

New York State Workers' Compensation Board

Employers' Handbook

**A Guide to the Workers' Compensation and the Disability Benefits
Systems for the New York State Business Owner**

employer's business in New York State. To be exempt, the employees just living in New York State must also not receive any direction and control in their homes from their out-of-state employer.

Out-of-state Employers with Employees WORKING in New York State

As part of the 2007 Workers' Compensation Reform Legislation, Workers' Compensation Law Section 50(2) was amended to state that when compensation is secured via a stock corporation, mutual corporation or reciprocal insurer authorized to transact the business of workers' compensation insurance in this state, that such coverage be obtained "through a policy issued under the law of this state."

On July 12, 2007, Subject Number 046-198 was issued stating that "effective September 9, 2007, all out-of-state employers with employees working in New York State will be required to carry a full statutory New York State workers' compensation insurance policy." A full, statutory NYS workers' compensation insurance policy is one where New York is listed in item 3A on the Information Page of an employer's workers' compensation insurance policy.

Thereafter, in September 2007, the Board posted on its website notice that the Board was reviewing the applicability of this provision to out-of-state employers whose employees are attending meetings, seminars, or other minimal activities in New York State.

On November 23, 2010, the NYS Workers' Compensation Board issued Subject Number 046-454 stating the following **Out-of-State Employers policy**. Insurance carriers, agents, and brokers, as well as out-of-state employers, should carefully review this policy.

Full NY Workers' Compensation Coverage Required

An out-of-state employer with an individual or individuals working in New York State is required to have a full NYS workers' compensation insurance policy if that employer (as defined in the WCL) meets **ANY** of the following criteria:

- The employer is required to register with the NYS Department of Labor and pay Unemployment Insurance for any period in question.
- The employer has a permanent physical location in New York or has employees whose primary work location is here.
- The employer is operating in New York under a permit, contract, or license granted by the State of New York, its counties or any municipality as defined under §57 of the Workers' Compensation Law.
- The employer is working as a contractor/general contractor/subcontractor on a construction project in New York.
- In the previous year, the employer had employees physically in New York for:
 - at least 40 hours of every week for a period of longer than 2 consecutive weeks; or
 - 25 or more individual days (e.g.- 5 employees working for 5 days in New York equals 25 individual employee days).

Employees traveling through the State not stopping for deliveries, pick-ups, or other work are not deemed to have worked a day here.

An employer that has reason to know that it will meet these criteria in the current year, even if it has not done so in the prior year, must obtain the required coverage.

If an out-of-state employer with an individual or individuals working in New York State meets any of the above requirements, NY **MUST** be listed on Item 3A on the Information Page of an employer's workers' compensation insurance policy. This means that the employer is fully covered under the NY Workers' Compensation Law.

Full NY Workers' Compensation Coverage NOT Required, 3C Coverage Acceptable

When out-of-state employers send employees into New York for work purposes and a full, statutory NYS workers' compensation insurance policy is not required, the employer must have such coverage for workers' compensation as required under the laws of its state, and New York must be listed in item 3C on the Information Page of the employer's workers' compensation insurance policy. If the insurance carrier writing the out-of-state employer's workers' compensation insurance policy is not authorized by the NYS Department of Financial Services to write workers' compensation and employers' liability coverage in New York, for the 3C coverage to comply with this policy, the insurance carrier must have completed, signed, and filed the **Statement of Compliance With Workers' Compensation Law** with the Chair, [Form C-105.11](#).

An out-of-state employer having a new worker's compensation insurance policy issued after February 1, 2011 by a private insurance carrier not licensed in New York and listing New York under 3C of that policy will not qualify for the specific exemptions set forth in the Out-of-State Employers Policy statement unless the carrier completes, signs, and files the **Statement of Compliance With Workers' Compensation Law** with the Chair, [Form C-105.11](#).

The Board will post on its website a list of all carriers that have filed the Statement of Compliance with Workers' Compensation Law, and will provide periodic updates to such listing.

It may be appropriate to contact your insurance broker, carrier or agent, check with your trade association, or conduct additional research to find the most appropriate insurance coverage for your company. In addition, a New York State workers' compensation policy may be obtained from the [New York State Insurance Fund](#) by calling 1-888-875-5790 and a disability benefits insurance policy may be obtained from the [New York State Insurance Fund](#) by calling 1-866-697-4332.

Please contact the Board's Bureau of Compliance at 1-866-298-7830 if you have any questions regarding these requirements.

Partnerships

Workers' compensation coverage IS NOT required for partners of a business that is a partnership under the laws of New York State that does not have employees (see [Employees](#)).

Partners of a business that is a partnership under the laws of New York State and has employees are automatically **excluded** from the business' workers' compensation insurance coverage. The partners may elect to have themselves included in that coverage by filing [Form C-105.32](#) with the insurance carrier. That coverage election form may be obtained from the insurance carrier or is available on the Board's website.

However, if a business that is a partnership under the laws of New York State has no employees but obtains a workers' compensation policy, the partners are automatically **included** in that policy. The partners may elect to have themselves excluded from that