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Testimony on Workers' Compensation

May 15, 2024

To the Senate Committee on Labor:

My name is Molly Senack, and I am testifying today on behalf of the Center for Independence of the Disabled, New York (CIDNY) as their Education and Employment Community Organizer.

In New York State, workers' compensation provides workplace ill or injured employees with partial wages, medical care related to the injury or illness, access to training and job services, social services, rehabilitation counselors, and social workers. All are intended to help employees return to work, and manage any family or financial problems that may have arisen as a result of whatever made filing a claim necessary.

While almost all employees in New York State have explicit access to these benefits, far fewer have implicit access. There are certain upfront costs of applying for workers' compensation that have the potential to financially derail the lives of employees who live paycheck to paycheck. People with disabilities are disproportionately likely to be in this type of financial situation prior to experiencing a workplace illness or injury. In New York State, people with disabilities are more than twice as likely to live in poverty than people without disabilities (33% vs 13%). Across the country, people with disabilities are twice as likely as a nondisabled person to have to work part-time (30% vs 16%), which often makes them ineligible for medical benefits. Meanwhile, the nature of the way government benefits are awarded discourages people with disabilities from being able to save money for emergencies. When all of these factors are taken together, they add up to mean that people with disabilities are among the least likely who can afford to lose work, and therefore, are among the most likely to face financial barriers in the application process, which may prevent them from filing a claim at all in the event of a workplace illness or injury.

On January 24, 2024, during a New York's Workers' Compensation Board webinar, the host said that "while not all claims will be accepted, there is no harm or risk to filing a claim." However, that is only true for those in a secure enough financial position to afford (or even not notice) the upfront costs: even with free medical care, the time off needed to go to a doctor (or more than one, depending on the illness or injury) to receive the necessary documentation to pursue a claim is a cost if the employee does not have sick time and needs to miss a paid shift. The cost of transportation to go to the doctor(s) might eventually be reimbursed, but the employee may not have the money to lay out, especially if the person is disabled and cannot access all means of transportation. New York pays for lost wages benefits after seven missed days of work, but until those lost wages are made available to that employee (which, according to the New York State Workers' Compensation Board can take almost a month even in the best of circumstances) the employee might not be able to afford rent or groceries.

To take these risks, the employee also has to trust that filing the claim will end in their favor. If workers' compensation is not awarded, the employee:

- Has to pay for the medical costs they were told would be covered.
- Will not be reimbursed for what they spent on transportation to acquire treatment or documentation.
- Will have fully lost the wages for the shifts they did not work.

An employee has no way of knowing the risk involved in filing for workers' comp. Official data on how many claims are paid, settled, controverted, appealed, or denied, compared with how many claims are filed, is inaccessible to the point of being unavailable. Instead, there is only unofficial data from the websites of various legal groups advertising their services, all listing inconsistent estimates of the likelihood of success. The lack of transparency in this aspect of the workers' compensation process, especially if coupled with a lack of transparency in other areas (e.g., a difficult to navigate or otherwise inaccessible website, use of overcomplicated legal language in explaining the process, etc.) often equates to many people whose financial stability is already tentative- a hallmark of over a third of the disabled population in New York- viewing working through illness or injury as the lesser risk compared to the financial one.

In a 2008 Congressional hearings' review of numerous studies on the discrepancies between workplace injuries and illnesses and the relatively low number of people who reported them, a consistent pattern became clear: people who were the most desperate to retain their jobs were the least likely to report their injuries. Desperation to retain a job is not necessarily about a fear of retribution or getting fired, but, as is the reality for many workers with disabilities in New York State, knowing that the consequences for the loss of a single shift can mean, according to that 2008 Congressional hearing, "financial disaster."

In 2023 the Bureau of Labor Statistics reported that there were 2.8 million nonfatal workplace injuries and illnesses in private industries in 2022. That total is 7.5% higher than in 2021, with injuries up 4.5% and illnesses up by 26.1%. Respiratory illness cases rose by 35.4%, after an initial decline from 2020 to 2021. Industries that had been regarded previously as "safer," e.g. jobs in offices, education, and sales, are now considered similarly dangerous to transportation and material moving and service jobs, both of which are in industries that tend to report the highest Days Away, Restricted or Transferred (DART) rate. In New York State, according to the Bureau of Labor Statistics, about 54% of employed people with disabilities work in what were, but are no longer seen as, "safer" industries.

The numbers above are likely undercounts. Injuries and illnesses that are due to prolonged exposure can be harder to identify as being work-related. This is even more difficult when it comes to attributing mental health issues to a work-related cause. The New York Workers' Compensation Board advocates addressing these issues through consistent documentation of doctors' visits and treatment. But that entails once again, a potentially enormous upfront cost which, even if momentarily affordable, may never get reimbursed.

This testimony is focused on the inherent barriers that people with disabilities face in filing a workers' compensation claim. There are potential remedies, however:

1) Every worker in New York State, regardless of if they are part-time employees or shift workers (this is the case for double the number people with disabilities compared to people without disabilities), should be entitled to sick time. An employee should not ever have to weigh

the decision of seeking medical treatment for a job-related injury or illness and having documentation in case they wish to pursue a claim against losing a day's wages.

2) In order for people to make an informed choice, there needs to be greater transparency at every stage of the application process, including ready availability of the statistics of possible outcomes.

3) The tracking and treatment of job-related illness, both physical and mental, must align with the trend of its prevalence: the prominence of illnesses relating to prolonged exposure is growing in the modern workplace, and yet the process for dealing with it has remained unchanged.

In the 16 years since the Congressional hearing about workplace illnesses and injuries not matching up with the number of workers' compensation claims filed, there has not been much legal movement to abate that discrepancy. As we go forward with reviewing the workers' compensation program, we have to start with ensuring the initial process is actually accessible for all employees who need it. As it stands, obtaining workers' compensation is a privilege that only some can afford to attain. For many, the upfront costs of lost shifts, of transportation that may never get reimbursed, of lost wages they might never see, and medical costs they may actually need to pay back if their claim is denied causes the safer financial option to outweigh the safer health option.

This is the reality for too many disabled people in New York whose lives, even prior to sustaining a workplace injury or illness, could easily be a paycheck away from being upended. Workers' compensation is a lifeline, and access to it needs fewer barriers. Thank you for your time.

Sincerely,

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