

WORKERS' COMPENSATION SUBROGATION WAIVER ENDORSEMENTS IN ALL 50 STATES

Most state workers' compensation laws, or cases construing them, allow the employer and its carrier to waive its right to subrogate against a third party that caused or contributed to an employee's injury, its right to reimbursement from a tort recovery obtained by the employee, or its right to a future credit based on such a recovery. The purpose of a subrogation waiver is not well understood and is a subject of some confusion in the marketplace. Most frequently, contracting parties agree to contractually require the inclusion of a waiver of subrogation endorsement in a workers' compensation policy simply because the requirement is contained in the form contract, and has been for many years. On other occasions, the requirement is included in the belief that such a waiver will provide some protection or immunity from lawsuits filed by employees of other subcontractors. Unfortunately, an effective waiver of subrogation does *not* prevent a subcontractor's employee from filing suit against the contractor. It only prevents the subcontractor's workers compensation carrier from initiating a third-party subrogation action, seeking reimbursement out of a third-party recovery obtained by the employee, and/or taking advantage of a future credit. In turn, this deprives the small subcontractor of a subrogation recovery and the positive effect such a recovery would have on its risk modifier and future workers' compensation premiums.

In addition, the subcontractor pays an additional premium to have the endorsement appended to the insurance policy in the first place. This premium is often 5% to 10% of the manual premium developed in conjunction with the project/contract for which the waiver is provided, or more. Frequently, the only ones who benefit from a waiver is the employee and the personal injury attorney he or she has hired, who are then allowed to receive a double recovery if the worker's compensation lien does not have to be repaid to the employer or its compensation insurer. The contractor against whom subrogation is waived doesn't benefit since the employee can still sue for personal injuries. For all the harm the misunderstood waiver causes, employers and/or workers' compensation carriers continue to pay unlimited medical expenses and/or indemnity benefits for the life of the employee, rather than receiving a statutory future credit which would positively affect the employer's experience modifier. It increases the cost of doing business in every state in which waivers are allowed. And nobody knows why they are required—it's just the way things have always been done.

Whether or not a waiver of subrogation is valid depends on many variables, including the existence of a valid waiver of subrogation endorsement in the worker's compensation insurance policy. Assuming that the waiver is valid, the question that naturally arises is precisely which right is being waived:

1. Workers' compensation statutory right of subrogation (*i.e.*, the right of the carrier to sue the tortfeasor for recovery of its past lien)?
2. Right to reimbursement of its statutory lien from any recovery made via settlement or verdict by the employee?

3. Right to a future credit for any amounts recovered by the employee?

A typical waiver endorsement is the Texas Amendatory Endorsement WC 42 03 04 A approved by the Texas Department of Insurance. is found in a Texas workers' compensation policy looks like this:

<p style="text-align: center;">TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - WC 42 03 04</p> <p>This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.</p> <p>We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.</p> <p>This endorsement shall not operate directly or indirectly to benefit anyone named in the Schedule.</p> <p>The premium for this endorsement is shown in the Schedule.</p> <p style="text-align: center;"><u>Schedule:</u></p> <p>(1) () Specific Waiver Name of person or organization () Blanket Waiver Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.</p> <p>(2) Operations:</p> <p>(3) Premium The premium charge for this endorsement shall be _____ percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.</p> <p style="text-align: center;">*</p> <p>(4) Advance Premium</p> <p>Notes:</p> <p>(1) Use this endorsement to effect a waiver of recovery from others in accordance with Rule II, § G, of the Texas Workers' Compensation Manual.</p> <p>(2) If blanket waiver of recovery from others is written, the following wording should be inserted following Operations in Schedule: All Texas Operations.</p>

Other states have other waiver forms, such as Form WC 00 03 13. The WC 00 03 13 endorsement is an endorsement developed by the National Council on Compensation Insurance, Inc. (NCCI). By its terms, carrier consent to the waiver is limited to situations where the insured has contractually agreed in writing to obtain the waiver from its carrier.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Two questions arise in connection with these waivers:

1. Does the waiver prevent the carrier from insisting on its right of reimbursement (as opposed to subrogation)?

The following states have ruled on or hinted to the answer to question 1: Arizona, Arkansas, Indiana, Louisiana, Maine, Mississippi, New Jersey, New York, Oklahoma, Texas, Virginia, and Wisconsin. (Bold = “reimbursement” allowed; Italics = “reimbursement” not allowed)

2. Does the waiver prevent the carrier from claiming a future credit?

Only a few states have weighed in: **California, Nebraska, Pennsylvania**, *Texas*. (Bold = “future credit” allowed; Italics = “future credit” not allowed).

