

NEW YORK STATE INSURANCE FUND

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A Claims Guide for the Employer



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NEW YORK STATE INSURANCE FUND

Workers' Compensation & Disability Benefits Specialist since 1914

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Workers’ Compensation Claims

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Fundamentals of Efficient Claims Service

The Claims Department remains dedicated to serving policyholders and their employees with courteous, knowledgeable, effective and timely service, including:

1. The prompt payment of compensation in legitimate claims, and
2. The early and thorough investigation and determination of questionable cases.

This service cannot be rendered without the immediate and complete cooperation of employers with our investigators and case managers. **Time is of utmost importance as it affects the speed with which appropriate medical care is rendered, which may ultimately affect claim duration and cost, and when benefits may be paid or determined in each case.**

The Workers' Compensation Law requires that:

1. The first payment of compensation is due no later than 18 days after disability begins or 10 days after knowledge of the accident, whichever date is later;
2. In cases where the right to compensation is controverted, notice to that effect must be filed on or before the 18th day of disability or within 10 days after knowledge of the accident, whichever date is later.

Severe penalties may be imposed for violation of these provisions. Failure to file timely notice of controversy may force payment of an otherwise questionable claim.

Claims processing enhancements and better fraud detection are top priorities. The former enables more efficient claims cost containment and expedites appropriate payments. The latter helps thwart the small percentage of employers, claimants and medical providers who abuse the system to the detriment of both NYSIF and its premium paying policyholders.

This guide is designed to help policyholders understand and comply with the complexities of the Workers' Compensation Law. We hope all policyholders will read this guide and keep it handy. **Although the guide should answer most questions, our web site at nysif.com contains extensive information on all matters pertaining to workers' compensation and disability benefits.** As always, staff is available to answer all inquiries.

A listing of all NYSIF Claims Managers appears on Page 26 of this guide.

What You Should Know

Workers' compensation benefits are paid for job-related accidents and occupational diseases resulting in disability.

Disability benefits are paid for off-the-job injury, sickness and for disabilities arising from a pregnancy.

In workers' compensation claims, charges for causally-related medical treatment are paid by the insurance carrier. In disability benefits claims, the law does not provide for payments for medical care.

Safety

One of NYSIF's primary objectives is to promote an enthusiastic interest among its policyholders in increasing efforts to prevent accidents and occupational diseases. Effective safety programs depend on the extent of your commitment and cooperation.

An Accident Prevented Is A Claim Unborn

For help with your accident prevention program, call your NYSIF claims manager to request loss prevention services by one of our trained safety specialists. Also visit our web site at nysif.com for an extensive menu of free safety resources under *Safety & Risk Management*.

Rehabilitation

Of equal importance is your responsibility as the employer and our responsibility as the insurer in guaranteeing that your injured employees receive every necessary physical and vocational rehabilitation service to reduce the degree of disability and restore earnings potential to the highest level possible. Rehabilitation emphasizes rebuilding and expanding their capacities; it is never willing to accept their limitations. **The rewards of rehabilitation are great in personal satisfaction, in social and economic impact, and in reduced claims cost.**

The WCB requires the prompt filing of **form R**, "Carriers Report on Rehabilitation to Chairperson, Workers' Compensation Board," by the carrier for every compensation claim in which loss time exceeds 12 weeks. NYSIF does not stop there. We believe our work entails more than filing a report, paying a medical bill or putting a claim check in the mail. **NYSIF offers rehabilitative and vocational therapy through our "Global Case Management" program, managed by medical care representatives on NYSIF staff.**

Record of Accidents

All employees should be provided, or directed to obtain, medical treatment as necessary when an accident occurs. They should then inform their supervisor about their accident and how it occurred as soon as their injuries permit. The employee should submit written notice of the accident as soon as possible, but not later than 30 days after it happened. Employers must maintain a record of all accidents for a minimum of 18 years. A C-2 "Employer's Report of Work-Related Injury/Illness" is the form prescribed for this purpose whether or not the accident is reported to the WCB by the employer.

Employers must file a completed Form C-2 with the WCB, and with the employer's insurance carrier, if a work-related injury or illness results in personal injury requiring:

- a) a loss of time from regular duties of one day beyond the working day or shift in which the accident occurred; or
- b) medical treatment beyond ordinary first aid; or
- c) more than two treatments by a person rendering first aid.

Fatal accidents and those that may cause a permanent loss or loss of use of a finger, toe or limb, or a loss of hearing or eyesight, or leave a permanent visible facial, head or neck scar **must** be reported.

If an injury is minor, NYSIF policyholders may choose to pay for first aid treatments directly. In this instance, employers complete a C-2, but need not send it to the WCB or NYSIF. Any "non-reportable" injury or illness cannot be used as a basis for determining experience modification rates, provided the employer pays for any treatment directly, or promptly reimburses NYSIF for treatment paid. Employers still maintain the C-2 in their files for the statutory 18-year period.

Workers' Compensation Law requires every employer to file a C-2 on a reportable accident within 10 days after the employer learns of the accident, or face a fine of up to \$1,000 and a penalty of up to \$2,500. Effective April 1, 2009, the WCB issued a **revised Form C-2** requiring employers to provide additional information. The WCB also requires employers to distribute a **Claimant Information Packet** to injured employees for all reportable claims. This packet is available from NYSIF on our web site at nysif.com. The WCB cautioned employers to fully complete the revised Form C-2 to the best of their ability, indicating if information is not available, and timely file the form. Forms failing to answer a significant number of questions may be deemed deficient by the WCB, leaving the employer subject to penalty.

