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WORKERS' COMPENSATION SUBROGATION IN ALL 50 STATES

State	Main Statute	Can Carrier Sue Third Party Directly	Do You Need To Intervene?	Recovery From UM/UIM Benefits	Subro Against Med Mal	Subro Against Legal Mal	Recovery Allocation/Equitable Limitations	Employer Contribution Employer Negligence	Attorney's Fees/Costs	Future Credit	Aut o No-Fault	PI SOL
Alabama	Ala. Stat. § 25-5-11	Yes, 6 months after SOL.	Yes, imperative. Employee will argue you have no lien for medical benefits-only subrogation rights.	No	Yes	No	(1) Carrier Reimbursed, Less Attorney's Fees. (2) Balance to Plaintiff. There is confusion over whether there are reimbursement rights for both medical benefits and indemnity benefits.	No, employer immune even if intentional.	Pro-Rata. <i>Fitch</i> Formula. Carrier can recover fees if it files suit.	Yes, but not if lump sum award or "unknown or incalculable" future medical. Carrier owes fees on value of future benefits. Use <i>Miller</i> Formula.	No	2 Yrs.
Alaska	Alaska Stat. § 23.30.015	Yes, after 1 year.	Yes. To defend against employer fault.	Undecided	Undecided	Yes	(1) Litigation Costs (2) Employer Reimbursed (3) Balance to Plaintiff	No, employer reimbursement reduced by % of fault.	<i>Cooper</i> Rule. Pro-Rata. Past and Future. Active vs. Passive <i>English</i> Rule	Yes, reduced by employer's negligence.	No	2 Yrs.
Arizona	A.R.S. § 23-1023(D)	Yes, after 1 year.	Yes. To defend against employer fault.	No	Yes	No	(1) Litigation Costs (2) Employer Reimbursed (3) Balance to Plaintiff	No, contribution lien reduced by % of employer's fault determined by jury (trial, not settlement).	No, lien not subject to reduction for atty's fees.	Yes, also reduced by employer's % of fault.	No	2 Yrs.
Arkansas	A.C.A. § 11-9-410	Yes, party must give 3 days' notice of settling.	Yes. Mandatory to Intervene in reasonable time after notice.	Employer's Policy Only	Undecided	Undecided	(1) Costs/Fees (2) 1/3 to Worker (3) 2/3 to Carrier (4) Balance to Plaintiff Made Whole Applies	No	Pro-Rata	Yes	No	3 Yrs.
California	Labor Code § 3852	Yes, with notice by certified mail.	Yes. Employee can settle around your lien.	No	No	Undecided	(1) Costs/Fees Based on Services by Both (2) Carrier Reimbursed* (3) Balance to Plaintiff *possibly limited to 1/3 of third party policy limits if EE is peace officer or firefighter. (SB 487).	Proportional Only if Verdict	Apportion, if carrier actively participates.	Yes. But not if EE is peace officer or firefighter. Should file petition with W.C.A.B.	No	2 Yrs.

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Colorado	C.R.S. § 8-41-203	Yes	Yes. Employee will gerrymander recovery to non-economic damages.	No	Yes	No?	Economic Damages Only. No recovery from non-economic damages.	No	Pro-Rata	Yes	Not after 7/1/03	2 Yrs. 3 Yrs. if auto.
Connecticut	C.G.S.A. § 31-293	Employer can bring suit. C.G.S.A. § 31-293. Carrier can bring suit and automatically loses 1/3 of its lien if it waits for employee to file suit.	Yes. Recommend to intervene vs. give notice of lien within 30 days after notice of filing suit.	No	Yes	No	(1) Fees, Expenses (2) 1/3 to Employee (if employee filed. No credit) (3) Carrier Reimbursed (4) Balance to Plaintiff If suit brought by carrier, may be subject to equitable defenses, including Made Whole Doctrine.	No	Lien Automatically Reduced By 1/3 if P files suit, unless ER is state or city. Most likely, suit must be filed to get attorneys' fees. If suit brought by carrier, may be subject to equitable defenses, including Common Fund Doctrine.	Yes	No	2 Yrs.
