

\$500 Post DRO Attorney Consultation Fees & Costs



	FY2010	FY2011	FY2012	FY2013	FY2014
Total Fees & Costs	\$32,117	\$64,126	\$105,131	\$99,602	\$101,993
■ Costs	\$32	\$172	\$665	\$75	\$551
■ Fees	\$32,085	\$63,954	\$104,466	\$99,527	\$101,442

92-01-02-11.1. Attorney's fees. Upon receipt of a certificate of program completion from the decision review office, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at one hundred forty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at seventy dollars per hour.

2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to eighty-five dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at forty dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.

3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:

a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.

b. Three thousand five hundred dollars, plus reasonable costs

incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the hearing is called to order.

c. Five thousand five hundred dollars, plus reasonable costs incurred, if the employee prevails after the hearing is called to order by the administrative law judge. If the employee prevails after the hearing, and the organization appeals the final order, the organization shall pay attorney's fees at a rate of one hundred twenty-five percent of the maximum fees specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.

d. Six thousand one hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Eight thousand two hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.

e. Nine thousand nine hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Ten thousand eight hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.

f. One thousand six hundred dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.

g. Should a settlement or order amendment offered during the DRO process be accepted after the DRO certificate of completion has

been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.

4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.

5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).

6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.

7. The following costs will be reimbursed:

- a. Actual postage, if postage exceeds three dollars per parcel.
- b. Actual toll charges for long-distance telephone calls.
- c. Copying charges, at eight cents per page.
- d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by

North Dakota Century Code sections 44-08-04 and 54-06-09.

Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.

e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.

8. The following costs will not be reimbursed:

- a. Facsimile charges.
- b. Express mail.
- c. Additional copies of transcripts.
- d. Costs incurred to obtain medical records.
- e. Online computer-assisted legal research.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

History: Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010; April 1, 2012; April 1, 2014.

General Authority: NDCC 65-02-08, 65-02-15

Law Implemented: NDCC 65-02-08, 65-02-15, 65-10-03f. Copy charges for documents provided by the organization.

Vocational Rehabilitation Statistics from 7/1/2011 to 6/30/2014

Claims Opened:

Timeframe	ND Claims	Out of State Claims	Total
7/1/2011 to 6/30/2012	434	147	581
7/1/2012 to 6/30/2013	405	264	669
7/1/2013 to 6/30/2014	429	302	731

Claims Closed:

	7/1/2011 to 6/30/2012	7/1/2012 to 6/30/2013	7/1/2013 to 6/30/2014
RTW Same Position-Same Employer	33	19	29
RTW Same Occupation - Any Employer	54	70	105
Return to Modified Position - Same Employer	11	6	8
Return to Modified or Alternate Occupation- An	30	24	33
RTW to a Local Labor Market (35 mile radius)	3	11	21
RTW Statewide	25	31	38
Retraining	32	30	53
Paragraph 6	37	34	51
Total	225	225	338

Retraining Programs:

	7/1/2011 to 6/30/2012	7/1/2012 to 6/30/2013	7/1/2013 to 6/30/2014
Retraining Programs Offered:		94	84
Retraining Programs Awarded:	32	30	53

Retraining 2014/2015 School Year:

99 Students

73 Students are out of state (39 Students are in Minnesota and the remaining 34 students are in 19 other states)

Income Test based on 66 2/3 of the States Average Weekly Wage

7/1/2011	\$482	\$12.05 hr
7/1/2012	\$531	\$13.25 hr
7/1/2013	\$586	\$14.65 hr
7/1/2014	\$610	\$15.25 hr

Vocational staff include 14 vocational case managers and 1 School Coordinator

Vocational Rehabilitation Services: In-house Expenses

<u>Calendar Year 2012</u>		<u>Calendar Year 2013</u>	
Payroll Expenses Summary	491,555.01	Payroll Expenses Summary	612,849.95
Fringe Benefits Summary	193,962.13	Fringe Benefits Summary	222,502.72
Total Payroll and Benefits Summary	<u>685,517.14</u>	Total Payroll and Benefits Summary	<u>835,352.67</u>
Total RTW Dept. Expenses	104,290.03	Total RTW Dept. Expenses	123,945.14
Voc. Rehab Portion	50%	Voc. Rehab Portion	50%
	<u>52,145.02</u>		<u>61,972.57</u>
Calendar Year 2012 Total	\$ 737,662.15	Calendar Year 2013 Total	\$ 897,325.24

Vocational Rehabilitation Services: Actual Costs Paid to Corvel

<u>July 1, 2009 - June 30, 2010</u>	<u>July 1, 2010 - June 30, 2011</u>
1,084,796.07	1,129,309.17

2013 SB 2298 Information Sheet

Engrossed 2013 SB 2298 with House Amendments amended NDCC 65-05-08.3. This statute was originally enacted in 2009.

This section provides guidelines to be followed by WSI in the event conflicting medical opinions exist within a claim.

This law was passed by the 2009 Legislative Assembly and was an attempt to legislatively enact what already was established North Dakota case law, and had been the standard for then 28 years. See, *Bromley v. N.D. Work Comp*, 304 N.W.2d 412 (N.D. 1981). *Bromley* established WSI cannot make a claims decision that is contrary to a treating doctor's opinion without first having a supported and defensible reason for doing so.

During the pendency of this legislative action, WSI's interpretation of 65-05-08.3 was on appeal to the North Dakota Supreme Court. It was alleged within that litigation this statute created a presumption of correctness of a treating physician's opinion to be rebutted by presentation of testimony to the contrary.

The creation of a presumption would require WSI to bear the burden of persuasion should there be conflicting medical evidence in any particular case.

In almost all other circumstances, WSI is the adjudicator of fact and the burden of persuasion is on the entity seeking redress, whether that is the employer or the employee.

This amendment was intended to clarify that WSI must explain why it is adopting a particular medical opinion other than that of the treating physician, but it does not create the presumption of correctness the original legislation is alleged to have done. The clarifying changes were enacted and became effective August 2013.

On June 19, 2013 the North Dakota Supreme Court issued Albright v. WSI, 2013 ND 97, which agreed with WSI's position regarding the original language of NDCC 65-05-08.3. The Court determined "that the legislature's intent in passing H.B. 1561 [the original version of the statute] was to codify caselaw stating that if WSI disregards medical evidence favorable to a claimant WSI must consider the entire record, clarify inconsistencies, and adequately explain the reason for disregarding medical evidence favorable to the claimant, applying the two tests and the factors identified in N.D.C.C. § 65-05-08.3." At ¶ 27.

Independent Medical Examinations (IMEs)

IMEs have been a discussion topic within numerous independent studies, evaluations, and reports conducted on WSI. IMEs are also an element in the 2014 Performance Evaluation which is a work in progress and is tentatively scheduled to be presented to the interim legislative Workers' Compensation Review Committee in September 2014.

Some excerpts from prior reviews are contained below:

2008 Independent Performance Evaluation conducted by BDMP (issued 10/8/2008)*

(p. 91) *The claim evaluations revealed that IMEs were utilized appropriately in the claims process and ultimately helped drive claims towards resolution 86% of the time. In other words, the claim adjuster was able to make decisions on the claim once they obtained an independent medical opinion. The remaining 14% of evaluated claims are still ongoing and have not yet been resolved. According to WSI, 0.5% of the claims are sent for IMEs. In every case BDMP examined, the adjuster chose an IME physician based on the specialty required to provide a thorough and accurate independent medical exam.*

(p. 91) *In every claim evaluated, the specialty of the IME physician was either the same as the treating physician or was a specialty better versed in the specific injury or treatment that was in question. The specialty of the IME physician was often documented on the forms sent to the injured worker and on the report forwarded back to the adjuster.*

(p. 92) *Of the IME claims evaluated by BDMP with completed IME reports, 35% of the IME physicians agreed and 65% disagreed with the treating physician.*

(p. 92) *Of the IME claims evaluated, only 18% were completed with North Dakota physicians, while 82% were scheduled with Minnesota physicians.*

- In multiple instances however, the Minnesota IME physicians traveled to North Dakota to complete the IME.

- There was no significant difference between the IME results (agree/disagree with the treating physician) related to the location of the IME physician. 33% of the North Dakota IME physicians agreed with the treating physician compared to 35% of the Minnesota IME physicians.

