ORIGINAL

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

FILED

OCT 7 2009

ADMINISTRATIVE HEARING BUREAU

In the Matter of the Appeal of	)	
	)	
READYLINK HEALTHCARE, INC.,	)	
	)	
Appellant,	)	FILE AHB-WCA-08-14
	)	
From the Decision of the	)	
	)	
STATE COMPENSATION INSURANCE FUND,	)	
	)	
Respondent.	)	
	)	

73

ORDER ADOPTING PROPOSED DECISION AND DESIGNATION OF DECISION AS PRECEDENTIAL

The attached proposed decision of Administrative Law Judge Kristin L. Rosi is adopted as the Insurance Commissioner's decision in the above entitled matter. Additionally, pursuant to Government Code section 11425.60, I hereby designate this decision as precedential. This order shall be effective 20 days from date of service.

Reconsideration of the Commissioner's decision may be had pursuant to California Code of Regulations, title 10, section 2509.72, but it is not necessary to request reconsideration prior to initiating judicial review. Any party seeking reconsideration of the Insurance Commissioner's decision should serve the request for reconsideration on William Gausewitz, Counsel to the Commissioner, at the address indicated below in sufficient time to ensure that the Commissioner can review the request and take appropriate action before the expiration of the 30 day limit for reconsideration.

William Gausewitz
Counsel to the Commissioner
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

Judicial review of the Insurance Commissioner's decision may be had pursuant to California Code of Regulations, title 10, section 2509.76. The person authorized to accept service on behalf of the Insurance Commissioner is:

Staff Counsel Darrel Woo
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

Any party seeking judicial review of the Insurance Commissioner's decision shall file the original writ of administrative mandamus with the court. Copies of the writ of administrative mandamus and the final judicial decision and order on the writ of administrative mandamus must be served on the Administrative Hearing Bureau of the California Department of Insurance.

Dated: 09/30/09

STEVE POIZNER
Insurance Commissioner

By: Bill Gausewitz
WILLIAM GAUSEWITZ
Counsel to the Commissioner

DEPARTMENT OF INSURANCE
ADMINISTRATIVE HEARING BUREAU
45 Fremont Street, 22nd Floor
San Francisco, CA 94105
Telephone: (415) 538-4102 or (415) 538-4251
FAX: (415) 904-5854

BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	
READYLINK HEALTHCARE, INC.,	)	
	)	
Appellant,	)	FILE AHB-WCA-08-14
	)	
From the Decision of the	)	
	)	
STATE COMPENSATION INSURANCE FUND,	)	
	)	
Respondent.	)	
	)	

PROPOSED DECISION

I. Introduction

This appeal is brought pursuant to California Insurance Code section 11753.1, and arises from a dispute between the State Compensation Insurance Fund ("SCIF") and Appellant ReadyLink Healthcare, Inc. ("Appellant" or "ReadyLink") regarding the proper calculation of payroll for premium and statistical reporting purposes under the terms of the California Workers' Compensation Uniform Statistical Reporting Plan ("USRP").[1] More specifically, ReadyLink

[1] The provisions of the USRP, including the Standard Classification System in Part 3, are part of the Insurance Commissioner's regulations, at title 10, California Code of Regulations, section 2352.1. The 2005 version of the Plan applies to the issue presented in this appeal because the payroll dispute at issue incepted during that year.

appeals SCIF's 2005 audit which treated Appellant's "per diem"[2] payments made to registry nurses as "payroll" which thereby greatly increased Appellant's premium payments. This is a matter of first impression for the Commissioner.

For the reasons set forth below, SCIF's decision is affirmed.

II. Statement of Issues

1. For policy year 2005, did SCIF properly include per diem payments made to registry nurses as "payroll" or "remuneration" pursuant to USRP, Part 3, Section V?

III. Contention of the Parties

Appellant contends that SCIF incorrectly included the amounts paid to employees as per diem to "payroll" under the USRP. Appellant argues it wholly complied with Internal Revenue Service ("IRS") guidelines in formulating and implementing its per diem program and thus such payments should be excluded from payroll calculations.

SCIF contends ReadyLink's program is not reasonable as it serves to compensate nurses for their nursing services rather than reimbursing them for expenses incurred while travelling for business.[3] Moreover, SCIF argues many of ReadyLink's nurses did not work in job locations that would have required the employee to incur additional expenses not normally assumed by the employee.[4] As such, SCIF contends the per diem payments constitute "payroll" under the USRP and must be included in Appellant's final audit.

---

[2] The term "per diem" literally means "per day." However, for tax and payroll purposes, the term "per diem" pertains to the monetary amount an employee receives in reimbursement for travel or other business expenses incurred while conducting business on behalf of the employer. When used herein, the term "per diem" will refer to such reimbursable or tax-deductible expenses.

[3] SCIF Post-hearing Brief, p. 5.

[4] *Id.* at p. 8.

IV. Procedural History

Appellant initiated these proceedings on April 16, 2008, by filing a written appeal to the Insurance Commissioner from SCIF's February 28, 2008 decision affirming the findings of Appellant's 2005 audit.

SCIF first appeared by filing a response dated June 30, 2008. The Workers' Compensation Insurance Rating Bureau ("WCIRB")[5] appeared by filing a response dated June 26, 2008, but later withdrew from active participation in this matter.

Between July 1, 2008 and March 25, 2009, the parties engaged in discovery, deposed witnesses and participated in a number of telephonic status conferences.

Administrative Law Judge Kristin L. Rosi conducted a live evidentiary hearing in the Department of Insurance's Los Angeles hearing room on March 25 – 27, 2009.

Arthur J. Levine, Esq. represented Appellant. Lisa Tang, Esq., Staff Counsel, and Jody DeBernardi, Esq., Senior Staff Counsel, represented Respondent SCIF. Monica Floeck, Esq., Staff Counsel represented the WCIRB.[6]

The parties filed opening and post-hearing briefs, introduced documentary evidence, and elicited testimonial evidence at the hearing. The documentary evidence in this case includes all exhibits admitted into evidence, identified more specifically in the parties' Exhibit Lists.

Each party called witnesses to testify on its behalf. Elizabeth Ann Watts, Executive Vice President of ReadyLink, and Mindy Harada, Payroll Administrator, testified on behalf of the Appellant. SCIF called Eric Riley, Deborah Tjaden, Special Risk Auditor, and Cora Lisa Vail, Special Risk Supervising Auditor as witnesses.

---

[5] The WCIRB is a rating organization licensed by the Insurance Commissioner under Insurance Code section 11750 et seq., to assist the Commissioner in the development and administration of workers' compensation insurance classification and rating systems. The Bureau serves as the Commissioner's designated statistical agent for the purpose of gathering and compiling experience data developed under California's workers' compensation and employer's liability insurance policies. (Ins. Code § 11751.5.)

[6] The WCIRB's participation in this matter was limited to providing a response letter and producing Eric Riley, Quality Assurance Director, as a witness at the evidentiary hearing.

During the course of the proceedings, the ALJ took official notice, under California Code of Regulations, title 10, section 2509.67 and California Evidence Code section 450 et seq., of: (1) 26 United States Code section 62; (2) 41 Code of Federal Regulations Chapter 301, Appendix A; (3) 26 Code of Federal Regulations, section 1.62-2; and (4) Uniform Statistical Reporting Plan, in effect during the policy year at issue. Additionally, the ALJ took official notice of California Labor Code section 1182.12. Both parties were provided with a reasonable opportunity to refute the officially noticed matters, and neither Appellant nor Respondent objected to the official notice.

At the culmination of the evidentiary hearing, SCIF moved for an order requiring Appellant to produce time cards and invoices supporting its contention that ReadyLink complied with IRS per diem rules and regulations. Appellant did not object to the motion. On April 1, 2009, the ALJ held a telephonic status conference regarding SCIF's motion. The ALJ ordered Appellant to provide time cards for five randomly-chosen employees and all invoices sent to contracting California hospitals. On June 2, 2009, the ALJ entered the 16 binders of invoices and time cards provided on April 21, 2009, into evidence, without objection from Respondent, as ALJ Exhibit 6. The record was closed on June 19, 2009.

V. Findings of Fact[7]

ReadyLink is a healthcare staffing agency, providing temporary nursing personnel primarily to established hospitals. Founded in 1998, ReadyLink is a California corporation owned solely by Barry Treash.[8] ReadyLink is headquartered in Thousand Palms, and staffs

[7] References to the transcript of the hearing held on March 25 – 27, 2009, are "Tr." followed by the page number(s) and, where line references are used, a ":" followed by the line numbers(s). Thus, for example, a reference to Tr. 35:14-18 is to page 35, lines 14-18 of the transcript. Exhibits are referred to by the numbers assigned to them in the Exhibit Lists filed by the parties.

[8] Tr. 108:25.

hospitals in both Southern and Northern California, as well as hospitals in a handful of other states.[9] Mr. Treash devised the per diem plan at issue, but elected not to testify at the hearing.[10]

Ms. Watts serves as ReadyLink's Executive Vice-President of Operations and has been with the corporation since its inception. Ms. Watts' responsibilities include supervising staffing services and developing new contracts.[11] Additionally, Ms. Watts concurrently holds the position of chief nursing executive at Park View Hospital.[12]

Appellant employs a direct telephone solicitation method of recruiting its nurses.[13] At any given time, ReadyLink employs 40 to 50 recruiters in what is considered a high turnover position.[14] After purchasing lists of nurses from direct mail establishments and matching those names with telephone numbers, ReadyLink recruiters begin calling the nurses on the lists. For every 100 calls made, these recruiters will speak to about five people and recruit approximately one of the five to work for ReadyLink.[15] During the call, recruiters explain the nature of the company, the number of jobs available and rate of pay. ReadyLink recruiters specifically tell the nurses they call that a portion of their take home pay will be in the form of a tax-exempt per diem allowance.[16]

After a nurse is recruited by ReadyLink, Appellant secures all of the employee's relevant license and employment history, verifies the validity of the information presented and prescreens the nurses for immunizations and qualifications. Additionally, before a nurse actually goes to work for a hospital, the contract is reviewed by ReadyLink's quality assurance supervisor and records supervisor for compliance purposes.[17]

---

[9] Tr. 107:7-9.
[10] Tr. 320:21-25.
[11] Tr. 109:13-15.
[12] Tr. 109:16-19.
[13] Tr. 136-137:25-1.
[14] Tr. 321:7-16.
[15] Tr. 137:12-21.
[16] Tr. 139-140:18-7.
[17] Tr. 324:2-6.

