

**NYSIF**<sup>®</sup>

**PREFERRED RISK & RETRO PLANS**

NEW YORK STATE INSURANCE FUND

*Workers' Comp.*

# ADVISOR

nysif.com

April, May, June 2011

## **NYSIF eFROI<sup>®</sup>**

Put A Powerful Claims  
Management Tool  
to Work For You

## **Fraud Fighters**

An Industry Leader Again:  
107 Arrests, \$11.3M  
Savings

### **TRIANGLE'S LEGACY**

# 'They Did Not Die In Vain'

Firefighters battle the Triangle  
Shirtwaist Factory fire, Asch  
Building, lower Manhattan,  
March 25, 1911; Now the Brown  
Building, it still stands at 23-39  
Washington Place



# Questions & Answers

WCA Jan-Feb 2001 (below) covered topics that prompted readers' questions. Here are some answers:

## Domestic Workers' Bill

Several readers asked about the Domestic Workers' Bill of Rights. This new legislation did not alter the pre-existing requirements for workers' comp. benefits for domestic workers, addressed in the paragraphs quoted below from the NYS Workers' Comp. Board (WCB) web site:

"Domestic workers employed 40 or more hours per week by the same employer (including full-time sitters or companions, and live-in maids) are required to be covered by a NYS workers' comp. insurance policy.

"Workers' comp. insurance is NOT required IF the only people who work for

period of time are subject to the Disability Benefits Law. This includes employers of domestic employees in a private home if they employ at least one employee who works 40 or more hours per week for that one employer. If the household employs at least one qualified domestic worker, then the employer is required to provide disability benefits to all eligible employees, which includes full-time and part-time employees.

For more on workers' comp. and db for domestic workers visit:

[http://www.wcb.state.ny.us/content/main/onthejob/CoverageSituations/domesticWorkers\\_NonAudioPPT.jsp](http://www.wcb.state.ny.us/content/main/onthejob/CoverageSituations/domesticWorkers_NonAudioPPT.jsp). For more on the Domestic Workers' Bill visit:

<http://www.labor.ny.gov/sites/legal/laws/domestic-workers-bill-of-rights.page>.

## Correction

Some readers spotted an editing error in an article on Page 4 about the [Construction Industry Fair Play Act](#).

The article listed a description of an independent contractor, not an employee. It should have read as follows:

**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.

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

## Medical Treatment Guidelines

New Medical Treatment Guidelines issued by the WCB raised questions that the Board addressed in a "Frequently Asked Questions" page on its web site, including key facts, training, pre-authorizations, variance process, existing claims, billing, forms, out-of-state and other questions. The complete guidelines and FAQs are available here: <http://www.wcb.state.ny.us/content/main/hcpp/MedicalTreatmentGuidelines/FAQs.jsp>

## Recommendation of Care (ROC)

Policyholders who sign up for [NYSIF ROC program](#) to potentially reduce medical claim costs up to 15% now can e-mail a signed copy of the ROC Acknowledgement Form to [Roc@nysif.com](mailto:Roc@nysif.com) or fax a signed copy of the form to 212-312-7120 in lieu of the original. Only send a signed original to NYSIF, 199 Church Street, Attn: ROC, 4th Floor Claims Administration, NY, NY 10007, if you cannot e-mail or fax the form.

NYSIF Workers' Comp. Advisor  
April/May/June 2011

## This Issue 'Not In Vain'

The Triangle Shirtwaist Co. fire in NYC was a galvanizing American tragedy ushering in the modern progressive era – a defining moment in labor history and



industrial safety legislation leading to workers' compensation insurance and NYSIF. On the fire's 50th anniversary, words once spoken about the victims by Frances Perkins, an early NYSIF commissioner, still resonate: "They did not die in vain."