Conolly Review (issued 3/5/2008)

(p.49) *We found it unusual that the total number of WSI ordered IME's [Independent Medical Reviews] performed in 2007, at only 110, is the subject of public controversy. In contrast with the more than 2,000 lost time cases accepted each year by WSI. The same number of IME's is very small upon a relative basis, particularly in comparison to most of the workers' compensation systems with which we are familiar. In many other jurisdictions IME's are routine, and not the exception that they clearly are in North Dakota. Moreover, IME's appear to be ordered reluctantly by WSI, and only in the more difficult or questionable cases.*

IME Audit Report conducted by DA Dronen Consulting (issued 2/1/2007)*

(p. 24) 2. *WSI's utilization of IME's and Record Reviews reflects a lower percentage frequency than that of neighboring states and other insurance companies. Audit findings showed that based on a two year average of total claims filed (20,738) in 2005-06, an average of 113 IME's and Record Reviews were conducted through WSI. This reflects a 0.5% utilization rate. In comparison, a large Minnesota based workers compensation insurer shared data that demonstrates in 2005-06, on 21,134 claims filed they conducted 789 IME's/Record Reviews. This Minnesota based insurer's utilization rate of these services is 3.7%. A comparable state fund shared data that demonstrates on an average of 161,986 claims filed in 2005-06, 16,396 IME's were conducted. This represents a utilization rate of 10.1%.*

(p. 27) *However, our review of a sample of claims did reflect the rationale for obtaining IME's was consistently sound, appeared objectively driven, and was scheduled with IME vendors based on availability and scheduling habits rather than any desire to obtain a certain position favorable to WSI.*

*-indicates complete copies of the report can be found on WSI's website at www.workforcesafety.com

Exhibit 5.2: State by State Comparison with Respect to Prior Injuries, Pre-Existing Conditions, and Degenerative Conditions

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Alabama	<p><i>Taylor v. Mobile Pulley & Mach. Works</i>, 714 So.2d 300 (Ala. Civ. App., 1997) If the employee was able to perform his duties prior to the injury, no preexisting condition is present for the purposes of workers compensation. If a job related injury combines with a preexisting condition to produce a disability, it does not affect a compensation award. Further, if a preexisting condition is aggravated by a work-related injury, the condition is still compensable even though the accident may not have caused the same injury in a normal person.</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p>Ala. Code 25-5-57(a)(4)3: If an employee had a permanent disability or has previously sustained another injury than that in which he received a subsequent permanent injury by accident, such as is specified in the provision of this section defining permanent injury, he shall be entitled to compensation only for the degree on injury that would have resulted from the latter accident if the earlier disability or injury had not existed</p>
Alaska	<p><i>AS 23.30.010(a)</i>: Employee must establish a causal link between the employment and the disability, death or the need for medical treatment ... Compensation or benefits under this chapter are payable for the disability, death, or need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability, death, or need for medical treatment. <i>AS 21.55.130(a)</i>: State Plan must include coverage of a preexisting condition unless the condition happened 3 months immediately before the effective date of coverage, which would cause a reasonable person to seek care, treatment, or medical advice or treatment was recommended or received within the period of 3 months immediately before the effective date of coverage. <i>Burgess Constr. Co. v. Smallwood</i>, 623 P.2d 312: It is well established in worker's compensation law that when a work-related injury aggravates a pre-existing condition a compensable claim arises.</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p>If the work injury temporarily aggravates the pre-existing condition, the employer is responsible for bringing the employee back to a pre-injury status. If a work injury permanently aggravates a pre-existing condition, the employer is responsible for 100% of the benefits going forward.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Arizona	No statutory definition pertaining to pre-existing conditions.	<i>A.R.S. 23-1065-2c</i> : In claims involving an employee who has a preexisting physical impairment which is not industrially-related and, whether congenital or due to injury or disease, is of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the impairment equals or exceeds a ten per cent permanent impairment evaluated in accordance with the American medical association guides to the evaluation of permanent impairment, and the employee thereafter suffers an additional permanent impairment not of the type specified in section 23-1044, subsection B, the claim involving the subsequent impairment is eligible for reimbursement, as provided by subsection D of this section (list of conditions)....	<i>A.R.S.23-901.05</i> : Where an occupational disease as defined by § 23-901 paragraph 13, subdivision (c) (substantial contributing cause” under § 23-1021 means anything more than a slight contributing cause), is aggravated by any other disease or infirmity not itself compensable, or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in anywise contributed to by an occupational disease, the compensation payable under this chapter shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease were the sole cause of the disability or death, as such occupational disease as a causative factor bears to all the causes of such disability or death.

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Arkansas	<p><i>A.C.A. 11-9-525 (a)(3)</i>: It is intended that latent conditions that are not known to the employee or the employer not be considered previous disabilities or impairments which would give rise to a claim against the fund. <i>Nashville Livestock Com'n v. Cox</i>, 787 S.W.2d 664: The court stated, "In workers' compensation law the employer takes the employee as he finds him and employment circumstances which aggravate preexisting conditions are compensable. <i>Parker v. Atlantic Research Corp.</i>, 189 S.W.3d 449: Employee had preexisting condition that was asymptomatic prior to the work activity. A rapid, repetitive motion injury is argued to be an aggravation of a preexisting condition if the claimant can prove it caused harm requiring medical services, arose out of and in the course of employment, was caused by rapid, repetitive motion, was the major cause of injury, and supported by objective medical evidence. Appellant's doctor testified within a reasonable degree of medical certainty that the work-related aggravation was the major cause of employee's disability and need for treatment.</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p><i>A.C.A. § 11-9-601(c)(1)</i>: Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable shall be reduced and limited to the proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as the occupational disease, as a causative factor, bears to all the causes of the disability or death.</p>
California	<p>No statutory definition pertaining to pre-existing conditions. The employer is also allowed to join prior employers to contribute to the cost only if the employee has been with the employer less than one year.</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p><i>Cal. LC 4663</i>: In case of aggravation of any disease existing prior to a compensable injury, compensation shall be allowed only for the portion of the disability due to the aggravation of such prior disease which is reasonably attributed to the injury. <i>Cal. LC 4664</i>: The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment. <i>City of Glendale v. Indus. Acc. Comm'n of Cal.</i>, 314 P.2d 182: Where disability is due entirely to the lighting up or aggravation of preexisting conditions by industrial injury, employer is liable to compensate for entire disability, but where disability is partly due to industrial injury and partly due to normal progress of preexisting disease or condition, industrial accident Commission must apportion the percentage of disability due to injury and percentage due to continuance of disease apart from injury.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Colorado	No statutory definition pertaining to pre-existing conditions.	No statutory definition pertaining to subsequent non-work related conditions.	<i>C.R.S.A. 8-42-104:</i> The fact that an employee has suffered a previous disability or impairment or received compensation therefore shall not preclude compensation for a later injury or for death. An employee's recovery of permanent total disability shall not be reduced when the disability is the result of work related injury or work related injury combined with genetic, congenital, or similar conditions when an employee has suffered more than one permanent medical impairment to the same body part and has received a worker's compensation award or settlement, or when an employee has a non work-related previous permanent medical impairment to the same body part that has been identified, treated, and, at the time of the subsequent compensable injury, is independently disabling. The percentage of the non work-related permanent medical impairment existing at the time of the subsequent injury to the same body part shall be deducted from the permanent medical impairment rating for the subsequent compensable injury.
Connecticut	<i>C.G.S.A. 38a-476:</i> "Preexisting conditions provision" means a policy provision which limits or excludes benefits relating to a condition based on the fact that the condition was present before the effective date of coverage, for which any medical advice, diagnosis, care or treatment was recommended or received before such effective date. <i>C.G.S.A. 38a-553:</i> No preexisting condition exclusion shall exclude coverage of any preexisting condition unless the condition first manifested itself within the period of six months immediately prior to the effective date of coverage in such a manner as would cause a reasonably prudent person to seek diagnosis, care or treatment; medical advice or treatment was recommended or received within the period of six months immediately prior to the effective date of coverage; or the condition is pregnancy existing on the effective date of coverage. No policy shall exclude coverage for a loss due to preexisting conditions for a period greater than twelve months following the effective date of coverage.	No statutory definition pertaining to subsequent non-work related conditions.	<i>C.G.S.A. 31-275:</i> For aggravation of a preexisting disease, compensation shall be allowed only for that portion of the disability or death due to the aggravation of the preexisting disease as may be reasonably attributed to the injury upon which the claim is based, where "previous disability" means an employee's preexisting condition caused by the total or partial loss of, or loss of use of, one hand, one arm, one foot, or one eye resulting from accidental injury, disease or congenital causes, or other permanent physical impairment.

