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New York budget bills include significant workers' compensation reform

On March 29, 2013, New York Governor Andrew Cuomo signed the state's 2013-2014 budget bills into law. Part GG of [Senate 2607-D and its House companion, Assembly 3007-D](#), includes significant workers' compensation reforms. According to [the governor's office](#), these changes could save New York employers as much as \$800 million in loss costs.

The following notable provisions discuss the handling of workers' compensation claims:

- The minimum compensation rate for dates of injury on or after May 1, 2013 will increase from the current \$100 to \$150, except if the employee's wages at the time of injury are less than \$150 per week, in which case the employee will receive his/her full wages. The rate has not changed since 2007 and, unlike the weekly benefit that is updated every July 1, is not tied to an index.
- Section 25-A will close to new claims on January 1, 2014. Section 25-A of the workers' compensation law allows for certain claims to be transferred to what's known as the Fund for Reopened Cases. Claims become eligible to be transferred to the fund if at least seven years have passed since the date of injury and at least three years have passed since the date of the last indemnity payment. If a carrier's petition to establish a 25-A claim is approved, the fund takes over direct payments to both the claimant and the health care providers, allowing for closure of the claim file. The single assessment (described below) will be used to keep the funds' assets at the minimum statutory level.
- In lieu of an arbitration committee, a single arbitrator process will be introduced to resolve medical bill disputes involving less than \$1,000, or greater than \$1,000 if requested by the provider. The arbitrator will be a medical provider selected by the chair of the same practice area as the medical services in dispute.

The bills also include the following reforms designed to promote efficiency and provide savings to New York employers:

- Assessments for the Special Disability Fund (Section 15-8), Self-Insured Bond Financing (Section 50-C), Reopened Case Fund (Section 25-A), Disability Benefit Fund (Section 214), and the expenses of the Workers' Compensation Board will be combined into one and collected directly from employers. The new assessment will be calculated based on the overall anticipated annual expenses of the state's workers' compensation system.

- Assessment rates will be determined by November 1 of each year and assessed effective January 1 the following year. Carriers will be responsible for collecting and remitting the assessments for insured employees.
- The Workers' Compensation Board's authority to oversee the Special Disability Fund was confirmed. The budget bill grants authority to the board's chair to appoint an attorney to represent and defend the fund, instead of a representative.
- The bill establishes a bonding program, the proceeds of which will be used to purchase assumption of liability policies for claims associated with defaulted group self-insurance trusts (GSITs). The bonds will be backed by the assessments in Section 50-5 of the workers' compensation law. Ultimately the state will be able to offer flexible repayment plans, resulting in settlement and release for insolvent GSIT members.

The proposal to eliminate mandatory deposits into the state Aggregate Trust Fund (ATF) and close it to future deposits was not included in the final bill due to a compromise negotiated by Governor Cuomo, the Senate, and the General Assembly.

Early analysis from the [New York Compensation Insurance Rating Board](#) indicates that an increase of between 4.4 and 5.3 percent in future workers' compensation costs and that the termination of the Reopened Case Fund will result in more than \$1 billion in unfunded liabilities for carriers and the State Insurance Fund; however, the NYCIRB anticipates that these costs will be largely offset by a reduced Reopened Case Fund assessment, yielding overall net savings for employers in the state of New York.

Sedgwick is gearing up to implement the enacted changes and will continue to monitor whether the reforms improve the administration of the New York workers' compensation system and reduce costs.

If you have any questions about New York's workers' compensation reform efforts, please contact your Sedgwick client services representative.

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