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Heather M. MacMaster  
Deputy General Counsel  
Workers' Compensation Board  
328 State Street  
Schenectady, New York 12305-2318

VIA EMAIL TO [regulations@wcb.ny.gov](mailto:regulations@wcb.ny.gov)

Re: Comments in Response to Proposed Amendment to 12 NYCRR 300.2,  
New Proposed Regulations 12 NYCRR 300.39 and 12 NYCRR 325-1.6, and  
Proposed "Guidelines for Determining Impairment" issued September 1,  
2017

Dear Ms. MacMaster:

The National Employment Law Project (NELP) urges the Workers' Compensation Board to withdraw the proposed regulations and impairment guidelines issued on September 1, 2017, and replace them with guidelines that follow the legislative mandate, produce benefit amounts that adequately compensate workers injured or made ill on the job, and respect the due process rights of workers. The proposed regulations and guidelines, if adopted, will clearly result in drastic cuts to benefits to workers who have suffered serious injuries on the job, further shifting the cost of work related injuries onto workers and their families. With these proposals and guidelines, New York will be transferring the costs of work related injuries away from the employer and insurance companies, and on to the backs of the hard working men and women of New York—and on to taxpayer funded benefit programs.

NELP is a non-profit law and policy organization with 45 years of experience providing research, advocacy and public education to advance the employment and labor rights of the nation's workers. NELP has offices in New York, District of Columbia and California and works with state and local partners to promote policies and programs to create good, safe jobs and ensure that work is an anchor of economic security and a ladder of economic opportunity for all of America's working families.

The basic principle of workers' compensation — sometimes called **the Grand Bargain**—is that employers assume responsibility for providing insurance that pays cash and medical benefits for workers injured on the job **without regard to fault**; in return, the **employers are protected from personal injury or other liability** for workplace injuries or illnesses. With these proposals, the New York State Workers' Compensation board is completely upending this bargain; siding with greedy corporations and against the hard working families in New York State.

Nationally employers are paying historically lower rates today for workers' compensation than at any time in the history of the workers' compensation system. In New York, rates are drastically lower than what they were 20 years ago. And they continue to drop. According to the latest data from the [National Academy of Social Insurance](#), employer costs of workers' compensation per \$100 of covered wages in New York is lower in 2015, than it was two years ago. **Further, of note for the board, total workers' compensation benefits paid per \$100 of coverage wages also dropped in New York from 2011-2015. New York is already paying less benefits to injured workers.**

The New York Workers' Compensation Board should take a hard look at what recently happened in Iowa, where business lobbied hard to reduce workers' compensation costs. Business claimed that if benefits were cut to injured workers, their premiums would go down. So, this past Spring, the Republican lead Iowa legislature teamed up with a new Republican Governor, and drastically reduced workers' compensation benefits for severely injured workers in the state of Iowa. This was despite the fact that Iowa workers' compensation premiums were already dropping. The gutting of benefits, however, had no effect on premiums dropping in the state—no effect on reduced costs for employers. From the [Des Moines register](#):

The governor's news release last month included a link to the [422-page report from NCCI](#) announcing the rate reduction. The in-depth analysis made no mention of the 2017 legislative changes. Rather, it credited the rate reduction to historical workers' compensation performance during policy years 2014 and 2015.

"This rate reduction is wrongly being used to justify the devastating workers' compensation legislation last year," said Andrew Mertens, spokesman for the Iowa Association of Justice. "The governor's office claimed that this was a direct result of the legislation that passed when the report clearly states the opposite.

Thus Iowa gutted benefits to workers—but that had no effect on premium reductions. Hard working lowans were hurt, and the insurance industry increased their profits. They could have kept benefits at the same level—and premiums would have been reduced because the number of claims had gone down over time in the state.

A 2016 [U.S. DOL](#) report concluded that: working people are at great risk of falling into poverty as a result of workplace injuries and the failure of state workers' compensation systems to provide them with adequate benefits. With these new proposed regulations and guidelines, the workers compensation board in New York will hasten the slide of all injured workers—and especially low wage injured

workers -- into poverty. This would be a travesty. We urge you to withdraw these proposed regulations and guidance in its entirety.

Sincerely,

Deborah Berkowitz  
Senior Fellow in Worker Safety and Health  
National Employment Law Project

