



Frequently Asked Claims Questions 2007: New York Workers' Compensation Law Reform

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Q: How does the 2007 New York Workers' Compensation Law (NYWCL) Reform change an employer's responsibility to report claims? Do employers need to change their incident report?

A: The new law has not changed an employer's responsibility to report claims. PMA has always recommended that employers report workers' compensation claims within 24 hours of incidents. The changes to the law have resulted in an expedited hearing process (discussed below) that reinforces PMA's recommendation.

Prior to reporting a claim, it's critical that an employer complete a thorough internal investigation into the facts of the accident. We recommend that all Employer's First Reports of Injury (EFRs) be submitted to PMA with the following information and documents:

- A statement by the employee that describes the occurrence of the injury and the body part injured.
- A statement by the supervisor that describes both how and when the employee reported the injury, and the supervisor's opinion of legitimacy of the employee's report.
- Statements from any witnesses to the injury.
- Photographs of the accident site, if applicable.
- If a third party caused the injury, e.g., another motorist, please provide the insurance information of that party. If a defective product or machine caused the injury, please provide the make and purchase date of the product or machine. If possible, do NOT alter the product or machine in question until you have discussed the claim with a PMA representative.

In most cases, PMA will attempt to obtain an employee's past medical records. You can help to expedite this effort by asking all injured employees to complete a Medical Authorization form at the time of report. Your PMA representative can supply copies of the Medical Authorization form.

If your current internal incident report does not include the items listed above, we recommend that you make changes to the report to ensure that you supply the information necessary for a full evaluation of any claim. Your PMA representative can provide incident report templates.

Q: How has the 2007 NYWCL Reform changed the hearing process on controverted claims? What is an employer's role? Should an employer attend hearings?

A: The new law streamlines the adjudication process by implementing what is being termed a "rocket docket," or expedited hearing process. The goal of this process is to reduce the time it takes to resolve disputed claims to 90 days. A Pre-Hearing Conference will be scheduled within 45 days of filing a C-7 (notice that claim is controverted). If a controverted case does not settle at the Pre-Hearing Conference, the parties will immediately begin trying the case, including presentation of witnesses. Prior to a Pre-Hearing Conference, a carrier or the carrier's representative must complete a Pre-Hearing Conference Statement. The statement must identify disputed issues and witnesses, and provide certain documents. A carrier must provide an Independent Medical Examination (IME) report prior to a Pre-Hearing Conference if the carrier disputes medical issues.

As we note above, it is very important that an employer report claims to PMA promptly, so that we can properly evaluate the facts of the claim and take the necessary steps if we find that compensability is an issue.

All employer witnesses must attend an initial hearing. You will be notified in advance regarding the time and location of any hearing.

Q: Are there new New York Workers' Compensation Board (NYWCB) forms?

A: Thus far, there are no new forms. The NYWCB has proposed changes to many of the existing forms, including the C-2 (Employer's Report), C-3 (Employee's Claim), C-4 (Medical Provider's Report) and C-7 (Denial). We anticipate that changes to the forms will be finalized by January 1, 2008. Employers must still promptly and accurately complete the C-240 (Wage Statement) and the C-11 (Change in Work Status) forms.

Please note that the NYWCB assigns penalties to employers that fail to promptly or properly complete these forms. If you have any questions regarding the forms, please contact your PMA representative.

Q: Has the 2007 NYWCL Reform provided a right to direct injured workers to specific diagnostic testing networks and/or pharmacy networks? Did the treatment authorization threshold change?

A: The 2007 NYWCL Reform has established a pharmaceutical fee schedule setting forth the maximum fee for prescription medicines. It allows carriers and self-insureds to contract with pharmacy networks and requires, in most cases, that injured workers obtain all prescription medicines through the contracted networks. The reform further allows carriers and employers to contract with networks for diagnostic testing, such as MRIs, x-rays, CT scans, etc.

The right of carriers to authorize any treatment costing \$500 or more has been amended. The new authorization threshold is \$1,000.

Q: Does the 2007 NYWCL Reform require a posting at an employer's location noting the carrier/employer's choice of designated pharmacy and/or diagnostic testing networks? How will PMA advise injured employees of the existence of these networks?

A: The 2007 NYWCL Reform and accompanying Regulations require that certain notices be provided to potential injured workers (employees) and to injured workers with existing workers' compensation claims. One of the notice requirements is a posting at the employer's location of certain information regarding authorized pharmacy networks and procedures for obtaining medications.

PMA has developed the required pharmacy network notifications. Similarly, the new law requires notice to an injured worker of the name and contact information for the diagnostic network. PMA has included the new notifications regarding the pharmacy and diagnostic networks in this mailing.

PMA has also made the following changes to our claim acknowledgement process:

- Our claim acknowledgement letters that are issued to injured workers now include language that specifically identifies our authorized networks and the obligation of injured workers to utilize these networks.
- A separate notification will also be sent to the injured employee by our pharmacy provider, Tmesys, which will include a temporary pharmacy card and a list of member pharmacy locations.

Q: Are there other changes to the medical benefits afforded injured workers?

A: No. Carriers are still responsible for all necessary and related treatment, and to pay medical providers according to the fee schedule established by the NYWCB.

