



NYS Workers' Compensation Board



Prove It to Move It

**Navigating Workers'
Compensation and Disability
Benefits Requirements**

**What Code Enforcement Officials
Need to Know**



Walt Peretti

Governor Andrew M. Cuomo

Workers' Compensation Board

Chair Robert E. Beloten

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View Latest Board Announcements

Workers



- File A Claim
- Workers' Comp Benefits
- The Claim Process
- Disability Benefits

Employers / Businesses



- Report Injury/Illness
- Coverage Requirements
- Disability Benefits
- Respond to Employer Notice

Insurance Carriers



- Certificates of Insurance
- Coverage Reporting Mandates
- Insurance Compliance Inquiry

Self-Insured Employers



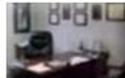
- Individual/Group
- Political Subdivisions
- Disability Benefits

Health Care Information



- Medical Treatment Guidelines
- Medical Care Fee Schedules
- Unpaid Medical Bills (HP-1)

Representatives



- Attorneys
- Licensed Representatives
- Third Party Administrators



- Board Bulletins and Subject Numbers
- On-line Services
- Public Contracts Debarment List
- Laws, Regulations and Decisions
- Independent Livery Drivers Benefit Fund
- Publications
- 2012 Board Meeting Dates
- Procurement Opportunities
- Return to Work
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WC/DB Exemptions Form CE-200

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WHAT'S NEW

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**New York State
Workers' Compensation Board**

**Employers'
Handbook**

**A Guide to the Workers' Compensation and the Disability Benefits
Systems for the New York State Business Owner**

Governor David A. Paterson

Chair Robert E. Beloten



What Are Worker's Compensation and Disability Benefits Insurances?

- **Workers' Compensation Insurance**
 - **Covers on-the-job accidents, injuries and illnesses.**
 - **Provides medical and wage replacement.**
 - **Protects both employers and their employees!**
- **Disability Benefits Insurance**
 - **Covers off-the-job accidents, injuries and illnesses.**
 - **Provides only limited wage replacement.**



Key NYS Workers' Compensation Organizations

- NYS Insurance Department
- Compensation Insurance Rating Board
- NYS Workers' Compensation Board
- Insurers - Insurance Carriers
Self-Insurers
Group Self-Insurers



An average year in NYS Workers' Compensation

- 700,000 Active NY Employers:
- 175,000 Claims
- 170,000 Penalties Against Employers
- 19,000 Civil Judgments
- 24,000 Controverted Claims
- 400 Uninsured Claims



Who Needs Coverage and Who Doesn't?

*Businesses with employees need
coverage.*



Employee Definition

- Basically anyone providing any services to a for-profit business can be determined to be an employee of that business.
- Basically any compensated individuals providing services to a nonprofit; the exceptions are clergy, and teachers in a 501(c)(3) nonprofit.



Who Isn't Required to Carry Workers' Compensation Insurance

- Sole proprietors with no employees;
- Partners in partnerships with no employees; and
- One/two person owned corporations with no employees.

BUT.....



Specific Coverage Issues

- **Sole Proprietors, Partnerships including LLCs & LLPs & Corporate Officers**
- **Independent Contractors and Subcontractors**
- **Family Members**
- **Domestics**
- **Borrowed Employees**
- **Farms**
- **Homeowners' Workers' Compensation Insurance Rider**
- **Leased Employees: Professional Employer Organization**
- **Nonprofit Organizations**
- **Out-of-state Employers Working in New York State**
- **Religious Organizations**
- **Student Interns**
- **Temporary Service Agencies**
- **Volunteers**



General Contractors: Under the Law

- General contractors are liable for the workers' compensation claims of all uninsured subcontractors.



Independent Contractor? 10 Indicators

Indicators to identify if an individual is an independent contractor and not an employee:

1. Obtain a Federal Employer Identification Number from the Federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on work or service performed the previous calendar year;
2. Maintain a separate business establishment from the hiring business;
3. Perform work that is different than the primary work of the hiring business and perform work for other businesses;



Independent Contractor? 10 Indicators (Continued)

4. Operate under a specific contract, and is responsible for satisfactory performance of work and is subject to profit or loss in performing the specific work under such contract, and be in a position to succeed or fail if the business's expenses exceed income;
5. Obtain a liability insurance policy (and if appropriate, workers' compensation and disability benefits insurance policies) under its own legal business name and federal employer identification number;
6. Have recurring business liabilities and obligations;



Independent Contractor? 10 Indicators (Continued)

7. If it has business cards or advertises, the materials must publicize itself, not another entity;
8. Provide all equipment and materials necessary to fulfill the contract;
9. Control the time and manner in which the work is to be done; and
10. The individual works under his/her own operating permit, contract or authority.



