



memo

TO: Members, NYS Legislature
FROM: Ken Pokalsky and Lev Ginsburg
SUBJECT: 2017 Workers Comp Reform Legislation
DATE: March 10, 2017

Workers' compensation coverage in New York is expensive and getting more so. National surveys show New York comp costs as among the highest in the nation, and the Department of Financial Services approved a "loss cost" increase – the basis for setting comp premiums – of 9.3 percent for 2017.

In response, The Business Council is supporting legislation that will produce significant comp system savings, while preserving the principal objectives of the workers' comp system – replacing lost wages, providing medical care to injured workers, and promoting return to work.

- **S.4014 (DeFrancisco) / A.5977 (Woerner)** would require the Workers' Compensation Board (WCB) to release and adopt already completed Impairment Guidelines for SLU awards. These guidelines serve as the basis for determining impairment, which is a major determinant in the size of SLU awards. However, the WCB's current guidelines have not been overhauled since 1983, and reflect thirty-year old medical assumptions. The WCB has developed new guidelines, with input from medical professionals and system stakeholders, which reflect modern medical evidence. Updated SLU impairment guidelines will result in more appropriate calculations of SLU awards.
- **S.4554 (Amedore) / A.6218 (McDonald)** limits "scheduled loss of use" awards to cases with 85% impairment ratings; in these cases, injured workers would receive the SLU award adjusted for indemnity benefits for lost time. These additional SLU awards have no relationship to lost time or lost earnings. In fact, New York State Workers' Compensation Board data show that 75 percent of SLU awards are payments in excess of actual lost, while costing the system over \$1.2 billion annually. This bill would guaranty that severely injured workers would continue to use the current schedules, while those with less serious injuries, who have missed little time from work, continue to receive workers' compensation benefits in the exact same way that their colleagues with non-SLU injuries.
- **S.4520 (Akshar) / A.6602 (Woerner)** specifies that duration caps for permanent partial disability claims will start at the date of injury. One of the major provisions of the 2007 workers' compensation reform package was a more than doubling of the maximum weekly benefit, indexed to the average weekly wage, from \$400 to now more than \$864, to be offset by durational caps on permanent partial disability (PPD) claims of up to ten years. Pre-reform, New York was the only state allowing "lifetime" PPD claims. Unfortunately, the 2007 legislation failed to address the start date for durational caps, and the average time from the date of injury to the date of disability rating (and the commencement of duration caps) in New York had skyrocketed to over eight years after the 2007 reforms. While there has been some reduction in this time delay, this bill will address the gap in the 2007 law and specify that the 10-year duration "clock" start at the date of injury.

Addressing these two issues will provide cost savings of up to 10 percent each, producing significant premium relief for NYS employers, assuring a more financially stable comp insurance market, while preserving indemnity and medical benefits for injured workers