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## **NYS Bill A10780 (Military Buy Back)**

S T A T E O F N E W Y O R K

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10780--B

I N A S S E M B L Y

May 4, 1998

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Introduced by COMMITTEE ON RULES -- (at request of M.of A. Tocci, Brodsky, Vitaliano, Bragman, Pretlow, Carrozza, Canestrari, Christensen, Clark, Colman, Connelly, Crowley, Destito, Gromack, Gunther, Harenberg, Hill, Magee, McEneny, Pheffer, Robach, Schimminger, Sidikman, Smith, Sweeney, Tokasz, Tonko, Towns) -- read once and referred to the Committee on Governmental Employees -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the military law, in relation to credit to members of public retirement systems for military service performed during a period of war

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY,  
DO ENACT AS FOLLOWS:

1 Section 1. The military law is amended by adding a new section 244-a

2 to read as follows:

3 S 244-A. CREDIT TO MEMBERS OF PUBLIC RETIREMENT SYSTEMS FOR MILITARY  
4 SERVICE PERFORMED DURING WAR. 1. NOTWITHSTANDING ANY OTHER PROVISION OF  
5 LAW, A MEMBER OF A PUBLIC RETIREMENT SYSTEM OF THE STATE, AS DEFINED IN  
6 SUBDIVISION TWENTY-THREE OF SECTION FIVE HUNDRED ONE OF THE RETIREMENT  
7 AND SOCIAL SECURITY LAW, SHALL BE ELIGIBLE FOR CREDIT FOR MILITARY  
8 SERVICE PERFORMED DURING A PERIOD OF WAR UPON ATTAINMENT OF NO LESS  
9 THAN

10 TEN YEARS OF SERVICE AND MAY OBTAIN, UPON APPLICATION TO SUCH  
11 RETIREMENT

12 SYSTEM, A TOTAL NOT TO EXCEED THREE YEARS OF SERVICE CREDIT WITHIN THREE  
13 YEARS PRIOR TO RETIREMENT FOR UP TO THREE YEARS OF MILITARY SERVICE AS A  
14 MEMBER OF THE ARMED FORCES OF THE UNITED STATES IF SUCH SERVICE WAS  
15 RENDERED DURING A PERIOD OF WAR. FOR PURPOSES OF THE NEW YORK STATE  
16 AND

17 LOCAL EMPLOYEES' RETIREMENT SYSTEM AND THE NEW YORK STATE AND LOCAL  
18 POLICE AND FIRE RETIREMENT SYSTEM ALL SUCH SERVICE SHALL BE CREDIBLE IN  
19 ALL PLANS SPECIFIED IN THE RETIREMENT AND SOCIAL SECURITY LAW.

20 2. IN ORDER TO PURCHASE CREDIT PURSUANT TO THIS SUBDIVISION, THE  
MEMBER SHALL PAY INTO THE PENSION ACCUMULATION FUND THE CONTRIBUTION  
AMOUNT AS DETERMINED BY THE COMPTROLLER, EITHER IN A LUMP SUM OR IN  
INSTALLMENTS, NECESSARY TO PAY IN FULL THE COST OF SUCH PREVIOUS

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets { } is old law to be omitted.

LBD14462-06-8

A. 10780--B 2

1 SERVICE. IF SUCH PAYMENT BE MADE IN INSTALLMENTS, THE SAME SHALL BE PAID

2 WITHIN A PERIOD NO GREATER THAN THE NUMBER OF MONTHS OF SUCH MEMBER  
3 SERVICE GRANTED.

4 3. IN NO EVENT SHALL THE CREDIT GRANTED PURSUANT TO THIS SECTION, WHEN  
5 ADDED TO CREDIT GRANTED FOR MILITARY SERVICE WITH ANY RETIREMENT  
SYSTEM

6 PURSUANT TO THIS SECTION OR ANY OTHER PROVISION OF LAW, EXCEED A TOTAL  
7 OF THREE YEARS.

8 S 2. This act shall take effect immediately.

FISCAL NOTE.--This bill would allow a member of a New York public retirement system to purchase a maximum of three years of credit for military service performed during a period of war. The member must have ten years of service and apply for the service within three years of retirement. The full cost of such service will be paid by the member.

If this bill is enacted, the member`s cost will vary depending on the member`s age, years of service, years of military service, plan and final average salary. Members who are in retirement plans which allow retirement without regard to age will become eligible to retire at an earlier age. For members whose retirement eligibility date is unaffected by this legislation, while they can purchase their military service, there would be no advantage in doing so.

This estimate, dated June 4, 1998 and intended for use only during the 1998 Legislative Session, is Fiscal Note No. 98-278 prepared by the Actuary for the New York State and Local Employees` Retirement System and the New York State and Local Police and Fire Retirement System.

.SO DOC A 10780B \*END\* BTXT 1997

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## Military Buy Back Bill - (Problems)

The bill numbers are Senate 6927b (Meier) and Assembly 10780b (Tocci). The bill would allow a public employee to purchase up to three years of military time served during a "time of war" to be applied towards their retirement. As of this morning the bill had passed both houses of the Legislature and was still waiting to go to the Governor for action.

