

Notice of Request for Stakeholder Input
Proposed Revision to 8 AAC 45.136

In the January 2019 Workers' Compensation Board meeting, stakeholders raised concerns about proposed regulatory adjustments to the language in 8 AAC 45.136. The adjustments were primarily aimed at updating references to electronic filing protocols and removing references to hard copy practices that are no longer being used. Stakeholders were concerned that the updated regulations would alter the Division of Workers' Compensation's approach to waiving penalties for good cause. Due to the concerns, the Workers' Compensation Board voted to hold the proposed changes to allow for additional industry input.

Alaska has completed its implementation of electronic filing of FROI and SROI reports and we are continuing our efforts to enhance and improve our data collection and communications with our trading partners and injured workers. To ensure injured workers receive benefits in a fair, efficient, and timely manner we must enhance how we measure and monitor claim-handling timeliness to determine whether employers, insurers, and self-insured employers have met their obligations under the Alaska Workers' Compensation Act (Act).

Alaska Statute 23.30.155 governs payment and reporting of compensation by employers, insurers, and self-insurers. As we continue to move from paper reporting to electronic reporting, we will continue to enforce penalties for late payment and reporting using the MTC date (accepted EDI transaction, with or without errors) of the electronic filed document.

(b) Initial Indemnity Payments

- Compliance – benefits are paid to the injured worker on the 14th day after the employer's notice or knowledge.

(c) Subsequent Report of Injury Filings

- Compliance – insurer or adjuster notifies the division that the payment of compensation has begun, increased, decreased, suspended, terminated, resumed, or changed in type no later than 28 days after the date of issuing a payment that reflects the change. If not notified within 28 days a civil penalty of \$100 for the first day plus \$10 for each subsequent day notice is not provided. Total penalties may not exceed \$1,000 for failure to submit a report. Reduced assessed penalties under (m) shall be increased by an additional 25 percent and bear interest at the rate established under AS 45.45.010.

(d) Notice of Controversy Filings

- Compliance – If the employer controverts the right to compensation, the employer shall file a notice of controversion on or before the 21st day after the employer receives notice or knowledge of an employee injury or death.

(e) Benefit payments payable without an award

- Compliance – due within seven days after it becomes due, as provided in (b) of this section. 25% penalty added to installment due, unless excused by the Alaska Workers' Compensation Board.

(f) Benefit payments payable with an award

- Compliance – due within 14 days after it becomes due, as provided in (b) of this section. 25% penalty added to installment due, unless excused by the Alaska Workers' Compensation Board.

(m) Filing of annual report to the division

- Compliance – due on or before March 1 of each year.
 - If at least 99 percent of the reports were filed on time, the penalties assessed under (c) shall be waived (\$100 for the first day plus \$10 for each subsequent day late).
 - If at least 97 percent of the reports were filed on time, the penalties assessed under (c) 75percent of the penalties assessed under (c) shall be waived (\$100 for the first day plus \$10 for each subsequent day late).
 - If at least 95 percent of the reports were filed on time, the penalties assessed under (c) 50 percent of the penalties assessed under (c) shall be waived (\$100 for the first day plus \$10 for each subsequent day late).
 - If the annual report is not filed on or before March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the first day the annual report is late and \$10 for each additional day the report is late.
 - If the annual report is incomplete when filed, the insurer or adjuster shall pay a civil penalty of \$1000.

We are seeking feedback from our trading partners on the above compliance measures that are subject to fines through electronic filing. We hope to provide a courtesy copy of our compliance reports to carriers soon.

Trading partners have notified the division of technological issues that may have deterred stakeholder efforts to meet timely filing requirements to avoid compliance penalties on outstanding reporting and corrections. We have reviewed these issues on a case-by-case basis and provided waiver of penalties with just cause, but this waiver process is not established in regulation. We are seeking stakeholder input about whether the proposed regulation below needs to include a description of the waiver process and the reasons that waivers may be granted or if this process should remain under the division's historical practices of situational analysis and discretion. Please submit proposed language if you have a particular concept in mind.

The regulation as it was proposed is listed below:

8 AAC 45.136 is repealed and readopted to read:

(a) When an insurer or adjuster begins, increases, decreases, terminates, suspends or otherwise modifies compensation payments to the employee, the insurer or adjuster shall notify the division of the nature and substance of the commencement or change within 28 days after the commencement or change by filing a subsequent report of injury. The notice shall be filed through Electronic Data Interchange.

(b) For purposes of this section and AS 23.30.155(c), "filed" means submitted through Electronic Data Interchange and subsequent receipt of a Transaction Accepted acknowledgement.

(c) For purposes of AS 23.30.155(m) a "complete" annual report means

(1) submitted through Electronic Data Interchange and subsequent receipt of a Transaction Accepted acknowledgement; and

(2) the difference, if any, between the amount listed as paid in each payment category is no greater than 10 percent of the amount reported to the division on the subsequent report of injuries filed under AS 23.30.155(c) in the preceding year.

(d) The division will compare the amount listed for each payment category on the annual report with the division's records to determine if the annual report is complete. The division will serve the insurer or adjuster written notice that the annual report was incomplete, based on the differences. Within 30 days after the date notice is served, the insurer or adjuster must respond in writing to the division and provide documentation that the division's records are in error and the annual report was complete as initially filed. If the insurer or adjuster fails to timely respond in accordance with this section or the evidence submitted in the response does not prove the error was in the division's records, the annual report is incomplete for purposes of AS 23.30.155(m).

(e) Penalties assessed under AS 23.30.155(c) are due after application of AS 23.30.155(m) and (d) of this section. The division will notify the insurer or adjuster of the amount of penalties due, if penalties are not paid within 30 days after notification by the division of the amount due, the insurer or adjuster shall pay

(1) an additional 25 percent of the penalties due under AS 23.30.155(m); and

(2) interest on the penalties at the rate established by AS 45.45.010 until the penalties are paid.

Please submit comments by April 30, 2019. If you have questions or concerns, please contact Velma Thomas at velma.thomas@alaska.gov or at 907-465-2790.