



Wisconsin Compensation Rating Bureau

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GENERAL CIRCULAR LETTER 533—JANUARY 13, 2009

TO: Members of the Bureau

FROM: Donna Knepper

RE: Wage Continuation—Workers Compensation Reimbursement

Recently, WCRB, Office of the Commissioner of Insurance (OCI), and Department of Workforce Development (DWD) have received inquiries with regard to employers continuing wages to injured employees. The OCI will be publishing an article in the next Wisconsin Insurance News (WIN).

The WCRB has added the following FAQ on the Web site:

My insured has been advised that they can lower their experience modification by continuing an injured employee's wages and not reporting the indemnity loss to my insurance carrier. Is this practice acceptable?

If you know of anyone marketing this practice, the Office of the Commissioner of Insurance should be notified.

Some insured employers are paying continuing wages to injured employees while they are unable to work due to work-related injuries. WC insurance companies for these employers have not been paying compensation as required by ch. 102, Wis. Stats. (Wisconsin Worker's Compensation Act), and have not reported the amount of compensation due to the Wisconsin Compensation Rating Bureau (WCRB). These practices are inappropriate since they jeopardize the safety incentive implied in the experience modification system, put other employers at a rating disadvantage, and distort work-injury statistics.

Under ch. 102, Wis. Stats., employers are allowed to pay continued wages to injured employees. This usually occurs while employees are temporarily disabled during the healing period.

Section 102.31 (1) (b), Wis. Stats., provides that a contract for WC insurance coverage shall be construed to grant full coverage for all liability of the insured under ch. 102, Wis. Stats.

The portion of continued wages that is workers compensation is the amount that is payable for compensation under ch. 102, Wis. Stats. The Office of the Commissioner of Insurance and the Worker's Compensation Division have

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regulatory authority over this portion of the continued wages. The excess amount is not workers compensation, and therefore the Office of the Commissioner of Insurance and the Worker's Compensation Division have no WC regulatory authority.

Where wages are continued in lieu of compensation WC insurance carriers must reimburse employers an amount equal in value to the amount payable under ch. 102, Wis. Stats., and report this amount to the Wisconsin Compensation Rating Bureau for purposes of experience rating. Failure of WC insurance carriers to take such action constitutes use of deductible WC policies that have not been approved by the Office of the Commissioner of Insurance in Wisconsin.

It is the position of the Office of the Commissioner of Insurance, Wisconsin Compensation Rating Bureau, and the Department of Workforce Development that in a situation where an insured employer pays continued wages to an injured worker, consultants, agents and insurance companies cannot encourage, advise or condone an insurance company's failure to reimburse an employer an amount equal in value to the amount of compensation payable under ch. 102, Wis. Stats., and not report the amount of compensation paid to the Wisconsin Compensation Rating Bureau for purposes of experience rating. Statutory authority that support this position include:

- s. 626.11, Wis. Stats, Rate standards;
- s. 626.12, Wis. Stats., Rating methods;
- s. 626.25, Wis. Stats., Use of rates; and
- s. 628.34, Wis. Stats., Unfair marketing practices.

The standard workers compensation insurance policy contains language that requires the insurance company to promptly pay benefits when due that are required by ch. 102, Wis. Stats., and establishes a duty for an employer after an injury occurs to not voluntarily make payments, assume obligations or incur expenses. An employer must comply with the policy provisions to obtain protection from the policy. Since workers compensation is a required coverage and all policies authorized for use in Wisconsin contain identical provisions about payments and required duties of the insured employer, it is improper for consultants, agents or insurance companies to permit employers to pay continued wages to injured employees without reimbursement by the insurance company and reporting of the compensation payments to the Wisconsin Compensation Rating Bureau. It is also improper for insurance companies to avoid paying legitimate workers compensation claims because of a request to do so by a consultant, agent or employer.

For additional information or to report inappropriate activity, contact:

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