**Section 7100.100 Insurance Coverage: Compliance**

a) Employers to Insure Payment of Compensation

Any employer who shall come within the provisions of Section 3 of the Workers' Compensation Act (the Act) (Ill. Rev. Stat. 1989, ch. 48, par. 138.3) or any employer who shall elect to provide and pay the compensation provided for in the Workers' Compensation Act and the Workers' Occupational Diseases Act (Ill. Rev. Stat. 1989, ch. 48, par. 172.36 et seq.) shall insure payment of such compensation pursuant to Section 4(a) of the Act and Section 4(a) of the Workers' Occupational Diseases Act by obtaining approval by the Industrial Commission to operate as a self-insurer or by insuring its entire liability to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in Illinois.

b) Failure to Insure Payment of Compensation Liability – Penalty

1) *The Commission may assess a civil penalty of up to five hundred dollars ($500.00) per day for each day of:*

A) *the knowing and wilful failure or refusal after December 18, 1989 of an employer to comply with any of the provisions of Section 4(a) of the act; or*

B) *failure or refusal after December 18, 1989 of an employer, service or adjustment company, or an insurance carrier to comply with any order of the Industrial Commission pursuant to Section 4(c) of the Act and Section 4(c) of the Workers' Occupational Disease Act disqualifying it to operate as a self-insurer and requiring it to insure its liability with an insurance carrier.* (Ill. Rev. Stat. 1989, ch. 48, pars. 138.4(d) and 172.39(d).)

2) Penalties by the Commission may be assessed after reasonable notice and hearing in accordance with subsection (d).

c) Notice of Non-Compliance

1) The Industrial Commission shall give Notice of Non-Compliance to the employer at the employer's last known address or to the representative thereof. The notice shall be accompanied by a certificate of service by the Industrial Commission on the employer setting forth the time and manner of service.

2) The Notice of Non-Compliance shall be a written statement setting forth, but not limited to, the following information:

A) the name and address of the employer;

B) a statement of the section of the statute alleged to be violated, the periods of non-compliance and the penalty which may be imposed;

C) a statement that the employer must submit evidence of compliance or otherwise respond within thirty (30) days of the date of receipt of the notice. Examples of evidence of compliance are:

i) a copy of the policy information page as required to be filed under Section 7100.30 which indicates coverage for the periods of alleged non-compliance;

ii) a self-insurance certificate of approval covering the periods of alleged non-compliance.

D) a statement that failure to respond to the Notice of Non-Compliance within the prescribed time period shall cause the Commission to set this matter for hearing in accordance with subsection (d).

3) Informal Conference

A) When a Notice of Non-Compliance has been sent, the Commission shall, at the request of the employer or its attorney, or may on its own initiative, schedule the matter for an informal conference at which a designated representative of the Commission shall meet with the employer in an attempt to resolve the matter.

B) A request by the employer or its attorney for an informal conference must be received by the Commission within fifteen (15) days of the receipt of the Notice of Non-Compliance.

C) The Commission shall send written notice to the employer or its attorney at least seven (7) days prior to the scheduled conference.

D) The conference shall be held at a site designated by the Commission.

E) If the matter cannot be resolved at the conference, the Commission shall set the matter for hearing in accordance with subsection (d).

d) Hearings

1) Notice of Hearing; Locations

A) A matter under this Section is commenced by the Industrial Commission by service of a Notice of Hearing upon the employer at least thirty (30) days prior to the time fixed for hearing. Service of the Notice shall be by United States registered or certified mail addressed to the employer at the last known address or to the representative thereof.

B) The Notice of Hearing shall be a written statement setting forth, but not limited to, the following information:

i) the name and address of the employer;

ii) the time, date and place of hearing;

iii) the name of the Commissioner;

iv) a statement of the section of the statute alleged to be violated, periods of non-compliance and the penalty which may be imposed; and

v) a statement that failure to appear at the hearing where no continuance has been obtained prior to the hearing shall constitute a default and shall result in a finding that there has been a knowing and wilful failure of the employer to insure his liability to pay compensation in accordance with Section 4(a) of the Act or to comply with an order of the Commission under Section 4(c) and an assessment of penalties under Section 4(d) of the Act.

C) The hearing shall be set at a site designated by the assigned Commissioner.

2) Assignment

A) In all cases where the employer is principally located in Cook County, a matter to be scheduled for hearing under this Section shall be randomly assigned to a Commissioner.

B) In all other cases, a matter to be scheduled for hearing under this Section shall be assigned to the Commissioner who serves that territory within which the employer is principally located.

3) Conduct of Hearings

A) At the hearing a representative of the Commission shall have the opportunity to introduce evidence, to call and examine witnesses and to cross examine witnesses. The employer or its attorney shall be given the opportunity to show that there has been compliance with Section 4(a) or an order of the Commission under Section 4(c) or show cause why compliance has not been accomplished. The employer or its attorney shall have the opportunity to introduce evidence, to call and examine witnesses, and to cross-examine witnesses. The representative of the Commission shall have the right of rebuttal.

B) *The Commission or any member thereof shall have the power to administer oaths, to subpoena and examine witnesses, and to issue subpoena duces tecum requiring the production of such books, papers, records or documents as may be evidence to determine the issue* of non-compliance. (Section 16 of the Act.)

C) The Illinois common law rules of evidence and Article VIII of the Code of Civil Procedure (Ill. Rev. Stat., 1989, ch. 110, par. 8-101 et seq.) shall apply except to the extent they conflict with the Workers' Compensation Act, the Workers' Occupational Diseases Act, or the Rules Governing Practice Before the Industrial Commission (50 Ill. Adm. Code: Chapter II).

D) A certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 7100.30 shall be deemed prima facie evidence of that fact.

E) A certification from an employee of the Commission stating that an employer has not been approved as a self-insurer shall be deemed prima facie evidence of that fact.

e) Decision

The Commission, after the hearing is concluded, shall issue a decision which shall include:

1) the findings of the Commission;

2) where applicable, the dates of failure to insure and the amount of penalty assessed for each day;

3) the payment procedures as provided in subsection (f); and

4) a statement of the conditions for a judicial review of the Commission's decision in accordance with the requirements of 50 Ill. Adm. Code 7060.

f) Payment Procedures

Where the Commission assesses a penalty against an employer in accordance with Section 4(d) of the Workers' Compensation Act or Workers' Occupational Diseases Act, payment shall be made according to the following procedure:

1) payment of the penalty shall be made by certified check or money order made payable to the State of Illinois;

2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court on review after final adjudication to:

Illinois Industrial Commission

Fiscal Office

100 West Randolph Street

Suite 8-328

Chicago, Illinois 60601

1-312/814-6625

(Source: Added at 14 Ill. Reg. 13149, effective August 1, 1990)