Independent Contractors under the 2008 Fair Play in Construction Act

- Anyone hired by a person or other legal entity in the construction trades is presumed to be their employee.
- Unless . . .



Independent Contractors Under the 2008 Fair Play in Construction Act

For a person to be an independent contractor, the alleged employer must demonstrate ALL three of the following criteria:

- ❑ The person is free from control and direction in performing the job, both under contract and in fact,
- ❑ The person is performing services outside of the usual course of business for the company, and;
- ❑ The person is engaged in an independently established trade, occupation or business that is similar to the service s/he performs.



Independent Contractors Under the 2008 Fair Play in Construction Act

12-part test to determine when a sole proprietor, partnership, corporation or other entity will be considered a "separate business entity" from the contractor. If an entity meets ALL of the 12 statutory criteria, it will not be considered an employee of the contractor. Instead, it will be a separate business entity that is itself subject to the new law regarding its own employees. A separate business entity must:

1. be performing the service free from the direction or control over the means and manner of providing the service subject only to the right of the contractor to specify the desired result;
2. not be subject to cancellation when its work with the contractor ends;
3. have a substantial investment of capital in the entity beyond ordinary tools and equipment and a personal vehicle;
4. own the capital goods and gain the profits and bear the losses of the entity;
5. make its services available to the general public or business community on a regular basis;
6. include the services provided on a federal income tax schedule as an independent business;
7. perform the services under the entity's name;
8. obtain and pay for any required license or permit in the entity's name;
9. furnish the tools and equipment necessary to provide the service;
10. hire its own employees without contractor approval, pay the employees without reimbursement from the contractor and report the employees' income to the Internal Revenue Service;
11. have the right to perform similar services for others on whatever basis and whenever it chooses;

12. The contractor does not represent the entity or the employees of the entity as its own employees to its customers.



Out-of-state Companies Working in NYS

- Effective September 9, 2007, any out-of-state employer with employees working in NYS needs a full NYS workers' compensation insurance policy.
- NY must appear on Item 3A on the information page of a policy.



Noncompliance Penalties

- Up to \$2,000 for each 10 days out of compliance, or \$72,000 a year.
- Up to 5 employees is a misdemeanor, subject to a maximum \$5,000 penalty
- More than 5 employees is a Class E Felony, subject to a maximum \$50,000 penalty and a maximum of 1 1/3 to 4 years in prison



Noncompliance Penalties

- Employers are liable for all medical and wage benefits for claims made against them while uninsured. (Includes corp. officers, partners & LLC members).
- Assessments of \$2000 for every ten days are added for any period the employer was found to be uninsured.
- Workers' Compensation benefits are not capped in NYS.



More Noncompliance Penalties

- \$1,000 fine for each 10 days the business fails to keep accurate payroll records and/or correctly classify employees.
- Filing false documents is a **Class E Felony**.



Other Noncompliance Penalties

- Stop Work Orders
- Barred from Bidding on Public Works Projects
- The following parties can be directly sued and are personally liable for any claims that occur while uninsured
 - Sole proprietor
 - Partner
 - President
 - Secretary
- The liabilities include
 - Penalties
 - Lost wages
 - Medical costs
 - Assessments



