



2026 WORKERS' COMPENSATION CONFERENCE

COMMEMORATING THE 25TH ANNIVERSARY OF 9/11

OCTOBER 16 — ALBANY, NY



Workers'
Compensation
Board



Workers'
Compensation
Board

COMPLIANCE & LITIGATION



TERI COOPER, DIRECTOR OF COMPLIANCE
TODD ROBERTS, SUPERVISING ATTORNEY



AGENDA

- 1 Mission Statement
- 2 Relevant Statutes
- 3 Penalties for Non-Compliance
- 4 Repercussions for Non-Compliance
- 5 Judgments





MISSION STATEMENT

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.

WORKERS' COMPENSATION

Workers' compensation insurance pays for medical bills and lost wages for an employee who has suffered a work-related injury or illness. Businesses fulfill this requirement by purchasing coverage through an insurance carrier or by obtaining authorization from the Board to be self-insured.

- **Benefit Amount:** Two-thirds (2/3) of your average weekly wage for the last eight weeks worked
- ***Maximum Weekly Benefit:** \$1,281.50 per week
- ***Minimum Weekly Benefit:** \$384.45
- **Waiting Period:** 7-day unpaid waiting period; lost time exceeding 14 days pays retroactively
- **Medical Services:** Medical treatment, including dental, surgical, optometry, and assistive devices

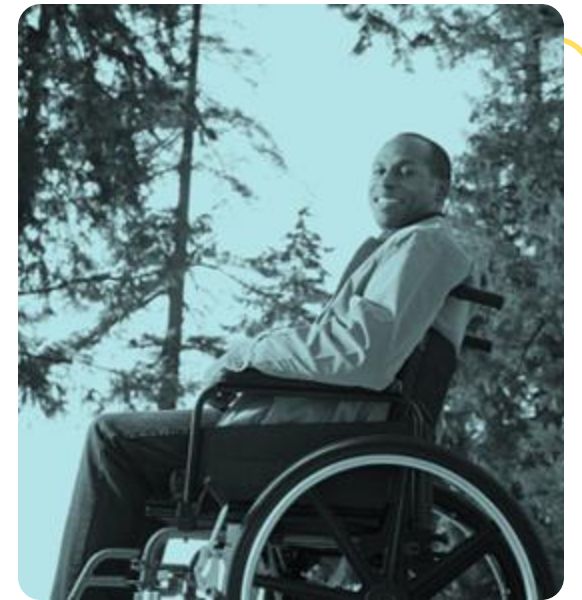




DISABILITY BENEFITS

Disability Benefits insurance pays an employee partial wages in the event they are unable to work due to an injury or illness not related to work. Businesses fulfill this requirement by purchasing insurance coverage through an insurance carrier or by obtaining authorization from the Board to be self-insured

- **Benefit Amount:** 50% of your average weekly wage for the last eight weeks worked
- **Maximum Weekly Benefit:** \$170 per week
- **Duration:** Up to 26 weeks of benefits in a 52-week period
- **Waiting Period:** A 7-day unpaid waiting period; benefits begin on the 8th consecutive day of disability





PAID FAMILY LEAVE

Paid Family Leave provides eligible employees with job protected, paid time off to bond with a new child, care for a family member with a serious health condition, or assist when a spouse, domestic partner, child, or parent is deployed abroad on active military service.

This requirement is generally met as a rider on an existing disability benefits insurance policy.

- **Duration:** Up to 12 weeks of paid time off
- **Payout Rate:** 67% of your average weekly wage
- **Maximum Weekly Benefit (2026):** Capped at a weekly maximum of \$1,228.53 based on the statewide average weekly wage



WHEN IS WORKERS' COMPENSATION REQUIRED?

Workers' Compensation

- Employers in New York State must provide workers' compensation coverage for their employees — NYS Workers' Compensation Law (WCL) §2 and 3. Most individuals providing services to a for-profit business will be considered employees of that business with limited exceptions.
- An employee is a person (including family members) who performs under the supervision, direction, and control of an employer either on or off their premises. This applies whether the worker is:
 - Part-time/full-time
 - Temporary
 - Seasonal
 - Casual/day labor
 - Leased
 - Borrowed
 - Unpaid volunteers, including family members





WHEN IS DB-PFL REQUIRED?

