

STATE OF NEW YORK

3964

2017-2018 Regular Sessions

IN SENATE

January 31, 2017

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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 § 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 biennially 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
23 an employer fails to provide reasonable access to all such books and
24 records necessary for a payroll verification audit, including a physical
25 inspection of the employer's operation, the employer shall pay a

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

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1 surcharge to the carrier of two times the most recent estimated annual
2 premium.

3 (b) Employers that fail to provide reasonable access to the carrier
4 for the purpose of conducting an audit shall be reported to the New York
5 compensation insurance rating board.

6 (c) If an employer knowingly understates or knowingly conceals
7 payroll, knowingly misrepresents or knowingly conceals employee duties
8 so as to avoid proper classification for premium calculations, or know-
9 ingly misrepresents or knowingly conceals information pertinent to the
10 computation and application of an experience rating modification factor,
11 said knowing misrepresentations or knowing concealments shall be consid-
12 ered fraudulent practices in violation of applicable provisions of
13 section one hundred fourteen of this article and insurance fraud in
14 violation of applicable provisions of section 176.05 of the penal law.

15 (d) If during the course of an audit conducted under this section, an
16 insurance carrier obtains information indicating a violation of the
17 provisions of paragraph (c) of this subdivision, then the carrier shall
18 report such information to the board.

19 2. This section shall not apply to employers that self-insure or
20 employers that are members of a workers' compensation group self-insured
21 trust.

22 3. For the purposes of this section, "construction class" means the
23 work or occupation described in "Group 3" of subdivision one of section
24 three of this chapter.

25 § 2. This act shall take effect January 1, 2019.