

## ***GLOSSARY OF “Workers Compensation” TERMS***

### **A**

**Accident, Notice and Causal Relationship** – The finding made by presiding Judge or the Board that the claimant sustained an accidental injury arising out of and in the course of employment; that timely notice thereof was given to the employer; and that the disability is causally related to the accidental injury (Sec. 2, Subd., 7; Sec. 18)

**Accidental Injury** – A personal injury which is accidental and which arose out of and in the course of employment, and such disease or infection as may naturally and unavoidably result therefrom. The term implies an unlooked for mishap or untoward event, and should be construed in line with the common sense view of the average person. (Sec. 2, Subd.7)

**Actual Reduced Earnings (ARE)** – The difference between the claimant’s post-accident earnings and pre-accident earnings. (Sec. 14)

**Actuarial Computation** – See Deficiency Compensation.

**Advocate For Business** – The Advocate for Business assists employers in New York State by resolving problems and answering questions that businesses have regarding the workers’ compensation concerns that encompass the entire system.

**Advocate For Injured Workers** – The Advocate for Injured Workers assists and protects the individual for whom the Workers’ Compensation Law was enacted – the injured worker.

**Adjournment Assessment** – A \$100.00 assessment which the Board may impose in its discretion for each hearing adjourned due to dilatory tactics or lack of preparedness on the part of carrier.

**Affidavit** – A written statement under oath or affirmation made or taken before an officer having authority to administer such oath.

**Aggregate Trust Fund** – An indivisible trust fund established under Section 27 to assure the payment of workers’ compensation in claims involving permanent total disability, the loss of major members and fatal injuries. A private carrier is required, and a self-insured employer under certain circumstances, is permitted to pay the actuarial value of claimant’s future compensation payments in the above type cases, into the fund, and upon such payment, the carrier and self-insured employer are discharged from further liability to such claimant for compensation or death benefits. (Section 27)

**ANCR** – The abbreviation for Accident, Notice, and Causal Relationship. See explanation of the Findings under "Accident, Notice and Causal Relationship," above.

**Appeal** – The legal action taken by one of the parties in the Appellate Division, Third Department, to reverse or amend a decision or direction made by a Board Panel or the imposition of an assessment made by the Chair, Workers' Compensation Board pursuant to Section 52(5) of the Law. (Sections 23, 224, WCL and Sections 46, V.F.B.L and V.A.W.B.L.)

**Application For Review** – A written request to the Workers' Compensation Board for review of an award or decision of a W.C. Law Judge, specifying the grounds on which it is made. It must be filed within 30 days after notice of the filing of the decision sought to be reviewed, accompanied by a cover sheet and should be directed to the Workers' Compensation Board.

**Arising Out Of and In The Course of Employment** – The injury that "arises out of" the employment is one that was caused by a hazard of the employment. The injury that is "in the course of employment" is one that arose at a time, place, and under circumstances related to the employment. Both conditions must be satisfied in order to establish a work-connected accidental injury. (Sec. 2, Subd. 7)

**Authorized Physician** – A physician licensed to practice medicine in the State of New York who has been authorized by the Chair of the Workers' Compensation Board to render medical care or treatment under the Workers' Compensation Law. The authorization specifies the character of the medical care which the physician is authorized to render. (Sec. 13-b, Subd. 2)

**Authorized Podiatrist** – A podiatrist licensed to practice podiatry in the State of New York who has authorized by the Chair of the Worker' Compensation Board to render podiatric care or treatment under the Workers' Compensation Law. When care is required for injury to the foot, the injured worker may select to be treated by any authorized physician or podiatrist. (Sec. 13-k)

**Authorized Chiropractor** – A chiropractor licensed to practice in the State of New York who has been authorized by the Chair of the Workers' Compensation Board to render chiropractic care under the Workers' Compensation Law within the limits prescribed by the Education Law.

**Authorized Psychologist** – A psychologist licensed to practice in the State of New York who has been authorized by the Chair of the Workers' Compensation Board to render psychological care under the Workers' Compensation Law within the limits prescribed by the Education Law.