Delaware	19 Del. C. § 2363	Yes, if no plaintiff suit by 260 days. 30 days' notice by all.	Optional. Recommend with larger liens to avoid gerrymander.	Yes	Yes	No	(1) Fees, Expenses (2) Carrier Reimbursed, Less Pro-Rata Fees (3) Balance to Plaintiff	No	Pro-Rata	Yes	No	2 Yrs.
District of Columbia	D.C. Code Ann. § 32-1535	6 months after award.	Yes. Mandatory to intervene if plaintiff files suit.	No	Yes	Undecided	Formula applies when carrier files suit. Otherwise, carrier has only equitable lien.	No	If employee files third-party suit; costs of litigation and fees shared pro-rata based on amount each received in the total recovery.	Yes, may recover in third-party suit directly if carrier files.	Yes	3 Yrs.
Florida	F.S.A. § 440.39	Year: 1: Plaintiff 2: Carrier* 3: Plaintiff** *must give 30 days-notice to employee. **Some will argue HB 837 changed this due to 2 yr. SOL. (for causes of action after 3/24/23).	No. Intervention possible but very difficult. MUST file Notice of Lien.	No	Yes	No	Carrier gets lien, less pro-rata fees, unless plaintiff shows <i>Manfredo</i> Formula.	No	Pro-Rata	Yes, may recover in third-party suit if carrier files.	Yes	2 Yrs. after 3/24/23) 4 Yrs. (before 3/24/23).
Georgia	O.C.G.A. § 34-9-11.1	Yes, after 1 year.	Must intervene to	No	Undecided	Undecided	Made Whole Doctrine codified. No lien against non-economic damages.	Plaintiff's recovery reduced by employer's negligence.	Apportion based on services by carrier and plaintiff atty.	No	No	2 Yrs.

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			defeat "Made Whole."									
Hawaii	Haw. Rev. Stat. § 386-8	Yes, after 9 months.	If you want to defend against attorneys' fees being taken out of lien.	No?	Undecided	Undecided	(1) Fees, Expenses (2) Carrier Reimbursed, Less Pro-Rata Fees (3) Balance to Plaintiff	No	Apportion based on activity of each.	Yes, with approval of Dept. of Labor	Yes	2 Yrs. Longer if auto accident.
Idaho	Idaho Code § 72-223	Yes	Yes. Necessary to defend against employer fault which destroys lien.	Undecided	Yes	Undecided	Carrier gets first money dollar-for-dollar.	No subro when employer is comparatively negligent.	Apportion based on activity of each.	Yes. Carrier must reimburse atty's fees with each benefit payment it is saved from making.	No	2 Yrs.
Illinois	820 I.L.C.S. § 305/5(b)	Yes, 3 months before SOL.	Yes. Subrogation turns into defense as we must combat Kotecki contribution against employer.	No	Yes	No	Carrier gets first money off top, less atty's fees.	No. <i>Kotecki</i> Contribution only, up to <i>Kotecki</i> cap.	Pro-Rata. Limited to 25%	Yes, 25% of future benefits owed as atty's fees.	No	2 Yrs.
Indiana	I.C. § 22-3-2-13	Yes, 1 year after SOL.	No. But recommend to fight against Lien Reduction Statute.	Employer's UM policy only, unless exclusion.	Yes	Undecided	Carrier paid first, less fees. Lien Reduction Stat. §34-51-2-19 may apply.	No	Pro-Rata 25% (pre-suit) and 1/3 (post-suit). Past and future benefits.	Future obligations end with any third-party recovery.	No	2 Yrs.
Iowa	I.C.A. § 85.22	Yes, carrier must give 90 days' notice. Plaintiff must give notice 10 days before trial.	Depends on facts. Must intervene or file Notice of Lien within 30 days of receiving employer's notice or lose subro rights.	No	No	No	First money – past and future. § 85.35. Settlement of comp claim bars subro.	No	Pro-Rata. Future fees paid back as benefits paid.	Yes, may also recover in third-party suit.	No	2 Yrs.