Reporting Accidents

The best way to inform NYSIF of an accident, and, if “reportable,” the WCB, is to use our electronic First Report of Injury system, NYSIF eFROI®, available at nysif.com to NYSIF policyholders.

Electronic Reporting Options for NYSIF Policyholders at nysif.com

You can fill out an electronic Form C-2 online and submit the form electronically to the WCB for immediate compliance on a reportable accident. NYSIF stores this information on its secure servers and files it electronically with the WCB on behalf of the policyholder. Policyholders may also print a copy of the C-2 for their records or store a copy to an electronic medium. **This information, either printed or in electronic format, must be maintained for 18 years.**

Electronic filing is quick and easy, involving the least amount of effort with the quickest notification possible for prompt claims processing and compliance with your legal obligation. If electronic filing is not an option, you must complete and submit Form C-2 to the WCB, with a copy to NYSIF, for all reportable claims. You must also keep a copy for your records for 18 years to be made available upon request by the WCB.

If a non-reportable accident later develops into one that requires medical treatment or causes loss of time from work, Form C-2 should be filed immediately. Carefully prepare the form with all questions answered fully.

Statements on Form C-2 have been held to be admissions binding the employer. Therefore, exercise caution in reporting doubtful or questionable claims. In such cases, the history of the accident should be prefaced with the phrase, “It is alleged that,” or “The employee claims that.” Where there are suspicious circumstances, or the employer is doubtful as to whether the case comes under the Workers’ Compensation Law, advise NYSIF immediately by telephone, later confirmed by e-mail or letter. NYSIF will determine the necessity for filing the C-2 form.

Referral of Communications

Any oral or written communication pertaining to any claim received from any doctor, attorney, claimant or other person should be referred immediately to NYSIF, attention Claims Dept. If possible, include the NYSIF claim number with any communication.

If You Suspect Fraud

Recognizing Possible Fraud

NYSIF is an industry leader in the fight against workers' compensation fraud.

So-called "red flags" are often found in connection with fraudulent claims. "Red flags" are not of equal importance or weight, nor do they in and of themselves prove anything. If you find clusters of "red flags" connected with a claim, the claim should be carefully examined to determine if the claimant may have lied about any material fact connected with the claim.

Common "Red Flags"

Employment History – Injury reported after a serious problem on the job, such as disciplinary action, demotion, being passed over for a promotion, or notified of a layoff. Worker is a new hire, or has a prior history of multiple personal injury or workers' compensation claims.

Personal History – Injury reported soon after purchase of private disability insurance. Worker engages in high-risk leisure activities. Worker has financial difficulties or domestic problems at time of injury.

Accident Circumstances – Accident occurs early Monday or on return from vacation, or was not immediately reported. Description of accident has inconsistencies or is not believable. Accident is not witnessed, or witnesses' descriptions contradict injured worker's account. Injury is inconsistent with activity at the time of injury.

Claimant Behavior – Claimant difficult to contact during working hours, uses an answering machine to screen calls, or a post office box as a residential address.

The Division of Confidential Investigations

NYSIF's Division of Confidential Investigations (DCI) investigates cases of suspected fraud and refers completed investigations for criminal prosecution. DCI's goal is to ensure that all cases of suspected fraud—including policyholder, provider and claimant fraud—are thoroughly investigated and that arrests and prosecutions take place where appropriate.

If you suspect fraud, call toll free (877)WCNYSIF (926-9743), report fraud online at nysif.com or write DCI at PO Box 3395, Church Street Station, NY NY 10008. You may also call 518-437-8084 (Albany), 607-741-3997 (Binghamton), 716-851-2200 (Buffalo), 631-756-4007 (Long Island), 212-312-9701 (NYC), 585-258-2023 (Rochester), 315-453-6651 (Syracuse), or 914-701-2171 (White Plains).

Medical Care

NYSIF offers a Recommendation of Care (ROC) program with the potential for savings of up to 15% on the medical cost of claims. Use of the ROC program by injured workers is strictly voluntary. For the treatment of any work-related injury or illness, the injured worker retains the right of choice of any physician, podiatrist, chiropractor or psychologist authorized by the NYS Workers' Compensation Board. The WCB lists authorized doctors at www.wcb.state.ny.us/content/main/hcpp/hcpp.jsp. **Visit nysif.com for more information about ROC.**

*Under 2007 workers' compensation reform legislation, **Sec. 13-a (7)** authorizes employers/carriers to contract with a network(s) for diagnostic tests and requires claimants to use a provider or facility within the network with which it contracts, except in cases of emergency. Under such circumstances, the employer is obligated to provide immediate medical care. **Sec. 13(i)** authorizes employers/carriers to contract with a pharmacy benefit management program to supply prescription medicine to claimants and requires claimants to use pharmacies that are part of the network, excepting medical emergencies, or if the program does not have mail order service, or have a network pharmacy located within a reasonable distance from the claimant.*

Waiver of Free Choice

Employees may voluntarily waive their free choice privilege, preferring the employer or insurance carrier to select an authorized doctor. Employees **must** sign a waiver (**form C-3.1**), and the employer or insurance carrier **must** then promptly provide necessary medical care. Employees can switch to a doctor of choice at any time.

