



# Legislative and Regulatory Environment in Workers Compensation

Carla Townsend  
State Relations Executive, NCCI



# Agenda

- **NCCI Overview**
- **Workers Compensation in Missouri, State of the Line**
- **Legislation in Missouri**
- **National Hot Topics**
- **Upcoming Events**



# NCCI Overview



# Mission and Core Objectives

- **MISSION:** Our mission is to foster a healthy workers comp system.
- **CORE OBJECTIVES:** We drive informed decision making through:



# Alliance of Stakeholders

- Our 900+ employees work within an **alliance of system stakeholders** to provide underlying data and identify system trends.
- NCCI coordinates with regulators, insurers, trade associations, and business, industry, and labor coalitions **to maintain a healthy workers compensation system.**
- We often provide expert actuarial and economic testimony before state or federal regulatory and legislative groups to support **NCCI's analyses and cost estimates.**



# Special Studies and Efforts

NCCI also undertakes a variety of special studies and data collection efforts during the year, including:

- Claim cost research projects
- Cost analyses of judicial and regulatory decisions
- Monitoring newly enacted laws and regulation



# By the Numbers

Each year, we collect and analyze:

About  
**3 million**  
policies

Approximately  
**4.6 million**  
unit statistical reports

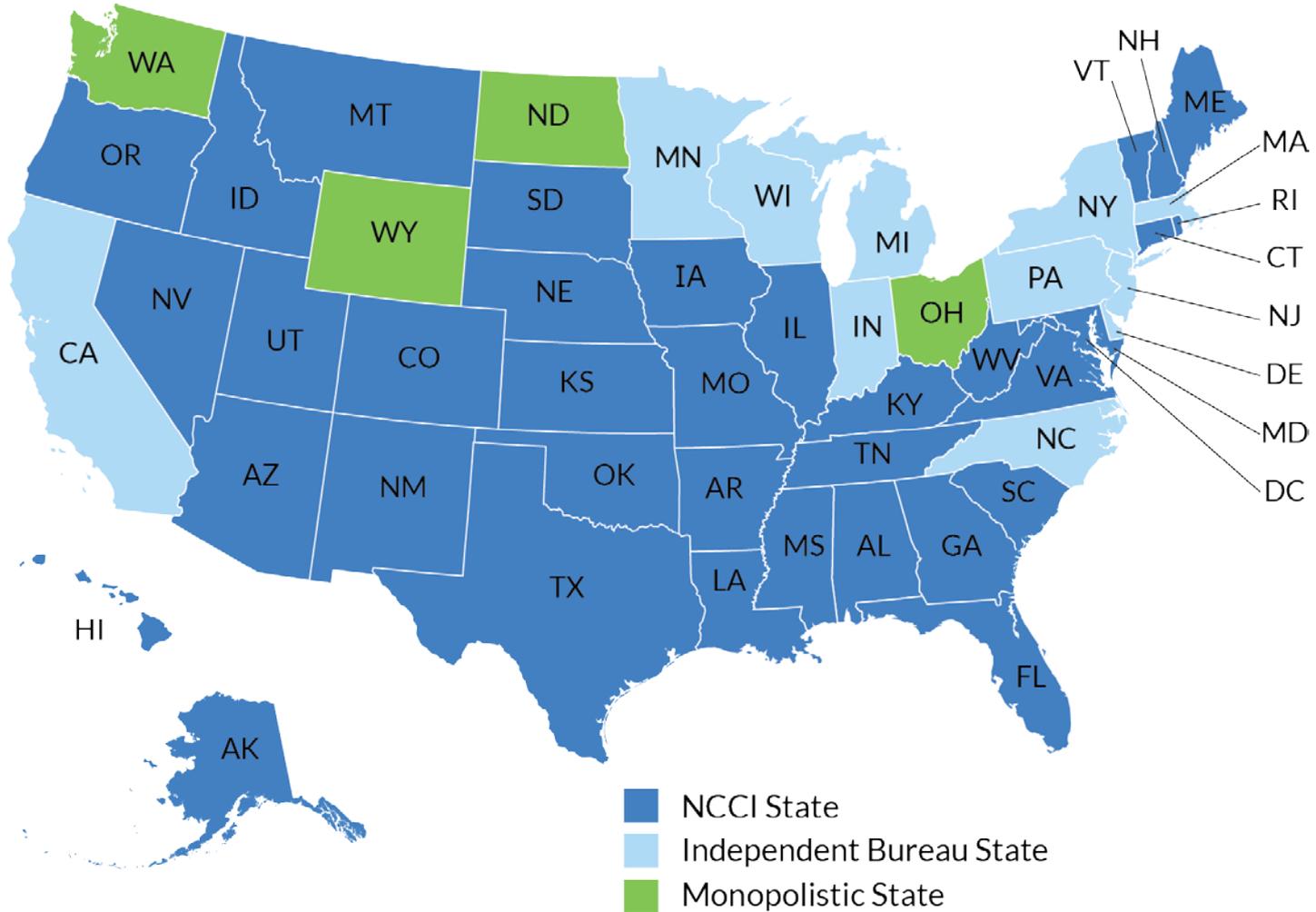
Combined insurer financial  
information representing about  
**\$28.6 billion**  
in premium

Detailed information for about  
**200,000**  
new claims

**86 million** medical data  
transactions

# NCCI State Map

Welcome to the NCCI State Map. This map is a convenient reference of states whose insurance departments have designated NCCI as the licensed rating and statistical organization.

