

Trending Topics



DWC-Audit and Enforcement Unit

Audit Unit – Trending Topics

Speakers



Cora Lee
Compliance Manager
Audit and Enforcement Unit
213-576-7428
clee@dir.ca.gov



Drenée Miners
Gallagher Bassett
Vice President
530-269-1988
drene_miners@gbtpa.com



Monserrat Morita
Southern Compliance Supervisor
Audit and Enforcement Unit
213-620-2312
mmorita@dir.ca.gov



Peggy Thill
Northern Compliance Supervisor
Audit and Enforcement Unit
510-286-7109
pthill@dir.ca.gov

5 Key areas of review: What causes the most violations?



❧ Lack of payment of accrued and undisputed indemnity:

- ❧ Failure to pay all due when due - First payment, miscalculation of amounts
- ❧ Failure to pay self imposed increase
- ❧ Failure to pay Awards as issued

5 Key areas of review: What causes the most violations?



❧ Miscalculation of Wage Statement:

- ❧ Labor Code reference for calculation of average weekly wages
 - ❧ 30+ hrs/wk & 5+ days /wk- LC §4453(c)(1)
 - ❧ Concurrent earnings - LC §4453(c)(2)
 - ❧ Irregular earnings - LC §4453(c)(3)
 - ❧ Earning capacity - LC §§4453(c)(4) & 4459

5 Key areas of review: What causes the most violations?



❧ **Late first payment of Temporary Disability/first Notice of Salary Continuation:**

- ❧ Date of knowledge: Employer vs. Claims Administrator (Ins Code §11652).
- ❧ Salary Continuation Notice is due in lieu of the First payment.

5 Key areas of review: What causes the most violations?



❧ **Late first payment of Permanent Disability and Death Benefits**

- ❧ Failure to investigate
- ❧ Assumption that a Monitoring Notice allows extra time to pay permanent disability
- ❧ Failure to pay upon receipt of medical evidence

5 Key areas of review: What causes the most violations?



☞ **Late subsequent indemnity payments**

- ☞ Creativity with the payment schedule:
 - ☞ Not paying every two weeks
 - ☞ Not paying on designated day
 - ☞ Not returning to the schedule after a holiday
- ☞ Exceptions to the rule:
 - ☞ Due on holiday [8CCR §10108(a)]
 - ☞ Prior termination of payments

5 Key areas of review: What causes the most violations?



☞ **Provision of notice for QME (8CCR § 9812):**

- ☞ Where required a notice should have:
 - ☞ The mandatory language that explains the QME process to unrepresented workers
 - ☞ The chapter reference to the **Guidebook for Injured Workers**
 - ☞ The pertinent URL to the chapter in the guidebook
 - ☞ When applicable, the notice regarding the QME Panel Request Form

Unsupported Denials



- ❧ **A claim file must document a factual, medical and/or legal basis for the denial of any benefits**
 - ❧ Send within 14 days after determination to deny
 - ❧ Advise of the specific reasons for denial
 - ❧ Include the required QME information as applicable
 - ❧ Send copy of denial notice as required

Tools to Improve Claims Handling



- ❧ **Suggestions from the Audit Unit**
 - ❧ Communication and documentation are key. It didn't happen if it is not documented in the file.
 - ❧ Analysis of the earnings information, not just a calculation (AWW).
 - ❧ The first payment of TD should pay through the day of issuance of the check.
 - ❧ If there is a legitimate dispute that affects the delivery of benefits, document it in the file.

The Audit Subject's Perspective



- ☞ Timely issue all appropriate notices.
- ☞ Document and accurately calculate the AWW.
- ☞ First payment of TD through the date of the check.
- ☞ Timely recognize a change in the worker's disability status

The Audit Subject's Perspective



- ☞ Pay TD and PD benefits at the correct rate. Be sure to comply with the statutory maximum and minimum rates.
- ☞ Timely pay the self-imposed penalty when required

The Audit Subject's Perspective



- ❧ A common penalty issued by the Audit Unit is when it believes the applicant's average weekly wage (AWW) has been incorrectly calculated.
- ❧ It is important that all advantages an employee receives as part of his/her remuneration are included in the calculation (e.g., overtime, bonuses, meals, lodging, tips and gratuities).
- ❧ The employer can provide printouts for overtime, bonuses, meals, lodging, etc.
- ❧ It may be necessary to clarify with the employee how much he/she receive in tips and to determine whether the employee had concurrent employment.

The Audit Subject's Perspective



- ❧ The applicant's earnings are normally calculated by determining the total amount the applicant earned in the year before an injury and dividing by 52 weeks.
 - ❧ But this is not always appropriate. A claims adjuster should determine the following:
 - ❧ Did the applicant receive a raise within the past year?
 - ❧ Is there a scheduled earnings increase within the anticipated disability period? (Grossmont Hospital v. WCAB (Kyllonen)).
 - ❧ Is there a change in employment status? (Part-time to full time; increase in hours).
 - ❧ Did the employee have concurrent employment?

The Audit Subject's Perspective



- ❧ The AWW calculations are difficult with short term employees.
- ❧ A common mistake happens when adjusters divide the applicant's earnings by the number of checks he/she received during the employment.
- ❧ Adjusters should confirm the days the applicant actually worked, and calculate the earnings accordingly.

The Audit Subject's Perspective



- ❧ If the applicant was injured less than a week into the employment, it would be appropriate to contact the employer to determine how many hours the applicant was anticipated to work.
- ❧ The reason for any payment of TD at less than the maximum rate must be documented. The defendant must demonstrate a reasonable basis for its calculation of the AWW.

Questions and Answers



- ❧ There are 5 key areas of review. Do all five carry the same value?
- ❧ How does the money paid by EDD mitigate a comp due?
- ❧ Can you deny a claim for lack of information?