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Delaware	<p>If an injured worker has an asymptomatic degenerative condition which is accelerated or exacerbated by the work event, the workers' compensation carrier is 100% responsible for injury. If an injured worker has a symptomatic degenerative condition which is aggravated by the work event, the workers' compensation carrier may argue that the responsibility is only until the injured workers returns to baseline.</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p><i>19 Del.C. 2327:</i> Whenever a subsequent permanent injury occurs to an employee who has previously sustained a permanent injury, from any cause, whether in line of employment or otherwise, the employer for whom such injured employee was working at the time of such subsequent injury shall be required to pay only that amount of compensation as would be due for such subsequent injury without regard to the effect of the prior injury. <i>19 Del.C. 2329:</i> Whenever any disability from which any employee is suffering following the contraction of a compensable occupational disease is due in part to such occupations disease and in part to a preexisting disease or infirmity, the Board shall determine the proportion of such disability which is reasonably attributable to the occupational disease and the proportion which is reasonably attributable to the preexisting disease or infirmity and such employees shall be entitled to compensation only for that proportion of the disability which is reasonably attributable solely to the occupational disease.</p>
Florida	<p><i>F.S.A. 440.09:</i> This chapter does not require any compensation or benefits for any subsequent injury the employee suffers as a result of an original injury arising out of and in the course of employment unless the original injury is the major contributing cause of the subsequent injury. Major contributing cause must be demonstrated by medical evidence only. If an injury arising out of and in the course of employment combines with a preexisting disease or condition to cause or prolong disability or need for treatment, the employer must pay compensation or benefits required by this chapter only to the extent that the injury arising out of and in the course of employment is and remains more than 50 percent responsible for the injury as compared to all other causes combined and thereafter remains the major contributing cause of the disability or need for treatment. Major contributing cause must be determined by medical evidence only.</p> <p>If a compensable injury, disability, or need for medical care, or any portion thereof, is a result of aggravation or acceleration of a preexisting condition, or is the result of merger with a preexisting condition, only the disabilities and medical treatment associated with such</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p><i>F.S.A. 440.09:</i> The degree of permanent impairment or disability attributable to the accident or injury shall be compensated in accordance with this section, apportioning out the preexisting condition based on the anatomical impairment rating attributable to the preexisting condition.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Florida (Cont'd)	compensable injury shall be payable under this chapter, excluding the degree of disability or medical conditions existing at the time of the impairment rating or at the time of the accident, regardless of whether the preexisting condition was disabling at the time of the accident or at the time of the impairment rating and without considering whether the preexisting condition would be disabling without the compensable accident. Medical benefits shall be paid apportioning out the percentage of the need for such care attributable to the preexisting condition.		
Georgia	<i>Harris v. Peach County Board Of Commissioners, 674 S.E.2d 36</i> : Court states that the employee's predisposition to dislocate her knee, per se, does not render her job-related injury non-compensable. The court also stated that "it is well established that an employee need not be in perfect health or free from disease at the time he received the injury to recover under the Act. <i>Union City Auto Parts v. Edwards, 589 S.E. 2d 351</i> : Employers are required to pay income benefits when a claimant is disabled because of aggravation of a preexisting hernia, but they are not required to pay medical expenses for aggravation of a preexisting hernia under OCGA § 34-9-261.	<i>Ga. Code Ann.34-9-204</i> : No compensation shall be payable for the death or disability of an employee if his or her death is caused by or, insofar as his or her disability, may be aggravated, caused, or continued by a subsequent non work related injury which breaks the chain of causation between the compensable injury and the employee's disability.	<i>Ga. Code Ann. 34-9-241</i> : Limitation on compensation for permanent partial disability. If an employee received an injury for which income benefits are payable under Code Section 34-9-263 and has a preexisting bodily loss or loss of use as described under Code Section 34-9-263 which was increased by reason of the injury, the employee shall be entitled to income benefits under Code Section 34-9-263 only for the loss or loss of use as increased by the injury. This limitation, however, shall not prevent the employee from continuing to receive income benefits for the preexisting loss or loss of use to which the employee is otherwise entitled under Code Section 34-9-263

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Hawaii	HRS 386-3: An employee's injury caused by a disease is compensable as an "injury by disease", pursuant to this section, when the disease (1) is caused by conditions that are characteristic of or peculiar to the particular trade, occupation, or employment, (2) results from employee's actual exposure to such working conditions, and (3) is due to causes in excess of the ordinary hazards of employment in general. 94 H. 70, 9 P.3d 382.	No statutory definition pertaining to subsequent non-work related conditions.	HRS 386-33: (a) Where prior to any injury an employee suffers from a previous permanent partial disability already existing prior to the injury for which compensation is claimed, and the disability resulting from the injury combines with the previous disability, whether the previous permanent partial disability was incurred during past or present periods of employment, to result in a greater permanent partial disability or in permanent total disability or in death, then weekly benefits shall be paid as follows: (1) In cases where the disability resulting from the injury combines with the previous disability to result in greater permanent partial disability the employer shall pay the employee compensation for the employee's actual permanent partial disability but for not more than one hundred four weeks; the balance if any of compensation payable to the employee for the employee's actual permanent partial disability shall thereafter be paid out of the special compensation fund; provided that in successive injury cases where the claimant's entire permanent partial disability is due to more than one compensable injury, the amount of the award for the subsequent injury shall be offset by the amount awarded for the prior compensable injury; (2) In cases where the disability resulting from the injury combines with the previous disability to result in permanent total disability, the employer shall pay the employee for one hundred four weeks and thereafter compensation for permanent total disability shall be paid out of the special compensation fund; and (3) In cases where the disability resulting from the injury combines with the previous disability to result in death the employer shall pay weekly benefits in accordance with sections 386-41 and 386-43 but for not more than one hundred four weeks; the balance of compensation payable under those sections shall thereafter be paid out of the special compensation fund.
Idaho	No statutory definition pertaining to pre-existing conditions.	If an industrial injury is substantially aggravated by a subsequent non-industrial cause, there would be a defense that the WC surety would not be responsible for the medical care or any additional impairment/disability. This is determined on a case-by-case basis.	I.C. 72-406: In cases of permanent disability less than total, if the degree or duration of disability resulting from an industrial injury or occupational disease is increased or prolonged because of a preexisting physical impairment, the employer shall be liable only for the additional disability from the industrial injury or occupational disease.

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Illinois	<p><i>HB6159:</i> Amends the Workers' Compensation Act as follows: defines "injury" as an injury that has arisen out of and in the course of employment; provides that an injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability; provides that an injury is deemed to arise out of and in the course of the employment only if specified conditions are met; provides that an injury resulting directly or indirectly from idiopathic causes is not compensable. It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed, outside of and unrelated to the employment in non employment life.</p>	<p><i>HB0058:</i> In computing the compensation to be paid any employee who, before the accident for which he or she claims compensation, had previously sustained an injury resulting in the payment of compensation for a percentage of partial disability under this paragraph (d)2, that percentage of partial disability shall be deducted from any award or settlement made under this paragraph (d)2 for a subsequent injury.</p>	<p><i>HB0058:</i> In computing the compensation to be paid any employee who, before the accident for which he or she claims compensation, had previously sustained an injury resulting in the payment of compensation for a percentage of partial disability under this paragraph (d)2, that percentage of partial disability shall be deducted from any award or settlement made under this paragraph (d)2 for a subsequent injury.</p>
Indiana	<p><i>IC 22-3-7-10:</i> (a) As used in this chapter, "occupational disease" means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section. (b) A disease arises out of the employment only if there is apparent to the rational mind, upon consideration of all of the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workers would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.</p>	<p><i>IC 22-3-3-12: Sec.12:</i> That if the permanent injury for which compensation is claimed, results only in the aggravation or increase of a previously sustained permanent injury or physical condition, regardless of the source or cause of such previously sustained injury or physical condition, the board shall determine the extent of the previously sustained permanent injury or physical condition, as well as the extent of the aggravation or increase resulting from the subsequent permanent injury, and shall award compensation only for that part of such injury, or physical condition resulting from the subsequent permanent injury.</p>	<p><i>IC 22-3-3-12: Sec.12:</i> That if the permanent injury for which compensation is claimed, results only in the aggravation or increase of a previously sustained permanent injury or physical condition, regardless of the source or cause of such previously sustained injury or physical condition, the board shall determine the extent of the previously sustained permanent injury or physical condition, as well as the extent of the aggravation or increase resulting from the subsequent permanent injury, and shall award compensation only for that part of such injury, or physical condition resulting from the subsequent permanent injury.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Iowa	No statutory definition pertaining to pre-existing conditions.	I.C.A. 85.34: An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.	I.C.A. 85.34: An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.
Kansas	KSA 44-501c: The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work related injury causes increased disability. KSA 44-510d: Where disability in part results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A 44-510h and 44-510i.	No statutory definition pertaining to subsequent non-work related conditions.	K.S.A. 44-510 (a): Any award of compensation shall be reduced by the amount that the prior disability contributes to the overall disability following the later injury. The reduction shall be made only if the resulting permanent total or permanent partial disability was contributed to by a prior disability and if compensation was actually paid or is collectible for such prior disability.
Kentucky	K.S. 342.0011(1): Injury means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. Injury does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment.	No statutory definition pertaining to subsequent non-work related conditions.	KRS 342.7630(2): The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Louisiana	No statutory definition pertaining to pre-existing conditions.	<i>RS 23:1225(3)</i> : If an employee is receiving both workers' compensation benefits and disability benefits subject to a plan providing for reduction of disability benefits, the reduction of workers' compensation benefits required by R.S. 23:1225(C)(1) shall be made by taking into account the full amount of employer funded disability benefits, pursuant to plan provisions, before any reduction of disability benefits are made.	LSA-R.S. 23:1371: It is the purpose of this Part to encourage the employment of physically handicapped employees who have a permanent, partial disability by protecting employers, group self-insurance funds, and property and casualty insurers from excess liability for workers' compensation for disability when a subsequent injury to such an employee merges with his preexisting permanent physical disability to cause a greater disability than would have resulted from the subsequent injury alone. The disability resulting from the subsequent injury in conjunction with the preexisting permanent partial disability is materially and substantially greater than that which would have resulted had the preexisting permanent partial disability not been present, and the employer has been required to pay and has paid compensation for that greater disability.
Maine	<i>MN Title 39-A Part 1 Chapter 5 Section 201 (4)</i> : If a work-related injury aggravates, accelerates or combines with a preexisting physical condition, any resulting disability is compensable only if contributed to by the employment in a significant manner. <i>MN Title 39-A Part 1 Chapter 5 Section 201 (6)</i> : If an employee suffers a work-related injury that aggravates, accelerates or combines with the effects of a work-related injury that occurred prior to January 1, 1993 for which compensation is still payable under the law in effect on the date of that prior injury, the employee's rights and benefits for the portion of the resulting disability that is attributable to the prior injury must be determined by the law in effect at the time of the prior injury.	<i>MN Title 39-A Part 1 Chap 5 Section 201</i> : If an employee suffers a non work-related injury or disease that is not causally connected to a previous compensable injury, the subsequent non work-related injury or disease is not compensable under this Act.	<i>MN Title 39-A Part 2 Chap 15 Section 605</i> : When an occupational disease is aggravated by any other disease or infirmity not itself compensable, or death or incapacity from any other cause not itself compensable is aggravated, prolonged, accelerated or in any way contributed to by an occupational disease, the compensation payable must be reduced and limited to the proportion only of the compensation that would be payable if the occupational disease were the sole cause of the incapacity or death as the occupational disease, as a causative factor, bears to all the causes of that incapacity or death, the reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of the payments as, under the circumstances of the particular case, may be for the best interest of the claimant or claimants.

