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Workers' Comp.

ADVISOR

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Second Quarter 2012

Role of the Employer in Claims

First Report of Injury

- Why You Should Start Using NYSIF eFROI[®] Now
- When To File
- First Aid Option
- Red Flags of Fraud
- Recommendation of Care

Safety Cop
When the Worksite is Offsite



NYSIF People

Don DeCarlo Appointed Chair

Donald T. DeCarlo, Esq., was appointed chairman of the NYSIF Board of Commissioners by Governor Andrew M. Cuomo and confirmed unani- mously by the Senate in February.



Donald T. DeCarlo

Mr. DeCarlo is the principal of an independent law firm in Lake Success, NY, which focuses on media- tion/arbitration and regulatory and insurance counseling. Before establishing the firm in 2005, Mr. DeCarlo was a partner at Lord Bissell & Brook LLP and headed its New York office. Formerly, he was senior vice president and general counsel of The Travelers Insurance Companies, executive vice president and general counsel for Gulf Insurance Group and vice president of NCCI Holdings, Inc. Mr. DeCarlo is a director of several companies in the insurance industry.

Mr. DeCarlo is a certified ARIAS-US arbitrator and umpire, a master arbitrator for the NYS Financial Services Department, and an arbitrator for the American Arbitration Association. He is the founder, chairman and president of The American Society of Workers' Comp Professionals, Inc. (AMCOMP) and WCP. Mr. DeCarlo is a professor and teaches a professional development program, the first of its kind, at The Center for Professional Education at St. John's School of Risk Management, Insurance and Actuarial Science.

Mr. DeCarlo has authored numerous scholarly articles in legal and trade jour- nals and is a co-author of three books on workers' compensation insurance, *Workers Compensation Insurance & Law Practice - The Next Generation*; *Stress in the American Workplace - Alternatives for the Working Wounded*, and *Workers Compensation: The First 100 Years*.

Mr. DeCarlo was appointed by the NYS Insurance Department to chair a task force on New York State Insurance Regulatory Modernization. He chairs an advisory committee of the World Trade Center Captive Insurance Company, and served as vice chairman and commissioner of NYSIF for 10 years. He also served as an inspector for the NYS Athletic Commission.

Mr. DeCarlo is a Knight of Malta and a trustee of Mount St. Michael Academy. He received a Humanitarian Award for his efforts with the Judeo-Christian tradition by the Development Corporation of Israel. He has been hon- ored by numerous major academic institutions such as Mount St. Michael and the College of Mount St. Vincent. He has also been honored by the Long Island Chapter of the Cystic Fibrosis Foundation.

Mr. DeCarlo graduated from Iona College with a major in economics and earned his law degree at Saint John's University School of Law. He and his wife, MaryAnne, an artist, reside in Douglaston, NY.

High Cost of Falls

An OSHA analysis of fall injuries for roofers and carpenters found that falls by roofers cost an average of approximately \$106,000 each, and falls from elevations by carpenters cost an average of over \$97,000 each. You can view a PowerPoint presentation, *Workers' Compensation Costs of Falls in Construction*, on OSHA's [Residential Fall Protection](#) web page.

Construction Noise

A new publication, *Protecting Yourself from Noise in Construction*, discusses loud noise, how it is measured, and how to find out if noise on the job is causing hearing loss. It explains administrative and engineering controls, and proper personal hearing protection to reduce noise exposure. To order, call 1-800-321-OSHA or visit OSHA's [Publications](#) web page.

NYSIF Workers' Comp. Advisor
April/May/June 2012

This Issue
Key Player
On Team

A key player on the claims team, the employer is responsible for initiating a claim with a timely first report of injury, providing details of the accident

and verifying the injured worker's account of the incident or illness. And that's not all. Learn about your crucial role in the claims process.

Clock Ticking on Paper Claims

With the Workers' Comp. Board announc- ing plans to begin phasing in mandatory claims e-filing in 2013, it's time to go elec- tric. Fortunately, NYSIF has an electronic claims filing system that many policyhold- ers are already using, NYSIF eFROI®. If you're not one of them, now is a good time to get started.