In my opinion there are several problems inherent in the bill including:

- - the entire cost falls on the employee
- - certain key terms are not defined, especially "time of war"
- - for CO's does the time purchased apply towards the twenty-five years served in title under Tier III
- - if not, then would it apply on the back end (presently Tier III CO's \ SHTA's get no credit for time after 25)

Since the bill is very vague the details will be filled in by the Comptroller. The Council should meet with him asap after the bill is signed into law to address issues such as these. While the bill is a good first step, because it opens the door to obtaining military service credit, it could be greatly improved.

John D'Alessandro

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## Attica inmate faces charges in attempted escape

An inmate at the Attica Correctional Facility faces attempted escape- related charges today after he cut through a window cell bar and exited a cell block, only to be discovered within the prison some 60 minutes later hiding under a blanket near an inmate recreation yard, an area accessible to inmates.

Commissioner Goord said, "Even though this was an attempted escape, any such incident will be dealt with severely. Inmates must know that any attempted breach of security will bring criminal charges and the harshest penalties that the law allows."

Inmate Paul Garrett, 33, was observed in his cell today during the 5 a.m . count. He was reported missing at 5:30 a.m. by an Officer delivering meals to three other inmates on the gallery, who were scheduled for early transport for medical visits at outside facilities.

Garrett apparently cut through one of the perpendicular bars in the window in the back of his first-floor cell, which is on the outer wall of C-Block but still within the perimeter wall of the facility. After removing the bar and crawling through the window behind it, he then cut through the security screening on the outside of the window frame and exited the cellblock.

Once outside the block, Garrett crossed approximately 200 feet to outside of the E-Block recreation yard. He secreted himself under a blanket in the grass. He was discovered there by Officers searching for him at approximately 6:30 a.m. Investigators are interviewing Garrett at Attica, where he will remain housed.

A morning inspection determined there was no tampering with other cell bars in the prison. As a result, the facility is running normal operations and programs today. Attica today houses 2,194 inmates. Its capacity is 2,240 inmates.

Because Commissioner Goord intends to see Garrett prosecuted for attempted escape and possibly other related charges, no other information on the incident will be released, in order to avoid compromising the probe headed by the Wyoming County District Attorney. An investigation is continuing by this Department's Inspector General and by the Division of State Police.

Garrett is already serving a sentence of 33 years to life following convictions for second-degree murder, criminal possession of a weapon and first-degree robbery in Queens County, plus a first-degree robbery count in Nassau County. Garrett was received into the system on June 13, 1990. His parole eligibility date is June 10, 2022.

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## Tractor accident claims life of Ulster corrections officer

By JOHN MILGRIM

Staff Writer

KERHONKSON - An Ulster corrections officer was killed Saturday when a tractor toppled onto him as he tried to pull out a tree stump, police said. Nathaniel White, 54, of the Colonial Motel in Kerhonkson, was found pinned under the tractor shortly after noon yesterday. He was already dead. State Police Investigator William Whalen said the accident most likely happened Saturday, when White was last seen by the motel owner clearing brush in nearby woods.

He said White sometimes helped out around the motel property and had previously used the tractor.

When he was found yesterday the tractor had a chain tied to a tree stump behind it, Whalen said.

The motel's owner declined comment when reached by telephone last night. White worked the midnight shift at Ulster Correctional Facility, a medium security prison in Napanoch.

Whalen said White has a 16-year-old daughter living in Dutchess County. An autopsy is scheduled for today but as of last night the death was listed as an accident.

He said White was well regarded around the motel and at work and was, "Just a generally nice guy."

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## SGT. EXAM COURT DATE

We have a court date for the Sgt exam lawsuit. What we are protesting is that we were never allowed a proper post exam review process. We all agree that there are bogus questions/answers on the exam, and we were never allowed to appeal. The relief sought is a proper review and points added to scores and the list adjusted.

The court date is **Dec 11th at 9:30a.m.. Supreme Court, Albany.** Anyone interested in attending? It would make a wonderful show of support for Officers as we demonstrate that Civil Service pencil-pushers should not be allowed to dictate our futures.

I knew absolutely nothing about the testing process for promotion. I took the test and learned what a screwing every Officer received. It is a very messed up system, a system that drastically needs to be changed.

Please feel free to comment me directly in private e-mail...

Mike Blaine  
CLINTON CF

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## Correction Officer Killed In Auto Accident.

FORT EDWARD- WEST HEBRON -- Melanie "Mel" Rose Cary, 38, of Fort Edward, formally of West Hebron, died Wednesday, November, 4, 1998, as the result of an automobile accident on Route 50 in Wilton.

Born July 3, 1960, in Granville, she was the daughter of Charles and Ruth (Matteson) Cary.

Melanie was a 1979 graduate of Salem Central School. She was an accomplished athlete and was a coach for the Salem Youth Softball League. Also she excelled at the Department of Corrections Olympics and had set many records. She also enjoyed hunting, hiking and the outdoors.

She had been a Correction Officer for the New York State Department of Corrections for 13 years, recently being employed at Mt. McGregor Correctional Facility in Wilton.

