

# STATE OF NEW YORK

5302

2019-2020 Regular Sessions

## IN SENATE

April 24, 2019

Introduced by Sen. RAMOS -- 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 access to the workers' compensation system, timely and meaningful wage replacement benefits, and medical treatment and to improve efficiency of the system and cost savings; and to repeal certain provisions of the workers' compensation law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The opening paragraph of section 11 of the workers' compen-  
2 sation law, as amended by section 8 of part SS of chapter 59 of the laws  
3 of 2017, is amended to read as follows:  
4 The liability of an employer prescribed by the last preceding section  
5 shall be exclusive and in place of any other liability whatsoever, to  
6 such employee, his or her personal representatives, spouse, parents,  
7 dependents, distributees, or any person otherwise entitled to recover  
8 damages, contribution or indemnity, at common law or otherwise, on  
9 account of such injury or death or liability arising therefrom, except  
10 [~~that if an~~] in the following events: (i) the employer's violation of an  
11 applicable statute or regulation involving workplace safety was a proxi-  
12 mate cause of the employee's injury or death; (ii) the employee's bene-  
13 fits have been terminated pursuant to paragraph w of subdivision three  
14 of section fifteen of this article; or (iii) the employer fails to  
15 secure the payment of compensation for his or her injured employees and  
16 their dependents as provided in section fifty of this article. In such  
17 events, an injured employee, or his or her legal representative in case  
18 of death results from the injury, may, at his or her option, elect to  
19 claim compensation under this chapter, or to maintain an action in the  
20 courts for damages on account of such injury[~~, and in such an action it~~  
21 ~~shall not be necessary to plead or prove freedom from contributory~~  
22 ~~negligence nor may the defendant plead as a defense that the injury was~~

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

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~~caused by the negligence of a fellow servant nor that the employee assumed the risk of his or her employment, nor that the injury was due to the contributory negligence of the employee.]~~ where an action is brought pursuant to the employee's benefits being terminated pursuant to paragraph w of subdivision three of section fifteen of this article, any applicable statute of limitations shall be tolled from the date of injury until the date the employee's benefits are terminated. The employer shall be entitled to take credit for compensation paid under this chapter against any damages awarded in an action brought in the courts for

damages. The liability under this chapter of The New York Jockey Injury Compensation Fund, Inc. created under section two hundred twenty-one of the racing, pari-mutuel wagering and breeding law shall be limited to the provision of workers' compensation coverage to jockeys, apprentice jockeys, exercise persons, and at the election of the New York Jockey Injury Compensation Fund, Inc., with the approval of the New York state gaming commission, employees of licensed trainers or owners licensed under article two or four of the racing, pari-mutuel wagering and breeding law and any statutory penalties resulting from the failure to provide such coverage.

§ 2. Section 12 of the workers' compensation law is REPEALED.

§ 3. Subdivisions (a), (b) and (g) of section 13 of the workers' compensation law, subdivision (a) as amended by chapter 6 of the laws of 2007, the opening paragraph of subdivision (a) as amended by chapter 23 of the laws of 2016, subdivision (b) as amended by chapter 113 of the laws of 1946 and subdivision (g) as separately amended by chapters 834 and 922 of the laws of 1990, are amended to read as follows:

(a) The employer shall promptly provide for an injured employee such medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus for such period as the nature of the injury or the process of recovery may require. The employer shall be liable for the payment of the expenses of medical, dental, surgical, optometric or other attendance or treatment, nurse and hospital service, medicine, optometric services, crutches, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices and apparatus, as well as artificial members of the body or other devices or appliances necessary in the first instance to replace, support or relieve a portion or part of the body resulting from and necessitated by the injury of an employee, for such period as the nature of the injury or the process of recovery may require, and the employer shall also be liable for replacements or repairs of such artificial members of the body or such other devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices or appliances necessitated by ordinary wear or loss or damage to a prosthesis, with or without bodily injury to the employee. Damage to or loss of a prosthetic device shall be deemed an injury except that no disability benefits shall be payable with respect to such injury under section fifteen of this article. Such a replacement or repair of artificial members of the body or such other devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthetic devices, functional assistive and adaptive devices or appliances or the providing of medical treatment and care as defined herein shall not constitute the payment of compensation under section twenty-five-a of this article. All fees and other charges for such treatment and services shall be limited to such charges as prevail in

1 the same community for similar treatment of injured persons of a like  
2 standard of living.

3 The chair shall ~~[prepare and]~~ establish a committee to determine the  
4 schedule for the state, or schedules limited to defined localities, of  
5 charges and fees for such medical treatment and care, and including all  
6 medical, dental, surgical, optometric or other attendance or treatment,  
7 nurse and hospital service, medicine, optometric services, crutches,  
8 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic  
9 devices, functional assistive and adaptive devices and apparatus [~~in~~

10 ~~accordance with and to be subject to change pursuant to rules promulgat-~~  
11 ~~ed by the chair. Before preparing such schedule for the state or sched-~~  
12 ~~ules for limited localities the chair shall request].~~ The members of the

13 committee shall be the president of the medical society of the state of  
14 New York [~~and~~], the president of the New York state osteopathic medical  
15 society [~~to submit to him or her a report on~~], the president of the New

16 York state society of orthopedists, the president of the New York state  
17 AFL/CIO, the president of the business council of the state of New York,  
18 an individual designated by the senate majority leader, an individual  
19 designated by the speaker of the assembly, and the chair of the board.

20 The committee shall meet annually in order to determine the amount of  
21 remuneration deemed [~~by such society~~] to be fair and adequate for the  
22 types of medical care to be rendered under this chapter, but consider-  
23 ation shall be given to the view of other interested parties. In the  
24 case of physical therapy fees schedules the chair shall request the  
25 president of a recognized professional association representing physical  
26 therapists in the state of New York to submit to [~~him or her~~] the

27 committee a report on the amount of remuneration deemed by such associ-  
28 ation to be fair and reasonable for the type of physical therapy  
29 services rendered under this chapter, but consideration shall be given  
30 to the views of other interested parties. The chair shall also prepare

31 and establish a schedule for the state, or schedules limited to defined  
32 localities, of charges and fees for outpatient hospital services not  
33 covered under the medical fee schedule previously referred to in this  
34 subdivision, to be determined in accordance with and to be subject to  
35 change pursuant to rules promulgated by the chair. Before preparing such  
36 schedule for the state or schedules for limited localities the chair  
37 shall request the president of the hospital association of New York

38 state to submit to [~~him or her~~] the committee a report on the amount of  
39 remuneration deemed by such association to be fair and adequate for the  
40 types of hospital outpatient care to be rendered under this chapter, but  
41 consideration shall be given to the views of other interested parties.

42 In the case of occupational therapy fees schedules the chair shall  
43 request the president of a recognized professional association repres-  
44 enting occupational therapists in the state of New York to submit to  
45 [~~him or her~~] the committee a report on the amount of remuneration deemed

46 by such association to be fair and reasonable for the type of occupa-  
47 tional therapy services rendered under this chapter, but consideration  
48 shall be given to the views of other interested parties. The amounts  
49 payable by the employer for such treatment and services shall be the

50 fees and charges established by such schedule. Nothing in this sched-  
51 ule, however, shall prevent voluntary payment of amounts higher or lower  
52 than the fees and charges fixed therein, but no physician rendering  
53 medical treatment or care, and no physical or occupational therapist

54 rendering their respective physical or occupational therapy services may  
55 receive payment in any higher amount unless such increased amount has  
56 been authorized by the employer, or by decision as provided in section

1 thirteen-g of this article. Nothing in this section shall be construed  
2 as preventing the employment of a duly authorized physician on a salary  
3 basis by an authorized compensation medical bureau or laboratory.

4 (b) In the case of persons, injured or residing and receiving medical  
5 treatment outside of this state, but entitled to compensation or bene-  
6 fits under this chapter, the provisions as to selection of authorized  
7 physicians and the rules and regulations of the board governing medical  
8 treatment within the state shall be inapplicable. In such cases the  
9 employer shall promptly provide all necessary medical treatment and care  
10 but if the employer fail to provide the same, after request by the  
11 injured employee such injured employee may do so at the expense of the  
12 employer. The employee shall not be entitled to recover any amount  
13 expended by him for such treatment or services unless he shall have  
14 requested the employer to furnish the same and the employer shall have  
15 refused or neglected to do so, or unless the nature of the injury  
16 required such treatment and services and the employer or his superinten-  
17 dent or foreman having knowledge of such injury shall have neglected to  
18 provide the same; nor shall any claim for medical or surgical treatment  
19 be valid and enforceable, as against such employer, unless within twenty  
20 days following the first treatment, the physician giving such treatment,  
21 furnish to the employer and the chairman a report of such injury and  
22 treatment, on a form prescribed by the chairman. The board may, however,  
23 by the unanimous vote of a panel of not less than three members quali-  
24 fied to act, excuse the failure to give such notice within twenty days  
25 when it finds it to be in the interest of justice to do so, and may,  
26 subject to the limitations contained in section twenty-eight of this  
27 [~~chapter~~] article, make an award for the reasonable value of such  
28 medical or surgical treatment. All fees and other charges for such  
29 treatment and services, whether furnished by the employer or otherwise,  
30 shall be subject to regulation by the board as provided in section twen-  
31 ty-four of this [~~chapter~~] article, and shall be limited to such charges  
32 as prevail in the same community for similar treatment of injured  
33 persons of a like standard of living.

34 (g) Every hospital operating in the state shall, within twenty days of  
35 receiving a written request by a claimant, claimant's representative,  
36 employer, carrier or special fund created under this chapter, provide to  
37 such claimant, claimant's representative, employer, carrier or special  
38 fund for use in board proceedings the medical records of an employee who  
39 has received treatment in such hospital and who is claiming benefits  
40 under this chapter. Each hospital shall designate at least one officer  
41 or employee who shall be responsible for provision of such records on  
42 written request, and to whom the board, claimant, claimant's, employer,  
43 carrier representative or special fund may address informal inquiries  
44 regarding provision of such records.

45 No hospital shall be required to produce the records of any claimant  
46 pursuant to this section without receiving the cost of copying such  
47 records as determined by the chair. Such cost shall be paid by the  
48 requesting party except that the employer or carrier or special fund  
49 shall reimburse a claimant or claimant's representative the cost of an  
50 initial set of such records where the request is made by a claimant or  
51 claimant's representative. Should the hospital not be able to provide  
52 the requested records within twenty days, they shall notify in writing  
53 the party requesting the records of the reason why the records were not  
54 provided and the date on which they will be provided. Such date shall be  
55 within a reasonable period of time, but shall not exceed thirty days.  
56 Failure to either provide the records within twenty days or to provide a

1 reason why the records have not been provided shall subject the hospital  
2 to a fine of two hundred dollars which shall be imposed by the chair  
3 payable to the board upon finding that this subdivision has not been  
4 complied with. No hospital shall be required to produce the records of  
5 any claimant without receiving its customary fees or charges for reproduc-  
6 tion of such records. The employer or carrier shall file with the  
7 board any hospital or medical records concerning an injured worker that  
8 come into its possession and have not been previously filed with the  
9 board.

10 § 4. Paragraphs (d), (e) and the closing paragraph of subdivision 4  
11 and subdivision 5 of section 13-a of the workers' compensation law,  
12 paragraphs (d), (e) and the closing paragraph of subdivision 4 as  
13 amended by chapter 473 of the laws of 2000 and subdivision 5 as amended  
14 by chapter 6 of the laws of 2007 and as further amended by section 104  
15 of part A of chapter 62 of the laws of 2011, are amended to read as  
16 follows:

17 (d) The independent medical examiner on behalf of the employer or  
18 carrier shall provide such reports and shall submit to investigation as  
19 required by the chair.

