



**2019 STATE-BY-STATE
SUBROGATION RIGHTS
FOR WORKERS'
COMPENSATION LIENS**

Compendium of Law

USLAW
NETWORK, INC.[®]

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

INTRODUCTION

Your employee is injured by a third party during the course of their employment. What are your rights to recovery?

What steps do you need to take to perfect reimbursement? This compendium answers those questions on a state-by-state basis and provides a quick reference for what is often a frustrating experience, obtaining reimbursement for third party acts.

USLAW's State-by-State Subrogation Rights for Workers' Compensation Liens Compendium takes advantage of USLAW's knowledge and experience of all 50 states plus Washington, D.C.

*Fred L. Hubbs, Jr. prepared original content;
updated annually by USLAW members firms.*

USLAW NETWORK **WORKERS' COMPENSATION** PRACTICE AREA

The USLAW NETWORK Worker's Comp Community offers a global network of attorneys who assist clients with creating, managing, implementing and updating employee guidelines and policies as well as defending any workplace-related complaints. Through information exchanges, idea sharing and policy updating, our attorneys remain current with the latest issues facing the work environment – from both the employee and employer perspective – so they can best assist all clients with questions and case-related issues.

Why Choose USLAW NETWORK Worker's Comp Law Firms?

Our attorneys represent public and private employers of all sizes, whether union or nonunion, insurance carriers, self-insured employers/servicing agents, and uninsured employers in all manner of workers' compensation cases. We offer extensive experience in the defense of all types of employment-related lawsuits and grievances. Whether a client needs drafting, revising, and updating personnel policies, employee handbooks, employment contracts, severance agreements, contractor agreements, non-competition/non-solicitation/ confidentiality agreements, and other employment-related documents reflecting the individual employer's unique needs and preferences, we have a network of attorneys able to provide legal counsel. While workers' compensation laws seek to protect employees, USLAW attorneys help to shield our clients from abuses of the system, ensuring fair and just awards for employers and insurance companies.

Areas of Practice

USLAW Worker's Comp attorneys defend and provide legal counsel on a wide range of worker's compensation cases on issues related to:

- ADA
- ADEA
- Arbitration
- Collective bargaining
- EEOC
- Employment Security
- ERISA
- FMLA
- MSHA
- NLRA
- NLRB
- OSHA
- Union campaigning and elections
- Wage & Hour
- WARN
- And other employment-related state and federal laws

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State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

Alabama.....	1	Montana.....	10
Alaska.....	1	Nebraska.....	10
Arizona.....	1	Nevada.....	11
Arkansas.....	2	New Hampshire.....	11
California.....	2	New Jersey.....	11
Colorado.....	2	New Mexico.....	12
Connecticut.....	3	New York.....	12
Delaware.....	3	North Carolina.....	12
District of Columbia.....	4	North Dakota.....	13
Florida.....	4	Ohio.....	13
Georgia.....	5	Oklahoma.....	13
Hawaii.....	5	Oregon.....	14
Idaho.....	5	Pennsylvania.....	14
Illinois.....	6	Rhode Island.....	15
Indiana.....	6	South Carolina.....	15
Iowa.....	6	South Dakota.....	15
Kansas.....	7	Tennessee.....	16
Kentucky.....	7	Texas.....	16
Louisiana.....	7	Utah.....	16
Maine.....	8	Vermont.....	17
Maryland.....	8	Virginia.....	17
Massachusetts.....	8	Washington.....	17
Michigan.....	9	West Virginia.....	18
Minnesota.....	9	Wisconsin.....	18
Mississippi.....	9	Wyoming.....	18
Missouri.....	10		

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

ALABAMA

Code of Ala. § 25-5-11

Can Carrier Sue Third Party Directly?.....Yes, after 6-month Statute of Limitation

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

The insurance carrier may sue the third party directly after six months has passed. Even if the injured employee, or his or her dependents, in case of death, do not file a civil action, the insurance carrier is allowed an additional six-month period within which to bring a civil action. If the insurance carrier has paid compensation to the employee, the civil action may be maintained in the name of the insurance carrier or employer.

ALASKA

Alaska Stat. § 23.30.015

Can Carrier Sue Third Party Directly?.....Yes, after 1 year

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

Acceptance of compensation under an award filed by the board operates as an assignment to the employer of all rights of the person entitled to compensation. The employer may file suit directly against the third party unless the person commences an action against the third party within one year after an award. If the employer is insured and the carrier has assumed the payment of compensation, the carrier shall be subrogated to all the rights of the employer.