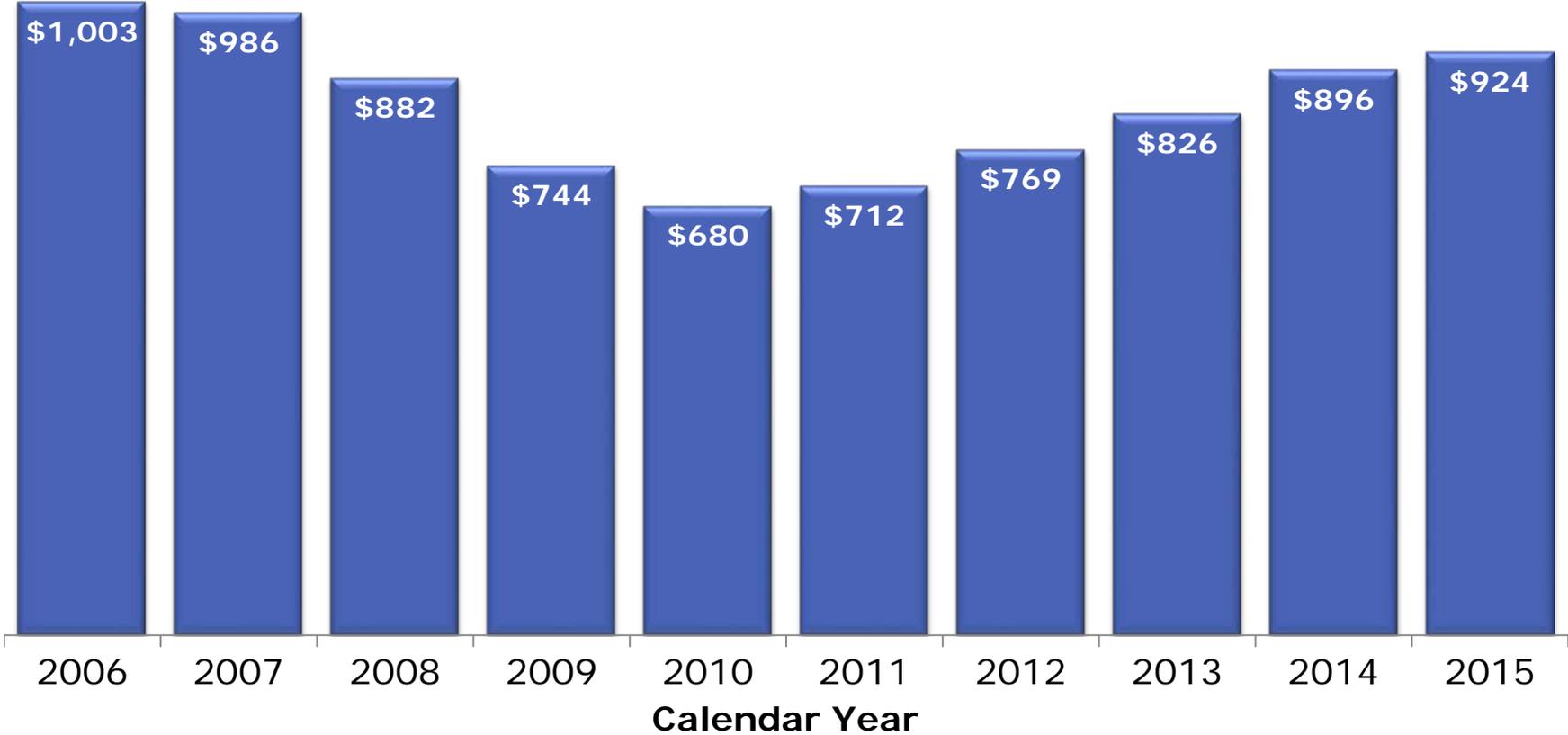




# Workers Compensation in Missouri, a state of the line.



# Missouri's Direct Written Premium in \$ Millions

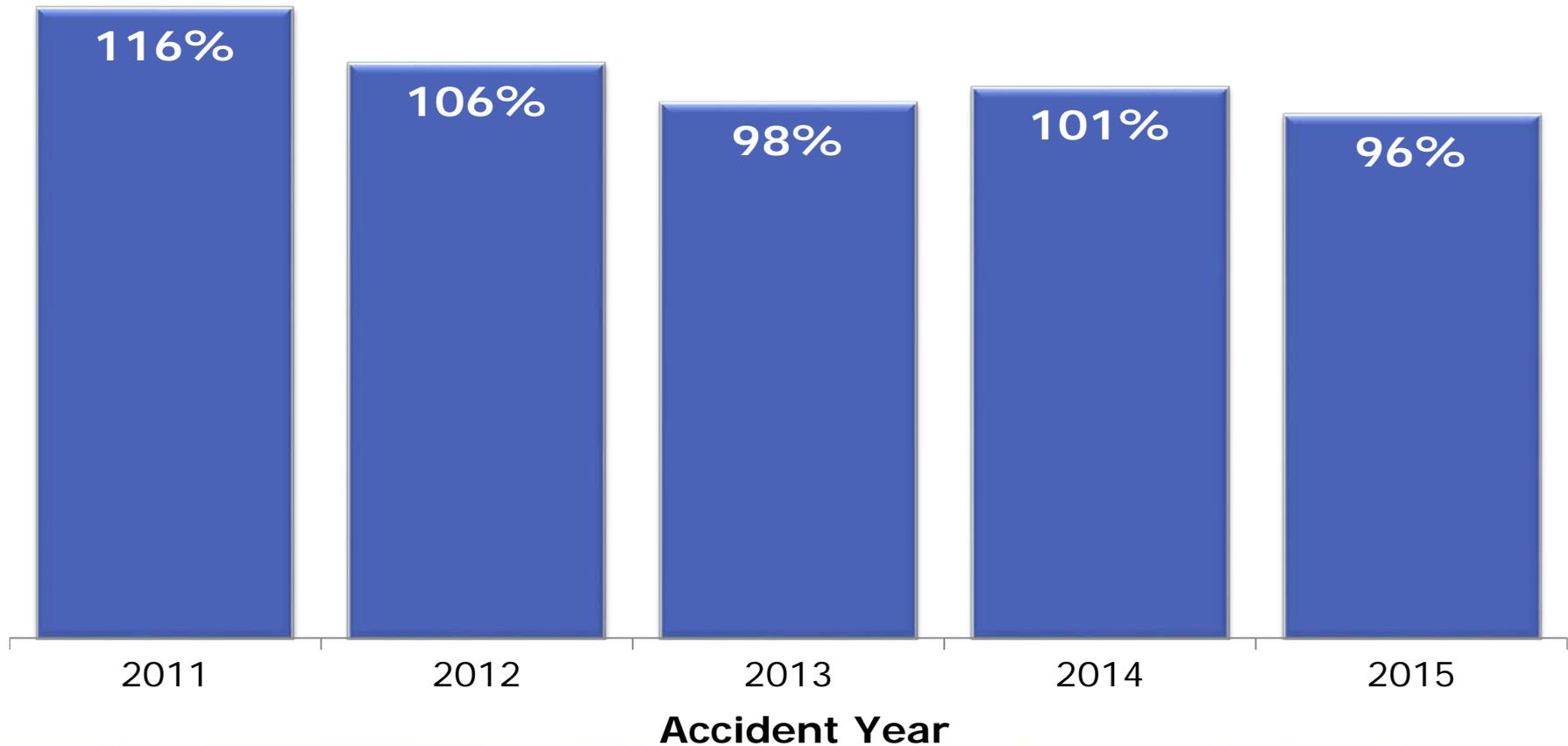


■ Source: NAIC's Annual 2015 Statement data



# Missouri's Accident Year Combined Ratios

- Sources: NCCI's financial data and NAIC's Annual Statement data



# Change in Private Employment

Private Employment Growth Is Below Average

July 2014

July 2015

July 2016

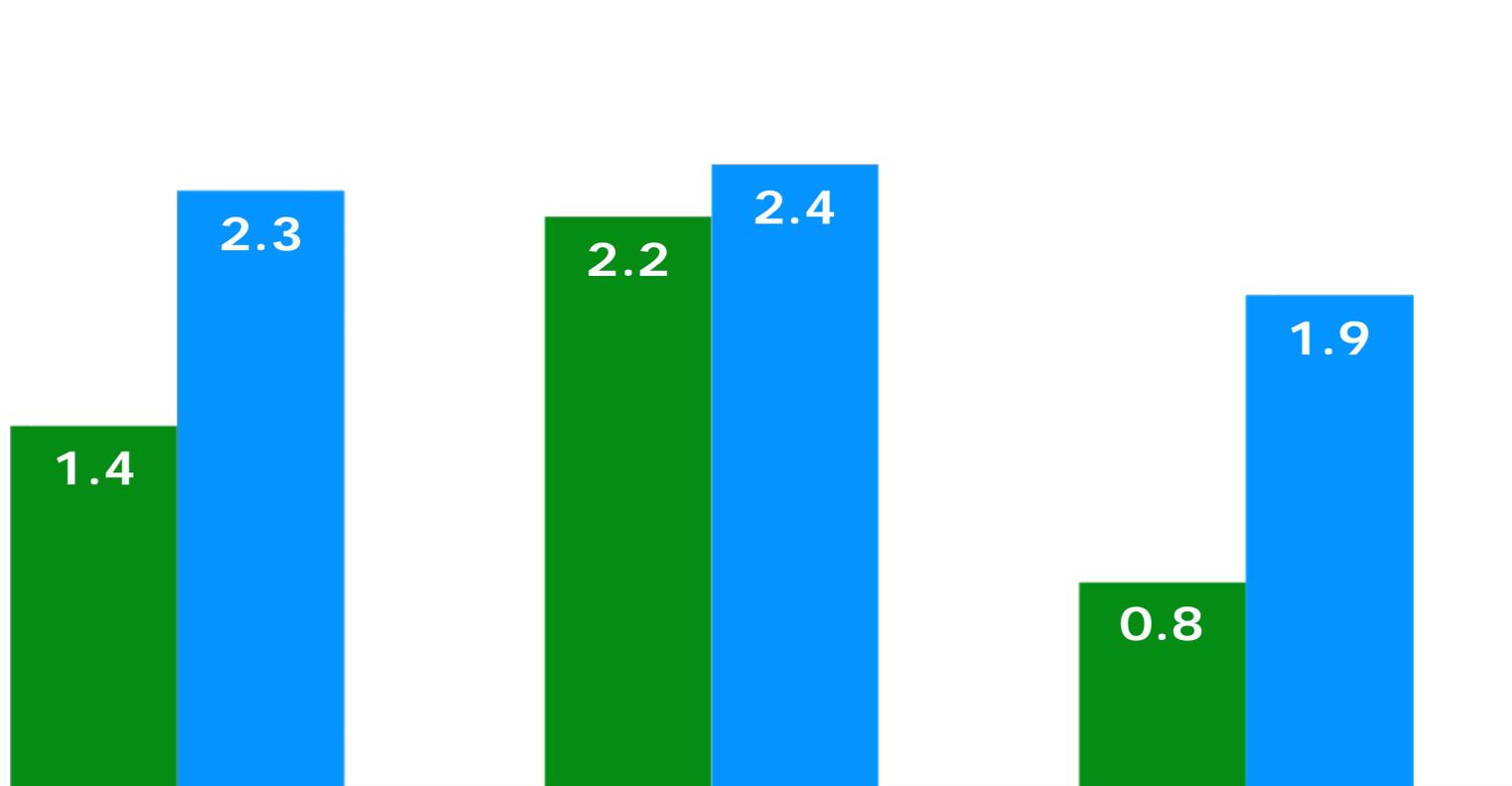
Percent

3

2

1

0



■ Missouri

■ United States

Private Nonfarm Employment, seasonally adjusted  
Frequency of observation: monthly; latest available data point: July 2016; percentage change for the 12 months ending each July  
Source: US Bureau of Labor Statistics (BLS), [www.bls.gov](http://www.bls.gov)

# Change in Employment by Industry

## Employment in Most Industries Has Decreased in the Past 12 Months

Industrial Sector		12-Month Percent Change, July 2016		Sector Size	% Share	12-Month Change
Financial Activities	MO	+3.4		172,200	6	+5,600
	US	+2.0				
Professional and Business Services	MO	+3.0		380,700	14	+11,200
	US	+2.8				
Leisure and Hospitality	MO	+2.6		299,700	11	+7,700
	US	+2.8				
Construction	MO	+0.8		114,100	4	+900
	US	+3.3				
Government	MO	+0.3		437,400	16	+1,500
	US	+0.7				
Manufacturing	MO	-0.2		261,700	9	-400
	US	-0.3				
Education and Health Services	MO	-0.3		447,600	16	-1,400
	US	+2.9				
Trade, Transportation, and Utilities	MO	-0.3		532,200	19	-1,700
	US	+1.4				
Other Services	MO	-0.8		113,900	4	-900
	US	+1.1				
Information	MO	-1.7		53,200	2	-900
	US	+1.0				
Natural Resources and Mining	MO	-2.5		3,900	0	-100
	US	-16.0				

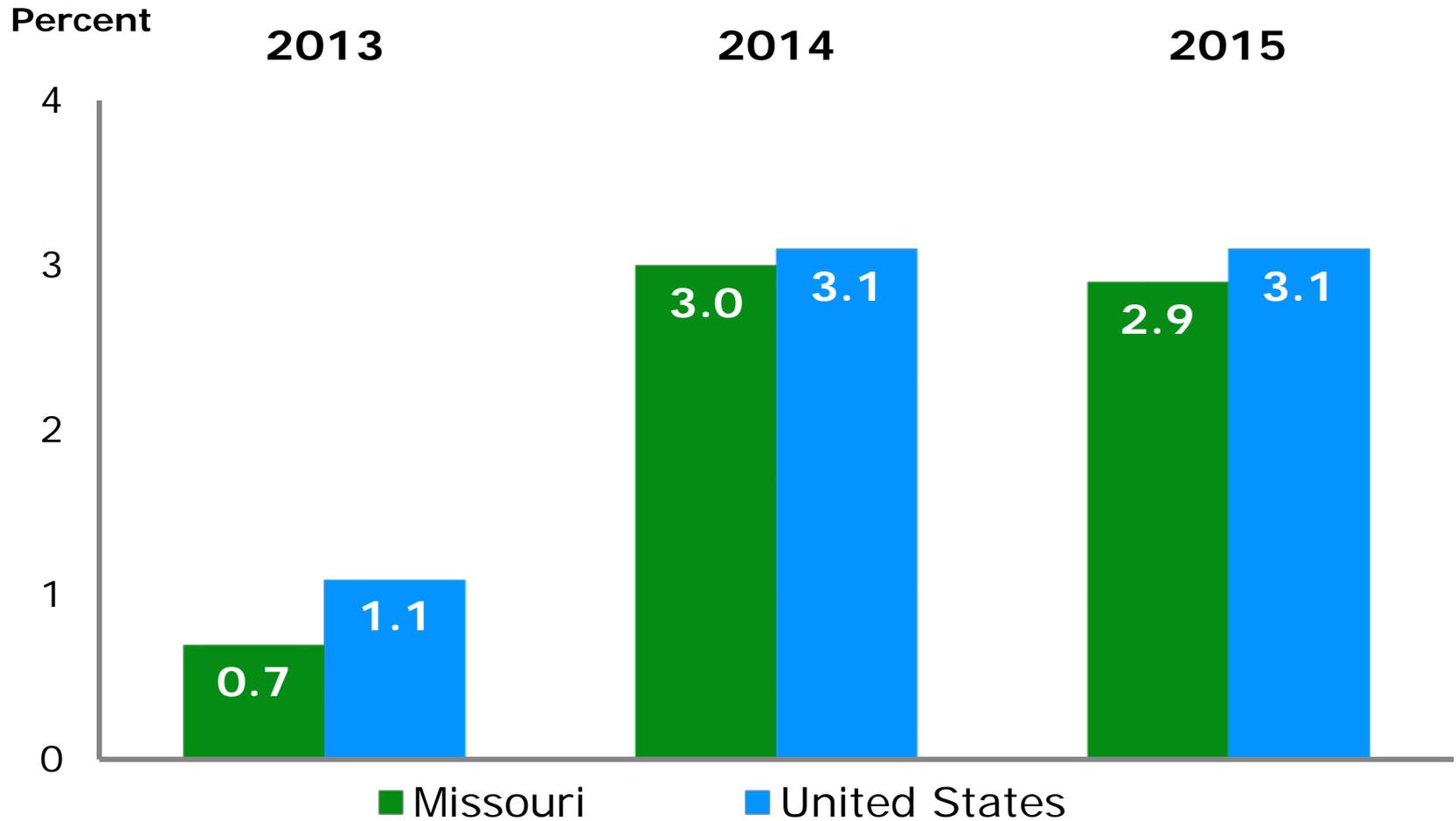
Percentage change for the latest 12 months as of July 2016

Current Employment Statistics Survey, seasonally adjusted; frequency of observation: monthly

Source: US Bureau of Labor Statistics (BLS), [www.bls.gov](http://www.bls.gov)

# Change in Average Weekly Wages

## Wage Growth Is Below the Rest of the Nation

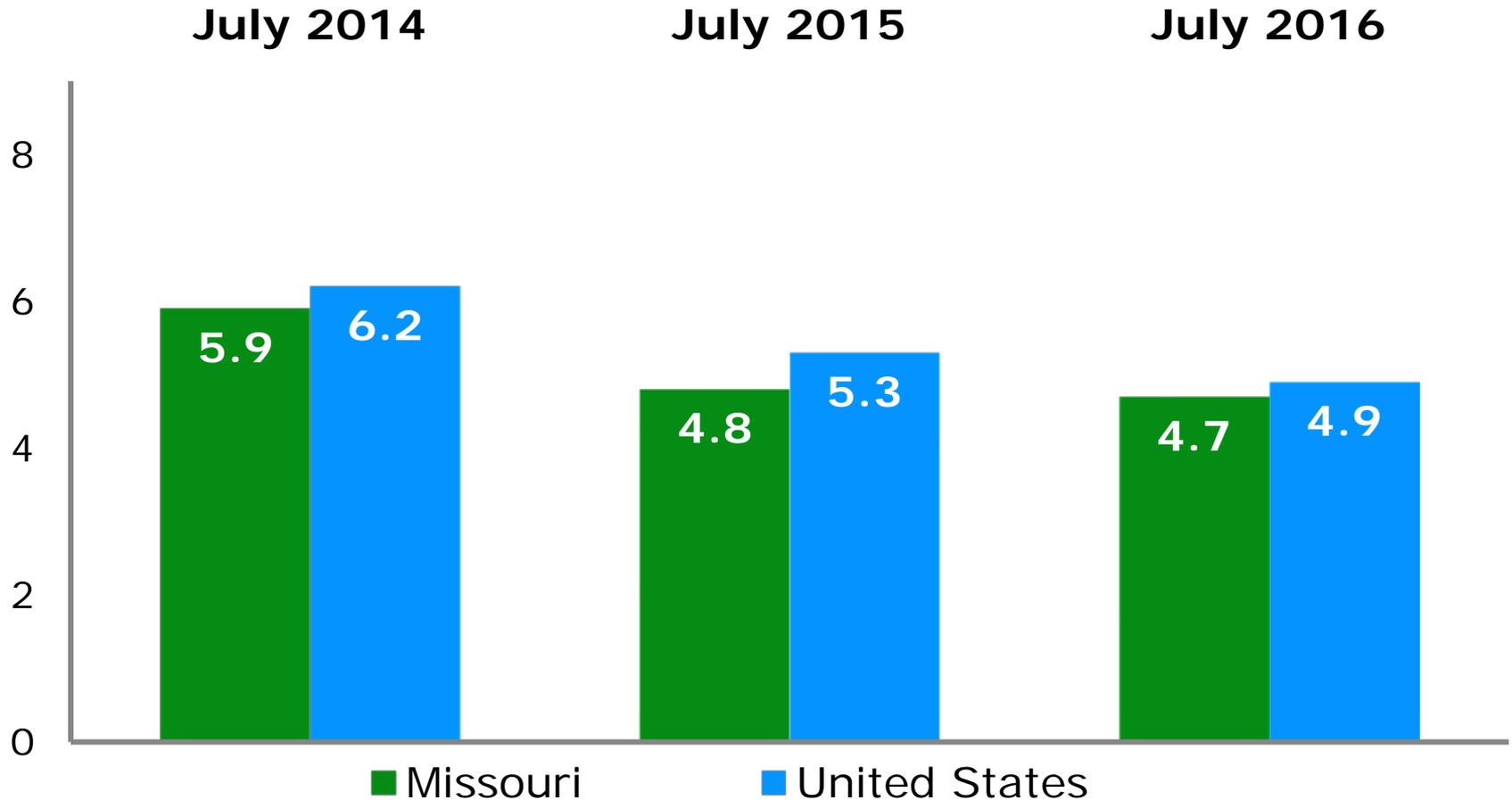


Wages are for Total Private Industry  
Frequency of observation: annual; latest available data point: 2015  
Source: US Bureau of Labor Statistics (BLS), [www.bls.gov](http://www.bls.gov)

