

## **Workers' Comp Bill Will Save Employers Money—And Crack Down on Fraud**

Changes on the horizon for New York's perennially troubled workers' compensation system may be a source of celebration for employers who have long struggled with it—but the proposed law contains stricter penalties for non-compliance that may also arouse their concern.

As of March 7, 2007, the bill has been passed by the Senate and is almost certain to be signed into law. The reforms proposed under the bill will implement a series of cost-saving measures to reduce the premiums paid into the system by employers. It has been estimated that employers will save up to \$1 billion over several years as a result. At the same time, the bill provides for incremental increases in workers' weekly benefits. It also imposes new recordkeeping requirements on employers.

Some of the major cost-saving measures of the reformed system include a cap on the time period that permanent partially disabled workers can receive weekly checks—up to a maximum of 525 weeks, rather than through to retirement age—and the creation of a fee schedule for the drugs, lab tests, and

prosthetic devices used in workers' compensation cases.

Other savings are expected to result from a crackdown on employer fraud. Under the proposed new system, the antifraud division will be increased in size and armed with stricter civil and criminal penalties. Employers who defraud the system will be prohibited from receiving state and municipal contracts for five years, and state officials will be authorized to shut down construction projects or other operations if any workers on site do not have coverage.

Among the more striking aspects of the reform bill are the criminal penalties for failure to secure workers' compensation coverage. The bill, as presently written, makes it a Class E felony for an employer to fail to secure coverage for five or more employees during a twelve month period, punishable by fines of no less than five thousand and no more than fifty thousand dollars. A second violation is a Class D felony.

### **Employers Beware**

Under a literal interpretation of this law, the misclassification of an employ-

ee as an independent contractor may be deemed a failure to secure coverage and expose the employer (and, if a corporation, its president, secretary, and treasurer) to criminal liability. Read accordingly, the implications of this provision are quite severe. However, the bill does provide employers and corporate officers with an affirmative defense to criminal liability if they can show that they took “reasonable steps” to secure coverage. The extent to which this affirmative defense mitigates the risk of criminal liability will ultimately depend upon how the new bill is interpreted and enforced.

**For more information on the implications of this reform bill, or any other labor and employment matter, please contact:**

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