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Maryland	<p><i>MD Code 9-501: Employer liable regardless of fault.- An employer is liable to provide compensation in accordance with subsection (a) of this section, regardless of fault as to a cause of the accidental personal injury.</i></p>	<p><i>MD Code 9-608: Determination of percentage of contribution.- The Commission shall determine the percentage that an occupational disease contributed to the death or disability of a covered employee when the occupational disease is aggravated by another disease or infirmity that is not compensable; or the occupational disease accelerates, aggravates, prolongs, or in any way contributes to a disability or death from a cause that is not compensable.</i></p>	<p><i>MD Code 9-608: Determination of percentage of contribution.- The Commission shall determine the percentage that an occupational disease contributed to the death or disability of a covered employee when the occupational disease is aggravated by another disease or infirmity that is not compensable; or the occupational disease accelerates, aggravates, prolongs, or in any way contributes to a disability or death from a cause that is not compensable.</i></p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Massachusetts	<p><i>M.G.L. 152-26:</i> If an employee who has not given notice of his claim of common law rights of action under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer's authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer or self-insurer, as hereinafter provided.</p>	<p><i>M.G.L. 152-37:</i> Whenever an employee who has a known physical impairment which is due to any previous accident, disease or any congenital condition and is, or is likely to be, a hindrance or obstacle to his employment, and who, in the course of and arising out of his employment, receives a personal injury for which compensation is required and which results in a disability that is substantially greater by reason of the combined effects of such impairment and subsequent personal injury than that disability which would have resulted from the subsequent personal injury alone, the insurer or self-insurer shall pay all compensation provided by this chapter. If said subsequent injury is caused by the preexisting impairment said subsequent personal injury of such an employee shall result in the death of the employee, and it shall be determined that the death would not have occurred except for such pre-existing physical impairment, the insurer shall pay all compensation provided by this chapter. There shall be no reimbursement unless the employer had personal knowledge of the existence of such pre-existing physical impairment within thirty days of the date of employment or retention of the employee by such employer from either a physical examination, employment application questionnaire, or statement from the employee.</p>	<p><i>M.G.L. 152-37:</i> Whenever an employee who has a known physical impairment which is due to any previous accident, disease or any congenital condition and is, or is likely to be, a hindrance or obstacle to his employment, and who, in the course of and arising out of his employment, receives a personal injury for which compensation is required and which results in a disability that is substantially greater by reason of the combined effects of such impairment and subsequent personal injury than that disability which would have resulted from the subsequent personal injury alone, the insurer or self-insurer shall pay all compensation provided by this chapter. If said subsequent injury is caused by the preexisting impairment said subsequent personal injury of such an employee shall result in the death of the employee, and it shall be determined that the death would not have occurred except for such pre-existing physical impairment, the insurer shall pay all compensation provided by this chapter. There shall be no reimbursement unless the employer had personal knowledge of the existence of such pre-existing physical impairment within thirty days of the date of employment or retention of the employee by such employer from either a physical examination, employment application questionnaire, or statement from the employee.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Michigan	<p><i>M.C.L.A. 418-301</i>: Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof.</p> <p><i>M.C.L.A. 418-401</i>: "Personal injury" shall include a disease or disability which is due to causes and conditions which are characteristic of and peculiar to the business of the employer and which arises out of and in the course of the employment. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable.</p>	<p><i>M.C.L.A. 418-431</i>: Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any way contributed to by an occupational disease, the compensation payable shall be a proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bearing to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.</p>	<p><i>M.C.L.A. 418-431</i>: Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any way contributed to by an occupational disease, the compensation payable shall be a proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bearing to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Minnesota	<p>M.S.A. 176.021: Every employer is liable for compensation according to the provisions of this chapter and is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment without regard to the question of negligence.</p>	<p><i>M.S.A. 176.101 Subd. 4a:</i> If a personal injury results in a disability which is attributable in part to a preexisting disability that arises from a congenital condition or is the result of a traumatic injury or incident, whether or not compensable under this chapter, the compensation payable for the permanent partial disability pursuant to this section shall be reduced by the proportion of the disability which is attributable only to the preexisting disability. An apportionment of a permanent partial disability under this subdivision shall be made only if the preexisting disability is clearly evidenced in a medical report or record made prior to the current personal injury. Evidence of a copy of the medical report or record upon which apportionment is based shall be made available to the employee by the employer at the time compensation for the permanent partial disability is begun</p>	<p><i>M.S.A. 176.101 Subd. 4a:</i> If a personal injury results in a disability which is attributable in part to a preexisting disability that arises from a congenital condition or is the result of a traumatic injury or incident, whether or not compensable under this chapter, the compensation payable for the permanent partial disability pursuant to this section shall be reduced by the proportion of the disability which is attributable only to the preexisting disability. An apportionment of a permanent partial disability under this subdivision shall be made only if the preexisting disability is clearly evidenced in a medical report or record made prior to the current personal injury. Evidence of a copy of the medical report or record upon which apportionment is based shall be made available to the employee by the employer at the time compensation for the permanent partial disability is begun</p>
Mississippi	<p><i>Miss. Code Ann. 71-3-3:</i> "Injury" means accidental injury or accidental death arising out of and in the course of employment without regard to fault which results from an untoward event or events, if contributed to or aggravated or accelerated by the employment in a significant manner. Untoward event includes events causing unexpected results. An untoward event or events shall not be presumed to have arisen out of and in the course of employment, except in the case of an employee found dead in the course of employment. <i>Miss. Code Ann. 71-3-7:</i> Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease.</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p><i>Miss. Code Ann. 71-3-7:</i> Where a preexisting physical handicap, disease, or lesion is shown by medical findings to be a material contributing factor in the results following injury, the compensation which, but for this paragraph, would be payable shall be reduced by that proportion which such preexisting physical handicap, disease, or lesion contributed to the production of the results following the injury. The employer or carrier does not have the power to determine the date of maximum medical recovery or percentage of apportionment. This must be done by the attorney-referee, subject to review by the commission as the ultimate finder of fact. Apportionment shall not be applied until the claimant has reached maximum medical recovery.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Missouri	<p><i>V.A.M.S. 287.020:</i> The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal non employment life. <i>V.A.M.S. 287.067:</i> An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable.</p>	<p><i>V.A.M.S. 287.190.3:</i> For permanent injuries other than those specified in the schedule of losses, the compensation shall be paid for such periods as are proportionate to the relation which the other injury bears to the injuries above specified, but no period shall exceed four hundred weeks, at the rates fixed in subsection 1. The other injuries shall include permanent injuries causing a loss of earning power. <i>V.A.M.S. 287.190.6(3):</i> Any award of compensation shall be reduced by an amount proportional to the permanent partial disability determined to be a preexisting disease or condition or attributed to the natural process of aging sufficient to cause or prolong the disability or need of treatment.</p>	<p><i>V.A.M.S. 287.190.3:</i> For permanent injuries other than those specified in the schedule of losses, the compensation shall be paid for such periods as are proportionate to the relation which the other injury bears to the injuries above specified, but no period shall exceed four hundred weeks, at the rates fixed in subsection 1. The other injuries shall include permanent injuries causing a loss of earning power. <i>V.A.M.S. 287.190.6(3):</i> Any award of compensation shall be reduced by an amount proportional to the permanent partial disability determined to be a preexisting disease or condition or attributed to the natural process of aging sufficient to cause or prolong the disability or need of treatment.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Montana	<p><i>MCA 39-71-119</i>: "Injury" or "injured" means internal or external physical harm to the body that is established by objective medical findings; An injury is caused by an accident. An accident is an unexpected traumatic incident or unusual strain, identifiable by time and place of occurrence, identifiable by member or part of the body affected, caused by a specific event on a single day or during a single work shift. "Injury" or "injured" does not include a disease that is not caused by an accident. <i>MCA 39-71-407</i>: Each insurer is liable for the payment of compensation to an employee of an employer covered that it insures who receives an injury arising out of and in the course of employment. If the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that a claimed injury has occurred, or a claimed injury aggravated a preexisting condition, proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.</p> <p>As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes. Occupational diseases are considered to arise out of employment or be contracted in the course and scope of employment if: the occupational disease is established by objective medical findings; and the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.</p>	<p><i>MCA 39-71-407</i>: If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury. <i>MCA 39-71-403</i>: If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries. <i>MCA 39-70-901</i>: "Person with a disability" means a person who has a medically certifiable permanent impairment that is a substantial obstacle to obtaining employment or to obtaining reemployment if the person should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.</p>	<p><i>MCA 39-71-739</i>: If aggravation, diminution, or termination of disability takes place or is discovered after the rate of compensation is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter are not reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter. <i>MCA 39-70-901</i>: "Person with a disability" means a person who has a medically certifiable permanent impairment that is a substantial obstacle to obtaining employment or to obtaining reemployment if the person should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.</p>
