

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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FILED

2005 MAY 18 P 4: 12

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: W. Va. Code §§23-1-1a(j)(3); 23-5-7

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: Compromise & Settlement of Workers' Compensation Issues

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: June 23, 2005 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Rooms 207-209
Charleston Civic Center
Charleston, West Virginia

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

T.J. Obrokta, General Counsel
Executive Offices
Workers' Compensation Commission
4700 MacCorkle Avenue, S. E.
Charleston, WV 25304

Fax # (304) 926-5372

[Handwritten Signature]

Authorized Signature

#3.80

May 18, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 12
"Compromise & Settlement of Workers' Compensation
Issues"

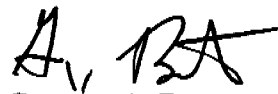
Dear Secretary Ireland:

Please consider this letter to be my written approval for the filing of the above-noted proposed Rule.

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. The Board of Managers of the Workers' Compensation Commission has approved the enclosed 85 C.S.R. 12 for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,



Gregory A. Burton
Executive Director

Enclosure

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 85, Series 12: Compromise & Settlement of Workers' Compensation Issues

Type of Rule: X Legislative Exempt Interpretive Procedural

Agency Workers' Compensation Commission

Address 4700 MacCorkle Avenue, S.E.

Charleston, WV 25304

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	N/A
PERSONAL SERVICES	0	0	0	0	N/A
CURRENT EXPENSE	0	0	0	0	N/A
REPAIRS & ALTERNATIONS	0	0	0	0	N/A
EQUIPMENT	0	0	0	0	N/A
OTHER	0	0	0	0	N/A

2. Explanation of above estimates:

Proposed changes since the last filing for this rule address issues related to the settlement of claims for the Workers' Compensation Commission (commission) until the termination of the commission. The above estimates are based on the assumption that the rule changes become effective in the current fiscal year (FY'05). There should be no significant change in the estimated costs associated with claims settlements for the Workers' Compensation Commission thru 12/31/05. After 12/31/05, subject to the governor issuing the proclamation set forth in chapter twenty-three, article 2C of the Code of West Virginia that terminates the Workers' Compensation Commission, claims settlements will be the responsibility of the successor to the commission, private carriers and self-insured employers, whichever may be applicable. The Office of Judges will no longer be responsible for the approval of settlement agreements.

3. Objectives of this rule:

This rule provides required procedures for the commission, the successor to the commission or other private carriers or self-insured employers, whichever is applicable, the employer and the claimant to negotiate a settlement of any and all issues in a claim or claims except for medical benefits for nonorthopedic occupational disease claims.

Rule Title: Title 85 Series 12: Compromise & Settlement of Workers' Compensation Issues

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that there will be no economic impact from the rule changes.

B. Economic Impact on Political Subdivisions, Specific Industries; Specific groups of Citizens.

It is expected that there will be no impact from the rule changes.

C. Economic Impact on Citizens/Public at Large.

The rule changes will not have a direct economic impact on the citizens of West Virginia.

Date: _____

5/18/85

Signature of Agency Head or Authorized Representative

 _____

Gregory A. Burton
Executive Director, Workers' Compensation Commission

**SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 12**

Compromise & Settlement of Workers' Compensation Issues

Pursuant to Senate Bill 1004, First Special Session, 2005, the Workers' Compensation Commission may terminate. Thereafter, Workers' Compensation insurance in West Virginia will be provided through the successor to the Commission and other private insurance carriers.

This rule is amended to address the termination of the Commission and to transition the enforcement of this rule to the Office of the Insurance Commissioner.

In addition, as a result of the Legislation, settlements of claims matters are no longer approved by the Office of Judges. The rule was amended to reflect this change and to provide safeguards as contained in the provisions of W. Va. Code §23-5-7.

TITLE 85
PROCEDURAL EXEMPT LEGISLATIVE RULE
BUREAU OF EMPLOYMENT PROGRAMS
WORKERS' COMPENSATION FUND COMMISSION

FILED

2005 MAY 18 P 4: 12

SERIES 12
COMPROMISE & SETTLEMENT OF WORKERS' COMPENSATION ISSUES
 OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

§85-12-1. General.

