

Regulatory Impact Statement (RIS)

1. Statutory Authority

The Chair of the Workers' Compensation Board (Board) is authorized to amend 12 NYCRR 302-1.6. The Board's authority is derived from Workers' Compensation Law (WCL) § 117(1), which authorizes the Chair to adopt reasonable regulations consistent with and supplemental to the provisions of the WCL and the Labor Law.

2. Legislative Objectives

WCL 117(1) authorizes the Chair to adopt reasonable regulations to supplement the WCL. The WCL was enacted for socio-economic remediation purposes to protect workers and their dependents from economic hardship in case of injury on the job (*see Matter of Post v Burger & Gohlke*, 216 NY 544 [1916]; *see also Matter of LaCroix v Syracuse Exec. Air Serv., Inc.*, 8 NY3d 348 [2007]). The proposed rule will allow law student and legal interns through the state, regardless of their association with a legal aid organization, to represent parties in Board proceedings upon approval of the appellate division in which the law school sits and the claimant's permission. The Board expects that these amendments will lessen the economic hardship to claimants insofar as the amended regulation will allow previously unrepresented claimants to retain adequate legal counsel. The Board anticipates that claims will be resolved faster with the assistance of a legal intern, as opposed to when a party is unrepresented. As a result, the Board expects that injured workers will receive the benefits they are due more expeditiously as a result of the proposed amendment.

3. Needs and Benefits

The purpose of the proposed rule is to allow a more expansive group of law school and legal interns to represent parties of interest in Board proceedings. Currently, the regulations only allow legal or law school interns, as defined in Third Department Appellate Division rules (22 NYCRR 805.5[b]), to represent a party of interest before the Board if the intern has been designated as a legal or law school intern by a legal aid organization. The proposed amended regulation would allow law school and legal interns statewide to represent parties before the Board by allowing the appellate division in which the intern's activities are taking place to permit law school graduates and senior law students to practice law, thereby expanding the appellate division departments which may authorize law student interns. Additionally, the term "legal aid organization" is defined to include any organization with a program that provides assistance to persons who are financially unable to pay for legal services and are eligible to qualify for free legal services in accordance with that program's guidelines.

The Board believes that such amendments are necessary to decrease the total number of unrepresented claimants appearing in Board proceedings, particularly where no indemnity benefits are sought and the only issue is entitlement to medical treatment.

Upon review of current internal records, the Board finds that, in 2016, there were 247 unrepresented claimants with cases pending before the Board, in which the claimant did not seek indemnity benefits. This number is largely consistent with past years; in 2014 there were 229 such claimants and in 2015 there were 302. It is the Board's position that the legal assistance provided by a law school or legal intern will help many of these unrepresented claimants navigate the workers' compensation law and the adversarial hearing process.

4. Costs

The proposed rule will not impose costs on any party. The Board expects that the costs to the agency will be negligible, however. The proposed regulation will permit the Board to directly hire and supervise law school and legal interns, who will represent parties of interest in Board proceedings. The Board expects to hire such legal interns by working with area law schools to arrange a work-for-credit program. As such, no monetary compensation will be provided to the legal interns.

Local Government Mandates

The proposed regulation does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

5. Paperwork

The proposed regulation does not impose any reporting requirements. Claimants will be required to complete a form, consenting to be represented by a legal intern. The Board does not expect such paperwork to be onerous, and it is necessary to ensure the claimant fully understands his or her rights.

6. Duplication

22 NYCRR 805.5(b) allows law students who have completed at least two semesters of law school and law school graduates appointed as law interns to engage in certain legal activities, including rendering legal services in contested proceedings before administrative agencies when under immediate supervision. 12 NYCRR 302-1.6(b) specifically permits law school and legal interns, as defined in 22 NYCRR 805.5(b), to "represent any party in interest before the [B]oard, on a particular matter[.]" However, 12 NYCRR 302-1.6(b), as currently written, only allows those law school and legal interns who have been designated by a legal aid organization to represent parties of interest before the Board. The proposed rule therefore does not duplicate any relevant rules or legal requirements, but only expands those who may qualify as law school and legal interns to represent claimants in Board proceeds.

7. Alternatives

No significant alternatives to the proposed regulation were considered.

8. Federal Standards

There is no federal standard associated with or similar to the proposed regulatory amendment. As such, the proposed rule does not exceed any minimum standards set forth by the federal government.

9. Compliance Schedule

The proposed rule does not impose obligations on any party. The amendment would merely allow an expanded category of law student and legal interns throughout the State of New York and regardless of their association with a legal aid organization to represent parties in Board proceedings. Accordingly, there is no compliance schedule.