The Appeal Process

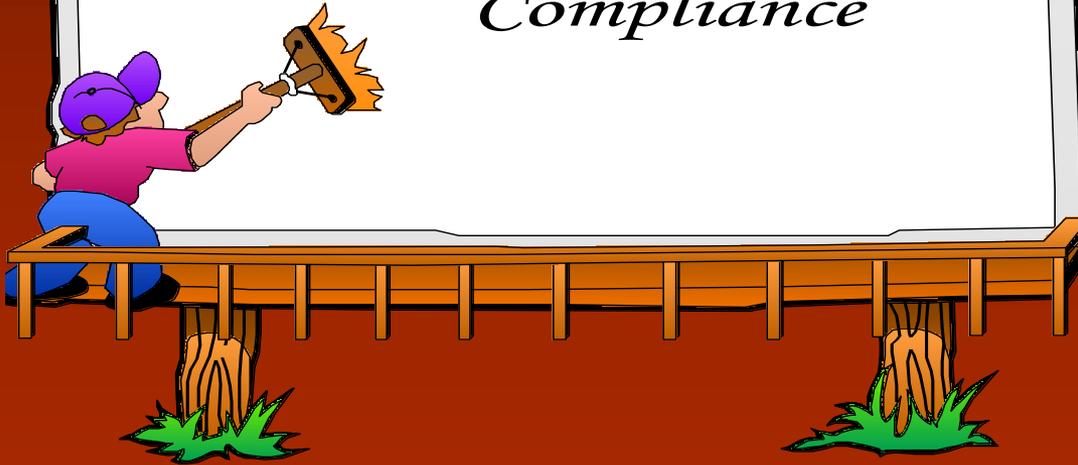
- The Board's goal is to ensure every employer that should have insurance coverage has that insurance.
- This ensures benefits for injured workers, maintains a level playing field for employers, and prevents lawsuits.
- If you're penalized, don't stick your head in the sand! Appeal the penalty.





WORKERS' COMPENSATION LAW
§57 & §220 Subd. 8

*No Permit, License
Or Contract
Shall Be
Issued Without
Proof of Workers'
Compensation &
Disability Benefits
Compliance*



What Is A Legal Name Of An Employer And Why Is It Important?

- Each business using employees **must** have workers' compensation insurance in its own legal name and under its own FEIN.
- One policy can insure many legal entities, so long as there is common majority ownership among those entities and the carrier lists all the legal entity names and FEINs on the WC insurance policy.



Proof of Workers' Compensation Compliance (For Businesses)

- CE-200 Business Does Not Require Workers' Compensation and/or Disability Benefits Coverage
- C-105.2 Certificate of Workers' Compensation Insurance Coverage
- U-26.3 State Insurance Fund Version of Certificate of Workers' Compensation Insurance Coverage
- SI-12 Certificate of Workers' Compensation Self-Insurance or GSI-105.2 Certificate of Workers' Compensation Group Self-Insurance



7. Please select the reason that the legal entity is NOT required to obtain New York State Specific Workers' Compensation Insurance Coverage:

- A. The applicant is NOT applying for a workers' compensation certificate of attestation of exemption and will show a separate certificate of NYS workers' compensation insurance coverage.
- B. The business is owned by one individual and is not a corporation. Other than the owner, there are no employees, day labor, leased employees, borrowed employees, part-time employees, unpaid volunteers (including family members) or subcontractors.
- C. The business is a LLC, LLP, PLLP or a RLLP; OR is a partnership under the laws of New York State and is not a corporation. Other than the partners or members, there are no employees, day labor, leased employees, borrowed employees, part-time employees, unpaid volunteers (including family members) or subcontractors.
- D. The business is a one person owned corporation, with that individual owning all of the stock and holding all offices of the corporation. Other than the corporate owner, there are no employees, day labor, leased employees, borrowed employees, part-time employees, other stockholders, unpaid volunteers (including family members) or subcontractors.
- E. The business is a two person owned corporation, with those individuals owning all of the stock and holding all offices of the corporation (each individual must hold an office and own at least one share of stock). Other than the two corporate officers/owners, there are no employees, day labor, leased employees, borrowed employees, part-time employees, other stockholders, unpaid volunteers (including family members) or subcontractors.
- F. The applicant is a nonprofit (under IRS rules) with NO compensated individuals providing services except for clergy; or is a religious, charitable or educational nonprofit (Section 501(c)(3) under the IRS tax code) with no compensated individuals providing services except for clergy providing ministerial services; and persons performing teaching or nonmanual labor. [Manual labor includes but is not limited to such tasks as filing; carrying materials such as pamphlets, binders, or books; cleaning such as dusting or vacuuming; playing musical instruments; moving furniture; shoveling snow; mowing lawns; and construction of any sort.]
- G. The business is a farm with less than \$1,200 in payroll the preceding calendar year.
- H. The applicant is a homeowner serving as the general contractor for his/her primary/secondary personal residence. The homeowner has no employees, day labor, leased employees, borrowed employees, part-time employees or subcontractors. The homeowner ONLY has uncompensated friends and family working on his/her residence.
- I. Other than the business owner(s) and individuals obtained from a temporary service agency, there are no employees, day labor, leased employees, borrowed employees, part-time employees, unpaid volunteers (including family members) or subcontractors. Other than the business owner(s), all individuals providing services to the business are obtained from a temporary service agency and that agency has covered these individuals for New York State workers' compensation insurance. In addition, the business is owned by one individual or is a partnership under the laws of New York State and is not a corporation; or is a one or two person owned corporation, with those individuals owning all of the stock and holding all offices of the corporation (in a two person owned corporation, each individual must be an officer and own at least one share of stock). A Temporary Service Agency is a business that is classified as a temporary service agency under the business's North American Industrial Classification System (NAICS) code.