20 (e) In order to qualify as admissible medical evidence, for purposes  
21 of adjudicating any claim under this chapter, any report submitted to  
22 the board by an independent medical examiner on behalf of the employer  
23 or carrier licensed by the state of New York shall include the follow-  
24 ing:

25 (i) a signed statement certifying that the report is a full and truth-  
26 ful representation of the independent medical examiner's professional  
27 opinion with respect to the claimant's condition[+];

28 (ii) such examiner's board issued authorization number;

29 (iii) the name of the individual or entity requesting the examination;

30 (iv) if applicable, the registration number as required by section  
31 thirteen-n of this article; and

32 (v) such other information as the chair may require by regulation.

33 Any report by an independent medical examiner on behalf of the employ-  
34 er or carrier who is not authorized, and who performs an independent  
35 medical examination in accordance with paragraph (c) of this subdivi-  
36 sion, which is to be used as medical evidence under this chapter, shall  
37 include in the report such information as the chair may require by regu-  
38 lation.

39 (5) No claim for specialist consultations, surgical operations,  
40 physiotherapeutic or occupational therapy procedures, x-ray examinations  
41 or special diagnostic laboratory tests costing more than one thousand  
42 dollars shall be valid and enforceable, as against such employer, unless  
43 such special services shall have been authorized by the employer or by  
44 the board, or unless such authorization has been unreasonably withheld,  
45 or withheld for a period of more than thirty calendar days from receipt  
46 of a request for authorization, or unless such special services are  
47 required in an emergency, provided, however, that the basis for a denial  
48 of such authorization by the employer must be based on a conflicting  
49 second opinion rendered by a physician authorized by the board. The  
50 board, with the approval of the superintendent of financial services,  
51 shall issue and maintain a list of pre-authorized procedures under this  
52 section, which shall not be used to deny medical treatment that varies  
53 from such list or which occurs outside of the state.

54 § 5. Subdivision 1 of section 13-f of the workers' compensation law,  
55 as amended by chapter 353 of the laws of 1990, is amended to read as  
56 follows:

1 (1) Fees for medical services shall be payable only to a physician or  
2 other qualified person permitted by sections thirteen-b, thirteen-k,  
3 thirteen-l and thirteen-m of this [~~chapter~~ article or other authorized  
4 provider of health care under the education law or the public health law  
5 permitted to render medical care or treatment under this chapter, or to  
6 the agent, executor or administrator of the estate of such physician or  
7 such other qualified person. Except as provided in section thirteen-d  
8 of this [~~chapter~~ article, no provider of health care rendering medical  
9 care or treatment to a compensation claimant, shall collect or receive a  
10 fee from such claimant within this state, but shall have recourse for  
11 payment of services rendered only to the employer under the provisions  
12 of this chapter. Where an issue arises regarding a medical fee, a  
13 provider of health care shall have the rights provided by sections twen-  
14 ty and twenty-three of this article. Any compensation claimant who pays  
15 a fee to a provider of health care for medical care or treatment under  
16 this chapter shall have a cause of action against such provider of  
17 health care for the recovery of the money paid, which cause of action  
18 may be assigned to the claimant in trust for the assigning claimant. All  
19 such assignments shall run to the claimant. The claimant may sue the physi-  
20 cian, or other authorized provider of health care as herein described on  
21 the assigned cause of action with the benefits and subject to the  
22 provisions of existing law applying to such actions by the claimant  
23 himself or herself. Hospitals shall not be entitled to receive the  
24 remuneration paid to physicians on their staff for medical and surgical  
25 services.

26 § 6. Subdivisions 1, 2, paragraphs s, t, v and w of subdivision 3,  
27 subdivisions 4, 4-a, 5 and paragraph (a) of subdivision 6 of section 15  
28 of the workers' compensation law, subdivision 1 as amended by chapter  
29 675 of the laws of 1977, subdivision 2 as amended by chapter 161 of the  
30 laws of 1966, paragraph s of subdivision 3 as amended by chapter 204 of  
31 the laws of 1988, paragraph t of subdivision 3 as amended by chapter 774  
32 of the laws of 1945, subparagraphs 1 and 2 of paragraph t of subdivision  
33 3 as amended by chapter 924 of the laws of 1990, paragraph v of subdivi-  
34 sion 3 as amended by chapter 364 of the laws of 1989, paragraph w of  
35 subdivision 3 as amended by section 1 of subpart A of part NNN of chap-  
36 ter 59 of the laws of 2017, subdivision 4 as amended by chapter 168 of  
37 the laws of 1979, subdivision 4-a as amended by chapter 712 of the laws  
38 of 1941, subdivision 5 as amended by chapter 161 of the laws of 1966,  
39 paragraph (a) of subdivision 6 as amended by section 7-a of part GG of  
40 chapter 57 of the laws of 2013, are amended and a new subdivision 10 is  
41 added to read as follows:

42 1. Permanent total disability. In case of total disability adjudged to  
43 be permanent sixty-six and two-thirds per centum of the average weekly  
44 wages shall be paid to the employee during the continuance of such total  
45 disability. Loss of both hands, or both arms, or both feet, or both  
46 legs, or both eyes, or of any two thereof, or inability to perform the  
47 full range of sedentary work, or approval for federal social security  
48 disability benefits as a result of the compensable accident or occupa-  
49 tional disease shall, in the absence of conclusive proof to the contra-  
50 ry, constitute permanent total disability. In all other cases permanent  
51 total disability shall be determined in accordance with the facts.  
52 Notwithstanding any other provision of this chapter, an injured employee  
53 disabled due to the loss or total loss of use of both eyes, or both  
54 hands, or both arms, or both feet, or both legs, or of any two thereof  
55 shall not suffer any diminution of his compensation by engaging in busi-  
56 ness or employment provided his earnings or wages, when combined with

1 his compensation, shall not be in excess of the wage base on which the  
2 maximum weekly compensation benefit is computed under the law in effect  
3 at time of such earning; further provided, that if the combination  
4 exceeds such wage base, the compensation shall be diminished to an  
5 amount which, together with his earnings or wages, shall equal the wage  
6 base; and further provided that the application of this subdivision  
7 shall not result in reduction of compensation which an injured employee  
8 who is disabled due to the loss or total loss of use of both eyes, or  
9 both hands, or both arms, or both feet, or both legs or of any two ther-  
10 eof, would otherwise be entitled to under any other provision of this  
11 section.

12 2. Temporary total disability. In case of temporary total disability,  
13 which shall consist of the injured employee's inability to perform his  
14 or her at-injury employment or any modified employment offered by the  
15 employer that is consistent with the employee's disability, sixty-six  
16 and two-thirds per centum of the average weekly wages shall be paid to  
17 the employee during the continuance thereof, except as otherwise  
18 provided in this chapter.

19 s. Partial loss or partial loss of use. Compensation for permanent  
20 partial loss or loss of use of a member [~~may~~] shall be for proportionate  
21 loss or loss of use of the member. Compensation for permanent partial  
22 loss or loss of use of an eye shall be awarded on the basis of uncor-  
23 rected loss of vision or corrected loss of vision resulting from an  
24 injury whichever is the greater.

25 t. Disfigurement. 1. The board may award proper and equitable compen-  
26 sation for serious facial or head disfigurement, not to exceed [~~twenty~~]  
27 thirty thousand dollars, including a disfigurement continuous in length  
28 which is partially in the facial area and also extends into the neck  
29 region as described in [~~paragraph~~] subparagraph two [~~hereof~~] of this  
30 paragraph.

31 2. The board, if in its opinion the earning capacity of an employee  
32 has been or may in the future be impaired, may award compensation for  
33 any serious disfigurement in the region above the sterno clavicular  
34 articulations anterior to and including the region of the sterno cleido  
35 mastoid muscles on either side, but no award under subdivisions one and  
36 two of this section shall, in the aggregate, exceed [~~twenty~~] thirty  
37 thousand dollars.

38 3. Notwithstanding any other provision hereof, two or more serious  
39 disfigurements, not continuous in length, resulting from the same inju-  
40 ry, if partially in the facial area and partially in the neck region as  
41 described in [~~paragraph~~] subparagraph two [~~hereof~~] of this paragraph,  
42 shall be deemed to be a facial disfigurement.

43 v. Additional compensation for impairment of wage earning capacity in  
44 certain permanent partial disabilities. Notwithstanding any other  
45 provision of this subdivision, additional compensation shall be payable  
46 for impairment of wage earning capacity for any period after the termi-  
47 nation of an award under paragraphs a, b, c, or d, of this subdivision  
48 for the loss or loss of use of [~~fifty~~] forty per centum or more of a  
49 member, provided such impairment of earning capacity shall be due solely  
50 thereto. Such additional compensation shall be determined in accordance  
51 with paragraph w of this subdivision, but shall not cease until the date  
52 the disabled employee receives or is entitled to receive old-age insur-  
53 ance benefits under the social security act. The additional compensation  
54 shall be reduced by fifty per centum of any amount of disability bene-  
55 fits which the disabled employee is receiving or entitled to receive for  
56 the same period under the social security act, [~~and shall cease on the~~

1 ~~date the disabled employee receives or is entitled to receive old age~~  
2 ~~insurance benefits under the social security act~~. As soon as practica-  
3 ble after the injury, the worker shall be required to participate in a  
4 board approved rehabilitation program; or shall have demonstrated coop-  
5 eration with efforts to institute such a board approved program and  
6 shall have been determined by the board not to be a feasible candidate  
7 for rehabilitation; such rehabilitation shall constitute treatment and  
8 care as provided in this chapter.

9 w. Other cases. In all other cases of permanent partial disability,  
10 the compensation shall be sixty-six and two-thirds percent of the  
11 difference between the injured employee's average weekly wages and his  
12 or her wage-earning capacity thereafter in the same employment or other-  
13 wise. Nothing in this paragraph shall preclude the payment of compen-  
14 sation under paragraphs a through t of this subdivision, however, the  
15 employer or carrier shall be entitled to take credit for any payment of  
16 compensation under such paragraphs a through t against a payment of  
17 compensation under this paragraph. Compensation under this paragraph

18 shall be payable during the continuance of such permanent partial disa-  
19 bility, without the necessity for the claimant who is entitled to bene-  
20 fits at the time of classification to demonstrate ongoing attachment to  
21 the labor market, but subject to reconsideration of the degree of such  
22 impairment by the board on its own motion or upon application of any  
23 party in interest however, all compensation payable under this paragraph  
24 shall not exceed (i) five hundred twenty-five weeks in cases in which  
25 the loss of wage-earning capacity is greater than ninety-five percent;  
26 (ii) five hundred weeks in cases in which the loss of wage-earning  
27 capacity is greater than ninety percent but not more than ninety-five  
28 percent; (iii) four hundred seventy-five weeks in cases in which the  
29 loss of wage-earning capacity is greater than eighty-five percent but  
30 not more than ninety percent; (iv) four hundred fifty weeks in cases in  
31 which the loss of wage-earning capacity is greater than eighty percent  
32 but not more than eighty-five percent; (v) four hundred twenty-five  
33 weeks in cases in which the loss of wage-earning capacity is greater  
34 than seventy-five percent but not more than eighty percent; (vi) four  
35 hundred weeks in cases in which the loss of wage-earning capacity is  
36 greater than seventy percent but not more than seventy-five percent;  
37 (vii) three hundred seventy-five weeks in cases in which the loss of  
38 wage-earning capacity is greater than sixty percent but not more than  
39 seventy percent; (viii) three hundred fifty weeks in cases in which the  
40 loss of wage-earning capacity is greater than fifty percent but not more  
41 than sixty percent; (ix) three hundred weeks in cases in which the loss  
42 of wage-earning capacity is greater than forty percent but not more than  
43 fifty percent; (x) two hundred seventy-five weeks in cases in which the  
44 loss of wage-earning capacity is greater than thirty percent but not  
45 more than forty percent; (xi) two hundred fifty weeks in cases in which  
46 the loss of wage-earning capacity is greater than fifteen percent but  
47 not more than thirty percent; and (xii) two hundred twenty-five weeks in  
48 cases in which the loss of wage-earning capacity is fifteen percent or  
49 less. For a claimant with a date of accident or disablement after the  
50 effective date of [~~the~~] section one of subpart A of part NNN of chapter  
51 59 of the laws of two thousand seventeen [~~that amended this subdivi-~~  
52 ~~sion~~], where the carrier or employer has provided compensation pursuant  
53 to subdivision five of this section beyond one hundred thirty weeks from  
54 the date of accident or disablement, all subsequent weeks in which  
55 compensation was paid shall be considered to be benefit weeks for  
56 purposes of this section, with the carrier or employer receiving credit