ARIZONA

A.R.S. § 23-1023

Can Carrier Sue Third Party Directly?.....Yes, after 1 year

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

If the employee or their dependents fail to follow through with a claim, then the rights of the claim are assigned to the carrier and the carrier can bring suit against the third party. Any dismissal of the employee's suit shall not prohibit a suit by the carrier. The carrier shall also have a lien on the amount actually collectable from the third party by the employee.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

ARKANSAS

A.C.A. § 11-8-410

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes, but must do so in reasonable time after notice

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

An employer or carrier shall have the right to maintain an action in tort against any third party responsible for the injury or death. However, the employer or carrier must notify the claimant in writing that the claimant has a right to pursue their own claim. No party involved shall settle a claim without first giving three (3) days' written notice to all parties with an interest in the claim of the intent to settle.

CALIFORNIA

Cal. Lab. Code § 3852

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

Any employer who pays or becomes obligated to pay compensation may make a claim or bring an action against the third person. The employer may recover in addition to the total amount of compensation, damages for which the employer was liable including all salary, wage, pension, or other emolument paid to the employee or their dependents.

COLORADO

C.R.S. § 8-41-203

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

The insurance carrier shall not be entitled to recover any sum in excess of the amount of compensation for which said carrier is liable to the injured employee, but to the extent of that compensation the carrier shall be subrogated the rights of the injured employee against the third party causing the injury. The right of subrogation shall apply and include all compensation but shall not extend to moneys collected for noneconomic damages awarded for pain and suffering, inconvenience, emotional stress or impairment of quality of life.

CONNECTICUT

Conn. Gen. Stat. § 31-293

Can Carrier Sue Third Party Directly?..... No, only employee and employer can file.
Carrier can file statutory lien and/or intervene in name of the employer

Can Carrier Intervene? Yes, but must intervene or give
notice of lien within 30 days after notice of filing suit

What is the Statute of Limitations? 2 years

Encapsulation of Pertinent Statutory Language

Any employer or custodian having paid or having become obligated to pay may bring an action against the third party to recover any amount that they have paid or have become obligation to pay. However, the employer or custodian shall immediately notify the others in writing of the action. The employer or insurance carrier shall have a lien against any compensation received by the employee from litigation provided the carrier gave written notice of the lien to the party prior to such judgment or settlement.

DELAWARE

19 Del. C. § 2363

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes, but must do so through the employer's policy

What is the Statute of Limitations? 2 years

Encapsulation of Pertinent Statutory Language

If the injured employee does not commence an action within 260 days after the occurrence of the injury, then the employer or its insurance carrier may enforce the liability of the third party in the name of the injured employee. Each party must notify any other party of their intent to bring a lawsuit at least 30 days prior to bringing the suit. Any party in interest shall have a right to join in the suit. Any settlement and release by the employee shall not bar an action by the employer or its carrier to proceed against the third party. Any recovery against the third party for damages resulting from personal injury or death, after deducting expenses of recovery, which include costs and attorney fees incurred in effecting such recovery, shall first reimburse the employer or its carrier for any amounts paid up to the date of recovery, and the balance shall be paid to the employee and treated as an advance payment by the employer on account of any future payment of compensation benefits.

The subrogation rights of an employer or carrier only extend to third-party liability insurance coverage and are limited to the maximum amounts of the third party's liability insurance coverage available for the injured party, after the injured party's claim has been settled. Where the work-related injury is caused by a motor vehicle accident, any PIP eligible medical or indemnity benefits are not included in the workers' compensation lien against a third party. The subrogation rights also do not extend to UM/UIM coverage, regardless of whether UM/UIM benefits are from an employer-funded policy or a personal policy of the injured employee.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

DISTRICT OF COLUMBIA

D.C. Code § 32-1535

Can Carrier Sue Third Party Directly?..... Yes, but only after 6 months of award

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer. Acceptance of award by injured party shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against the third party. If the employer fails to commence an action against such third party within 90 days after the cause of action is assigned, the right to the action reverts back to the injured party. A payment made by the employer or insurance carrier pursuant shall operate as an assignment to the employer of all rights of the deceased.

