

NYSIF[®]

NEW DOMESTIC WORKERS' LAW

NEW YORK STATE INSURANCE FUND

Workers' Comp.

ADVISOR

nysif.com

January, February, March 2011



**Charting Lower
Claims Medical Costs**



**NYSIF
Introduces
'Recommendation
of Care' Program
- *Save With
Network
Providers***



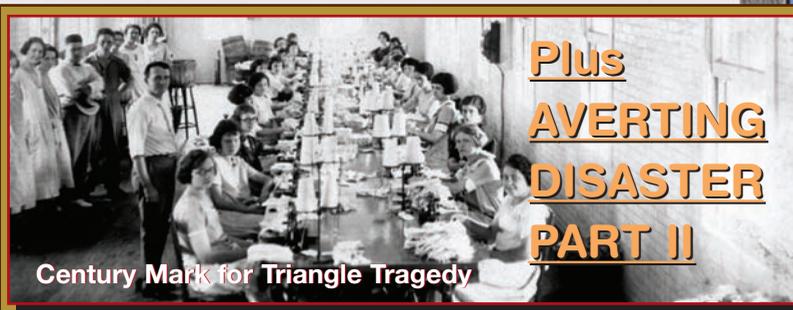
**Comp. Board
Issues Mandatory
Treatment
Guidelines**



Also:

NYSIF Refresher Course

**Go
Electric**



**Plus
AVERTING
DISASTER
PART II**

Century Mark for Triangle Tragedy

Law Expands Protection for Domestic Workers

A new law extending labor rights for domestic workers reinforces New York State's statutory requirement that employers must obtain workers' comp. and disability benefits coverage for those workers.



The Domestic Workers' Bill of Rights establishes labor standards including overtime pay, paid vacation and sick days, and a weekly day of rest for New York's estimated 200,000 domestic workers. It also extends protections against sexual harassment and harassment based on gender, race, reli-

gion, or national origin to that labor force. The law, whose primary sponsors are NYS Senator Diane Savino and Assemblyman Keith L.T. Wright, took effect Nov. 29, 2010.

Described as an "invisible workforce," outreach efforts aimed at nannies, caretakers and housekeepers have begun to disseminate information about the law to domestic workers, as well as educate employers about their obligations under the new law.

Whether they are businesses or individual households employers are required to carry workers' comp. and disability benefits insurance for full-time domestic workers.

NYS Labor Commissioner Colleen Gardner asked agencies to provide easily accessible informational material for domestic employers and workers, covering employment benefits, and tax and insurance laws. Employers can visit nysif.com to learn more about their requirements under the workers' comp. and disability benefits laws in New York State.

NYSIF Chief Deputy Executive Director Francine James stated that, in addition to provisions of the new law, businesses and household employers should be mindful of the existing rights of domestic workers and the obligations of employers.

"Under the current law, employers – whether they are businesses or individual households – are required to carry workers' compensation and disability benefits insurance for full-time domestic workers," Ms. James reminded employers.

NYSIF can assist any New York employer with workers' comp. and disability benefits coverage for domestic workers.

NYSIF Workers' Comp. Advisor
 January/February/March 2011



This Issue

New Remedies for Comp Cost Drivers

Two sources of relief from medical comp. costs are in the offing as NYSIF announces a voluntary care plan policyholders can embrace, and the WCB issues its mandatory treatment guidelines.

Page 3



No Let-Up in Need to Remain Accountable for Worker Safety

Shortly after WCA Oct-Dec 2010 (I.) reported that creating a safety culture of accountability is key to averting workplace disasters,

the Occupational Safety and Health Administration said it had issued penalties exceeding \$100,000 in 164 significant cases over a 12-month period ending last September. The number of significant and egregious cases, some involving worksite catastrophes and fatalities, was more than OSHA found during any similar period in the last decade. The increase not only shows a commitment to aggressively enforce worker protections, it makes the timing of part two of our report, *Well-Run Fire Drills* – coinciding with the 100th anniversary of the Triangle Shirtwaist Fire – all the more relevant today. **See Safety Cop/Page 6**

New Cranes & Derricks Rule Resources

OSHA posted compliance assistance for the Cranes & Derricks in Construction Final Rule. Resources include two facts sheets on Subpart CC of the rule addressing [crane and derrick assembly/disassembly](#), and [operator qualification/certification](#). A PowerPoint presentation provides an overview of Subpart CC. OSHA's Cranes & Derricks in Construction [Final Rule page](#) contains the complete text of the rule, an archived web chat and answers to [frequently asked questions](#).