Kansas	K.S.A. § 44-504	Yes, after 1 year; 18 months if death.	Yes. To defend against employer fault and gerrymander of settlement.	Possibly only to substituted payment.	Yes	Undecided	Lien extends only to damages that duplicate medical and lost wages.	Yes. <i>Brabander</i> Formula.	Apportion, If active. No fee if gerrymandering.	Yes, reduced by employer's negligence.	Yes	2 Yrs.

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Kentucky	K.R.S. § 342.700	Yes, but only if employee has not filed suit.	Mandatory. Must Intervene by statute.	No	Yes	Undecided	No reimbursement from non-economic damages. Modified Made Whole Doctrine applies.	Yes, third-party can seek contribution from employer, which reduces plaintiff's recovery, lien, and credit.	Lien reduced by a pro rata-share of plaintiff's attorney's fees and costs.	Yes, lien must exceed plaintiff's atty's fees and costs or there's no credit. Credit is reduced by % of employee's and employer's fault.	Yes	1 Yr. 2 Yrs. For Auto
Louisiana	La. R.S. § 23:1101, <i>et. seq.</i>	Yes, with notice. Carrier must consent to settlement.	Must Intervene.	Policy only, unless UM policy excludes benefits to WC carrier.	Yes	No	First money reimbursed. Reduced by plaintiff's contributory negligence. If settled, carrier can recover max of 50% of lien.	Yes, lien reduced by employer's % of fault.	Moody Fees. Pro-Rata based on atty's activity.	Yes	No	1 Yr. or 2 Yrs.
Maine	39-A M.R.S.A. § 107	Yes, after 30-day demand.	Not necessary but recommend with large liens.	Employer Policy: Yes Employee Policy: ?	Yes?	Undecided	Carrier gets first money, less fees and costs.	No	Pro-Rata, if plaintiff files.	Yes	No	6 Yrs.
Maryland	Md. Lab. & Empl. § 9-901-903	Exclusive right for 2 mths after first award of comp. Joint right to file after 2 mths.	No. But should intervene if want to defend against attorneys' fees.	No	Yes, if mal-practice aggravates injury.	Undecided	Carrier gets first money, less fees and costs.	No	Pro-Rata, unless intervention is necessary.	Yes	No	3 Yrs.
Massachusetts	M.G.L.A. 152 § 15	Yes, after 7 months.	Yes. This is a high-risk anti-subro state due to <i>Eisner</i> and <i>Curry</i> allocations. Early local counsel is necessary to file a Notice of Lien and respond immediately to hurriedly-noticed hearings.	No	Yes	Undecided	Carrier gets first money, less fees and costs. Subro possibly not allowed against pain and suffering (<i>Curry</i> Allocation) or against loss of consortium (<i>Eisner</i> Allocation).	No	Apportion, depending on activity.	Hunter offset. Pays only fraction of future benefits.	Yes	3 Yrs.

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Michigan	M.C.L.A. § 418.827	Yes, after 1 year.	Yes	UM – Yes UIM - No	Yes	NO	Carrier gets first money, less fees and costs. Subrogated to economic damages only if no-fault involved. No Subro for Med Expense if No-Fault.	No	Pro-Rata	<i>Franges</i> Formula	Yes	3 Yrs.
Minnesota	M.S.A. § 176.061	Yes	Yes, can also actively participate.	No	Yes	Yes	(1) Fees, Expenses (2) 1/3 to Plaintiff (3) Carrier Reimbursed, Less Pro-Rata Fees (4) Balance to Plaintiff As (Credit). <i>Naig</i> Settlement	<i>Lambertson</i> Contribution/Reduction	Pro-Rata. Court has discretion to determine reasonable fees. Carrier can't get fees.	Yes, carrier pays % of future benefits because of reduction for costs/fees.	Yes	2/6 Yrs.
