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A REFRESHER REGARDING NOTICES OF INTENTION TO DISCONTINUE BENEFITS

By James (Fritz) Hauschild

A Notice of Intention to Discontinue Benefits, commonly referred to by its abbreviation, NOID, is a form that **must** be served upon **all interested parties**, including counsel, and filed with the Department of Labor and Industry. A NOID must be served and filed when, pursuant to Minn. Stat. §176.238, an employer and insurer seek to discontinue, suspend, or modify benefits being paid to an employee. Common reasons for serving and filing a NOID include discontinuing temporary total disability benefits due to a return to work, maximum medical improvement, discontinuing or reducing temporary partial disability benefits because of a return to full or increased wages, and being released to return to work without restrictions.

NOIDs must contain substantially the following:

1. Information identifying the employee, employer/insurer and any adjusting company;
2. The date of injury or disease;
3. Claim number or codes;
4. Type of benefit being reduced or discontinued;
5. The legal reason or grounds for the proposed discontinuance or reduction;
6. The effective date of discontinuance;
7. Information regarding benefits previously paid;
8. Information regarding attorney fees;
9. The date the Notice was served on the employee and the employee's attorney;
10. Verification and information identifying the person making the proposal to discontinue benefits;
11. Instructions to the employee, including who to contact for more information and how to request a conference of hearing;
12. Copies of relevant medical reports; and
13. Copies of any other relevant documents.

Significantly, if a legal reason or grounds for a proposed discontinuance or reduction is not mentioned in the NOID and/or attached to a NOID, it cannot be argued in support of the discontinuance or reduction at an Administrative Conference regarding the disputed discontinuance or reduction.

Technical deficiencies in notice (e.g., failure to serve the employee with a formal NOID) are not necessarily fatal to discontinuance as long as the Employee had adequate notice of the intent and basis for the discontinuance (e.g., the employer and insurer notified the employee via other means). However, employers and insurers are in a far better position to argue the merits of the discontinuance when there is no technical deficiency in notice. Some judges will not hear merits-based arguments when there is a technical deficiency. Similarly, although failure to attach a medical report (e.g., Independent Medical Examination report) in support of a proposed discontinuance is not fatally defective pursuant to case law, it is statutorily deficient, and some judges are unwilling to look past the statutory deficiency and hear merits-based arguments based upon the IME

report.

One thing to keep in mind is that the NOID is your pleading. If you notice an issue with your NOID after it has been filed, you can always withdraw it and re-serve/file it correctly. Of course, you may need to reinstate benefits (if, for example, you are discontinuing TTD benefits via the NOID) for the period of time up until you re-serve/file the NOID. However, that is often preferable to going to a .239/NOID Conference where the NOID is deficient.

If you are considering discontinuing, suspending, or modifying workers' compensation benefits being paid to an employee, please be sure to serve and file the NOID correctly. Include all legal reasons or grounds for the proposed discontinuance, suspension, or modification and attach any supporting documentation as an exhibit.

Please do not hesitate to contact me or any of my colleagues at Brown and Carlson with any questions you may have regarding NOIDs. We are always happy to help with NOIDs and any other workers' compensation issues you may have.

Thank you.

James (Fritz) Hauschild

James (Fritz) Hauschild
763-252-6362
fhauschild@brownandcarlson.com



Visit our Website

Brown & Carlson, P.A.
300 Highway 169 S.,#500
Minneapolis, MN 55426-1113
763-591-9950
F: 763-591-9202