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NYSIF

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Preventing Eye Injuries

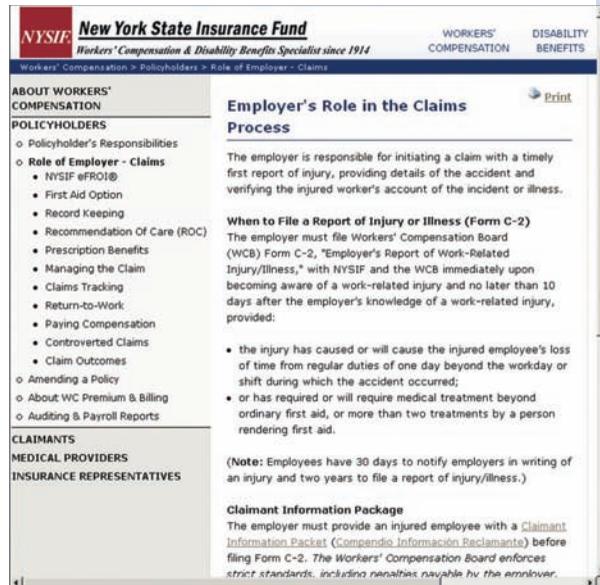
An [OSHA factsheet](#), *Eye Protection against Radiant Energy during Welding and Cutting in Shipyard Employment*, is intended to help prevent eye injuries from radiant energy given off by an arc or flame. For protection, employers must ensure that workers use the necessary per- sonal protective equipment, such as safety glasses, goggles, welding helmets or weld- ing face shields. This equipment must have filter lenses with a shade number that pro- vides the appropriate level of protection. The higher the shade number, the darker the filter and the less light radiation that will pass through the lens. Tables in the new factsheet show the proper shade num- bers to be used under various conditions.

The Employer's Role in the Claims Process

Although the claims administration landscape will change with the introduction next year of a national standard for electronic claim filing by the NY Workers' Comp. Board [see related story, right], the employer's crucial role in the claims process remains the same. Aside from a change in how to file, the employer is still responsible for initiating a claim with a timely first report of injury – an important step because timely reporting helps expediently achieve the best outcome for the claimant and the employer.

NYSIF policyholders have had access to NYSIF eFROI® to file an electronic C-2, *Employer's Report of Work Related Injury/Illness*, the paper form the board will begin phasing out next year, for more than a decade. Our web-based system generates an immediate loss record, sends an eC-2 data file directly to the WCB, and allows for quick accident investigation and proactive claims management by NYSIF.

In addition to timely reporting, the employer is responsible for providing details of an accident and verifying the injured workers' account of the accident or illness. Our newly-reorganized Workers' Compensation section at nysif.com provides more information



Our reorganized [Workers' Compensation](#) section at nysif.com has more.

Start using NYSIF eFROI® to familiarize yourself with electronic claims reporting.

about the role of the employer in the claims process under the Policyholders tab.

It contains important details about the employer's responsibilities regarding when to file a claim and about notifying NYSIF of new developments in a case after filing a C-2, including accurate wage and attendance information for the injured worker, or any change in work status such as a return to light duty or modified job assignment.

You'll also find a note about using discretionary language when reporting questionable claims [learn about red flags of fraud, page 7], and additional information that covers the Claimant Information Packet, First Aid Option [page 8], Recording Keeping, Prescription Benefits, Claims Tracking, Return-to-Work, and NYSIF's Recommendation of Care (ROC) program that helps reduce the medical cost of claims.

ROC Expands Provider List

NYSIF's Recommendation of Care program now totals more than 34,000 participating providers. The program, administered by the Coventry medical provider network, has the potential to save up to 15% on medical claim costs. You must sign up to take advantage of the program. Click the [Recommendation of Care](#) link under the Employers tab on NYSIF's home page for details.

WCB Plans Switch to eFiling in 2013

The NYS Workers' Comp. Board announced plans to phase-in mandated electronic claims filings, beginning in spring 2013.

WCB Chair Robert Beloten said the board will use the national standard Electronic Data Interchange (EDI) format established by the International Association of Industrial Accident Boards and Commissions (IAIABC). The board will implement EDI Claims Release 3.0 in phases to replace paper copies of forms C-2, *Employer's Report of Work Related Injury/Illness*, and VF-2 and VAW-2, covering claims for volunteer firefighters and ambulance workers, along with other related claim forms.

NYSIF reminds policyholders that NYSIF eFROI® (electronic First Report of Injury) facilitates electronic claims filing with the WCB. NYSIF encourages policyholders who haven't tried it yet to use NYSIF eFROI®, our web-based service accessible at nysif.com from the home page under the Online Services or Employers tabs.

'NYSIF welcomes the opportunity to work with the board in the EDI initiative.'

