

NYS WORKERS' ADVOCATE CONFERENCE



MAY 1, 2023

**Know your rights:
Workers' Compensation,
Disability Benefits, and
Paid Family Leave**

Clarissa Rodriguez

Chair, NYS Workers' Compensation Board



**Workers'
Compensation
Board**

Agenda

- **Workers' compensation**
- **Disability benefits**
- **Paid Family Leave overview, including COVID-19**
- **Resources to assist you**
- **Questions**

What is the Workers' Compensation Board?

- Created in 1914 after **Triangle Shirtwaist Factory** fire of 1911
- Oversees workers' compensation, disability benefits, & Paid Family Leave
- Receives reports of injuries & payments, authorizes medical providers
- Approx. 950 employees with offices and hearing points statewide
- Holds hearings to adjudicate disputes



What is workers' compensation?

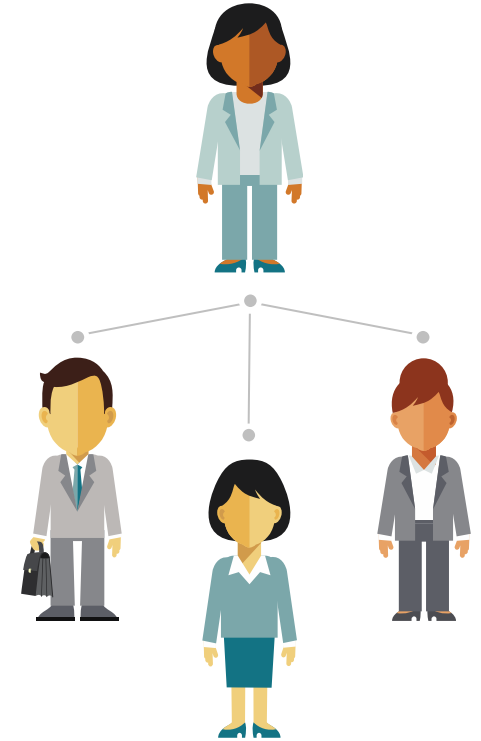
- No-fault insurance system – “The Grand Bargain”
- Workers are not suing their employers
- Provides medical care & lost wages to workers injured or made ill on the job
- No cost to workers



Who needs coverage?

- Businesses and most nonprofits with employees are required to have coverage
- Some exceptions include:
 - Partnerships, LLCs, LLPs and
 - Sole-proprietorships with NO employees

* BUT they can choose to cover themselves
- **Worker/Employees** are anyone providing services to a for-profit business or nonprofit (*with limited exceptions for clergy, teachers*)



What about...

- Family members?
- Domestic workers (nannies, cleaners, tutors)?
- Independent contractors?

Call us if you're not sure!



Independent contractors

- **May be considered employees. It depends....**
- Workers' comp definition is not the same as Dept. of Labor or Tax for independent contractors
- A 1099 is not enough – factors considered by a Workers' Compensation Law Judge:
 - Direction and control: Who controls the time and manner in which the work is to be done?
 - Do they have a Federal Employer Identification Number (FEIN) from the Internal Revenue Service (IRS) or file business tax returns?
 - Do they maintain a separate business establishment?
- Visit the “Employer” section of wcb.ny.gov for all criteria

Construction workers: Under the law

- **Construction Industry Fair Play Act** - Workers are presumed employees unless they can prove they have their own business
- **Subcontractors** must have workers' compensation policy. If unsure, workers should file a claim anyway!
- **General contractors** are liable for the workers' compensation claims of all uninsured subcontractors

***TIP:** Workers should keep company names & records, especially if paid in cash*

Visit labor.ny.gov for more information



Worker rights

- If a worker is injured or made sick at work, they are entitled to workers' compensation. It cannot be signed away.
- Employees are eligible regardless of their citizenship and/or immigration status
- Wages paid in cash is not a factor
- Dismissal or retaliation is unlawful
- Free language assistance available



If there's a workplace injury...

