

Timing is Everything with Settlement Checks

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After settlement is reached, too often the issuance of settlement checks can fall off our radar. The timeliness of settlement checks is the most important remaining issue in a workers' compensation claim, especially since failing to comply with the North Carolina Statute can subject the carrier to significant penalties by the Industrial Commission.

In other areas of law, it is common practice for the proceeds of a settlement to be paid after the parties have executed the settlement agreement and the party seeking relief has dismissed their claim. In North Carolina, the timing of settlement checks is based on the date the Compromise Settlement Agreement is approved by the Industrial Commission. Under N.C. Gen. Stat. § 97-17(a), all Compromise Settlement Agreements must be approved by the Industrial Commission.

After receiving the Industrial Commission's Order approving settlement, N.C. Gen. Stat. § 97-18(e) states that the settlement compensation is due within 10 days. Unlike an Opinion and Award that orders the carrier to pay indemnity benefits to the claimant, an Order approving a Compromise Settlement Agreement is not appealable. N. C. Gen. Stat. §97-17(a) provides that "No party to any agreement for compensation approved by the Commission shall deny the truth of the matters contained in the settlement agreement unless the party is able to show to the satisfaction of the Commission that there has been an error due to fraud, misrepresentation, undue influence or mutual mistake, in which case the Commission may set aside the agreement." Unless the party can prove fraud, misrepresentation, undue influence or mutual mistake, "the decision of the Commission to approve a settlement agreement is final and is not subject to review or collateral attack."

So, the proceeds from a lump sum settlement are due and payable within 10 days from the date of the Order approving the settlement agreement. However, the carrier has an additional "grace period" to issue payment. N.C. Gen. Stat. §97-18(g) provides a grace period of an additional 14 days for the payment of compensation. If the payment is not made within this grace period, then the statute requires the Industrial Commission to assess a 10% penalty on the total amount owed under the settlement. This is a mandatory penalty. The only way the carrier can be excused from paying this additional 10% penalty is if there were conditions over which he had no control such that the lump sum settlement could not be paid. For example, if the carrier never received a copy of the Order approving the settlement agreement, then the Industrial Commission may find that this circumstance excuses the late payment.

So, these statutes, when read together, hold that the proceeds from a Compromise Settlement Agreement must be paid to the Plaintiff within 24 days following the date the settlement is approved by the Industrial Commission to be timely and avoid any assessment of a penalty. If the end of this 24 day period falls on a Saturday, Sunday, or legal holiday, for purposes of computing time period prescribed by Workers' Compensation Act, the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday.

A common question is whether the Plaintiff must actually receive the payment within the 24 days to avoid the imposition of the 10% penalty. In North Carolina, the mailing of the payment within the 24 day period of time is sufficient to avoid the imposition of a late payment penalty. This is known as the "mailbox" rule, meaning that the payment is made once it is placed in the mail. This rule can raise some issues due to changes in technology. In today's world, settlement checks are almost exclusively issued electronically. As a result, even if a check is issued in the carrier's computer system, many times the check will not be mailed until the next business day. This could subject the carrier to a penalty if issued on the last day of the 24 day time period. Also, a carrier could have an incorrect address in its system and there are times when settlement checks are lost in the mail. However, if the carrier can prove that the payment was mailed within the 24 day period to the correct address, then this should protect the carrier from being subject to a penalty.

Finally, after the payment has been issued, the carrier has one more obligation under the *North Carolina Workers' Compensation Act*. The carrier should file a Form 28C with the Industrial Commission noting the total amount of benefits paid, the amount of the settlement, and the date on which the settlement check was mailed to the claimant. This form is for statistical purposes, but also helps prove that payment was timely issued in the event Plaintiff seeks a penalty. A final practice tip is to confirm that the claimant received and cashed the settlement check. At that point, the file should be ready for closure.

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