

WORKERS' COMPENSATION NEWSLETTER

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VOLUME 22, No. 1

JANUARY 2018

WHAT TO DO WITH AN INCOME WITHHOLDING ORDER FOR CHILD SUPPORT, A PRIMER

By: Corin West, LFLM Redding

The presence of Income Withholding Orders (IWO) from the Department of Child Support Services (DCSS) can feel like an unnecessary and unwelcome complication to any claim. They can certainly create interesting questions of arithmetic. Regardless of their difficulties, they are a legislative priority and an often-overlooked reality of workers' compensation claims. Having an idea of what income-withholding orders are and what to do when confronted with one will streamline claims handling and litigation.

What are they?

DCSS will seek income-withholding orders when an obligor has not paid child or spousal support. It is an order issued by the department with the backing of the superior court usually directed to an employer to withhold specific portions of the applicant's pay and forward them to the department. (FC Section 5208). Temporary disability due to an industrial injury is considered "earnings" subject to these types of orders. (FC Section 5206(d), CCP Section 704.160(c)). In fact, the legislature has created a mandatory duty for the Division of Workers' Compensation to enforce the collection of child support: "The Division of Workers' Compensation shall cooperate in enforcement of child support obligations," which includes sharing information with DCSS, related to applications and awards. (Labor Code Section 138.5).

How should we address them?

Asking your employer about income withholding orders should be part of opening any claim. Depending on the size of the employer, the first contact may not have any information about them, but getting a definitive answer from someone who does know (the bookkeeper or payroll department), can head off problems down the road, such as unexpected liens. Always make sure to get copies of the orders for your claims files.

When we do find out about an IWO (whenever that may be), we need to adjust the TD payments and issue notices accordingly. If the IWO has a different employer name, or the incorrect address, this does not necessarily void the

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INCOME WITHHOLDING ORDER

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order's validity. In fact, California's Family Code provides for the orders to bind successive employers (FC Section 5231). So, if there has been a relocation or a change in the business, the IWO is likely still valid. If the IWO is from a different county or a different state, it is still valid in California and should be complied with. (FC Section 5230.1) Applicants have postulated that an order must be directed to the insurance carrier or TPA to be valid, but this is clearly not the case since "employer" is defined in the Family Code as anyone paying earnings and earnings are defined to include temporary disability. (FC Sections 5210, 5206). What should be verified before withholding is the name and social security number of the obligor listed on the order. If they do not match those in the claim, a call to DCSS should be place to confirm.

Withholding should be begin as soon as possible, but no later than ten days of service or knowledge of the order by the adjuster. (FC Section 5233). Withholding continues until an order of termination has been served on the employer or the adjuster. (FC Section 5235). Payments can be made in a single check, even if there are multiple orders (for multiple dependents), so long as an itemized accounting indicating the name, social security number, and amounts of each obligee accompanies the payments. (FC Section 5236). For each payment, the adjuster may deduct up to \$2.00 for administration, from the payment. (CCP Section 704.160(c)).

How much to pay depends on the rate of TD, whether it is temporary total disability or temporary partial disability (wage loss), and the amount and number of orders. The basic rule is the lesser of the weekly dollar value on the IWO or 25% of the temporary disability weekly rate. (CCP Section 704.160(c)) If there are multiple orders which cannot be paid in full by the 25% of the benefit paid, proration among the orders is necessary, based on their proportion to the total current support owed. Believe it or not, there is phone number you can call for help with this math (866-901-3212, in California). If wage loss is being paid, clarify with the employer whether they will pay the IWO

out of the actual wages earned by the applicant or whether the adjuster should withhold out of the wage loss portion of disability benefits, to avoid double withholding.

Why are they important?

DCSS IWOs is an area of policy that the legislature has created as a priority for the WCAB. (Labor Code Section §138.5) Service of an IWO creates a lien by operation of law, which must be addressed. (FC Section 5242). Beyond that, willful failure to comply with an IWO could create liability for all payments, plus interest, to say nothing of penalties.

IWOs are not a common complication, but when they arise, careful and quick conversations with the employer can avoid unexpected problems down the road. ☞

Laughlin, Falbo, Levy & Moresi LLP has 11 offices throughout California to handle your company's workers' compensation cases. Our offices are located in Anaheim, Fresno, Oakland, Pasadena, Redding, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, and Santa Monica. All are staffed with attorneys who are able to represent your interest before the Workers' Compensation Appeals Board and Office of Workers' Compensation Programs.

Laughlin, Falbo, Levy & Moresi LLP conducts educational classes and seminars for clients and professional organizations. Moreover, we would be pleased to address your company with regard to recent legislative changes and their application to claims handling or on any subject in the workers' compensation field which may be of interest to you or about which you believe your staff should be better informed. In addition, we would be happy to address your company on recent appellate court decisions in the workers' compensation field, the American with Disabilities Act, or on the topic of workers' compensation subrogation.

Please contact Laura Gannon in our Anaheim office.

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APPEASING BOTH SIDES: A QUICK PRIMER ON SENATE BILL 1160

By: Omar Behnawa, LFLM San Diego

Senate Bill 1160 was signed into law on 9/30/16. The Bill seeks to address concerns by both defendants and claimants/applicants. The Bill increases control of liens, a concern for defendants, in exchange for less restrictive Utilization Review (UR) at the start of the claim – a concern for claimants/applicants.

