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MAE News: Newsletter from the Office of Monitoring, Audit and Enforcement, Spring 2010

Maine Workers' Compensation Board

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MAE News

Newsletter from the Office of Monitoring, Audit and Enforcement Maine Workers' Compensation Board

Spring 2010

Volume 6, Number 1



Summer Training Sessions

The MAE Program's summer open training sessions will take place on **June 28-29, 2010** in the Elkins Training Room on the campus of the former Augusta Mental Health Institute (AMHI). The Elkins Training Room can be found in Room 110 of the Williams Pavilion, which is a building connected to the Eastside Wellness Center ("the gym") on the AMHI campus across from Riverview Psychiatric Center.

The June 28th session will present the Basic Compliance program that includes basic forms and payment compliance training. The June 29th session will present the Advanced Compliance program that includes AWW and partial benefit calculation training followed by a group case study.

To sign up for one or more of these sessions, contact Anne Poulin at (207) 287-7067 or send her an e-mail at Anne.Poulin@Maine.Gov. Also, if your company is in need of personalized training on form filing or other compliance issues, please contact Anne. We can design our training to suit your needs.

Electronic Filing of Proof of Coverage Reminder

The filing of an insurance binder does not satisfy the requirement to timely file the notice of workers' compensation insurance. Pursuant to Board Rules and Regulations, Chapter 3, Section 5, the required notice of the new, renewal, or endorsement of any workers' compensation policy to an employer must be filed electronically (accepted EDI transaction, with or without errors – "TE" or "TA" only) with the Board no later than 14 days from the transaction effective date for issuance, renewal or add endorsement. Transactions for new, renewal or endorsement policies filed later than 14 days after issuance, renewal or endorsement shall be considered late and are subject to a penalty not to exceed \$100 pursuant to 39-A M.R.S.A. Section 360(1)(B)*.

* Effective through August 22, 2010, if notice of the new, renewal, or endorsement of any workers' compensation policy is initially submitted and rejected within the initial 14 day period, the notice will not be considered late if it is resubmitted and accepted by the Board within 30 days after the TR acknowledgement code is sent by the Board.

When Must Interest Be Paid? How Should It Be Reported?

Interest *must* be paid:

1. When weekly compensation is paid pursuant to an award, interest on the compensation must be paid at the rate of 10% per annum from the date each payment was due, until paid. (See Section 205.6), or
2. If benefits have been discontinued or reduced pursuant to paragraph A or B and the board, after hearing, determines that benefits have been wrongfully withheld, the board shall order payment of all benefits withheld together with interest at the rate of 6% a year. (See Section 205.9.F)

Interest paid should be reported on the Statement of Compensation (WCB-11) under the category "Other". Please *do not* report interest paid on any discontinuance form.

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Executive Director/Chair

Steven P. Minkowsky
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Claims Management Unit WCB-11 Form Filing Reminders

For the Cumulative Totals in Box 20:

1. **Do not include any penalty amounts (regardless of fault).**
2. **In cases involving apportionment, do not include amounts paid to the “lead” carrier.**
3. **Do not reduce these totals by the amount of any recoveries, including deductibles.**
 - Medical – enter the sum of medical benefits paid for this claim.
 - Weekly Compensation – enter the sum of indemnity benefits paid for this claim (dependent benefits, specific loss benefits and mandatory payments are considered weekly compensation benefits). **This amount must match the sum of the “amount paid” on all WCB-4, WCB-4A and mandatory Memorandum of Payment forms and/or the sum of the “Compensation Payment to Date of Certificate” and “Compensation to be Paid for 21-Day Period” on all WCB-8 forms.**
 - Permanent Impairment – enter the sum of permanent impairment benefits paid for this claim (pre 1993 claims only).
 - Rehabilitation Expense – enter the sum of rehabilitation expenses paid for this claim.
 - Lump Sum Settlement – enter the amount approved by Board Hearing Officer of any lump sum settlement.
 - Death Benefit/Funeral Expense – enter the sum of funeral expenses paid for this claim (cannot exceed \$7,000.00).
 - Legal Expense (Employee Related) – enter the sum of the claimant’s legal expenses paid for this claim.
 - Legal Expense (Employer Related) – enter the sum of the employer’s legal expenses paid for this claim.
 - Other – enter the sum of all other payments not otherwise reported for this claim.
 - Total Paid – enter the total amount paid for all categories.

