

STATEMENTS OF POLICY

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 123]

Uninsured Employer Guaranty Fund

The Department of Labor and Industry (Department), Bureau of Workers' Compensation, adds Chapter 123, Subchapter I (relating to Uninsured Employer Guaranty Fund—statement of policy) to read as set forth in Annex A. This statement of policy provides guidance regarding Article XVI of the Workers' Compensation Act (act) (77 P. S. §§ —), as amended by the act of November 9, 2006 (P. L. 1362, No. 147) (Act 147). Article XVI of the act, as amended by Act 147, became effective January 8, 2007.

A. Effective Date

This statement of policy will be effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

Interested parties may obtain further information and provide comments regarding this statement of policy by writing to John T. Kupchinsky, Director, Bureau of Workers' Compensation, P. O. Box 15121, Harrisburg, PA 17105-5121. This statement of policy will also be available on the Department's website at www.dli.state.pa.us.

C. Statutory Authority

This statement of policy is issued under the authority of section 435 of the act (77 P. S. § 991), which authorizes the Department to adopt regulations that are reasonably calculated to explain and enforce the provisions of the act. Section 435 of the act charges the Department with promulgating rules and regulations that are reasonably calculated to expedite the reporting and processing of injury cases; insure full payment of compensation when due; expedite the hearing and determination of claims for compensation; and provide notice to disabled employees of their rights under the act. In addition, section 1608 of the act (77 P. S. § —), as amended by Act 147, specifically authorizes the Department to promulgate regulations for the administration and enforcement of Article XVI of the act.

D. Purpose

On November 9, 2006, Governor Edward G. Rendell signed Act 147 into law. Pertinently, Act 147 added Article XVI to the act. Article XVI establishes and funds the Uninsured Employer Guaranty Fund (Fund), which provides benefits to injured employees of uninsured employers. Article XVI of the act requires that an injured worker notify the Fund within 45 days after the injured worker knew that the employer was uninsured. Further, Act 147 prohibits an injured worker from filing a claim petition against the Fund until at least 21 days after notice of a claim is made to the Fund.

This statement of policy does not constitute a rule or regulation with the force and effect of law. This statement of policy is issued so that all parties will have a clear

understanding of their rights and obligations under Article XVI of the act. The Department intends to promulgate regulations for this purpose as soon as practical.

STEPHEN M. SCHMERIN,
Secretary

(*Editor's Note:* Title 34 of the Pa. Code is amended by adding a statement of policy in §§ 123.801—123.805 to read as set forth in Annex A.)

Fiscal Note: 12-80. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VIII. BUREAU OF WORKERS' COMPENSATION

CHAPTER 123. GENERAL PROVISIONS—PART II

Subchapter I. UNINSURED EMPLOYER GUARANTY FUND—STATEMENT OF POLICY

Sec.

123.801. Uninsured Employer Guaranty Fund.

123.802. Notice to the Uninsured Employer Guaranty Fund.

123.803. Prerequisites for filing claim petition for benefits from Fund.

123.804. Filing of claim petition for benefits from the Fund.

123.805. Rights of Fund.

§ 123.801. Uninsured Employer Guaranty Fund.

The Department of Labor and Industry (Department) adopts this statement of policy so that all parties will have a clear understanding of their rights and obligations under the act, as amended by Act 147 of 2006 (P. L. 1362, No. 147) (Act 147). This subchapter does not constitute a rule or regulation with the force and effect of law. The Department intends to promulgate regulations for this purpose as soon as practicable.

§ 123.802. Notice to the Uninsured Employer Guaranty Fund.

(a) For purposes of Article XVI of the act (77 P. S. §§ —), an injured worker who seeks benefits from the Uninsured Employer Guaranty Fund (Fund) shall notify the Fund of a claim within 45 days from the date upon which the injured worker knew that the employer was uninsured.

(b) Compensation will not be paid from the Fund until notice is given.

(c) Notice to the Fund shall consist of completing and mailing the form designated as "Notice of Claim Against Uninsured Employer" (Notice) to the Department of Labor and Industry (Department) at the address listed on the form. The Department may reject any incomplete Notice.

(d) The Notice will be deemed filed as of the date of the Notice's deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid. If a United States Postal Service Postmark is not present, the date of the Department's actual receipt of the Notice is the filing date.

§ 123.803. Prerequisites for filing claim petition for benefits from Fund.

(a) Upon the filing of a completed "Notice of Claim Against Uninsured Employer" (Notice), the Uninsured Employer Guaranty Fund (Fund) will determine whether it will commence making payments.

(b) An injured worker may not seek an award against the Fund unless the worker completes and files the form designated as the "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund."

(c) A "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund" may not be filed until at least 21 days after the injured worker filed the Notice as required in § 123.802 (relating to notice to the Uninsured Employer Guaranty Fund).

(d) A completed "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund" will be deemed filed upon the later of either of the following:

(1) The date of the petition's deposit in the United States Mail, as evidenced by a United States Postal Service postmark, properly addressed, with postage or charges prepaid; or, if no United States Postal Service Postmark is present, as of the Department's receipt of the petition.

(2) Twenty-one days after the filing of the Notice identified in § 123.802.

(e) The Department may reject any incomplete petition.

§ 123.804. Filing of claim petition for benefits from the Fund.

(a) If an injured worker attempts to file a "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund" before filing the "Notice of Claim Against

Uninsured Employer" (Notice) required under § 123.802 (relating to notice to the Uninsured Employer Guaranty Fund), the Department will return the petition to the injured worker and instruct the worker to complete a Notice.

(b) A Claim Petition for Workers' Compensation (LIBC—362) filed against an employer may not act as a claim against the Uninsured Employer Guaranty Fund (Fund) or be deemed notice to the Fund.

(c) An injured worker seeking an award of benefits from the Fund shall file the "Claim Petition for Benefits from the Uninsured Employer Guaranty Fund" with the Bureau and shall serve the Fund and the alleged employer at the addresses identified on the petition. The Fund is not required to answer a petition which does not conform to this section.

§ 123.805. Rights of Fund.

The Uninsured Employer Guaranty Fund (Fund) is not prejudiced by an agreement, admission or stipulation concerning the compensability, facts or legal conclusions relating to an injury underlying a claim against the Fund unless the Fund is a party to and specifically endorses the agreement, admission or stipulation.

[Pa.B. Doc. No. 07-86. Filed for public inspection January 19, 2007, 9:00 a.m.]