

STATE OF NEW YORK

3418

2025-2026 Regular Sessions

IN ASSEMBLY

January 27, 2025

Introduced by M. of A. BRONSON, LUNSFORD -- 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:

1 Section 1. Subdivision 1 of section 11 of the workers' compensation
2 law, as amended by chapter 835 of the laws of 2022, is amended to read
3 as follows:
4 1. (a) The liability of an employer prescribed by the last preceding
5 section shall be exclusive and in place of any other liability whatsoever,
6 to such employee, [~~his or her~~] such employee's personal representa-
7 tives, spouse, parents, dependents, distributees, or any person other-
8 wise entitled to recover damages, contribution or indemnity, at common
9 law or otherwise, on account of such injury or death or liability arising
10 therefrom, except [~~that if an~~] in the following events: (i) the
11 employer's violation of an applicable statute or regulation involving
12 workplace safety was a proximate cause of the employee's injury or
13 death; (ii) the employee's benefits have been terminated pursuant to
14 paragraph w of subdivision three of section fifteen of this article; or
15 (iii) the employer fails to secure the payment of compensation for [~~his~~
16 ~~or her~~] such employer's injured employees and their dependents as
17 provided in section fifty of this chapter. In such events, an injured
18 employee, or [~~his or her~~] such employee's legal representative in case
19 of death results from the injury, may, at [~~his or her~~] such employee's
20 option, elect to claim compensation under this chapter, or to maintain
21 an action in the courts for damages on account of such injury[~~, and in~~
22 ~~such an action it shall not be necessary to plead or prove freedom from~~

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

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1 ~~contributory negligence nor may the defendant plead as a defense that~~
2 ~~the injury was caused by the negligence of a fellow servant nor that the~~
3 ~~employee assumed the risk of his or her employment, nor that the injury~~
4 ~~was due to the contributory negligence of the employee] where an action
5 is brought pursuant to the employee's benefits being terminated pursuant
6 to paragraph w of subdivision three of section fifteen of this article,
7 any applicable statute of limitations shall be tolled from the date of
8 injury until the date the employee's benefits are terminated. The
9 employer shall be entitled to take credit for compensation paid under
10 this chapter against any damages awarded in an action brought in the
11 courts for damages. The liability under this chapter of The New York
12 Jockey Injury Compensation Fund, Inc. created under section two hundred
13 twenty-one of the racing, pari-mutuel wagering and breeding law shall be
14 limited to the provision of workers' compensation coverage to jockeys,
15 apprentice jockeys, exercise persons, and at the election of the New
16 York Jockey Injury Compensation Fund, Inc., with the approval of the New
17 York state gaming commission, employees of licensed trainers or owners
18 licensed under article two or four of the racing, pari-mutuel wagering
19 and breeding law and any statutory penalties resulting from the failure
20 to provide such coverage.~~

21 (b) For purposes of this section the terms "indemnity" and "contrib-
22 ution" shall not include a claim or cause of action for contribution or
23 indemnification based upon a provision in a written contract entered
24 into prior to the accident or occurrence by which the employer had
25 expressly agreed to contribution to or indemnification of the claimant
26 or person asserting the cause of action for the type of loss suffered.

27 (c) An employer shall not be liable for contribution or indemnity to
28 any third person based upon liability for injuries sustained by an
29 employee acting within the scope of [~~his or her~~ such employee's employ-
30 ment for such employer unless such third person proves through competent
31 medical evidence that such employee has sustained a "grave injury" which
32 shall mean only one or more of the following: death, permanent and total
33 loss of use or amputation of an arm, leg, hand or foot, loss of multiple
34 fingers, loss of multiple toes, paraplegia or quadriplegia, total and
35 permanent blindness, total and permanent deafness, loss of nose, loss of
36 ear, permanent and severe facial disfigurement, loss of an index finger
37 or an acquired injury to the brain caused by an external physical force
38 resulting in permanent total disability.

39 (d) For purposes of this section "person" means any individual, firm,
40 company, partnership, corporation, joint venture, joint-stock associ-
41 ation, association, trust or legal entity.

42 (e) The liability under this chapter of the New York black car opera-
43 tors' injury compensation fund, inc. shall be limited to: (i) securing
44 the payment of workers' compensation in accordance with article six-F of
45 the executive law to black car operators, as defined in such article,
46 whose injury arose out of and in the course of providing services for a
47 central dispatch facility, as defined in such article, that is a regis-
48 tered member of such fund, and (ii) any statutory penalty resulting from
49 the failure to secure such payment. The liability under this chapter of
50 a central dispatch facility, as defined in article six-F of the execu-
51 tive law, that is a registered member of the New York black car opera-
52 tors' injury compensation fund, inc. that shall be limited to remaining
53 a registered member in good standing of such fund and any statutory
54 penalty, including loss of immunity provided by this section, resulting
55 from the failure to become or remain a registered member in good stand-
56 ing of such fund, except, however, that such central dispatch facility

1 shall be subject to the provisions of section one hundred thirty-one of
2 this chapter and shall be liable for any payments for which it may
3 become responsible pursuant to such section or pursuant to section four-
4 teen-a of this article.

5 (f) The liability under this chapter of the New York independent
6 livery driver benefit fund, inc. shall be limited to: (i) securing the
7 payment of workers' compensation coverage to cover those matters
8 required by article six-G of the executive law for independent livery
9 drivers, as defined in such article, whose injury arose out of and in
10 the course of providing covered services for a livery base, as defined
11 in such article, that is a registered member of such fund, and (ii) any
12 statutory penalty resulting from the failure to secure such payment.

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

14 § 3. Subdivisions (a), (b) and (g) of section 13 of the workers'
15 compensation law, subdivision (a) as amended by chapter 6 of the laws of
16 2007, the opening paragraph of subdivision (a) as amended by chapter 23
17 of the laws of 2016, subdivision (b) as amended by chapter 113 of the
18 laws of 1946 and subdivision (g) as separately amended by chapters 834
19 and 922 of the laws of 1990, are amended to read as follows:

20 (a) The employer shall promptly provide for an injured employee such
21 medical, dental, surgical, optometric or other attendance or treatment,
22 nurse and hospital service, medicine, optometric services, crutches,
23 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
24 devices, functional assistive and adaptive devices and apparatus for
25 such period as the nature of the injury or the process of recovery may
26 require. The employer shall be liable for the payment of the expenses of
27 medical, dental, surgical, optometric or other attendance or treatment,
28 nurse and hospital service, medicine, optometric services, crutches,
29 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
30 devices, functional assistive and adaptive devices and apparatus, as
31 well as artificial members of the body or other devices or appliances
32 necessary in the first instance to replace, support or relieve a portion
33 or part of the body resulting from and necessitated by the injury of an
34 employee, for such period as the nature of the injury or the process of
35 recovery may require, and the employer shall also be liable for replace-
36 ments or repairs of such artificial members of the body or such other
37 devices, eye-glasses, false teeth, artificial eyes, orthotics, prosthet-
38 ic devices, functional assistive and adaptive devices or appliances
39 necessitated by ordinary wear or loss or damage to a prosthesis, with or
40 without bodily injury to the employee. Damage to or loss of a prosthetic
41 device shall be deemed an injury except that no disability benefits
42 shall be payable with respect to such injury under section fifteen of
43 this article. Such a replacement or repair of artificial members of the
44 body or such other devices, eye-glasses, false teeth, artificial eyes,
45 orthotics, prosthetic devices, functional assistive and adaptive devices
46 or appliances or the providing of medical treatment and care as defined
47 herein shall not constitute the payment of compensation under section
48 twenty-five-a of this article. All fees and other charges for such
49 treatment and services shall be limited to such charges as prevail in
50 the same community for similar treatment of injured persons of a like
51 standard of living.