1 for all such subsequent weeks against the amount of maximum benefit  
2 weeks when permanent partial disability under this section is deter-  
3 mined. In the event of payment for intermittent temporary partial disa-  
4 bility paid after one hundred thirty weeks from the date of accident or  
5 disablement, such time shall be reduced to a number of weeks, for which  
6 the carrier will receive a credit against the maximum benefit weeks. For  
7 a claimant with a date of accident or disablement after the effective  
8 date of [~~the~~] section one of subpart A of part NNN of chapter 59 of the  
9 laws of two thousand seventeen [~~that amended this subdivision~~], when  
10 permanency is at issue, and a claimant has submitted medical evidence  
11 that he or she is not at maximum medical improvement, and the carrier  
12 has produced or has had a reasonable opportunity to produce an independ-  
13 ent medical examination concerning maximum medical improvement, and the  
14 board has determined that the claimant is not yet at maximum medical  
15 improvement, the carrier shall not receive a credit for benefit weeks  
16 prior to a finding that the claimant has reached maximum medical  
17 improvement, at which time the carrier shall receive credit for any  
18 weeks of temporary disability paid to claimant after such finding  
19 against the maximum benefit weeks awarded under this subdivision. For  
20 those claimants classified as permanently partially disabled who no  
21 longer receive indemnity payments because they have surpassed their  
22 number of maximum benefit weeks, the following provisions will apply:

23 (1) There will be a presumption that medical services shall continue  
24 notwithstanding the completion of the time period for compensation set  
25 forth in this section and the burden of going forward and the burden of  
26 proof will lie with the carrier, self-insured employer or state insur-  
27 ance fund in any application before the board to discontinue or suspend  
28 such services. Medical services will continue during the pendency of any  
29 such application and any appeals thereto.

30 (2) The board is directed to promulgate regulations that establish an  
31 independent review and appeal by an outside agent or entity of the  
32 board's choosing of any administrative law judge's determination to  
33 discontinue or suspend medical services before a final determination of  
34 the board.

35 4. Effect of award. An award made to a claimant under any paragraph of  
36 subdivision three of this section shall in case of death arising from  
37 causes other than the injury be payable to and for the benefit of the  
38 persons following:

39 a. If there be a surviving spouse and no child of the deceased under  
40 the age of eighteen years, to such spouse.

41 b. If there be a surviving spouse and surviving child or children of  
42 the deceased under the age of eighteen years, one-half shall be payable  
43 to the surviving spouse and the other half to the surviving child or  
44 children.

45 The board may in its discretion require the appointment of a guardian  
46 for the purpose of receiving the compensation of the minor child. In the  
47 absence of such a requirement by the board the appointment for such a  
48 purpose shall not be necessary.

49 c. If there be a surviving child or children of the deceased under the  
50 age of eighteen years, but no surviving spouse then to such child or  
51 children.

52 d. If there be no surviving spouse and no surviving child or children  
53 of the deceased under the age of eighteen years, then to such dependent  
54 or dependents as defined in section sixteen of this [~~chapter~~] article,  
55 as directed by the board; and if there be no such dependents, then to  
56 the estate of such deceased [~~in an amount not exceeding reasonable~~

1 ~~funeral expenses~~] as provided in subdivision one of section sixteen of  
2 this [~~chapter~~] article, or, if there be no estate, to the person or  
3 persons paying the funeral expenses of such deceased in an amount not  
4 exceeding reasonable funeral expenses as provided in subdivision one of  
5 section sixteen of this [~~chapter~~] article.

6 An award for disability may be made after the death of the injured  
7 employee.

8 4-a. Protracted temporary total disability in connection with perma-  
9 nent partial disability. In case of temporary total disability and  
10 permanent partial disability both resulting from the same injury, if the  
11 temporary total disability continues for a longer period than the number  
12 of weeks set forth in the following schedule, the period of temporary  
13 total disability in excess of such number of weeks shall be added to the  
14 compensation period provided in subdivision three of this section: Arm,  
15 [~~thirty-two~~] sixteen weeks; leg, [~~forty~~] twenty weeks; hand, [~~thirty-~~  
16 ~~two~~] sixteen weeks; foot, [~~thirty-two~~] sixteen weeks; ear, [~~twenty-five~~]  
17 twelve weeks; eye, [~~twenty~~] ten weeks; thumb, [~~twenty-four~~] twelve  
18 weeks; first finger, [~~eighteen~~] nine weeks; great toe, [~~twelve~~] six  
19 weeks; second finger, [~~twelve~~] six weeks; third finger, [~~eight~~] four  
20 weeks; fourth finger, [~~eight~~] four weeks; toe other than great toe,  
21 [~~eight~~] four weeks.

22 In any case resulting in loss or partial loss of use of arm, leg,  
23 hand, foot, ear, eye, thumb, finger or toe, where the temporary total  
24 disability does not extend beyond the periods above mentioned for such  
25 injury, compensation shall be limited to the schedule contained in  
26 subdivision three.

27 5. Temporary partial disability. In case of temporary partial disabil-  
28 ity resulting in decrease of earning capacity, the compensation shall be  
29 two-thirds of the difference between the injured employee's average  
30 weekly wages before the accident and his wage earning capacity after the  
31 accident in the same or other employment, which difference shall be the  
32 injured employee's loss of wage-earning capacity. Compensation under  
33 this subdivision shall be payable during the continuance of such tempo-  
34 rary partial disability, without the necessity for the claimant to  
35 demonstrate ongoing attachment to the labor market, unless the board  
36 finds that the injured employee's loss of wages is wholly unrelated to  
37 his or her partial disability.

38 (a) Compensation for permanent or temporary total disability due to an  
39 accident or disablement resulting from an occupational disease that  
40 occurs, (1) on or after January first, nineteen hundred seventy-eight,  
41 shall not exceed one hundred twenty-five dollars per week, that occurs  
42 (2) on or after July first, nineteen hundred seventy-eight, shall not  
43 exceed one hundred eighty dollars per week, that occurs (3) on or after  
44 January first, nineteen hundred seventy-nine, shall not exceed two  
45 hundred fifteen dollars per week, that occurs (4) on or after July  
46 first, nineteen hundred eighty-three, shall not exceed two hundred  
47 fifty-five dollars per week, that occurs (5) on or after July first,  
48 nineteen hundred eighty-four, shall not exceed two hundred seventy-five  
49 dollars per week, that occurs (6) on or after July first, nineteen  
50 hundred eighty-five, shall not exceed three hundred dollars per week,  
51 that occurs (7) on or after July first, nineteen hundred ninety, shall  
52 not exceed three hundred forty dollars per week; and in the case of  
53 temporary total disability shall not be less than thirty dollars per  
54 week and in the case of permanent total disability shall not be less  
55 than twenty dollars per week except that if the employee's wages at the  
56 time of injury are less than thirty or twenty dollars per week respec-

1 tively, he or she shall receive his or her full weekly wages. Compen-  
2 sation for permanent or temporary partial disability due to an accident  
3 or disablement resulting from an occupational disease that occurs (1) on  
4 or after [~~January first~~] March thirteenth, nineteen hundred seventy-  
5 eight, shall not exceed one hundred five dollars per week, that occurs  
6 (2) on or after July first, nineteen hundred eighty-three, shall not  
7 exceed one hundred twenty-five dollars per week, that occurs (3) on or  
8 after July first, nineteen hundred eighty-four, shall not exceed one  
9 hundred thirty-five dollars per week, that occurs (4) on or after July  
10 first, nineteen hundred eighty-five, shall not exceed one hundred fifty  
11 dollars per week, that occurs (5) on or after July first, nineteen  
12 hundred ninety, shall not exceed two hundred eighty dollars per week;  
13 nor be less than twenty dollars per week; except that if the employee's  
14 wages at the time of injury are less than twenty dollars per week, he or  
15 she shall receive his or her full weekly wages. In no event shall  
16 compensation when combined with decreased earnings or earning capacity  
17 exceed the amount of wages which the employee was receiving at the time  
18 the injury occurred. Compensation for permanent or temporary partial  
19 disability, or for permanent or temporary total disability due to an  
20 accident or disablement resulting from an occupational disease that  
21 occurs (1) on or after July first, nineteen hundred ninety-one and prior  
22 to July first, nineteen hundred ninety-two, shall not exceed three  
23 hundred fifty dollars per week; (2) on or after July first, nineteen  
24 hundred ninety-two, shall not exceed four hundred dollars per week; nor  
25 be less than forty dollars per week except that if the employee's wages  
26 at the time of injury are less than forty dollars per week, the employee  
27 shall receive his or her full wages. Compensation for permanent or  
28 temporary partial disability, or for permanent or temporary total disa-  
29 bility due to an accident or disablement resulting from an occupational  
30 disease that occurs (1) on or after July first, two thousand seven shall  
31 not exceed five hundred dollars per week, (2) on or after July first,  
32 two thousand eight shall not exceed five hundred fifty dollars per week,  
33 (3) on or after July first, two thousand nine shall not exceed six  
34 hundred dollars per week, and (4) on or after July first, two thousand  
35 ten, and on or after July first of each succeeding year, shall not  
36 exceed two-thirds of the New York state average weekly wage for the year  
37 in which it is reported. Compensation for permanent or temporary partial  
38 disability, or for permanent or temporary total disability due to an  
39 accident or disablement resulting from an occupational disease that  
40 occurs on or after July first, two thousand seven shall not be less than  
41 one hundred dollars per week except that if the employee's wages at the  
42 time of injury are less than one hundred dollars per week, the employee  
43 shall receive his or her full wages. Compensation for permanent or  
44 temporary partial disability, or for permanent or temporary total disa-  
45 bility due to an accident or disablement resulting from an occupational  
46 disease that occurs on or after May first, two thousand thirteen shall  
47 not be less than one hundred fifty dollars per week except that if the  
48 employee's wages at the time of injury are less than one hundred fifty  
49 dollars per week, the employee shall receive his or her full wages.  
50 Compensation for permanent or temporary partial disability, or for  
51 permanent or temporary total disability due to an accident or disable-  
52 ment resulting from an occupational disease that occurs on or after July  
53 first of each year commencing in two thousand eighteen shall not be less  
54 than one-sixth of the New York state average weekly wage for the year in  
55 which it is reported. In no event shall compensation when combined with  
56 decreased earnings [~~or earning capacity~~] exceed the amount of wages the

1 employee was receiving at the time the injury occurred. Compensation for  
2 permanent or temporary partial disability, or for permanent or temporary  
3 total disability due to an accident or disablement resulting from an  
4 occupational disease or injury that occurred as a result of World Trade  
5 Center rescue activity by an employee of a private voluntary hospital,  
6 who passed a physical examination upon employment as a rescue worker  
7 that failed to reveal evidence of a condition that was the proximate  
8 cause of disablement or occupational disease or injury, shall not exceed  
9 three-quarters of a claimant's wage on September eleventh, two thousand  
10 one. In no event shall compensation when combined with decreased earn-  
11 ings or earning capacity exceed the amount of wages the employee was  
12 receiving on September eleventh, two thousand one.

13 10. Cost-of-living adjustments of disability benefits in certain  
14 cases. (a) Notwithstanding any other provision of law, in addition to  
15 any other amount received pursuant to this article as disability bene-  
16 fits, an employee with a permanent total disability or the beneficiary  
17 dependent of such employee shall be entitled to an additional allowance,  
18 to be known as a cost-of-living adjustment allowance, payable annually.

19 (b) The cost-of-living adjustment allowance shall be computed by  
20 applying an adjustment for regional costs of living and shall be based  
21 on fifty percent of the annual increase in the consumer price index as  
22 promulgated by the United States department of labor.

