



***Out-of-state employers working in New York get some long-awaited relief
The New York Workers' Compensation Board relaxes its Item 3.A. coverage enforcement standards***

On Nov. 22, 2010, the New York Workers' Compensation Board (WCB) issued [Subject No. 046-454](#), which carves out some Item 3.A. coverage exemptions for out-of-state employers having incidental or temporary work in New York. PIANY has worked hard over the last three years attempting to effect change in the rigid Item 3.A. coverage requirement adopted by the WCB following the 2007 Workers' Compensation Reform legislation. Association staff has had frequent communication with the WCB, legislators and the governor's office, including the submission of written comments on three drafts of proposed Guidelines For Out-Of-State Employers.

Out-of-state employers who have Item 3.C. coverage will now be in compliance with insurance requirements (and not subject to enforcement penalties) as long as the employer:

- 1) is not required to register with the state Department of Labor and pay unemployment insurance for any period in question (see <http://www.labor.ny.gov/ui/dande/covered1.shtm> for details);
- 2) has no permanent physical location in New York or has no employees whose primary work location is in New York;
- 3) is not operating in New York under a permit, contract or license granted by the state of New York, its counties or any municipality as defined under Section 57 of the Workers' Compensation Law;
- 4) is not working as a contractor/general contractor/subcontractor on a construction project in New York; and
- 5) had no employees physically in New York the previous year for at least 40 hours of every week for a period longer than two consecutive weeks, or had no employees present in New York for 25 or more individual days (e.g., five employees working for five days in New York equals 25 individual employee days). Note that when employees travel through the state without stopping for deliveries, pick-ups or other work, it is not considered a work day.

If the insurer providing Item 3.C. coverage is not authorized in New York, new [Form C-105.11](#) will be required to be completed by the insurer. The WCB will post on its website a list of all carriers that have filed the Form C-105.11, and will provide periodic updates to such listing.

While more restrictive than many surrounding states, this change in enforcement standards is a welcome improvement for employers conducting incidental and temporary work in New York.

To assist you in educating your clients about this important new change, PIA has created sample letters to send to your clients. Simply select the appropriate state below:

[Connecticut](#)
[New Hampshire](#)
[New Jersey](#)