"As the largest writer of workers' compensation insurance in New York, NYSIF welcomes the opportunity to work with the board in the EDI initiative," NYSIF Chief Executive Deputy Director Dennis J. Hayes said. "This should reduce costs for our policyholders, ensure the delivery of benefits in a more timely fashion and provide greater accountability for all parties of interest."

New York is the 37th state to adopt the EDI claims reporting format of IAIABC, a not-for-profit association of government entities who administer workers' comp. systems.

The board expects the system, which it has dubbed "eClaims," to provide more accurate claims reporting, improve timely delivery of benefits, and reduce paper handling costs.

Thanks to technology an ever-increasing number of employees work frequently or exclusively from their homes and other offsite locations. [WorldatWork's 2011 Survey on Workplace Flexibility](#) showed that over 26 million Americans telecommuted at least once a month in 2010.

Most articles on preventing occupational accidents don't discuss safety at home, but with telecommuting redefining the "office," home safety has become an important risk management topic. The changing definition of workplace requires employers to weigh the benefits, and pitfalls, of allowing select workers to telecommute, and to help them prevent injuries wherever they work.

Telecommuting can be a *formal* working arrangement that designates a specific number of days per week, month, or payroll period that employees will work from home or another site (such as a telecommuting center) mutually agreed upon by the employer and the employee. (Formal agreements help define what *doesn't* constitute "working," such as voluntarily checking e-mails during non-work hours, or taking files home to "catch up" on projects if this is not approved.)

Pros and Cons

Flexible scheduling and reduced commuting costs and travel time (although many telecommuters spend some time in the office) are some benefits of telecommuting. Employers may reduce office space when fewer workers require fixed workstations, and business may continue when the central office is inaccessible. Some employers see telecommuting as a way of attracting or retaining skilled workers. Of course, certain jobs are not suitable for home work: accountants, yes; machinists, no.

Working at home has allowed some disabled employees to work productively without commuting. Companies may allow employees recovering from compensable injuries (whose jobs or transitional duties permit it) to work from home as part of their return-to-work programs.

On the other hand, management concerns include work performance and time spent on tasks. Do domestic matters interfere with deadlines/goals? Will telecommuters claim overtime pay? Employers must consider data security, responsibility for company-owned equipment, and privacy issues.

Now add to those concerns worker safety and workers' compensation exposure while performing work at home.

What Are the Risks?

Ideally, the alternative worksite should lack distractions, and be secure, private and safe. It's common to consider one's own home to be free of occupational hazards, but ensuring worker safety away from the office isn't easy. Working from home exposes workers to many of the same hazards found in traditional workplaces. These include slips, trips and falls, fires, musculoskeletal injuries from improper ergonomics, and even sitting too long.



Telecommuting Extends On-the-Job Injury Exposure; What You Can Do to Minimize the Risk

A court ruling upheld compensation for an employee tripping over her dog. In another case, an obese telecommuter (with pre-existing risk factors) died of a blood clot due to sedentary work habits; a court ordered compensation benefits paid to her spouse.

According to *Risk & Insurance* magazine, "State workers' comp. laws covering employees who telecommute remain underdeveloped. As these cases show, this new territory should be a concern for every employer who has telecommuting employees." While many employers do not mandate a home inspection prior to approving telecommuting, it is an option and can become part of the formal agreement.

Who's Right for the Job?

Besides developing a formal policy, experts agree that choosing the right employees for telecommuting can help prevent problems. Selecting the right telecommuting employees is a critical risk management tool. Successful candidates should have sufficient experience in their positions, and be capable of working with little supervision. The employer trusts these workers to carry on company business sight unseen. Gauging this capability requires an honest appraisal of the employee's work history, performance evaluations, time and attendance records, organizational ability, work initiative, meeting deadlines and goals, and ability to work independently.

Supervisors may require daily logs, weekly plans, or other documentation deemed appropriate. The employee at an alternative worksite must be able to complete his or her job duties at the same level of proficiency as if working at the central worksite. However, the employee's need for specialized materials and/or equipment must not pose an undue hardship to the employer.



A Safe Telecommute: Minimize Your Risk

How to Handle Injuries

Workers' Compensation Law applies if a telecommuting employee incurs a work-related injury. The employee should notify the employer about any alleged injury that occurs while working, usually reporting the incident to his or her supervisor. The supervisor should follow approved practices for reporting the incident; when filing a C-2 report of injury or using NYSIF eFROI® (electronic First Report of Injury), be sure to specify where and when the employee alleges the injury occurred [see page 3].