52 The chair shall [~~prepare and~~] establish a committee to determine the
53 schedule for the state, or schedules limited to defined localities, of
54 charges and fees for such medical treatment and care, and including all
55 medical, dental, surgical, optometric or other attendance or treatment,
56 nurse and hospital service, medicine, optometric services, crutches,

1 eye-glasses, false teeth, artificial eyes, orthotics, prosthetic
2 devices, functional assistive and adaptive devices and apparatus [~~in~~
3 ~~accordance with and to be subject to change pursuant to rules promulgat-~~
4 ~~ed by the chair. Before preparing such schedule for the state or sched-~~
5 ~~ules for limited localities the chair shall request~~]. The members of the
6 committee shall be the president of the medical society of the state of
7 New York [~~and~~], the president of the New York state osteopathic medical
8 society [~~to submit to him or her a report on~~], the president of the New
9 York state society of orthopedists, the president of the New York state
10 AFL/CIO, the president of the business council of the state of New York,
11 an individual designated by the senate majority leader, an individual
12 designated by the speaker of the assembly, and the chair of the board.
13 The committee shall meet annually in order to determine the amount of
14 remuneration deemed [~~by such society~~] to be fair and adequate for the
15 types of medical care to be rendered under this chapter, but consider-
16 ation shall be given to the view of other interested parties. In the
17 case of physical therapy fees schedules the chair shall request the
18 president of a recognized professional association representing physical
19 therapists in the state of New York to submit to [~~him or her~~] the
20 committee a report on the amount of remuneration deemed by such associ-
21 ation to be fair and reasonable for the type of physical therapy
22 services rendered under this chapter, but consideration shall be given
23 to the views of other interested parties. The chair shall also prepare
24 and establish a schedule for the state, or schedules limited to defined
25 localities, of charges and fees for outpatient hospital services not
26 covered under the medical fee schedule previously referred to in this
27 subdivision, to be determined in accordance with and to be subject to
28 change pursuant to rules promulgated by the chair. Before preparing such
29 schedule for the state or schedules for limited localities the chair
30 shall request the president of the hospital association of New York
31 state to submit to [~~him or her~~] the committee a report on the amount of
32 remuneration deemed by such association to be fair and adequate for the
33 types of hospital outpatient care to be rendered under this chapter, but
34 consideration shall be given to the views of other interested parties.
35 In the case of occupational therapy fees schedules the chair shall
36 request the president of a recognized professional association repres-
37 enting occupational therapists in the state of New York to submit to
38 [~~him or her~~] the committee a report on the amount of remuneration deemed
39 by such association to be fair and reasonable for the type of occupa-
40 tional therapy services rendered under this chapter, but consideration
41 shall be given to the views of other interested parties. The amounts
42 payable by the employer for such treatment and services shall be the
43 fees and charges established by such schedule. Nothing in this sched-
44 ule, however, shall prevent voluntary payment of amounts higher or lower
45 than the fees and charges fixed therein, but no physician rendering
46 medical treatment or care, and no physical or occupational therapist
47 rendering their respective physical or occupational therapy services may
48 receive payment in any higher amount unless such increased amount has
49 been authorized by the employer, or by decision as provided in section
50 thirteen-g of this article. Nothing in this section shall be construed
51 as preventing the employment of a duly authorized physician on a salary
52 basis by an authorized compensation medical bureau or laboratory.

53 (b) In the case of persons, injured or residing and receiving medical
54 treatment outside of this state, but entitled to compensation or bene-
55 fits under this chapter, the provisions as to selection of authorized
56 physicians and the rules and regulations of the board governing medical

1 treatment within the state shall be inapplicable. In such cases the
2 employer shall promptly provide all necessary medical treatment and care
3 but if the employer [~~fail~~] fails to provide the same, after request by
4 the injured employee such injured employee may do so at the expense of
5 the employer. The employee shall not be entitled to recover any amount
6 expended by [~~him~~] such employee for such treatment or services unless
7 [~~he~~] such employee shall have requested the employer to furnish the same
8 and the employer shall have refused or neglected to do so, or unless the
9 nature of the injury required such treatment and services and the
10 employer or [~~his~~] such employer's superintendent or [~~foreman~~] foreperson
11 having knowledge of such injury shall have neglected to provide the
12 same; nor shall any claim for medical or surgical treatment be valid and
13 enforceable, as against such employer, unless within twenty days follow-
14 ing the first treatment, the physician giving such treatment, furnish to
15 the employer and the [~~chairman~~] chairperson a report of such injury and
16 treatment, on a form prescribed by the [~~chairman~~] chairperson. The
17 board may, however, by the unanimous vote of a panel of not less than
18 three members qualified to act, excuse the failure to give such notice
19 within twenty days when it finds it to be in the interest of justice to
20 do so, and may, subject to the limitations contained in section twenty-
21 eight of this [~~chapter~~] article, make an award for the reasonable value
22 of such medical or surgical treatment. All fees and other charges for
23 such treatment and services, whether furnished by the employer or other-
24 wise, shall be subject to regulation by the board as provided in section
25 twenty-four of this [~~chapter~~] article, and shall be limited to such
26 charges as prevail in the same community for similar treatment of
27 injured persons of a like standard of living.

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

39 No hospital shall be required to produce the records of any claimant
40 pursuant to this section without receiving the cost of copying such
41 records as determined by the chair. Such cost shall be paid by the
42 requesting party except that the employer or carrier or special fund
43 shall reimburse a claimant or claimant's representative the cost of an
44 initial set of such records where the request is made by a claimant or
45 claimant's representative. Should the hospital not be able to provide
46 the requested records within twenty days, they shall notify in writing
47 the party requesting the records of the reason why the records were not
48 provided and the date on which they will be provided. Such date shall be
49 within a reasonable period of time, but shall not exceed thirty days.
50 Failure to either provide the records within twenty days or to provide a
51 reason why the records have not been provided shall subject the hospital
52 to a fine of two hundred dollars which shall be imposed by the chair
53 payable to the board upon finding that this subdivision has not been
54 complied with. No hospital shall be required to produce the records of
55 any claimant without receiving its customary fees or charges for repro-
56 duction of such records. The employer or carrier shall file with the

1 board any hospital or medical records concerning an injured worker that
2 come into its possession and have not been previously filed with the
3 board.

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

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

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

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

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

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

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

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

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

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

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

55 (1) Fees for medical services shall be payable only to a physician or
56 other qualified person permitted by sections thirteen-b, thirteen-k,

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

24 § 6. Subdivisions 1, 2, paragraphs s, t, v and w of subdivision 3,
25 subdivisions 4, 4-a and 5 of section 15 of the workers' compensation
26 law, subdivision 1 as amended by chapter 675 of the laws of 1977, subdi-
27 vision 2 as amended by chapter 161 of the laws of 1966, paragraph s of
28 subdivision 3 as amended by chapter 204 of the laws of 1988, paragraph t
29 of subdivision 3 as amended by chapter 774 of the laws of 1945, subpara-
30 graphs 1 and 2 of paragraph t of subdivision 3 as amended by chapter 924
31 of the laws of 1990, paragraph v of subdivision 3 as amended by chapter
32 364 of the laws of 1989, paragraph w of subdivision 3 as amended by
33 section 1 of subpart A of part NNN of chapter 59 of the laws of 2017,
34 subdivision 4 as amended by chapter 168 of the laws of 1979, subdivision
35 4-a as amended by chapter 712 of the laws of 1941, and subdivision 5 as
36 amended by chapter 161 of the laws of 1966, are amended and a new subdi-
37 vision 10 is added to read as follows:

