STATE OF NEW YORK

1146

2021-2022 Regular Sessions

IN ASSEMBLY

January 7, 2021

Introduced by M. of A. BRONSON, HEVESI, STECK, SIMON, JOYNER -- read once and referred 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:

Section 1. The opening paragraph of section 11 of the workers' compensation law, as amended by section 8 of part SS of chapter 59 of the laws of 2017, is amended to read as follows:

The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom, except [~~that if an~~] **in the following events: (i) the employer's violation of an applicable statute or regulation involving workplace safety was a proximate cause of the employee's injury or death; (ii) the employee's benefits have been terminated pursuant to paragraph w of subdivision three of section fifteen of this article; or (iii) the** employer fails to secure the payment of compensation for his or her injured employees and their dependents as provided in section fifty of this article**. In such events**, an injured employee, or his or her legal representative in case of death results from the injury, may, at his or her option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury[~~; and in such an action it shall not be necessary to plead or prove freedom from contributory 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

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

The chair shall [~~prepare and~~] establish a **committee to determine the** schedule for the state, or schedules limited to defined localities, of charges and fees for such medical treatment and care, and including all 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 [~~in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request~~]**. The members of the committee shall be** the president of the medical society of the state of New York [~~and~~]**,** the president of the New York state osteopathic medical society [~~to submit to him or her a report on~~]**, the president of the New York state society of orthopedists, the president of the New York state AFL/CIO, the president of the business council of the state of New York, an individual designated by the senate majority leader, an individual designated by the speaker of the assembly, and the chair of the board. The committee shall meet annually in order to determine** the amount of remuneration deemed [~~by such society~~] to be fair and adequate for the types of medical care to be rendered under this chapter, but consideration shall be given to the view of other interested parties. In the case of physical therapy fees schedules the chair shall request the president of a recognized professional association representing physical therapists in the state of New York to submit to [~~him or her~~] **the committee** a report on the amount of remuneration deemed by such association to be fair and reasonable for the type of physical therapy services rendered under this chapter, but consideration shall be given to the views of other interested parties. The chair shall also prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for outpatient hospital services not covered under the medical fee schedule previously referred to in this subdivision, to be determined in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the president of the hospital association of New York state to submit to [~~him or her~~] **the committee** a report on the amount of remuneration deemed by such association to be fair and adequate for the types of hospital outpatient care to be rendered under this chapter, but consideration shall be given to the views of other interested parties. In the case of occupational therapy fees schedules the chair shall request the president of a recognized professional association representing occupational therapists in the state of New York to submit to [~~him or her~~] **the committee** a report on the amount of remuneration deemed by such association to be fair and reasonable for the type of occupational therapy services rendered under this chapter, but consideration shall be given to the views of other interested parties. The amounts payable by the employer for such treatment and services shall be the fees and charges established by such schedule. Nothing in this schedule, however, shall prevent voluntary payment of amounts higher or lower than the fees and charges fixed therein, but no physician rendering medical treatment or care, and no physical or occupational therapist rendering their respective physical or occupational therapy services may receive payment in any higher amount unless such increased amount has been authorized by the employer, or by decision as provided in section

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

(b) In the case of persons, injured **or residing and receiving medical treatment** outside of this state, but entitled to compensation or benefits under this chapter, the provisions as to selection of authorized physicians **and the rules and regulations of the board governing medical treatment within the state** shall be inapplicable. In such cases the employer shall promptly provide all necessary medical treatment and care but if the employer fail to provide the same, after request by the injured employee such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within twenty days following the first treatment, the physician giving such treatment, furnish to the employer and the chairman a report of such injury and treatment, on a form prescribed by the chairman. The board may, however, by the unanimous vote of a panel of not less than three members qualified to act, excuse the failure to give such notice within twenty days when it finds it to be in the interest of justice to do so, and may, subject to the limitations contained in section twenty-eight of this [~~chapter~~] **article**, make an award for the reasonable value of such medical or surgical treatment. All fees and other charges for such treatment and services, whether furnished by the employer or otherwise, shall be subject to regulation by the board as provided in section twenty-four of this [~~chapter~~] **article**, and shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living.

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

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

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

§ 4. Paragraphs (d), (e) and the closing paragraph of subdivision 4 and subdivision 5 of section 13-a of the workers' compensation law, paragraphs (d), (e) and the closing paragraph of subdivision 4 as amended by chapter 473 of the laws of 2000 and subdivision 5 as amended by section 8 of part CC of chapter 55 of the laws of 2019, are amended to read as follows:

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

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

(i) a signed statement certifying that the report is a full and truthful representation of the independent medical examiner's professional opinion with respect to the claimant's condition[~~:~~]**;**

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

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

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

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

Any report by an independent medical examiner **on behalf of the employer or carrier** who is not authorized, and who performs an independent medical examination in accordance with paragraph (c) of this subdivision, which is to be used as medical evidence under this chapter, shall include in the report such information as the chair may require by regulation.

