

**INSURANCE DEPARTMENT OF THE STATE OF NEW YORK**  
**THIRD AMENDMENT TO REGULATION NO. 119**  
**11 NYCRR 151-4**  
**WORKERS' COMPENSATION INSURANCE RATES**

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 210, 301, 1303, and 4117 of the Insurance Law, and Section 32(i) of the Workers Compensation Law, do hereby promulgate the third 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:

A new Subpart 151-4 entitled "Reserves for Special Disability Fund Claims" is added to read as follows:

(ALL MATTER NEW)

**Section 151-4.1 Preamble.**

The Special Disability Fund ("SDF") reimburses carriers and self-insured employers for all payments properly paid in accordance with Workers' Compensation Law Sections 15(8) and 14(6). Specifically, where an employee with a "permanent physical impairment" incurs a subsequent disability as a result of a work-related injury or occupational disease that results in a permanent disability caused by both conditions combined, to a degree greater than what would have resulted from the second injury or occupational disease alone, the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 260 weeks of disability. If the employee suffered the second injury before August 1, 1994, then the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 104 weeks of the second injury. Further, if the second injury results in the employee's death, which would not have occurred except for the pre-existing permanent physical impairment, the employer or carrier is entitled to be reimbursed from the SDF for all benefits payable in excess of 260 weeks (or 104 weeks for accidents or disablements before August 1, 1994).

The SDF funds its operations and claims payments by making annual assessments on insurers writing workers compensation insurance in New York, self-insured employers (including political sub-divisions), group self-insurers, and the State Insurance Fund. The combination of increasing requests for reimbursement from SDF, as well as the SDF's assessment funding mechanism, has resulted in a burden on New York State insurers and employers. In fact, assessments on insurers have increased by nearly 160% from 1999 to 2008, resulting in increased premium charges to employers.

The Legislature enacted Chapter 6 of the Laws of 2007, which amended Workers' Compensation Law Section 15(8)(h), in order to close the SDF to claims for reimbursement for injuries or illnesses occurring on or after July 1, 2007, and to mandate that all claims for reimbursement be filed with the SDF prior to July 10, 2010. The legislation also amends Workers' Compensation Law section 32(i) to permit the chair of the Workers' Compensation Board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the special disability fund. Furthermore, Workers' Compensation Law section 32(i)(5) mandates that no carrier, self insured employer, or the State Insurance Fund may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent of Insurance. This purpose of this subpart is to ensure that an insurer, self-insured employer, or State

Insurance Fund does not over-reserve for claims if it voluntarily assumes the liability for, or management, administration or settlement.

**Section 151-4.2 Definitions.**

*Waiver agreement*, in this subpart, means any agreement entered into between an insurer, self-insured employer, or the State Insurance Fund and the New York State Workers' Compensation Board pursuant to Workers' Compensation Law sections 32(i)(2) and (3).

**Section 151-4.3 Reserve Amounts.**

Any insurer, self-insured employer, or the State Insurance Fund that enters into a waiver agreement shall establish reserves for those claims in accordance with Insurance Law sections 1303 and 4117(d).



**STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004**

I, James J. Wynn, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the Third 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 January 4, 2011 pursuant to Sections 210, 301, 1303, and 4117 of the Insurance Law, and Section 32(i) of the Workers Compensation 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 November 17, 2010. No other publication or prior notice is required by statute.

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James J. Wynn  
Superintendent of Insurance

Dated: January 4, 2011