



NOTICE

REGARDING WORKERS' COMPENSATION DECISIONS

To: Insurers Providing Workers' Compensation Coverage in West Virginia, Third Party Administrators and Self-insured Employers
From: West Virginia Offices of the Insurance Commissioner
Date: February 6, 2019
Re: Content of Orders Issued in West Virginia Workers' Compensation Claims

The purpose of this notice is to provide updated and continued guidance from the West Virginia Offices of the Insurance Commissioner ("OIC") relating to the content of orders issued in West Virginia workers' compensation claims. This guidance is intended for all insurance carriers, third-party claims administrators, and self-insured employers.

More than 13 years ago, the workers' compensation insurance market in West Virginia privatized. Presently, there are approximately 280 carriers licensed to write workers' compensation insurance in the West Virginia market. West Virginia has received 14 consecutive years of loss costs reductions resulting in a cumulative base premium decrease of 75.8%.

These numbers speak to the success of privatization and the attractiveness of the West Virginia market. They also indicate that there are a significant number of new carriers who may not have a lengthy history of adjusting workers' compensation claims in our state or navigating our state's workers' compensation system. As part of its continuing effort to educate and ensure compliance in managing workers' compensation claims, the OIC is issuing this notice as a reminder of the basic legal requirements for issuing a written decision or notice regarding a decision in a workers' compensation claim.

- Pursuant to W. Va. Code § 23-5-1(a), with regard to any issue which is ready for a decision, the private carrier or self-insured employer shall promptly send the decision to all parties, including the basis of its decision.
- Pursuant to W. Va. Code § 23-5-1(b)(1), upon making any decision, upon making or refusing to make any award or upon making any modification or change with respect to former findings or orders, the private carrier or self-insured employer, whichever is applicable, shall give notice to the parties to the claim of its action, in writing. Put simply, a written decision should be issued any time a final action is taken regarding the claimant's benefits.
- Pursuant to W. Va. Code §23-5-1(a) and W.Va. Code R. § 85-1-7.2, a copy of the written decision or notice must be sent to all parties to the claim.



- Pursuant to W.Va. Code R. § 85-1-2.3, “decision” means any determination by a responsible party regarding the compensability of a claim, the award or denial of any type of benefit in a claim, or any other substantive request by a claimant in a claim.
- Pursuant to W. Va. Code § 23-5-1(b)(1) and W.Va. Code R. § 85-1-7.2, the written decision or notice shall state the time allowed for filing a protest to the finding. An example of an appropriate protestable clause is as follows:

The claimant may protest this decision within 60 days from the date of receipt of this decision or notice. The claimant must send a written protest, along with a copy of this decision, to the Workers' Compensation Office of Administrative Law Judges, P.O. Box 2233, Charleston, WV 25328-2233, and must serve a copy of any protest upon all parties to this claim.

- The OIC believes that all written decisions or notices must include basic information to be compliant with state law, to assist with a claimant's understanding of the decision and the basis therefore, and to provide certain information in the event of future litigation. In that regard, the OIC believes that a written decision or notice should, at minimum:
 - Identify the proper parties to the claim;
 - Clearly set forth the date the decision is being made or issued;
 - Note the specific issue being decided;
 - Note the decision being made on the specific issue being decided;
 - State the basis for the decision being made;
 - Clearly set forth the jurisdictional claim number and/or the carrier's claim number; and,
 - State the time allowed for filing a protest to the finding.

The information in this notice should be included in your company's training activities. The OIC is a valuable resource and we encourage consultation with our legal division if a claims administrator or adjuster is uncertain about specific legal requirements regarding written decisions or notices. Although we cannot provide legal advice regarding specific claims, we can share our expectations as a regulator on the requirements of statutes and rules.

We hope to continue to improve our workers' compensation system for the benefit of all workers, employers and other stakeholders.

For further information you may contact:

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