\$50M in Small Biz Loans

Empire State Development announced allocations from a new Small Business Revolving Loan Fund that is providing \$50 million in loans for New York small businesses. Visit www.esd.ny.gov/SmallBusiness.html for more info.

Taking Control of Your Medical Claim Costs



NYSIF Announces 'Recommendation of Care' Program

NYSIF announced it has begun offering a Recommendation of Care (ROC) program for the treatment of workers' comp. injuries through a medical provider network.

NYSIF is providing the ROC program through the MetraComp medical provider network. MetraComp is a solely owned subsidiary of Coventry Workers' Comp Services, whose focus is to reduce workers' compensation costs—with potential savings of as much as 15% on the medical cost of claims.

"Medical fees are a primary cost driver in escalating workers' compensation costs," NYSIF Chief Dep. Executive Director Francine James said. "We're are pleased and optimistic about making this program available to our policyholders who want to begin to drive down medical claims costs, and we are expecting great results."

Policyholders who participate in the program must still follow standard protocol by giving injured workers the Claimant Information Packet as required by New York State at the time of injury. Employers can download the packet at nysif.com.

VOLUNTARY PROGRAM

Additionally, policyholders must give the injured worker Form C-3.1, "Notice of Right to Select a Workers' Compensation Board Authorized Health Care Provider," immediately upon learning of the injury. [Form C-3.1](#) also can be downloaded through the web site.

Ms. James stressed that use of the MetraComp network of medical providers is strictly voluntary on the part of the employee. Whether or not a policyholder signs up for the ROC program, the injured worker retains the right to select any physician, podiatrist, chiropractor or psychologist authorized by the NYS Workers' Compensation Board to perform treatment.

"The choice of a treating doctor always rests with the claimant," Ms. James said. "We hope the ROC program is a useful tool for the claimant and employer in the selection process."

ENROLLMENT INSTRUCTIONS ON WEB

Injured workers can obtain a list of authorized healthcare providers from the Workers' Compensation Board. NYSIF policyholders can visit the [ROC page at nysif.com](#) for more information on how to participate in the ROC program and further instructions on Form C-3.1 requirements.

DO THE MATH:

Medical fees are a primary driver of workers' comp. costs	+	ROC can save up to 15% on the medical cost of claims	+	ROC enrollment is simple and well worth it
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WCB Issues Med Treatment Guidelines

NYSIF Claims personnel have completed training in new Medical Treatment Guidelines set forth by the Workers' Comp. Board to take effect Dec. 1, 2010 as the mandatory standard of care for treatment of workers' comp. injuries to the knee, shoulder, neck, and mid-and lower-back.

A major component of the 2007 workers' comp. reforms, the guidelines apply to all medical providers, insurance carriers and employers in the New York State workers' comp. system.

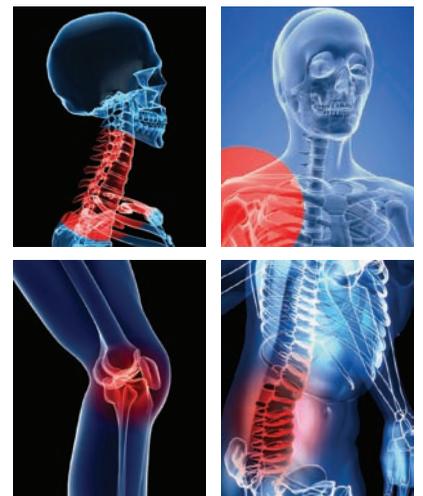
"The new guidelines will bring about a sea of change in the way injuries to the neck, mid and low back, shoulder and knee are processed," NYSIF Claims Director Ed Hiller said.

In addition to reducing costs, the goals of the guidelines are to:

- Set a single standard of medical care for injured workers,
- Expedite quality care,
- Improve medical outcomes,
- Speed return to work,
- Reduce treatment disputes, and
- Increase timely payments to providers.

FOUR PROTOCOLS

Formulated by the Governor's Workers' Comp. Reform Task Force the guidelines are based on established medical evidence and a consensus of appointed medical professionals.



