

## **Why is the Workers' Compensation Case Still Open if My Employee is Back to Work?**

This is one of the more common questions we receive regarding Workers' Compensation claims. My employee is back to work and seems fine. Why is there still a reserve on the claim? Why is the claim still open?

In the New York Workers' Compensation system, employees are covered for the medical costs associated with a work related injury as well as "lost wages" or indemnity. The medical provider(s) are compensated for treating the injured employee and the employee receives indemnity payments to help offset their lost wages while they are out of work recovering from the injury. Another potential cost of a claim is a Schedule Loss of Use (SLU) Award. A SLU award is a cash payment made to an injured employee for the permanent complete or partial loss of use of the body part(s) affected by the work related injury. A SLU award can be made even if the claimant never missed time from work or has already returned to work.

The SLU award is made after the employee has reached Maximum Medical Improvement or MMI. This could be determined up to a year or more after the injury occurred or any subsequent surgery treating the injury is performed. This gives the body time to heal and recover as much use of the body part as possible. Until MMI can be determined, a WC claim subject to a potential SLU award must remain open with a cash reserve.

### **What body parts are potentially subject to SLU awards?**

If one or more of the following body parts do not fully heal as a result of a work related injury, the claimant may be eligible for a SLU award.

- Arm
- Hand
- Finger
- Wrist
- Elbow
- Shoulder

- Leg
- Foot
- Toe
- Ankle
- Knee
- Hip
- Face (Scar)
- Neck
- Scalp
- Eye (Vision Loss)
- Ear (Hearing Loss)

Permanent injuries to these body parts can include:

- Fractures
- Amputations
- Surgeries
- Tears
- Dislocations
- Second and third-degree burns
- Crush injuries
- Severe nerve damage

### **Who determines when MMI is reached and the SLU percentage?**

The claimant's doctor as well as the State Insurance Fund doctor may submit medical reports to the Workers' Compensation Board (WCB) stating their opinion regarding MMI and the percentage loss of use of the affected body part(s). If these reports are contradictory the WCB can schedule a hearing for the WCB Judge to make a determination if MMI is reached, and if so, the amount of the SLU award. Once a SLU award decision has been rendered by the WCB, the State Insurance Fund has 10 days to make payment.

It is important for an employer to remember that even if an employee is back to work and performing their job functions in the same manner they did prior to the work related injury, this does not necessarily mean the WC claim is closed. Any potential permanent loss of use of the body parts indicated above can result in additional compensation being awarded to the claimant.