



2026 WORKERS' COMPENSATION CONFERENCE

COMMEMORATING THE 25TH ANNIVERSARY OF 9/11

OCTOBER 16 — ALBANY, NY



Workers'
Compensation
Board



**Workers'
Compensation
Board**

LEGAL UPDATES



QUINN RAPP-ELLIS, GENERAL COUNSEL
COURTNEY VALLEE, ASSOCIATE ATTORNEY



AGENDA

- 1 Legislative Updates
- 2 Court of Appeals Decisions
- 3 Regulatory Updates
- 4 Looking Ahead





Legislation





RESIDENTS AND FELLOWS

Part AA of 2025 Budget Bill S3005/A3005



- NYS Workers' Compensation Law (WCL) § 13-b amended to add new paragraph (b-2)
 - Residents or fellows who may practice medicine as an exempt person as provided for in Title 8 of the Education Law may treat workers' compensation claimants under the supervision of an authorized provider
 - Supervising provider must not have been removed from list of providers under NYS WCL § 13-d
- Took effect when signed in May 2025



PAYMENT WITHOUT LIABILITY



Part CC of 2025 Budget Bill S3005/A3005

- NYS WCL § 21-a amended to allow employer or its insurance carrier to pay on medical-only claims for up to one year without admitting liability
- Previously NYS WCL § 21-a could only be utilized on claims with indemnity benefits
- Effective January 1, 2027

S755/A1677 (2025)

- Added new paragraph (c) to NYS WCL § 10 creating a new standard for Post-Traumatic Stress Disorder (PTSD), Acute Stress Disorder (ASD), and Major Depressive Disorder (MDD) claims as a result of work-related stress
 - Employee must show PTSD, ASD, or MDD arose out of extraordinary work-related stress attributable to a distinct work-related event directly related to employment and occurring during the performance of employee's job duties
 - Must submit medical evidence of PTSD, ASD, or MDD based on the criteria contained in the version of the Diagnostic and Statistical Manual of Mental Disorders in effect on the date of accident



STRESS & MENTAL INJURY (cont'd)

- Added new paragraph (d) to NYS WCL § 10 that says the mental injury standards in (b) and (c) are not applicable to a claim for mental injury due to a work-related physical injury
- **S755/A1677** took effect June 4, 2025, and applied to all pending claims, regardless of date of accident





PAID FAMILY LEAVE: CONSTRUCTION EMPLOYEES

S8795/A9466 (2026)



- Added new subdivision 25 to NYS WCL § 201
 - Construction employee defined: “employees who perform construction, demolition, reconstruction, excavation, rehabilitation, repairs, renovations, alterations, or improvements for multiple employers pursuant to a collective bargaining agreement.”
- Amended NYS WCL § 203
 - Construction employee must work the employer’s normal work week for at least 26 of the last 39 weeks with any covered employer which is a signatory to a collective bargaining agreement
 - Covered employer immediately preceding the period of Paid Family Leave (PFL) responsible

PFL: CONSTRUCTION EMPLOYEES (cont'd)

- Amended NYS WCL §203-c
 - Construction employees maintain any existing union health plan or fund benefits in force for the duration of PFL as if the construction employee had continued to work
 - Parties to collective bargaining agreement for construction employees may provide additional terms including, but not limited to, payment of health contributions for such employees on PFL and whether leave time is considered hours worked for purposes of eligibility in health plan or fund
- Effective January 1, 2027





DISTRICT ATTORNEY FUNDING

Part W of 2026 Budget Bill S9005C/A1005C



- Amended NYS WCL § 151(1) to include in assessments a sum sufficient to cover the establishment and maintenance of dedicated workers' compensation fraud units within NYS District Attorneys' Offices
- Amended NYS WCL § 151 to add new subdivision 15 requiring reporting on the distribution of funds in the Board's annual report
- Took effect when signed in May 2026

UNIVERSAL AUTHORIZATION

Part X of 2026 Budget Bill S9005C/A1005C

- Amends NYS WCL § 13-b(1) to change the Board-authorization of providers
- Amends NYS WCL § 13-b(2) to remove emergency treatment without authorization language and replace it with the requirement that providers render medical care and treatment in accordance with the Workers' Compensation Board's *New York Medical Treatment Guidelines (MTGs)* and *New York State Workers' Compensation Fee Schedules*
- Amends NYS WCL § 141 to require the Chair to develop and require trainings for providers and to promulgate certain deposition regulations