Temporary Service Agency

Name _____ Phone # _____

- J. The out-of-state entity has no NYS employees and/or NYS subcontractors AND ALL work related to the permit, license or contract is done outside of NYS; OR ALL employees are direct employees of a government entity outside of New York. Please provide coverage information.

Carrier _____ Policy # _____

Policy start date _____ Policy expiration date _____



Proof of Workers' Compensation Compliance (For Homeowners)

- BP-1 Homeowner Does Not Require Workers' Compensation Coverage
- CE-200 Business Does Not Require Workers' Compensation and/or Disability Benefits Coverage
- C-105.2 Certificate of Workers' Compensation Insurance Coverage
- U-26.3 State Insurance Fund Version of Certificate of Workers' Compensation Insurance Coverage



Proof of Disability Benefits Compliance

- CE-200 Applicant Does Not Require Workers' Compensation and/or Disability Benefits Coverage
- DB-120.1 Certificate of Disability Benefits Insurance Coverage
- DB-155 Certificate of Disability Benefits Self-Insurance



Verifying Workers' Compensation Insurance Proof of Coverage

- Ensure coverage is on Board's website
- Go to www.wcb.ny.gov



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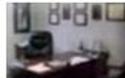
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GOVERNOR ANDREW M. CUOMO

Justice Center For the Protection of People with Special Needs

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Report a Work-Related Injury or Illness



Employers Handbook 



Does Employer Have Coverage?



Respond to Employer Notice

Workers' Compensation (On-the-Job Injury or Illness)

The Advocate for Business

Resources for Employers

Coverage Requirements

When An Accident Happens

Who Is and Is Not Covered

Who Is An Employee?

Who Is an Independent Contractor?

Employers' Rights and Responsibilities

Out-of-State Employers

Business Permits/Licenses/Contracts

W/C/DB Exemptions

Claimant Information Packet 

Compendio Información Reclamante
(Claimant Information Packet, Spanish)



Return to Work

Understanding Workers' Comp Insurance

Obtaining Insurance

Penalties For Not Having Coverage

N.Y. Construction Payroll Limitation

Employer Whistleblower Form

Public Contracts Debarment List 

On-Line Forms

Stop Work Orders

Representatives

What Business Owners Must Know
about Workers' Compensation 



Disability Benefits Coverage Requirements



Does Employer Have Coverage?

Disability Benefits (Off-the-Job Injury or Illness)

What are Disability Benefits

Who Is and Is Not Covered

Who Is An Employee

Who Is an Independent Contractor?

Penalties for Not Having Required Coverage

Employers Handbook 

Business Permits/
Licenses/Contracts

Frequently Asked Questions

Cash Benefits

Out-of-State Companies Working in
NYS

W/C/DB Exemptions





Employer Coverage Search

If you cannot find an employer or suspect an employer of operating without workers' compensation insurance, please select one of the following links to [electronically send Employer Whistleblower Form](#) or [mail a paper copy Employer Whistleblower Form \(PDF\)](#).

Employer Search Criteria

Search by Employer Name

(Enter a word or partial word of the beginning part of the employer's name. The search will return employers that begin EXACTLY with the portion entered.)