The very terms of the above endorsement refer to waiving “the right to recover our payments from anyone liable for an injury covered by this policy.” It indicates that the carrier will not enforce this right “against the person or organization named in the Schedule.” This language suggests that the workers’ compensation carrier is agreeing to waive the first of the three above-referenced rights granted by a state’s workers’ compensation subrogation statute—viz., the right to sue the tortfeasor—but not the other two rights, including the right to be reimbursed out of any recovery the employee eventually receives from a settlement or verdict with the tortfeasor. Not all states agree with this interpretation, and the actual effect of a valid waiver of subrogation varies from state to state, with most states still undecided one way or the other. Because most states have not developed a rule with regard to the full effect of a valid waiver of subrogation endorsement in a policy, an argument should be made that the right of subrogation is waived, but not the right to reimbursement or the right to a future credit. The following chart reveals the current state of the law in all 50 states regarding the full effect of a valid waiver of subrogation.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER’S RIGHT TO ASSERT A LIEN ON CLAIMANT’S RECOVERY	OTHER APPLICABLE LAW
ALABAMA	Ala. Stat. § 25-5-11	Nothing in the Alabama Workers’ Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier’s rights, including its right to enforce its statutory lien, has not yet been decided.	None.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
ALASKA	Alaska Stat. § 23.30.015	Nothing in the Alaska Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
ARIZONA	A.R.S. § 23-1023(D)	Nothing in the Arizona Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	A waiver of subrogation endorsement in the workers' compensation policy also waives the carrier's right to "reimbursement" out of a recovery made by the employee. <i>Olivas v. United States</i> , 506 F.2d 1158 (9 th Cir. 1974).	None.
ARKANSAS	A.C.A. § 11-9-410	Nothing in the Arkansas Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided. However, courts have distinguished subrogation and reimbursement. <i>Provident Life & Acc. Ins. Co. v. Williams</i> , 858 F. Supp. 907 (W.D. Ark. 1994).	None.
CALIFORNIA	Cal. Labor Code § 3852	Nothing in the California Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided; however, it is settled that a waiver of subrogation does not mean a waiver of the right to a future credit. The rights to a credit and lien are distinct and the right to a credit must be expressly waived. <i>Herr v. W.C.A.B. and County of Los Angeles</i> , 98 Cal. App.3d 321, 159 Cal. Rptr. 435 (Ct. App. 1979).	None.
COLORADO	C.R.S. § 8-41-203	Nothing in the Colorado Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	Waivers of subrogation in construction contracts are limited to the work performed by the contractor, not to the extent of property insurance actually obtained. <i>Copper Mountain, Inc. v. Indus. Sys., Inc.</i> 208 P.3d 692 (Colo. 2009).

