

NYS
WORKERS' ADVOCATE
CONFERENCE



MAY 1, 2023

**Workers' Comp 202:
Best Practices to
Access Benefits**

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Advocate for Injured Workers



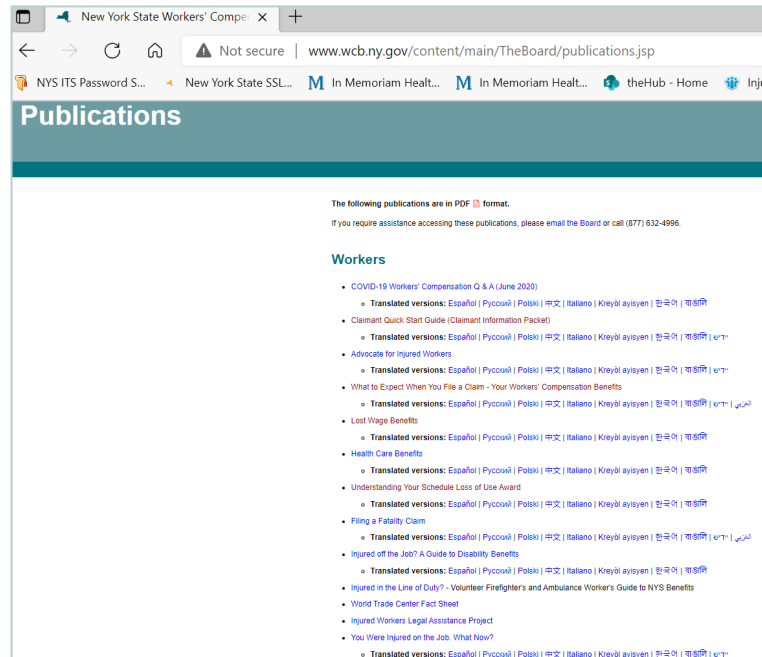
**Workers'
Compensation
Board**

Creating safer workplaces

- **Form a labor/management safety committee**
 - Equal number of workers and managers
 - Regularly rotate Chair
 - Meet regularly, with an agenda
- **Perform safety inspections - visit workplace to identify potential threats to employee safety**
- **Review equipment and procedures - establish safe procedures and train for safety**



We have education!

- Visit wcb.ny.gov, choose ‘Publications’ from the list under ‘Communications,’ near the bottom of the screen
- Register for eCase to see all your claim documents



Privacy provisions

- Only these parties may discuss claims with the Board:
 - Claimants and claimant attorneys
 - Employers, insurers, and attorneys
 - Providers
- Claimants grant others access to claim details with *Form OC-110a*
- Fillable online; Spanish version too

		CLAIMANT'S AUTHORIZATION TO DISCLOSE WORKERS' COMPENSATION RECORDS (Pursuant to Workers' Compensation Law Section 110-a)	
PO Box 5205, Binghamton, NY 13902-5205 • www.wcb.ny.gov			
CLAIMANTS ARE PROHIBITED FROM AUTHORIZING RELEASE OF WORKERS' COMPENSATION INFORMATION TO PROSPECTIVE EMPLOYERS OR IN CONNECTION WITH ASSESSING FITNESS OR CAPABILITY OF EMPLOYMENT.			
PLEASE COMPLETE ALL ITEMS. AN INCOMPLETE FORM WILL DELAY THE PROCESSING OF YOUR REQUEST.			
Claimant's Name	Claimant's Social Security or Tax Identification Number	Case Number <input type="checkbox"/> WCB <input type="checkbox"/> DR <input type="checkbox"/> Discrimination <input type="checkbox"/> PFL	and/or Date of Accident
IF RELEASE IS AUTHORIZED FOR ADDITIONAL CASE FILE(S), IDENTIFY BELOW BY WCB/DR/DC/PFL CASE NUMBER AND/OR DATE OF ACCIDENT(S)			
INSTRUCTIONS: Submit original to the Workers' Compensation Board and retain a copy for your records. Authorization for disclosure of records for certain purposes is not valid under the law. See excerpt of WCL Section 110-a on the reverse of this form. This authorization is effective until it is revoked by the claimant. Claimant may revoke this authorization at any time upon written notice to the Workers' Compensation Board.			
THIS AUTHORIZATION DOES NOT PERMIT YOU TO OPEN AN INDIVIDUAL eCASE ACCOUNT OR TO VIEW CASES VIA eCASE OUTSIDE OF A BOARD LOCATION.			
Pursuant to Section 110-a of the Workers' Compensation Law, I _____ (CLAIMANT'S NAME)			
represent that I am a person who is/was the subject of the workers' compensation cases(s) indicated above, and I authorize the Workers' Compensation Board to discuss the above-referenced Workers' Compensation Board records with and/or release a copy of the above-referenced records to _____ (NAME OF A SPECIFIC PERSON, CORPORATION, ASSOCIATION OR PUBLIC OR PRIVATE ENTITY)			
at _____ (ADDRESS)			
I understand that the requesting party may be required to pay a statutory fee prior to being provided copies of these records by the Workers' Compensation Board.			
Claimant's Signature (ink only - use blue ink if possible)		Date	
_____		_____	
Failure to provide the information requested on this form will not result in the denial of your authorization, but may delay the processing of your request. The voluntary release of your social security number enables the Board to ensure that information is associated with, and quick action is taken on, your request.			
OC-110A (12-17) Prescribed by the Chair, Workers' Compensation Board			

