

SUMMARY OF NEW PENALTIES STATUTE

ACT 337

1021 (13) Payor defined – entity responsible, whether by law or contract, for the payment of benefits incurred by a claimant as a result of a work related injury.

1121 B. (1) Expedited hearing for employee on choice of physician.

Prior law referred to 1124(D), which was the expedited hearing for SMO and was the section referred to in all statutes using the expedited hearings to show the procedures for the expedited hearing. Section 1121(B)(1) gives the details for the expedited hearing for choice of physician and now refers to the new provisions of 1201.1(K)(8), which gives the employee the right to file a 1008 if he has been denied his choice of physician.

1121B(5) Signing choice form

Now provides that an employer need not file for an expedited hearing if the employee fails to sign a choice of physician form. The employer may suspend medical benefits until the employee complies. The employer's suspension of medical benefits is noticed by filing the Notice of Payment or Controversion [1201.1A(4) & (5)]. When the employee files a 1008, the employer may move for an Order to compel claimant to return the form.

1124 SMO

Prior law – employer could not suspend indemnity benefits when employee failed to show for an SMO but must first file a 1008 and ask the OWC judge to order claimant to show. Only if he fails to show the second time would the employer ask the judge to order suspension.

New law - If SMO appointment is properly noticed (14 day written notice) and claimant fails to show, employer will suspend indemnity benefits – file Notice of payment/controversion – when employee files 1008 employer can move for an order compelling claimant to appear for SMO.

1201 H Prior preliminary determination telephone hearing procedure is deleted/
Reason – new preliminary determination procedure is established in 1201.1.

1201.1 New Provision

- A. When making the first payment of compensation or any modification, suspension, termination or controversion of compensation of medical benefits for **any** reason, the employer or payor shall:
 - 1. Prepare the Notice of modification, suspension, termination or controversion.
 - 2. Send notice of the initial payment to the employee **with the first payment** after the payor has received notice of the claim from the employer.
 - 3. Send copy of notice of the initial payment to the OWC within 10 days after original Notice sent to employee or by fax to attorney.
 - 4. [when there is a change] Send Notice of modification, suspension, termination or controversion to employee **by certified mail** to address where employee received comp and send it **on** or **before** date the change will take effect.
 - 5. Send same notice to OWC at same time sent to employee or his attorney.
- B. Form of Notice of modification, suspension, termination or controversion promulgated by OWC.
- C. OWC is to make notice available to employee or his attorney.
- D. If represented, **Notice sent to attorney by fax** – proof that Notice sent to attorney prima facie in compliance with Subsection (A).
- E. This statute will not involve issues of medical necessity [guidelines].
- F.
 - 1. Any injured employer or his attorney who disagree with any information on Notice send by employer/payor shall notify the

employer basis for disagreement by returning the Notice form to employer/payor or by letter of demand stating what is owed.

2. **No 1008 filed unless this form or demand sent to employer/payor.**
- G.
1. If employer/payor pays as per demand ***within 7 days of receipt***, then no 1008 filed on that issue and no claim for P&A related to this disputed payment, modification, suspension, termination or controversion.
 2. If the employer does not provide the benefits that the employee claims is due, the employee may file a disputed claim for benefits (provided it is filed within the prescriptive period §1209).
- H. The employer or payor who wishes to have a PD hearing ***shall request the hearing in his answer*** to the disputed claim. In cases where a disputed claim is already pending when an issue arises from a subsequent notice of payment, such request shall be made in an amended pleading filed within 15 days of expiration of the 7 day period
- I.
1. No PD for employer/payor who has not complied with Subsection A–E or has not initially accepted the claim as compensable (subject to further investigation and subsequent controversion). Employer who is not entitled to PD or is entitled but fails to request PD may be subject to penalties and attorney fees (per §1201) at trial on the merits or an expedited hearing per paragraph (K)(8).
 2. If disputed by the parties on a rule to show cause held prior to any PD or expedited hearing, the WCJ will determine whether the employer is in compliance.
- J.
1. Upon filing of the request for PD, the WCJ shall initiate a telephone status conference to schedule discovery deadlines and exchange documents. Discovery limited to issues raised in disputed payment/controversion PD contradictory hearing and introduce evidence.
 2. Physician testimony by certified records or deposition. Uncertified medical records may be introduced if agreed by parties. Witnesses may testify at hearing or if agreed, by deposition.
 3. PD hearing held no later than 90 days from scheduling conference. There can be one extension of an additional 30 days if good cause.

Preliminary Determination decision to be issued no later than 30 days from the hearing.