Page 4

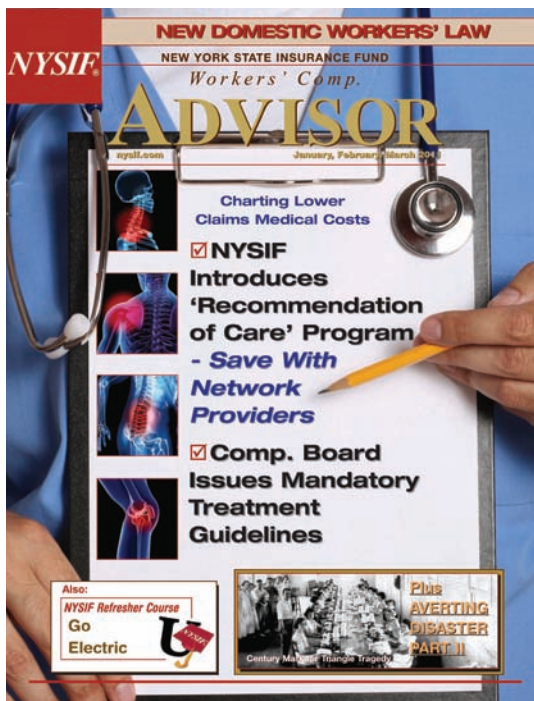
## Tap Into NYSIF eFROI®

Still using a paper form to notify NYSIF about claims? Ouch! Delays in the claims process can be costly. Use this powerful claims management tool that lets NYSIF cut to the chase and get on the case right away.

Page 5

## OSHA Backs Up on MSDs

Seeking more input from impacted small businesses, OSHA temporarily withdrew its proposal to restore a column for work-related musculoskeletal disorders on employer injury and illness logs. According to the Bureau of Labor Statistics, MSDs accounted for 28% of all reported lost time workplace injuries and illnesses in 2009.



the household are domestic workers in a private household who individually work less than 40 hours per week for that household and do not live on premises. However, a person who employs household help for less than 40 hours per week is encouraged to obtain a voluntary workers' comp. insurance policy to protect both the employer and the employee."

Additionally, employers in New York State who employ one or more domestic employees for the statutory minimum

## Preferred Risk and Retro Plans


# Loss Control Incentives

NYSIF invites eligible policyholders to take a look at these options that have built-in loss control incentives:


**Preferred Risk Participation Plan (PRPP)** - For eligible medium- and large-sized business, a new program that rewards excellent loss experience with a return of premium beyond the initial advance discount. PRPP offers policyholders an advanced discount of 20%, with a potential maximum return of 49% of NYSIF discounted premium when the term ends. Return of premium is calculated one year after the end of the policy period.

**How return of premium is determined:** A policyholder with an inception date of January 1, 2011 receives a 20% discount for the 2011 policy year. Twelve months after the policy period concludes (January 1, 2013) NYSIF develops the loss ratio, which determines the return of premium, if any. Policyholders can request a check or credit toward future workers' comp. premium.

**Retrospective Rating Plan** - For large employers who assume a portion of risk for a plan based on claims history and safety practices. With a retro, the insured's actual loss experience, plus a percentage of standard premium to cover insurer expenses, establishes the final premium, which is subject to a predetermined minimum and maximum. For a large risk, a retro plan offers possible savings as an alternative to guaranteed cost, or self-insured plans – without the administrative or regulatory requirements of self insurance.




**WORKERS' COMP  
OPTIONS**




**RETRO**  
Retrospective  
Rating Plan

May be just the right fit  
for your business.

An alternative to self-insurance  
and guaranteed cost



**WORKERS' COMP  
OPTIONS**



**PRPP**  
Preferred Risk  
Participation Plan

A new option for medium- and  
large-sized business

NYSIF offers a loss-sensitive  
alternative to group  
self-insurance &  
private carrier dividend plans

**Contact Policyholder Services at a local NYSIF office  
(see [nysif.com](http://nysif.com)) to learn if either option is right for you.**

## More On the 2010 Construction Industry Fair Play Act

In addition to criteria for determining independent contractors (See correction, opposite page) the law also contains a 12-part test to determine when a sole proprietor, partnership, corporation or other entity is considered a "separate business entity" from the contractor. An entity must meet all 12 of the following statutory criteria to be considered a separate business entity that is subject to the new law regarding its own employees:

- perform 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;
- not be subject to cancellation when its work with the contractor ends;
- have a substantial investment of capital in the entity beyond ordinary tools, equipment and a personal vehicle;
- own the capital goods, gain the profits and bear the losses of the entity;

- make its services available to the general public or business community on a regular basis;
- include the services provided on a federal income tax schedule as an independent business;
- perform the services under the entity's name;
- obtain and pay for any required license or permit in the entity's name;
- furnish the tools and equipment necessary to provide the service;
- 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;
- have the right to perform similar services for others on whatever basis and whenever it chooses; and
- the contractor does not represent the entity or the employees of the entity as its own employees to its customers.