Indemnity benefits: Controversies

- If a claim is disputed (controverted), no benefits will be paid until it's resolved
- Insurers must cite one of the limited number of reasons to controvert
- The expedited calendar resolves disputes in 90 days or less
- **Workers may file a short-term disability claim if they cannot work, *Form DB-450*, to get some income (\$170 per week)**

Indemnity benefits: CCP helps workers

- There are circumstances where insurers may change or stop ongoing payments at their discretion
- Judges at hearing can issue a **CCP, *Carrier Continue Payments***
- With a CCP, insurers may not change or stop ongoing payments unless a judge directs it at hearing

Indemnity benefits: Degree of disability

- Providers indicate an opinion on how disabled the worker is at that time: *degree of disability*
- The degree of disability ranges from 0% to 100%, but sometimes, terms are used that equate to these percentages

Degree of disability	Percentage
Total	100%
Marked	75%
Moderate	50%
Mild	25%

Indemnity benefits: How degree of disability impacts benefit payments by rate

Degree of disability	Percentage of benefit rate*
Total disability	100% of benefit rate
75% disability	$\frac{3}{4}$ of benefit rate
50% disability	$\frac{1}{2}$ of benefit rate
25% disability	$\frac{1}{4}$ of benefit rate

*Capped at the maximum benefit rate for the worker's date of accident.

Indemnity benefits: Degree of disability

- Workers with temporary disabilities must see treating providers every 90 days (minimum) for degree of disability or benefits can be halted without a CCP
- Providers should file a report that includes:
 - Work status – is patient working?
 - Causality – is this condition the cause of disability?
 - Degree of disability – how disabled?
- Providers sometimes need to be reminded

Medical Narrative Report Template for CMS-1500

Patient's Name	
Patient's Date of Birth	
WCB Case Number (if known)	
Insurer Case Number	
Date of Injury / Onset of Illness	
Provider's Name	
Provider's NPI Number	
WCB Authorization Number	
WCB Rating Code	
Date(s) of Service	

1. Work Status	
2. Causal Relationship	
3. Temporary Impairment Percentage	

Narrative with Examination Findings: Providers must attach the applicable narrative report(s) to this template. For examples of acceptable narrative formatting, please see the CMS-1500 section of the Board's website at <http://www.wcb.ny.gov/CMS-1500requirements.asp>.

Provider's Signature: _____ Date: _____

Indemnity benefits: Permanent partial disability

LWEC	Weeks of benefits
96%-99%	525 weeks
91%-95%	500 weeks
86%-90%	475 weeks
81%-85%	450 weeks
76%-80%	425 weeks
71%-75%	400 weeks
61%-70%	375 weeks
51%-60%	350 weeks
41%-50%	300 weeks
31%-40%	275 weeks
16%-30%	250 weeks
1%-15%	225 weeks

Best practices: Indemnity payments

- Please consider using direct deposit
- Keep records if paid in cash
- Please note where you were working




Indemnity benefits: Labor market attachment (LMA)

- Workers who are **temporarily** disabled at **less than** 100% disability must look for employment within their restrictions to continue indemnity (*American Axle* decision)
- Insurers raise this obligation at hearing
- Worker must demonstrate a **timely, diligent, and persistent** work search
- The **type** of work search is known; the **amount** of effort demonstrating a work search is decided at hearing/appeal

Indemnity benefits: Demonstrating LMA

- NYS Dept. of Labor Reemployment Services
- NYS Dept. of Labor One-stop Career Centers for searches and follow-ups on matches, seminars, orientation, and counseling
- Full-time higher education or training
- Vocational rehab via ACCES-VR (VESID)
- File *Claimant's Record of Job Search Efforts/Contacts (Form C-258)* for these activities
- Include a resume in your Board filings

 **Workers' Compensation Board**

CLAIMANT'S RECORD OF JOB SEARCH EFFORTS/CONTACTS

Last Name: _____ First Name: _____ MI: _____ WCB Case # _____

For the Period: _____ to: _____

Use this form to show your efforts to attach to the labor market. Information regarding labor market attachment can be found on the Board's website at www.secd.ny.gov/labormarket/attachment. Detailed instructions are on page two of this form.

