



## 2007 New York Workers' Compensation Law Reform Claims Summary

### December 2007

On March 13, 2007, New York Governor Spitzer signed into law the New York Workers' Compensation Reform. The reform resulted from negotiations between the Governor and the New York State Legislature, following extensive input from the business and labor communities. In addition to changes in the statute, the bill mandates regulatory reform to complement the new legislation.

The Governor has charged the New York Superintendent of Insurance to lead the following regulatory reform efforts:

- **Design of Data Collection System** - The Superintendent is directed to take the steps to gather all data on a regular and ongoing basis necessary to make appropriate policy judgments and determine whether to approve rates.
- **Design of a Streamlined Docket** –Also known as the “Rocket Docket,” this streamlined process will be discussed in more detail below. The goal is to create a system in which a disputed claim will be adjudicated within 90 days of the initial dispute.
- **Design New Guidelines** - The Superintendent is directed to develop:
  - 1.) Guidelines that structure information the treating physician is required to report, including degree of disability and permanency;
  - 2.) A set of best practices for health care professionals who are providing treatment;
  - 3.) Protocols and training for New York Workers' Compensation Board (NYWCB) law judges and employees. We anticipate the NYWCB will issue these guidelines in December, 2007.

Some of the major changes to the statutory provisions are highlighted below.

### 1. Benefit Rates

Maximum weekly indemnity benefit levels are raised from the current level of \$400 to new levels for accidents occurring after 7/1/07, as noted below:

- \$500 for accidents or deaths on and after 7/1/07
- \$550 for accidents or deaths on and after 7/1/08
- \$600 for accidents or deaths on and after 7/1/09
- Post 7/1/2010, the maximum benefit will be indexed against the statewide average weekly wage. The maximum rate will be calculated as 2/3 of the statewide average weekly wage.

The minimum weekly rate is raised from \$40 to \$100 for accidents occurring on and after 7/1/07. If the injured worker's wages are less than \$100 per week, the injured worker will receive full wages.

The industry anticipated the change to the benefit structure. The most significant impact of the change will not be felt until 2010.

**2. Caps on Permanent Partial Disability (PPD) Benefits**

The caps established for indemnity benefits for PPD apply only to cases with dates of accident or disablement on or after 3/13/07. Awards for PPD will be prospective; they are payable post the date of classification.

The caps on PPD benefits may result in additional litigation, due to the expansion of percentage increments and uncertainty regarding the prospective interpretation of the yet-to-be issued medical guidelines. However, PPD awards have always been predicated upon an assumption of wage loss. We suggest strongly that employers utilize their return-to-work and light-duty programs to help manage the impact of the potential increase in the number of PPD awards.

The Reform states that injured workers who have sustained significant injuries resulting in 80% PPD or more will receive lifetime benefits. The absence of medical guidelines may engender litigation over such cases.

The caps based on percentage loss of wage earning capacity are according to the following schedule established by the New York Workers' Compensation Law (NYWCL):

<b>% Loss of Wage Earning Capacity</b>	<b>Maximum Benefit Weeks</b>	<b>Number of Years</b>
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.

### 3. Aggregate Trust Fund (ATF)

The ATF's role is significantly increased under the new Reform.

Prior to Reform, insurance carriers were required to make deposits into the ATF in cases of Permanent Total Disability, Total Industrial Disability, or Death. The amounts of deposits were calculated by ATF actuaries, and were payable, in total, upon New York Workers' Compensation Board (NYWCB) order.

Post-Reform, ATF deposits will be required on all classification awards made after 7/1/07. The amount of deposit will be calculated by ATF actuaries. The ATF will be permitted to settle classified cases.

It is expected the impact of this provision can be mitigated by effective return-to-work programs. Also, insurance carriers should make efforts to settle cases prior to classification.

### 4. Medical

Pharmaceuticals: The reform directs the NYWCB to develop a fee schedule for medications. The fee schedule will cover brand and generic drugs. The reform also allows employers or carriers to contract with a network pharmacy provider. It is anticipated this provision will result in significant savings.

