

## WORKERS' COMPENSATION REQUIREMENTS UNDER WORKERS' COMPENSATION LAW §57

To comply with coverage provisions of the Workers' Compensation Law ("WCL"), businesses must:

- A) be legally exempt from obtaining workers' compensation insurance coverage; or
- B) obtain such coverage from insurance carriers; or
- B) be a Board-approved self-insured employer or participate in an authorized group self-insured plan.

To assist State and municipal entities in enforcing WCL Section 57, businesses requesting permits or seeking to enter into contracts **MUST provide ONE** of the following forms to the government entity issuing the permit or entering into a contract:

- A) **CE-200**, Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required;

*Starting December 1, 2008, Form CE-200 can be filled out electronically on the Board's website, [www.wcb.state.ny.us](http://www.wcb.state.ny.us), under the heading "Forms." Applicants filing electronically are able to print a finished Form CE-200 immediately upon completion of the electronic application. Applicants without access to a computer may obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers' Compensation Board. Applicants using the manual process may wait up to four weeks before receiving a CE-200. Once the applicant receives the CE-200, the applicant can then submit that CE-200 to the government agency from which he/she is getting the permit, license or contract.*

**OR**

- B) **C-105.2** – Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the government entity upon request) **PLEASE NOTE:** The State Insurance Fund provides its own version of this form, the U-26.3; **OR**

- C) **SI-12** – Certificate of Workers' Compensation Self-Insurance (the business calls the Board's Self-Insurance Office at 518-402-0247), **OR** **GSI-105.2** – Certificate of Participation in Worker's Compensation Group Self-Insurance (the business's Group Self-Insurance Administrator will send this form to the government entity upon request).

## DISABILITY BENEFITS REQUIREMENTS UNDER WORKERS' COMPENSATION LAW §220(8)

To comply with coverage provisions of the WCL regarding disability benefits, business may;

- A) be legally exempt from obtaining disability benefits insurance coverage; or
- B) obtain such coverage from insurance carriers; or
- C) be a Board-approved self-insured employer.

Accordingly, to assist State and municipal entities in enforcing WCL Section 220(8), businesses requesting permits or seeking to enter into contracts **MUST provide ONE** of the following forms to the entity issuing the permit or entering into a contract:

- A) **CE-200**, Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required;

*Starting December 1, 2008, Form CE-200 can be filled out electronically on the Board's website, [www.wcb.state.ny.us](http://www.wcb.state.ny.us), under the heading "Forms." Applicants filing electronically are able to print a finished Form CE-200 immediately upon completion of the electronic application. Applicants without access to a computer may obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers' Compensation Board. Applicants using the manual process may wait up to four weeks before receiving a CE-200. Once the applicant receives the CE-200, the applicant can then submit that CE-200 to the government agency from which he/she is getting the permit, license or contract.*

**OR**

- B) **DB-120.1** – Certificate of Disability Benefits Insurance (the business's insurance carrier will send this form to the government entity upon request); **OR**

- C) **DB-155** – Certificate of Disability Benefits Self-Insurance (the business calls the Board's Self-Insurance Office at 518-402-0247).

Please note that **for building permits ONLY**, certain homeowners of 1,2,3 or 4 family owner-occupied residences serving as their own General Contractor may be eligible to file form **BP-1** (The homeowner obtains this form either the Building Department or on the Board's website, [www.wcb.state.ny.us](http://www.wcb.state.ny.us), under the heading "Forms".)

## **WORKERS' COMPENSATION LAW**

### **Section 57 Restriction on issue of permits and the entering into contracts unless compensation is secured.**

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.

## **WORKERS' COMPENSATION LAW (Disability Benefits)**

### **§ 220 Subd. 8**

a) The head of a state or municipal department, board commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and to withstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any such contract for or in connection with any work involving the employment of employees in employment as defined in this article, and not withstanding any general or special statute requiring or authorizing any such contract, shall not enter into such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits for all employees has been secured as provided by this article.

## ***Identifying an Independent Contractor***

To be considered an independent contractor, and thus not an employee, an individual must meet and maintain **All Ten** of the following conditions:

1. Obtain a Federal Employer Identification Number from the Federal Internal Revenue Service (IRS) or have filed business or self-employment income tax returns with the IRS based on work or service performed the previous calendar year;
2. Maintain a separate business establishment from the hiring business;
3. Perform work that is different than the primary work of the hiring business and perform work for other businesses;
4. Operate under a **specific** contract, and is responsible for satisfactory performance of work and is subject to profit or loss in performing the specific work under such contract, and be in a position to succeed or fail if the business's expenses exceed the income.
5. Obtain a liability insurance policy (and if appropriate, workers' compensation and disability benefits insurance policies) under its own legal business name and federal employer identification number;
6. Have recurring business liabilities and obligations;
7. If it has business cards or advertises, the materials must publicize itself, not any other entity
8. Provide all equipment and materials necessary to fulfill the contract;
9. Control the time and manner in which the work is being done; and
10. **The individual works under his/her own operating permit, contract or authority.**

**Special Note for the Trucking Industry:** To be considered an independent contractor, drivers must also be transporting goods under their own bill of lading and under their own Department of Transportation Number.

