



March 2007

Message to PIANY Members on WC Reform

By David Dickson, PIANY President

This month historic changes have been made to New York's workers' compensation system. In the state that "invented" workers' compensation, New York's employers and employees can look forward to changes in how medical and wage loss benefits are provided, significant cost savings for those employers who some say were penalized for "playing by the rules," and significant oversight and regulatory changes, designed to make the system fairer and more responsive.

In the coming months, various task forces established by the new law will be recommending and implementing further reform measures in addition to the major changes you've been reading in the press.

Everyone by now doubtlessly is aware of the major changes: increases in wage loss benefits, "caps" for permanent partial disability benefits and savings to employers. However, there are other significant changes that, for some, may be even more important.

Earlier this year, a landmark study reported on figures which are signaling that there is significant noncompliance by New York's employers with workers' compensation requirements. In short, the study said that roughly one out of every four payroll dollars is not being reported for purposes of workers' compensation. Subsequent reports in the press also have focused on this serious compliance problem.

The new law takes significant steps to address this serious issue. I urge you, both for purposes of your own business and for your clients, to become very familiar with these new provisions.

The new law establishes severe penalties for employers who fail to maintain workers' compensation coverage. Fines have been increased significantly—they will range from \$5,000 to \$50,000. Failure to have required coverage will be considered as a class E felony. Subsequent violations will result in class D felony charges and even higher fines. These new penalties are significantly higher than the present \$250 fine for misdemeanor charges.

For employers who intentionally misclassify employees or materially under-report payroll to avoid proper calculation of workers' compensation premium, the penalties will be the same as if there were no workers' compensation. Same fines, same felony charges.

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For employers who are found not to have coverage, the Workers' Compensation Board will have the authority to issue "stop work" orders, shutting down business operations, until the workers' compensation requirements are met. Even more significantly, any employer found to be in violation of the requirements will be barred from submitting any bid for, or receiving, any public work contract or subcontract from the state or any municipal corporation or public body for at least a year and in some cases longer.

Employers will be required to maintain business records for at least four years that include: their true and accurate number of employees, the classification of each employee, information regarding employee accidents and wages paid. These records must be available for inspection at any time. Failure to comply with these new record retention requirements can result in significant fines and penalties; in addition to the imposition of assessments based on what the proper workers' compensation premium would have been.

This new law allows for greater coordination and communication among the Workers' Compensation Board, the Department of Labor, the Department of Taxation and Finance, the Department of Motor Vehicles and the Insurance Department, for purposes of detecting and investigating fraud. Additionally, you should expect changes employing new technologies regarding certificates of insurance.

As employers, these new requirements will apply to your own business. For your clients who also are employers, I urge you to share this and other information on the new workers' compensation provisions.

One reason that the cost of workers' compensation in New York currently is so high, is that a significant number of employers for years have not been "playing by the rules." Participants from both business and labor who took part in crafting the reform agreement recognized that, to move forward and restore confidence in the system, tough new measures had to be implemented. For those employers who have been "playing by the rules," these changes will mark the beginning of the end to the unreasonable subsidy of "paying more than they had to," to cover the costs of others.

As these changes are implemented, I urge you to continue to look to PIANY as the resource for key information, for your business and for your clients.

Thank you,



David Dickson
PIANY President