Disability (DB) and Paid Family Leave (PFL) benefits



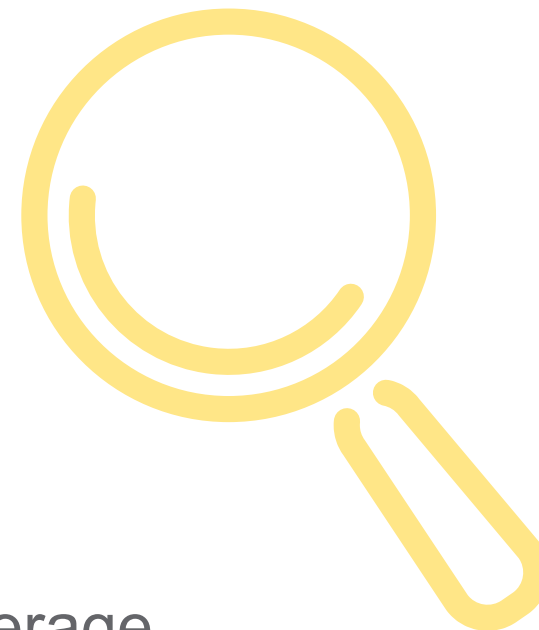
- An employer who has had in New York State employment one or more employees on each of at least 30 days in any calendar year shall be a “covered employer” subject to the Disability Benefits Law after the expiration of four weeks following the 30th day of such employment (NYS WCL § 202) with limited exceptions.
- These 30 days of employment need not be consecutive days but must be workdays of employment in one calendar year.
- Voluntary coverage may be obtained for compensated employees in New York State employments for whom DB and PFL benefits are not required by law.
- Enhanced benefits for rate, duration and waiting period may also be provided by the employer.



HOW DO WE MONITOR EMPLOYERS?

Employer compliance is maintained through the Insurance Compliance database (IC2)

- Employer records are created by:
 - Department of Labor — loads of data are received weekly and quarterly
 - Board Units — such as Enforcement, No Insurance, and Self Insurance
- Insurance carriers, or their designated third-party vendor, submit insurance policy data by an electronic proof of coverage (POC) transaction which matches up to the employer records by federal Employer Identification Number (EIN).





WHAT HAPPENS?

What happens when a record does not have proof of coverage?

- IC2 generates an Inquiry Notice for new employer records without coverage or an existing employer record with a policy cancelation where subsequent coverage has not been reported by a carrier.
- If the Inquiry goes unanswered or the response does not resolve all of the non-compliance period, the IC2 system generates a Penalty Notice. Under NYS WCL § 52(5) the business has 30 days to submit a request for a redetermination review of the penalty.





Relevant Statutes





NYS WCL § 50

Security for payment of compensation — an employer shall secure compensation to their employees in one or more of the following ways:

- By insuring and keeping insured the payment of such compensation in the state fund
- By insuring and keeping insured the payment of such compensation with any stock corporation, mutual corporation or reciprocal insurer authorized to transact the business of workers' compensation insurance in this state through a policy issued under the law of this state
- By furnishing satisfactory proof to the chair of his financial ability to pay such compensation for themselves, or to pay such compensation on behalf of a group of employers in accordance with subdivision ten of this section



NYS WCL § 52(1)(d): If at any time an employer intentionally and materially understates or conceals payroll, or intentionally and materially misrepresents or conceals employee duties so as to avoid proper classification for calculation of premium paid to secure compensation, or intentionally and materially misrepresents or conceals information pertinent to the calculation of premium paid to secure compensation, such employer shall be deemed to have failed to secure compensation and shall be subject to the sanctions applicable to this section.





NYS WCL § 131

NYS WCL § 131: Payroll records. (1) Every employer subject to the provisions of this chapter shall keep a true and accurate record of the number of his or her employees, the classification of employees, information regarding employee accidents and the wages paid by him or her for a period of four years after each entry therein, which records shall be open to inspection at any time, and as often as may be necessary to verify the same by investigators of the board, by the authorized auditors, accountants or inspectors of the carrier with whom the employer is insured, or by the authorized auditors, accountants or inspectors of any workers' compensation insurance rating board or bureau operating under the authority of the insurance law and of which board or bureau such carrier is a member or the group trust of which the employer is a member.



NYS WCL § 211: Provision for payment of benefits. A covered employer shall, with his or her own contributions and the contributions of his employees, provide disability and after January first, 2018, family leave benefits to his or her employees in one or more of the following ways:

- By insuring and keeping insured the payment of such benefits in the state fund, or
- By insuring and keeping insured the payment of such benefits with any stock or mutual corporation or reciprocal insurer authorized to transact the business of accident and health insurance in this state, or
- By furnishing satisfactory proof to the chair of the employers financial ability to pay such benefits, in which case the chair shall require the deposit of such securities as the chair may deem necessary consistent with the provisions of subdivision three of section fifty of this chapter.





