

Notice of Rulemaking Hearing
Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation

There will be a hearing before the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, to consider the promulgation of amendments to rules pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-204, 50-6-118, 50-6-233 and 50-6-412. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Media Room on the First Floor of the W.R. Snodgrass Tower, 312 8th Ave. North, Nashville, Tennessee 37243 at 9:00 a.m. CDT on the 28th day of October, 2005.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Labor and Workforce Development, Division of Workers' Compensation, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department's ADA Coordinator, Mr. Jewel Crawford, at Andrew Johnson Tower, 8th Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0655 and (615) 741-8805.

For a copy of the entire text of this notice of rulemaking hearing contact: Erol Eryasa, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Penalty Program Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 253-1606.

Substance of Proposed Amendments

Chapter 0800-2-13
Penalty Program

Amendments

Part 2. of subparagraph (b) of paragraph (4) of rule 0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits is amended by adding a semicolon (“;”) and the word “or” after the word “employee” so that as amended the subparagraph shall read:

- 2. all workers' compensation benefits owed to an employee under the Workers' Compensation Law have been and continue to be timely paid to the employee; or

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Subparagraph (b) of paragraph (4) of rule 0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits is amended by creating a new Part 3. “the insurer has acted diligently, as determined by the Commissioner or Commissioner's Designee, to obtain necessary information to process the claim and has not been able to obtain it,” so that as amended the subparagraph shall read:

- 3. the insurer has acted diligently, as determined by the Commissioner or Commissioner's Designee, to obtain necessary information to process the claim and has not been able to obtain it.

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Paragraph (5) of rule 0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits is amended by adding the phrase “A benefit is paid on the date the employer or insurer places the

benefits into the mail for delivery to the injured employee.” after the word “paid” and the punctuation period “.” before the word “After” so that as amended the subparagraph shall read:

- (5) In deciding whether a benefit is unpaid or untimely paid, compensation shall be deemed promptly paid if the first payment is made fifteen (15) calendar days after the employer has knowledge of the injury and every subsequent payment is made within consecutive fifteen (15) calendar day increments, until all temporary benefits have been paid. A benefit is paid on the date the employer or insurer places the benefits into the mail for delivery to the injured employee. After twenty (20) calendar days from the date of the employer’s knowledge of any disability that would qualify for benefits, the twenty-five percent (25%) penalty will attach to all payments unpaid or untimely paid.

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Part 2. of subparagraph (a) of paragraph (1) of rule 0800-2-13-.03 Departmental Actions is amended by adding a semicolon (“;”) and the word “or” after the word “Law” so that as amended the subparagraph shall read:

- (2) the employer or insurer does not owe any workers’ compensation benefits under the Workers’ Compensation Law; or

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Subparagraph (a) of paragraph (1) of rule 0800-2-13-.03 Departmental Actions is amended by creating a new Part 3. “in the sole discretion of the Commissioner or the Commissioner’s Designee, the Commissioner or Commissioner’s Designee finds that the insurer has acted diligently to obtain necessary information to process the claim and has not been able to obtain it,” so that as amended the subparagraph shall read:

- (3) in the sole discretion of the Commissioner or the Commissioner’s Designee, the Commissioner or Commissioner’s Designee finds that the insurer has acted diligently to obtain necessary information to process the claim and has not been able to obtain it.

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Paragraph (3) of rule 0800-2-13-.03 Departmental Actions is amended by adding a comma (“;”) and the phrase “or the Commissioner’s Designee” and a second comma (“;”) after the word “Commissioner” and before the word “shall” so that as amended the paragraph shall read:

- (3) The Commissioner, or the Commissioner’s Designee, shall have the sole discretion not to issue a penalty even if the technical requirements of subparagraph (1)(b) are satisfied.

Authority: T.C.A. §§ 50-6-118, 50-6-233 and 50-6-412.

Rule 0800-2-13-.04 Administrative Appeal of an Agency Decision Assessing a Civil Penalty for Unpaid or Untimely Paid Workers’ Compensation Benefits is amended by inserting a new paragraph (1) and by renumbering the existing paragraphs so that as amended the rule shall read:

- (1) An employer or insurer assessed a civil penalty for unpaid or untimely paid worker’s compensation benefits has the right to file, in writing, a petition for informal reconsideration by the Commissioner or Commissioner’s Designee, other than the specialist who issued the Agency Decision, to determine if the civil penalty should have been assessed. However, the filing of the petition shall not be a prerequisite for requesting a contested case hearing, and the fifteen calendar day period for a party to request a contested case hearing shall not be tolled by the filing of a petition for informal reconsideration. The petition for informal reconsideration shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid

workers' compensation benefits and shall be filed with the Designee who issued the Agency Decision assessing the civil penalty within seven (7) calendar days of the date upon which the Agency Decision was issued.

- (2) An employer or insurer assessed a civil penalty for unpaid or untimely paid workers' compensation benefits has the right to request a contested case hearing to determine if the civil penalty should have been assessed.
- (3) The request for a hearing shall be made in writing by an employer or insurer which has been assessed a civil penalty for unpaid or untimely paid workers' compensation benefits.
- (4) Any request for a hearing shall be filed with the Designee who issued the Agency Decision assessing the penalty within fifteen (15) calendar days of the date upon which the Agency Decision was issued. Failure to file a request for a hearing within fifteen (15) calendar days of the date of entry of the agency decision shall result in the Agency Decision becoming a Final Order not subject to further review.
- (5) The Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner shall have authority to hear the matter as a contested case and determine if the civil penalty assessed for unpaid or untimely paid workers compensation benefits should have been assessed.
- (6) Upon receipt of a timely request for a hearing, the Commissioner shall issue a Notice of Hearing to the employer or insurer.

Authority: T.C.A. §§ 50-6-118, 50-6-233(c) and 50-6-412.

Person to contact to answer any questions regarding the notice of rulemaking hearing:

Peter B. Halverstadt
Director
Penalty Program
TN Dept. of Labor and Workforce Development
Andrew Johnson Tower, Second Floor
710 James Robertson Pkwy.
Nashville, TN 37243-0661
Telephone: (615) 532-2403

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation.

James Neeley
James Neeley
Commissioner

Subscribed and sworn to before me this the 22 day of August,

Vickie H. Gregory
Notary Public

My commission expires on the 26 day of January, 2009.



The notice of rulemaking set out herein was properly filed in the Department of State on the 23 day of Aug, 2005.

Riley C. Darnell
Riley C. Darnell
Secretary of State

By: M. M. [Signature]

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