

9-706. FAILURE TO NOTIFY EMPLOYER — EXCUSE AND WAIVER.

(A) EXCUSED BY COMMISSION.

THE COMMISSION SHALL EXCUSE A FAILURE TO COMPLY WITH THE NOTICE REQUIREMENT OF § 9-704 OR § 9-705 OF THIS SUBTITLE IF THE COMMISSION FINDS THAT:

(1) THERE WAS A SUFFICIENT REASON FOR THE FAILURE TO COMPLY; OR

(2) THE EMPLOYER OR ITS INSURER HAS NOT BEEN PREJUDICED BY THE FAILURE TO COMPLY.

(B) BURDEN OF PROOF.

THE EMPLOYER OR ITS INSURER HAS THE BURDEN OF PROVING THAT IT HAS BEEN PREJUDICED BY THE FAILURE TO COMPLY WITH THE NOTICE REQUIREMENT.

(C) OCCUPATIONAL DISEASE — WAIVER OF DEFENSE.

IN THE CASE OF AN OCCUPATIONAL DISEASE, THE DEFENSE OF FAILURE TO COMPLY WITH THE NOTICE REQUIREMENT IS WAIVED UNLESS RAISED AT A HEARING ON THE CLAIM BEFORE ANY AWARD OR DECISION IS MADE.

REVISOR'S NOTE: This section is new language derived without substantive change from former Art. 101, § 26(a)(3) and the second and third sentences of (2), and, except as it related to barring a claim, the third sentence of § 38(a).

Subsections (a)(2) and (b) of this section are revised to reflect that the employer or insurer may be affected by the failure to give notice of an occupational disease. Although former Art. 101, § 26(a)(2), which concerned occupational disease claims, only referred to "employer", there seemed no intent to exclude the insurer and not to parallel the notice requirement for an accidental injury in former Art. 101, § 38(a).

Also in subsections (a)(2) and (b) of this section, the word "insurer" is substituted for the former words "Injured Workers' Insurance Fund" or "insurance company" for brevity.

In subsection (b) of this section, the former phrase "by the lack of notice" in the third sentence of former Art. 101, § 26(a)(2) and the former phrases "by such failure on the part of the employee" and "by delay in giving such notice" in the third sentence of former Art. 101, § 38(a) are deleted as unnecessary in light of the broad reference to "failure to comply with the notice requirement".

Defined term: "Commission" § 9-101