



Workers'
Compensation
Board



CONFERENCE 2024

OCTOBER 18

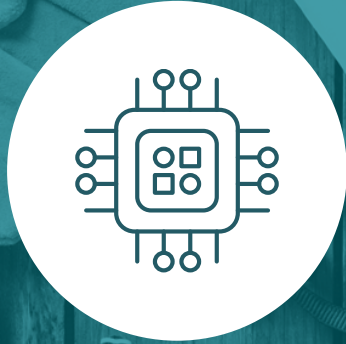


Workers'
Compensation
Board



Your Rights, Responsibilities, and Resources

ANTHONY TOMASELLI — ADVOCATE FOR BUSINESS
JOE CAVALCANTE — ADVOCATE FOR INJURED WORKERS



ACHIEVING BETTER PERFORMANCE IN WORKERS' COMPENSATION

ADVOCATE FOR BUSINESS

- Educates business owners and government personnel on the workers' compensation system
- Assists individual businesses with coverage and compliance problems
- Meets with business associations and employer groups to hear their concerns regarding the system
- Reports directly to the Chair of the Board



ADVOCATE FOR INJURED WORKERS

- Available to help workers; acts as an ombudsman
- Handles most complex claims and fatalities
- Liaison to 9/11 community
- Meets with workers, labor advocates, unions, occupational health providers, and employers, among others
- Reports directly to the Chair of the Board



WORKERS' COMPENSATION, DISABILITY BENEFITS, AND PAID FAMILY LEAVE



■ Workers' compensation insurance

- Covers on the job accidents, injuries, and illnesses.
- Provides medical benefits and wage replacement.
- Protects both employers and their employees.



■ Disability benefits insurance

- Covers off-the-job accidents, injuries, and illnesses.
- Provides only limited wage replacement, no medical benefits.



■ Paid Family Leave

- Bond with a newly born, fostered, or adopted child.
- Care for family members with a serious health condition.
- Assist family when a service member is deployed abroad.

WHO NEEDS COVERAGE?

Businesses with employees need coverage.

- Workers' compensation
 - Day 1
- Disability and Paid Family Leave
 - 4 weeks after the 30th day of employment

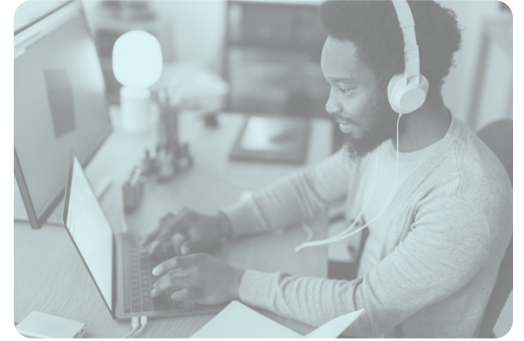
EMPLOYEE: DEFINITION

- **Anyone** providing any services to a for-profit business can be determined to be an employee of that business.
- **Any compensated individual** providing services to a nonprofit **except** clergy and teachers in a 501(c)(3).



WHO IS NOT REQUIRED TO CARRY WORKERS' COMPENSATION INSURANCE?

- Sole proprietors with no employees
- Partners in partnerships with no employees
- One- or two-person owned corporations with no employees
- LLCs, if the only people compensated are the members of the LLC



INDEPENDENT CONTRACTOR?

- Factors considered when determining whether an individual is an independent contractor:
 - Does the hiring business control the time and way the work is to be done?
 - Individual has a Federal Employer Identification Number from the Internal Revenue Services (IRS) or filed business tax returns
 - Individual maintains a separate business establishment from the hiring business
- Visit the Employer section at wcb.ny.gov

GENERAL CONTRACTORS: UNDER THE LAW

- General contractors are liable for the workers' compensation claims of all uninsured subcontractors. (WCL § 56)
- It's recommended that subcontractors add the general contractor as a certificate holder on their NYS workers' compensation policy.
- No permit, license, or contract shall be issued without proof of workers' compensation and disability benefits compliance.