**Average Weekly Wage (WCL)** – The average weekly wage is one-fifty second part of the average annual earning of the injured worker. Such average annual earnings are computed in one of the following ways:

If the claimant worked in the employment in which the injury occurred substantially the whole year preceding the injury, whether for the same employer or not, the average annual earning will consist of three hundred times the average daily wage if he/she was a six-day worker, and two hundred and sixty times the average daily wage if he/she was a five-day worker. A claimant who has worked ninety percent of the year preceding the injury, is deemed to have worked substantially the whole year. In the event the claimant has not worked a substantial part of the year the average daily wage of another employee of the same class, who has worked substantially the whole of such immediately preceding year in the same or similar employment, in the same or a neighboring area will be used to fix the claimant's average annual earnings. Where the employment itself as distinguished from the claimant's relationship to it, is intermittent or discontinuous, and the multiplication of claimant's average daily wage by either the three-hundred multiple or the two hundred and sixty multiple will not accurately reflect his/her annual earning capacity, the claimant's average annual earnings will be fixed at two-hundred times his/her average daily wage in the employment in which the injury occurred. (Section 14)

## **B**

**Binder** – A temporary insurance contract which, except for specified differences, contain the terms of the contract which will replace it. The binder obligates the carrier to fulfill the terms of the contract just as if the final contract were in effect.

**Board of Consultants** – Two compensation examining physicians appointed by the Board Medical Director, when a Principal Medical Examiner is not available, to examine a claimant when objection is taken to the report of another compensation examining physician in schedule type cases exclusive of eye and ear cases.

**Board Denial** – A Board decision denying the relief sought in an application for review of a W.C. Law Judge's decision because the application failed to conform to Board Rule(s) or statute.( Sections 23, 224 and Board Rules 13,14, and 15)

**Board Panel** – A panel of three Board Members who render decisions on applications for review of Judges' decisions.

**Board Review** – Where a Judge's decision is disputed, the aggrieved party may file an application for a review thereof with the Board. The Board's decision on the application will contain a statement of the facts which formed the basis of its action on the issue

raised. Appeals from Board decisions may be taken to the Appellate Division of the Supreme Court, Third Department, and thereafter to the Court of Appeals. (Sections 23, 224, Board Rule 13)

## C

**Calendar** – A list of cases scheduled to be heard on a given date at a specific part of hearing point. (Section 141; Board Rules 4, 7, 8, and 9)

**Carrier** – The term applies to the State Fund, stock corporations, mutual corporations, or reciprocal insurers with which employers cover their liability under the Workers' Compensation Law, the Volunteer Firefighters' Benefit Law, and the Volunteer Ambulance Workers' Benefit Law. The term also applies to self insured employers. The carrier is liable for the payment of indemnity benefits and where indicated, medical care.(Section 2, Subd 12; Section 50)

**Causal Relationship** – The connection between the claimant's physical condition and the accidental injury or occupational disease. ( Section 2, Subd. 7)

**Chiropractic Fee Schedule** – The schedule established by the Chair of the Workers' Compensation Board and charges and fees for chiropractic treatment and care furnished to workers' compensation claimants. (Section 13-1)

**Claim (WCL)** – A request on a prescribed form C3 (or C121 if claimant is also commencing a third party action) for workers' compensation for work connected injury, occupational disease disablement, or death (form C-62) resulting from either cause. A claimant must file a claim within a two-year period from the occurrence of the accidental injury, occupational disablement or death. Failure may bar an award for compensation unless the employer has made advance benefit payment in which event the claim filing requirement is deemed waived. (Sections 20, 28)

**Committee** – A responsible person or persons appointed by a court to protect the interests of a mental incompetent. If a committee has not been appointed, the time limitations under the Workers' Compensation Law do not run. (Section 115)

**Commuted Award** – The actuarially determined value of an award, payable bi-weekly for a period of future disability, which is changed into a single fixed or gross sum payable into the Aggregate Trust Fund. (Section 15, Subd. 5-b; Sections 25, 25b, 27, W.C.L. and Sections 54, V.F.B.L. and V.A.W.B.L.)

**Compensation Examining Physician** – A Workers' Compensation Board employee appointed under Civil Service Regulations to examine claimants for the Workers' Compensation Board. (Section 19)

**Conciliation** – The Conciliation Bureau reconciles issues in non-controverted cases where the expected duration of benefits is sixteen weeks or less. Failure to reach agreement results in the case being scheduled for a hearing.

**Consequential Accident** – A second accident resulting from a prior accidental injury which arose out of and in the course of employment. For example, a claimant falling down a flight of stairs at home while using crutches because of a leg injury incurred at work. (Section 2, Subd. 7)

**Continuing Jurisdiction** – The jurisdiction of the Workers' Compensation Board over a workers' compensation claim is continuing, and the board may from time to time within its discretion, reconsider a claim, change its findings, and either make new awards or modify outstanding awards as in its opinion may appear just. (Section 123)

**Controverted Claim** – A claim rejected by the carrier on stated grounds. A pre-hearing conference (and necessary hearings) for the determination of these grounds is set by the Board, and the parties are directed to appear and present their case. (Section 25)

## D

**Date Certain** – An action taken by a judge at a hearing in which he arranges for the next hearing of the case on a particular day and time when required witnesses may appear.