Mississippi	M.C.A. § 71-3-71	Yes, with reasonable notice.	Must intervene unless there is reimbursement agreement or the carrier files.	No	Yes, but not as to past medical or lost wages.	Undecided	(1) Fees, Expenses (2) Carrier Reimbursed Fully - No Fees (3) Balance to Plaintiff	No	No	Yes	No	3 Yrs.
Missouri	Mo. Rev. Stat. § 287.150	Yes	Yes, but not required.	UM - No UIM – Employee: No Employer: Undecided	Yes	No	<i>Ruediger</i> Formula	No	Pro-Rata	Yes	No	5 Yrs.
Montana	Mont. Stat. § 39-71-412	Yes, after 1 year. Plaintiff must give notice.	Not clear if right to intervene. Recommend attempting to avoid Made Whole.	Yes	Undecided	Undecided	First money lien, subject to Made Whole Doctrine. Employee is made whole only if the total of (1) all workers' compensation benefits paid or to be paid, (2) the net third-party recovery, and (3) the costs of recovery exceeds the employee's entire loss. The made whole requirement likely applies where the employee files suit and the carrier enforces its right of reimbursement,, as well as where the carrier files a subrogation third-party action and obtains a recovery.	No	Pro-Rata, unless carrier waives 50%.	Future Credit Stat. repealed in 2005. Carrier can be reimbursed and/or get a future credit only when employee is made whole.	No	3 Yrs.

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Nebraska	Neb. Rev. Stat. §§ 48-118; 48-118.01; 48-118.04	Yes	Yes. Necessary to defend against "fair and equitable" division.	Yes. Possibly Employer's Policy Only	Yes	Undecided	(1) Fees, Expenses (2) Carrier Reimbursed (3) Balance to Plaintiff Division must be agreed to or court approved as fair and equitable.	No, only if contractual indemnity.	Fees/costs recoverable and allocated if carrier is active. If not, pro-rata deduction.	Yes	No	4 Yrs.
Nevada	N.R.S. § 616C.215 (SB 258 makes sweeping changes effective 5/31/25)	Yes	Recommend in order to fight Loss of Consortium allocation and gerrymander.	Yes. Employer's Policy Only. Carrier can initiate UM/UIIM third-party claim.	Yes	Undecided	Lien extends to both economic and non-economic damages—"total amount of recovery." Lien capped at lesser of (1) full lien or (2) 1/3 of total third-party recovery.	No	No fees/costs owed if full lien recovered. Carrier owes no attorney's fees. Carrier owes 50% of litigation costs. Employee must provide costs itemization that is subject to judicial review.	Future credit not applicable to "accident benefits", which means medical benefits. Future credit only applies to indemnity and only to 1/3 of each future amount owed.	No	2 Yrs.
New Hampshire	N.H. Rev. Stat. Ann. § 281-A:13	Yes, after 9 months.	No. But should intervene on larger liens if you want to prevent fees/costs being deducted from lien.	Yes	Undecided	Undecided	Lien reimbursed off the top, less any fees owed.	No	"As Justice May Require". Carrier may recover fees. Fees/costs owed on past and future benefits.	Yes	No	3 Yrs.
New Jersey	N.J.S.A. § 34:15-40	Yes, after 1 year.	No.	Yes	Yes	Yes	Carrier reimbursed, less pro-rata share of fees/costs.	No	Pro-rata of 1/3 fees and up to \$750 in costs.	Yes	Yes	2 Yrs.
New Mexico	N.M.S.A. § 52-5-17	No. Reimbursement Only	Yes. Need to intervene to combat Made Whole defense.	Employer's Policy Only	Yes?	Undecided	Hybrid Made Whole Doctrine: Subrogable Elements Allocation Required. Employee has burden of proof. Court looks at percentage of each damage element recovered.	Yes, reimbursement reduced by % of fault.	Pro-rata, up to discretion of court.	Yes	No	3 Yrs.
New York	N.Y. Work Comp § 29	Yes, 30 days' notice.	Recommend intervening if no-fault involved.	No	Yes	Yes	(1) Fees, Expenses (2) Carrier Fully Reimbursed (3) Net to Plaintiff	"Grave Injury" Contribution	Kelly Formula Burns Formula	Yes	Yes	3 Yrs.

