

**Kupchinsky, John**

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**From:** Seelig, Todd  
**Sent:** Friday, August 05, 2005 5:12 PM  
**To:** Kupchinsky, John; Wunsch, Eileen  
**Cc:** Cicola, David  
**Subject:** Comments of Proposed Rulemaking, Chapter 123 and 121

Dear John and Eileen:

As you may know, the Pennsylvania Workers' Compensation Judges have an Association known as the Pennsylvania Workers' Compensation Judges' Association (PWCJPA). A majority of the approximate 90 WCJs are members. We have polled our members to see if there were any comments on these regulations. Pursuant to the Pennsylvania Bulletin, I am submitting written comments to the proposed regulations.

**34 Pa. Code 123:**

Proposed Regulation 123.203. This proposed regulation received the most comments from our members. Several judges were concerned whether there was statutory authority to support the Regulation, specifically 123.203(c).

Proposed Regulation 123.204(a). There was a comment expressed that the regulation did not specify "when" the disclosure must be made to allow the WCJ to determine if the regulation has been complied with. Perhaps Proposed regulation 123.204(a) should begin with the word, "Before", as does 123.205(b).

Proposed Regulation 123.204(b). There was a comment that this section should also contain a provision as to when a copy of the report must be sent to the employee. At this point, the Rules of Administrative Practice and Procedure before WCJs would seem to be the only source for this information which apply after litigation has already started. The WCJ Rules require disclosure at the first hearing in a litigated modification or suspension petition. The Commonwealth Court has seemed concerned with when the Claimant receives this information to allow Claimant to actually "follow up" on the job. Perhaps a regulation would be useful to the WCJs and Appellate Courts on this issue.

**34 Pa. Code 121**

Proposed Regulation 121.3b(b)(3). There was a comment made that the proposed regulation should include in the "posted information" when the employer must provide this notice (i.e., both at the time of hire and at the time of injury). This would hopefully aid in giving both employers and employees more information of what is required. This is often an issue in litigation.

Thank you for your attention to these comments.

Judge Todd B. Seelig  
President, PWCJPA