

DEPARTMENT OF INSURANCE**Legal Division, Government Law Bureau**

45 Fremont Street, 21st Floor
San Francisco, CA 94105
www.insurance.ca.gov

**NOTICE**

To: ALL WORKERS' COMPENSATION INSURERS, INSURANCE AGENTS AND BROKERS, AND OTHER INTERESTED PARTIES

Date: November 14, 2018

Subject: Request to Cease Collecting Responses to Questions Regarding Disability and Age on ACORD Form 130

The Association for Cooperative Operations Research and Development (ACORD) promulgated Form 130 (2013/09) (Form 130) for use by insurers and producers as an application for workers' compensation insurance coverage. Form 130 requests employer applicants to respond to several questions including the following:

10. ANY EMPLOYEES UNDER 16 OR OVER 60 YEARS OF AGE?

13. ANY EMPLOYEES WITH PHYSICAL HANDICAPS?

If used for rating purposes, the information elicited by questions 10 and 13 on Form 130 would violate Insurance Code section 11735, subdivision (d) that provides:

Notwithstanding Section 679.70, no rating organization may issue, nor may any insurer use, any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act.

Insurance Code section 679.72 provides that no application for insurance used by an insurer to determine the insurability of an applicant shall carry any identification, or any requirement therefor, of any characteristic listed or defined in subdivision (b) of Section 51 of the Civil Code with respect to the applicant. The characteristics listed or defined in Civil Code section 51 (b) include, but are not limited to, 'disability,' and 'medical condition.' Even though the Unruh Act (Cal Civil Code §51 et seq.) does not delineate 'age' as a prohibited characteristic, the Unruh Act may be applicable in situations in which business establishments make classifications based on age. Moreover, employers may violate California's anti-discrimination laws if they ask their employees to provide the information sought by questions 10 and 13 on Form 130.

The information collected on Form 130 is shared with the National Council on Compensation Insurance (NCCI) for the purpose of its research on statistics relating to workers' compensation policies from states that participate in its data collection program. California is not, however, a NCCI participating state and the NCCI does not use data collected from California for its research. Additionally, the Workers' Compensation Insurance Rating Bureau of California (WCIRB) does not use the data collected in response to questions 10 and 13 on Form 130, and

since 1994 the State Compensation Insurance Fund (SCIF) has instructed interested parties not to collect responses to questions 10 and 13 on Form 130. As a result, the information requested by questions 10 and 13 on Form 130 is not used by the various rating agencies that generally analyze country-wide workers' compensation data or that specifically analyze California workers' compensation data.

Although the continued use of Form 130 in California generally is not objectionable, because the information requested by questions 10 and 13 on Form 130 is not utilized by the NCCI, the WCIRB or SCIF and California employers may violate the State's anti-discrimination laws by requesting such information from their employees, insurers, agents and brokers are encouraged not to collect answers to questions 10 and 13 on Form 130 and for California employers to refrain from seeking such information from their employees.

Questions regarding this Notice should be directed to workcompquestions@insurance.ca.gov.