(5) No claim for specialist consultations, surgical operations, physiotherapeutic or occupational therapy procedures, x-ray examinations or special diagnostic laboratory tests costing more than one thousand dollars shall be valid and enforceable, as against such employer, unless such special services shall have been authorized by the employer or by the board, or unless such authorization has been unreasonably withheld, or withheld for a period of more than thirty calendar days from receipt of a request for authorization, or unless such special services are required in an emergency, provided, however, that the basis for a denial of such authorization by the employer must be based on a conflicting second opinion rendered by a physician authorized by the board. The board, with the approval of the superintendent of financial services, shall issue and maintain a list of pre-authorized procedures under this section**, which shall not be used to deny medical treatment that varies from such list or which occurs outside of the state**. Such list of pre-authorized procedures shall be issued and maintained for the purpose of expediting authorization of treatment of injured workers. Such list of pre-authorized procedures shall not prohibit varied treatment when the

treating provider demonstrates the appropriateness and medical necessity of such treatment.

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

(1) Fees for medical services shall be payable only to a physician or other qualified person permitted by sections thirteen-b, thirteen-k, thirteen-l and thirteen-m of this [~~chapter~~] **article** or other authorized provider of health care under the education law or the public health law permitted to render medical care or treatment under this chapter, or to the agent, executor or administrator of the estate of such physician or such other qualified person. Except as provided in section thirteen-d of this [~~chapter~~] **article**, no provider of health care rendering medical care or treatment to a compensation claimant, shall collect or receive a fee from such claimant within this state, but shall have recourse for payment of services rendered only to the employer under the provisions of this chapter. **Where an issue arises regarding a medical fee, a provider of health care shall have the rights provided by sections twenty and twenty-three of this article.** Any compensation claimant who pays a fee to a provider of health care for medical care or treatment under this chapter shall have a cause of action against such provider of health care for the recovery of the money paid, which cause of action may be assigned to the chair in trust for the assigning claimant. All such assignments shall run to the chair. The chair may sue the physician, or other authorized provider of health care as herein described on the assigned cause of action with the benefits and subject to the provisions of existing law applying to such actions by the claimant himself or herself. Hospitals shall not be entitled to receive the remuneration paid to physicians on their staff for medical and surgical services.

§ 6. Subdivisions 1, 2, paragraphs s, t, v and w of subdivision 3, subdivisions 4, 4-a, 5 and paragraph (a) of subdivision 6 of section 15 of the workers' compensation law, subdivision 1 as amended by chapter 675 of the laws of 1977, subdivision 2 as amended by chapter 161 of the laws of 1966, paragraph s of subdivision 3 as amended by chapter 204 of the laws of 1988, paragraph t of subdivision 3 as amended by chapter 774 of the laws of 1945, subparagraphs 1 and 2 of paragraph t of subdivision 3 as amended by chapter 924 of the laws of 1990, paragraph v of subdivision 3 as amended by chapter 364 of the laws of 1989, paragraph w of subdivision 3 as amended by section 1 of subpart A of part NNN of chapter 59 of the laws of 2017, subdivision 4 as amended by chapter 168 of the laws of 1979, subdivision 4-a as amended by chapter 712 of the laws of 1941, subdivision 5 as amended by chapter 161 of the laws of 1966, paragraph (a) of subdivision 6 as amended by section 7-a of part GG of chapter 57 of the laws of 2013, are amended and a new subdivision 10 is added to read as follows:

1. Permanent total disability. In case of total disability adjudged to be permanent sixty-six and two-thirds per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof**, or inability to perform the full range of sedentary work, or approval for federal social security disability benefits as a result of the compensable accident or occupational disease** shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts.

Notwithstanding any other provision of this chapter, an injured employee disabled due to the loss or total loss of use of both eyes, or both hands, or both arms, or both feet, or both legs, or of any two thereof shall not suffer any diminution of his compensation by engaging in business or employment provided his earnings or wages, when combined with his compensation, shall not be in excess of the wage base on which the maximum weekly compensation benefit is computed under the law in effect at time of such earning; further provided, that if the combination exceeds such wage base, the compensation shall be diminished to an amount which, together with his earnings or wages, shall equal the wage base; and further provided that the application of this subdivision shall not result in reduction of compensation which an injured employee who is disabled due to the loss or total loss of use of both eyes, or both hands, or both arms, or both feet, or both legs or of any two thereof, would otherwise be entitled to under any other provision of this section.

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

s. Partial loss or partial loss of use. Compensation for permanent partial loss or loss of use of a member [~~may~~] **shall** be for proportionate loss or loss of use of the member. Compensation for permanent partial loss or loss of use of an eye shall be awarded on the basis of uncorrected loss of vision or corrected loss of vision resulting from an injury whichever is the greater.

