

Workers' Compensation Reform Coalition Members



March 9, 2017

**Re: Workers Compensation Reform and the 2017 NYS Budget**

*S.4014 (DeFrancisco) / A.5977 (Woerner); S.4554 (Amedore) / A.6218 (McDonald);  
S.4520 (Akshar) / A.6602 (Woerner)*

Dear Legislator:

High Workers' Compensation costs present a significant hardship to New York employers and continue to escalate. This past year alone, the basis for workers' compensation costs increased over 9 percent, and in some cases premiums increased by almost forty percent, continuing a near decade of increases that businesses have endured since the 2007 reforms. The growing costs of workers' compensation coverage has been expressed by our collective memberships as one of the biggest business and competitiveness concerns facing New York's job creators. These immense costs impact all New York employers including for-profits, non-profits, schools, municipalities and state government.

In a recent survey of 211 employers which requested feedback on workers' compensation costs and practices, conducted by several regional chambers of commerce and statewide trade associations, 83 percent of participants identified workers' compensation costs as a significant concern, with many reporting average annual cost increases of 10-22 percent over a five year period. Employers are forced to respond to these double digit increases by re-examining employee benefits, hiring fewer employees, increasing product and service pricings, reducing labor costs through increased automation, delaying expansion plans, eliminating jobs and, in some cases, reallocating jobs outside of NYS. Additionally, in a recent Siena College Research Institute poll of upstate CEOs, a resounding 90 percent of those polled indicated support for reductions in workers' compensation costs. In short, high workers' compensation costs are hampering employers' ability to compete, reward employees, maintain a stable labor force and create jobs.

On behalf of our memberships, which collectively represent thousands of employers who employ several million New Yorkers, we ask for your assistance this legislative session and during the budget process in reforming New York's outdated and expensive workers' compensation system. Identified below are two reforms that, if implemented, will reduce system costs while insuring that injured workers, especially those who are most injured, continue receiving exceptional medical care and appropriate financial compensation.

We ask that you support and sponsor the legislation outlined below and to make workers' compensation reform a priority during the 2017 New York State budget process.

### Scheduled Loss of Use Awards

Many workplace injuries result in little or no lost time from work. Injuries to extremities for example, which are subject to Scheduled Loss of Use (SLU) awards, base benefits on a multiplier of statutorily designated weeks, type of injury and declared severity, rather than lost work time. This approach has led to the awarding of **enormous awards for injuries that required no lost-time from work**. The cost of these awards has ballooned since the 2007 reforms. In 2006, \$509 million in SLU benefits were paid system-wide in New York State; by 2015, the cost of SLU awards had grown to just over \$1 billion.

Over four years ago, the Workers' Compensation Board embarked on a project to modernize the SLU rating system by updating the applicable medical impairment guidelines. These guidelines have not been substantially updated in over three decades. As a result, levels of impairment and payments don't reflect the dramatic advancements in surgery and other medical treatments that have occurred over the last several decades. The newly developed guidelines, using modern medicine and science, more accurately

reflect the severity of an injury with respect to its effect on a claimant's ability to perform necessary job duties, recovery time and amount of permanent disability.

Unfortunately, these new standards have yet to be implemented. Accordingly, we ask that the Legislature both act to compel the Workers' Compensation Board to adopt updated impairment guidelines and enact reforms that would limit the unfair windfall system that SLUs have become by limiting these awards to those with impairments of 85 percent or above. All other claimants would continue to receive the same benefits for any time lost from work that every other claimant receives.

These reforms would make the workers' compensation system more equitable while significantly reducing costs. Such reforms would have no effect on severely injured employees or on the amount of compensation any employee receives for lost-time.

- **S.4014 (DeFrancisco) / A.5977 (Woerner)** calls for the expedited release of the aforementioned proposed impairment guidelines. The guidelines used to help determine SLU awards have not been substantially updated since 1983. This legislation will bring New York State's workers' compensation system into the 21st century.
- **S.4554 (Amedore) / A.6218 (McDonald)** limits SLU awards to workers who suffer injuries resulting in 85 percent impairment or greater, guaranteeing that severely injured workers are justly compensated while those with less severe injuries resulting in little or no lost time from work will receive the exact same benefits as other workers with non-SLU classified injuries.

### Classification of Maximum Medical Improvement (MMI)

A major deficiency of the 2007 reform legislation was the lack of criteria for commencing duration caps on permanent partial disability (PPD) benefits. As a way to pay for significant increases in injured worker weekly benefits, the legislation "capped" PPD payouts at 10 years. Unfortunately, the start date of the 10-year period can vary considerably at considerable cost. To address this shortcoming, which has led to an excess payment of total temporary disability (TTD) benefits, the state should commence the durational cap at the date of injury, which would significantly decrease the cost of claims. This was the intent of the 2007 legislation, but the lack of effective implementation has resulted in significantly increased TTD costs.

This shortcoming in the 2007 legislation creates additional costs not limited to benefit payments. These include additional utilization of unnecessary medical services used to justify remaining on temporary total disability, as well as the frictional cost of legal involvement and hearings. The magnitude of the impact of the increase to "healing periods" since 2007 is illustrated by simply considering a \$864 per week benefit paid for an additional 52 weeks, which adds over \$45,000 to the cost of a claim, prior to consideration of unnecessary medical costs and other frictional costs.

- **S.4520 (Akshar) / A.6602 (Woerner)** will commence the 10-year duration caps on PPD benefits at the date of injury, keeping with the spirit of the deal struck by business and organized labor in 2007 and will promote efficiency in the system, reducing hearings, litigation, and independent medical examinations, while allowing cases that are outliers to be properly adjudicated.

We thank you for your leadership on this important issue and look forward to working with you to reform the workers' compensation system and to continue to find ways to lower costs for employers and improve outcomes for employees. Thank you for your consideration.

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