Standards Set for Care of Neck, Knee, Shoulder and Back

The regulations require all medical providers to treat all applicable existing or new workers' comp. injuries or illnesses on or after Dec. 1, 2010 according to four WCB-issued protocols only for the prescribed body parts.

PROSPECTIVE TREATMENT

The guidelines apply prospectively to treatment for existing claims. Subsequent treatment requires the injured worker to be re-evaluated to determine if there is continuing objective functional improvement.

Treating doctors can seek a variance

See page 4

Albany, Rensselaer, Dutchess Sweep Nets 7

'These cases span the gamut, pointing out widespread abuse of workers' comp. and the cost that can be extracted by a few individuals. With help from the public and law enforcement, NYSIF is committed to the fight against workers' comp. fraud, particularly at a time when honest working people and legitimate businesses can ill afford to take on more of a financial burden.'

- NYSIF Chief Dep. Executive Director Francine James

Surveillance video showing a man walking freely for nearly a mile and carrying a walker under his arm before he testified that a job-related injury left him unable to walk or stand unassisted is part of the evidence in a three-county workers' comp. fraud sweep.

The arrests are the result of joint investigations by NYSIF's Division of Confidential Investigations, the offices of Albany County DA David Soares, Rensselaer County DA Richard McNally, Jr., Dutchess County DA William Grady, the NYS Insurance Dept. Frauds Bureau, Workers' Comp. Board Fraud Insp. General, New York State Police, Albany County Sheriff's Dept. and Poughkeepsie police.

The suspect, **Nicholas Fortuso**, of Poughkeepsie, is one of seven arrests in the October sweep. The others are identified as **John Lanza**, 44, of Colonie; **Andrew Motkowicz**, 59, of Watervliet; **Peter Pelech**, 53, of Watervliet; **Royal Steves**, 53, of Queensbury; **Khurram Khan**, 49, of Middletown, and **Marjorie Forbes**, 43, of Castleton. Among the others, Ms. Forbes was charged with cashing \$5,400 in checks intended for her deceased father-in-law, Mr. Motkowicz was charged with illegally collecting \$60,500 while working, and Mr. Khan, a business owner, was charged with application fraud.

In other cases:

Mark Cathy, 44, owner of Jordan Drywall, Inc., was charged with underreporting payroll to reduce workers' comp. premium of more than \$630,000 in alleged fraud.

Homer Spangler, 45, of Kenoza Lake, NY, was charged with collecting workers' comp. benefits while working as a self-employed painter and home repairman.

Joanne Somers, 45, of Batavia, NY, was charged with collecting workers' comp. benefits while working at a tavern.

NYS corrections officer **Charles Little**, 55, of Hudson Falls, was charged with collecting workers' comp. benefits while working.

Carlos Martinez, 45, of Queens, NY, owner of C.M. Painting Corp., was charged with underreporting payroll to reduce his workers' comp. premium.

George Azattian, 58, of Amherst, NY, owner of a cleaning company, was charged with underreporting payroll to reduce his workers' comp. premium.

Jose Henao, 48, of Ossining, NY, was charged with collecting workers' comp. benefits while working as a taxi driver.

Report fraud confidentially to NYSIF at 1-877-WCNYSIF or at nysif.com

Criminal complaints and indictments are accusations only. Defendants are presumed innocent until proven guilty.

Construction 'Fair Play' Is Law

Effective Oct. 26, 2010, the "[Construction Industry Fair Play Act](#)" set a new standard for determining if a worker is an employee or independent contractor in the construction industry. **The law clearly defines which workers are considered independent contractors and—a first in New York—imposes fines and criminal penalties specifically for employee misclassification on construction jobs.**

The law says you are an employee unless:

- You are free from direction and control in performing your job, **and**
- You perform work that is not part of the usual work done by the business that hired you, **and**
- You have an independently established business.



A law to reign in misclassification of casual laborers as independent contractors

All three conditions must be met for an employer to consider a worker an independent contractor.

■ CPAP Applications Now on Web

The NY Compensation Insurance Rating Board's new CPAP Application Entry System allows web submission of Construction Classification Premium Adjustment Program applications at <http://cpap.nycirb.org/>. NYSIF will no longer send the four-page application to policyholders, and instead will send a one-page notification letter directing policyholders to the web site.

Medical Treatment Guidelines

From 3

by justifying treatment based on objective measures of patient improvement, individual circumstances and/or compelling medical evidence. Diagnostic tests and medical treatment performed in accordance with the guidelines are pre-authorized and not subject to prior authorization by the employer or insurance carrier.

