

Employer Rights

Information for Employers from the Division of Workers' Compensation

What is Workers' Compensation Insurance Coverage?

Texas employers, except for public entities, can choose whether or not to provide workers' compensation insurance coverage for their employees. Workers' compensation provides covered employees with income and medical benefits if they are injured on the job or have a work-related injury or illness. Workers' compensation is regulated by the Texas Department of Insurance; Division of Workers' Compensation (the Division).

Participation in the workers' compensation system in Texas is voluntary for most employers. Employers who choose to have workers' compensation insurance may:

- purchase a workers' compensation insurance policy from a private insurance company;
- self-insure, if the employer can meet the requirements to self-insure under the Texas Workers' Compensation Act (the Act) and is certified through the Division;
- self-insure through the Texas Department of Insurance with a group of same or similar private employers; or
- if a governmental entity, purchase a workers' compensation policy from a private insurance company, or self-insure either individually or as a group

With few exceptions, workers' compensation insurance limits the employer's liability for the work-related injury or death sustained by the employee.

For additional information, visit the Division's website for:

- Information regarding benefits that employees are eligible for www.tdi.state.tx.us/wc/information/benefits.html.
- Information regarding Employer Rights and Responsibilities www.tdi.state.tx.us/wc/information/employers.html.
- Information about how to become self-insured through the Division www.tdi.state.tx.us/wc/dwc/division/selfins.html.

This publication is a summary and is presented for informational purposes only. It is not a substitute for the statute and Division rules. For questions about Division rules, please call Customer Assistance at 1-800-252-7031. CS05-016E(8-07)

Covered Employer Rights

The Texas Workers' Compensation Act provides a covered employer the following rights:

- the right to contest the compensability of a workers' compensation claim (claim) if the employer's insurance carrier accepts liability. Contesting the compensability of a claim means the employer can present evidence in dispute resolution proceedings held at the Division and in court that indicates the employee's injury, illness, or death did not occur on the job or is not work-related.
- the right to receive notice, after making a written request to the insurance carrier, about any dispute resolution proceeding or court proceeding related to an employee's claim, or any proposal to settle the claim by an agreement.
- the right to attend all dispute resolution proceedings related to an employee's claim.
- the right to present relevant evidence about disputed issues at dispute resolution proceedings.
- the right to report suspected workers' compensation fraud to the Division or to the insurance carrier.
- the right to contest the failure of the insurance carrier to provide accident prevention services required by the Act.

For additional information regarding dispute resolution and a list of the Division's local offices in your area, visit the Division's website at www.tdi.state.tx.us/wc/information/dispute.html or <http://www.tdi.state.tx.us/wc/dwcontacts.html#offices>.

To obtain the forms to dispute a claim (DWC Form-4 and DWC Form-45), visit the Division's website at www.tdi.state.tx.us/wc/forms/index.html.

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Reimbursement of Voluntary Payments Made by an Employer

[Section 408.003, Rules 126.13, 129.7]

Whether an employer may be reimbursed for voluntary payment of benefits paid to an injured employee depends on the type of payments made and when the payments were issued.

An employer is eligible for reimbursement of voluntary payment of benefits the employer has paid to an injured employee when:

- the carrier has denied liability for the injury, the employer does not agree, and the injury is determined compensable; or
- the carrier has not completed its initial investigation. **(Please Note: an employer is only allowed to pay benefits in this situation for the first two weeks after the injury).**

In the situations above, the employer must file the *Employer's Report for Reimbursement of Voluntary Payment* (DWC Form-2) detailing the total amount of voluntary payments made up to the point when the carrier notified the employer that they have accepted liability for the injury and have begun benefit payments. The carrier must reimburse the employer for the amount of benefits the carrier would have paid. If the employer made payments in excess of what the carrier would have paid in benefits, the excess amount is not reimbursable unless there is a written agreement between the injured employee and the employer that the excess amount can be recouped from future impairment income benefits paid by the carrier, if any.

An employer is not eligible for reimbursement of wages paid to continue the employee's full salary after an injury if the carrier has initiated benefits. An employer must ensure the carrier is aware the employer is paying full salary to the employee to prevent the carrier from paying Temporary Income Benefits (lost wage benefits) for the same time period. An employer who pays salary to supplement the difference between the 70 percent or 75 percent of the employee's average weekly wage that is being paid by the carrier is not entitled to and may not seek reimbursement from the employee or the carrier.

