



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services

Workers' Compensation Division

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May 10, 2006

To: Oregon Workers' Compensation Insurers

Subject: Suspension of Civil Penalties for Guaranty Contract Terminations

The purpose of this notice is to inform you about the division's temporary suspension of quarterly civil penalties for late filing of guaranty contract terminations, effective immediately.

Oregon law requires that insurers file a guaranty contract with the Department of Consumer and Business Services as employers' proof of workers' compensation coverage. The guaranty contract (GC) assures the director that the insurer assumes the employer's liability during the contract period. The GC is binding on the insurer until it is terminated, and is separate from the policy, which is the insurer's and employer's agreement. The Workers' Compensation Division (WCD) monitors GC filings and investigates employers when GCs are terminated to ensure subsequent coverage exists to protect both employers and workers for work-related injuries. When WCD cannot identify that coverage exists and under which insurer, there is the potential for non-complying employers, delayed benefits for injured workers, litigation, and increased system costs, when a work-injury occurs.

In January 2004, the statutory notice requirements changed and termination of a GC became effective 30 days from the date the employer was notified by the insurer. The number of gaps in coverage increased significantly under the new notice requirement. The statute requires both policy cancellation under ORS 656.423 and GC termination under ORS 656.427. When an insurer cancels coverage under the policy, it must notify both the employer and director in writing and include a specific statement that the GC filing with the director will also terminate. We have identified situations where it is often difficult for insurers to comply with the timeframe for filing termination notices, such as when an employer fails to notify the insurer of an entity change, and in situations when the employer cancels coverage.

We recognize that insurers are investing significant time in reviewing their performance data and processes, specific penalties, and working with WCD on individual cases. Our analysis over the last six months has also demonstrated that similar problems and issues are arising regardless of whether insurers meet GC filing and termination requirements electronically or by paper. Based on the number and nature of the issues that the first two quarters' of civil penalties have raised, particularly regarding GC terminations, **WCD is temporarily suspending our quarterly issuance of penalties for untimely notice to the director of GC terminations.**

This action will apply to the first quarter of calendar year 2006 and continue until further notice. This suspension of penalties applies only to termination filings. Penalties for late GCs and for insurers' failure to respond timely to WCD inquiries about pending coverage will continue as scheduled.

We intend to review the various issues related to GC terminations, how best to achieve and balance regulatory and system objectives with the administrative burdens and costs for insurers, and to examine Oregon's proof of coverage structure itself.

We are interested in hearing your ideas, perspectives, and experiences in other states. If you'd like to share those comments with us, please contact Mary Schwabe, Manager, Compliance Section, after Monday, May 29, at (503) 947-7651, or mary.v.schwabe@state.or.us.

For questions about coverage and filing requirements, coverage inquiries, quarterly penalties and appeals, etc., please contact Reg Gregory, Manager, Employer Compliance Unit, at (503) 947-7665, or reg.e.gregory@state.or.us.

For questions about electronic coverage filing, please contact Kori Kountz, Manager, Employer Coverage Unit, at (503) 947-7613, or kori.k.kountz@state.or.us.



John Shilts, Administrator
Workers' Compensation Division

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