Access to the employee's home-based office can become a tricky issue, especially after an accident occurs. Sometimes, the telecommuting agreement requires a safety inspection *prior* to working at home, or requires telecommuters to allow technical personnel access to install company-supplied equipment. The employer may require that investigators access the alternative worksite in the event of an alleged injury.

Prevention Strategies

Employees working at home should have a separate work area. This helps prevent accidents and enhances an "at-work" mindset. Telecommuters should practice good housekeeping to prevent slipping on area rugs and tripping over loose wires and cables. They must keep the area neat to prevent falls and, especially if paperwork accumulates, fires. Electrical circuits and outlets should not be overloaded. An appropriate fire extinguisher (usually "ABC"-rated) must be accessible.

The work area should have good lighting, a comfortable desk and chair, proper computer equipment, properly adjusted ergonomic furniture and a business phone. If using a mobile device, its keypad should not substitute for a full-sized computer keyboard.

Good Ergonomics

Telecommuters and supervisors should agree, within reason, to specific work hours and breaks. This may limit the employer's liability if an injury occurs during a scheduled break. Formal breaks encourage walking around and reduce the risks of sedentary work habits. If telecommuters work with documents, try to provide them electronically. This reduces lifting/storing paperwork (and delivery costs).

Experts believe computer users should not overuse laptops because they are not as



Telecommuting allows some disabled employees to remain productive.

adjustable as traditional desktop models. Those assigned laptops for extended telecommuting can benefit from separate keyboards and monitors. Use ergonomic principles to prevent musculoskeletal problems and fatigue with any equipment:

- Adjust chairs to the proper height so feet rest comfortably on the floor.
- Sit with arms at a 90-degree angle and hold the wrist in a straight (neutral) position.
- Place the video monitor or other screens below eye level, and 18 to 24 inches from the eyes.
- Maneuver the mouse with arm movement, not by twisting the wrist.

The Bottom Line

There is never a guarantee that safe work practices will prevent accidents, as we know from traditional workplaces. When the worksite is off-premises, prudent employers will take great pains to choose the right employees for the privilege of telecommuting. These workers must not have a false sense of security because they are working in their home setting.

Preventing Injuries in Healthcare

Federal data showed that health-care sector workers reported more injuries/illnesses in 2010 than any other industry [WCA Jan-Mar 2012]. The National Institute for Occupational Safety and Health (NIOSH), and the Occupational Safety and Health Administration (OSHA) are reminding employers about protecting healthcare workers from two frequent exposures: needlesticks and workplace violence.

A new NIOSH-supported study shows how the Needlestick Safety and Prevention Act (NSPA) and OSHA's Bloodborne Pathogens standard have significantly reduced needlesticks and bloodborne disease exposure for healthcare workers. OSHA's revised standard requires employers to provide safety-engineered devices to workers exposed to bloodborne pathogens, including workers in the selection of these devices, to review exposure-control plans at least annually and to maintain specific sharps-injury logs. For more information about bloodborne pathogens and needlestick prevention, see OSHA's [Safety & Health Topics](#) web page.

A new factsheet published by NIOSH assists employers in preventing violence against home healthcare workers, which includes verbal abuse, stalking, threats and homicide. NIOSH offers strategies for workers, and encourages employers to establish a zero-tolerance policy for violence and provide violence-prevention training. For more information on OSHA guidelines for preventing workplace violence for healthcare and social service workers visit OSHA's [Workplace Violence](#) web page.

NYSIF safety resources help promote a safe workplace – wherever it happens to be. Find safety issues discussed on this page at [nysif.com>Safety & Risk Management>Safety Resources](#)

Safety Matters

Ergonomics
Bloodborne Pathogens/
Needle-Stick Prevention

Safety Checklist

Office Ergonomics

Safety Basics

Ergonomics - Office Basics
Ergonomics - Office Safety Tips
Proper Housekeeping
Workplace Violence Prevention
Healthcare Series

Also find an extensive collection of relevant safety posters.

Cellphone Ban Needs Wheels: Risk Experts

Distracted driving is receiving more attention these days, deservedly so in the age of cellphones, tweets and text messaging. The latest U.S. Bureau of Labor Statistics showed transportation-related accidents, as in previous years, leading all workplace fatalities. In 2010, this was true in New York and the nation.

