

RECORD YEAR FOR FRAUD SAVINGS

NYSIF[®]

NEW YORK STATE INSURANCE FUND

Workers' Comp.

ADVISOR

nysif.com

April, May, June 2009



Rocket Docket!
Get Onboard



Need to know...

Adding color to workplace decor can boost performance, researchers say. Red promotes accuracy; blue, creativity.

NYSIF Workers' Comp. Advisor
April/May/June 2009

**This Issue****Beat the Clock**

Streamlined
Claims
Adjudication

Procedures — otherwise known as the “rocket docket” — implemented by the Workers' Comp. Board on January 1, have NYSIF hearing representatives up against tight deadlines in controverted case preparation to defend the rights of policyholders. Read all about the recently-adopted regulations and how your cooperation is crucial to compliance under the new rules.

Pages 3-4

Staying Serious About Falls

In times past, “ascending the scaffold” meant an appointment with the executioner and certain death. With scaffolding accidents all too common today, and all too often leading to deadly consequences, it's high time to get scaffolds right. An urgent follow up to “Getting Serious About Fall Protection” (WCA Jan-Mar 09).

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Reminder: Post '08 OSHA Summary Thru April 30

Employers are reminded to conspicuously post OSHA Summary Form 300A of total 2008 job-related injuries and illnesses through April 30, 2009. The form is available on the OSHA Recordkeeping web page.

Use New C-2 Form on April 1**Employers Cautioned on Filing, Record Keeping**

Beginning April 1, the NYS Workers' Comp. Board is requiring employers to use a revised Form C-2, *Employer's Report of Work-Related Injury/Illness*. NYS Workers' Comp. Law requires employers to record any injury or illness incurred by their employees in the course of employment using Form C-2. Employers must maintain the completed forms, which are subject to review by the WCB at any time, for 18 years.

In addition to maintaining these records, an employer must file a completed Form C-2 with the WCB, and with the employer's insurance carrier, when a work-related injury or illness results in personal injury requiring:

- a loss of time from regular duties of one day beyond the working day or shift in which the accident occurred; or
- medical treatment beyond ordinary first aid; or
- more than two first-aid treatments.

Revised Form C-2 requires employers to provide additional information

On September 17, 2008, the WCB announced that it had substantially revised Form C-2 and other core WCB forms. The new Form C-2 takes effect April 1, 2009. A slightly revised version of Form C-2 was issued in October 2008.

The revised Form C-2 requires employers to provide additional information, such as policy period, date the employee gave notice of accident/illness, the employee's supervisor, a list of witnesses and whether the employee received a **Claimant Information Packet**—a new requirement—from the employer.

EMPLOYERS NOTE: the Claimant Information Packet is available from NYSIF's web site at nysif.com. Employers must provide injured employees with this packet, which includes the *Employee Claim* (Form C-3) and the *Limited Release of Health Information* (Form C-3.3). [For more information, see page 4].

Employers must file Form C-2 within 10 days after a reportable accident. Employers may designate a third party to complete and/or file Form C-2.

As of April 1, 2009, employers who fail to file a completed Form C-2 (9/08 or 10/08 version) with the WCB within 10 days after a reportable accident, or do not submit a Form C-2 at all, face penalties of up to \$2,500.

The WCB cautioned employers to make every effort to fully complete Form C-2

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TO OUR POLICYHOLDERS

From NYSIF Chairman
Robert H. Hurlbut

On behalf of The New York State Insurance Fund Board of Commissioners, I thank you for choosing NYSIF to fulfill your workers' compensation insurance and disability benefits needs.

Effective at the close of business on March 5, the Board accepted the resignation of former Executive Director David Wehner. The Board designated Deputy Directors Thomas Gleason and Shirley Stark to perform the duties of the Executive Director, until such time as a new Executive Director is appointed. These two individuals are outstanding public servants, in whose abilities I have great confidence.

