

3512--A

2015-2016 Regular Sessions

I N   S E N A T E

February 11, 2015

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Introduced by Sens. SEWARD, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommended to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to providing incentives for productive workers' compensation audits

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The workers' compensation law is amended by adding a new  
2     section 112-a to read as follows:  
3     S 112-A. AUDITS OF EMPLOYERS. 1. (A) EMPLOYERS IN ALL CLASSES OTHER  
4     THAN THE CONSTRUCTION CLASS SHALL BE AUDITED NOT LESS FREQUENTLY THAN  
5     BIENNIALY AND THE CHAIR OR BOARD MAY PROVIDE FOR MORE FREQUENT AUDITS  
6     OF EMPLOYERS IN SPECIFIED CLASSIFICATIONS BASED ON FACTORS SUCH AS  
7     AMOUNT OF PREMIUM, TYPE OF BUSINESS, LOSS RATIOS, OR OTHER RELEVANT  
8     FACTORS. IN NO EVENT SHALL EMPLOYERS IN THE CONSTRUCTION CLASS, GENERAT-  
9     ING MORE THAN THE AMOUNT OF PREMIUM REQUIRED TO BE EXPERIENCE RATED, BE  
10    AUDITED LESS FREQUENTLY THAN ANNUALLY. THE ANNUAL AUDITS REQUIRED FOR  
11    CONSTRUCTION CLASSES MAY BE A PHYSICAL, ONSITE REVIEW OF ORIGINAL  
12    PAYROLL RECORDS, EMPLOYEE RECORDS, CHECKBOOKS, CASH BOOK (DISBURSEMENTS  
13    AND RECEIPTS), GENERAL LEDGER, CONTRACTS, TAX RETURNS INCLUDING QUARTER-  
14    LY PAYROLL FILINGS, AND ORIGINAL CERTIFICATES OF INSURANCE. THE AUDIT OF  
15    ALL EMPLOYERS SHALL BE CONDUCTED NO MORE THAN ONE HUNDRED TWENTY DAYS  
16    AFTER THE EXPIRATION OF A POLICY PERIOD. AT THE COMPLETION OF AN AUDIT,  
17    IF REQUESTED BY THE AUDITOR, THE EMPLOYER OR OFFICER OF THE CORPORATION  
18    MUST PRINT AND SIGN THEIR NAMES ON THE AUDIT DOCUMENT AFFIRMING THE  
19    ACCURACY OF THE INFORMATION PROVIDED THEREIN. AS REQUIRED BY SECTION ONE  
20    HUNDRED TWELVE OF THIS ARTICLE, EMPLOYERS SHALL MAKE AVAILABLE ALL BOOKS  
21    AND RECORDS NECESSARY FOR THE PAYROLL VERIFICATION AUDIT AND PERMIT THE  
22    AUDITOR TO MAKE A PHYSICAL INSPECTION OF THE EMPLOYER'S OPERATION. IF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 AN EMPLOYER FAILS TO PROVIDE REASONABLE ACCESS TO ALL SUCH BOOKS AND  
2 RECORDS NECESSARY FOR A PAYROLL VERIFICATION AUDIT, INCLUDING A PHYSICAL  
3 INSPECTION OF THE EMPLOYER'S OPERATION, THE EMPLOYER SHALL PAY A  
4 SURCHARGE TO THE CARRIER OF TWO TIMES THE MOST RECENT ESTIMATED ANNUAL  
5 PREMIUM.

6 (B) EMPLOYERS THAT FAIL TO PROVIDE REASONABLE ACCESS TO THE CARRIER  
7 FOR THE PURPOSE OF CONDUCTING AN AUDIT SHALL BE REPORTED TO THE NEW YORK  
8 COMPENSATION INSURANCE RATING BOARD.

9 (C) IF AN EMPLOYER KNOWINGLY UNDERSTATES OR KNOWINGLY CONCEALS  
10 PAYROLL, KNOWINGLY MISREPRESENTS OR KNOWINGLY CONCEALS EMPLOYEE DUTIES  
11 SO AS TO AVOID PROPER CLASSIFICATION FOR PREMIUM CALCULATIONS, OR KNOW-  
12 INGLY MISREPRESENTS OR KNOWINGLY CONCEALS INFORMATION PERTINENT TO THE  
13 COMPUTATION AND APPLICATION OF AN EXPERIENCE RATING MODIFICATION FACTOR,  
14 SAID KNOWING MISREPRESENTATIONS OR KNOWING CONCEALMENTS SHALL BE CONSID-  
15 ERED FRAUDULENT PRACTICES IN VIOLATION OF APPLICABLE PROVISIONS OF  
16 SECTION ONE HUNDRED FOURTEEN OF THIS ARTICLE AND INSURANCE FRAUD IN  
17 VIOLATION OF APPLICABLE PROVISIONS OF SECTION 176.05 OF THE PENAL LAW.

18 (D) IF DURING THE COURSE OF AN AUDIT CONDUCTED UNDER THIS SECTION, AN  
19 INSURANCE CARRIER OBTAINS INFORMATION INDICATING A VIOLATION OF THE  
20 PROVISIONS OF PARAGRAPH (C) OF THIS SUBDIVISION, THEN THE CARRIER SHALL  
21 REPORT SUCH INFORMATION TO THE BOARD.

22 2. THIS SECTION SHALL NOT APPLY TO EMPLOYERS THAT SELF-INSURE OR  
23 EMPLOYERS THAT ARE MEMBERS OF A WORKERS' COMPENSATION GROUP SELF-INSURED  
24 TRUST.

25 3. FOR THE PURPOSES OF THIS SECTION, "CONSTRUCTION CLASS" MEANS THE  
26 WORK OR OCCUPATION DESCRIBED IN "GROUP 3" OF SUBDIVISION ONE OF SECTION  
27 THREE OF THIS CHAPTER.

28 S 2. This act shall take effect January 1, 2017.