Predeceased include her maternal grandfather, Claude Matteson and her paternal grandparents Fred and Agnes Cary.

Survivors include her parents, Charles and Ruth (Matteson) Cary of West Hebron; her daughters, Ashley and Amber Cary of Fort Edward; one sister, Susan Sheldon of Newport, RI; five brothers, Michael Cary of Corning, Tim Cary, Todd Cary and Chris Cary, all of West Hebron and Mark Cary, a student at Cornell in Ithaca; her maternal grandmother, Ida Matteson of West Rupert, VT; and several aunts, uncles, nieces, nephews and cousins.

Funeral services will be held at 1:00pm Saturday, November 7, 1998 at the Salem United Methodist Church with Rev. Debbie Besse, pastor, officiating. Burial will be at the Evergreen Cemetery in Salem.

Friends may call from 3 to 5 and 7 to 9pm today (Friday November 6th) at the McClellan Funeral Home, 19 East Broadway, Salem.

The family requests that flowers be omitted and memorial contributions be made to the Melanie Cary fund, c/o Evergreen Bank, Main Street, Salem, NY 12865.

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## Will Council 82 be 86'd?

### Members may decide fate

By KRISTEN SCHWEIZER

Staff Writer

WALLKILL - Bill West pays more than \$450 in union dues to Council 82 annually. He feels he gets little more than gadgets in return.

"We get nothing with this union, just trinkets," said West, referring to his latest annual gift - a pocket-sized calendar.

West works at Wallkill Correctional Facility. He's been a correction officer for 21 years and is one of roughly 21,000 correction officers in New York that are represented by Council 82.

But now, West and others want to break away.

Citing what they call a lack of benefits, inadequate representation for employees and a public image as a dirty union, West and other Council 82 dissidents have generated enough support statewide to force a decertification vote on Council 82 - the third time by rank-and-file members in the past two decades.

If the vote is successful, a new union - the New York State Correctional Officers and Police Benevolent Association - will succeed Council 82.

NYSCOPBA leaders say theirs is a union free of affiliation with a national parent. One that will decrease dues. And one, they say, that is truly a voice for the members. Meanwhile, Council 82 leaders are calling NYSCOPBA's accusations against them "absurd," said spokesman Daniel Curran.

He said Council 82 is confident it will prevail in the decertification attempt and are anxious for the ballot vote to take place.

"We have a great deal of confidence in our members and we know that the people can see right through the veil of lies NYSCOPBA is stating about us," Curran said. The new union was created by West and Brian Shanagher, a Cornwall-on-Hudson resident who works at Green Haven Correctional Facility.

"We started this because we need an independent union which caters to correction officers' needs, not some dues-making machine," said Shanagher.

But NYSCOPBA's move to overthrow Council 82 and its national affiliate, the American Federation of State and County Municipal Employees, is not running as smoothly as it had hoped.

After gathering the 30 percent of members' signatures required to hold a decertification vote, Council 82 leaders put a block in the procedure late last month, and an independent state agency is now reviewing the concerns. "We're not saying this looks fraudulent, but we want to be fair to everyone," said Rosemarie Rosen, a spokeswoman with the state's Public Employees Relations Board.

Council 82 leaders objected to the fact some members who signed "show of interest" cards used only their first initial. Another concern is that some signatures were mailed in on the cards - raising the question of whether a member actually signed it. PERB is expected to meet with both sides in a week or so and give its decision, said Rosen. It was 1994 when West and Shanagher launched a grassroots campaign to replace Council 82. The duo had just lost a previous bid to decertify Council 82 under a separate union name.

They set out visiting states that already had independent unions; California, New Jersey and Massachusetts. They also criss-crossed New York state gaining support for NYSCOPBA.

Although the majority of members in Council 82 are correction officers, the union also represents state park police, environmental conservation police and other police officers.

By September this year, NYSCOPBA leaders said they had letters of support from park and conservation police and collected nearly 10,000 signatures to force the decertification vote.

### **Loyal members**

Not all Council 82 members support NYSCOPBA. "If you ask me, (NYSCOPBA) is just a bunch of disgruntled Council 82 employees trying to form a union," said Duane Hannold, union president at Sullivan Correctional Facility in Woodbourne.

Hannold said staying with AFSCME makes sense. He cites strength in numbers and better resources under AFSCME, like a research department, libraries and consultants.

"If NYSCOPBA wants research they have to pay for it through a consultant," said Hannold.

AFSCME has also helped Council 82 crusade against a proposed private prison in Sullivan County and against privatization as a whole. The controversial issue of privatizing prisons is a main concern of many correction officers, as private prison companies continue to make headway.

Nationwide, AFSCME represents 100,000 correction officers. The union even has a special committee set up for corrections issues, said Eliot Seide, an AFSCME area director

Through AFSCME, he said, a handful of corrections-related bills have passed federal and state legislatures. A federal law now mandates that inmates who come into physical contact with federal correction officers are tested for communicable diseases.

Seide said the same bill is being pushed for state correction officers. A statewide bill AFSCME helped with 'makes it a felony for an inmate to throw urine or feces at a correction officer.

