Washington L&I amends penalty rules for unreasonable delays in benefit payments

By John M. Zanetti • April 7, 2015

In the wake of a series of cases involving penalty requests against employers, most prominently *In re James Coston*,[1] the Washington Department of Labor and Industries recently amended its rule governing penalties for unreasonable delays in paying benefits: WAC 296-15-266.

Previously, the statutes and rules governing employer penalties were notably vague.[2] Under RCW 51.48.017, upon a worker's request, the Department could assess a penalty against an employer if it unreasonably delayed or refused payment of a benefit. However, neither the statutes nor the Department's rules defined what constituted an "unreasonable delay" or what exactly was considered a "benefit." While over the past few years the Board of Industrial Insurance Appeals has steadily expanded what is considered a benefit, general confusion over penalties still reigned.

Now, with the newly amended WAC 296-15-266 the Department has sought to address some of the confusion surrounding employer penalties.

The first section of WAC 296-15-266 defines circumstances under which the Department might assess a penalty for an unreasonable delay of benefits. As might be expected, these circumstances include unreasonable delays in payment of time loss compensation, loss of earning power compensation and permanent partial disability awards. In a nod to recent decisions,[3] the section further lists unreasonable delays in payment of medical treatment benefits and benefits on appeal as situations where a penalty against an employer may be warranted. The second section details how a worker makes a penalty request, and the Department's guidelines for processing such a request.

At first blush, the amended penalty rule may seem like all bad news for employers. However, there are upsides. The new rule contains a variety of measures an employer can utilize to potentially avoid a penalty, including notice provisions, requests for information and steps to dispute a claimed benefit at the Department. Thus, while the additional deadlines and procedures in the amended rule may appear daunting, with proper counsel the new rule may offer employers a degree of predictability the old penalty rule did not allow.

With proper counsel the new rule may offer employers a degree of predictability the old penalty rule did not allow.

Please note, for reasons of economy this summary is not exhaustive and

Continued

Reinisch Wilson Weier PC
LAW OFFICES

PORTLAND: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 • T 503-245-1846 / F 503-452-8066
SEATTLE: 159 South Jackson Street, Suite 300, Seattle, WA 98104 • T 206-622-7940 / F 206-622-5902
www.rwwcomplaw.com

John Zanetti is an attorney at Reinisch Wilson Weier PC. HE may be reached at 503.452.7264 or JohnZ@rwwcomplaw.com.

only highlights some of the recent changes to the penalty rule that became effective January 23, 2015.

If you or the employer you work with are facing a penalty request, it may be wise to contact the Department or consult your defense counsel to discuss how these changes might affect your situation. ■

---

[1] *In re James Coston, BIIA* Dec., 11 12310 (2012).

[2] For instance, before WAC 296-15-266 was amended, it merely consisted of the following short question and answer: "What must a self-insurer do when the department issues an order assessing a penalty? The self-insurer must make payment of the penalty assessment on or before the date the order becomes final."

[3] For summaries of *In re James Coston* and another penalty case, *In re Emily Eyrich*, link to: http://rwwcomplaw.com/new-rulings-on-delay-of-payment-penalties-in-washington/

Reinisch Wilson Weier PC
LAW OFFICES

PORTLAND: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 ● T 503-245-1846 / F 503-452-8066
SEATTLE: 159 South Jackson Street, Suite 300, Seattle, WA 98104 ● T 206-622-7940 / F 206-622-5902
www.rwwcomplaw.com