



**New York State Office of the Attorney General
Letitia James**

Testimony Before the

New York State Senate

Standing Committee on Labor, Chair: Senator Jessica Ramos

**Addressing the Current State of the Workers' Compensation System and
Possible Areas for Improvement**

May 15, 2024

Good morning Chair Ramos and Committee members. My name is Karen Cacace, and I am the Bureau Chief for the New York State Attorney General's Labor Bureau. I have been in this position for over four years. Prior to joining the Attorney General's Office, I was the Director of the Employment Law Unit at The Legal Aid Society in New York City for over nine years.

I want to thank you for convening this important hearing and for giving our office an opportunity to share our recent experiences, feedback, and insight. Today's hearing offers many of us working on labor issues in New York State a chance to report on the effectiveness of the workers' compensation system and its capacity for protecting the rights of employees and employers by ensuring the proper delivery of benefits to injured workers. We look forward to discussing possible legislative and policy changes which we think would help improve the system.

I also want to note that Attorney General James, and the rest of our office, continues to appreciate the strong and constructive relationship between our office and the legislature. As with other issues we've worked on together, we offer our time and any relevant expertise we may have to assist with the legislative objectives of the committee, legislative leadership, or other individual legislators.

The Labor Bureau affirmatively investigates and litigates matters affecting workers in New York State. Our office prioritizes enforcement of violations against low-wage workers, including wage theft, discrimination, safety, and family and medical leave. In addition, the Labor Bureau defends the New York State Department of Labor and Workers' Compensation Board when their decisions are challenged in court. Alison Kent-Friedman is the Section Chief of the Workers' Compensation Section. Prior to joining the Attorney General's Office, she worked at the New York State Insurance Fund for 28 years.

Recently, in keeping with our office's emphasis on worker protection, the Workers' Compensation Section began investigating employers who use discrimination, intimidation or retaliation to prevent injured workers from accessing the workers' compensation system. Through this work, we have become aware that there are currently gaps in the Workers' Compensation Law. Accordingly, we have the following suggestions, which we feel would improve injured workers' access to the workers' compensation system and strengthen the integrity of the system:

Workers' Compensation Discrimination and Retaliation

We are aware of unscrupulous employers who discriminate and retaliate against workers who are eligible for or use the workers' compensation system. Employers are often eager to prevent workers from filing workers' compensation claims so that the cost of their insurance will not rise, particularly in industries with a high incidence of injuries where the premium rate for certain job classifications is already high. Employers can intimidate and deter their workers from filing claims by threatening them with adverse employment actions, including firing and diminished work hours. Due to the workers' lack of knowledge concerning what rights they may have to collect benefits when they are injured, employers can also manipulate workers into not telling medical providers they are being treated for a work-related injury. This undue pressure is particularly prevalent in instances where the worker is not a native English speaker or has a fear of exposing their immigration status. The law, however, does not currently provide sufficient penalties for these illegal actions.

- **Workers' Compensation Law §120:** The current enforcement statute, Workers' Compensation Law (WCL) §120, provides authority for the Board to commence administrative action against employers who retaliate against workers seeking to file claims. However, the penalties the Board can assess for violations (\$100-\$500) are minimal and are mandated to be paid into the state treasury rather than to the worker. Strengthening penalties under this statute would provide more of a deterrent to employers contemplating unlawfully threatening their employees. Because of the low penalties, most WCL §120 claims are brought by pro se claimants as there is little to no financial incentive for counsel to represent them. This may cause extensive delays in resolving the action and, ultimately, make it easier for employers who are bad actors to avoid liability. WCL §120 should be amended to add the ability to award liquidated damages and costs and attorneys' fees to the employee in the event of a successful claim, along with any other recourse the legislature deems appropriate to bolster compliance and protect workers' rights.
- **Medical Only Claims-** In addition to the difficulty in obtaining legal representation for discrimination claims, it is also difficult for claimants to obtain attorneys in medical-only workers compensation claims where there is an accidental injury but no lost time from work. This can be problematic for claimants as they often cannot determine how to get medical expenses paid on the claim without an attorney's assistance. Under WCL §24, attorneys' fees are only paid out when a claimant receives an award of benefits for lost wages to compensate him or her for losing time from work. The attorneys' fees are considered as a lien on the lost wage benefits, so if there is no lost time from work, no

attorneys' fees can be awarded. We recommend expanding awards of attorneys' fees to also include claims where only medical benefits are paid out.

- **Workers' Compensation Law §§ 32 and 110-a:** We are also aware of instances where employers have deliberately disclosed the existence of confidential workers' compensation information in order to harass workers who have filed claims. We have also seen employers looking to minimize the costs of an accident who have coerced employees, outside the presence of an attorney, into private financial settlements of their claims. These settlements were undoubtedly much smaller than the employees would have obtained had they filed claims and had access to legal advice. Accordingly, we recommend amendments to WCL §110-a to provide for individual remedies on behalf of the employee for the deliberate unlawful disclosure of confidential workers' compensation claim information and for amendments to WCL §32 to provide for additional penalties against employers who coerce employees into financial settlement of their claims in order to avoid higher workers' compensation insurance costs.

- **Notice Requirements for Injured Employees under the Workers' Compensation Law §51 (S.7097)** Another significant issue we have encountered is workers' lack of knowledge of their entitlement to workers' compensation benefits. WCL §51 currently requires that employers post a notice only in English and Spanish of workers' compensation insurance coverage "in a conspicuous place or places" in their place of business so as to notify workers that coverage is in place in the event they are injured. However, there is currently no requirement under the WCL that the employer directly inform the employee of his or her right to file a workers' compensation claim when the employee sustains a workplace injury or the procedure for doing so, nor is there any requirement for providing information in languages other than English and Spanish. Currently introduced legislation, S.7097 (Sen. Ramos), would require the notice to be posted in other languages as determined by the board, and employers to provide to the worker when they are injured a notice of workers' compensation insurance requirements in their native language. This legislation would also provide for monetary penalties for non-compliance.

- **Outreach - Awareness of Benefits** Workers' lack of awareness about their rights to workers' compensation benefits is especially problematic among agricultural and construction workers and in other industries with large populations of workers that are not native English speakers. . Although the Board does have information on language access resources on its website, workers and employers are often unaware of where to look for it. We recommend the creation of an education and outreach initiative to fund worker advocates to provide such training to employees and employers about how to use the workers' compensation system, what their obligations are, and what language access resources are available.

- **Medical Treatment-** We are also aware that payment of medical expenses is a problem in cases where coverage is controverted as it is difficult to determine who pays the claim if the claim is denied and there is no backup insurance. An expedited process for determining

coverage or creation of a special adjudication part to hear such issues might so that they are finally determined within a 30-45 day window would aid in resolving this issue.

- **Independent Livery Drivers:** Finally, we note that coverage for independent livery drivers in general under Executive Law §160-ddd is still severely limited (only for injuries resulting from a crime, or in cases of amputation or loss of an arm, leg, hand, foot, multiple fingers, index finger, multiple toes, ear, or nose, paraplegia, quadriplegia, or total and permanent blindness or deafness), shifting unnecessary and often expensive losses to the Uninsured Employers' Fund, a division of the Workers' Compensation Board funded through annual assessments of affected employers in the state. We would encourage the legislature through an inclusive process to determine how best to achieve comprehensive workers compensation coverage for independent livery drivers.

We very much appreciate the opportunity to share our input with you here today and welcome the chance to continue this conversation moving forward.

Thank you.