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
CONNECTICUT	C.G.S.A. § 31-293	Nothing in the Connecticut Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
DELAWARE	19 Del. C. § 2363	Nothing in the Delaware Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
DISTRICT OF COLUMBIA	D.C. Code Ann. § 32-1535	Nothing in the D.C. Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided; however, a waiver of rights against "any customer (and the employees of any customer") of the employer, signed by the employee, has been held valid and enforceable. <i>Brown v. 1301 K Street, Ltd. Partnership</i> , 2011 WL 5864738 (D.C. App. 2011).	None.
FLORIDA	F.S.A. § 440.39	Yes.	In <i>Specialty Disability Trust Fund, et al. v. Comcar Indus.</i> , 675 So.2d 1019 (Fla. App. 1996), the court recognized a self-insured's waiver of their lien on past benefits as well as on future proceeds from the third-party action in exchange for a release and settlement of the claim.	None.
GEORGIA	O.C.G.A. § 34-9-11.1	Yes. An insurer's waiver of subrogation was upheld despite not being included in settlement documents between the claimant and the insurer. <i>Employers Commercial Union Ins. Co. v. Wrenn</i> , 208 S.E.2d 124 (Ga. App. 1974).	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
HAWAII	Haw. Rev. Stat. § 386-8	Nothing in the Hawaii Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
IDAHO	Idaho Code § 72-223	Nothing in the Idaho Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
ILLINOIS	820 I.L.C.S. § 305/5(b)	Yes. <i>Chicago Transit Auth. v. Yellow Cab Co.</i> , 442 N.E.2d 546 (Ill. App. 1982).	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	Waivers in the property insurance area are also routinely upheld. <i>Intergovernmental Risk Mgmt. v. O'Donnell</i> , 692 N.E.2d 739 (Ill. App. 1998). Further, Illinois courts have distinguished waivers of subrogation from indemnity agreements. <i>Intergovernmental Risk Mgmt. v. O'Donnell</i> , 295 Ill. App. 3d 784 (1 st Dist. 1998).
INDIANA	I.C. § 22-3-2-13	Nothing in the Indiana Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	A waiver of subrogation may bar the insurer from asserting any subrogation rights, including reimbursement from third parties responsible for the loss. The court interpreted the intent of the parties to be that all rights of recovery were waived through the subrogation waiver. <i>South Tippecanoe School Building Corp. v. Shambaugh & Son, Inc.</i> 395 N.E.2d 320 (Ind. App. 1979).	None.
IOWA	I.C.A. § 85.22	Nothing in the Iowa Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
KANSAS	K.S.A. § 44-504	Yes. <i>Deffenbaugh Industries, Inc. v. Wilcox</i> , 11 P.3d 98 (Kan. App. 2000). However, waiver of subrogation requirement in private construction contract is void.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided. However, courts have distinguished subrogation and reimbursement. <i>Wishon v. Cossman</i> , 991 P.2d 415 (Kan. 1999).	Kansas statute declares that any waiver of subrogation in a private construction contract is void and against public policy. Exceptions: (1) Wrap-up insurance; (2) Owner/contractor protective liability insurance; and (3) Project mgmt. protective liability insurance. K.S.A. § 16-1803(b)(3).
KENTUCKY	K.R.S. § 342.700	No. K. R. S. § 342.700 states that it is contrary to public policy and unlawful for any owner or employer to require another employer to waive its remedies under the Act as a condition to receiving a contract or purchase order.	Kentucky's Department of Workers' Claims interprets the statute to prohibit all waivers of subrogation, whether entered on a voluntary basis. The DOI will no longer approve forms or rates that include a waiver of subrogation for workers' compensation insurance. Kentucky Advisory Opinion 1999-13 (November 19, 1999).	None.
LOUISIANA	La. R.S. § 23:1101, et. seq.	Yes. <i>Sandborn v. BASF Wyandotte Corp.</i> , 674 So.2d 349 (La. App. 1996).	If there is an express waiver of subrogation contained in either a contract or an insurance policy, there is no separate and independent statutory right to reimbursement that contravenes the expression of the waiver. <i>Morgan v. Hercules Drilling Co., LLC</i> , 2011 WL 3739053 (W.D. La. 2011).	Louisiana has enacted the Louisiana Oilfield Anti-Indemnity Act which prevents an indemnitee from being indemnified for its own negligence in contracts dealing with the operation of a well. La. R.S. § 9:2780
MAINE	39-A M.R.S.A. § 107	Yes.	An insurer is allowed to enforce a workers' compensation lien against the employee that sued the responsible third party, even though a contract with the third party contained a waiver of subrogation. <i>Fowler v. Boise Cascade Corp.</i> , 948 F.2d 49 (1 st Cir. 1991).	Maine does not consider the right of reimbursement to be subrogation which can be waived, but instead recognizes a statutory right of reimbursement. 39-A M.R.S.A. § 107.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
MARYLAND	Md. Lab. & Empl. § 9-901-903	Yes. <i>Heat & Power Corp. v. Air Products & Chemicals, Inc.</i> , 578 A.2d 1202 (Md. App. 1990).	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
MASSACHUSETTS	M.G.L.A. 152 § 15	Nothing in the Massachusetts Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
MICHIGAN	M.C.L.A. § 418.827	Nothing in the Michigan Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
MINNESOTA	M.S.A. § 176.061	Nothing in the Minnesota Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	M.S.A. § 176.061(11) allows the employer to avoid contribution exposure by affirmatively waiving their subrogation rights before selection of a jury, which will prevent assertion of a lien against the claimant's recovery.	None.
MISSISSIPPI	M.C.A. § 71-3-71	Nothing in the Mississippi Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	A subrogation waiver also acts as a waiver to reimbursement so no lien on the claimant's recovery is possible. <i>Trejo v. Alter Scrap Metal, Inc.</i> 210 WL 2773397 (S.D. Miss., July 13, 2010).	None.