ReadyLink pays its nurses on a weekly basis after receiving time cards from the hospital verifying the hours worked.[18] Employee contracts spell out work hours, shifts to be worked and remuneration in terms of wages and in terms of per diem pay. For example, Ronna Abuyuan's contract start date is September 11, 2006 and the end date is December 11, 2006.[19] Ms. Abuyuan is assigned a 12 hour shift beginning at 7:30 p.m. and ending at 8:00 a.m. Ms. Abuyuan's compensation is as follows:

- Gross per-shift pay (Wages: $94.52, Per Diem: $358.60) = $453.12
- Per shift "take home" (estimated after taxes) = $440.83
- Weekly "take home" (estimated after taxes) = $1,322.49
- Contract "take home" (estimated after taxes) = $17,192.37

Thus, Ms. Abuyuan's hourly pay is equal to $6.75 per hour.[20] The above compensation is in effect only if she works a 12 hour shift on each scheduled day of work. If an employee works less than the shift hours set forth in their contract, under the contract terms ReadyLink's computer system calculates their hourly wage at a significantly higher rate and does not pay out a per diem allowance for that day.[21]

> Premium Rate: Per Diem cannot be paid for any shifts that are of a non-standard time frame (substantially less than the scheduled hours). For all shifts less than 11 hours, rate of pay will be $37.76 (taxable) per hour for all hours worked. (This rate equals the same "gross" rate as regular shifts, i.e. your gross amount above divided by the hours in shift).

That $37.76 per hour is the exact amount per hour Ms. Abuyuan would be making if you divided her daily rate of pay, $453.12, by the 12 hours worked.[22] The sole difference is the tax liability ReadyLink and Ms. Abuyuan would be paying for each shift worked.

---

[18] Tr. 336:6-11.
[19] Exh. 1-1.
[20] For a 12 hour shift, ReadyLink pays 8 hours of straight time at $6.75 and 4 hours of overtime at $10.13, totaling $94.52.
[21] Tr. 341:11-17; Tr. 343:17-24.
[22] Tr. 342:8-17.

A. Registry Nurse Industry

The temporary nursing field was first established in 1978, in response to a nursing shortage throughout the country.[23] While the exact number of nurse registries in operation today is difficult to establish, the travelling nurse industry has become more popular in recent years. There are approximately 300 nurse registries in the Los Angeles area alone and thousands of these businesses exist across the country.[24] While many nurse registries are small business operations, focusing on one locale, some agencies operate nationwide and are publicly-traded corporations.

Temporary nursing provides unique benefits to hospitals and nurses alike. Hospitals embrace the arrangement because the agreements permit medical centers to flex their staffing needs based on patient census, and because nurse registries streamline the hiring process.[25] Nurses are prescreened by the nurse registries, saving the hospitals time and money. Additionally, the nurse registries manage all payroll and insurance requirements, eliminating any hospital-incurred administrative expenses.[26] Nurses likewise embrace temporary nursing for the flexibility in scheduling their hours, and the opportunity to "test out" hospitals before seeking more permanent employment.[27] Additionally, for those nurses who are interested in working in a new location, the travel nurse industry offers the financial advantage of paying their expenses under a tax exempt compensation program.

Common among nurse registries are reimbursement programs which permit employees to receive per diem payments based upon their travel assignments. Employees who take assignments away from their regular home are reimbursed for their meals and lodging while on assignment and such monies are received tax free. Often termed "tax advantage" programs, the

[23] Tr. 133:3-11.
[24] Tr. 135:13-16; Tr. 136:3-8.
[25] Tr. 120:16-19.
[26] Tr. 121:3-21.
[27] Tr. 124-125:5-21.

programs are generally consistent with regard to eligibility. For example, the tax advantage program operated by AdvantageRN, a nationwide travel nursing company, makes clear that traveling nurses must (1) have a tax home where they reside and pay taxes, (2) the tax home must be different from their travel assignment and (3) the assignment must be less than one year.[28] A nurse working in the general proximity of the tax home and returning home nightly from the work shift, does not qualify for the program.[29] Healthcare Staffing Inc. similarly explains the eligibility requirements for its IRS tax advantage program and further clarifies that the permanent tax home must be habitable living quarters and should be at least 50 miles away from the temporary residence.[30] Additionally, Healthcare Staffing compels its employees to file a Permanent Tax Residence Form to ensure compliance with the IRS rules.[31] In fact, each of the ten travel nurse companies listed in Exhibit 275 explicitly states that per diem payments are contingent upon the nurse travelling a certain distance away from their permanent home and establishing a temporary residence during the assignment.[32]

B. ReadyLink's Employees

Throughout her testimony, Ms. Watts made factual claims regarding the constitution of ReadyLink's workforce and their employment conditions. However, much of Ms. Watts' testimony regarding ReadyLink employees proved inconsistent with the Appellant's own exhibits.[33] Additionally, Ms. Watts admitted to altering some of the evidence presented at trial. As the exhibits presented include signed copies of employment contracts and federal W-2

[28] Exh. 275-1.
[29] *Ibid.*
[30] Exh. 275-29.
[31] Exh. 275-30.
[32] See, Exh. 275-39; 275-54; 275-63.
[33] For example, Ms. Watts testified that 75% of the nurses worked only 13 weeks during the policy year. (Tr. 326:20-25.) However, of the 259 employees, 131 worked more than one 13 week contract. Additionally, Ms. Watts testified that only 30 employees lived within 50 miles of their workplace. (Tr. 172:20-24.) Actually, 140 of the 259 employees worked within 50 miles of their permanent home.

reports, the ALJ finds the documentary evidence identified as Exhibits 1 through 271 and admitted into evidence to be more credible than Ms. Watts' testimony or revised exhibits.[34]

As noted, Exhibits 1 through 271 provide application and W-2 information, signed contracts, and payroll documentation for each of the employees at issue herein. These exhibits filled more than 20 large binders. In an effort to synthesize the information contained in Exhibits 1 through 271, the ALJ created and attached an addendum to this decision, identified as Appendix 1 and incorporated herein by reference. The Appendix contains five (5) columns of information for each employee at issue. The first column identifies the employee by the number assigned in ALJ Exhibit 1. The second column records the employee's W-2 zip code. The third column lists the hospital's zip code where the employee worked. The fourth column reports the distance between columns two and three if the distance was less than 50 miles. Column 5 lists the hours the employee worked per day under the contract. Additionally, where an employee worked under more than one contract, the employee number is listed more than one time in column 1.

For example, the information recorded in Appendix 1 for Employees 1 and 6 is presented in an abbreviated chart below and is summarized as follows: Employee No. 1 lived at zip code 91344 and worked at a hospital in zip code 90027, a distance of 16.7 miles from her residence. Employee No. 1 worked a 12 hours shift under the terms of her contract. Employee No. 6 lived at 92324 and worked at two different hospitals during the policy year; one located in zip code 92505, the other at 92705, distances of 13.9 miles and 35.9 miles respectively from home. Under the terms of the contract, Employee No. 6 worked 12 hours shifts.

[34] Appellant provided revised information in Exhibit 275.

Employee No.	W-2 Zip Code	Hospital Zip Code	Distance	Hours
1	91344	90027	16.7	12
6	92324	92505	13.9	12
6	92324	92705	35.9	12

Based on the evidence contained in Exhibits 1 through 271, summarized in Appendix 1, the ALJ finds that during the policy year at issue, ReadyLink employed 259 nurses assigned to 75 different hospitals in California.[35] While the typical employment contract between ReadyLink and its employees was 13 weeks in duration, one half of the nurses worked under more than one contract during the policy year at issue and most worked more than 13 weeks during the year.[36] More specifically, of the 259 employees, 131 employees worked under more than one contract, with some working as many as four or five different contracts with various hospitals. For example, Employee No. 7 worked under four different contracts from October 2005 through September 2006 and Employee No. 144 worked under five different contracts during that same time period. Additionally, Employee No. 49 worked under three different contracts at three different hospitals during the policy year at issue. Of those employees who worked under multiple contracts, eight (8) nurses signed contracts that were one year in duration or worked under two or more contracts spanning more than one year.[37]

Recruitment of ReadyLink nurses did not follow any geographic pattern, nor did recruiters actively enlist nurses from outside the immediate contracting hospital's area. As such, more than 50% of the ReadyLink's nurses worked at a hospital within 50 miles of their

[35] ALJ Exhibit 1 identifies 271 employees. However, employees 12, 36, 91, 96, 136, 239 and 241, worked exclusively outside of California, and five (5) employees listed among the 271 did not work during the policy year at issue. Accordingly, the ALJ finds the total number of employees considered in this appeal at issue is 259.
[36] This finding of fact discounts Ms. Watts' testimony that 75% of the nurses worked only 13 weeks during the policy year. (Tr. 326:20-25.)
[37] Employees 9, 61, 124, 144, 145, 153, 249, and 262.

permanent residence.[38] Moreover, of the 140 "local" nurses who worked at hospitals within 50 miles of their home, 108 of those nurses worked at hospitals within 20 miles of their permanent home. Appellant failed to provide any evidence demonstrating these "local" nurses established temporary residences away from their permanent homes, nor does the record include any evidence that the nurses slept away from their homes at any time during the contract period.

Nurses in California typically work twelve (12) hour shifts, regardless of whether their employment is temporary or permanent.[39] This generality applies to ReadyLink's employees as well, 83% of which exclusively worked 12 hours shifts during the policy year.[40] Of the 44 employees who worked 8 hours shifts, 27 of those nurses lived within 50 miles of their workplace.[41] Additionally, a majority of ReadyLink's employees, 62%, worked the evening or overnight shift.[42] This also is typical for temporary nurses, as hospitals have the most difficulty filling the overnight shifts.[43]

On average, a nurse working in California in 2004 earned $30.24 per hour, depending upon location, skill level, area of specialty and years of experience.[44] Experienced nurses could earn up to twice that amount per hour.[45] Nurses employed by ReadyLink made considerably less than the state average. In fact, nearly 60% of ReadyLink's contracts paid nurses only $6.75 per hour, just above California's minimum wage in 2005. Not one of ReadyLink's nurses made over $20.00 per hour regardless of work location or experience. Thus, a typical ReadyLink nurse working three 12-hours shifts during a one week time period would earn only $243 in wages,

---

[38] More specifically, 140 of the 259 employees, or 54%, worked within 50 miles of their permanent home. The tax home for each employee was determined by the address on the employee's W-2 tax form. Application addresses, where they differed from W-2 addresses, were rejected for accuracy reasons and because Ms. Watts, herself, admitted to altering with these addresses in connection with Exhibit 295 and 297. (Tr. 210-212; Tr. 288-289.)
[39] Tr. 317:2-5; Tr. 327:8-16.
[40] 44 of the 259 employees worked 8 hours shifts. See Appendix 1.
[41] Specifically, employees 23, 42, 50, 77, 80, 98, 100, 115, 120, 124, 126, 127, 143, 145, 157, 158, 159, 164, 167, 169, 193, 200, 213, 220, 222, 234 and 268 lived within 50 miles of their workplace and worked 8 hours shifts.
[42] Tr. 172:4-24. 101 of the 259 employees at issue worked day shifts. See Appendix 1.
[43] Tr. 309:10-12.
[44] Exh. 332.
[45] Tr. 566:13-20.

while their counterpart employed by the hospital itself would earn $1,088.64 in wages for that same time period. ReadyLink's hourly wage also is significantly lower than that paid by other nurse registries in the Los Angeles area.[46] Hourly wages for temporary nurses in Southern California range from $20 per hour to $50 per hour.[47]

C. ReadyLink's Per Diem Program

ReadyLink admits the hourly wage received by its nurses is below average, and explains its ability to recruit nurses at this wage level by emphasizing its unique per diem program. Under ReadyLink's per diem program, each nurse employed by ReadyLink, regardless of where the employee lives or how long a shift the employee works, receives a daily per diem amount.[48] This per diem amount is presented directly on the nurses' contract and the amount is not generally negotiable.