FLORIDA

Fla. Stat. § 440.39

Can Carrier Sue Third Party Directly?..... Yes, but after one year if the employee fails to bring an action

Can Carrier Intervene? Upon the suit being filed, the carrier may file in the suit a notice of payment of compensation to the employee for their share of recovery to be determine by the court

What is the Statute of Limitations?..... 4 years

Encapsulation of Pertinent Statutory Language

If the employee accepts worker's compensation payments, then the rights of a suit against a third party will be assigned to the insurance carrier or the employer. If the injured employee or their dependents fail to bring suit within one year of the injury, then the insurance carrier is assigned the right to bring a suit against the third party but the carrier must give notice to the injured party their intent to bring the suit at least 30 days prior to bringing the suit.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

GEORGIA

O.C.G.A. § 34-9-11.1

Can Carrier Sue Third Party Directly?..... Yes, after one year

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

If the employee brings a suit or has a right of action then the employer or the carrier will have a subrogation lien on that award, not to exceed the actual amount of compensation paid pursuant to this chapter, against such recovery. If an action is not brought by the employee within one year after the date of injury, then the employer or such employer's insurer may bring their own suit against the third party. The employer or its insurer shall immediately notify the employee of its assertion of such cause of action, and the employee shall have a right to intervene. If the employee asserts a cause of action against a third party, then the employee must immediately notify the employer and the insurance carrier and the employer and insurance carrier shall have the right to intervene.

HAWAII

HRS § 386-8

Can Carrier Sue Third Party Directly?.....Yes, after nine (9) months

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

If the employee commences an action against a third person, the employee must immediately notify the employer. The employer, at any time before trial on the facts, may join as party plaintiff. If within nine months after the date of the personal injury the employee has not commenced an action against a third person, the employer, having paid or being liable for compensation under this chapter, shall be subrogated to the rights of the injured employee.

IDAHO

Idaho Code § 72-223

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

If compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefor, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability. Action may be instituted against such third party by the employee, or in event compensation has been claimed and awarded, by the employee and employer jointly, in the employee's name, or, if the employee refuses to participate in such action, by the employer in the employee's name.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

ILLINOIS

820 ILCS 305/5

Can Carrier Sue Third Party Directly?..... Yes, at any time prior to 3 months before such action would be barred

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

If the injured employee or his personal representative agrees to receive money or compensation from the employer, then the employer may have or claim a lien upon any award from which the employee might be compensated from a third party. Any compensation awarded from litigation must be paid to the employer in the amount of compensation paid to the employee for injury. If the injured party fails to bring a suit against a third party, then the employer or carrier may bring a suit against the third party as long as it is three months before such an action would be time barred.

INDIANA

Ind. Code. Ann. § 22-3-2-13

Can Carrier Sue Third Party Directly?..... Yes, but only after 1 year from when the employee's action has been dismissed

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

The employer or the insurance carrier may bring a suit against the third party as long as it is within one year of the employee's action being dismissed. The employee must provide notice to the employer of their lawsuit against the third party and the employer/carrier may join in such suit provided they do so within 90 days of receipt of notice.

IOWA

Iowa Code § 85.22

Can Carrier Sue Third Party Directly?..... Yes, if the employee fails to bring an action within 90 days

Can Carrier Intervene? Yes, but must within thirty days of receiving notice of employee suit file notice of lien

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

If compensation is paid to the employee, the employer or the carrier shall have a lien on the claim against a third party. However, within thirty days of the suit by the employee against the third party, the employer/carrier must provide notice of the lien to such employee.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

KANSAS

K.S.A. § 44-504

Can Carrier Sue Third Party Directly?..... Yes, if employee fails to bring suit within 1 year

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

Failure on the part of the injured worker, or the dependents or personal representatives of a deceased worker to bring such action within the time specified by this section (1 year if prosecuted by the employee and 18 months if prosecuted by the dependents or personal representatives of deceased worker) shall operate as an assignment to the employer of any cause of action in tort. The worker's compensation fund is subrogated all rights of the employer. The commissioner of insurance may intervene in suit, enforce a lien or bring their own cause of action.

KENTUCKY

KRS § 342.700

Can Carrier Sue Third Party Directly?..... Yes, only if employee has not filed suit

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 1 year

Encapsulation of Pertinent Statutory Language

If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists.