A full set of instructions for this form as well as the other Board forms can be found on the Board’s website at:

<http://maine.gov/wcb/departments/mae/formsmanual/cover.html>

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Fringe Benefits

Title 39-A M.R.S.A. Section 102.4.H. states, "Average weekly wages, earnings or salary' does not include any fringe or other benefits paid by the employer that continue during the disability. Any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 2/3 of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death."

Board Rules and Regulations Chapter 1.5 provides further direction regarding fringe benefits:

1. Fringe or other benefits shall be defined as anything of value to an employee and dependents paid by the employer which is not included in the average weekly wage. When the employer has paid the employee a sum to cover any special expense incurred by the employee by the nature of the employee's employment, that sum shall not be considered a fringe benefit. For those companies which self-fund health and dental coverage, the value of such health and dental coverage shall be equal to the cost to the employee for maintaining such coverage pursuant to the federal C.O.B.R.A. provisions less the employee's pre-injury contributions.
 - A. A "fringe or other benefit" pursuant to Section 102(4)(H) shall include, but is not limited to, the following:
 - (1) For those who do not self-fund, the employer's cost to provide health, dental and disability insurance benefits less the employee's contribution;
 - (2) For those who self-fund disability, the employer's cost to provide disability benefits less the employee's contribution;
 - (3) The employer's cost to provide pension benefits, including 401(k) matching funds;
 - (4) The fair market value of employer provided meals and/or housing;
 - (5) The employer's cost of providing utilities and other costs associated with the provision of housing;
 - (6) The value of using a company vehicle for personal purposes; and
 - (7) The employer's cost to provide life insurance benefits less the employee's contribution.
 - B. The following generally shall not be considered a "fringe or other benefit" pursuant to Section 102(4)(H):
 - (1) The cost of uniforms provided by the employer for use in the employment;
 - (2) Employer contribution to Social Security, unemployment insurance or workers' compensation insurance;
 - (3) A company vehicle for which the employee must reimburse the employer for personal use;
 - (4) Charitable contributions and/or matching gifts;
 - (5) Company sponsored picnics and other social activities; and
 - (6) Reimbursements for travel, parking, etc.



Many claim administrators have found it helpful to include a “Fringe Benefits Worksheet” when requesting wages from insureds. Below is an example of a sample worksheet.

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**SAMPLE
FRINGE BENEFITS WORKSHEET**

**Employee vs. Employer
DOI:
SS#:**

Under §102(4)(H) of the Maine Workers’ Compensation Act, “Any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee’s average weekly wage ...”

PLEASE PROVIDE THE COST OF THE FRINGE BENEFITS TO THE EMPLOYEE AS OF THE EMPLOYEE’S DATE OF INJURY IF THE EMPLOYEE WAS RECEIVING THE BENEFITS ON HIS/HER DATE OF INJURY.

Fringe Benefit	Provided	Continues While Employee is Out of Work	Date Benefit Ends	Weekly Cost of Benefit
Health Insurance:	Yes/No	Yes/No		\$
Dental Insurance:	Yes/No	Yes/No		\$
Disability Insurance:	Yes/No	Yes/No		\$
Pension/401K:	Yes/No	Yes/No		\$
Life Insurance:	Yes/No	Yes/No		\$
Other (Please list):	Yes/No	Yes/No		
Other (Please list):	Yes/No	Yes/No		\$
Other (Please list):	Yes/No	Yes/No		\$
Other (Please list):	Yes/No	Yes/No		\$