**When Coverage Can or Cannot be Required:** A business cannot require employees working for that business to obtain their own workers' compensation insurance policy or contribute towards a workers' compensation insurance policy (WCL §31, 32 and 32-a). Independent contractors may be required to maintain their own workers' compensation insurance policy if they intend to work for other businesses. For proper risk management and to ensure that its insurance premiums are as low as possible, a business that hires independent contractors should require those independent contractors to provide proof of their own workers' compensation insurance policies prior to commencing work (See C-105.2, U-26.3, GSI-105.2, and SI-12).

Therefore, a business may require an independent business that has its own employees to obtain a workers' compensation insurance policy if the independent business is working as a subcontractor. (An independent business usually has characteristics such as media advertising, commercial telephone listing, business cards, business stationary or forms, its own Federal Employer Identification Number (FEIN), working under its own permits of operating authority, business insurance (liability & WC), and/or maintaining a separate establishment. The independent business has significant investment in facilities and means of performing work.)

For example, if Business A contracts with Business B to perform services and Business B is an independent business with its own employees, Business A can require Business B to have its own workers' compensation insurance policy and obtain a certificate of insurance for this policy. This will help ensure that Business A's workers' compensation premiums are as low as possible and shield business A from liability under the Workers' Compensation Law.

**Disclaimer:** The preceding was solely provided for informational purposes. Only the Board, in its adjudicatory function, is authorized to determine entitlement to benefits based on the specific facts of a case and its application of the Law.

## Section 57 -- Restriction on Issue of Permits and the Entering of Contracts Unless Compensation is Secured

Section 57 of the Workers' Compensation Law ("WCL") requires the heads of all State and municipal entities, prior to issuing any permits, licenses or entering into contracts, to ensure that **businesses** applying for those permits, licenses or entering into such contracts have appropriate workers' compensation insurance coverage.

To comply with coverage provisions of the WCL, businesses must:

- A) be legally exempt from obtaining workers' compensation insurance coverage; or
- B) obtain such coverage from insurance carriers; or
- C) be a Board-approved self-insured employer or participate in an authorized group self-insurance plan.

To assist State and municipal entities in enforcing WCL Section 57, ), businesses requesting permits or seeking to enter into contracts **MUST provide ONE** of the following forms to the entity issuing the permit or entering into a contract:

- A) **CE-200**, Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required;

*Starting December 1, 2008, Form CE-200 can be filled out electronically on the Board's website, [www.wcb.state.ny.us](http://www.wcb.state.ny.us), under the heading "Forms." Applicants filing electronically are able to print a finished Form CE-200 immediately upon completion of the electronic application. Applicants without access to a computer may obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers' Compensation Board. Applicants using the manual process may wait up to four weeks before receiving a CE-200. Once the applicant receives the CE-200, the applicant can then submit that CE-200 to the government agency from which he/she is getting the permit, license or contract.*

**OR**

- B) **C-105.2** – Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the government entity upon request) **PLEASE NOTE:** The State Insurance Fund provides its own version of this form, the U-26.3; **OR**
- C) **SI-12** – Certificate of Workers' Compensation Self-Insurance (the business calls the Board's Self-Insurance Office at 518-402-0247), **OR** GSI-105.2 – Certificate of Participation in Worker's Compensation Group Self-Insurance (the business's Group Self-Insurance Administrator will send this form to the government entity upon request).

**(Please note: ACORD forms are NOT acceptable proof of workers' compensation coverage!)**

### Government Officials Local Contacts with the NYS Workers' Compensation Board

Government Officials should call the Workers' Compensation Board's Enforcement Unit in the nearest district office to notify them of a non-compliant business:

Albany	(518) 486-3349	Manhattan	(212) 932-7576
Binghamton	(607) 721-8179	Peekskill	(914) 788-5804
Brooklyn	(718) 802-6870	Queens	(718) 523.-8409
Buffalo	(716) 842-2057	Rochester	(585) 238-8335
Hauppauge	(631) 952-6698	Syracuse	(315) 423-1141
Hempstead	(516) 560-7741		

Please call the Bureau of Compliance at (518) 486-6307 with any general questions regarding Section 57 of the Workers' Compensation Law.

## Form CE-200 (12/08)

**Effective December 1, 2008**, please use the following revised Form CE-200 as part of the enforcement of Section 57 and Section 220 of the New York State Workers' Compensation Law and Section 125 of the General Municipal Law (Form CE-200 replaces the old forms WC/DB-100, WC/DB-101 and C-105.21):

### **Form CE-200, Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That new York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required**

This certificate can ONLY be used to attest to a government entity that the applicant requesting a permit, license or contract from that government entity is not required to carry New York State specific workers' compensation and/or disability benefits insurance.

