



## Table of Contents

A Message from Chair Zachary S. Weiss .....	1
Introduction.....	2
Benefits for Injured Workers Increased for the First Time in Over a Decade.....	3
Employer Costs Were Reduced Significantly; Savings Will Grow Over Time .....	4
Claim Procedures Were Streamlined .....	5
Forms .....	5
Appealed Cases .....	6
Ensuring a Level Playing Field for All Employers.....	6
Stop-Work Orders .....	6
Proof-of-Coverage .....	7
Self Insurance.....	8
Livery Cabs and Workers' Compensation.....	9
Other Notable Achievements .....	10
Fraud Prevention.....	10
Pharmacy Fee Schedule .....	10
Claimant Services .....	10
Web Site.....	11
World Trade Center Outreach.....	11
Progress in Other Reform Areas .....	12
Medical Treatment Guidelines.....	12
Return to Work .....	12
Data Collection .....	12
Conclusion .....	13

## **A Message from Chair Zachary S. Weiss**

In the past year, there have been great changes in the workers' compensation system in New York—changes that were necessary for New York State and the Workers' Compensation Board to fulfill their obligation to both workers and employers.

It has been just over a year since I assumed the role of Chair for the Workers' Compensation Board. I have been impressed with the dedication and talent shown by the Board's staff in tackling the task of improving the New York State workers' compensation system. I am also extremely grateful to our friends in state government, labor, and business for their support and cooperation in taking on this demanding challenge.

Together, we have made significant progress.

In 2007, New York saw sweeping statutory reform in the workers' compensation system. Since then, benefits have increased while costs have decreased; injured workers are getting benefits faster; and fraud is being rooted out. This year, a great deal of the Board's efforts have been dedicated to implementing the reforms of 2007, as well as improving internal performance at the Board.

The same spirit of collaboration that helped craft the 2007 reforms also helped see the Board and the state through recent difficulties within the group self-insurance program. Under the leadership of Governor David A. Paterson, the legislature, business and labor were able to reach an agreement that ensures injured workers will continue to receive benefits, while maintaining self-insurance as a viable option for businesses across our state.

We should be proud of our accomplishments, but there is still much left to do. This report describes both the progress we have made and the challenges we still face. My hope is it will also help advance the dialogue on workers' compensation in New York and create a path for future successes.

Zachary S. Weiss  
Chair, New York State Workers' Compensation Board

## **Introduction**

For nearly a century, New York has had a no-fault workers' compensation system. Before the Workers' Compensation Law was enacted, an injured worker's only remedy was to sue in the courts. Even then, the employer could always raise an objection that the worker had assumed the risk of employment, or the injury was caused by the worker's negligence or that of another worker.

Today, the workers' compensation system guarantees both medical care and weekly cash benefits to people who are injured on the job. Weekly cash benefits and medical care are paid by the employer's insurance carrier, as directed by the Workers' Compensation Board. Employers pay for this insurance, and may not require the employee to contribute to the cost of compensation.

New York can trace its workers' compensation system back almost a full century, to a tragic fire at the Triangle Shirtwaist Factory in New York City. In that incident, 146 people died – mostly women, some as young as twelve. It was the greatest workplace disaster in New York until the attack on the World Trade Center on September 11, 2001. The fire galvanized labor and led to many reforms in safety, health, and labor laws. More to the point, it helped lead to the ultimate triumph of the workers' compensation system both here in New York and across the country.

Because New York's Workers' Compensation Law pre-dates Social Security and Prohibition, it needs to be revised to keep up with the times. That is why over one year ago the state of New York, in close partnership with labor and the business community, adopted a sweeping workers' compensation reform measure.

The 2007 reforms have done as much to reform the way our workers' compensation system works as had been done in any of the previous 90 years. What follows is an examination of the 2007 reforms and their implementation by the New York State Workers' Compensation Board.

### Benefits for Injured Workers Increased for the First Time in Over a Decade

When a worker is injured on the job and has to miss work, workers' compensation will provide a wage replacement benefit. The benefit is two-thirds of the worker's pay, up to a maximum benefit. For fifteen years, the maximum weekly benefit for injured workers was fixed at \$400.

The reform law of 2007 immediately increased the maximum weekly benefit to \$500 and provided for steady increases until 2010, when it will be indexed annually at two-thirds of the average weekly wage in New York. According to the New York State Department of Labor, the 2007 average weekly wage for New York was \$1,141. If this remains unchanged until 2010, the maximum weekly benefit will increase to approximately \$760.