38 1. Permanent total disability. In case of total disability adjudged to
39 be permanent sixty-six and two-thirds per centum of the average weekly
40 wages shall be paid to the employee during the continuance of such total
41 disability. Loss of both hands, or both arms, or both feet, or both
42 legs, or both eyes, or of any two thereof, or inability to perform the
43 full range of sedentary work, or approval for federal social security
44 disability benefits as a result of the compensable accident or occupa-
45 tional disease shall, in the absence of conclusive proof to the contra-
46 ry, constitute permanent total disability. In all other cases permanent
47 total disability shall be determined in accordance with the facts.
48 Notwithstanding any other provision of this chapter, an injured employee
49 disabled due to the loss or total loss of use of both eyes, or both
50 hands, or both arms, or both feet, or both legs, or of any two thereof
51 shall not suffer any diminution of [~~his~~] such employee's compensation by
52 engaging in business or employment provided [~~his~~] such employee's earn-
53 ings or wages, when combined with [~~his~~] such employee's compensation,
54 shall not be in excess of the wage base on which the maximum weekly
55 compensation benefit is computed under the law in effect at time of such
56 earning; further provided, that if the combination exceeds such wage

1 base, the compensation shall be diminished to an amount which, together
2 with [~~his~~] such employee's earnings or wages, shall equal the wage base;
3 and further provided that the application of this subdivision shall not
4 result in reduction of compensation which an injured employee who is
5 disabled due to the loss or total loss of use of both eyes, or both
6 hands, or both arms, or both feet, or both legs or of any two thereof,
7 would otherwise be entitled to under any other provision of this
8 section.

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

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

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

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

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

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

1 board approved rehabilitation program; or shall have demonstrated coop-
2 eration with efforts to institute such a board approved program and
3 shall have been determined by the board not to be a feasible candidate
4 for rehabilitation; such rehabilitation shall constitute treatment and
5 care as provided in this chapter.

6 w. Other cases. In all other cases of permanent partial disability,
7 the compensation shall be sixty-six and two-thirds percent of the
8 difference between the injured employee's average weekly wages and [~~his~~
9 ~~or her~~] such employee's wage-earning capacity thereafter in the same
10 employment or otherwise. Nothing in this paragraph shall preclude the
11 payment of compensation under paragraphs a through t of this subdivi-
12 sion, however, the employer or carrier shall be entitled to take credit
13 for any payment of compensation under such paragraphs a through t
14 against a payment of compensation under this paragraph. Compensation
15 under this paragraph shall be payable during the continuance of such
16 permanent partial disability, without the necessity for the claimant who
17 is entitled to benefits at the time of classification to demonstrate
18 ongoing attachment to the labor market, but subject to reconsideration
19 of the degree of such impairment by the board on its own motion or upon
20 application of any party in interest however, all compensation payable
21 under this paragraph shall not exceed (i) five hundred twenty-five weeks
22 in cases in which the loss of wage-earning capacity is greater than
23 ninety-five percent; (ii) five hundred weeks in cases in which the loss
24 of wage-earning capacity is greater than ninety percent but not more
25 than ninety-five percent; (iii) four hundred seventy-five weeks in cases
26 in which the loss of wage-earning capacity is greater than eighty-five
27 percent but not more than ninety percent; (iv) four hundred fifty weeks
28 in cases in which the loss of wage-earning capacity is greater than
29 eighty percent but not more than eighty-five percent; (v) four hundred
30 twenty-five weeks in cases in which the loss of wage-earning capacity is
31 greater than seventy-five percent but not more than eighty percent; (vi)
32 four hundred weeks in cases in which the loss of wage-earning capacity
33 is greater than seventy percent but not more than seventy-five percent;
34 (vii) three hundred seventy-five weeks in cases in which the loss of
35 wage-earning capacity is greater than sixty percent but not more than
36 seventy percent; (viii) three hundred fifty weeks in cases in which the
37 loss of wage-earning capacity is greater than fifty percent but not more
38 than sixty percent; (ix) three hundred weeks in cases in which the loss
39 of wage-earning capacity is greater than forty percent but not more than
40 fifty percent; (x) two hundred seventy-five weeks in cases in which the
41 loss of wage-earning capacity is greater than thirty percent but not
42 more than forty percent; (xi) two hundred fifty weeks in cases in which
43 the loss of wage-earning capacity is greater than fifteen percent but
44 not more than thirty percent; and (xii) two hundred twenty-five weeks in
45 cases in which the loss of wage-earning capacity is fifteen percent or
46 less. For a claimant with a date of accident or disablement after the
47 effective date of [~~the~~] section one of subpart A of part NNN of chapter
48 59 of the laws of two thousand seventeen [~~that amended this subdivi-~~
49 ~~sion~~], where the carrier or employer has provided compensation pursuant
50 to subdivision five of this section beyond one hundred thirty weeks from
51 the date of accident or disablement, all subsequent weeks in which
52 compensation was paid shall be considered to be benefit weeks for
53 purposes of this section, with the carrier or employer receiving credit
54 for all such subsequent weeks against the amount of maximum benefit
55 weeks when permanent partial disability under this section is deter-
56 mined. In the event of payment for intermittent temporary partial disa-

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

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

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

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

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

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

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

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

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

1 exceeding reasonable funeral expenses as provided in subdivision one of
 2 section sixteen of this [~~chapter~~] article.

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

5 4-a. Protracted temporary total disability in connection with perma-
 6 nent partial disability. In case of temporary total disability and
 7 permanent partial disability both resulting from the same injury, if the
 8 temporary total disability continues for a longer period than the number
 9 of weeks set forth in the following schedule, the period of temporary
 10 total disability in excess of such number of weeks shall be added to the
 11 compensation period provided in subdivision three of this section: Arm,
 12 [~~thirty-two~~] sixteen weeks; leg, [~~forty~~] twenty weeks; hand, [~~thirty-~~
 13 ~~two~~] sixteen weeks; foot, [~~thirty-two~~] sixteen weeks; ear, [~~twenty-five~~]
 14 twelve weeks; eye, [~~twenty~~] ten weeks; thumb, [~~twenty-four~~] twelve
 15 weeks; first finger, [~~eighteen~~] nine weeks; great toe, [~~twelve~~] six
 16 weeks; second finger, [~~twelve~~] six weeks; third finger, [~~eight~~] four
 17 weeks; fourth finger, [~~eight~~] four weeks; toe other than great toe,
 18 [~~eight~~] four weeks.

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

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

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

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

45 § 7. Subdivisions 1-a, 1-b, 1-c, 1-d, 2, 2-a, 2-b, and 4-d of section
 46 16 of the workers' compensation law, subdivisions 1-a, 1-b, 1-c and 2 as
 47 amended by chapter 168 of the laws of 1979, subdivisions 1-d, 2-b and
 48 4-d as added by chapter 689 of the laws of 2007 and subdivision 2-a as
 49 amended by chapter 174 of the laws of 1981, are amended and two new
 50 subdivisions 1-e and 2-c are added to read as follows:

51 1-a. For the purpose of this section, (1) the term dependent blind or
 52 physically disabled as used herein in relation to dependent children
 53 shall be deemed to mean totally blind or physically disabled children
 54 whose disablement is total and permanent, (2) the term surviving spouse
 55 shall be deemed to mean the legal spouse but shall not include a spouse
 56 who has abandoned the deceased, [~~and~~] (3) the term abandoned shall be

1 deemed to mean such an abandonment as would be sufficient under section
2 two hundred of the domestic relations law to sustain a judgment of separa-
3 tion on that ground, and (4) the term "surviving spouse" shall apply
4 to a surviving spouse without regard to remarriage.