**IMPORTANT:** *These certificates cannot be used to waive the workers' compensation rights or obligations of any party.* The applicant may **NOT** use this certificate to show either another business or their business's insurance carrier that such insurance is not required.

If appropriate, the applicant requesting a permit, license or contract from a government entity must complete Form CE-200, print a copy of it and give it to the **government entity** issuing the permit, license or contract.

The Board may investigate entities using this certificate to claim exemption from the coverage requirements of the Law. Any false statement, misrepresentation or concealment will subject business owners to **felony** criminal prosecution, including jail and civil liability in accordance with the Workers' Compensation Law and all other New York State laws.

Form CE-200 reflects a totally new process of granting exemptions from workers' compensation and disability benefits insurance coverage requirements. Historically, the WC/DB-100 exemption forms were: 1) valid for multiple permits, licenses or contracts for which the applicant applied, 2) had to be notarized, and 3) had to be stamped by the New York State Workers' Compensation Board.

Effective December 1, 2008, this process radically changes. **Exemptions** will no longer be valid for multiple permits, licenses or contracts for which the applicant applied. Further, exemptions no longer have to be notarized; nor do they have to be stamped by the NYS Workers' Compensation Board. (Please note that **government agencies may continue to use insurance and Self-Insurance certificates** for multiple permits, licenses or contracts issued to a specific legal entity during the coverage period listed on insurance/self-insurance related certificates).

**Starting December 1, 2008, ONLY** applicants eligible for **exemptions** must file a **new CE-200** for **each** and **every** new or renewed permit, license or contract issued by a government agency. Each CE-200 will specifically list the issuing government agency and the additional information including identifying the specific job location and the estimated cost of the project.

Please ensure that the legal entity name on Form CE-200 exactly matches the legal entity name applying for the permit, license or contract that you are issuing. Please also ensure that Form CE-200 is signed and dated by the applicant.

Each CE-200 will have a certificate number printed on it. You can verify if the CE-200 provided to you by the applicant was actually issued by the Workers' Compensation Board by checking on the Board's website at [www.wcb.state.ny.us](http://www.wcb.state.ny.us).

The applicant is attesting to penalty of perjury that the information contained in the CE-200 is accurate – the Board does not initially verify this information. However, Board staff may investigate applicants filing Form CE-200.

Accordingly, please also verify that the business is eligible for the workers' compensation and/or disability benefits exemption reason described on the CE-200 and notify the Board's investigative staff if there are discrepancies (Board Enforcement Unit phone numbers are listed on page 11 of the instruction manual). For example, if you are licensing a 150 seat restaurant and the applicant indicates on the CE-200 exemption form that he/she is a sole proprietor with no employees, this may indicate a problem.

To make this process as easy and as efficient as possible for business owners, the vast majority of these forms will be processed electronically on-line. Applicants having access to the internet will be able to fill out the CE-200 on the internet and **immediately** upon completion, **be able to print out a hard copy of the CE-200** that they then submit to the government agency issuing the permit, license or contract. Computers with internet access will also be available for CE-200 electronic application processing at Customer Service Centers located in the Workers' Compensation Board District Offices.

Filling out the electronic Form CE-200 on the internet is very similar to filling out a hotel reservation request on the internet for frequent travelers. Applicants will be issued a pin number and a password so that they can easily access their information. Once an applicant enters his/her basic information on the Board's website, it can be retrieved by that applicant in the future by using that pin number and password when the applicant is applying for another permit, license or contract.

Applicants without access to a computer may obtain a paper application for the CE-200 by writing or visiting the Customer Service Center at any District Office of the Workers' Compensation Board. Applicants using the manual process may wait up to four weeks before receiving a CE-200. Once the applicant receives the CE-200, the applicant can then submit that CE-200 to the government agency from which he/she is getting the permit, license or contract. This delay results from Workers' Compensation Board staff having to manually enter information from the applicant's paper application into the web based application. Accordingly, to avoid delays, all applicants for exemptions are strongly encouraged to use the on-line Form CE-200 on the Board's website, [www.wcb.state.ny.us](http://www.wcb.state.ny.us), under the heading "Forms."

# Liabilities and Penalties for Not Having Required Workers' Compensation Insurance Coverage

## Ascertaining Violations of the Law

The Workers' Compensation Board may require an employer to furnish proof that the employer:

- has a valid workers' compensation insurance policy;
- is self-insured for workers' compensation; or
- is legally exempt from having to obtain workers' compensation coverage.

If an employer fails to provide this information within 10 days following the Board's request, the Board assumes that the employer is violating the Workers' Compensation Law (WCL).

## Personal Accountability

The **sole proprietor or the partners** of a business, **or the President, Secretary and Treasurer** of a corporation are **personally liable** for the business's failure to secure workers' compensation insurance.

## Liability for Claims Incurred by an Uninsured Employer for Workers' Compensation Insurance

### -- Section 26-a of the Workers Compensation Law

The employer is liable for paying an assessment of **\$1,000 for each 10-day period of noncompliance or a sum not in excess of two times the amount of premium that should have been paid by the employer during the period of noncompliance, plus** the actual award (including both compensation and medical costs) **plus any penalties** the Board assesses for noncompliance.