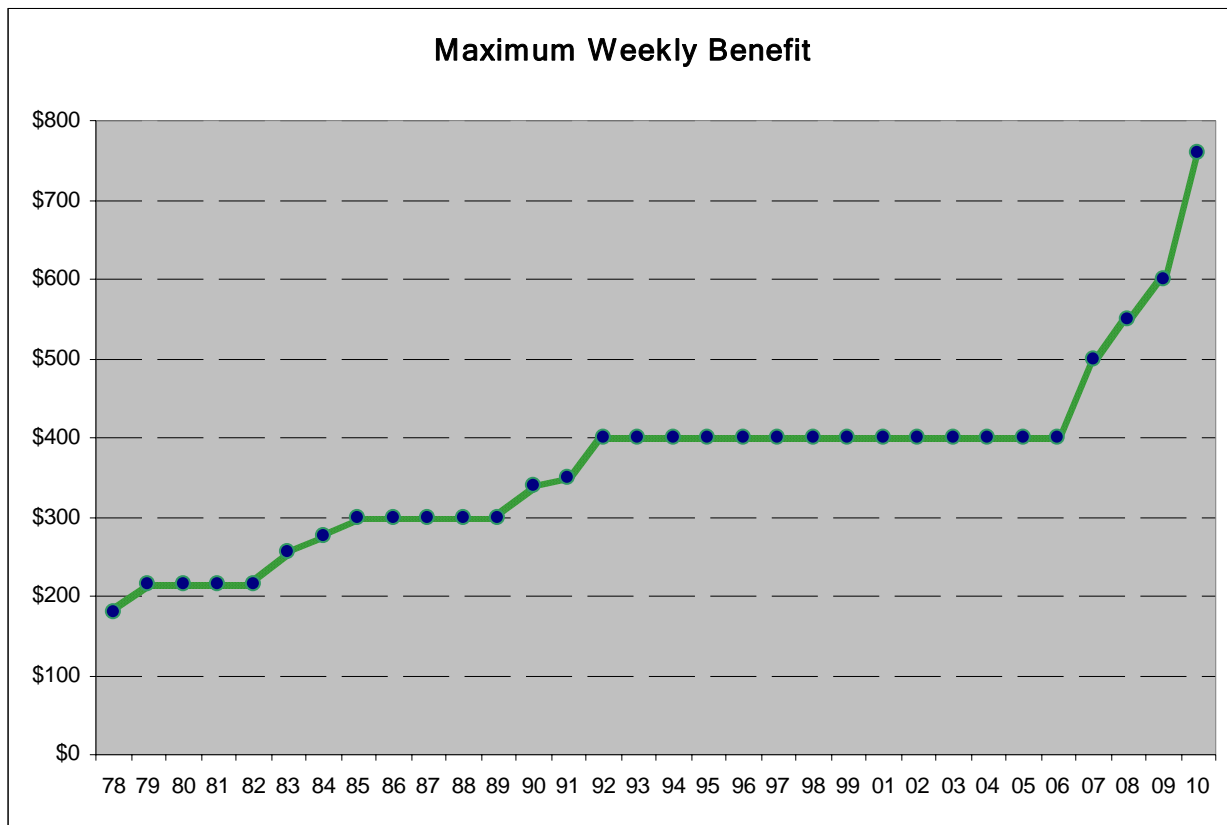


Figure 1. Maximum benefits for the past 30 years, per Workers' Compensation Law WCL §15(6). Year 2010 is projected.

### Employer Costs Were Reduced Significantly; Savings Will Grow Over Time

Two years ago, New York had one of the most expensive workers compensation programs in the country. Now, because of the successful implementation of workers' compensation reforms of 2007, employers in New York are becoming far more competitive.

In a recent study, the Oregon Department of Consumer and Business Services found that employers in New York State's voluntary market pay, on average, the 19<sup>th</sup> highest workers' compensation premium rates in the nation. This is down from the 10<sup>th</sup> highest rates in 2006 and doesn't include a recent 5% rate reduction. New York now ranks below neighboring states Pennsylvania, New Jersey, Vermont, and Ohio.