NYSIF has a long, proud tradition of safeguarding workers and protecting families. For more than 95 years, NYSIF professionals have promoted a healthy and accident-free workplace for each of its policyholders and employees. I want to reassure you that NYSIF remains committed to serving the businesses, injured workers and people of New York State. NYSIF's dedicated workforce will continue to serve the insurance needs of our policyholders by providing outstanding customer service. Once again, I thank you for choosing NYSIF.



THE CLOCK IS TICKING

The accelerated hearing process is as follows under the new regs:

A pre-hearing conference is to be scheduled "as soon as practicable," but no later than 30 calendar days after receipt by the Board of the C-7 and the medical report referencing an injury.

Insurers must file a pre-hearing conference statement with the Board no later than 10 days prior to the pre-conference hearing.

Along with the statement, the insurer must submit all reports, forms and documents it intends to use at the hearing, including hospital records, employer's statement of wages, claimant's work status, plus:

- a brief claim summary;
- basis for the controversy;
- an offer of proof for each defense raised;
- list of all witnesses to testify, including employers;
- summary of all testimony;
- list of medical witnesses and plans for cross-examination;
- names of additional necessary parties;
- a statement that all necessary forms are submitted and discovery completed, or details on further forms and discovery needed.

Failure to file and serve the statement upon all parties to the claim within

a timely manner will result in a waiver of defenses to the claim.

Failure to list a witness, failure of a witness to appear, or failure to include a necessary document may result in a waiver of the right to call such witness or introduce the document in the case.

- At conclusion of the hear-

Streamlined Claims Hearings

NYSIF Needs Your Cooperation

The NYS Workers' Comp. Board Streamlined Adjudication Procedures, otherwise known as the "rocket docket," set an important piece of the 2007 NY Workers' Comp. Reforms in rapid motion.

With NYSIF hearing representatives facing tight deadlines to meet requirements of the new regulations, which took effect January 1, 2009, NYSIF is seeking cooperation from employers to resolve controverted cases in compliance with the new process.

Rocket docket rules set specific benchmarks with which insurers must comply for controverted cases to be heard by the WCB.

"We're asking policyholders to help us meet Board requirements to speed the claims adjudication process in the interests of all parties—employers and injured workers," NYSIF Deputy Executive Director Tom Gleason said.

A controverted case is one in which NYSIF files a C-7 "Notice of Controversy" indicating NYSIF's intent to dispute the merits of a claim for workers' comp. benefits in a hearing before the WCB.

For policyholders, cooperation is the key to protecting their interests in these cases.

The rules specifically require insurers to be fully prepared to present evidence in support of the Notice of Controversy at a pre-hearing conference within 30 days of filing in order for the case to proceed.

As part of workers' comp. reform, the WCB's streamlined docket regulations require insurers to then meet specific benchmarks for each ensuing stage of the proceedings. The objective is to trim the average time to resolve a disputed claim from 200 days to within 90 days or less.

"Employer cooperation is critical for promptly resolving compensability in contested claims so employers rights are protected, and so workers receive timely payment of benefits when they're entitled," NYSIF Supervising Hearing Representative John Zenkewich told a gathering of policyholder representatives during a presentation last December.

Mr. Gleason said: "We are relying heavily on employers for their cooperation in order

'We are relying heavily on employers for their cooperation in order to fulfill our obligation to policyholders and to injured workers to resolve these cases as quickly as possible.'

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Rocket Docket: Get Onboard

From 3

to fulfill our requirements under the rules, but also to fulfill our obligation to policyholders and to injured workers to resolve these cases as quickly as possible.”

Mr. Zenkewich told his audience the best way for policyholders to help NYSIF expedite cases with the intent to resolve claims more quickly is as follows:

How Employers Can Help

- Provide NYSIF prompt notification of all accidents (see the WCB notification about requirements for recording all accidents on the revised Form C-2);
- When contacted, respond promptly to NYSIF investigators;
- Provide full cooperation and assistance in the investigation process.

The rules require that every effort be made to present all evidence at the initial expedited hearing, at which point the judge is expected to attempt to resolve all the issues in the case.

