

**New York State
Workers' Compensation Board**

The Licensed Representative Examination Process

I. Written Examination

In order to become a New York State Workers' Compensation Board Licensed Representative, an individual must take and pass the written examination with a grade of 70 percent or better. This exam will test the prospective Licensed Representative's knowledge of the Workers' Compensation Law, Disability Benefits Law, Volunteer Ambulance Workers' Benefit Law, Volunteer Firefighters' Benefit Law, regulations adopted by the Workers' Compensation Board and published in Title 12 of the New York Codes of Rules and Regulations, and applicable case law.

Examinees will not be allowed to utilize any reference books or written material during the examination.

The written examination consists of two parts:

Part 1 consists of 25 multiple choice questions derived from:

- I. Any provision of the Workers' Compensation Law, including the Disability Benefits Law, as amended and published in the most recent update of McKinney's Consolidated Laws of New York as of the cutoff date for the examination.
- II. Any provision of the Volunteer Firefighters' Benefit Law and the Volunteer Ambulance Workers' Benefit Law as amended and published in the most recent update of the McKinney's Consolidated Laws of New York as of the cutoff date for the examination.
- III. Any provision of the Board's Rules and Regulations as published in the New York Code of Rules and Regulations and in effect as of the cutoff date for the examination.
- IV. Relevant decisions of the Appellate Division and the Court of Appeals interpreting the above enumerated provisions.

Part 2 requires the completion of four essay questions.

II. Sample Questions

Outlined below are sample questions of the examination:

Part 1 – Multiple Choice (Each Question is worth 2 Points)

1. An injured employee is not entitled to which of the following benefits under the Workers' Compensation Law:
 - A. Chiropractic treatment.
 - B. Podiatric treatment.

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- C. Replacement of personal property lost as a result of the accident.
- D. Reasonable travel expenses to and from the treating physician.
- E. Prosthetic devices.

Answer: C

- 2. If an employer fails to provide workers' compensation coverage as required by law, an injured employee:
 - A. May elect either to claim workers' compensation benefits or sue the employer for damages in a court of law, subject to the customary defenses in negligence suits.
 - B. May elect either to claim workers' compensation benefits or sue the employer for damages in a court of law, but if he sues in a court of law, he need not prove the absence of contributory negligence, and the employer may not plead as a defense that the injury was caused by the negligence of the a co-employee or that the employee assumed the risk of his employment.
 - C. Must sue the employer in a court of law in negligence.
 - D. May obtain both workers' compensation benefits and recover damages based on negligence in a suit against the employer in a court of law.

Answer: B

- 3. Under which of the following circumstances would an employer be liable for workers' compensation benefits:
 - A. The claimant's injury was caused solely by his intoxication while on duty.
 - B. The claimant's injury was caused by the carelessness of a co-worker.
 - C. The claimant's injury was caused solely by his willful intention to bring about the injury of another.
 - D. None of the above.

Answer: B

- 4. The rules promulgated under the Workers' Compensation Law contain guidelines regulating the use of advertising by licensed representatives. Which of the following items is not specified as a necessary requirement of such advertising?

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- A. Name of the licensed representative.
- B. Office address of the licensed representative.
- C. Year of issuance of license to the licensed representative.
- D. Individual's identity as Workers' Compensation licensed representative.

Answer: C

5. In a compensable death claim, the surviving spouse may receive weekly benefits until he/she:
- A. Turns 65 years old or receives social security survivor benefits.
 - B. Begins working or receives social security retirement benefits.
 - C. Remarries or dies.
 - D. A and C, but not B.
 - E. B and C, but not A.

Answer: C

6. Assume a claimant sustains a compensable on-the-job injury under covered employment. Under which of the following circumstances may the claimant's entitlement to medical treatment be terminated?
- A. When the claimant is permanently discharged from the employment in which the claimant was injured.
 - B. When the claimant is able to return to work.
 - C. When medical fees reach the total sum of \$50,000.
 - D. When the claimant permanently moves to a foreign country.
 - E. None of the above.

Answer: E

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Part 2 – Essays (Each Essay Question is worth 12.5 Points with the possibility of additional bonus points)

Sample Question #1

The claimant, a 24-year old male, was employed during the day as a custodian with the Smith Intermediate School. During the evening, he had a part-time job as a sales clerk with the XYZ Department Store. On December 15, 1995, while working for XYZ Department Store, he fell to the floor, injuring his back. The accident happened while he was attempting, during his regular work time, to do a handstand on the arms of a chair. The claimant and his co-workers regularly did physical exercise during their break time, including push-ups and chin-ups. The employer knew of this practice and permitted it. At the time of the accident, the claimant received an average weekly wage of \$180 from his job with XYZ Department Store and \$300 from his job with the Smith Intermediate School. The Board found the claimant to have a 50% earning capacity and he was determined to have a non-scheduled permanent partial disability classification. In a fully developed essay, please answer the following questions:

