

# PUTNEY, TWOMBLY, HALL & HIRSON LLP

ESTABLISHED 1866

COUNSELORS AT LAW  
521 FIFTH AVENUE  
NEW YORK, NEW YORK 10175  
(212) 682-0020  
TELEFAX: (212) 682-9380  
putneylaw.com

DANIEL F. MURPHY, JR.  
MICHAEL T. McGRATH  
THOMAS A. MARTIN  
WILLIAM M. POLLAK  
DUSTAN T. SMITH  
JAMES E. McGRATH, III  
CHRISTOPHER M. HOULIHAN  
THOMAS M. LAMBERTI  
STEPHEN J. MACRI  
HARVEY I. SCHNEIDER  
MARY ELLEN DONNELLY  
JOSEPH B. CARTAFALSA  
GEOFFREY H. WARD  
ANDREA HYDE  
E. PARKER NEAVE  
MARK A. HERNANDEZ  
JAMES M. STRAUSS  
PHILIP H. KALBAN

120 WOOD AVENUE SOUTH  
SUITE 600  
ISELIN, NEW JERSEY 08830  
(732) 632-2505  
TELEFAX: (732) 632-2506

1205 FRANKLIN AVENUE  
GARDEN CITY, NY 11530  
(516) 746-0070  
TELEFAX: (516) 746-0599

2500 NORTH MILITARY TRAIL  
SUITE 465  
BOCA RATON, FLORIDA 33431  
(800) 935-8480  
TELEFAX: (561) 750-6602

COUNSEL

CHARLES J. GROPPE  
ALEXANDER NEAVE  
LOUIS A. TRAPP, JR.

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## CLIENT ALERT

### NEW YORK STATE WORKERS' COMPENSATION REFORM

On March 13, 2007 Governor Spitzer signed a bill reforming New York State's workers' compensation laws. Prior to this legislation, despite the fact that employer costs for workers' compensation insurance in New York were among the highest in the United States, claimants received some of the smallest benefits. The new law increases benefits for injured workers and reduces employer premiums by 10 to 15 percent with enhanced savings over time.

- The reform legislation increases the maximum weekly benefit for injured workers.
  - ◇ The maximum weekly benefit increases from \$400 to \$500 in the first year, \$550 in the second year, \$600 in the third year, and to two-thirds of the average weekly wage in New York in the fourth year. At that point in time, there will be no further increases, but the maximum benefit will be indexed annually (to the average weekly wage).
  - ◇ The minimum benefit has been increased from \$40 to \$100. A claimant earning under \$100 will receive only the amount of his or her wages.
- The bill also sets a maximum number of years for which permanent partially disabled claimants may receive cash benefits.
  - ◇ Maximum weeks of benefits operate on a sliding scale and depend on the percentage of loss of earning capacity or disability.
  - ◇ For example, for one whose loss of wage earning capacity is under fifteen percent, the maximum number of weeks of benefits is 225. Someone whose loss of earning capacity is over ninety-five percent can receive benefits for 525 weeks.

- ◇ These limitations affect only indemnity, not medical benefits.
- ◇ If a worker has over an 80% loss of earning capacity, he or she may request to be classified as permanently disabled.
- The legislation seeks to impose significant penalties for fraud and abuse.
  - ◇ These measures include the ability to stop work on a job site where a company has failed to purchase workers' compensation insurance for its workers, higher criminal penalties for violators and debarment provisions.
  - ◇ Employers who fail to secure workers' compensation payments for over five workers can be subject to a class E felony, which will be punishable with a fine ranging from \$5,000 to \$50,000, in addition to any other penalties provided by law.
  - ◇ Employers who intentionally misclassify employees as independent contractors in order to avoid the need for workers' compensation insurance will also be charged with a felony.
  - ◇ Other penalties will be imposed for failure to keep adequate business records.
  - ◇ Violations of these and other fraud provisions can lead to debarment for attorneys and ineligibility for businesses to enter into contracts with the state.
- Employers will save due to the closing of the Special Disability Fund (Second Injury Fund) which they were previously forced to contribute to.
  - ◇ Insurance carriers used this fund as a loophole to avoid paying claims.
  - ◇ The Fund will be closed to new cases occurring on or after July 1, 2007 and claims for accidents occurring prior to this date will only be accepted until July 1, 2010. The legislation provides for bonds to be issued to cover the remaining unfunded liabilities.
- The Compensation Insurance Rating Board, which assists in determining workers' compensation costs for employers, will sunset as of February 1, 2008.
  - ◇ A suggestion by the Superintendent of Insurance about what, if anything, should replace the Board is expected in September 2007.
- The legislation contains various provisions affecting medical benefits and fees.

- ◇ Carriers are allowed to contract with organized networks to perform various medical tasks including diagnostic tests, x-rays, magnetic resonance imaging and other radiological tests.
  - ◇ The bill institutes a pharmacy fee schedule and requires the use of generic drugs when available.
  - ◇ A fee schedule is established for prosthetics and other medical related devices.
  - ◇ Prior authorization is now only required for diagnostic and specialty treatment exceeding \$1,000, an increase from the previous \$500 limit.
- The legislation puts in place several “return to work” programs aimed at assisting workers return to the workforce.
- ◇ The Commissioner of Labor, assisted by an advisory council, must, by December 1, 2007 make recommendations on how to best “assure that workers categorized by the board as permanently partially disabled return to gainful employment to the greatest extent practicable.”
  - ◇ The Commissioner must issue annual reports including various workers’ compensation statistics.
  - ◇ The Commissioner is responsible for implementing a drug and alcohol prevention program.

If you have any questions, please feel free to contact us.