4. Employer to produce documents relied on **within 10 days** after the request for PD.
- K.
1. **Within 10 days of mailing the PD**, the employer shall:
 - a. Accept and comply with the PD along with any payment amount and any arrearage due.
 - b. Notify the employee or attorney in writing that employer/payor does not accept the determination.
 2. Employer who **accepts and complies within 10 days** shall not be subject to penalties or attorney fees on issues that were the subject of the PD.
 3. Employer who accepts and complies may disagree by filing notice with court within 10 days of receipt of the PD and proceed to trial on the merits.
 4. Employer who does not accept PD or fails to comply within 10 days may be subject to penalties and attorney fees arising out of the issues raised in the PD.
 5. Employee may disagree with PD and proceed to trial. Employer who accepts and complies may then also go to trial on all issues.
 6. Employee who accepts and complies with PD and does not request to go to trial may controvert further matters and PD will not be considered an order and not *res judicata*. Acceptance shall not be considered an admission.
 7. If 1008 filed and employer/payor is not entitled to PD, the matter will proceed to trial on the merits
 8. a. Upon motion of either party (whether or not employee/payor is entitled to PD) and expedited hearing shall be conducted for following:
 - (i) Employee seeks choice of physician 23:1221(B)(1).
 - (ii) Employee files claim regarding vocational services 23:1226(B)(3)(a).

- (iii) The employer or payor seeks to compel the employee to sign the choice of physician form 23:1121(B)(5).
 - (iv) The employer/payor seeks to compel employee to submit to SMO exam 23:1124.
 - (v) The employer seeks to require the employee to return form 1025 or 1020.
 - (vi) The employee seeks to have a suspension of benefits lifted §1121(B)(1).
 - (vii) Employee seeks to have a suspension of benefits for failure to submit to SMO exam lifted.
 - (viii) Employee seeks to have a suspension of benefits for failure to comply with 23:1208(H) lifted.
 - (ix) Employee seeks to have a reduction in benefits for failure to cooperate with vocational rehabilitation lifted.
- b. (i) The WCJ shall set the expedited summary judgment hearing pursuant to R.A. 23:1201.1(K)(8)(a)(iii), (iv) and (v) with 3 days of receiving the motion for the expedited hearing. The hearing held not less than 10 nor more than 30 days after motion filed.
 - (ii) WCJ gives notice of hearing date to employee or attorney same time and same manner that notice given to employer/payor.
 - (iii) Party seeking expedited hearing shall not be required to submit to mediation or pre-trial conference. Hearing continued as rule to show cause.
- c. WCJ shall order employee to sign choice form, enforce employee submission to medical exam or provide form 1020 or 1025 unless good cause shown.
 - d. If good cause shown, the WCJ shall order the suspension or reduction of benefits be lifted and payment of any arrearage due. If no good cause shown, the WCJ shall order the continued suspension or reduction of benefits until employee complies.
 - e. Employer or payor who is entitled to PD **and complies with the Order of the court within ten days (10 days)** shall not be subject to penalties and attorney fees.

L. Failure to comply with any provisions of this section shall not itself be considered a failure to reasonably controvert benefits. However, it will result in the loss of the safe harbor from penalties and attorney fees.

§1208 F Employer and employee are to sign certification showing they understand the fines and penalties for fraud (form sent to payor).

G. When employee received benefits for more than 30 days, upon request by employer/payor he is to report other earnings to employer/payor (Form 1020).

Suspend, No form 1020

H. 1. Whenever employee fails to report earnings within 14 days of receipt of the form [1020] the employer/payor may suspend the employee's right to benefits upon receipt. Upon receive of form employee entitled to any of the suspended benefits (if any owed). Suspension made in accordance with 23:1201.1(A) – (E). Employer/payor may move for order to compel employee to return form [if 1008 filed by employee].

ER must follow procedure to suspend

2. Employer who fails to report to payor as required (fraud form) subject to penalty of \$500 payable to payor.

3. Payor may file a claim against employer for failure to report their compliance with fraud certification.

§1226 3. (a) If employer refuses to provide vocational services or a dispute arises concerning the vocational services, the employee may file a 1008.

Expedited hearing on voc services

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(c) Employee who refuses voc services may have benefits reduced by 50%. Reduction shall be made in accordance with procedures – 1201.1(A) – (E).

50% Reduction

§1310.8 Modification of Judgments

B. Clarifies current law that employer may file a motion to modify judgment.

Employer seeks modification

§1314 Prematurity

Limited
1008 rights
of employer

E 1. Employer/payor permitted to file 1008 against employee or dependents if alleges fraud causing employer to pay benefits. Also may file 1008 v. employee to appeal decision of medical director [§1203.1(K)].

Employer
can sue
anyone else

2. Employer/payor may file 1008 against any person or entity other than an employee regarding any other dispute arising under this Chapter [contribution – indemnification].

Remedial – Retroactive and prospective – if any provision held prospective, all will be prospective.



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