5 1-b. If there be a surviving spouse and no child of the deceased under
6 the age of eighteen years and no child of any age dependent blind or
7 physically disabled, and the death occurs on or after July first, nine-
8 teen hundred forty-eight, and prior to January first, nineteen hundred
9 seventy-eight, to such spouse forty per centum of the average wages of
10 the deceased during [~~widowhood or widowerhood with two years' compen-~~
11 ~~sation in one sum, upon remarriage~~] the applicable period; and where the
12 death occurred prior to July first, nineteen hundred forty-eight, to
13 such [~~wife (or dependent husband)~~] spouse thirty per centum of such
14 wages during [~~widowhood (or dependent widowerhood) with two years'~~
15 ~~compensation in one sum, upon remarriage~~] the applicable period.

16 1-c. If there be a surviving spouse and no child of the deceased under
17 the age of eighteen years or under the age of twenty-three years if
18 enrolled and attending as a full time student in an accredited educa-
19 tional institution and such enrollment and full time attendance is
20 certified by such institution and no child of any age dependent blind or
21 physically disabled, and the death occurs on or after January first,
22 nineteen hundred seventy-eight, to such spouse sixty-six and two-thirds
23 per centum of the average wages of the deceased during [~~widowhood or~~
24 ~~widowerhood with two years' compensation, in one sum, upon remarriage~~]
25 the applicable period. Where the death occurs on or after January
26 first, nineteen hundred seventy-eight, and the spouse is receiving the
27 survivors insurance benefits under the social security act, the death
28 benefit payable under this section shall be reduced in accordance with
29 the provisions of table No. [1] I below by five per centum of the
30 spouse's share of the survivor's insurance benefits under the social
31 security act for each ten dollars of deceased's average weekly wage in
32 excess of one hundred dollars provided that in no case shall such
33 reduction exceed fifty per centum of said spouse's share of the survi-
34 vors insurance benefits under the social security act.

35 TABLE No. I

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

38 AVERAGE WEEKLY WAGE	39 PERCENTAGE OF SPOUSE'S 40 SHARE OF SURVIVORS INSURANCE BENEFITS
41 over \$100 up to and including \$110	5
42 over \$110 up to and including \$120	10
43 over \$120 up to and including \$130	15
44 over \$130 up to and including \$140	20
45 over \$140 up to and including \$150	25
46 over \$150 up to and including \$160	30
47 over \$160 up to and including \$170	35
48 over \$170 up to and including \$180	40
49 over \$180 up to and including \$190	45
50 over \$190 up to and including \$200	50
51 over \$200	50

52 1-d. If there be a surviving spouse of an employee of a private volun-
53 tary hospital killed in a World Trade Center rescue, who passed a phys-

1 ical examination upon employment as a rescue worker that failed to
2 reveal evidence of a condition that was the proximate cause of death,
3 and no child of the deceased under the age of eighteen years, or under
4 the age of twenty-three years if enrolled and attending as a full-time
5 student in an accredited educational institution and such enrollment and
6 full-time attendance is certified by such institution, and no child of
7 any age dependent blind or physically disabled, to such spouse seventy-
8 five per centum of the average wages of the deceased during [~~widowhood
9 or widowerhood, with two years' compensation, in one sum, upon remarriage.~~
10 ~~Where such death occurs, and the spouse is receiving the survivors insurance benefits under the social security act, the death benefit
11 payable under this section shall be reduced in accordance with the
12 provisions of table No. I in subdivision one c of this section by five
13 per centum of the spouse's share of the survivor's insurance benefits
14 under the social security act for each ten dollars of deceased's average
15 weekly wage in excess of one hundred dollars, provided that in no case
16 shall such reduction exceed fifty per centum of such spouse's share of
17 the survivors insurance benefits under the social security act]~~ the
18 applicable period.

19
20 1-e. If there be a surviving spouse and no child of the deceased under
21 the age of eighteen years or under the age of twenty-three years if
22 enrolled and attending as a full-time student in an accredited educa-
23 tional institution and such enrollment and full-time attendance is
24 certified by such institution and no child of any age dependent blind or
25 physically disabled, and the death occurs on or after January first, two
26 thousand twenty-six, to such spouse sixty-six and two-thirds per centum
27 of the average wages of the deceased during the applicable period.

28 2. If there be a surviving spouse and a surviving child or children of
29 the deceased under the age of eighteen years or a surviving child or
30 children of any age dependent blind or physically disabled, and the
31 death occurs on or after July first, nineteen hundred forty-eight, and
32 prior to January first, nineteen hundred seventy-eight, to such spouse
33 thirty per centum of the average wages of the deceased during [~~widowhood
34 or widowerhood with two years' compensation in one sum, upon remarriage]~~
35 the applicable period; and the additional amount of twenty per centum of
36 such wages for each such child until the age of eighteen years or until
37 the removal of the dependency of the blind or physically disabled child
38 or children; in case of the subsequent death [~~or remarriage~~] of such
39 surviving spouse any surviving child of the deceased employee, at the
40 time under eighteen years of age or dependent through mental or physical
41 infirmity, shall have [~~his~~] such person's compensation increased to
42 thirty per centum of such wages, and the same shall be payable until
43 [~~he~~] such person shall reach the age of eighteen years or until such
44 dependent blind or physically disabled condition shall have been
45 removed; provided that the total amount payable shall in no case exceed
46 sixty-six and two-thirds per centum of such wages. [~~Upon statutory
47 termination of compensation payments to all such children, the compen-
48 sation of the surviving spouse shall be increased to forty per centum of
49 such wages with two years' compensation, at such rate, in one sum, upon
50 remarriage.~~]

51 If there be a surviving [~~wife (or dependent husband)]~~ spouse and any
52 of the aforementioned surviving children, and the death occurred prior
53 to July first, nineteen hundred forty-eight, to such [~~wife (or dependent
54 husband)]~~ spouse thirty per centum of the average wages of the deceased
55 during [~~widowhood (or dependent widowerhood) with two years' compen-
56 sation in one sum, upon remarriage]~~ the applicable period; and the addi-

1 tional amount of ten per centum of such wages for each such child until
2 eighteen years of age or until the removal of the dependency of the
3 blind or physically disabled child or children; in case of the subse-
4 quent death [~~or remarriage~~] of such surviving [~~wife (or dependent~~
5 ~~husband)~~] spouse any surviving child of the deceased shall have [~~his~~]
6 such child's compensation increased to fifteen per centum of such wages
7 until [~~he~~] such child shall reach the age of eighteen years or until
8 such dependent blind or physically disabled condition shall have been
9 removed; provided that the total amount payable shall in no case exceed
10 sixty-six and two-thirds per centum of such wages.

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

16 2-a. If there be a surviving spouse and a surviving child under the
17 age of eighteen years or under the age of twenty-three years if enrolled
18 and attending as a full time student in an accredited educational insti-
19 tution and such enrollment and full time attendance is certified by such
20 institution or a surviving child of any age dependent blind or phys-
21 ically disabled and the death occurs on or after January first, nineteen
22 hundred seventy-eight, to such spouse thirty-six and two-thirds per
23 centum of the average wages of the deceased during [~~widowhood or widow-~~
24 ~~erhood with two years' compensation in one sum, upon remarriage~~] the
25 applicable period; and thirty per centum of such wages to such child
26 under the age of eighteen years or under the age of twenty-three years
27 if enrolled and attending as a full time student in an accredited educa-
28 tional institution and such enrollment and full time attendance is
29 certified by such institution or a surviving child of any age dependent
30 blind or physically disabled; in the case of the subsequent death of
31 such surviving spouse the surviving child shall have [~~his~~] such child's
32 compensation increased to sixty-six and two-thirds per centum of such
33 wages and the same shall be payable so long as [~~he~~] such child is under
34 the age of eighteen years or under the age of twenty-three years if
35 enrolled and attending as a full time student in an accredited educa-
36 tional institution and such enrollment and full time attendance is
37 certified by such institution or a surviving child of any age dependent
38 blind or physically disabled; upon statutory termination of compensation
39 payable to such child, the compensation of the surviving spouse shall be
40 increased to sixty-six and two-thirds per centum of such wages [~~with two~~
41 ~~years' compensation, at such rate, in one sum, upon remarriage. Upon~~
42 ~~remarriage of such surviving spouse, the surviving child shall continue~~
43 ~~to receive thirty per centum of such wages~~]. Where the death occurs on
44 or after January first, nineteen hundred seventy-eight and the spouse is
45 receiving survivors insurance benefits under the social security act,
46 the death benefit payable under this section shall be reduced by five
47 per centum of the spouse's share of the survivors insurance benefits
48 under the social security act for each ten dollars of deceased's average
49 weekly wage in excess of one hundred dollars provided that in no case
50 shall such reduction exceed fifty per centum of said spouse's share of
51 the survivors insurance benefits under the social security act as set
52 forth in table No. I below.