You can demonstrate attachment in one or more ways:

1. active participation in a job-location service such as One-Stop Career Centers, Workforce One, etc.;
2. an independent job search;
3. active participation in vocational rehabilitation through ACCES-VR, another Board approved rehabilitation program, or a job re-training program;
4. attendance in an accredited educational institution full-time to pursue employment.

Check the box or boxes below to demonstrate your attachment to the labor market and provide all required information.

NOTE: Benefits may be suspended if the Board issues a decision finding that your job search efforts were not sufficient. This document will be considered evidence by the NYS Workers' Compensation Board, therefore you should consult with an attorney or licensed representative before completing this form and before submitting it to the Board.

1. Participating in NYS Department of Labor's re-employment services such as One-Stop Career Centers, Workforce One, etc.:

Name of Program or Service: _____ Location: _____

Date mm/dd/yyyy: _____ Activity/Result: _____

Date mm/dd/yyyy: _____ Activity/Result: _____

Date mm/dd/yyyy: _____ Activity/Result: _____

Attach supporting documentation. If necessary, attach separate sheet listing additional dates and activity/result.

2. Independent Job Search. If you conducted an independent job search complete Form C-258-1 to record your job search efforts. Be sure to complete all fields in order to show that your job search is timely, diligent and persistent. If you are only submitting a record of an independent job search, you may use Form C-258-1 without also filing out Form C-258.

3. Participating in Adult Career and Continuing Education (ACCES-VR) or other rehabilitation or job-retraining programs including SUNY Educational Opportunity Centers (EOC):

Date(s) of Contact mm/dd/yyyy: _____

Name of Career Center or Program: _____

Mailing Address: _____ Line 2: _____

City: _____ State: _____ Zip Code: _____

Name of Person Contacted: _____ Daytime Phone #: _____

Result: _____

Attach supporting documentation.

4. Attending an accredited educational institution or licensing program to pursue employment within my work restrictions:


Date of Enrollment mm/dd/yyyy: _____ Estimated Graduation Date mm/dd/yyyy: _____

Name of Educational Institution: _____

Mailing Address: _____ Line 2: _____

City: _____ State: _____ Zip Code: _____

Attach proof of enrollment.

C-258 (5-19)  Page of www.secd.ny.gov

Indemnity benefits: Independent work search to demonstrate LMA

■ In-person canvass and applications are acceptable

- Full date, name, phone, and address of contact and employer
- Type of work/position discussed and employer response

■ Online applications are acceptable

- Application date, position, and site name used
- Reference number and copy of application
- File email confirmations
- File *Claimant's Record of Independent Job Search Efforts (Form C-258.1)*

Workers' Compensation Board
CLAIMANT'S RECORD OF INDEPENDENT JOB SEARCH EFFORTS

Last Name: _____ First Name: _____ M: _____ WCB Case #: _____
For the Period: _____ to _____

Use this form to record all of your independent job search efforts. In the space provided above you should indicate the period of time covered by this form. Use additional sheets as needed. You may be asked to present documentation to support your work search efforts at a hearing. Attach copies of resumes, inquiry letters, email communications and applications completed in connection with these job search efforts.

* Method of Contact: P for in person, T for telephone, M for mail, or O for online or email.

Date of Contact	Method of Contact	Position Applied For
Employer Name: _____ Mailing Address: _____ Name and Title of Person Contacted: _____ Daytime Phone #: _____ Employer Website: _____ Confirmation #: _____ Result: _____		
Employer Name: _____ Mailing Address: _____ Name and Title of Person Contacted: _____ Daytime Phone #: _____ Employer Website: _____ Confirmation #: _____ Result: _____		The pos
Employer Name: _____ Mailing Address: _____ Name and Title of Person Contacted: _____ Daytime Phone #: _____ Employer Website: _____ Confirmation #: _____ Result: _____		

[Add Another Job Search](#)

C-258.1 (7-17) Page 1 of 1 www.wcb.ny.gov

Medical Care: Medical Treatment Guidelines

- Treatment must conform to the 16 individual guidelines
- **Providers** must file for prior authorization in OnBoard
- Prior authorization is specified for
 - Treatments that vary from the guidelines
 - Treatments over \$1,000
- There is a review process of authorization and variance requests