## Penalties for Noncompliance with Workers' Compensation Mandatory Coverage Requirements

- 1) **Section 5205 of the Workers' Compensation Law** -- The Board may impose upon any employer, **in addition** to all other penalties, a fine of **\$2,000 for each 10-day period of noncompliance or a sum not in excess of two times the amount of premium that should have been paid by the employer during the period of noncompliance.** The fine of \$2,000 for each 10-day period of noncompliance is the most commonly imposed penalty for noncompliance.
- 2) **Section 52-1 of the Workers' Compensation Law** -- Not securing required workers' compensation insurance is a **misdemeanor** for employers five or less employees – punishable by a fine of not less than \$1,000 nor more than \$5,000 in addition to all other penalties. Not securing required workers' compensation insurance is a **Class E Felony** for employers with more than 5 employees – punishable by a fine of not less than \$5,000 nor more than \$50,000 in addition to all other penalties. Subsequent violations of the Law within five years is a **Class D Felony** for all employers and may result in a fine of not less than \$10,000 nor more than \$50,000 in addition to all other penalties.

*Misrepresentation of payroll results in a penalty to \$2,000 for each 10 days of not keeping accurate payroll records. Additionally, the fine for criminal conviction is from \$5,000 to \$25,000.*

- 3) **Section 51 of the Workers' Compensation Law** -- Any employer who fails to conspicuously post a C-105 form in each place of business that indicates their workers' compensation insurance coverage shall be required to pay to the board a fine of up to \$250 for each violation, in addition to any other penalties imposed by law to be deposited into the uninsured employers' fund.
- 4) **Section 131 of the Workers' Compensation Law** -- *\$1,000 penalty for each 10 days of not keeping accurate payroll records. Additionally, the fine for criminal conviction is from \$5,000 to \$25,000.*
- 5) **Section 141-a of the Workers' Compensation Law** -- The Board now has the authority to issue Stop Work Orders to noncompliant businesses.
- 6) **Section 141-b of the Workers' Compensation Law** – Prevents employers with various types of workers' compensation noncompliance infractions from bidding on Public Work Projects.

## Additional Liability for Uninsured Employers

- 1) An uninsured employer is responsible for obtaining and paying for any legal representation required to defend against a workers' compensation claim. *(An insured employer's workers' compensation insurance carrier provides such representation as part of the workers' compensation insurance policy's coverage.)*
- 2) An uninsured employer can be directly sued by an injured employee. *(In most cases, an employer's workers' compensation insurance is the sole recourse for the employer's injured employees.)*



DAVID A. PATERSON  
GOVERNOR

STATE OF NEW YORK  
WORKERS' COMPENSATION BOARD  
20 PARK STREET  
ALBANY, NY 12207



ZACHARY S. WEISS  
CHAIR

December 1, 2008

To all Code Enforcement Officials, Building Departments, and Municipal Entities:

Effective January 18, 1999, Section 125 of the General Municipal Law requires that any individual applying for a building permit must prove to the building department that he/she is in compliance with the mandatory coverage provisions of the Workers' Compensation Law before the building permit is issued.

### General Background

Under Section 57 of the Workers' Compensation Law, businesses listed as the general contractors on building permits are required to submit proof of compliance with the mandatory coverage provisions of the Workers' Compensation Law to the building department before a building permit is issued. Section 125 of the General Municipal Law is specifically targeted at ensuring that all applicants who list themselves as the general contractors on the building permit are in compliance with the mandatory coverage provisions of the Workers' Compensation Law.

For homeowner applicants, the instruction manual includes a link to form BP-1 (9/07) Affidavit of Exemption to Show Specific Proof of Workers' Compensation Coverage for a 1, 2, 3 or 4 Family, Owner-occupied Residence. The law requires homeowners to provide proof of workers' compensation compliance when applying for a building permit. If the homeowner qualifies for an exemption, the homeowner must either complete this form and file it with the local building department; or the homeowner must complete Form CE-200 and file it with the local building department.

### Implementing Section 125 of the General Municipal Law

#### 1. General contractors and Business Owners

Businesses listed as the general contractors on building permits, must prove that they are in compliance with the mandatory coverage requirements and also Section 57 of the Workers' Compensation Law (WCL) by producing ONE of the following forms indicating that they are:

- insured (Form C-105.2 or U-26.3 – the business's insurance carrier will send this form to the building department upon the business's request) All private carriers and their licensed insurance agents are authorized to issue the form C-105.2 as their Certificate of NYS Workers' Comp Insurance. The State Insurance Fund uses the U-26.3 form as its Certificate of NYS Workers' Compensation Insurance.
- self-insured (Form SI-12 -- Certificate of Workers' Compensation Self-Insurance (the business calls the Board's Self-Insurance Office at 518-402-0247), **OR** Form GSI-105.2 -- Certificate of Participation in Workers' Compensation Group Self-Insurance) (the business's Group Self-Insurance Administrator will send this form to the government entity upon request).
- exempt (Form CE-200 – {Form CE-200 is available on the Board's website, [www.wcb.state.ny.us](http://www.wcb.state.ny.us), under the heading "Forms." Paper applications for this form are available by writing or visiting any Customer Service Center at any District Office of the Workers' Compensation Board.}