**Day of Disability** – Any day on which the employee was prevented from performing work because of disability and for which he/she has not received the regular remuneration. (Section 2-1, Subd. 14)

**Deficiency Compensation** – The difference between the net recovery in a third party action instituted by a claimant on account of work-connected accidental injury and the amount of workers' compensation payable for such injury, if such amount is larger. Deficiency compensation is payable by the workers' compensation carrier. (Section 29, W.C.L. and Sections 20 V.F.B.L. and V.A.W.B.L.)

**Dependency** – Death benefits in a fatal injury case may be payable under certain circumstances, to surviving blind or physically disabled dependent children over the age of 18, dependent grandchildren, brothers and sisters under the age of 18 ( or under Workers' Compensation Law, to age 23, if enrolled and attending as a full time student in an accredited educational institution; under Volunteer Firefighters' Benefit Law an Volunteer Ambulance Workers' Benefit Law, to age 25, if enrolled in any accredited educational institution) and dependent parents and grandparents. These claimants must prove their dependency upon the deceased employee. The regular receipt of contributions by the alleged dependent on which he/she relies and needs, even only partially, to sustain

his/her customary mode of living, constitutes dependency. The surviving spouse or children under 18 years of age are not required to prove dependency. (Section 15, Subd. 4)

**Deposition** – Evidence of testimony of a witness based upon a series of questions drawn up for the purpose of ascertaining the facts. Depositions are taken where witnesses cannot appear at a hearing before the Board. The questions and answers are part of a proceeding before an official person. (Section 121; Board Rule 19)

**Disability (Total)** – Disability which precludes a claimant from earnings any wages. Such total disability can be either established on a medical basis alone or can be established based upon a combination of medical factors and industrial considerations such as age, education, experience, special skills and other factors of a personal nature related to the claimant's ability to work. (Section 15, Subds. 1,2)

**Disability (Partial)** – Disability which allows a claimant to engage in some kind of gainful employment. The difference between the claimant's pre-accident earnings and post-accident earnings is determinative of the reduced earnings rate. In the absence of actual post-accident earnings, the Board may, in the interest of justice, fix such wage earning capacity as is reasonable. (Section 15, Subds. 5, 5-a)

**Double Compensation** – A duplicate award of either compensation or death benefits made on the ground that the injured employee, at the time of the accident, was under the age of 18 years and was permitted or suffered to work in violation of the New York Labor Law or of a rule of the Board of Standards and Appeals. The employer alone and not the carrier is liable for the additional compensation. (Section 14-a)

**Double Indemnity** – The same as Double Compensation. See explanation appearing immediately above.

## E

**Earning Capacity** – The ability of a claimant, who has suffered a work-connected disabling injury, to earn wages in the labor market. A claimant's earning capacity is determined by his/her actual post-accident earnings. In the event there are no actual earnings, the Board may establish a theoretic wage earning capacity which is reasonable on the basis of the record but not in excess of 75% of the claimant's former full time actual earnings. (Section 15, Subd. 5-a)

**Election of Remedies** – The right of a claimant whose employer was uninsured at time of the accident, to bring a court action against such employer in lieu of claiming workers' compensation. (Section 11)

**Employee Contributions** – Under the Disability Benefits Law, an employee may be required to contribute ½ of 1% of the employees wages, but not more than 60 cents per week. Where benefits are being provided under a plan approved by the Chair, contributions of employees may be reduced or eliminated; or may be at a higher rate if the employer and employees have agreed thereto and the employee contribution is reasonably related, in the judgement of the Chair, to the value of the benefits payable. (Section 209, Subd. 3)

**Exclusiveness of Workers' Compensation Remedy** – The legislature has established the Workers' Compensation Law as the Exclusive remedy of an employee and his /her dependents in a death case against the employer who has secured workers' compensation. It is the sole recourse that the injured employee, dependents or representatives have against the employer for injuries or death resulting from a work-connected accident or occupational disease. If an employer who is required to secure workers' compensation insurance fails to do so, the employee, if disabled due to a work-connected injury, has the right to elect to either claim workers' compensation or to maintain an action against the uninsured employer for damages. (Section 11)

