**Section 9110.80 Rate Adjustment Fund and Second Injury Fund Contributions: Compliance**

a) Employers Required to Make Payments to Rate Adjustment Fund and Second Injury Fund

Any employer who shall come within the provisions of Section 3 of the Act or any employer who shall elect to provide and pay the compensation provided for in the Act and the Workers' Occupational Diseases Act [820 ILCS 310] shall pay into the Rate Adjustment Fund and the Second Injury Fund in accordance with the provisions of Section 7(f) of the Act.

b) Penalties

1) *If the Commission finds, after reasonable notice and hearing* in accordance with subsection (e), *that an employer or insurance carrier on behalf of the employer has willfully and knowingly failed to pay any obligations accruing after December 18, 1989 into the Rate Adjustment Fund or the Second Injury Fund as required by Section 7(f) of the Act or if such payments are not made within the time periods prescribed by Section 7(f) of the Act, the employer shall, in addition to such payments, pay a penalty of 20% of the amount required to be paid or $2,500, whichever is greater, for each year or part thereof of such failure to pay.* (Section 7(f) of the Act)

2) Obligations Accruing Prior to December 18, 1989

A) *Any obligations of an employer or insurance carrier to the Rate Adjustment Fund or the Second Injury Fund accruing prior to December 18, 1989 shall be paid in full by such employer within 5 years of December 18, 1989, with at least one-fifth of such obligation to be paid during each year following December 18, 1989.* (Section 7(f) of the Act)

i) Such obligations shall be paid pursuant to an agreement signed by the employer or by the insurance carrier on behalf of the insured employer.

ii) The agreement shall include the amount of the obligation and the date each payment is due.

B) *If the Commission finds, after reasonable notice and hearing* in accordance with subsection (e), *that an employer or insurance carrier has failed to make timely payments of any obligation accruing* under subsection (b)(2)(A), *the employer shall, in addition to all other payments required, be liable for a penalty equal to 20% of the overdue obligation or $2,500, whichever is greater, for each year or part thereof, that the obligation is overdue.* (Section 7(f) of the Act)

3) *The Commission may for good cause shown waive all or part of any penalty assessed.* The decisions of the Commission under Section 7(f) of the Act shall serve as precedents in determining good cause.

c) Verification of Amounts Paid by Employers into the Rate Adjustment Fund and Second Injury Fund

1) *The Chairman shall* by May 1 of each year *furnish to the Director of the Illinois Department of Insurance a list of the amounts paid into the Second Injury Fund and the Rate Adjustment Fund by each insurance company on behalf of their insured employers. The Director shall verify to the Chairman* on or before September 1 of each year *that the amounts paid by each insurance company are accurate as best as the Director can determine from the records available to the Director.*

2) *The Chairman shall verify that the amounts paid by each self-insurer are accurate as best as the Chairman can determine from records available to the Chairman.* (Section 7(f) of the Act) The Chairman may, upon written notice, require that each self-insurer provide the following:

A) *Information* on forms provided by the Commission *concerning the total compensation payments made upon which contributions to the Rate Adjustment Fund and Second Injury Fund are predicated, and*

B) *Any additional information establishing that payments have been made into the Rate Adjustment Fund and the Second Injury Fund.* (Section 7(f) of the Act) Such additional information shall include, but not be limited to, cancelled checks or other proof of payment.

3) Any information requested under subsection (c)(2) shall be provided to the Commission by the self-insurer within 30 calendar days after the date of the notice.

d) Notice of Deficiency – Informal Conference

1) Notice of Deficiency

A) When the records of the Commission or the Department of Insurance show that a deficiency exists regarding payment into the Rate Adjustment Fund or the Second Injury Fund, the Commission shall give notice of the deficiency to the insurance carrier or the self-insured employer. Service of the Notice of Deficiency shall be by United States registered or certified mail, addressed to the insurance company or the self-insured employer at the last known address, or to a representative thereof, and to the State Treasurer as ex-officio Custodian of the Rate Adjustment Fund and the Second Injury Fund.