Authorization & Billing

Except in emergencies, authorization is required for specialist consultations, surgery, physiotherapy, x-rays or laboratory tests costing more than \$1,000.

All requests for authorization received by the employer should be referred immediately to NYSIF. All medical bills received by the employer must be forwarded immediately to NYSIF to insure prompt payment of proper medical liability, or to object to their reasonableness within prescribed time limitations.

Forms C-4 & C-5

All attending physicians, except eye doctors, must file a **C-4** as a 48-hour preliminary report, a 15-day progress report, and at intervals of 45 days during continuance of treatment, or sooner if warranted by unusual medical developments. Form **C-5** is used in eye cases. *To assist NYSIF in meeting its legal obligations and assure economic relief to injured workers, employers should insist on prompt medical reports and transmit them immediately to their nearest NYSIF office (see page 26).*

Wage Statements (Form C-240)

The weekly rate of compensation is based on the average weekly wage earned by the employee in the employment in which the injury occurred during the 52 weeks prior to the accident. Immediately upon request, the employer should prepare in duplicate, on **form C-240**, a full record of the injured person's earnings for the 52 weeks prior to the accident, and return both copies to the requesting NYSIF office (see Page 26), or assigned case manager.

The earnings of a similar worker for the full period may be substituted if the injured employee has not worked a full or substantial part of the 52 weeks prior to the accident, along with providing a record of the injured worker's earnings for the period of employment. The similar worker should be of the same class as the injured worker. This is so the record of earnings fairly represents the earnings of the injured worker had that person worked in the employment in which he or she was injured for the entire 52 weeks prior to the accident.

If the injured worker was on a seasonal or irregular basis, and there are no similar workers of the same class who worked a full or substantial part of the 52 weeks prior to the accident, please note this on form C-240, together with a record of the actual earnings of the injured worker during the same period, so that the actual average daily wage may be computed.

On all payroll forms, **gross earnings** should be shown without tax, social security or other deductions. Any extra remuneration received by the employee, such as bonuses, gratuities, lodging, meals, etc., should be recorded in the space provided. **It is especially important that wage statements always show the number of days worked during each of the weeks itemized.**

Concurrent Employment

The average weekly wage of an injured employee who is concurrently engaged in more than one employment at the time of injury is based on the wages earned from all concurrent employments covered under the Workers' Compensation Law. The employer in whose employment the employee was injured, or the employer's workers' compensation carrier, pays any additional benefits resulting from the concurrent employments.

Compensation Payments

Benefit Rates (Applicable to accidents on or after 7/1/07) *As a result of workers' compensation reform legislation in 2007, maximum weekly indemnity benefits levels are raised from \$400 for new accidents as follows:*

- \$500 for accidents or deaths on and after 7/1/07
- \$550 for accidents or deaths on and after 7/1/08
- \$600 for accidents or deaths on and after 7/1/09
- Two-thirds of the New York State average weekly wage for accidents or deaths on or after 7/1/10, reindexed to the state average weekly wage annually on 7/1 thereafter
- The minimum weekly rate is raised from \$40 to \$100 for accidents on and after 7/1/07. If wages are less than \$100 per week, the claimant receives full wages.

Caps on Permanent Partial Disability Benefits (Applicable to accidents on or after 3/13/07) Compensation for claimants classified with permanent partial disabilities (PPDs) continues at two-thirds of the difference between the average weekly wage and the claimant's wage earning capacity. For accidents and dates of disablement on or after the legislation's effective date (3/13/07), weekly benefits for PPDs are capped based on percentage loss of wage earning capacity as per the following schedule:

% Loss of Wage Earning Capacity	Maximum Benefit Weeks	Number of Years
1% - 15%	225	4.33
16% - 30%	250	4.81
31% - 40%	275	5.29
41% - 50%	300	5.77
51% - 60%	350	6.23
61% - 70%	375	7.21
71% - 75%	400	7.69
76% - 80%	425	8.17
81% - 85%	450	8.65
86% - 90%	475	9.13
91% - 95%	500	9.62
96% - 99%	525	10.10

Benefits are not paid for the first seven calendar days of the work-related disability unless the disability extends beyond 14 calendar days.

If the employee is disabled for more than 14 calendar days, compensation is payable for the first week of disability and continues during loss of time from work, payable every two weeks, as long as there is medical proof of disability.

Compensation Payments

There are certain types of injuries where compensation may be allowed even though there is no loss of time or earnings. An injury resulting in serious permanent facial, head or neck disfigurement or scarring, or one which causes permanent impairment of a digit or extremity, or loss of vision or hearing, entitles the injured employee to compensation based on a schedule established by law and, in accordance with the extent of impairment, without regard to time actually lost from work.

By law, if the employee was under 25 years of age at the time of injury and the employee's wages would be expected to increase—under normal conditions and usually in the same industry—that may be considered in arriving at the average weekly wage in certain cases of permanent disability. In such cases, the employer will estimate the employee's "wage expectancy" by completing form **WEC-62**.

Reimbursement of Wages Advanced by an Employer During Disability (Form C-107)

If an employer has made advance payments of compensation, or has made payments to an employee in like manner as wages during any period of disability, and desires reimbursement, the law permits deductions for reimbursement to be made from unpaid compensation due the employee.

Reimbursement is permitted only to the extent of compensation due for the period during which advance payments of compensation or wages were paid. However, if the claimant is awarded compensation for a permanent disability (schedule type or facial disfigurement), full reimbursement within the limits of the amount awarded may be obtainable.