**Exclusiveness of Workers Compensation Remedy** - The legislature has established the Workers' Compensation Law as the exclusive remedy of an employee and his personal representatives against his employer who has secured Workers' Compensation. It is the sole recourse that the injured employee, his dependents or representatives have against the employer for injuries or death resulting from a work-connected accident or occupational disease. If an employer who is required to secure Workers' Compensation insurance fails to do so, his employee if disabled due to a work-connected injury, has the right to elect to either claim Workers' Compensation or to maintain an action against the uninsured employer for damages. (Section 11)

## F

**Facial Disfigurement Award** – An award of compensation for serious permanent facial or head disfigurement. (Section 15, Subd. 3, par.t)

**Final Adjustment (FA)** – A hearing held in cases involving the loss or loss of use of a member or organ of the body in which the principal issue is the extent of loss or loss of use. (Section 15, Subd. 3)

**Fund For Reopened Cases** – A fund created under the Workers' Compensation Law to assume liability for claims of compensation in certain “stale” cases where specified time limits have elapsed. (Section 25a, W.C.L., and Sections 51, V.F.B.L. and V.A.W.B.L.)

## G

**General Employer** – The general employer is the regular or parent employer who makes the employee available to a special employer. The general employer usually exercises indirect control and the special employer or both may be liable for the compensation due to the injured employee. (Section 2, Subds. 3,4)

## H

**Hearing (WCL)** – The Law provides that “no case shall be closed without notice to all interested parties and without giving to all such parties an opportunity to be heard.” These “hearings” are held before Judges who hear and determine claims for compensation for the purpose of ascertaining the substantial rights of the parties. (Section 20, 150)

**Hearsay Evidence** – Testimony based upon second-hand information not known directly by the witness but related by someone else, constitutes hearsay evidence. It is admissible in a workers’ compensation proceeding. Declarations of a deceased employee concerning the accident are receivable in evidence, and if corroborated by circumstances or other evidence are sufficient to establish the accident and the injury. (Section 118)

## I

**In Line of Duty** – Injures to volunteer firefighters are deemed to be in line of duty if incurred in the course of necessary travel to and from, and work at, a fire, alarm of fire, hazardous material incident or other emergency to which the fire company or any unit thereof has responded, or would be required or authorized to respond and necessary travel during such work. It also covers (1) the performance, pursuant to orders of authorization, including necessary travel directly connected therewith, of duties in the firehouse or elsewhere and the investigation thereof as well as the inspection of property for fire hazards or other dangerous conditions; (2) Instruction in fire duties and authorized attendance at a fire school; (3) attendance or work at meetings if the fire department or fire company or any unit thereof; (4) work in connection with the construction, testing, inspection, repair or maintenance of the firehouse and the fixtures, furnishings and equipment thereof, the fire fighting vehicles, fire apparatus and equipment, the fire alarm system, water supply system, fire well, fire cistern or fire suction pool use by the fire department or fire company or other unit thereof; (5) engaging in the inspection of fire fighting vehicles and fire apparatus prior to delivery under a contract of purchase, or performing duties in relation to the delivery thereof; (6) authorized participation in any drill, parade, inspection or review or competitive tournament, contest or public exhibition which the fire department or company or any unit thereof is engaged in and attendance at

## *Glossary of Workers Compensation Terms*

a convention or conference as an authorized delegate of the fire department, company or unit thereof; (7) authorized work in connection with a fund raising activity of the fire company within the limits of Section 204-a of the General Municipal Law. It also extends to necessary travel to, work in connection with, and necessary travel returning from a call for general ambulance service by a member of an emergency relief squad which has been authorized to furnish such service pursuant to Section 209-b of the General Municipal Law; (8) performing work or service leading or directing a youth program pursuant to Section 204b of the G.M.L.; (9) performing the duty of pumping out water or any other substance from the basement or other part of a building; (10) traveling, supervising, being instructed or participating in a supervised physical fitness class, group, session or program for the purpose of promoting or maintaining the performance of their duties or responsibilities. (Section 5(1) VFBL)

**Indexed Claim** – A claim case folder when assembled is referred to as an indexed claim. (Section 141)

### **J**

**Jurisdiction (WCL)** – The Workers’ Compensation Board has the right to hear and determine a workers’ compensation case if the employment was located in New York. Proof of the latter would be some of the following contacts with New York State; (1) hiring in New York, (2) work in New York, (3) control of out of state employment from New York, (4) residency of claimant in New York, (5) understanding that the claimant is to return to New York, following completion of the out-of state assignment, and (6) occurrence of injury in New York.