Any residence that is not a 1, 2, 3, or 4 Family, Owner-occupied Residence is considered a business (income or potential income property) and must prove compliance by filing one of the above forms. **(Please note: ACORD forms are NOT acceptable proof of workers' compensation coverage!)**

## Owner-occupied Residences

Homeowners of a 1, 2, 3, or 4 Family, Owner-occupied Residence, must file form BP-1(9/07) when applying for a building permit when they are:

- listed as the general contractor on the building permit, and the homeowner:
  - is performing all the work for which the building permit was issued him/herself,
  - is not hiring, paying or compensating in any way, the individual(s) that is (are) performing all the work for which the building permit was issued or helping the homeowner perform such work, or
  - has a homeowner's insurance policy that is currently in effect and covers the property for which the building permit was issued AND the homeowner is hiring or paying individuals a total of less than 40 hours per week (aggregate hours for all paid individuals on the jobsite) for the work for which the building permit was issued.
  
- If the homeowner of a 1, 2, 3, 4 Family, Owner-occupied Residence is hiring or paying individuals a total of 40 hours or MORE in any week (aggregate hours for all paid individuals on the jobsite) for the work for which the building permit was issued, then the homeowner may NOT file the "Affidavit of Exemption" form, BP-1 (9/07), but must either:
  - acquire appropriate workers' compensation coverage and provide, to the government entity issuing the building permit, appropriate proof of that coverage, on forms C-105.2 or U-26.3, OR
  - have the general contractor performing the work provide appropriate proof of workers' compensation coverage, or proof of exemption from that coverage, to the government entity issuing the building permit.

### **Background on Coordinating the Implementation of Section 125 of the General Municipal Law with Existing Statutes**

To ensure that homeowners are not required to have duplicate workers' compensation coverage, the implementation form attempts to coordinate compliance with Section 125 of the Municipal Law with coverage provided under Section 3420(j) of the Insurance Law, which is the homeowner's policy's workers' compensation insurance rider.

As of March 1, 1985, New York State Insurance Law § 3420(j) provides that every policy of comprehensive personal liability insurance (i.e., homeowner's insurance) on a 1, 2, 3, or 4 Family owner-occupied dwelling (including condominiums) will also provide workers' compensation benefits. This section was added to protect the homeowner from unexpected liability when the Board determines that a person, whom the homeowner did not believe required coverage, is found to be entitled to benefits. To receive benefits under this policy, the employee must be found by the Board to have been injured in employment of the policyholder and employed for less than 40 hours a week in and about the owner's 1, 2, 3, 4 family residence in this State.

Form BP-1, (9/07) is available on the Board's website, [www.wcb.state.ny.us](http://www.wcb.state.ny.us), under the heading "Forms." Please make as many copies of the BP-1 (9/07) as you require. The BP-1 form reflects the minimum standard to be applied statewide. If a municipality wishes to collect a copy of the certificate of insurance from a building permit applicant's homeowner's insurance policy or obtain a copy of the information page from the building permit applicant's homeowner's insurance policy, the municipality could make that a local requirement which would be in addition to the State requirement.

If you have any questions regarding the BP-1 form, Section 125 of the General Municipal Law or Section 57 of the Workers' Compensation Law, please contact Steve Carbone of the New York State Workers' Compensation Board at (518) 486-6307.

Thank you for your office's cooperation in enforcing Section 125 of the General Municipal Law and Section 57 of the Workers' Compensation Law.

Sincerely,

Peter Michels  
Director of Compliance

LAWS OF NEW YORK, 1998  
CHAPTER 439

The general municipal law is amended by adding a new section 125 to read as follows:

125. ISSUANCE OF BUILDING PERMITS. NO CITY, TOWN OR VILLAGE SHALL ISSUE A BUILDING PERMIT WITHOUT OBTAINING FROM THE PERMIT APPLICANT EITHER:

1. PROOF DULY SUBSCRIBED THAT WORKERS' COMPENSATION INSURANCE AND DISABILITY BENEFITS COVERAGE ISSUED BY AN INSURANCE CARRIER IN A FORM SATISFACTORY TO THE CHAIR OF THE WORKERS' COMPENSATION BOARD AS PROVIDED FOR IN SECTION FIFTY-SEVEN OF THE WORKERS' COMPENSATION LAW IS EFFECTIVE; OR

2. AN AFFIDAVIT THAT SUCH PERMIT APPLICANT HAS NOT ENGAGED AN EMPLOYER OR ANY EMPLOYEES AS THOSE TERMS ARE DEFINED IN SECTION TWO OF THE WORKERS' COMPENSATION LAW TO PERFORM WORK RELATING TO SUCH BUILDING PERMIT.