1.1. Scope. -- These rules shall govern the compromise and settlement of workers' compensation issues pursuant to W. Va. Code §23-5-7.

1.2. Authority. -- W. Va. Code §§~~21A-2-6(2); 21A-3-7(b); 21A-3-7(e);~~ §§23-1-1; 23-1-1a(j)(3); 23-1-5; 23-1-8; 23-1-13; 23-1-14; 23-1-15; 23-4-1 et seq.; 23-5-1; 23-5-7. Pursuant to W. Va. Code §23-1-1a(j)(3), rules adopted by the board of managers and the commission are not subject to legislative approval as would otherwise be required under W. Va. Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. -- ~~August 12, 2002.~~

1.4. Effective Date. -- ~~September 12, 2002.~~

1.5. Repeal of former rule. — ~~This legislative rule repeals and replaces WV 85 CSR 12 "Settlement of Permanent Partial Disability Awards" filed April 11, 1991 and effective May 13, 1991.~~

§85-12-2. Purpose.

The purpose of this rule is to establish a consistent process to govern the settlement of workers' compensation issues.

§85-12-3 Definitions.

As used in this legislative rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

3.1. "Commissioner" means the ~~commissioner of the bureau of employment programs~~ workers' compensation commission created pursuant to the provisions of W. Va. Code §23-1-1.

3.2. "~~Division~~" ~~refers to the workers' compensation division of the bureau of employment programs.~~ "Board" means the workers' compensation board of managers created pursuant to the provisions of W. Va. Code §23-1-1a.

3.3. Until the termination of the commission, "~~An~~ an employer that is not active in the claim" means an employer that is either defunct or has bought out its liability. For claims that are not in litigation, an employer will be considered inactive if the employer is not represented by counsel or is not represented by an employer service company in accordance with W. Va. Code §23-1-13 and has failed to respond to the ~~division's~~ commission's notice of settlement negotiations. For claims that are in litigation, an employer will be considered inactive if the employer is not represented by counsel and has failed to respond to the ~~division's~~ commission's notice of settlement negotiations.

Upon termination of the commission, an "employer that is not active in the claim" means an employer that has, as its workers' compensation insurance carrier, the successor to the commission or other private carrier.

3.4. "Review process" refers to the period between the identification of a potential claim and the final closure of the claim pursuant to the statute.

§85-12-4. Parties.

The claimant, the employer and the ~~commissioner, or the commissioner's appointed designee, commission, the successor to the commission or other private insurance carriers, or self-insured employer, whichever is applicable,~~ may negotiate a settlement of any and all issues in a claim or claims, ~~excluding except for~~ medical benefits for nonorthopedic occupational disease claims, pursuant to the requirements of W. Va. Code §23-5-7 and the regulations herein set forth. ~~The division commission, the successor to the commission or other private insurance carriers, or self-insured employers, whichever is applicable,~~ and the claimant may negotiate a settlement of a claim when the employer is not active in the claim. In multiple employer claims, all employers active in the claim must be parties to the settlement agreement. All corporate employers must be represented by an attorney licensed to practice law in the State of West Virginia.

§85-12-5. Notice.

If the employer has not been notified of pending settlement negotiations, the ~~division commission~~ will notify the employer by certified mail, giving the employer thirty (30) days to respond to the ~~division commission~~. If the employer fails to respond to the notice or chooses not to participate, the ~~division commission~~ may negotiate a settlement on behalf of the employer in accordance with W. Va. Code §23-5-7. Upon termination of the commission, the successor to the commission or other private carrier is not required to provide notice of pending settlement negotiations to the employer.

§85-12-6. Issues Subject to Settlement.

If the claim is in the review or appellate process, all claim issues, ~~excluding except for~~ medical benefits for nonorthopedic occupational disease claims, may be settled, even though the issues may not be currently contested. These issues include, but are not limited to, temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, vocational rehabilitation and any other issues within the ~~jurisdiction of the division~~ settlement provisions of W. Va. Code §23-5-7.

§85-12-7. Manner of Payment.