Twelve surgical procedures require prior authorization, as well as any repeat surgery. The guidelines otherwise limit the timing, frequency and use of certain other diagnostic tests, and therapeutic, surgical or medical treatments. Find the complete guidelines on the [WCB web site](#).



NYSIF Customer Longevity Awards

NYSIF thanks policyholders who have continuously trusted us for workers' comp. and disability benefits insurance for 75 years or more, and congratulates them on their longevity. **90 Years** – Johnston and Rhodes Blue Stone Co. (above r., l.-r.): Off. Mgr. Katrina Johnston, NYSIF's Tom Racko, Pres. Peter Johnston, Sr., NYSIF's Gurinder Singh. **80 Years** – Mercury Aircraft (above l.): Dir. Human Resources Jon Pierce, NYSIF's Nancy Walsh, Safety Dir. Bob Smith, NYSIF's Patti Albert, Asst. VP J. F. Meade IV, Pres. J. F. Meade III, Treasurer Greg Hintz, NYSIF's Lisa Ellsworth, NYSIF's Dave Lane, Controller Laura Chandler. **Family and Children Services of the Capital Region** (top. l.): Exec. Dir. Keith Pickett, NYSIF's Augusto Bortoloni. **75 Years** – NY Foundling Hospital (above r.): Fiscal Prgm. Dir. Tom Caruso, Barry Hartglass, Tom McEvily, Jr., Tom McEvily III, Asst. Exec. Dir. Patricia Hackler, Exec. Dir. Bill Baccaglioni, NYSIF's Dave Sweeney, Christopher McEvily, Michael McEvily.

Assureds Find Fund Safety Training Success

News item: Bureau of Labor stats for 2009 show 400,000 fewer nonfatal illnesses and injuries in private industry than the previous year. Workplace fatalities also showed a marked decrease.

NYSIF injury statistics followed a nationwide downward trend. Whether this is attributable to downsizing or improved workplace safety, or a combination of factors, NYSIF safety training has a history of decreasing the number and severity of workplace injuries. Two recent cases in point:

Darmstadt Overhead Doors, Kingston, NY, an installer and repair operation, came to NYSIF in 2008 after two employees suffered serious injuries on the job. Darmstadt also had a series of minor injuries, resulting in an experience modification that climbed from well below the industry average to unacceptable levels. ■ Owner Ken Darmstadt contacted NYSIF following two ladder accidents in 2008. NYSIF Field Rep. Anthony Apuzzi met with Mr. Darmstadt to complete a safety audit. NYSIF instituted a regular schedule of employee training covering topics pertinent to the company's operations: lockout-tag out, HazCom, hand-held power tools, ladder safety, avoiding slips, trips and falls, back safety, safe lifting, and safe driving practices. ■ "Mr. Darmstadt also instituted an ongoing schedule of weekly training sessions for his employees," Mr. Apuzzi said. Since starting the training, the company had only two reportable minor injuries, according to Mr. Apuzzi. Neither required reserves for medical or compensation.

AMT Inc., Sharon Springs, NY, an investment casting foundry owned by Lanning Brandel, came to NYSIF in 2008 after its experience modification increased in the previous two years due to prior losses. "I visited AMT for training five times and am pleased to note my visit on July 8, 2010 coincided with the two-year anniversary of no reportable accidents or injuries [for] AMT," Mr. Apuzzi said. "As an added bonus, I was in the audience when pay raises of four percent were awarded to all AMT workers in recognition of their achievement."



Mr. Apuzzi

■ Mr. Apuzzi said AMT put responsible people in charge of safety and emphasized mandatory monthly safety training for all employees, without exception. AMT Gen. Mgr. Scott Stevens expressed his gratitude to NYSIF in an e-mail: "During the mid-point of the decade, AMT experienced an increase of safety related events. Subsequent to this increase, we teamed with NYSIF. Through the combined efforts of all our employees...[and] NYSIF...we developed a program that has helped us to realize a run of 28 consecutive months with no lost time or recordable incidents."

■ Prior to renewal last October, AMT obtained premium quotes from several carriers, but after weighing the benefits of its NYSIF experience against all the other options, AMT decided to stay with NYSIF.