1. Did the accident arise out of and in the course of the employment? Give your reasons, for and against.
2. If the claimant were entitled to medical benefits as a result of the accident, which employer would be liable for these benefits?
3. Assume the claim is compensable. What wages should be used to determine the claimant's average weekly wage? Give your reasons for your answer.
4. If the claimant's day job was with the U.S. Postal Service instead of Smith Intermediate School, would your answer to question #3 above be different? Explain your answer.
5. Discuss any other factor(s) that might impact the claimant's final average weekly wage determination.
6. Assume the claimant is not currently working. Based on this record, what would be the amount of the maximum weekly benefit to which the claimant would be entitled?
7. If the XYZ Department Store, as a self-insured employer, was paying the claimant more compensation than if it were the sole employer, would it be entitled to reimbursement of the excess amount? If so, from whom?

Sample Response #1

Reference Case: Aucompaugh v. General Electric, 111 A.D. 2d 1073 (Third Dept. 1985); Minkowitz Practice Commentaries – WCL §14

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1. The accident did arise out of and in the course of the claimant's employment. The carrier may claim this injury did not arise out of or in the course of the claimant's employment since his attempt to perform a handstand on the arm of a chair was not part of his job duties as a sales clerk and "exercising" was only permitted on breaks, not during regular work time. This is typically known as the "horseplay" defense. However, this defense will likely fail since the employer knew of and permitted employee break time exercises. [2 points]
2. If the claim is held compensable, the XYZ Department Store will be liable for the claimant's medical bills since his injury occurred while "working" for the store. [1 point]
3. Under WCL §14(6), the wages from concurrent employments are combined to determine the average weekly wage. Since the claimant worked days at one job and evenings at the other, he held both jobs concurrently (not consecutively) and is, therefore, eligible to have his earnings from both jobs combined to determine his proper average weekly wage. The proper average weekly wage in this case is \$480, \$300/week from the claimant's school employment plus \$180/week from his store employment. [4 points]
4. The answer to question #3 would be different since federal employers are not "covered" under New York's Workers' Compensation Law and, therefore, the wages earned from the U.S. Postal Service would not be factored into the equation. [See WCL §14(6).] [1 point]
5. Since the claimant was under 25 at the time of his injury and he has been determined to have a permanent disability, he is eligible for wage expectancy consideration under WCL §14(5). [2.5 points]
6. Since the claimant's proper average weekly wage is \$480, his maximum benefit would be two-thirds of this amount or \$320/week. [2 points]
7. If the XYZ Department Store was paying the claimant more compensation than if it were the sole employer, i.e., more than \$200/week, the store would be entitled to reimbursement of the excess from the Special Disability Fund under WCL §14(6) and 15(8)(1). [1 point]

Sample Question #2

In 1986, in response to an increase in the number of lengthy employee absences, ABC Company instituted a policy of reducing the vacation time of any employee who had been absent four weeks or more during the preceding year by an amount proportional to the length of the absence. ABC Company was a relatively small company of about 25 employees. This vacation reduction policy was applied to every employee with absences exceeding four weeks duration.

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In 1992, Bill Jones sustained a compensable injury while working for ABC Company. Due to his injuries sustained, Bill was off work for an extended period of time and had his vacation time reduced as a result of ABC's vacation reduction policy. Bill filed a discrimination claim with the Workers' Compensation Board claiming ABC's vacation reduction policy violated WCL §120.

Joe Smith, comptroller for ABC during the relevant time period, testified that the policy was instituted in an attempt to recover work time lost due to absences and was applied evenhandedly to all employees based solely on the amount of work time missed. He further testified that he could not identify any employee whose vacation time had been decreased who had not received workers' compensation or disability benefits and 90% of those affected by the policy had suffered job-related injuries. He also testified that the policy was not applied when an employee had intermittent absences totaling a period of four weeks. Reductions were imposed only if there was an uninterrupted absence of at least four weeks duration.

In a well-developed essay, answer and discuss the following:

1. Set forth the argument you would make in support of Bill Jones' WCL §120 discrimination claim.
2. Set forth the arguments you would make in defense of ABC Company.
3. Assume Bill Jones wins his claim and ABC's vacation reduction policy is found to violate WCL §120,
 - a. What remedy or relief could the Board order for Bill Jones?
 - b. Would ABC be liable for any fines or penalties? If so, how much are they?
 - c. If ABC is fined or penalized, will ABC's insurance company have to pay the fines or penalties? Explain your answer.
4. Who pays the fees of the claimant's legal representative in a successful WCL §120 discrimination claim? Who determines the amount of such fees?

Sample Response #2

Reference Case: *Assem v Key Food Stores*, 216 A.D. 2d 806 (Third Dept. 1995) leave to appeal den. 87 NY 2d 802.

