



Oregon

Theodore R. Kulongoski, Governor

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To: Workers' Compensation Insurers, Self-Insured Employers, Service Companies, Third Party Administrators, and Other Interested Parties

Subject: Civil Penalties for Coverage and Claims Processing Performance

This notice is to provide you information about changes in civil penalty amounts and performance thresholds used by the Workers' Compensation Division (WCD) in our monitoring, audit, and enforcement activities. We are providing this advance notice to help you avoid civil penalties by fine-tuning internal processes for coverage and claims processing performance.

After reviewing our current practices, WCD has decided to adjust penalty amounts and thresholds, and eliminate penalty maximums established by practice or administrative rule that are lower than those allowed by statute. Doing so will more effectively support objectives for enhancing industry performance as well as provide data to assess whether a statutory change to the civil penalty ceiling is necessary. Accordingly, WCD is increasing some penalty amounts and performance thresholds for areas affecting coverage and timely/accurate benefits, from 80% to 90%, as described in the attached chart. Penalty thresholds for claims reporting performance will remain at 80%. The chart shows the revised penalty thresholds, penalty amounts, the effective dates, and how we will apply them. More detailed information can be found on WCD's Web site at http://www.wcd.oregon.gov/communications/industry_notices/covpendetail.pdf, or go to <http://www.wcd.oregon.gov/> and click on Industry Notices on the left side bar. Where necessary, WCD will also revise administrative rules to adjust the penalty amounts, thresholds, and maximum amounts, to be consistent with the statute and the attached information.

Ensuring that subject employers have the required workers' compensation coverage and that injured workers receive accurate and timely benefits are key objectives of the workers' compensation law, WCD's statutory charge, and the division's strategic priorities. In carrying out WCD's regulatory activities in support of those objectives and priorities, we are striving for effective approaches that are often expressed by insurers, self-insured employers, and policymakers: reducing burdensome, "up front" reporting requirements where possible, educating responsible parties about requirements, emphasizing industry accountability for higher levels of claims and coverage performance, and strengthening "back end" verification through audits and sanctions. One component of that enhanced accountability and verification is the civil penalties WCD assesses for unsatisfactory performance.

In addressing unsatisfactory coverage and claims performance, WCD considers the dollar amounts for specific penalties, the performance thresholds at which we assess penalties (also considering the amount of activity in a period), and the statutory civil penalty “ceiling” of \$10,000 in any three-month period (ORS 656.745). In many situations, the division has managed that penalty ceiling by establishing penalty maximums by practice or administrative rule that are lower than those allowed by statute. We’ve done this so that, if necessary, civil penalties for different issues can be assessed without exceeding the statutory maximum for that period. The result of this approach, however, is that some violations are not penalized to the full extent allowed by statute or rule. Also, WCD has not been able to evaluate the appropriateness of the statutory penalty ceiling and its effectiveness in influencing performance.

In addition to the change to civil penalties, during the last year, WCD began posting performance information from the Compliance Performance and Employer-at-Injury audits on our external Web site. As we implement these changes, we will begin posting insurers’ performance results related to guaranty contract filing and termination. We estimate that this information will be available by November.

If you have questions about the civil penalties and on-line performance information pertaining to coverage/guaranty contract issues, please contact Reg Gregory, Manager, Employer Compliance Unit, (503) 947-7665, reg.e.gregory@state.or.us; or Sally Coen, Manager, Investigations and Sanctions Unit, (503) 947-7654, sally.c.coen@state.or.us. If you have similar questions pertaining to civil penalties for QCPP and Compliance Performance Audit issues, please contact Jennifer Flood, Manager, Field Audit Unit, (503) 947-7687, jennifer.r.flood@state.or.us.



John Shilts, Administrator
Workers’ Compensation Division

Attachment: [Penalty Amount/Threshold Chart](#)

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