

NEW YORK STATE WORKERS' COMPENSATION BOARD



Arbitration of Paid Family Medical Leave

Request for Information (RFI)

This is NOT a solicitation for bids

New York State Workers' Compensation Board
328 State Street
Schenectady, NY 12305
WCBContracts@wcb.ny.gov

Issue Date October 12, 2016

TABLE OF CONTENTS

Section	Title	Page
1	Introduction	3
1.1	Issuing Office	4
1.2	Registering Interest	4
1.3	Respondent Questions	4
1.4	RFI-Related Meeting	5
1.5	Response Clarifications	5
1.6	Incurring Costs	5
1.7	Disclosure of RFI Response Contents	5
1.8	Contact with Employees	6
2	Project Overview	6
3	Response Contents	7

1 INTRODUCTION

The mission of the Workers' Compensation Board ("WCB" or the "Board") is to serve the workers and employers of New York State by fairly and promptly administering provisions of the Workers' Compensation Law ("WCL"), the Disability Benefits Law ("DBL"), the Volunteer Fire Fighter's Benefit Law, and the Volunteer Ambulance Workers Benefit Law. In 2016, the WCL was amended to add Paid Family Leave ("PFL") to the DBL. Pursuant to the newly added PFL, the Chair of the Board is authorized at section 221 of the WCL, to select a dispute resolution process for resolution of disputes regarding PFL and adopt regulations related to resolution of these disputes.

This is a Request for Information ("RFI") issued by the WCB. This RFI requests responses from entities with proven experience in alternative dispute resolution processes, including arbitration. There will not be a contract award for alternative dispute resolution services directly resulting from this RFI. The purpose of the RFI is to permit the Board to gather information as to available alternative dispute resolution processes in order to assist the Board in the creation of regulations directing a method of alternative dispute resolution for PFL disputes, and to assist in the possible future selection of an alternative dispute resolution provider.

Respondents to this RFI may be invited to have further discussions with the Board, related to the information contained in this RFI and to the information received in response to this RFI. Any decision to subsequently issue a Request for Proposal ("RFP") for such services will be at the sole discretion of the Board, and the Board is under no obligation to initiate such an RFP.

A response to this RFI does not bind or obligate the respondent or the Board to any agreement of provision or procurement of the services referenced in response to this RFI. No contract can or will be awarded based on any submissions received in response to this RFI. Any decision to subsequently procure services referenced in response to this RFI will be at the sole discretion of the Board, and the Board is under no obligation to initiate a procurement for such services.

Since the RFI is designed as a tool to collect information and will not result in a procurement contract, it does not fall under the requirements of the State Finance Law §§139-j and 139-k (the Procurement Lobbying Law) and there is no restricted period. However, the Board requests that you direct your questions and responses in writing to the individual identified in the relevant sections below. The Board and the State of New York thank you for your assistance during this information collection process.

1.1 Issuing Office

Courtney Souza is the issuing officer and the sole point of contact for the Board for matters relating to this RFI. All responses and accompanying documentation should be submitted to:

Agency: New York State Workers' Compensation Board
Address: 328 State Street, Schenectady, NY 12305
Attention: Courtney Souza, Rm 331-69
Phone No.: 518-388-1456
E-mail: WCBcontracts@wcb.ny.gov

The Board expects responses in the format specified in Section 3, Response Requirements, of the RFI. All responses should be addressed to the Issuing Officer Courtney Souza. Responses should be emailed to WCBcontracts@wcb.state.gov and should be received **no later than 2:00 p.m. on November 22, 2016.**

Key Event	Date
Release of RFI	October 12, 2016
Respondent Questions Due	October 26, 2016
Reply to Respondent Questions	November 8, 2016
Written RFI Response Due	November 22, 2016
RFI-Related Meetings	December 5, 2016 - December 16, 2016

1.2 Registering Interest

Potential respondents should register their interest in the RFI in writing (via letter or e-mail) with the Issuing Officer prior to the deadline for submission of questions. Respondents are encouraged to submit questions if they need clarification or for any other reason concerning this RFI. Submitted questions and the Board's answers to those questions will only be distributed to those vendors who register their interest.

1.3 Respondent Questions

All inquiries concerning this RFI should be submitted via e-mail to: Courtney Souza (WCBcontracts@wcb.ny.gov), with the e-mail subject heading "RFI-inquiries". Written questions will be accepted until 5:00p.m. on October 26, 2016. Should Courtney Souza not be available, Tonya Sanderson is the alternate contact (WCBcontracts@wcb.ny.gov).

