



Center for
New York City
Affairs

Workers' Compensation

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Good morning, Chair Ramos and members of the Senate Labor Committee. Thank you for the opportunity to testify today on this critical topic affecting the health and well-being of New York workers.

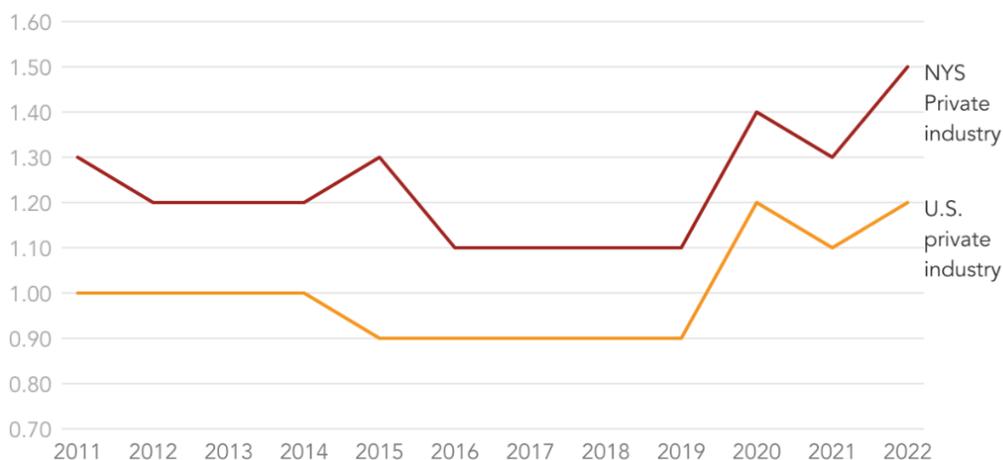
New York was the first state to adopt workers' compensation and was once a national leader in safeguarding the interests of workers injured on the job. However, worker protections under New York's workers' comp system have eroded over the years as legislative and administrative changes have focused on curtailing benefits rather than minimizing injuries, adequately compensating injured workers, or fostering return to work. Fairly compensating injured workers used to be the guiding principle for workers' compensation; for the last several years, changes have reduced employer costs and boosted insurance company profits.

New York needs to update income replacement payments to injured workers, improve access to benefits, particularly for low-wage workers, and ensure that businesses responsibly invest in enhancing worker safety.

New York's private sector workplaces are not becoming safer. Nearly 200,000 workers are injured annually in New York State. Workplace fatalities have averaged 250 annually over the past decade, more than 10 percent greater than in the first decade of this century. The incidence of workplace injuries and illnesses has increased in New York State over the past three years and was a quarter higher than the national rate in 2022. See Figure 1.

Figure 1
New York's workplace injury rates are up since 2019, and exceed U.S. levels

Injuries & illnesses per 100 full-time workers



Source: BLS, Survey of Occupational Injuries and Illnesses, annual. • Created with Datawrapper

Nearly three out of every five injuries in New York's private sector that result in lost workdays occur in predominantly low-wage industries or in industries, like construction, which hire many low-wage workers. Nursing homes, warehouses, hospitals, food manufacturing, and hotels have the highest incidence of lost-workday injuries. Immigrants, some of whom may experience language-access problems in navigating the workers' comp system, hold over one-third of all jobs in many higher-than-average injury-prone industries with large numbers of low-wage workers, such as construction, transportation and warehousing, hotels, and hospitals.

Three New York industries stand out as having become notably more injury-prone in recent years—hospitals, nursing homes, and warehouses. From 2018-22, injury incidence rates rose by two-thirds in nursing facilities, injury incidence doubled in hospitals, and in warehouses the number of warehouse injuries has risen five-fold since 2017.

State and local government workers, particularly those in law enforcement, nursing homes, hospitals, and public schools, have workplace injury incidence rates much higher than the state's overall injury rate. The inadequacy of New York's workers' compensation income replacement payments applies equally to private and State and local government workers.