53

TABLE No. I

54

Offset provisions applicable in death benefits

1 where there is a surviving spouse and one child

2 AVERAGE WEEKLY WAGE	3 PERCENTAGE OF SPOUSE'S 4 SHARE OF SURVIVORS 5 INSURANCE BENEFITS
6 over \$100 up to and including \$110	7 5
8 over \$110 up to and including \$120	9 10
10 over \$120 up to and including \$130	11 15
12 over \$130 up to and including \$140	13 20
14 over \$140 up to and including \$150	15 25
16 over \$150 up to and including \$160	17 30
18 over \$160 up to and including \$170	19 35
20 over \$170 up to and including \$180	21 40
22 over \$180 up to and including \$190	23 45
24 over \$190 up to and including \$200	25 50
26 over \$200	27 50

28 If there be a surviving spouse and two or more surviving children
29 under the age of eighteen years or under the age of twenty-three years
30 if enrolled and attending as a full time student in an accredited educa-
31 tional institution and such enrollment and full time attendance is
32 certified by such institution or a surviving child or children of any
33 age dependent blind or physically disabled and a death occurs on or
34 after January first, nineteen hundred seventy-eight, to such spouse
35 thirty-six and two-thirds per centum of the average wage of the deceased
36 during ~~[widowhood or widowerhood with two years' compensation in one sum~~
37 ~~upon remarriage]~~ the applicable period; and thirty per centum of such
38 wages to such children under the age of eighteen years or under the age
39 of twenty-three years if enrolled and attending as a full time student
40 in an accredited educational institution and such enrollment and full
41 time attendance is certified by such institution or a surviving child or
42 children of any age dependent blind or physically disabled, share and
43 share alike; in case of the subsequent death of such surviving spouse
44 the surviving children shall have their compensation increased to
45 sixty-six and two-thirds per centum of such wages and the aggregate sum
46 shall be payable, share and share alike, so long as they are under the
47 age of eighteen years or under the age of twenty-three years if enrolled
48 and attending as a full time student in an accredited educational insti-
49 tution and such enrollment and full time attendance is certified by such
50 institution or a surviving child or children of any age dependent blind
51 or physically disabled. ~~[Upon remarriage of such surviving spouse, if~~
52 ~~there be two surviving children each shall receive twenty five per~~
53 ~~centum of such wages, and if there are surviving more than two children~~
54 ~~under the age of eighteen years or under the age of twenty three if~~
55 ~~enrolled and attending as a full time student in an accredited educa-~~
~~tional institution and such enrollment and full time attendance is~~
~~certified by such institution or a surviving child or children of any~~
~~age dependent blind or physically disabled 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

1 security act for each ten dollars of deceased's average weekly wage in
2 excess of one hundred fifty dollars provided that in no case shall such
3 reduction exceed fifty per centum of said spouse's share of the survi-
4 vors insurance benefits under the social security act as set forth in
5 table No. II below.

6 TABLE No. II
7 Offset provisions applicable in death benefits
8 where there is a surviving spouse and two or more children

9 AVERAGE WEEKLY WAGE	10 PERCENTAGE OF SPOUSE'S 11 SHARE OF SURVIVORS 12 INSURANCE BENEFITS
13 over \$150 up to and including \$160	5
14 over \$160 up to and including \$170	10
15 over \$170 up to and including \$180	15
16 over \$180 up to and including \$190	20
17 over \$190 up to and including \$200	25
18 over \$200 up to and including \$210	30
19 over \$210 up to and including \$220	35
20 over \$220 up to and including \$230	40
21 over \$230 up to and including \$240	45
22 over \$240 up to and including \$250	50
23 over \$250	50

24 2-b. If there be a surviving spouse of an employee of a private volun-
25 tary hospital killed in a World Trade Center rescue, who passed a phys-
26 ical examination upon employment as a rescue worker that failed to
27 reveal evidence of a condition that was the proximate cause of death,
28 and a surviving child under the age of eighteen years, or under the age
29 of twenty-three years if enrolled and attending as a full-time student
30 in an accredited educational institution and such enrollment and full-
31 time attendance is certified by such institution, or a surviving child
32 of any age dependent blind or physically disabled, to such spouse forty
33 per centum of the average wages of the deceased during [~~widowhood or~~
34 ~~widowerhood, with two years' compensation in one sum, upon remarriage~~]
35 the applicable period; and thirty-five per centum of such wages to such
36 child under the age of eighteen years, or under the age of twenty-three
37 years if enrolled and attending as a full-time student in an accredited
38 educational institution and such enrollment and full-time attendance is
39 certified by such institution, or a surviving child of any age dependent
40 blind or physically disabled; in the case of the subsequent death of
41 such surviving spouse the surviving child shall have [~~his or her~~] such
42 child's compensation increased to seventy-five per centum of such wages
43 and the same shall be payable so long as [~~he or she~~] such child is under
44 the age of eighteen years, or under the age of twenty-three years if
45 enrolled and attending as a full-time student in an accredited educa-
46 tional institution and such enrollment and full-time attendance is
47 certified by such institution, or a surviving child of any age dependent
48 blind or physically disabled; upon statutory termination of compensation
49 payable to such child, the compensation of the surviving spouse shall be
50 increased to seventy-five per centum of such wages [~~with two years'~~
51 ~~compensation, at such rate, in one sum, upon remarriage~~]. [~~Upon remar-~~
52 ~~riage of such surviving spouse, the surviving child shall continue to~~
53 ~~receive thirty-five per centum of such wages. Where such death occurs,~~
~~and the spouse is receiving survivors insurance benefits under the~~

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

1 2-c. If there be a surviving spouse and a surviving child under the
2 age of eighteen years or under the age of twenty-three years if enrolled
3 and attending as a full-time student in an accredited educational insti-
4 tution and such enrollment and full-time attendance is certified by such
5 institution or a surviving child of any age dependent blind or phys-
6 ically disabled and the death occurs on or after January first, two
7 thousand twenty-six, to such spouse thirty-six and two-thirds per centum
8 of the average wages of the deceased during the applicable period; and
9 thirty per centum of such wages to such child under the age of eighteen
10 years or under the age of twenty-three years if enrolled and attending
11 as a full-time student in an accredited educational institution and such
12 enrollment and full-time attendance is certified by such institution or
13 a surviving child of any age dependent blind or physically disabled; in
14 the case of the subsequent death of such surviving spouse the surviving
15 child shall have their compensation increased to sixty-six and two-
16 thirds per centum of such wages and the same shall be payable so long as
17 they are under the age of eighteen years or under the age of twenty-
18 three years if enrolled and attending as a full-time student in an
19 accredited educational institution and such enrollment and full-time
20 attendance is certified by such institution or a surviving child of any
21 age dependent blind or physically disabled; upon statutory termination
22 of compensation payable to such child, the compensation of the surviving
23 spouse shall be increased to sixty-six and two-thirds per centum of such
24 wages.

