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N.Y. Fair Play Act alters legal definition of "employee"

On Jan. 10, 2014, Gov. Andrew Cuomo signed into law the New York Commercial Goods Transportation Industry Fair Play Act, S5867-2013/A5237B. Then, on March 17, 2014, Cuomo signed into law A0451/S06336 that made "technical corrections" to the so-called "Fair Play Act," including retroactively changing its effective date from March 11 to April 10, 2014. This legislation was enacted with bipartisan support as the result of a compromise by various industry representatives and political stakeholders.

The Fair Play Act addresses the status of drivers who possess a state-issued driver's license and operate a commercial motor vehicle as defined by law. Under Subdivision 4(a) of Section 2 of N.Y. transportation law, a commercial motor vehicle is one that has a gross vehicle weight rating or gross combination weight of 10,001 pounds or more, whichever is greater.

The act amends the state's labor and workers' compensation laws to establish that any driver injured possessing a state-issued driver's license and who transports goods in N.Y. while operating a commercial motor is presumed to be an employee of the commercial goods transportation contractor and not an independent contractor if injured on or after April 10, 2014, unless one of two tests is met.

The New York State Workers' Compensation Board issued the April 4, 2014, Bulletin Subject No. 046-669 elaborating on these tests. The bulletin also explains the substantial civil penalties that may be imposed by workers' compensation law judges and the Bureau of Compliance for violation of the Fair Play Act, which is on top of all existing civil and criminal penalties for misclassification, failure to provide required coverage or other violations of workers' compensation, labor, or tax and finance law.

Should you have any questions about what this legislative change means for your N.Y. workers' compensation claims, please contact your Sedgwick client services representative.

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