Nebraska	<p><i>Neb Rev St. 48-101</i>: The accident requirement of the act is satisfied if the cause of the injury was of accidental character or the effect was unexpected or unforeseen, and happened suddenly and violently; and, furthermore, it is no longer necessary that the injury be caused by a single traumatic event, but the exertion in the employment must contribute in some material and substantial degree to cause the injury. The term "in the course of" refers to the time, place, and circumstances surrounding the accident. The term "arising out of" describes the accident and its origin, cause, and</p>	<p><i>Neb Rev St. 48-128</i>: If an employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, which is or is likely to be a hindrance or obstacle to his or her obtaining employment or obtaining reemployment if the employee should become unemployed and which was known to the employer prior to the occurrence of a subsequent compensable injury, receives a subsequent</p>	<p><i>Yakal v. Henkle & Joyce Hardware Co.</i>, 145 Neb. 365, 16 N.W.2d 531: Award will be sustained when injury, resulting from an accident arising out of and in the course of employment and preexisting disease combined to produce disability. <i>Dymak v. Haskins Bros. & Co.</i>, 132 Neb. 308, 271 N.W. 860: Injury from strain or overexertion due to a physical condition predisposing the employee to injury is an injury under the terms of the Workmen's Compensation Act, even though, had the person been sound, the strain would not have been sufficient to occasion serious injury. <i>Gray v. Fuel Economy Contracting Co.</i>, 236 Neb. 937, 464 N.W.2d 366: This court has expressly disapproved of language in</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Nebraska (Cont'd)	<p>character, i.e., whether it resulted from the risks arising within the scope or sphere of the employee's job. Employee can recover for accumulated effects of occupational disease when disability occurs.</p> <p>This section compensates injury caused to an employee by an accident arising out of and in the course of his or her employment; the phrases "arising out of" and "in the course of" are conjunctive and must both be established by a preponderance of the evidence. <i>Yakal v. Henkle & Joyce Hardware Co.</i>, 145 Neb. 365, 16 N.W.2d 531: Award will be sustained when injury, resulting from an accident arising out of and in the course of employment and preexisting disease combined to produce disability. <i>Jurgensen v. Rogers</i>, 139 Neb. 30, 296 N.W. 341: Where sudden jerk of road grading machinery results in injury to back of employee, it is sufficient to constitute an accident arising out of and in the course of his employment. <i>Neb Rev St. 48-137 & Snipes v. Sperry Vickers</i>, 251 Neb. 415, 557 N.W.2d 662: This section has at least two exceptions, including (1) where a "latent and progressive" injury is not discovered within 2 years of the accident which caused the injury and (2) where a material change in condition occurs which necessitates additional medical care and from which an employee suffers increased disability.</p>	<p>compensable injury resulting in additional permanent partial or in permanent total disability so that the degree or percentage of disability caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. For the additional disability, the employee shall be compensated out of the Workers' Compensation Trust Fund.</p> <p>As used in this subsection, preexisting permanent partial disability shall mean any preexisting permanent condition, whether congenital or the result of injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. No condition shall be considered a preexisting permanent partial disability under this subsection unless it would support a rating of twenty-five percent loss of earning power or more or support a rating which would result in compensation payable for a period of ninety weeks or more for disability for permanent injury as computed under subdivision (3) of section 48-121.</p>	<p>previous opinions which imposed an enhanced degree of proof by an employee with a preexisting disability or condition who is prosecuting a claim under the Nebraska Workers' Compensation Act. For an award based on disability, a claimant need only establish by a preponderance of the evidence that the employment proximately caused an injury which resulted in compensable disability.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Nevada	<p><i>NRS 616C.150:</i> An injured employee or the dependents of the injured employee are not entitled to receive compensation pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS unless the employee or the dependents establish by a preponderance of the evidence that the employee's injury arose out of and in the course of his or her employment. <i>NRS 616C.160:</i> If, after a claim for compensation is filed The injured employee seeks treatment from a physician or chiropractor for a newly developed injury or disease; and the employee's medical records for the injury reported do not include a reference to the injury or disease for which treatment is being sought, or there is no documentation indicating that there was possible exposure to an injury, the injury or disease for which treatment is being sought must not be considered part of the employee's original claim for compensation unless the physician or chiropractor establishes by medical evidence a causal relationship between the injury or disease for which treatment is being sought and the original accident.</p> <p><i>NRS 616C.175:</i> If an employee subsequently sustains an injury by accident arising out of and in the course of his or her employment which aggravates, precipitates or accelerates the preexisting condition, shall be deemed to be an injury by accident that is compensable unless the insurer can prove by a preponderance of the evidence that the subsequent injury is not a substantial contributing cause of the resulting condition. <i>NRS 616C.480:</i> If an employee who has received compensation in a lump sum for a permanent partial disability is subsequently injured by an accident arising out of and in the course of his or her employment and is thereby entitled to receive compensation for a temporary total disability, the compensation for the subsequent injury may not be reduced because of the receipt of the lump-sum payment if the subsequent injury is distinct from the previous injury.</p>	<p><i>NRS 616C.175:</i> The resulting condition of an employee who sustains an injury by accident arising out of and in the course of his or her employment; and subsequently aggravates, precipitates or accelerates the injury in a manner that does not arise out of and in the course of his or her employment, shall be deemed to be an injury by accident that is compensable pursuant to the provisions of chapters 616A to 616D, inclusive, of NRS, unless the insurer can prove by a preponderance of the evidence that the injury described in paragraph (a) is not a substantial contributing cause of the resulting condition.</p>	<p><i>NRS 616C.480:</i> Reduction of benefits for previous injury causing permanent partial disability prohibited. <i>NRS 616C.557/560:</i> If an employee of a self-insured employer has a permanent physical impairment from any cause or origin and incurs a subsequent disability by injury arising out of and in the course of his or her employment which entitles the employee to compensation for disability that is substantially greater by reason of the combined effects of the preexisting impairment and the subsequent injury than that which would have resulted from the subsequent injury alone, the compensation due must be charged to the Subsequent Injury Account for Self-Insured Employers in accordance with regulations adopted by the Board.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
New Hampshire	<p><i>N.H.Rev. Stat. 281-A:2 XI: "Injury" or "personal injury" as used in and covered by this chapter means accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment. Conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable only if contributed to or aggravated or accelerated by the injury. N.H.Rev. Stat. 281-A:2 XIII: "Occupational disease" means an injury arising out of and in the course of the employee's employment and due to causes and conditions characteristic of and peculiar to the particular trade, occupation or employment. It shall not include other diseases or death therefrom unless they are the direct result of an accidental injury arising out of or in the course of employment, nor shall it include either a disease which existed at commencement of the employment or a disease to which the last injurious exposure to its hazards occurred prior to August 31, 1947. N.H.Rev. Stat. 281-A:16 For the purpose of determining the date of injury for an occupational disease, the date of injury shall be taken to be the last date of injurious exposure to the hazards of such disease or the date on which the employee first knew or reasonably should have known of the condition and its relationship to the employee's employment, whichever is the later. For an injury caused by cumulative trauma, the date of injury shall be the date of first medical treatment. For an injury or condition aggravated by cumulative trauma, the date of injury shall be the date of first medical treatment for the aggravation.</i></p>	<p><i>N.H.Rev. Stat 281-A:54: If the subsequent injury of such an employee occurring on or after July 1, 1975, shall result in the death of the employee and it shall be determined that the death would not have occurred except for such preexisting permanent physical or mental impairment, the employer or the employer's insurance carrier shall in the first instance pay the compensation prescribed by this chapter. However, the commissioner shall reimburse such employer or insurance carrier from the special fund created</i></p>	<p><i>N.H. Rev.Stat.281-A:54: If an employee who has a permanent physical or mental impairment, as defined in RSA 281-A:2, XIV, from any cause or origin incurs a subsequent disability by injury arising out of and in the course of such employee's employment on or after July 1, 1975, which results in compensation liability for a disability that is greater by reason of the combined effects of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or the employer's insurance carrier shall in the first instance pay all awards of compensation provided by this chapter. However, the commissioner shall reimburse such employer or insurance carrier from the special fund.</i></p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
New Jersey	<p><i>N.J.S.A. 34:15-7&30:</i> When employer and employee shall by agreement accept the provisions of this article compensation for personal injuries to, or for the death of, such employee by accident or any occupational disease arising out of or in the course of employment shall be made by the employer without regard to the negligence of the employer. <i>N.J.S.A. 34-15-31:</i> For the purpose of this article, the phrase "compensable occupational disease" shall include all diseases arising out of and in the course of employment, which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment. Deterioration of a tissue, organ or part of the body in which the function of such tissue, organ or part of the body is diminished due to the natural aging process thereof is not compensable.</p>	<p><i>N.J.S.A. 34:15-95:</i> The sums collected under R.S. 34:15-94 shall constitute a fund, to be known as the Second Injury Fund, out of which a sum shall be set aside each year by the Commissioner of Labor from which compensation payments in accordance with the provisions of paragraph (b) of R.S. 34:15-12 shall be made to persons totally disabled, as a result of experiencing a subsequent permanent injury under conditions entitling such persons to compensation therefore, when such persons had previously been permanently and partially disabled from some other cause.</p>	<p><i>N.J.S.A. 34:15-12:</i> If previous loss of function to the body, head, a member or an organ is established by competent evidence, and subsequently an injury or occupational disease arising out of and in the course of an employment occurs to that part of the body, head, member or organ, where there was a previous loss of function, then the employer or the employer's insurance carrier at the time of the subsequent injury or occupational disease shall not be liable for any such loss and credit shall be given the employer or the employer's insurance carrier for the previous loss of function and the burden of proof in such matters shall rest on the employer.</p>
New Mexico	<p><i>N.M.S.A. 1978 52-1-19:</i> As used in the Workers' Compensation Act [Chapter 51, Article 1 NMSA 1978], unless the context otherwise requires, "injury by accident arising out of and in the course of employment" shall include accidental injuries to workers and death resulting from accidental injury as a result of their employment and while at work in any place where their employer's business requires their presence but shall not include injuries to any worker occurring while on his way to assume the duties of his employment or after leaving such duties, the proximate cause of which is not the employer's negligence.</p>	<p><i>N.M.S.A. 1978 52-3-43:</i> Where an occupational disease is aggravated by any other disease or infirmity not itself compensable, or where disablement or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable under this act shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disablement or death, as such occupational disease as a causative factor bears to all the causes of such disablement or death, such reduction to be effected by reducing the number of weekly payments.</p>	<p><i>N.M.S.A. 1978 52-1-47 (D):</i> The compensation benefits payable by reason of disability caused by accidental injury shall be reduced by the compensation benefits paid or payable on account of any prior injury suffered by the worker if compensation benefits in both instances are for injury to the same member or function or different parts of the same member or function or for disfigurement and if the compensation benefits payable on account of the subsequent injury would, in whole or in part, duplicate the benefits paid or payable on account of such prior injury.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
New York	<p><i>McKinney's Workers' Compensation law § 3</i>: Lists occupations that are covered under the system as well as occupational diseases. What case law has stated is that a pre-existing condition does not bar award for occupational disease if there is a link between employment and disease. <i>Hollander v. Valor Clothers, Inc.</i> 457 N.Y.S.2d 1002: Workers compensation is not payable for aggravation of previous active condition; to be compensable, pre-existing condition must be dormant and non-disabling and some distinctive feature of employment must cause disability by activating condition. <i>Detenbeck v GMC</i>, 132 N.E.2d 840: o The rule regarding occupational diseases differs from that concerning industrial accident, in that an accident resulting in disability is compensable even though it would not have occurred unless the employee had been predisposed to it through some pre-existing physical defect. Predisposition of an employee to an occupational disease does not prevent him from having benefits of workmen's compensation if he develops what would ordinarily be an occupational disease. WCL § 3. The test of what is an "occupational disease" is the same whether employee is decrepit or in normal health; there must be some recognizable link between disease and some distinctive feature of claimant's job.</p>	No statutory definition pertaining to subsequent non-work related conditions.	Awards may be made against, and payments of compensation or death benefits or medical or other expenses shall be paid out of such special fund for all compensation or death benefits due to an excess of disability found to have been caused to an employee by reason of a pre-existing disability found to have existed at the time of a subsequent injury, after all compensation that would have resulted from such subsequent injury, if no previous disability had existed, has been paid by the employer or his insurance carrier. All expenses authorized in advance by the industrial commissioner, and all reasonable charges for medical treatment and care, nursing and hospitalization, medicines and drugs, necessitated by reason of the injury after the termination of the liability of the employer, shall be paid out of such special fund.