UNIVERSAL AUTHORIZATION (cont'd)

- Adds NYS WCL § 13-b(1)(r) to define the exclusion list as a list of providers who are disqualified from rendering care or performing independent medical exams (IME). List will be published and maintained by the Chair.
- Amends NYS WCL § 13-d to provide for placement of providers on the exclusion list and added reasons for disqualification from rendering medical care or treatment to NYS WCL § 13-d(2)
- Adds NYS WCL § 13-d(6) permitting the chair to promulgate regulations related to publication and maintenance of the exclusion list



UNIVERSAL AUTHORIZATION (cont'd)

- Amends NYS WCL § 13-a:
 - (4)(a) to add: “A provider’s reports or records shall be considered as evidence in support of a claim notwithstanding the provider’s compliance with the foregoing time frames.”
 - (5) to increase the threshold for authorized services from \$1,000 to \$1,500
 - (6) to add language about communications between claimants’ attorneys and injured employees
- Repeals NYS WCL §§ 13-k, 13-l, 13-m



UNIVERSAL AUTHORIZATION (cont'd)

- Amends NYS WCL § 153 to require the Board to submit the annual report to the legislature in addition to the Governor. The report must include:
 - Number of providers who rendered medical care or treatment in prior calendar year
 - Completion rate for provider training
 - Analysis of the degree to which new providers are successfully complying with the WCL and regulations
- Effective January 1, 2028





WORLD TRADE CENTER

S10605/A11531 (2026)

- Amends NYS WCL § 162 to extend the deadline to file *Registration of Participation in World Trade Center Rescue, Recovery and/or Cleanup Operations: Sworn Statement Pursuant to WCL §162 (Form WTC-12)* until **Sept. 11, 2030**
- Adds subdivision 6 to NYS WCL § 168:
 - Any claim for workers' compensation benefits with date of disablement between Sept. 11, 2021, and Sept. 11, 2025, not disallowed based on NYS WCL §§ 18 or 28 if filed on or before Sept. 11, 2030
 - Directs the Board to reconsider any disallowed claims based on NYS WCL §§ 18 or 28 with dates of disablement between Sept. 11, 2021, and Sept. 11, 2025
- Took effect when signed in Sept. 2026





Court of Appeals Decisions





MATTER OF SCHULZE

Matter of Schulze v. City of Newburgh Fire Dept., 44 N.Y.3d 45 (2025)



- Court of Appeals affirmed the Board’s decision finding that benefits paid to a retired firefighter pursuant to General Municipal Law (GML) NYS WCL § 207-a(2) were not payments “in a like manner as wages” which are subject to reimbursement by the employer pursuant to NYS WCL § 25(4)(A)



MATTER OF GARCIA

Matter of Garcia v. WTC Volunteer, 45 N.Y.3d 141 (2005)

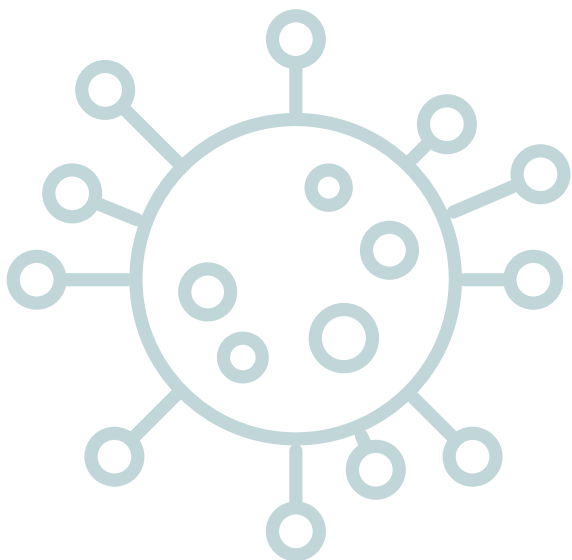


- Court of Appeals affirmed the Board's decision disallowing the claim under Article 8-A
- NYS WCL § 168 does not apply to claims brought by anyone other than the participant
- NYS WCL § 28 requires claims be filed within two years of the death



MATTER OF AUNGST

Matter of Aungst v. Family Dollar, 45 N.Y.3d 114 (2025)



- Court of Appeals upheld the “prevalence” standard adopted by the Board for determining whether claims for work-related contraction of COVID-19 are compensable
 - “[T]he Board’s application of the ‘prevalence’ framework is not inconsistent with the Workers’ Compensation Law as we have interpreted it.”