# Headline Unemployment Rate

## The Unemployment Rate Is Below the National Average

Percent

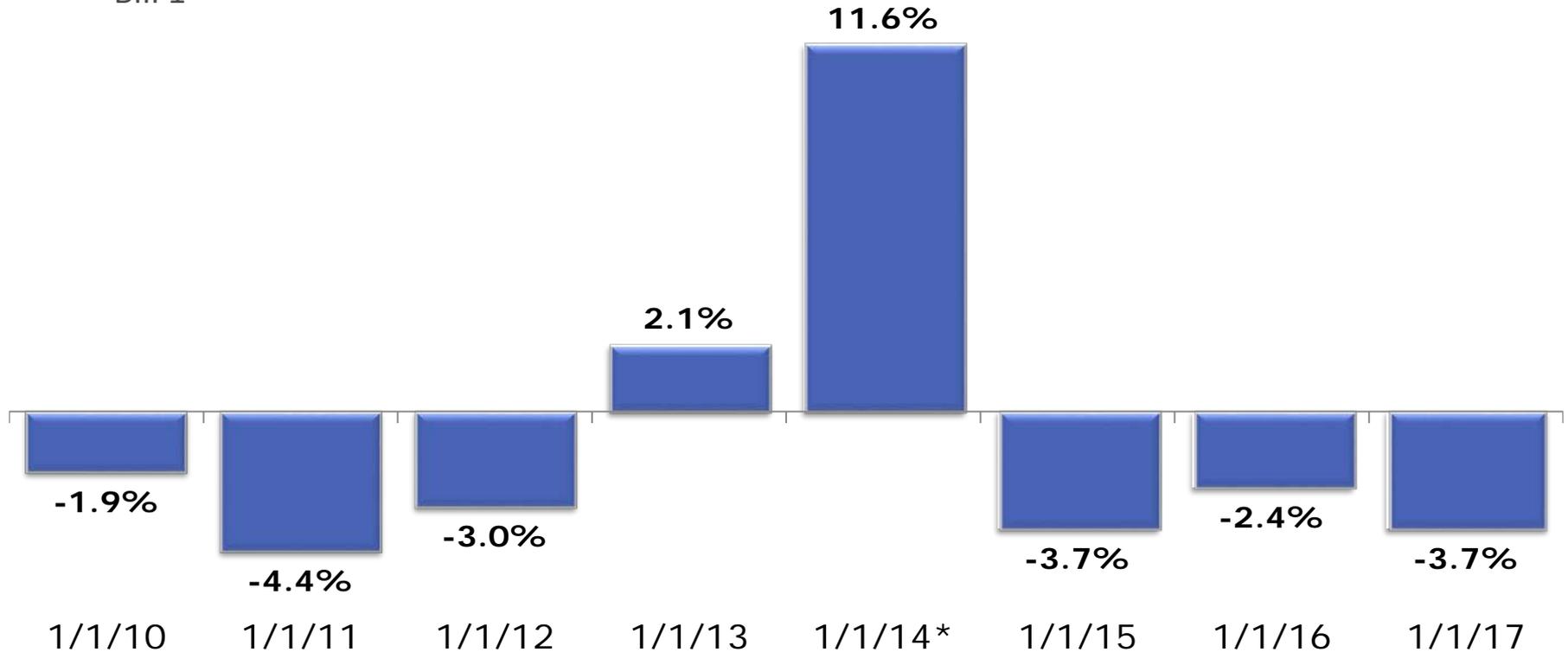


■ Headline Unemployment Rate, seasonally adjusted  
■ Frequency of observation: monthly; latest available data point: July 2016  
■ Source: US Bureau of Labor Statistics (BLS), [www.bls.gov](http://www.bls.gov)

# Missouri Filing Activity

## Voluntary Loss Cost Level Changes

- \*January 1, 2014 loss cost level change includes a 3.8% increase due to the impact of Senate Bill 1



# January 1, 2017 Loss Cost Filing

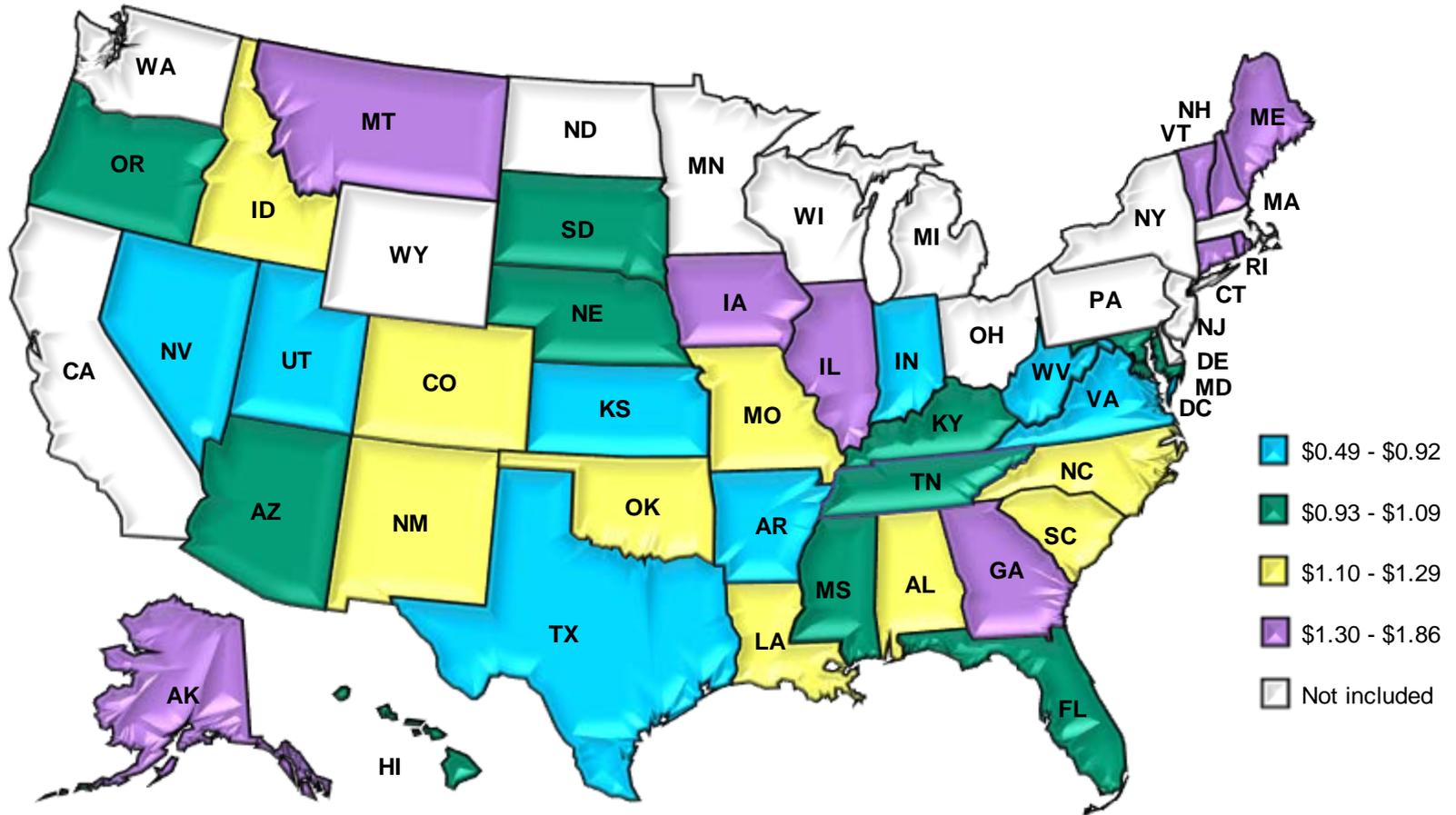
## Average Changes by Industry Group



**Overall -3.7%**

# Average Voluntary Pure Loss Cost Quartiles

## Using Missouri Payroll Distribution by Class



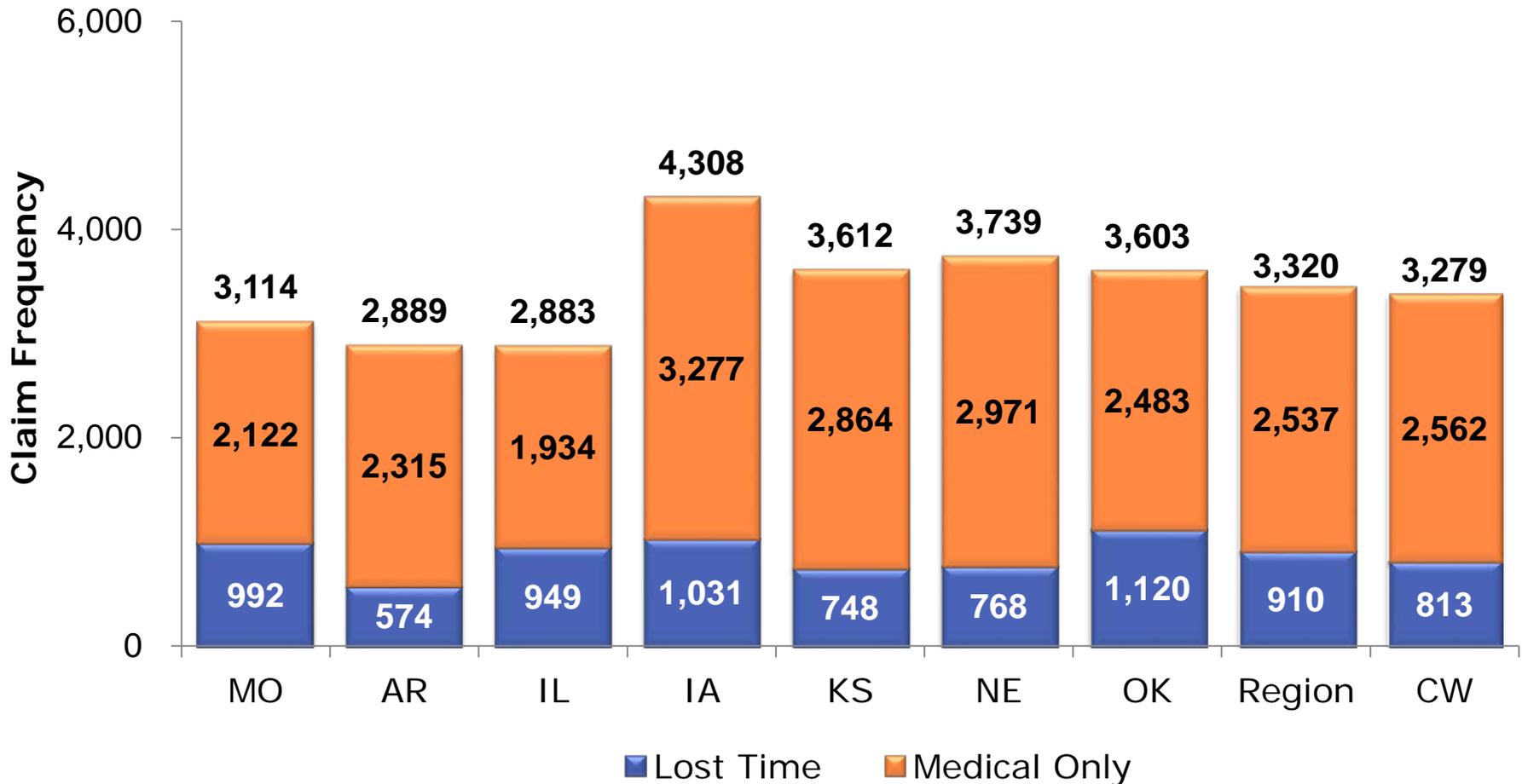
Countrywide = \$1.04

Missouri = \$1.10

# Missouri vs. Region

## Claim Frequency per 100,000 Workers—All Claims

■ Based on NCCI's *Statistical Plan* data



# Missouri's Indemnity Loss Distribution by Injury Type

## Missouri



## Region



## Countrywide



0% 20% 40% 60% 80% 100%

■ Temporary Total

■ Permanent Partial

■ Permanent Total

■ Fatal

Regional states are AR, IL, IA, KS, NE, and OK

Based on NCCI's 2015 *Statistical Plan* data for jurisdiction/claim type combinations for which three or more cases exist

# Medical Benefits Constitute the Majority of Total Benefit Costs in Missouri

## Missouri



## Region



## Countrywide



# Regional Comparison Average Medical Claim Severity

In \$ Thousands

- \*Severity values for IL are on an unlimited basis
- Based on NCCI's financial data for lost-time claims

