

Before You Join A Workers Comp Insurance Trust

Lawley Service Insurance is the group manager of the New York State Auto Repair Shop Workers Compensation Safety Group (Group #536). The Safety Group has been saving repair shops money over 13 years and has over 1900 members in New York State. In the couple of years people have started to ask the difference between a Workers Compensation Safety Group and a Workers Compensation Trust.

There is a number of differences between a guaranteed cost Workers Compensation Safety Group & a Workers Compensation Trust. Here at Lawley Service Insurance we felt that the most important difference that you should be aware of is Joint and several liability. Joint and several liability does not exist under a standard workers' compensation insurance policy because the liability to pay the indemnity and medical obligations of injured employees lies specifically with the insurer and not the insured/employer.

Joint and several liability is an integral part of a Trust. The NYSWCB will not approve a Trust in the absence of joint and several liability among all of the group members. All group members are required to jointly and severally pay all obligations imposed under the Workers' Compensation Law. The joint and several obligations of all of the group members to pay all of the Trust obligations [which generally include indemnity and medical payments for injured employees and statutory assessments] is specifically included multiple times within the Trust documents [contracts] that all group members are required to sign prior to approval by the NYSWCB as a group member in a particular Trust. The joint and several obligations, like the claims obligations, are "from cradle to grave" and thus exist forever.

If an insured/employer was part of a Trust for a period of time and then leaves the Trust to procure insurance through a standard workers' compensation insurer, the insured/employer will still be responsible for any and all indemnity and medical payments for claimants/employees that were injured during the period of time they participated in the Trust, in addition to ongoing assessments attributable to any losses for which indemnity payments continue. As such, the insured/employer should expect to pay not only the workers' compensation insurance premium for the standard workers' compensation policy, but should also understand that it will likely be paying additional money into the Trust to satisfy its contractual joint and several obligations.

While the expectation is that each group member only pays its own pro rata share for the ongoing Trust obligations, the determination of how additional obligations are funded is entirely within the discretion of the Trustees [usually several of the original Trust members]. As such, insureds/employers who are interested in joining a Trust should understand that joining a Trust is a long-term commitment.