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# Louisiana Workers Compensation

## Chapter 14

### *Claims Process and Procedures*

La. R.S. 23:1310.1 provides for adjudication of workers' compensation claims by workers' compensation judges, who are appointed by the director of the Office of Workers' Compensation.<sup>1</sup> Workers' compensation judges have original, exclusive jurisdiction over all disputes arising out of the Louisiana Workers' Compensation Act. In addition to claims by employees for benefits, the workers' compensation judges' jurisdiction includes insurance coverage disputes, group self-insurance indemnity contract disputes, employer demands for overpayment of benefits, determination and recognition of employer credits, claims between employers or insurers for indemnification or contribution, and concursus proceedings concerning the entitlement to benefits.<sup>2</sup>

#### Notice and Report of Injury

Under La. R.S. 23:1301, an injured employee is required to give the employer notice of an injury no later than thirty days after the injury occurs. Failure to do so is supposed to bar the employee from filing a claim for benefits with the Office of Workers' Compensation.<sup>3</sup> As applied by Louisiana courts, however, an employee's untimely notice will not bar the claim unless the employer can show that it was prejudiced by the delay.<sup>4</sup>

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<sup>1</sup> La. R.S. 23:1310.1(D)

<sup>2</sup> La. R.S. 23:1310.3(F)

<sup>3</sup> La. R.S. 23:1301 provides that "[n]o proceeding under this Chapter for compensation shall be maintained unless notice of injury has been given to the employer within thirty days after the date of the injury or death."

<sup>4</sup> See, Holcomb v. Bossier City Police Department, 27,095 (La. App. 2 Cir. 8/25/95), 660 So.2d 199

Within ten days of receiving notice of an injury, the employer is required to report the injury to its insurer, or, if self-insured, to its claims administrator.<sup>5</sup> The insurer or the administrator is required to file a First Report of Injury with the Office of Workers' Compensation.<sup>6</sup> The failure to file the First Report of Injury with the Office of Workers' Compensation could interrupt prescription on the employee's claim for benefits.<sup>7</sup>

### Proceedings for Compensation

Litigation before the Office of Workers' Compensation now is similar to litigation before district courts.<sup>8</sup> By design, however, workers' compensation claims move much faster than proceedings in district court. Workers' compensation cases generally are set for trial within three or four months of the filing of the claim. Also, unlike district court proceedings, where a matter will remain inactive until a party moves to set the case for trial, the Office of Workers' Compensation sets a status conference to pick a trial date as soon as the defendant files an Answer.

#### *1. Initiation of the Claim - Necessary Allegations*

A claim is initiated by the filing of a Disputed Claim for Compensation.<sup>9</sup> The claim is premature unless it alleges one of the following:

- (1) The employee or dependent is not being or has not been paid the disability benefits due as a result of the injury;
- (2) The employee has not been furnished the proper medical attention, or the employer or insurer has not paid for the medical attention furnished;
- (3) The employee has not been provided copies of medical reports after written request; or
- (4) The employer or insurer has not paid penalties and attorney's fees to which the employee is entitled.

When an employee is receiving workers' compensation disability benefits at the full rate, a claim seeking a declaration that she is permanently and totally disabled is premature because it does not include one of the necessary allegations. Dove v. Liberty Mutual Ins. Co., 119 So.2d 1193 (La. App. 3<sup>rd</sup> Cir. 1980). This statute was used most frequently, however, to prevent an employer from litigating contested issues while it pays workers'

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<sup>5</sup> La. R.S. 23:1306(A).

<sup>6</sup> La. R.S. 23:1306(B).

<sup>7</sup> Roy v. Chris' Steak House, Inc., 525 So.2d 630 (La. App. 3<sup>rd</sup> Cir. 5/11/98)

<sup>8</sup> Previously, the Office of Workers' Compensation had established mandatory procedures (informal conference and pre-trial mediation) designed to resolve disputes without litigation. In most cases, however, those procedures just delayed the ultimate resolution of the dispute. Now, the informal conference has been eliminated, and pre-trial mediation is voluntary.