Q: Does the 2007 NYWCL Reform contain changes to maximum indemnity levels for partial or total disability?

A: Yes. The maximum weekly benefits for permanent or temporary partial disability, and permanent or temporary total disability, have been increased as follows:

- From \$400 to \$500 for an accident or disablement that occurs on or after July 1, 2007;
- \$550 for an accident or disablement that occurs on or after July 1, 2008;
- \$600 for an accident or disablement that occurs on or after July 1, 2009; and two-thirds of the New York State average weekly wage after July 1, 2009.

As of July 1, 2007, the minimum rate has been increased from \$40 to \$100. This is a one-time increase.

Q: How does the 2007 NYWCL Reform affect permanency calculations?

A: The NYWCL Reform contemplates two different types of permanency benefits.

- The first is a Scheduled Loss of Use (SLU) benefit. This benefit is payable for permanent injury to an extremity. The NYWCB uses a chart assigning escalating numbers of weeks to correspondingly more significant assessments of permanent loss of use of an extremity. Awards of SLU benefits are inclusive; they contemplate paid weeks of TTD.

- The second type of permanency benefits are those known as “classifications.” Compensation for injured workers with permanent partial disability will continue to be two-thirds of the difference between the average weekly wage and the injured worker’s wage earning capacity. However, for accidents and date of disability on or after March 13, 2007, weekly benefits for permanent partial disability (PPD) are capped based on the percentage loss of wage earning capacity according to a schedule (at the end of this document). The schedule will assign a defined number of weeks of benefits based upon a percentage of wage loss earning capacity. See page 6.

Q: Will most classification claims fall within the schedule of capped benefits?

A: It is our understanding that the majority of claims that would have been eligible for classification pre-reform will fall within the post-reform capped schedule. However, because the new schedule greatly expands the scope of PPD to include a 1 – 25% loss of wage earning capacity from a pre-reform minimum of 25% loss of wage earning capacity, in our opinion, it is possible that there will be an increase in the overall number of classified claims.

Q: What is the Aggregate Trust Fund (ATF)?

A: Pre-Reform, the NYWCB had the authority to mandate a deposit of monies into the Aggregate Trust Fund, a fund administered by the State Insurance Fund, for any case that resulted in a permanent total disability (PTD) or death. Essentially, the NYWCB ordered carriers in such instances to pay a sum equivalent to the present-day value of the case, as determined by ATF actuaries. The purpose of the ATF was to safeguard PTD injured workers or survivors against carrier bankruptcy.

Post-Reform, the NYWCB will require carriers that are stock corporations or mutual associations to make a deposit into the ATF whenever an injured worker is classified with a permanent partial disability. The deposit will be calculated by ATF actuaries with the amount to represent the present-day value of the claim under the new system of benefits.

Q: The 2007 NYWCL has capped PPD awards. Are light-duty and return-to-work programs still important?

A: In our opinion, the 2007 NYWCL Reform has not altered well established law that, even for an acknowledged disability, an injured worker has an obligation to look for work within his restrictions. Light-duty programs and return-to-work initiatives are among the most effective cost-saving tools available to employers. Statistics show that effective programs reduce lost-time days, reduce over-treatment and increase productivity. The advent of the ATF provision in the 2007 NYWCL Reform should provide an additional incentive to establish a return-to-work program, as ATF deposits are only required in the event of actual loss of earnings.

Please contact your PMA representative for assistance in creating or enhancing your return-to-work program.

Q: What effect does the 2007 NYWCL Reform have on the Special Funds Conservation Committee (SFCC)?

A: Pre-Reform, if an injured worker's occupational injury materially and substantially worsened a pre-existing condition, carriers were able to request relief from the SFCC, created pursuant to Section 15-8 (15-8) of the NYWCL. If successful in their application, a carrier's obligation was capped at 260 weeks of disability, after which the SFCC reimbursed all payments made. The SFCC was funded through carrier/employer assessments.

The 2007 Reform has abolished 15-8 recoveries on all claims occurring after July 1, 2007. Any claims for SFCC relief must be made, in total, no later than July 1, 2010.

Pre-Reform, the SFCC also administered reimbursement for benefits paid as a result of concurrent employment under Section 14-6 of the NYWCL. The abolishment of the SFCC eliminates the SFCC as a vehicle for reimbursement for benefits paid as a result of concurrent employment. The net result of this change in the law is that a carrier/employer could be responsible for the total lost wage burden of a part-time employee.

Q: Does the 2007 NYWCL Reform abolish apportionment?

A: No. Carriers will continue to be allowed to pursue apportionment against prior workers' compensation claims. There is no apportionment opportunity for non-occupational pre-existing conditions.

Weekly Benefits for Permanent Partial Disability

The caps based on percentage loss of wage earning capacity are according to the following schedule:

% Loss of Wage Earning Capacity	Maximum Benefit	Number of
	Weeks	Years
Greater than 95%	525	10.10
90% - 95%	500	9.62
86% - 90%	475	9.13
81% - 85%	450	8.65
76% - 80%	425	8.17
71% - 75%	400	7.69
61% - 70%	375	7.21
51% - 60%	350	6.23
41% - 50%	300	5.77
31% - 40%	275	5.29
16% - 30%	250	4.81
15% or less	225	4.33

Medical benefits will still be available for lifetime.

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