ReadyLink has developed its own proprietary software program to calculate the amount of per diem pay an employee receives on a daily basis. Initially, a ReadyLink employee will enter information from ReadyLink's hospital contract into the software program.[49] Information entered into the system includes the amount the hospital is paying ReadyLink per hour for each nurses as well as the shifts available.[50] Recruiters merely call up on their computers the available hospital contracts and the software program automatically calculates the per diem rate taking into consideration ReadyLink's expenses and profit margin. The program itself provides recruiters with the exact amount to be paid in per diem and is programmed not to exceed the federal per diem amounts listed in 41 Code of Federal Regulations, Chapter 301, Appendix A.[51]

---

[46] Tr. 565:3-17.
[47] Tr. 566:13-20.
[48] Tr. 303:6-14; Tr. 327-328:24-6.
[49] Tr. 168:10-19.
[50] Tr. 168:1-8.
[51] Appendix A is also known as the Continental United States (CONUS) table.

ReadyLink does not require its employees to demonstrate a permanent tax home outside of the work location, nor does ReadyLink monitor employee tax data to ensure compliance with IRS regulations.[52] ReadyLink does not provide employees with information regarding the IRS rules, nor does ReadyLink explain the workers' compensation impact of below market wages.[53] Thus, unlike other nurse registries, ReadyLink employees working within 50 miles of their permanent tax home receive per diem payments just like those nurses who have relocated for their positions.[54]

ReadyLink does not require employees to provide any documentation regarding the use of their per diem payments.[55] ReadyLink assumes the per diem payments are being expended for business travel purposes and does not inquire as to how per diem money is spent. ReadyLink does not collect receipts or any other information substantiating the use of the per diem payments. ReadyLink does not require its employees to return any per diem monies not spent on travel expenses.[56]

D. SCIF's 2005 Audit

In January 2007, SCIF commenced its audit for the 2005 policy year at issue.[57] Deborah Tjaden, a Senior Workers Compensation Payroll Auditor in SCIF's Special Risk Division, conducted the on-site audit and drafted the audit findings. The Special Risk Division is exclusively charged with conducting payroll audits for temporary staffing agencies and professional employer organizations. Ms. Tjaden has conducted dozens of audits of nurse registries during her employment with SCIF.[58]

---

[52] Tr. 291:15-25.
[53] Tr. 338:14-21; Tr. 144-145:15-10.
[54] Tr. 327-328:24-7.
[55] Tr. 177:11-20.
[56] Tr. 140:14-21.
[57] Tr. 545:8-10.
[58] Tr. 564:14-22.

On January 9, 2007, Ms. Tjaden met personally with Ms. Watts to review the payroll information for the 2005 policy year.[59] Appellant presented Ms. Tjaden with payroll registries, quarterly tax returns and ReadyLink's by-client payroll report which included information regarding each contracting hospital.[60] When Ms. Tjaden requested specific information regarding Appellant's per diem program, Ms. Watts indicated ReadyLink was in compliance with federal per diem guidelines and thus saw no need to provide SCIF with the per diem information.[61] Ms. Tjaden was concerned, however, about ReadyLink's per diem program as she had never seen a nurse registry pay its nurses minimum wage.[62] Ms. Tjaden testified most nurse registries paid their nurses between $20 per hour and $50 per hour and had not come across a nurse registry paying less than $10 per hour.[63] Additionally, Ms. Tjaden indicated she had not audited any nurse registries where more than 50% of the remuneration received by nurses was in the form of per diem payments.[64]

On February 1, 2007, Ms. Tjaden sent a letter to Ms. Watts again requesting specific information regarding ReadyLink's per diem program.[65] While citing the USRP rules regarding per diem, Ms. Tjaden specifically requested that Appellant send "any additional information that will confirm the per diem payments are reasonable and show that the employees worked at a job location that would have required the employee to incur additional expenses not normally assumed by the employee."[66] ReadyLink did not timely respond to Ms. Tjaden's letter nor did ReadyLink provide any of the requested information.[67]

---

[59] Tr. 546:13-23; ALJ Exh. 2-4.
[60] Tr. 547:1-23.
[61] Tr. 549:11-18.
[62] Tr. 565:3-17.
[63] Tr. 566:10-20.
[64] Tr. 579:13-17.
[65] Exh. 301. The letter provided ReadyLink 10 days to provide the requested information.
[66] Exh. 301-2; Tr. 550:6-21.
[67] Tr. 553:15-18.

On March 7, 2007, ReadyLink responded in writing to Ms. Tjaden's February 1, 2007, letter by stating again its belief that its per diem program complied with federal per diem guidelines and thus SCIF was not entitled to additional payroll information.[68] Consistent with its belief, ReadyLink failed to provide any per diem information to Ms. Tjaden.

On March 12, 2007, Audit Supervisor Cora Lisa Vail wrote a letter to Ms. Watts further explaining SCIF's need for per diem information and again informing Appellant that failue to provide such information by March 29, 2007, would result in per diem monies being assigned to payroll computation.[69] SCIF did not receive any per diem information in response to this letter.[70] Rather, on March 29, 2007, Ms. Watts telephoned Ms. Vail to discuss the per diem issue. During this telephone conversation Ms. Watts reiterated ReadyLink's position that they were in compliance with federal per diem guidelines and further informed Ms. Vail that ReadyLink would not be providing the information requested.[71]

On June 27, 2007, Ms. Tjaden provided ReadyLink with a copy of its final audit. The final audit included per diem payments to all nurses as "payroll" for reporting purposes and thus included such amounts in premium computation.[72] As a result of the decision to include per diem payments in Appellant's payroll computation, SCIF determined ReadyLink's owed an additional $570,000 in premium payments for the policy year.[73]

E. IRS Audit

On September 12, 2007, ReadyLink received a letter from IRS Agent Manuel Estrada indicating its selection for an Employment Tax Audit for tax years 2004, 2005 and 2006.[74] The

[68] Exh. 336.
[69] Exh. 302.
[70] Tr. 595:2-9.
[71] Tr. 596-597:19-9.
[72] Exh. 303.
[73] Exh. 307-4.
[74] Exh. 274. Mr. Estrada was subpoenaed for this proceeding. The IRS moved to quash the subpoena in federal court, and the subpoena was subsequently withdrawn by the Appellant. Mr. Estrada did not appear to testify on the scope of his audit examination.

letter informed ReadyLink of an October 2007 audit date and listed a number of documents the IRS wished to examine. Included among the documents requested were check registers, the employee handbook and ReadyLink's cash reimbursement policy including travel logs and receipts.[75] Due to postponements by the IRS, the audit did not take place until January 2008.[76]

Upon learning of the IRS audit, ReadyLink hired Payroll Specialist Mindy Harada to assist Appellant with preparing for the audit examination.[77] During the three-day audit, Ms. Harada answered questions on behalf of ReadyLink and provided Mr. Estrada with the requested documentation.[78]

On October 17, 2008, Mr. Estrada informed ReadyLink by letter that he was proposing no changes to ReadyLink's tax return.[79]

VI. Applicable Law

A. The Regulatory Scheme

The function of the WCIRB is to collect accurate payroll and loss information regarding every California worker's compensation insurance policy. Once the data is collected, the WCIRB uses actuarial techniques to produce advisory pure premium rates for workers' compensation insurance.[80] Given the critical nature of accurate data, every insurer must record and report its policy payroll and claims loss data to the WCIRB pursuant to the rules in the USRP. Moreover, pure premium advisory rates are used as a benchmark for insurance companies as they develop their own premium rates. The premium amount is derived from the application of the rates to the remuneration paid to employees after application of an experience

---

[75] Exh. 274-2.
[76] Tr. 306:2-8.
[77] Tr. 305:13-23.
[78] Tr. 157:6-25.
[79] Exh. 274-3.
[80] "Pure premium advisory rates" is based upon loss and payroll data submitted to the WCIRB by all insurance companies and reflects the amount of losses an insurer can expect to pay in benefits due to workplace injuries, per every $100 of payroll. (Part I, Section I.) The Commissioner recently changed the term "pure premium advisory rate" to the "Workers Compensation Claims Cost Benchmark."

modification, if applicable.[81] Since payroll amounts impact the premium owed and the calculation of experience modification, accurate payroll reporting takes on added importance and becomes the subject of much debate and inquiry.[82]

B. USRP Per Diem Rules

As used by the USRP, payroll and remuneration are synonymous and mean the monetary value at which service is recompensed.[83] Appendix III of the USRP defines the various types of compensation that shall be considered payroll for statistical reporting purposes. With regard to per diem payments, the USRP states as follows:

> Subsistence payments are considered to be reimbursement for additional living expense by virtue of job location.[84]

The USRP further mandates that stipulated per diem amounts shall not be considered payroll if "the amount is reasonable and the employer's records show that the employee worked at a job location that would have required the employee to incur additional expenses not normally assumed by the employee." If it is determined that the payments cannot reasonably be considered reimbursement for additional living expenses incurred by virtue of a job location, then such monies shall be included in an employer's payroll total.[85]

The USRP, however, does not define a "reasonable" per diem amount, nor does the USRP reference any federal or state guidelines in characterizing "additional expenses not normally assumed by the employee."[86] While such additional expenses clearly contemplate

---

[81] 1 Hanna, Law of Employment Injury and Workers Compensation, (2009) §2.41.
[82] An experience modification factor is a percentage that reflects how an insured's workers compensation premium rate may vary from the standard or "normal" rate for the insured's industry, based on the loss history of the particular employer insured. If the employer has better than normal loss experience (i.e. fewer or less serious worker injuries than prevail in the industry), the experience modification may be less than the standard (100%), which means that the premium for that business would be less than 100% of the standard rate for similar businesses. Conversely, if the loss experience of a business is worse than the norm for businesses in that industry, the premium rate would be higher than the standard 100%. Experience modification is not at issue herein.
[83] USRP, Part 3, Section V, Subsection 1.
[84] USRP, Appendix III, p. 219.
[85] Tr. 95-96:21-6; Exh. 335-3.
[86] Tr. 69:16-18; Tr. 83-84:20-4.

"travel expenses," neither the USRP nor the WCIRB provide any further information regarding this provision.[87]

VII. Federal and State Per Diem Standards

Absent specific guidance for interpreting the reasonableness of a per diem plan under the USRP, it is instructive to review other state and federal agency regulations regarding per diem usage, and the case law interpreting such regulations.

A. EDD Per Diem Regulations

The California Employment Development Department ("EDD") administers four state payroll taxes, each of which requires the calculation of employee "wages." Among such taxes are Unemployment Insurance ("UI") tax and State Disability Insurance ("SDI") tax, as well as Personal Income Tax ("PIT"). Because the purpose of each payroll tax is different, the definition of wages differs under each method.

