



# Workers' Compensation Board

June 4, 2019

# Meet the Advocate

## Neil Gilberg

# The Advocate for Business

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

# Workers' Compensation and Disability Benefits Insurance

## ■ Workers' Compensation Insurance

- Covers on-the-job accidents, injuries and illnesses
- Provides medical 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

# New York State Paid Family Leave

Provides job-protected, Paid Time Off to



**Bond with a child**



**Care for sick family members**



**Assist family when a service member is deployed abroad**

# Coverage and Costs

Virtually all private employers are required to provide Paid Family Leave coverage

## ■ Employers

- Must procure coverage
- May deduct cost from employees' paychecks

## ■ Employees

- Pay the cost of the insurance



# Contributions and Benefits

- Employee contribution for 2019 is 0.153%
- Maximum annual contribution for 2019 is \$107.97
- Employees earning less than Statewide Average Weekly Wage will contribute less than \$107.97, consistent with actual wages
- Weekly benefit for 2019 is capped at 55% of the New York State average weekly wage, which is \$746.41.
- May pay for PFL benefit on behalf of employees

# Workers' Compensation Insurance Premium

- **Premium determined by:**
  - Classification code – how hazardous is business
  - Rates are per \$100 of payroll
  - Size of payroll
  - How safely you operate business
  - Administrative expenses

# Who Needs Coverage and Who Doesn't?

- Businesses with employees need coverage





# 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; the exceptions are clergy, and teachers in a 501(c)(3) nonprofit

# Who Is Not Required to Carry Workers' Compensation Insurance?

- Sole proprietors with no employees
- Partners in partnerships with no employees
- One/two person owned corporations with no employees

# Independent Contractor?

- Indicators created to identify if an individual is an independent contractor and not an employee
- Indicator examples:
  1. Employer Identification Number from the Federal Internal Revenue Service (IRS) or filed tax returns
  2. Maintain a separate business establishment from the hiring business
- For more information and all indicators, visit the employer section on the Board's website for more information

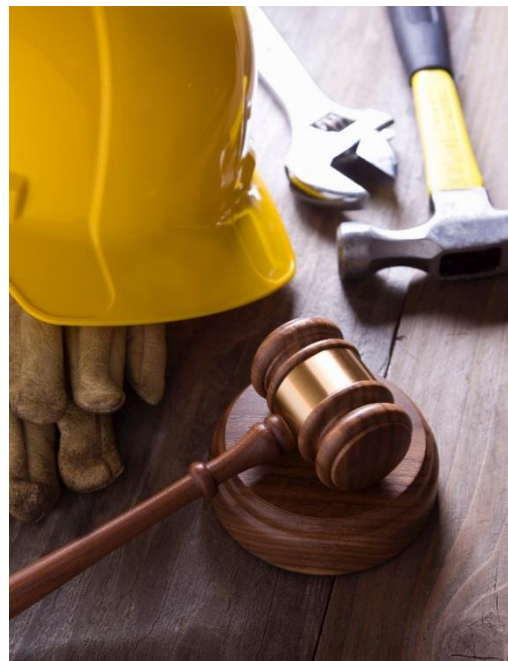
# General Contractors: Under the Law

- General contractors are liable for the workers' compensation claims of all uninsured subcontractors



# General Contractors:

- It is recommended that you have subcontractors add you as a certificate holder on their NYS Workers' Compensation insurance policy



# Specific Coverage Issues

- Sole proprietors, partnerships including LLCs & LLPs & corporate officers
- Independent contractors and subcontractors
- Family members
- Domestic employees
- And more..