(NYSCOPBA) has done nothing, they talk and that's it," said Seide. "We've promoted a huge agenda for correction officers. (AFSCME) is vigilant on behalf of the state's correction officers."

During the travels across New York, West and Shanagher said they've encountered some resistance from fellow members concerned whether NYSCOPBA can be as politically powerful as Council 82 and AFSCME.

"We tell them yeah, we are as powerful, because we still represent 26,000 members," said West "And if we are independent, I believe we can be stronger."

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## Union carries baggage of past problems

By MARC VIOLETTE  
Ottaway News Service

ALBANY - In its relatively brief history Council 82 - the bare-knuckled state prison guards union - has been wracked by internal strife and leadership purges, investigated by the FBI and challenged by aggressive upstarts seeking overthrow it.

And that's just in the 1990s. Council 82, an affiliate of the Washington, D.C.-based American Federation of State, County and Municipal Employees (AFSCME) was founded in 1968 and currently represents some 26,000 law enforcement officers across New York, 21,000 of whom work in the state's 69 prisons.

In 1979 the union made waves with a bitter 16-day strike over a push by the state Department of Corrections to remove seniority privileges from a new union contract. Council 82 prevailed on the issue even though the strike was in direct violation of state laws barring public sector workers from walking off the job. More recently, in the 1990s, the union has undergone one wrenching upheaval after another.

Some recent history:

- 1994: Troubled by allegations of financial mismanagement by executives at Council 82 headquarters in Albany dating back to 1990, a dissident faction within the union pushed for a takeover by the rival The Union for Law Correction Officers and Law Enforcement (TUFCO). In a close vote Council 82 survived.



Financial allegations included claims that a handful of Council 82 executives ran up some \$507,000 in undocumented expenses on union American Express cards for trips to Finland and Sweden, Los Angeles, Las Vegas and Myrtle Beach, lavish meals, gifts, furniture, leather clothing and expensive electronic equipment.

Concerns were also raised by the sale of the union's headquarters at 61 Colvin Ave. in Albany to a corporation made up of union executives that leased the building back to the union.

- 1995: In January, amid growing mismanagement concerns, the union's executive board suspended president Tom Kennedy.

The union's executive director, Joe Puma, resigned under a cloud in June.

In August AFSCME moved into the Colvin Avenue headquarters and took over the day-to-day operations of the beleaguered union. The national union assigned five auditors to begin a full-time inspection of C-82's books.

The FBI began interviewing union members and examining Council 82's financial records.

In December AFSCME expelled Puma, Kennedy and associate director Lawrence Germano and ordered them to pay restitution for undocumented charges they had run up on their union credit cards.

- 1996: In an election overseen by AFSCME, Richard Abrahamson, a former prison guard from the Buffalo area, becomes the new president of Council 82 and takes over the union's operation from AFSCME.

Under Abrahamson the union's policy-setting executive council was expanded from 12 to 120 members to give more voice to rank-and-file members and voting procedures were put in place to ensure more democratic operation of the union.

- 1997: Abrahamson is re-elected president in August.

- 1998: A rival union, Correctional Officers and Police Benevolent Association, begins signing up correction officers in an effort to oust Council 82.

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## Complaints against Council 82

Union vs. union

Among complaints by the New York State Correctional Officers and Police Benevolent Association against Council 82, the biggest concern salary, benefits and lack of representation.

ØSalary: In California, the maximum base salary is \$52,126. In Massachusetts: \$46,027. New York state: \$42,000.

Council 82 leaders are quick to point out, however, that in California the ratio of inmates to correction officers is 7 to 1. In New York the ratio is 3 to 1. California correction officers, they say, also gave up overtime and have to submit to drug testing under their salary agreement.

But most importantly, said Council 82 spokesman Daniel Curran, Council 82 is experienced at negotiating contracts while the leaders of NYSCOPBA have never negotiated one.

"If you put together the number of years of experience (Council 82) has in negotiating contracts it equals 102 years," he said.

ØRepresentation: NYSCOPBA members say they want to be represented by lawyers on all grievances, disciplinary action and other issues. They've even picked a law firm in Albany that has represented State Police in contract negotiations for the past 25 years.

Under Council 82, members are represented by fellow co-workers named as union representatives. Lawyers become involved, however, down the line if the issue is serious.

"We want attorneys instead of a correction officer with a tie ... who's kissed butt to get the job," said Bill West, executive vice president of NYSCOPBA and correction officer at Wallkill Correctional Facility.

Council 82 argues that using attorneys every step of the way during a grievance or other issue is too expensive. "If they had an attorney in place of a correction officer, I'm not sure they could afford it," said Curran.

ØPublic image: The public perception of Council 82 and correction officers is not at all flattering, said NYSCOPBA leaders.

They point to a history plagued with corrupt Council 82 members and union leaders filling politicians' pockets with money.

The public believes anyone with a General Equivalency Diploma can be a correction officer.

Council 82 leaders dispute that image.