Diagnostic Testing: Employers or carriers are allowed to contract with networks for the provision of diagnostic testing such as MRIs, X-rays, CT scans and other radiological and/or diagnostic examinations. The employer or carrier must notify injured workers of the network specifics prior to directing them to a network diagnostic provider.

Pre-authorization for treatment: Prior to 3/13/07, medical providers were required to contact the employer or carrier if the cost of a medical procedure or test would exceed \$500. The Reform increases that threshold to \$1,000. The NYWCB will issue a list of pre-authorized procedures.

Dental care, prosthetic devices and additional fee schedules: The NYWCL section 13(a) is amended to add dental care and prosthetic devices to the list of covered treatments and will be subject to a fee schedule.

## 5. Special Funds

### ***Section 15-8/Second injury fund***

The Reform closes the Special Disability Fund as follows:

- No claim for relief will be accepted for any injury occurring after 7/1/07.
- No claim for relief will be accepted after 7/1/2010 regardless of date of injury.

All claims for relief are filed using NYWCB form C-250. The NYWCB established a filing fee of \$250 for any C-250 filed on or after 3/1/07. Should a claim be established by the Fund, \$200 will be refunded to the form filer.

The newly created Waiver Agreement Management Office (WAMO) will be dedicated to securing settlements of the outstanding claims that have qualified for relief under the Second Injury Fund in an effort to reduce the ultimate liability of the Fund. Under the law, WAMO may establish guidelines for settling established second injury cases and is not required to secure the permission of the carrier or Self-Insured Employer during the settlement process. Parties will be given 10 days after the settlement hearing to withdraw from the settlement agreement. The party required to make the settlement payment is not clearly defined in the law, but it is believed that the carrier will make the payment and seek reimbursement from Special Funds.

### ***14-6/Concurrent employment***

This section of the law allows an injured worker who has more than one job and is losing time from work to receive benefits according to a calculation that considers the wages of the employment-of-record and the concurrent employment.

Prior to the Reform, carriers could seek relief from the Special Fund by requesting reimbursement of the portion of payment that resulted from the second job's average weekly wage.

Under the Reform as of 7/1/07, carriers remain responsible for the payments resulting from combined earnings, but will no longer be entitled to reimbursement for the portion that resulted from the concurrent employment.

## 6. Settlement

### ***Mandatory Section 32 offers***

The Reform amends Section 32 to require that every insurance carrier must offer an injured worker the opportunity to enter into a section 32 agreement (settlement) either: 1) within two years of indexing by the NYWCB; or 2) six months after the injured worker is classified with a permanent disability, whichever is later. In a death case, a section 32 settlement offer must be made within six months of establishment of entitlement to benefits for all beneficiaries. The settlement offer must break down the portions allocated for indemnity, medical (including prescriptions) and attorney fees.

## 7. Sanctions and Penalties

The Reform makes specific provisions with regard to fraud and frivolous claims, as follows:

- **Employer Fraud–Failure** by an employer to secure insurance coverage for five or fewer employees is a misdemeanor punishable by a fine of \$1,000 to \$5,000. Failure to secure insurance coverage for more than five employees is a Class E Felony punishable by a fine of \$5,000 to \$50,000 and imprisonment for up to four years. An employer who intentionally understates or conceals payroll, or conceals job duties that would affect premium calculation, will be subjected to a Class E Felony charge for the first violation. An employer must maintain appropriate records or be subjected to penalties and or criminal sanctions. The Chair is empowered to investigate records and issue “Stop Work Orders” against employers failing to secure insurance coverage.
- **Sanctions for Frivolous Claims** – These sanctions are designed to discourage frivolous claims. The reform allows for assessments against parties who institute or maintain actions without reasonable grounds.
- **Alteration of an Independent Medical Exam (IME) report** or material changing of an IME report may result in revocation of an IME organization’s license (registration), penalties up to \$10,000, and referral to the Attorney General’s office.

## 8. Incarceration:

Claimants incarcerated as a result of felony conviction are ineligible for benefits while incarcerated. They may re-apply for benefits upon being released.

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