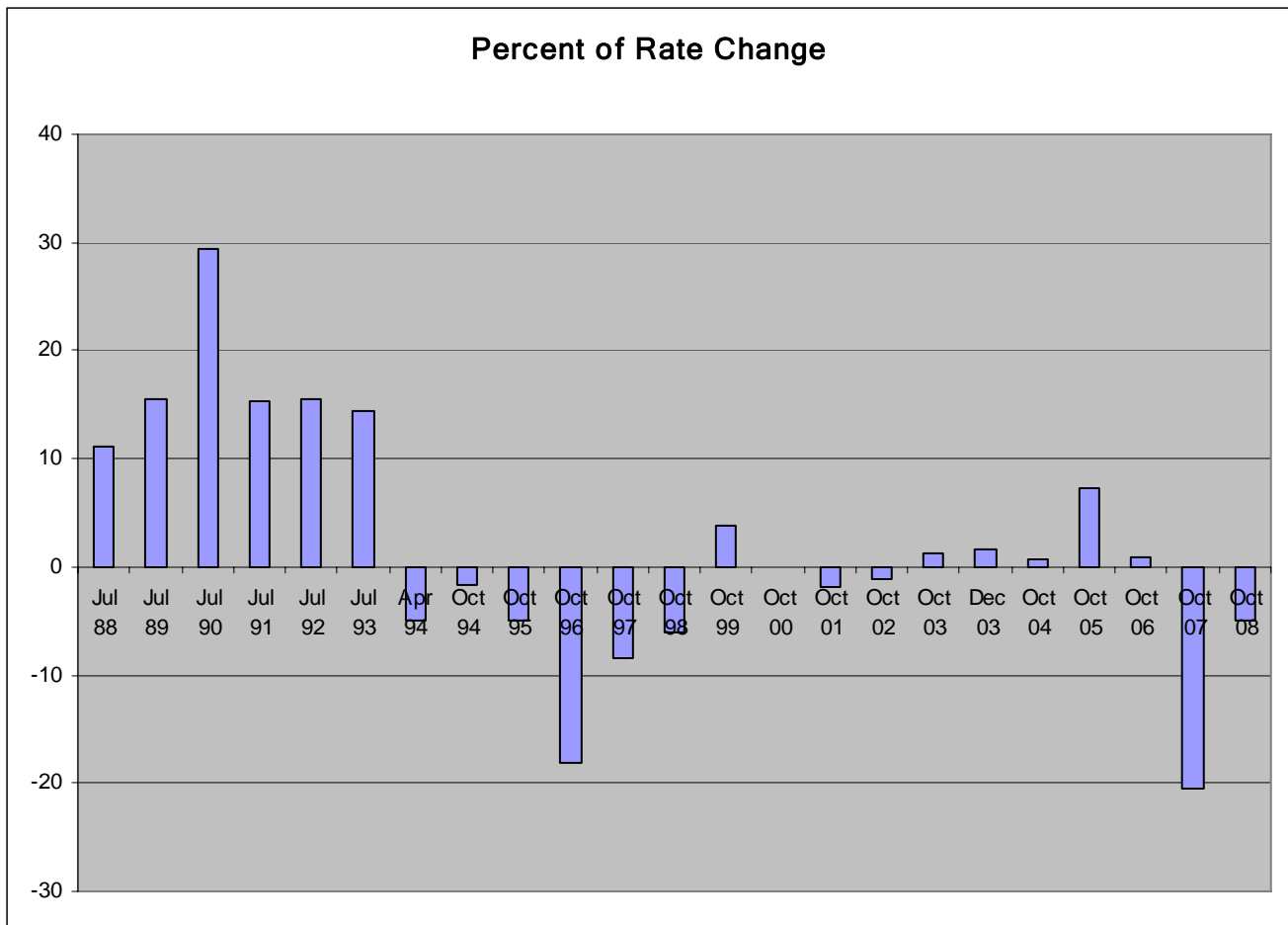


Figure 2. Percentage of rate change for the past 20 years.

## **Claim Procedures Were Streamlined**

When an employer disputes (or *controverts*) a claim, the Workers' Compensation Board determines, through an administrative proceeding, whether an injured worker will receive benefits and/or medical care reimbursement, and how much he or she will receive. Prior to the 2007 reforms, it took an average of more than 200 days to resolve disputed claims; now, the goal is to resolve these cases in 90 days. Towards this end, at its September 16, 2008 meeting, the New York State Workers' Compensation Board voted unanimously to adopt new regulations permanently creating a streamlined docket to resolve controverted claims. This vote marks a great leap forward for New York's injured workers, who will now have a regulatory guarantee that they will receive their needed benefits more quickly.

