

CLIENT NEWSLETTER



THE LAW OFFICE OF RICKY D. GREEN, PLLC



January 2, 2012



Happy New Year! Recoupment is here! Our law office is excited about 2012, and we hope that you're ready to continue to receive relevant industry news regarding Texas workers' compensation issues in our newsletters. We will briefly discuss the new recoupment of overpayment/underpayment provisions which Commissioner Rod Bordelon adopted on December 12, 2011. The new rules became effective January 1, 2012.

DWC Rule 126.15 is titled "**Procedures for Resolution of Underpayments of Income Benefits**" and provides a process for resolving underpayments of income benefits. This section does not apply to death, burial or burial benefits. Our law firm will recap each subsection of DWC Rule 126.15.

(b) if the insurance carrier determines that there has been an underpayment to the claimant, the insurance company must catch the claimant up by paying all accrued and owed income benefits with interest within 7 days of its determination.

(c) if the claimant determines that there has been an underpayment, the claimant must send the carrier a written explanation and information that shows underpayment.

(d) if the insurance carrier agrees with the claimant that there's an underpayment, the carrier must catch the claimant up by paying all accrued and owed income benefits with interest within 7 days of receiving the notice from the claimant.

(e) if the carrier disagrees with the claimant that there has been an underpayment of income benefits, the carrier must provide the claimant a letter of its written determination within 7 days of notice. The determination letter must be in plain language, include the reasons for the carrier's determination, and have a statement that the claimant may request dispute resolution.

(f) the carrier must provide notice to the claimant and the Division of any change in payment of a claimant's income benefits.

(g) the claimant can request dispute resolution (BRC, CCH, appeal) if there has been an underpayment.

(h) the Division can identify and take action on underpayments on its own motion.

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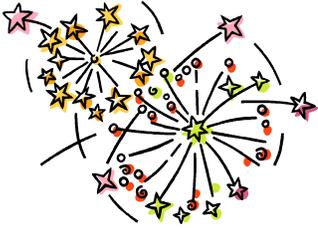
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DWC Rule 126.16 titled “**Procedures for Recouping Overpayments of Income Benefits**” applies to insurance carrier overpayment of income benefits. This section does not apply to death, burial or burial benefits. Our law firm will recap each subsection of DWC Rule 126.16.

(b) if the carrier determines that it overpaid the claimant, it can recoup the overpayment from future income benefits. The carrier must notify the claimant in writing that it will begin withholding benefits to recoup an overpayment. The notice must be in plain language, in English or Spanish (as appropriate), and must include:

- The reason for the overpayment,
- The amount of the overpayment to be recouped from future income benefit payments,
- The date recoupment will begin,
- Relevant documentation that supports the insurance carrier’s determination of an overpayment, such as a wage statement or supplemental report of injury.



The notice must also advise the injured employee that if the injured employee disagrees that there has been an overpayment, the injured employee may request dispute resolution. The carrier cannot begin recoupment of the overpayment earlier than the 2nd income benefit payment made after the written notice has been sent to the claimant. If the claimant is not paying attorney fees, then the carrier can recoup up to 25% of the overpayment from each future income benefit payment. If the claimant is paying attorney fees or paying back an advancement, the carrier can recoup up to 10% of the overpayment from each future income benefit payment.

(c) if the carrier wants to seek recoupment in amount more than 25%/10% of each income benefit payment, the carrier must first try to obtain a written agreement from the claimant. If the parties cannot reach an agreement, then the carrier can seek dispute resolution. If the claimant wants the carrier to recoup less than 25%/10% from each income benefit payment, then the claimant must first try to obtain a written agreement from the carrier. If the parties cannot reach an agreement, then the claimant can seek dispute resolution.

(d) in determining whether to approve an increase or decrease in the recoupment rate, the Division must consider the cause of the overpayment and minimize any financial hardship that may occur for the claimant.

(e) the carrier must provide notice to the claimant and the Division of any change in payment of a claimant’s income benefits. The carrier’s notice to the claimant must identify the amount it overpaid.

(f) the overpayment rule does not create a carrier entitlement to seek reimbursement from the Subsequent Injury Fund, except that provided by Texas Labor Code Section 403.006 (general SIF provision), 408.0041 (designated doctor provision), 410.209 (reimbursement for overpayment due to interlocutory order or decision that’s reversed) and applicable Division rules.

(g) if the claimant does not agree that there was an overpayment, the claimant can request dispute resolution.

(h) the Division can identify and take action on underpayments on its own motion.

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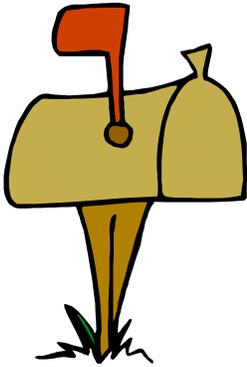
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QUESTIONS? COMMENTS? Have questions or comments about any of the stories in the newsletter or general questions about a workers' compensation matter? Drop us a line at questions@rickygreen.com, or give us a call at (512) 280-0055. We look forward to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

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