash benefits for workers who are injured on the job or who experience occupation-related illnesses.

Certain types of workers receive workers' compensation coverage through various federally administered programs, including:

- Federal workers.
- Longshore and harbor workers.

- Coal miners with black lung disease.
- Energy workers who become ill from the production and testing of nuclear weapons.
- Military veterans.
- Interstate railroad workers.
- Merchant Marines.

For all others, regulation and oversight occur at the state level. Every state has a unique workers' compensation policy landscape. States apply varying coverage requirements and standards based on industry, occupation, and the size and structure of a business. States also determine who can provide coverage to employers. North Dakota, Ohio, Washington and Wyoming, for example, prohibit employers from purchasing coverage from private insurers. Instead, these states offer a single publicly managed option that employers can

purchase. Most private employers are required to purchase workers' compensation insurance that covers all their employees. States differ on exceptions to this requirement. Texas law makes workers' compensation coverage optional for employers. Larger companies can sometimes self-fund their coverage instead of purchasing third-party insurance if they meet their state's minimum financial requirements. Some states like North Dakota and Wyoming, however, prohibit self-insurance. The wide variation among states can prove challenging and costly for multi-state companies that must comply with the laws of each state in which they operate.

Workers' compensation is designed to benefit both employees and employers by providing reliable insurance coverage with predictable, timely payments and reduced legal costs. Previously, workers injured on the job had to prove employer negligence to recover lost wages, medical expenses and other damages. Today, employees are guaranteed these and other benefits under workers' compensation protections, regardless of fault. In exchange for these protections, employees surrender their right to file negligence lawsuits against their employer. Benefits may be denied under certain conditions including self-inflicted injury, employee drug or alcohol use, or incidents involving illegal activity.

Minimizing Long-Term Work Absences

When an injury, illness or chronic health condition impacts a worker's ability to perform his or her regular job functions, stay-at-work/return-to-work policies help minimize extended work absences and keep the worker connected to the workforce. If an injury or illness necessitates an absence from work, it is imperative that the worker return to work promptly—being mindful of the worker's safety and health. Keeping injured and ill employees in the workforce, when medically appropriate, provides continued financial security, independence and a better quality of life for the worker. Employers maintain optimal productivity and retain valued employees. Governments also benefit, since extended work absences result in reduced tax revenue and increased demand for public services.

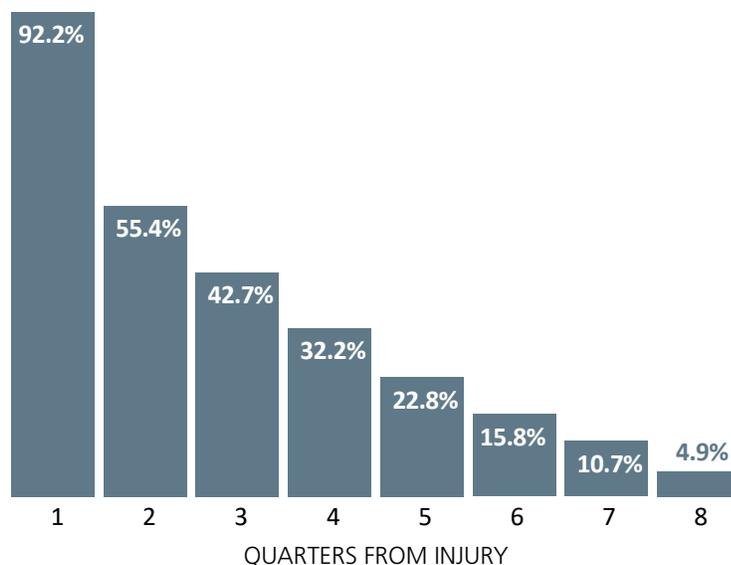
In 2017, nearly 20 million American workers received medical treatment for an off-the-job non-fatal injury or illness. An additional **4 million people** suffer work-related injuries or illnesses each year.

The likelihood that a worker ever returns to full employment is closely tied to the length of their absence from work. The chances of returning to full employment after a six-month absence due to injury or illness is 55.4%, according to a report by the [Washington State Department of Labor and Industries](#). The chance of returning drops to 32.2% after one year, and after two years away from work the chance of ever returning to employment falls to 4.9%. The study determined that the point at which an injury or illness becomes a chronic disability most likely occurs from three to six months into an absence.