Medical Care: Medical Treatment Guidelines

- Level 1 – Adjuster/nurse at the payer reviews
- Level 2 – Treating provider asks to escalate denial to a physician at the payer
- Level 3 - Treating provider asks to escalate denial to the Board's Medical Director's Office (MDO)
- An *Order of the Chair* may be created in some circumstances
- There is also a *Drug Formulary*

Best practice: Medical care

- Arrive at all appointments with your:
 - WCB case number
 - Insurer case number
 - Insurer name



Best practice: Independent medical exams

- There is no doctor/patient relationship
- You may bring a witness to an independent medical exam (IME)
- You may record an IME, video, and audio
- You should review the IME report
- Complaints about IME conduct should be made to the Advocate for Injured Workers
- You may claim travel reimbursement to and from an IME

Appeals

- **Judge's decisions can be appealed within 30 days of filing**
 - If represented, the attorney does it
- **Appeal is decided by a panel of three Board members and benefits must be paid then, if found payable**
- **Next appeal is to the full Board – mandatory (split decision) and discretionary (unanimous decision)**
- **From there, the NYS Supreme Court, Appellate Div., 3rd Dept.**
- **Appellants may skip the full Board and go directly to the 3rd Dept.**

What's a settlement?

- A **settlement** is a **Section 32 Waiver Agreement**
- A Section 32 Waiver Agreement permanently closes medical, indemnity, or both, in exchange for a payment
- It's forever, so the worker cannot return for more benefits
- It's entirely optional for worker and payer
- Last step: the Board reviews it, then approves or rejects it (if unconscionable), but does not **negotiate** it

File claims for COVID-19

- Medical reports are key
- File a positive PCR test result or diagnosis
- Discuss with provider details of your workplace
 - Public contact?
 - Are masks worn?
 - Is COVID-19 prevalent in the workplace?
 - Any other circumstances the provider should know about potential exposure?
- There's a fact sheet and a short video on wcb.ny.gov

Scenario: Should Liz file a claim for COVID exposure?

- Liz worked at a big box store in the seasonal department during the holidays, dealing with the public
- Liz called in sick to work; her PCR COVID test was positive
- She received Paid Sick Leave for the two weeks of work she missed
- Liz was vigilant about following COVID protocols
- Several of Liz's coworkers also had COVID at the same time

Finding an attorney

- **NYS Bar Association**

(800) 342-3661 Monday – Friday, 8:00 a.m. – 12:00 p.m.
FindaLawyerNYS.org to request a referral

- **NYS Injured Workers Bar Association**

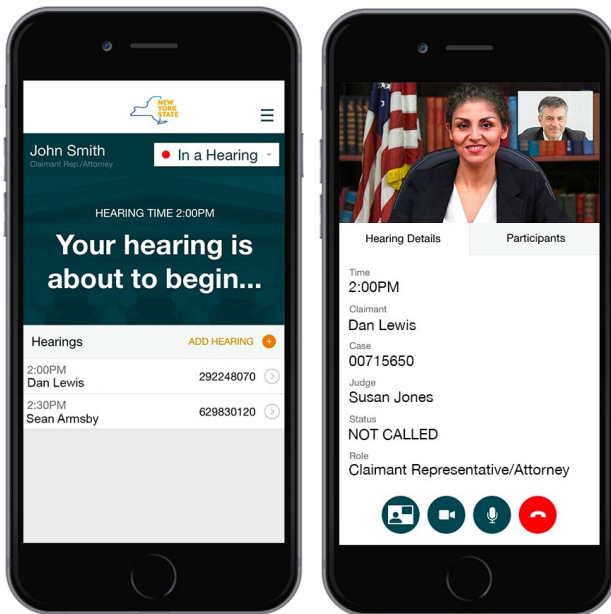
(518) 694-5358
injuredworkersbar.org

- **Licensed representatives: visit wcb.ny.gov and search “licensed claimants’ representatives” for the list**

- **Medical-only claim: visit nysba.org and select “workers’ compensation” on the left side of the page**

Virtual hearings

- First-in-the-nation initiative
- Makes attending hearings over mobile phone even easier
- Free app – no additional software
- Added convenience for injured workers and other parties
- Hearings have continued uninterrupted with virtual hearings



Follow the Board



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@NYSWorkersCompBoard



youtube.com/@nyswcb



wcb.ny.gov/notify

More information Advocate for Injured Workers

HELPLINE: (877) 632-4966

EMAIL: AdvocateforInjuredWorkers@wcb.ny.gov

WEBSITE: wcb.ny.gov *(search 'Advocate for Injured Workers')*



**Workers'
Compensation
Board**

Thank you

Questions?