The UI and SDI programs provide temporary payments to individuals who are unemployed through no fault of their own or are unemployed due to disability. These acts are remedial statutes meant to furnish benefits to eligible workers deprived of wages and cushion the impact of unemployment or disability.[88] UI is paid by the employer based on wages paid to each employee.[89] SDI generally pays 55% of the wages earned during the previous year before the onset of the disability.[90]

The EDD has adopted its own rules and regulations regarding the calculation of "wages." For unemployment and disability purposes, "wages" are payments made to an employee for their personal services, including commissions, bonuses, and the reasonable cash value of all amounts

---

[87] Tr. 95-96:7-6. Mr. Riley testified the WCIRB has yet to address the per diem issue.
[88] Unemp. Ins. Code §100; *Garcia v. Industrial Acc. Comm.* (1953) 41 Cal.2d 689, 693.
[89] Tax-rated employers pay a percentage on the first $7,000 in wages paid to each employee in a calendar year. The UI rate schedule and amount of taxable wages are determined annually.
[90] Unemp. Ins. Code § 2653 et seq.

paid to employees in any medium other than cash.[91] Also included within taxable wages is "board, lodging, or any other payment in kind, received by an employee in addition to, or in lieu of cash wages."[92]

California Code of Regulations, title 22, section 929-1, subsection (a) notes, however, that "wages" does not include the actual amount of traveling, automobile or other required or necessary business expenses incurred in connection with employment.[93] While Section 929-1, subsection (d) permits an employer to provide a flat weekly allowance, the allowance must cover travelling expenses actually incurred and not be used as remuneration for services performed. EDD regulations also require that an employee account for travel expenses and provide the information to the employer. Failure by the employer to properly account for travel or "necessary" business expenses renders the costs taxable for unemployment and disability purposes.[94]

Regulations for the calculation of "wages" for personal income tax differ markedly. For example, while the amount of meals and lodging furnished for the employer's convenience and on an employer's property is a taxable employment benefit under UI and SDI, these benefits are tax-exempt for personal income tax purposes.[95]

B. IRS Regulations on Travel and Per Diem

The Internal Revenue Service is charged with collecting a variety of tax revenue from employees and employers in order to fund federal programs. The pertinent federal regulations pertaining to employee income and social security tax are briefly summarized below.

United State Code, title 26, section 62 defines a taxpayer's adjusted gross income for income tax purposes. A taxpayer's adjusted gross income is defined as their gross income minus

[91] Exh. 334-1; Exh. 298-1; Calif. Code Regs., tit. 22, § 926.
[92] Exh. 334-3.
[93] Exh. 334-12.
[94] Tr. 402:1-14.
[95] Exh. 298-4.

any applicable deductions. Section 62, subsection (a)(2) permits taxpayers to deduct all expenses paid or incurred by the taxpayer, in connection with the performance by the taxpayer of services as an employee, under a reimbursement or other expense allowance arrangement with his employer.[96] Section 162 further clarifies the types of business and travel expenses that qualify for reimbursement.[97] A taxpayer may deduct all ordinary and necessary expenses paid or incurred during the tax year, including "travelling expenses while away from home in the pursuit of a trade or business."[98]

1. Away From Home

IRS Code section 162, subsection (a)(2) allows individual taxpayers to deduct all ordinary and necessary travelling expenses while "away from home" in the pursuit of a trade or business. This deduction is designed to mitigate the burden on taxpayers who travel on business, as travel involves substantial continuing expenses.[99] For example, while the employee maintains a permanent home and must pay monthly rent on that abode, that employee may be required to travel away from home for employment purposes, thereby incurring hotel or rental expenses in addition to the monthly rent. This "duplication" does not exist unless the taxpayer maintains an abode which entails living expenses in addition to those which one incurs while travelling.[100] To qualify for this "away from home" deduction, the U.S. Supreme Court has held the expenses must (1) be reasonable and necessary expenses; (2) be incurred while away from home; and (3) be incurred while in the pursuit of a trade or business.[101]

---

[96] 26 U.S.C. § 62(a)(2)(A).
[97] 26 U.S.C. § 162.
[98] 26 U.S.C. § 162(a)(2).
[99] *James v. United States* (9th Cir. 1962) 308 F.2d 204, 207; *Henderson v. United States* (9th Cir. 1998) 143 F.3d 497, 500.
[100] *James, supra*, 308 F.2d at 207.
[101] *Flowers v. Commissioner* (1946) 326 U.S. 465, 470. The ALJ notes that such language is strikingly similar to that found in the USRP.

Generally, for tax purposes, the term "home" means a taxpayer's principal place of employment, not their place of abode. However, if a taxpayer has no regular or principal place of business, as in the case of temporary employees, the taxpayer's place of abode will serve as their tax home.[102] Moreover, if a taxpayer continuously travels and thus does not duplicate substantial, continuous living expenses for a permanent home, the taxpayer may be considered "itinerant" and thus ineligible for any travel deductions.[103]

The courts have defined "tax home" for temporary employees. In *Gleeson v. Commissioner* (1985) 50 T.C.M. 680, the petitioner worked as a journeyman electrician, taking short-term employment assignments from the referral list at the local union hall.[104] While working temporary assignments, petitioner lived rent-free with either his parents or his fiancé. When petitioner claimed over $2,500 in meal and lodging expenses, the IRS rejected the deductions finding petitioner was not "away from home" when the expenses were incurred. The Tax Court sustained the IRS's findings, noting that petitioner had not demonstrated he incurred any expenses while living with his parents and fiancé and thus could not have incurred any duplicate expenses, which the rule attempts to ameliorate.[105] Similarly, the Sixth Circuit in *Brandl v. Commissioner* (6th Cir. 1975) 513 F.2d 697, denied a taxpayer deductions for travel expenses where the taxpayer could not establish he had worked "away from home."[106] In *Brandl*, the taxpayer traveled 10 months of the year on business. Between assignments, the taxpayer stayed at his brother's home rent-free, while purchasing groceries for his brother's family and assisting in home improvement projects.[107] The Court found that the taxpayer failed to establish the burden of duplicate expenses necessary to qualify for the deduction. Of critical

[102] *Henderson, supra,* 143 F.3d at p. 499.
[103] *Ibid; Gleeson v. Commissioner* (1985) 50 T.C.M. (CCH) 680.
[104] *Gleeson, supra,*50 T.C.M. (CCH) 680 at p. 2.
[105] *Id* at p. 12-13.
[106] *Brandl v. Commissioner* (6th Cir. 1975) 513 F.2d 697, 698.
[107] *Id.* at 698.

importance was the taxpayer's failure to prove he incurred the continuing expenses of maintaining a home, as well as the expenses of travelling.[108] Based on this line of cases, a pre-condition for being "away from home" is that the taxpayer has a home separate from the travel location.[109]

The courts have also defined what it means to be away from home for business purposes. Through a series of cases, the courts developed the "sleep or rest" rule when deciding if an employee is away from home. As generally stated:

> If the nature of the taxpayer's employment is such that when away from home, during released time, it is reasonable for him to need and to obtain sleep or rest in order to meet the exigencies of his employment or business demands of his employment, his expenditures for the purposes of obtaining sleep or rest are deductible traveling expenses under Section 162(a)(2) of the 1954 Code.[110]

In applying this rule, the Courts look to the length of the work day and whether the employee has the opportunity to sleep or rest during the work day. For example, in *Williams, supra*, a railroad engineer worked a 16 hour day every other day.[111] On a turnaround route between Alabama and Georgia, the taxpayer had a 6 hour layover in Atlanta before beginning his return trip to Alabama that same day. Although not required by the employer, during the layover the engineer elected to rest and rented a hotel room. At the hotel, the employee slept and ate one or two meals before returning to work.[112] The Court of Appeals held that given the length of the

---

[108] *Id.* at 700.
[109] *Baugh v. Commissioner* (1996) 71 T.C.M. (CCH) 2140. See also, *Upton v. Commissioner* (1976) 35 T.C.M. (CCH) 177.
[110] *Williams v. Patterson* (1961) 286 F.2d 333, 340; *United States v. Correll* (1967) 389 U.S. 299.
[111] *Williams, supra*, 286.F.2d at p. 334.
[112] *Ibid.*

workday, the duration of the layover and the responsibility of the position he held, the taxpayer was permitted to deduct the cost of meals and lodging during the 6-hour layover.[113]

The courts and the IRS have held, however, that a brief interval during which an employee may be released from duty to eat or rest does not satisfy the "sleep or rest" rule. In *Barry v. Commissioner* (1st Cir. 1970) 435 F.2d 1290, the Court of Appeal disallowed expenses for meals claimed by a taxpayer on one-day business trips that lasted between 16 and 19 hours during which the tax payer rested briefly once or twice in his automobile.[114] Moreover, a consulting engineer employed on a per diem basis who left home early, ate breakfast and lunch at work, stopped for dinner on the drive back home, and arrived at home at 10 p.m. could not deduct meal expenses since he was not away from home to sleep or rest.[115] Similarly, the court in *Correll, supra*, determined that a travelling salesman who customarily left home at 5 a.m. ate breakfast and lunch on the road, ordinarily drove 150 miles daily, finished his daily schedule by 4 p.m., and returned home by 5:30 p.m., could not deduct the cost of meals since his daily trips required neither sleep nor rest and therefore were not "away from home."[116] As the Supreme Court held in *Correll*, only a taxpayer who finds it necessary to stop for sleep or rest incurs significantly higher living expenses as a result of the business travel, and is permitted to deduct living expenses.[117] Likewise, meal expenses may be deductible as traveling expenses under section 162, subsection (a)(2) if a taxpayer can prove the meals were consumed while traveling "away from home" in the pursuit of business. The IRS Code interprets "away from home" as on a trip that requires the taxpayer to stop for sleep or a substantial period of rest.[118]

---

[113] See also, *Bissonnette v. Commissioner* (2006) 127 T.C. 124, where ferryboat captain permitted to deduct meals and lodging during 6-hour layover between routes where Petitioner actually obtained sleep or rest, but not permitted to deduct expenses during 5-hour layover where there is no evidence Petitioner slept or rested during the layover.
[114] *Id.* at p. 1291.
[115] See *Commissioner v. Bagley* (1st Cir. 1967) 374 F.2d 204.
[116] *Correll, supra*, 389 U.S. at p. 303.
[117] *Ibid.*
[118] *Correll, supra*, 389 U.S. at pp. 304-305; See also, *Strohmaier v. Commissioner* (1999) 113 T.C. 106, 115.