MISSOURI	Mo. Rev. Stat. § 287.150	Nothing in the Missouri Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation, except in construction contracts.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided. However, the trend in decisions illustrate that while prospective waivers are not allowed, settlement agreements where the insurer surrenders its subrogation rights may be allowed.	In construction contracts, any provision that purports to waive subrogation rights in anticipation of future injury or death is against public policy and is void, pursuant to the Missouri's Workers' Compensation Act.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
MONTANA	Mont. Stat. § 39-71-412	Nothing in the Montana Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
NEBRASKA	Neb. Rev. Stat. §§48-118 48-118.01 and 48-118.04	Nothing in the Indiana Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	Unclear; however, a carrier's right to a future credit will not be waived unless the employer intentionally and voluntarily waives such right. <i>Turner v. Metro Area Transit</i> , 368 N.W.2d 09 (Neb. 1985)	Any carrier wishing to include such an endorsement in its policies must seek approval from the Nebraska Department of Insurance.
NEVADA	N.R.S. § 616C.215	Nothing in the Nevada Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
NEW HAMPSHIRE	N.H. Rev. Stat. Ann. § 281-A:13	No. Section 281-A:13 (VI) prohibits any provision in any agreement that requires an employer or an employer's insurer to waive any rights of subrogation	N/A	None.
NEW JERSEY	N.J.S.A. § 34:15-40	Yes. <i>New Amsterdam Cas. Co. v. Popovich</i> , 113 A.2d 666 (N.J. 1955)	A contractual waiver of subrogation provision bars the carrier's claim for reimbursement as well. <i>SAIF v. Fama Construction</i> , 801 A.2d 459 (N.J. Super L. 2001), <i>aff'd</i> 801 A.2d 334 (N.J. Super. 2001).	None.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
NEW MEXICO	N.M.S.A. § 52-5-17	Nothing in the New Mexico Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation, except in oilfield services (see "other applicable law").	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	The New Mexico Oilfield Anti-Indemnity Statute includes specific language specifically prohibiting the contracting party's right to include language regarding waivers of subrogation regarding production activities at well heads. N.M.S.A. § 56-7-2.
NEW YORK	N.Y. Work Comp. §29	Yes. <i>Comm'r of State of Ins. Fund v. Ins. Co. of N. Am.</i> , 607 N.E.2d 795 (N.Y. App. 1992).	A waiver of the right to subrogation does not mean that the carrier also waives its separate and distinct right of reimbursement. <i>Teichman by Teichman v. Community Hosp. of Western Suffolk</i> , 87 N.Y.2d 514, 640 N.Y.S.2d 472, 663 N.E.2d 628 (1996).	None.
NORTH CAROLINA	N.C.G.S.A. § 97-10.2	Yes. <i>Turner v. Ceco Corp.</i> , 390 S.E.2d (N.C. App. 1990).	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
NORTH DAKOTA	N.D.C.C. § 65-01-09	Unclear	North Dakota statutorily prohibits any reduction in the subrogation interest or lien by settlement, compromise, or judgment, though it is unclear if this prohibition also applies to waivers of subrogation prior to a loss. N.D.C.C. § 65-01-09.	None.
OHIO	Ohio Rev. Code Ann. § 4123.931	Nothing in the Ohio Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
OKLAHOMA	85 O.S. § 348104 (Accident Prior to 2/1/14) 85 O.S. § 43 (Accident After 2/1/14)	Nothing in the Oklahoma Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	Oklahoma provides for a statutory right of reimbursement (Section 348(A)) that permits the carrier to seek and obligates the claimant to pay reimbursement for w/c benefits previously paid from the third-party recovery. <i>Frank's Tong Serv. v. Lara</i> , 2013 WL 7809847 (Okla. App. 2013).	None.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
OREGON	O.R.S. § 656.593	Nothing in the Oregon Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	O.R.S. § 30.145, enacted in 2011, acts as a partial ban on waivers of subrogation in construction contracts. The section voids any contractual requirement that a party waive its right to subrogate claims against another party, or its right to seek indemnity or contribution for claims paid by one party and caused by another.
PENNSYLVANIA	77 P.S. § 671	Yes. <i>Winfree v. Philadelphia Electric Co.</i> , 554 A.2d 794, 796 (Pa. 1985).	Subrogation rights are statutorily absolute and cannot be abrogated without a specific waiver or the insurer's consent. Lien remains against the claimant's recovery unless specifically waived. <i>See Winfree, supra.</i> However, in <i>Fortwangler v. W.C.A.B. (Quest Diagnostics)</i> , 113 A.3d 28 (Pa. Cmmw. 2015), the court held that a subrogation lien has two distinct aspects: (1) a past accrued lien, and (2) a right of subrogation against future disability and medical benefits. Both aspects of the subrogation lien must be explicitly addressed in a Third Party Settlement Agreement to avoid confusion and possible litigation.	Waiver of a future credit must be specifically contracted for in addition to a waiver of subrogation lien, in order to fully waive it. <i>Boeing Helicopters v. W.C.A.B. (Kirkwood Constr.)</i> , 952 A.2d 748 (Pa. Cmmw. 2008).
RHODE ISLAND	R.I.G.L. § 28-35-58	Nothing in the Rhode Island Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
SOUTH CAROLINA	S.C. Code Ann. § 42-1-560	Nothing in the South Carolina Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
SOUTH DAKOTA	S.D.C.L. § 62-4-38, 39, 40	Nothing in the South Dakota Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
TENNESSEE	T.C.A. § 50-6-112	Yes. Tennessee courts have recognized that a workers' compensation carrier has the ability to waive subrogation against a third party without prejudice to the employee's right to pursue a third-party action. <i>International Harvester Co. v. Sartain</i> , 222 S.E.2d 854 (Tenn. App. 1948).	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	Caselaw allowing waiver refers to the insurer's ability to waive subrogation, and not the employer's ability to waive subrogation for the insurer and without the insurer's consent.

