

**INJURED WORKERS' BAR ASSOCIATION  
2010 LEGISLATIVE AND REGULATORY PROPOSALS**

**I. LEGISLATION**

1. Amend effective date of 2007 reforms from March 13, 2007 to July 1, 2007. Employees injured between March 13, 2007 and June 30, 2007, are denied the benefit of the increased rates under the "reforms".
2. Elimination from WCL 15.3(v) of constitutionally infirm language decreasing workers' compensation benefits upon receipt of social security disability and old age benefits. At least two states [UT and WV] recently have stricken such language as unconstitutional. Critics of the SSD presumption legislation have cited the non-relevance of social security criteria in connection with workers' compensation.
3. Adoption of A. 2135 [S. John] S. 2781 [G. Onorato] to create a presumption of permanent total disability upon receipt or approval of Social Security Disability benefits. This amendment is intended to reduce litigation in workers' compensation claims and recognize concurrent disability findings in SSA that complement the reform act's "loss of wage earning capacity."
4. Amend WCL Sec. 150 to require the Secretary of the WCB to maintain a searchable data base on the web site of all board Panel decisions.
5. Amend WCL Sec. 2 to subject the Workers' Compensation Board to the provisions of the State Administrative Procedures Act [SAPA].
6. Amendment of WCL Sec. 15.6(a) to provide indexing of the minimum rates of compensation to parallel the maximum rates indexed under the 2007 reforms.
7. Amendment of WCL Sec. 27 to require mandatory deposits to the ATF by SIEs and the SIF to create parity with that of commercial carriers.
8. Amendment of WCL Sec 25-a(9)(a) to provide supplemental benefits [viz. Cost of Living Adjustment or COLA] to defined recipients as of July 1, 1992 and require the Workers' Compensation Board to apply such supplemental benefit increases without the necessity of application by the claimant.
9. Amend WCL 15.3(w) to reduce the 80% threshold Loss of Earning Capacity to 60% for reconsideration and redetermination of the degree of permanent disability.
10. Amend WCL Sec 23 to provide for reimbursement by the Workers' Compensation Board for costs, disbursements, and attorney fees upon reversal of a Board Panel decision following submission of a perfected record to the Appellate Division and reversal upon Full Board Review. This amendment incurs little cost and is intended to level the appellate playing field to encourage injured employees to advance their positions in the appellate process.

11. Amend WCL Secs. 120 and 125 to provide “whistleblower” protection to employees and employers. Presently, the web site of the NYS Workers’ Compensation Board encourages whistleblower conduct and provides forms for that purpose. However, the WCL affords no direct legislative protection and encouragement.

12. Amend WCL Sec 204 to increase the Disability Benefit to \$500.00 per week. The present weekly rate has been in effect since 1989.

13. Amend WCL Sec. 13-a(5) to include prescription drugs within the \$1,000 authorization limit. Alternatively, amend the law to require that the carrier must have contrary medical evidence in support of their denial of prescriptions.

14. Amend WCL Sec. 29 to limit a carrier’s lien and credit rights against a third party recovery solely to that portion of the net recovery representing lost wages and medical treatment. This amendment conforms the scope of damages recoverable under workers’ compensation to those in a companion third party action and avoids unjust enrichment to the carrier.

15. Amend WCL Sec. 16.1-b. to eliminate the Social Security Survivor’s Benefits offset provisions.

16. Amend WCL Sec. 110-A to indicate that the Board’s publication of daily Hearing Dockets / Sign-in Sheets do not constitute a violation of this section.

## II. REGULATION

1. Amend NYCRR 325-1.3(b)(3) to extend submission of medical reports to 90 days.

2. Amend NYCRR 302-1.2 to require Licensed Representatives to undertake annual continuing education courses.

3. Amend NYCRR 300.17 to authorize attorney fees in “medical only” cases.

4. Amend NYCRR 300.17 authorizing WCB to award costs, disbursements, and legal services compensation to claimant attorneys for participating in depositions.

5. Amend NYCRR 300.10(c) to require that the carrier must present evidence to rebut the presumption contained in WCL section 21(5) prior to requesting to produce an attending physician whose report is on file for cross-examination.