1. One should emphasize the following in support of Bill Jones' discrimination claim: ABC's vacation reduction policy is applied only to those who have uninterrupted absences of at least four weeks and is not applied to employees with intermittent absences of more than four weeks. This uninterrupted vs. intermittent distinction causes the policy

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- to impact employees with workers' compensation claims in a disproportionate, discriminatory fashion. This is borne out by the fact that 90% of those affected by the policy have suffered an on-the-job injury. As further proof of the discriminatory impact of the policy, Joe Smith, ABC's comptroller, could not identify any employee whose vacation time had been reduced who had not received workers' compensation or disability benefits. [4 points]
2. In defense of ABC Company, one should argue:
- a. The vacation reduction policy is applied evenhandedly to all employees based solely on the amount of work time missed.
 - b. ABC Company is a relatively small company, and, therefore, the company needs flexibility in regulating employee absence issues. [2 points]
3. Bill Jones wins his claim and ABC's vacation reduction policy is found to violate WCL §120,
- a. The Board could order ABC to restore Bill Jones to the position or privileges he would have had but for the discrimination and that he be compensated for any loss of compensation suffered as a result of the employer's discriminatory action. (1 bonus point.) In Bill Jones' case, the relief the Board could order would be the restoration of Bill Jones' vacation days that were eliminated as a result of ABC's vacation reduction policy. [1.5 point]
 - b. ABC would be liable for a penalty of \$100-\$500. [1 point]
 - c. ABC's insurance company will not have to pay any fines or penalties imposed. WCL §120 specifies the employer alone, and not their carrier, is liable for such penalties and further provides that any insurance contract provision, which relieves an employer from the payment §120 penalties, is void. [3 points]
4. The guilty employer pays the fees of the claimant's legal representative in a successful §120 claim. The Board determines the amount of such fees. [1 point]

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III. Recommended Study Materials

Candidates are expected to have a working knowledge of the Workers' Compensation Law in order to successfully complete this exam. In response to numerous requests, we are including for your information some suggested study materials. However, candidates are also encouraged to use other study material that they feel would be helpful in the successful completion of the exam.

<u>Resource</u>	<u>Contact</u>
NYS Workers' Compensation Law Handbook, 2008 Edition \$125.00 (book only) \$197.00 (book w/CD ROM) (plus shipping, handling & tax)	Lexis Nexis Matthew Bender 1275 Broadway Albany, NY 12204-2694 1-800-223-1940
McKinney's Consolidated Laws of New York Annotated Book 63 A (pamphlet) - \$29.00* Book 63 B (1 volume) - \$135* Book 64 (5 volumes) - \$135 ea.* *Plus tax	Thomson West PO Box 64833 St. Paul, MN 55164 1-800-328-4880
New York Workers' Compensation Law Reporter (\$735 plus shipping, handling & tax)	LRP Publications 747 Drescher Road, P. O. Box 980 Horsham, PA 19044-0980 215-784-0860/1-800-341-7874
Court of Appeals Decisions and Appellate Division	See Page 10 for Web Site

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IV. Withdrawing from Exam

Withdrawals must be made **in writing** to the Licensing Unit at 328 State Street, Room 333, Schenectady, NY 12305 and must include the reason the applicant is not able to take the exam. If the letter of withdrawal is received **no later than two weeks before** the scheduled date of the exam, the fee is automatically credited to the next exam. **No refunds will be given for any reason.** If the applicant fails to take the second examination, the fee is forfeited.

V. Taking the Exam

All applicants must bring an official picture ID to the exam, which will be checked before entering the exam room. Applicants must bring pens (no pencils are to be used on the exam) to answer the exam questions/essays; applicants are also encouraged to bring a calculator. A quiet lunch and drink is permitted since there will be no lunch break.

While we attempt to provide ideal conditions at the test site, there are times when certain circumstances develop that are beyond our control, e.g., construction, heating or cooling problem at the site, etc. It is best to be prepared, so it is suggested that you dress in layers, and bring a sweater or jacket. Applicants may also wear earplugs if they choose; however, headphones are not permitted.

VI. Orientation for Successful Candidates

The orientation encompasses the Workers' Compensation Procedures, Ethics and Responsibilities. Topics will include:

Claim Filing	Self-Insurance
Medical Exams and Reports	Disability Benefits
Hearing Process and Awards	Other Related Topics
Appeals and Reopenings	

Successful examination candidates will also be required to observe a minimum of eight hours of Workers' Compensation hearings in the district office nearest the candidate.

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VII. Interview

A committee of the Board will interview all successful examination candidates. Character, fitness, and knowledge of the Workers' Compensation Law and Rules and Regulations will be considered.

Questions regarding the examination process should be directed to:

Workers' Compensation Board
Licensing Unit
328 State Street – Room 333
Schenectady, NY 12305
1-800-664-2379

Court of Appeals and Appellate Division

Web Address: www.courts.state.ny.us

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