WHAT LAWS DO WE ENFORCE?

NYS WCL § 50

Failure to have workers' compensation coverage

NYS WCL § 52(1)(d)

Under reporting or misclassification of employees to evade paying proper premium

NYS WCL § 131

Failure to true and accurate payroll records

NYS WCL § 211

Failure to have disability benefits and Paid Family Leave coverage



Penalties for Non-Compliance





NYS WCL § 52(5)

NYS WCL § 52(5): The chair, upon finding that an employer has failed for a period of not less than ten consecutive days to make the provision for payment of compensation required by section 50 of this article, may impose upon such employer, in addition to all other penalties, fines or assessments provided for in this chapter, a penalty of up to two thousand dollars for each 10-day period of non-compliance or a sum not in excess of two times the cost of compensation for its payroll for the period of such failure, which sum shall be paid into the uninsured employers’ fund created under section 26-a of this chapter.





NYS WCL § 52(1)(a) — CRIMINAL

NYS CL § 52: Effect of failure to secure compensation. (1)(a) Failure to secure the payment of compensation for five or less employees within a 12-month period shall constitute a misdemeanor and is punishable by a fine of not less than one thousand nor more than five thousand dollars. Failure to secure the payment of compensation for more than five employees within a 12-month period shall constitute a class E felony, and is punishable by a fine of not less than five thousand dollars nor more than fifty thousand dollars in addition to any other penalties otherwise provided by law.





NYS WCL § 131(3)

NYS WCL § 131(3): The chair, upon finding that an employer has failed to keep true and accurate records as required by this section, may impose upon such employer, in addition to all other penalties, fines or assessments provided for in this chapter, one thousand dollars for each ten day period of non-compliance or a sum not in excess of two times the cost of compensation for its payroll for the period of such violation, which sum shall be paid into the uninsured employers' fund created under section twenty-six-a of this chapter.





NYS WCL § 220(2)

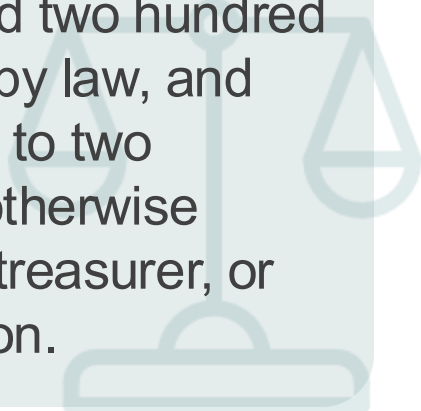
NYS WCL § 220(2): The chair or any officer of the board designated by him or her, upon finding that an employer has failed to make provision for the payment of disability or family leave benefits, shall impose upon such employer a penalty not in excess of a sum equal to one-half of one per centum of his or her weekly payroll for the period of such failure and a further sum not in excess of five hundred dollars, which sums shall be paid into the fund created under section two hundred fourteen of this article.





NYS WCL § 220(1) — CRIMINAL

NYS WCL § 220(1): Any employer who fails to make provision for payment of disability or family leave benefits as required by section two hundred eleven of this article within ten days following the date on which such employer becomes a covered employer as defined in section two hundred two of this article shall be guilty of a misdemeanor and upon conviction be punishable by a fine of not less than one hundred nor more than five hundred dollars or imprisonment for not more than one year or both, except that where any person has previously been convicted of a failure to make provisions for payment of disability or family leave benefits within the preceding five years, upon conviction for a second violation such person shall be fined not less than two hundred fifty nor more than one thousand two hundred fifty dollars in addition to any other penalties including fines otherwise provided by law, and upon conviction for a third or subsequent violation such person may be fined up to two thousand five hundred dollars in addition to any other penalties including fines otherwise provided by law. Where the employer is a corporation, the president, secretary, treasurer, or officers exercising corresponding functions, shall each be liable under this section.