“Clearly the Workers’ Comp. Board is serious in its intent to reduce the average time for the resolution of controverted claims from 200 days to 90 days as illustrated by the new requirements,” NYSIF Claims Director Edward Hiller stated.

A list of imperatives issued by Mr. Hiller—including marking all rocket dock-

et notifications as “high importance” and confirming the appearance of all witnesses prior to hearings—has illustrated the point to NYSIF Claims personnel. NYSIF claims teams involved in piloting rocket docket cases developed strategies recommended for complying with the timeline under the streamlined requirements.

Case managers have noted that the WCB is strictly adhering to the benchmark deadlines, and has been consistent in allowing only 30 days for production of an IME report on disputed medical issues, and only 60 days for the completion and filing of medical depositions.

“It is imperative that we all work together to preserve employers’ and claimants’ rights in light of these challenging new regulations,” Mr. Hiller said.

Mr. Gleason said: “We can’t stress enough how important it is for employers to work with NYSIF and with your injured workers to bring about a timely resolution of claims. Not only in cases that fall under the requirements of the rocket docket timeline, but in all workers’ compensation claims.”



THE CLOCK IS TICKING

From 3

ing, a Workers’ Comp. Law Judge will identify issues to be tried, witnesses, need for further discovery, depositions, and set a trial date (initial expedited hearing) within 60 days of the pre-hearing conference.

- If an independent medical examination (IME) is ordered, it must be completed and the doctor’s report filed at least three days prior to the date of the initial expedited hearing.
- Failure of medical witnesses to appear at the pre-hearing conference will result in waiver of the employer’s right to introduce the IME report, or have the witness testify at a hearing, or by deposition unless an affidavit is filed showing good cause and that the employer acted in good faith and with due diligence.
- Failure to file the IME report within three days of trial will result in a waiver of the right to obtain an IME unless excused by the judge based upon an affidavit showing good cause.

Rocket Docket Timeline

- Day 20** Pre-Hearing Statement filed, Independent Medical Exam secured
- Day 30** Pre-Hearing Conference
- Day 57** IME filed and served
- Day 60** Initial Expedited Hearing
- Day 85** Medical testimony completed, transcripts filed
- Day 90** Record closed/Decision

Failure of witnesses to appear at the pre-hearing conference will result in waiver of the employer’s right to have the witness testify at trial.

Use Revised Form C-2 on April 1

From 2

(9/08 or 10/08 version). If employers do not have the information to answer all questions on the Form C-2 within 10 days of the accident, they should complete the form as best they can, indicate which information is unavailable, and timely file the form.

However, employers may incur penalties for not filing Form C-2 if a Workers’ Comp. Law Judge or conciliator finds it deficient due to a significant number of questions left unanswered.

Form C-2 (10-08) is available at the WCB’s web site for downloading and for online submission from the Forms pages.

DISTRIBUTING THE CLAIMANT INFORMATION PACKET

The WCB now requires employers to distribute a **Claimant Information Packet** to workers at the time of a reportable injury or illness, including info on the following:

- Filing a claim
- Providing notice
- Hiring representation
- Obtaining health care
- Using a carrier’s designated pharmacies and diagnostic testing networks.

These items, combined with **Form C-3 Employee’s Claim** and **Form C-3.3 Limited Release of Health Information (HIPAA)**, constitute the Claimant Information Packet. To comply with the rule, employers can print and distribute the Claimant Information Packet found on nysif.com once they become aware of an employee’s reportable injury or illness.



\$20.7M '08 Anti-Fraud Campaign Yields Record Savings

NYSIF's 2008 fraud prevention program accounted for more than \$20 million in total savings, a record amount exceeding all prior yearly totals since NYSIF began the program.

Continuing an aggressive attack against workers' compensation fraud in New York State, NYSIF again emerged as an industry leader in fighting fraud with a methodical approach to building solid cases through the efforts of our policyholder, claims and investigative teams in cooperation with a number of other New York State agencies and law enforcement authorities.

NYSIF's Division of Confidential Investigations (DCI) completed a record year in 2008 with successful workers' compensation fraud investigations leading to an estimated savings of \$20.7 million.