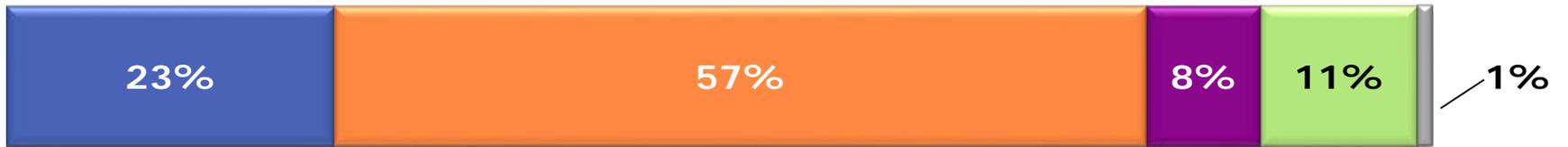


# Missouri's Medical Loss Distribution by Injury Type

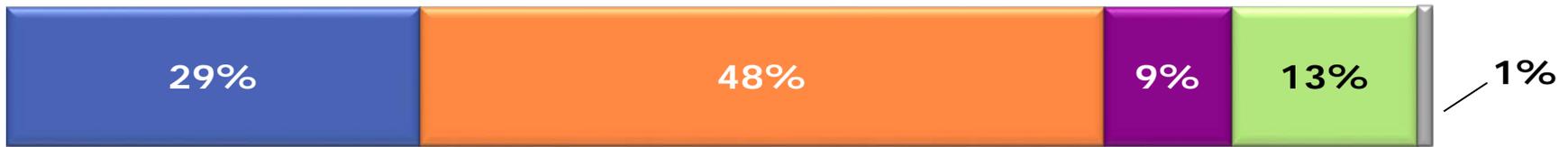
## Missouri



## Region



## Countrywide



0% 20% 40% 60% 80% 100%

■ Temporary Total ■ Permanent Partial ■ Permanent Total ■ Medical Only ■ Fatal



# MISSOURI COVERAGE VERIFICATION SERVICE (CVS)



# MISSOURI CVS



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- Discrimination
- Public Entities
- Forms
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**REGISTER NOW!** 23<sup>rd</sup> Annual Missouri **WORKERS' COMPENSATION CONFERENCE** JUNE 5-6, 2017 TAN-TAR-A RESORT OSAGE BEACH, MO

## About Workers' Compensation

The Division provides services to those who have been injured on the job or exposed to occupational disease arising out of and in the course of employment. The Division also makes sure that an injured worker receives benefits that they are entitled to under the Missouri Workers' Compensation Law. The Division's Administrative Law Judges have the authority to approve settlements or issue awards after a hearing relating to an injured worker's entitlement to permanent benefits allowed by Missouri law. [Learn more about the Division.](#)

[2016 Workers' Compensation Annual Report](#)

## For Businesses

- **Notice: Changes to Chapter 287 RSMo per SB 700 effective 08/28/2016**
- **Employers, Insurers, TPAs**
- **For Health Care Providers**
- **Insurance Responsibilities**
- **Injury Reporting Responsibilities**
- **Calculate Your Rates**
- **Handle Disputes with Employees**
- **Second Injury Fund Surcharge**
- **Missouri Workers' Safety Program**

## For Workers

- **File a Claim for Compensation**
- **Process for Injured Workers**
- **Handle Disputes with Employer/Insurer**
- **Obtaining a Lawyer**
- **Docket Locations**
- **Are You Covered?**
- **Benefits Available**
- **Kids' Chance of Missouri**
- **Missouri Workers' Memorial Ceremony**

## About the Director

Nasreen Esmail currently serves as Interim Director of the Division of Workers' Compensation.

## Contact

Division of Workers' Compensation  
 P.O. Box 58  
 Jefferson City, MO 65102-0058  
 Phone: 573-751-4231



# MISSOURI CVS

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Select Language

Employers

Injured Workers

Unemployed Workers

Discrimination

Public Entities

Forms

News

## ARE YOU COVERED?

In the state of Missouri, any employer with five or more employees and any employer in the construction industry with one or more employees is required to maintain workers' compensation coverage for its employees. An employer in Missouri may satisfy this requirement by either obtaining a workers' compensation policy or obtaining permission from the Division of Workers' Compensation (Division) to self-insure its workers' compensation liabilities.

Related: [Notice of Employers Election to Become a Member of a Group Insurance Pool\\* Pursuant to 287.200.4\(3\)\(a\), RSMo \(WC-304-G\)](#)

Related: [Mesothelioma Liability Election of Self-Insured Employer or Group Trust Member Pursuant to 287.200.4\(3\), RSMo \(WC-304-I\)](#)

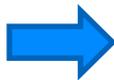
Follow this three-step process to determine whether an employer has coverage in the state of Missouri through one of the methods above:

1. Click below to see if the employer has obtained a workers' compensation policy through an insurance carrier. NOTE: If you don't find the employer through this search, the employer may be authorized to self-insure its worker's compensation liabilities. Please return to this page to search for a Division authorized self-insured employer under step #2.



**Employers Workers' Compensation Coverage**

2. Click below to see if the employer has been granted authority to self-insure by the Division.



**Is Employer Self Insured by the Division?**

3. Click the button below to obtain the revisions to the National Council on Compensation Insurance (NCCI) manuals that

### Contact

#### Missouri Division of Workers Compensation

3315 W. Truman Blvd., Room 131  
P.O. Box 58  
Jefferson City, MO 65102-0058

Phone: 573-751-4231  
Toll-Free: 800-775-2667  
Fax: 573-526-4960

[workerscomp@labor.mo.gov](mailto:workerscomp@labor.mo.gov)

# MISSOURI CVS



## Missouri Department of Labor & Industrial Relations

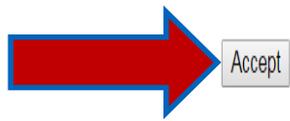
### NOTICE AND DISCLAIMER

#### Purpose - No Scripting or Automatic Retrieval

The purpose of this website and Coverage Verification Service is to assist you in determining whether an employer has workers compensation insurance in the state. Coverage Verification Service will provide the name of the insurer that wrote a workers compensation policy for a specific employer on a specific date. Please note that Coverage Verification Service is being provided to you for your personal, non-commercial use only, solely to verify an employer's workers compensation insurance coverage. Coverage Verification Service may not be used in any other manner or for any other purpose, except as identified herein. Scripted queries and automatic retrieval(s) is/are expressly prohibited.

#### Limitation of Available Information

If an employer query does not produce any result(s) this may not mean that the employer does not have insurance or is operating in violation of state law. Coverage information may not be available or complete for all employers due to limitations with the policy information. Employer queries should be specific. Open ended queries may not return any results. In the event of excessive queries, you may be prohibited from accessing the information provided under Coverage Verification Service. You may not disable or otherwise work around any restrictions and limitations that may be a part of Coverage Verification Service, such as CAPTCHA. Any attempt to do so is prohibited and will result in you being unable to access Coverage Verification Service. Scripted queries and automatic retrieval(s) is/are expressly prohibited. By clicking "Accept", below, you affirm that you have read and understand the notices and disclaimers on this page.



# MISSOURI CVS

← → ↻ NCCI Holdings Inc. [US] | https://www.ewccv.com/cvs/ ☆

## Missouri Department of Labor & Industrial Relations



Required to access the Search functionality:  
Type the characters as they appear in the image above and click *Submit*.  
Note: Your browser must be set to allow scripting.

Submit ←

# MISSOURI CVS

## Missouri Department of Labor & Industrial Relations

### Employers' Workers' Compensation Insurance Coverage Verification

Select Coverage Date  Default = Today's Date ←

Employer Name   Contains  Starts With

OR

Federal Employer Identification Number



→ **Limitation of Information**

The information accessible through this web site is a representative reflection of selected information available to the Missouri Division of Workers' Compensation and should be used only as a guide in seeking specific workers' compensation coverage verification. There may be discrepancies in the information provided due to causes outside the control of the Missouri Division of Workers' Compensation, such as reporting/recording delays and inaccuracies. Results obtained from a search of this web site cannot be the sole basis for a legal determination as to whether a particular employer was insured at a particular time. We recommend that you make contact with the insurance carrier listed to verify coverage. Please note the full [disclaimer](#) on the previous page. If you have questions or are unclear of the results of a search, please call the Division of Workers' Compensation at 1(800)775-2667.

For more details on an insurance carrier providing coverage, you may access the [Missouri Department of Insurance, Financial Institutions and Professional Registration](#) company search engine. You will need to enter the provider name as it is listed on the search results page of this application.



If you don't find the employer through the above search---DO NOT STOP HERE:

- The employer may be authorized to self-insure its workers' compensation liabilities in the state of Missouri. [Click Here](#) to search self-insured employers; OR
- The employer may operate under a name different than that which they entered; OR
- The employer may have fewer than five employees or is in the construction industry with zero employees, in which case, it is not required to have workers' compensation coverage in Missouri; OR
- The employer may for other reasons not be required to obtain workers' compensation coverage in Missouri.

Download the free Workers Compensation Coverage Verification (WCCV) Mobile Application



← → ↻ NCCI Holdings Inc. [US] | <https://www.ewccv.com/cvs/>

## Missouri Department of Labor & Industrial Relations

### Employers' Workers' Compensation Insurance Coverage Verification

Select Coverage Date  Default = Today's Date

Employer Name   Contains  Starts With

OR

Federal Employer Identification Number

The following policy level result(s) do not imply coverage for this Employer in this state. Please click on a row to verify coverage information.

Policy Number	Primary Policy Name
C49112294	HOME DEPOT USA INC
C49112294	HOME DEPOT STORE SUPPORT LLC
C49112294	THE HOME DEPOT INC
WC011048400	MOBILE HOME DEPOT INC



# MISSOURI CVS

Select Coverage Date   Default = Today's Date

Employer Name   Contains  Starts With

OR

Federal Employer Identification Number

 **Worker's Compensation Insurance Coverage Provider: INDEMNITY INS CO OF N AMERICA (INA INS) (CT GEN)**  
**Policy Number: C49112294**  
**Coverage Date: 04/20/17**

[Return to Policy Results](#)

Page size:

Page 1

Employer Name	Street Address	City	State	Zip
<input type="text" value=""/>				
HD DIRECT LLC	4655 E LIBERTY ST	MEXICO	MO	65265-3576
HOME DEPOT USA INC	1000 BRANSON HILLS PKWY	BRANSON	MO	65616-9940
HOME DEPOT USA INC	10890 SUNSET HILLS PLZ	SAINT LOUIS	MO	63127-1221
HOME DEPOT USA INC	10930 NEW HALLS FERRY RD	SAINT LOUIS	MO	63136-4435
HOME DEPOT USA INC	111 E LINWOOD BLVD	KANSAS CITY	MO	64111-1117
HOME DEPOT USA INC	11215 SAINT CHARLES ROCK RD	BRIDGETON	MO	63044-2702
HOME DEPOT USA INC	1131 W GANNON DR	FESTUS	MO	63028-2602
HOME DEPOT USA INC	1306 E NORTH AVE	BELTON	MO	64012-5108
HOME DEPOT USA INC	13915 NEW HALLS FERRY RD	FLORISSANT	MO	63033-2943
HOME DEPOT USA INC	13929 MANCHESTER RD	BALLWIN	MO	63011-4505
HOME DEPOT USA INC	1525 HIGHWAY K	O FALLON	MO	63366-3079
HOME DEPOT USA INC	1603 S HANLEY RD	BRENTWOOD	MO	63144-2907
HOME DEPOT USA INC	1920 WENTZVILLE PKWY	WENTZVILLE	MO	63385-3453
HOME DEPOT USA INC	2104 E INDEPENDENCE ST	SPRINGFIELD	MO	65804-3757
HOME DEPOT USA INC	3015 N BALTIMORE ST	KIRKSVILLE	MO	63501-1920
HOME DEPOT USA INC	3110 E 20TH ST	JOPLIN	MO	64801-5909



# MISSOURI CVS

## Missouri Department of Labor & Industrial Relations

### Employers' Workers' Compensation Insurance Coverage Verification

Select Coverage Date  Default = Today's Date

Employer Name   Contains  Starts With

OR

Federal Employer Identification Number

**Worker's Compensation Insurance Coverage Provider:** INDEMNITY INS CO OF N AMERICA (INA INS) (CT GEN)  
**Policy Number:** C49112294  
**Coverage Date:** 04/20/17

[Return to Policy Results](#)

Page size: 20

Page 1

Employer Name	Street Address	City	State	Zip
<input type="text" value=""/>		<input type="text" value="SAINT LOUIS"/>		<input type="text" value=""/>
HOME DEPOT USA INC	10890 SUNSET HILLS PLZ	SAINT LOUIS	MO	63127-1221
HOME DEPOT USA INC	10930 NEW HALLS FERRY RD	SAINT LOUIS	MO	63136-4435
HOME DEPOT USA INC	3202 S KINGSHIGHWAY BLVD	SAINT LOUIS	MO	63139-1114
HOME DEPOT USA INC	7481 S LINDBERGH BLVD	SAINT LOUIS	MO	63125-4800
HOME DEPOT USA INC	9215 RIVERVIEW DR	SAINT LOUIS	MO	63137-3104
U.S. REMODELERS INC	103 ARC DR	SAINT LOUIS	MO	63146-3502