The parties to any settlement may arrange for any amount paid to be paid to the claimant or for the benefit of the claimant in a lump sum or in incremental payments or in any manner as agreed upon by the parties. If no mention is made in the settlement agreement regarding a permanent disability percentage, the claim record will not reflect a percentage for the settlement award.

§85-12-8. Dependent's Benefits.

Except in cases where the claimant has previously been granted a permanent total disability award, dependents are not entitled to one hundred four (104) weeks of benefits as set forth in W. Va. Code §23-4-10 if the agreement is silent as to the claimant's entitlement to a permanent total disability award.

§85-12-9. Settlement Not to be Considered an Admission Against Interest.

The terms of a settlement agreement, ~~whether approved, rejected or denied,~~ shall not constitute an admission against interest by any party. All communications and correspondence between the parties during settlement negotiations are confidential and may not be used against a party if a settlement is not reached.

§85-12-10. Effective Date of Settlement.

Unless otherwise agreed upon by the parties, the effective date of a settlement shall be the date ~~of the order approving the agreement from the Office of Judges~~ the agreement is executed by the claimant and by the employer and commission, the successor to the commission or other private insurance carrier, or self-insured employer, whichever is applicable.

§85-12-11. Minor Dependents and Claimants.

In any case in which a surviving dependent infant may be entitled to receive the balance of a permanent partial disability award due to the death of a claimant before such award was paid in full or in any case in which the claimant is an infant, the legal guardian of such infant may negotiate a settlement of such claim with the employer or employers involved and the commission, the successor to the commission or other private insurance carriers, and self-insured employers, whichever is applicable. ~~If such settlement is approved by the office of judges, the~~ The legal guardian shall proceed as set forth in W. Va. Code §44-10-14. The appointment of said guardian shall be done as set forth in W. Va. Code §44-10-1 et seq. No bond shall be required of said guardian by the ~~commissioner or administrative law judge, whichever is appropriate,~~ commission in addition to that required by the appointment of said guardian or approval by the circuit court of any settlement pursuant to the provisions of W. Va. Code §44-10-1 et seq.

§85-12-12. Death of Claimant.

Unless otherwise agreed upon by the parties, should a claimant to whom an award has been made pursuant to a settlement die, the unpaid balance of the award shall be paid to the claimant's dependents as defined in W. Va. Code §23-4-10, if any. The payment shall be made in the same installments which would have been made to the claimant if living, but no payment shall be made to a surviving spouse of the claimant after his or her remarriage and such liability shall not accrue to the estate of such claimant and shall not be subject to any debts or charges against the estate.

If the claimant dies while the settlement is pending ~~but before it is approved by the office of judges~~ and the claimant is survived by dependents, the settlement may continue as if the death had not occurred. ~~If the settlement agreement is approved,~~ the payment shall be made to the dependents.

§85-12-13. Deductions From Settlement Awards.

13.1. Pursuant to W. Va. Code §23-4-18, any amounts owed for child or spousal support will be withheld from settlement payments.

13.2. Overpayments will be deducted pursuant to W. Va. Code §23-4-1c and 23-4-1d, unless otherwise agreed upon by the parties in the agreement.

13.3. Any award of monetary benefits entered in the claim being settled by the workers' compensation ~~division commission, successor to the commission or other private carrier, or self-insured employer,~~ the office of judges, the Appeal Board or the Supreme Court of Appeals of West Virginia, between after the date the settlement agreement was signed by the necessary parties ~~to the date that it is approved by the Office of Judges~~ shall be deducted from the agreed upon settlement amount. If the

amount of any such award is greater than the agreed upon settlement amount, the claimant's recovery shall be limited to the amount specified in the settlement agreement.

§85-12-14. Settlement Terms.

Under the terms of the agreement, the claimant shall be provided five (5) business days to revoke the executed settlement agreement. In addition and in accordance with the provisions of W. Va. Code §23-5-7, each settlement agreement shall provide the toll free number of the West Virginia State Bar Association.

§85-12-15. Severability.

If any provision of these rules or the application thereof to any person, party, or circumstances is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the other provisions or application of these rules, and to this end the provisions of these rules are declared to be severable.