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New York budget bills include significant workers' compensation reform

On April 10, 2017, New York Gov. Andrew Cuomo signed the state's 2017–2018 budget bills into law, including the most significant workers' compensation reforms since 2007. These reforms were the result of negotiations among all stakeholders and, once implemented, will reportedly help businesses and local governments achieve savings, while also enhancing protections for injured employees. [Click here](#) to view the workers' compensation reforms in Part NNN of Senate 2009-C and its House companion, Assembly 3009-C, starting on page 156.

System savings

Following are key workers' compensation reform provisions that are expected to result in savings for employers:

- **Change to temporary disability durations:** The insurance carrier or self-insured employer is allowed, with limitations, to take credit for benefits paid beyond 130 weeks (2.5 years) against the maximum number of weeks for permanent partial disability (PPD) when determined.
- **Revises Medical Impairment Guidelines for Scheduled Loss of Use (SLU) awards:** Requires the Workers' Compensation Board (WCB) to consult with stakeholders and adopt revised permanency guidelines that are reflective of advances in modern medicine that enhance healing and result in better outcomes by Jan. 1, 2018.
- **Creation of a prescription drug formulary:** The WCB chair must establish a comprehensive prescription drug formulary on or before Dec. 31, 2017. The formulary is required to include a tiered list of high-quality, cost-effective medications that are pre-approved to be prescribed and dispensed, as well as additional non-preferred drugs that can be prescribed with prior approval.

In evaluating savings due to these reform measures, two factors to keep in mind are:

1. The New York State Department of Financial Services (DFS) approved a 9.3 percent average loss cost increase in July 2016.
2. Provisions such as the creation of a drug formulary or revision of the medical impairment guidelines will not be implemented immediately, so the soonest many anticipated savings will be seen is 2018.

Protections for injured employees

The workers' compensation reforms in this bill intended to enhance protections for injured employees include:

- **Provides claimant right to hearing:** Requires the Board to hold a hearing within 45 days of request from a claimant if payments have not been started but the claim has not been denied under specific circumstances.

- **Creates “safety valve” for injured employee not at maximum medical improvement (MMI) within 130 weeks:** Limits the provision that credits temporary compensation paid beyond 130 weeks towards PPD under certain circumstances.
- **Eliminates attachment to the labor market defense for PPD:** Allows continuance of PPD benefits without requiring an ongoing demonstration of attachment to the labor market.
- **Expands eligibility for an extreme hardship redetermination:** Lowers the threshold for eligibility to apply for an extreme hardship redetermination from “greater than 80 percent” loss of wage earning capacity (LWEC) to “greater than 75 percent” LWEC. Also entitles injured worker to a full Board review in certain extreme hardship situations.
- **Limits defense in mental injury claims involving first responders:** Prohibits WCB from disallowing mental injury claims because the stress was not greater than that which usually occurs in the normal work environment if filed by a police officer, firefighter, emergency technician, paramedic or other person certified to provide medical care in emergencies, or an emergency dispatcher, due to extraordinary work-related stress incurred in a work-related emergency.

Additional reform provisions

The budget also includes the following workers’ compensation reform measures focused on promoting improved efficiency of the New York workers’ compensation system:

- **Adds establishment of the Board’s performance standards:** Empowers the WCB to administratively assess an aggregate penalty to any carrier or self-insured employer that fails to meet established performance standards.
- **Requires study of independent medical examination (IME) utilization:** Directs WCB chair to conduct a study of the utilization of IMEs in New York and convene an advisory committee that consists of relevant stakeholders and experts.
- **Requires annual report of overall system savings as a result of the 2017 reforms:** The public actuary must issue a report on or before June 1, 2018, and each of the next 10 years, that indicates the overall savings in the workers’ compensation system as a result of the 2017 reforms.

Sedgwick and many of our customers have been very involved in advocating for several of the key reform measures enacted. We are now gearing up to implement the enacted changes and will continue to monitor activity by the Board and committees being convened.

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

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