

**§9705. Administrative Penalty Schedule for Labor Code section 138.6.**

(a) The Administrative Director shall assess an administrative penalty for a claims administrator's failure to comply with selected reporting requirements mandated by California Code of Regulations, title 8, section 9702. The total amount of penalties assessed against a claims administrator in a calendar year shall not exceed \$5,000.00. Penalties assessed pursuant to this section shall only apply to violations occurring on or after January 1, 2015.

(b) If the failure by the claims administrator to comply with WCIS reporting requirements is due to a system failure caused by or affecting the Department of Industrial Relations, the Administrative Director shall waive all or part of administrative penalties assessed pursuant to this section. For the purpose of this section, "system failure" is defined as a WCIS hardware or software malfunction that prevents the transmission or proper validation of otherwise valid data elements.

(c) For each of the violations listed below, the penalty amount shall be \$100.00:

(1) For failure to submit on a claim, when required, an electronic report (maintenance type code MTC = 00, 04 or AU) under section 9702(b), hereinafter referred to as the "First Report of Occupational Injury."

(2) For failure to submit on an indemnity claim, when required, an electronic report (MTC = IP or AP) under section 9702(d), hereinafter referred to as the "Subsequent Report of Occupational Injury."

(3) For failure to submit on a claim, when required, an electronic, subsequent report of injury (MTC=AN) under section 9702(g), hereinafter referred to as the "Annual Report."

(4) For failure to submit, upon closure of a claim, an electronic subsequent report of injury (MTC=FN) under section 9702(h) hereinafter referred to as the "Final Report."

(5) For failure to submit on a compensable death, an electronic first report of injury or subsequent reports of injury (MTC=CD) under sections 9702(b) and 9702(c), including employee date of death, death benefits paid, and other non-benefit death-related payments.

(6) For failure to submit on a claim, when required, an electronic report under section 9702(e), hereinafter referred to as a "Medical Bill Payment Record."

(d)(1) Each electronic report identified in subdivision (c) that is rejected by the WCIS electronic reporting edits identified in the California EDI Implementation Guide for First and Subsequent Reports of Injury, as defined in section 9701(b), or the California EDI Implementation Guide for Medical Bill Payment Records, as defined in section 9701(c), will be considered not filed. For such reports, the claims administrator will receive an acknowledgement with a "TR" (transaction rejected) code.

(2) If an electronic report initially rejected under subdivision (d)(1) is required to be resubmitted under section 9702, but remains rejected and is not corrected and resubmitted into WCIS within 30 calendar days after receipt of the original acknowledgement rejection message, an administrative penalty shall be assessed in the amount of \$100.00 for each such report.

(A) Electronic reports that are not required to be resubmitted under section 9702 include, but are not limited to, electronic reports submitted in error or duplicate submissions. "Duplicate" is defined as an electronic report that contains the same data values for all validated data elements, excluding transmission data elements, provided in a previously submitted electronic report.

(B) Rejected reports that are not required to be resubmitted will not be included in the calculation of a claims administrator's threshold amount pursuant to section 9705.1(f).

(e) For each of the violations listed below, the penalty amount shall be \$50.00:

(1) For failure to timely submit on a claim the First Report of Occupational Injury.

(2) For failure to timely submit on a claim, when required, a Medical Bill Payment Record.

(3) For failure to timely submit on a claim, when required, an Annual Report.

(4) For failure to correct and resubmit to WCIS within 30 calendar days after receipt of the original acknowledgement message, the following error codes

on a First Report of Occupational Injury or a Subsequent Report of Occupational Injury on an acknowledgement with a transaction accepted with ("TE") error code:

(A) Mandatory Field not Present: Error code 001;

(B) Code Invalid: Error codes 006, 007, 008, 009, 011, 012, 014, 015, 016, 017, 020, 032 (with reported United States address), 042;

(C) Date Invalid: Error code 029;

(D) Format Error: Error code 028, 031;

(E) Required Segment not Present: Error code 062;

(5) For failure to correct and resubmit to WCIS within 60 calendar days after receipt of the acknowledgement message, the following error codes on a Medical Bill Payment Record with a date of injury on or after March 1, 2000 and a transaction accepted with ("TE") error ("TE") code: No Match on Database; Error code 039;

Authority: Sections 133, 138.6, and 5307.3, Labor Code.

Reference: Section 138.6, Labor Code

**§9705.1 Investigation and Assessment of Administrative Penalty Issued Pursuant to Labor Code section 138.6.**

(a) On a periodic basis, no less than two times but no more than four times per year, WCIS will provide to claims administrators a data quality report, which will identify data reporting errors that are subject to an assessment of administrative penalties under section 9705. The data quality report shall identify the electronic report or reports that are subject to an assessment and indicate the specific violations in section 9705 that are associated with the reports.

(b) To determine the administrative penalties under section 9705 for mandatory electronic reports that are not submitted, or are submitted but not accepted, the review shall be conducted using the documents or information listed in subdivision (c) of this section.

(c) To determine whether a claims administrator has failed to submit a mandatory electronic report, submitted a mandatory electronic report that was not accepted, or failed to timely and accurately submit a mandatory electronic report, the Administrative Director may use, but not be limited to, the following documents or information:

(1) Electronic reports submitted by the claims administrator to WCIS during the previous calendar year pursuant to section 9702.

(2) The Annual Report of Inventory submitted to the Division of Workers' Compensation Audit Unit for the previous calendar year pursuant to California Code of Regulations, title 8, section 10104.

(3) The reports and findings of audits conducted by the Division of Workers' Compensation Audit Unit pursuant to Labor Code section 129 and 129.5.