The total savings includes cash restitution of approximately \$1.6 million and estimated future savings of more than \$19 million, resulting from additional premium, lower reserves and forfeiture of future payments on fraudulent claims.

Total savings for 2008 surpasses all prior yearly totals, as does the amount of cash restitution collected since NYSIF began reporting data on fraud arrests in 1994.

NYSIF is an established state and national leader in the fight against workers' compensation fraud. In 2008, NYSIF cases led to 148 arrests.

Going back to 1995, NYSIF anti-fraud efforts have accounted for a cumulative total of 1,228 arrests, representing estimated savings of \$166.5 million for New York State.

Reducing fraud in the workers' compensation system benefits all honest businesses, working people and consumers.

NYSIF's record-setting savings amount in 2008 is a credit to our anti-fraud efforts and the assistance we receive from outside agencies committed to the fight against workers' compensation fraud.

NYSIF DCI works in close cooperation with the New York State Insurance Department Frauds Bureau, the Workers' Compensation Board Office of Fraud Inspector General, local and state police and district attorneys in counties throughout New York State.

"The Workers' Compensation Board has been proud to partner with NYSIF and the Insurance Department to fight and prevent fraud," Workers' Compensation Board Chair Zachary S. Weiss said. "This cooperation is smart government and will lead to

further savings and confidence in the system as a whole."

New York State Insurance Superintendent Eric Dinallo said: "Workers' compensation fraud is a serious crime victimizing hundreds of thousands of honest New York taxpayers and businesses forced to shoulder the burden of higher premiums. The Insurance Department's Frauds Bureau is committed to continuing its aggressive anti-fraud efforts and working with the

Insurance Fund and the Workers' Compensation Board Fraud Inspector General in a determined effort to combat all forms of workers' comp fraud. Strong anti-fraud activities complement the state's ongoing work to drive down the cost of workers' compensation insurance."

NYSIF DCI Director Laurence LaPointe, who has headed NYSIF's special investigations unit since 1998, said 2008 arrests and savings totals included investigations of a number of major cases of premium fraud as well as claims and medical provider fraud.

"Our successes in this area included prosecutions of roofing, masonry and general construction contractors, home improvement contractors and a house moving company," Director LaPointe stated. "These companies had an unfair competitive advantage over honest businesses because they were not paying their fair share of the cost of taking care of injured workers. We are working closely with state and local law enforcement to ensure a level playing field for all New York businesses."

The Totals

Arrests 148
Cash Restitution
\$1,598,232.37
Estimated future savings
\$19,053,200.41
Estimated total savings
\$20,651,432.78

Going back to 1995, NYSIF anti-fraud efforts have accounted for a cumulative total of 1,228 arrests, and estimated savings of \$166.5 million for New York State.

Phone It In
Help NYSIF fight fraud.
Report fraud against
NYSIF at 877-WCNYSIF
or
Online at nysif.com
Strictly Confidential

Getting Scaffolds Right

Gary Dombroff, WCP/CSC

Safety Cop



In times past, “ascending the scaffold” meant an appointment with the executioner and certain death. Construction workers and window washers have met the same fate on today’s scaffolds when these elevated, temporary work platforms are improperly assembled or anchored, poorly maintained, incorrectly used, or have no fall protection. The U.S. Bureau of Labor Statistics reported that falls killed 355 construction trade workers in 2007, and 88 workers in all occupations died due to falls from scaffolding.

Work on and around scaffolds also causes a significant number of lost-time accidents. The Occupational Safety and Health Administration has exacting requirements, found in 29 CFR 1926 Subpart L, for the construction, usage, maintenance and inspection of fixed, movable and suspended scaffolds.

In addition, awards to injured workers in height-related accidents under New York State’s Labor Law Section 240 (known as the “scaffold law”) are *not* covered by workers’ comp. Defending against this liability means going to court.

