January 24, 2005

To: All California Employers

From: Andrea Lynn Hoch, Administrative Director
Division of Workers’ Compensation

Subject: Workers’ Compensation Fraud Warning Notice

To comply with the mandate of Labor Code Section 3822, the Administrative Director has drafted this warning notice for distribution to employers.

THE FIGHT AGAINST WORKERS’ COMPENSATION FRAUD

Workers’ compensation fraud is a drain on California’s economy. Workers’ compensation fraud harms employers by contributing to the high cost of workers’ compensation insurance and self-insurance and it harms employees by undermining the perceived legitimacy of all workers’ compensation claims.

To help promote awareness of the need to eliminate fraud in the workers’ compensation system, the legislature enacted Labor Code Section 3822 to require the Administrative Director of the Division of Workers’ Compensation to provide every employer, claims adjuster, third party administrator, physician and attorney who participates in the workers’ compensation system, an annual notice warning the recipient against committing workers’ compensation fraud, and advising of the penalties for such fraud.

Workers’ compensation fraud is not limited to claimant fraud. The workers’ compensation program is also victimized by fraud committed by medical providers, employers, claims adjusters and attorneys.

WHAT CONSTITUTES EMPLOYER FRAUD?

- **Premium fraud:** when an employer schemes to defraud their workers’ compensation insurer by paying less for their workers’ compensation insurance than they should. Examples include under-reporting payroll, misclassifying employees’ job descriptions, paying an employee’s medical provider directly for medical treatment for a work related injury.

- **Failing to secure workers’ compensation insurance coverage**
WORKERS' COMPENSATION FRAUD IS A CRIME

Insurance Code section 1871.4 provides that it is a felony to make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in section 3207 of the Labor Code, or present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation for the purpose of obtaining or denying any compensation, as defined in section 3207 of the Labor Code. It is also a crime to knowingly assist, abet, conspire with, or solicit any person in an unlawful act of workers' compensation insurance fraud.

It is also a crime to make or cause to be made any knowingly false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

Workers' compensation fraud may be punished by imprisonment in county jail for one year, or in a state prison, for two, three, or five years, or by a fine not exceeding one hundred fifty thousand dollars ($150,000) or double the value of the fraud, whichever is greater, or by both imprisonment and fine. In addition, if someone is convicted of workers' compensation fraud, the court is required to order restitution to be paid, including restitution for any medical evaluation or treatment services obtained or provided.

Finally, Insurance Code section 1871.5 provides that any person convicted of workers' compensation fraud pursuant to section 1871.4 or section 550 of the Penal Code shall be ineligible to receive or retain any compensation, as defined in section 3207 of the Labor Code, where that compensation was owed or received as a result of a violation of section 1871.4 or section 550 of the Penal Code for which the recipient of the compensation was convicted.

WORKERS' COMPENSATION FRAUD IS A SERIOUS MATTER

Workers' compensation fraud can increase the cost of doing business and can result in decreases (or no increases) in employee salaries, laying off employees or even going out of business. Workers' compensation fraud can also increase health care costs and the cost of insurance for all Californians.

If you would like to obtain more information about the issue of workers' compensation fraud, or would like to report an occurrence of workers' compensation fraud, please call the Department of Insurance Fraud Division's hotline number: (800) 927-4357. If you have Internet access, you can access the Fraud Division's Website at: http://www.insurance.ca.gov/FRD/Frd_main.htm to obtain more information and locate the telephone number for the Fraud Division office nearest to you.