The claim for reimbursement must be filed before an award of compensation is made by the WCB. Use form **C-107**, "Employer's Request for Reimbursement," for this purpose. This form should be completed in duplicate and filed with the nearest NYSIF office (see Page 26).

If the employer does not request or desire reimbursement, the employee is entitled to regular compensation benefits in addition to wages received.

Contested Cases – Claims for Reimbursement (Forms DB-470 & DB-471)

When a claim for workers' compensation is controverted on the grounds that an employee's disability is not caused by an accident that arose out of and in the course of employment or by an occupational disease, the employee may be entitled to benefits prescribed under the New York State Disability Benefits Law pending determination of the compensation claim.

To assure compliance with this regulation, **the workers' compensation insurance carrier is obligated to furnish the employer's disability benefits carrier with a copy of the Notice of Controversy (form C-7), indicating the grounds on which the claim is controverted.** Upon receipt of this form, the disability benefits carrier is required to begin payment of disability benefits, provided that other conditions of eligibility are satisfied.

Where the employer insures both workers' compensation and disability benefits liability with NYSIF, NYSIF automatically issues disability benefits payments in the event of controversy of a claim for workers' compensation. If NYSIF carries only the employer's workers' compensation insurance, it promptly provides the disability benefits carrier with the Notice of Controversy, or forwards copies directly to the employer with instructions to transmit them immediately to the disability benefits carrier.

All payments of disability benefits in these cases constitute a lien upon the proceeds of any award that may subsequently be made upon determination of the disputed workers' compensation claim. **The employer or insurance carrier making the payment of disability benefits must file claims for reimbursement (on prescribed form DB-470) with the WCB and the workers' compensation carrier before an award of workers' compensation benefits is made.**

Hearings

Ordinarily, hearing notices are sent by the WCB to NYSIF as the carrier for the employer. Employers are not obligated to attend unless a hearing notice is sent to the employer specifically requesting attendance, or unless NYSIF requests attendance.

Notice of Return to Work – Change in Employment Status (Form C-11)

Complete **Form C-11**, “Employer’s Report of Injured Employee’s Change in Employment Status Resulting from Injury,” as soon as the employment status of an injured employee is changed from that reported on form C-2, or on a previously-submitted form C-11. For convenience, employers may fill this form out electronically on NYSIF’s web site.

Change in employment status, if related to the injury, includes:

1. Return to work.
2. Discontinuance of work.
3. Decrease of regular hours of work.
4. Reduction of wages.

Complete form C-11 in triplicate; one copy should be sent directly to the WCB, one copy to the nearest NYSIF office (see Page 26), or assigned case manager, if known, and one copy retained for employer’s files.

Employment of Minors

Section 14-a of the Workers’ Compensation Law provides that:

1. Compensation, death benefits and awards to the Commissioner of Taxation and Finance in accordance with subdivision nine of Section 15 and Section 25-a, shall be double the amount otherwise payable if the injured employee at the time of the accident is a minor employed, permitted or suffered to work in violation of any provision of the labor law or in violation of any rule heretofore or hereafter adopted by the Board of Standards and Appeals pursuant to subdivision four of Section 133 of said law.

An employer who knowingly permits or suffers a newspaper carrier to work in violation of Section 3228 of the education law, shall be liable for increased awards provided by this section.

2. The employer alone, and not the insurance carrier, shall be liable for increased compensation, increased death benefits, or awards to the Commissioner of Taxation and Finance provided for by this section. Any provision in an insurance policy undertaking to relieve an employer from such increased liability shall be void.

Employment of Minors

3. A person over 18 years of age may apply for a certificate of age to the superintendent of schools or to an employment certificating officer. Upon application, a certificate of age, signed by the issuing officer and containing the name, date of birth, address and signature of the applicant shall be issued if he or she furnishes proof of age, such as is required for the issuance of an employment certificate. Such a certificate shall be conclusive evidence for an employer that the person has reached the age certified to therein, and the provisions of this section shall not apply to the employer of such person while the person is engaged in employment lawful for the age and sex as certified to in the certificate of age.

The foregoing provisions have been very strictly construed by the WCB and the courts. The penalty may vary from a few dollars to many thousands of dollars, depending entirely upon the extent of the injury. The employer cannot be relieved, regardless of good faith on his or her part, or deceit upon the part of the injured minor, or upon showing that the injury did not result from immaturity or inexperience of the employee.

Note especially that the employer alone, and not the insurance carrier, is liable for increased compensation, death benefits and other awards.

A certificate of age, if issued by the superintendent of schools or by an employment certificating officer, is conclusive evidence only of the age of the person certified to therein. It is still necessary to refer to the provisions of the labor law and rules of the Board of Standards and Appeals in order to determine what types of employment are permissible for such persons and under what circumstances they may be legally employed.

Information on "Laws Governing Employment of Minors" is available at www.labor.state.ny.us/workerprotection/laborstandards/workprot/minors.shtm.

All employers who employ minors are urged to study this information.

Second Injury Fund – Relief Under Section 15-8

Under prescribed conditions, Section 15, Subd. 8 of the Workers' Compensation Law reduces employer liability to specified limits in certain cases of permanent disability. This provision constitutes what is known as the second injury law, the purpose of which is to facilitate the employment of persons with prior disabilities by relieving employers and carriers of excess compensation costs due to previous permanent physical impairment regardless of the employer's knowledge about the existence of that impairment

"Permanent physical impairment" is defined as any permanent condition due to previous accident or disease, or any congenital condition which is, or is likely to be, a hindrance or obstacle to employment.

