



**GALFAND
BERGER
LLP**

LAW OFFICES

1818 MARKET STREET
SUITE 2300
PHILADELPHIA, PA 19103
www.galfandberger.com
FAX: (215) 564-2262
TEL: (215) 665-1600

Original: 2484

July 29, 2005

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AUG - 2 2005

Director's Office
Bureau of Workers' Comp.

John Kupchinsky, Bureau Director
Bureau of Workers' Compensation
Department of Labor and Industry
Chapter 121 Regulations - Comments
P.O. Box 15121
Harrisburg, PA 17105

RE: Proposed Rules on Workers' Compensation

Dear Director Kupchinsky:

I reviewed the proposed rules. I have the following comments:

Rule 121.1(b)(ii) – The Proposed Amendment expands the definition of “employer” to include the insurer. I believe such a definition conflicts with the Commonwealth Court decision in Kramer v. WCAB (Rite Aid) 2002 Pa.WCLR Lexis 51 (February 2002). In Kramer the Court specifically limited the right to take a credit for severance payments only to those employers which were also making payment of compensation benefits. By incorporating the insurer into the definition of employer the Rule either invalidates or unnecessarily complicates the issue of whether the carrier can take a credit without actually being the employer.

Rule 121.17(d) – This Rule indicates the employer may stop payment of Temporary compensation within five days of the last payment ... I believe it should be made more clear that under Section 406.1(d)(2)(ii) stopping payment of compensation is proper only if such notice is given within five days and assuming the payment of compensation has not extended beyond ninety days. If payment is made for more than ninety days the employer does not have the right to stop payment of compensation even if such notice is given within five days from the date of last payment.

I hope you find these suggestions/comments useful.

Very truly yours,

MARC S. JACOBS

LEGAL DIVISION
BUREAU OF WORKERS' COMP

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READING OFFICE:
501 WASHINGTON STREET
SUITE 201
READING, PA 19601
TEL: (610) 376-1696

NEW JERSEY OFFICE:
THE ARATE BUILDING
300 SUNSET ROAD
SUITE 308
BURLINGTON, NJ 08016
FAX: (609) 747-1521
TEL: (609) 747-1519