### Implementing Section 125 of the General Municipal Law

#### 1. General Contractors -- Business Owners and Certain Homeowners

For businesses and certain homeowners listed as the general contractors on building permits, proof that they are in compliance with Section 57 of the Workers' Compensation Law (WCL) is ONE of the following forms that indicate that they are:

- ◆ insured (C-105.2 or U-26.3),
- ◆ a Board-approved self-insured employer (SI-12), or
- ◆ are exempt (WC/DB-100),

under the mandatory coverage provisions of the WCL. Any residence that is not a 1, 2, 3 or 4 Family, Owner-occupied Residence is considered a business (income or potential income property) and must prove compliance by filing one of the above forms.

#### 2. Owner-occupied Residences

For homeowners of a 1, 2, 3 or 4 Family, Owner-occupied Residence, proof of their exemption from the mandatory coverage provisions of the Workers' Compensation Law when applying for a building permit is to file Form BP-1.

- ◆ Form BP-1 shall be filed if the homeowner of a 1, 2, 3 or 4 Family, Owner-occupied Residence is listed as the general contractor on the building permit, and the homeowner:
  - ◊ is performing all the work for which the building permit was issued him/herself,
  - ◊ is not hiring, paying or compensating in any way, the individual(s) that is(are) performing all the work for which the building permit was issued or helping the homeowner perform such work, or
  - ◊ has a homeowner's insurance policy that is currently in effect and covers the property for which the building permit was issued AND the homeowner is hiring or paying individuals a total of less than 40 hours per week (aggregate hours for all paid individuals on the jobsite) for the work for which the building permit was issued.
- ◆ If the homeowner of a 1, 2, 3 or 4 Family, Owner-occupied Residence is hiring or paying individuals a total of 40 hours or MORE in any week (aggregate hours for all paid individuals on the jobsite) for the work for which the building permit was issued, then the homeowner may not file the "Affidavit of Exemption" Form BP-1, but shall either:
  - ◊ acquire appropriate workers' compensation coverage and provide appropriate proof of that coverage on forms approved by the Chair of the NYS Workers' Compensation Board to the government entity issuing the building permit (Form C-105.2 or Form U-26.3), OR
  - ◊ have the general contractor, performing the work on the 1, 2, 3 or 4 family, owner-occupied residence (including condominiums) listed on the building permit, provide appropriate proof of workers' compensation coverage, or proof of exemption from that coverage on forms approved by the Chair of the NYS Workers' Compensation Board to the government entity issuing the building permit.

# PRESENTATION OVERVIEW

## WORKERS' COMPENSATION LAW -- SECTIONS 57 AND 220 (8)

1. Definition of Workers' Compensation and Disability Benefits
  - ◆ WC covers **job** related accidents, injuries, illnesses -- Benefits include all related medical expenses plus 2/3 average weekly wage up to \$500 per week effective 7/1/07, \$550 per week effective 7/1/08, \$600 per week effective 7/1/09 and 2/3 of the State's average weekly wage effective 7/1/10 and thereafter.
  - ◆ DB covers **non-job** related accidents, injuries, illnesses -- Benefits 1/2 average weekly wage up to \$170 per week for maximum of 26 weeks; **NO** medical expenses.
2. How this insurance benefits both employers and employees
  - ◆ Employees -- No fault, "prompt payment" of benefits
  - ◆ Employers -- Sole remedy coverage – "eliminates" lawsuits and personal liability
3. Why municipal or State employees have to check on this insurance coverage
  - ◆ WCL §57 & §220 (8) requirement
  - ◆ Part of public protection responsibilities
4. What happens if an employer is supposed to have this coverage and doesn't
  - ◆ Employer personally liable for full compensation and medical claim payments; penalties; administrative expenses; and possible criminal charges.
  - ◆ Employee initially paid by Uninsured Employers' Fund – requires a lengthy process before compensation or medical bills are paid.
5. How municipal or State employees check on this insurance coverage  
(Please note: businesses must supply appropriate form(s) once per year)
  - WC & DB ◆ CE-200, Certificate of Attestation For New York Entities With No Employees And Certain Out Of State Entities, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; **OR**
  - WC ◆ C-105.2 -- Certificate of Workers' Compensation Insurance (the business's insurance carrier will send this form to the government entity upon the business's request) **PLEASE NOTE:** The State Insurance Fund provides its own version of this form, the U-26.3; **OR**
  - WC ◆ SI-12 -- Certificate of Workers' Compensation Self-Insurance, GSI-105.2 -- Certificate of Participation in Workers' Compensation Group Self-Insurance  
(Please note: **ACORD forms are NOT acceptable proof of workers' compensation coverage!**)
  - DB ◆ DB-120.1 -- Certificate of Disability Benefits (the business's insurance carrier will send this form to the government entity upon request); **OR**
  - DB ◆ DB-155 -- Certificate of Disability Benefits Self-Insurance.
6. Out-of-state employers need specific NYS workers' compensation coverage if they have any employees working in New York State.