"(NYSCOPBA) is concentrating on the sins of the prior leadership," said Curran. "The new leadership of Council 82 has done a lot for members and all that hard work will be trashed."

The current leadership of Council 82, he said, has brought the net worth of the union from \$465,000 when it took over in 1996 to \$3 million today.

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## **Workers' Rights to Compensation for Occupational Disease in New York State**

Imagine the following scenes.

A 60-year-old bricklayer becomes sick and disabled from lung disease acquired as a result of exposure to silica dust on the job. He has worked for 35 years in his trade, but for many different employers. He is now forced to retire and must receive constant medical care.

A toolmaker inhales toxic fumes from equipment used in her work and suffers lung and larynx injuries. She cannot return to tool making, but she is young and still able to work although probably at a lower

wage. In addition, she continues to have shortness of breath because of her toxic exposure.

A janitor develops carpal tunnel syndrome, a compression of the nerve in the wrist, from the physical repetition of pushing brooms and mops. He needs surgery to be able to return to his job and may be out of work periodically even after surgery.

Are these employees eligible to recover workers' compensation benefits or other compensation for their illnesses? If they die, are their families entitled to any death benefits? Does workers' compensation cover other job-related conditions, such as hearing loss, lead or mercury poisoning, arthritis or varicose veins?

Workers who become disabled due to occupational disease lose wages and incur medical costs. In New York State, workers who suffer occupational disease are entitled to compensation for lost wages and medical treatment under the New York State Workers' Compensation Law. Compensation benefits are awarded to workers by the Workers' Compensation Board, a group of 13 commissioners who are appointed by the Governor and approved by the State Senate. To properly exercise their rights to claim and obtain compensation from the Workers' Compensation Board, workers must be aware of how the Board functions and what the law provides.

The Workers' Compensation Law also provides benefits for injuries caused by on-the-job accidents, and injuries or illnesses that do not arise out of employment. General information about the full scope of benefits under the Workers' Compensation Law can be obtained from the Board at the addresses listed at the end of this pamphlet.

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## Questions and Answers about Workers' Rights to Compensation for Occupational Disease

- \*Occupational Diseases (Questions 1 through 5)
  - \*Compensation Benefits (Questions 6 through 8)
  - \*Diagnosis & Medical Expenses (Questions 9 through 13)
  - \*Filing a Claim for Benefits (Questions 14 through 18)
  - \*Proving Your Claim (Questions 19 through 22)
  - \*Additional Information (Questions 23 through 24)
- 

## Occupational Diseases

### 1. What is an occupational disease?

The Workers' Compensation Law defines an occupational disease as any ailment that is contracted or aggravated due to the nature of a particular kind of work. Not all work-related illness qualifies as an occupational disease under the Workers' Compensation Law. According to the law, the fact that an ailment or illness is contracted at the place of employment is not, in itself, enough to make it an occupational disease. The test used to determine what is and what is not an occupational disease is whether the nature or conditions of a particular type of work create a risk to employees who perform such work that is not shared by employees generally.

Consider this example. A nurse who contracts tuberculosis from a tubercular patient would be entitled to benefits for an occupational disease because it is an ordinary feature of a nurse's employment to be exposed to persons suffering from such diseases/ However, an office worker who contracted tuberculosis for being exposed to a co-worker would not be considered to have contracted an occupational disease

because there is nothing in the nature of office work which would expose all persons doing that type of work to tuberculosis.

The Workers' Compensation Law lists 29 specific illnesses presumed to be occupational diseases if contracted by persons working with certain toxic substances, including silicosis and other dust diseases, dermatitis, anthrax, lead, mercury and radium poisoning. However, any disease or condition which is contracted or aggravated due to the nature of the employment may be covered under the Workers' Compensation Law.

Even if a condition does not qualify as an occupational disease, benefits may still be available under the Workers' Compensation Law if either the cause of the condition or the onset of the resulting disability is sudden enough in nature to qualify as an accident injury.

For example, a worker who suffers temporary hearing loss caused by an explosion or loss of sight due to a chemical splashing the eyes may be entitled to benefits as a result of such accidental injuries.

In another example, a worker whose arthritis flares up due to a sudden water leak or lack of heat at the place of employment may also be entitled to benefits.

2. Is an occupational disease limited to conditions caused by toxic substances?

No. While most people think of occupational diseases as those caused by toxic substances, benefits can be awarded under the Workers' Compensation Law for any illness or disease resulting from a particular feature of the employee's work.

For example, occupational diseases have included arthritis in a worker whose job involved picking up heavy boxes and depositing them on a conveyor belt over her head; a hernia in a worker whose job consisted of lifting and bending; varicose veins in the feet of a gas station attendant whose duties required him to stand almost the entire day; and pneumonia in a butcher who was required to go in and out of a refrigerator, subjecting him to sharp variations in temperature. Hearing loss caused by excessive industrial noise is also an occupational disease covered by workers' compensation.

3. Can I obtain benefits for my occupational disease even if no one I work with has the same condition or I am particularly vulnerable to that illness?

Yes. As long as it is caused by a distinctive feature of the work, even if only one employee develops the health problem, the ailment can be found to be an occupational disease.