(4) Claim information contained in the Electronic Adjudication Management System, or EAMS, the computer case management system used by the Division of Workers' Compensation.

(d) Before October 1 of each calendar year, the Administrative Director, or his or her designee, shall review the electronic data reports of claims administrators submitted to WCIS pursuant to section 9702 during the previous calendar year, in addition to the documents or information listed in subdivision (c) of this section, and assess administrative penalties for the previous calendar year for violations set forth in section 9705.

(e) For the purpose of assessing administrative penalties under section 9705, multiple errors in a single electronic report shall be counted as a single violation.

(f) (1) Administrative penalties under section 9705 will not be assessed against a claims administrator on the first 5% of each of the following types of violations:

(A) Electronic reports that are not submitted.

(B) Electronic reports that are not submitted within the timeframes established in section 9702.

(C) Electronic reports that are submitted but rejected (acknowledgment code "TR") during the previous calendar year and are not exempted from resubmission in section 9705(d)(2)(A).

(D) Electronic reports that are accepted with an error (acknowledgment code "TE") during the previous calendar year.

(2) The number of violations that correspond to the 5% threshold level will be determined based on the number and type of electronic reports that were submitted to WCIS by the claims administrator during the prior calendar year.

(g) On or before October 1 of each calendar year, the Administrative Director shall issue a Notice of Penalty Assessment to claims administrators with identified violations of section 9705 during the previous calendar year. The Notice of Penalty Assessment shall consist of:

(1) Information identifying the electronic report or reports for which the administrative penalty is being assessed pursuant to section 9705.

(2) The specific violation in section 9705 associated with the identified electronic report or reports.

(3) The administrative penalty assessed for the specific violation in section 9705 associated with the identified electronic report or reports.

(4) The total amount of administrative penalties for the previous calendar year assessed against the claims administrator for the violation or violations listed in the Notice of Penalty Assessment.

(5) The claims administrator's 5% threshold rates for the previous calendar year, for reports that are not submitted or are submitted but not accepted, and for reports that are late or accepted with an error.

(6) The amount of administrative penalties assessed against the claims administrator for the previous calendar year pursuant to section 9705, by type of violation, for the current calendar year.

(7) The total amount of administrative penalties owed by the claims administrator for the previous calendar year for the violation or violations indicated in the Notice of Penalty Assessment.

(h) The total amount of penalties assessed against a claims administrator in a calendar year shall not exceed \$5,000.

(i) A conference to discuss the Notice of Penalty Assessment shall be scheduled, if necessary, within twenty-one calendar days from the issuance of the notice.

(j) Within thirty (30) calendar days after the date of service of the Notice of Penalty Assessment, the claims administrator may pay the assessed administrative penalties or file a request for reconsideration of the administrative penalties as set forth in section 9705.2. All administrative penalties assessed pursuant to section 9705 shall be deposited in the Workers' Compensation Administration Revolving Fund.

(k) The Administrative Director shall post on the website for the Division of Workers' Compensation an annual report disclosing the compliance rates of claims administrators for the previous calendar year.

Authority: Sections 133, 138.6, and 5307.3, Labor Code.

Reference: Sections 129, 129.5, and 138.6, Labor Code

**§9705.2 Requests for Reconsideration of Administrative Penalty Issued Pursuant to Labor Code section 138.6.**

(a) A request for reconsideration of an administrative penalty issued pursuant to section 9705.1 shall be filed with the Administrative Director in writing within thirty (30) calendar days of receipt of the Notice of Penalty Assessment issued pursuant to section 9705.1. The request by the claims administrator shall clearly specify the reasons the administrative penalty should be reconsidered and shall include a proof of service and any other information necessary to support the request.

(b) Good cause to grant the request shall be clearly shown by verified statement of facts, and, where appropriate, supportive documentary evidence. Good cause includes, but is not limited to any of the following:

(1) The failure of the claims administrator to comply with the data reporting requirement for which the administrative penalty was assessed under section 9705 was due to system failure either caused by or affecting the WCIS.

(2) The data reporting requirement for which the administrative penalty was assessed under section 9705 conflicts or is inconsistent with another regulation of the Administrative Director.

(3) The violation or violations for which administrative penalties are assessed under section 9705 are below the 5% threshold levels set by the Administrative Director pursuant to section 9705.1(f).

(4) A clear showing that the violation or violations for which administrative penalties are assessed under section 9705 was based on the reporting of a data element that was not available to the claims administrator.

(5) The violation or violations for which administrative penalties are assessed under section 9705 are the result of data error or omission on the part of WCIS.

(6) The violation or violations for which administrative penalties are assessed under section 9705 are related to an occupational injury or illness that does not meet the definition of "claim" as set forth in section 9701.

(7) A clear showing that the claims administrator experienced an unexpected, unintended system failure that prevented the submission of timely and accurate electronic reporting to WCIS.

(c) The Administrative Director shall, within 45 calendar days of the receipt of the request, either:

(1) Deny the request pursuant to a finding that there is no good cause to reconsider or rescind the administrative penalty or penalties issued under section 9705.

(2) Grant the request and either rescind or modify the administrative penalty in accordance with the evidence.

(d) Any order denying or granting the claims administrator's request, whether issued with or without hearing, shall be final and binding upon the claims administrator unless within 20 calendar days from service thereof the claims administrator petitions the Workers' Compensation Appeals Board for relief in the manner prescribed by California Code of Regulations, title 8, section 10950.

Authority: Sections 133, 138.6, and 5307.3, Labor Code.

Reference: Section 138.6, Labor Code