



CDSS

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GOVERNOR

April 23, 2012

ALL COUNTY LETTER NO. 12-15

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY WELFARE-TO-WORK COORDINATORS

SUBJECT: CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS (CalWORKs): GUIDELINES REGARDING WORKERS' COMPENSATION INSURANCE COVERAGE FOR PARTICIPANTS IN SUBSIDIZED EMPLOYMENT PROGRAMS

REFERENCES: ALL-COUNTY LETTERS (ACL) 00-14, 10-43, 11-17, 11-32, and 11-58; ALL COUNTY INFORMATION NOTICE (ACIN) I-31-10; GOVERNMENT CODE SECTION 12928

The purpose of this letter is to provide counties with clarifying guidance regarding workers' compensation (WC) coverage for CalWORKs subsidized employment (SE) program participants.

Background

In recent years, SE programs have greatly expanded opportunities for CalWORKs welfare-to-work (WTW) participants. In 2008, Assembly Bill (AB) 98 (Chapter 589, Statutes of 2007) was enacted, which provided additional funding for SE programs. In addition, the American Recovery and Reinvestment Act of 2009 introduced the Temporary Assistance for Needy Families (TANF) Emergency Contingency Fund (ECF), which allowed counties the opportunity to expand their CalWORKs SE programs. Although highly successful, the TANF ECF program ended in September 2010.

Through the passage of Senate Bill 72 (Chapter 8, Statutes of 2011), the AB 98 SE program has been expanded. As a result, there is significant interest among counties to maintain, expand, or start SE programs. Depending on the manner in which counties implement SE programs, multiple entities may be involved in placing, employing, and compensating SE participants. In this context, questions have arisen as

to which entity must provide WC coverage. In addition, the California Department of Social Services (CDSS) contracts with the State Compensation Insurance Fund (SCIF) to administer WC benefits to some CalWORKs WTW participants, which in some circumstances may include individuals participating in SE programs. Therefore, this letter provides counties with guidance to help structure their SE programs and ensure successful outcomes for both the clients and participating employers. For information regarding how to make WC claims to the state's contract with SCIF, please refer to ACL 11-17.

Definition of Employer /Employer of Record

"Employer" is described by Government Code section 12928 as "any person or entity identified as the employer on the employee's Federal Form W-2 (Wage and Tax Statement)." For the purposes of CalWORKs SE, the term "employer of record" would be defined as the entity or agency held responsible for paying wages and taxes for the SE program participant. Generally, the entity responsible for wages and tax withholding is required to provide WC coverage for SE participants. The following guidelines are to assist counties to ensure that the appropriate party is providing WC coverage.

When to Use CDSS' Contract with SCIF for Workers' Compensation Claims

CDSS has stated previously in ACIN I-31-10 and ACL 10-43 that the SCIF contract for WC coverage has a limited amount of funding, though historically CDSS has had sufficient WC funding for the WTW program. These letters also stated that the SCIF contract should only be used if paying for this coverage is identified as being a barrier for an employer in offering SE. However, upon closer review of the agreement with SCIF and verification of WC regulations, CDSS has determined that county welfare departments (CWD) shall only access the state contract when they are the employer of record. Therefore, ACIN I-31-10 and ACL 10-43 language limiting access to the SCIF contract as stated above is superseded by the guidelines in this ACL, as discussed in the examples below.

Examples of Responsible Parties for WC Coverage

Below are examples of when the county, an employment agency, or a third-party employer is responsible for WC for some types of placements:

- If the CWD is the employer of record for a SE participant, then the CWD is responsible for WC coverage, which can be provided by CDSS' SCIF contract. The CWD also has the discretion to use its own CalWORKs WC coverage fund for SE participants.

- If the CWD places a SE participant with another county department (e.g. parks and recreation) or another government agency (e.g. federal government), which is determined to be the employer of record, then that county department or government agency is responsible for WC coverage.
- If an employment agency—e.g. a workforce investment board (WIB) or a for-profit employment agency—places a SE participant with a third-party employer, yet the WIB or employment agency is the employer of record, then the WIB or employment agency is responsible for WC coverage for the participant.
- If the CWD, WIB, or employment agency places a SE participant with a third-party employer, which is the employer of record, then the third-party employer is responsible for WC coverage for the participant.

When the employer of record is other than the CWD, it is the CWD's option whether or not to reimburse the employer of record for WC premiums. As stated in ACL 11-32, CWDs may be able to claim certain non-wage costs such as workers' compensation under AB 98 or use their single allocation funds.

If you have workers' compensation or subsidized employment policy questions, please contact your CDSS Employment Bureau County Consultant at (916) 654-2137. Please direct fiscal policy or claiming questions to the Fiscal Systems Bureau's electronic mailbox at fiscal.systems@dss.ca.gov.

Sincerely,

Original Document Signed By:

TODD R. BLAND
Deputy Director
Welfare to Work Division

c: CWDA