If an employee with a pre-existing permanent physical impairment sustains a second injury which itself produces a permanent disability, and if the combined permanent disability resulting from the pre-existing impairment and the subsequent injury is "materially and substantially greater" than that which would have stemmed from the second injury alone, the carrier pays whatever awards are made. If the subsequent injury results in the employee's death, and it is determined that either the injury or death would not have occurred except for the existence of the prior permanent physical impairment, the carrier pays all awards made to the employee's dependents.

There is no difference, whatsoever, in the amount of compensation payable to a claimant, or to his or her dependents, when the case comes under the provisions of the second injury law.

Limits on 'Claims for Reimbursement'

Workers' compensation reform legislation of 2007 mandates the phase out of certain Special Funds, as follows:

Filing of C-250 or C-251.3

1. No "claim for reimbursement" under §15-8 (the C-250) may be filed for accidents or disablements on or after 7/1/07.

2. No "claim for reimbursement" (C-250) may be filed after 7/1/10 (i.e. for older cases previously closed without findings of permanency but later reopened), and no written submissions or evidence in support of a claim for reimbursement may be submitted after 7/1/10 in any §15-8 claim regardless of date of filing.

Limits on 'Claims for Reimbursement'

3. Sections 15-8(ee) and 15-8(f) are amended to make these time limits applicable for Special Disability Fund claims in dust diseases. Section 14-6 is amended to apply the time limits to applications for reimbursement for payments made on account of concurrent employment from the Special Disability Fund (the C-251-3).

Monetary Reimbursement After §15-8 or §14-6 Is Established

All requests for reimbursement from the Special Disability Fund on established §15-8 and §14-6 claims must be submitted to the fund no later than one year from the payment of the expense.

Reopened Cases – Relief Under Section 25-a

Payments in certain old or reopened cases may be made out of a special fund, the Fund for Reopened Cases, to relieve the employer and the insurance carrier of direct obligation. Generally, under Section 25-a, these claims arise:

1. After a lapse of seven years from the date of the injury or death, where claim for compensation previously has been disallowed or the claim has been otherwise disposed of without an award of compensation, or

2. After a lapse of seven years from the date of injury or death, and also a lapse of three years from the date of the last payment of compensation.

The words "payment of compensation," as used above, mean the payment of wages or compensation to the employee for any loss of time due to the original injury.

Such payment may recreate for the employer or insurance carrier a liability which would otherwise be the obligation of the Special Fund for Reopened Cases. In this type of case, it is imperative that NYSIF be consulted prior to the payment of compensation or wages during disability, or authorization of medical care.

Discrimination Proceedings

The following is from Section 120 of the Workers' Compensation Law and Section 241 of the Disability Benefits Law, regarding allegations of employment discrimination against employees in connection with claims for benefits under either law.

Section 120 (Workers' Compensation Law)

"It shall be unlawful for any employer or his or her duly authorized agent to discharge or in any other manner discriminate against an employee as to his or her employment because such employee has claimed or attempted to claim compensation from such employer, or because he or she has testified or is about to testify in a proceeding under this chapter and no other valid reason is shown to exist for such action by the employer. Any complaint alleging such an unlawful discriminatory practice must be filed within two years of the commission of such practice."

Section 241 (Disability Benefits Law)

"...The provisions of Section 120 of this chapter shall be applicable as fully as if set forth in this article, except that penalties paid into the state treasury pursuant thereto under this article shall be applied toward the expenses of administering this article."

If the WCB finds a violation of either of these sections, the employer is liable for:

1. A penalty of \$100 to \$500
2. Restoration of an employee to employment, and
3. Compensation for any loss of wages arising out of such discrimination.

All of these liabilities are solely the responsibility of the employer and not of the insurance carrier.

The employer, and not the insurance carrier, is responsible for providing a defense. All such penalties shall be paid into the state treasury. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

An employer found in violation of this section, and the aggrieved employee, must report on the employer's compliance to the WCB within 30 days of receipt of a final determination. In case of a failure to report on, or comply with, an order or penalty of the WCB within 30 days after the order or notice of penalty is served – except where timely application to the WCB for a modification, rescission or review of such order or penalty has been filed under Section 23 of this chapter – the WCB chair may enforce the order or penalty in a like manner as an award of compensation.

Workers' Compensation Forms

Prompt filing is essential.

Forms to Be Filed by the Employer

- * C-2 Employer's Report of Work-Related Injury/Illness (see pages 3 & 4)
- * C-11 Employer's Report of Injured Employee's Change in Employment Status Resulting From Injury (see Page 11)
- C-107 Employer's Request for Reimbursement (see Page 9)
- * C-240 Employer's Statement of Wage Earnings (see Page 7)

Forms to Be Filed by the Claimant

- * C-3 Employee's Claim for Compensation
- C-3S Employee's Claim for Compensation (Spanish)
- C-3.1 Notice that Employee Elects Not to Choose Own Doctor (see Page 6)
- C-3.3 Limited Release of Health Information (HIPPA)
- C-257 Claimant's Record of Medical and Travel Expenses