## Penalties

An employer who willfully violates the Fair Play Act by failing to properly classify employees is subject to civil penalties of up to a \$2,500 fine per misclassified employee for a first violation and up to \$5,000 per misclassified employee for a second violation within five years. Employers also may be subject to criminal prosecution for violations of the act with penalties of up to 30 days in jail, \$25,000 in fines and debarment from bidding on or being awarded any Public Works contracts for up to one year for a first offense. Subsequent misdemeanor offenses are punishable by up to 60 days in jail, \$50,000 in fines and debarment from bidding on or being awarded Public Works contracts for up to five years.

Questions regarding compliance may be addressed to the Bureau of Compliance, 20 Park Street, Room 202, Albany, New York 12207, (866) 298-7830.



# Triangle's Legacy

**T**he Triangle Shirtwaist Factory fire in New York City on March 25, 1911 was the flash point for the modern day workers' comp. system in America.

Ceremonies, documentaries and other remembrances marked the 100th anniversary of the fire.

Triangle's victims were mostly young women and men who had a lifetime ahead of them. The ensuing shock and outrage led to investigations and reforms, new building and labor laws, and many protections for workers.

On that late Saturday afternoon a fateful combination of working and social conditions, managerial mindset and building design coalesced into a brief, but deadly inferno. The factory itself had a high concentration of flammables, narrow aisles, locked exits and defective fire escapes. Rescue ladders too short to reach beyond six or seven stories forced agonizing decisions – face the fire or jump (the eight- or nine-story plunge was not survivable). In a matter of minutes, 146 innocent workers perished.

The fire opened more eyes to workplace safety issues. Labor unions, led by the International Ladies' Garment Workers, regrouped and rallied for better working conditions. Three months later, a Factory Investigating Commission headed by state legislators Robert Wagner, Sr., and Al Smith visited over 3,000 factories in multiple industries, held hearings across the state and, in 1912, issued a scathing preliminary report. Their chief investigator was zealous labor reformer (later a NYSIF commissioner, and, then, U.S. secretary of labor) Frances Perkins, an eyewitness to the fire.

Ultimately, the Triangle victims' legacy would include improved working conditions, wage and child labor laws, and fire-proof buildings that protect life as well as property. One often-seen reform – “panic bar” locks on outward-swinging exit doors – are now part of building codes. Use of this lock, available since about 1904, might have prevented or limited the tragedy.

In three years, a public referendum led to an amended State Constitution, the 1914 New York Workmen's Compensation Law and the New York State Insurance Fund. At the fire's 50th anniversary in 1961, Ms. Perkins memorialized the victims: “They did not die in vain, and we will never forget them.”

## 21st Century Sweatshops

NYS Dept. of Labor enforces garment, wage and hour laws through its Apparel Industry Task Force (AITF), created in 1987 by the legislature in response to growing concern over unlawful sweatshops in New York State. Sweatshop conditions are no longer confined to the apparel industry. They're found in restaurants, laundries, grocery stores, bakeries, gardening services and other industries where victims are often immigrants who speak little English. AITF investigates sweatshops in each industry.

The law requires all apparel manufacturers to register with NYS Division of Labor Standards each year. As of March 21, 2011, there were 1,726 apparel firms registered in the state, but AITF identifies many businesses that are not registered from one year to the next. Investigators must find who is no longer operating, or operating without a license. In 2008, AITF found garment manu-

Gary Dombroff, CSC/CSS  
*Safety Cop* NYSIF



## FIRE TRAP VICTIMS BURIED

DRAFT NEW LAW TO SAVE SHOP WORKERS

THE WEATHER NEW YORK EVENING JOURNAL 9TH EDITION EXTRA

Who Is Responsible? WOMAN TELLS OF FIGHT FOR LIFE AT BARRED DOORS!

A 1911 headline in the New York *Evening Journal*

facturers owed more than \$5 million in wages to workers, including a case of extensive labor violations by a garment contractor in Long Island City.