### **L**

**Laches** – The failure by a party to assert a right or request the enforcement of a right for a period of time which is unreasonable and unexplained.

**Licensed Representative** – A person other than an attorney who is authorized by the Workers’ Compensation Board to represent claimants before the Board, and in some instances, to receive a fee, fixed by the Board for such services. Also, a person other than an attorney who is authorized by the Workers’ Compensation Board to represent carriers self-insurers before the Board. (Sections 24a, 50 (3-b), 225); (Board Rule Licenses)

**Lost Time (LT)** – The phrase indicates that the claimant’s disability has caused lost time and loss of earnings beyond the waiting period (the first seven days of disability). In workers’ compensation cases only, if the disability exceeds 14 days, compensation will be payable from the first day of disability. There is no waiting period in VFBL or VAWBL cases. (Sections 12, 204.(1)) There is a one week waiting period in Disability Benefits cases regardless of the length of disability.

**Lump-Sum Non-Schedule Adjustment** – A lump sum paid to a claimant in a non-schedule disability case in which the continuance of disability and of future earning capacity cannot be ascertained with reasonable certainty. Such lump sums must be submitted to the Board for approval after they have been agreed to by the claimant and the carrier. (Section 15, Subd. 5-b)

## M

**Managed Care Pilot Program** – A pilot program created by Chapter 729 of the Laws of 1993, which seeks to ensure prompt medical treatment and care of injured workers, enhance the quality of such treatment and care, promote employees' swifter return to work, improve safety in the workplace, and reduce medical and other health care costs. (See page 20 for additional information on this pilot program.)

**Medical Fee Schedule** – The schedule established by the Chair of the Workers' Compensation Board of charges and fees for medical treatment and care furnished to workers' compensation claimants. (Section 13, Subd. (a))

**Modify Previous Award (MPA)** – A direction by a presiding Judge or a Board Panel ending, reducing or increasing the workers' compensation previously awarded to the claimant. (Sections 22, 223)

**Motion Calendar Hearing** – An ex-parte hearing on a case in which no controversy or issue exists. The notice of hearing contains the proposed decision, and the interested parties are advised that they may file objections/request a formal hearing, within 30 days

## N

**No Claim Paper** – A form, paper, or correspondence received by the Board which does not warrant the indexing of a claim case folder. These papers are filed in the No-Claim file.

**No Dependency Death Case** – A death case in which there are no persons eligible to receive workers' compensation benefits. In such case, the employer or his insurance carrier pays the funeral expenses pursuant to the fee schedule and \$2,000 into the Vocational Rehabilitation Fund, and \$3,000 into the Special Fund for Reopened Cases. Under certain circumstances, the \$1,500 payment is paid to the Uninsured Employers' Fund instead. (Sections 15 (9), 16 (1), and 25-a (3), WCL, and Sections 15, 51 VFBL and VAWBL)

**No Lost Time (NLT)** – Claimant has not lost time beyond the waiting period (the first seven days of disability) as a result of work-connected injuries. (Section 12)

**Non-Insurer** – A subject employer who has failed to provide for the payment of benefits to his/her employees either under the Workers’ Compensation Law or under the Disability Benefits Law. (Sections 50, 220)

**Notice (WCL)** – Employees who are injured on the job must give their employers notice in writing of the occurrence as soon as possible but not later than 30 days thereafter. The Board may excuse the failure to give notice on the ground that notice for some sufficient reason could not have been given on the ground that the employer had knowledge of the accident or on the ground that the employer had not been prejudiced thereby. In addition, a claim must be filed with the Board within two years. Failure to file a claim may bar an award of compensation unless the employer has made advance payments to the injured worker or has failed to raise the issue at the first hearing at which all parties were present. (Sections 18, 28, 40, and 45)

**Notice (VFBL & VAWBL)** – Under the Volunteer Firefighters’ Benefit Law and the Volunteer Ambulance Workers’ Benefit Law, notice of injury or death must be given by the injured volunteer firefighter or ambulance worker or his/her dependents within 90 days after the injury or death. (See Q. and A. 14 under the Volunteer Firefighters’ Benefit Law and Q. and A12 under the Volunteer Ambulance Workers’ Benefit Law)

