

NEW Weekly Payment Requirements are effective July 1, 2010

Adjusters and Employer/Carriers beware! Starting July 1, 2010, you will be required to establish and report to the Department and the claimant in each claim the day of the week on which payment shall be mailed or deposited. This is true whether benefits have been awarded or are not in dispute, according to the new provisions of 21 V.S.A. sec. 650(f).

Also, all employer/carriers shall ensure that each weekly payment is mailed or deposited on or before the day established. To make it easier for a carrier to provide notice of this information to both the Department and the claimant, the Department is revising certain workers' compensation forms to include a new line requesting this information. These revised forms can be found on the Department's website at www.labor.vermont.gov and include revised versions of: Form 21 (Agreement for Temporary Total Disability Compensation), Form 22 (Agreement for Permanent Partial or Permanent Total Disability Compensation), Form 23 (Agreement for Fatal Compensation), Form 24 (Agreement for Temporary Partial Disability Compensation), and Form 25 (Wage Statement). Each form now has a section where you **MUST** fill in the day of the week that payment will be mailed or deposited. A *copy* of the Form 25 specifying the date of payment must now be sent to the claimant at the time that it is submitted to the Department.

If payments are being made on a without prejudice or voluntary basis, the employer/carrier **MUST** notify the claimant and the Department in writing of the week day that payment will be mailed or deposited on and the starting date for such payment. A letter sent the claimant and the department providing this information will meet the notice requirement in these situations.

Remember, there is nothing precluding an employer/carrier from mailing a check **prior** to the established week day. Indeed, carriers/employers should avoid establishing week days as payment dates which frequently fall on State or federal holidays (such as Mondays).

If the benefit payment is **NOT** mailed or deposited on the day established, the new provisions of 21 V.S.A. sec. 650(f) require the employer/carrier to pay to the claimant a late fee of \$10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day. For the purposes of this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. Should an employer/carrier fail to establish a payment date as required by the new law, it shall be subject to administrative penalties as determined by the Commissioner of the Department, consistent with existing statutory provisions and case law.

In the event of a dispute, proof of payment must be established by affidavit. Most adjusters do not personally issue and mail checks to claimants, so affidavits from employees who are actually responsible for these functions will need to be provided by the employer/carrier to the Department. The burden of proof shall rest with the employer/carrier that: (1) it established a weekly payment date; (2) it informed both the Department and claimant of this date prior to the issuance of the first weekly payment; and (3) that it in fact mailed or deposited payment on or before the established weekly payment date.

The full text of new 21 V.S.A. sec. 650(f) states:

(f) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established. If the benefit payment is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of \$10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day. For the purposes of this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit.