



Get those Washington overpayments back!

By Eric T. Duncan ■ August 25, 2016

Benefit overpayment commonly occurs during workers' compensation claim administration in Washington. An employer can recover certain types of overpayments from the Overpayment Reimbursement Fund if the overpayment is not recovered after 24 months of effort.

Benefit orders issued by the Department of Labor and Industries become effective and benefits are due on the date the order issues.¹ In most cases this requires a self-insured employer to pay benefits pursuant to a Department order, even if that order is appealed to the Board of Industrial Insurance Appeals or to the courts. An overpayment can arise if the order is overturned on appeal.

To protect employers from overpayments paid pursuant to orders later overturned, the legislature created an Overpayment Reimbursement Fund, from which certain unrecovered overpayments may be recovered.

The self-insured employer overpayment reimbursement fund is created in the custody of the state treasurer. Expenditures from the account may be used only for reimbursing the reserve fund and self-insured employers for benefits overpaid during the pendency of board or court appeals in which the self-insured employer prevails and has not recovered.²

Specific statutory requirements must be satisfied before the fund can be accessed. The Revised Code of Washington allows access to the fund only after 24 months of unsuccessful recoupment efforts:

If a self-insurer is not fully reimbursed within twenty-four months of the first attempt at recovery through the collection process pursuant to this subsection and by means of processes pursuant to subsection (6) of this section, the self-insurer shall be reimbursed for the remainder of the amount due from the self-insured employer overpayment reimbursement fund.³

Recoupment may be made from future benefits owed to the claimant, for example, on another claim with the self-insured employer. Collection processes include filing a warrant with the superior court clerk's office and pursuing wage garnishment.⁴ If these efforts do not result in full overpayment reimbursement

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after 24 months, application can be made to the Department for the remaining balance.

Accordingly, a self-insured employer should consider seeking advice from a Reinisch Wilson Weier attorney or other defense counsel when contemplating a demand for overpayment reimbursement, or when considering accessing the Overpayment Reimbursement Fund. ■

¹ RCW 51.52.050

² RCW 51.44.142

³ RCW 51.32.240(4)(c)

⁴ RCW 51.32.240(6)

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