Even prior to the adoption of these regulations, this year the Board was able to halve the time it took to resolve controverted claims and will continue to improve operations to better serve the injured workers of New York. Parties will be required to provide more information earlier in the process. The key is the presence of a medical report alongside a statement from the employer or employee. The medical report itself will also be more inclusive. These steps should significantly reduce and eventually eliminate preemptive challenges for missing medical evidence and both help hearings move faster and eliminate unnecessary hearings.

## **Forms**

One of the goals of the Workers' Compensation Reform initiative is to enhance the service the Board provides to injured workers, employers and stakeholders. A critical element of this effort is the redesign of forms the Board uses to gather information about a claim. The goals of the forms redesign effort were to develop more user-friendly forms while collecting additional information needed to more quickly process and resolve claims, including claims that have been controverted.

To design the new forms the Board formed an internal working team and procured a forms expert to make the initial revisions.

In October and November of 2007, the Board met with representatives from various stakeholder groups representing workers, businesses, medical providers, insurance carriers and attorneys to gather feedback on the initial revisions to the forms.

Between December 11, 2007, and January 24, 2008, the Board posted the revised C-2, C-3, and C-4 forms, and the new C-4.2 form, on its website for input from the general public. During this period, over 340 survey responses were received.

After each step in the process, suggestions were evaluated and changes were incorporated.

In addition, Forms C-2 and C-3 were reviewed with plain language experts to ensure ease of use for all participants in the workers' compensation system.

With the Board's approval of the Streamlined Docket regulations, the revised forms are now available for use.

### ***Appealed Cases***

The Board has restructured the flow of appealed cases, which has allowed us to cut the backlog and expedite processing time. There has been a 25% drop in backlog since March, 2008.

Our inventory of pending appeals has continued to drop. As of November 1, the Board had a pending inventory of about 3,652 cases, down nearly 1,100 cases since February, 2008. The age of our cases continues to drop as well. In November, 91% of our inventory was under 6 months old. With a smaller inventory, we expect to see the age of our cases to drop further. A shorter period on turn-around time will move the Board closer to our goal of making sure that cases are resolved as quickly as possible.

## **Ensuring a Level Playing Field for All Employers**

### ***Stop-Work Orders***

Any business operating without workers' compensation coverage hurts not just its employees but every other business that plays by the rules. To combat this problem and ensure a level playing field for all New York businesses, the reform legislation of 2007 gave the Board the power to issue stop-work orders. If an investigator determines the employer does not have a workers' compensation policy or has unpaid compliance penalties, this employer must immediately cease business operations. To date, the Workers' Compensation Board has issued over 1,700 stop-work orders.

The first stop work order was issued on July 17, 2007, and the Board has recently stepped up its use of this tool. Board investigators regularly serve them on compliance sweeps. Carriers must advise the Board after every workers' compensation policy is written or canceled, and this data is captured in an easily searchable database. Thus, businesses that do not carry insurance are readily identified.

Many of the stop work orders are lifted after only a few days or less when the employer obtains a workers' compensation policy and, if necessary, enters into a payment plan to pay compliance penalties. This helps ensure that the employees are covered by a policy and are back to work quickly.

Since July 2007, a total of \$20 million in penalties have been levied statewide – including \$16.6 million in penalties to businesses that did not have the mandatory insurance

protection for injured workers. In addition, \$3.3 million in penalties were levied for failing to produce business records that show, for example, number of employees, wages paid, and classification of employees.

Those penalties are deposited in the Uninsured Employers Fund (UEF), which pays the claims of injured workers whose employers do not carry the required insurance. New York is one of the few states whose uninsured employer funds are currently operating in a surplus. New York's UEF balance has risen every year since 2005, and stands at over \$49.2 million.

Earlier this year, the penalty for failing to maintain insurance coverage was increased to \$2,000 for every 10 days out of compliance, up from the \$1,000 set in the 2007 Workers' Compensation Reform. Previously, the noncompliance penalty was \$250 for every 10 days.