## O

**Occupational Disease** - A disease arising from the conditions to which all employees of a class are subject and which produces the disease as a natural incident of a particular occupation as distinguished from and exceeding the hazard and risk of ordinary employment. A disease does not become an occupational disease merely because it is contracted on the employer’s premises in the course of the employment; it must be one which is commonly regarded as natural to, inhering in, or an incident of the work in question. There must be a recognizable link between the disease and some distinctive feature of the claimant’s job. (Sections 2 (15), 3(2), 37)

## P

**Podiatry Fee Schedule** – The schedule established by the Chair of the Workers’ Compensation Board of charges and fees for podiatric treatment and care furnished to workers’ compensation claimants. (Section 13-K)

**Pre-Hearing Conference** – If a case is controverted, the Board must schedule a pre-hearing conference before a W.C. Law Judge within sixty days of the receipt of notice of controversy from carrier or employer. This hearing is for the purpose of identifying witnesses, limiting issues and, if possible, to establish the case upon the agreement of the parties.

**Presumptions** – In a claim for workers’ compensation, it is presumed in the absence of substantial evidence to the contrary, that the claim falls within the Law; that sufficient notice was given; that the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death; and that death did not result solely from the intoxication of the injured employee. (Sections 21, 47)

**Principal Medical Examination** – Examination of a claimant by a supervising compensation examining physician (Principal Medical Examiner) when objection, substantiated by medical evidence, is taken to the report of a compensation examining physician in schedule type cases exclusive of eye and ear cases.

**Protracted Healing Period** – In the case of temporary total disability and permanent partial disability both resulting from the same schedule injury, if the period of temporary total disability continues for a longer period than the normal hearing period as set forth in Section 15, Sub. 4-a, the period of temporary total disability in excess of such normal healing period is added to the schedule award. ( Section 15, Subd. 4-a, WCL and Sections 9, VFBL and VAWBL)

## **R**

**Red Seal Summons** – A summons issued by the Board requiring an employer to appear at the Board or to furnish information by mail regarding compliance with either the Workers’ Compensation Law or the Disability Benefits Law.

**Reduced Earnings (RE)** – A compensation rate based on the claimant’s reduced earning or reduced earning capacity due to a condition related to a compensable injury. (Section 15)

**Referee ( W.C. Law Judge)** – A quasi-judicial officer appointed by the Chair of the Workers’ Compensation Board, to hear and determine claims and to conduct such hearings and investigations and make such orders, decisions, and determinations as may be required in the adjudication of the claims. The decision is deemed the decision of the Board unless the Board modifies or rescinds such decision. (Section 150)

**Reformation of Insurance Policy** – The Workers’ Compensation Board has the power to reform or rectify an insurance policy whenever the policy fails through fraud or mutual mistake to reflect the real agreement or actual intention of the parties.

**Rehabilitation** - The process of restoring injured workers to productive employment through physical means, medical procedures, vocational retraining, selective placement, and social readjustment. Rehabilitation is an integral part of the medical care and other services furnished a claimant under the Law. (Section 13, Subd. a)

**Remarriage Award** – An award of two years' compensation paid in a lump sum, to the surviving widow or surviving widower of a fatally injured worker upon his or her remarriage. ( Section 16, Subd. 2)

**Reopened Case** – A case which has been closed by a Judge or the Board, and is subsequently made active again to determine the claimant's eligibility for benefits. (Sections 22, 23, and 224)

**Reopened Cases Fund** – When an application to reopen a closed case is made more than seven years from the date of injury and more than three years from the date of the last payment of compensation, liability for any additional workers' compensation awarded in the case is imposed against the Reopened Cases Fund. The latter is financed through payments in non-dependency death cases and through assessments made periodically against all carriers. (Section 25-a, WCL and Sections 51, VFBL and VAWBL)

**Request for Reimbursement** – A request by an employer for reimbursement of wages paid to an employee for a period during which the employee was eligible to receive workers' compensation or disability benefits. Also, a request by a compensation carrier for reimbursement out of the Special Disability Fund (Second Injury Fund); and a request by a disability benefits carrier for reimbursement of benefits paid to a claimant while the workers' compensation case was being litigated. (Sections 15 (8), 25, 206 (2))

**Review Assessment** – An assessment made by the Board where the decision of a W.C. Law Judge is affirmed by the Board upon review. A carrier or employer seeking such a review is assessed \$150; all other parties may be assessed \$20. ( Section 142)

## S

**Schedule Loss** – The number of weeks of compensation payable for permanent partial disability due to the loss of use of certain members of the body or organs as listed in Section 15, Subd. 3 of the Law. (Sections 10, VFBL and VAWBL)

**Second Injury Fund** – A Fund technically known as the Special Disability Fund, created to encourage employers to hire people with disabilities by protecting them against a disproportionate liability in the event of subsequent employment injury. At the same time, the Second Injury Law assures the injured worker full workers' compensation benefits. ( Section 15, Subd. 8)

**Second Injury Law** – This Law is designed to encourage the employment of people with disabilities by limiting the liability of an employer in the event they sustain permanent disability due to work connected injury (Section 15, Subd. 8)

### **Second Injury Law**

(Section 15, Subd. 8, W.C.L.)