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

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

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

v. Additional compensation for impairment of wage earning capacity in certain permanent partial disabilities. Notwithstanding any other provision of this subdivision, additional compensation shall be payable for impairment of wage earning capacity for any period after the termination of an award under paragraphs a, b, c, or d, of this subdivision for the loss or loss of use of [~~fifty~~] **forty** per centum or more of a member, provided such impairment of earning capacity shall be due solely thereto. Such additional compensation shall be determined in accordance with paragraph w of this subdivision**, but shall not cease until the date**

the disabled employee receives or is entitled to receive old-age insurance benefits under the social security act. The additional compensation shall be reduced by fifty per centum of any amount of disability benefits which the disabled employee is receiving or entitled to receive for the same period under the social security act, [~~and shall cease on the date the disabled employee receives or is entitled to receive old-age insurance benefits under the social security act~~]. As soon as practicable after the injury, the worker shall be required to participate in a board approved rehabilitation program; or shall have demonstrated cooperation with efforts to institute such a board approved program and shall have been determined by the board not to be a feasible candidate for rehabilitation; such rehabilitation shall constitute treatment and care as provided in this chapter.

w. Other cases. In all other cases of permanent partial disability, the compensation shall be sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages and his or her wage-earning capacity thereafter in the same employment or otherwise. Nothing in this paragraph shall preclude the payment of compensation under paragraphs a through t of this subdivision, however, the employer or carrier shall be entitled to take credit for any payment of compensation under such paragraphs a through t against a payment of compensation under this paragraph. Compensation under this paragraph shall be payable during the continuance of such permanent partial disability, without the necessity for the claimant who is entitled to benefits at the time of classification to demonstrate ongoing attachment to the labor market, but subject to reconsideration of the degree of such impairment by the board on its own motion or upon application of any party in interest however, all compensation payable under this paragraph shall not exceed (i) five hundred twenty-five weeks in cases in which the loss of wage-earning capacity is greater than ninety-five percent; (ii) five hundred weeks in cases in which the loss of wage-earning capacity is greater than ninety percent but not more than ninety-five percent; (iii) four hundred seventy-five weeks in cases in which the loss of wage-earning capacity is greater than eighty-five percent but not more than ninety percent; (iv) four hundred fifty weeks in cases in which the loss of wage-earning capacity is greater than eighty percent but not more than eighty-five percent; (v) four hundred twenty-five weeks in cases in which the loss of wage-earning capacity is greater than seventy-five percent but not more than eighty percent; (vi) four hundred weeks in cases in which the loss of wage-earning capacity is greater than seventy percent but not more than seventy-five percent; (vii) three hundred seventy-five weeks in cases in which the loss of wage-earning capacity is greater than sixty percent but not more than seventy percent; (viii) three hundred fifty weeks in cases in which the loss of wage-earning capacity is greater than fifty percent but not more than sixty percent; (ix) three hundred weeks in cases in which the loss of wage-earning capacity is greater than forty percent but not more than fifty percent; (x) two hundred seventy-five weeks in cases in which the loss of wage-earning capacity is greater than thirty percent but not more than forty percent; (xi) two hundred fifty weeks in cases in which the loss of wage-earning capacity is greater than fifteen percent but not more than thirty percent; and (xii) two hundred twenty-five weeks in cases in which the loss of wage-earning capacity is fifteen percent or less. For a claimant with a date of accident or disablement after the effective date of [~~the~~] section one of subpart A of part NNN of chapter 59 of the laws of two thousand seventeen [~~that amended this subdivi-~~

~~sion~~], where the carrier or employer has provided compensation pursuant to subdivision five of this section beyond one hundred thirty weeks from the date of accident or disablement, all subsequent weeks in which compensation was paid shall be considered to be benefit weeks for purposes of this section, with the carrier or employer receiving credit for all such subsequent weeks against the amount of maximum benefit weeks when permanent partial disability under this section is determined. In the event of payment for intermittent temporary partial disability paid after one hundred thirty weeks from the date of accident or disablement, such time shall be reduced to a number of weeks, for which the carrier will receive a credit against the maximum benefit weeks. For a claimant with a date of accident or disablement after the effective date of [~~the~~] **section one of subpart A of part NNN of** chapter **59** of the laws of two thousand seventeen [~~that amended this subdivision~~], when permanency is at issue, and a claimant has submitted medical evidence that he or she is not at maximum medical improvement, and the carrier has produced or has had a reasonable opportunity to produce an independent medical examination concerning maximum medical improvement, and the board has determined that the claimant is not yet at maximum medical improvement, the carrier shall not receive a credit for benefit weeks prior to a finding that the claimant has reached maximum medical improvement, at which time the carrier shall receive credit for any weeks of temporary disability paid to claimant after such finding against the maximum benefit weeks awarded under this subdivision. For those claimants classified as permanently partially disabled who no longer receive indemnity payments because they have surpassed their number of maximum benefit weeks, the following provisions will apply:

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

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

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

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

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

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

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

d. If there be no surviving spouse and no surviving child or children of the deceased under the age of eighteen years, then to such dependent or dependents as defined in section sixteen of this [~~chapter~~] **article**, as directed by the board; and if there be no such dependents, then to the estate of such deceased [~~in an amount not exceeding reasonable funeral expenses~~] as provided in subdivision one of section sixteen of this [~~chapter~~] **article**, or, if there be no estate, to the person or persons paying the funeral expenses of such deceased in an amount not exceeding reasonable funeral expenses as provided in subdivision one of section sixteen of this [~~chapter~~] **article**.