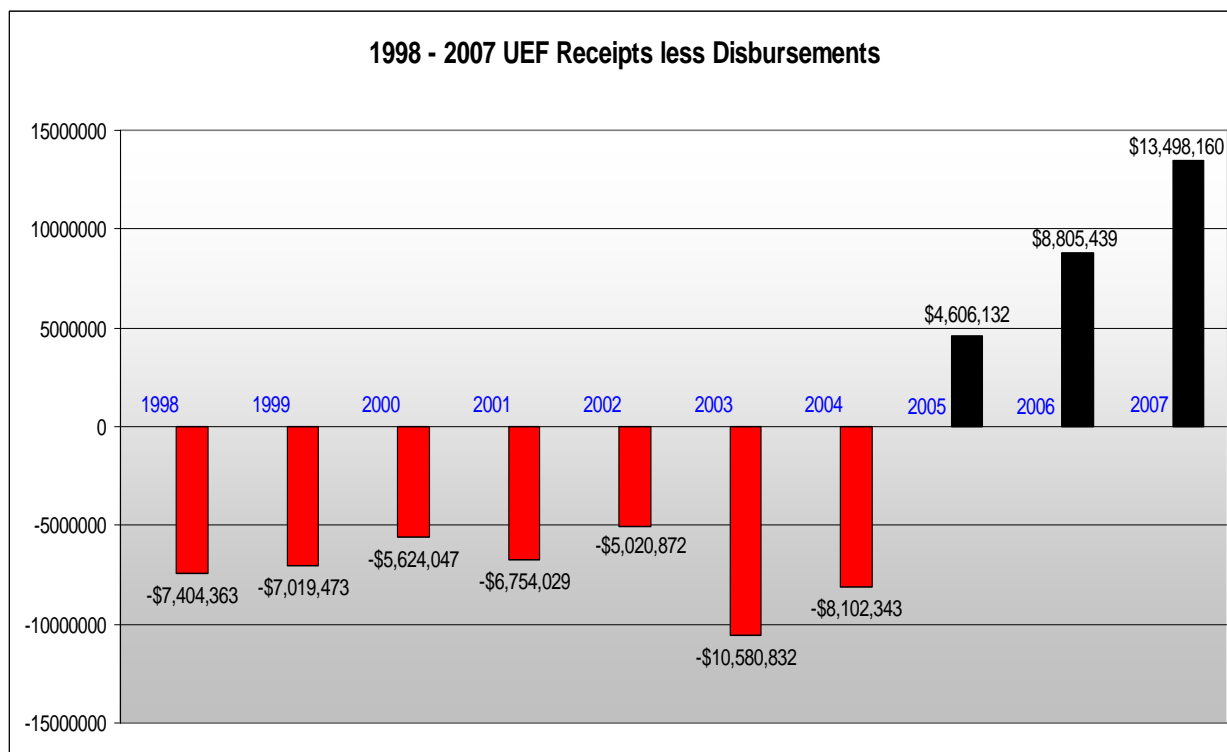


Figure 3. The Unemployed Employers Fund after receipts and disbursements, from 1998 to 2007.

**Proof-of-Coverage**

On the Board's website is an Employer Proof-of-Coverage tool. Now anyone can look up a New York employer's Workers' Compensation or Disability Benefits policy, and then contact the Board's compliance office if an employer lacks the required coverage. For example, an injured worker will be able to determine if his or her employer has coverage, and an employer can look up a competitor's record to determine if that

business carries coverage. It is the Board's hope that this technology will lead to greater compliance statewide.

### **Self Insurance**

New York State employers are required by law to provide workers' compensation coverage to their employees, and one way of doing so is through self-insurance. There are two ways to self-insure – individually or as part of a group trust. In a group trust, a number of smaller businesses in a similar industry pool money to be able to pay the workers' compensation claims of group members. Over the past year and a half, the Board has taken over the administration of a number of these trusts because they have become insolvent. These defaults have placed a considerable strain on the whole self-insured community.

In June 2008, Governor David A. Paterson signed legislation to improve the transparency and strengthen regulation of group self-insured trusts through regular review of trust finances by independent actuaries, heightened penalties for misconduct, and new procedures to ensure that under-funded trusts become fully funded.

The new law also calls for the creation of a fund to ensure the payment of claims by defaulted trusts. This new fund will be able to access excess funds from the Board's Uninsured Employers' Fund up to a total of \$52 million, which will alleviate some of the burden placed on other employers by these defaults. In addition, the legislation created a task force to recommend possible additional reforms for workers' compensation group self-insured trusts. The task force comprises representatives of various participants in the workers' compensation arena.

