

# Workers Compensation Claim State Environmental Guide – New York

NEW YORK – <http://www.wcb.ny.gov/>

## Indemnity issues

Temporary Total Benefits	Injured workers' weekly benefits are determined at 2/3 of the average weekly wage 52 weeks prior to the date of loss. There is a seven day waiting period; retroactive back to the first day of lost time after 14 days. The maximum rate changes every year effective July 1 <sup>st</sup> and is equivalent to 2/3 of the NYS AWW as reported by the Dept. of Labor. The current maximum weekly benefit rate for dates of accident on or after 7/1/17 is \$870.6. The minimum weekly benefit rate is \$150 for accidents on or after 5/1/13.
Temporary Total Caps	No duration caps on TT.
Temporary Partial Benefits	Injured workers' weekly benefits are determined at 2/3 of the average weekly wage 52 weeks prior to the date of loss. There is a seven day waiting period; retroactive back to the first day of lost time after 14 days. TPD benefits are calculated by multiplying the percent of disability by the AWW and then taking 2/3 of that, up to the maximum rate. The minimum weekly benefit rates apply to TPD.
Permanent Partial Benefits	Injured workers' weekly benefits are determined at 2/3 of the average weekly wage 52 weeks prior to the date of loss up to the maximum rate. Permanency involving the loss of hearing, eyesight or use of an extremity is scheduled based on the 2012 Impairment Guidelines. For dates of loss on or after 3/13/2007, unscheduled permanency awards are capped benefits determined in accordance with the NYS Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity as explained below. For dates of loss on or after 4/9/17, insurance carriers may receive a credit against the maximum benefits payable for permanent partial disability for any periods of temporary disability paid beyond 130 weeks.
Permanent Partial based on AMA Guidelines	Permanent Partial Disability is not based on the AMA Guidelines. Effective, January 1, 2012, the NYS Guidelines for Determining Permanent Impairment and Loss of Wage Earning Capacity were enacted. The determination is a three step process. The first step is initiated when the Injured Worker reaches Maximum Medical Improvement. The second step involves medical opinions of impairment and functional capacity. Lastly, the Judge reviews all medical and vocational factors and determines the Loss of Wage Earning Capacity (LWEC).
Permanent Total Benefits	Injured workers' weekly benefits are determined at 2/3 of the average weekly wage 52 weeks prior to the date of loss up to the maximum rate. PTD benefits are lifetime payments.

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**Indemnity issues**

Fatality Benefits	Fatality benefits are determined at 2/3 of the average weekly wage 52 weeks prior to the date of loss up to the maximum rate. Benefits are paid to the surviving spouse until remarriage. Dependents are eligible for fatality benefits through age 25 while enrolled in school. Non-dependent family members can claim a \$50,000 cash benefit. In cases where there are no dependents or family members, a one-time payment is made to the State of NY in the amount of \$5,000. In addition, there is a funeral benefit of \$10,500 or \$12,500 based on region.
Vocational Rehabilitation	Vocational Rehabilitation (ACCESS) is optional and not required by law. VESID/ACCESS is a program in New York State that allows injured workers to receive additional training to return to the workforce.
Settlement Allowed	Settlements can be “full and final” or indemnity only.
Cap on benefits, exceptions	TTD – No duration caps. TPD – No duration caps. PPD – Duration caps exist for dates of loss after 3/13/07, based on loss of wage earning capacity. For dates of loss prior to 3/13/07, there are no caps on PPD benefits. PTD – No duration caps on PTD. This is a lifetime benefit.

**Medical issues**

Initial Choice of Provider	An injured worker has the right of choice, except for diagnostic testing and pharmacy, unless the employer is formally enrolled in a Managed Care Program for WC. If enrolled, the employer may direct care for 30 days.
Change of Provider	An injured worker has the right to change providers unless their employer is enrolled in Managed Care and it is within the 30 day period.
Medical Fee Schedule	NY’s medical fee schedule is not based on Medicare. NY also has Prescription, Dental and DME fee schedules.
Managed Care	Managed Care is an optional program available to employers. There is a formal enrollment process that must be adhered to. An employer must be located in a certified county. There currently are 31 certified counties. For more information, please refer to the <a href="#">WC Managed Care Quick Reference Chart by State Guide</a> .
Utilization Review	Utilization Review (UR) is only required for treatment to body parts covered by the NYS Medical Treatment Guidelines that is not already approved within these guidelines.
Treatment Guidelines	NYS Medical Treatment Guidelines (MTGs) took effect on 12/1/2010 for Neck, Back, Knee and Shoulder; Carpel Tunnel Guidelines 3/1/13; Non-Acute Pain Guidelines 12/14/14. Treatment inconsistent with these guidelines requires a variance request (MG2) to be submitted by the treating provider. Treatment for an exacerbation does not require a variance as long as the documentation supports the exacerbation, treatment plan and goals.
Generic Drug Substitution	The state mandates generic substitution.
Medical Mileage Reimbursement Rate	The current reimbursement rate (1/1/17) is 54 cents per mile.
Network Information	CorVel network is used.
Ability to Terminate Medical Treatment	We do not have a unilateral right to terminate treatment. With appropriate medical evidence, we can request a review of treatment by the Workers Compensation Board.
Settlement Allowed	Settlement of medical is allowed.

**Medical issues**

Cap on benefits, exceptions	Medical benefits can continue for the life of a claim if treatment is related to the original injury and is consistent with the Medical Treatment Guidelines.
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**Other Issues**

WC Hearing Docket Speed	Claims denied on compensability issues are placed on the Rocket Docket and a hearing must be scheduled within 30 days of the carrier's denial. An expedited calendar was established to ensure permanency issues are addressed within 60 days after completion of the record.
Staff Counsel	<p>Law Office of John Wallace 60 Lakefront Blvd, Suite 102 Buffalo, New York 14202</p> <p>Law Office of Theresa Puleo 1 Park Place, Suite 402 Albany, NY 12205</p> <p>Law Office of Andrea G. Sawyers 3 Huntington Quadrangle, Suite 102 S Melville, NY 11747</p>
Hearings require attorney or claim handler participation	An attorney or licensed Hearing Representative must be present.
Occupational Diseases	The NYS WC law recognizes Occupational Diseases. Claims must be filed within two years of the date that the Injured Worker knew or should have known of the relationship between the injury and the occupation.
Second Injury Fund availability	No Second Injury Fund on accidents with dates of loss after 7/1/07.
Other Offset Opportunities	Apportionment and future credit against third party net proceeds.
EDI	<p>Claims EDI Release 3: FROI &amp; SROI (4/23/2014)</p> <p>The WCB has implemented procedures for the periodic review and analysis of payor compliance with claim handling statutory and regulatory requirements. The data that all payors (including carriers, third party administrators, self-insureds, self-insured trusts/groups and governmental subdivisions) are and will be measured on is:</p> <ul style="list-style-type: none"> <li>○ Timeliness of the First Report of Injury Filing;</li> <li>○ Timeliness and Reporting of Initial Payment of Compensation;</li> <li>○ Timeliness of Notice of Controversy Filing; and</li> <li>○ Percentage of Claims Controverted.</li> </ul> <p>All payors receive quarterly reports of their performance in the first two areas listed above and expect to receive quarterly reports in the two additional areas listed soon. Each quarterly report includes the payor score, the state-wide average score, and the performance goal for each particular measure.</p>
In-State Adjusting Required	No
License or Certification Required	No license or certification required for individual employees of the carrier. Claim professionals who handle self-insured employers must be licensed.