PENALTIES FOR NON-COMPLIANCE

Violations of NYS WCL § 50, § 52(1)(d)

Up to **\$2,000** for every 10-day period
or 2x times the cost of premium

Violations of NYS WCL § 131(1)

\$1,000 for every 10 days

Violation of NYS WCL § 211

1/2 of one percent of the employer's payroll during
the period of noncompliance PLUS an additional
sum of **\$500** for each period of noncompliance





Repercussions for Non-compliance





REPERCUSSIONS FOR NON-COMPLIANCE

- Penalties NYS WCL §§ 52(5)/220(2)
- A stop work order issued to cease business operations: NYS WCL § 141-a
- Debarment from public works or contracts with a New York State entity: NYS WCL § 141-b and Executive Order 192
- Referral of debt for offset against NYS tax refunds and other NYS payments
- Rejection of a *Certificate of Attestation of Exemption (CE-200)* application which may be required to secure a license, permit or contract from a government agency
- Liability for a claim (lost wages and medical costs) and assessments: NYS WCL § 26-a
- Judgment lien





NYS WCL § 141-a(4)

NYS WCL § 141-a(4): Whenever the chair determines that an employer who is required to secure compensation in accordance with this chapter has failed to secure such compensation, or where an employer has failed to pay penalties assessed against it pursuant to this chapter, or failed to pay a judgment under section 26 of this chapter within 90 days after notice to the employer and has not moved to modify or vacate such judgment, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the chair of a stop-work order on the employer, requiring the cessation of all business operations effective immediately, except where the employer's failure concerns only domestic or child-care workers in his or her own household. The chair may issue such order, which shall take effect as to a particular employer worksite when served at that worksite, or as to all employer worksites in the state for which the employer is not in compliance when served on the employer.





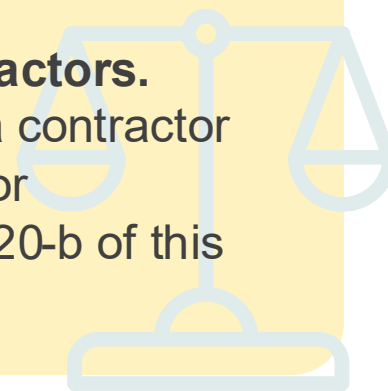
NYS WCL § 141.1-B

NYS WCL § 141-b: Suspension and debarment. Any person subject to a final assessment of civil fines or penalties or a stop-work order, or that has been convicted of a misdemeanor for a violation of sections 26, 52 or 131 of this chapter, and any substantially-owned affiliated entity of such person, shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of one year from the final determination or conviction. Any person convicted of a felony under this article, or a misdemeanor under sections 125 and 125-a of this chapter shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from such conviction.

Executive Order 192 extends debarment to all contracts with a government agency.

Section 220-i(4) of the Labor law. Registration system for contractors and subcontractors.

The commissioner shall promulgate regulations to determine under what circumstances a contractor or subcontractor would be unfit to be registered pursuant to this section; such contractor or subcontractor is currently debarred or ineligible pursuant to subdivision three of section 220-b of this article or section 141-b of the workers' compensation law.





Judgments





NYS WCL § 52 (1)

Effect of failure to secure compensation

- **NYS WCL § 52(1)(a): Failure to secure the payment of compensation for five or less** employees within a 12-month period shall constitute a misdemeanor and is punishable by a fine of \$1,000 to \$5,000
 - Fine increases to a class E felony and a fine of between **\$5,000 to \$50,000** if more than five employees within a 12-month period
- **NYS WCL § 52(1)(b):** If previously convicted of a failure to secure compensation within the last five years — Class D felony with fines between **\$10,000 to \$50,000**
- **NYS WCL § 52(1)(c):** If employer is a corporation, its president, secretary, and treasurer are liable for the failure to secure coverage





NYS WCL § 52 (1) (cont'd)

- **NYS WCL § 52(d):** If an employer “intentionally and materially understates or conceals payroll” or “materially misrepresents or conceals information pertinent to the calculation of premium paid to secure compensation,” then the employer is deemed to have failed to secure compensation
- **NYS WCL § 52(5):** If an employer fails to provide coverage for a period of 10 or more consecutive days, employer is subject to a penalty of up to **\$2,000** for each 10-day period of non-compliance or a sum not in excess of 2X the cost of compensation for its payroll for the period of such failure
 - Where the employer is a corporation, the president, secretary, and treasurer shall be liable for the penalty
 - If the employer shall within 30 days after notice of the imposition of a penalty by the chair pursuant to this subdivision make an application in affidavit form for a redetermination review of such penalty, the chair shall make a decision in writing on the issues raised on such application





NYS WCL § 26-A

Procedure and payment of compensation in claims against uninsured defaulting employers:

- **NYS WCL § 26-a(1)(a):** An uninsured claim is to be paid by the Uninsured Employer's Fund (UEF)
 - The employer shall be liable with the fund for payment of the award
 - Where the employer is a corporation the president, secretary, and treasurer thereof shall also be personally, jointly and severally liable with the corporation for payment of the award
- **NYS WCL § 26-a(2)(b):** For the purpose of establishing and maintaining the fund, the board shall impose an assessment in the sum of **\$1,000** for each 10-day period of non-compliance or a sum not in excess of two times the amount of the cost of compensation for its payroll for the period of such failure against the employer



NYS WCL § 26-A (cont'd)

- **NYS WCL § 26-a(2)(c):** If the employer shall fail to pay these assessments into the fund within 10 days after date of mailing of notice, such default shall constitute a default in payment of compensation pursuant to WCL § 26 and judgment therefor shall be entered in accordance therewith
- **NYS WCL § 26-a(4):** Upon notice to the representative of the UEF, the Board has discretion to compromise the amount for which judgment has been entered against an employer pursuant to this section and the judgment entered may be modified accordingly
- **NYS WCL § 26-a(11):** All assessments payable pursuant to the provisions of this section shall be liens against the assets of the employer liable therefor without limit of amount, subordinate, however, to claims for unpaid wages and prior recorded liens



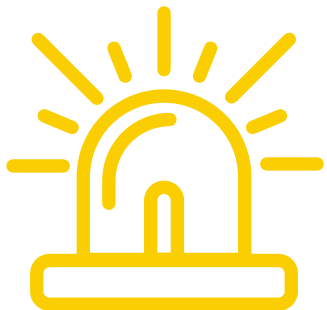


Enforcement





NYS WCL § 26



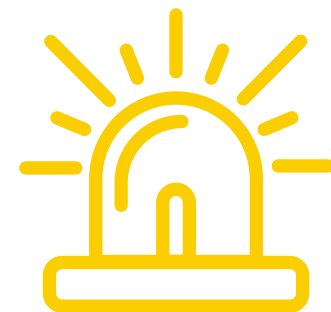
The Board may secure a judgment against an employer in the county in which the employer has its principal place of business (or the county in which the injury occurred) if there is a default by an employer in:

- Failing to pay a compensation award in excess of 30 days;
- Failing to deposit the commuted or estimated value of the compensation payable under an award made in accordance with the provisions of NYS WCL § 14-a as security for prompt and convenient payment of such compensation as it accrues;
- Failing to secure the payment of compensation to its employees as required by NYS WCL § 50 together with a default in payment for a period of 10 days; or
- **Failing to pay an assessment imposed by NYS WCL § 52(5) within 20 days.**



NYS WCL § 26 (cont'd)

- Such judgment shall be entered in the same manner, have the same effect and be subject to the same proceedings as though rendered in a suit duly heard and determined by the supreme court, except that no appeal may be taken there from
- The court shall vacate or modify such judgment to conform to any later award or decision of the Board upon presentation of a certified copy of such award or decision
- The award may be so compromised by the Board at its discretion
- Neither the chairman nor any party in interest shall be required to pay any fee to any public officer for filing or recording any paper or instrument or for issuing a transcript of any judgment executed in pursuance of this section





Relief from Judgment or Order





CPLR RULE 5015: RELIEF FROM JUDGMENT OR ORDER

- **(a) On motion.** The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:
 - excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry; or
 - newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under CPLR § 4404; or
 - fraud, misrepresentation, or other misconduct of an adverse party; or
 - lack of jurisdiction to render the judgment or order; or
 - reversal, modification or vacatur of a prior judgment or order upon which it is based.



CPLR RULE 5015 (cont'd)

- **(b) On stipulation.** The clerk of the court may vacate a default judgment entered pursuant to CPLR § 3215 upon the filing with him of a stipulation of consent to such vacatur by the parties personally or by their attorneys.
- **(c) On application of an administrative judge.** An administrative judge, upon a showing that default judgments were obtained by fraud, misrepresentation, illegality, unconscionability, lack of due service, violations of law, or other illegalities or where such default judgments were obtained in cases in which those defendants would be uniformly entitled to interpose a defense predicated upon but not limited to the foregoing defenses, and where such default judgments have been obtained in a number deemed sufficient by him to justify such action as set forth herein, and upon appropriate notice to counsel for the respective parties, or to the parties themselves, may bring a proceeding to relieve a party or parties from them upon such terms as may be just. The disposition of any proceeding so instituted shall be determined by a judge other than the administrative judge.
- **(d) Restitution.** Where a judgment or order is set aside or vacated, the court may direct and enforce restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal.



