

Updated Guidance: Labor Market Attachment

On March 7, 2020, Governor Andrew M. Cuomo issued Executive Order 202, declaring a state disaster emergency in the State of New York due to the COVID-19 pandemic. Due to the resulting disruption to normal economic activity in New York State, the Workers' Compensation Board (Board) issued a policy directive shortly thereafter entitled **Labor Market Attachment During COVID-19 Pandemic**. This directive concerns claimants who have an obligation to demonstrate attachment, resulting from a Board decision, or when it is an issue being adjudicated before the Board, or when the carrier raises it as an issue in the context of a permanent partial disability determination. This directive acknowledged the difficulty that would be encountered by claimants in conducting successful job searches and participating in job placement or vocational rehabilitation due to these restrictions. The Board directed that during the pendency of the state disaster emergency, injured workers would not be required to demonstrate labor market attachment in order to maintain entitlement to partial disability payments.

On June 23, 2021, Governor Cuomo announced that the state disaster emergency necessitated by the COVID-19 pandemic expired on June 24, due to New York State's success in ensuring vaccinations of eligible adults and consistently declining hospitalization and positivity rates.

Consistent with Governor Cuomo's announcement and the end of the state disaster emergency, the Board will permit carriers and other payers to raise the issue of labor market attachment in workers' compensation claims beginning on **August 16, 2021**. Partially disabled claimants who are under an obligation to demonstrate attachment should make efforts to attach to the labor market as soon as practical. This means:

- Partially disabled claimants will be required to demonstrate a good faith, independent job search, or participation in job placement or vocational rehabilitation, that is appropriate given the current Covid-19 infection rate and resulting limitations in mobility. Partially disabled claimants may utilize the Department of Labor's Workforce1 services once it is re-opened to the public.
- Such efforts should include use of online job placement and vocational rehabilitation services, as well as online and/or phone applications. Online and phone interviews should be accepted. In-person job searches are not presently required. When an employer is in compliance with local board of health guidance relating to business operations in the state, a job offer may not be refused solely because it requires in-person attendance at work.

When determining issues relating to labor market attachment, the Workers' Compensation Law Judge will take into account the special circumstances each claimant faces, including difficulties and obstacles that continue with respect to job searches, job placement, or vocational rehabilitation. The Board will apply a standard that is mindful of the statewide Covid-19 infection rate and resulting limitations in mobility.

If you have questions or need additional information, please contact the Office of General Counsel at officeofgeneralcounsel@wcb.ny.gov or the Office of the Advocate for Injured Workers at AdvInjWkr@wcb.ny.gov.

The New York State Workers' Compensation Board protects the rights of employees and employers by ensuring the proper delivery of benefits and by promoting compliance with the law. To learn more about the Workers' Compensation Board, visit wcb.ny.gov.