## How to Identify Sweatshops

NYS Dept. of Labor helps manufacturers and retailers avoid sweatshops when seeking apparel contractors. A guide to common characteristics include fire, safety and structural hazards and wage violations (no single characteristic marks a sweatshop). Companies contracting with sweatshops face civil and criminal penalties, and loss of illegally produced goods. Read more: [www.labor.ny.gov/workerprotection/laborstandards/workprot/sweatshp.shtm](http://www.labor.ny.gov/workerprotection/laborstandards/workprot/sweatshp.shtm)

## What Became Law

No fewer than 36 laws were enacted on recommendations of the Factory Investigating Commission, among bills addressing:

Fire drills

Automatic sprinklers

Fire prevention

Fire escapes and exits

Fire alarm systems

Child labor laws

Manufacturing in tenements

Working hours

Ventilation

Washing facilities

Accident prevention and lighting

Dangerous trades

Cleanliness and sanitation

[WCA Oct-Dec 2010](#) (I.) and [WCA Jan-Mar 2011](#) contain a two-part guide to fire safety;

Read more: [nysif.com](http://nysif.com)>About NYSIF>NYSIF News>Triangle Shirtwaist Co. Fire - Commemorative





**The power to manage your claims more effectively**

**NYSIF eFROI®**  
Electronic First Report of Injury

Go to [nysif.com](http://nysif.com) > Employers > Report an Injury/Illness or call 1-888-875-5790

*The sooner you report a worker injury, the more you may be able to reduce the cost of the claim!*

New York State Insurance Fund

## A Powerful Claims Management Tool For You

Why wait for a paper C-2 to reach NYSIF?

**D**elays in the claims process can be costly. Despite declining frequency, workers' comp. claims costs continue to rise industry wide, fueled partly by escalating medical fees and stalled case management.

Did you know the fastest, most efficient way to notify NYSIF about workplace injuries is with our electronic First Report of Injury system, NYSIF eFROI®?

You don't need an online account to use NYSIF eFROI®. Just go to [nysif.com](http://nysif.com)>Report an Injury/Illness to get started.

**FOR REPORTABLE INJURIES** Use NYSIF eFROI® for all NYSIF claims that require you to file Form C-2 "Employer's Report of Work-Related Injury/Illness" with the Workers' Comp. Board. NYSIF eFROI® gives policyholders the option to file a claim by sending an electronic C-2 to NYSIF and the WCB for fastest claims service.

Employers must file a claim within 10 days of becoming aware of a work-related injury that will cause an employee's loss time from work of more than one day.

However, early filing facilitated by using NYSIF eFROI® helps lower claim costs by allowing a NYSIF case manager to actively manage the claim as soon as possible. Reporting claims with NYSIF eFROI® expedites the entire claims process, facilitating personal claims handling, reducing errors and delays, and accelerating medical treatment strategies to speed recovery.

The Occupational Safety and Health Administration requires employers to keep records of all workplace accidents, including "first aid" cases, for at least 18 years whether filing a claim or not in case an accident that is non-reportable later becomes a claim.

NYSIF eFROI® retains a permanent record of your report, retrievable on our web site by the policyholder. This is a convenient feature, which allows policyholders to meet OSHA record keeping requirements.

Study after study shows the quickest way to shorter claims duration is active claims management from the outset of a claim. Why wait for a paper C-2 form to reach NYSIF by mail? Start using your best option to notify NYSIF as soon as you have

knowledge of a reportable claim. Start using NYSIF eFROI® today.

**IMPORTANT INFO ABOUT FILING A CLAIM** Employees have 30 days to give employers written notice of an injury and up to two years to file a report of injury or illness.

Policyholders using the "first aid" option pay for medical treatment for minor injuries that are non-reportable, meaning the injury does not cause a loss of time from regular duties by the employee

### Tap Into the Power of NYSIF e-FROI® - the fastest way to claims resolution

- ⚡ Report injuries to NYSIF 24/7, expedite claims handling
- ⚡ Allow proactive case management by NYSIF staff
- ⚡ Speed needed medical care to help with recovery
- ⚡ Eliminate errors, reduce costly delays, cut potential claim costs

**File C-2 claim forms electronically with NYSIF and the Workers' Comp. Board**

(The law requires employers to retain all accident records for 18 years, even if the claim is non-reportable. Completing NYSIF eFROI® online facilitates your record-keeping requirements.)