New York has not been exempt from a disturbing national trend since the 1990s that has eroded payments meant to provide "income protection" to injured workers. A 2015 report from the federal Occupational Safety and Health Administration (OSHA) concluded: "employers now provide only a small percentage (about 20 percent) of the overall financial cost of workplace injuries and illnesses through workers' compensation. This cost-shift has clearly worsened in New York in recent years and has forced injured workers, their families and taxpayers to subsidize the vast majority of the lost income and medical care costs generated by these conditions." Workers and taxpayers, rather than employers and insurance companies, are paying a high and rising price for workplace health and safety failures.

In the year following the OSHA report, the U.S. Labor Department warned, "As the costs of work injury and illness are shifted, high hazard employers have fewer incentives to eliminate workplace hazards and actually prevent injuries and illnesses from occurring."

New York's 2007 and 2017 legislative changes harmed most workers. Injured workers in New York receive an indemnity benefit (separate from payment for medical costs) equal

to a maximum of two-thirds of their prior year's average weekly wages, subject to a maximum and a minimum weekly benefit. When a worker's physical impairment is less than 100 percent, benefits are adjusted for the degree of impairment. Relatively few workers receive two-thirds of their prior earnings. A 2007 increase in the maximum and minimum benefit levels raised the benefits for high-wage workers, did nothing for middle-wage workers, and provided a slight benefit for some, but not all, low-wage workers. However, a cap on permanent partial disability payments wiped out benefits for all such injured workers beyond 10 years. For most long-term partially disabled high-wage workers, this 10-year limit more than offset the higher maximum.

For long-term injured workers (more than 15 years), the wage replacement value of indemnity benefits is much lower than before the 2007 changes, and before that there had been no enhancements since 1992. A 2017 2.5-year cap on temporary disability payments, which had not been subject to a cap before, reduced benefits for all workers not fully recovered within a few years. For example, a worker injured for more than 10 years would see their wage replacement rate cut by 20 percent.

Indemnity benefits for those suffering workplace injuries are woefully inadequate, falling far short of lost earnings and imposing an extra hardship on low-wage workers. A number of changes would enhance the degree to which lost wages are replaced by workers' comp disability payments. These changes could include raising the minimum and maximum weekly benefit levels and adjusting the base wage for expected increases in a workers' earnings potential had they not been injured on the job. Administrative reforms would better ensure that injured workers receive appropriate benefits in a timelier fashion. New York could also raise the workers' comp payment level above the current two-thirds ratio to a worker's average pre-injury wage.

For low-wage workers, losing a third or more of their wage, as happens in every worker's comp case, can be financially devastating, and can lead to indebtedness and the possible risk of losing their cars or homes. While New York increased its minimum weekly benefit amount from \$150 to \$275 effective January 1, 2024 (rising to \$275 in 2025), the average minimum benefit for New York's five neighboring states averages \$372 weekly, 35 percent greater than the Empire State's new minimum.¹ As the chart below indicates, New York's maximum benefit levels trail most neighboring states, with the average for neighboring states 31 percent greater than New York's maximum weekly payment.

¹ Starting in 2026, New York's minimum benefit will be pegged at one-fifth of the state's average weekly wage.

Figure 2

New York's Minimum and Maximum Workers' Comp Benefit Levels Trail Most Neighboring States

Minimum weekly workers' comp benefit as of Jan. 1, 2024		Maximum weekly workers' comp benefit as of Jan. 1, 2024	
New York State	\$275	New York State	\$1,145
Connecticut	\$315	Connecticut	\$1,575
Massachusetts	\$359	Massachusetts	\$1,797
New Jersey	\$302	New Jersey	\$1,131
Pennsylvania *	\$315	Pennsylvania	\$1,325
Vermont	\$567	Vermont	\$1,700
Avg., 5 neighboring states	\$372	Avg., 5 neighboring states	\$1,506
5-state avg. compared to NYS	135%	5-state avg. compared to NYS	131%
* PA min. is 90% of a worker's avg weekly wage (AWW) if less than \$736; if AWW=\$350, min.=\$315.			

