



California Workers' Compensation Institute
1333 Broadway - Suite 510, Oakland, CA 94612 • Tel: (510) 251-9470 • Fax: (510) 763 -1592

October 31, 2016

VIA E-MAIL – LC139.48Comments@dir.ca.gov

Tess Gormley, Chief
Claims and Risk Management
California Department of Industrial Relations
1515 Clay St., 17th Floor
Oakland, CA 94612

**Re: Comments on Proposed Modifications to
Return-to-Work Supplement Program**

Dear Ms. Gormley:

These comments on the Proposed Modifications to Return-to-Work Supplement Program regulations are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 72% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (28% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Alaska National Insurance Company, Allianz, AmTrust North America, CHUBB, CNA, CompWest, Crum & Forster, EMPLOYERS, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, ALPHA Fund, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of Alameda, County of San Bernardino Risk Management, County of Santa Clara, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group; Southern California Edison, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

Discussion

The Institute has no comment or concern with the proposed modifications as originally drafted, which were the subject of the DIR Notice dated September 15, 2016.

At the time of the public hearing on October 31, 2016, a revised proposal was referenced by the original drafters of the amendment. This revised proposal was also the subject of written comments from CAAA, dated October 31, 2016. The Institute does have concerns with the revised proposal, as set forth below.

CAAA's revised proposal of §17303 would require the employer or claims administrator to, within 30 days of the effective date of the amendment, send notices of eligibility to all injured workers who became eligible prior to the effective date of the amendment. The employer or claims administrator would apparently be further required to notify the Administrative Director of these employees, in order that a list of eligible workers could be created; payment would then be issued automatically. The employer or claims administrator would be subject to administrative penalties for failure to timely provide notifications, or for failure to utilize proper forms. As an alternative, the revised proposal suggests a revision to §17304, removing all time limitations for the filing of an application for the RTW Supplement for injured workers who were not served with the revised forms.

While the Institute recognizes that the revised proposal has not been reviewed by the DIR, much less adopted, the Institute has serious concerns, as follows:

1. As part of the original negotiated reform, the agreement was that employers and claims administrators would have no duty or involvement in administering or implementing the Return-to-Work Supplement Program.
2. The revised proposal is also problematic from a workability standpoint. Because there was no need to do so under the original and existing regulations, claims administrators neither tracked nor captured information regarding which injured employees received vouchers. Imposing a requirement at this point for claims administrators to send notifications to eligible individuals would necessitate a case-by-case review of every open and closed claim since 2013. In practice, such a response could not reasonably be accomplished within a year, much less than within the 30 days proposed.

Thank you for the opportunity to comment, and please contact me if additional information would be helpful.

Sincerely,

Ellen Sims Langille
General Counsel

ESL/me
Attachment

cc: Christine Baker, DIR Director
George Parisotto, DWC Acting Administrative Director
CWCI Claims Committee
CWCI Medical Care Committee
CWCI Legal Committee