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
North Carolina	<p><i>N.C. Gen. Stat. § 97-2:</i> “injury and personal injury” shall mean only injury by accident arising out of and in the course of employment...With respect to back injuries, however, where injury to the back arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned, “injury by accident” shall be construed to include any disabling physical injury to the back arising out of and causally related to such incident. <i>N.C. Gen. Stat 97-52:</i> Disablement or death of an employee resulting from an occupational disease described in G.S. 97-53 shall be treated as the happening of an injury by accident within the meaning of the North Carolina Workers' Compensation Act and the procedure and practice and compensation and other benefits provided by said act shall apply in all such cases except as hereinafter otherwise provided. The word "accident," as used in the Workers' Compensation Act, shall not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously or at frequent intervals in the course of such employment, over extended periods of time, whether such events may or may not be attributable to fault of the employer and disease attributable to such causes shall be compensable only if culminating in an occupational disease mentioned in and compensable under this Article.</p>	<p><i>N.C. Gen. Stat. 97-35:</i> If an employee has previously incurred permanent partial disability through the loss of a hand, arm, foot, leg, or eye, and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only.</p>	<p><i>N.C. Gen. Stat. 97-35:</i> If an employee has previously incurred permanent partial disability through the loss of a hand, arm, foot, leg, or eye, and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Ohio	<p><i>Ohio Rev Statutes Annotated, Section 4123.01(C):</i> “Injury” includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee’s employment. “Injury” does not include injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body, A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. Such a substantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results. Subjective complaints may be evidence of such a substantial aggravation. However, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation. “Occupational disease” means a disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general.</p>	<p>No compensation shall be awarded on account of disability or death from disease suffered by an employee who, at the time of entering into the employment from which the disease is claimed to have resulted, willfully and falsely represented himself as not having previously suffered from such disease. Compensation shall not be awarded on account of both injury and disease, except when the disability is caused by a disease and an injury, in which event the administrator of workers’ compensation may apportion the payment of compensation provided for in sections 4123.56 to 4123.59 of the Revised Code between the funds as in his judgment seems just and proper. If an employee is suffering from both occupational disease and an injury, and the administrator can determine which is causing his disability, the administrator shall pay compensation therefore from the proper fund.</p>	<p>No compensation shall be awarded on account of disability or death from disease suffered by an employee who, at the time of entering into the employment from which the disease is claimed to have resulted, willfully and falsely represented himself as not having previously suffered from such disease. Compensation shall not be awarded on account of both injury and disease, except when the disability is caused by a disease and an injury, in which event the administrator of workers’ compensation may apportion the payment of compensation provided for in sections 4123.56 to 4123.59 of the Revised Code between the funds as in his judgment seems just and proper. If an employee is suffering from both occupational disease and an injury, and the administrator can determine which is causing his disability, the administrator shall pay compensation therefore from the proper fund.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Oklahoma	<p><i>85 Okl. St. Ann. 3(13a):</i> Compensable injury” means any injury or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment if such employment was the major cause of the specific injury or illness. An injury, other than cumulative trauma, is compensable only if it is caused by a specific incident and is identifiable by time, place and occurrence unless it is otherwise defined as compensable in this title. A compensable injury must be established by objective medical evidence, as defined in this section. <i>85 Okl. St. Ann. 3(13d):</i> “Compensable injury” shall not include the ordinary, gradual deterioration or progressive degeneration caused by the aging process, unless the employment is a major cause of the deterioration or degeneration and is supported by objective medical evidence, as defined in this section; nor shall it include injury incurred while engaging in, performing or as the result of engaging in or performing any recreational or social activities. "Compensable injury" shall not include the ordinary, gradual deterioration or progressive degeneration caused by the aging process, unless the employment is a major cause of the deterioration or degeneration and is supported by objective medical evidence, as defined in this section; nor shall it include injury incurred while engaging in, performing or as the result of engaging in or performing any recreational or social activities. "Cumulative trauma" means a compensable injury, the major cause of which results from employment activities which is repetitive in nature and engaged in over a period of time and which is supported by objective medical evidence as defined in this section.</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p><i>85 Okl.St. Ann. 22(7):</i> The fact that an employee has suffered previous disability or impairment or received compensation therefore shall not preclude the employee from compensation for a later accidental personal injury or occupational disease; but in determining compensation for the later accidental personal injury or occupational disease the employee's average weekly wages shall be such sum as will reasonably represent the employee's earning capacity at the time of the later accidental personal injury or occupational disease. In the event there exists a previous impairment, including a previous non-work-related injury or condition which produced permanent disability and the same is aggravated or accelerated by an accidental personal injury or occupational disease, compensation for permanent disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional compensation shall be allowed for the pre-existing disability or impairment.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Oregon	<p><i>O.R.S. 51-656.005(7)(a)</i>: No injury or disease is compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the consequential condition. If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition. <i>Wal-Mart Stores, Inc. v. Young, 182 P.3d 298</i>: Once the worker establishes an otherwise compensable injury, the employer shall bear the burden of proof to establish the otherwise compensable injury is not, or is no longer, the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition. <i>ORS 656.802</i>: If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease.</p>	<p><i>656.222</i>: Should a further accident occur to a worker who is receiving compensation for a temporary disability, or who has been paid or awarded compensation for a permanent disability, the award of compensation for such further accident shall be made with regard to the combined effect of the injuries of the worker and past receipt of money for such disabilities.</p>	<p><i>656.222</i>: Should a further accident occur to a worker who is receiving compensation for a temporary disability, or who has been paid or awarded compensation for a permanent disability, the award of compensation for such further accident shall be made with regard to the combined effect of the injuries of the worker and past receipt of money for such disabilities.</p>
Pennsylvania	<p><i>Section 301 C</i>: The terms "injury," "personal injury," and "injury arising in the course of his employment," as used in this act, shall include, unless the context clearly requires otherwise, occupational disease as defined in section 108 of this act: Provided, That whenever occupational disease is the basis for compensation, for disability or death under this act, it shall apply only to disability or death resulting from such disease and occurring within three hundred weeks after the last date of employment in an occupation or industry to which he was exposed to hazards of such disease: And provided further, That if the employee's compensable disability has occurred within such period, his subsequent death as a result of the disease shall likewise be compensable.</p>	<p><i>Section 306.1</i>: If an employee, who has incurred (through injury or otherwise) permanent partial disability, through the loss, or loss of use of, one hand, one arm, one foot, one leg or one eye, incurs total disability through a subsequent injury, causing loss, or loss of use of, another hand, arm, foot, leg or eye, he shall be entitled to additional compensation via the Second Injury Fund.</p>	<p><i>Section 306 D</i>: Where, at the time of the injury the employee receives other injuries, separate from these which result in permanent injuries enumerated in clause (c) of this section, the number of weeks for which compensation is specified for the permanent injuries shall begin at the end of the period of temporary total disability which results from the other separate injuries, but in that event the employee shall not receive compensation provided in clause (c) of this section for the specific healing period.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Rhode Island	<i>R.I. 28-34-2: 28-34-2: Occupational diseases listed as covered.</i>	<i>R.I. 28-34-7: Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable shall be the proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as that occupational disease, as a causative factor, bears to all the causes of that disability or death, the reduction in compensation to be effected by reducing the number of weekly payments or the amounts of the payments, as under the circumstances of the particular case may be for the best interests of the claimant or claimants.</i>	<i>R.I. 28-34-7: Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable shall be the proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as that occupational disease, as a causative factor, bears to all the causes of that disability or death, the reduction in compensation to be effected by reducing the number of weekly payments or the amounts of the payments, as under the circumstances of the particular case may be for the best interests of the claimant or claimants.</i>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
South Carolina	<p><i>S.C. 42-1-60:</i> "Injury" and "personal injury" mean only injury by accident arising out of and in the course of employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident and except such diseases as are compensable under the provisions of Chapter 11 of this title. In medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment. For purposes of this subsection, "medically complex cases" means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x-rays, or other similar diagnostic techniques. <i>S.C. 42-11-10:</i> Occupational disease" means a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged. A disease is considered an occupational disease only if caused by a hazard recognized as peculiar to a particular trade, process, occupation, or employment as a direct result of continuous exposure to the normal working conditions of that particular trade, process, occupation, or employment. In a claim for an occupational disease, the employee shall establish that the occupational disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment by a preponderance of the evidence.</p>	<p><i>SC Code 42-11-90:</i> No compensation is payable or the degree of disability resulting from non-compensable causes.</p>	<p><i>SC Code 42-11-90:</i> When an occupational disease prolongs, accelerates or aggravates or is prolonged, accelerated or aggravated by any other cause or infirmity not otherwise compensable, the compensation payable for disability or death shall be limited to the disability which would have resulted solely from the occupational disease if there were no other such cause or infirmity and shall be computed by the proportion which the disability from occupational disease bears to the entire disability. No compensation is payable or the degree of disability resulting from non-compensable causes.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
South Dakota	<p><i>S.D.C.L. 62-1-1(7):</i> "Injury" or "personal injury," only injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence. (a) No injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of; or (b) If the injury combines with a preexisting disease or condition to cause or prolong disability, impairment, or need for treatment, the condition complained of is compensable if the employment or employment related injury is and remains a major contributing cause of the disability, impairment, or need for treatment. (c) If the injury combines with a preexisting work related compensable injury, disability, or impairment, the subsequent injury is compensable if the subsequent employment or subsequent employment related activities contributed independently to the disability, impairment, or need for treatment.</p>	<p><i>S.D. 62-4-29:</i> Apportionment of compensation for subsequent injury. As to an employee who before the accident for which the employee claims compensation was disabled and drawing compensation under the terms of this title, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which the employee may have suffered.</p>	<p><i>S.D. 62-4-29:</i> Apportionment of compensation for subsequent injury. As to an employee who before the accident for which the employee claims compensation was disabled and drawing compensation under the terms of this title, the compensation for each subsequent injury shall be apportioned according to the proportion of incapacity and disability caused by the respective injuries which the employee may have suffered.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Tennessee	<p><i>TN 50-6-102.12</i>: “Injury” and “personal injury” mean an injury by accident arising out of and in the course of employment that causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course of employment that cause either disablement or death of the employee and shall include a mental injury arising out of and in the course of employment.</p>	<p><i>TN 50-6-208 a.1-2</i>: If an employee has previously sustained a permanent physical disability from any cause or origin and becomes permanently and totally disabled through a subsequent injury, the employee shall be entitled to compensation from the employee's employer or the employer's insurance company only for the disability that would have resulted from the subsequent injury, and the previous injury shall not be considered in estimating the compensation to which the employee may be entitled under this chapter from the employer or the employer's insurance company; provided, that in addition to the compensation for a subsequent injury, and after completion of the payments for the subsequent injury, then the employee shall be paid the remainder of the compensation that would be due for the permanent total disability out of a special fund to be known as the second injury fund. To receive benefits from the second injury fund, the injured employee must be the employee of an employer who has properly insured the employer's workers' compensation liability or has qualified to operate this chapter as a self-insurer, and the employer must establish that the employer had actual knowledge of the permanent and preexisting disability at the time that the employee was hired or at the time that the employee was retained in employment after the employer acquired knowledge, but in all cases prior to the subsequent injury.</p>	<p><i>TN 50-6-208 a.1-2</i>: If an employee has previously sustained a permanent physical disability from any cause or origin and becomes permanently and totally disabled through a subsequent injury, the employee shall be entitled to compensation from the employee's employer or the employer's insurance company only for the disability that would have resulted from the subsequent injury, and the previous injury shall not be considered in estimating the compensation to which the employee may be entitled under this chapter from the employer or the employer's insurance company; provided, that in addition to the compensation for a subsequent injury, and after completion of the payments for the subsequent injury, then the employee shall be paid the remainder of the compensation that would be due for the permanent total disability out of a special fund to be known as the second injury fund. To receive benefits from the second injury fund, the injured employee must be the employee of an employer who has properly insured the employer's workers' compensation liability or has qualified to operate this chapter as a self-insurer, and the employer must establish that the employer had actual knowledge of the permanent and preexisting disability at the time that the employee was hired or at the time that the employee was retained in employment after the employer acquired knowledge, but in all cases prior to the subsequent injury.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Texas	<p><i>State Office of Risk Mgmt vs. Escalante, 162 S.W.3d. 619:</i> Even if Claimant had a pre-existing condition affecting his lower back, the aggravation of a pre-existing condition is a compensable injury. No statutory definition pertaining to pre-existing conditions.</p>	<p><i>TX Sec. 408.162:</i> If a subsequent compensable injury, with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund shall compensate the employee for the remainder of the lifetime income benefits to which the employee is entitled.</p>	<p><i>TX Sec. 408.084:</i> At the request of the insurance carrier, the commissioner may order that impairment income benefits and supplemental income benefits be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries. The commissioner shall consider the cumulative impact of the compensable injuries on the employee's overall impairment in determining a reduction under this section; if the combination of the compensable injuries results in an injury compensable under Section 408.161, the benefits for that injury shall be paid as provided by Section 408.162.</p>
Utah	<p><i>U.C.A. 34A-3-103:</i> For purposes of this chapter, a compensable occupational disease means any disease or illness that arises out of and in the course of employment and is medically caused or aggravated by that employment.</p>	<p><i>U.C.A. 34A-3-110:</i> The compensation payable under this chapter shall be reduced and limited to the proportion of the compensation that would be payable if the occupational disease were the sole cause of disability or death, as the occupational disease as a causative factor bears to all the causes of the disability or death when the occupational disease, or any part of the disease: is causally related to employment with a non-Utah employer not subject to commission jurisdiction; is of a character to which the employee may have had substantial exposure outside of employment or to which the general public is commonly exposed or is aggravated by any other disease or infirmity not itself compensable; or when disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease.</p>	<p><i>U.C.A. 34A-3-110:</i> The compensation payable under this chapter shall be reduced and limited to the proportion of the compensation that would be payable if the occupational disease were the sole cause of disability or death, as the occupational disease as a causative factor bears to all the causes of the disability or death when the occupational disease, or any part of the disease: is causally related to employment with a non-Utah employer not subject to commission jurisdiction; is of a character to which the employee may have had substantial exposure outside of employment or to which the general public is commonly exposed or, is aggravated by any other disease or infirmity not itself compensable; or when disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Vermont	<p>VT ST T. 21 601: "Injury" and "personal injury" includes occupational diseases, death resulting from injury within two years and includes injury to and cost of acquiring and replacement of prosthetic devices, hearing aids and eye glasses. "Occupational disease" means a disease that results from causes and conditions characteristic of and peculiar to a particular trade, occupation, process or employment, and to which an employee is not ordinarily subjected or exposed outside or away from the employment and arises out of and in the course of the employment. <i>Marsigli Estate v. Granite City Auto Sales, Inc.</i>, 124 Vt. 95, 103, 197 A.2d 799, 805; <i>Laird v. State Highway Department</i>, supra, 112 Vt. at 86, 20A.2d at 565; <i>Morrill v. Charles Bianchi & Sons, Inc.</i>, 107 Vt. 80, 87-88, 176 A. 416, 419-20: The aggravation or acceleration of a pre-existing condition can constitute a personal injury by accident under the Act.</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p>VT ST T. 21 633: The commissioner shall, from time to time, apportion such compensation between any and all dependents named in section 632 of this title in such manner as he deems best and in making such apportionment he shall, insofar as it is possible, apportion such sum so that each dependent shall be self-supporting.</p>
Virginia	<p>Va. Code Ann. 65.2-101: "Injury" means only injury by accident arising out of and in the course of the employment or occupational disease as defined in Chapter 4 (§ 65.2-400 et seq.) of this title and does not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes. Va. Code Ann. 65.2-400. "Occupational disease" defined as used in this title, unless the context clearly indicates otherwise, the term "occupational disease" means a disease arising out of and in the course of employment, but not an ordinary disease of life to which the general public is exposed outside of the employment. B. A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances: 1. A direct causal connection between the conditions under which work is performed and the occupational disease; 2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment; 3. It can be fairly traced to the employment as the proximate cause; 4. It is neither a disease to which an employee may have had substantial exposure outside of the employment, nor any condition of the neck, back or</p>	<p>Va. Code Ann. 65.2-505: Except for hearing or vision loss that has not reached a compensable level of disability, if an employee has a permanent disability or has sustained a permanent injury in service to his employer and receives a subsequent permanent injury by accident, such as specified in 65.2-503, he shall be entitled to compensation only for the degree of incapacity which would have resulted from the later accident if the earlier disability or injury had not existed.</p>	<p>Va. Code Ann. 65.2-505: Except for hearing or vision loss that has not reached a compensable level of disability, if an employee has a permanent disability or has sustained a permanent injury in service in the armed forces of the United States or in another employment other than that in which he receives a subsequent permanent injury by accident, such as specified in 65.2-503, he shall be entitled to compensation only for the degree of incapacity which would have resulted from the later accident if the earlier disability or injury had not existed.</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Virginia (Cont'd)	spinal column; 5. It is incidental to the character of the business and not independent of the relation of employer and employee; and 6. It had its origin in a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.		
Washington	<p><i>RCW 51.32.100:</i> If it is determined that an injured worker had, at the time of his or her injury, a preexisting disease and that such disease delays or prevents complete recovery from such injury, it shall be ascertained, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and the extent of permanent partial disability which the injury would have caused were it not for the disease, and compensation shall be awarded only therefore. <i>RCW 51.32.180:</i> Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title, except as follows: (a) This section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937; and (b) for claims filed on or after July 1, 1988, the rate of compensation for occupational diseases shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim.</p>	No statutory definition pertaining to subsequent non-work related conditions.	<p><i>RCW 51.32.160 (1)(a):</i> If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: PROVIDED, That the director may, upon application of the worker made at any time, provide proper and necessary medical and surgical services as authorized under RCW 51.36.010. The department shall promptly mail a copy of the application to the employer at the employer's last known address as shown by the records of the department.</p>