- Get necessary **medical treatment** promptly
- Inform employer in writing, as soon as possible, but no later than 30 days from the incident
- File an *Employee Claim (Form C-3)* as soon as possible – either online, by phone, or by mail
- Workers have two years after incident to file
- Continue medical treatment with an authorized provider

Work-related COVID-19

- COVID-19 contracted at work may be compensable
- Workers have **two years** from the time they contracted COVID-19 to file
- File a positive PCR test result or diagnosis
- Discuss workplace details with medical provider to prove cause:
 - Public contact?
 - Are masks worn?
 - Is COVID-19 prevalent in the workplace?
 - Any other circumstances the provider should know about potential exposure?
- Visit **wcb.ny.gov/covid-19**

Who pays claims?

- If the employer **purchased an insurance policy**, their insurance carrier pays claims
- If the employer is **self-insured** for workers' compensation, the employer is ultimately responsible
 - Self-insured employers usually (but not always) use a claim administrator to handle claims; that administrator makes payment
- If the employer is **uninsured**, the Board will advance payments and go after the employer for reimbursement and penalties

Medical benefits

- Free medically necessary treatment of work-related injury or illness – lifetime benefit
 - Includes tests, hospital visits, medications, physical therapy, equipment, and home care attendants
 - Transportation costs for travel to treatment are also reimbursable
- Treatment must conform to our Medical Treatment Guidelines



Cash benefits

- **Workers' compensation pays lost wages**
 - Max of **two-thirds** the average weekly wage; all compensation counts
 - Maximum weekly benefit is now \$1,125.46
 - Temporary benefits for lost wages
 - Permanent benefits if worker can't work again
 - Payments for loss of use of an extremity, hearing or eyesight



Death benefits

Funeral/memorial expenses

Weekly payments to surviving family – spouse, children up to age maximums, disabled or blind dependents

If no survivors, \$50,000 is paid to parents

If no family, \$50,000 is paid to the estate

Penalties for late payment

- Benefits must be paid within **18 days from incident** or **10 days from notice**, whichever is later
- If a Workers' Compensation Law Judge directed payment, benefits must be paid within **10 days of decision** or **25 days in ongoing payments**
- Interest may be due in some circumstances after appeal

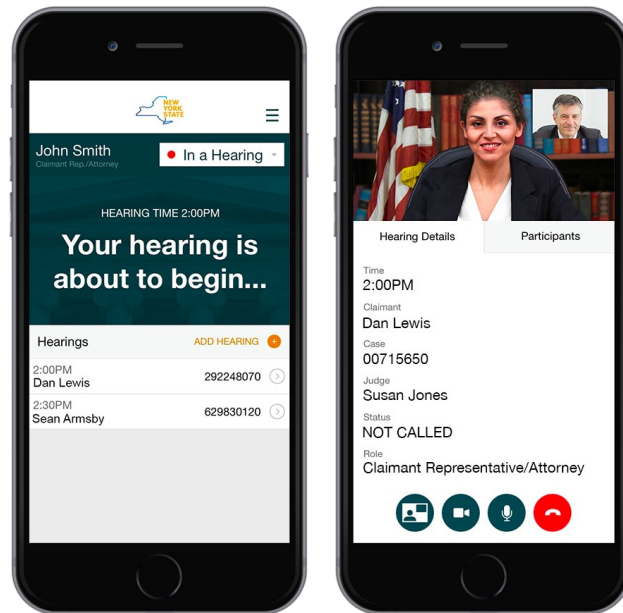
What to expect if there's a hearing

- A worker and their representative/attorney (if they have one) will attend – worker may be asked questions
- Insurer or claim administrator will send an attorney
- Workers' Compensation Law Judge makes findings of fact
- Witnesses may be called and depositions presented
- The Board does not use the formal rules of evidence and procedure that courts use



Virtual/Remote hearings

- First-in-the-nation initiative
- Allowed us to continue hearings uninterrupted during pandemic
- Free app – no additional software
- Workers can attend hearings via phone or via the virtual/remote hearings system.
- Language services are available



Worker responsibilities

- **Get medical treatment promptly**
- Tell medical providers how the injury/illness was **work-related**
- **Return to work** if able – (ask for light/modified duty or look for other work within physical limitations)
- Respond to **all inquiries** & documents in a timely manner
- Advise the Board and other parties of **address changes**
- Ask to receive wage benefits via **direct deposit**
- Understand any agreements made – stay involved

Stay involved

- Visit wcb.ny.gov, sign up for eCase, and stay involved in the claim
- Legal representative/attorney can answer questions
- Employer may not have the most current information
- NYS Workers' Compensation Board can provide correct information –