Last December, the National Transportation Safety Board (NTSB) recommended a total ban on cellphone use by drivers in all motor vehicles. Although the U.S. Dept. of Transportation did not support the NTSB proposal for all 50 states and the District of Columbia to ban nonemergency use of portable electronic devices by all drivers, DOT did issue a new rule prohibiting interstate truck and bus drivers from using hand-held cellphones while operating their vehicles.

NTSB said that December 23, 2011, ruling did not go far enough, however. According to Caroline McDonald, reporting in *National Underwriter News Service PropertyCasualty360.com*, professional risk managers are in agreement with a total ban of cellphone use while behind the wheel.

“As a risk manager, I support the implementation of a total ban on cellphone usage,” she quotes Lori Seidenberg, an enterprise and insurance risk manager, and director of the Risk and Insurance Management Society, Inc. Risk managers also agree with NTSB research showing hands-free technology does not solve the problem. “You still need to look at your phone or PDA to answer or dial the call,” Ms. Seidenberg said.

The real issue is distracted driving, risk managers say.

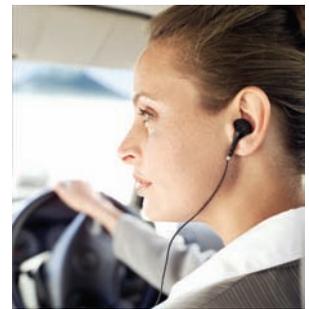
“The ever-present cellphone poses an insidious danger when it comes to cognitive distractions behind the wheel,” according to the NTSB Public Affairs Office. NTSB is sure there is no safety benefit to the use of hands-free phones. “When at the wheel of a 40-ton vehicle, driving safely should be the driver’s only focus,” it stated. The independent agency cited several cases involving fatalities and injuries when drivers used hands-free devices.

From a business perspective, employers should weigh the risk



Common-Sense Safety

A new DOT rule prohibits interstate bus and truck drivers from using hand-held devices while operating their vehicles. Citing distracted driving injuries and fatalities, The National Transportation Safety Board says the ban should extend to non-emergency use of hand-held or hands-free devices for all motorists.



of injury or death caused by distracted driving. Multi-tasking behind the wheel – driving while participating in conference calls or answering e-mails – defies common sense. Employers serious about banning cellphone use while driving can purchase inexpensive technology to disable a cellphone if its GPS detects vehicle motion, risk experts say.

They and the NTSB advocate education and enforcement, similar to that for drunk driving, to teach motorists about the risks of texting and cellphone use while driving. A written safety policy that prohibits cellphone use by employees while driving is good company policy for all businesses.

As one risk management consultant told *NU Online News Service*, “As a former police-accident investigator I handled more cases caused by inattention than I can count.”



Now ‘move over’ for tow trucks and other emergency vehicles

Remember to Move Over

New York instituted the Move Over Law last year after State Trooper Robert Ambrose and Onondaga County Sheriff Glenn Searles were killed while providing emergency roadside assistance to motorists. January 2012 marked the law’s one-year anniversary.

According to the National Law Enforcement Officers Memorial Fund, more than 150 officers have died the same way over the last 10 years nationwide.

The Move Over Law requires motorists to slow down and, if possible, move to another lane when they see an emergency vehicle stopped along a highway or street. Failure to obey the law can result in a moving violation and \$150 fine.

New York law enforcement takes the law seriously. The automobile club AAA New York reported that State Police on the NY Thruway and nine Hudson Valley counties issued 865 tickets in one week last spring to crackdown on motorists not obeying the Move Over Law. This January, the law expanded the definition of emergency vehicles to include tow trucks and other emergency road-service and hazard equipment.

AAA New York reported that the International Towing and Recovery Hall of Fame & Museum in Chattanooga, Tennessee, estimates about 50 tow truck drivers are killed every year.

The next time you see an emergency vehicle stopped along a highway or street, slow down and move over to the adjacent lane to avoid a possible tragedy. It’s not only common sense, it’s the law.

Common Claims' Red Flags

The employer's role in the claims process includes notifying NYSIF about questionable claims. Use cautionary language when filing a C-2 *Employer's Report of Work-Related Injury/Illness* for doubtful claims. When there are suspicious circumstances (red flags) preface your report with phrases such as, "It is alleged that...", or "The employee claims that..."