When workers experience a medical condition preventing them from being able to work, they may turn to federal disability benefits and Medicaid coverage for financial support. Once enrolled in these programs, many factors make it difficult for a person to leave them. While federal disability benefits and Medicaid provide important protections for people unable to work or lacking health insurance coverage, built-in income caps for these programs may discourage a return to work. Certain environmental barriers can also make finding stable and gainful work challenging for a person with a significant disability.

Post-injury Return to Work

Probability of returning to work in an eight-quarter period if not returned within initial three months of injury.



Source: *Washington State Department of Labor and Industries*



The critical importance of timely and effective care, treatment, services and support following an injury or illness underlies efforts by state and federal policymakers seeking to reduce the number of unemployed workers with disabilities. The Council of State Governments recently published a [Stay-at-Work/Return-to-Work Toolkit](#) exploring in detail the costs that extended work absences because of injuries and illnesses have on workers, businesses and the community. The toolkit serves as a starting place for states wishing to implement stay-at-work and return-to-work policies. It describes best practices and strategies to improve stay-at-work and return-to-work outcomes.

Disability Benefits

Of the 46 states that provide temporary partial disability (TPD) benefits, the majority require workers' compensation insurance to replace a portion of lost wages when employees return to work under a reduced or part-time schedule while the employee recovers. TPD benefits are commonly calculated as two-thirds of a worker's gross income at the time of the injury.

The benefits generally last until employees return to full employment at their previous wage, or until the treating physician determines they have reached their maximum medical improvement (MMI). If the physician determines a permanent impairment limits an injured employee's ability to work, the worker may be eligible to receive either permanent partial, or permanent total disability benefits.

Permanent partial disability benefits are typically calculated based on the type of impairment. States often have a schedule of injuries that assigns specific benefit awards for various types of injuries. A benefit amount can also be assigned by a judge in a workers' compensation proceeding. Workers often have a choice of receiving the benefit as a lump sum or in installments. It is presumed that someone with a permanent partial disability is still capable of working in some form, even if at a lesser income. Once the permanent partial disability benefit is paid out, the case is considered closed.

If the treating physician determines that the employee is incapable of performing even basic work functions, that worker can be classified as having a permanent total disability and receive a recurring lifetime benefit—sometimes referred to as a workers’ compensation pension. The pension is typically equal to the temporary wage replacement benefit amount. The workers’ compensation insurer will pay this benefit for the rest of the worker’s life.

Workers with permanent total disability status, or who otherwise cannot work in any capacity, can apply for federal disability benefits such as Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI). They can receive both workers’ compensation benefits and federal disabilities benefits if they qualify for both benefits and the combined award is less than 80% of their income at the time of injury.

Once classified as having a permanent disability, either total or partial, an injured or ill worker may qualify for state vocational rehabilitation services, where they can receive assistance in training for a new job or finding employment with their existing skillset.

Transitioning Back to Work

As a strategy to reduce work absences and the likelihood of permanent disability status, states can employ strategies to aid in the [transition back to work](#). Operating within a worker’s medical restrictions, a transition plan may include reduced working hours, alternative or adjusted work responsibilities, and workplace modifications.

North Carolina and Massachusetts allow trial periods—nine months and 28 days, respectively—to ensure that workers who want to try returning to work will not lose their workers’ compensation benefits. In these circumstances, if the attempt to return to work is unsuccessful, the workers are still eligible for the same benefits received before the work trial. This incentive encourages workers to try to return to work without fear of losing benefits if they are unsuccessful.

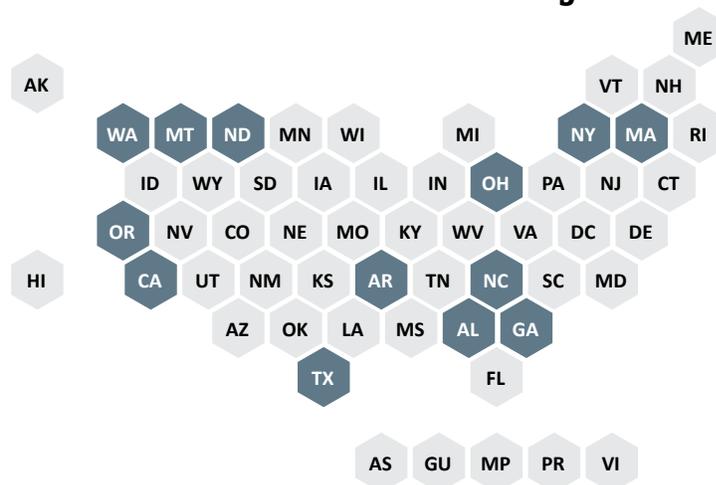
Maryland operates the [Managed Return-to-Work Program](#) for its state employees, which offers short-term transitional duty assignments to state employees recovering from a work-related injury. Under the program, transitional duty assignments may be part-time or full-time, but cannot exceed 75 calendar days per injury.

