

STATE OF CALIFORNIA
Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105

BULLETIN NO. 2005-3
June 9, 2005

TO: ALL DOMESTIC WORKERS' COMPENSATION INSURERS

SUBJECT: CESSATION of FACT-FINDING and DECISIONS on WORKER STATUS AND EMPLOYEE EXEMPTION ISSUES

Please take notice that effective from this date forward, the Insurance Commissioner and/or his designees, including the Administrative Law Judges of the Department of Insurance Administrative Hearing Bureau, will no longer hear issues pertaining to employee exemptions under Labor Code sections 3351 or 3352, or worker status as employee or independent contractor that are raised in workers' compensation appeals filed pursuant to Insurance Code section 11737 subsection (f), section 11752.6 subsection (c) and section 11753.1 subsections (a) and (b). However, all issues in those cases in which live testimony has already been admitted as of this date will be decided.

Whether a worker is an employee for workers' compensation purposes or whether an employee is exempt from workers' compensation coverage under the applicable provisions of the Labor Code are not questions that need to be submitted initially to Department of Insurance administrative review. Indeed, the courts have made it clear that their review of any such administrative decision would be respectful but not deferential. (*State Compensation Ins. Fund v. Brown* (1995) 32 Cal.App.4th 188, 199.) Thus, an initial fact-finding and decision by the Commissioner may actually slow the final determination of these issues to the detriment of workers, policyholders and insurers. Moreover, since worker status and employee exemption issues also are within the purview of the divisions of the Department of Industrial Relations and the Labor and Workforce Development Agency, cessation by the Department of Insurance of fact-finding and decision in these two areas will diminish the number of potentially inconsistent decisions from sister agencies.

Accordingly, the Administrative Hearing Bureau is instructed to close those appeals that are pending but in which no live testimony has been taken, and that raise as an initial matter worker status and/or employee exemption. The Commissioner will continue to conduct hearings and make factual findings and determinations with respect to all other issues properly raised on appeal pursuant to Insurance Code section 11737 subsection (f), section 11752.6 subsection (c) and section 11753.1 subsections (a) and (b).

Insurers and the Worker's Compensation Insurance Rating Bureau are directed to change form letters, decision letters, and training manuals in keeping with this bulletin. Policyholders should not be led to believe that the Administrative Hearing Bureau of the Department of Insurance will provide a forum for the resolution of employee status or employee exemption issues.



JOHN GARAMENDI
INSURANCE COMMISSIONER