

4123-3-34 Settlement of state fund claims.

(A) The procedures of this rule shall apply to the settlement of state fund injury and occupational disease claims.

(B) The employer or the claimant shall file an application for approval of settlement agreement on the appropriate form with the administrator of workers' compensation. Each application shall include the signature of the claimant and the employer, except as follows:

(1) A claimant may file an application without an employer's signature in the following situations:

(a) The employer is no longer doing business in Ohio;

(b) The claim no longer is in the employer's industrial accident or occupational disease experience as provided in division (B) of section 4123.34 of the Revised Code and the claimant no longer is employed with that employer; or,

(c) The employer has failed to comply with section 4123.35 of the Revised Code.

(2) If a claimant files an application without an employer's signature, and the employer still is doing business in this state, the bureau shall send written notice of the application to the employer immediately upon receipt of the application. If the employer fails to respond to the notice within thirty days after the notice is sent, the application need not contain the employer's signature.

(C) Each settlement application shall:

(1) Include a list of the claim numbers and body parts affected in all claims filed by the claimant with the administrator of workers' compensation or the industrial commission.

(2) Set forth the reason the proposed full and final settlement is deemed desirable by the claimant and state the amount of the requested settlement.

(D) Settlement applications filed for lost time claims shall be filed in the service office responsible for processing the claim. Settlement applications for medical only claims shall be filed with the medical claims department.

(E) Settlement may be requested for a portion of a claim, one or more claims, or a combination of claims, provided that the claimant is not required to enter into a settlement agreement for every claim that has been filed with the bureau by the claimant.

(F) The administrator shall utilize whatever methods the administrator determines to be appropriate, consistent with general insurance principles, to evaluate a claim for settlement. When a settlement agreement has been approved by the administrator, a notice of approval shall be sent to the claimant, the employer, and their representatives, informing them of their rights to withdraw consent to the settlement agreement within thirty days. If written notice of the withdrawal of consent is not filed within the thirty day period, the settlement agreement is final.

An injured worker's refusal to endorse a settlement check issued as a result of an agreement reached pursuant to these procedures does not alter the finality of the settlement. The administrator may reopen a settled claim for purposes of conducting a fraud investigation.

(G) The administrator shall also send the notice of approval to the industrial commission within five days from the date of the bureau order of approval. The staff hearing officer shall determine, within the time set forth in paragraph (F) of this rule, whether the settlement agreement is or is not a gross miscarriage of justice. If the staff hearing officer determines within that time period that the settlement agreement is clearly unfair, the staff hearing officer shall issue an order disapproving the settlement agreement. If the staff hearing officer determines that the settlement agreement is not clearly unfair, or fails to act within the time limits, the settlement agreement is approved.

(H) The effective date of the settlement is the date the notice of approval of settlement agreement is mailed. Once the thirty day waiting period has passed as set forth in paragraphs (F) and (G) of this rule, the agreed settlement shall be final and cannot be appealed to the industrial commission or to court.

(I) When a settlement application is filed in a claim in which an application for violation of specific safety requirement has been granted or is pending, the administrator shall refer the claim to the industrial commission for disposition of the application for violation of the specific safety requirement. If the application for the specific safety requirement has been granted and the employer is no longer doing business, or is otherwise not making the payments required by any award for violation of any specific safety requirement, the administrator may approve a final settlement without referring the claim to the industrial commission, provided the administrator identifies any settlement amounts that may be attributed to the award for violation of specific safety requirement. The administrator need not refer to the industrial commission any claim in which the injured worker has voluntarily withdrawn an application for violation of a specific safety requirement, provided no portion of the settlement amount is attributed to any violation of a specific safety requirement.

(J) The administrator may offset settlement amounts due the claimant by overpayments owed by the claimant or, where the claimant is also an employer, unpaid premiums owed by a claimant, as the administrator determines appropriate.

(K) The representative's signature for either the claimant or the employer satisfies the requirements for paragraphs (B) and (C) of this rule.

(L) A settled claim may be used as a defense to a claim for the same or similar conditions. A self-insuring employer shall not settle disabled workers' relief fund liability in state fund claims without the administrator's approval.

Effective: 2/16/07

Prior Effective Date: 7/12/99