The IRS is also careful to distinguish between commuting costs and true travel expenses. The latter only can be allowed when an employee is away from home. A taxpayer's costs of commuting between the taxpayer's residence and the taxpayer's place of business are generally nondeductible personal expenses and thus not subject to reimbursement.[119] A taxpayer may, however, deduct daily transportation expenses incurred in going between the taxpayer's residence and a temporary work location, if that temporary work location is outside the metropolitan area where the taxpayer lives.[120]

If an employee is found to be "away from home" for purposes of business, the employee is entitled to receive reimbursement of his/her travel expenses. Reimbursement may be tax exempt if it is made pursuant to an "accountable plan." A reimbursement or other expense allowance arrangement is considered to be an accountable plan if it satisfies the following requirements: (1) the plan has a business connection; (2) the employee is required to substantiate the reimbursed expenses within a reasonable time; and (3) the employee is required to return the excess of any reimbursement over the amount of substantiated expenses.[121]

2. Business Connection Requirement

The business connection requirement of IRS section 162, subsection (c)(2) is substantive as it enforces the fundamental distinction between taxable compensation and tax-exempt reimbursement.[122] Requiring a demonstrable connection to actual business expenses prevents businesses from improperly sheltering otherwise taxable compensation under the guise of per diem reimbursement.[123] The regulations make this policy rationale clear by stating that any reimbursements that fail this business connection test are treated as taxable income.[124]

---

[119] 26 C.F.R. §§ 1.162-2(e) and 1.162-1(b)(5).
[120] *Rev. Rul. 94-97, 1994-2 C.B. 18; Rev Rul. 99-7, 1999-1 C.B. 361.*
[121] 26 U.S.C. § 62(a)(2)(A); 26 C.F.R. §1.62-2(c)(1).
[122] *Shotgun Delivery Inc. v. U.S.* (9th Cir. 2001) 269 F.3d 969, 974.
[123] *Ibid.*
[124] 26 C.F.R. §1.62-2(d)(3).

A reimbursement arrangement meets the business connection test if it provides advances or allowances for business expenses which the employees actually incur or are reasonably expected to incur in connection with their employment duties.[125] If a reimbursement arrangement pays an amount to the employee regardless of whether the expense will meet the business connection requirement, then all amounts paid under the arrangement are treated as paid under a non-accountable plan.[126] For example, in *Shotgun Delivery*, *supra*, drivers of a delivery service (who supplied their own vehicles) were paid a commission equal to 40% of the amount billed to customers.[127] The employer allocated the 40% commission by paying the driver minimum wage with any excess allocated as mileage reimbursement. The Court of Appeal held the reimbursements were fully subject to employment taxes because they were unrelated to the number of miles driven by the workers and thus were unrelated to any business expense incurred.[128]

Moreover, if an arrangement provides reimbursements to an employee for deductible employee business expenses and for other bona fide expenses related to the employer's business, i.e., meals and lodging not incurred away from home, that are not deductible as employee business expenses, the employer is treated as maintaining two arrangements. The portion of the employer's arrangement which provides for payment of the employee's deductible business expenses is treated as an arrangement that meets the business connection test and is an accountable plan if all other requirements are met. The portion of the arrangement that provides payment to the employee for nondeductible expenses is treated as a second arrangement that does not meet the business connection test and all amounts paid under this second arrangement

---

[125] 26 C.F.R. §1.62-2(d); *Shotgun Delivery*, *supra*, 269 F.3d at p. 972.
[126] 26 C.F.R. §1.62-2(d)(3).
[127] *Shotgun Delivery, supra*, 269 F.3d 969.
[128] *Id.* at p. 973.

are considered to be subject to employment taxes.[129] For example, airlines pay an allowance under an arrangement that is otherwise an accountable plan to its pilots and flight attendants who travel away from their home base airports, whether or not they are away from home. The arrangement is treated as two separate plans. The portion of the arrangement providing reimbursement for away-from-home travel is an accountable plan. The portion providing an allowance for non-away-from-home travel is treated as a non-accountable plan, and the amounts paid are subject to employment taxes.[130]

3. Substantiation Requirement

The second requirement of an accountable plan is that each business expense must be substantiated to the employer within a reasonable amount of time.[131] An employee is considered to have substantiated expenses if the information submitted to the employer is sufficient to enable the employer to identify the specific nature of each expense and to conclude the expense is attributable to the employer's business.[132] Practitioners commonly refer to this requirement as the "time, place and business purpose" requirement.

In an effort to streamline the substantiation requirements, the IRS has promulgated regulations under which certain expenses may be deemed to be substantiated.[133] Meal and lodging expenses incurred away from home will be deemed substantiated when the amount is covered by a per diem allowance plan that follows either the per diem or high-low method of reimbursement.[134] Under these rules, the deemed amount is treated as substantiated whether the

---

[129] 26 C.F.R. §1.62-2(d)(2). See also, 1-4 Bender, Payroll Tax Guide (2008) §4.780.
[130] 26 C.F.R. §1.62-2(j), Ex. 2.
[131] 26 C.F.R. §1.62-2(e)(1).
[132] 26 C.F.R. §1.62-2(e)(3).
[133] 26 C.F.R. §1.62-2(f)(2).
[134] *Rev. Rul. 2000-39, 2000-2 CB 340.*

employee substantiates the actual amount of the expense. However, the employee must continue to substantiate the time, place and business purpose relating to the expense.[135]

Under the high-low method, the IRS publishes a list of localities that are classified as high-cost areas. All other areas within the continental United States are classified as low-cost areas. A per diem rate is then established for the two types of localities. This method, known as the CONUS method, sets forth the maximum per diem rates for each locality. A per diem rate is deemed substantiated if it does not exceed the maximum federal per diem rate and meets the additional requirements set forth above.

4. Return of Excess Requirement

The third requirement of an accountable plan mandates that the employee return to the employer within a reasonable period of time any amount paid under the arrangement in excess of the expenses which are substantiated to the employer.[136] Excess reimbursement means any amount for which the employee did not adequately account. For example, if an employee received a travel advance and did not spend the entire amount on business-related expenses, the employee has an excess reimbursement and must return the excess.

An exception to the general rule of returning excess reimbursements amounts is authorized by Code of Federal Regulations, title 26, section 1.62-2, subsection (f)(2). Under this regulation, a per diem allowance will be treated as meeting this requirement if (1) the allowance is paid at a daily rate that is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and (2) the employee is required to return within a reasonable period of time any portion of the allowance which relates to days not substantiated in accordance with the section 1.62-2, subsection (e).

---

[135] *Ibid.*
[136] 26 C.F.R. §1.62-2(f)(1).

VIII. Discussion

Appellant contends its per diem policy is executed in accordance with IRS guidelines, and as such is inherently "reasonable" and proper under the USRP. SCIF contends ReadyLink failed to provide facts demonstrating the per diem amounts paid to employees were "reasonable" and were paid to employees who worked at a job location that would have required the employee to incur additional expenses not normally assumed by the employee.

A. Standard To Be Applied in Worker's Compensation Cases

The USRP states that subsistence payments are considered to be reimbursement for additional living expense by virtue of job location.[137] The USRP also mandates that in order to be exempt from payroll calculation, any per diem must be "reasonable and the employer's records show that the employee worked at a job location that would have required the employee to incur additional expenses not normally assumed by the employee."[138]

Since the USRP does not specifically define the terms "reasonable" or "job location requiring the employee to incur additional expenses" and does not specify an interpretation consistent with state or federal per diem guidelines, ReadyLink urges the ALJ to adopt Appellant's interpretation of IRS guidelines that permits Appellant to deduct its per diem payments from its payroll calculation. Having considered EDD and IRS regulations, precedential case law and learned treatises on the subject of tax law referenced above, the ALJ declines to adopt Appellant's position and finds as follows.

1. Expenses Must be Reasonable

USRP regulations require per diem payments be "reasonable." Absent a definition in the USRP, the ALJ must consider the plain meaning of the term "reasonable," as well as its use in

[137] USRP, Appendix III, p. 219.
[138] *Ibid.*

other jurisdictions.[139] Black's Law Dictionary defines "reasonable" as "fair, proper or moderate under the circumstances."[140] Webster's Dictionary describes it as "within the bound of common sense" and "not extreme or excessive."[141] Thus, expenses that are moderate and within the bounds of common sense would be reasonable, while extravagant or lavish expenditures would be considered unreasonable under the USRP.

Case law in this area provides some additional guidance. For example, while an expenditure may be ordinary and necessary, it may at the same time be unreasonable in amount if a "hard-headed businessman" would not have incurred such an expense.[142] In *Palo Alto Town & Country Village* (1973) 32 T.C.M. 1048, the IRS found that an airplane rental fee paid by a construction company for an airplane kept on stand-by at all times was unreasonable where evidence showed there were only three instances during six years where having an airplane on stand-by was convenient.[143] Lastly, case law makes clear that even if per diem payments are reasonable in amount, they are still not tax exempt if they are created solely for the purpose of effectuating a camouflaged assignment of income.[144]

Accordingly, the ALJ finds that a per diem payment is "reasonable" if it comports with common sense, is not lavish or extravagant, and is not made for the purpose of circumventing per diem regulations.

2. Employee Must Work Away From Home

Under the USRP, in order to be exempt from payroll calculation, the employer's records must demonstrate the employee was "working at a location that would have required an

---

[139] Statutory interpretation begins with the plain meaning of the statute's language. (*Botosan v. Paul McNally Realty* (9th Cir. 2000) 216 F.3d 827, 831.)
[140] Black's Law Dict. (8th ed. 2004) p. 1293, col. 1.
[141] Webster's II New College Dict. (3d. ed. 2005) p. 945.
[142] *U.S. v. Haskel Engineering & Supply Co.* (9th Cir. 1967) 380 F.2d 786, 788; *B. Forman v. Commissioner* (5th Cir. 1972) 453 F.2d 1144, 1160.
[143] *Palo Alto Town & Country Village v. Comm.* (1973) 32 T.C.M. (CCH) 1048.
[144] *U.S. v Estate Preservation Services* (9th Cir. 2000) 202 F.3d 1093, 1101; *Audano v. U.S.* (5th Cir. 1970) 478 F.2d 251, 256-257.

employee to incur additional expenses not normally assumed." A reasonable interpretation of the provision exempts per diem expenses from payroll calculation when an employee is engaged in business travel. Indeed, with regard to reimbursement, the USRP states that such repayment is limited only to "additional living expense by virtue of job location."

USRP Appendix III also supports this interpretation as it specifies the employee must be "working at a location" not normally assigned. Such a statement assumes a regularly assigned work place and travel away from such location. Absent travel, an employee simply does not incur additional expenses beyond that of any other work day. Accordingly, the ALJ adopts the plain meaning of the regulation, and notes that eligibility for such per diem payments first requires a demonstration that the employee worked at a location other than their permanently assigned workplace. This interpretation is consistent with related provisions of the USRP, EDD and IRS regulations, and precedential case law in this area.

This interpretation is also applicable to temporary employees working away from home. In *Gleeson, supra*, the Tax Court held that temporary employees must demonstrate they incurred duplicate expenses by working the temporary assignment.[145] Similarly, in *Brandl, supra*, the Court of Appeal held an employee must prove they incurred the continuing expenses of maintaining a permanent residence.[146]

The USRP exempts per diem reimbursements only if the employee, whether permanent or temporary "incurred additional living expenses" by virtue of working in another location. The rationale behind the USRP requirement is to mitigate the burden of a taxpayer who travels on business, and incurs duplicative living expenses due to that travel.[147] To exempt per diem from its payroll, employees must demonstrate they assumed duplicate living expenses while engaging in business travel. However, these "additional living expenses" are not to be confused with

[145] *Gleeson, supra*, 50 T.C.M. 680.
[146] *Brandl, supra*, 513 F.2d 697.
[147] *James, supra*, 308 F.2d at p. 207; *Henderson, supra*, 143 F.3d at p. 500.

normal commuting costs or meal expenses when not away from home, since the expenses are not "additional" expenses but in fact expenses normally assumed by the employee.