Averting Disaster/Part II

Well-Run Fire Drills

Gary Dombroff, CSC/CSS

Safety Cop

NYSIF



Every business or organization is unique. Relatively simple fire plans might apply to offices that rent space in a building; businesses with machinery or chemical processes that have to be stopped or shut down need more complex plans. Healthcare facilities and schools have special requirements and evacuation methods. Know the requirements for your facility, and instead of merely complying with local regulations requiring fire drills, conduct them as if everyone's life depends on them.

A fire safety team is an integral part of the process. Team members usually include a director (who may need special certification), wardens, assistants on each floor, exit guards and searchers. Have floor plans showing the location of exits, the way in which hallways and corridors lead to stairwells, and other structural features that can affect the speed and efficiency of exiting.

During drills, have floor wardens or other observers check traffic patterns. How much does the flow of evacuees slow down as stairways fill up? Observers should note "choke points" and unsafe behaviors that hamper exiting. Discuss these at post-drill review meetings. Rework exit patterns or shift occupants to other stairways if needed.

SMOOTH, COURTEOUS, UNBURDENED DRILLS

For evacuation drills to go smoothly, evacuees must act cooperatively. Encourage courteous and efficient behavior. Allow tenants from other floors to merge onto stairs and join the stream. Focus on safely evacuating the premises unburdened by excessive personal possessions, or a coffee cup. Minimize talking.

The team should be aware of anyone finding it difficult to evacuate. Maintain floor-by-floor lists with the names of wardens, alternates, searchers, exit guards and anyone with permanent or temporary disabilities. Be ready to accommodate someone who is unexpectedly unable to exit unassisted.

Courtesy and patience are extremely important, especially during long walks down stairways. An important component of evacuation behavior comes from perceptions of calm or panic. One study found, "the nature of the merging behavior may change as the level of perceived immediate threat increases or decreases." Well-run drills build confidence in evacuees' ability to leave, and the team's ability to lead them to safety.

COMMUNICATION VITAL

All types of occupied structures require good communication to implement effective fire safety plans. This goes beyond intercoms, signals, walkie-talkies and cell phone groups; it's personal.

Fire safety personnel should always act calmly and professionally. Your fire safety team must be able to gently, but firmly, convey the urgency of the need to leave *now*—without causing panic. The drill must simulate a real situation.

Written policies also require the right touch. Notes CSP Linda Sherrard, who wrote for *Occupational Health and Safety*, "Few employees read several pages of policy. Almost everyone will read three to five bulleted safety tips...Also tell them when something goes right. It builds confidence that your program is working."

Effective communication reaches all employees, regardless of their level of literacy or language spoken. Safety material is available in numerous languages. Be sure to follow all regulations concerning multilingual communications, and that training and evacuation instructions reach your audience in a language they understand. Ask questions to be certain everyone understands the message.

Practice and keep fire safety plans, training and drills up to date, and keep it simple. In Ms. Sherrard's opinion, "No other program is more essential than repeating basic fire protection at your facility...training must guarantee that safe behavior is second nature."

100 Years Ago, The Fire That Led to Change

March 25, 2011 marks the 100th anniversary of The Triangle Shirtwaist Factory fire, a defining moment in labor history, modern industrial safety and progressive insurance legislation.

The tragedy remains one of the most deadly workplace accidents in American history – 146 workers, mostly young women, died in the blaze or leapt to their deaths from the Asch Building in Lower Manhattan, an on-the-job death toll eclipsed in New York only by the attack on the World Trade Center.

One hundred years later, the fire still resonates in books, plays, scholarships and memorials. The NYS Dept. of Labor's Apparel Industry Task Force annually dedicates their enforcement efforts in memory of the Triangle fire.

In 1911, the ensuing shock and outrage led to investigations and reforms, and to new building and labor laws, work safety rules, New York's workers' comp. system, and the creation of NYSIF.

The Triangle fire had all the makings of an escalating disaster: sudden conflagration, panic, confusion, inaccessible exit doors and ruined fire escape stairs.

A Factory Investigation Commission was created that, coupled with public outrage at hazardous and substandard working conditions, led to change.

A key commission witness, NYFD Chief Edward Croker, stated: "We must add to the term 'fireproof' the terms 'death proof' and 'conflagration proof,' believing that fire drills and proper preparation could have prevented the tragedy.