This legislation has already helped strengthen and stabilize the self-insurance industry in New York. Because of this new law and other successful recovery and cost containment efforts, the Board was able to reduce by half the annual self-insurers' assessment amount from the previous estimate of \$66 million for 2008-09 to approximately \$33 million.

The Board expects to be able to minimize the amount of borrowing from the UEF for the 2008-09 year – allowing the majority of the UEF funds to be used as an offset against the 2009-10 self-insurers' assessment. It is the Board's hope that if the present trends continue, the assessments for 2009-2010 will be significantly less than the amount required for this year.

## **Livery Cabs and Workers' Compensation**

Because of their unique status, livery drivers who are injured on the job have faced uncertainty in receiving needed compensation. To remedy this, Governor David A. Paterson signed a bill into law that establishes clear rules for classifying livery cab drivers in New York City, Westchester, and Nassau County as either employees or independent contractors of livery bases—cab companies that dispatch livery drivers. The new law also calls for the creation of a fund to give workers' compensation benefits to independent contractor livery drivers and their families in cases of severe injury, death, or when the driver is the victim of a crime.

Before this law, there was no system in place to clarify when livery cab bases should classify their drivers as employees or independent contractors. As a result, an injured driver could go years without receiving compensation because this lack of classification would bounce drivers between the no-fault insurance and workers' compensation systems.

This new law eliminates these problems. It establishes a clear set of rules to define when drivers are either employees or independent contractors of livery cab bases. Such a classification will be made in advance for each livery cab base, so that policies can immediately be put in place for drivers and other employees to claim benefits and compensation.

Second, the law creates a new fund for independent contractors that establishes full workers' compensation coverage for many serious injuries—death, paralysis, loss of limb, and those resulting from a crime. In such cases, drivers will no longer be forced to rely on the no-fault insurance system. The fund will provide greater benefits to the drivers than if they were completely independent contractors, while the bases will pay less than if they were full employees.

## **Other Notable Achievements**

### ***Fraud Prevention***

During 2007, the New York State Workers' Compensation Board Office of Fraud Inspector General (OFIG) received 3,893 fraud complaints for investigation. This figure includes 880 complaints received through OFIG's 24-hour fraud telephone hotline.

In 2007, the number of arrests and prosecutions resulting from OFIG investigations increased to 144. This increases the total number of arrests stemming from OFIG's fraud investigations since 1997 to 1,019. These arrests have included claimants, employers, insurance brokers, lawyers and medical providers. The overwhelming majority of these defendants plead guilty once the incriminating documentary and/or video surveillance evidence against them was revealed.

Restitution to employers, insurance carriers, self-insurers and government agencies was frequently secured through court order. In 2007, the amount of money restored to defrauded victims resulting from OFIG actions via direct restitution payments, fines collected, and fraud prevented totaled \$5.6 million. Since 1997, OFIG has saved the workers' compensation system \$31.6 million in victim restitution, fines and fraud prevented. Cases currently under prosecution are likely to result in the return of several million dollars more to fraud victims.

### ***Pharmacy Fee Schedule***

Recognizing the unique nature of workers' compensation claims within the pharmacy industry, the Board adopted one of the most aggressive fee schedules in the nation. The fee schedule reimburses vendors at the average wholesale price (AWP) minus 12 percent for brand name drugs, plus a \$4 dispensing fee. The reimbursement price for generic drugs is AWP minus 20 percent, plus a \$5 dispensing fee. This move will provide significant cost savings.

### ***Claimant Services***

The Board is working to accommodate the different language requirements of injured workers. By increasing a claimant's understanding of the hearing process, the Board hopes to improve that worker's participation and yield fairer results.

Claimants who speak and understand little or no English are known as Limited English Proficient (LEP). Currently, workers' compensation law judges use telephone interpreters to allow LEP claimants to testify at hearings. Generally, an interpreter is only used when the judge or the claimant's attorney is asking the LEP claimant questions that require a response. Other portions of the hearing, including the testimony of other English-speaking witnesses, occur in English only. This effectively denies the LEP claimant the opportunity to understand those portions of the hearing and to participate in the prosecution of his or her claim.

The Board is developing a program to use in-person interpreters for all hearings involving LEP claimants that are scheduled for a fixed date. The interpreter will sit next to the claimant and provide simultaneous translation of the entire proceeding.

