



October 6, 2017

The Honorable Clarissa M. Rodriguez
Chair
NYS Workers' Compensation Board
328 State Street
Schenectady, NY 12305

Dear Chairwoman Rodriguez,

On behalf of the Capital Region Chamber, I am writing to you regarding reforms to Workers Compensation that were enacted as part of the adopted state budget. The Capital Region Chamber represents over 2,400 businesses and organizations from throughout the Capital Region that employ more than 150,000 area residents.

As you know, the business community worked very hard this year to help pass a fair, balanced, and comprehensive workers' compensation reform. The reform, included in the budget, openly negotiated by the AFL-CIO, the New York State Trial Lawyers Association, the Medical Society of New York, The Business Council of the State of New York and others, carefully balanced protections for seriously injured workers while promising to decrease costs to employers.

The reform accomplished this balance by strengthening the position of injured workers through: decreasing the threshold for the permanent partial disability cap "safety net" from an impairment of 80% to 75%; removing the requirement that an injured worker, who was entitled to benefits and attached at the time of classification, demonstrate attachment to the labor market; expediting hearings to 45 day from date of request; changing threshold for proof for mental health claims for first-responders; and creating a panel to study independent medical examinations.

For employers, the reform capped classification of Maximum Medical Improvement at 2.5 years by creation of a credit to employers for temporary payments beyond the threshold all while maintaining a safety valve, allowing claimants to overcome this classification. The final and perhaps, most crucial piece of the bargain, was the guaranteed development of new Impairment Guidelines, to be adopted by January 1, 2018, to adhere to modern medical evidence and modern medical outcomes to replace impairment guidelines that were based on 35-year-old medical assumptions.

As had occurred immediately after the 2007 workers' compensation reforms, there has been an immediate and intense campaign, led by The Workers' Compensation Alliance, an organization of workers' compensation attorneys, who glean hundreds of millions of dollars from the workers' compensation system annually, and their allies in organized labor, to undo any part of the bargained reform that would lead to cost savings for employers. This is not only unfair, given that this reform was negotiated by employers and labor together in good faith, but it is in direct conflict with the legislative intent of the reform.

There is no disputing that the workers' compensation in New York State was spinning out of control, with a total cost of \$10 billion per year. There is also no question that the schedule loss of use (SLU)

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system was a major contributor to the uptick in costs, costing New York's employers over \$1.2 billion in 2015, \$934 million of which is for limited-lost-time awards. The SLU system used an antiquated model and three-decade old medical assumptions and paid many claimants, some who never even missed work, six-figure awards. The reform, agreed to by both business and labor, passed by the Legislature and signed into law by the Governor, mandated a comprehensive rewriting of the New York State Workers' Compensation Permanency Impairment Guidelines to modernize the system and mitigate these unnecessary costs. Any assertion to the contrary is simply untrue.

As a chamber that represents thousands of employers, we too have many concerns about the draft guidelines. For instance, they rely extensively on pain scales as a measure of impairment. These are subjective measure which falls under the exclusive control of a patient and is thus a completely inappropriate measure of impairment in the workers' compensation system. Additionally, the decision to utilize a "bucket system" for rating leaves the minimum percentages of impairment far higher than need be based on medical reality. While the guidelines are certainly in need of some serious fine-tuning, their value and legitimacy is a certainty.

Opponents of the reform have relied on the age-old strategy of a misinformation campaign, putting forth assertion after assertion that have no basis in fact. They continue to claim that the reform did not envision a re-write of these guidelines. Nothing could be further from the truth. The time to argue against the validity of this reform ended when it was signed into law by the Governor. The need for a new and modern guideline is not and should not be in question. I respectfully request that that the Workers' Compensation Board continue to uphold the law, and the fair and negotiated reform, by creating a final guideline that reflects changes in medicine and fulfills the promise of reducing the run-away costs of SLUs.

Sincerely,



Mark N. Eagan, CCE
Chief Executive Officer

cc: Hon. Andrew Cuomo
Capital Region Legislative Delegation