<sup>9</sup> OWC form 1008.

compensation benefits. For example, in Fru-Con Construction Corp. v. Xchanging, 11-529 (La. App. 3 Cir. 12/14/11), 81 So.3d 209, the employer filed a Petition for Declaratory Judgment based on conflicting medical opinions as to whether the employee required additional medical treatment and could return to work. The court held that, because the petition did not contain any of the allegations in La. R.S. 23:1314, the claim was premature. The employer's only option if it disagreed with the opinion of the employee's treating physician was to terminate benefits, at the risk of being assessed penalties and attorney's fees.

La. R.S. 23:1314 was amended effective August 1, 2013, to allow the employer or payor to file a Disputed Claim for Compensation against an employee in two limited circumstances: (1) when the employer or payor alleges that it paid benefits that were not due because the employee committed fraud, and (2) when the employer or payor wishes to appeal a decision of the Medical Director regarding medical necessity.<sup>10</sup> The amendment also clarified that an employer or payor may file a claim against any party other than the employee concerning any other dispute under the Louisiana Workers' Compensation Act.<sup>11</sup>

## 2. Venue

When the claimant is a domiciliary of Louisiana, proper venue is (1) the judicial district of the parish of the claimant's domicile at the time of injury; (2) the judicial district where the injury occurred; or (3) the judicial district of the parish of the principal place of business of the employer.<sup>12</sup> The word "claimant" refers to the employee, no matter who files the claim. Ryder v. Rowan Companies, Inc., 845 So.2d 540 (La. App. 1 Cir. 2/26/03). Even when the employee is not a party, the claimant, for venue purposes, is the injured employee.

When the claimant is not a domiciliary of Louisiana, and the injury occurred in Louisiana, proper venue is the judicial district of the parish where the injury occurred.<sup>13</sup> When the claimant is not a domiciliary of Louisiana, and the injury did not occur in Louisiana, proper venue is the judicial district of the parish where the contract of employment was made or in which the employment was principally located.<sup>14</sup>

## 3. Appeal

The decision of a workers' compensation judge may be appealed to the Louisiana Court of Appeal for the district from which the decision arose.<sup>15</sup> The delays for appeal are the same as in district court. A suspensive appeal must be filed within thirty days, and a devolutive appeal must be filed within sixty days.<sup>16</sup> An order for physical therapy or work

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<sup>10</sup> La. R.S. 23:1314(E)(1)

<sup>11</sup> La. R.S. 23:1314(E)(2)

<sup>12</sup> La. R.S. 23:1310.4(A)(2)

<sup>13</sup> La. R.S. 23:1310.4(A)(3)

<sup>14</sup> La. R.S. 23:1310.4(A)(3)

<sup>15</sup> La. R.S. 23:1310.5(A)(2)

<sup>16</sup> La. R.S. 23:1310.5(B)

hardening, however, may not be suspended while an appeal is pending.<sup>17</sup> Also, when the workers' compensation judge rules that delaying a surgery would, more likely than not, result in death, permanent disability or irreparable injury the claimant, any appeal of a judgment awarding surgery will be handled on an expedited basis.<sup>18</sup>

### Continuing Jurisdiction and Modification of Judgments

Res Judicata has limited application in workers' compensation cases. A judgment denying benefits is res judicata after the claimant has exhausted the rights of appeal.<sup>19</sup> Regarding any other judgment, however, the jurisdiction of the workers' compensation judge is continuing.<sup>20</sup> On the application of a party and after a contradictory hearing, the judge may make any modifications or changes regarding former findings or orders that the judge finds justified.<sup>21</sup>

A judgment awarding benefits also may be modified based on a change of conditions.<sup>22</sup> A modification proceeding is initiated on the motion of a party and requires a contradictory hearing.<sup>23</sup> If the judge finds that it is warranted by a change of conditions, the judge may terminate, decrease or increase the compensation previously awarded.<sup>24</sup> A petition to modify is subject to the prescriptive periods set forth in La. R.S. 23:1209.<sup>25</sup>

