



Testimony by Nadia Marin-Molina, NYCOSH Associate Director

New York State Assembly Standing Committee on Labor

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Thank you for the opportunity to speak here today. I am here on behalf of the New York Committee for Occupational Safety and Health (NYCOSH). The New York Committee for Occupational Safety and Health works to extend and defend every person's right to a safe and healthy workplace, including the protection of the workers' compensation system.

The New York State Workers' Compensation System was designed as a simple bargain after one of the worst tragedies for American workers—the Triangle Shirtwaist Factory Fire. In 1914, New York State passed legislation to ensure that hurt workers would automatically be granted compensation; and employers would pay in order to fund it. NYCOSH has consistently argued for protecting and improving the workers compensation system, as it is one of the pillars of New York's worker protection framework, along with minimum wage and overtime laws and anti-discrimination protections.

The New York State Workers' Compensation Board's proposed guidelines are an attack on workers. NYCOSH stands strongly in opposition to the proposed guidelines, for the following reasons: 1) While businesses demand increased cost cutting measures, they are already saving money; 2) There is no medical basis for the proposed guidelines; 3) Scheduled loss payments are already too low; 4) The Workers Compensation Board is exceeding its authority; and 5) Injured workers should not be required to submit to a company doctor.

The proposed guidelines are aimed at saving money for companies that are already saving money. In a 2015 Pro Publica article entitled, "Employers Complain of Rising Premiums but Worker Comp is at a 25-year Low," the authors find that despite employer claims to the contrary, the cost to employers of workers compensation insurance has decreased by \$1.57 per \$100 nationwide. Despite this, the current SLU proposal is targeted to continue to lower costs for business by taking advantage of one of New York's most vulnerable populations, injured and disabled workers. In the New York State Business Council's May 15 statement on the budget, the businesses are already counting the increased cash they stand to gain from their successful advocacy around these guidelines. They say that the measures "will continue to provide premium savings as Impairment Guidelines go into effect next January, creating an even greater annualized savings of hundreds of millions of dollars into the future."

There is no medical basis for proposed guidelines. While the Board states that it has consulted with the New York State Society of Orthopedic Surgeons, neither the regulations nor the guidelines themselves contain a medical or scientific justification for the changes. Why change the evaluation of the anatomical or functional loss of range of motion to a worker's knee, or hand, or elbow? What particular advancement in modern medicine supports this proposal? It may be that there are areas in which this change is justified, and other areas in which it is not. However, it is difficult to even engage in this discussion, without an understanding of the scientific and medical rationale behind the proposal. Despite the clear requirement that "the permanency impairment



guidelines shall be reflective of advances in modern medicine that enhance healing and result in better outcomes,” the Board made no effort to comply, instead advancing a set of guidelines without explanation.

Schedule loss of use payments are already too low for injured workers. In schedule loss cases, the money an injured worker receives for lost wages is taken out of the schedule loss payment. This often leaves the injured worker without adequate compensation for the injury. Schedule loss payments should be paid in addition to wage loss benefits, instead of having wage loss benefits deducted from the payment for the injury. In addition, the benefit weeks payable for “schedule loss awards” for permanent injury to limbs, vision loss, hearing loss, and facial scars have not been increased in 100 years. The current number of weeks in the law for these injuries should be increased. Instead of increasing these payments, the current guidelines slash or eliminate payments for a number of injuries including fractures, ligament and tendon tears, and dislocations, to name a few.

The Workers Compensation Board is exceeding its authority. The current awards for schedule loss are based on a determination laid out in New York’s Workers Compensation Law Section 15 of the number of weeks that is an equivalent to the loss caused by the injury. Any changes to that determination must be carried out through legislation, not through regulations. The legislature explicitly required that the board “permit review and comment by such representatives chosen medical advisor,” referring to the medical advisors of labor, business, medical providers, insurance carriers, and self-insured employers. However, the board issued the regulations and provided less than three days for the stakeholders and their medical advisors to review or comment.

Injured workers should be provided with quality health care, not coerced to submit to a high stakes examination. The proposed regulations state that “The claimant must cooperate with the independent medical examiner at all times,” and give extraordinary power to this “independent medical examiner” to accuse the worker of non-cooperation and deny the worker’s benefits. The phrase “Independent Medical Examiner” is a misnomer, which refers to doctors assigned by the employer, or by the insurance company which has a vested interest in denying treatment. If the worker fails to fill out every question on the medical form, they can be accused of not cooperating. If they make a mistake on the form, they can be accused of not cooperating. These doctors would be able to perform any examination, or ask any question, regardless of relevance to the injury. Studies indicate that less than 40% of eligible workers who were injured on the job even try to apply for compensation. We should not be making it the system more challenging for workers, we should be making the system more open and accessible for all.

Finally, in NYCOSH’s 2013 Report, “New York State Injured Workers Speak Out About Workers’ Compensation”, we document the case of Deloris Lake, a 60 year old fitting room checker at Macy’s Department Store, who fell when she was tangled in big clothing rods that were left with merchandise on them, causing injury to her right shoulder, both hands, neck, knees and herniated discs in her back. She said of her experience with the Workers Compensation system: “They do not care if you live or die. I am in pain every day of my life.”

We are here today because we believe that the focus should be improving the situation of workers like Delores, who urgently need a strong and effective workers compensation insurance system, which includes respect for the human rights of injured and ill workers, just and timely compensation, quality health care, an accessible process, justice for low wage workers, and freedom from retaliation. Thank you for the opportunity to testify and we look forward to continuing to work with you on this critical issue.