Appeals





NYS WCL § 23 — APPEALS

- An award or decision of the Board is final and conclusive upon all questions within its jurisdiction...unless reversed or modified on appeal therefrom.
- Within 30 days after notice of the filing of an award or decision of a referee (WCLJ), a party may file a written application for a modification or rescission or review of such award or decision.
- The Board shall render its decision upon such application in writing and shall include in such decision a statement of the facts which formed the basis of its action on the issues raised before it on such application.



NYS WCL § 23 — APPEALS (cont'd)

- Within 30 days after notice of the decision of the Board upon such application has been served upon the parties, **or within thirty days after notice of an administrative redetermination review decision by the chair pursuant to WCL 52(5)**...has been served upon any party in interest, an appeal may be taken therefrom to the **Appellate Division, Third Department**...provided that any party in interest may within 30 days ...make application in writing for review thereof by the full board.
- An appeal may also be taken to the Court of Appeals in the same manner and subject to the same limitations not inconsistent herewith as is now provided in the civil practice law and rules.



Pertinent Cases

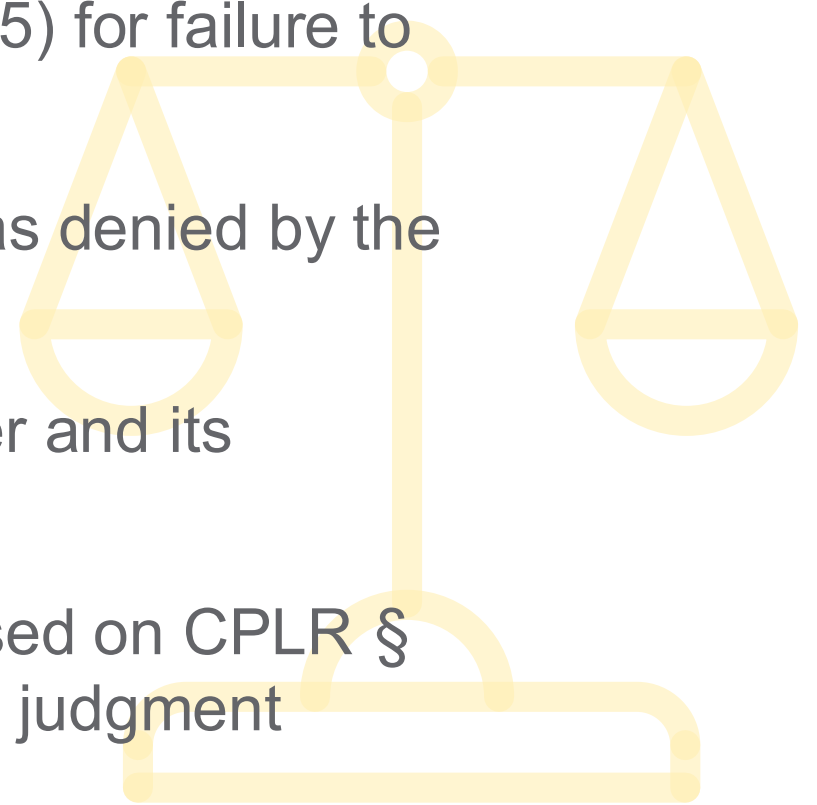




AUTHORITATIVE CASE #1

NYSWCB v. Williams Auto Parts Inc.