25 If there be a surviving spouse and two or more surviving children
26 under the age of eighteen years or under the age of twenty-three years
27 if enrolled and attending as a full-time student in an accredited educa-
28 tional institution and such enrollment and full-time attendance is
29 certified by such institution or a surviving child or children of any
30 age dependent blind or physically disabled and a death occurs on or
31 after January first, two thousand twenty-six, to such spouse thirty-six
32 and two-thirds per centum of the average wage of the deceased during the
33 applicable period; and thirty per centum of such wages to such children
34 under the age of eighteen years or under the age of twenty-three years
35 if enrolled and attending as a full-time student in an accredited educa-
36 tional institution and such enrollment and full-time attendance is
37 certified by such institution or a surviving child or children of any
38 age dependent blind or physically disabled, share and share alike; in
39 case of the subsequent death of such surviving spouse the surviving
40 children shall have their compensation increased to sixty-six and two-
41 thirds per centum of such wages and the aggregate sum shall be payable,
42 share and share alike, so long as they are under the age of eighteen
43 years or under the age of twenty-three years if enrolled and attending
44 as a full-time student in an accredited educational institution and such
45 enrollment and full-time attendance is certified by such institution or
46 a surviving child or children of any age dependent blind or physically
47 disabled. Upon statutory termination of compensation payable to such
48 children, the compensation of the surviving spouse shall be increased to
49 sixty-six and two-thirds per centum of such wages.

50 4-d. If there be no surviving spouse or child, or children of an
51 employee of a private voluntary hospital killed in a World Trade Center
52 rescue, who passed a physical examination upon employment as a rescue
53 worker that failed to reveal evidence of a condition that was the proximate
54 cause of death, under the age of eighteen years, or under the age
55 of twenty-three years if enrolled and attending as a full-time student
56 in an accredited educational institution and such enrollment and full-

1 time attendance is certified by such institution, or dependent blind or
2 physically disabled child of any age, or grandchildren or [~~brothers and~~
3 ~~sisters~~] siblings if dependent upon the deceased at the time of the
4 accident, under the age of eighteen years, or under the age of twenty-
5 three years if enrolled and attending as a full-time student in an
6 accredited educational institution and such enrollment and full-time
7 attendance is certified by such institution, or disabled blind or phys-
8 ically disabled grandchildren or [~~brothers and sisters~~] siblings of any
9 age, then a sum of [~~fifty~~] one hundred thousand dollars shall be paid to
10 the deceased's surviving parents or if there be no surviving parents to
11 the deceased's estate.

12 § 8. The workers' compensation law is amended by adding a new section
13 17-b to read as follows:

14 § 17-b. Limited English proficiency. 1. The board shall provide trans-
15 lation of all documents and forms used by or issued to injured employ-
16 ees. The translation shall be in the six most common non-English
17 languages spoken by individuals with limited-English proficiency in the
18 state of New York.

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

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

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

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

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

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

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

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

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

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

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

45 § 18. Notice of injury or death. Notice of an injury or death for
46 which compensation is payable under this chapter shall be given to the
47 employer within thirty days after the accident causing such injury, and
48 also in case of the death of the employee resulting from such injury,
49 within thirty days after such death. Such notice may be given by any
50 person claiming to be entitled to compensation, or by [~~some one in his~~]
51 someone on such person's behalf. The notice shall be in writing, and
52 contain the name and address of the employee, and state in ordinary
53 language the time, place, nature and cause of the injury, and be signed
54 by [~~him~~] such person or by a person on [~~his~~] such person's behalf or, in
55 case of death, by any one or more of [~~his~~] such person's dependents, or
56 by a person, on their behalf. It shall be given to the employer by

1 delivering it to [~~him~~] such employer or sending it by mail, by regis-
2 tered letter, addressed to the employer at [~~his or its~~] such employer's
3 last known place of business; provided that, if the employer be a part-
4 nership then such notice may be so given to any one of the partners, and
5 if the employer be a corporation, then such notice may be given to any
6 agent or officer thereof upon whom legal process may be served, or any
7 agent in charge of [~~his~~] such employer's business in the place where the
8 injury occurred. The failure to give notice of injury or notice of death
9 unless excused by the board either on the ground that notice for some
10 sufficient reason could not have been given, or on the ground that the
11 employer, or [~~his or its~~] such employer's agents in charge of the busi-
12 ness in the place where the accident occurred or having immediate super-
13 vision of the employee to whom the accident happened, had knowledge of
14 the accident or death, or on the ground that the employer has not been
15 prejudiced thereby, shall be a bar to any claim under this chapter, but
16 the employer and the insurance carrier shall be deemed to have waived
17 such notice unless the objection to the failure to give such notice or
18 the insufficiency thereof, is raised before the board on the first hear-
19 ing of the claim [~~filed~~] filed by such injured employee, or [~~his or her~~]
20 such employee's dependents at which all parties in interest are present,
21 or represented, and at which the claimant, or principal beneficiary,
22 testifies. The burden of proof on the issue of prejudice shall rest with
23 the employer.

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

27 1. At any time after [~~the expiration of the first seven days of disa-~~
28 ~~bility on the part of~~] an injury the injured employee, or at any time
29 after the employee's death, a claim for compensation may be presented to
30 the employer or to the chair. The board shall hold an initial hearing
31 in each claim and shall have full power and authority to determine all
32 questions in relation to the payment of claims presented to it for
33 compensation under the provisions of this chapter. The chair or board
34 shall make or cause to be made such investigation as it deems necessary,
35 and upon application of either party, shall order a hearing, and within
36 thirty days after a claim for compensation is submitted under this
37 section, or such hearing closed, shall make or deny an award, determin-
38 ing such claim for compensation, and file the same in the office of the
39 chair. Immediately after such filing the chair shall send to the parties
40 a copy of the decision. Upon a hearing pursuant to this section either
41 party may present evidence and be represented by counsel. The decision
42 of the board shall be final as to all questions of fact, and, except as
43 provided in section twenty-three of this article, as to all questions of
44 law. Except as provided in section twenty-seven of this article, all
45 awards of the board shall draw simple interest from thirty days after
46 the making thereof at the rate provided in section five thousand four of
47 the civil practice law and rules. Whenever a hearing or proceeding for
48 the determination of a claim for compensation is begun before a referee,
49 pursuant to the provisions of this chapter, such hearing or proceeding
50 or any adjourned hearing thereon shall continue before the same referee
51 until a final determination awarding or denying compensation, except in
52 the absence, inability or disqualification to act of such referee, or
53 for other good cause, in which event such hearing or proceeding may be
54 continued before another referee by order of the chair or board.

55 § 11. Section 24 of the workers' compensation law is amended by adding
56 a new subdivision 5 to read as follows:

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

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

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

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

22 (c) The board shall keep an accurate stenographic record of all hear-
23 ings held. Whenever a hearing must be continued or adjourned because
24 the carrier or employer has engaged in dilatory tactics or exhibited
25 unjustified lack of preparedness, the board shall impose a penalty of
26 twenty-five dollars to be paid to the fund created by subdivision two of
27 section one hundred fifty-one of this chapter and shall in addition make
28 an award of seventy-five dollars payable to the injured worker or [~~his~~
29 ~~or her~~] such worker's dependants. Dilatory tactics may include but shall
30 not be limited to: failing to subpoena medical witnesses or to secure
31 an order to show cause as directed by the referee, failing to bring
32 proper files, failing to appear, failing to produce witnesses or docu-
33 ments after they have been requested by the referee or examiner or as
34 directed by the hearing notice, unnecessarily protracting the production
35 of evidence, or engaging in a pattern of delay which unduly delays
36 resolution, except that no penalty shall be imposed nor award made under
37 this subdivision if the carrier or employer produces evidence sufficient
38 to excuse its conduct to the satisfaction of the referee.

