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Form 113 or Section 19- the dilemma

I am frequently asked to explain the difference between these two DIA forms. Below will provide some basic facts and some analysis.

Form 113 (also called Section 113)

This formerly was used for both with liability and without liability adjustment in a case. About 12 years ago the conciliator manager decided that it could only be used for WITH liability adjustments.

Tip – use only if you have or will be accepting the case. Common uses are section 36, payment of benefits (usually a closed period), acceptance of specific treatment, AWW, withdrawal of an appeal that leads to an attorney fee.

This form can be approved by a conciliator or judge even if you have a pro se employee.

Attorneys shy away because it requires a lot of information to be filled out and is hard to limit.

Section 19

This was created to allow the parties to do without liability agreement (if they so designate) so long as they are mutually agreed to. This form is great for almost anything you desire. It can be used to pay any length of benefits, recreate the PWOP period (one of my favorites), adjust

ongoing or anticipate litigation. The goal of this form is to limit the terms to only what is specified in the agreement and not beyond.

If you have a pro se the form can only be approved by an AJ or ALJ.

Suggestions:

If you are going to be in a penalty situation (late payment, late denial) I use the Section 19 to recreate the PWOP or to pay a specific period / amount with no strings attached waiving any prior penalties or wrong doing. Will cost a legal fee to the employee's attorney but in my experience the insurer gets more then it gives up.

If you adjust indemnity be sure to specify that the employee is waiving any Section 50 interest or risk a possible claim for penalties if you do not pay it. Tip- I commonly say the parties waive any possibly due Section 50 interest and any Section 13A(10) offset.

If you use it to recreate the PWOP why not extend it. I frequently use the Section 19 to extend without doing a Form 105. Be sure to get an AJ to approve it.