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North Carolina	N.C.G.S.A. § 97-10.2	Yes, joint right after 1 year, ending 60 days before SOL (written admission of liability must be filed by employer with Commission).	Yes. Only way to combat "discretionary reduction" of lien.	Yes, for policies after 10/1/99.	Undecided	No	(1) Fees, Expenses (2) Carrier Fully Reimbursed (3) Net to Plaintiff "Discretionary Reduction" Consent of employee and employer required in order to settle.	Yes N.C.G.S.A. § 97-10.2(e)	Pro-Rata. Plaintiff Must Apply	No, must recover in third-party suit.	No	3 Yrs.
North Dakota	N.D.C.C. § 65-01-09	Yes, after 60 days.	No.	Undecided	Yes	No	Up to 50% of Third-Party Recovery	No	25% / 1/3%	Yes	Yes	6 Yrs.
Ohio	Ohio Rev. Code Ann. § 4123.931	Yes	No.	Yes	Probably	Probably	Statutory allocation formulas for trials and settlements.	No	Yes	Yes, but trust set up in amount of futures.	No	2 Yrs.
Oklahoma	85 O.S. § 348 Accident Prior to 2/1/14	Yes	No.	No	Yes	Yes	(1) Fees - costs off top. (2) If recovery is compromise settlement approval of court is needed. Balance apportioned as parties may agree. If no agreement, court can equitably apportion. (3) If recovery is not "compromise settlement, <i>Prettyman</i> formula allowed.	No	No	Only if recovery is more than lien.	No	2 Yrs.
	85A O.S. § 43 Accident After 2/1/14	Yes. If employee pursues w/c claim, cause of action against third-party is assigned to carrier.	Mandatory	Yes	Yes?	Yes?	<u>If employee pursues:</u> [1] Fees/costs off the top. [2] Carrier receives lesser of 2/3 of remainder or its entire lien. [3] Employee receives balance. <u>If carrier pursues:</u> [1] Fees/Costs deducted. [2] Carrier recovers lien. [3] Balance to employee.	No	No	"Deficiency Rule" applies and allows a credit for 2/3 of the employee's net recovery.	No	2 Yrs.
Oregon	O.R.S. § 656.593	Yes, 60 days after election.	Yes. Necessary to defeat "Just and Reasonable" Allocation.	No	Yes?	Yes	(1) Fees, Expenses (2) Carrier Reimbursed Fully for Past and Future Benefits (3) Carrier Reimbursed Fully (4) Balance to P-Credit Possible "Just and Reasonable" Allocation	No	No Off the Top	No, must recover in third-party suit. Credit if recovery made before benefits paid.	No	2 Yrs.
Pennsylvania	77 P.S. § 671	No	No. But should intervene if you have large reserves and	<u>Employer:</u> Yes <u>Employee:</u> No <u>Other Person:</u> Yes	Future credit only. No reimbursement of	Yes	None	None.	First Money Reimbursed	Yes, but as to indemnity benefits only.	Yes	2 Yrs.

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			need future credit.		past medical or lost wages.							
Rhode Island	R.I.G.L. § 28-35-58	Yes, if notice given 26 weeks before 2 years, 8 months anniversary of accident, can sue after 2 years, 8 months date.	No.	No	Yes	Undecided	None	None. First Money Reimbursed	Pro-Rata	Partial. Only for future indemnity (lost wage) benefits, but no for medical expenses.	No	3 Yrs.
South Carolina	S.C. Code Ann. § 42-1-560	Yes, after 1 year. Twenty (20) days assignment notice to employee required. Can sue 90 days after that.	Yes. Necessary to defend against equitable reduction.	No.	Yes	Undecided	First money less fees; but equitable reduction.	No	Set by Commission F2 1/3	Yes	No	3 Yrs.