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

46 1. If an employee entitled to compensation under this chapter be
47 injured or killed by the negligence or wrong of another not in the same
48 employ, such injured employee, or in case of death, [~~his~~] such employ-
49 ee's dependents, need not elect whether to take compensation and medical
50 benefits under this chapter or to pursue [~~his~~] such employee's remedy
51 against such other but may take such compensation and medical benefits
52 and at any time either prior thereto or within six months after the
53 awarding of compensation or within nine months after the enactment of a
54 law or laws creating, establishing or affording a new or additional
55 remedy or remedies, pursue [~~his~~] such employee's remedy against such
56 other subject to the provisions of this chapter. If such injured employ-

1 ee, or in case of death, [~~his~~] such employee's dependents, take or
2 intend to take compensation, and medical benefits in the case of an
3 employee, under this chapter and desire to bring action against such
4 other, such action must be commenced not later than six months after the
5 awarding of compensation or not later than nine months after the enact-
6 ment of such law or laws creating, establishing or affording a new or
7 additional remedy or remedies and in any event before the expiration of
8 one year from the date such action accrues. In such case, the state
9 insurance fund, if compensation be payable therefrom, and otherwise the
10 person, association, corporation or insurance carrier liable for the
11 payment of such compensation, as the case may be, shall have a lien on
12 the proceeds of any recovery from such other to the extent such recovery
13 is for lost wages or medical expenses, whether by judgment, settlement
14 or otherwise, after the deduction of the reasonable and necessary
15 expenditures, including attorney's fees, incurred in effecting such
16 recovery, to the extent of the total amount of compensation awarded
17 under or provided or estimated by this chapter for such case and the
18 expenses for medical treatment paid or to be paid by it and to such
19 extent such recovery shall be deemed for the benefit of such fund,
20 person, association, corporation or carrier. Should the employee or
21 [~~his~~] such employee's dependents secure a recovery from such other,
22 whether by judgment, settlement or otherwise, such employee or depen-
23 dents may apply on notice to such lienor to the court in which the third
24 party action was instituted, or to a court of competent jurisdiction if
25 no action was instituted, for an order apportioning the reasonable and
26 necessary expenditures, including attorneys' fees, incurred in effecting
27 such recovery. Such expenditures shall be equitably apportioned by the
28 court between the employee or [~~his~~] such employee's dependents and the
29 lienor. Notice of the commencement of such action shall be given within
30 thirty days thereafter to the [~~chairman~~] chairperson, the employer and
31 the insurance carrier upon a form prescribed by the [~~chairman~~] chair-
32 person. Any of the foregoing providers of compensation and/or medical
33 benefits which has recovered a lien pursuant to the provisions hereof
34 against the recovery of a person injured on or after February first,
35 nineteen hundred seventy-four and before July first, nineteen hundred
36 seventy-eight, through the use or operation of a motor vehicle in this
37 state, shall notify such person by certified mail in a manner to be
38 approved by the [~~chairman~~] chairperson and the superintendent of finan-
39 cial services of the responsibility of an "insurer" (as defined in
40 subsection (g) of section five thousand one hundred two of the insurance
41 law), to reimburse such person under such circumstances to the extent
42 that the recovered lien represent first party benefits as defined in
43 article fifty-one of the insurance law.

44 A copy of the papers to be used on the application to compromise and
45 settle the claim must be served as directed by the court or in the same
46 manner as provided in the civil practice law and rules for a notice of
47 motion upon the commissioners of the state insurance fund or such offi-
48 cer thereof designated by them or upon the person, association, corpo-
49 ration, or insurance carrier, whose written approval would have been
50 required to compromise such cause of action by the employee or [~~his~~]
51 such employee's dependents. This notice shall afford them the opportu-
52 nity to submit affidavits and to be heard by the court on the applica-
53 tion. A petition may also be filed pursuant to this subdivision allocat-
54 ing a portion of the third-party recovery to lost wages and/or medical
55 treatment.

1 6. ~~[The]~~ Except as set forth in section eleven of this article, the
2 right to compensation or benefits under this chapter, shall be the
3 exclusive remedy to an employee, or in case of death ~~[his or her]~~ such
4 employee's dependents, when such employee is injured or killed by the
5 negligence or wrong of another in the same employ, the employer's insur-
6 er or any collective bargaining agent of the employer's employees or any
7 employee, of such insurer or such collective bargaining agent (while
8 acting within the scope of ~~[his or her]~~ such individual's employment).
9 The limitation of liability of an employer set forth in section eleven
10 of this article for the injury or death of an employee shall be applica-
11 ble to another in the same employ, the employer's insurer, any collec-
12 tive bargaining agent of the employer's employees or any employee of the
13 employer's insurer or such collective bargaining agent (while acting
14 within the scope of ~~[his or her]~~ such individual's employment). The
15 option to maintain an action in the courts for damages ~~[based on the~~
16 ~~employer's failure to secure compensation for injured employees and~~
17 ~~their dependents as set forth in section eleven of this article]~~ shall
18 not be construed to include the right to maintain an action against
19 another in the same employ, ~~[the employer's insurer,]~~ any collective
20 bargaining agent of the employer's employees or any employee ~~[of the~~
21 ~~employer's insurer]~~ or such collective bargaining agent (while acting
22 within the scope of ~~[his or her]~~ such individual's employment).

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

26 3. Extreme hardship redetermination. In cases where the loss of wage-
27 earning capacity is greater than ~~[seventy-five]~~ fifty percent, a claim-
28 ant may request~~[, within the year prior to the scheduled exhaustion of~~
29 ~~indemnity benefits under paragraph w of subdivision three of section~~
30 ~~fifteen of this article]~~, that the board reclassify the claimant to
31 permanent total disability or total industrial disability due to factors
32 reflecting extreme hardship. Extreme hardship is defined as: (a) the
33 injured worker's income from Social Security disability benefits and
34 disability pension (if applicable) would be less than fifty percent of
35 such worker's average weekly wage upon termination of PPD benefits; or
36 (b) the injured worker will be unable to meet expenses for themself and
37 any dependents upon termination of PPD benefits; or (c) additional
38 medical, functional or vocational factors arising subsequent to the
39 classification of permanent partial disability have further eroded the
40 injured worker's wage earning capacity; or (d) the injured worker's
41 income would be below the federal poverty guidelines upon termination of
42 PPD benefits.

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

45 (a) Return to work education. The board and the department of labor
46 shall develop and provide education tools and technical assistance on
47 how to build a return to work culture within an organization, partic-
48 ularly to small- and medium-sized employers. These tools shall include
49 templates of sample policies and procedural frameworks for return to
50 work programs, and illustrations of the financial benefits of effective
51 return to work protocols. In addition, the board and the department of
52 labor shall develop and implement, with input from stakeholders, an
53 education program for all participants in the workers' compensation
54 system, including employers and employees, carriers, claimants' attor-
55 neys and claims examiners, on the value and components of an effective

1 return to work program and their respective roles in assuring positive
2 return to work outcomes.

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

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

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

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

35 (f) Vocational rehabilitation services. The board shall assure that
36 vocational rehabilitation services are provided more expeditiously to
37 injured workers and are appropriately funded. The options available and
38 the costs shall be subject to regulation by the board. If the evaluation
39 recommends vocational education or retraining, the costs shall be
40 covered first by appropriate sources of state or federal funding. Carri-
41 ers shall not be permitted to seek a change in an injured worker's clas-
42 sification status while that individual is actively participating in
43 retraining or vocational rehabilitation in accordance with the individ-
44 ualized reemployment plan developed as a result of the vocational reha-
45 bilitation evaluation.

