

# STATE OF NEW YORK

320

2021-2022 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Labor

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

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

1 Section 1. The workers' compensation law is amended by adding a new  
2 section 112-a to read as follows:

3 § 112-a. Audits of employers. 1. (a) Employers in all classes other  
4 than the construction class shall be audited not less frequently than  
5 biennially and the chair or board may provide for more frequent audits  
6 of employers in specified classifications based on factors such as  
7 amount of premium, type of business, loss ratios, or other relevant  
8 factors. In no event shall employers in the construction class, generat-  
9 ing more than the amount of premium required to be experience rated, be  
10 audited less frequently than annually. The annual audits required for  
11 construction classes may be a physical, onsite review of original  
12 payroll records, employee records, checkbooks, cash book (disbursements  
13 and receipts), general ledger, contracts, tax returns including quarter-  
14 ly payroll filings, and original certificates of insurance. The audit of  
15 all employers shall be conducted no more than one hundred twenty days  
16 after the expiration of a policy period. At the completion of an audit,  
17 if requested by the auditor, the employer or officer of the corporation  
18 must print and sign their names on the audit document affirming the  
19 accuracy of the information provided therein. As required by section one  
20 hundred twelve of this article, employers shall make available all books  
21 and records necessary for the payroll verification audit and permit the  
22 auditor to make a physical inspection of the employer's operation. If  
23 an employer fails to provide reasonable access to all such books and  
24 records necessary for a payroll verification audit, including a physical

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

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1 inspection of the employer's operation, the employer shall pay a  
2 surcharge to the carrier of two times the most recent estimated annual  
3 premium.

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

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

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

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

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

26 § 2. This act shall take effect on the first of January next succeed-  
27 ing the date on which it shall have become a law.