For more information on workers' compensation for employers see the following fact sheets:

- Employer Responsibilities
- Non-Covered Employers

Employer Responsibilities

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COVERED EMPLOYERS

Employer Responsibilities

An employer must report the following to its insurance carrier within eight (8) days of the date:

- an employee misses more than one (1) day of work because of a work-related injury;
- an employer knows about an occupational disease or illness even if the employee has not missed any work; or
- an employee dies because of a work-related injury, or illness.

An employer may report the injury or illness to its insurance carrier by mail, fax, telephone, or electronic transmission and should keep a record of the date each injury is reported to its carrier.

An employer is required to provide a copy of the completed *Employer's First Report of Injury or Illness*, (DWC Form-1) to the injured employee at the same time the injury is reported to its insurance carrier. An employer must also provide a copy of "*Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System*" to the injured employee.

To view or print a copy of the *Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System*, visit the Division's website at www.tdi.state.tx.us/wc/employee/workerrights.html.

The insurance carrier and the employer may agree to have the insurance carrier send a copy of the *Employer's First Report of Injury and Illness* (DWC Form-1) and *Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* to the injured employee. However, an employer can be fined up to \$500 per occurrence if the employer or the carrier fails to provide this information.

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Employer's Wage Statement

[Rule 120.4]

An employer is required to report an injured employee's wages and other fringe benefits (i.e. health premiums, uniform allowance, etc.) to the insurance carrier. The employer is required to send the *Employer's Wage Statement* (DWC Form-3) to the insurance carrier and the injured employee within 30 days of the date that income benefits begin to accrue (the 8th day missed from work). An employer is not required to send a copy of the wage statement to the Division unless the Division requests the statement.

Supplemental Report of Injury

[Rule 120.3]

An employer must report any changes in an injured employee's pay or employment status to the insurance carrier. The employer must send the *Supplemental Report of Injury* (DWC Form-6), to the insurance carrier and the injured employee within:

- ten (10) days from the end of a pay period in which an injured employee's pay changes; and
- ten (10) days from the date an injured employee resigns or is terminated; and
- three (3) days from the date an injured employee returns to work; and
- three (3) days from the date an injury causes an employee to miss additional work after returning to work.

If an employer does not send the required forms, or does not send the forms on time, the employer could be fined up to \$500 per occurrence.

Record-Keeping Responsibilities

[Section 409.006, Rule 120.1]

An employer must keep a record of all work-related injuries, illnesses, and fatalities. The records must be kept for at least five (5) years from the last day of the year in which the injury, illness or fatality occurred, or for the period of time required by the Occupational Safety and Health Administration (OSHA), whichever is longer.

If these records are not kept, an employer could be fined up to \$500 per occurrence.

Notice Responsibilities

[Sections 409.043, 406.007, 406.034, Rules 110.101, 110.108]

Written notice must be posted in the workplace in English and Spanish and any other language that is appropriate telling employees that:

- the employer has workers' compensation insurance, and the workers' compensation insurance company's name;
- information regarding the Division's Ombudsman program; and
- the Division's toll-free telephone number to report unsafe work conditions.

The notice must be placed in the employer's personnel office (if any) and in a prominent place where employees can see it regularly. The notice must be in the wording and format adopted by the Division (Notice-6). To obtain Notice-6, visit the Division's website at www.tdi.state.tx.us/forms/form20all.html.

If the notice is not posted, the employer could be fined up to \$1,000.

Notice to New Employees

[Section 406.034, Rule 110.101]

An employer is required to give written notice of coverage to new employees upon hire and inform them of their right to reject workers' compensation coverage and retain their common law right of action. If at any time the coverage terminates and then the employer again obtains new coverage, the employer is required to give all employees this information in writing. To review the rule and obtain the required wording for this notice, visit the Division's website at www.tdi.state.tx.us/wc/rules/110.pdf.

The Division encourages an employer to keep a copy of the notice provided to each new employee. The notice may be signed and dated by the employer and the new employee.

If this notice is not provided to new employees, the employer could be fined up to \$500 per occurrence.

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Notice of Change in Coverage

[Section 406.005, Rule 110.1]

An employer must give all employees written notice if the employer requests cancellation of the workers' compensation policy or if the insurance carrier cancels the policy. The notice must be given to all employees within 15 days from the date the request for cancellation was made or the date the employer receives notice from the insurance carrier that the carrier intends to cancel the policy.

If this notice is not provided to all employees, the employer could be fined up to \$500 per occurrence.

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