

HAZARDS

Communication

THE WESTERN NEW YORK COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH NEWSLETTER



October Rally at the Workers Compensation Board

Comp Board Revises Harmful Proposed Guidelines

In September 2017, the New York State Workers' Compensation Board issued a proposal that included harmful cuts to injured workers. Some of those cuts would have restricted the rights of injured workers through potential abuse and fraud by so-called "independent medical examiners" used by insurers to defend claims, in addition to proposed impairment guidelines that would slash benefits for workers.

Because of the thousands of petitions, letters, calls and comments—which WNYCOSH was a part of—the Workers' Comp Board rescinded their harmful proposal. Injured workers, elected officials, labor unions, community organizations, and attorneys were all part of the widespread opposition to the Board's proposal.

On November 22, 2017 the Board reissued a new set of proposed guidelines eliminating the prior proposals around

FROM THE EXECUTIVE DIRECTOR

It's been a long time since we published our last *HAZARDS Communication* newsletter, so we've decided to revive it to make sure we keep in touch with some of our members and friends who don't necessarily follow us on Facebook. We will be publishing four issues a year with updates on worker legislation, what's happening on the national level with OSHA under the current administration, WNYCOSH news and events, and what programs and campaigns the Worker Center will be working on in the upcoming year.

With the introduction of our newsletter, we would also like to introduce Hein Saw, Mary Lister, and Joseph Hall who recently joined the WNYCOSH staff to work on some of our exciting new WNYCOSH Worker Center programs.

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Germain Harnden with Arturo Rodríguez, President of the United Farm Workers & Mark Gaston Pearce, NLRB and WNYCOSH Leadership Award recipient



Oktoberfest 2017: Justice for Migrant Families receives the WNYCOSH Leadership Award

FRANK DOLCE FELLOWSHIP FUNDRAISER

Last summer WNYCOSH was proud to launch the Frank Dolce Activist Fellowship to honor Frank's role in founding WNYCOSH and his lifelong commitment to social justice. Jaela Williams was our first fellow and took the lead in developing a number of projects and was the inspiration for growing the program. Dolce Panepinto LLC took the lead in organizing a fundraiser in October, raising more than \$79,000 in gifts and pledges to build a sustainable fellowship to honor Frank's worker justice legacy. For more information please visit our website at wnycosh.org/dolce-fellowship/.

company-assigned doctors, the list of injuries that would no longer be covered, and the 97% benefit cuts for some injuries.

According to the NYS Workers' Compensation Alliance, the most recent proposed guidelines are a significant improvement over the previous proposal, however they still represent reductions in benefits that cannot be entirely justified by "advances in modern medicine that enhance healing and result in better outcomes."

The Board issued a final 2018 Permanent Impairment Guideline on 12/18/2017, effective 1/1/18. Some highlights:

Total Joint Replacement: The 35% baseline figure should be retained, but range of motion deficits should be added to that figure, not included in it.

Knee and Shoulder Tears: The "special considerations" for tears of the meniscus and rotator cuff tears in the exiting guidelines were not retained.

Range of Motion: Radial abduction of the thumb

remains at 90 degrees. The guidelines clarify the range of motion allowed in a shoulder claim, limited either flexion or abduction. The greater of the two losses should be used, not both. Also in the new guidelines, awards for loss of motion cannot be more than ankylosis (total loss of motion), 80% in most hip, knee and shoulder cases. The new guidelines also include the evaluation of total joint replacement by a doctor for a "good, fair or poor" outcome of surgery and its effect on levels of motion loss.

Loading: Clarifies the role of loading in the event of injuries to multiple fingers and slightly increases the percentages to be used. This appropriately reflects the impact of significant injury to multiple fingers on the function of the hand.

Keith Williams, licensed representative with Lipsitz Green Scime Cambria LLC, notes that "while this new Guideline changes some of the considerations of permanent loss of use, it is by far a victory for workers and those advocating for a fair assessment and treatment of compensation to injured workers from the original proposal." ■

FEDERAL HEALTHY & SAFETY NEWS

One of Donald Trump's first actions as president was to order federal agencies to cut two regulations for every one they put into place. For agencies like OSHA, that means standards that workers have fought and died for are at risk. Many rules that were supposed to go into effect have been delayed, while others have been moved to the long-term actions list, meaning we should not expect any updates or changes in the near future. While OSHA has not been as badly affected as some other agencies, there have been changes that are cause for concern.

Beryllium is one of the standards that has been affected. Put into place at the beginning of January 2017, enforcement has been pushed back to March 2018 at the earliest, with OSHA saying it may amend the rule.

