



## **Complying with the New York Disability Benefits Law**

**Issue Date: February 2018**

Employers with employees who work in the state of New York must provide disability insurance to workers who work in the state at least 30 days during a calendar year. This requirement is in addition to regular workers' compensation coverage.

### **Covered Employers**

An employer who has at least one employee who works in the state of New York for at least 30 days in any calendar year is considered a "covered employer." These 30 days of employment need not be consecutive. If an out-of-state employer meets this criterion, the employer is required to carry a New York State disability benefits insurance policy. (The employer has four weeks from the completion of the 30th day of work by one or more individuals to obtain the disability benefits policy.)

### **What Is Required?**

A "covered employer" is required to provide for the payment of Disability Benefits to all eligible employees, which includes full-time and part-time employees. The plan must cover employees for an off-the-job accident, injury, or illness and pays half an employee's weekly wage, up to \$170 per week, for up to 26 weeks.

The employer may comply by purchasing a policy of insurance or by applying to the state for approval as a self-insurer with permission to deposit securities or file a surety bond. Insurance may be purchased from any insurance company authorized to write Disability Benefits insurance in this state.

A covered employer is authorized to collect an employer contribution of ½ of 1% of wages paid, but not in excess of 60 cents per week. However, an employer may apply to the State to arrange for employee contributions in excess of the statutory rate if the amount is reasonably related to the value of the benefits provided.

### **Insurance Carrier Reports to the State**

All information pertaining to premium rates, filing of forms, or other data in connection with the policy will be supplied by the carrier of the employer's choice. Accordingly, employers are not required to send any forms to the Workers' Compensation Board nor to make any premium payments to the Board. Premiums for Disability Benefits insurance policies are paid directly to the insurance carrier by the employer.

### **Notice Posting Requirement**

Each covered employer must post and maintain conspicuously at the place or places of business a prescribed form, Notice of Compliance, Form DB-120, stating that the provisions have been made for the payment of disability benefits to all eligible employees. Also, whenever an employee of a covered employer is absent from work due to disability for more than seven consecutive days, the employer shall, within five days, provide the employee with prescribed Form DB-271S, Statement of Rights under the Disability Benefits Law. Both forms may be obtained from your insurance carrier or at

[http://www.wcb.ny.gov/content/main/forms/Forms\\_db\\_carrier\\_self\\_insurer.jsp](http://www.wcb.ny.gov/content/main/forms/Forms_db_carrier_self_insurer.jsp).

### **Private Sick Leave, Employer Provided STD, and Other Employer Arrangements**

Many organizations have sick leave plans, salary continuance arrangements, or other disability plans on a voluntary basis or as a result of collective bargaining. Although some of these plans may comply with the Disability Benefits Law, if secured by disability benefits insurance or approved self-insurance, most do not. An employer may provide benefits under a Board-approved Plan for Disability Benefits or one negotiated by agreement and accepted by the Chair of the Board as meeting the requirements of the New York State Disability Benefits Law (DBL) only when the plan is insured through a carrier licensed by New York State to write statutory disability benefits insurance policies, or by an employer authorized by the New York State Workers' Compensation Board to self-insure for disability benefits. Questions about the acceptability of disability benefit plans should be directed to Bureau of Compliance PO Box 5200 Binghamton, NY 13902-5200. For questions regarding employer compliance, please call (866) 298-7830.

### **Liabilities and Penalties for Not Having Required Disability Benefits Insurance Coverage**

Failure of an employer to provide disability benefits coverage as required by law will subject the employer to penalties and the cost of any claims associated with the noncompliance. The Board has the authority under the DBL to determine when coverage is required. Sole proprietors, partners of a partnership, and the President, Secretary, and Treasurer of a corporation may be held personally liable for an employer's failure to secure disability benefits insurance. Liabilities and penalties for not having the required disability benefits coverage include, but are not limited to:

- **Section 220 (2) of the Disability Benefits Law** – The Board shall impose upon an employer a penalty of 1/2 of one percent of the employer's payroll during the period of noncompliance PLUS an additional sum of \$500 for each period of noncompliance.
- **Section 220 (1) of the Disability Benefits Law** – Not securing required disability benefits insurance is a misdemeanor, punishable by a fine of not less than \$100 nor more than \$500. A second violation of the Law within five years may result in a fine of not less than \$250 nor more than \$1,250. A third or subsequent violation of the Law within five years may result in a fine of up to \$2,500.
- **Liability for Claims Against an Uninsured Employer Under the Disability Benefits Law, Section 213 (1)** – In addition to the penalties assessed under Section 220, subdivision 2, the employer is liable for either the total value of any disability benefits claims paid by the Special Fund for Disability Benefits during the period of noncompliance OR one percent of the employer's payroll during the period of noncompliance, whichever is greater.

*Please be aware that this does not represent legal or tax advice and is only Frenkel's interpretation of the laws, regulations and statutes. It is highly recommended that you seek the advice of your legal and tax professional as to the applicability of this information to your particular situation.*