# Noncompliance Penalties

- Up to **\$2,000** for every 10 days out of compliance, or **\$72,000** a year
- Up to 5 employees is a **misdemeanor**, subject to a maximum **\$5,000 penalty**
- More than 5 employees is a **Class E Felony**, subject to a maximum **\$50,000 penalty** and a maximum of **1 1/3 to 4 years in prison**
- Misclassification is the same as being uninsured

# The Appeal Process

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





# Employer Responsibilities

- Obtain required insurance
- Display required insurance poster
- File claims timely
- Section 120 of NYS Workers' Compensation Law states that an employee cannot be discriminated against for filing a claim
- Employees can only be terminated for a valid business reason including misconduct, insubordination, lack of work/economic reasons, lengthy absence from work, inability to perform the job, or poor job performance
- Employees are eligible regardless of their citizenship and/or immigration status

# How To Get The Best Results

- Prompt reporting of injury
- Prompt payment of benefits
- Consistent effective medical care
- Return to work program

# Expedited Benefit Payments

- Payments to injured workers must begin within 18 days of injury or **10 days from the worker giving employer notice of an injury**

**2015**  
**38%** timely payments



**2018**  
**90%** timely payments



# Injury Reporting

- Insurers must also report worker injuries to the Board within 18 days of injury or 10 days from employer knowledge, whichever is later

**2015**  
**35%** timely payments



**2018**  
**82%** timely payments



# How To Keep Premium Costs Low

- Shop around for Workers' Compensation Insurance
- Get correct insurance certificates for independent contractors
- Check that your classification codes are correct
- Create a return to work program
- Create a labor/management committee to ensure a safe workplace – **the cheapest accident is one that is prevented**
- Keep in touch with employees during their absence

*Studies show that the faster an employee returns to work, the better the outcome*

# Workplace Safety Prevention Incentive Program (Code Rule 60)

- Voluntary establishment of 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 [www.labor.ny.gov/WSLPIP.html](http://www.labor.ny.gov/WSLPIP.html)

# Better for Workers, Better for Business

## ■ Injured Worker Improvements

Promptly paid

Lowest dispute rate in decades

Appealed claims quickly resolved

Legal services access expanded

Better worker protections



## ■ System Improvements

Employer assessments cut by 33%

Insurance rates declining

Outdated, expensive special fund closed



# Better for Workers, Better for Business

## ■ Technology Improvements

Accepting online payments

Innovating with virtual hearings

Building a new claims system



## ■ Health Care Improvements

Adopting a Drug Formulary

Addressing opioids

Revising the Permanent Impairment Guidelines

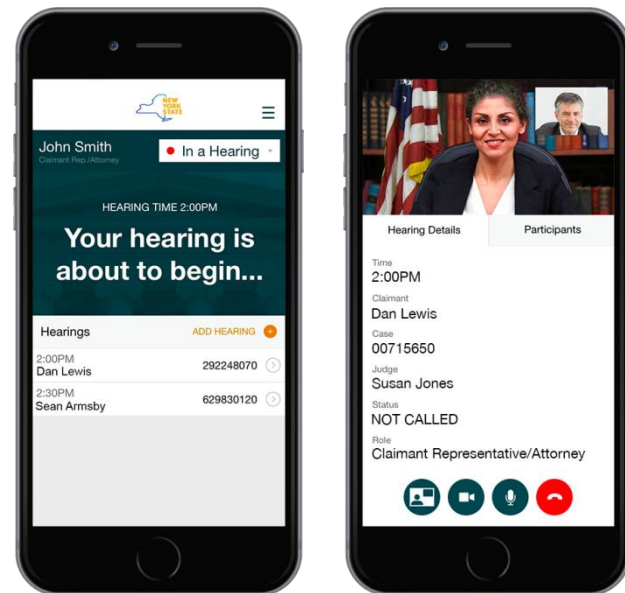
Improving medical care for injured workers





# New Virtual Hearings App

- Makes attending hearings over mobile phone even easier
- Free app – no need to download additional software
- Added convenience for injured workers
- Easier for attorneys and representatives, too



# For More Information

## Advocate for Business

Helpline:

**(518) 486-3331**

Email:

**[Neil.Gilberg@wcb.ny.gov](mailto:Neil.Gilberg@wcb.ny.gov)**

## Paid Family Leave

Helpline:

**(844) 337-6303**

Website:

**[www.PaidFamilyLeave.ny.gov](http://www.PaidFamilyLeave.ny.gov)**