If you find clusters of red flags connected with a claim, the claim should be examined to determine if the claimant has lied about any material fact regarding the claim. Some red flags found in connection with fraudulent claims:

Suspicious Account of Accident

- No specific date, time, place of injury in report
- Injury details are sketchy in claim report
- Claimant's description of accident has inconsistencies, or is not believable
- Discrepancies between claimant's version and witness accounts, or medical reports
- Injury is not witnessed

- Accident occurs outside normal work area

Claimant Behavior

- Claimant difficult to contact during working hours; answering machine screens calls; post office box is residential address
- Claimant hires attorney shortly after the accident

Employment History

- Claimant is new on the job
- Injury reported after a disciplinary action, demotion, being passed over for promotion, etc.
- Claimant complains about job, supervisor, company
- Injury occurs prior to anticipated layoff, termination, strike, etc., or shortly thereafter

Personal History

- Claimant has taken out a private disability policy just prior to injury
- Claimant is having financial difficulties or domestic problems at time of claim

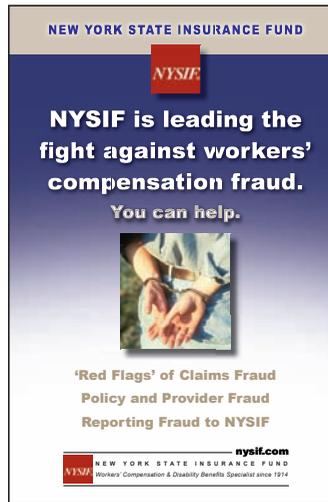
Suspicious Timing of Claim

- Injury reported to have happened early Monday, or on the day of return from vacation
- Untimely delay in reporting injury to supervisor
- Injury occurs before seasonal layoff

Suspicious Nature and Extent of Injury

- Injury is not associated with claimant's job duties
- Injury involves soft tissue and cannot be objectively confirmed
- Claimant refuses to return to work after being cleared for return by doctor
- Employee history of reporting subjective injuries
- Injury inconsistent with activity at time of accident
- Claimant engages in high-risk leisure activities

Plea Carries \$2.5M Restitution; 141 Arrests, \$12.8M Savings in 2011



Find NYSIF's anti-fraud guide at nysif.com>Online Publications

NYSIF received \$500,000 in February as the first installment of \$2.5 million restitution from a former policyholder charged with fraud for providing false business documents to NYSIF premium auditors.

The payment is part of a plea agreement signed on Feb. 1, 2012, by Owen O'Reilly, 46, a partner in MC&O Masonry, a Queens, NY, concrete business.

The Manhattan DA's Office arrested Mr. O'Reilly on Jan. 19, 2012, following a joint investigation with NYSIF's Division of Confidential Investigations (DCI). Mr. O'Reilly pleaded guilty to one count of fraudulent practices in violation of the Workers' Comp. Law and offering a false instrument for filing, both felonies.

DCI is a national leader among insurance investigation units. In 2011, NYSIF's anti-fraud program produced 141 arrests and \$12.8 million in restitution and estimated future savings.

75 Years with NYSIF



NYSIF Bronx/Queens Business Manager John DeFazio (l.) and Policyholder Services Manager Norvle Clark (r.) met Morris Yacht and Beach Club Commodore Glen Vitagliano (c.) and Chairman Steve Lott to present a plaque recognizing the club's 75 years as a NYSIF policyholder.

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Send WCA comments to jmesa@nysif.com

A NYSIF 'U' REFRESHER

NYSIF's education and information series for employers.



Claims 101: When to File a Report of Injury or Illness

The employer must file Workers' Comp. Board (WCB) Form C-2 *Employer's Report of Work-Related Injury/Illness* with NYSIF and the WCB immediately upon becoming aware of a work-related injury and no later than 10 days after the employer's knowledge of a work-related injury, provided:

- the injury has caused or will cause the injured employee's loss of time from regular duties of one day beyond the workday or shift during which the accident occurred;
- or has required or will require medical treatment beyond ordinary first aid, or more than two treatments by a person rendering first aid.

First Aid Option

■ The first aid option allows employers to avoid having a claim impact their claims history by paying for medical services rendered for accidents that are not reportable. The policyholder should advise NYSIF, the claimant and medical providers to send medical bills to the policyholder for prompt payment.

■ If the policyholder chooses the first aid option, but the injury escalates to a lost time case, or more than two medical treatments are rendered, the policyholder must file a C-2 with NYSIF and the WCB immediately.

Note: Employees have 30 days to notify employers in writing of an injury and two years to file a report of injury/illness.

Claimant Information Packet

The employer must provide an injured employee with a [Claimant Information Packet](#) before filing Form C-2.

See nysif.com>[Workers' Compensation](#)>[Policyholders](#)>[Role of Employer](#) for more information.

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