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PENALTIES PLACED ON THE INSURER, SELF-INSURED EMPLOYER, THIRD-PARTY PARTY ADMINISTRATOR THROUGH FAILURE TO ADHERE TO LAW AND REGULATIONS OF WORKERS' COMPENSATION

BY: SCOTT A. O'MARA

Labor Code §129.5 states that there are administrative penalties and civil penalties that can be placed against an insurer, self-insured employer or third-party administrator for failure to comply with payment of mandated benefits and provision of medical care when the defendant has knowledge of the injured worker's entitlement to benefits and has not provided the same.

The code specifically states that if there is a failure to provide indemnity payments to the injured worker and/or failure to pay reasonable medical costs when benefits are undisputed, a penalty can be imposed. Additional penalties can be placed if there are failures to provide payments in the entire amount due for non-disputed permanent disability benefits, non-disputed death benefits and other benefits, in addition to penalties pursuant to Labor Code §5814. The Administrative Director (AD) of the Division of Workers' Compensation (DWC) can perform audits, whether done by random selection or based on complaints filed with the State. The AD can audit all aspects of how claims have been handled by the defendants: proper payment of permanent disability, temporary disability, death benefits, medical care, including whether payments have been made in correct amounts, paid timely. Labor Code §129.5 empowers the Administrative Director under the audit and endorsement unit to determine violations and impose penalties.

Additionally, again per Labor Code §129.5, the AD can impose a civil penalty of up to \$100,000.00 upon finding, after a hearing has been held, that an employer, insurer, or third-party administrator has, "knowingly" committed or performed with sufficient frequency so as to indicate a general business practice any of the following:

- (1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation.
- (2) Refused to comply with known and legally indisputable compensation obligations.
- (3) Discharged or administered compensation obligations in a dishonest manner.
- (4) Discharged or administered compensation obligations in a manner as to cause injury to the public or those dealing with the employer or insurer.

