

Vecchione, Vecchione, Connors & Cano LLP

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Workers' Compensation Board Issues New Guidance on Labor Market Attachment

In March of 2020 the Workers' Compensation Board issued guidance on the issue of Labor Market Attachment in the wake of Executive Order 202. Because of the pandemic the Workers' Compensation Board for all intents and purposes suspended all litigation on the issue of labor market attachment, that had not been raised prior to the implementation of the State of Emergency by Governor Cuomo.

When New York State recently reached 70% vaccination of people over age 18, the governor ended the state of emergency in New York State effective June 24, 2021.

Because the State of Emergency has ended the Workers' Compensation Board has issued new guidance on the issue of Labor Market Attachment. Labor Market Attachment can be raised again effective August 16, 2021. The Guidance issued by the Workers' Compensation Board indicates that partially disabled claimants should begin to make efforts to show attachment "as soon as practical".

When the issue is raised there are no changes in what a claimant must show in order to be attached to the labor market. The requirements of *American Axle* are still the standard. However, the guidance indicates that a Law Judge can take into account "difficulties and obstacles that continue with respect to job searches, job placement, or vocational rehabilitation.

With the order lifted we are recommending that if there is no evidence in the Workers' Compensation Board's Electronic Case Folder of a job search on August 16th that an RFA-2 be filed immediately raising the issue of Labor Market Attachment. It is especially important to do this on the cases in which maximum medical improvement has been found but the Workers' Compensation Board stop the classification process because of the moratorium on Labor Market Attachment, so that the PPD can be implemented and start running. For those cases where the Safety Valve of 130 weeks is in effect, we will be seeking to have all of the weeks after 130 weeks from the date of the accident be applied as a credit against the weeks in the cap.

The Workers' Compensation Board's new Guidance is available [here](#).

If you have any questions, please feel free to contact our firm for guidance as Labor Market Attachment once again becomes a viable defense.

We welcome your feedback and look forward to providing information on topics that are of interest to you. If you have any questions about the information provided, or if you have a workers' compensation matter that you need assistance with, we are available to speak with you. Please contact us at yvccnews@vecchionelaw.com.

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