



WORKERS' COMPENSATION SUBROGATION IN ALL 50 STATES

| State | Main Statute | Can Carrier Sue Third Party Directly | Right 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 | Auto No-Fault | PI SOL |
|-------------------|--------------------------|--|---|-------------------------------|-----------------------|-------------------------|--|--|--|---|---------------|--------|
| Alabama | Ala. Stat. § 25-5-11 | Yes, 6 months after SOL. | Yes, if shown it could make substantial contribution. | 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 | 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 | 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. | Must 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 | No | No | Undecided | (1) Costs/Fees Based on Services by Both (2) Carrier Reimbursed (3) Balance to Plaintiff | Proportional Only if Verdict | Apportion, if carrier actively participates. | Yes, in amount of employee's net recovery. Should file petition with W.C.A.B. | No | 2 Yrs. |

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| Colorado | C.R.S. § 8-41-203 | Yes | Yes, even after SOL runs. | 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. | Must intervene or 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. | Yes | No | 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. | Carrier must 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 | <u>Year:</u> 1: Plaintiff 2: Carrier* 3: Plaintiff *must give 30 days-notice to employee. | No, 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 | 4 Yrs. |
| Georgia | O.C.G.A. § 34-9-11.1 | Yes, after 1 year. | Yes | 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. |
| Hawaii | Haw. Rev. Stat. § 386-8 | Yes, after 9 months. | Yes | 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. |

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| Idaho | Idaho Code § 72-223 | Yes | Yes | 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 reimbursed atty's fees on each payment. | No | 2 Yrs. |
| Illinois | 820 I.L.C.S. § 305/5(b) | Yes, 3 months before SOL. | Yes | 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. | Yes | 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% and 1/3. 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. | 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 | 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. |
| Kentucky | K.R.S. § 342.700 | Yes, but only if employee has not filed suit. | Must Intervene | 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, et. seq. | 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. | <i>Moody</i> Fees. Pro-Rata based on atty's activity. | Yes | No | 1 Yr. |
| Maine | 39-A M.R.S.A. § 107 | Yes, after 30-day demand. | Yes. | 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. |

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| Maryland | Md. Lab. & Empl. § 9-901-903 | Exclusive right for 2 mths after first award of comp. Joint right to file after 2 mths. | Yes | 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. | No | 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. | <i>Hunter</i> offset. Pays only fraction of future benefits. | Yes | 3 Yrs. |
| 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 (<i>Credit</i>). <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 | 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. | Yes? | Yes | Undecided | Undecided | First money lien, subject to Made Whole Doctrine. | No | Pro-Rata, unless carrier waives 50%. | Future Credit Stat. repealed in 2005. | No | 3 Yrs. |

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| Nebraska | Neb. Rev. Stat. §§ 48-118; 48-118.01; 48-118.04 | Yes | Yes, equal voice. | 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 | Yes | Possibly | Employer's Policy Only | Yes | Undecided | Lien may be limited to economic damages. | No | Breen Formula | Yes. Credit arguably limited to economic damages and reduced by personal living expenses. No credit for non-economic damages. | No | 2 Yrs. |
| New Hampshire | N.H. Rev. Stat. Ann. § 281-A:13 | Yes, after 9 months. | Yes | 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 | 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. | Depends | No | Yes | Yes | (1) Fees, Expenses (2) Carrier Fully Reimbursed (3) Net to Plaintiff | "Grave Injury" Contribution | Kelly Formula | Yes | Yes | 3 Yrs. |
| North Carolina | N.C.G.S.A. § 97-10.2 | Yes, joint right after 1 year, ending 60 days before SOL. | Yes | Yes, for policies after 10/1/99. | Undecided | No | (1) Fees, Expenses (2) Carrier Fully Reimbursed (3) Net to Plaintiff "Discretionary Reduction" | 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. | Yes | 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 | Yes | Yes | Probably | Probably | Statutory allocation formulas for trials and settlements. | No | Yes | Yes, but trust set up in amount of futures. | No | 2 Yrs. |

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| Oklahoma | 85 O.S. § 348 Accident Prior to 2/1/14 | Yes | Yes | 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 | Must | Yes | Yes? | Yes? | (1) Fees/costs off the top. (2) Employee receives 1/3 off the top; (carrier gets 100% if it brings third-party suit); [3] Carrier receives balance of net recovery or its entire lien, whichever is less. Carrier reimbursed for past lien AND present value of future benefits owed. (3) Balance remaining paid 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, 90 days after election. | No | 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 | Yes | <u>Employer:</u> Yes <u>Employee:</u> No <u>Other Person:</u> Yes | Causes of action prior to 3/20/03 | Yes | None | None. First Money Reimbursed | Pro-Rata | Yes, but as to indemnity benefits only. | Yes | 2 Yrs. |
| 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. | Yes | No | Yes | Undecided | None | None. First Money Reimbursed | Pro-Rata | Yes | No | 3 Yrs. |

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| 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 | 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 | 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. | Yes | 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 | Yes | 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. |
| Utah | U.C.A. § 34 A-2-106 | Yes | Yes | No | Yes | Undecided | (1) Fees, Expenses (2) Carrier Reimbursed Fully, Less Pro-Rata Fees/ Costs. (3) Net to Plaintiff | 40% Rule | Pro-Rata | Yes | Yes | 4 Yrs. |
| Vermont | Vt. Stat. Ann. Tit. 21 § 624 | Yes, after 1 year. | Yes | Only If Plaintiff Is Made Whole | Undecided | Undecided | First dollar reimbursed to carrier, less pro-rata fees. | No | Pro-Rata | Yes | No | 3 Yrs. |
| Virginia | Va. St. § 65.2-309 | Yes | Probably | 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. |

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| Washington | R.C.W.A. § 51.24.030 | Yes | Yes | 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 | Yes | <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 | 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. |
| Wyoming | Wyo. Stat. § 27-14-105 | Yes, 15 days' notice. | Yes | Undecided | Undecided | Undecided | First money right of recovery. | No | No | No, must recover in third-party suit. | No | 4 Yrs. |

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