**Have your policy number, date of injury and employee social security number ready when using e-FROI**

beyond the workday or shift in which the injury occurred, or require more than two treatments by a person rendering first aid. In first-aid cases, have the injured worker and medical provider send you the medical bills for prompt payment to avoid having the case affect your claims history. If NYSIF inquires, be sure to advise us you are handling the injury as a first aid case. If the injury becomes a lost time case, or more than two medical treatments have been rendered, the policyholder must immediately file Form C-2 with NYSIF and the WCB.

**DON'T FORGET CONNECTS** CONNECTS stands for Clients On Net - NYSIF Electronic Claims Tracking System, giving policyholders 24/7 access to discrete data to keep up with claims' progress and identify accident trends. Together, NYSIF eFROI® and CONNECTS may well be the most effective tools NYSIF policyholders have to manage claims cost.

**WHAT TO DO IF YOU SUSPECT FRAUD** See page 6 for tips on filing Form C-2.



## 2010 Totals: 107 Arrests, \$11.3M Savings

**D**ivision of Confidential Investigations Dir. Phil Di Senso announced that NYSIF recorded 107 arrests for workers' comp. fraud in 2010, resulting in restitution and estimated future savings of \$11.3 million.

### **Sports Bar Boss Pleads Guilty**

In a year-end arrest, Manhattan DA Cyrus R. Vance, Jr., announced the guilty plea of the principal owner of The Kettle Black, a sports bar and restaurant in Bay Ridge, Brooklyn, on Dec. 29, for failing to pay more than \$1.3 million in city and state sales tax between 2005 and 2010 in a case that included workers' comp. premium fraud against NYSIF.

**Thomas Casatelli**, 40, pleaded guilty to grand larceny in the second degree and offering a false instrument for filing in the first degree, agreeing to pay taxes, insurance premiums, accrued interest and penalties totaling \$1,326,940.

Authorities said Mr. Casatelli also paid most of his employees off-the-books, failing to collect withholding tax from them or unemployment insurance tax.

"NYSIF is grateful for the work of the Manhattan District Attorney's Office in this case," NYSIF Chief Dep. Exec. Dir. Francine James said. "Our investigators work closely with local law enforcement to pursue workers' compensation fraud against NYSIF. Insurance fraud is not a victimless crime. It is a crime against honest businesses and hard working men and women."

State Labor Commissioner Colleen C. Gardner said: "I applaud District Attorney Vance for taking strong action to crack down on unemployment insurance fraud and off-the-books employment. These issues have far reaching consequences, including loss of tax revenue and diminished protections for workers."

**Report fraud confidentially to NYSIF  
at 1-877-WCNYSIF or at [nysif.com](http://nysif.com)**

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

Since 1995, NYSIF's anti-fraud program has resulted in 1,489 arrests for workers' comp. and disability benefits insurance fraud, along with restitution and estimated savings of \$194.4 million.

### **Claimant in Taxi Bribe Scheme**

A former NYSIF claimant arrested in 2010 in a NYSIF DCI case, pleaded guilty in Federal court on March 2, 2011 to distributing more than \$250,000 in bribes in a scheme to obtain licenses to operate cab companies in Washington, DC, and to influence city legislation that would benefit his business, the *Washington Post* reported.

**Yitharek Syume**, 53, pleaded guilty to bribery, conspiracy to commit bribery, and mail fraud in a plea deal in which he agreed to cooperate with authorities in the investigation, the *Post* said.

Mr. Syume and two other men allegedly conspired to pay tens of thousands of dollars in bribes to the chairman of the DC Taxicab Commission to obtain licenses to operate multi-vehicle taxi companies, with the expectation that the taxi licenses would become more lucrative when the District eventually enacted a moratorium on such permits in 2008, according to the *Post*. The chairman of the taxicab commission reportedly tipped off authorities after he was first offered a \$20,000 bribe by Mr. Syume in September 2007, prosecutors said.

Mr. Syume, who owned a taxi repair shop, allegedly defrauded NYSIF of \$110,790 in workers' comp. benefits during a four-year period ending in 2008, which led to his arrest for mail fraud in 2010. NYSIF is seeking restitution.

**TIPS ON FILING FORM C-2** Statements made on Form C-2, "Employer's Report of Work-Related Injury/Illness," have been held to be binding by the WCB. Notify NYSIF immediately if you are suspicious about a claim. If reporting a questionable claim, exercise caution. Preface accident descriptions with phrases such as, "It is alleged that..." or "The employee claims that..."