NYSIF Training Program  
For Internal Use

## DECLARATION OF POLICY AND LEGISLATIVE INTENT

As a guide to the interpretation and application of this subdivision, the policy and intent of this legislature is declared to be as follows:

First: That every person in this state who works for a living is entitled to a reasonable opportunity to maintain his independence and self-respect through self-support even after he has been physically handicapped by injury or disease;

Second: That any plan which will reasonably, equitably and practically operate to break down hindrances and remove obstacles to the employment of partially disabled persons honorably discharged from our armed forces, or any other physically handicapped persons, is of vital importance to the state and its people and is of concern to this legislature;

Third: That it is the considered judgment of this legislature that the system embodied in this subdivision, which makes a logical and equitable adjustment of the liability under the Workers' Compensation law which an employer must assume in hiring employees, constitutes a practical and reasonable approach to a solution of the problem for the employment of physically handicapped persons.

Moreover, because of the insidious nature of slowly developing diseases such as silicosis and other dust diseases and because of the reluctance on the part of employers to employ persons previously exposed to silica or other harmful dust, means should also be provided whereby employers will be encouraged to employ and to continue the employment of such persons by apportioning liability fairly between the employer and industry as a whole without at the same time- removing any incentive for the prevention of harmful dust diseases.

**Self-Insurance** – A method by which an employer or group of employers may secure the payment of workers' compensation or disability benefits for its employees by depositing securities, cash, letters of credit or a surety bond in an amount required by the Chair of the Workers' Compensation Board. This method is in lieu of purchasing insurance from an insurance carrier. (Sections 50, 211, WCL and Sections 3, Subd. 13, VFBL and VAWBL)

**Slow-Starting Occupational Disease** – The Law identifies the diseases in this category as those caused by compressed air illness or its sequelae, or by latent or delayed pathological bone, blood or lung changes or malignancies due to occupational exposure or contact with arsenic, benzol, beryllium, zirconium, cadmium, chrome, lead or fluorine or exposure to X-rays, radium, ionizing radiation, or radioactive substances. (Section 28)

**Special Funds** – These are Funds specifically created in the Workers’ Compensation and Disability Benefits Laws. There are nine such Funds. They are designed mainly to assure payment of benefits to claimants. In certain instances, (Section 15, Subd. 8 and Section 25-a) the liability of the employer for compensation to the injured is transferred to the Fund, and the employer is relieved in part or in whole of such liability. (Section 15, Subd. 9, 25-b, 26-a, 107 214, 319)

**Special Funds Conservation Committee** – A committee created in accordance with Section 15, Subd. 8, and Section 25-a of the Law to defend claims made against the Special Funds created under those sections.

**State Insurance Fund** – A fund created by the State pursuant to Section 76 of the Law for the purpose of insuring employers in the field of workers’ compensation, disability benefits, volunteer firefighters and volunteer ambulance workers benefit insurance.

**Statute of Limitations** – Statutory enactments that prescribe the periods within which actions may be brought upon certain claims or within which certain rights may be enforced. Some of the statutes of limitations in the Workers’ Compensation Law are:

**Section 15, Subd. 8.** In a Second Injury Law case, the employer or carrier must file notice of claim for reimbursement from the Special Disability Fund within 104 weeks after the date of disability or death, or in a reopened case, no later than the determination of permanency upon such reopening.

**Section 18.** Written notice of injury or death must be given to the employer within 30 days after the accident causing such injury. ( Note: The Board may excuse the failure to do so on specified grounds.)

**Section 23.** An application for Board review must be made within 30 days after the filing of the award or decision of the Judge. An appeal to the Appellate Division, Third Department, must be taken within 30 days after notice of the Board decision.

**Section 25-a.** An application for compensation may be made against the Reopened Cases Fund after a lapse of seven years from the date of injury or death and also a lapse of three years from the date of the last payment of compensation. Awards made against the Reopened Cases Fund are not retroactive for a period of more than two years immediately preceding the date of filing of the application for reopening.

**Section 28.** The right to claim compensation is barred unless a claim for compensation is filed with the Chair of the Board within two years after the accident. An employer is deemed to have waived the bar of this statute unless the objection to the failure to file the claim within two years is raised at the first

hearing on such claim at which all parties in interest are present. Also no case in which an advance payment is made is barred by the failure to file a claim. (Important: The Board may not excuse the failure to file a claim within the two year period.)

**Section 54, Subd. 5.** No contract of workers' compensation insurance may be canceled within the time limits in such contract, prior to its expiration for non-payment of premiums, until at least 10 days after notice of cancellation is filed in the office of the Chair and also served on the employer. When cancellation is due to any other reason, cancellation is not effective until at least 30 days after notice of cancellation is filed in the office of the Chair and also sent to the employer.

**Section 110.** Every employer shall report within 10 days of the occurrence of an accident resulting in personal injury which has caused or will cause a loss of time beyond the day of the occurrence or which has required or will require medical treatment beyond ordinary first aid or more than two treatments by a person rendering first aid.

**Section 115.** No limitation of time shall run as against any person who is mentally incompetent or a minor so long as he/she has no committee or guardian.

**Section 120.** Any complaint alleging an unlawful discriminatory practice must be filed within 2 years of such practice.

**Section 123.** No awards of compensation or death benefits may be made after a lapse of 18 years from the date of injury or death and a lapse of 8 years from the date of the last payment of compensation.

**Status Quo Ante** – The term signifies that a claimant's health has returned to what it was before the occurrence of the accident.

**Subpoena** – A legal writ commanding a designated person to appear and give testimony at a workers' compensation hearing under penalty for failure to do so. The Chair, Board Members, Judges, officers of the Board designated by the Chair and any attorney may sign and issue a subpoena, or a subpoena duces tecum, the latter requiring the production of records. (Sections 119, 142 (3), 231)

**Subrogation** – The assignment of a cause of action against a third party by the claimant to the carrier. Failure of a claimant to commence a third party action, if cause therefore exists, within the period of time specified in Section 29 (in Workers' Compensation case) and 227 (in a Disability Benefits case) operates as an assignment of the cause of action to the carrier liable for payment of compensation or disability benefits provided that proper notice of such subrogation is given to the claimant. (Sections 29, 227, WCL; Sections 20, VFBL and VAWBL)

## T

**Temporary Reduced Earnings Rate (TRE)** – A temporary reduced earnings rate of compensation pending adjudication of the actual amount of reduced earnings or the determination of the claimant’s reduced wage earning capacity. (Section 15, Subs. 5, 5-a)

**Tentative Rate (TR)** – The tentative rate of compensation pending final adjudication of the issues relating to rate. (Sections 14,15)

**Third Party Settlement** – When an employee is injured by the negligence or wrong of a party he/she may sue such party other than the employer or a fellow employee, if injured in the course of employment. The carrier which has paid compensation or disability benefits to the employee has a lien against any recovery in the third party action. A settlement of such action is called a third party settlement. (Sections 29, 227, WCL; Sections 20, VFBL and VAWBL)

## U

**Uninsured Employers’ Fund** – A special fund which provides for the payment of workers’ compensation in cases where the employer was not insured or self insured. (Section 26-a)

## W

**Wage Expectancy** – The wages of a claimant, who is a minor at the time of the occurrence of the accident, are presumed to increase under normal conditions, and the Board may consider the fact in establishing the claimant’s compensation rate if the injuries are permanent. (Section 14, Subd. 5)

**Wages** – The money rate at which employment with an employer is recompensed under the contract of hiring with the employer and shall include the reasonable value of board, rent, housing, lodging or similar advantage received under the contract of hiring. (Section 2, Subd. 9, Section 201, Subd. 12)

**Waiting Period** – Neither workers’ compensation nor disability benefits are allowable for the first seven days of disability, except that (1) in the case of an on-the-job accident, if disability exceeds 14 days, cash compensation is allowable from the date of the disability; and (2) in the case of disability benefits, (a) the sick unemployed, receiving unemployment insurance at the time they become sick, are not subjected to a waiting period, and (b) under a plan or agreement accepted by the Chair, the waiting period may be less than 7 days or eliminated entirely. There is no waiting period in VFBL and VAWBL cases. (Sections 12, 204, 211) (Sections 43, VFBL, VAWBL)