23 § 7. Subdivisions 1-a, 1-b, 1-c, 1-d, 2, 2-a, 2-b, and 4-d of section  
24 16 of the workers' compensation law, subdivisions 1-a, 1-b, 1-c and 2 as  
25 amended by chapter 168 of the laws of 1979, subdivisions 1-d, 2-b and  
26 4-d as added by chapter 689 of the laws of 2007 and subdivision 2-a as  
27 amended by chapter 174 of the laws of 1981, are amended and two new  
28 subdivisions 1-e and 2-c are added to read as follows:

29 1-a. For the purpose of this section, (1) the term dependent blind or  
30 physically disabled as used herein in relation to dependent children  
31 shall be deemed to mean totally blind or physically disabled children  
32 whose disablement is total and permanent, (2) the term surviving spouse  
33 shall be deemed to mean the legal spouse but shall not include a spouse  
34 who has abandoned the deceased, ~~and~~ (3) the term abandoned shall be  
35 deemed to mean such an abandonment as would be sufficient under section  
36 two hundred of the domestic relations law to sustain a judgment of sepa-  
37 ration on that ground, and (4) the terms "widowhood" or "widowerhood"  
38 shall apply to a surviving spouse without regard to remarriage.

39 1-b. If there be a surviving spouse and no child of the deceased under  
40 the age of eighteen years and no child of any age dependent blind or  
41 physically disabled, and the death occurs on or after July first, nine-  
42 teen hundred forty-eight, and prior to January first, nineteen hundred  
43 seventy-eight, to such spouse forty per centum of the average wages of  
44 the deceased during widowhood or widowerhood [~~with two years' compen-~~  
45 ~~sation in one sum, upon remarriage~~]; and where the death occurred prior  
46 to July first, nineteen hundred forty-eight, to such wife (or dependent  
47 husband) thirty per centum of such wages during widowhood (or dependent  
48 widowerhood) [~~with two years' compensation in one sum, upon remarriage~~].

49 1-c. If there be a surviving spouse and no child of the deceased under  
50 the age of eighteen years or under the age of twenty-three years if  
51 enrolled and attending as a full time student in an accredited educa-  
52 tional institution and such enrollment and full time attendance is  
53 certified by such institution and no child of any age dependent blind or  
54 physically disabled, and the death occurs on or after January first,  
55 nineteen hundred seventy-eight, to such spouse sixty-six and two-thirds  
56 per centum of the average wages of the deceased during widowhood or

1 widowerhood [~~with two years' compensation, in one sum, upon remarriage~~].  
 2 Where the death occurs on or after January first, nineteen hundred  
 3 seventy-eight, and the spouse is receiving the survivors insurance bene-  
 4 fits under the social security act, the death benefit payable under this  
 5 section shall be reduced in accordance with the provisions of table No.  
 6 [~~±~~] I below by five per centum of the spouse's share of the survivor's  
 7 insurance benefits under the social security act for each ten dollars of  
 8 deceased's average weekly wage in excess of one hundred dollars provided  
 9 that in no case shall such reduction exceed fifty per centum of said  
 10 spouse's share of the survivors insurance benefits under the social  
 11 security act.

12 TABLE No. I

13 Offset provisions applicable in death benefits  
 14 where there is a sole surviving spouse

15 AVERAGE WEEKLY WAGE	16 PERCENTAGE OF SPOUSE'S 17 SHARE OF SURVIVORS INSURANCE BENEFITS
18 over \$100 up to and including \$110 .....	5
19 over \$110 up to and including \$120 .....	10
20 over \$120 up to and including \$130 .....	15
21 over \$130 up to and including \$140 .....	20
22 over \$140 up to and including \$150 .....	25
23 over \$150 up to and including \$160 .....	30
24 over \$160 up to and including \$170 .....	35
25 over \$170 up to and including \$180 .....	40
26 over \$180 up to and including \$190 .....	45
27 over \$190 up to and including \$200 .....	50
28 over \$200 .....	50

29 1-d. If there be a surviving spouse of an employee of a private volun-  
 30 tary hospital killed in a World Trade Center rescue, who passed a phys-  
 31 ical examination upon employment as a rescue worker that failed to  
 32 reveal evidence of a condition that was the proximate cause of death,  
 33 and no child of the deceased under the age of eighteen years, or under  
 34 the age of twenty-three years if enrolled and attending as a full-time  
 35 student in an accredited educational institution and such enrollment and  
 36 full-time attendance is certified by such institution, and no child of  
 37 any age dependent blind or physically disabled, to such spouse seventy-  
 38 five per centum of the average wages of the deceased during widowhood or  
 39 widowerhood[~~, with two years' compensation, in one sum, upon remarriage.~~  
 40 ~~Where such death occurs, and the spouse is receiving the survivors~~  
 41 ~~insurance benefits under the social security act, the death benefit~~  
 42 ~~payable under this section shall be reduced in accordance with the~~  
 43 ~~provisions of table No. I in subdivision one e of this section by five~~  
 44 ~~per centum of the spouse's share of the survivor's insurance benefits~~  
 45 ~~under the social security act for each ten dollars of deceased's average~~  
 46 ~~weekly wage in excess of one hundred dollars, provided that in no case~~  
 47 ~~shall such reduction exceed fifty per centum of such spouse's share of~~  
 48 ~~the survivors insurance benefits under the social security act].~~

49 1-e. If there be a surviving spouse and no child of the deceased under  
 50 the age of eighteen years or under the age of twenty-three years if  
 51 enrolled and attending as a full-time student in an accredited educa-  
 52 tional institution and such enrollment and full-time attendance is  
 53 certified by such institution and no child of any age dependent blind or

1 physically disabled, and the death occurs on or after January first, two  
2 thousand sixteen, to such spouse sixty-six and two-thirds per centum of  
3 the average wages of the deceased during widowhood or widowerhood.

4 2. If there be a surviving spouse and a surviving child or children of  
5 the deceased under the age of eighteen years or a surviving child or  
6 children of any age dependent blind or physically disabled, and the  
7 death occurs on or after July first, nineteen hundred forty-eight, and  
8 prior to January first, nineteen hundred seventy-eight, to such spouse  
9 thirty per centum of the average wages of the deceased during widowhood  
10 or widowerhood [~~with two years' compensation in one sum, upon remar-~~  
11 ~~riage~~]; and the additional amount of twenty per centum of such wages for  
12 each such child until the age of eighteen years or until the removal of  
13 the dependency of the blind or physically disabled child or children; in  
14 case of the subsequent death [~~or remarriage~~] of such surviving spouse  
15 any surviving child of the deceased employee, at the time under eighteen  
16 years of age or dependent through mental or physical infirmity, shall  
17 have his compensation increased to thirty per centum of such wages, and  
18 the same shall be payable until he shall reach the age of eighteen years  
19 or until such dependent blind or physically disabled condition shall  
20 have been removed; provided that the total amount payable shall in no  
21 case exceed sixty-six and two-thirds per centum of such wages. [~~Upon~~  
22 ~~statutory termination of compensation payments to all such children, the~~  
23 ~~compensation of the surviving spouse shall be increased to forty per~~  
24 ~~centum of such wages with two years' compensation, at such rate, in one~~  
25 ~~sum, upon remarriage.~~]

26 If there be a surviving wife (or dependent husband) and any of the  
27 aforementioned surviving children, and the death occurred prior to July  
28 first, nineteen hundred forty-eight, to such wife (or dependent husband)  
29 thirty per centum of the average wages of the deceased during widowhood  
30 (or dependent widowerhood) [~~with two years' compensation in one sum,~~  
31 ~~upon remarriage~~]; and the additional amount of ten per centum of such  
32 wages for each such child until eighteen years of age or until the  
33 removal of the dependency of the blind or physically disabled child or  
34 children; in case of the subsequent death [~~or remarriage~~] of such  
35 surviving wife (or dependent husband) any surviving child of the  
36 deceased shall have his compensation increased to fifteen per centum of  
37 such wages until he shall reach the age of eighteen years or until such  
38 dependent blind or physically disabled condition shall have been  
39 removed; provided that the total amount payable shall in no case exceed  
40 sixty-six and two-thirds per centum of such wages.

41 The board may in its discretion require the appointment of a guardian  
42 for the purpose of receiving the compensation of a minor child or a  
43 dependent blind or physically disabled child. In the absence of such a  
44 requirement by the board the appointment of a guardian for such purposes  
45 shall not be necessary.

46 2-a. If there be a surviving spouse and a surviving child under the  
47 age of eighteen years or under the age of twenty-three years if enrolled  
48 and attending as a full time student in an accredited educational insti-  
49 tution and such enrollment and full time attendance is certified by such  
50 institution or a surviving child of any age dependent blind or phys-  
51 ically disabled and the death occurs on or after January first, nineteen  
52 hundred seventy-eight, to such spouse thirty-six and two-thirds per  
53 centum of the average wages of the deceased during widowhood or widower-  
54 hood [~~with two years' compensation in one sum, upon remarriage~~]; and  
55 thirty per centum of such wages to such child under the age of eighteen  
56 years or under the age of twenty-three years if enrolled and attending

1 as a full time student in an accredited educational institution and such  
 2 enrollment and full time attendance is certified by such institution or  
 3 a surviving child of any age dependent blind or physically disabled; in  
 4 the case of the subsequent death of such surviving spouse the surviving  
 5 child shall have his compensation increased to sixty-six and two-thirds  
 6 per centum of such wages and the same shall be payable so long as he is  
 7 under the age of eighteen years or under the age of twenty-three years  
 8 if enrolled and attending as a full time student in an accredited educa-  
 9 tional institution and such enrollment and full time attendance is  
 10 certified by such institution or a surviving child of any age dependent  
 11 blind or physically disabled; upon statutory termination of compensation  
 12 payable to such child, the compensation of the surviving spouse shall be  
 13 increased to sixty-six and two-thirds per centum of such wages [~~with two~~  
 14 ~~years' compensation, at such rate, in one sum, upon remarriage. Upon~~  
 15 ~~remarriage of such surviving spouse, the surviving child shall continue~~  
 16 ~~to receive thirty per centum of such wages~~]. Where the death occurs on  
 17 or after January first, nineteen hundred seventy-eight and the spouse is  
 18 receiving survivors insurance benefits under the social security act,  
 19 the death benefit payable under this section shall be reduced by five  
 20 per centum of the spouse's share of the survivors insurance benefits  
 21 under the social security act for each ten dollars of deceased's average  
 22 weekly wage in excess of one hundred dollars provided that in no case  
 23 shall such reduction exceed fifty per centum of said spouse's share of  
 24 the survivors insurance benefits under the social security act as set  
 25 forth in table No. I below.

