

INSURANCE DEPARTMENT OF THE STATE OF NEW YORK
SECOND AMENDMENT TO REGULATION NO. 119
11 NYCRR 151-3
WORKPLACE SAFETY AND LOSS PREVENTION INCENTIVE PROGRAM

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301 and 308 of the Insurance Law, and Chapter 6 of the Laws of 2007, do hereby promulgate the Second Amendment to Part 151 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 119), to take effect upon publication in the State Register, to read as follows:

(ALL MATTER NEW)

A new subpart 151-3 is added to read as follows:

Section 151-3.1 Preamble.

(a) In March 2007, the Legislature enacted Chapter 6 of the Laws of 2007, which reformed New York's workers' compensation system. Chapter 6 amended Workers Compensation Law § 134(6), to state that employers insured through the state insurance fund (except those who are current policy holders in a recognized safety group) or any other insurer that issues policies of workers' compensation insurance, shall be eligible for a credit in workers' compensation insurance premiums if the employer implements any of the following:

- (1) a safety incentive program that conforms to regulations promulgated by the Commissioner of Labor;
- (2) a drug and alcohol prevention program that conforms to regulations issued by the Commissioner of Labor, in consultation with the office of alcoholism and substance abuse services; or
- (3) a return to work program that conforms to regulations issued by the Commissioner of Labor.

(b) Pursuant to the statute, the Commissioner of Labor promulgated 12 NYCRR 60 ("Industrial Code Rule 60"). Industrial Code Rule 60 sets forth the minimum requirements for an acceptable safety incentive program, drug and alcohol prevention program, and a return to work program. Workers Compensation Law § 134(6)(c) requires the superintendent to promulgate regulations establishing the premium credit for those programs, and include provisions for recertification on an annual basis.

(c) The superintendent will review the information submitted by insurers pursuant to this Part to evaluate whether the credit amounts specified in this Part continue to be appropriate and reflective of actual loss and experience and expenses.

Section 151-3.2 Definitions.

In this Part:

(a) *Credit* means credit in workers' compensation insurance premium provided to an insured employer that implements an approved WSLPIP.

(b) *Industrial Code Rule 60* means the rule promulgated by the Commissioner of Labor as 12 NYCRR 60.

(c) *Workplace safety and loss prevention incentive program* or *WSLPIP* means, pursuant to 12 NYCRR 60, a qualifying:

- (1) safety incentive program;
- (2) drug and alcohol prevention program; or
- (3) return to work program.

Section 151-3.3 Employer safety incentive program credits.

For each policy of workers' compensation insurance issued or renewed in the state, an insurer shall provide credit to an insured employer that implements and maintains a safety incentive program, which meets the requirements of Industrial Code Rule 60. The credit shall be:

- (a) four percent in the first full year in which the insured is entitled to a credit; and
- (b) two percent in each consecutive full year thereafter.

Section 151-3.4 Employer drug and alcohol prevention program credits.

For each policy of workers' compensation insurance issued or renewed in the state, an insurer shall provide credit to an insured employer that implements and maintains a drug and alcohol prevention program, which meets the requirements of Industrial Code Rule 60. The credit shall be two percent in the every full year for which the insured is entitled to a credit;

Section 151-3.5 Employer return to work program credits.

For each policy of workers' compensation insurance issued or renewed in the state, an insurer shall provide credit to an insured employer that implements and maintains a return to work program, which meets the requirements of Industrial Code Rule 60:

- (a) four percent in the first full year for which the insured is entitled to a credit; and
- (b) two percent in each consecutive full year thereafter.

Section 151-3.6 Deviation from premium credit amount.

An insurer, upon written application to the superintendent, may deviate from the credit, provided that the superintendent approves the deviation in accordance with, and pursuant to, the standards set forth in Insurance Law Article 23.

Section 151-3.7 Credit for Employers with more than one WSLPIP.

For each insured with more than one WSLPIP, an insurer shall add all credits to which the insured is entitled for a total combined credit amount.

Section 151-3.8 Amount of credit for a WSLPIP when not implemented for consecutive years.

(a) An insured that ceases to maintain a previously approved WSLPIP for less than four years shall, upon application pursuant to 12 NYCRR 60-1.6, be eligible for a credit in an amount equal to the amount that the insured would have been entitled to as if the insured had continuously maintained the WSLPIP.

(b) An insured that ceases to maintain a previously approved WSLPIP for four or more years shall, upon application pursuant to 12 NYCRR 60-1.6, be eligible for a credit in an amount equal to the amount that the insured would have been entitled to as if the insured were a new entrant into the WSLPIP.

Section 151-3.9 Provision of Initial Approval Certificate and Annual Credit Recertification

(a) An insurer shall require an insured that receives a credit pursuant to Industrial Code Rule 60 and this Part to provide the insurer with the certificate of approval issued pursuant to 12 60-1.6(e) of Industrial Code Rule 60.

(b) An insurer shall require an insured that receives a credit pursuant to Industrial Code Rule 60 and this Part to recertify the credit by annually submitting to the insurer the verification submitted to the Department of Labor pursuant to 12 NYCRR 60-1.8.

Section 151-3.10 Reporting Requirements

An insurer providing a credit pursuant to this Part shall report annually to the superintendent and the Commissioner of Labor, in a form prescribed by the superintendent, the total number of employers insured during the prior year that received a premium credit for each WSLPIP program, and the total amount of the credit provided by the insurer.

I, James J. Wrynn, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Second Amendment to Part 151 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 119), promulgated by me on April 5, 2010 pursuant to Sections 201, 301 and 308 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on February 24, 2010. No other publication or prior notice is required by statute.

James J. Wrynn
Superintendent of Insurance

Dated: April 5, 2010