### Settlements

The stated policy of the Louisiana Workers' Compensation is that it is in the best interest of the injured worker to receive benefits on a periodic basis.<sup>26</sup> Despite that stated policy, settlement is allowed when all parties (employee, insurer and employer<sup>27</sup>) agree, and workers' compensation judge confirms that the settlement is clearly in the best interest of the parties.<sup>28</sup> When the employee is represented by counsel, the workers' compensation judge has no discretion in this regard. If the settlement documents verify that the employee's attorney has explained the employee's rights and the consequences of the settlement, the workers' compensation "shall" approve the settlement.<sup>29</sup> When the employee is not represented by an attorney, however, the workers' compensation judge may refuse to approve a settlement if the judge finds that the employee does not

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<sup>17</sup> La. R.S. 23:1310.5(E)(1)

<sup>18</sup> La. R.S. 23:1310.5(E)(2)

<sup>19</sup> La. R.S. 23:1310.8(E)

<sup>20</sup> La. R.S. 23:1310.8(A)(1)

<sup>21</sup> Id.

<sup>22</sup> La. R.S. 23:1310.8(B)

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> See, Chapter 15, Prescription

<sup>26</sup> La. R.S. 23:1271(A)

<sup>27</sup> The insurer is not allowed to settle without the employer's consent)

<sup>28</sup> La. R.S. 23:1271(A)

<sup>29</sup> La. R.S. 23:1272(B)

understand the terms and conditions of the settlement or that the settlement does not provide substantial justice to all parties.<sup>30</sup>

The settlement agreement must be presented to the workers' compensation judge for approval through a signed and verified petition or by recitation and acknowledgment of the terms of the settlement on the record in open court.<sup>31</sup> A workers' compensation settlement is not enforceable unless it has been presented properly and approved by a workers' compensation judge. Once the settlement is approved, however, it can only be set aside or modified for fraud or misrepresentation.<sup>32</sup>

Louisiana law allows two types of settlement of workers' compensation claims, compromise settlements and lump sum settlements. A compromise settlement resolves a dispute between the parties. In other words, if the parties disagree as to whether the employee is entitled to benefits or as to the amount of any benefits owed, and the parties may agree to resolve that dispute through a payment by the employer or insurer to the employee. A compromise settlement may be for any amount agreed on by the parties.

A lump sum settlement is an agreement by the parties that benefits admittedly due to the employee will be paid in a lump sum, rather than on a periodic basis. A lump sum settlement must be for the full value of the employee's claim, discounted at no more than 8%. The penalty for discounting payments by more than 8% is one and one-half times the compensation due, less the amount already paid.<sup>33</sup> For example, if the full value of the employee's claim, discounted at 8%, is \$100,000.00, and the parties enter into a lump sum settlement for \$50,000.00, the employee would be entitled to a penalty of \$100,000.00 in addition to the amount received in the settlement. (Full value [\$100,000.00] x 1.5 = \$150,000.00; \$150,000.00 - the settlement amount [\$50,000.00] = \$100,000.00 penalty). The employee must make a claim for the penalty within two years of the lump-sum payment.

Because of the potential penalty, lump sum settlements are rare. If there is no arguable dispute, however, a court could find that a settlement labeled as a compromise settlement was, in fact, a lump sum settlement. For example, if an employer has taken the social security offset, the employer has stipulated that the employee is permanently and totally disabled.<sup>34</sup> Therefore, any settlement of a claim involving a social security offset must be for the full value of the claim, discounted at no greater than 8%, regardless of whether the settlement is labeled as a compromise settlement or a lump sum settlement.

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<sup>30</sup> La. R.S. 23:1272(C)

<sup>31</sup> La. R.S. 23:1272(A)

<sup>32</sup> La. R.S. 23:1272(B) and (C)

<sup>33</sup> La. R.S. 23:1274(B)

<sup>34</sup> See Ch. 13, Credits and Offsets