Oregon’s [Employer-at-Injury Program](#) (EAIP) enables employers to receive consulting and financial support from their insurer while providing transitional work. The insurer receives reports from the worker’s medical provider and helps the employer develop an appropriate work transition plan. The employer’s insurer can request reimbursement from the state for certain related costs including wage subsidies, workplace modifications and retraining.

Employer Incentives

States can offer incentives for employers to keep injured and ill workers in the workforce or return them to work promptly. These incentives often come in the form of a discount or subsidy on an employer’s workers’ compensation insurance premium. In [Ohio](#), where the state is the sole workers’ compensation insurer, qualifying employers can apply for a discounted premium on their workers’ compensation insurance coverage when they implement an approved transitional work plan for an employee receiving treatment under a workers’ compensation claim.

States with Partial Return to Work Programs



Source: IMPAC International, “Transition Back to Work: Policies to Support Return to Work After Illness or Injury,” 2017

Sometimes returning an injured or ill worker to his or her previous position or employer is not viable. States can offer incentives for other employers to hire these workers. Under North Dakota's Preferred Worker Program, qualifying employers can be exempt from paying premiums on salaries for preferred workers—employees certified as having permanent medical restrictions—for up to three years. The program offers other incentives including wage replacement and reimbursement for necessary workplace modifications to accommodate the worker. North Dakota is also the state's sole workers' compensation insurer.

Mental Health Coverage

Mental health conditions remain one of the biggest health care challenges in the country. Often invisible, a mental health condition can significantly affect one's ability to work a his or her full potential.

Most state workers' compensation laws allow coverage for some mental health conditions under a workers' compensation claim. A worker must be able to prove the condition is directly work-related. The burden of proof varies from state to state. In practice, this is very difficult to demonstrate. Psychological conditions, such as work-induced stress, are rarely covered. In fact, some states specifically prohibit mental health claims in workers' compensation statutes unless it can be directly tied to a physical workplace injury that caused the mental injury.

At least 13 states have considered stronger coverage for first responders diagnosed with post-traumatic stress disorder (PTSD) resulting from their work duties. Minnesota enacted [HF 3873](#) in 2018, granting a presumption that a PTSD diagnosis in a first responder is work-related if there is no history of the condition prior to employment. Florida passed a similar law that same year. Other states like Kentucky and West Virginia introduced similar legislation in recent years, but the bills did not pass. New Hampshire, Texas and Utah have established working groups to explore the feasibility of covering PTSD in first responders with workers' compensation.

Coordinating Services Across State Agencies

Coordinating services across key stakeholders is an effective approach to treating injured and ill workers that minimizes or eliminates work absences. When the worker, medical provider, employer, workers' compensation insurance provider and relevant state agencies are working toward the same goal, the injured or ill worker fares much better.

One example of this coordination can be found in Washington state. There, state-run regional [Centers for Occupational Health and Education \(COHEs\)](#) provide guidance and training to health care professionals in treating and rehabilitating injured workers. The training addresses occupational health best practices of:

- Efficiently managing workers' compensation insurance claims.
- Creating treatment plans that outline an injured workers' abilities and work restrictions.
- Developing plans to overcome any barriers that stand in the way of an injured worker returning to work.

Washington's COHEs also employ health service coordinators (HSCs) who coordinate with the worker, his or her employer, medical treatment provider, insurance claim manager and other stakeholders identified in the worker's treatment plan. HSCs ensure that these stakeholders work together with the goal of the worker returning to the workforce.

Mental Health Cases in California

California compensates workers for psychiatric injuries but sets a higher threshold for these claims than for a physical injury.

A worker must:

- Be diagnosed with a mental disorder by a licensed psychologist.
- Demonstrate actual events of employment were predominant as to all causes combined of the psychiatric injury.
- Have been working for the employer for at least six months.

