

Workers' compensation touches every industry and workplace in both the private and public sectors. Unfortunately, workers' compensation law tends to lag behind the changes that occur in the industries it covers. At [Martin & Jones](#), we help our clients by staying abreast of legal developments and by anticipating changes that may be coming in order to address workplace trends. If you are unable to work due to a work-related injury or illness, one of our [workers' compensation lawyers](#) can help you understand your options.

North Carolina Workplace Injuries and Illnesses Are Below the National Average

The most recent statistics available from the Bureau of Labor Statistics and the North Carolina Department of Labor paint an interesting picture.

- Nationwide, fatal injuries increased by 5.7% over the prior year and injury and illness cases increased by 7.5% over the prior year
- The national incidence rate of injury and illness cases was 3.0 per 100 full-time workers in 2022
- The incidence rate of injury and illness cases for North Carolina is 2.2 per 100 full-time workers in 2022, well below the national incidence rate
- The North Carolina incidence rate did not significantly change over the prior year

North Carolina is one of only 12 states to have an incidence rate that was significantly lower than the national rate. Experts believe that the low incidence rate is due to the fact that North Carolina operates its OSHA (Occupational Safety and Health Administration) programs rather than the federal government, allowing it to devote greater resources and more attention to workplace safety.

While North Carolina's low incidence rate is certainly encouraging, other experts are worried that there is a more dangerous reality. Over the past decade, workplace inspections have fallen by 50% and fatalities have been rising overall.

Post COVID-19 Questions

While the pandemic is behind us, many questions remain, both as to the future and the current impact on the workers' compensation system. It is estimated that 7% of workers who were infected with COVID-19 continue to suffer prolonged symptoms associated with "long COVID." In addition, infection remains a possibility in the workplace, particularly as we have relaxed mask and social-distancing requirements. Workers who are infected with COVID-19 due to at-work exposure should unfortunately be prepared to face issues if they must seek workers' compensation benefits. In the meantime, we hope to see greater clarity from both the legislature and the judiciary regarding the effects of long COVID and other difficult-to-diagnose illnesses such as Lyme disease.

Otherwise, the pandemic has raised questions about what changes the industry needs to make in order to prepare for future surges or new pandemics. Does special consideration need to be given to industries with a higher risk of viral infection? What about the impact on mental health arising from work-related infections? We hope that legislation will be introduced to address these issues so that we are better prepared for the next pandemic.

Mental Health Issues

In recent years, mental health issues have gained recognition in recent years, both as legitimate health issues and as something that affects far more people than previously thought. While workers' compensation does provide coverage for mental health issues arising from or in the course of employment, experts continue to question whether coverage is adequate and whether the law needs to do more to help people who are unable to work due to work-related mental health issues.

One of the issues that we expect to be addressed at some point is the preference that is given to certain industries over others. For example, first responders are more likely to have PTSD, anxiety, depression, and other mental health issues covered by workers' compensation than other workers. First responders are expressly provided for by statute, while other workers must prove the following:

- Their employment placed them at an increased risk of mental health issues compared to the overall population; and
- Their job substantially contributed to their mental health issues

It is difficult to foresee how the legislature will respond to these issues, but we expect that the judiciary will further clarify how workers can qualify for workers' compensation for work-related mental health issues.

Artificial Intelligence

As with every other sector, the workers' compensation industry is exploring the potential uses and impacts of using AI in the processing of claims. The obvious advantage is that AI would reduce the time involved in processing and responding to claims. AI would reduce the demands on personnel for insurers and possibly at the NCIC level. This could help workers get their claims approved more quickly, thereby receiving their benefits sooner.

As has been widely reported in the media, the problem with AI is potential bias. Workers should be concerned about AI automatically denying claims that are complex or that involve injuries that are atypical for a particular industry. There are also concerns of implicit bias towards women and minorities. One would hope that the AI process would trigger a human review for complex or unusual claims, but that remains to be seen. We expect to see legislation governing the use of AI in workers' compensation claims in the near future, both in how claims are handled as well as addressing the concerns over bias.

Medical Marijuana

Unlike many other states, North Carolina has not approved marijuana for recreational or medical use. Senate Bill 711 seemingly paved the way for medical marijuana when it passed the Senate last year, but once again, the effort failed in the House. However, numerous industry experts believe that efforts will continue to legalize marijuana for both recreational and medicinal use.

For workers, this means that medical marijuana may be used for treatment of pain resulting from work-related injuries within the next few years. That said, workers should be mindful that it would have to be approved by workers' compensation insurance companies even if it has been legalized for medicinal purposes.

Workplace Violence

Workplace violence is on the rise across the country. This can include violence perpetrated by customers, patients, and others from outside the workplace, but can also include violence among co-workers. The critical issue is whether the violence arises out of the injured worker's employment - if the violence isn't work-related, the injured worker is not entitled to workers' compensation benefits. For example, a worker who is attacked by a co-worker as a result of workplace tension would likely qualify for workers' comp. On the other hand, a worker who is attacked by her ex-husband while at work as a result of a child custody dispute would likely not qualify for workers' compensation. The law

is fairly clear on this point so we do not necessarily anticipate any changes, but it will be interesting to see if the law responds if insurers continue to pay increasing amounts of benefits due to workplace violence.

Disparate Treatment Among Claimants?

Some researchers point to how different workers or classes of workers may not be treated the same when it comes to receiving workers' compensation benefits. First responders and mental health issues are one example, but there are other illnesses and injuries that are often approved for some workers and not others. Some believe that our workers' compensation laws should be amended to ensure that benefits are approved on an equal basis.

Clarification on Total Loss of Wage-Earning Capacity

In an opinion issued last year, the North Carolina Court of Appeals rendered a decision in *Sturdivant v. N.C. Dep't of Pub. Safety* concerning a worker's ability to seek additional workers' compensation benefits beyond the initial 500-week period.

North Carolina law was amended in 2011 to allow for workers to receive extended benefits if they could demonstrate that they have suffered a "total loss of wage-earning capacity." The issue at the center of the case was whether "total loss of wage-earning capacity" was judged according to the same standard as determining whether the worker had suffered a "total disability" for the initial disability determination. Ultimately, the Court of Appeals found that the two phrases - "total loss of wage-earning capacity" and "total disability" - were synonymous, and therefore the same analysis should apply.

Unfortunately, the worker ultimately lost the case. The second part of the analysis addressed whether he had met his burden of proof in determining whether he had experienced a total loss of wage-earning capacity, as the inability to secure gainful employment could be considered a "total disability." The Court of Appeals found that he did not meet his burden of proof because he failed to introduce evidence of his efforts to find a job or that there were no suitable jobs available.

Unable to Work Due to a Work-Related Injury or Illness? Contact Martin & Jones Today

Workers' compensation claims can be far more complex than people expect. Fortunately, you do not have to find your way on your own. If you have run into obstacles or have been denied, we can help. Call us today at 800-662-

1234 or [contact us online](#) to schedule a free consultation.

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