For dates of injury on or after 1/1/18, there is no requirement for UR, subject to some exceptions. Treatment requests within the first 30 days following the initial date of injury must be authorized, unless the treatment request is for any of the following:

Surgery, psychological treatment, imaging/radiology services other than X-rays, medical equipment costing more than \$250.00, home health care, or medications not covered in the prescription formulary.

If the treatment requested within the first 30 days of the claim is for any of the foregoing treatment modality (not subject to the 30-day UR exemption), it is imperative that defendants submit the treatment request to UR for a determination as to reasonableness. Otherwise, claimants/applicants will be able to proceed to an Expedited Hearing on the issue, likely obtain the treatment and thereby subvert the UR/IMR process altogether.

The Workers' Compensation Newsletter is published by Laughlin, Falbo, Levy & Moresi LLP. Contributors to this issue include Omar Behnawa (San Diego) and Corin West (Redding).

Should you have any questions or comments regarding the Laughlin, Falbo, Levy & Moresi newsletter, or would like to suggest a topic or recent case you think would be of interest, please contact:

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The treatment rendered within the first 30 days of the claim must still be reported to the claims administrator and a provider may be forced to go through retroactive UR – to ensure the treatment rendered was within evidence based medical standards. Labor Code Section 4610(f) allows retroactive UR for the sole purpose of determining whether a provider is consistent with the Medical Treatment Utilization Schedule (MTUS). A provider may be removed from the Medical Provider Network (MPN) if there is a “pattern and practice” of treatment inconsistent with the MTUS. If providers are non-compliant with the reporting requirements, the providers’ 30-day exemption from UR may be removed.

UR decisions covered by the medication formulary must be made within 5 business days. The 14-calendar day timeframe to obtain additional information prior to issuing a UR decision is inapplicable to the medication formulary. Formulary disputes must be submitted to IMR within 10 days (still 30 days for all other disputes). IMR must decide medication formulary disputes within 5 days (all other disputes still to be decided within 30 days, though per case law no real remedy for untimely IMR decision).

As part of Senate Bill 1160’s lien/anti-fraud provisions, Labor Code Section 4615 requires an immediate stay on the liens of medical providers criminally charged with fraud against the workers’ compensation system, medical billing fraud, or fraud against the Medicare/Medi-Cal programs, until the criminal proceedings are resolved.

The Bill also requires lien claimants to file a Declaration stating that they are within the employer’s MPN, have searched and do not believe the employer has an MPN, or have proof of denial of care. The Declaration is required for any lien filed after 1/1/17. All liens filed prior to 1/1/17 were to file the foregoing Declaration by 7/1/17. Lien claimants that failed to file the Declaration by 7/1/17 are dismissed by operation of law. ☹

THE WORKERS' COMPENSATION NEWSLETTER

UPCOMING CONFERENCES

DVICA 2018 Annual Half-Day Seminar

“Comp & Order: Trials and the WCAB”

Friday, January 26, 2018 10:00 AM - 5:00 PM

Walnut Creek Marriott

Topics Covered:

Elimination of Bias in WC Evaluations, Taking Cases to Trial at the WCAB

Making a Record at Trial, WCAB Updated from Commissioner Jose Razo

With our very own **Jeffrey E. Lowe** of our Oakland office as **Master of Ceremonies!**

Visit the DVICA website to register: http://dvica.wildapricot.org/event_2778941/Registration

MacroPro & Friends Conference

“Navigation Thru the Workers’ Compensation System in 2018 ”

Wednesday, January 24, 2018 8:15 AM - 3:30 PM

Handlery Hotel (950 Hotel Circle N., San Diego)

Topics Covered:

Navigation Your Defenses to the SJDB/Voucher, Avoiding the Fraud Iceberg

Preparing for Impairment Rating Disasters, Trends / Early Settlement

With presentations by our very own **Marijo Kuperman** and **Omar Behnawa** of our San Diego office.

RSVP@MacroPro.com subject line: SD 1/24/2018

Questions: Diann Cohen, AVP Macro Pro, Diann@macropro.com, (916) 705-1618

2018 PARMA Annual Conference

Public Agency Risk Managers Association

February 14-16, 2018

Monterey Conference Center

Visit the PARMA website for further details: <http://parma.com/>

CSIA 2018 Annual Meeting & Educational Conference

California Self-Insurers Association

March 19-20, 2018

Disneyland Hotel (Anaheim, CA)

Topics Covered:

Augmented Reality Makes an Appearance in the Workplace, Violence in the Workplace: The San Bernardino Experience

Managing the Needs of Aging Injured Workers, Issues Facing Self-Insurers – Past, Present and Future

Southern California Edison, PG&E and SoCal Gas celebrate 100 years of being self-insured

Visit the CSIA website to register: <http://caself-insurers.com/>

2018 RIMS Annual Conference

Risk Management Society

April 15-18, 2018

Henry B. Gonzalez Convention Center

San Antonio, Texas

NEW PARTNERS

We are pleased to announce that effective 1/1/18, two LFLM attorneys are joining the ranks of partnership:

- **Vicki Lindquist** of the Oakland office, practicing California workers' compensation defense.
- **Jonathan Liff** of the Sacramento office, practicing California workers' compensation defense.

Both Vicki and Jonathan demonstrate the high level of client service, teamwork, and commitment that are the core of our partnership. Congratulations Vicki and Jonathan!

To see all LFLM Partners and Associate Attorneys visit our LFLM Attorneys page. You can learn more about our firm at www.lflm.com.