Employer Name:

For example, 'Americoan' will return 'Americoan Industry', but not 'Great Americoan'

Maximum Results Displayed:

Search by Federal Employer Identification Number

FEIN: (must be nine digits)

Search by Policy Number

Policy Number:

Search by NYS WCB Employer Number

WCB Employer Number:

Enter the 6 characters shown in the image to the right:





Employer Coverage Search

If you cannot find an employer or suspect an employer of operating without workers' compensation insurance, please click on one of the following links to [electronically send employer referral](#) or, mail a [paper copy employer referral \(PDF\)](#).

[New Search](#)

Coverage History

[Back to Search Results](#)

IMPORTANT NOTE TO GOVERNMENT AGENCIES: The coverage information contained on this web site is NOT a substitute for government agencies requiring certificates of workers' compensation and disability benefits insurance from applicants pursuant to Workers' Compensation Law Sections 57 and 220. Government entities should only use the coverage information contained on this web site to verify certificates of insurance that have already been received pursuant to WCL Sections 57 and 220.

Employer

WCB Emp Num	Name	Address
2344293	HOW ADORABLE INC	MOUNT SINAI, NY

Workers' Compensation Coverage

Insurer	Policy Number	Effective Date	End Date	End Reason	Wrap Up
FARM FAMILY CASUALTY INS CO	3152W8528	12/01/2008			N
FARM FAMILY CASUALTY INS CO	3152W8528	12/01/2007	12/01/2008	Renewal	N
FARM FAMILY CASUALTY INS CO	3152W8528	12/01/2006	12/01/2007	Renewal	N
FARM FAMILY CASUALTY INS CO	3152W8528	12/01/2005	12/01/2006	Renewal	N

Disability Benefits Coverage

Insurer	Policy Number	Effective Date	End Date	End Reason
FIRST REHABILITATION LIFE INS	DBL244039	12/01/2005		



Filing of Workers' Compensation Insurance Proof of Coverage

- Submit only the approved forms.
- Make sure legal name on the approved form matches the legal name on the permit, license or contract.
- FEIN numbers — make sure FEIN on the approved form matches FEIN on the permit, license or contract.
- Ensure coverage is on Board's website.



1-15087

CERTIFICATE OF INSURANCE: EGWTE01

CSR SW 10/22/96

PRODUCER

INSURED

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY
A American International Co.

COMPANY
B

COMPANY
C

COMPANY
D

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY BE REQUIRED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES WHICH MAY HAVE BEEN REDUCED BY PAID CLAIMS.

DOI LTR	TYPE OF INSURANCE	POLICY NO.	POLICY EXP DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GEN LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCC. <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROTECTIVE <input type="checkbox"/> <input type="checkbox"/>			GENERAL AGGREGATE PROD-COMP/OP AGG. PERS. & ADV. INJURY EACH OCCURRENCE FIRE DAMAGE (ANY ONE FIRE) MED. EXPENSE (ANY ONE PERSON)
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> RENTED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/>			COMB. SINGLE LIMIT BODILY INJURY (PER PERSON) BODILY INJURY (PER ACCIDENT) PROPERTY DAMAGE AUTO ONLY (EA ACC) OTHER / AUTO ONLY: EACH ACCIDENT AGGREGATE
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> <input type="checkbox"/>			EACH OCCURRENCE AGGREGATE
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM			
A	WORKERS COMP. AND EMP. LIAB. THE PROPRIETOR/PARTNERS/ EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL. <input type="checkbox"/> EXCL.	WC 4065206	10/21/96 10/21/97	<input checked="" type="checkbox"/> STAT LIM <input type="checkbox"/> 10TH EL EA ACCIDENT 100,000 EL DISEASE-POL. LIM 500,000 EL DISEASE-EA EMP. 100,000
	OTHER			



DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
 WC000301A, Alternate Employer Endorsement, and WC000313, Waiver of ~~Own~~ Right to Recover from Others Endorsement, added in favor of this certificate holder

CERTIFICATE HOLDER

CANCELLATION

IF SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL endeavor to MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER SHOWN TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE *S F Whipple*



Questions or problems?

Call WCB Compliance:

518-486-6307

1-866-298-7830

518-402-8330

<http://www.wcb.ny.gov>



Questions or problems?

WCB Enforcement:

Teri Cooper (upstate)

518-486-3349

Len Frasco (NYC/LI)

718-802-6870