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

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

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

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

(a) Compensation for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs, (1) on or after January first, nineteen hundred seventy-eight, shall not exceed one hundred twenty-five dollars per week, that occurs (2) on or after July first, nineteen hundred seventy-eight, shall not exceed one hundred eighty dollars per week, that occurs (3) on or after January first, nineteen hundred seventy-nine, shall not exceed two hundred fifteen dollars per week, that occurs (4) on or after July first, nineteen hundred eighty-three, shall not exceed two hundred fifty-five dollars per week, that occurs (5) on or after July first, nineteen hundred eighty-four, shall not exceed two hundred seventy-five dollars per week, that occurs (6) on or after July first, nineteen hundred eighty-five, shall not exceed three hundred dollars per week, that occurs (7) on or after July first, nineteen hundred ninety, shall

not exceed three hundred forty dollars per week; and in the case of temporary total disability shall not be less than thirty dollars per week and in the case of permanent total disability shall not be less than twenty dollars per week except that if the employee's wages at the time of injury are less than thirty or twenty dollars per week respectively, he or she shall receive his or her full weekly wages. Compensation for permanent or temporary partial disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after [~~January first~~] **March thirteenth**, nineteen hundred seventy-eight, shall not exceed one hundred five dollars per week, that occurs (2) on or after July first, nineteen hundred eighty-three, shall not exceed one hundred twenty-five dollars per week, that occurs (3) on or after July first, nineteen hundred eighty-four, shall not exceed one hundred thirty-five dollars per week, that occurs (4) on or after July first, nineteen hundred eighty-five, shall not exceed one hundred fifty dollars per week, that occurs (5) on or after July first, nineteen hundred ninety, shall not exceed two hundred eighty dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he or she shall receive his or her full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, nineteen hundred ninety-one and prior to July first, nineteen hundred ninety-two, shall not exceed three hundred fifty dollars per week; (2) on or after July first, nineteen hundred ninety-two, shall not exceed four hundred dollars per week; nor be less than forty dollars per week except that if the employee's wages at the time of injury are less than forty dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, two thousand seven shall not exceed five hundred dollars per week, (2) on or after July first, two thousand eight shall not exceed five hundred fifty dollars per week, (3) on or after July first, two thousand nine shall not exceed six hundred dollars per week, and (4) on or after July first, two thousand ten, and on or after July first of each succeeding year, shall not exceed two-thirds of the New York state average weekly wage for the year in which it is reported. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, two thousand seven shall not be less than one hundred dollars per week except that if the employee's wages at the time of injury are less than one hundred dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after May first, two thousand thirteen shall not be less than one hundred fifty dollars per week except that if the employee's wages at the time of injury are less than one hundred fifty dollars per week, the employee shall receive his or her full wages. **Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disable-**

ment resulting from an occupational disease that occurs on or after July first of each year commencing in two thousand eighteen shall not be less than one-sixth of the New York state average weekly wage for the year in which it is reported. In no event shall compensation when combined with decreased earnings [~~or earning capacity~~] exceed the amount of wages the employee was receiving at the time the injury occurred. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease or injury that occurred as a result of World Trade Center rescue activity by an employee of a private voluntary hospital, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of disablement or occupational disease or injury, shall not exceed three-quarters of a claimant's wage on September eleventh, two thousand one. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages the employee was receiving on September eleventh, two thousand one.

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

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

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

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

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

1-c. If there be a surviving spouse and no child of the deceased 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 and no child of any age dependent blind or physically disabled, and the death occurs on or after January first, nineteen hundred seventy-eight, to such spouse sixty-six and two-thirds per centum of the average wages of the deceased during widowhood or widowerhood [~~with two years' compensation, in one sum, upon remarriage~~]. Where the death occurs on or after January first, nineteen hundred seventy-eight, and the spouse is receiving the survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced in accordance with the provisions of table No. [~~1~~] **I** below by five per centum of the spouse's share of the survivor's insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act.

TABLE No. I

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

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

1-d. If there be a surviving spouse of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, and no child of the deceased 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 educational institution and such enrollment and full-time attendance is certified by such institution, and no child of any age dependent blind or physically disabled, to such spouse seventy-five per centum of the average wages of the deceased during widowhood or widowerhood[~~, with two years' compensation, in one sum, upon remarriage. Where such death occurs, and the spouse is receiving the survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced in accordance with the provisions of table No. I in subdivision one-c of this section by five per centum of the spouse's share of the survivor's insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars; provided that in no case shall such reduction exceed fifty per centum of such spouse's share of the survivors insurance benefits under the social security act~~].

1-e. If there be a surviving spouse and no child of the deceased 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 educational institution and such enrollment and full-time attendance is certified by such institution and no child of any age dependent blind or physically disabled, and the death occurs on or after January first, two thousand sixteen, to such spouse sixty-six and two-thirds per centum of the average wages of the deceased during widowhood or widowerhood.