Forms to Be Filed by the Health Care Providers

- * C-4 Doctor's Initial Report (see Page 6)
- C-4.2 Doctor's Progress Report
- C-4.3 Doctor's Report of MMI/Permanent Impairment
- * C-5 Eye Surgeon's Report (see Page 6)

Forms to Be Filed by the Insurance Carrier

- C-669 Notice to Chair of Carrier's Action on Claim for Benefits
- C-7 Notice that the Right to Compensation is Controverted (see Page 10)
- C-8/C8.6 Notice that Payment of Compensation for Disability Has Been Stopped or Modified
- C-8.1 Notice of Treatment Issues/Disputed Bill Issues
- R Carrier's Report On Rehabilitation to Chair, Workers' Compensation Board (see Page 2)

*Available at nysif.com; other forms listed available at www.wcb.state.ny.us

Disability Benefits

The Disability Benefits Law provides for the payment of cash benefits to employees who become disabled because of injuries or sickness that have no connection with their employment. New York State makes employers of one or more employees subject to the provisions of the Disability Benefits Law.

A covered employer must provide written notice to an employee who is absent due to non-work-related disability for more than seven consecutive days, of his or her rights under the Disability Benefits Law.

Form DB-271, "Statement of Rights," is available in English or Spanish by calling **1-866-NYSIFDB (697-4332)** or from your nearest NYSIF office (see Page 26). The notice must be furnished within five business days after the employee's seventh consecutive day of absence due to disability, or within five business days after the employer knows or should know that the absence is due to disability, whichever is later.

NYSIF offers low-cost disability benefits insurance to all employers and their employees, within the limits prescribed by law, and extends to this form of social insurance the expert, meticulous and prompt services which characterize its operations in the field of workers' compensation.

The following material is designed to provide you with a basic understanding of the conditions which regulate the payment of claims under the Disability Benefits Law. In addition, for holders of NYSIF disability benefits insurance policies, instructions are included to guide you to easy compliance with our claim filing requirements and procedures.

While the following fundamental claim information is of general application, the specific instructions dealing with claim filing and reporting, and some of the descriptive data on forms, are peculiar to NYSIF only. Employers whose disability benefits liability is not insured with NYSIF are advised to follow the instructions of their own carriers in connection with the reporting of claims and in all other matters relating to this type of insurance.

Notice and Proof of Disability – Reporting of Claims (Form DB - 450)

To claim benefits, the disabled employee is required to file form DB-450, “Notice and Proof of Claim for Disability Benefits,” with the employer within 30 days after disability begins. This form consists of two portions mandated by the WCB, and one portion required by the insurance carrier to process the claim. The first part must be filled out by or on behalf of the employee, the second part by the doctor, and the third part by the employer.

NYSIF provides specialized DB-450 forms to employers, claimants and providers upon request.

Immediately upon receipt of form DB-450 from the employee, NYSIF policyholders should complete part 3, the “Employer’s Statement” and mail the form to NYSIF’s Buffalo office (see Page 26), where all disability benefits claims are processed. **If your copy of form DB-450 does not include part 3, the “Employer’s Statement,” call 1-866-NYSIFDB for assistance.**

The disability benefits law provides that: “The first payment of benefits shall be due on the 14th day of disability, and benefits for that period shall be paid directly to the employee within four business days thereafter or within four business days after filing of required proof of claim, whichever is the later.” Penalties may be invoked for failure to comply with this requirement.

To avoid penalties, and to insure that benefits lawfully due are paid to disabled employees promptly, **it is imperative for the employer to complete the indicated portion of form DB-450 and mail it to NYSIF on the same day it is received from the employee. Copies are not to be sent to the WCB.**

In the event an employee uses means other than form DB-450 to notify the employer of a disability, the employee should be given NYSIF form DB-450 for immediate completion by the employee and doctor and employer. The employer should then forward the form to NYSIF’s Buffalo office for processing

In the event an employee mails an incomplete form DB-450 directly to NYSIF, the employer will be notified that NYSIF requires additional information including submittal of an “Employer’s Statement.”

NYSIFDB policyholders may obtain NYSIF’s specialized DB-450 forms at nysif.com or by calling 1-866-NYSIFDB, or from any NYSIF office (see page 26).

If an employee fails to file form DB-450 within 30 days after onset of the disability, the claim is not necessarily invalidated. However, the employee may lose some part of the benefits to which he or she might otherwise have been entitled, since no payments need be made for any period of disability which commenced more than two weeks before form DB-450 was submitted.

Under circumstances where it is shown that late filing was unavoidable, and that notice and proof of disability was provided as soon as was reasonably possible by the employee, the chairperson of the WCB is empowered to waive the time limit.

Should the employee fail to file DB-450 until more than 26 weeks after the disability commences, he or she completely forfeits the right to benefits for the period of disability on which the claim is based.

Eligibility for Benefits

To receive benefits in the event of disability, an employee must first attain "eligibility." *Eligibility is established if a non-occupational disability begins:*

- 1.** During employment with a covered employer for whom the employee has worked full-time at least four consecutive weeks and part-time at least 25 days immediately preceding disability, or
- 2.** At any time during employment with a covered employer, provided the employee was at the time he or she entered such employment:
 - (a)** Currently receiving unemployment insurance benefits, or
 - (b)** Currently receiving benefits from the Special Fund for the Disabled Unemployed.

An employee who acquires eligibility retains it for a period of four weeks immediately after employment terminates. If the employee resumes covered employment before expiration of this four-week period, the employee loses eligibility with respect to the former employer, but regains it immediately with respect to the new employer.