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Washington DC	<p><i>Title 32 Chap 5 Sec. 32-1501: "Injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of third persons directed against an employee because of his employment.</i></p>	<p><i>Title 32 Chap 5 Sec. 32-1501 (6)(A): If an employee receives an injury, which combined with a previous occupational or non-occupational disability or physical impairment causes substantially greater disability or death, the liability of the employer shall be as if the subsequent injury alone caused the subsequent amount of disability and shall be the payment of: (i) All medical expenses; (ii) All monetary benefits for temporary total or partial injuries; and (iii) Monetary benefits for permanent total or partial injuries up to 104 weeks.</i></p>	<p><i>Title 32 Chap 5 Sec. 32-1501 (6)(A): If an employee receives an injury, which combined with a previous occupational or non-occupational disability or physical impairment causes substantially greater disability or death, the liability of the employer shall be as if the subsequent injury alone caused the subsequent amount of disability and shall be the payment of: (i) All medical expenses; (ii) All monetary benefits for temporary total or partial injuries; and (iii) Monetary benefits for permanent total or partial injuries up to 104 weeks.</i></p>
West Virginia	<p><i>W.V. Reg Chapter 3 Article 4 Sec. 23-4-(f) For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows as an incident of occupational disease as defined in this chapter. W.V. Reg Chapter 3 Article 4 Sec. 23-4-(1f): For the purposes of this chapter, no alleged injury or disease shall be recognized as a compensable injury or disease which was solely caused by nonphysical means and which did not result in any physical injury or disease to the person claiming benefits. It is the purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter.</i></p>	<p><i>W.V. Reg Chapter 3 Article 4 Sec.23-4-9b:Where an employee has a definitely ascertainable impairment resulting from an occupational or a non-occupational injury, disease or any other cause, whether or not disabling, and the employee thereafter receives an injury in the course of and resulting from his or her employment, unless the subsequent injury results in total permanent disability within the meaning of section one, article three of this chapter, the prior injury, and the effect of the prior injury, and an aggravation, shall not be taken into consideration in fixing the amount of compensation allowed by reason of the subsequent injury. Compensation shall be awarded only in the amount that would have been allowable had the employee not had the preexisting impairment. Nothing in this section requires that the degree of the preexisting impairment be definitely ascertained or rated prior to the injury received in the course of and resulting from the employee's employment or that benefits must have</i></p>	<p><i>W.V. Reg Chapter 3 Article 4 Sec.23-4-9b:Where an employee has a definitely ascertainable impairment resulting from an occupational or a non-occupational injury, disease or any other cause, whether or not disabling, and the employee thereafter receives an injury in the course of and resulting from his or her employment, unless the subsequent injury results in total permanent disability within the meaning of section one, article three of this chapter, the prior injury, and the effect of the prior injury, and an aggravation, shall not be taken into consideration in fixing the amount of compensation allowed by reason of the subsequent injury. Compensation shall be awarded only in the amount that would have been allowable had the employee not had the preexisting impairment. Nothing in this section requires that the degree of the preexisting impairment be definitely ascertained or rated prior to the injury received in the course of and resulting from the employee's employment or that benefits must have</i></p>