Questions and answers to all questions will be compiled and shared with all vendors that have either submitted questions or registered their interest in the RFI. The Board will answer all questions as quickly as possible. All questions will be answered **no later than 5:00 p.m. on November 8, 2016.**

1.4 RFI-Related Meeting

The Board may request to meet with a respondent to discuss their response to the RFI. The Board will provide notification to respondents as soon as possible after receipt and evaluation of their RFI response, if such a meeting is requested.

1.5 Response Clarifications

The Board may seek additional information (clarifying or otherwise) following the receipt and consideration of RFI Responses. This may be through phone discussions, meetings or correspondence, and may be with an individual respondent, a subset of respondents, or all respondents.

1.6 Incurring Costs

The Board is not liable for any costs incurred by respondents in preparation and production of a response to this RFI.

1.7 Disclosure of RFI Response Contents

To the extent permitted by law, any respondent's response to this RFI will not be disclosed, except for purposes of evaluation, and subsequently as may be required to substantiate any determinations resulting from such evaluation. All materials submitted, become the property of the Board and may be returned only at the Board's sole discretion. The Board reserves the right to use any and all non-proprietary information presented in any response to the RFI.

If respondent believes that any information in its response constitutes a trade secret and wishes such information not to be disclosed if requested by a member of the public pursuant to the New York State Freedom of Information Law, Article 6 of the Public Officers Law, the respondent shall submit in its proposal a letter, specifically identifying by page number, line, or other appropriate designation, that information which is alleged to be a trade secret and explaining in detail why such information is allegedly a trade secret. Failure by respondent to submit such a letter with its proposal identifying alleged trade secrets shall constitute a waiver by the respondent of any rights it may have under Section 89 (Subdivision 5) of the Public Officers Law relating to the protection of trade secrets.

At no time will the Board consider information to be a trade secret if that information is not the proprietary information or ideas of the respondent and so designated in the proposal, or if that information:

1. was known to the Board before submission of such proposal;
2. properly became known to the Board thereafter through other sources; or
3. is in the public domain.

1.8 Contact with Employees

From the issuing date of this RFI until a determination and approval is made regarding the course of action to be taken by the Board, the Board will not allow respondent's staff to make direct contact with any Board staff regarding this initiative without prior approval. Requests for contact should be directed to the Board's Issuing Officer, Courtney Souza (WCBcontracts@wcb.ny.gov).

2 PROJECT OVERVIEW

On April 1, 2016 PFL was enacted in New York State as part of the Executive Budget. Through amendments to Article 9 of the WCL, Disability Insurance Policies must now offer coverage to employees for PFL. The coverage provides benefits for lost wages when an employee is out of work due to the birth, adoption or fostering of a child, or to care for a family member with a serious health condition, or to provide care due to a qualifying exigency under the Family and Medical Leave Act when a family member is on active military duty or about to be deployed. Benefits will become available on or after January 1, 2018. The benefit will increase each year over the first four years as to both the maximum weekly benefit and the maximum number of weeks for which PFL is available. In the fourth year and in each succeeding year, benefits will be at the statutory maximum rate of 67% of the average weekly wage with a cap of 67% of the statewide average weekly wage (as set by the Department of Labor each July). In the fourth year and in each succeeding year, benefits will be available for a maximum duration of 12 weeks in any 52 consecutive week period. A copy of the newly amended Article 9 of the WCL is attached hereto as Exhibit A.

Article 9 permits the Chair of the Workers' Compensation Board (Board) to select an alternative dispute resolution process and alternative dispute resolution provider to oversee disputes regarding PFL benefits. The Board anticipates selecting an arbitration entity to oversee the resolution of claim-related disputes; including, but not limited to, eligibility, benefit rate and duration of PFL. Given the short-term nature of the leave, it will be required that disputes be resolved within a month of the request for arbitration being made. As part of the process, the Chair will be adopting regulations pertaining to the selection of an arbitration entity and arbitrators, the disputes that will be resolved via arbitration, and the procedure that will be followed by the arbitrators, insurance carriers and employees.

It is difficult for the Board to estimate the volume of disputes that an arbitration entity will be expected to resolve. Any entity selected by the Chair must have the resources and flexibility to handle spikes in volume. As background, the Board provides the following factual information: there are approximately 500,000 covered employers in New York State, and there are approximately 135,000 new workers' compensation claims filed each year. The number of disability claims filed each year is not readily measured as claims that are not disputed are often not reported to the Board. While it is difficult to anticipate how many claims for PFL will be disputed by the employer or insurance carrier, it may be useful to use the 10% average dispute rate in workers' compensation claims as a bench mark for anticipating approximate volume.

