

**THE PITFALLS OF PENNSYLVANIA WORKERS' COMPENSATION**

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- Failure to issue and file Bureau forms in Harrisburg when initiating the payment of medical and/or indemnity benefits to a claimant
- Failure to issue and file Bureau forms in Harrisburg when stopping the payment of benefits to a claimant
- Failure to accurately describe the injury for which liability is accepted
- Failure to know time limitations
- Failure to engage self help provisions of the statute
- Failure to issue a Notice of Ability to Return to Work
- Failure to pursue subrogation rights against a third party
- Failure to screen medications through PDR or the Internet
- Failure to screen medical diagnostic and procedure codes
- Failure to call defense counsel when in doubt

**Failure to issue and file Bureau forms in Harrisburg when initiating the payment of medical and/or indemnity benefits to a claimant**

Workers' compensation benefits include the payment of medical and indemnity benefits. The initiation of the payments of benefits requires a writing in the nature of a Bureau form filed with the Bureau in Harrisburg. Such forms include an Agreement for Compensation (LIBC 336 or 338), a Temporary Notice of Compensation Payable (LIBC 501), a Notice of Compensation Payable (LIBC 495), a Supplemental Agreement (LIBC 337 or 339), or a decision from a Workers' Compensation Judge (WCJ).

Failure to file a writing with the Bureau in Harrisburg results in the employer being responsible for any and all injuries the claimant avers to be work related.

**Failure to issue and file Bureau forms in Harrisburg when stopping the payment of benefits to a claimant**

The stopping of indemnity benefits requires a writing in the nature of a Bureau form filed with the Bureau in Harrisburg. Such forms include an Agreement for Compensation (LIBC 336 or 338), a Final Receipt (LIBC 340), a Supplemental Agreement (LIBC 337 or 339), or a decision from a Workers' Compensation Judge (WCJ).

The failure to file a writing with the Bureau In Harrisburg can result in the assessment of penalties up to 50% (which are discretionary with a WCJ) and counsel fees to claimant's counsel

### **Failure to accurately describe the injury for which liability is accepted**

Not only is the filing of Bureau documents essential to excellent claims handling, but also, the description of the injury in the Bureau documents is essential to excellent claims handling. The medical diagnosis should be included in the Bureau document. If you are unsure of what to describe as an injury consult legal counsel. After all, the Bureau documents are in the nature of an agreement.

### **Failure to know time limitations**

A Claim Petition **must be answered** within **20 days** from the Notice of Assignment from a WCJ.. Failure to timely answer a Claim Petition results in an admission of all allegations in the Claim Petition. Ironically, the failure to file a timely Answer to any other petition does not result in an admission of the allegations.

The investigation of the compensability of the claim by statute must be completed within **21 days** of the injury. At the present time this requirement is not strictly enforced by the Bureau. One of the reasons for issuing a Temporary Notice of Compensation Payable is to pay a claimant while the investigation continues. The issuance of a Temporary Notice of Compensation Payable is not an admission of liability. The Temporary Notice of Compensation Payable automatically converts to Notice of Compensation Payable **90 days** after it has been issued . To avoid the conversion, a Notice Stopping Temporary Compensation (LIBC 502) must be filed with the Bureau in Harrisburg.

An appeal to the Workers' Compensation Appeal Board must be filed within **20 days** from the date of the decision from a WCJ. A request for a supersedeas must be filed within **20 days** from the date of the decision from a WCJ.

An appeal to the Commonwealth Court must be filed within **30 days** of the decision of the Workers' Compensation Appeal Board .

An appeal to the Supreme Court must be filed with **30 days** of the decision of the Commonwealth Court.

### **Failure to engage self help provisions of the statute**

Since 1996 employers can engage in self help under very strict conditions. Section 413 (c) & (d) permits an employer to file a Notification of Modification/Suspension with the Bureau and the claimant within **7 days** of the date suspension or modification of benefits. If the claimant

objects he/she must file a Challenge Petition within **20 days** of his/her receipt of the Notification. If the claimant does not file a Challenge Petition within 20 days the Notification converts to a suspension or modification of benefits having the binding effect of a Supplemental Agreement.

#### **Failure to issue a Notice of Ability to Return to Work**

Section 306 (b)(3) requires the employer to provide **prompt notice** to the claimant if it receives medical evidence that the claimant is able to return to work. (LIBC 757). Failure to comply with this Section prevents the employer from modifying or suspending.

#### **Failure to pursue subrogation rights against a third party**

Section 319 permits an employer to subrogate to the rights of a claimant against a third party where the compensable injury is caused in whole or in part by an act or omission of a third party.

#### **Failure to screen medications through PDR or Internet**

Employers often pay for medications that are not related to the work injury for which it accepted liability. Review of the medications prescribed either with the Physicians' Desk Reference or with the Internet avoids this problem.

#### **Failure to screen medical diagnostic and procedure codes**

As with medications, employers often pay for medical procedures that are not work-related. A review of medical invoices for diagnostic codes and medical procedures avoids this problem.

#### **Failure to call defense counsel when in doubt**

Many of the above mentioned pitfalls can easily be avoided by promptly calling defense counsel. The adjustor and defense counsel are a team of professionals that bring excellence to claims handling.