

## **RULES AND REGULATIONS FOR COORDINATION OF BENEFITS**

The Director proposes the following rules and regulations for the coordination of benefits, pursuant to R.I.G.L. section 28-33-45.

### DEPARTMENT OF LABOR RULES

1. The employer, upon notice of retirement by an employee being compensated under the Workers' Compensation Act for an injury occurring on or after May 18, 1992, shall provide the employee with a form entitled, Employee's Retirement Benefits Report (DWC-36), prescribed by the Department of Labor. The employer shall also send notice of employee's retirement to the insurer.
2. The employer shall assist the employee in preparing the form, listing all retirement benefits for which the employee is eligible.
3. The completed form shall be notarized, and constitutes an affidavit by the employee that the information requested has been supplied and is correct to the best of the employee's knowledge.
4. The employer shall send the original completed form to the insurer and a copy of the completed form to the Department of Labor. Both forms should be sent by certified mail, return receipt requested, within ten (10) calendar days from the date of notice of retirement.
5. The insurer or self-insured employer shall prepare a form entitled, Coordination of Benefits (DWC-37). In determining the amount of offset, the following must be considered.
  - A. Determine whether there exists any social security disability benefits to be offset against workers' compensation awards pursuant to 42 USCS section 424(a). (The Social Security Administration provides information regarding offset of social security disability benefits and workers' compensation benefits.)
  - B. Determine whether the R.I.G.L. section 28-33-45 offset provisions are applicable to the employee. Subsection (b) exempts certain employees from this offset provision based on the date of injury, the date of retirement, and the age of the employee collecting retirement and workers' compensation benefits.
  - C. If the employee is not exempt from R.I.G.L. section 28-33-45 offset provision, then retirement benefits and workers' compensation should be calculated using the following restrictions:
    1. Retirement benefits contributed exclusively by the employee and earnings on employee contributions shall be excluded.
    2. No compensation is paid after retirement for injuries occurring within two (2) years of retirement.
6. The insurer or self-insured employer will notify the employee of the amount of offset, which will be taken against the employee's compensation. This

notice will be on a form entitled, Coordination of Benefits (DWC-37), prescribed by the Department of Labor and will be sent to the employee within ten (10) days of Receipt of Employee's Retirement Benefits Report by certified mail, return receipt requested. A duplicate of this form shall be filed with the Department of Labor at the time the original is sent to the employee.

7. In the event that a dispute exists regarding offsets, jurisdiction lies in the first instance with the Department of Labor. The employee may choose to have the Director hear and determine the controversy pursuant to R.I.G.L. section 28-33-47.
8. The Director, or the Director's designee, shall serve notice within ten (10) days upon receipt of employee's Request for Review of Coordination of Benefits form (DWC-38) according to the following procedures:
  - i. Persons entitled to notice of hearing before the Director or the Director's designee shall be timely informed of:
    - (1) the time, place, and nature of the hearing
    - (2) the legal authority and jurisdiction under which the hearing is to be held; and
    - (3) a short and plain statement of the matters inserted. The initial notice may be limited to a statement of the issues involved and detailed statement shall be furnished.

In fixing the time for hearings, due regard shall be given to the convenience and necessity of the parties or their representatives within the time constraints provided by the Workers' Compensation Act and these Rules and Regulations.

- ii. The Director shall give all interested parties opportunity for:
    - (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time and the public interest permit; and
    - (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with these Rules and Regulations as promulgated herein.
  - iii. A person compelled to appear in person in a hearing before the Director or the Director's designee is entitled to be represented and advised by counsel.
9. The Order of the Director is final. An aggrieved party may seek review of a final order by filing a complaint in the Workers' Compensation Court pursuant to R.I.G.L. section 28-30-1.