The USRP clearly sets forth the employer's per diem record-keeping obligation. The employer must provide records proving that each employee receiving per diem reimbursement worked at a location that required the employee to incur additional living expenses. The USRP also mandates that an employer's records must demonstrate the employee incurred additional duplicate living expenses and that such expenses were mitigated by per diem reimbursement. Absent such a showing, the per diem payments will constitute "payroll" under the reporting requirements of the USRP.

B. Application of Standard to ReadyLink's Facts

Appellant failed to prove its employees were eligible to receive per diem payments and further failed to prove the payments were "reasonable" under USRP guidelines

1. ReadyLink's Per Diem Payments Were Not Reasonable

ReadyLink contends its per diem payments were "reasonable" since they comported with amounts permitted under CONUS, and thus should excluded from its payroll calculation. SCIF contends the per diem amounts should be included in Appellant's payroll calculation because they were not reasonable since they did not reflect the nurses' anticipated lodging, meal or incidental expenses. Applying the law to the facts in this case, the ALJ finds SCIF's arguments more persuasive.

ReadyLink paid its employees a below-market hourly wage for the type of work being performed and used per diem payments to supplement the low hourly wage. As Ms. Tjaden testified, traveling nurses in California routinely earn between $20 and $50 per hour. This testimony is further supported by the EDD's Occupation Employment Statistics which notes the

2004 average hourly rate for nurses in Los Angeles County was $30.60 per hour. [148] Despite these average hourly rates, ReadyLink paid 60% of its nurses only $6.75 per hour, with not a single nurse earning wages of more than $20 per hour. In order to recruit nurses to work for such low pay, ReadyLink used its per diem plan to supplement employee income. By paying nurses over $300 per shift in per diem allowances, ReadyLink effectively increased its nurses' income while avoiding payroll tax liabilities for itself. The law clearly forbids deductions for payments where the obligation resulted not as an ordinary or necessary incident of business but instead was created to camouflage the assignment of income.[149]

ReadyLink's contention that its per diem plan is reasonable because the amounts distributed conform to the amounts permitted in the federal CONUS table is not persuasive. First, as noted above, the federal CONUS table may be applicable for federal income tax purposes, but it is not the only per diem table available. Indeed, the State of California's per diem schedule for state employees is substantially lower than the federal table. For example, while the CONUS table permits $104 in lodging expenses and $64 in meals and incidentals in Los Angeles, California regulations permit $110.00 in lodging expenses with only $34 in meals and incidentals.[150] Additionally, ReadyLink failed to prove the amounts provided to traveling nurses reflect their anticipated expenses. Rather, ReadyLink freely admitted the per diem amounts were calculated based on the CONUS table and were not related to the expenses a nurse might actually incur.

As the per diem amounts were not intended to reimburse employees for business expenses, the ALJ finds that ReadyLink's per diem payments were not reasonable under the USRP.

---

[148] Exh. 332.
[149] *U.S. v. Estate Preservation Services, supra*, 202 F.3d at p. 1101.
[150] 41 C.F.R., Chap. 301. Appendix A; Cal. Code Regs., tit. 2, §599.615 et seq.

2. ReadyLink Failed to Demonstrate "Local" Nurses Worked at a Location that Required Additional Expenses

USRP regulations permit per diem expenses to be excluded from payroll calculation if the employee works at a location where the employee would incur additional living expenses not normally assumed. As Appellant fails to demonstrate its "local" employees were "away from home" when working under ReadyLink contracts, the ALJ finds that Appellant's per diem payments are properly included in its payroll calculation.[151]

ReadyLink failed to prove that 142 of its employees worked outside the metropolitan area in which they lived, such that the employees would incur duplicate living expenses not normally assumed. Based on a preponderance of the evidence, 108 of the nurses working during the policy year at issue lived within 20 miles of their place of employment and another 34 nurses worked within 50 miles of their homes. These nurses clearly lived in their own homes and returned to those homes every day and night at the completion of their shift. None of the 142 employees incurred duplicate lodging expenses nor did they incur any expenses beyond that normally assumed by an employee. Moreover, no evidence was presented to prove that the IRS intended these regulations to reward "temporary" employees working 10 miles from home with a tax-free windfall. Nurses "travelling" to and from work are merely commuting in the clearest sense, and a taxpayer's costs of commuting between home and business are nondeductible personal expenses and thus not subject to tax exempt reimbursement.[152]

ReadyLink also contends its employees work 12-hours shifts and thus are eligible for per diem reimbursement, arguing that the length of the nurses work day is such that rest might be

---

[151] Ms. Harada provided her lay opinion regarding the proper use of per diem payments for local employees. Lay opinion regarding questions of law is inadmissible. (Evid. Code § 800.) Moreover, Ms. Harada's testimony was inaccurate. For example, Ms. Harada testified that an employee, working a 15-hour day but returning home at the end of the day was entitled to meal reimbursement. (Tr. 501:9-16.) Case law makes clear, however, that such an employee would be ineligible for meal reimbursement as the employee was not "away from home." (See, *Commissioner v Bagley* (1st Cir. 1967) 374 F.2d 204.) Ms. Harada's opinion on per diem regulations was inaccurate on two additional hypothetical situations as well, casting considerable doubt upon her credibility.

[152] 26 C.F.R. §§ 1.162-2(e) and 1.162-1(b)(5).

needed. However, no 12-hour work day rule exists which would entitle an employee to per diem pay.[153] Instead, the IRS utilizes a "sleep or rest" rule which permits per diem payments for lodging and meals if the employee is on a trip that requires a stop for sleep or a substantial period of rest.[154] Per diem is not available to employees on one-day business trips who rest in their cars, nor is per diem available to an employee who works a 24-hour shift and returns home after the shift.[155] Accordingly, per diem is not available to ReadyLink employees merely because they worked 12-hour shifts.

ReadyLink's policy is even more dubious when applied to nurses working 8-hour shifts. ReadyLink failed to explain why the 27 "local" nurses who worked only 8 hour shifts received per diem pay. For example, Employee No. 164 received over $17,000 in untaxed per diem monies while working 8-hour days only 35 miles away from home.[156] No evidence was provided demonstrating this employee incurred any lodging or meal expenses beyond normal commuting costs.[157] Additionally, Employee No. 127, who lived one mile from the hospital, collected nearly $16,000 in meal and lodging expenses from ReadyLink during the contract period,[158] while Employee No. 124, who worked 6 miles from home, received $23,000 in untaxed lodging and meal expenses.[159] Again, ReadyLink failed to substantiate these employees' eligibility for per diem payments. The most egregious example can be found in the case of Employee No. 144. While working for more than one year at a hospital 16 miles from her tax home, this nurse collected over $47,000 in tax-free per diem payments.[160] In all, the 27

[153] Ms. Watts testified to the existence of a "12-hour" rule. (Tr. 171:7-9.) However, when questioned about such a rule, Ms. Watts was unable to provide any support for her testimony. (Tr. 277:1-14; Tr. 325-326:20-1.)
[154] *Correll, supra*, 389 U.S. at pp. 304-305; See also, *Strohmaier v. Commissioner* (1999) 113 T.C. 106, 115.
[155] *Barry, supra*, 435 F.2d at 1291; *Moffit, supra*, 31 T.C.M. 910 at pp. 10-12.
[156] Exh. 164-8.
[157] Exh. 164.
[158] Exh. 127-6.
[159] Exh. 124-15.
[160] Exh. 144-17.

employees working 8 hour shifts while living within the same metropolitan area as their place of employment, collected over $150,000 in per diem reimbursements.

ReadyLink attempts to present its per diem program as comparable to others in the field in order to justify its per diem payments. However, analysis of the per diem programs presented demonstrates two things. First, ReadyLink's interpretation of IRS rules differs markedly from that of its competitors. Each of the competitors highlighted in Exhibit 275 noted that per diem payments were available only to those employees working more than 50 miles from their tax home.[161] In fact, in order to insulate themselves from IRS audits, many nurse registries require nurses to sign and certify the location of their permanent residence in order to assure per diem eligibility.[162] Second, unlike its competitors, ReadyLink does not explain per diem eligibility rules to its nurses, nor does it monitor its employees' eligibility for such reimbursement. While its rivals are strictly monitoring their employees for use of permanent and temporary housing facilities, ReadyLink admits it does not know if employees are using per diem payments to offset duplicate expenses and further admits it does not require any substantiation regarding the use of such monies.[163]

Accordingly, the ALJ finds that ReadyLink's employees whose tax home was located within 50 miles of their place of employment did not work at locations that required them to incur additional expenses, and as such, all per diem payments made to those employees are properly considered payroll for premium calculation purposes.[164]

---

[161] Exh 275-39; 275-54; 275-63.
[162] Exh. 275-30.
[163] Tr. 295-296.
[164] The 142 employees falling into this category can be distinguished in Appendix 1 under the "Miles from Home" column.

3. ReadyLink Failed to Substantiate that the Remaining 117 Nurses were "Away From Home" [165]

Appellant failed to provide any facts demonstrating these 117 employees actually had a separate residence or that they incurred duplicate living expenses while in ReadyLink's employ as required by the plain language of the USRP.[166]

True traveling nurses make their living by moving from job to job, usually at 13-week intervals. Such freedom allows nurses to live in different locales and experience different hospitals, but may also impede their per diem eligibility, as receipt of such monies is contingent upon demonstrating a permanent tax home. If a taxpayer continuously travels and thus does not duplicate substantial, continuous living expenses for a permanent home, the taxpayer may be considered "itinerant" and thus ineligible for any travel deductions.[167] Moreover, a nomadic taxpayer may not live free with relatives or friends and still receive per diem payments, because the nomadic taxpayer cannot demonstrate substantial duplicate living expenses.

ReadyLink provided W-2 forms for each of its employees. For 117 of these employees, the address listed on the W-2 forms was more than 50 miles from the address of the contracting hospital. However, merely living more than 50 miles from their employment does not automatically render those nurses eligible for per diem payments. In order to meet the USRP eligibility requirements for subsistence payments, these nurses also must prove their employment resulted in additional duplicate living expenses. Because ReadyLink failed to monitor employee eligibility and failed to require employees to substantiate their per diem expenses, Appellant has failed to prove these nurses actually incurred additional living expenses.

---

[165] The 117 employees are distinguished in Appendix 1 by a blank value in the "Miles from Home" column.
[166] Ms. Watts, a lay witness, opined that all temporary employees are "away from home" once they leave their permanent home. (Tr. 177:17-18.) Such an opinion is inconsistent with case law discussed above and is further evidence of Appellant's misinterpretation of IRS regulations. (See, *Gleeson, supra* at 50 T.C.M. 680.) Ms. Watts' testimony on this legal issue is given no weight.
[167] *Gleeson, supra* at 50 T.C.M. 680.

