



STATE EDITION  
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# MERIT MESSENGER

6369 Collamer Drive, East Syracuse, NY 13057-1115 empire@abcnys.org  
315) 463-7539 Fax 7621 (800) 477-7743 Education (888) 696-2237

ENY ABC John Nerney 518-449-1062 / Fax 9084  
WNY ABC Scott Zylka 716-832-0777 / Fax 0749

## **NYSDOL Supplemental Benefits Notice Extended Again – until March 1, 2001**

In April, 1999, the New York State Department of Labor (NYSDOL) issued a “Notice” that, effective June 15, 1999, contractors who varied from NYSDOL policy as to providing supplemental benefits, could be guilty of a willful violation of NYS Labor Law.

The notice resulted in state and federal lawsuits, and numerous meetings with NYSDOL officials, to determine just what NYSDOL’s “policy” is or was. **As of today, NYSDOL apparently maintains that their policy is and has been a requirement that supplemental benefits be annualized** – i.e., that to obtain credit on public work for funds paid on behalf of employees into benefit funds, that the contractor must remit the same amounts on private work as are required to be paid on public work, or pay the difference (or all the benefits) in cash. This position ignores the fact that hundreds of contractors and others were told in at least eight seminars, in transcripts and in writing from Counsel’s office, and by compliance officers in Bureau of Public Work audits, that annualization was *not* required by NYSDOL.

The effective date of the NYSDOL Notice has been repeatedly extended, most recently to March 1, 2001. We believe it will continue to be extended until the US Circuit Court of Appeals issues its decision (hopefully by April) as to whether NYSDOL has the authority to annualize. We also do not expect any other legislative or government action until the court makes its ruling. Over the last year, NYSDOL has solicited comments on what their policies should be, and issued at least two “DRAFTs” of proposed redefinitions of NYSDOL policy. The original notice and subsequent information on the ensuing legal actions and policy drafts are available on-line at [www.abc.org/newyork](http://www.abc.org/newyork) – Government/Laws + Legal Issues – PUBLIC WORK: Supplemental Benefits.

Although NYSDOL officials are apparently working to draft a “new” policy that does not deny workers the right to obtain benefits as opposed to cash, and although the DRAFTs of such proposed policies appear to be getting closer to a rule that may be workable – NYSDOL officials have recently stated that any such “new” rule will only be effective proactively, after it is issued, and not retroactively. Which means that NYSDOL is apparently taking the position that they have every right to wage a vendetta against open shop contractors, assessing the “bad guys” with penalties of tens of thousands of dollars per firm for not having met the strictest annualization standard. ABC is getting more and more reports of contractors charged with retroactive penalties. Some of these actions involve “unclosed” investigations several years old.

In order for us to better assess the present situation, please fax back this form if:

Your firm: \_\_\_\_\_ or a firm you know of: \_\_\_\_\_  
\_\_\_ has been investigated \_\_\_ is under investigation, or \_\_\_ has open files from past investigations  
\_\_\_ has been charged with underpayments due to an NYSDOL annualization (date: \_\_\_\_\_)  
\_\_\_ has been investigated with no annualization charges, and the file closed (date: \_\_\_\_\_)

All information submitted will be kept confidential.