



CLIENT NEWSLETTER



THE LAW OFFICE OF RICKY D. GREEN, PLLC

February 15, 2012

Dear Reader:

The number one question regarding the new overpayment/underpayment rules is: “When can we start recouping an overpayment?” The answer is: (1) the new overpayment/underpayment rules are effective January 1, 2012; and (2) the carrier can start recouping overpayment after it sends proper notice to the claimant and makes one full payment.

Here's an example. Let's say Widget Insurance Company, a comp carrier, realizes that there is a \$2,000.00 overpayment. This comp carrier cuts a TIBs check to the claimant every Monday for \$600.00. Before it can start recouping the overpayment, the new law requires Widget Insurance Company to send a notice in plain language in English or Spanish explaining to the claimant that it will withhold benefits to recoup an overpayment. The notice must include the reason for the overpayment, the amount to be recouped from future income benefit payments, the date the recoupment will begin, and “relevant documentation” that supports the carrier's determination of an overpayment such as a wage statement or supplemental report of injury. The notice must also advise the claimant that if the claimant disagrees with the carrier's determination of overpayment and recoupment, then the claimant can request dispute resolution (BRC/CCH/administrative appeal).



In our example, let's say Widget Insurance Company sends the notice of overpayment/recoupment to the claimant today, February 15, 2012. Since Widget cuts the TIBs check every Monday, then Widget must make one full payment next Monday, February 20. The following Monday on February 27, Widget can start recouping the overpayment of \$2,000.00. Widget will cut a TIBs check for \$450 to the claimant and recoup \$150 (the law allows the carrier to recoup 25% of the overpayment from future income benefit checks if the claimant does not have an attorney). If the claimant has an attorney and is paying attorney fees, then Widget must pay 25% of the TIBS check to the claimant's attorney and recoup 10%. If attorney fees are being paid, Widget will cut a TIBs check for \$390.00 to the claimant, cut his/her attorney a check for \$150.00 and recoup \$60.00. The carrier can try to recoup more than 25%/10% from each future income benefit check, but the law requires that Widget try to enter into a written agreement with the claimant to recoup more. If Widget and the

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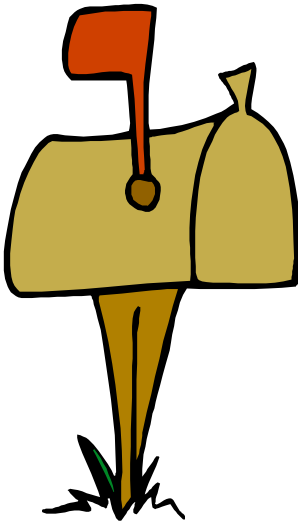
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claimant cannot reach an agreement, then Widget can request dispute resolution to recoup more than the standard amount. If this case goes to a BRC and/or CCH, the division must consider the cause of the overpayment and minimize the financial hardship on the claimant if there's recoupment.

Please feel free to contact our law firm if you have any questions.



QUESTIONS? COMMENTS? Have questions or comments about any of the stories in the newsletter or general questions about a workers' compensation matter? Drop us a line at questions@rickydgreen.com, or give us a call at (512) 280-0055. We look forward to handling all of your workers' compensation needs.

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