Some higher-wage New York workers receive much less than two-thirds of their average wage. For example, a skilled tradesperson earning \$2,000 per week injured today would have her/his weekly worker's compensation indemnity benefit limited to \$1,145 (i.e., two-thirds of the 2022 statewide average weekly wage of \$1,718). Thus, this worker would see a wage replacement rate of only about 57 percent. For 2018, nearly one in four claimants was subject to the maximum benefit cap. Despite having one of the highest costs of living and the highest statewide average wage in the country, New York's workers' comp maximum ranked in the bottom half of all states, according to most recent data (for 2021) reported by the National Association of Social Insurance. The 1972 National Commission on State Workmen's Compensation Laws recommended that the maximum indemnity benefit be set at *twice* a state's average weekly wage—that would be over \$3,400 for New York. (In 1980, New York's maximum was 89 percent of the state's average weekly wage.)

National experts on workers' comp insurance urge that the wage base for indemnity benefits reflect a worker's earnings potential rather than the pre-injury wage. This would reflect earnings gains from periodic wage increases, longevity increases, and promotions that workers normally receive over the course of their careers. A very conservative approach to approximate an expected increase over time in a worker's earnings capacity is to index the worker's pre-injury wage to increases in the statewide average wage. The 1972 National Commission recommended that cash benefits be indexed to the increase in a state's average weekly wage. Since 2000, New York's statewide average weekly wage has increased by an average 3.29 percent

annually—over 10 years this would increase a worker's wage base by 38 percent and over 20 years by 91 percent.

Many injured workers have difficulty accessing benefits. From the early stages of injury reporting and claim filing all the way through the increasingly litigious workers' compensation process, injured workers face a host of barriers to accessing benefits. Many injured workers never apply for workers' compensation, and vulnerable workers, such as immigrant and low-wage workers, face disproportionate barriers. A National Employment Law Project survey of over 600 low-income injured workers in New York City, Chicago, and Los Angeles found that only nine percent received benefits. Half of the workers who reported injuries to their employer experienced retaliation.

Various administrative changes after the 2007 legislation substantially added to the number and complexity of claim forms, medical reports for health care providers, and incident reports for employers. This increased complexity has made the system considerably less transparent and harder to access by many low-wage and immigrant workers. The Workers' Compensation Board's shift away from hearings to the issuance of non-hearing decisions leaves many workers without an opportunity to seek clarity regarding their cases and their rights.

Workers who are less than fluent in English face additional barriers to accessing benefits. While the Workers' Compensation Board offers translation services, only 0.3 percent of 2015 claims were filed in a language other than English, and only four percent of phone calls to the Board used interpretation services.

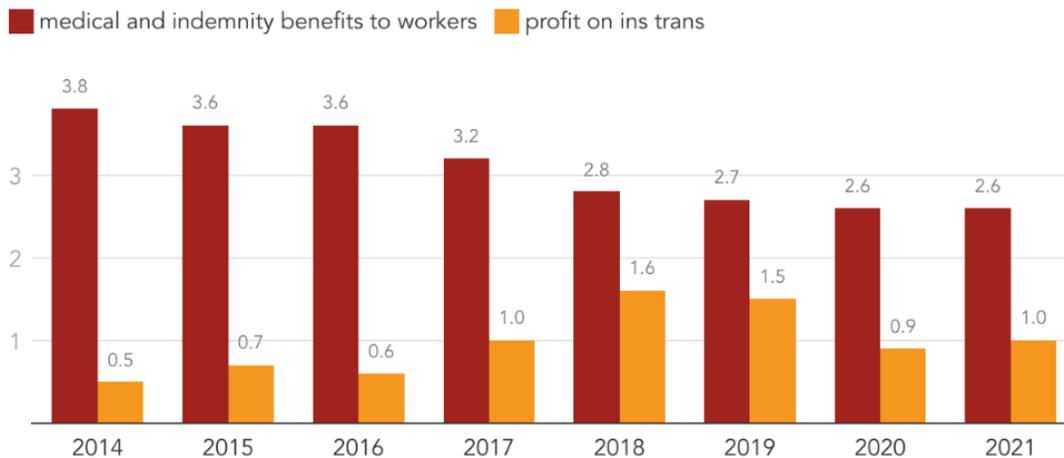
New York employer costs for workers' compensation are a very small share (1.2 percent) of total employee compensation. Ten states have higher employer costs than New York.