South Dakota	S.D.C.L. § 62-4-38, 39, 40	Yes	Yes. Necessary to defend against gerrymander of like damages.	Employer's Policy Only	Undecided	Undecided	Subro limited to "like damages" (economic v. non-economic). Below is "Zoss Formula": (1) Allocate recovery into "like damages" (hearing); (2) Determine amount of "like damages" paid by carrier; (3) Subtract pro-rata fees /costs (ratio of lien to gross recovery); and (4) Balance paid to carrier.	No	Pro-rata, up to 35%. Allocated between worker and carrier.	Yes, recovery and credit limited to "like damages".	No	3 Yrs.
Tennessee	T.C.A. § 50-6-112	Yes, after 1 year. Carrier has additional 6 months to file for a total of 18 months.	No. But should intervene if you have large reserves and need future credit.	No	Yes	Undecided	No Special Formula First Money	No, defendant can introduce evidence to show employer cause in fact.	Pro-rata if no active participation by carrier.	Yes, but no credit against unknown or incalculable future medical benefits, unless carrier proves likelihood and amount of future medicals.	No	1 Yr.
Texas	V.T.C.A. Labor Code §§ 417.001-417.004	Yes	Recommend to avoid gerrymander and to prevent fees/costs	Employer's Policy Only	Yes	Yes	Carrier has first money right of recovery.	After 1/1/03 proportional reduction.	Apportionment	Yes, may recover in third-party suit if carrier sues alone.	No	2 Yrs.

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			being deducted from lien.									
Utah	U.C.A. § 34 A-2-106	Yes	No. But recommend to combat employer fault.	No	Yes	Undecided	(1) Fees, Expenses (2) Carrier Reimbursed Fully, Less Pro-Rata Fees/Costs. (based on past lien and anticipated future benefits). (3) Net to Plaintiff	40% Rule	Pro-Rata	Yes	Yes	4 Yrs.
Vermont	Vt. Stat. Ann. Tit. 21 § 624	Yes, after 1 year.	No.	Only If Plaintiff Is Made Whole	Undecided but likely.	No.	First dollar reimbursed to carrier, less pro-rata fees. If the employee's third-party recovery is less than the full value of the tort damages, the carrier's lien/credit is limited to the portion of the recovery allocated to damages covered by workers' compensation	No	Pro-Rata	Yes	No	3 Yrs.
Virginia	Va. St. § 65.2-309	Yes	No.	Employer's Policy Only	Yes	Undecided	First dollar reimbursed to carrier, less pro-rata fees.	No	Pro-Rata	Yes, carrier reimbursed attorney's fees on each payment.	No	2 Yrs.
Washington	R.C.W.A. § 51.24.030	Yes	Yes. To avoid gerrymander of recovery.	Yes. Possibly Employer's Policy Only	Yes?	Yes	(1) Fees, Expenses (2) 25% to Plaintiff (3) Carrier Reimbursed Fully, Less Pro-Rata Fees/Costs. (4) Net to Plaintiff No recovery from pain and suffering damages.	No	Pro-Rata	Yes	No	3 Yrs.
West Virginia	W.Va. Code § 23-2A-1	Undecided	No.	<u>Employee Policy:</u> No <u>Employer Policy:</u> Undecided	Yes?	Undecided	First dollar recovery after 2003 Amendment.	No	Statutory Reduction. W.Va. Code § 23-2A-1(b)	No	No	2 Yrs.
Wisconsin	Wis. Stat. § 102.29	Yes	Yes, if named as involuntary plaintiff under §803.03.	No	Yes	No	(1) Atty's Fees/Costs (2) 1/3 Balance to Plaintiff (3) Carrier Reimbursed Fully (4) Balance to Plaintiff's Credit	No	No	Yes, carrier can recover futures if prosecutes third-party case.	No	3 Yrs. 2 Yrs. If auto death
Wyoming	Wyo. Stat. § 27-14-105	Yes, 15 days' notice.	No.	Undecided	Undecided	Undecided	First money right of recovery.	No	No	No, must recover in third-party suit.	No	4 Yrs.

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