



**Workers'
Compensation
Board**

What You Need to Know

**Office of the Advocate for
Business**

WCB.NY.GOV

The Advocate for Business

- Assists individual businesses with coverage and compliance problems
- Educates business owners and government personnel on the workers' compensation system
- Meets with business associations and employer groups to hear their concerns regarding the system
- Reports directly to the Chair of the Board

Workers' Compensation

- **Workers' Compensation Insurance**
 - Covers on-the-job accidents, injuries and illnesses
 - Provides medical and wage replacement
 - Protects both employers and their employees

Disability Benefits Insurance

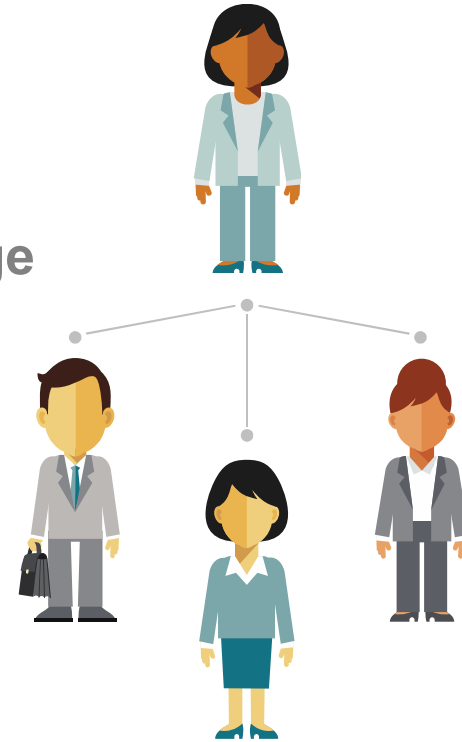
Disability Benefits Insurance

- Covers off-the-job accidents, injuries and illnesses
- Provides only limited wage replacement, no medical benefits
- Employees can receive a wage replacement of up to \$170.00 a week for up to 26 weeks



Who Needs Coverage and Who Doesn't?

- Businesses with employees need coverage



Employee Definition

- Anyone providing any services to a for-profit business can be determined to be an employee of that business
- Any compensated individual providing services to a nonprofit can also be determined to be an employee of that nonprofit with limited exceptions, such as clergy or teachers in a 501(c)(3)

Who Is Not Required to Carry Workers' Compensation Insurance?

- Sole proprietors with no employees
- Partners in partnerships with no employees
- One- or two-person owned corporations with no employees
- LLCs, if the only people compensated are the members of the LLC

Workers' Compensation Insurance Premium

■ Premium determined by:

- Classification code – how hazardous is business
- Rates are per \$100 of payroll
- Size of payroll
- How safely you operate business
- Administrative expenses

Specific Coverage Issues

- Sole proprietors, partnerships including LLCs, LLPs and corporate officers
- Independent contractors and subcontractors
- Family members
- Domestic employees
- And more...



Independent Contractor?

- **Factors considered when determining whether an individual is an independent contractor**
- **Examples:**
 1. Does the hiring business control the time and manner in which the work is to be done?
 2. Federal Employer Identification Number from the Internal Revenue Services (IRS) or filed business tax returns
 3. Maintain a separate business establishment from the hiring business
- **For more information and an extensive list of factors considered when determining whether an individual is an independent contractor visit the Employer section of the Board's website**

Construction Workers: Under the Law

- Construction Industry Fair Play Act
- Workers are presumed to be an employee unless they can prove they have their own business
- labor.ny.gov – search ‘Construction Industry Fair Play Act’



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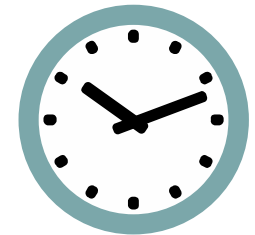
General Contractors: Under the Law

- General contractors are liable for the workers' compensation claims of all uninsured subcontractors



General Contractors:

- It is recommended that you have subcontractors add you as a certificate holder on their NYS Workers' Compensation insurance policy



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Noncompliance Penalties

- Up to **\$2,000** for every 10 days out of compliance, or **\$72,000** a year
- Up to 5 employees is a **misdemeanor**, subject to a maximum **\$5,000 penalty**
- More than 5 employees is a **Class E Felony**, subject to a maximum **\$50,000 penalty** and a maximum of **1 1/3 to 4 years in prison**
- Misclassification is the same as being uninsured

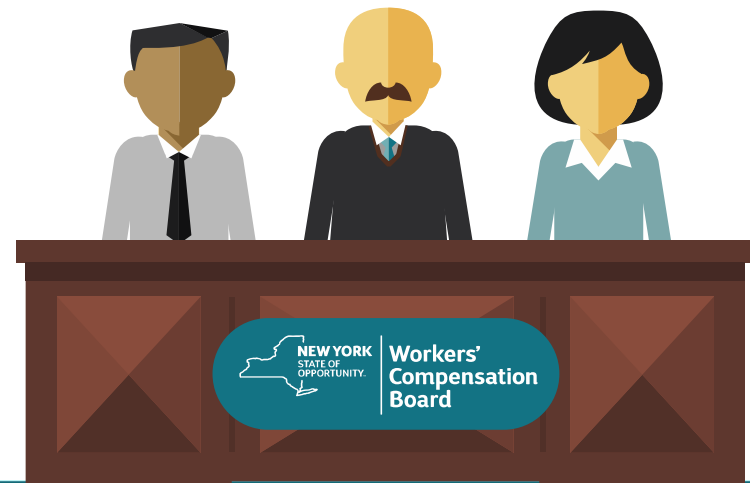
Debarment

- Under section 141-b of the Workers' Compensation Law, any person (or entity substantially owned by that person) is barred from bidding on, or being awarded, any public work contract or subcontract with the State, any municipal corporation or public body for one year for each WCB violation
- The ban is for five years for each felony conviction