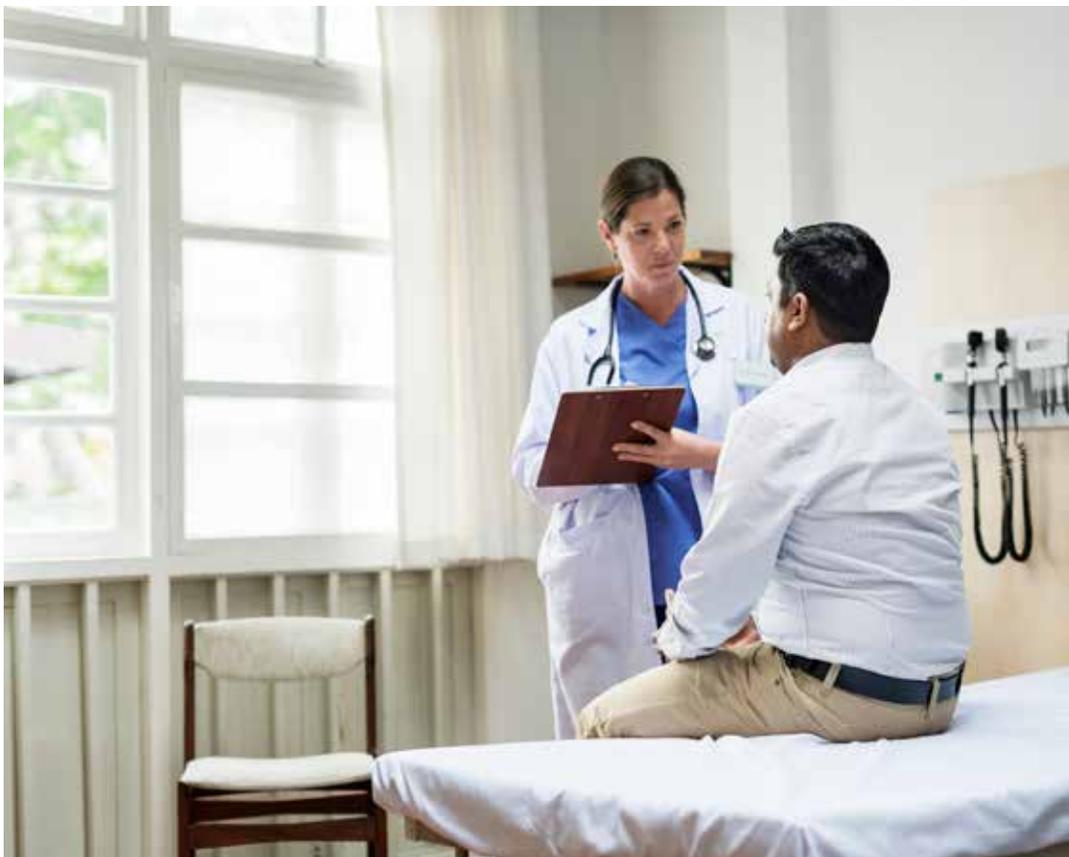
Federal RETAIN Demonstration Projects

The U.S. Department of Labor (DOL) launched the [RETAIN Demonstration Projects](#) in 2018 for states interested in improving policies and programs focused on keeping injured or ill workers on the job. Historically, state policies have largely separated injuries that occur at work—and are covered by workers' compensation—from those that occur outside of work. RETAIN encourages states to look at all injuries and illnesses impacting a person's ability to work, regardless of where they occur, in a more holistic way.

DOL awarded [eight states](#) a total \$18.8 million in RETAIN grant funds under phase one of the program, which lasts 18 months. During the first phase, states will develop and implement pilot programs focused on improving stay-at-work/return-to-work outcomes for workers by improving retraining and rehabilitation, job modification and accommodations, and increasing communication among workers, employers, health care providers and state agencies. A subset of phase one grantees will be competitively selected to fully implement their programs in phase two. Successful RETAIN Demonstration Projects can serve as effective models for other states.

What's Ahead for States?

With unemployment at historic lows and an unprecedented number of unfilled job openings, employers and policymakers continue to seek ways to keep employees in the workforce. Research shows that when people sustain a serious work-related injury or illness it is imperative they receive early and effective treatment focused on their return to some form of employment. Failure to provide this early treatment increases the likelihood that workers will not return to employment. In some cases, workers cannot return to their original job. Alternative job placement, employer hiring incentives, and workplace accommodations can help ensure a secure, continued source of income and reduce the demand for state and federal disability benefits. States will likely continue incorporating these approaches into their workers' compensation policies, particularly as the RETAIN grant recipients pave a path toward comprehensive stay-at-work/return-to-work programs.



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NCSL Contact:

Josh Cunningham

Program Manager

Employment, Labor, and Retirement Program

303-856-1354

Josh.Cunningham@ncsl.org



NATIONAL CONFERENCE OF STATE LEGISLATURES

William T. Pound, Executive Director

7700 East First Place, Denver, Colorado 80230, 303-364-7700 | 444 North Capitol Street, N.W., Suite 515, Washington, D.C. 20001, 202-624-5400

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