MATTER OF MCLAURIN

Matter of McLaurin v. NYC Transit Authority, 45 N.Y.3d 251 (2025)



- Court of Appeals reversed the Third Department and reinstated the Board’s decision using the “stress greater than” standard and disallowing the COVID-19 stress claims

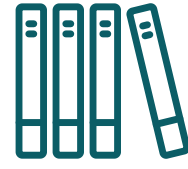


MATTER OF GONZALEZ

Matter of Gonzalez v. Northeast Parent & Child Society, __N.E.3d__, 2026 N.Y. Slip Op. 01443 (2026)



- Court of Appeals affirmed the Board’s denial of attorneys’ fees on penalties assessed under NYS WCL § 25 for late payments of awards
 - “Awarding such fees would be wholly at odds with WCL 24(2)’s detailed fee schedule, and would contravene the plain meaning of the statute.”



Regulations





PURPOSE OF REGULATIONS

Emergency

Support of Board initiatives

Required by statute

Resolve inconsistencies created by court decisions

Conform to national standard

Correct mistakes





REGULATORY PROCESS

↓	Regulations are used to help implement the law — once adopted, they have legal force
↓	Draft text of regulation and impact statements
↓	Proposals go to the Regulatory Review Unit (RRU) for executive approval before we file
↓	<i>Notice of Proposed Rule Making</i> filed for publication in the State Register Published every Wednesday (filing deadlines are Tuesdays for publication two weeks later)
↓	Public comment period follows, assess public comments
↓	<i>Notice of Revised Rule Making</i> or <i>Notice of Adoption</i>





REGULATORY PROCESS (cont'd)

Incorporation by Reference

Emergency Adoptions

Emergency Adoption and Notice of Proposed Rule Making

Consensus Regulations

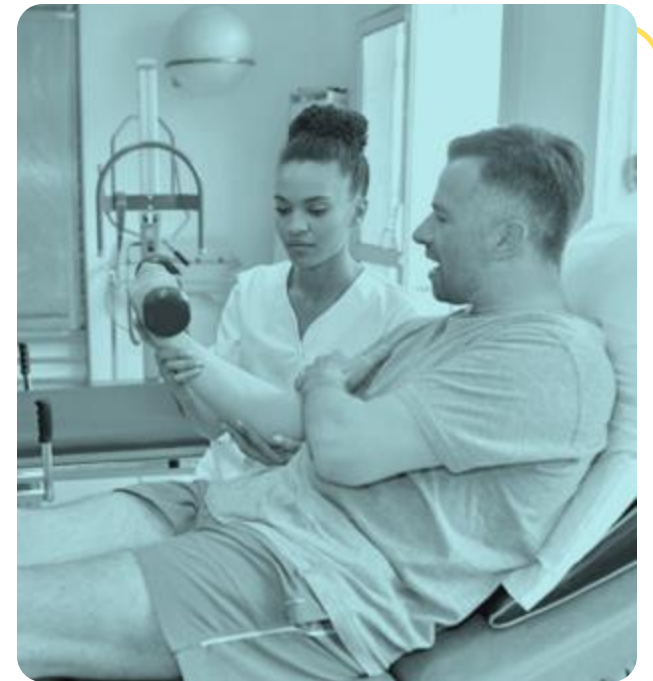




PT/OT ASSISTANTS

12 NYCRR 329-1.3(c)

- To provide guidance about billing for treatment by physical therapist (PT) and occupational therapist (OT) **assistants** and implement amendment to section 13-b of the Workers' Compensation Law
- Emergency adoption filed 10/24/24, effective 10/27/24
- Permanent proposal filed in February 2025 and adopted and effective 3/22/25





NETWORK PHARMACIES

12 NYCRR 440.3, 440.4, and 441.3

- Proposal published 12/31/24
- Adopted in June 2025, effective 7/11/25
- To provide clear guidelines allowing an injured worker to obtain outpatient prescription medications from a non-designated pharmacy, particularly when the payer has not yet accepted a claim for compensation for a particular body part or when the payer has another legal objection to the prescribed medication





DENTAL FEE SCHEDULE (2nd EDITION)