An employer has a full, statutory NYS workers' compensation insurance policy when New York is listed in Item 3A on the Information Page of the employer's workers' compensation insurance policy.

Disability benefits coverage is required if the business employs individuals in NYS for more than 30 days in a calendar year.
7. General Contractors/Subcontractors
  - ◆ To obtain a permit, contract or license from a government agency, **general contractors MUST carry a workers' compensation insurance policy if they are hiring subcontractors.**

8. Are homeowners required to submit proof of workers' compensation insurance prior to the homeowner receiving a building permit? (Chapter 439 of the Laws of 1998 -- General Municipal Law Chapter 125)

For homeowners of a **1, 2, 3, or 4 family, Owner-occupied Residence**, proof of their exemption from the mandatory coverage provisions of the Workers' Compensation Law when applying for a building permit is to file a form BP-1 (9/07).

- ◆ Form BP-1 (9/07) shall be filed if the homeowner of a **1, 2, 3 or 4 Family, Owner-occupied Residence** is listed as the general contractor on the building permit, and the homeowner:
  - ◆ is performing all the work for which the building permit was issued him/herself,
  - ◆ is not hiring, paying or compensating in any way, the individual(s) that is(are) performing all the work for which the building permit was issued or helping the homeowner perform such work, or
  - ◆ has a homeowner's insurance policy that is currently in effect and covers the property for which the building permit was issued AND the homeowner is hiring or paying individuals a total of less than 40 hours per week (total hours for all paid individuals on the jobsite) for the work for which the building permit was issued.
- ◆ If the homeowner of a **1, 2, 3 or 4 Family, Owner-occupied Residence** is hiring or paying individuals a total of **40 hours or MORE** in any week (total hours for all paid individuals on the jobsite) for the work for which the building permit was issued, **OR** is constructing his/her own personal primary/secondary residence (new construction) then the homeowner may not file the "Affidavit of Exemption" form, BP-1(9/07), but shall either:
  - ◆ acquire appropriate workers' compensation coverage and provide, to the government entity issuing the building permit, appropriate proof of that coverage, on forms C-105.2 or U-26.3, OR
  - ◆ have the general contractor, (performing the work on the 1, 2, 3 or 4 family, **owner-occupied** residence (including condominiums) listed on the building permit) provide appropriate proof of workers' compensation coverage, or proof of exemption from that coverage on forms approved by the Chair of the NYS Workers' Compensation Board to the government entity issuing the building permit.

9. What is a municipal or State employee's personal liability if he/she forgets to get proof of these coverages?

- ◆ No direct liability under Section 57 for payment of no-insurance claims. However, nothing precludes an injured individual from filing a direct lawsuit for failure to perform public responsibilities.

10. What is the municipal or State agency's liability if municipal or State employees forget to get proof of these coverages?

- ◆ No liability under Section 57 for payment of no-insurance claims. However, nothing precludes an injured individual from filing a direct lawsuit for failure to perform public responsibilities. **Please note:** if the municipality or State agency is directly hiring independent contractors or subcontractors, to avoid workers' compensation liability, the government entity should always require that the independent contractors or subcontractors have a workers' compensation insurance policy.

**Disclaimer: The preceding was solely provided for informational purposes. Only the Board, in its adjudicatory function, is authorized to determine entitlement to benefits based on the specific facts of a case and its application of the Law.**

**December 1, 2008**



## New Requirements for Small Construction Projects

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Did you know that if your project disturbs *one or more acres* of land, you must have a permit for stormwater discharges from the site?

### Why?

- Excessive amounts of sediment and debris from construction sites are often washed into local waterbodies during a storm. Construction vehicles can leak fuel, oil, and other harmful fluids that can be picked up by stormwater as well.

### What to Do?

- Under a new regulation, the Department of Environmental Conservation (DEC) requires that before starting construction, a Stormwater Pollution Prevention Plan (SWPPP) must be developed. The SWPPP is a plan for erosion and sediment control, and for installation of treatment for post-construction runoff.
- **Before construction activity begins**, a Notice of Intent must be filed with the DEC affirming that a SWPPP has been prepared and is being implemented.
- If you begin construction before filing the NOI and obtaining coverage, you may be subject to a penalty of up to \$37,500 per violation per day.

### Think Ahead!



- It could take up to sixty (60) business days to get a permit, but often only takes five (5) business days. The length of time depends on the type of construction site involved. It also depends on the existing levels of pollution in the waterbodies to which stormwater from the site will discharge.

### For More Information

- Visit our website: [www.dec.state.ny.us/website/dow/mainpage.htm](http://www.dec.state.ny.us/website/dow/mainpage.htm)
- If you don't have web access, you can obtain written material by calling 518-402-8265. Or call the DEC regional office.



