

Summary of key provisions of workers' compensation reform agreement

The bottom line is a projected savings for employers of 10-15 percent at the outset with more to follow

Here is a summary of the key provisions of a package of workers' comp reforms that was announced February 27 by Governor Spitzer and legislative leaders. The announcement followed nearly three months of negotiations among Spitzer and key players in his administration, business (represented by the New York State Business Council) and labor.

The legislation – S.5322 (Bruno) / A. 6163 (Silver) passed both houses unanimously on Tuesday, March 6. Governor Spitzer signed the bill into law on March 13 (Chapter 6 of the Laws of 2007). The Governor also issued a directive – in the form of a separate letter dated to March 13 – to the Superintendent of Insurance, Commissioner of Labor and Chairman of the Workers' Compensation Board on a number of follow-up administrative and regulatory changes.

I. Maximum benefit weeks

The maximum number of weeks that PPD claimants can receive indemnity payments is set forth in the schedule below. The Maximum Benefit Period is calculated from the date that the claimant is classified as being permanently partially disabled.

These maximums affect indemnity only, not medical benefits.

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

II. Safety net

There are four components: (1) the Commissioner of Labor produces a report by 12/1/07 as to how to get workers back to gainful employment; (2) the Total Industrial Disability

case law is incorporated by reference; (3) there is an extreme hardship redetermination option for those with 80% or greater disability; (4) the Commissioner issues annual reports as to the status of the PPD claimants.

III. Benefits

1. Maximum benefit is raised to 2/3 average weekly wage in steps. Year 1 to 500, Year 2 to 550, Year 3 to 600, and Year 4 to 2/3 AWW in perpetuity. The 2/3 AWW calculation will be on the previous year's four quarters.

2. Minimum weekly benefit is raised to \$100 from the current \$40. A claimant who makes less than \$100 will receive only the amount of their wages.

IV. Miscellaneous Provisions with Scoring from CIRB

1. Establish a fee schedule for prosthetic and other devices. Pharmacy fee schedules. Allows use of generics when available. Allows negotiated networks for imaging, labs and other medical tests.
2. Claimants who are incarcerated are not entitled to receive WC benefits.
3. Creates discount programs for maintaining a safe workplace, return to work programs and drug and alcohol rehab programs.

V. Elimination of Second Injury Fund

The proposal will establish a management and financial structure to provide for elimination of the Second Injury Fund, settlement of existing cases and necessary financing mechanisms to manage the Fund's liabilities while providing less costly assessments for the business community.

VI. Mandates to Superintendent of Insurance and Work Groups

The Superintendent of Insurance will perform the following functions in consultation with the Board and the Commissioner of Labor.

1. Ongoing data collection by Superintendent of Insurance.
2. Streamlined regulations – Rocket Docket.
3. Committee to develop guidelines. (a) Updated NY guidelines for treating doctors. (b) A “best practices” document for health care professionals for treatment, managed care, vocational rehabilitation, and use of imaging. (c) Guidelines, protocols, and training for ALJs.
4. Rate setting inquiry.

VII. Return to Work Program

The Commissioner of Labor will issue a report to the Governor and the Legislature on or before December 1, 2007, making recommendations as to how to assure that workers categorized by the Board as permanently partially disabled return to gainful employment to the greatest extent practicable. Sets up a six person Advisory Council to assist the Commissioner.

VIII. Anti-Fraud

1. Numerous provisions to detect and thwart fraud by employers and employees, including penalties, fines and stop-work orders.

VIII. Other provisions

Numerous provisions, including:

1. Raises threshold for prior authorization for radiology imaging and testing to \$1,000 and keeps physical therapy at \$500.
2. The manner in which assessments are determined for self-insured trusts will be amended.
3. Makes it easier for employers to create a PPO network.
4. Sunsets, as of 2/01/08, CIRB's designation as the special agent to the Insurance Department for rate-making purposes.
5. Creates a study to be done by the Workers' Comp Board on the methodology for establishing bonding requirements on self-insured employers.