46 (g) Incentive programs. The board, the department, and the department
47 of financial services shall develop incentive programs targeted to
48 hiring workers who have permanent work restrictions. These programs
49 shall be established and analyzed for their impact on return to work
50 rates and cost effectiveness. Parameters for such program, at a minimum,
51 shall include those which offer employers wage subsidies for employing
52 and retraining injured workers, reimbursement for workplace accommo-
53 datations to enable injured workers to adjust the job to their capacities,
54 vocational assessments, retraining for those injured workers who cannot
55 return to their at-injury employer and funds for purchase of items that
56 are required of any new hire. Return to work programs subsidized by

1 these programs shall, at a minimum, be at eighty percent of the pre-hire
2 wage. Incentive programs shall require an employer match.

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

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

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

23 § 16. The workers' compensation law is amended by adding a new section
24 59 to read as follows:

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

29 (b) On or before April first of each year, every insurer shall for the
30 calendar year provide the board and the public with a detailed financial
31 statement to supplement and expand upon any other information otherwise
32 provided to the board, the department of financial services, or the New
33 York compensation insurance rating board as it relates to an insurer's
34 provision of workers' compensation insurance coverage to employers;
35 provided, however, that the initial financial statement so filed by an
36 insurer after the effective date of this section shall include the
37 information required in this subdivision not only for such prior calen-
38 dar year but also for the previous nine calendar years prior to such
39 report. The financial statement shall, in depth, detail:

- 40 (1) total premium collected;
- 41 (2) assessments collected;
- 42 (3) dividend income;
- 43 (4) payment of workers' compensation benefits for temporary disabili-
44 ty;
- 45 (5) non-scheduled permanent partial disability;
- 46 (6) scheduled permanent partial disability;
- 47 (7) permanent total disability;
- 48 (8) death benefits;
- 49 (9) medical treatment;
- 50 (10) payments to vendors including but not limited to: (i) independent
51 medical examination providers; (ii) investigators; (iii) nurse case
52 managers; (iv) peer reviews; (v) utilization reviews; and (vi) defense
53 litigation costs;
- 54 (11) number of open claims at the time such statement is prepared;
- 55 (12) other expenses by category as determined by the board to reflect
56 the cost to the insurer to provide such coverage;

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

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

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

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

9 (c) The board shall, in both written form and as part of the agency
10 website, make such financial statements and detailed claim information
11 available to the public. The detailed claim information shall be
12 provided in aggregate form for all insurers and separated by specific
13 insurer, combined without any identification of a specific claim to a
14 specific insurer. None of the publicly available detailed claim informa-
15 tion shall identify the individual insurer, employer or employee, or
16 representative of the same, associated with the claim. Such financial
17 statements and detailed claim information shall be deemed a public docu-
18 ment and no person shall be required to file a request for such finan-
19 cial statements pursuant to article six of the public officers law in
20 order to receive a copy thereof, but upon request and payment of the fee
21 for copying such document, it shall be provided forthwith. With respect
22 to the electronic copy of such financial statements and detailed claim
23 information, which shall be accessible on the board's website, the board
24 shall highlight the availability of such information to the public on
25 such website, and the link to each insurer's financial statement and the
26 aggregated detailed claim information shall be accessible in a simple
27 and easy manner. Both the financial statement and aggregated detailed
28 claim information on the board's website shall be available in spread-
29 sheet format, in addition to any other format the chair determines is
30 appropriate. Where summaries are included, they shall be written in
31 plain and simple English so that the public at large can easily compre-
32 hend the data provided.

33 (d) On or before July first of each year, the chair shall issue
34 reports summarizing and explaining the information collected from the
35 financial statements and the detailed claim information and summarizing
36 the cost and other essential elements relevant to providing workers'
37 compensation insurance coverage. Copies of such reports shall be
38 forwarded to the temporary president of the senate, the speaker of the
39 assembly and the chairs of the senate and assembly insurance committees.
40 Such reports shall be public documents and shall be accessible both in
41 paper copy and on the board's website in a similar fashion as provided
42 for in subsection (c) of this subdivision.

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

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

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

11 § 17. The workers' compensation law is amended by adding a new section
12 112-a to read as follows:

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

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

41 (c) If an employer knowingly understates or knowingly conceals
42 payroll, knowingly misrepresents or knowingly conceals employee duties
43 so as to avoid proper classification for premium calculations, or know-
44 ingly misrepresents or knowingly conceals information pertinent to the
45 computation and application of an experience rating modification factor,
46 said knowing misrepresentations or knowing concealments shall be consid-
47 ered fraudulent practices in violation of applicable provisions of
48 section one hundred fourteen of this article and insurance fraud in
49 violation of applicable provisions of section 176.05 of the penal law.

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

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

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

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

7 1. The board may adopt reasonable rules consistent with and supple-
8 mental to the provisions of this chapter and the labor law. The [~~chair-~~
9 ~~man~~] chairperson may make reasonable regulations consistent with the
10 provisions of this chapter and the labor law. The board may not utilize
11 "subject numbers", forms or other informal communications outside of its
12 rules, regulations or decisions to interpret or apply the law.

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

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

36 Any complaint alleging such an unlawful discriminatory practice must
37 be filed within two years of the commission of such practice. Upon find-
38 ing that an employer has violated this section, the board shall make an
39 order that any employee so discriminated against shall be restored to
40 employment or otherwise restored to the position or privileges [~~he or~~
41 ~~she~~] such employee would have had but for the discrimination and shall
42 be compensated by [~~his or her~~] such employee's employer for any loss of
43 compensation arising out of such discrimination together with such fees
44 or allowances for services rendered by an attorney or licensed represen-
45 tative as fixed by the board. Any employer who violates this section
46 shall be liable to a penalty of not less than one [~~hundred~~] thousand
47 dollars or more than [~~five hundred~~] ten thousand dollars, as may be
48 determined by the board. All such penalties shall be paid [~~into the~~
49 ~~state treasury~~] to the employee so discriminated against. All penal-
50 ties, compensation and fees or allowances shall be paid solely by the
51 employer. The employer alone and not [~~his or her~~] such employer's carri-
52 er shall be liable for such penalties and payments. Any provision in an
53 insurance policy undertaking to relieve the employer from liability for
54 such penalties and payments shall be void.

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

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

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

16 7. The claimant shall receive notice by mail of the scheduled inde-
17 pendent medical examination on behalf of an employer or carrier at least
18 seven business days prior to such examination. Such notice shall advise
19 the claimant if the practitioner intends to record or video tape the
20 examination, and shall advise the claimant of their right to video tape
21 or otherwise record the examination. Claimants shall be advised of their
22 right to be accompanied during the exam by an individual or individuals
23 of their choosing.

24 11. At the time of the independent medical examination on behalf of an
25 employer or carrier the claimant shall receive a notice from the entity
26 performing the independent medical examination, on a form which shall be
27 approved and promulgated by the chair, stating the rights and obli-
28 gations of the claimant and the practitioner with respect to such exam,
29 and such notice shall include but not be limited to a statement that the
30 claimant's receipt of benefits could be denied, terminated, or reduced
31 as a result of a determination which may be based upon the medical eval-
32 uation made after such independent medical examination, and the claim-
33 ant's rights to challenge or appeal such a determination.

34 § 21. The workers' compensation law is amended by adding a new section
35 208-a to read as follows:

36 § 208-a. Cost-of-living adjustments of disability benefits in certain
37 cases. 1. Notwithstanding any other provision of law, effective July
38 first, two thousand twenty-six, in addition to any other amount received
39 pursuant to this article as disability benefits, an employee with a
40 permanent total disability or the beneficiary-dependent of such employee
41 shall be entitled to an additional allowance, to be known as a cost-of-
42 living adjustment allowance, payable annually.

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

47 § 22. This act shall take effect immediately.