Page size: 20

Page 1





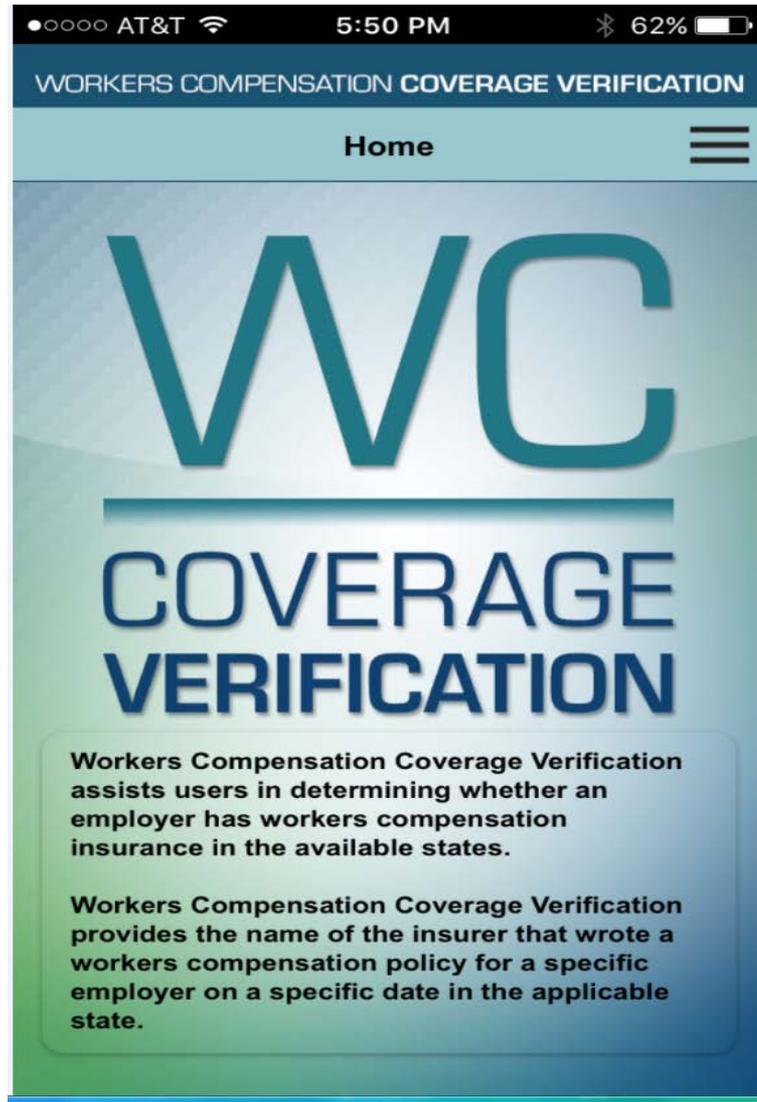
# Workers Compensation Coverage Verification (WCCV App)



# WCCV APP

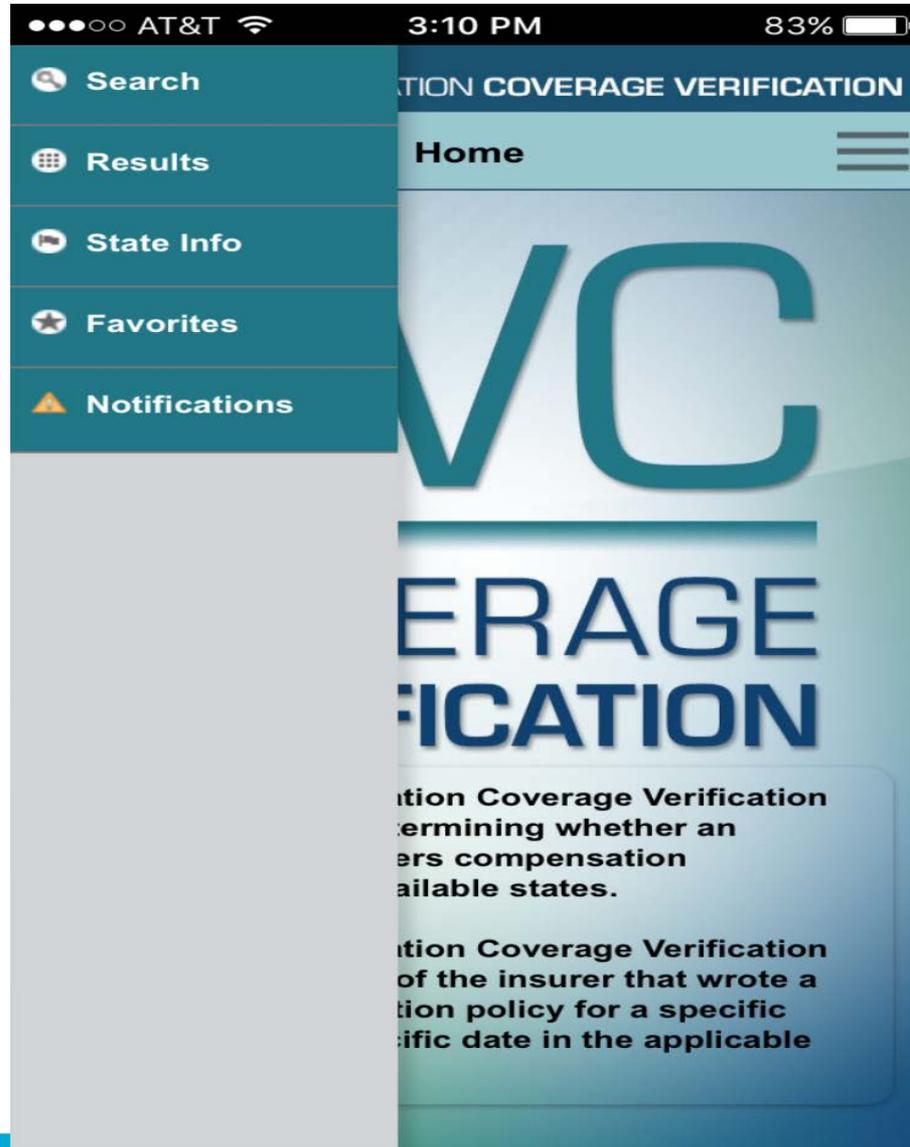
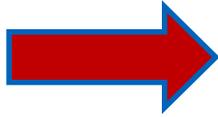


# WCCV APP



# WCCV APP—MENU

\*Public Site Information



# WCCV APP—SEARCH

\*Public Site Information

WORKERS COMPENSATION COVERAGE VERIFICATION

< Search

Missouri

Select Coverage Date:

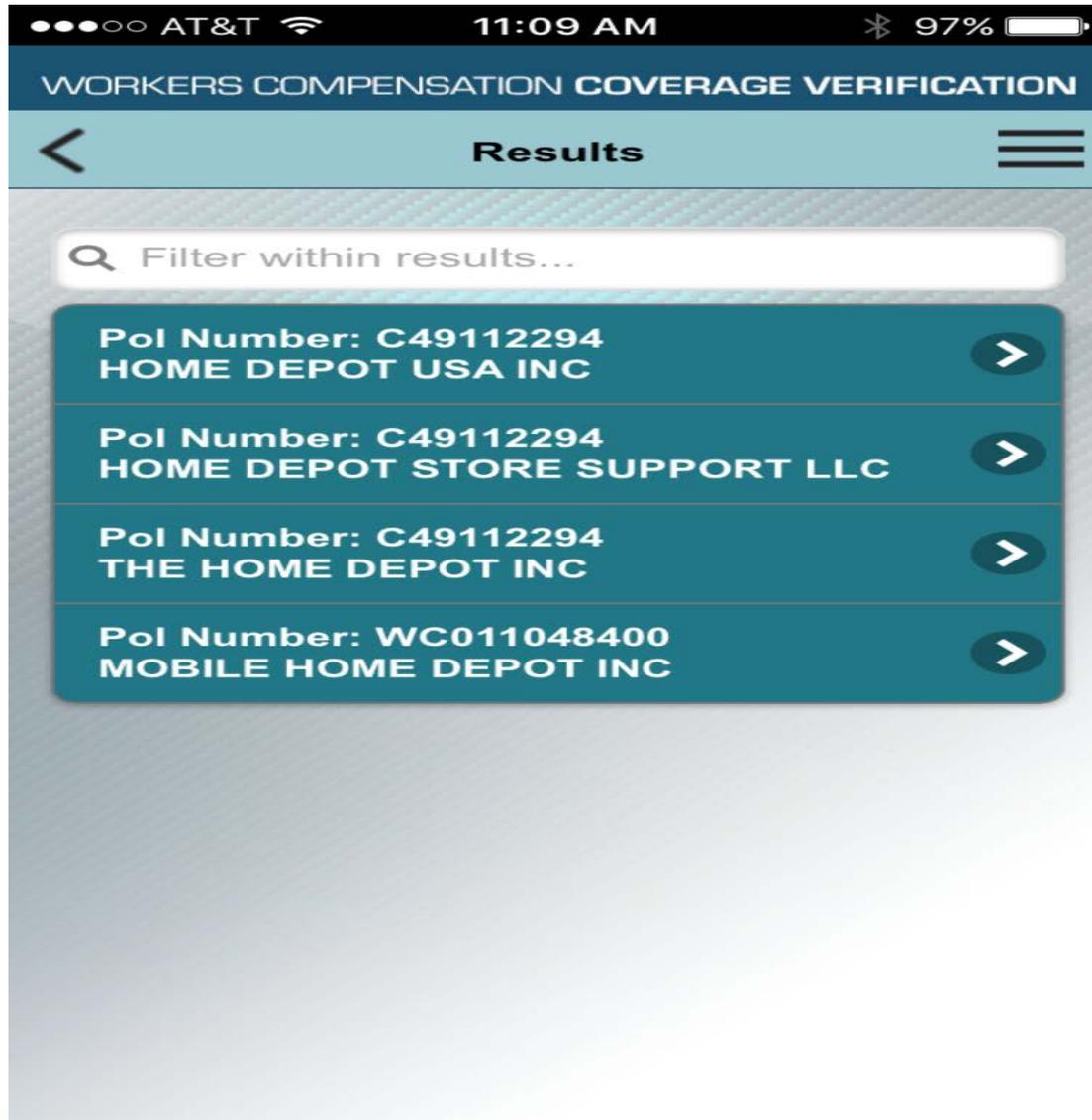
Apr 21, 2017

Q Home depot

Q Or FEIN

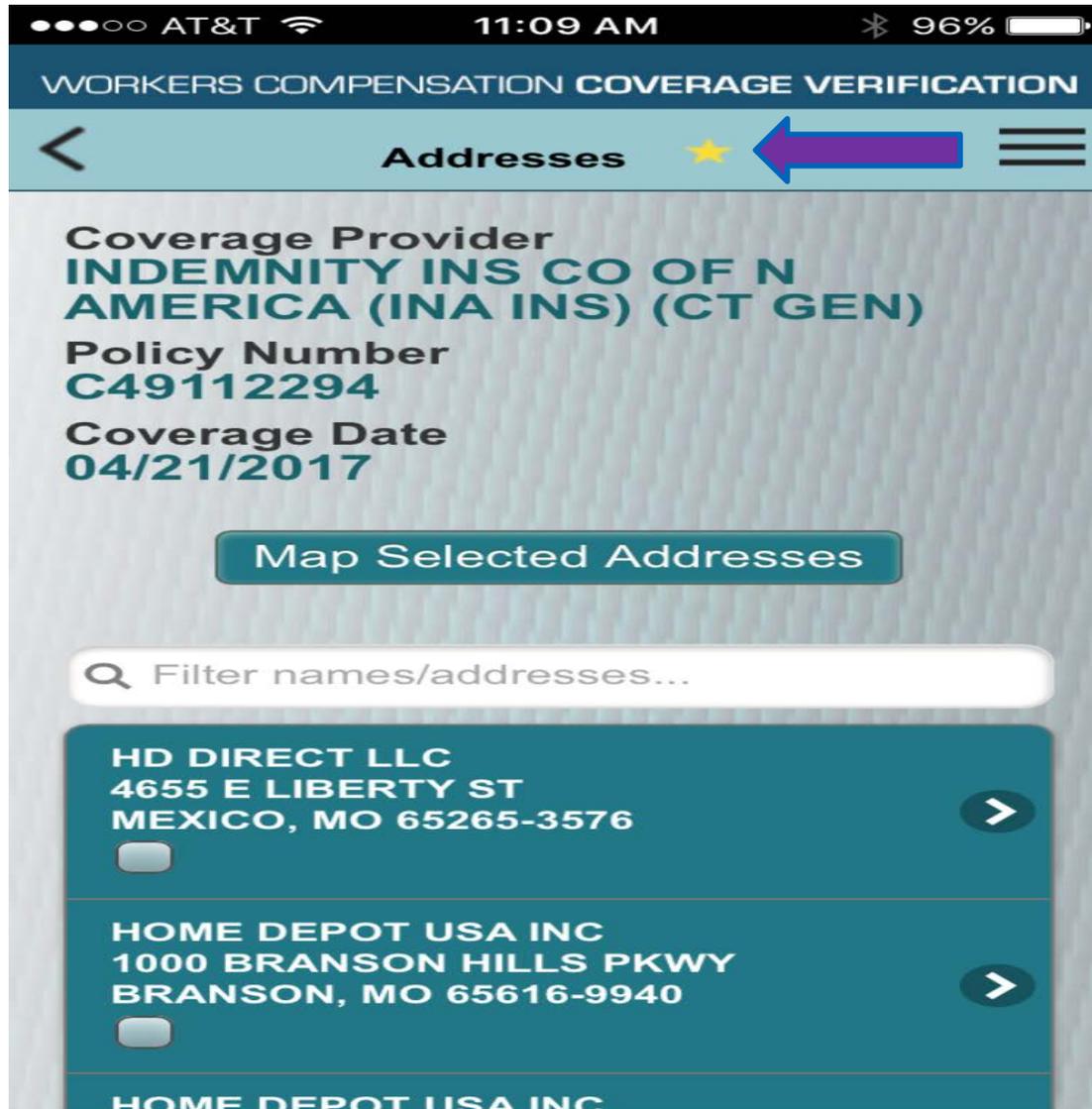
Search

# WCCV APP—RESULTS



# WCCV APP—LOCATIONS

\*Public Site Information



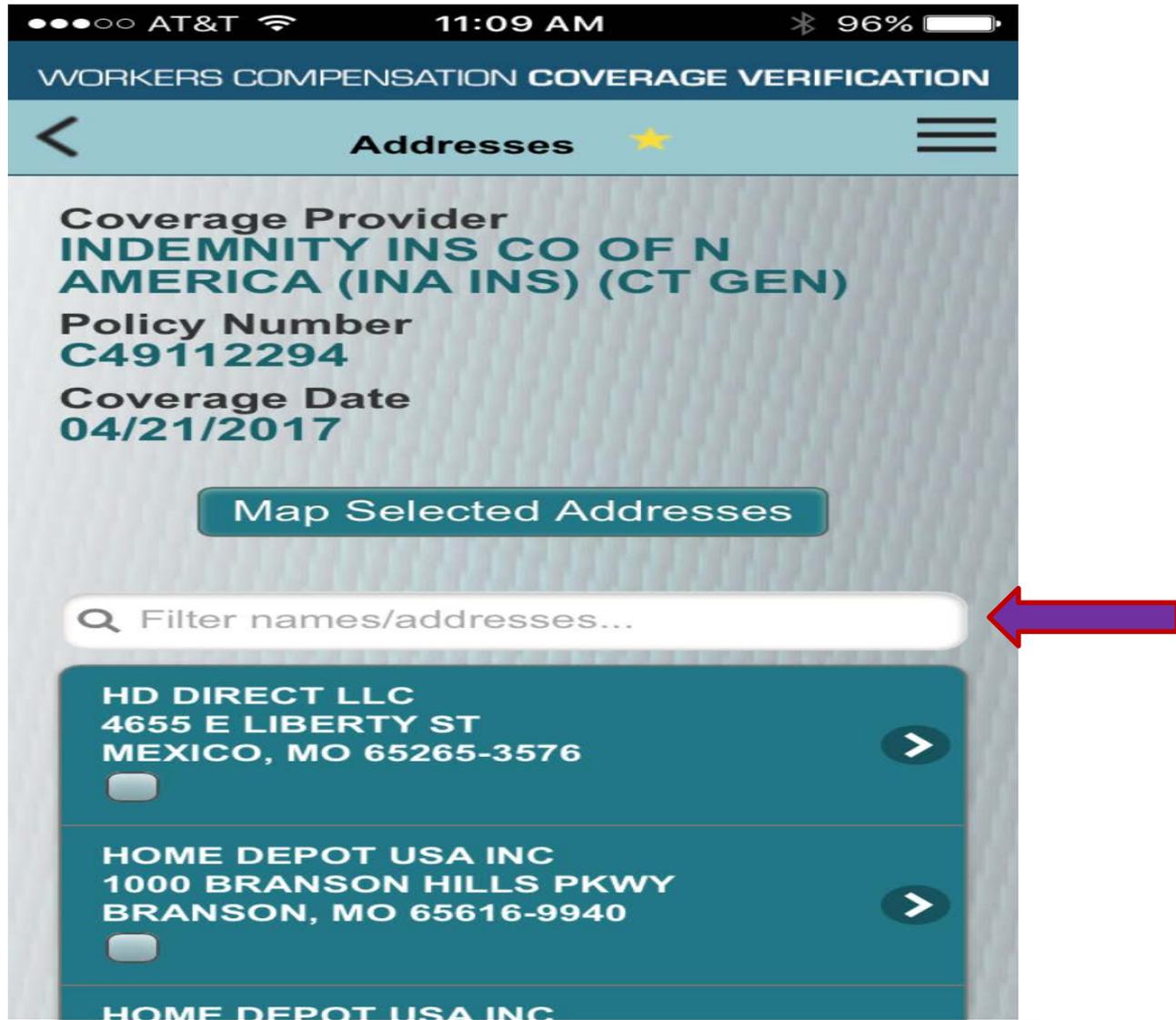
# WCCV APP—FAVORITES

\*Public Site Information



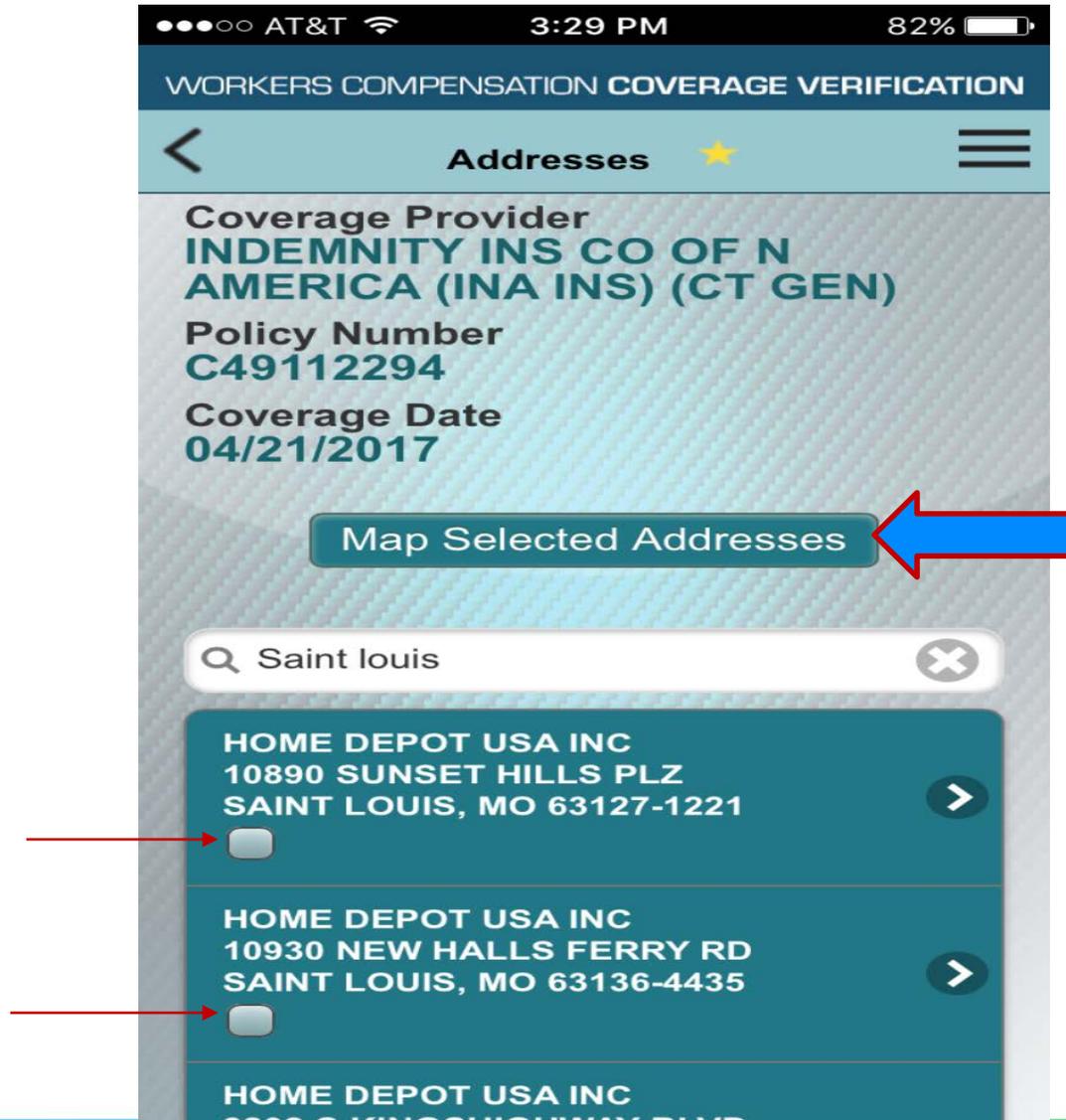
# WCCV APP—LOCATIONS

\*Public Site Information



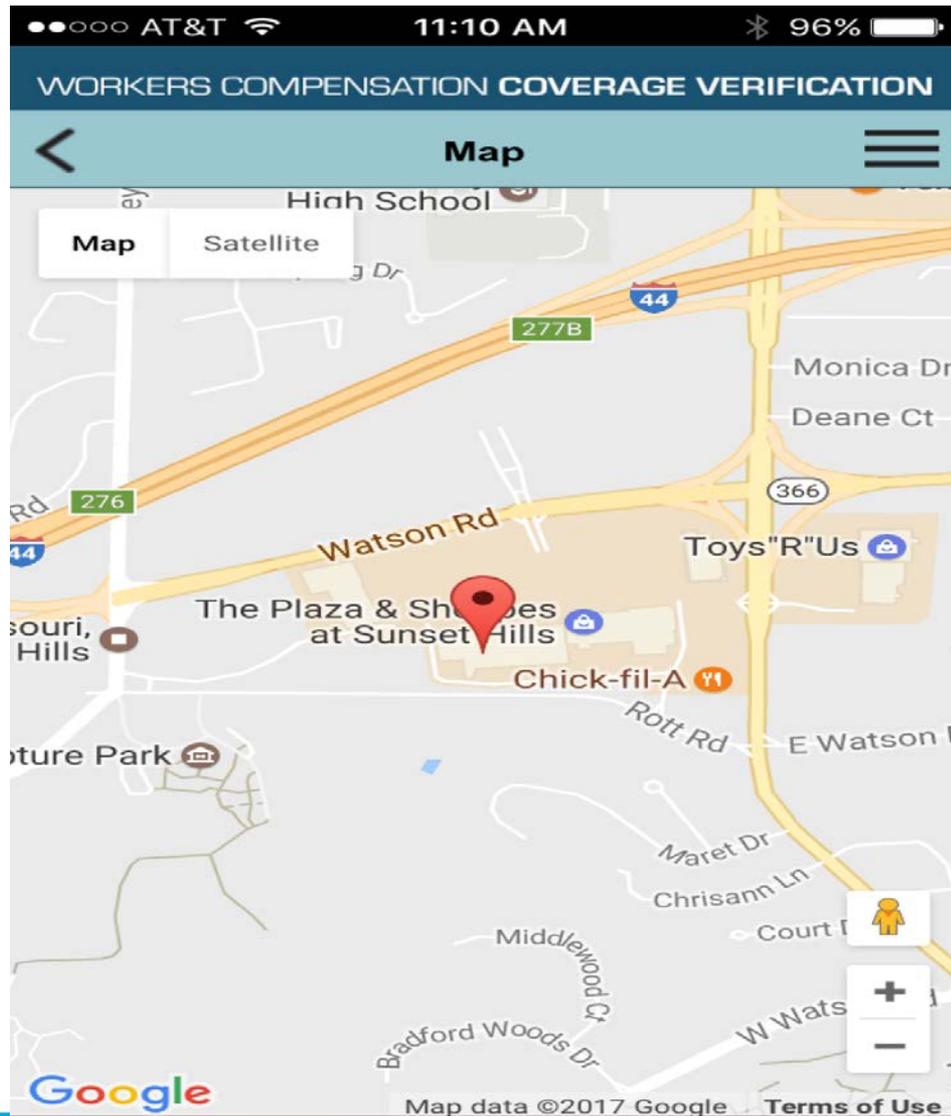
# WCCV APP—LOCATIONS

\*Public Site Information

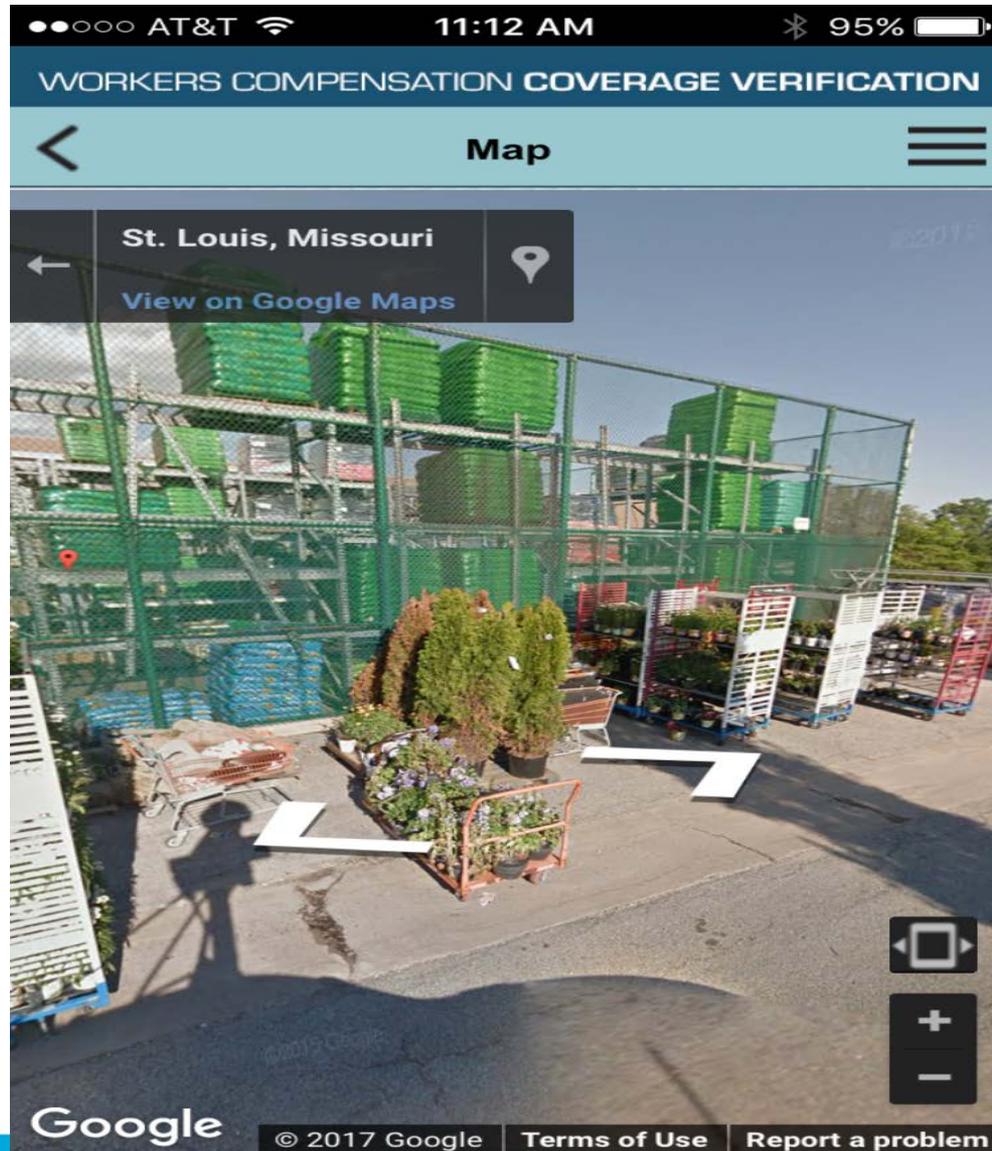


# WCCV APP—MAP

\*Public Site Information

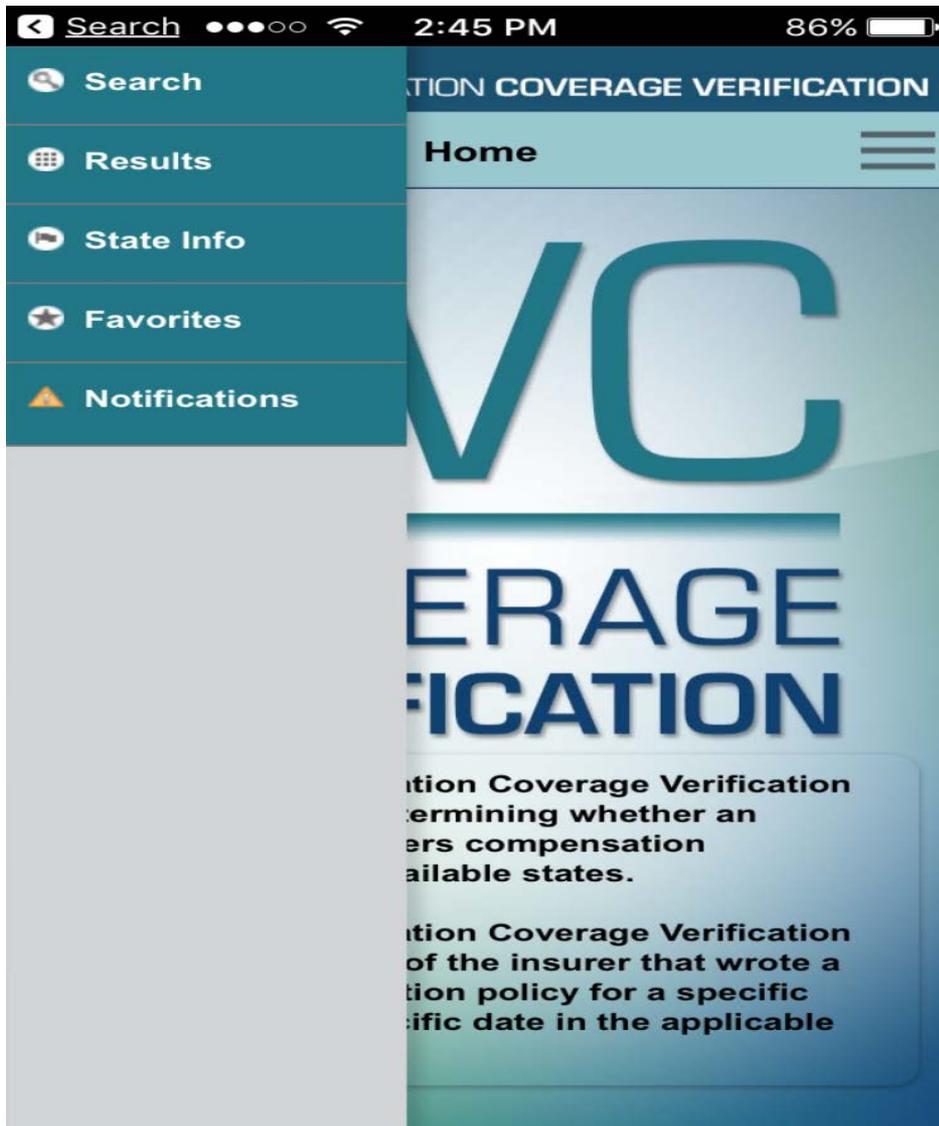


# WCCV APP—MAP



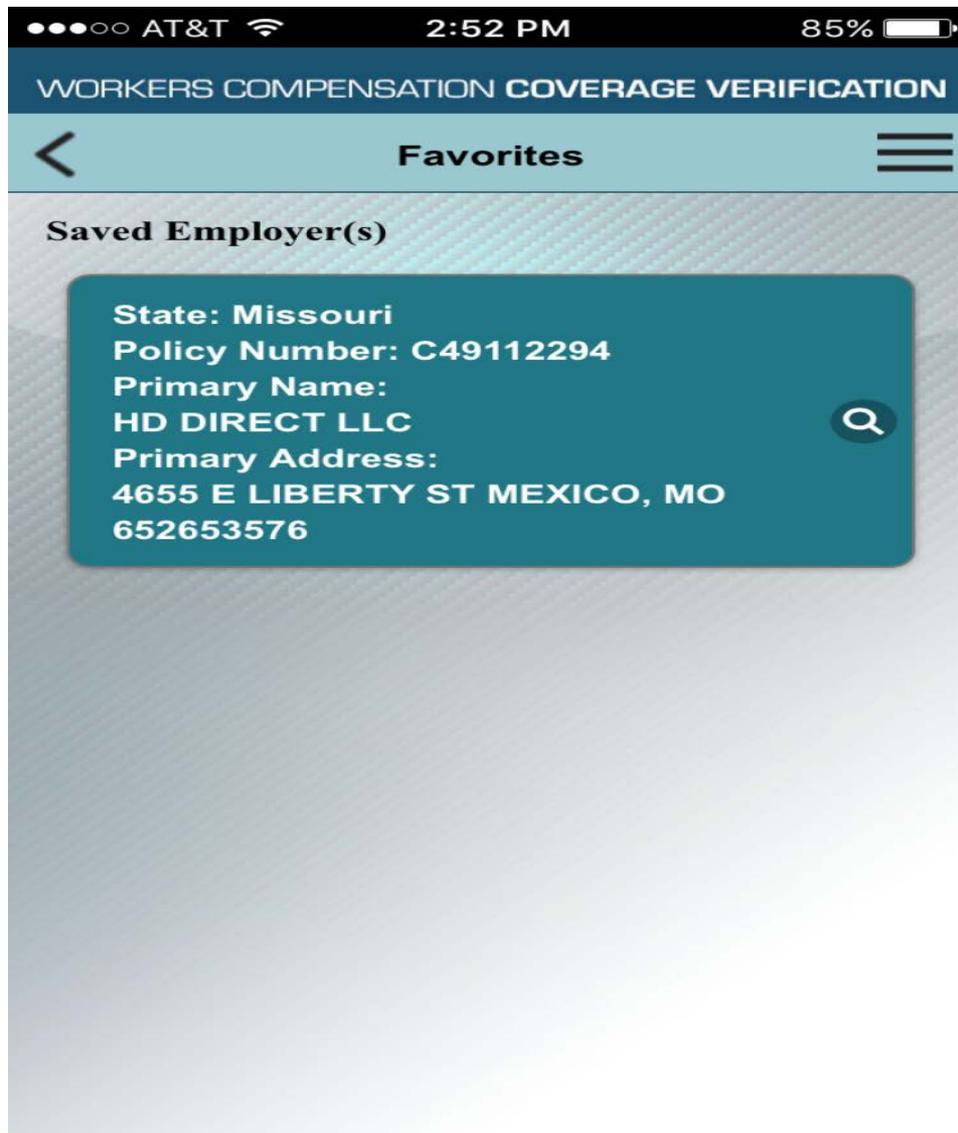
# WCCV APP—MENU

\*Public Site Information



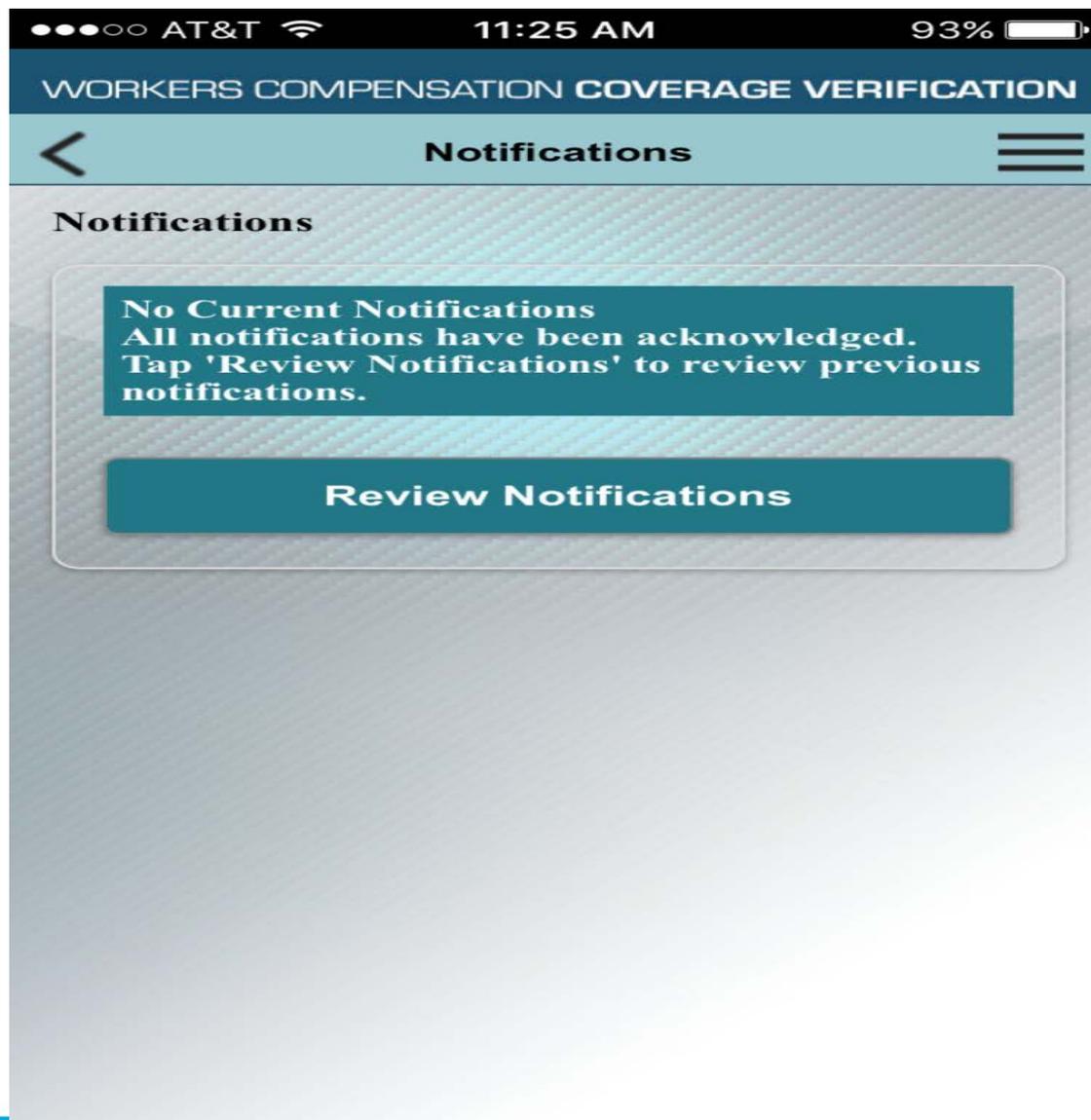
# WCCV APP—FAVORITES

\*Public Site Information

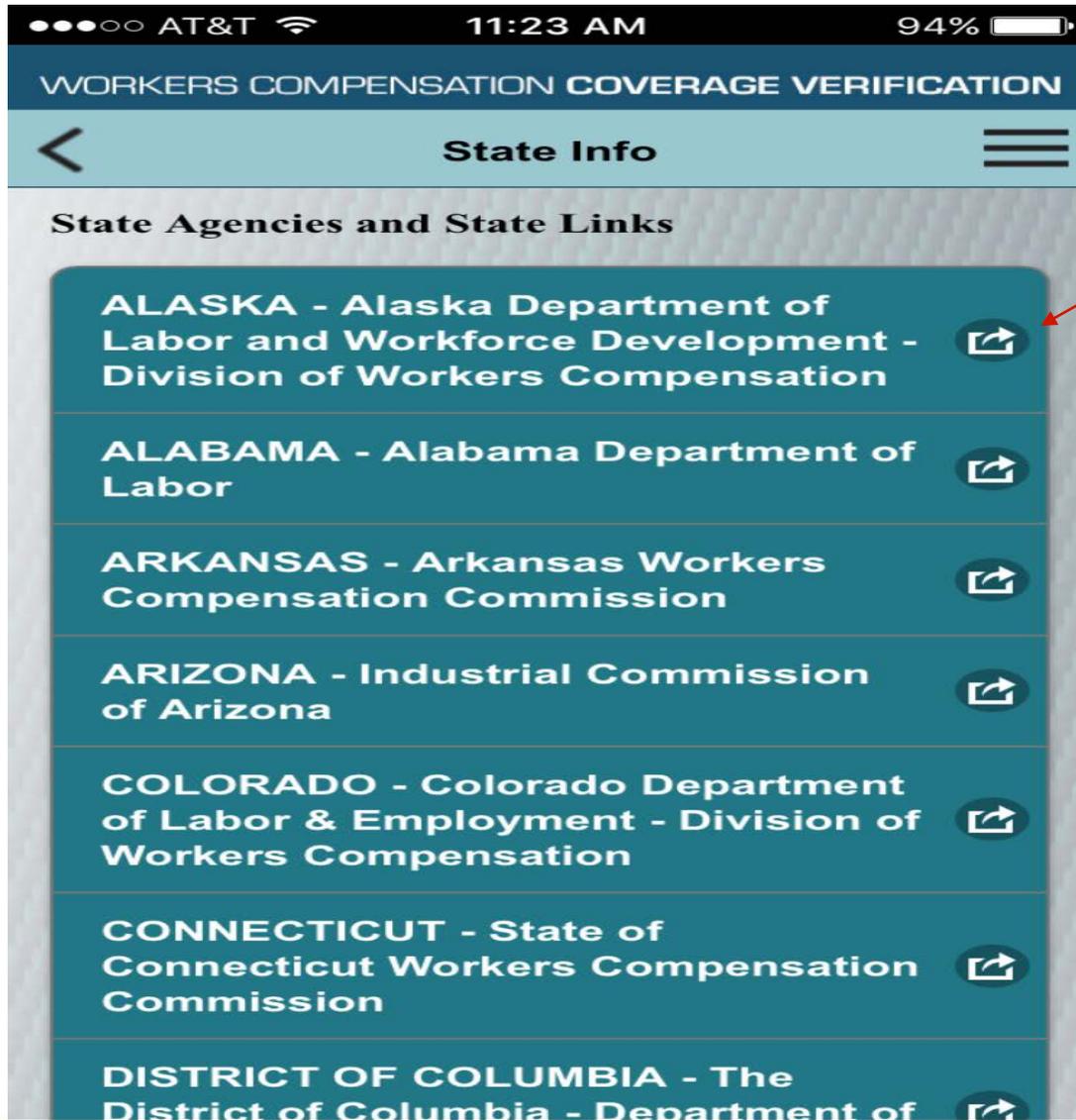


# WCCV APP—NOTIFICATIONS

\*Public Site Information



# WCCV APP—STATE INFO



# WCCV APP—STATE INFO

WC Cov Verify. ●●●○○ 3:44 PM 80%

labor.alaska.gov

**State of Alaska** myAlaska My Government Resident Business in Alaska Visiting Alaska State Employees

Alaska Department of Labor and Workforce Development

HOME JOB SEEKER WORKER EMPLOYER RESEARCH AND ANALYSIS RETURN ON INVESTMENT

State of Alaska > Department of Labor & Workforce Development >

**HEADLINES**

- Unemployment Rate at 6.4 Percent in March
- 4th Annual Stand-Down to Prevent Falls in Construction
- Annual Governor's Safety and Health Conference Brings Together Alaska Industries
- Alaska Occupational Safety and Health 10-hour Construction Course

[More News Releases>>](#)

**CONNECT**

Alaska Dept of Labor @AlaskaLabor

Join us tomorrow at the Mountain View Library for a Job Fair! Meet employers and find your next career.

Alaska 2017 Commission presents

**2017 Mountain View Job Fair/Expo!**

Noon to 3 p.m. (12:00-15:00) Friday, April 21, 2017

**DIVISIONS**

- Commissioner's Office
- Administrative Services
- Alaska Workforce Investment Board
- Labor Relations Agency
- Workers' Compensation Appeals Commission
- AVTEC
- Employment and Training Services
- Labor Standards and Safety
- Vocational Rehabilitation
- Workers' Compensation

**OF INTEREST**

- Alaska's Job Bank
- Job Fairs, Recruitments, and Workshops
- Finding Work in Alaska
- Alaska Performance Scholarship
- Oil & Gas Employment and Training Opportunities
- Apprenticeship
- Fishermen's Fund
- Unemployment Appeals
- Veteran Services
- Workforce Innovation and Opportunity Act

**QUICK LINKS**

- Alaska Economic Trends
- FY 2017 DOLWD Budget (Proposed)
- Alaska Wages
- Alaska Unemployment Rate
- Alaska Population
- Healthcare Jobs
- Seafood Jobs
- Relocating to Alaska
- Foreign Workers Information
- File Unemployment Benefits Online

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Department of Labor & Workforce Development  
PO Box 111149  
Juneau, AK 99811  
1016 West Sixth Avenue, Suite 401  
Anchorage, AK 99501  
Phone: 907-465-2799 | Fax: 907-465-2784





# Legislative Update



# NCCI's Role in the Legislative Process

## Before and during the legislative session:

Provide examples of how an issue is treated in other states

Analyze the cost impact of various options being considered and update impact analysis if a bill is amended



## After the legislature has adjourned:

Prepare circulars on substantive changes.

Make filings if needed

- File rate/loss costs to address changes when the cost impact is significant
- File rule/program changes, if needed



Monitor effects of the law changes/ court rulings after they are enacted

# Missouri Legislative Update

## 2017 Pending Legislation

Definitive  
bright line of  
Maximum  
Medical  
Improvement  
(MMI) as the  
determining  
factor to end  
Temporary  
benefits.  
(TTD/TPD)

Rebuttable  
presumption of  
intoxication

Civil provision  
in cases of  
retaliatory  
discharge  
resulting from  
Workers  
Compensation  
claim reporting

Election/  
Exemption of  