LOUISIANA

La. R.S. § 23:1101

Can Carrier Sue Third Party Directly?..... Yes, with notice

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 1 year

Encapsulation of Pertinent Statutory Language

Any person having paid or having become obligated to pay compensation under the provisions of this Chapter may bring suit against such third person to recover any amount which he has paid or becomes obligated to pay as compensation to such employee or his dependents.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

MAINE

39-A M.R.S. § 107

Can Carrier Sue Third Party Directly?..... Yes, after 30-day demand to bring suit by employer goes unanswered

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 6 years

Encapsulation of Pertinent Statutory Language

If the employee or the employee's beneficiary fails to pursue the remedy against the 3rd party within 30 days after written demand by the employer, the employer is subrogated to the rights of the injured employee and is entitled to enforce liability in its own name or in the name of the injured party.

MARYLAND

Md. Labor and Employment Code Ann. § 9-901 through 903

Can Carrier Sue Third Party Directly? Yes, if a claim is filed and compensation is awarded or paid

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

If a claim is filed and compensation is awarded or paid, a self-insured employer, an insurer, the Subsequent Injury Fund, or the Uninsured Employers' Fund may bring an action for damages against the third party who is liable for the injury or death of the covered employee.

MASSACHUSETTS

ALM GL ch. 152, § 15

Can Carrier Sue Third Party Directly?..... Yes, after seven (7) months following the injury

Can Carrier Intervene? No

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

Either the employee or insurer may proceed to enforce the liability of such person, but the insurer may not do so unless compensation has been paid to the injured party. The insurer and employer also must wait until seven months following the date of such injury to bring suit. The sum recovered shall be for the benefit of the insurer, unless such sum is greater than that paid by it to the employee, in which event the excess shall be retained by or paid to the employee.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

MICHIGAN

MCLS § 418.827

- Can Carrier Sue Third Party Directly?**.....Yes, after one (1) year
- Can Carrier Intervene?** Yes
- What is the Statute of Limitations?** 3 years

Encapsulation of Pertinent Statutory Language

If the injured employee or his or her dependents or personal representative does not commence the action within 1 year after the occurrence of the personal injury, then the employer or carrier may enforce the liability of the third party in the name of the injured employee

MINNESOTA

Minn. Stat. § 176.061

- Can Carrier Sue Third Party Directly?**..... Yes
- Can Carrier Intervene?** Yes
- What is the Statute of Limitations?** 6 years

Encapsulation of Pertinent Statutory Language

If the employee or the employee's dependents elect to receive benefits from the employer, or the special compensation fund, the employer or the special compensation fund has a right of indemnity or is subrogated to the right of the employee or the employee's dependents to recover damages against the third party.

MISSISSIPPI

Miss. Code Ann. § 71-3-71

- Can Carrier Sue Third Party Directly?**..... Yes
- Can Carrier Intervene?** Yes
- What is the Statute of Limitations?** 3 years

Encapsulation of Pertinent Statutory Language

The employer and insurance carrier are entitled to reasonable notice of any action by the injured employee against a third party and are entitled to intervene in that action. If the employer or carrier have paid compensation benefits then they are entitled to repayment from the employee's action or they are entitled to bring their own suit against the third party, either in the name of the employee or in their own name.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

MISSOURI

§ 287.150 R.S.Mo.

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 5 years

Encapsulation of Pertinent Statutory Language

The employer is subrogated all rights of the injured party against the third party and the recovery is not limited to only that which was paid to the injured party. The employer shall also have a subrogation lien on any recovery that the injured party is awarded.

MONTANA

§ 39-71-414 MCA

Can Carrier Sue Third Party Directly?..... Yes, after 1 year

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

The insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery. If an injured employee refuses or fails to institute the third-party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative.

NEBRASKA

R.R.S. Neb. § 48-118

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 4 years

Encapsulation of Pertinent Statutory Language

When a third person is liable to the employee or to the dependents for the injury or death of the employee, the employer shall be subrogated to the right of the employee or to the dependents against such third person. The recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his or her dependents should have been entitled to recover.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

NEVADA

Nev. Rev. Stat. Ann. § 616C.215

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Possibly

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

Insurer has right of action against third party and is subrogated to employee's rights; Insurer has lien upon total proceeds of recovery from third party whether by judgment, settlement or otherwise; lien is total WC expenditures, paid and obligated to pay; employee or his/her attorney shall advise insurer in writing before initiating third party action and within 15 days of recovery by judgment, settlement or otherwise.

