

# Legislative Amendment to the Workers' Compensation Penalty Statute

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## A. Section 86.13 Prior to 2009 Amendment

The Iowa General Assembly recently amended Iowa Code section 86.13, which provides for a fifty percent penalty on workers' compensation benefits wrongfully delayed or terminated. The penalty statute was originally adopted in 1982, and formerly stated:

...

If a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were unreasonably delayed or denied. Iowa Code § 86.13 (2008).

The Iowa Supreme Court interpreted the former version of the statute several times. The established prerequisites for imposition of a penalty are (1) a delay in the commencement of benefits or a termination of benefits (2) without reasonable or probable cause or excuse. See Keystone Nursing Care Center v. Craddock, 705 N.W.2d 299, 307 (Iowa 2005).

It is the claimant's burden to prove the first element, that a delay or termination of benefits occurred. Once established, the burden shifts to the employer and insurer to prove a reasonable or probable cause or excuse for the delay or denial. Id.; see also City of Madrid v. Blasnitz, 742 N.W.2d 77 (Iowa 2007) (citing Christensen v. Snap-On Tools Corp., 554 N.W.2d 254 (Iowa 1996)).

The Iowa Supreme Court has held that a reasonable or probable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim, or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. Craddock at 307. A "reasonable basis" exists when the claim is "fairly debatable." Id. Finally, whether the issue is "fairly debatable" turns on whether a factual dispute existed that, if resolved in favor of the employer and insurer, would have supported their denial of compensability. See Mycogen Seeds v. Sands, 686 N.W.2d 459 (Iowa 2004).

## B. Amendment Effective July 1, 2009

The amended statute, effective July 1, 2009, reads as follows:

1. If an employer or insurance carrier pays weekly compensation benefits to an employee, the employer or insurance carrier shall file with the workers' compensation commissioner in the form and manner required by the workers' compensation commissioner a notice of the commencement of the payments. The payments establish conclusively that the employer and insurance carrier have notice of the injury for which benefits are claimed but the payments do not constitute an admission of liability under this chapter or chapter 85, 85A, or 85B.

2. If an employer or insurance carrier fails to file the notice required by this section, the failure stops the running of the time periods in section 85.26 as of the date of the first payment. If commenced, the payments shall be terminated only when the employee has returned to work, or upon thirty days' notice stating the reason for the termination and advising the employee of the right to file a claim with the workers' compensation commissioner.
3. This section does not prevent the parties from reaching an agreement for settlement regarding compensation. However, the agreement is valid only if signed by all parties and approved by the workers' compensation commissioner.
4.
  - a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
  - b. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:
    - (1) The employee has demonstrated a denial, delay in payment, or termination of benefits.
    - (2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.
  - c. In order to be considered a reasonable or probable cause or excuse under paragraph "b", an excuse shall satisfy all of the following criteria:
    - (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
    - (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.
    - (3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

## C. Differences

The new version of the statute varies from the old version in several ways. The claimant still has the initial burden to prove that the denial, delay in payment, or termination of benefits occurred, after which the employer and insurer must prove a reasonable or probable cause or excuse. However, the legislature added language requiring that the cause or excuse be “known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits...” In addition, the legislature has provided the following three criteria to define what will be considered a reasonable or probable cause or excuse:

1. The excuse must be preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.

This requirement basically means that all questionable workers’ compensation claims must be thoroughly investigated prior to making a decision with respect to compensability or termination of benefits. The statute provides that the investigation and evaluation must be “reasonable,” but does not define the term, making it the commissioner’s subjective decision.

2. The results of the reasonable investigation and evaluation must be the actual basis upon which the employer and insurance carrier relied in denying, delaying, or terminating benefits.

This requirement seems to correspond with the requirement in the first paragraph that the cause or excuse be “known” to the employer and insurance carrier at the time of the denial. The only way to prove that the results of the investigation are the actual basis for the denial or termination is through documentation, as discussed below.

3. The employer or insurance carrier must contemporaneously convey the basis of the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay in payment, or termination of benefits.

Under Craddock, the failure to explain the reasons for denying or terminating benefits was not an independent ground for awarding penalty benefits. However, with the addition of this element, the legislature has effectively abrogated that portion of the case. Again, documentation will be key in avoiding penalties under the new version of the statute.

## D. Recommendations

In order to avoid the imposition of penalties under the revised statute, we strongly recommend documentation of every aspect of the investigation and evaluation concerning the particular case. A final decision regarding compensability with respect to a questionable claim should be not be made until a “reasonable” investigation has been completed. It is now vital to document every step of the process. In addition, providing updates to claimant’s attorney regarding the status of the investigation will be helpful in proving the reasonableness of the investigation.