To make sure that unrepresented claimants receive the same attention afforded to represented claimants, the Board has started a trial program where three hearing parts in Manhattan have one day per week devoted to calendars consisting only of unrepresented claimants. As these cases generally take longer to handle, the Board also doubled the normal time allowance.

### **Web Site**

As part of its continuing efforts to improve service to both business and injured workers, the New York State Workers' Compensation Board launched a redesigned web site in May, 2008.

The redesigned web site's new features include intuitive navigation that makes it easier to find information; new graphics and layout; and the latest in accessibility options for people with visual, auditory or other impairments.

Anyone can also use the web site to access web casts of Workers' Compensation Board meetings going back to September 2007. In addition to its normal work, the Board has hosted a number of noted experts in the field of workers' compensation, including:

- John Burton Jr. Ph.D., Professor Emeritus, Rutgers University,
- Robert Emmett Bonner M.D. PhD, Vice President of The Hartford,
- Ann Clayton, Workers' Compensation Consultant, and
- Les Boden Ph.D., Economist, Boston University School of Public Health.

### **World Trade Center Outreach**

As part of the campaign to educate and alert those who participated in rescue, recovery and clean-up operations after the World Trade Center attacks of their service, former New York Yankee Bernie Williams has appeared in radio and television announcements for the Board in English and Spanish. In the television spot, he stands atop the World Financial Center, overlooking Ground Zero. The spots, which ask workers and volunteers to *Tell Us You Were There*, began airing statewide in early July.

The Board has also partnered with the 9/11 Health Registry and the Fire Chiefs Association of New York, as well as several industry publications, to reach the rescue, recovery and clean-up workers from the World Trade Center.

Due to the Board's efforts, the number of registrations has increased dramatically, with over 4,100 people newly registering.

## **Progress in Other Reform Areas**

### ***Medical Treatment Guidelines***

In December 2007, the Superintendent of Insurance submitted the first set of recommended treatment guidelines for the lower back, shoulder, cervical spine, and knee. Along with the treatment guidelines was an education plan. The Advisory Committee to the Superintendent continued to work on the implementation standards for the treatment guidelines, which were completed and forwarded to the Chair in June 2008. Upon receiving these standards, the Board was able to begin implementation and move ahead with a request for proposal (RFP) for services to develop and deliver training on the medical guidelines. To assist in identifying training needs, the Board has solicited input from the insurance carrier, physician and attorney communities. The Board expects to finalize the RFP by the end of 2008. The Board is drafting text to adopt the treatment guidelines and the implementation standards as regulations.

The Medical Guidelines Advisory Committee is currently working on impairment guidelines.

### ***Return to Work***

The Board, in partnership with the New York State Department of Labor, is determining the next steps for implementation of the administrative recommendations in the *Return to Work* Report issued by the Commissioner of Labor in March 2008. The Board has developed a list of initial recommendations to be implemented, and has reviewed them with the Department of Labor.

### ***Data Collection***

In March 2008, the Insurance Department issued its *Data Report*. The report contained benchmark measures of the New York State Workers' Compensation system and identified areas where additional data should be collected. The Board has identified the data it could begin collecting immediately. Some of the data required by the report will take additional resources to collect. The Board is exploring options to create a data warehouse so that all necessary information is measured and understood. The Board is currently working with the Insurance Department on a data report to be issued in March 2009.

## **Conclusion**

At its core, workers' compensation is a mutually beneficial agreement, facilitated by the state, between employers and their employees. This was true for the creation of our system in 1914 and continued with the reforms of 2007. It is important for government, labor, and business to continue this dialogue begun so many years ago.

The reforms are beginning to work and we are seeing system-wide improvements. It would be premature, however, to pass final judgment on our reform efforts. More time is needed to fully implement, evaluate, and develop the reform measures.

We owe the workers and businesses of New York a workers' compensation system that is just and strives for continuous improvement. We will only accomplish this if there is a lasting dialogue between all of the stakeholders in the system.

To encourage this dialogue, the New York State Workers' Compensation Board welcomes all feedback, questions, and concerns. To reach the Board, please write:

NYS Workers' Compensation Board  
20 Park Street  
Albany, NY 12207

Call (877) 632-4996, or send e-mail to [general\\_information@wcb.state.ny.us](mailto:general_information@wcb.state.ny.us).