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

i) the name and address of the insurance carrier, or the self-insured employer or representative;

ii) a statement of the statute alleged to be violated, the dates of non-payment or underpayment, the amount of deficiency and the penalty that may be imposed;

iii) a statement that the self-insured employer or insurance carrier must cure the deficiency or otherwise respond in writing within 30 calendar days after the receipt of the Notice of Deficiency; and

iv) a statement that the failure to respond to a Notice of Deficiency within the prescribed time period shall cause the Commission to set the matter for hearing in accordance with subsection (e).

2) Informal Conference

A) When a Notice of Deficiency has been sent, the Commission may, at the request of the self-insured employer or insurance carrier, or on its own initiative, schedule the matter for an informal conference at which a designated representative of the Commission shall meet with the self-insured employer or the insurance carrier in an attempt to resolve the matter. An informal conference will not be scheduled when the self-insured employer or the insurance carrier cures the deficiency within 30 calendar days after receipt of the Notice of Deficiency.

B) A request by the self-insured employer or the insurance carrier for an informal conference shall be included in the response to the Notice of Deficiency.

C) The Commission shall send written notice of the time and place of the conference to the self-insured employer or the insurance carrier and State Treasurer as ex-officio Custodian of the Rate Adjustment Fund and the Second Injury Fund at least 15 calendar 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 (e).

e) Hearings

1) Notice of Hearing – Locations

A) Any matter under this Section is commenced by the Commission by serving a Notice of Hearing upon the insurance carrier or self-insured employer, and the State Treasurer as ex-officio Custodian of the Rate Adjustment Fund and the Second Injury Fund. Notice of Hearing shall be given at least 30 calendar days prior to the time fixed for hearing. Service of the Notice of Hearing shall be by United States registered or certified mail, addressed to the insurance carrier or the self-insured employer at the last known address, or to a representative thereof, and to the State Treasurer as ex-officio Custodian of the Rate Adjustment Fund and the Second Injury Fund.

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 insurance carrier or self-insured employer;

ii) the time, date and place of hearing;

iii) the name of the hearing Commissioner;

iv) a statement of the statute alleged to be violated and the penalty that may be imposed;

v) a statement of the amount of the deficiency and the dates of non-payment or underpayment;

vi) a statement that failure to appear at the hearing, when no continuance has been obtained from the Commissioner prior to the hearing, shall constitute a default and will result in a finding that there has been a willful and knowing failure to comply with Section 7(f) of the Act, and an assessment of penalties.

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

2) Assignment

A) In cases in which 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 a Commissioner who serves the territory within which the employer is principally located.

3) Conduct of Hearings

A) A representative of the Commission shall have the opportunity to introduce evidence, to call and examine witnesses, and to cross-examine witnesses. The records of the Commission and the Department of Insurance regarding deficiency in payment shall be considered prima facie evidence of failure to comply with Section 7(f) of the Act.

B) At the hearing, the insurance carrier or self-insured employer, or its attorney, shall be given the opportunity to rebut the evidence of deficiency.

C) Any party, including the State Treasurer as ex-officio Custodian of the Rate Adjustment Fund and the Second Injury Fund, shall have the right to introduce evidence, to call and examine witnesses and to cross-examine witnesses. The representative of the Commission shall have the right of rebuttal.

D) *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)

E) The Illinois Rules of Evidence and Article VIII of the Code of Civil Procedure [735 ILCS 5/Art. VIII] shall apply at the hearing except to the extent they conflict with the Act, the Workers' Occupational Diseases Act [820 ILCS 310], and the Rules governing practice before the Illinois Workers' Compensation Commission (50 Ill. Adm. Code 9010 through 9500).

f) Decision

The Commission, after the hearing is concluded, shall issue a decision in accordance with Section 7(f) of the Act, which shall include:

1) the findings of the Commission;

2) when applicable, the amount of the penalty assessed and the basis for the amount;

3) the payment procedures provided in subsection (g);

4) a statement of the conditions for a judicial review of the Commission decision in accordance with the requirement of 50 Ill. Adm. Code 9060.

g) Payment Procedure

When the Commission assesses a penalty against an employer in accordance with Section 7(f) of the 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 30 calendar days after issuance of the final order of the Commission or the order of the court on review after final adjudication to:

Illinois Workers' Compensation Commission

Fiscal Office

69 West Washington Street

Suite 900

Chicago, Illinois 60602

(312) 814-6500

(Source: Amended at 47 Ill. Reg. 6186, effective April 13, 2023)