Call us! HELPLINE: (877) 632-4966

Employer responsibilities

- Employer must obtain required insurance
- Display required insurance poster
- Inform the Board & insurance carrier of incident – **within 10 days** of accident
- Employer cannot **discriminate** or **retaliate** against a worker for filing a claim – irrespective of citizenship/immigration status
- Enlightened employers offer light duty or transitional duty

Disability benefits insurance

- Covers off-the-job accidents, injuries, and illnesses
- Provides only limited wage replacement, no medical benefits
- Employees can receive a wage replacement of up to \$170 a week for up to 26 weeks
- Visit [wcb.ny.gov](https://www.wcb.ny.gov) and search “Disability” for more information





Paid Family Leave

Paid Family Leave basics

Paid Family Leave is insurance fully funded by employees

It provides paid time off and job protection for employees to:



Bond with a new child



Care for a family member
with a serious health condition



Assist loved ones when a family
member is deployed abroad

Bonding with a child

Provides time for parents to bond with a child within the first 12 months of:



Birth



Adoption



Foster Care

Caring for a sick family member

Defined as: an illness, injury, or condition that requires either inpatient care in a hospital, hospice, or residential health facility OR continuing treatment or supervision by a health care provider

Qualifying family members include:

- Spouse
- Domestic partner
- Child/stepchild
- Sibling*
- Parent/stepparent
- Parent-in-law
- Grandparent
- Grandchild

Family can live outside of New York State and even outside the U.S.

***New in 2023 – check with carrier for details**

Assisting during a military deployment

For assistance when a spouse, child, domestic partner, or parent is deployed abroad on active military service, including:

- Short notice military deployment
- Military events, related activities
- Service member's rest and recuperation
- Counseling
- Post-deployment activities
- Making financial/legal arrangements
- Childcare arrangements for military member's child



Who is covered?

- Most workers employed by private employers
- Public employers may opt in
- Public workers represented by a union may be covered if Paid Family Leave is collectively bargained
- **Payroll Contributions = 0.455%** of gross wages each pay period, capped at an annual maximum of **\$399.43**
- The employer can choose to pay contributions on behalf of employee



COVID-19 quarantine leave

- Job protection and financial compensation when worker or their minor dependent child is subject to a *mandatory or precautionary order of quarantine or isolation*
- Workers may apply for Paid Family Leave & disability benefits to receive their full pay (up to a cap)
- 67% of pay, up to a maximum of \$840.70 weekly
- Disability benefits make up the difference, up to \$2,043.92 weekly max.
- Total combined benefits of \$2,884.62 weekly
- No waiting period

Who is eligible for Paid Family Leave?

- **Covered workers** are eligible once they have met the minimum requirements:
 - **Full-time:** If working 20 or more hours per week, eligible after 26 consecutive weeks
 - **Part-time:** If working less than 20 hours per week, eligible after 175 days, which do not need to be consecutive
- **Citizenship and/or immigration** status is not a factor in employee eligibility
- **Waivers** can be obtained if employees won't qualify
- Paid Family Leave and Family Medical Leave Act can run concurrently

Time off and wage benefits

- In 2023, up to **12 weeks** off at **67%** of a worker's average weekly wage (AWW), (capped at **67%** of the New York State AWW)
- For 2023, the New York State AWW is **\$1,688.19** with a maximum weekly benefit of **\$1,131.08**
- AWW is based on last **eight weeks** of pay
- Leave can taken all at once, or intermittently, in full-day increments

Paid Family Leave resources

Visit PaidFamilyLeave.ny.gov to access:

- Detailed information on Paid Family Leave
- Paid Family Leave request forms and fact sheets
- Weekly benefit and payroll deduction calculators
- Paid Family Leave updates for 2023
- Information about COVID-19 quarantine benefits
- **Helpline: (844) 337-6303**





Resources

The Advocate for Injured Workers

- Ombudsman – helps workers with difficult and complex claims
- Handles fatality claims
- Works with the 9/11 community
- Reports directly to the Chair of the Board
- HELPLINE: (877) 632-4966
- EMAIL: advocateforinjuredworkers@wcb.ny.gov
- WEBSITE: wcb.ny.gov (search “Advocate for Injured Workers”)

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Thank you

Questions?