For example, if a waiter with diabetes develops varicose veins from standing all day, even though no other waiter develops the same condition, the waiter's varicose veins may be found to be an occupational disease.

4. Do I have to be exposed at work to a toxic substance or hazardous condition for a long period of time to be entitled to compensation?

No. If it can be demonstrated that the disease is caused by a short exposure or even a single incident, the disease will be considered occupational and covered by the Workers' Compensation Law as long as it results from a distinctive feature of your job.

5. I work with paints and solvents containing toxic chemicals on the job. I also work with paints and

solvents on my own time out of work. Do I have a claim for benefits from my employer if I contract an illness from working with paints and solvents?

As long as your work exposure contributed to your condition, it is probably covered. Depending upon the particular circumstances of your case, however, the Board may divide responsibility between the work and non-work related causes, which could result in your obtaining lower benefits.

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## **Compensation Benefits**

6. According to my doctor, I have elevated levels of lead in my blood due to my work. My condition is not disabling, but he recommends that I not work for several weeks until my lead levels are reduced. Can I receive benefits for the time I am out of work?

The Board usually upholds claims of this type. However, since there is no specific provision in the law covering these situations, at the present time such claims are usually contested by the insurance companies, leading to delays in obtaining benefits.

7. How much compensation is paid to someone disabled by an occupational disease?

Generally, benefits under the Workers' Compensation Law are calculated at two-thirds of an employee's average weekly wage, subject to certain dollar limitations depending on the degree of the disability and ability to work. If the disabling condition improves and the worker's ability to work changes, the benefit level can be reduced. Partially disabled workers who remain capable of performing some work receive compensation at a lower rate. Benefits generally last as long as the person remains disabled.

8. If I die of an occupational disease will my spouse and children be entitled to benefits?

Yes. The surviving spouse is eligible to receive death benefits in the amount of two-thirds of the average weekly wages per week, subject to limits set by law. The spouse receives death benefits until he or she remarries, at which time a final lump sum payment totaling two years of death benefits is paid. Surviving school-aged children share the death benefits with the spouse according to conditions and percentages set by the law. Certain other persons may be eligible for benefits in cases where there is no surviving spouse or school-aged child. There is also an allowance for reasonable funeral expenses.

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## **Diagnosis and Medical Expenses**

9. What about my medical and hospital expenses while I'm disabled from an occupational disease?

The law requires the employer to provide and pay for all medical, hospital or other types of treatment needed due to the nature of the occupational disease. However, treatment must be supplied by health care providers authorized to treat people receiving workers' compensation. The Workers' Compensation Board maintains a list of health care providers authorized to treat workers suffering from occupational illnesses. Prior authorization from your employer, its insurance carrier or the Board, may be necessary for more expensive treatment or procedures. Workers are not required, and their doctors cannot force them, to pay for these medical expenses themselves. Workers who have paid for such services or are being pressed for payment by a doctor or collection agency, should immediately contact the Medical Registration Bureau of the Workers' Compensation Board.

10. What if I use my sick leave while waiting for my compensation claim to be decided? Am I entitled to

get the leave restored to me once the claim is granted?

There is nothing in the present law that expressly entitles workers to have their used sick leave restored by the employer. But, the employer can request reimbursement out of the compensation award for at least a portion of the wages paid to a disabled worker on sick leave while a claim was pending. Workers should alert the Board at the time of their hearing that they have used sick leave and should ask the Board to reimburse their employers only if the used sick leave is restored to the worker.

11. How can I find out if my condition is caused by exposure to a toxic substance on the job?

Under State and Federal law, the employee, the employee's doctor, or a union representative may obtain written information about toxic substances found in an employee's workplace, including information concerning the known and suspected health hazards of those substances. The New York State "Right to Know Law" covers all public employees in New York State, and the federal Occupational Safety and Health Act covers all persons employed by private companies. Workers might also want to contact the occupational disease diagnostic centers near them for a diagnosis and any available information on the possible work-related causes of their conditions.

12. If I have been exposed to a toxic substance, but have not yet contracted an occupational disease, is compensation available to cover my present expenses for medical tests to see if I am developing a disease?

Under the present law, a worker must actually contract an occupational disease before becoming entitled to payments for such medical monitoring. Unionized workers should consult a union representative to determine whether their collective bargaining agreement (contract) provides such benefits.

13. I have an illness due to my work, but the condition is not disabling and I can continue to perform my duties. Do I have to wait until I am disabled and unable to work in order to claim workers' compensation benefits? Can I at least be reimbursed for my medical expenses?

A claim may be filed whenever there is an illness or condition caused by the nature of your work even if you can still perform your job. If you file a claim while you are still able to work, benefits will probably be limited to payment of your medical bills. Once time is lost from work because of a disability, you will receive biweekly benefits for lost wages as well as reimbursement of your medical bills. The amount of benefits you receive for lost wages is based upon when you became disabled. The Workers' Compensation Board makes this decision based on the evidence. Since the maximum benefit rate is increased by law from time to time, the amount of benefits for lost wages may be greater if you wait to file a claim until you are actually disabled from working.