TABLE No. I

Offset provisions applicable in death benefits  
 where there is a surviving spouse and one child

AVERAGE WEEKLY WAGE	PERCENTAGE OF SPOUSE'S SHARE OF SURVIVORS INSURANCE BENEFITS
over \$100 up to and including \$110 .....	5
over \$110 up to and including \$120 .....	10
over \$120 up to and including \$130 .....	15
over \$130 up to and including \$140 .....	20
over \$140 up to and including \$150 .....	25
over \$150 up to and including \$160 .....	30
over \$160 up to and including \$170 .....	35
over \$170 up to and including \$180 .....	40
over \$180 up to and including \$190 .....	45
over \$190 up to and including \$200 .....	50
over \$200 .....	50

If there be a surviving spouse and two or more surviving children  
 under the age of eighteen years or under the age of twenty-three years  
 if enrolled and attending as a full time student in an accredited educa-  
 tional institution and such enrollment and full time attendance is  
 certified by such institution or a surviving child or children of any  
 age dependent blind or physically disabled and a death occurs on or  
 after January first, nineteen hundred seventy-eight, to such spouse  
 thirty-six and two-thirds per centum of the average wage of the deceased  
 during widowhood or widowerhood [~~with two years' compensation in one sum~~  
~~upon remarriage~~]; and thirty per centum of such wages to such children  
 under the age of eighteen years or under the age of twenty-three years

1 if enrolled and attending as a full time student in an accredited educa-  
 2 tional institution and such enrollment and full time attendance is  
 3 certified by such institution or a surviving child or children of any  
 4 age dependent blind or physically disabled, share and share alike; in  
 5 case of the subsequent death of such surviving spouse the surviving  
 6 children shall have their compensation increased to sixty-six and two-  
 7 thirds per centum of such wages and the aggregate sum shall be payable,  
 8 share and share alike, so long as they are under the age of eighteen  
 9 years or under the age of twenty-three years if enrolled and attending  
 10 as a full time student in an accredited educational institution and such  
 11 enrollment and full time attendance is certified by such institution or  
 12 a surviving child or children of any age dependent blind or physically  
 13 disabled. [~~Upon remarriage of such surviving spouse, if there be two  
 14 surviving children each shall receive twenty-five per centum of such  
 15 wages, and if there are surviving more than two children under the age  
 16 of eighteen years or under the age of twenty three if enrolled and  
 17 attending as a full time student in an accredited educational institu-  
 18 tion and such enrollment and full time attendance is certified by such  
 19 institution or a surviving child or children of any age dependent blind  
 20 or physically disabled sixty-six and two-thirds per centum of such wages  
 21 share and share alike.~~] Upon statutory termination of compensation paya-  
 22 ble to such children, the compensation of the surviving spouse shall be  
 23 increased to sixty-six and two-thirds per centum of such wages [~~with two  
 24 years' compensation, at such rate, in one sum, upon remarriage~~]. Where  
 25 the death occurs on or after January first, nineteen hundred seventy-  
 26 eight, and the spouse is receiving survivors insurance benefits under  
 27 the social security act, the death benefits payable under this section  
 28 shall be reduced by five per centum of the spouse's share of the survi-  
 29 vors insurance benefits under the social security act for each ten  
 30 dollars of deceased's average weekly wage in excess of one hundred fifty  
 31 dollars provided that in no case shall such reduction exceed fifty per  
 32 centum of said spouse's share of the survivors insurance benefits under  
 33 the social security act as set forth in table No. II below.

34 TABLE No. II

35 Offset provisions applicable in death benefits  
 36 where there is a surviving spouse and two or more children

37 AVERAGE WEEKLY WAGE	38 PERCENTAGE OF SPOUSE'S 39 SHARE OF SURVIVORS INSURANCE BENEFITS
40 over \$150 up to and including \$160 .....	5
41 over \$160 up to and including \$170 .....	10
42 over \$170 up to and including \$180 .....	15
43 over \$180 up to and including \$190 .....	20
44 over \$190 up to and including \$200 .....	25
45 over \$200 up to and including \$210 .....	30
46 over \$210 up to and including \$220 .....	35
47 over \$220 up to and including \$230 .....	40
48 over \$230 up to and including \$240 .....	45
49 over \$240 up to and including \$250 .....	50
50 over \$250 .....	50

51 2-b. If there be a surviving spouse of an employee of a private volun-  
 52 tary hospital killed in a World Trade Center rescue, who passed a phys-  
 53 ical examination upon employment as a rescue worker that failed to



1 reveal evidence of a condition that was the proximate cause of death,  
2 and a surviving child under the age of eighteen years, or under the age  
3 of twenty-three years if enrolled and attending as a full-time student  
4 in an accredited educational institution and such enrollment and full-  
5 time attendance is certified by such institution, or a surviving child  
6 of any age dependent blind or physically disabled, to such spouse forty  
7 per centum of the average wages of the deceased during widowhood or  
8 widowerhood[~~, with two years' compensation in one sum, upon remarriage~~];  
9 and thirty-five per centum of such wages to such child under the age of  
10 eighteen years, or under the age of twenty-three years if enrolled and  
11 attending as a full-time student in an accredited educational institu-  
12 tion and such enrollment and full-time attendance is certified by such  
13 institution, or a surviving child of any age dependent blind or phys-  
14 ically disabled; in the case of the subsequent death of such surviving  
15 spouse the surviving child shall have his or her compensation increased  
16 to seventy-five per centum of such wages and the same shall be payable  
17 so long as he or she is under the age of eighteen years, or under the  
18 age of twenty-three years if enrolled and attending as a full-time  
19 student in an accredited educational institution and such enrollment and  
20 full-time attendance is certified by such institution, or a surviving  
21 child of any age dependent blind or physically disabled; upon statutory  
22 termination of compensation payable to such child, the compensation of  
23 the surviving spouse shall be increased to seventy-five per centum of  
24 such wages [~~with two years' compensation, at such rate, in one sum, upon~~  
25 ~~remarriage~~]. [~~Upon remarriage of such surviving spouse, the surviving~~  
26 ~~child shall continue to receive thirty five per centum of such wages.~~  
27 ~~Where such death occurs, and the spouse is receiving survivors insurance~~  
28 ~~benefits under the social security act, the death benefit payable under~~  
29 ~~this section shall be reduced by five per centum of the spouse's share~~  
30 ~~of the survivors insurance benefits under the social security act for~~  
31 ~~each ten dollars of deceased's average weekly wage in excess of one~~  
32 ~~hundred dollars, provided that in no case shall such reduction exceed~~  
33 ~~fifty per centum of such spouse's share of the survivors insurance bene-~~  
34 ~~fits under the social security act as set forth in table No. I in subdivi-~~  
35 ~~sion one c of this section.~~] If there be a surviving spouse of an  
36 employee of a private voluntary hospital killed in a World Trade Center  
37 rescue, who passed a physical examination upon employment as a rescue  
38 worker that failed to reveal evidence of a condition that was the proxi-  
39 mate cause of death, and two or more surviving children under the age of  
40 eighteen years, or under the age of twenty-three years if enrolled and  
41 attending as a full-time student in an accredited educational institu-  
42 tion and such enrollment and full-time attendance is certified by such  
43 institution, or a surviving child or children of any age dependent blind  
44 or physically disabled and a death occurs on or after September elev-  
45 enth, two thousand one, to such spouse forty per centum of the average  
46 wage of the deceased during widowhood or widowerhood [~~with two years'~~  
47 ~~compensation in one sum upon remarriage~~]; and thirty-five per centum of  
48 such wages to such children under the age of eighteen years, or under  
49 the age of twenty-three years if enrolled and attending as a full-time  
50 student in an accredited educational institution and such enrollment and  
51 full-time attendance is certified by such institution, or a surviving  
52 child or children of any age dependent blind or physically disabled,  
53 share and share alike; in case of the subsequent death of such surviving  
54 spouse the surviving children shall have their compensation increased to  
55 seventy-five per centum of such wages and the aggregate sum shall be  
56 payable, share and share alike, so long as they are under the age of

1 eight years, or under the age of twenty-three years if enrolled and  
2 attending as a full-time student in an accredited educational institu-  
3 tion and such enrollment and full-time attendance is certified by such  
4 institution, or a surviving child or children of any age dependent blind  
5 or physically disabled. [~~Upon remarriage of such surviving spouse, if  
6 there be two surviving children each shall receive thirty seven and  
7 one half per centum of such wages, and if there are surviving more than  
8 two children under the age of eighteen years, or under the age of twen-  
9 ty-three if enrolled and attending as a full-time student in an accred-  
10 ited educational institution and such enrollment and full-time attend-  
11 ance is certified by such institution, or a surviving child or children  
12 of any age dependant blind or physically disabled, seventy five per  
13 centum of such wages share and share alike.~~] Upon statutory termination  
14 of compensation payable to such children, the compensation of the  
15 surviving spouse shall be increased to seventy-five per centum of such  
16 wages [~~with two years' compensation, at such rate, in one sum, upon  
17 remarriage~~]. Where the death occurs on or after September eleventh, two  
18 thousand one, and the spouse is receiving survivors insurance benefits  
19 under the social security act, the death benefits payable under this  
20 section shall be reduced by five per centum of the spouse's share of the  
21 survivors insurance benefits under the social security act for each ten  
22 dollars of deceased's average weekly wage in excess of one hundred fifty  
23 dollars; provided that in no case shall such reduction exceed fifty per  
24 centum of said spouse's share of the survivors insurance benefits under  
25 the social security act as set forth in table No. II in subdivision  
26 two-a of this section.

27 2-c. If there be a surviving spouse and a surviving child under the  
28 age of eighteen years or under the age of twenty-three years if enrolled  
29 and attending as a full-time student in an accredited educational insti-  
30 tution and such enrollment and full-time attendance is certified by such  
31 institution or a surviving child of any age dependent blind or phys-  
32 ically disabled and the death occurs on or after January first, two  
33 thousand sixteen, to such spouse thirty-six and two-thirds per centum of  
34 the average wages of the deceased during widowhood or widowerhood; and  
35 thirty per centum of such wages to such child under the age of eighteen  
36 years or under the age of twenty-three years if enrolled and attending  
37 as a full-time student in an accredited educational institution and such  
38 enrollment and full-time attendance is certified by such institution or  
39 a surviving child of any age dependent blind or physically disabled; in  
40 the case of the subsequent death of such surviving spouse the surviving  
41 child shall have their compensation increased to sixty-six and two-  
42 thirds per centum of such wages and the same shall be payable so long as  
43 they are under the age of eighteen years or under the age of twenty-  
44 three years if enrolled and attending as a full-time student in an  
45 accredited educational institution and such enrollment and full-time  
46 attendance is certified by such institution or a surviving child of any  
47 age dependent blind or physically disabled; upon statutory termination  
48 of compensation payable to such child, the compensation of the surviving  
49 spouse shall be increased to sixty-six and two-thirds per centum of such  
50 wages.

51 If there be a surviving spouse and two or more surviving children  
52 under the age of eighteen years or under the age of twenty-three years  
53 if enrolled and attending as a full-time student in an accredited educa-  
54 tional institution and such enrollment and full-time attendance is  
55 certified by such institution or a surviving child or children of any  
56 age dependent blind or physically disabled and a death occurs on or

1 after January first, two thousand sixteen, to such spouse thirty-six and  
2 two-thirds per centum of the average wage of the deceased during widow-  
3 hood or widowerhood; and thirty per centum of such wages to such chil-  
4 dren under the age of eighteen years or under the age of twenty-three  
5 years if enrolled and attending as a full-time student in an accredited  
6 educational institution and such enrollment and full-time attendance is  
7 certified by such institution or a surviving child or children of any  
8 age dependent blind or physically disabled, share and share alike; in  
9 case of the subsequent death of such surviving spouse the surviving  
10 children shall have their compensation increased to sixty-six and two-  
11 thirds per centum of such wages and the aggregate sum shall be payable,  
12 share and share alike, so long as they are under the age of eighteen  
13 years or under the age of twenty-three years if enrolled and attending  
14 as a full-time student in an accredited educational institution and such  
15 enrollment and full-time attendance is certified by such institution or  
16 a surviving child or children of any age dependent blind or physically  
17 disabled. Upon statutory termination of compensation payable to such  
18 children, the compensation of the surviving spouse shall be increased to  
19 sixty-six and two-thirds per centum of such wages.

20 4-d. If there be no surviving spouse or child, or children of an  
21 employee of a private voluntary hospital killed in a World Trade Center  
22 rescue, who passed a physical examination upon employment as a rescue  
23 worker that failed to reveal evidence of a condition that was the proximate  
24 cause of death, under the age of eighteen years, or under the age  
25 of twenty-three years if enrolled and attending as a full-time student  
26 in an accredited educational institution and such enrollment and full-  
27 time attendance is certified by such institution, or dependent blind or  
28 physically disabled child of any age, or grandchildren or brothers and  
29 sisters if dependent upon the deceased at the time of the accident,  
30 under the age of eighteen years, or under the age of twenty-three years  
31 if enrolled and attending as a full-time student in an accredited educa-  
32 tional institution and such enrollment and full-time attendance is  
33 certified by such institution, or disabled blind or physically disabled  
34 grandchildren or brothers and sisters of any age, then a sum of [~~fifty~~  
35 one hundred thousand dollars shall be paid to the deceased's surviving  
36 parents or if there be no surviving parents to the deceased's estate.