Today's workers' comp. system and emphasis on safe work practices are a far cry from the dark and contentious times of the early 20th Century. – GD



STRAIGHT TALK ABOUT THE WORKERS' COMP. MARKET

There is a lot of talk now about declining profitability in the workers' compensation insurance line. As our economy struggles to recover, decision makers at the largest private insurers say they will be more cautious than ever when writing workers' comp. policies. "We will not chase volume at the expense of profit," one said. Another added: "We're being very selective about where we write."*

This discussion comes at a point in a staggering economy and soft market when all but one of the top 25 workers' comp. writers in the U.S. saw recent declines in direct written premiums, and nearly one-third saw huge drops of more than 20%, according to the credit rating service A.M. Best.

The most recent A.M. Best Co. Statistical Study lists the New York State Insurance Fund as the No. 6 workers' comp. insurance carrier in the U.S., which is one spot higher than our previous rank and positions us stably behind the top five private insurers. That is a suitable place for NYSIF, since our purpose, from inception, was never to be the biggest or most profitable insurance carrier on the block.

No one can argue that profit isn't important, but profit that imperils purpose is usually a slippery slope, one which, you may recall, rendered some private insurers next to insolvent not very long ago. NYSIF's mission is to maintain a stable market for workers' compensation insurance in New York by always being available to any business needing coverage. We cannot "pick and choose." In hard markets, we take on more business due to price hardening among the private carriers. In soft markets, we take on risks the other insurers selectively reject.

Our legislative mandate is to provide workers' comp. insurance to any business in New York at the lowest cost possible consistent with maintaining solvency, something we've been able to do for 96 years, in good times and bad, without tax payer money or any other kind of bailout.

This is something we do as well as any insurance company in the industry. Among the six companies at the top of A.M. Best's list, NYSIF is the only single-state, monoline insurance company in the group. Yet our decline in direct written premium in 2009, a modest 3.4%, was better than all but five of the top 25 companies. We attribute these results to our strong safety advocacy programs, premium discount plans, proactive claims management and a loyal customer base that recognizes value and good service.

Volatility in the workers' comp. market can have many causes – an insolvency crisis, failed self-insured trusts, exorbitant prices and fees, a weak economy, poor performance in general. Stability and customer service never go out of style. They are the most important qualities to find in a workers' comp. insurance company in any market, and they are what places NYSIF among the best on the A.M. Best list.

Industry watchers will continue to characterize NYSIF as "government run," "last resort" and a "residual carrier." True, NYSIF is all of these. Those who suggest, however, that the only reason businesses come to us is that they have no where else to go, perpetuate a dated fallacy. Old misconceptions are never a reliable reference.

The reality is that thousands of businesses choose NYSIF for workers' compensation and disability benefits insurance because we are a full-service, customer-focused insurance company driven not by profit, driven not to be the biggest, but driven to be the best at what we do. If you think your client or business might benefit by being with the sixth largest workers' comp. carrier in the United States, contact box199@nysif.com or give us a call today at 1-866-303-7737.



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Safety, Stability*

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A NYSIF 'U' REFRESHER

Introducing NYSIF 'U', a NYSIF education series providing information to address your workers' comp. and disability benefits needs.



E-Services Are The Way to Go

Did you know that more policyholders pay their NYSIF premium using our electronic payment service, eCHECK, than ever before? In two years since its debut, eCHECK has shown steady growth, with usage up by 28% in the past year alone. It's a quick and easy way to pay your workers' comp. and disability benefits premiums by electronic funds transfer from a bank account without charge, without the hassles of writing checks and mailing payments. Payments by eCHECK now outpace credit card transactions four to one.



■ To use eCHECK, policyholders can visit nysif.com and click on "Pay My Bill." You must have the policy number, the amount of the premium payment and bank account information including routing number. When the transaction is finished, eCHECK displays a confirmation page with total payment amount and a printable receipt. Or call **877-309-6028** to make eCHECK payments by phone.

Did you also know that more than 17,000 policyholders now get their NYSIF *Workers' Comp. Advisor* news electronically? Helping us save printing costs and paper, these policyholders receive a quarterly e-mail delivery notification sending them to our web site for the latest edition of each *Advisor*. It's the "green" way to go.

■ To discontinue receiving a paper copy of the *Advisor* and sign up for electronic delivery notices, e-mail your request to marketing@nysif.com. And remember, you may access and print the current and past editions of *WCA* at nysif.com any time.

[If you have a question for NYSIF 'U' e-mail jmesa@nysif.com]