

**Texas Workers' Compensation Act Supplement: Substantive Corrections  
To the Version of the Act Distributed at the 2005 Education Conference**

1. §401.011(31-a)(C): the second "by" should be deleted.
2. §401.025(a): "workers' compensation" should be added in between "other" and "laws."
3. §402.00118(3): "as an executive" should be added in between "five years experience" and "in the administration."
4. §402.00121(b): "decision" should be replaced by "division."
5. §402.00125: "of" should be replaced by "on" in the chapter title.
6. §402.00127: "decision" should be replaced by "division."
7. §402.00128: subsection (7) should be added, which states, "enter appropriate orders as authorized by this title;"
8. §402.023(a)(2): "division's" should be added in between, "available on the" and "internet website."
9. §402.075(g): "not" should be deleted after "may" and before "provide."
10. §404.055(b): "of the public counsel" should be added in between "removal" and "exists."
11. §404.106(b): "needed" should be added in between "obtain" and "information."
12. §407A.357: should be added as follows:

**“§407A.357. TEXAS GROUP SELF-INSURANCE GUARANTY ASSOCIATION;  
ADVISORY COMMITTEE.**

- (a) Subject to Subsection (d), the Texas Group Self-Insurance Guaranty Association shall be established not later than January 1, 2006, based on recommendations from the guaranty association advisory committee established under Subsection (b). The guaranty association shall provide for the payment of workers' compensation insurance benefits and expenses related to payment of those benefits for the injured employees of an insolvent group.
- (b) The guaranty association advisory committee is composed of the following voting members:
  - (1) three members who represent different groups under this chapter, subject to Subsection (c);
  - (2) one member designated by the commissioner of workers' compensation;

- (3) one member designated by the insurance commissioner; and
- (4) the public counsel of the office of public insurance counsel.

(c) If three groups under this chapter have not been established by July 1, 2004, the advisory committee shall include representatives of any certified groups, and the commissioner shall choose the remaining voting members under Subsection (b)(1):

(1) from members of a bona fide trade association in this state that is eligible for and has applied for a certificate of approval; or

(2) if an association described by Subdivision (1) does not exist as of July 1, 2004, from any association in this state representing employers in the same or similar business that has been in existence for at least five years for purposes other than obtaining insurance coverage.

(d) If the advisory committee under this section recommends that a guaranty association not be created, the guaranty mechanism under Section 407A.356 continues in effect.”

13. §408.004(e): the version effective on or after January 1, 2002 and before the effective date of rules adopted by the Workers’ Compensation Commissioner after September 1, 2005 should have two subsection (e)s, which read as follows:

“(e) An employee who, without good cause as determined by the commission, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (b) commits a violation. A violation under this subsection is a Class D administrative violation. An employee is not entitled to temporary income benefits, and an insurance carrier may suspend the payment of temporary income benefits, during and for a period in which the employee fails to submit to an examination under Subsection (a) or (b) unless the commission determines that the employee had good cause for the failure to submit to the examination. The commission may order temporary income benefits to be paid for the period that the commission determines the employee had good cause. The commission by rule shall ensure that an employee receives reasonable notice of an examination and of the insurance carrier's basis for suspension of payment, and that the employee is provided a reasonable opportunity to reschedule an examination missed by the employee for good cause.

(e) An employee who, without good cause as determined by the commission, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (b) commits a violation. The commission by rule shall ensure that an employee receives reasonable notice of an examination and that the employee is provided a reasonable opportunity to reschedule an examination missed by the employee for good cause.”

14. §408.004(b): “whether it is necessary to change the employee’s diagnosis” should be added after “employee’s condition and” and before the next sentence beginning with “The commissioner by rule shall adopt. . .” in the version effective for a request for medical

examinations made to the Division by an insurance carrier on or after the date provided by the Workers' Compensation Commissioner rule adopted after September 1, 2005.

15. §408.047: a second §408.047 that is effective for claims for workers' compensation benefits based on a compensable injury that occurs before 9/1/05 should be added and read as follows:

**“§408.047. STATE AVERAGE WEEKLY WAGE.** *[Applies to claims for workers' compensation benefits based on a compensable injury that occurs before Sept. 1, 2005]*

The state average weekly wage for the fiscal year beginning September 1, 2003, and ending August 31, 2004, is \$537, and for the fiscal year beginning September 1, 2004, and ending August 31, 2004, is \$539.

Acts 1993, 73rd Leg., ch. 269, §1, eff. Sept. 1, 1993. SB 104, effective June 10, 2003 and SB 1574 effective June 20, 2003.”

16. §408.122(b): “be” should replace “by” in the first version of §408.122, which is effective for a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2003.

17. §408.1225: the following subsection (d) should be added:

“(d) The commissioner shall develop rules to ensure that a designated doctor called on to conduct an examination under Section 408.0041 has no conflict of interest in serving as a designated doctor in performing any examination.”

18. §408.123: subsections (c) through (d) should be added and read as follows:

“(c) The commissioner shall adopt a rule that provides that, at the conclusion of any examination in which maximum medical improvement is certified and any impairment rating is assigned by the treating doctor, written notice shall be given to the employee that the employee may dispute the certification of maximum medical improvement and assigned impairment rating. The notice to the employee must state how to dispute the certification of maximum medical improvement and impairment rating.

(d) If an employee is not certified as having reached maximum medical improvement before the expiration of 102 weeks after the date income benefits begin to accrue, the division shall notify the treating doctor of the requirements of this subchapter.

(d) Except as provided in Subsections (e), (f), and (g), the first valid certification of maximum medical improvement and the first valid assignment of impairment rating to an

employee are final if the certification of maximum medical improvement and/or the assigned impairment rating is not disputed within 90 days after written notification of the maximum medical improvement and/or assignment of impairment rating is provided to the claimant and the carrier by verifiable means.”

19. §408.125(c): “preponderance” should replace “great weight” in between “report unless the” and “of the other medical evidence.”
20. §409.012(f): “vocational” should be added in between “the effectiveness of” and “rehabilitation.”
21. §410.032: “or will preside” should be added after “who presided” and before “at the benefit review conference.”
22. §413.002(b)(2): “or” should be replaced with a comma after, “408.122” and before “408.151.”
23. §413.011(e): “individual” should be added in between “may adopt” and “treatment protocols.”
24. §413.011(h): replace section “412.031” with “413.031.”
25. §413.011(i): replace “decision” with “division” in the last sentence.
26. §413.022(A)(2): insert “business” in between “each” and “day.”
27. §413.022(c): “accommodations” should be replaced with “modifications” before “necessary” and after “workplace.”
28. §413.023(b): “appropriately assist an injured employee to” should be added in between “employer to” and “obtain access.”
29. §413.025(a): “workplace” should be replaced by “workforce” in the first sentence.
30. §413.025(b): “ever” should be inserted in between “unable to” and “return to the workforce.”
31. §413.025(c)(4): “benefit” should be added in between “income” and “recipients.”
32. §413.032(b): “carrier” should be added after “any of the treating doctors insurance” and before “health care providers who reviewed the case for decision.”