USRP regulations make clear that an employer's records must document the eligibility for per diem reimbursement. As ReadyLink failed to substantiate these 117 employees incurred additional duplicate living expenses by working under ReadyLink contracts, the ALJ finds that all per diem payments made to these employees must be included in ReadyLink's payroll calculation for workers' compensation purposes.

C. Public Policy Factors

The Insurance Commissioner is charged with ensuring the proper calculation of payroll data for reporting and auditing purposes. A program created to circumvent proper payroll calculation and reporting is thus contrary to the public policy. Appellant presents a variety of arguments in an effort to convince the Commissioner that ReadyLink's program conforms to USRP guidelines. However, analysis of such arguments demonstrates public policy favors disavowing any program such as the one adopted by ReadyLink.[168]

1. Alleged Disparate Treatment of Similarly Employed Individuals

Without providing any statutory support, Appellant contends California's worker's compensation system is intentionally structured to disparately compensate similarly situated employees while providing full medical benefits to all employees equally.[169] According to Appellant, ReadyLink's employees are not prejudiced by inaccurate payroll reporting since each will receive full medical benefits if they become injured.[170] Appellant fails to acknowledge, however, that the proper calculation of payroll is the sole issue herein, and that it is not within

---

[168] Appellant urges the ALJ to apply this decision prospectively to future cases, while exempting Appellant from the findings herein. In addition to failing to provide any legal support for this request, Appellant's request would relegate this decision to an entirely academic exercise and a meaningless endeavor. Moreover, Appellant's decision to file an appeal regarding the USRP regulations renders this decision applicable to it.

[169] App. Post-hearing Brief, pp. 3-5.

[170] Appellant's argument is unsound as it fails to consider the actual compensation an employee receives when disabled. For example, a ReadyLink nurse earning $6.75 per hour will receive approximately $187.14 per week in workers' compensation benefits, while a nurse employed by the hospital and earning the industry average of $35.00 per hour will receive $831.00 per week in workers' compensation.

the purview of the ALJ to question the USRP regulations. As Appellant's assertion is outside of the scope of this action, the argument need not be addressed herein.

2. Administrative Costs Do Not Outweigh Proper Interpretation of Regulation

Appellant further argues the ALJ should adopt the IRS rules regarding per diem payments in order to minimize the administrative costs faced by employers forced to comply with differing sets of rules and regulations.[171] In fact, without any legal support for such a statement, Appellant states the ALJ "should adopt the long-considered and well-developed interpretation to which employers already are subject by another jurisdiction unless there is a *compelling* reason to deviate."[172]

Appellant presented no evidence that compliance with USRP regulations is an "administrative burden." Employers routinely compile information for regulatory purposes and already comply with incongruent tax rules and regulations. For example, EDD regulations regarding the taxability of health care accounts, adoption benefits, cafeteria benefit plans, domestic partner benefits and meals and lodging assistance differ not only from IRS regulations but also differ from California's personal income tax rules.[173] Given the various laws governing employer recordkeeping and given that the USRP rules do not require any novel recordkeeping, Appellant's argument that compliance with USRP regulations is unduly burdensome is not persuasive.

3. Inclusion of Per Diem Payments is Consistent with Rating System

Appellant contends that inclusion of per diem payments, such as those provided by ReadyLink, into payroll amounts reported to the WCIRB will result in an inaccurate rate calculation and will interfere with the WCIRB's reporting system. Appellant's assertion relies

---

[171] App. Post-hearing Brief, pp. 7-8.
[172] *Id* at p. 8 (emphasis in original).
[173] See Exh. 298.

on the faulty assumption that all nurse registries and other temporary staffing agencies are currently operating under the same type of per diem program as it employs, and that inclusion of such large per diem amounts in payroll reporting will greatly increase the payroll and skew the pure premium rates for this classification.

Appellant's argument is not based on any evidence in the record. Examples of other nurse registries provided by Appellant demonstrate those agencies pay per diem only to eligible employees and require strict compliance with regulations on duplicate living expenses. ReadyLink failed to uncover even one nurse registry whose per diem program permits the payment of living expenses to nurses working locally. Moreover, Ms. Tjaden testified that she had not witnessed a nurse registry paying more than 50% of the remuneration received by nurses in the form of per diem payments.[174] Thus, there is no evidence that the WCIRB's pure premium advisory rates for temporary nurses will be unduly influenced by correct reporting of ReadyLink's per diem payments. As such, Appellant's argument is unsupported.

Appellant's argument is also puzzling. USRP regulations are clear with regard to the inclusion and exclusion of per diem reimbursements. Failure of an employer to follow those regulations does not render the rule unworkable nor does it render the data unreliable.

IX. Conclusion

Pursuant to California Code of Regulations, title 10, section 2509.61, subdivision (a), a "party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he or she is asserting."

Based on the evidence submitted by the parties, the record on appeal and the foregoing analysis of the facts and law at issue, Appellant has not met its burden of proof to show SCIF's 2005 payroll calculations were improper with regard to the inclusion of per diem monies. More

[174] Tr. 579:13-17.

specifically, Appellant failed to prove the per diem amounts paid to its employees were "reasonable" and further failed to prove the nurses worked in locations that required them to incur additional expenses not normally assumed.

ORDER

1. SCIF's decision regarding the 2005 policy year audit is affirmed.

I submit this proposed decision based on the evidentiary hearing, records and files in this matter and recommend its adoption as the decision of the Insurance Commissioner of the State of California.

Dated: August 6, 2009

KRISTIN L. ROSI
Administrative Law Judge
Administrative Hearing Bureau
California Department of Insurance

Employee #	W-2 Zip Code	Hospital Zip Code	Miles From Work	Hours per Shift
1	91344	90027	16.7	12
2	93442	95119		12
3	10304	94578		8
4	93309	93215	31.5	12
5	92619	90706	25.6	12
6	92324	92505	13.9	
6	92324	92705	35.9	12
7	90630	92868	9.6	12
7	90630	92868	9.6	
7	90630	92868	9.6	
7	90630	92705	13.2	12
8	29501	94578		
8	29501	94546		8
8	29501	95670		8
8	29501	95670		8
9	90746	90706	7.7	12
9	90746	90706	7.7	12
9	90746	90706	7.7	12
9	90746	90706	7.7	12
10	91790	91776	9.2	12
11	95247	94040		12
12	60435	61342		
12	60435	61342		
12	60435	61342		
13	95252	95249	13	12
13	95252	95249	13	12
14	90813	90806	1.4	12
14	90813	90806	1.4	
15	92241	93215		12
16	90802	90806	2.3	12
16	90802	90806	2.3	12
17	34208	94546		10
18	96067	93546		8
18	96067	93546		12
19	93505	93555	38.1	12
19	93505	93555	38.1	12
20	94965	93230		
20	94965	94602	16	12
21	38864	92252		12
21	38864	92252		12
22	91311	91367	5.2	12
23	94587	90806		12
23	94587	94602	17	8
23	94587	94602	17	8
24	37327	92868		8
25	95482	92243	6.3	12
26	94087	95051	2.7	12
26	94087	95051	2.7	12
26	94087	95051	2.7	12
26	94087	95051	2.7	

Employee numbers relate to employees identified in ALJ Exhibit 1. Data complied from Exhibits 1 through 271.

27	90815	90806	3.89	12
28	94806	94801	2.4	12
28	94806	94801	2.4	12
29	90012	94611		12
30	92129	92025	9.4	12
30	92129	91950	20.7	12
30	92129	90806		12
30	92129	92801		12
31	34684	95340		12
32	34684	95340		12
33	32086	95051		12
34	92354	90027		
35	92253	92252	33.8	12
36	35078			
36	35078			in
36	35078			
37	92377	92503	16.6	12
37	92377	92503	16.6	12
38	95336	95823	48.3	12
38	95336	95608		
39	96007	96020		12
40	91730	91367		12
40	91730	92335	7.8	12
41	95696	95119		12
42	90603	90027	21.1	8
43	96792	95823		
43	96792	95203		12
44	94804	90034		12
45	92530	92708	33.6	12
46	93906	94040		12
47	74426	92243		12
48	90062	91367	21.7	12
48	90062	90034	5.5	12
49	92260	92705		varies
49	92336	92335	2.69	12
49	92336	92807	26.8	12
50	96003	96001	4.7	8
51	79936	92243		12
52	92201	92503		12
52	92201	90034		12
53	84404	93230		12
54	92688	92705	13.4	12
55	94590	94611	18.6	12
56	93033	90706		12
57	95828	94143		8
58	95570	95482		12
58	95570	95482		12
58	95570	95482		12
58	95570	95482		12
58	95570	95482		12
59	15074	91206		12
59	15074	91206		12

Employee numbers relate to employees identified in ALJ Exhibit 1. Data complied from Exhibits 1 through 271.

59	15704	91206		12
60	57069	90806		
60	57069	88240		
61	95926	95926	0	12
62	92371	93215		12
63	92844	92335	37.2	12
64	95926	95926	0	12
65	97444	96020		12
66	48532			12
67	92399	92252	43.5	12
68	90803	90806	4.5	12
69	90706	92705	21.5	12
70	36613	95119		12
71	96056	96020		12
71	96056	96020		12
71	96056	96001		12
71	96056	96001		12
72	90802	90806	2.5	12
73	92555	92503	16.8	12
74	93010	92705		
74	91364	91367	2	12
74	91364	91367	2	12
74	91364	91367	2	12
74	91364	91367	2	12
75	92028	90806		8
75	92028	90806		12
75	92028	90806		12
75	92028	90806		
76	90813	90806	1.9	12
76	90813	90806	1.9	12
76	90813	92705	23.1	12
77	92376	91706	34	8
78	90004	90034	6.2	12
79	59802	92335		12
79	59802	95670		8
80	94579	94546	4.6	8
81	92234	95531		8
82	30108	92243		12
83	93309	93301	4.7	
83	93309	93301	4.7	12
84	97415	95531	19.3	12
85	39212	95926		16
86	95363	93230		12
86	95363	94062		12
86	95363	94602		12
87	95926	90806		11.5
87	95926	99901		
88	94117	90806		12
89	95503	95482		12
90	76051			12
91	62040	88240		
91	62040	62226	15.9	

Employee numbers relate to employees identified in ALJ Exhibit 1. Data complied from Exhibits 1 through 271.