37 § 8. The workers' compensation law is amended by adding a new section  
38 17-a to read as follows:

39 § 17-a. Limited English proficiency. 1. The board shall provide trans-  
40 lation of all documents and forms used by or issued to injured employ-  
41 ees. The translation shall be in the six most common non-English  
42 languages spoken by individuals with limited-English proficiency in the  
43 state of New York.

44 2. The board shall provide interpretation services to injured employ-  
45 ees with respect to its provision of services, information and/or bene-  
46 fits.

47 3. The board shall publish a language access plan that reflects:

48 (a) the means by which it provides language assistance services;

49 (b) the titles of all available translated documents and the languages  
50 into which they have been translated;

51 (c) the number of public contact positions at the board and the number  
52 of bilingual employees in public contact positions, including the  
53 languages they speak;

54 (d) a training plan for board employees which includes, at minimum,  
55 annual training on its language access policies and how to provide  
56 language assistance services;

1 (e) a plan for annual internal monitoring of the board's language  
 2 access plan;

3 (f) a plan of how the board intends to notify injured employees of  
 4 offered language assistance services; and

5 (g) the appointment of a language access coordinator at the board, who  
 6 shall be publicly identified.

7 4. The language access coordinator for the board shall monitor the  
 8 agency's compliance with this section by annually collecting data on the  
 9 provision of language assistance services, the availability of trans-  
 10 lated materials, whether signage is properly posted, and any other rele-  
 11 vant measures.

12 § 9. Section 18 of the workers' compensation law, as amended by chap-  
 13 ter 747 of the laws of 1947, is amended to read as follows:

14 § 18. Notice of injury or death. Notice of an injury or death for  
 15 which compensation is payable under this chapter shall be given to the  
 16 employer within thirty days after the accident causing such injury, and  
 17 also in case of the death of the employee resulting from such injury,  
 18 within thirty days after such death. Such notice may be given by any  
 19 person claiming to be entitled to compensation, or by some one in his  
 20 behalf. The notice shall be in writing, and contain the name and address  
 21 of the employee, and state in ordinary language the time, place, nature  
 22 and cause of the injury, and be signed by him or by a person on his  
 23 behalf or, in case of death, by any one or more of his dependents, or by  
 24 a person, on their behalf. It shall be given to the employer by deliver-  
 25 ing it to him or sending it by mail, by registered letter, addressed to  
 26 the employer at his or its last known place of business; provided that,  
 27 if the employer be a partnership then such notice may be so given to any  
 28 one of the partners, and if the employer be a corporation, then such  
 29 notice may be given to any agent or officer thereof upon whom legal  
 30 process may be served, or any agent in charge of his business in the  
 31 place where the injury occurred. The failure to give notice of injury or  
 32 notice of death unless excused by the board either on the ground that  
 33 notice for some sufficient reason could not have been given, or on the  
 34 ground that the employer, or his or its agents in charge of the business  
 35 in the place where the accident occurred or having immediate supervision  
 36 of the employee to whom the accident happened, had knowledge of the  
 37 accident or death, or on the ground that the employer has not been prej-  
 38 udiced thereby, shall be a bar to any claim under this chapter, but the  
 39 employer and the insurance carrier shall be deemed to have waived such  
 40 notice unless the objection to the failure to give such notice or the  
 41 insufficiency thereof, is raised before the board on the first hearing  
 42 of the claim field by such injured employee, or his or her dependents at  
 43 which all parties in interest are present, or represented, and at which  
 44 the claimant, or principal beneficiary, testifies. The burden of proof  
 45 on the issue of prejudice shall rest with the employer.

46 § 10. Subdivision 1 of section 20 of the workers' compensation law, as  
 47 amended by chapter 635 of the laws of 1996, is amended to read as  
 48 follows:

49 1. At any time after [~~the expiration of the first seven days of disa-~~  
 50 ~~bility on the part of~~] an injury the injured employee, or at any time  
 51 after the employee's death, a claim for compensation may be presented to  
 52 the employer or to the chair. The board shall hold an initial hearing  
 53 in each claim and shall have full power and authority to determine all  
 54 questions in relation to the payment of claims presented to it for  
 55 compensation under the provisions of this chapter. The chair or board  
 56 shall make or cause to be made such investigation as it deems necessary,

1 and upon application of either party, shall order a hearing, and within  
2 thirty days after a claim for compensation is submitted under this  
3 section, or such hearing closed, shall make or deny an award, determin-  
4 ing such claim for compensation, and file the same in the office of the  
5 chair. Immediately after such filing the chair shall send to the parties  
6 a copy of the decision. Upon a hearing pursuant to this section either  
7 party may present evidence and be represented by counsel. The decision  
8 of the board shall be final as to all questions of fact, and, except as  
9 provided in section twenty-three of this article, as to all questions of  
10 law. Except as provided in section twenty-seven of this article, all  
11 awards of the board shall draw simple interest from thirty days after  
12 the making thereof at the rate provided in section five thousand four of  
13 the civil practice law and rules. Whenever a hearing or proceeding for  
14 the determination of a claim for compensation is begun before a referee,  
15 pursuant to the provisions of this chapter, such hearing or proceeding  
16 or any adjourned hearing thereon shall continue before the same referee  
17 until a final determination awarding or denying compensation, except in  
18 the absence, inability or disqualification to act of such referee, or  
19 for other good cause, in which event such hearing or proceeding may be  
20 continued before another referee by order of the chair or board.

21 § 11. Section 24 of the workers' compensation law, as amended by chap-  
22 ter 494 of the laws of 1950, is amended to read as follows:

23 § 24. Costs and fees. (a) If the court before which any proceedings  
24 for compensation or concerning an award of compensation have been  
25 brought, under this chapter, determine that such proceedings have not  
26 been so brought upon reasonable ground, it shall assess the cost of the  
27 proceedings upon the party who has so brought them.

28 (b) Claims of attorneys and counselors-at-law for legal services in  
29 connection with any claim arising under this chapter, and claims for  
30 services or treatment rendered or supplies furnished pursuant to subdivi-  
31 sion (b) of section thirteen of this ~~chapter~~ article, shall not be  
32 enforceable unless approved by the board. The board shall approve such  
33 claims of attorneys in accordance with each applicable provision of the  
34 following schedule:

35 (i) when an award is made directing the continuation of weekly compen-  
36 sation benefits for temporary total or partial disability, the attor-  
37 ney's fee shall be one-third of one week's compensation.

38 (ii) when an award is made that increases the amount of compensation  
39 awarded or paid for a previous period or periods of temporary total or  
40 partial disability, the attorney's fee shall be fifteen percent of the  
41 increased compensation.

42 (iii) when an award is made for schedule loss of use or permanent  
43 facial disfigurement pursuant to paragraphs a through t of subdivision  
44 three of section fifteen of this article, the attorney's fee shall be  
45 fifteen percent of the compensation due in excess of the employer or  
46 carrier's previous payments.

47 (iv) when an award is made for permanent total disability pursuant to  
48 subdivision one of section fifteen of this article or permanent partial  
49 disability pursuant to paragraph w of subdivision three of section  
50 fifteen of this article, the attorney's fee shall be equivalent to ten  
51 weeks of compensation at the rate fixed by the board.

52 (v) when an award is made for death benefits pursuant to section  
53 sixteen of this article, the attorney's fee shall be equivalent to  
54 fifteen percent of the compensation due in excess of the employer or  
55 carrier's previous payments, plus a sum equivalent to ten weeks of  
56 compensation at the rate fixed by the board.

1 (vi) when an award is made pursuant to section thirty-two of this  
 2 article, the attorney's fee shall be fifteen percent of any benefits to  
 3 be paid by the employer or carrier under the agreement. However, if the  
 4 attorney is awarded a fee pursuant to this subdivision, payment of the  
 5 unpaid and unaccrued balance of any attorney fees under the foregoing  
 6 subdivisions shall be waived.

7 ~~[(c)]~~ (c) When so approved, such claim or claims shall become a lien  
 8 upon the compensation awarded, and upon any moneys ordered paid under an  
 9 award by the board into the special funds provided for in subdivision  
 10 nine of section fifteen~~[, subdivision nine,]~~ and section twenty-five-a,  
 11 and any other section of this chapter, but shall be paid therefrom only  
 12 in the manner fixed by the board. Any other person, firm or corporation  
 13 who shall exact or receive fee or gratuity for any services rendered on  
 14 behalf of a claimant except in an amount determined by the board, shall  
 15 be guilty of a misdemeanor. Any person, firm or corporation who shall  
 16 solicit the business of appearing before the board on behalf of a claim-  
 17 ant, or who shall make it a business to solicit employment for a lawyer  
 18 in connection with any claim for compensation under this chapter shall  
 19 be guilty of a misdemeanor. In case an award is affirmed upon an appeal  
 20 to the appellate division, the same shall be payable with interest ther-  
 21 eon from the date when said award was made by the board except as  
 22 provided in section twenty-seven of this ~~[chapter]~~ article.

23 (d) Where the claim is solely for medical treatment, and no award of  
 24 compensation is made, attorneys and counselors-at-law may submit a claim  
 25 for legal services rendered in connection with obtaining authorization  
 26 or approval for such medical treatment, including the provision of  
 27 advice and representation for the injured worker. The board shall review  
 28 and approve such claims, having due regard for the services rendered and  
 29 whether authorization or approval was obtained. The fees awarded to an  
 30 attorney pursuant to this subdivision shall be paid by the employer or  
 31 carrier. Any attorney fee awarded pursuant to this subdivision shall  
 32 become a credit against a subsequent attorney fee requested pursuant to  
 33 subdivision (b) of this section.

34 § 12. Subdivision 2-b of section 25 of the workers' compensation law  
 35 is REPEALED and subdivision 2-c is renumbered subdivision 2-b.

36 § 13. Paragraphs (b) and (c) of subdivision 3 of section 25 of the  
 37 workers' compensation law, as amended by chapter 61 of the laws of 1986,  
 38 are amended to read as follows:

39 (b) Nothing herein shall limit the right of the board in a particular  
 40 case to hold a hearing and make an award in accordance with other  
 41 provisions of this chapter. No case shall be closed and no decision  
 42 shall be issued without a hearing upon notice to all parties interested  
 43 and without giving to all such parties an opportunity to be heard.

44 (c) The board shall keep an accurate stenographic record of all hear-  
 45 ings held. Whenever a hearing must be continued or adjourned because  
 46 the carrier or employer has engaged in dilatory tactics or exhibited  
 47 unjustified lack of preparedness, the board shall impose a penalty of  
 48 twenty-five dollars to be paid to the fund created by subdivision two of  
 49 section one hundred fifty-one of this chapter and shall in addition make  
 50 an award of seventy-five dollars payable to the injured worker or his or  
 51 her dependants. Dilatory tactics may include but shall not be limited  
 52 to: failing to subpoena medical witnesses or to secure an order to show  
 53 cause as directed by the referee, failing to bring proper files, failing  
 54 to appear, failing to produce witnesses or documents after they have  
 55 been requested by the referee or examiner or as directed by the hearing  
 56 notice, unnecessarily protracting the production of evidence, or engag-

1 ing in a pattern of delay which unduly delays resolution, except that no  
2 penalty shall be imposed nor award made under this subdivision if the  
3 carrier or employer produces evidence sufficient to excuse its conduct  
4 to the satisfaction of the referee.