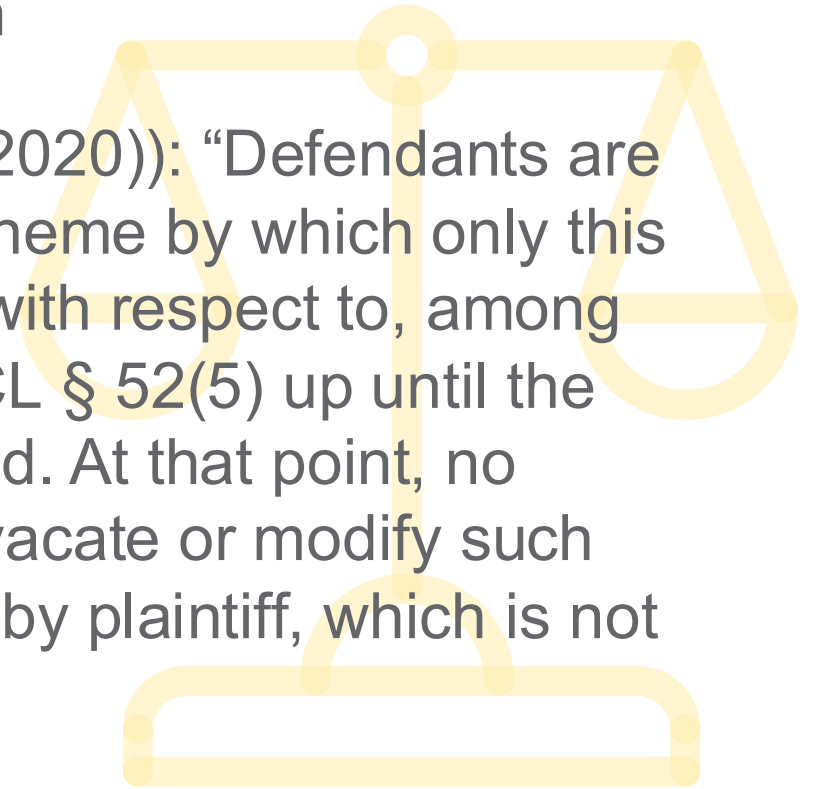
- Penalty of **\$34,500** imposed under NYS WCL § 52(5) for failure to provide coverage from 08/11/2013 to 07/06/2014
- Employer sought redetermination of penalty but was denied by the Board because it was outside the 30-day window
- Judgment taken in February 2017 against employer and its president under NYS WCL §§ 52(5) and 26
- Employer brought Order to Show Cause under based on CPLR § 5015 and lack of personal jurisdiction to vacate the judgment





AUTHORITATIVE CASE #1 (cont'd)

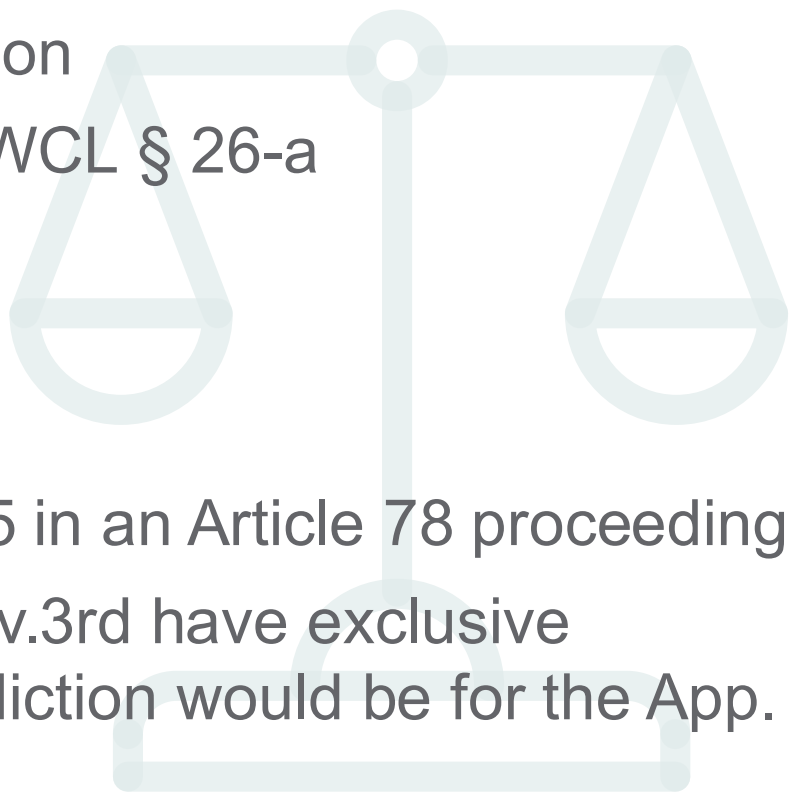
- Trial Court (Schenectady Cty.) acknowledged that WCL § 23 affords exclusive jurisdiction to the Board and to the App. Div. 3rd and therefore the Court lacks subject matter jurisdiction
- App. Div. 3rd agreed (187 A.D.3d 1252 (3rd Dept. 2020)): “Defendants are misguided, as they ignore the peculiar statutory scheme by which only this Court may review a final determination by plaintiff with respect to, among other things, assessments ordered pursuant to WCL § 52(5) up until the time that a judgment against an employer is entered. At that point, no appeal is permitted and Supreme Court may only vacate or modify such judgment to conform it to a later decision or award by plaintiff, which is not the case here”