Coverage for  
certain  
shareholders of  
S Corporation

Compromise  
Settlement  
criteria



# Hot Topics in Workers Compensation



# Air Ambulances

## Overview of the Issue:

- Whether the federal Airline Deregulation Act of 1978 (ADA) pre-empts state WC laws as to reimbursement rates for air ambulances
- McCarran-Ferguson reverse pre-emption: does McCarran-Ferguson, which grants authority to the states to regulate the business of insurance, pre-empt other federal law that may be applicable

## Several ADA pre-emption challenges to state reimbursement rates:

- Most recent cases in Texas state and federal courts
- In some cases ADA found to pre-empt state WC laws regulating air ambulance reimbursement rates

# Air Ambulances

Several state legislatures debating air ambulance issues in 2017:

Montana (HB 73 and SB 44)

New Mexico (HB 402)

West Virginia (SB 276)

Federal legislation introduced in 2017 (S 471). Intended to preserve state authority to regulate air carriers providing air ambulance services

National Association of Insurance Commissioners (NAIC): NCCI provided CW air ambulance information for service years 2011 to 2015

National Conference of Insurance Legislators (NCOIL): Created an Air Ambulance Task Force

# Opioids and Workers Compensation

Opioid addiction and overdose have reached epidemic levels over the past decade

According to the Centers for Disease Control and Prevention (CDC):

- Sales of opioid prescriptions in the U.S. have nearly quadrupled since 1999
- Deaths from opioid prescription drugs have more than quadrupled since 1999
- From 2000 to 2015 over half a million people died from drug overdoses (the majority of these deaths involved an opioid)

# Opioids and Workers Compensation

Several states are considering legislative and regulatory changes including:

Drug formularies

Limitations on physician dispensing and repackaged drugs

Enhancements to prescription drug monitoring programs (PDMPs)



Federal: New CDC Guidelines provide recommendations for prescribing opioid pain medication



NCCI research studies available on [ncci.com](http://ncci.com)

# Legalization of Marijuana

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- Federal level—Marijuana is an illegal Schedule I drug under the Controlled Substances Act

- 
- August 2016—The US Drug Enforcement Administration announced it will not reclassify marijuana

- 
- Unclear what will happen under new Administration

# Legalization of Marijuana— State Activity

28 states and the District of Columbia have legalized medical marijuana use (Arkansas, Florida and North Dakota passed law in November 2016)

8 states (Alaska, Colorado, Oregon and Washington, California, Maine, Massachusetts, Nevada) and the District of Columbia have legalized the recreational use of marijuana (California, Maine, Massachusetts and Nevada passed law in November 2016)

6 states (Connecticut, Maine, Massachusetts, Minnesota, New Jersey and New Mexico) have allowed reimbursement for workers compensation under certain circumstances

# Legalization of Marijuana – Workplace Challenges

Currently, no state allows employees to use marijuana in the workplace or requires employers to allow marijuana use on the job

Employees who can legally use medical marijuana while off duty may still face consequences for arriving at work with detectable amounts of marijuana in their system

There is a question as to whether lingering side effects may impact performance of regular work duties

# Legalization of Marijuana –

## Insurance Challenges

Insurers are receiving requests to pay for medical marijuana

### Reimbursement issues

- Centers for Medicare and Medicaid Services
- Absence of National Drug Code

Given federal issues, state courts are faced with the challenge of whether to approve medical marijuana treatment for work-related injuries