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

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

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

2-a. If there be a surviving spouse and a surviving child 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 educational institution and such enrollment and full time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled and the death occurs on or after January first, nineteen

hundred seventy-eight, to such spouse thirty-six and two-thirds per centum of the average wages 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 child 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 educational institution and such enrollment and full time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled; in the case of the subsequent death of such surviving spouse the surviving child shall have his compensation increased to sixty-six and two-thirds per centum of such wages and the same shall be payable so long as he is 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 educational institution and such enrollment and full time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled; upon statutory termination of compensation payable to such child, the compensation of the surviving spouse shall be increased to sixty-six and two-thirds per centum of such wages [~~with two years' compensation, at such rate, in one sum, upon remarriage. Upon remarriage of such surviving spouse, the surviving child shall continue to receive thirty per centum of such wages~~]. Where the death occurs on or after January first, nineteen hundred seventy-eight and the spouse is receiving survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act as set 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 educational 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 if enrolled and attending as a full time student in an accredited educational 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, share and share alike; in case of the subsequent death of such surviving spouse the surviving children shall have their compensation increased to sixty-six and two-thirds per centum of such wages and the aggregate sum shall be payable, share and share alike, so long as they are 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 educational 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. [~~Upon remarriage of such surviving spouse, if there be two surviving children each shall receive twenty-five per centum of such wages, and if there are surviving more than two children under the age of eighteen years or under the age of twenty-three if enrolled and attending as a full time student in an accredited educational 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 sixty-six and two-thirds per centum of such wages share and share alike.~~] Upon statutory termination of compensation payable to such children, the compensation of the surviving spouse shall be increased to sixty-six and two-thirds per centum of such wages [~~with two years' compensation, at such rate, in one sum, upon remarriage~~]. Where the death occurs on or after January first, nineteen hundred seventy-eight, and the spouse is receiving survivors insurance benefits under the social security act, the death benefits payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred fifty dollars provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act as set forth in table No. II below.

TABLE No. II

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

AVERAGE WEEKLY WAGE	PERCENTAGE OF SPOUSE'S SHARE OF SURVIVORS INSURANCE BENEFITS
over $150 up to and including $160	5
over $160 up to and including $170	10
over $170 up to and including $180	15
over $180 up to and including $190	20
over $190 up to and including $200	25
over $200 up to and including $210	30
over $210 up to and including $220	35
over $220 up to and including $230	40
over $230 up to and including $240	45

over $240 up to and including $250 50
over $250 50

2-b. If there be a surviving spouse of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, and a surviving child 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 educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child of any age dependent blind or physically disabled, to such spouse forty per centum of the average wages of the deceased during widowhood or widowerhood[~~, with two years' compensation in one sum, upon remarriage~~]; and thirty-five per centum of such wages to such child 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 educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child of any age dependent blind or physically disabled; in the case of the subsequent death of such surviving spouse the surviving child shall have his or her compensation increased to seventy-five per centum of such wages and the same shall be payable so long as he or she is 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 educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child of any age dependent blind or physically disabled; upon statutory termination of compensation payable to such child, the compensation of the surviving spouse shall be increased to seventy-five per centum of such wages [~~with two years' compensation, at such rate, in one sum, upon remarriage~~]. [~~Upon remarriage of such surviving spouse, the surviving child shall continue to receive thirty-five per centum of such wages. Where such death occurs, and the spouse is receiving survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars; provided that in no case shall such reduction exceed fifty per centum of such spouse's share of the survivors insurance benefits under the social security act as set forth in table No. I in subdivision one-c of this section.~~] If there be a surviving spouse of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, 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 educational 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 September eleventh, two thousand one, to such spouse forty per centum of the average wage of the deceased during widowhood or widowerhood [~~with two years' compensation in one sum upon remarriage~~]; and thirty-five per centum of such wages to such 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 educational 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, share and share alike; in case of the subsequent death of such surviving spouse the surviving children shall have their compensation increased to seventy-five per centum of such wages and the aggregate sum shall be payable, share and share alike, so long as they are 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 educational 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. [~~Upon remarriage of such surviving spouse, if there be two surviving children each shall receive thirty-seven and one-half per centum of such wages, and if there are surviving more than two children under the age of eighteen years, or under the age of twenty-three if enrolled and attending as a full-time student in an accredited educational institution and such enrollment and full-time attendance is certified by such institution, or a surviving child or children of any age dependant blind or physically disabled, seventy-five per centum of such wages share and share alike.~~] Upon statutory termination of compensation payable to such children, the compensation of the surviving spouse shall be increased to seventy-five per centum of such wages [~~with two years' compensation, at such rate, in one sum, upon remarriage~~]. Where the death occurs on or after September eleventh, two thousand one, and the spouse is receiving survivors insurance benefits under the social security act, the death benefits payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred fifty dollars; provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act as set forth in table No. II in subdivision two-a of this section.

2-c. If there be a surviving spouse and a surviving child 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 educational institution and such enrollment and full-time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled and the death occurs on or after January first, two thousand sixteen, to such spouse thirty-six and two-thirds per centum of the average wages of the deceased during widowhood or widowerhood; and thirty per centum of such wages to such child 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 educational institution and such enrollment and full-time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled; in the case of the subsequent death of such surviving spouse the surviving child shall have their compensation increased to sixty-six and two-thirds per centum of such wages and the same shall be payable so long as they are 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 educational institution and such enrollment and full-time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled; upon statutory termination of compensation payable to such child, the compensation of the surviving spouse shall be increased to sixty-six and two-thirds per centum of such wages.