12 NYCRR 444.2

- Dental fee schedule itself is incorporated by reference
- Proposal published July 2025
- Adopted in October 2025, took effect November 13, 2025



12 NYCRR 329-1.3(e)

- To help implement amendment to NYS WCL § 13-b; provides guidance about billing procedures when services are provided by residents/fellows under the supervision of an authorized provider
- Proposal published January 2026
- Adoption was published 4/22/26, which was also the effective date





NYS WCL § 21-a SUPPORTING REGULATION

12 NYCRR 300.22

- Governor Hochul signed an amendment to NYS WCL § 21-a that takes effect 1/1/27. These amendments were proposed to conform the regulation to the legislation
- Proposal published 3/18/26
- Adoption published in the 8/5/26 edition of the State Register
- Takes effect January 1, 2027 (with the amendment to NYS WCL § 21-a)



CONSENSUS: CONTACT INFO UPDATES

- Updated addresses, telephone numbers, email addresses across much of the workers' compensation regulations
- In those sections also updated the text to use gender neutral language
- Proposal published in the June 24, 2026, edition of the State Register
- Notice of Adoption published in the October 14, 2026, edition of the State Register





DEPOSITIONS

12 NYCRR 301.1, 301.3, and 300.10

- Increases deposition fees to account for rising medical costs
- Allows for a WCLJ's discretion regarding cross-examination of the provider (can deny if it is nonprejudicial and cross-examination would be duplicative, superfluous, or dilatory)
- Provides guidance about scheduling depositions and requesting adjournments and extensions
- Proposal published in the January 21, 2026, edition of the State Register
- Adoption will be published in the October 21, 2026, edition of the State Register, will be effective January 1, 2027





Governor Hochul announced the EXPRESSNY initiative in February, which is a statewide effort to streamline regulations and generally improve how government works

- Identified outdated or obsolete regulations
- Board has three EXPRESSNY proposal packages





Practice Committees and Medical Appeals Unit

- To repeal several Parts of Title 12 dealing with provider specific practice committees and the medical appeals unit as they are outdated and obsolete
 - Proposal published in the August 5, 2026, edition of the State Register
 - Public comment period ended October 5
 - Currently assessing comments received during the public comment period





Repeals 12 NYCRR 300.12

- **12 NYCRR 300.12:** When a claim presents a novel or important question of law or a question of public policy, a referee before rendering his decision thereon may certify such question to the board. In such a case the referee shall develop the record on the question involved and submit to the board for determination his findings of fact and the question presented by the record for decision.
 - Proposal published in the August 12, 2026, edition of the State Register
 - Public comment period ended October 12
 - Currently assessing comments





Repeals 12 NYCRR Part 391

- Outdated and superseded by case law
 - *Burns v. Varriale*, 9 NY 3d 207 (2007)
 - Outdated references to funeral expenses
- Proposal published in the August 12, 2026, edition of the State Register
- Public comment period ended October 12
- Currently assessing comments





MEDICAL FEE SCHEDULES UPDATE

12 NYCRR 329-1.3



- Part of the 2025 State of The State agenda
- Proposal filed in January 2026, public comment period ended in March 2026
- Approximately 85 comments received
- In response to the comments, the Board filed a revised proposal, published in the September 2, 2026, edition of the State Register
- 45-day public comment period ends October 19



PAID FAMILY LEAVE: CONSTRUCTION EMPLOYEES

12 NYCRR 355.9, 380-2.5, 380-2.6, and 380-5.1



- Governor Hochul signed an amendment to the WCL creating a new eligibility standard for PFL for construction employees
- Proposal published in the August 19, 2026, edition of the State Register
- Public comment period ends October 19



Looking Ahead





UPCOMING REGULATIONS



Universal Authorization



Regulatory Reset regulations



Look out for the Regulatory Agenda, published in the State Register each January and posted on the Board's website

OFFICE OF GENERAL COUNSEL

GENERAL INQUIRIES:

officeofgeneralcounsel@wcb.ny.gov

REGULATIONS: regulations@wcb.ny.gov

WEBSITE: wcb.ny.gov



FOLLOW THE BOARD

✕ [@NYSWWorkersComp](#)

f [@NYSWCB](#)

📷 [@NYSWorkersCompBoard](#)

▶ youtube.com/@nyswcb

in linkedin.com/company/nyswcb

✉ wcb.ny.gov/Notify — to subscribe



THANK YOU