The Appeal Process

- If you're penalized, don't stick your head in the sand!
- Contact the Board and/or appeal the penalty



Premium Cost Control

- Be sure the correct classification code is being applied
- Follow your claims – **STAY INFORMED**
- Operate safely

The Labor/Management Safety Committee: Avoiding Incidents

- Equal number of members from labor and management
- Regularly rotate Chair of committee
- Regular meeting schedule with an agenda

The Labor/Management Safety Committee: Tasks

- Visit the workplace
- Review equipment, sites and procedures
- Establish safe procedures and train for safety

Workplace Safety Prevention Incentive Program (Code Rule 60)

- Voluntary establishment of a safety, drug and alcohol prevention, or return to work program
- Save up to 10% on workers' comp insurance in first year, up to 6% in second and third years

	Year 1	Year 2	Year 3
Safety	4%	2%	2%
Return to Work	4%	2%	2%
Drug & Alcohol Prevention	2%	2%	2%

- For more information, visit www.labor.ny.gov/WSLPIP.html

NYS Dept. of Labor On-Site Consultation Program

- The NYS Dept. of Labor will visit the workplace and help mitigate safety risks at no cost
- For the NYS DOL On-site Consultation program, call **(518) 457-2238**

Employer Responsibilities

- Obtain required insurance
- Display required insurance poster
- Report claims timely
- Section 120 of NYS Workers' Compensation Law states that an employee cannot be discriminated against for filing a claim
- Employees can only be terminated for a valid business reason including misconduct, insubordination, lack of work/economic reasons, lengthy absence from work, inability to perform the job, or poor job performance
- Employees are eligible regardless of their citizenship and/or immigration status

New York State Paid Family Leave

Provides job-protected, **paid time off** to



Bond with a child



Care for sick family members



Assist family when a service member is deployed abroad

Coverage

Virtually all private employers are required to provide Paid Family Leave coverage

■ Employers

- Must procure coverage
- May deduct cost from employees' paychecks

■ Employees

- Pay the cost of the insurance



Sole Proprietors and Other Self-Employed Individuals

- Voluntarily opt-in for coverage
- Opt in within first 26 weeks of starting business: no waiting period
- Opt in after 26 weeks of starting business: two year waiting period

Who Pays for Coverage?

- Fully paid for by employee payroll contributions unless employer chooses to pay
- Department of Financial Services sets employee contribution rate to match cost of coverage
- Current cost information and a deduction calculator is available at paidfamilyleave.ny.gov/cost

Key Employer Responsibilities

1. Obtain Paid Family Leave coverage and pay the premium with funds collected from employee payroll deductions
2. Provide information about Paid Family Leave to employees
3. Provide wage information to the carrier when an employee requests Paid Family Leave

Visit the Employer section of paidfamilyleave.ny.gov for full details

COVID-19 Information

If There's an Illness

- If a worker notifies you they have tested positive for COVID-19, you must report it to your insurance carrier who will file a claim with the Board



COVID-19 Quarantine Leave

- Provides workers with job protection and financial compensation when they or their minor dependent child are subject to a mandatory or precautionary order of quarantine or isolation
- Most employees will get financial compensation by using a combination of benefits, which may include new employer-provided paid sick leave (depending on the size of the employer), Paid Family Leave and disability benefits

COVID-19 Quarantine Leave

- Your role in implementing the new COVID-19 quarantine leave, whether you're self-insured or providing these benefits through an insurance carrier, is largely the same as it has been for NY Paid Family Leave overall
- There are new forms for COVID-19 Quarantine Leave, available at paidfamilyleave.ny.gov/forms
- Visit paidfamilyleave.ny.gov/COVID19 for full details, including guidance for employers

COVID-19 Quarantine Leave

- **Employers with 10 or fewer employees and a net income less than \$1 million will:**
 - **Provide job protection**
 - **Eligible employees may use Paid Family Leave and disability benefits for the period of quarantine**

COVID-19 Quarantine Leave

- Employers with 11-99 employees and employers with 10 or fewer employees and a net income greater than \$1 million will:
 - Provide at least 5 days of paid sick leave
 - Provide job protection
 - Eligible employees may use Paid Family Leave and disability benefits for the period of quarantine

COVID-19 Quarantine Leave

- Employers with 100 or more employees, as well as all public employers will:
 - Provide at least 14 days of paid sick leave
 - Guarantee job protection for the period of quarantine

COVID-19 Premium Related Reductions

- Report payroll through your carrier
- Advise your carrier of personal protective equipment (PPE) purchases
- Check with your carrier to see if you qualify for the classification code for telecommuter reassigned employees (Code 8873)

More Information - Paid Family Leave

Helpline: **(844) 337-6303**

Website: **paidfamilyleave.ny.gov**



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New Claims System – Coming Soon!



- Access to real-time claim status
- Online self-service features and eForms
- Scheduled to launch in a limited release – Spring 2021
- eClaims upgrade – Mid-2021
- Full OnBoard system - 2023
- Stay informed: wcb.ny.gov/onboard

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wcb.ny.gov/notify

More Information – Advocate for Business

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wcb.ny.gov – search ‘Advocate for Business’