### Tools Available from the DEC:

**Permit:** SPDES General Permit for Stormwater Discharges from Construction Activity (GP-02-01)

**Guidance:** Overview of the SPDES General Permit for Storm water Discharges from Construction Activities and Instruction Manual for Stormwater Construction Permit

**Technical Information:** New York State Stormwater Management Design Manual  
NYS Standards and Specifications for Erosion and Sediment Control (aka the Blue Book)  
New York Contractor's Erosion and Sediment Control Field Notebook



# **Stormwater Regulations and the Construction Industry**

## **Stormwater Discharges**

The construction industry is a critical participant in New York State's efforts to protect our streams, wetlands, rivers, bays and lakes through the use of erosion and sediment control (**ESC**) practices.

As Stormwater flows over a construction site, it picks up soil, debris, and chemicals and washes them into our water resources. The result is degraded water quality and aquatic habitat.

Uncontrolled erosion can also have a significant financial impact on a construction project. It costs money and time to repair gullies, replace vegetation, clean sediment-clogged storm drains, replace poorly installed ESC practices, and repair damage to other people's property or to natural resources.

## **Soil Erosion Prevention and Sediment Control, An important responsibility on all construction sites**

### **Minimize the area of exposed soil on site:**

- To the extent possible, plan the project in stages to minimize the amount of area that is bare and subject to erosion. The less soil exposed, the easier and cheaper it will be to control erosion. The less soil exposed, the easier and cheaper it will be to control erosion.
- Seed disturbed areas with permanent or temporary groundcover immediately upon reaching final grade.
- Seed or cover stockpiles that will not be used immediately.

### **Protect defined channels with ESC practices adequate to handle expected storm flows:**

- Use stabilization measures such as sod, geotextile, natural fiber, or riprap to allow channels to carry water without causing erosion
- Use of softer measures like geotextile or vegetation where possible to prevent downstream impacts.

### **Reduce velocity of Stormwater:**

- **Use** ESC practices such as vegetated buffers and check dams to slow down Stormwater as it travels across and away from the project site.
- **Don't Use** silt fences or other types of perimeter filters to reduce the velocity of runoff; never install them in streams or ditches

### **Keep sediment on site:**

- Maintain a minimum 50-foot length of clean stone at all access points to accommodate large vehicles.
- Sweep the construction entrance road often to prevent soil and debris from entering storm drains.
- Do not hose paved areas.
- Use temporary sediment traps and basins with other permanent measures to retain sediment.

### **Divert clean water from disturbed soil:**

- Use interceptors and diversion structures to direct flow away from exposed areas toward stable portions of the site.

## Maintain all ESC practices to ensure their effectiveness during the life of the project:

- Regularly remove collected sediment from silt fences, berms, traps, and other practices.
- Maintain sediment controls that protect sensitive areas such as diversion structures and silt fences
- Keep geotextiles and mulch in place until vegetation is well established.

## How To Be In Compliance

### What is required for construction sites?

If your project will disturb one acre or more of ground, site owners and/or operators are required to:

1. **Develop a Stormwater Pollution Prevention Plan (SWPPP) and follow it.** The SWPPP is the plan for controlling runoff and pollutants from a site during and after construction. Stormwater planning early in project design provides the most aesthetic, effective and inexpensive Stormwater controls.
2. Once a SWPPP is prepared, **obtain a Stormwater General Permit** from DEC. You can obtain help from DEC or your County Soil and Water Conservation District about permit requirements. Or, go to the DEC website for detailed Stormwater information.
3. **Certify, under penalty of law**, to follow the SWPPP. Landowners and contractors must sign a statement that they understand and agree to comply with the terms and conditions of the SWPPP.
4. **Have a qualified professional\* perform inspections after ½ inch of rain, as well as weekly**, to determine compliance with water quality standards and adherence to the SWPPP. \* **As specified in the permit. See the DEC website for more information.**
5. **Maintain erosion and sediment control practices** and update the SWPPP regularly.
6. **Install permanent Stormwater management practices** (e.g. pond, wetland, filter, infiltration device or swale) as required by and in accordance with DEC standards.
7. **Keep all SWPPP and inspection forms in a log book on the construction site** and available to regulatory staff.

### Training is available:

The New York State Department of Environmental Conservation (DEC) regulates the Stormwater Program. DEC, Soil and Water Conservation Districts and Regional Planning Boards all provide Stormwater training that is essential for contractors and developers.

Contractors and developers can benefit from training and obtaining certification for a staff member who can then conduct project inspections as a Certified Professional in Erosion and Sediment Control. For more information go to:

[www.cpesc.net](http://www.cpesc.net)

### Information and assistance:

For more information, contact the DEC Bureau of Water Permits at (518) 402-8111 or visit their Stormwater website at: [www.dec.state.ny.us/website/dow/mainpage.htm](http://www.dec.state.ny.us/website/dow/mainpage.htm)

Information is also available from your County Soil and Water Conservation District.

Stormwater regulations are required by US EPA's Stormwater Phase II rule and New York's State Pollution Discharge Elimination System General Permit 02-01.

In cooperation with  
New York's Soil and Water Conservation



George E. Pataki, Governor  
State of New York

Erin M. Crotty, Commissioner  
NYS D.E.C.