PROOF OF COMPLIANCE

- *Certificate of Workers' Compensation Insurance (Form C-105.2)*
- *Certificate of Self-Insurance (Form SI-12)*
- For disability benefits and Paid Family Leave:
 - *Certificate of Insurance Coverage Disability and Paid Family Leave Benefits (Form DB-120.1)*
 - *Compliance With Disability Benefits Law (Form DB-155) for self-insured employers*
- Exempt businesses must obtain and sign *Certificate of Attestation of Exemption (Form CE-200)*
- Visit [BusinessExpress.NY.Gov](https://www.businessexpress.ny.gov) for more

Note: An ACCORD form is not acceptable proof.



NONCOMPLIANCE SUSPECTED?

- Notify the Board if you suspect noncompliance
- Stop work order possible
- Financial penalties possible
- Class E Felony or misdemeanor possible
- Fraud? Contact the NYS Workers' Compensation Inspector General
 - Website: ig.ny.gov/offices/workerscompensationfraudinspectorgeneral
 - Call: (518) 474-1010



NONCOMPLIANCE PENALTIES

- Up to **\$2,000** for every 10 days out of compliance, or **\$72,000** a year.
- Penalty of up to five employees is a **misdemeanor**, subject to a maximum **\$5,000 penalty**.
- More than five employees is a **Class E Felony**, subject to a maximum **\$50,000 penalty** and **1½ to 4 years in prison**.
- Misclassification is the same as being uninsured.



PENALTY APPEAL PROCESS

- If you're penalized, don't stick your head in the sand.
- Contact the Board and/or appeal the penalty.



WHAT DETERMINES YOUR PREMIUM?

- Classification code – Rates are per \$100 of payroll
- Payroll amount
- Claim experience
- How safely you operate – *EMR* or *X Mod*
- Reserves
- Administrative expenses



2024 ASSESSMENT RATE

- On January 1, 2024, the Board's assessment rate was set at 9.2% of the standard premium or premium equivalent
- 0.6% decrease from 2023's assessment rate of 9.8%
- Estimated savings of more than \$53 million for businesses across New York



CONTROLLING PREMIUM COSTS

- Schedule a regular meeting and review claims with your insurer/payer.
- Check that your classification codes are correct.
- Get your loss runs and understand your claim expenses:
 - Legal fees, surveillance, independent medical exam (IME), admin costs
- Get insurance certificates for independent contractors.
- Return to work programs.
- Operate safely.



WORKPLACE SAFETY PREVENTION INCENTIVE PROGRAM (CODE RULE 60)

- Business voluntarily establishes a safety, drug and alcohol prevention, or return-to-work program.

- Save up to 10% on workers' comp insurance in first year, up to 6% in second and third years.

	Year 1	Year 2	Year 3
Safety	4%	2%	2%
Return to Work	4%	2%	2%
Drug & Alcohol Prevention	2%	2%	2%

- For more information, visit dol.ny.gov/wslpip-model-programs-and-resources

EMPLOYER RESPONSIBILITIES

- Obtain required insurances.
- Display required insurance posters.
- File claims timely.
- Employees are eligible regardless of their immigration status.
- Discrimination against employees for filing a claim is prohibited.



LABOR/MANAGEMENT SAFETY COMMITTEE: AVOIDING INCIDENTS



- Have equal number of members from labor and management.
- Regularly rotate chair of committee.
- Meet regularly and have an agenda.

LABOR/MANAGEMENT SAFETY COMMITTEE: TASKS



- Visit the workplace.
- Review equipment, sites, and procedures.
- Establish safe procedures and train for safety.

WORKERS' COMPENSATION: IF THERE'S AN INJURY

- Get necessary medical treatment promptly.
- Continue receiving necessary treatment.
- Tell the employer about the incident, in writing, as soon as possible but no later than 30 days.
- File an *Employee Claim (Form C-3)* with the Workers' Compensation Board as soon as possible, either online or on paper.



IN THE EVENT OF AN ACCIDENT OR ILLNESS

Claims with the best outcomes have these features:

- Appropriate, prompt medical care
- Prompt reporting of injury
- Prompt payment of benefits
- Return-to-work program



INJURY REPORTING

Insurers must report worker injuries to the Board within 18 days of lost time or 10 days from employer knowledge, whichever is later.

2015

35% timely reports



2024

84% timely reports



EXPEDITED BENEFIT PAYMENTS

Payments to injured workers must begin within 18 days of lost time or 10 days from when the worker gave employer notice of an injury.

