

NEW YORK, FRIDAY, APRIL 4, 2008

DC 37 Presses 9/11 Label For Workers' Comp

Mayor Vetoed Switch During Task Force Deliberations

By MEREDITH
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The Governor's 9/11 Task Force made seven recommendations that would give significant assistance to sick Ground Zero workers seeking treatment, but an eighth proposal was blocked by the city, according to union officials, that could have mitigated the years of delays that currently plague most 9/11 Workers' Compensation claims.

The recommendation would have allowed certain health conditions stemming from recovery work after the World Trade Center towers collapsed to be classified as 9/11-related for the purpose of Workers' Compensation hearings. This would prevent the same conditions, acknowledged by the government as connected to 9/11, from being challenged repeatedly by the city.

Up to 3-Year Wait

A typical 9/11-related Workers' Compensation case that is challenged takes an average of about 32 months to complete, meaning a disabled worker has to wait that long before receiving any financial or health benefits.

DC 37 member whose claims have not been challenged," said Lee Clarke, the director of District Council 37's Health and Safety Division.

It is civilian workers, like those who make up DC 37, who are most directly affected since uniformed personnel, like firefighters and cops, are governed by a different set of rules and regulations and receive unlimited sick leave.

Workers' Compensation experts say that thousands of 9/11 claims have been filed, almost all of which have been challenged by the city.

Because the task force operated by consensus, the city's objection blocked the recommendation, which the other members agreed to, and resulted in the formation of a subcommittee to study the issue.

City: Hope to Streamline

"Working with the task force, the city agreed to the creation of a subcommittee to evaluate Workers' Compensation concerns," said mayoral spokesman Jason Post. "The city also committed to perform an internal review of how WTC-related Workers' Compensation claims are processed to determine whether it could better address, within the requirements imposed by state law and any other regulation, the challenges that WTC-related ailments pose to the system."

The subcommittee will likely be comprised of occupational safety and health experts but has not yet been formed.

Ms. Clarke, who acted as DC 37's representative on the committee, noted that the Fire Department has confirmed the existence of such conditions and linked them to work at Ground Zero.

"There's always the onus on the worker to prove that they were at Ground Zero and that they have the conditions," she said. "We're not asking for the gates to be opened and people to be able to just walk through. We're just saying open them up so that people can prove that they have the conditions."

Lifted Key Barrier

At the same time, most of the seven recommendations, which DC 37 played a major role in shaping, would greatly benefit civilian employees who worked at Ground Zero. One of the most important ones was getting rid of the requirement that an affected

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DC 37 Fights 9/11 Compensation Delays

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worker must have a pre-employment physical, against which a current physical could be compared. Uniformed employees undergo physicals as a pre-condition of employment, so that condition was less of an obstacle. But most DC 37 members are not required to do so, and their lack of a health record presented yet another barrier to clarifying their condition.

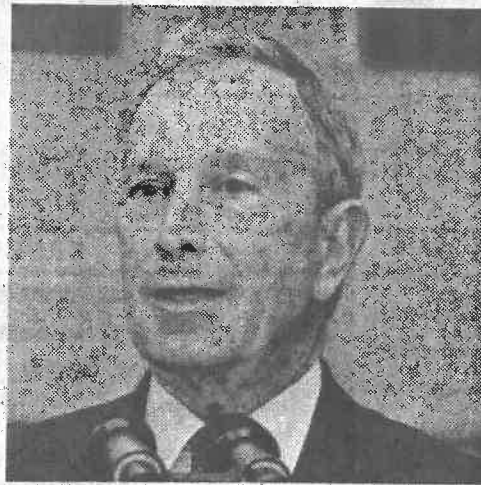
Even if all of the recommendations were adopted, however, civilian employees would likely still face a series of battles at the Workers' Compensation Board due to the city's repeated challenges of their claims.

Solution Causes Problems

That's because the state Workers' Compensation Law divides occupational illnesses into two universes—accidents and occupational diseases. There is a time limitation of two years from the date of the accident to file a claim. For occupational diseases, the compensation board has a degree of latitude in fixing the date of disablement; it could be one of three dates: 1) the first day of lost time from work, 2) the first day of medical treatment, or 3) the first knowledge of causal connection between the illness and work activity.

The 9/11 claims were all accident claims, because before the disaster there were no "9/11 illnesses." As a result, the board was denying claims that were made more than two years after September 2001.

Article 8A of the law was added to address that situation to allow the two-year clock to start ticking later than 9/11, in the same way



GREATER EFFICIENCY OR A STALL TACTIC? Mayor Bloomberg got a state task force on 9/11 to shelve a proposal that would have sped the processing of related Workers' Compensation claims until the issue could be studied more carefully, but District Council 37 Health and Safety Director Lee Clarke says the city is perpetuating a system that causes chronic delays in payments while putting an undue burden on employees to prove that their illness was contracted while working at the World Trade Center site or related locations.

that an occupational disease claim is handled.

But the city is still challenging all of the claims, because officials say they do not know which date the board will pick. For example, if a worker was at the site in October 2001, was diagnosed with obstructive lung disease in September 2005 and then left work in January 2006, the board could potentially choose any of those three dates. If it chose October 2001, the claim would be untimely, and so the city says it is forced to contest all the claims, just in case that date is chosen.

'Law Makes Us Do It'

"State law forces the Law Department's Workers' Comp Division to controvert (or challenge) late-emerging WTC-related claims, because a process is necessary to determine a date of disability

and establish causation," said Mr. Post.

But Workers' Compensation lawyer Robert Grey says that Article 8A, which he helped to draft, was meant to halt the constant challenges, not supply a new justification for them. "The purpose was to liberalize the time limitations," he said. "In practice, the city and others have taken it and stood it on its head. They challenge every single case, they lose almost all of them, and the workers have to wait two years. They don't have to do that."

Once workers have made it through the date challenge, they often face a second objection by the city based on whether the condition was actually "latent." For example, if a worker admitted he or she was coughing while on the pile but didn't seek treatment until a few years later, the city contended that the condition wasn't ac-

tually "latent," and that the two-year clock should have started ticking closer to 9/11.

If that hurdle is cleared, the city then often challenges the condition itself, because the 9/11-related illnesses are not written into the law as "presumptive conditions." That is what the eighth recommendation, which is now a subcommittee, would have addressed. "We have to go and prove the same conditions in every case," said Mr. Grey. "We just have to do it over and over and over again. It's like 'Groundhog Day.'"

Offers Improvements

Nonetheless, the task force produced a number of recommendations that would significantly improve the plight of ill civilian 9/11 workers. Included among them are dropping the 40-hour limitation with regard to how many hours a worker must have been at Ground Zero; and widening the geographical boundaries within which a contracted illness can be considered 9/11-related.

With the city on board with those, there is hope of getting the Legislature to sign off on them, but union officials say that ensuring passage and the creation of the Workers' Comp subcommittee will take continued effort.

"The work of the task force is not over," said Ms. Clarke.

DC 37 photo by Clarence Elie-Rivera