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## **Filing a Claim for Benefits**

14. How do I file a claim for benefits?

A worker must file a form, known as a "C-3" Employee's Claim for Compensation, available at any Workers' Compensation Board office. The form requires the worker to provide some basic information to the Board about his or her ailment.

15. What is the time limit for filing an occupational disease claim?

A claim for disability or death must be filed with the Workers' Compensation Board within two years after being disabled, or within two years after the worker knew or should have known that the occupational disease was due to the nature of the employment, whichever is later.

For example, if a worker stopped working in 1986 because of shortness of breath but did not learn from a doctor until 1988 that the cause of the shortness of breath was an asbestos-related disease resulting from exposure on the job, the time to file a claim for benefits would not expire until 1990, two years after the worker knew that the disease was due to employment.

These time limits are different for claims filed for job-related hearing loss, and workers should consult the Board about when to file a claim for hearing loss.

16. Whom do I file a claim against if I have worked for several employers and was exposed to the same toxic substance on each job, but I do not know which job actually caused my illness?

Generally, you should file a C-3 Claim for Compensation against the last employer where you were exposed to the toxic substance. However, as a general rule, the last employer is liable only if the exposure at that job contributed to the development or progress of the occupational disease. Therefore, if you had exposure at more than one job, you should probably file a claim against each employer where you were exposed or could have been exposed to a toxic substance causing the ailment. It is best to consult your union or an attorney or a claimant's representative, an individual licensed by the Board to represent workers, in such cases.

17. Whom do I file a claim against if I was exposed to a toxic substance ten years ago on a different job from my current one and did not contract an occupational disease until recently?

If your present job does not involve exposure to the substance which caused your disease, your claim should be filed against the last employer in the job where you were exposed.

18. I retired several years ago at age 65. During the time I was employed, I was exposed to toxic substances on the job. If I should now develop an occupational disease because of that exposure, can I get workers' compensation benefits even though I am no longer working?

You are entitled to have the medical expenses for your work-related illness paid. But wage replacement benefits are usually only available if the occupational disease causes lost wages. If you retired voluntarily and are no longer earning wages, you would probably not be entitled to benefits for lost wages. You should file a claim to have your medical expenses paid.

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## **Proving Your Claim**

19. What happens if my employer contests my claim for benefits?

You will have a right to a hearing before an impartial administrative law judge who will determine your rights to benefits. If the worker or employer is not satisfied with the judge's determination, either one may appeal that determination to a panel of the Board, consisting of three Board members. Therefore, either you or your employer can appeal the panel's decision to court.

20. Will I receive benefits if my employer contests my claim?

If the employer or carrier contests your right to benefits on the ground that your condition is not

work-related, you will not be entitled to benefits while the case is being heard before the Board, but you can apply to the Board for non-occupational disability benefits during this period, which will be repaid out of any workers' compensation award you may ultimately receive. After the Board has finally decided a claim in your favor, you are entitled to be paid within 10 days of the award, even if the employer or carrier appeals the decision to the courts. If the employer or insurance carrier concedes your right to some benefits but contests the amount, you are entitled to receive the uncontested portion of the benefits while your case is being heard.

#### 21. Will I need representation?

You may represent yourself. However, occupational disease cases are complex and your employer may contest your right to benefits. You may want an attorney's help to file your claim, represent you before the Board and find medical experts to support your case. If you belong to a union, your union representative may be able to prove the names of attorneys who specialize in workers' compensation law. In addition to attorneys, the Workers' Compensation Board licenses individuals to represent employees making claims in workers' compensation cases. Some unions have licensed representatives on their staffs who represent union members without charge. You can obtain the names of attorneys and licensed representatives from your local Board office, or you may contact your local bar association. If you do retain an attorney or representative, do not pay him or her directly, since the fee will be fixed by the Board and deducted from your award.

#### 22. What type of proof or medical evidence will I need to establish my claim that I contracted an occupational disease from exposure to a toxic substance?

Occupational disease claims usually require two types of proof: (1) evidence that you were exposed to a particular substance in the course of employment; and (2) proof that the exposure caused the condition for which you are claiming benefits. The first type of proof may be supplied by your testimony, if you know what substances you worked with, or by employment records. The second type of proof will usually require a medical report indicating that your condition was caused by exposure to the substance. Your doctor should be able to provide you with such a report, or you could utilize one of the occupational disease clinics established recently in this state for that purpose.

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### **Additional Information**

#### 23. I'm afraid that if I file a claim for workers' compensation benefits, my employer will find out I have a disease and fire me. Does the law provide any protection against this kind of treatment?

There are two laws which provide limited protection for the job security of workers who contract occupational diseases. The Workers' Compensation Law protects workers against discrimination by an employer because the worker has filed a claim for benefits or testified at a workers' compensation hearing. However, that law does not prohibit an employer from firing a worker for excessive absenteeism even if it is the result of a work-related disease. The Human Rights Law protects workers from discrimination on the basis of a disability, including one caused by an occupational disease. So, as long as you are able to perform substantially all of your job duties, you cannot be fired or otherwise discriminated against simply because you have a disability. Therefore, if your employer fires you either because you have an occupational disease or because you filed a claim or testified at a workers' compensation hearing, you may have a claim for damages which should be pursued before the New York State Division of Human Rights or the Workers' Compensation Board.