NEW HAMPSHIRE

N.H. RSA 281-A:13

Can Carrier Sue Third Party Directly?..... Yes, after 9 months

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

The employer or the employer's insurance carrier will have a lien on the amount of damages and benefits recovered by the employee including compensation, medical, hospital or other remedial care paid by the employer or carrier minus the attorney's fees/costs of action incurred by the injured employee.

NEW JERSEY

N.J. Stat. § 34:15-40

Can Carrier Sue Third Party Directly?..... Yes, after 1 year

Can Carrier Intervene? No

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

If 1 year passes and the employee fails to either bring suit or effect a settlement with the liable third party, then the carrier or the employer may bring a suit against the third party or effect settlement with the third party as long as they provide 10 days written notice to the injured employee.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

NEW MEXICO

N.M. Stat. Ann. § 52-5-17

Can Carrier Sue Third Party Directly?..... No, reimbursement only

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

If the injured party receives payment from the employer, this receipt shall operate as an assignment to the employer or his insurer of any cause of action to the extent the injured party was compensated.

NEW YORK

NY CLS Work Comp § 29

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

If the injured party accepts compensation but fails to commence an action against the third party with the appropriate time limit, then such failure shall operate as an assignment of the rights to the cause of action to the state or the state insurance fund if the state paid money into the injured party's compensation, if the state did not pay money then the failure to commence the action will then operate as an assignment of the rights to that cause of action to the employer or carrier.

NORTH CAROLINA

N.C. Gen. Stat. § 97-10.2

Can Carrier Sue Third Party Directly?..... Yes, after 1 year, but prior to 60 days before expiration of statute of limitations

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

If the injured party fails to make a settlement or commence an action within 12 months of the injury, then the employer shall have the right to proceed to enforce liability against a third party or effect a settlement as long as the employer has filed with the Industrial Commission a written admission of liability for the injured party. The employer must do this at least 60 days before the expiration of the statute of limitations or the rights to bring suit will revert back to the injured party.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

NORTH DAKOTA

N.D. Cent. Code, § 65-01-09

Can Carrier Sue Third Party Directly?..... Yes, after 60 days from injury

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 6 years

Encapsulation of Pertinent Statutory Language

Within sixty days after both the injured employee and the organization have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the employee, or both, and in trust for the organization and for the employee.

OHIO

ORC Ann. 4123.931

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

The right of subrogation is automatic. The employer or carrier can join in on the action against the third party or commence their own action against the third party. The net amount recovered by the injured party is the subrogee's right of recovery.

OKLAHOMA

85A Okl. St. § 43

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

An employer or carrier liable for compensation for the injured party shall have the right to maintain an action in tort against any third party responsible for the injury. However, the employer/carrier shall notify the injured party of their entitlement to bring their own suit. The employer or carrier liable for compensation shall also be entitled to maintain a third party action against the employer's uninsured motorist coverage.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

OREGON

ORS § 656.154, 656.583, 656.593

Can Carrier Sue Third Party Directly?..... Yes, after 90 days

Can Carrier Intervene? No

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

The carrier is entitled to notice of a claim or a suit and the proceeds of any damages recovered from an employer or third person by the worker or beneficiaries. Any action or settlement against a third party shall be subject to a lien of the paying agency for its share of the proceeds.

PENNSYLVANIA

77 P.S. § 671

Can Carrier Sue Third Party Directly?..... No

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employee, his personal representative, his estate or his dependents, against such third party to the extent of the compensation payable under this article by the employer; reasonable attorney's fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employee, his personal representative, his estate or his dependents. The employer shall pay that proportion of the attorney's fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employee, his personal representative, his estate or his dependents, and shall be treated as an advance payment by the employer on account of any future installments of compensation.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

RHODE ISLAND

R.I. Gen. Laws § 28-35-58

Can Carrier Sue Third Party Directly?..... Yes, if employee or employee representative fails to bring suit within two (2) years and eight (8) months after the injury

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

If the injured party fails to commence suit against the third party within two years and eight months after the injury, the employer or the employer's carrier may proceed with an action themselves and shall be subrogated to the rights of the injured employee, but the employer or the employer's carrier must notify the injured party of their intent to bring a suit at least six months (26 weeks) prior to the expiration of the two- year-and-eight-month timeframe referenced above. The failure of the injured party to bring suit within that two-year-eight-month timeframe will operate as an assignment of the right of action to the employer or the employer's carrier.

