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## Workers' Compensation Legislative Bills Part of Budget Proposal

One specific area during Manufacturing Lobby Day that was discussed in great detail is workers' compensation. Currently, there are three active pieces of legislation that are moving through each of the branches, and if passed, will have great impact on the high costs and burdens associated with workers' compensation.

This year's legislative package addresses the two major cost drivers in the system; Scheduled Loss of Use award (SLU) and the failure, since the 2007 reform, to adhere to the statutory durational caps for Permanent Partial Disabilities (PPD). Addressing these two issues will provide cost savings of up to 10 percent each, producing significant premium relief for NYS employers, assuring a more financially stable compensation insurance market, while preserving indemnity and medical benefits for injured workers.

- S.4520 (Akshar) specifies that duration caps for permanent partial disability claims will start at the date of injury. One of the major provisions of the 2007 workers' compensation reform package was a more than doubling of the maximum weekly benefit, indexed to the average weekly wage, from \$400 to now over \$852. To help offset these significant cost increases, the legislation also adopted durational caps on permanent partial disability (PPD) claims of up to 10 years. Pre-reform, New York was the only state allowing "lifetime" PPD claims. Unfortunately, the 2007 legislation failed to clearly address the start date for durational caps, and the average time from the date of injury to the date of disability rating (and the commencement of duration caps) in New York had skyrocketed to over eight years

after the 2007 reforms. Due to some efforts by the workers' compensation board, that number has come down to about four and a half years, but still far longer than ever anticipated by the 2007 legislation. This is due to the desire by claimant attorneys to extend the total time of benefits far beyond the 10-year cap. This bill will correct the flaw in drafting in the 2007 reforms and begin the 10-year duration "clock" at the date of injury.

- S.4554 (Amedore) limits "scheduled loss of use" awards to cases with 85% impairment ratings; in these cases, injured workers would utilize the SLU award adjusted for indemnity benefits for lost time. SLUs are now used by less than half of the states. New York's compensation statute still uses this antiquated model, under which injured workers receive indemnity benefits for lost work and lost earnings, while also paying significant lump-sum payments based on which body part was injured. These additional SLU awards have no relationship to lost time or lost earnings. This system gives five and six figure windfalls to claimants who may not actually miss any days of work. In fact, NYS Workers' Compensation Board data shows that 75% of SLU awards go to claimants missing less than two weeks of work, while costing the system over \$1.3 billion annually. This bill would guarantee that severely injured workers would continue to use the current schedules, while those with less serious injuries, who have missed little time from work continue to receive workers' compensation benefits in the exact same way as their colleagues with non-SLU injuries.
- S.4014 (DeFrancisco) / A.5977 (Woerner) would require the Workers' Compensation Board (WCB) to release and adopt already completed Impairment Guidelines for SLU awards. These guidelines serve as the basis for determining impairment, which is a major determinant in the size of SLU awards. However, the WCB's current guidelines have not been overhauled since 1983, and reflect thirty-year-old medical assumptions. The WCB has developed new guidelines, with input from medical professionals and system stakeholders, which reflect modern medical evidence. Updated SLU impairment guidelines will result in more appropriate calculations of SLU awards.

If you would like some more information on these bills and their impact, please do not hesitate to contact me directly at [kburns@macny.org](mailto:kburns@macny.org).