Other state and federal laws protect workers from discrimination because they requested information about on-the-job health hazards or because they filed a complaint with a governmental agency about unhealthy conditions in their workplace, or otherwise exercised any rights under those laws. For information about their rights under those laws, workers should consult their unions, private attorneys, the New York State Attorney General's Labor Bureau, or the New York State or United States' Department of Labor.

24. If I suffer an illness or injury or die of an occupational disease, can I or my family sue my employer in court and collect damages?

In most cases, workers are not allowed to file private lawsuits against their employers for illnesses or injuries arising from occupational disease, but there are exceptions. The Workers' Compensation Law does not prevent you or your family from filing lawsuits from damages against third parties, such as the manufacturer of the chemical or toxic substance which caused your illness or injury. In addition, if your employer intentionally injured you or failed to obtain workers' compensation insurance coverage, you or your family may be able to bring a private lawsuit against your employer.

25. Where can I get more information about my rights under the Workers' Compensation Law?

Workers may contact the Workers' Compensation Board at any of the local district offices.

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### **Workers' Compensation Board District Offices**

\*Albany: 100 Broadway, Albany, New York 2241 (518) 474-6674

\*Binghamton: State Office Building, 113 State St. 4th Fl., Binghamton, New York 13901 (607) 773-7867

\*Buffalo: 125 Main Street, Buffalo, New York 14203 (716) 847-3158

\*Hempstead: 175 Fulton Avenue, Hempstead, New York 11550 (516) 560-7700

\*New York City: 180 Livingston Street, Brooklyn, New York 11248 (718) 802-6600

\*Rochester: 130 Main Street West, Rochester, New York 14614 (716) 238-8300

\*Syracuse: State Office Building, 333 E. Washington Street, Syracuse, New York 13202 (315) 428-4464

### **Occupational Disease Diagnostic Centers in New York State**

\*Albany/Poughkeepsie: Eastern New York Occupational Health Program, 1202 Troy Schenectady Road, Latham, New York 12110 (518) 783-1518. Mid Hudson Satellite - (914) 471-2800

\*Buffalo: Union Occupational Health Center, 450 Grider Street, Buffalo, New York 14215 (716) 894-9366

\*Cooperstown: New York Center for Agricultural Medicine and Health, 1 Atwell Road, Cooperstown, New York 13326 (607) 547-6023 (800) 343-7527

\*Long Island: Occupational Medicine Clinic, c/o Department of Preventive Medicine Division of Occupational Medicine, HSC, Level 3, SUNY at Stony Brook, Ne

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# No Death Penalty For The Murder Of A CO

(11/12/98) WOODBURY -- A jury Thursday declined to recommend the death penalty for the killing of a Bayside State Prison guard.

The same jury that convicted Steven Beverly in the July 1997 murder of corrections officer Frederick Baker deliberated for four hours over two days before delivering a split verdict in the penalty phase of the trial.

Because the jury was unable to agree unanimously on the death penalty, Beverly will be sentenced to life in prison without parole. Beverly was serving a 20-year sentence for aggravated assault at the time of the killing.

Superior Court Judge Joseph F. Lisa scheduled sentencing for Dec. 17.

Beverly wept at the verdict. His relatives also cried and one repeatedly whispered, "Thank God."

Across the courtroom, Baker's family appeared stunned, but most remained composed. Some wept when they left the courtroom after the verdict.

Prosecutors said the fact that Baker was killed in the line of duty outweighs any of the 11 "mitigating factors" the defense presented in making their case for the lesser penalty.

The defense argued that Beverly had mental problems and was a victim of racism and homophobia at the hands of Baker and other white guards at the Cumberland County prison. Beverly and his gay lover are African-American.

Beverly, 39, of Atlantic City, tearfully apologized in court Tuesday and pleaded with the jury, saying he never intended to kill Baker. He asked jurors to "have mercy upon my soul."

"Please believe me when I say I'm very sorry. If I could turn back the hands of time, I would stop all this from happening," Beverly said.

The same jury of seven men and five women found Beverly guilty Monday of knowing and purposeful murder in the July 30, 1997, stabbing death of Baker, the first New Jersey prison guard killed in the line of duty in 25 years.

Witnesses testified that Beverly became enraged after learning that Baker planned to separate Beverly and his homosexual lover and cellmate. The final straw, the defense said, came when Baker referred to him with a racial slur.

During the trial, moved to Gloucester County to avoid conflicts, prosecutors argued the killing was coldblooded and premeditated. Baker was stabbed in the back with a homemade knife that resembled an ice pick.

Baker, 35, of Rio Grande, a 10-year veteran, collapsed into the arms of a fellow officer, saying in his last breaths, "Beverly stabbed me."

The prison, which has about 1,700 inmates, remained in a lockdown for nearly a month after the stabbing. Governor Whitman agreed to provide protective vests for corrections officers after the killing.