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 educational 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, two thousand sixteen, to such spouse thirty-six and two-thirds per centum of the average wage of the deceased during widowhood or widowerhood; and thirty per centum of such wages to such 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 educational 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, share and share alike; in case of the subsequent death of such surviving spouse the surviving children shall have their compensation increased to sixty-six and two-thirds per centum of such wages and the aggregate sum shall be payable, share and share alike, so long as they are 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 educational 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. Upon statutory termination of compensation payable to such children, the compensation of the surviving spouse shall be increased to sixty-six and two-thirds per centum of such wages.

4-d. If there be no surviving spouse or child, or children of an employee of a private voluntary hospital killed in a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death, 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 educational institution and such enrollment and full-time attendance is certified by such institution, or dependent blind or physically disabled child of any age, or grandchildren or brothers and sisters if dependent upon the deceased at the time of the accident, 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 educational institution and such enrollment and full-time attendance is certified by such institution, or disabled blind or physically disabled grandchildren or brothers and sisters of any age, then a sum of [~~fifty~~] one hundred thousand dollars shall be paid to the deceased's surviving parents or if there be no surviving parents to the deceased's estate.

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

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

2. The board shall provide interpretation services to injured employees with respect to its provision of services, information and/or benefits.

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

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

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

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

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

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

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

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

4. The language access coordinator for the board shall monitor the agency's compliance with this section by annually collecting data on the provision of language assistance services, the availability of translated materials, whether signage is properly posted, and any other relevant measures.

§ 9. Section 18 of the workers' compensation law, as amended by chapter 747 of the laws of 1947, is amended to read as follows:

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

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

1. At any time after [~~the expiration of the first seven days of disability on the part of~~] an injury the injured employee, or at any time

after the employee's death, a claim for compensation may be presented to the employer or to the chair. The board shall **hold an initial hearing in each claim and shall** have full power and authority to determine all questions in relation to the payment of claims presented to it for compensation under the provisions of this chapter. The chair or board shall make or cause to be made such investigation as it deems necessary, and upon application of either party, shall order a hearing, and within thirty days after a claim for compensation is submitted under this section, or such hearing closed, shall make or deny an award, determining such claim for compensation, and file the same in the office of the chair. Immediately after such filing the chair shall send to the parties a copy of the decision. Upon a hearing pursuant to this section either party may present evidence and be represented by counsel. The decision of the board shall be final as to all questions of fact, and, except as provided in section twenty-three of this article, as to all questions of law. Except as provided in section twenty-seven of this article, all awards of the board shall draw simple interest from thirty days after the making thereof at the rate provided in section five thousand four of the civil practice law and rules. Whenever a hearing or proceeding for the determination of a claim for compensation is begun before a referee, pursuant to the provisions of this chapter, such hearing or proceeding or any adjourned hearing thereon shall continue before the same referee until a final determination awarding or denying compensation, except in the absence, inability or disqualification to act of such referee, or for other good cause, in which event such hearing or proceeding may be continued before another referee by order of the chair or board.

§ 11. Section 24 of the workers' compensation law, as amended by chapter 494 of the laws of 1950, is amended to read as follows:

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

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

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

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

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

(iv) when an award is made for permanent total disability pursuant to subdivision one of section fifteen of this article or permanent partial disability pursuant to paragraph w of subdivision three of section

fifteen of this article, the attorney's fee shall be equivalent to ten weeks of compensation at the rate fixed by the board.

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

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

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

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

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

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

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

(c) The board shall keep an accurate stenographic record of all hearings held. Whenever a hearing must be continued or adjourned because the carrier or employer has engaged in dilatory tactics or exhibited unjustified lack of preparedness, the board shall impose a penalty of twenty-five dollars to be paid to the fund created by subdivision two of section one hundred fifty-one of this chapter and shall in addition make

an award of seventy-five dollars payable to the injured worker or his or her dependants. Dilatory tactics may include but shall not be limited to: failing to subpoena medical witnesses or to secure an order to show cause as directed by the referee, failing to bring proper files, failing to appear, failing to produce witnesses or documents after they have been requested by the referee or examiner or as directed by the hearing notice, unnecessarily protracting the production of evidence, or engaging in a pattern of delay which unduly delays resolution, except that no penalty shall be imposed nor award made under this subdivision if the carrier or employer produces evidence sufficient to excuse its conduct to the satisfaction of the referee.

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

1. If an employee entitled to compensation under this chapter be injured or killed by the negligence or wrong of another not in the same employ, such injured employee, or in case of death, his dependents, need not elect whether to take compensation and medical benefits under this chapter or to pursue his remedy against such other but may take such compensation and medical benefits and at any time either prior thereto or within six months after the awarding of compensation or within nine months after the enactment of a law or laws creating, establishing or affording a new or additional remedy or remedies, pursue his remedy against such other subject to the provisions of this chapter. If such injured employee, or in case of death, his dependents, take or intend to take compensation, and medical benefits in the case of an employee, under this chapter and desire to bring action against such other, such action must be commenced not later than six months after the awarding of compensation or not later than nine months after the enactment of such law or laws creating, establishing or affording a new or additional remedy or remedies and in any event before the expiration of one year from the date such action accrues. In such case, the state insurance fund, if compensation be payable therefrom, and otherwise the person, association, corporation or insurance carrier liable for the payment of such compensation, as the case may be, shall have a lien on the proceeds of any recovery from such other **to the extent such recovery is for lost wages or medical expenses**, whether by judgment, settlement or otherwise, after the deduction of the reasonable and necessary expenditures, including attorney's fees, incurred in effecting such recovery, to the extent of the total amount of compensation awarded under or provided or estimated by this chapter for such case and the expenses for medical treatment paid or to be paid by it and to such extent such recovery shall be deemed for the benefit of such fund, person, association, corporation or carrier. Should the employee or his dependents secure a recovery from such other, whether by judgment, settlement or otherwise, such employee or dependents may apply on notice to such lienor to the court in which the third party action was instituted, or to a court of competent jurisdiction if no action was instituted, for an order apportioning the reasonable and necessary expenditures, including attorneys' fees, incurred in effecting such recovery. Such expenditures shall be equitably apportioned by the court between the employee or his dependents and the lienor. Notice of the commencement of such action shall be