Payment of Disability Benefits

Disability benefits are payable to an eligible employee beginning with the eighth consecutive day of disability. Payments are due every two weeks thereafter, provided that disability continues, but may not exceed 26 weeks for any one period of disability. Nor may an employee receive more than 26 weeks of benefits during any 52 consecutive weeks, regardless of the number of periods of disability during this period.

Benefits are never paid for the first week of disability.

The weekly benefit rate for New York statutory disability benefits insurance is one half of the employee's "average weekly wage," but may not be greater than \$170 per week. The minimum rate is \$20 per week, unless the average weekly wage is lower than that amount, in which event the benefit rate is equal to the average weekly wage.

The "average weekly wage" is determined by dividing the employee's total gross wages for the eight payroll weeks of employment immediately preceding and including the last day worked prior to commencement of disability, by the number of those weeks in which the employee worked at least one day.

In certain cases, to insure that an equitable rate is established, other methods of computation are occasionally used, particularly if the employee was not employed by the last covered employer throughout the eight-week period.

Enriched disability benefits may be awarded to claimants whose employers purchase NYSIF disability benefits insurance at premium rates above statutory requirements.

Disabilities and Disability Periods for which Benefits Are Not Payable

Disability benefits are not payable:

- 1.** For any period of disability during which the employee is not under the care of a duly-licensed physician, podiatrist, dentist, chiropractor, psychologist or duly-certified nurse midwife.
- 2.** For any willfully self-inflicted injury or sickness, or for a disability incurred in the perpetration by the employee of an illegal act.
- 3.** For any day during which the employee performs any work for remuneration or profit.

4. For any day for which the employee is entitled to receive from the employer, or from a fund to which the employer has contributed, an amount equal to or greater than the benefits prescribed by the Disability Benefits Law.
5. For any period during which the employee normally would have been disqualified from receiving unemployment insurance.
6. For disability due to act of war, if such act occurs after June 30, 1950.
7. For any disability beginning before the employee is eligible for benefits.
8. For any period during which the employee receives unemployment insurance from any governmental source.
9. For any period during which the employee is entitled to receive workers' compensation or other statutory disability benefits, except for workers' compensation benefits payable for a permanent partial disability previously incurred.

These restrictions are listed for informational purposes only. Under no circumstances is the employer to intercept a claim.

In all cases where form DB-450 is filed by an employee, it should be transmitted to NYSIF, together with the "Employer's Statement," for processing and consideration. Any facts that may affect the determination of a claim should be indicated in the Employer's Statement.

Offsets Against Benefits

The normal weekly rate at which benefits are payable under the Disability Benefits Law is reduced by the amounts which the employee may receive for the same disability, or be entitled to, under the following programs:

1. Any benefit paid or payable under any annuity or pension policy of an employer, if the employer has contributed to the cost of such annuity or pension.
2. Any permanent disability benefit or annuity paid or payable under a government program, except a veteran's disability program.

Reimbursement of Benefits Advanced by an Employer During Disability

If an employer has made advance payments of benefits or has made payments to an employee in like manner as wages during any period of disability for which such employee is entitled to disability benefits, *the employer is entitled to reimbursement by the insurance carrier out of any benefits due or to become due for the existing disability, provided that a claim for reimbursement is filed with the carrier prior to commencement of its payments.*

If an employer issues payments to a disabled employee with the understanding that such payments are made in whole or in part as advanced benefits, the employer should make this intent clear to the employee and specify the amounts that constitute the benefits advanced.

A request for reimbursement may be made with the Employer's Statement on form DB-450. The law provides no disability benefits payments for any day for which full wages are paid.

Contested Disability Benefits Claims

If an employee's claim for disability benefits is rejected, in whole or in part, the insurance carrier is required to inform the employee of its decision and the reasons therefor by mailing to the employee form **DB-451**, "Notice of Rejection of Claim for Disability Benefits."

When an employer or carrier rejects a claim for benefits under the Disability Benefits Law, written notice of the rejection must be mailed within 45 days of receipt of proof of disability. If the employee disagrees with the carrier's action, an appeal may be filed within 26 weeks by completing the reverse side of form DB-451, under the heading "Claimant's Request for Review," stating fully the grounds upon which the appeal is based. Two copies of the form are to be mailed to the Workers' Compensation Board, Disability Benefits Bureau, 100 Broadway-Menands, Albany, New York 12241. A third copy should be retained by the employee for his or her record.

Hearings in disability benefits cases are scheduled only when disputes arise with respect to the benefits payable. Where an employee files a “Request for Review” of a carrier’s rejection of a claim, the WCB will set a hearing date and designate an administrative law judge to determine the issue. Either party may present evidence and be represented by counsel at any hearing.

Contested Workers’ Compensation Claims

There may be cases in which, while a pending claim for workers’ compensation is being controverted, an eligible employee may be entitled to disability benefits.

Although an employer may know that a claim for workers’ compensation is pending for the same disability, the employer should complete the “Employer’s Statement” immediately upon receipt of form DB-450 from the employee, or upon request by NYSIF.

Benefits for the Disabled Unemployed

The relation between disability benefits and contested workers’ compensation claims is fully described beginning on Page 14 of this guide. Under prescribed conditions of law, an unemployed worker may obtain benefits in the event of disabling injury or sickness. A special fund, administered by the WCB, provides such benefits if the employee is not eligible to receive benefits from any other source.