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
TEXAS	V.T.C.A. Labor Code § 417.001, <i>et seq.</i>	<p>Yes.</p> <p><i>Otis Elevator Co. v. Allen</i>, 185 S.W.2d 117 (Tex. Civ. App. – Fort Worth, 1944), <i>aff'd in part, rev'd in part</i>, 187 S.W.2d 657 (Tex. 1945); <i>Hartford Acc. & Indem. Co. v. Buckland</i>, 882 S.W.2d 440 (Tex. Civ. App. – Dallas, 1944) (case argued by Gary L. Wickert).</p>	<p>Carrier waives its right to reimbursement, subrogation, and future credit.</p> <p><i>Wausau Underwriters Ins. Co. v. Wedel</i>, 2018 WL 2750567 (Tex. 2018)*; <i>Hartford Accident & Indem. Co. v. Buckland</i>, 882 S.W.2d 440 (Tex. App. 1994).</p> <p>*Good dissent arguing that waiver is waiver of right to subrogation, not reimbursement.</p>	<p>A waiver of subrogation means that the carrier cannot recover indirectly from any settlement the third party pays to the employee.</p> <p><i>Wausau Underwriters Ins. Co. v. Wedel</i>, 61 Tex. Sup. Ct. J. 1381 (Tex. 2018).</p> <p>In order to have a valid waiver of subrogation, two conditions must be met: (1) employer must obligate itself to a waiver in an underlying contract, and (2) employer must obtain a separate endorsement from its workers' compensation carrier waiving those rights.</p> <p><i>Approach Operating, LLC v. Resolution Oversight Corp.</i>, 2012 WL 2742304 (Tex. App. 2012); <i>Chevron U.S.A. v. Cigna</i>, No., <i>supra</i> (not designated for publication) (enforcing waiver of subrogation clause); <i>Ken Petroleum Corp. v. Questor Drilling Corp.</i>, 24 S.W.3d 344 (Tex. 2000) (noting subrogation waiver in underlying contract and separate endorsement but holding insurer's claims were outside scope of waiver).</p>