OSHA has removed the list of workers who died due to workplace injuries from its home page, and has limited what incidents will be on the list. They have also removed the details of who those workers were.

President Trump signed a resolution to repeal the Volks Rule in March. That rule allowed OSHA to enforce the requirement of employers to maintain illness and injury records for 5 ½ years. The ability of OSHA to issue citations for failure to keep these records has now reverted back to the previous period of 6 months.

A rule regarding certifications for crane and derrick operators, first issued in 2010 has had its compliance date pushed into November 2018, with OSHA saying it needs to address "stakeholder concerns." A new rule requiring employers to electronically submit injury and illness data that they are mandated to keep has been delayed repeatedly, with employers advocating for changes. After multiple delays this fall, The new Silica Standard has gone into effect for the construction industry. The rule will go into effect for general industry and maritime workers in June 2018.

The nomination for the head of OSHA, Scott Mugno was the Vice-President for Safety, Sustainability and Vehicle Maintenance at FedEx, where three workers died on the job in the past four years. He has also worked with the Chamber of Commerce while it sued to overturn several OSHA regulations.

One positive development was the continued funding of the Susan Harwood grant program. COSH groups were widely funded under the program, though the scope of the

grant was reduced from previous years.

All of these changes and delays will affect the lives of thousands of workers, as will the rules that won't be considered in the future to protect workers' health and safety. Standards for other harmful chemicals, ergonomic issues, and other safety issues are likely to be put on a back burner. As we look to the 2018 legislative agenda, it is hard to know what the agency will do. Current rules may be slated for revisions, and new rules may be delayed or eliminated altogether. Continual lobbying from business groups may put pressure on OSHA to change some standards that have been fought for over the years. It is important that we all continue to fight for our existing standards and push for improvements and new standards. ■

OSHA Blotter

Mourn for the Dead, Fight like Hell for the Living.

Contractor Dies at Kenmore West High School. In late August, an electrical sub-contractor passed away after an accident doing "routine" work. He was employed by CIR Electrical Construction Corp. and a member of IBEW Local 41. The investigation is ongoing.

Unsafe Employers Get Tax Breaks. New York has been giving corporations tax breaks to kickstart the upstate economy. However, New York does not require companies to disclose regulatory violations or pending lawsuits. Companies with histories of violations often receive hundreds of thousands in tax breaks, even after worker deaths. For the full report, visit ProPublica.org.

Champagne Demolition Fined for Firing Whistleblower. In June 2010, an employee of Champagne Demolition reported improper asbestos removal practices at a school worksite in Gloversville, NY. The employee was fired the next day. On Dec 8, 2017, after an OSHA whistleblower investigation, a judge and jury ordered the company to pay their former employee \$173,793.84 in back wages and damages.

Company Fined \$64,000 for Bridge Worker Death. On November 4, 2016 Rahssan Smith and four other workers were plunged into the waters of the Champlain Canal after a cable gave way. Smith drowned. The four others managed to get to safety. In May 2017 OSHA fined P.S. Bruckel Inc. \$64,644 for six serious safety violations connected to Smith's death. ■

Germain Harnden, *Executive Director*
Brian Brown-Cashdollar, *Program Director*
Dawn Hanavan, *Fiscal Administrator*
Rachel Terhart, *Staff Trainer*
Susanne Donovan, *Worker Center Coordinator*
Mary Lister, *Outreach Staff*
Hein Saw, *Outreach Staff*
Joe Hall, *Outreach Staff*

WNYCOSH BOARD

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Susan Woods | *Cornell Adjunct Faculty Alliance*

WNYCOSH STORYTELLERS

WNYCOSH is encouraging workers to raise their voice through a worker-centered creative writing workshop—WNYCOSH Storytellers. This course will focus on developing participants' storytelling abilities through writing and thinking about work and its relationship to their lives. This course will be held bi-weekly on Saturdays from 1-3 PM, from February 10 to April 21. Sessions are at the Worker Center, 2495 Main Street, Suite 438. Language access will be available. Sign-up in advance or learn more by contacting Joseph Hall, jhall@wnycosh.org (716.833.5416 x 21).

HEALTH & SAFETY COMMITTEE MEETINGS

Jan 9 | Review of Recent Comp Changes

Feb 13 | Changes & Threats to OSHA Under the Current Administration

Mar 13 | Safety & Home Healthcare Workers

All meetings 5 - 6:30 PM, UAW Region 9 Office
35 George Karl Blvd, Suite 100, Amherst, NY 14221

FREE LEGAL ADVICE CLINICS

January 15 & March 15

4:30 - 6:30 PM, Our Lady of Good Hope
Corner of Lafayette and Grant, Buffalo



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