



Workers' Compensation Commission

Media Contact:

Kim Bailey, Executive Director
Kim.Bailey@wcc.ok.gov
(405)522-3222

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Commission Implementing Compliance Changes

(Oklahoma City) The Oklahoma Workers' Compensation Commission (WCC), an administrative agency of the executive branch of Oklahoma state government, has reviewed its compliance processes and has begun implementing changes.

The WCC, through its compliance division, is responsible for enforcing the Administrative Workers' Compensation Act's (AWCA) provisions which mandate most employers provide injury compensation coverage for their workers. These insurance requirements were formerly enforced by the Oklahoma Department of Labor (DOL) until February, 2014. The intent of this enforcement is to protect workers' interests in case of work-related injury.

When information is received suggesting an employer may not be providing required coverage, the WCC's investigators initiate an inquiry. Upon conclusion of this investigation, an employer receives notice of potential non-compliance, and is given multiple opportunities to respond. If there is no response, or no effort shown to protect employees, an order of proposed judgment with possible penalties is issued, and employers are given 20 days to request a hearing, or come into compliance. If no response is received, the order and penalties become final.

Additionally, in Title 85A O.S. Sec. 40.B.6, the Commission may petition a District Court for an order enjoining the employer from engaging in further employment until such time as the employer secures the payment of compensation or makes full payment of all civil penalties.

When asked of the effectiveness of the current compliance procedures, **recently appointed WCC Executive Director Kim Bailey said, "We've been operating under the new statute for about 15 months, and we believed it was timely and appropriate to evaluate how the implementation has affected compliance."**

In late June 2015, the WCC initiated a review of the compliance division's processes, and concurrently suspended issuance of proposed judgments, penalty assessments and processing of collections against employers who have been found to be potentially out of compliance. While some procedures are still under review, new procedures have been implemented so the compliance division may resume issuing proposed judgments from current investigations.

WCC's Compliance Director Ray Andrews, who transferred from the DOL, said the new procedures are to help the WCC better foster compliance and education. **He said, "Our job is not to play 'gotcha' with Oklahoma employers, but to bring them into compliance quickly. This protects employees, but also**

protects the employer from catastrophic loss.” In the event of an uninsured injury, the employer may be ultimately liable for all medical and legal costs, in addition to penalty assessments.

Among measures being implemented:

- 1) Proposed judgments are reviewed by an Assistant Attorney General or other reviewing officer prior to issuance by the compliance division, to ensure propriety, commensurate applicability, and consistency.
- 2) Employer's responses and inquiries should be liberally construed as requests for review hearings. **“Some employers are not fully aware of their ability to ask for a hearing; this will ensure if employers respond, we give them every opportunity to explain their situation before one of the Commission’s administrative law judges (ALJ),”** said Director Bailey. The Commission currently employs five ALJs.
- 3) The reviewing attorney may recommend bifurcating the proposed judgment and penalty assessment to allow employers the opportunity to remedy violations prior to penalty assessment. First, a proposed judgment of non-compliance may be issued notifying the employer of the WCC's determination and intent to assess penalties. If the employer then remedies the violation by securing coverage, the penalty could be reduced accordingly. If the employer fails to secure coverage, the Commission may petition to enjoin the business from operating and issue stricter penalties. Employers may still have the opportunity to challenge the proposed judgment and the subsequent penalty assessment in a final hearing.
- 4) Penalty assessments will be based on the circumstances of each case, in accordance with new Commission Permanent Rule 810:25-7-2 effective 8/27/15:

“...In determining the rate of reduction in penalty, consideration shall be given to the appropriateness of the penalty in light of the business of the employer charged, the gravity of the violation and the extent to which the employer charged has complied with the provisions of 85A O.S. § 38 or has otherwise attempted to remedy the consequences of the violation.”

Under current law, the Commission may assess a fine against an employer who fails to secure compensation insurance in an amount up to one thousand dollars (\$1,000.00) per day of violation, payable to the Workers' Compensation Fund.

The WCC’s counseling division will be more involved throughout the investigation and enforcement processes. WCC counselors are currently available to answer questions and provide information to employers in determining the employment status of their workers, and in obtaining appropriate workers' compensation coverage.

- 5) A program will be developed to educate employers about their obligations to employees under the Oklahoma statutes, the benefits of maintaining workers' compensation coverage, and the fines and other penalties associated with non-compliance.

These measures may be significantly modified as they are implemented. **“We need to implement these changes, but with appropriate deliberation. We want to get this right so we protect workers while ensuring a fair process for Oklahoma employers,”** said Director Bailey.