given within thirty days thereafter to the chairman, the employer and the insurance carrier upon a form prescribed by the chairman. Any of the foregoing providers of compensation and/or medical benefits which has recovered a lien pursuant to the provisions hereof against the recovery of a person injured on or after February first, nineteen hundred seventy-four and before July first, nineteen hundred seventy-eight, through the use or operation of a motor vehicle in this state, shall notify such person by certified mail in a manner to be approved by the chairman and the superintendent of financial services of the responsibility of an "insurer" (as defined in subsection (g) of section five thousand one hundred two of the insurance law), to reimburse such person under such circumstances to the extent that the recovered lien represent first party benefits as defined in article fifty-one of the insurance law.

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

6. [~~The~~] **Except as set forth in section eleven of this article, the** right to compensation or benefits under this chapter, shall be the exclusive remedy to an employee, or in case of death his or her dependents, when such employee is injured or killed by the negligence or wrong of another in the same employ, the employer's insurer or any collective bargaining agent of the employer's employees or any employee, of such insurer or such collective bargaining agent (while acting within the scope of his or her employment). The limitation of liability of an employer set forth in section eleven of this article for the injury or death of an employee shall be applicable to another in the same employ, the employer's insurer, any collective bargaining agent of the employer's employees or any employee of the employer's insurer or such collective bargaining agent (while acting within the scope of his or her employment). The option to maintain an action in the courts for damages [~~based on the employer's failure to secure compensation for injured employees and their dependents as set forth in section eleven of this article~~] shall not be construed to include the right to maintain an action against another in the same employ, [~~the employer's insurer,~~] any collective bargaining agent of the employer's employees or any employee [~~of the employer's insurer~~] or such collective bargaining agent (while acting within the scope of his or her employment).

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

3. Extreme hardship redetermination. In cases where the loss of wage-earning capacity is greater than [~~seventy-five~~] **fifty** percent, a claimant may request[~~, within the year prior to the scheduled exhaustion of indemnity benefits under paragraph w of subdivision three of section fifteen of this article~~], that the board reclassify the claimant to permanent total disability or total industrial disability due to factors reflecting extreme hardship. **Extreme hardship is defined as: (a) the injured worker's income from Social Security disability benefits and**

disability pension (if applicable) would be less than fifty percent of his or her average weekly wage upon termination of PPD benefits; or (b) the injured worker will be unable to meet expenses for himself or herself and any dependents upon termination of PPD benefits; or (c) additional medical, functional or vocational factors arising subsequent to the classification of permanent partial disability have further eroded the injured worker's wage earning capacity; or (d) the injured worker's income would be below the federal poverty guidelines upon termination of PPD benefits.

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

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

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

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

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

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

(f) Vocational rehabilitation services. The board shall assure that vocational rehabilitation services are provided more expeditiously to injured workers and are appropriately funded. The options available and the costs shall be subject to regulation by the board. If the evaluation recommends vocational education or retraining, the costs shall be covered first by appropriate sources of state or federal funding. Carriers shall not be permitted to seek a change in an injured worker's classification status while that individual is actively participating in retraining or vocational rehabilitation in accordance with the individualized reemployment plan developed as a result of the vocational rehabilitation evaluation.

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

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

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

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

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

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

(b) On or before April first of each year, every insurer shall for the calendar year provide the board and the public with a detailed financial statement to supplement and expand upon any other information otherwise provided to the board, the department of financial services, or the New York compensation insurance rating board as it relates to an insurer's provision of workers' compensation insurance coverage to employers;

provided, however, that the initial financial statement so filed by an insurer after the effective date of this section shall include the information required in this subdivision not only for such prior calendar year but also for the previous nine calendar years prior to such report. The financial statement shall, in depth, detail:

(1) total premium collected;

(2) assessments collected;

(3) dividend income;

(4) payment of workers' compensation benefits for temporary disability;

(5) non-scheduled permanent partial disability;

(6) scheduled permanent partial disability;

(7) permanent total disability;

(8) death benefits;

(9) medical treatment;

(10) payments to vendors including but not limited to: (i) independent medical examination providers; (ii) investigators; (iii) nurse case managers; (iv) peer reviews; (v) utilization reviews; and (vi) defense litigation costs;

(11) number of open claims at the time such statement is prepared;

(12) other expenses by category as determined by the board to reflect the cost to the insurer to provide such coverage;

(13) investment income realized from that portion of the premium paid for a policy providing such coverage;

(14) lien recoveries pursuant to section twenty-nine of this chapter;

(15) credits or offsets obtained pursuant to section twenty-nine of this chapter; and

(16) credits, premium reductions, experience modifications or other benefits provided to insured employers as a result of lien recoveries and credits obtained pursuant to section twenty-nine of this chapter.