# Legalization of Marijuana – Judicial Activity



**Colorado Supreme Court: *Coats v. Dish Network* (2015)**— Employers can lawfully terminate workers for using marijuana outside of work hours, even though the drug is legal in the state. A “lawful activity,” under Colorado’s lawful activities statute, must be lawful under both state and federal law.



## **New Mexico Court of Appeals:**

- ***Vialpando v. Ben’s Automotive Services and Redwood Fire & Casualty* (2014)**—An insurer must reimburse a “qualified” workers compensation claimant for the cost of medical marijuana to treat low back pain (appealed to NM Supreme Court: Certiorari denied)
- ***Maez v. Riley Industrial; Lewis v. American General Media* (2015)**—An employer is required to reimburse a “qualified” claimant for medical marijuana if the drug is reasonable and necessary medical care for treatment of a work injury.

# Legalization of Marijuana – Judicial Activity

**US District Court New Mexico: *Garcia v. Tractor Supply Company* (2016)**– Court dismissed employee’s complaint; employee was terminated for testing positive for marijuana even though employee qualified for medical marijuana under state Act, but Act imposed no duty on employers to accommodate medical marijuana use.

**US District Court for Western District of Washington: *Swaw v. Safeway, Inc.* (2015)** – Court dismissed employee’s discrimination and retaliation claims after he was terminated for testing positive for marijuana following workplace injury and violating a drug-free workplace policy.

# Legalization of Marijuana – Workers Compensation Board Decisions

**Connecticut Workers  
Compensation  
Commission: *Petrini v.  
Marcus Dairy, Inc. and  
Gallagher Bassett  
Service* (2016)**

- Claimant’s use of medical marijuana for pain management of his debilitating condition, as statutorily defined, constitutes reasonable and necessary medical treatment.

**Maine Workers  
Compensation Board:  
*Noll v. Lepage Bakeries,  
Inc. and Cannon  
Cochran Management  
Services* (2015)**

- Self-insured employer ordered to reimburse an injured worker for costs associated with the “reasonable and proper” medical use of marijuana to treat his back injury.

# Legalization of Marijuana – Regulatory and Legislative Activity

## New Mexico

- Adopted a fee schedule to provide for reimbursement of medical marijuana to injured workers. Effective January 1, 2016.
- Introduced legislation requiring employers/carriers to pay for medical marijuana for injured workers. (SB 371 did not pass)

## North Dakota

- Passed legislation prohibiting payment of workers compensation benefits for medical marijuana (HB 1156).

# Possible Applicable NCCI Classification Codes

## Growing and Cultivating

- Code 0079—Farm—Berry or Vineyard & Drivers
- Code 0035—Farm—Florist & Drivers

## Testing

- Code 4511—Analytical Laboratories or Assaying—Including Laboratory, Outside Employees, Collectors of Samples & Drivers
  - When performed by an independent lab, it is properly classified to Code 4511
  - Testing performed by the grower is properly classified to Code 0035 or Code 0079 (appropriate growing classification)

## Product Manufacturing

- Code 2003—Bakery—Salespersons & Drivers
- Code 4611—Drug, Medicine or Pharmaceutical Preparation, Compounding or Blending—No Manufacturing of Ingredients

## Sales

- Code 8045/8047—Store—Drug Retail/Wholesale (*Medicinal Marijuana Dispensaries*)
- Code 8017—Store—Retail NOC (*Recreational Use Marijuana*)

# Legalization of Marijuana – Summary

States are increasingly legalizing marijuana in some form for medical use

Marijuana is still illegal under federal law and remains a Schedule I drug

Courts are increasingly dealing with contested cases of medical marijuana in the work environment

# NCCI Events

## State Advisory Forums

Missouri: October 19, 2017; Columbia, MO

## Annual Issues Symposium

## Agent Education Workshops

## Open Houses

Visit [www.NCCI.com](http://www.NCCI.com) for more information.

# Questions?