2015
38% timely payments



2024
90% timely payments



BEST PRACTICE: MEDICAL CARE

- Arrive at all appointments with your:
 - WCB case number
 - Insurer case number
 - Insurer name
- See your doctor every 90 days in cases of ongoing disability.
- Understand your degree of disability.



BEST PRACTICE: PROVIDERS

- File completely and promptly.
- Add the **3 Big Questions** to your templates:
 1. Causality
 2. Work status
 3. Temporary impairment status (i.e., degree of disability)



BEST PROVIDER PRACTICES: PARS

MTG Variance / Non-MTG Over \$1000

Level 1	Adjuster/nurse at the payer reviews
Level 2	If denied, automatic escalation to payer physician
Level 3	If denied, must request escalation to the Board's Medical Director's Office

Medication

Level 1	Adjuster/nurse at the payer reviews
Level 2	If denied, must request escalation to payer physician
Level 3	If denied, must request escalation to the Board's Medical Director's Office

MAXIMUM & MINIMUM INDEMNITY BENEFITS

Lost wages

- Two-thirds the average weekly wage; all compensation counts
- Maximum benefit as of July 1, 2024: \$1,171.46
- Minimum benefit as of Jan. 1, 2024: \$275
 - Jan. 1, 2025: \$325 per week
 - July 1, 2026: 1/5th NYS average weekly wage
 - In all instances, if the worker earned less, full wages



BEST PRACTICES: INDEMNITY

- Please consider using direct deposit.
- Keep records if paid in cash.
- File the address where the incident occurred.



BEST PRACTICE: INDEPENDENT MEDICAL EXAMS

- You may bring a witness to an IME.
- You may record an IME, video and audio.
- You should review the IME report.
- You may claim travel reimbursement to and from an IME.
- Complaints about IME conduct should be made to the Advocate for Injured Workers.



BEST PRACTICES: PAYERS

- When paying claims under 21-a, payments must be consistent with the medical reports and wage information payers have.
- May not pay minimums to full-time workers even without a *C-240* form.



BEST PRACTICES: PAYERS (cont'd)

- Pay deposition fees once the deposition is completed; do not wait for Board instructions.
- Submit a summary of payments before any hearing considering awards over different time periods.
- Medical Only claims that become lost time will be indexed, so update filings and decide on liability, if not yet done.



BEST PRACTICE: RETURN-TO-WORK PROGRAMS

Bring workers back and keep in touch with them.

- Appoint a return-to-work coordinator who understands the goals and the process.
- Coordinator has a pool of transitional duties.
- Develop individual return-to-work plans.
- Use the doctor's restrictions.
- Comply with the ADA – 15 or more employees.



FINDING A WORKER'S ATTORNEY

- **NYS Bar Association**

(800) 342-3661 Monday – Friday, 8:00 a.m. – 12:00 p.m.

[FindaLawyerNYS.org](https://www.findalawyer.org) to request a referral

- **NYS Injured Workers Bar Association**

(518) 694-5358

[injuredworkersbar.org](https://www.injuredworkersbar.org)

- Licensed representatives: visit [wcb.ny.gov](https://www.wcb.ny.gov) and search “licensed claimants’ representatives” for the list

- Medical Only claim: visit [nysba.org](https://www.nysba.org) and select “workers’ compensation” on the left side of the page



FOLLOW THE BOARD

 [@NYSWorkersComp](https://twitter.com/NYSWorkersComp)

 [@NYSWCB](https://www.facebook.com/NYSWCB)

 [@NYSWorkersCompBoard](https://www.instagram.com/NYSWorkersCompBoard)

 [youtube.com/@nyswcb](https://www.youtube.com/@nyswcb)

 [linkedin.com/company/new-york-state-workers-compensation-board](https://www.linkedin.com/company/new-york-state-workers-compensation-board)

 wcb.ny.gov (“Get WCB Notifications”)

MORE INFORMATION

ADVOCATE FOR BUSINESS

Helpline:
(518) 486-3331

Email:
AdvocateBusiness@wcb.ny.gov

ADVOCATE FOR INJURED WORKERS

Helpline:
(800) 580-6665

Email:
AdvInjWkr@wcb.ny.gov



**Workers'
Compensation
Board**



**NEW
YORK
STATE** | **Workers'
Compensation
Board**

THANK YOU