SCAFFOLD BASICS

Scaffolds range from simple platforms for house painters, to complex structures enclosing office buildings, cathedrals, or the Statue of Liberty. They come in two basic varieties: those supported by rigid, load bearing members such as poles, legs, frames and outriggers; and those suspended overhead by ropes or other non-rigid supports. Subpart L also covers aerial lifts, such as “cherry pickers” or boom trucks.

All scaffolds are required to be physically sound and have fall protection, proper planking and suitable load capacity. Protective barriers (guardrails), when required, must be strong enough to support a falling employee.

OVERVIEW OF OSHA STANDARD

Subpart L defines and distinguishes between “competent” and “qualified” persons (see sidebar). The standard also mandates when a registered professional engineer is required, and who can design scaffolds, supervise their assembly and inspect them. Anyone utilizing scaffolds in their work should deal with capable

and experienced professionals who can ensure correct choices, safe assembly and compliance with OSHA regulations.

Employers must train each employee who works on a scaffold on the hazards and the procedures to control the hazards. Employees involved in erecting, disassembling, moving, operating, repairing, maintaining, or inspecting scaffolds also must be trained to recognize associated work hazards.

KEY SCAFFOLD REQUIREMENTS

- Each scaffold and scaffold component must support without failure its own weight and at least *four times* the maximum intended load applied or transmitted to it. Suspension scaffold rigging must support at least *six times* the intended load. Scaffolds and scaffold components must not be loaded in excess of their maximum intended loads or rated capacities, whichever is less.
- A *qualified* person must design scaffolds. In some cases, mostly for tall or complex scaffolds, an engineer is required.
- Each scaffold platform and walkway must be at least 18 inches wide. If the work area is less than 18 inches wide, guardrails and/or personal fall arrest systems must be used.
- The major protection from falling objects is to always wear a hardhat. In addition, when there is the danger of falling hand tools, debris and other small objects, the employer must install toe boards, screens or guardrail systems above the worker on a scaffold, or debris nets, catch platforms or canopy structures to contain or deflect falling objects.

CONSTRUCTING SCAFFOLDS

- Footings—Support scaffold footings must be level and capable of supporting the loaded scaffold. Legs, poles, frames and uprights must bear on base plates and mud sills.
- Platforms—Supported scaffold platforms must be fully planked or decked.
- Guying ties and braces—Supported scaffolds with a height-to-base of more than 4:1 must be restrained from tipping by guying, tying, bracing, or the equivalent.
- Inspections—Before each work shift and after any occurrence that could affect the structural integrity, a *competent* person must inspect the scaffold and scaffold components for visible defects.
- Erecting, dismantling—When erecting and dismantling supported scaffolds, a *competent* person must determine the feasibility of providing a safe means of access and fall protection for these operations.

FOILING FALLS

- Employers must protect each employee on a scaffold more than 10 feet above a lower level from falling to that lower level by guardrails or a fall arrest system.
- Each employee on a single-point and two-point adjustable suspended scaffold must be protected by both a personal fall arrest system *and* a guardrail.
- Suspended platforms require secure anchorage and lifelines that are independent of supporting ropes. A *competent* person must inspect ropes for defects prior to *each* work shift and after every occurrence that could affect a rope’s integrity. A *competent*

person must also evaluate all direct connections prior to use to confirm that supporting surfaces are able to support the load.

- When lanyards are connected to horizontal lifelines or structural members on single-point or two-point adjustable scaffolds, the scaffold must have additional independent support lines equal in number and strength to the suspension lines and have automatic locking devices.
- All suspension scaffolds must be tied or otherwise secured to prevent them from swaying, as determined by a *competent* person. The platform must not deflect more than 1/60 of the span when loaded.

STAYING ALIVE

This article only covers the basics of scaffold design, construction and protection. See additional sources of information listed below.

Competent v. Qualified? Know the Difference

OSHA's standard differentiates between workers who are "competent" and those who are "qualified" to meet scaffolding safety requirements:

A *competent* person is "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions, which are unsanitary or hazardous to employees, and who has authorization to take prompt corrective measures to eliminate them."

A *qualified* person is "one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work, or the project."