Profits have soared for New York's workers' compensation insurance companies while payments to or on behalf of workers for indemnity and medical costs have fallen in absolute and relative terms. Data from the National Association of Insurance Commissioners indicate a pronounced shift from workers' indemnity and medical benefits to insurance profits in recent years. The total dollar amount of worker benefits fell nearly a third 2014 to 2021 while insurance profits doubled.

Figure 3

From 2014-21, NYS workers' comp insurance profits doubled while benefits fell by one-third

In \$ billions



Source: National Association of Insurance Commissioners, Report on Profitability by Line by State, annual reports • Created with Datawrapper

New York workers' comp profits topped \$1 billion for the first time in 2017, then jumped more than 50 percent to nearly \$1.6 billion in 2018 and were over \$1.5 billion in 2019. Profits dropped below \$900 million in 2020 as payrolls plunged and total premiums paid fell by 15 percent. Even though total premiums rose by less than one percent in 2021, workers' comp profits rose by 20 percent and again topped \$1 billion. Benefits paid to or on behalf of injured workers were only 54 percent of premiums in 2021, while workers' comp insurance profits absorbed 22 percent of every premium dollar.

The workers' comp insurance profit figures cited above are before investment gains on insurance reserves. For the 2017-21 period, profits on New York insurance transactions plus investment gains averaged \$2.1 billion annually, an amount equal to 38 percent of total workers' comp premiums and 74 percent of the amount paid out in medical and indemnity benefits to workers.

In 2020, private insurance companies accounted for 46 percent of all workers' comp coverage provided in New York State. The State Insurance Fund (SIF), which serves as an insurer of last resort, provided 20 percent of coverage and self-insured employers (which include many government employers) accounted for the remaining 34 percent of the market.

The SIF generally adds net investment earnings to surplus reserves that are held separately from “loss reserves” set aside to pay future benefits on established claims. For the past two years (2021 and 2022), the SIF’s surplus reserves averaged \$9.7 billion and exceeded the \$9 billion in loss reserves. For the most recent five years for which data are available (2017-21), the SIF paid out a much higher share of premiums in worker benefits (64 percent), than did private workers’ comp insurance companies, which paid out only 45 percent of premiums collected.

The Black Car Fund (BCF), which serves as the employer of record for independent contractor black car and other for-hire vehicle (FHV) drivers to provide them with workers’ comp benefits, is also paying out a declining portion of revenues in workers’ comp and driver health benefits. The BCF funds workers’ comp and other benefits through a 2.75 percent surcharge on FHV passenger fares. In 2022, benefits paid out on behalf of workers were 41 percent of BCF fees.

Recommendations: New York needs to update income replacement payments, improve access to benefits (particularly for low-wage workers), and ensure that businesses responsibly invest in enhancing workplace safety. New York should restore the primacy of adequately compensating injured workers and expediting safe return to work. Specifically,

- The workers’ compensation benefit structure should be enhanced to improve indemnity benefits. New York should:
 - raise the minimum and maximum weekly benefit levels;
 - adjust the base wage for increases in a workers’ earnings potential; and
 - raise the ratio of benefits to a workers’ wage higher than two-thirds.
- Statutory language changes should require initial hearings in every case and clarify ability to work following a workplace injury. Administrative procedures need to be made more worker-friendly, and more accessible to non-English speakers. Current anti-retaliation protections should be further strengthened.
- Resources should be invested in measures to reduce workplace injuries and illnesses and in return-to-work programs.
- Enforcement should be bolstered against the misclassification of workers as independent contractors that allows some employers to evade paying workers’ compensation, placing their workers in serious jeopardy in the event of workplace accidents.