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West Virginia (Cont'd)		<p>been granted or paid for the preexisting impairment. The degree of the preexisting impairment may be established at any time by competent medical or other evidence.</p> <p>Notwithstanding the foregoing provisions of this section, if the definitely ascertainable preexisting impairment resulted from an injury or disease previously held compensable and the impairment had not been rated, benefits for the impairment shall be payable to the claimant by or charged to the employer in whose employ the injury or disease occurred. The employee shall also receive the difference, if any, in the benefit rate applicable in the more recent claim and the prior claim.</p>	the prior claim.

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Wisconsin	<p>"Injury" means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extra-hazardous duties incident to the business. "Injury" does not include any illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment; any injury or condition preexisting at the time of employment with the employer against whom a claim is made; any injury resulting primarily from the natural aging process or from the normal activities of day-to-day living, as established by medical evidence supported by objective findings.</p>	<p><i>WI Reg Chap 102 Sec 102.59:</i> (1) If an employee has at the time of injury permanent disability which if it had resulted from such injury would have entitled him or her to indemnity for 200 weeks and, as a result of such injury, incurs further permanent disability which entitles him or her to indemnity for 200 weeks, the employee shall be paid from the funds provided in this section additional compensation equivalent to the amount which would be payable for said previous disability if it had resulted from such injury or the amount which is payable for said further disability, whichever is the lesser. If said disabilities result in permanent total disability the additional compensation shall be in such amount as will complete the payments which would have been due had said permanent total disability resulted from such injury. This additional compensation accrues from, and may not be paid to any person before, the end of the period for which compensation for permanent disability resulting from such injury is payable by the employer, and shall be subject to s. 102.32 (6), (6m), and (7).</p>	<p><i>WI Reg Chap 102 Sec 102.59:</i> (1) If an employee has at the time of injury permanent disability which if it had resulted from such injury would have entitled him or her to indemnity for 200 weeks and, as a result of such injury, incurs further permanent disability which entitles him or her to indemnity for 200 weeks, the employee shall be paid from the funds provided in this section additional compensation equivalent to the amount which would be payable for said previous disability if it had resulted from such injury or the amount which is payable for said further disability, whichever is the lesser. If said disabilities result in permanent total disability the additional compensation shall be in such amount as will complete the payments which would have been due had said permanent total disability resulted from such injury. This additional compensation accrues from, and may not be paid to any person before, the end of the period for which compensation for permanent disability resulting from such injury is payable by the employer, and shall be subject to s. 102.32 (6), (6m), and (7).</p>

State	Pre-existing, chronic or degenerative condition worsened by work related injury or occupational disease	Work injury accelerated by subsequent non-work condition	Apportionment
Wyoming	<p>W.W.C.A. Chap 14 Article 1, 27-14-102: "Injury" means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extra-hazardous duties incident to the business. "Injury" does not include: (F) Any injury or condition preexisting at the time of employment with the employer against whom a claim is made; (G) Any injury resulting primarily from the natural aging process or from the normal activities of day-to-day living, as established by medical evidence supported by objective findings.</p>	<p>No statutory definition pertaining to subsequent non-work related conditions.</p>	<p>W.W.C.A. Chap 14 Article 27-14-105(a) If an employee covered by this act receives an injury under circumstances creating a legal liability in some person other than the employer to pay damages, the employee if engaged in work for his employer at the time of the injury is not deprived of any compensation to which he is entitled under this act.</p>