92	97458	94040		12
92	97458	94040		12
92	97458	94040		12
93	92677	90034	52.6	12
94	93240	93555	42	12
95	94703	94611	3.4	12
96	67501	67502	3.2	
96	67501	67502	3.2	
97	67212	67214	6.46	
98	94578	94602	8.3	8
99	92241	92243		12
99	92241	92243		12
99	92241	92363		12
100	94501	94109	8.9	8
101	90019	90034	3.5	12
102	39507			12
103	96001	96161		
104	95409	94903	31	
104	95409	94903	31	12
104	95409	95482	56.7	12
105	90047	92243		8
106	91012	91328	19.5	12
107	56762	95823		12
108	92883	92705	17.5	12
109	96101			12
110	92804	92708	7.2	12
110	92804	92708	7.2	
110	92804	91206	27.6	12
110	92804	90706	10.2	12
111	49503	94596		12
112	92392	92252		
113	94536	94602	20.3	12
113	94536	94062	16.8	12
114	93552	92411	51	12
115	94578	94578	0	8
116	92585	92252	57	12
117	36786	92104		12
118	85365	92243	62	12
118	85365	92243	62	12
119	90278			8
120	90212	90027	7.7	8
121	61821	92411		12
121	61821	61637		
121	61821	61637		
122	61821	61637		
122	61821	92411		12
123	96080	96080	0	12
124	94545	94546	6.5	8
124	94545	94546	6.5	8
124	94545	94546	6.5	8
125	92399	92025		12
125	92399	92335	24.5	12

Employee numbers relate to employees identified in ALJ Exhibit 1. Data complied from Exhibits 1 through 271.

126	95380	95380	0	8
127	93546	93546	0	8 & 12
128	59427	92252		12
128	59427	92252		12
128	59427	92252		12
129	92392	92252		12
129	92392	92252		12
130	92506			12
131	Empty			
132	94523	94611	11.4	12
133	95818	94538		12
134	95621	95815	9.3	12
135	75087	92064		12
136	51149	6457		
136	51149	6457		
137	90620	92025		
137	90620	92705	13.9	12
138	92868	92705	5.4	12
139	95621	95815	9.3	varies
139	95621	95815	9.3	
140	94591	94602	20.7	8 & 12
140	94591	94611	18.5	
141	92275	92243		12
142	60427	90806		12
143	94602	94611	2.4	8
144	90712	92868	16.1	12
144	90712	92868	16.1	12
144	90712	92868	16.1	12
144	90712	92868	16.1	12
144	90712	92868	16.1	12
145	95928	95926	5	
146	92220	90806		
147	95833	90806		
147	95833	99901		
148	93021	91367	16	12
149	11236			
149	11236	91367		12
149	11236	91367		12
150	93942	93420		8
151	1089	90027		8
151	92277	97601		
152	92010	92801		
152	92010	92120	25	12
153	92336	95926		16
154	92211	92505		12
155	58501	92363		12
156	92252	92252	0	12
156	92252	92252	0	12
156	92252	92252	0	12
157	92373	91706	46	8
158	91789	92335	23	8
159	95816	95670	12	8

Employee numbers relate to employees identified in ALJ Exhibit 1. Data complied from Exhibits 1 through 271.

160	78209			12
161	91739	92505	14.3	
161	91739	92335	4	
162	93401	92705		12
162	93401	93436	43.9	12
162	93401	93436	43.9	varies
163	78832	92705		12
164	92337	91776	35	8
164	92337	91776	35	8
165	92408	92503	15.5	12
166	95648			12
166	95648			12
166	95648			12
166	95648	96001		12
167	95531	95531	0	8
167	95531	92503		8
167	95531	92503		8
168	91932	90806		12
169	95827	95670	5.8	8
169	95621	95670	7.4	8
169	95621	95670	7.4	8
169	95621	95670	7.4	8
170	92253	92243		12
171	43072	92505		
171	43072	92708		12
171	43072	92335		
172	49801	92705		12
172	49801	92705		
172	49801	92705		12
173	92532	90806	52	12
174	95503	96001		
175	91316	90706	29	12
175	91316	90027	13	12
175	91316	90806	31	12
176	86314	93581		12
177	91944	90706		12
177	91944	92025	23	12
178	75007	90034		12
179	92234	92243		12
180	95380	95361	19	12
181	95928	95823		12
182	92869	92705	2.2	12
183	92649	90806	9.6	
183	92649	90806	9.6	12
184	91767	92335	16	12
185	28721	96020		8
186	92555	92252	52	12
186	92555	92252	52	12
187	92240			12
188	92241	92243		12
188	92241	92243		12
189	92868	90706	16	12

Employee numbers relate to employees identified in ALJ Exhibit 1. Data complied from Exhibits 1 through 271.

190	92821	92705	13	12
190	92821	92705	13	
191	95678	95823	21	12
191	95678	95823	21	12
192	93622	93635	23	12
193	91202	90027	3.1	8
193	91202	90027	3.1	8
194	95125			12
195	92243	92252		12
196	84720	90806		12
197	95828	95823	2.5	12
198	80501	95340		12
198	80501	95340		
199	93230	92243		12
199	93230	92252		12
199	93230	92252		12
199	93230	92252		12
199	93230	37601		
200	94806	94602	13	8
201	92252	92252	0	12
201	92252	95531		12
201	92252	92252	0	
202	91913	91950	6.4	12
203	5089	6457		
203	5089			
203	5089			
203	5089	95340		12
204	92337	92335	3.7	
204	92337	92411	10.9	12
204	92337	92411	10.9	12
204	92337	92411	10.9	12
204	92337	92411	10.9	12
205	39482	91206		12
205	39482	91206		12
205	39482	91206		12
206	95834	95361		12
207	93292	90806		12
208	46534	92252		
209	54937	96130		8
210	92264	92252	27	12
210	92264	92503	54	
211	93560	95531		12
212	93446	93635		12
213	90044	90027	11	8
214	92627	92705	11	12
215	90815	90806		
215	90815	90806	3.8	
215	90815	90806		12
216	93230			
216	93230			
216	93230	93230	0	12
217	92508	93546		

Employee numbers relate to employees identified in ALJ Exhibit 1. Data complied from Exhibits 1 through 271.

217	92508	92503	8.3	12
217	92508	92503	8.3	12
218	95608	96001		12
219	92887	94602		12
219	92887	94602		
219	92887	90706	22.9	12
220	92111	92064	14	8
221	89027	92705		
221	89027	94040		8
222	92154	92123	15.9	
222	92154	92123	15.9	8
223	83466	96020		12
224	91737	91204	39.5	12
224	91737	91204	39.5	
225	6405	90034		12
226	6405	90034		12
227	48768	93215		12
227	48768	93215		12
228	93710	90806		
229	95926	95815		12
230	38801	91206		12
231	94579	94611	11	
232	95340	93720	49	12
233	90405	90034	4.3	12
233	90405	90034	4.3	12
234	94587	91206		
234	94587	94602	17	8
235	85364	92243	54	12
236	90277	90806	11.6	12
236	90277	90806	11.6	12
237	36042	95531		12
238	92064	92064	0	12
238	92064	92120	13	12
238	92064	92120	13	12
239	79414			
240	91360	91367	14.5	12
240	91360	91367	14.5	12
240	91360	91367	14.5	12
240	91360	91367	14.5	12
241	85041	79606		
241	85041	79606		
241	85041	85207		
242	95670	88310		
242	95670	87401		
242	95670	91206		12
243	59427	91206		12
244	90027	90034	9.2	8
245	92227	92243	14.4	12
245	92227	92243	14.4	12
246	94806	94801	2.4	12
246	94806	94602	13	12
247	92589	92225		12

Employee numbers relate to employees identified in ALJ Exhibit 1. Data complied from Exhibits 1 through 271.

248	92336	92505	15	12
249	90808	92705	18.6	12
249	90808	92705	18.6	12
250	92677	92807	23	12
251	77015	94602		8
252	90807	90806	17	
253	96056	95203		12
254	76086	92604		12
255	92225	92252		12
255	92225	92252		12
255	92225	92252		12
255	92225	92252		12
256	90049	90806	25.7	12
256	90049	90806	25.7	12
257	92268	92411	46	12
258	90638	90034	24.1	12
258	90638	90034	24.1	
259	94501	94611	5.5	12
259	94501	94611	5.5	12
260	39532	95926		
260	39532	95926		12
260	39532	95926		12
260	39532	95926		
261	91342	91367	14	12
261	91342	91367	14	12
261	91342	91776	24	12
261	91342	90034	19	12
262	92553	93215		12
262	92553	93215		12
263	78253	94801		12
263	78253	94602		12
264	92507	92503	8.4	12
265	90650	90706	3	
266	90503			12
267	95640	96020		
267	95640			
267	95640	94611		8
267	95640	96101		12
268	91724	92503	26	
268	91724	91706	6.4	8
269	90808	91367	38	12
270	90065	91206	3.8	12
271	92647	92801	8.9	12
271	92647	92801	8.9	12
271	92647	92801	8.9	
271	92647	90806	11.8	12
271	92647	92705	12.4	12
272	73005	88240		
272	73005			8

Employee numbers relate to employees identified in ALJ Exhibit 1. Data complied from Exhibits 1 through 271.

DECLARATION OF SERVICE BY MAIL (AND FAX)

Case Name/No.: In the Matter of the Appeal of:
READYLINK HEALTHCARE, INC.
File No. AHB-WCA-08-14

I, **CARMENCITA O. MALBOG**, declare that:

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Administrative Hearing Bureau, 45 Fremont Street, 22nd Floor, San Francisco, California, 94105.

I am readily familiar with the business practices of the San Francisco Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in San Francisco, California.

[X] On October 7, 2009, following ordinary business practices, I caused a true and correct copy of the following document(s):

ORDER ADOPTING PROPOSED DECISION AND DESIGNATION OF DECISION AS PRECEDENTIAL; PROPOSED DECISION

to be placed for collection and mailing at the office of the California Department of Insurance at 45 Fremont Street, San Francisco, California, with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED PARTY SERVICE LIST)

[ ] In addition, on October 7, 2009, I also FAX'ed a copy of said document to all parties where indicated to the FAX number which is printed under each address on this Declaration.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on October 7, 2009.

October 7, 2009
DATE

CARMENCITA O. MALBOG

PARTY SERVICE LIST
AHB-WCA-08-14

Arthur J. Levine, Ph.D., J.D., CPCU,ARM 2067 Smokewood Avenue Fullerton, CA 92831 Tel. No.: (714) 447-8324 FAX No.: (714) 871-8508 art@drlevinelaw.com	Attorney for Appellant CERTIFIED MAIL
Lisa S. Tang, Esq. **STATE COMPENSATION INSURANCE FUND** 1750 East 4th Street, Ste. 450 Santa Ana, CA 92705-3930 Tel. No.: (714) 347-6141 FAX No. : (714) 347-6145	Attorney for State Compensation Insurance Fund CERTIFIED MAIL
Brenda J. Keys, Esq. Senior Vice President - Legal WORKERS' COMPENSATION INSURANCE RATING BUREAU 525 Market Street, Room 800 San Francisco, CA 94105 Tel. No.: (415) 778-7000 FAX No.: (415) 778-7007 legal@wcirbonline.org	Attorney(s) for Workers' Compensation Insurance Rating Bureau **Courtesy Copy** CERTIFIED MAIL
John N. Frye, Esq. **LAW OFFICES OF JOHN N. FRYE** 411 Borel Avenue, Suite 500 San Mateo, CA 94402 Tel. No.: (650) 577-0889 FAX No.: (650) 345-9875 jfryelaw@cs.com	Attorney(s) for Workers' Compensation Insurance Rating Bureau **Courtesy Copy** CERTIFIED MAIL