



December 5, 2016

Hon. Andrew M. Cuomo
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RE: Protecting Injured Workers in the NYS Workers' Compensation System

Gentlemen:

We are writing to you to speak on behalf of the millions of injured New Yorkers throughout New York State. We appreciate the recent efforts to support working families and exploited workers in New York State and recognize the significant efforts made in this regard. However, we continue to be troubled by what happens to New Yorkers when they are injured on the job.

The basic concept of workers' compensation law is that employers should be required to provide benefits to injured workers for medical treatment, lost wages and permanent disability. This system makes employers – not taxpayers or the state – responsible for the consequences of workplace injury, and is supposed to make sure that the injured and disabled do not become “fragments of human wreckage,” in the words of Justice Cardozo.

Today, our system is broken in a fundamental way. Instead of using employers' money to provide benefits for injured workers, insurance companies pay a host of businesses (“independent” medical examiners, “nurse case managers,” phony vocational rehabilitation companies, defense lawyers and more) that profit from the system at the expense of workers – and reap record profits for themselves.

This mentality has driven business and insurance company lobbyists, but also influenced the New York State Workers' Compensation Board itself. The New York State Workers' Compensation Board recently publicly testified that employer costs are too high and that benefits for workers should be reduced. This cost-cutting argument comes straight from the mouths of the insurance industry and the Business Council, who falsely blame the claims of disabled workers so they can continue to increase profits at the expense of injured workers by slashing benefits and shifting costs to public benefit programs. Injured workers cannot expect to get a fair hearing when decisions in their cases come from an agency that has already publicly taken the employer's side. Attacks on workers – especially low wage and immigrant workers – must stop.

In 2007, the Legislature and former Governor agreed to raise weekly workers' compensation benefits for the first time in fifteen years, but also to limit payments to permanently disabled workers. Low wage and immigrant workers do not earn enough to benefit from the increased weekly benefit amounts – but they bear the full cost of losing their permanent disability benefits. Much of the estimated \$1 billion that employers saved came at the expense of the most vulnerable workers.

Since that time, the state's Workers' Compensation Board has increasingly denied justice to injured workers. Injured workers are not granted fair hearings to explain their rights and benefits, and the Board has not complied with Governor Cuomo's Executive Order on Statewide Language Access Policy. The Board issues only limited documents in languages other than English, and the technical legal terms it uses are impossible to understand even for fluent English speakers. In addition, workers across the state report that their cases are decided unjustly and unfairly in favor of the insurance company.

The Business Council and its insurance allies are still not satisfied with the results of their cost-cutting at the expense of injured workers and are continuing their attack on our communities.

They now want to slash benefits for another type of permanent injury known as schedule loss of use. These benefits are paid to workers who have broken limbs, amputated fingers, joint replacement surgery, and similar injuries. The Business Council claims that awards for schedule loss are skyrocketing because weekly maximum benefits have increased. For low wage and immigrant workers, this claim is simply not true and is another inhumane attack on their benefits.

The amount of benefits an injured worker receives depends on his or her wages. Benefits for middle income injured New Yorkers have not increased since 2012. The only increase since then has been for the top 25% of wage earners, whose benefits have increased about 6%, or about 1.5% per year. For low wage and immigrant workers who do not earn more than \$30,000 per year – more than a third of New York’s workforce – compensation benefits have not increased since 1992, nearly a quarter-century ago. This includes the type of schedule loss award under attack by the Business Council. There is simply no truth to the Business Council’s claim that the cost of benefits are skyrocketing. The Council is again trying to cut costs on the backs of the State’s most vulnerable communities with the assumption that they will not fight back. They are wrong.

The real agenda is clearly to dismantle the state’s workers’ compensation system and to further impoverish the low wage and immigrant workers who were already devastated by the 2007 “reforms.” If the Business Council was truly interested in saving employers money, then it would help build a culture of prevention that values workplace safety and health, which saves the lives and limbs of workers. Various studies have shown that every dollar invested in injury prevention returns between \$2 and \$6. In a perfect world, we could guarantee that every workplace in the public and private sector centered the health and safety of every person.

Defending and protecting the workers’ compensation system is an essential community and statewide endeavor. Every New Yorker knows that he or she could be one step away from injury. If they have not been injured at work, they are sure to know a friend, neighbor or loved one that has been injured. Millions have also witnessed the exclusion, anxiety, and stigma that is put upon people that have been injured. It’s time for all of our rules and policies to reflect the dignity and human rights of injured workers.

The inhumane attack on injured workers—our State’s most vulnerable—must stop. We urge you to vigorously defend injured workers’ benefits and their dignity and join us as we work towards creating a better workers’ compensation system that works for injured workers. We must continue to improve the lives for all of New York’s workers, who urgently need a strong and effective workers’ compensation system, which includes respect for the human rights of injured and ill workers, just and timely compensation, quality health care, a fair and worker-friendly process, equity for low wage workers, and freedom from retaliation.

Thank you,



Art Wilcox

Workers' Protection Coalition