More Resources

OSHA Booklet:

Scaffold Use In The Construction Industry (OSHA 3150) – Revised 2002 www.osha.gov/Publications/osha3150.pdf

OSHA Quick Cards:

Supported Scaffold Safety Tips

www.osha.gov/OshDoc/data_Hurricane_Facts/supported_scaffold_tips.pdf

Supported Scaffold Inspection Tips

www.osha.gov/OshDoc/data_Hurricane_Facts/supported_scaffold_tips2.pdf

Aerial Lifts Safety Tips

www.osha.gov/OshDoc/data_Hurricane_Facts/aerial_lifts_safety.pdf

NYSIF Safety Resources:

Visit nysif.com>Safety & Risk Management>Safety Resources>Safety Matters Construction Series

Falls - Improper Scaffold Construction

Falls - Personal Fall Arrest Systems

Falls - Safety Net Systems

Falls - Safety Net Systems Drop Testing

Electrocution - Contact with Power Lines



From left: NYSIF's Russ Fitch and John McCarthy, OSHA's Ed Jerome, Americlean President Mark Miller, NYSIF's Augie Bortoloni and NYS DOL's Bob Francis

SHARP Operators

Policyholder Americlean became the first mobile construction company in New York certified by the U.S. Dept. of Labor's Safety and Health Achievement Recognition Program (SHARP). ■ Companies earning SHARP certification represent the top 1% of small businesses across the state in employee safety. "This is really a testament to the hard work and dedication of our entire team of employees," the South Glens Falls-based company founder Mark Miller said.

■ Americlean celebrated its newly-attained SHARP status in February 2009 at the Saratoga Auto Museum (above). Gov. David A. Paterson sent a letter of congratulations: "This prestigious distinction recognizes Americlean's profound commitment to worksite safety and health," he wrote, commending Americlean's "ongoing leadership in workplace safety" on behalf of all New Yorkers. ■ With NYSIF since 1988, Americlean joined Innovative Risk Concepts, Safety Group 568, in 1995. In 2006, the company set an ambitious goal to become SHARP certified, something no New York construction contractor had ever done due to logistical problems of multiple worksites.

■ Americlean worked with the Occupational Safety and Health Administration, NYS Dept. of Labor and NYSIF to achieve SHARP certification. To establish participation from employees, NYSIF's Russ Fitch suggested incorporating safety issues into Americlean's production meetings. In time, employees began to buy into the goal of SHARP certification.

Steps to SHARP Certification

Here's what worked for Americlean:

- Develop an employee safety committee;
- Establish an accident investigation system;
- Review near miss incidents;
- Develop steps to anticipate and prevent hazards;
- Institute mandatory safety and health training;
- Establish a reward system for effective employee participation.

For details on SHARP visit OSHA's web site at osha.gov/dcsp/smallbusiness/sharp.html.

SHARP Move - Small Business Resources

The NYS Business Council has opened a small business hotline—**1-866-997-7270**—to answer questions and help small business members. To learn about on-site safety evaluations visit OSHA's web site. Employers who use this service may qualify for SHARP.



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Workers' Comp. Advisor

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NYSIF Renews Safety Alliance

NYSIF and the Occupational Safety and Health Administration inked an agreement renewing the safety alliance initiated in January 2007 between NYSIF's Albany office and the OSHA Albany Office.

The alliance is a cooperative program between NYSIF and OSHA to educate New York State employers and employees in advancing workplace safety and health. NYSIF OSHA-authorized outreach trainers in Albany teamed with OSHA's Paul Wigger to conduct several OSHA training sessions with New York State businesses in the past two years. The alliance does not include an enforcement component.

NYSIF Albany Policyholder Services Manager Augusto Bortoloni said the alliance helps NYSIF "continue our outreach efforts to promote safety to employees in New York."

Monthly Safety Topics

Find safety topics at

nysif.com>Safety & Risk Management>Small Business

April Preventing Infectious Disease

May Safe Lifting Techniques

June Components of a Safe Workplace

**The alliance helps
NYSIF's outreach
efforts to promote
safety to employees
in New York State.**

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