Generally, special fund benefits are payable only to such unemployed workers whose disability commences more than four weeks following termination of employment and who are receiving unemployment benefits. Workers’ compensation policies extend protection over a span of four weeks subsequent to employee work stoppage.

An employee who claims benefits from the special fund is required to **file form DB-300**, not form DB-450, with the WCB at the address stated thereon. If benefits are payable in such a case, they will be issued directly by the WCB. **The carrier is not involved in these payments, but, by law, the WCB may call upon the employer to supply employment data and information. Requests of this must be acted upon immediately.**

Disability Benefits Forms

Prompt filing is essential.

Forms to Be Used by the Employer

- DB-271S Statement of Rights (see Page 17)
- DB-450 Employer's Statement - Part 3 (see Page 18)

Forms to Be Filed by the Disabled Employee

- * DB-450 Notice and Proof of Claim for Disability Benefits by Employed Claimant (see Page 18)
- * DB-300 Notice and Proof of Claim for Disability Benefits by Unemployed Claimant (see Page 23)

Forms to Be Filed by the Insurance Carrier

- DB-451 Notice of Rejection of Claim for Disability Benefits (see Page 22)
- DB-470 Preliminary/Final Claim for Reimbursement of Benefits Paid under the New York Disability Benefits Law (see Page 10)

*Available through nysif.com other forms listed available at www.wcb.state.ny.us

Workers' Compensation Board 877-632-4996

Albany

100 Broadway-
Menands
Albany, NY 12241
866-750-5157

Binghamton

State Office Building
44 Hawley Street
Binghamton, NY 13901
866-802-3604

Brooklyn

111 Livingston Street
Brooklyn, NY 11201
800-877-1373

Buffalo

107 Delaware Avenue
Buffalo, NY 14202
866-211-0645

Hauppauge

220 Rabro Drive,
Hauppauge, NY 11788
866-681-5354

Hempstead

175 Fulton Avenue
Hempstead, NY 11550
866-805-3630

Manhattan

215 W. 125th Street
New York, NY 10027
800-877-1373

Peekskill

41 North Division Street
Peekskill, NY 10566
866-746-0552

Queens

168-46 91st Avenue
Jamaica, NY 11432
800-877-1373

Rochester

130 West Main Street
Rochester, NY 14614
866-211-0644

Syracuse

935 James Street
Syracuse, NY 13203
866-802-3730

**Advocate for
Business**

800-628-3331

**Advocate for
Injured Workers**

800-580-6665

**Fraud Referral
Hotline**

888-363-6001

Office of Appeals

877-258-3441

**Health Provider
Administration**

800-781-2362

**Bureau of
Compliance**

866-298-7830

Disability Benefits

800-353-3092

NYSIF Offices

Workers' Compensation Claims & Service 888-875-5790

Albany

1 Watervliet Avenue Ext.
Albany, NY 12206-1649
518-437-6400
Augusto Bortoloni,
Business Mgr.
Christopher Rattazzi,
Claims Mgr.

Binghamton

Glendale Technology Park
Building 16
2001 Perimeter Rd. East
Endicott, NY 13760
607-741-5000
Kathleen Campbell,
Business Mgr.
Joseph Pavlovich,
Claims Mgr.

Buffalo

225 Oak Street
Buffalo, NY 14203
716-851-2000
Ronald Reed,
Business Mgr.
Edward Fries,
Claims Mgr.

Nassau

8 Corporate Center Dr.,
2nd Fl.
Melville, NY 11747-3166
631-756-4000
Cliff Meister,
Business Mgr.
Eric Parsons,
Claims Mgr.

Rochester

100 Chestnut Street
Rochester, NY 14604
585-258-2000
Lisa Ellsworth,
Business Mgr.
Joseph Stanistreet,
Claims Mgr.

Suffolk

8 Corporate Center Dr.,
3rd Fl.
Melville, NY 11747-3129
631-756-4300
Catherin Carillo,
Business Mgr.
Tony Hawkins,
Claims Mgr.

Syracuse

1045 7th North Street
Liverpool, NY 13088
315-453-6500
Patricia Albert,
Business Mgr.
Michelle VanCamp,
Claims Mgr.

White Plains

105 Corporate Park Dr.,
Suite 200
White Plains NY 10604
914-701-2120
Carl Heitner,
Business Mgr.
Trevor Jackson,
Claims Mgr.

New York City

199 Church Street
New York, NY 10007

Bronx/Queens

212-587-7390
John DeFazio,
Business Mgr.
Martha Golden,
Claims Mgr.

Brooklyn/Staten Island

212-587-9208
Lorna Morris,
Business Mgr.
Ryan McGrath,
Claims Mgr.

Lower Manhattan

212-587-7389
Leslie Javorsky,
Business Mgr.
Louis Vassallo,
Claims Mgr.

Upper Manhattan

212-312-0070
John Zenkewich,
Business Mgr.
Rita Fenton,
Claims Mgr.

Disability Benefits Claims & Service 866-697-4332

(specify **DB Claims**
or **DB Underwriting**)
15 Computer Dr. West
Albany, NY 12205-1690

E-mail:

DB-Claims email **box298@nysif.com**
DB-Underwriting email **box398@nysif.com**

Fax:

DB-Claims **518-437-5201**
DB-Underwriting **518-437-5278**