



## Unexpected Benefits from Government Regulation

Since WWII, many new programs, state and federal, regulating disability have been added to workers compensation. In some states, short term disability is required for most businesses. All have to comply with OSHA and ADA. Social Security Disability Benefits claims involve many employers, directly and indirectly.

With the laws have come statutes, rules, and regulations – at times overlapping other laws or even contradicting them. The wealth of material that must be read to deal with interactions is enormous – and well worth reading. (WCxKit)

Many situations which are confounding if a solution is sought by staying within one law can be solved by searching the provisions of other laws. For example, obtaining an early independent medical examination shortly after an incident has been reported.

An independent medical examination under, say, New York compensation law must be done by the carrier in such a way as to comply with numerous requirements. Miss a single step and you must start all over – which makes the first exam unlikely in less than three to six months. Some states restrict the number of independent exams on a claim, resulting in hoarding opportunities for an exam until late in a claim.

But other laws, free from the oversight of a comp board, often require exams doc compliance. OSHA, in 29 CFR 1904.5, lists a variety of reported conditions that do not need to be listed on the OSHA Form 300. However, in order to comply, an independent medical exam would often be required, since only a medical professional, with access to prior records, could decide if an incident is one of the conditions subject to exclusion.

In such cases, an employee could be required to attend an exam and, in addition, provide HIPAA releases for prior records. And, the exams are not subject to local work comp laws or oversight. The report of the exam can be used in a comp claim if proper discovery procedures are followed – and the exam does not count as a work comp exam.

ADA can also be used for return to work examinations, again, with HIPAA releases. "Reasonable accommodation," an ADA requirement, may often depend on the results of the exam. Again, the exam report can be used in the comp claim and the exam does not count as a comp IME.

Perhaps the most extreme example of expanding opportunities for additional exams is found in the New York Disability Benefits Law, Sect 217, where an employer is given the right to have an employee receiving short-term disability benefits attend an examination once a week for the period of disability ( for the maximum of 26 weeks of benefits). Short-term disability benefits are often paid while a comp claim is being contested. In such cases, a number of examinations could be scheduled and none would count as a comp IME. (WCxKit)

These are but a few of the examples of how the myriads of laws already in force can, with some searching, provide new solutions to old problems. Searing outside the comp law is truly searching "out of the box."

**Author:** Attorney Theodore Ronca is a practicing lawyer from Aquebogue, New York and an expert in providing training to employers in basic reporting and investigation of workers compensation claims. His NY FROI Training Program and Coaching can help employers do it right the first time. He also is a frequent writer and speaker, and has represented employers in the areas of workers compensation, Social Security disability, employee disability plans, and subrogation for over 30 years. Attorney Ronca can be reached at 631-722-2100.

WC IQ TEST: <http://www.workerscompkit.com/intro/>

WORK COMP CALCULATOR: <http://www.LowerWC.com/calculator.php>

MODIFIED DUTY CALCULATOR: <http://www.LowerWC.com/transitional-duty-cost-calculator.php>

WC GROUP: <http://www.linkedin.com/groups?homeNewMember=&gid=1922050/>

SUBSCRIBE: [Workers Comp Resource Center Newsletter](#)

**Do not use this information without independent verification. All state laws vary. You should consult with your insurance broker or agent about workers comp issues.**

©2011 Amaxx Risk Solutions, Inc. All rights reserved under International Copyright Law. If you would like permission to reprint this material, contact [Info@WorkersCompKit.com](mailto:Info@WorkersCompKit.com).