

## Interpretive Bulletins

### Director's interpretations of issues impacting the Colorado workers' compensation system

In an effort to provide guidance on the practical applications of the Colorado Workers' Compensation Act, we will be publishing Director's interpretations of statutes and other factors affecting the system, in the form of *Interpretive Bulletins*. The purpose is to provide greater levels of consistency and predictability as to how the Colorado system is intended to operate. While the opinions do not have the force and effect of rule, they are afforded as navigational tools to clarify and simplify processes, create efficiencies, and to reduce litigation.

If you have questions regarding this information or issues you would like to see addressed in future bulletins, please direct your inquiries to Bob Summers, Director of the Division of Workers' Compensation, at 633 17th St., Suite 400, Denver, CO 80202, FAX 303.318.8632, or e-mail at bob.summers@state.co.us

#### **INSURANCE COVERAGE REPORTING REQUIREMENTS**

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This interpretive bulletin is in response to recent inquiries received by the Division of Workers' Compensation ("Division"), and is intended to provide guidance on requirements for providing notice of insurance coverage and cancellations to the Division.

#### **Rule III (A)**

In 1994, House Bill 94-1271 was adopted into law. This bill mandated the development of an employer crosscheck system to determine whether employers who paid unemployment insurance tax also maintained workers' compensation insurance coverage for their employees. One purpose of the system was to determine how many employers in Colorado did not have workers' compensation insurance.

Informational systems within the Department of Labor and Employment were coordinated in order to establish the crosscheck system. These included data from the Division of Workers' Compensation, the Labor Market Information Office, and Unemployment Insurance Tax. The Division entered into a contract with the National Council on Compensation Insurance ("NCCI") to coordinate this policy data. The Division then adopted Rule III (A), of the *Rules of Procedure*, concerning the reporting of insurance coverage *after* the cancellation of coverage. Rule III (A) designates NCCI as the Division's agent to receive, process, and make available to the Division, the

required notices regarding coverage and the cancellation of coverage. Of real significance was the ability to transmit and receive policy information electronically.

NCCI provides the required information to the Division via electronic transmission. The result is that the Division's Coverage Enforcement Unit obtains information in a more timely manner and with increased accuracy. Prior to automation of the system, the Unit relied on hard copy correspondence to demonstrate compliance with coverage requirements. Typically, each employer sent one letter per year per policy to establish that coverage was in effect, and perhaps an additional letter if the policy was cancelled. This equated to approximately 300,000 letters per year. Processing and storing this correspondence was both burdensome and inefficient. Furthermore, there was no system to independently verify that coverage was in place, and because of the difficulty of retrieving information, an investigation would only take place if a complaint were received.

The automated system in place through NCCI allows the Division to receive information on a broader range of actions. Currently, the Division receives an average of 100,000 transactions per month, without the necessity of manually recording and maintaining each of these transactions. This information has allowed the Coverage Enforcement Unit to more effectively perform its mandated functions so that the number of employers in Colorado without workers' compensation insurance has declined each year.

### **Division's Interpretation of Statutory Mandate under Sections 8-44-110 and 8-45-113, C.R.S.**

Sections 8-44-110 and 8-45-113, C.R.S., define the statutory reporting requirements for providing notice of insurance coverage cancellations to the Division. Section 8-45-113, C.R.S., provides that the Colorado Compensation Insurance Authority (hereinafter referred to as "Pinnacol Assurance") shall notify the employer of its intent to cancel a policy of insurance, and "shall forward a copy of the notice to the division." Section 8-44-110, C.R.S., provides that every (workers' compensation) insurance carrier authorized to transact business in Colorado, including Pinnacol Assurance, "shall notify the division, any employer insured by the carrier or the Authority, and any such representative of the employer, if applicable, by certified mail of any cancellation . . ." In both instances, the notice sent is *prior* to the effective date of cancellation. These statutory provisions were intended to assist the Division in its coverage enforcement activities. Although insurance carriers may provide the statutory notice to the Division of the anticipated cancellation of a policy, it is the Division's view that failure by an insurance carrier to provide a copy of a notice of intent to cancel a policy does not nullify an otherwise proper cancellation.

The Division interprets the word "shall" in both statutes as a directory rather than a mandatory provision, and subsequent to the promulgation of Rule III (A), the Division does not enforce the reporting requirements provided under Sections 8-44-110 and 8-45-113, C.R.S.<sup>1</sup> This is due in no small part to the fact that a policy may not actually cancel

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<sup>1</sup> The Division interprets the word "shall" in both statutes as a directory rather than a mandatory provision. See, *DiMarco v. Department of Revenue, Motor Vehicle Division*, 857 P.2d 1329 (Colo.App. 1993); *Cornell v. State of Colorado, Board of Pharmacy*, 813 P.2d 771 (Colo.App. 1990); *Shaball v. State Compensation Insurance Authority*, 799 Colo.App. 1990; and *Danielson v. Castle Meadows, Inc.*, 791 P.2d

as a result of a notice of intent to cancel coverage. In the majority of cases coverage is maintained either by the same carrier or through a different carrier. Section 8-47-111, C.R.S., mandates that the Division ensure that all employers have workers' compensation insurance coverage in place. Receiving notice of an intent to cancel a policy is not required to assist the Division in meeting that mandate. In fact, it hampers the Division's regulatory function with unnecessary information that adds confusion and an additional step.

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1106 (Colo.1990). Although the cases cited above reference statutory deadlines imposed against a state entity, and the reporting requirements in Sections 8-44-110 and 8-45-113, C.R.S., fall on the insurer, the Division relies on the legislative mandate and the intent of these statutes in concluding that word "shall" is meant to be a directive provision. The court in *Danielson*, citing to *IA N. Singer, Sutherland Statutory Construction, Section 25.03, 441-42 (4<sup>th</sup> ed. 1984)*, noted that there is "no universal rule by which directory provisions may, under all conditions, be distinguished from those which are mandatory. The intention of the legislature, however, should be controlling and no formalistic rule of grammar or word form should stand in the way of carrying out the legislative intent." See, *Danielson v. Castle Meadows, Inc., at 1113*.