5 § 14. Subdivision 1, the fifth undesignated paragraph of subdivision 5  
6 and subdivision 6 of section 29 of the workers' compensation law, subdivi-  
7 sion 1 as amended by section 805 of the laws of 1984 and as further  
8 amended by section 104 of part A of chapter 62 of the laws of 2011, the  
9 fifth undesignated paragraph of subdivision 5 as amended by chapter 246  
10 of the laws of 1967, and subdivision 6 as amended by chapter 635 of the  
11 laws of 1996, are amended to read as follows:

12 1. If an employee entitled to compensation under this chapter be  
13 injured or killed by the negligence or wrong of another not in the same  
14 employ, such injured employee, or in case of death, his dependents, need  
15 not elect whether to take compensation and medical benefits under this  
16 chapter or to pursue his remedy against such other but may take such  
17 compensation and medical benefits and at any time either prior thereto  
18 or within six months after the awarding of compensation or within nine  
19 months after the enactment of a law or laws creating, establishing or  
20 affording a new or additional remedy or remedies, pursue his remedy  
21 against such other subject to the provisions of this chapter. If such  
22 injured employee, or in case of death, his dependents, take or intend to  
23 take compensation, and medical benefits in the case of an employee,  
24 under this chapter and desire to bring action against such other, such  
25 action must be commenced not later than six months after the awarding of  
26 compensation or not later than nine months after the enactment of such  
27 law or laws creating, establishing or affording a new or additional  
28 remedy or remedies and in any event before the expiration of one year  
29 from the date such action accrues. In such case, the state insurance  
30 fund, if compensation be payable therefrom, and otherwise the person,  
31 association, corporation or insurance carrier liable for the payment of  
32 such compensation, as the case may be, shall have a lien on the proceeds  
33 of any recovery from such other to the extent such recovery is for lost  
34 wages or medical expenses, whether by judgment, settlement or otherwise,  
35 after the deduction of the reasonable and necessary expenditures,  
36 including attorney's fees, incurred in effecting such recovery, to the  
37 extent of the total amount of compensation awarded under or provided or  
38 estimated by this chapter for such case and the expenses for medical  
39 treatment paid or to be paid by it and to such extent such recovery  
40 shall be deemed for the benefit of such fund, person, association,  
41 corporation or carrier. Should the employee or his dependents secure a  
42 recovery from such other, whether by judgment, settlement or otherwise,  
43 such employee or dependents may apply on notice to such lienor to the  
44 court in which the third party action was instituted, or to a court of  
45 competent jurisdiction if no action was instituted, for an order appor-  
46 tioning the reasonable and necessary expenditures, including attorneys'  
47 fees, incurred in effecting such recovery. Such expenditures shall be  
48 equitably apportioned by the court between the employee or his depen-  
49 dents and the lienor. Notice of the commencement of such action shall be  
50 given within thirty days thereafter to the chairman, the employer and  
51 the insurance carrier upon a form prescribed by the chairman. Any of the  
52 foregoing providers of compensation and/or medical benefits which has  
53 recovered a lien pursuant to the provisions hereof against the recovery  
54 of a person injured on or after February first, nineteen hundred seven-  
55 ty-four and before July first, nineteen hundred seventy-eight, through  
56 the use or operation of a motor vehicle in this state, shall notify such

1 person by certified mail in a manner to be approved by the chairman and  
2 the superintendent of financial services of the responsibility of an  
3 "insurer" (as defined in subsection (g) of section five thousand one  
4 hundred two of the insurance law), to reimburse such person under such  
5 circumstances to the extent that the recovered lien represent first  
6 party benefits as defined in article fifty-one of the insurance law.

7 A copy of the papers to be used on the application to compromise and  
8 settle the claim must be served as directed by the court or in the same  
9 manner as provided in the civil practice law and rules for a notice of  
10 motion upon the commissioners of the state insurance fund or such offi-  
11 cer thereof designated by them or upon the person, association, corpo-  
12 ration, or insurance carrier, whose written approval would have been  
13 required to compromise such cause of action by the employee or his  
14 dependents. This notice shall afford them the opportunity to submit  
15 affidavits and to be heard by the court on the application. A petition  
16 may also be filed pursuant to this subdivision allocating a portion of  
17 the third-party recovery to lost wages and/or medical treatment.

18 6. ~~[The]~~ Except as set forth in section eleven of this article, the  
19 right to compensation or benefits under this chapter, shall be the  
20 exclusive remedy to an employee, or in case of death his or her depen-  
21 dents, when such employee is injured or killed by the negligence or  
22 wrong of another in the same employ, the employer's insurer or any  
23 collective bargaining agent of the employer's employees or any employee,  
24 of such insurer or such collective bargaining agent (while acting within  
25 the scope of his or her employment). The limitation of liability of an  
26 employer set forth in section eleven of this article for the injury or  
27 death of an employee shall be applicable to another in the same employ,  
28 the employer's insurer, any collective bargaining agent of the employ-  
29 er's employees or any employee of the employer's insurer or such collec-  
30 tive bargaining agent (while acting within the scope of his or her  
31 employment). The option to maintain an action in the courts for damages  
32 ~~[based on the employer's failure to secure compensation for injured~~  
33 ~~employees and their dependents as set forth in section eleven of this~~  
34 ~~article]~~ shall not be construed to include the right to maintain an  
35 action against another in the same employ, ~~[the employer's insurer,~~  
36 ~~of the employer's insurer]~~ or such collective bargaining agent (while  
37 acting within the scope of his or her employment).

39 § 15. Subdivision 3 of section 35 of the workers' compensation law, as  
40 amended by section 2 of subpart A of part NNN of chapter 59 of the laws  
41 of 2017, is amended and a new subdivision 5 is added to read as follows:

42 3. Extreme hardship redetermination. In cases where the loss of wage-  
43 earning capacity is greater than ~~[seventy-five]~~ fifty percent, a claim-  
44 ant may request~~[, within the year prior to the scheduled exhaustion of~~  
45 ~~indemnity benefits under paragraph w of subdivision three of section~~  
46 ~~fifteen of this article]~~, that the board reclassify the claimant to  
47 permanent total disability or total industrial disability due to factors  
48 reflecting extreme hardship. Extreme hardship is defined as: (a) the  
49 injured worker's income from Social Security disability benefits and  
50 disability pension (if applicable) would be less than fifty percent of  
51 his or her average weekly wage upon termination of PPD benefits; or (b)  
52 the injured worker will be unable to meet expenses for himself or  
53 herself and any dependents upon termination of PPD benefits; or (c)  
54 additional medical, functional or vocational factors arising subsequent  
55 to the classification of permanent partial disability have further  
56 eroded the injured worker's wage earning capacity; or (d) the injured



1 worker's income would be below the federal poverty guidelines upon  
2 termination of PPD benefits.

3 5. Return to work programs. The following programs shall be developed  
4 and implemented by January first, two thousand twenty:

5 (a) Return to work education. The board and the department of labor  
6 shall develop and provide education tools and technical assistance on  
7 how to build a return to work culture within an organization, partic-  
8 ularly to small- and medium-sized employers. These tools shall include  
9 templates of sample policies and procedural frameworks for return to  
10 work programs, and illustrations of the financial benefits of effective  
11 return to work protocols. In addition, the board and the department of  
12 labor shall develop and implement, with input from stakeholders, an  
13 education program for all participants in the workers' compensation  
14 system, including employers and employees, carriers, claimants' attor-  
15 neys and claims examiners, on the value and components of an effective  
16 return to work program and their respective roles in assuring positive  
17 return to work outcomes.

18 (b) Employer return to work policies. The board shall require a  
19 formal, consistent return to work policy of all New York employers who  
20 employ more than twenty-five individuals, and carriers shall provide  
21 model policies for employers of fewer than twenty-five. The policy shall  
22 be written and tailored to the specific needs of the employer.

23 (c) Return to work communication. The board shall redesign the forms  
24 it uses to encourage and improve early and frequent outreach from the  
25 employer to the injured worker, from the physician to the employer and  
26 from the physician to the injured worker. These forms shall seek clearer  
27 information on job duties and physical demands of a given job; ascertain  
28 the extent to which physicians are communicating with the injured worker  
29 about return to work; and contain information that will allow review by  
30 board staff to ensure that injured workers are not needlessly delayed  
31 treatment or services that could facilitate return to work.

32 (d) Improvements in the physician's role. The occupational health  
33 clinics, administered by the department of health, shall develop content  
34 and curriculum for a continuing medical education course on return to  
35 work. The board shall improve training of physicians around return to  
36 work principles. The board shall assure that physicians are compensated  
37 for the time it takes to evaluate true return to work opportunities  
38 within the injured worker's functional capabilities.

39 (e) Vocational rehabilitation evaluations. The board shall assure that  
40 a neutral, non-medical vocational rehabilitation evaluation is provided  
41 to all claimants who have not returned to work at the time they have  
42 reached maximum medical improvement to determine whether their return to  
43 work would be facilitated by vocational education or training. The eval-  
44 uation shall be done under a standardized protocol established by the  
45 board and shall be binding on all parties. The vocational assessment  
46 shall be paid for by the carrier, self-insured employer or the state  
47 insurance fund. Submission of the current rehabilitation form shall be  
48 required, and penalties shall be imposed for the late or non-filing of  
49 forms related to return to work and rehabilitation programs.

50 (f) Vocational rehabilitation services. The board shall assure that  
51 vocational rehabilitation services are provided more expeditiously to  
52 injured workers and are appropriately funded. The options available and  
53 the costs shall be subject to regulation by the board. If the evaluation  
54 recommends vocational education or retraining, the costs shall be  
55 covered first by appropriate sources of state or federal funding. Carri-  
56 ers shall not be permitted to seek a change in an injured worker's clas-

1 sification status while that individual is actively participating in  
2 retraining or vocational rehabilitation in accordance with the individ-  
3 ualized reemployment plan developed as a result of the vocational reha-  
4 ilitation evaluation.

5 (g) Incentive programs. The board, the department, and the department  
6 of financial services shall develop incentive programs targeted to  
7 hiring workers who have permanent work restrictions. These programs  
8 shall be established and analyzed for their impact on return to work  
9 rates and cost effectiveness. Parameters for such program, at a minimum,  
10 shall include those which offer employers wage subsidies for employing  
11 and retraining injured workers, reimbursement for workplace accommo-  
12 modations to enable injured workers to adjust the job to their capacities,  
13 vocational assessments, retraining for those injured workers who cannot  
14 return to their at-injury employer and funds for purchase of items that  
15 are required of any new hire. Return to work programs subsidized by  
16 these programs shall, at a minimum, be at eighty percent of the pre-hire  
17 wage. Incentive programs shall require an employer match.

18 (h) Medical only cases. The board shall compensate attorneys for  
19 representation provided in certain medical-only cases, so as to facili-  
20 tate the medical care necessary for an injured worker's return to the  
21 labor force.

22 (i) Workers' compensation board process issues. The board shall put in  
23 place improvements and proactive approaches to return to work. It shall  
24 develop procedures for promptly contacting claimants no later than one  
25 hundred twenty days after injury or within two weeks of maximum medical  
26 improvement to determine the feasibility of return to work. Partic-  
27 ipants in the workers' compensation system, including the administrative  
28 law judges, shall be educated on the importance of return to work. The  
29 board shall establish a procedure to ensure that all claimants who are  
30 eligible for a reduced earning award receive such award.

31 (j) Return to work for public employees. A "pay without prejudice"  
32 pilot program shall be undertaken with state agencies and selected  
33 public authorities and local governments to speed up appropriate medical  
34 treatment to workers that sustain workplace injuries. The program shall  
35 be analyzed to determine whether improvements in timeliness of medical  
36 authorization results improve return to work outcomes of public employ-  
37 ees.

38 § 16. The workers' compensation law is amended by adding a new section  
39 59 to read as follows:

40 § 59. Financial statement and detailed claim data to be filed with the  
41 board. (a) For purposes of this section, the term "insurer" means any  
42 person, corporation, association or other business entity which issues a  
43 policy of workers' compensation insurance.