AUTHORITATIVE CASE #2

Tompkins Community Bank v. Tomlinson

- Claimant injured and an uninsured claim was established in November 2021 with finding that Claimant was employee of Tomlinson
 - In addition to a lost wage award, a \$324,000 NYS WCL § 26-a assessment imposed
 - No effort by Tomlinson to appeal the determination
 - Judgment filed on March 4, 2022
 - Tomlinson moved to vacate pursuant to CPLR 5015 in an Article 78 proceeding
 - Court acknowledged that the Board and the App.Div.3rd have exclusive jurisdiction and any claims to lack of personal jurisdiction would be for the App. Div. to decide
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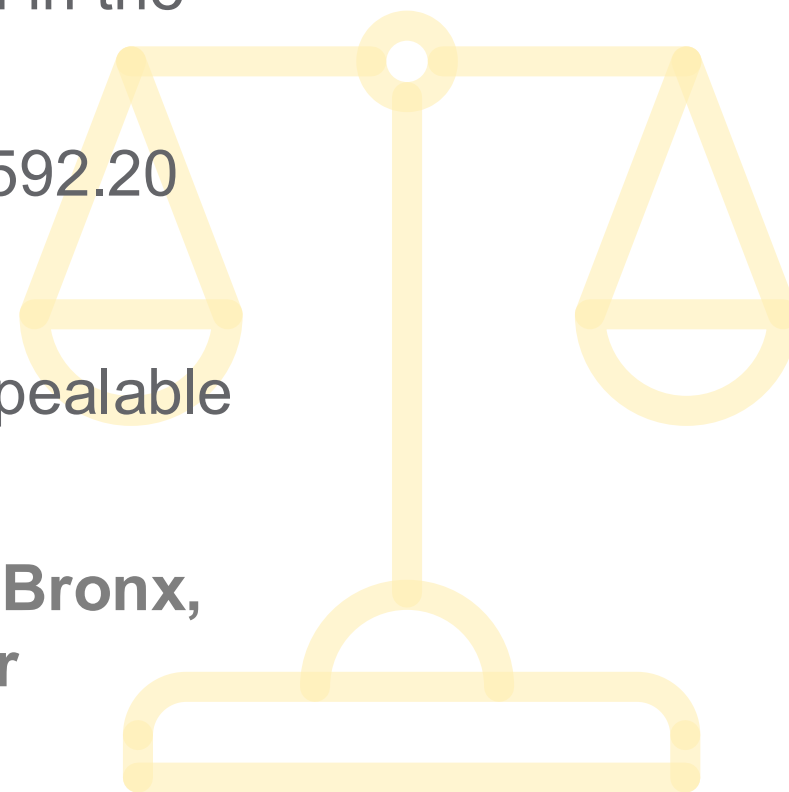


AUTHORITATIVE CASE #3

NYSWCB v. Dong Wen Chen

- Uninsured claim where medical and indemnity paid in the amount of \$1,592.20
- Board took a judgment May 2013 in amount of \$1,592.20
- Employer moved to vacate
- Court determined that Board decisions are only appealable pursuant to NYS WCL § 23

Similar favorable decisions received from Albany, Bronx, Nassau, Oswego, Queens, Richmond, Westchester





PENALTY/ASSESSMENT PROCESS

Penalty NYS WCL § 52(5)	Assessment NYS WCL § 26-a
Penalty imposed pursuant to NYS WCL § 52(5)	Assessment imposed pursuant to NYS WCL § 26-a
Employer may request 'Redetermination Review' w/i 30 days (NYS WCL § 52(5))	Award or Decision is final and conclusive unless reversed or modified on appeal (NYS WCL § 23)
Board issue written decision (NYS WCL §52(5))	Employer may appeal finding pursuant to NYS WCL § 23 w/i 30 days
Employer may appeal pursuant to NYS WCL § 23	Board issue written decision (NYS WCL § 23)
Judgment Entered pursuant to NYS WCL § 26	Judgment Entered pursuant to NYS WCL § 26
No Further Appeal (Williams Auto)	No Further Appeal (Williams Auto)



Suspension and Debarment



NYS WCL § 141-B: SUSPENSION AND DEBARMENT

Any person subject to a final assessment of civil fines or penalties or a stop-work order, or that has been convicted of a misdemeanor for a violation of WCL §§ 26, 52 or 131 of this chapter, and any substantially-owned affiliated entity of such person, shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of 1 year from the final determination or conviction. Any person convicted of a felony under this article, or a misdemeanor under WCL §§ 125 and 125-a of this chapter shall be ineligible to submit a bid on or be awarded any public work contract or subcontract with the state, any municipal corporation or public body for a period of five years from such conviction.



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THANK YOU