## *NYSIF People*

### **Phil Di Senso, Dir. DCI**

Chief Dep. Exec. Dir. Francine James announced the appointment of Phil Di Senso as director of the Division of Confidential Investigations. He succeeds Laurence LaPointe, who retired last year. Mr. Di Senso joined NYSIF in 1994 as DCI's first supervising field investigator, becoming DCI's first assistant director in 1999. In a career spanning four decades and three continents, Mr. Di Senso has conducted or supervised a wide range of investigations including: financial fraud, falsified accounting records, international tax violations, missing cash, as well as workers' comp. fraud. He conducted his first investigations as an officer in the U.S. Army. Previously, he retired from the IBM Corporation as the senior audit manager responsible for IBM's Finance Competency Center.



Mr. Di Senso

### **Sherwin Taylor, Dir. Underwriting**

Chief Dep. Exec. Dir. Francine James announced the appointment of Sherwin Taylor as director of Underwriting. Mr. Taylor joined NYSIF in 1976 and has more than 34 years' experience as an underwriter and manager. He succeeds John Massetti, who is now director of NYSIF Business Operations. Mr. Taylor served most recently as business manager of the Lower Manhattan office and, before that, Safety Group Office 2. He began his career as a senior underwriting clerk in NYC and came up through the ranks as an underwriter, sr. underwriter, associate underwriter and principal underwriter. He also supervised the Underwriting Operations unit, served as an underwriting trainer, and as policyholder services manager of SG2, before becoming business manager in 2001.



Mr. Taylor

# THIS BEHEMOTH IS NOT ABOUT TO LEAVE THE ROOM...

**\$600 Million**

## ...And it could grow larger still

The New York Workers' Comp. Board Self-Insurance Task Force estimates the audited unfunded liabilities of failed self-insured trusts at \$600 million. All self-insured entities – individual employers and self-insured groups – must pay assessments to an insolvency fund to cover this liability – a ruinously long tail with no end in sight.

• **Fact:** 36 self-insured groups have defaulted/voluntarily terminated since 2008.

• **Fact:** Seven more have voted to close effective 12/31/10.

• **Fact:** Eight others are 80% funded or less.

### Let NYSIF help you kick this elephant to the door. Take advantage of:

- Guaranteed cost premium discounts up to 35% for qualified employers
- Preferred Risk plans offering a potential 49% return of discounted premium
- Retrospective rating plans with guaranteed minimum and maximum final premium
- Safety group plans
- Full service claims administration for all new and existing claims



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Safety, Stability*

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SINCE 1914**

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#### **Chief Deputy Executive Director & Secretary to the Board of Commissioners**

Francine James

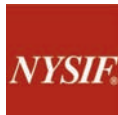
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Workers' Comp. Claims & Service **1-888-875-5790**  
Disability Benefits Claims & Service **1-866-697-4332**  
Business office contact information [nysif.com](http://nysif.com)

Send WCA comments to [jmesa@nysif.com](mailto:jmesa@nysif.com)



## **A NYSIF 'U' REFRESHER**

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



## **Nail Certificate Fraud with eCERTS®**

In 2001, NYSIF unveiled an industry-first electronic Certificate of Insurance System – eCERTS®, allowing customers to create/print certificates online. Contractors, government entities and others rely on certificates of insurance to prove workers' comp. coverage is secured for many types of work.

■ The system also has a fool-proof method for certificate holders to spot certificate fraud and avoid liability for potentially thousands of dollars in unpaid premium. Just go to [nysif.com](http://nysif.com) and click on "[Validate a Certificate](#)." Enter the unique validation number found on the lower left of each NYSIF certificate. If no match is found, you'll receive a link to report suspected fraud to NYSIF.



## **Thanks for the Feedback**

Several thousand policyholders received a recent e-mail from NYSIF regarding general information about premium audits in a project testing new ways to communicate with customers. The project was a positive experience, proving that education works both ways when there is a productive exchange of ideas. We received constructive comments about audit issues – some that we were able to promptly address and some that are part of our audit review process and we are continuing to study. Thanks for your feedback. If you would like to receive future e-mail information from NYSIF, including the *Workers' Comp. Advisor*, contact [marketing@nysif.com](mailto:marketing@nysif.com).

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