44 (b) On or before April first of each year, every insurer shall for the  
45 calendar year provide the board and the public with a detailed financial  
46 statement to supplement and expand upon any other information otherwise  
47 provided to the board, the department of financial services, or the New  
48 York compensation insurance rating board as it relates to an insurer's  
49 provision of workers' compensation insurance coverage to employers;  
50 provided, however, that the initial financial statement so filed by an  
51 insurer after the effective date of this section shall include the  
52 information required in this subdivision not only for such prior calen-  
53 dar year but also for the previous nine calendar years prior to such  
54 report. The financial statement shall, in depth, detail:

55 (1) total premium collected;

56 (2) assessments collected;

1     (3) dividend income;  
2     (4) payment of workers' compensation benefits for temporary disabili-  
3 ty;  
4     (5) non-scheduled permanent partial disability;  
5     (6) scheduled permanent partial disability;  
6     (7) permanent total disability;  
7     (8) death benefits;  
8     (9) medical treatment;  
9     (10) payments to vendors including but not limited to: (i) independent  
10 medical examination providers; (ii) investigators; (iii) nurse case  
11 managers; (iv) peer reviews; (v) utilization reviews; and (vi) defense  
12 litigation costs;  
13     (11) number of open claims at the time such statement is prepared;  
14     (12) other expenses by category as determined by the board to reflect  
15 the cost to the insurer to provide such coverage;  
16     (13) investment income realized from that portion of the premium paid  
17 for a policy providing such coverage;  
18     (14) lien recoveries pursuant to section twenty-nine of this chapter;  
19     (15) credits or offsets obtained pursuant to section twenty-nine of  
20 this chapter; and  
21     (16) credits, premium reductions, experience modifications or other  
22 benefits provided to insured employers as a result of lien recoveries  
23 and credits obtained pursuant to section twenty-nine of this chapter.  
24     (c) The board shall, in both written form and as part of the agency  
25 website, make such financial statements and detailed claim information  
26 available to the public. The detailed claim information shall be  
27 provided in aggregate form for all insurers and separated by specific  
28 insurer, combined without any identification of a specific claim to a  
29 specific insurer. None of the publicly available detailed claim informa-  
30 tion shall identify the individual insurer, employer or employee, or  
31 representative of the same, associated with the claim. Such financial  
32 statements and detailed claim information shall be deemed a public docu-  
33 ment and no person shall be required to file a request for such finan-  
34 cial statements pursuant to article six of the public officers law in  
35 order to receive a copy thereof, but upon request and payment of the fee  
36 for copying such document, it shall be provided forthwith. With respect  
37 to the electronic copy of such financial statements and detailed claim  
38 information, which shall be accessible on the board's website, the board  
39 shall highlight the availability of such information to the public on  
40 such website, and the link to each insurer's financial statement and the  
41 aggregated detailed claim information shall be accessible in a simple  
42 and easy manner. Both the financial statement and aggregated detailed  
43 claim information on the board's website shall be available in spread-  
44 sheet format, in addition to any other format the chair determines is  
45 appropriate. Where summaries are included, they shall be written in  
46 plain and simple English so that the public at large can easily compre-  
47 hend the data provided.  
48     (d) On or before July first of each year, the chair shall issue  
49 reports summarizing and explaining the information collected from the  
50 financial statements and the detailed claim information and summarizing  
51 the cost and other essential elements relevant to providing workers'  
52 compensation insurance coverage. Copies of such reports shall be  
53 forwarded to the temporary president of the senate, the speaker of the  
54 assembly and the chairs of the senate and assembly insurance committees.  
55 Such reports shall be public documents and shall be accessible both in

1 paper copy and on the board's website in a similar fashion as provided  
2 for in subsection (c) of this subdivision.

3 (e) Where an insurer fails or refuses to provide the board with a full  
4 and complete disclosure as required by this section, the chair shall  
5 take such action he or she deems necessary to bring the insurer into  
6 full compliance. Such action may include imposition of a civil penalty  
7 of up to fifty thousand dollars assessed against the insurer for each  
8 violation, temporary suspension of any right to issue additional poli-  
9 cies or contracts until the insurer brings itself into full compliance,  
10 an audit of the insurer's records by the department of financial  
11 services or its designated representative to obtain the information and  
12 which audit shall be paid for by the insurer, or any other civil remedy  
13 the chair deems warranted or necessary until such insurer fully  
14 complies. In addition the officer whose signature is affixed to such  
15 statement may be personally penalized to the same extent.

16 (f) The board may promulgate such rules and regulations it deems  
17 necessary for the proper administration of the provisions of this  
18 section, and such rules and regulations may be promulgated on an emer-  
19 gency basis if the chair warrants such action to be necessary.

20 (g) If any part of this section, or the application thereof to any  
21 person or circumstances shall be held to be invalid, such holding shall  
22 not affect, impair or invalidate the remainder of this act but it shall  
23 be confined in its operation to the item, clause, sentence, subpara-  
24 graph, subdivision or other part of this act directly involved in such  
25 holding, or to the person and circumstances therein involved.

26 § 17. The workers' compensation law is amended by adding a new section  
27 112-a to read as follows:

28 § 112-a. Audits of employers. 1. (a) Employers in all classes other  
29 than the construction class shall be audited not less frequently than  
30 biennially and the chair or board may provide for more frequent audits  
31 of employers in specified classifications based on factors such as  
32 amount of premium, type of business, loss ratios, or other relevant  
33 factors. In no event shall employers in the construction class, generat-  
34 ing more than the amount of premium required to be experience rated, be  
35 audited less frequently than annually. The annual audits required for  
36 construction classes may be a physical, onsite review of original  
37 payroll records, employee records, checkbooks, cash book (disbursements  
38 and receipts), general ledger, contracts, tax returns including quarter-  
39 ly payroll filings, and original certificates of insurance. The audit of  
40 all employers shall be conducted no more than one hundred twenty days  
41 after the expiration of a policy period. At the completion of an audit,  
42 if requested by the auditor, the employer or officer of the corporation  
43 must print and sign their names on the audit document affirming the  
44 accuracy of the information provided therein. As required by section one  
45 hundred twelve of this article, employers shall make available all books  
46 and records necessary for the payroll verification audit and permit the  
47 auditor to make a physical inspection of the employer's operation. If  
48 an employer fails to provide reasonable access to all such books and  
49 records necessary for a payroll verification audit, including a physical  
50 inspection of the employer's operation, the employer shall pay a  
51 surcharge to the carrier of two times the most recent estimated annual  
52 premium.

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

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

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

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

17 3. For the purposes of this section, "construction class" means the  
 18 work or occupation described in "Group 3" of subdivision one of section  
 19 three of this chapter.

20 § 18. Subdivision 1 of section 117 of the workers' compensation law,  
 21 as amended by chapter 17 of the laws of 1984, is amended to read as  
 22 follows:

23 1. The board may adopt reasonable rules consistent with and supple-  
 24 mental to the provisions of this chapter and the labor law. The chairman  
 25 may make reasonable regulations consistent with the provisions of this  
 26 chapter and the labor law. The board may not utilize "subject numbers",  
 27 forms or other informal communications outside of its rules, regulations  
 28 or decisions to interpret or apply the law.

29 § 19. The opening paragraph and second undesignated paragraph of  
 30 section 120 of the workers' compensation law, the opening paragraph as  
 31 amended by section 31 of part SS of chapter 54 of the laws of 2016, and  
 32 the second undesignated paragraph as amended by chapter 61 of the laws  
 33 of 1989, are amended to read as follows:

34 It shall be unlawful for any employer or his or her duly authorized  
 35 agent to discharge, threaten, penalize, or fail to reinstate pursuant to  
 36 section two hundred three-b of this chapter, or in any other manner  
 37 discriminate or retaliate against an employee as to his or her employ-  
 38 ment (i) because such employee has claimed or attempted to claim compen-  
 39 sation from such employer, or claimed or attempted to claim any benefits  
 40 provided under this chapter [~~or~~], (ii) because such employer believes  
 41 that such employee has claimed or will claim compensation; (iii) because  
 42 such employee has caused to be instituted or is about to institute a  
 43 claim for compensation or other benefit under this chapter; (iv) because  
 44 he or she has testified or is about to testify in a proceeding under  
 45 this chapter [~~and no other valid reason is shown to exist for such~~  
 46 ~~action by the employer~~]; or (v) because such employee has otherwise  
 47 exercised rights protected under this chapter. For purposes of this  
 48 provision, "because" shall be interpreted to require that the listed  
 49 activity was at least a contributing factor to the employer's action.

50 Any complaint alleging such an unlawful discriminatory practice must  
 51 be filed within two years of the commission of such practice. Upon find-  
 52 ing that an employer has violated this section, the board shall make an  
 53 order that any employee so discriminated against shall be restored to  
 54 employment or otherwise restored to the position or privileges he or she  
 55 would have had but for the discrimination and shall be compensated by  
 56 his or her employer for any loss of compensation arising out of such

1 discrimination together with such fees or allowances for services  
2 rendered by an attorney or licensed representative as fixed by the  
3 board. Any employer who violates this section shall be liable to a  
4 penalty of not less than one ~~hundred~~ thousand dollars or more than  
5 ~~five hundred~~ ten thousand dollars, as may be determined by the board.  
6 All such penalties shall be paid ~~[into the state treasury]~~ to the  
7 employee so discriminated against. All penalties, compensation and fees  
8 or allowances shall be paid solely by the employer. The employer alone  
9 and not his or her carrier shall be liable for such penalties and  
10 payments. Any provision in an insurance policy undertaking to relieve  
11 the employer from liability for such penalties and payments shall be  
12 void.

13 § 20. Paragraphs (a) and (b) of subdivision 1, subdivision 7 and  
14 subdivision 11 of section 137 of the workers' compensation law, as added  
15 by chapter 473 of the laws of 2000, are amended to read as follows:

16 (a) A copy of each report of independent medical examination on behalf  
17 of an employer or carrier shall be submitted by the practitioner on the  
18 same day and in the same manner to the board, the insurance carrier, the  
19 claimant's attending physician or other attending practitioner, the  
20 claimant's representative and the claimant.

21 (b) If a practitioner who has performed or will be performing an inde-  
22 pendent medical examination of a claimant on behalf of an employer or  
23 carrier receives a request for information regarding the claimant,  
24 including faxed or electronically transmitted requests, the practitioner  
25 shall submit a copy of the request for information to the board within  
26 ten days of receipt of the request. Nothing in this subdivision shall be  
27 construed to abrogate the attorney-client privilege.

28 7. The claimant shall receive notice by mail of the scheduled inde-  
29 pendent medical examination on behalf of an employer or carrier at least  
30 seven business days prior to such examination. Such notice shall advise  
31 the claimant if the practitioner intends to record or video tape the  
32 examination, and shall advise the claimant of their right to video tape  
33 or otherwise record the examination. Claimants shall be advised of their  
34 right to be accompanied during the exam by an individual or individuals  
35 of their choosing.

36 11. At the time of the independent medical examination on behalf of an  
37 employer or carrier the claimant shall receive a notice from the entity  
38 performing the independent medical examination, on a form which shall be  
39 approved and promulgated by the chair, stating the rights and obli-  
40 gations of the claimant and the practitioner with respect to such exam,  
41 and such notice shall include but not be limited to a statement that the  
42 claimant's receipt of benefits could be denied, terminated, or reduced  
43 as a result of a determination which may be based upon the medical eval-  
44 uation made after such independent medical examination, and the claim-  
45 ant's rights to challenge or appeal such a determination.

46 § 21. The workers' compensation law is amended by adding a new section  
47 208-a to read as follows:

48 § 208-a. Cost-of-living adjustments of disability benefits in certain  
49 cases. 1. Notwithstanding any other provision of law, effective July  
50 first, two thousand nineteen, in addition to any other amount received  
51 pursuant to this article as disability benefits, an employee with a  
52 permanent total disability or the beneficiary-dependent of such employee  
53 shall be entitled to an additional allowance, to be known as a cost-of-  
54 living adjustment allowance, payable annually.

55 2. The cost-of-living adjustment allowance shall be computed by apply-  
56 ing an adjustment for regional costs of living and shall be based on

1 fifty percent of the annual increase in the consumer price index as  
2 promulgated by the United States department of labor.

3 § 22. This act shall take effect immediately.