

# Democratic Victories May Bring 'Incremental' Changes for Workers' Comp

Options

By **William Rabb** (Reporter)

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A blue wave that swept through Kentucky and Virginia on Tuesday has given Democrats more control over those states' workers' compensation systems and could result in at least some changes in judges, a cancer presumption law and new retaliation prohibitions.



Andy Beshear

In formerly deep-red Kentucky, Democrat Andy Beshear toppled firebrand Republican incumbent Gov. Matt Bevin. But changes in Kentucky's system may prove to be only incremental because the governor-elect still faces a Republican supermajority in both houses of the legislature.

The real impact may play out over the next few years, as Beshear fills vacancies at the administrative law judge and appeals-board levels.

“That's a positive for us,” said Bill Londrigan, president of the Kentucky AFL-CIO. “Beshear is much more aligned with people who work for a living, including people who are injured on the job.”

The Kentucky General Assembly in 2018 passed one of the most significant pro-employer comp packages, ending lifetime medical benefits for some injuries and limiting the types of doctors who can diagnose black lung disease. Beshear may have scant ability to change that law, and even if he vetoes any new compensation legislation, Republicans would be inclined to override, Londrigan said.

But Bevin put his stamp on workers' comp in other ways, and Beshear will soon have his turn.

Bevin took the unprecedented step of restructuring a nominating committee that submits names for comp judges, giving the governor more control over who's nominated. Now, many are wondering if Bevin, in his remaining days in office, will fill a vacancy on the Workers' Compensation Board, the body that hears decisions appealed from ALJs.

The nominating committee last month submitted three names to replace Rebekkah Rector, who did not seek another term. But Bevin has yet to choose.

“There's always a question about whether the lame-duck governor can appoint or should that be left to the new guy,” said Ched Jennings, a longtime claimants' attorney in Louisville.

Beshear, who has been the state's attorney general since 2016, will also be able to name a new secretary of the Labor Cabinet, and may have some influence over Kentucky's new drug formulary, treatment guidelines and other comp regulations, Jennings said.

“It's a change for the good,” Jennings said. “Andy's attributed a lot of his success to labor and teachers. He's also very familiar with workers' comp law, so all of that should help.”

At least for the first few months of Beshear's term, though, workers' compensation may take a back seat to other issues, including salvaging the pension system for state employees. Some reports have said Bevin's mishandling of that issue, more than any other, led to his ouster.

Meanwhile, Virginia has had a Democratic governor since 2014, but Democrats now have a majority in the legislature for the first time in a quarter-century.

“It's a whole new waterfront,” said Richmond claimants' attorney Andrew Reinhardt.

But because employer groups, labor representatives and medical providers have shown they can work together on one of the most difficult issues in workers' comp — a medical fee schedule — comp probably won't take center stage next year, Reinhardt said.

"I expect small and incremental changes," he said.

What happens next month could prove to be a major factor in the legislature's direction. That's when the Joint Legislative Audit and Review Commission, known as JLARC, is due to release a much-anticipated study that takes a deep look at workers' compensation system in the state.

It started out last spring as a way to postpone action on a cancer presumption bill for firefighters. Both houses, then under Republican control, approved [House Bill 1804](#) in March. The bill expands the number of cancers presumed to be work-related, but there was a catch: The law cannot take effect unless the 2020 legislature approves the measure all over again. The bill also required the 2020 session to consider research and recommendations from JLARC.

Now, said Reinhardt, that study is expected to look at other facets of the comp system. It's the first comprehensive study of Virginia's comp system in 30 years and could lead to a range of legislation.

Also last year and this year, business groups and Republican lawmakers successfully opposed several bills offered by Del. Lee Carter, D-Manassas. Those are likely to come up again, said Chris LaGow, a lobbyist for insurers.

Carter has received considerable media attention in the last two years, mostly because he's a self-professed democratic socialist in the conservative South. He defeated an incumbent Republican in 2017, then won again Tuesday. Carter also is an authority on Virginia workers' compensation, in large part because he experienced the system first-hand.

In 2015, Carter, an information technology specialist, was shocked on the job and injured his back. He couldn't walk more than 50 feet at a time, according to news [reports](#). But Carter's workers' compensation claim was denied, and his employer slashed his work hours when he tried to return to the job.

That inspired Carter to run for the legislature, and he's been campaigning for workers' compensation reform ever since. In the 2019 session, Carter sponsored four bills that would have:

- Expanded prohibitions on retaliation against injured workers who file claims.
- Required the Workers' Compensation Commission to order an employer to notify a worker within 21 days if the company intends to accept or deny a claim, and give reasons for the denial or explain that the employer needs more information.

- Expanded coverage to workers injured outside of the state, if the injured worker is employed by a Virginia-based company.
- Ended the exclusion from state workers' compensation benefits if the worker is covered by the federal Longshore and Harbor Workers' Act.

Carter's bills all died in Republican-controlled House committees early in 2019. He and his staff could not be reached for comment Wednesday, but 2020 will bring new leadership to all House and Senate panels. It's probable that the bills will be taken up again.

"The committees will change pretty dramatically," lobbyist LaGow said.

Under state Senate rules, in fact, committees do not have to proportionately reflect the makeup of the chamber, so key committees could soon have three times as many Democrats as Republicans, LaGow said.

Sen. Richard Saslaw, D-Springfield, known as an authority on workers' compensation issues, has been the Senate minority leader and may be in line to be chairman of the Commerce and Labor Committee, which handles comp measures, LaGow said.

On the other side of the Capitol, Del. Jeion Ward, D-Hampton, could be in line for the House Commerce and Labor Committee chairmanship.