

QUESTION: What are the rules for Workers' Compensation when a New York employee has a temporary project in another state? I always try to list states under Item 3.C. in the Declarations for Other States Insurance. Also if possible one seminar said I should try if work done out of state I should try to get on WC policy Coverage A. part not only NY listed but also the states where the employees will be working. I attended a seminar where it was said that, if work is done out of state, the other states should be listed under Item 3.A. in the Declarations for Workers' Compensation Insurance. Some seem to believe it will all be picked up at audit. Others say it is best to advise the underwriter first and not to wait for audit to pick it up. Does the carrier have to be notified within a certain number of days?

ANSWER: Tell the carrier as soon as possible; don't wait for the audit.

This is from the [NYS Workers Compensation Board's website](#):

Generally, a New York State workers' compensation policy covers all of a firm's employees who are located within New York State. That policy also covers employees that have incidental travel and temporary work assignments outside of New York State for **New York workers' compensation insurance benefits** if those employees are injured outside of New York State. In some cases, an employee whose work site is located outside the state but whose employer's office is located in New York State, may be entitled to collect workers' compensation benefits in New York State. The Board may determine that the claim is subject to New York workers' compensation benefits if the employer directs and controls the out-of-state employees' work activities from the New York office, or the employer issues paychecks from the New York office. Due to every state and nation having different thresholds as to when an outside company working in their jurisdiction needs their specific coverage, New York employers working outside of New York State, even temporarily, should check for the local workers' compensation requirements in each state or nation where the employer is conducting business.

New York Workers Comp Law does not address the question of New York employees working outside the state one way or the other, and it does not set a "number of days" threshold, so this appears to be the board's interpretation.

Listing a state under Item 3.C. is a stop-gap measure. It means that the policy will provide the WC benefits under that state's laws under narrow circumstances. This is what the current version of the WC coverage form used in NY says:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.

2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.

3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

If an employer's WC policy takes effect on Dec. 1, 2023, and the employer has work on that date in Connecticut, the policy will provide Connecticut benefits (if the employer is required to pay them) for injuries occurring before Dec. 31.

If Connecticut is listed in Item 3.C., the employer starts work there after Dec. 1, and the employer is required to provide Connecticut benefits to an injured worker, the policy will provide those benefits. However, the employer must inform the insurer "at once" about the work in Connecticut.

Waiting for audit is a bad idea. The audit relates to the premium charged, not the benefits provided. The deciding factors are 1) the requirements in the other state, and 2) the terms and conditions in the WC policy.