This RFI seeks input from experienced arbitration entities as to: the services they offer; the regulations that will be required to support a full-blown arbitration program; the costs of such a program and an explanation of how costs are traditionally covered.

3 RESPONSE CONTENTS

A vendor is requested to respond to all questions included in this RFI. A response does not bind or obligate the responder or the Board to any agreement of provision or procurement of the services referenced. No contract can or will be awarded based on submissions.

The Board requests that the response be returned in electronic format, and that it consist of two software versions; one as a PDF file and the other as a Word document. In addition, the submission of hard copies are optional.

The response should consist of the following:

1. A cover letter that includes the following:
 - a. Respondent/contractor name and contact information, including email address and phone number; and
 - b. Description of the organization, including background and experience.
2. A response to each of the following:
 - a. Describe the arbitration process and services offered by your organization;
 - b. Regarding the arbitration process, please provide the following information:
 1. When should an employee request arbitration after receiving notification that benefits are being denied;
 2. After a request for arbitration is made, what timeline does the process follow (i.e. how long does the non-initiating party have to respond to the request for arbitration; how long do the parties have to submit exhibits; how long does it take to get the dispute scheduled for arbitration; how long does it take to get a resolution);
 3. How is the non-initiating party informed that arbitration has been requested (i.e. does the initiation party have to serve the request for arbitration on the non-initiating party or does your organization inform the non-initiation party of the request and, if so, by what means);
 4. What types of evidence may be submitted for consideration (i.e. documents, witness testimony, etc.);
 5. Are there any requirements for authenticating evidence;
 6. What is the process for scheduling the arbitration;
 7. Are there penalties imposed against a party for failure to adhere to the process; and
 8. Does your organization have the ability to award attorneys' fees?
 - c. Describe your organization's experience providing arbitration services, including a description of the level of experience of the arbitrators employed by your organization;
 - d. Describe the minimum level of qualifications that your organization's arbitrators must meet, if any;
 - e. Describe the size of your organization, including the number of arbitrators available to provide arbitration services;

- f. Indicate whether the Board will have the ability to select the arbitrators performing PFL arbitrations;
- g. Describe the volume of disputes that your organization currently handles, as well as the volume of disputes that your organization is capable of handling. Please provide the number of disputes handled by your organization in the past 5 years, categorized by year;
- h. Describe the types of matters that your organization currently handles, and identify any areas of expertise. If possible, please provide a percentage breakdown to illustrate the volume of each type of dispute that your organization handles;
- i. Describe the desk arbitration options offered by your organization;
- j. Describe the oral hearing arbitration options offered by your organization;
- k. Describe the quantity and location of your organization's hearing sites;
- l. Describe the technological capabilities that your organization has for conducting oral hearings;
- m. Describe, on average, how long it takes for a dispute to be scheduled and resolved through your organization's arbitration process;
- n. Provide an estimate as to how long it would take your organization to schedule and resolve PFL claims-related disputes (i.e. eligibility, employee-employer relationship, benefits rate, and reinstatement);
- o. Describe how much time an arbitrator will spend reviewing the file and examining evidence before issuing a decision;
- p. Provide an example of what an arbitration decision, issued by your organization, will look like;
- q. Provide a fee estimate for resolving PFL claims-related disputes (i.e. eligibility, employee-employer relationship, benefits rate, reinstatement) by desk arbitration and oral arbitration;
- r. Describe how the arbitration costs will be billed (Note: it is anticipated that the arbitration process will be initiated by the claimant; however, the employer or carrier will be responsible for paying the fees);
- s. In instances where the Board is a party to the dispute (i.e. situations where the employer is uninsured), indicate whether your organization would offer a discounted rate to the Board;
- t. Describe the technological capabilities of your organization (i.e. ability of parties to submit documents electronically, ability to access Board information electronically);
- u. Describe your ability to track data (i.e. types of issues being disputed, number of claims disallowed, number of claims allowed) and report such data to the NYS Department of Financial Services and the Board on at least an annual basis;
- v. Indicate your desire or willingness to have further discussions with the Board regarding your organization and the arbitration services that it provides; and
- w. Indicate your willingness to review and comment on proposed regulations directing the arbitration of PFL disputes; and
- x. Indicate whether your organization has handled any arbitrations related to paid family leave benefits in any other state or leave under the federal Family and Medical Leave Act. If so, please provide a description.

Please provide your response no later than 2:00p.m. on November 22, 2016 to WCBcontracts@wcb.ny.gov.