(c) The board shall, in both written form and as part of the agency website, make such financial statements and detailed claim information available to the public. The detailed claim information shall be provided in aggregate form for all insurers and separated by specific insurer, combined without any identification of a specific claim to a specific insurer. None of the publicly available detailed claim information shall identify the individual insurer, employer or employee, or representative of the same, associated with the claim. Such financial statements and detailed claim information shall be deemed a public document and no person shall be required to file a request for such financial statements pursuant to article six of the public officers law in order to receive a copy thereof, but upon request and payment of the fee for copying such document, it shall be provided forthwith. With respect to the electronic copy of such financial statements and detailed claim information, which shall be accessible on the board's website, the board shall highlight the availability of such information to the public on such website, and the link to each insurer's financial statement and the aggregated detailed claim information shall be accessible in a simple and easy manner. Both the financial statement and aggregated detailed claim information on the board's website shall be available in spreadsheet format, in addition to any other format the chair determines is appropriate. Where summaries are included, they shall be written in plain and simple English so that the public at large can easily comprehend the data provided.

(d) On or before July first of each year, the chair shall issue reports summarizing and explaining the information collected from the

financial statements and the detailed claim information and summarizing the cost and other essential elements relevant to providing workers' compensation insurance coverage. Copies of such reports shall be forwarded to the temporary president of the senate, the speaker of the assembly and the chairs of the senate and assembly insurance committees. Such reports shall be public documents and shall be accessible both in paper copy and on the board's website in a similar fashion as provided for in subsection (c) of this subdivision.

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

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

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

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

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

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

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

(c) If an employer knowingly understates or knowingly conceals payroll, knowingly misrepresents or knowingly conceals employee duties so as to avoid proper classification for premium calculations, or knowingly misrepresents or knowingly conceals information pertinent to the computation and application of an experience rating modification factor, said knowing misrepresentations or knowing concealments shall be considered fraudulent practices in violation of applicable provisions of section one hundred fourteen of this article and insurance fraud in violation of applicable provisions of section 176.05 of the penal law.

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

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

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

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

1. The board may adopt reasonable rules consistent with and supplemental to the provisions of this chapter and the labor law. The chairman may make reasonable regulations consistent with the provisions of this chapter and the labor law. The board may not utilize "subject numbers", forms or other informal communications outside of its rules, regulations or decisions to interpret or apply the law.

§ 19. The opening paragraph and second undesignated paragraph of section 120 of the workers' compensation law, the opening paragraph as amended by chapter 105 of the laws of 2019, and the second undesignated paragraph as amended by chapter 61 of the laws of 1989, are amended to read as follows:

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

Any complaint alleging such an unlawful discriminatory practice must be filed within two years of the commission of such practice. Upon finding that an employer has violated this section, the board shall make an order that any employee so discriminated against shall be restored to employment or otherwise restored to the position or privileges he or she would have had but for the discrimination and shall be compensated by his or her employer for any loss of compensation arising out of such discrimination together with such fees or allowances for services rendered by an attorney or licensed representative as fixed by the board. Any employer who violates this section shall be liable to a penalty of not less than one [~~hundred~~] **thousand** dollars or more than [~~five hundred~~] **ten thousand** dollars, as may be determined by the board. All such penalties shall be paid [~~into the state treasury~~] **to the employee so discriminated against**. All penalties, compensation and fees or allowances shall be paid solely by the employer. The employer alone and not his or her carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

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

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

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

7. The claimant shall receive notice by mail of the scheduled independent medical examination **on behalf of an employer or carrier** at least seven business days prior to such examination. Such notice shall advise the claimant if the practitioner intends to record or video tape the examination, and shall advise the claimant of their right to video tape or otherwise record the examination. Claimants shall be advised of their right to be accompanied during the exam by an individual or individuals of their choosing.

11. At the time of the independent medical examination **on behalf of an employer or carrier** the claimant shall receive a notice from the entity performing the independent medical examination, on a form which shall be approved and promulgated by the chair, stating the rights and obligations of the claimant and the practitioner with respect to such exam, and such notice shall include but not be limited to a statement that the claimant's receipt of benefits could be denied, terminated, or reduced as a result of a determination which may be based upon the medical evaluation made after such independent medical examination, and the claimant's rights to challenge or appeal such a determination.

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

§ 208-a. Cost-of-living adjustments of disability benefits in certain cases. 1. Notwithstanding any other provision of law, effective July

first, two thousand twenty-one, in addition to any other amount received pursuant to this article as disability benefits, an employee with a permanent total disability or the beneficiary-dependent of such employee shall be entitled to an additional allowance, to be known as a cost-of-living adjustment allowance, payable annually.

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

§ 22. This act shall take effect immediately.