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
UTAH	U.C.A. § 34A-2-106	Nothing in the Utah Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	The Utah Insurance Commissioner issued Bulletin 99-8 on September 29, 1999, indicating that the workers' compensation statute "does not prevent the insurer from compromising its subrogation portion of the claim." It also provides that a waiver of subrogation is permissible "as long as it does not affect the employee's rights." It must expressly exclude from release the insurer's authority as trustee of the entire claim as provided in § 34A-2-106. While this does not specifically address waiver of subrogation endorsements, it would seem such endorsements would be allowed and enforced.
VERMONT	Vt. Stat. Ann. Tit. 21, § 624	Nothing in the Vermont Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	None.
VIRGINIA	Va. St. § 65.2-309	Employer can waive subrogation when settling workers' compensation claim. <i>F&S Elec. Motor & Transformer Co. v. O'Hara</i> , 1992 Va. App. LEXIS 472 (July 2, 1996).	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	Employer's waiver doesn't mean carrier waives its separate and distinct right of reimbursement of its lien. <i>Reynolds Metals Co. v. Smith</i> , 241 S.E.2d 794 (Va. 1978).

STATE	SUBROGATION STATUTE	WAIVER ALLOWED?	EFFECT OF WAIVER ENDORSEMENT ON CARRIER'S RIGHT TO ASSERT A LIEN ON CLAIMANT'S RECOVERY	OTHER APPLICABLE LAW
WASHINGTON	R.C.W.A. § 51.24.050	Nothing in the Washington Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation. Monopolistic state.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	Workers' compensation department able to waive workers' compensation lien in light of third-party claim. <i>Hadley v. Dept. of Labor & Indus.</i> , 810 P.2d 500 (Wash. 1991).
WEST VIRGINIA	W. Va. Code § 23-2A-1	Nothing in the West Virginia Workers' Compensation Act or applicable case law prohibits the use or efficacy of a waiver of subrogation.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided. Until 2006, West Virginia was a monopolistic state, so law is not well-developed.	None.
WISCONSIN	Wis. Stat. § 102.29	Reimbursement rights under § 102.29 are distinct from subrogation. Subrogation is only one of the ways employers can recover such payments. Legislature intended § 102.29 to be independent cause of action, not a type of subrogation. <i>Campion v. Montgomery Elevator Co.</i> , 493 N.W.2d 244 (Wis. App. 1992).	Not applicable. Even If the waiver of subrogation is valid as written in the contract, it does not apply. <i>Campion v. Montgomery Elevator Co.</i> , 493 N.W.2d 244 (Wis. App. 1992).	Reimbursement under Wis. Stat. § 102.29 is a wholly statutory, legislatively created <i>substitute</i> for common law. <i>Larson v. DILHR</i> , 252 N.W.2d 33 (Wis. 1977). Employer cannot waive subro without insurer's consent (endorsement). <i>Campion v. Montgomery Elevator Co.</i> , 493 N.W.2d 244 (Wis. App. 1992).
WYOMING	Wyo. Stat. § 27-14-105	No. Monopolistic State.	The effect of a waiver of subrogation on the carrier's rights, including its right to enforce its statutory lien, has not yet been decided.	Wyoming is one of four monopolistic workers' compensation states. Coverage available only through the Wyoming Workers' Safety and Compensation Division of the Wyoming Department of Employment.

These materials and other materials promulgated by Matthiesen, Wickert & Lehrer, S.C. may become outdated or superseded as time goes by. If you should have questions regarding the current applicability of any topics contained in this publication or any publications distributed by Matthiesen, Wickert & Lehrer, S.C., please contact Gary Wickert at gwickert@mw-law.com. This publication is intended for the clients and friends of Matthiesen, Wickert & Lehrer, S.C. This information should not be construed as legal advice concerning any factual situation and representation of insurance companies and/or individuals by Matthiesen, Wickert & Lehrer, S.C. on specific facts disclosed within the attorney\client relationship. These materials should not be used in lieu thereof in anyway.