Documentation will not only prove the investigation was reasonable, but may be the only way to

prove that the results of the investigation were the “actual basis” for the denial, delay, or termination. In addition, it will be the only basis to prove that the reasonable or probable cause or excuse was “known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits...”

Finally, it is now required that the employer or insurance carrier contemporaneously convey the basis for the denial, delay in payment, or termination of benefits to the claimant at the time of the denial, delay in payment, or termination. In order to provide proof of compliance with this requirement, we recommend sending a letter explaining the details of the investigation, the results of the investigation, and the reason why those particular results were the basis for the denial, delay in payment, or termination of benefits.

## **E. Summary**

The revised penalty statute essentially requires the following steps in order to avoid a fifty percent penalty:

1. The basis for the denial, delay in payment, or termination of benefits must be known to the employer or insurance carrier at the time of the denial, delay, or termination.
2. Prior to the denial, delay in payment, or termination of benefits, the employer and insurance carrier must have proof of a reasonable investigation and evaluation, and the results must be the actual basis for the denial, delay, or termination. What makes the investigation “reasonable” will now be the commissioner’s subjective decision, so documentation detailing every step of the investigation will be key in providing proof of reasonableness.
3. If the claim is ultimately denied, payments are delayed, or benefits are terminated as a result of the investigation, the reasons for that decision must be conveyed to the claimant at the time of the denial, delay, or termination. This should be done in writing, in order to provide proof of compliance with the statute.

## **F. Sample Letter**

As the amendment only took effect on July 1, 2009, no cases have interpreted the new requirements as of the date of this outline. In order to protect our clients from possible penalties, we have begun writing detailed letters describing the investigation and evaluation of all questionable workers’ compensation claims. We believe the following sample letter complies with the requirements of the amended statute, and will provide a basis for proving the reasonableness of the investigation and evaluation of workers’ compensation claims. The following letter is a sample from a case that was denied, based on the results of the investigation.

If you have any questions regarding the revised penalty statute, please contact any of us at Grefe and Sidney for assistance.

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1234 Work Comp Street  
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Re: Claimant v. Employer and Insurance Carrier

Dear Claimant's Attorney:

The employer and its insurance carrier have retained Grefe and Sidney to represent them in the above-referenced workers' compensation claim. Prior to making a decision with respect to compensability, it is necessary for the employer and insurance carrier to conduct a reasonable investigation into all circumstances surrounding the claim. This letter is to update you with respect to the progress of that investigation thus far.

The employer was first notified of Claimant's workers' compensation claim on October 13, 2009. They immediately began an investigation into whether this claim is compensable under Iowa's workers' compensation laws. In particular, the investigation has focused on

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Defendants' investigation of Claimant's claim has included a thorough review of Iowa law regarding

*(Insert explanation of applicable law)*

Our investigation also included consultation with our clients and review of documents related to the claim. I have enclosed a copy of the following:

*(Provide copies of non-privileged documents related to the investigation, such as incident or accident reports, medical records, statements, etc.)*

Our clients advise that \_\_\_\_\_

*(provide any additional information regarding basis for denial and findings thus far)*

Option 1: If investigation is ongoing:

In order to assist in the continuing investigation and evaluation of Claimant's claim, I would like to \_\_\_\_\_.

*(describe additional steps needed to complete investigation, such as taking claimant's sworn statement, obtaining additional medical records, etc.)*

Once these tasks have been completed, the employer and insurance carrier will be in a position to issue a decision regarding compensability of Claimant's claim. If you have any additional information that you believe supports the argument that Claimant is entitled to benefits, please forward to my attention as soon as possible.

Option 2: If investigation has concluded and claim is denied:

In summary, the employer and insurance carrier have conducted a reasonable investigation and thoroughly evaluated Claimant's workers' compensation claim, and have determined it is appropriate to deny benefits at this time. The decision to deny benefits is based on the results of the investigation described herein, and the conclusion that \_\_\_\_\_.

*(insert basis for denial)*

This letter is intended to serve as our clients' contemporaneous conveyance of the basis for the denial of this claim, pursuant to the provisions set forth in Iowa Code section 86.13. If you have information or documentation that you believe supports the argument that Claimant is entitled to benefits, please forward to my attention as soon as possible.

Very truly yours,

Friendly Defense Attorney