SOUTH CAROLINA

S.C. Code Ann. § 42-1-560

Can Carrier Sue Third Party Directly?..... Yes, after 1 year

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

The carrier shall have a lien on the proceeds of any recovery by the injured party from the third party either as a judgment, settlement or otherwise. If one year passes since the injury and the injured party has not brought suit, then the right to bring suit is assigned to the carrier as long as the carrier commences suit at least 30 days before the statute of limitations runs.

SOUTH DAKOTA

S.D. Codified Laws § 62-4-38 through 62-4-40

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

If compensation has been awarded and paid under this title and the employee has recovered damages from another person, the employer having paid the compensation may recover from the employee an amount equal to the amount of compensation paid by the employer to the employee, less the necessary and reasonable expense of collecting the same.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

TENNESSEE

Tenn. Code Ann. § 50-6-112

Can Carrier Sue Third Party Directly?.....Yes, after one (1) year

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 1 year, but Carrier gets additional 6 months to file

Encapsulation of Pertinent Statutory Language

In the event that the injured party receives compensation, the employer and the carrier shall have a subrogation lien against the recovery, and the employer may intervene in any action to protect and enforce the lien. Failure on the part of the injured party to bring an action within one year shall operate as an assignment to the employer of the right to the cause of action against the third party, but the employer will then only have six months to commence the suit after it has been assigned to them.

TEXAS

Tex. Lab. Code. § 417.001

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

If the injury party claims the benefit and receives compensation, the insurance carrier is subrogated the rights of the injured party and may enforce the liability of the third party in a cause of action. The subrogation rights are limited to the amount of the total benefits paid.

UTAH

Utah Code Ann. § 34A-2-106

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 4 years

Encapsulation of Pertinent Statutory Language

If compensation is claimed and the employer or insurance carrier becomes obligated to pay compensation, the employer or insurance carrier shall become trustee of the cause of action against the third party; and may bring and maintain the action either in its own name or in the name of the injured employee, or the personal representatives of the deceased.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

VERMONT

21 V.S.A. § 624

Can Carrier Sue Third Party Directly?.....Yes, after 1 year

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

If the injured employee or the employee's personal representative does not commence the action within one year after the occurrence of the personal injury, then the employer or its insurance carrier may, within the period of time for the commencement of actions prescribed by statute, enforce the liability of the third party in the name of the injured employee or the employee's personal representative. Any party must provide notice by registered mail to any other party involved about the suit not less than 30 days before the commencement of the suit.

VIRGINIA

Va. Code Ann. § 65.2-309

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

Any worker's compensation claim against an employer on the behalf of an injured party creates a lien on behalf of the employer against any verdict or settlement arising from any right to recover by the injured party. Such employer shall also be subrogated any right and may enforce, in their name or in the injured party's name, the legal liability against the third party.

WASHINGTON

Rev. Code Wash. (ARCW) § 51.24.030 and § 51.24.050

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

The injured party must give notice to the state or to the insurance carrier for action taken. The carrier then must file a notice of statutory interest in recovery. The carrier may then intervene as a party in the action to protect its statutory interest in recovery. An election by the injured party to not proceed against the third party operates as an assignment of the cause of action to the insurance carrier.

State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2019

WEST VIRGINIA

W. Va. Code § 23-2A-1

Can Carrier Sue Third Party Directly?..... Undecided

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 2 years

Encapsulation of Pertinent Statutory Language

In the event that an injured worker, his or her dependents or personal representative makes a claim against a third party, there shall be a statutory subrogation lien upon the moneys received which shall exist in favor of the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable.

WISCONSIN

Wis. Stat. § 102.29

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 3 years

Encapsulation of Pertinent Statutory Language

An employer or compensation insurer that has paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel.

WYOMING

Wyo. Stat. § 27-14-105

Can Carrier Sue Third Party Directly?..... Yes

Can Carrier Intervene? Yes

What is the Statute of Limitations?..... 4 years

Encapsulation of Pertinent Statutory Language

The department or employer shall have an additional six (6) month limitation period beyond the date on which the employee or his estate is barred under the statute of limitations from commencing a claim for personal injury or wrongful death, in which to commence such an action on behalf of the employee or his estate. Very state oriented statute but it appears the carrier has rights to intervene in suit and conduct own suit against third party.