

## CHAPTER 120. COMPENSATION PROCEDURES - EMPLOYERS

### **§120.1. Employer's Record of Injuries.**

- (a) An employer shall keep a record of all injuries and fatal injuries to employees as reported to an employer, or otherwise made known to an employer. The record shall include:
  - (1) the name, address, date of birth, sex, wage, length of service, social security number, and occupation of the employee;
  - (2) the reported cause and nature of the injury, the part of the body affected, and a description of any equipment involved;
  - (3) the date, time, and location where the injury occurred;
  - (4) the name of the employee's immediate supervisor;
  - (5) the names of any witnesses (if known);
  - (6) the name and address of the treating health care provider, if known; and
  - (7) any voluntary benefits paid by the employer under the Texas Workers' Compensation Act (Act), §4.06.
- (b) These records shall be open to inspection by the commission, upon at least five working days notice to the employer, at a reasonable time and place.
- (c) The employer shall retain a record of an injury until the expiration of five years from the last day of the year in which the injury occurred or the period of time required by Occupational Safety and Health Administration standards and regulations, whichever is greater.
- (d) An employer who does not maintain a record, or who refuses to make the record available to the commission, may be assessed an administrative penalty not to exceed \$500.

*The provisions of this §120.1 adopted to be effective January 11, 1991, 16 TexReg 115.*

### **§120.2. Employer's First Report of Injury and Notice of Injured Employee Rights and Responsibilities.**

- (a) The employer shall report to the employer's insurance carrier each death, each occupational disease of which the employer has received notice of injury or has knowledge, and each injury that results in more than one day's absence from work for the injured employee. As used in this section, the term "knowledge" includes receipt of written or oral information regarding diagnosis of an occupational disease, or the diagnosis of an occupational disease through direct examination or testing by a doctor employed by the employer.
- (b) The Division shall prescribe the form, format, and manner of the employer's first report of injury (report). The report shall contain:
  - (1) the information required by § 120.1(a) of this title (relating to Employer's Record of Injuries);
  - (2) any additional information prescribed by the Division in accordance with the Labor Code § 402.00128(b)(10); and
  - (3) the information necessary for an insurance carrier to electronically transmit a first report of injury to the Division.

- (c) The report shall be filed with the insurance carrier not later than the eighth day after having received notice of or having knowledge of an occupational disease or death, or not later than the eighth day after the employee's absence from work for more than one day due to a work-related injury. For purposes of this section, a report is filed when personally delivered, mailed, reported via tele-claims, electronically submitted, or sent via facsimile.
- (d) The employer shall provide a written copy of the report and a written copy of the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice of Rights and Responsibilities) to the injured employee by personal delivery, mail, electronic submission or facsimile. The Notice of Rights and Responsibilities shall be in English and Spanish, or in English and any other language common to the employee. The written report may be the report specified in subsection (b) of this section, or at a minimum shall contain the information listed in § 120.1(a) of this title (relating to Employer's Record of Injuries).
- (e) The Notice of Rights and Responsibilities is adopted by reference and may be obtained from:
  - (1) the department's website at [www.tdi.state.tx.us](http://www.tdi.state.tx.us);
  - (2) the Office of Injured Employee Counsel's website at [www.oiec.state.tx.us](http://www.oiec.state.tx.us); or
  - (3) Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas, 78744-1609.
- (f) The employer shall maintain a record of the date the copy of the report of injury and the date the Notice of Rights and Responsibilities were provided to the employee. The employer shall also maintain a record of the date the report of injury is filed with the insurance carrier.
- (g) If the insurance carrier has not received the report, the employer has the burden of proving that the report was filed within the required time frame. If the carrier receives the report by mail, it will be presumed that the report was mailed four days prior to the date received by the carrier. The employer has the burden of proving that good cause exists if the employer failed to timely file or provide the report.
- (h) A party who fails to comply with this section commits an administrative violation.

*The provisions of this §120.2 adopted to be effective January 11, 1991, 16 TexReg 115; amended to be effective January 1, 1993, 17 TexReg 8295; amended to be effective December 4, 1995, 20 TexReg 9698; amended to be effective October 14, 2007, 32 TexReg 7065.*

### **§120.3. Employer's Supplemental Report of Injury.**

- (a) As used in this section, the term "employer" means the employer for whom the injured employee (employee) was working when injured and the filing requirements apply during the time the employee is entitled to temporary income benefits. The employer's duty to file reports required by this section continues until the employee reaches maximum medical improvement (MMI) or is no longer employed by the employer and the employer has made the report required by subsection (b) of this section. The employer may contact the insurance carrier (carrier) for information regarding the employee's MMI status.
- (b) As provided in §129.4 of this title (relating to Adjustment of Temporary Income Benefit Amount), the employer shall file the Supplemental Report of Injury, in the form, format and manner prescribed by the Commission. The report shall be filed with the employer's carrier and provided to the employee within ten days after the end of each pay period in which the employee has a change in earnings as a result of the

injury or within ten days after the employee resigns or is terminated. The requirement to report a change of earnings under this subsection includes reporting all post-injury earnings as that term is used in Chapter 129 of this title (relating to Temporary Income Benefits).

- (c) For injuries requiring an Employer's First Report of Injury, unless the information required in this subsection is provided on the Employer's First Report of Injury, the employer shall file the Supplemental Report of Injury with the employer's carrier and provide a copy to the employee within three days after:
  - (1) the employee begins to lose time from work as a result of the injury;
  - (2) the employee returns to work; or
  - (3) the employee, after returning to work, experiences an additional day(s) of disability as a result of the injury.
- (d) The employer shall file the supplemental report of injury with the carrier by personal delivery, telephone, facsimile or electronic transmission. The employer shall provide a copy of the report to the employee by facsimile or electronic transmission if the employee has identified a personal facsimile number or a personal email address to be used and the employer has the means of sending such a transmission. Otherwise the report shall be provided by personal delivery or sent by mail.
- (e) The employer shall maintain a record of the date the Supplemental Report of Injury is filed with the carrier and provided to the employee. If a report required by this section has not been received by the required recipient, the employer has the burden of proving that the report was filed within the required time frame. The employer has the burden of proving that good cause exists if the employer failed to file the report.

*The provisions of this §120.3 adopted to be effective January 1, 1993, 17 TexReg 8296; amended to be effective December 4, 1995, 20 TexReg 9698; amended to be effective December 26, 1999, 24 TexReg 11394.*

#### **§120.4 Employer's Wage Statement.**

- (a) The employer is required to timely file a complete wage statement in the form and manner prescribed by the commission. As used in this section, the term "filed" means "received."
  - (1) The wage statement shall be filed with the carrier, the claimant, and the claimant's representative (if any) within 30 days of the earliest of:
    - (A) the date the employer is notified that the employee is entitled to income benefits;
    - (B) the date of the employee's death as a result of a compensable injury.
  - (2) A subsequent wage statement shall be filed with the carrier, claimant, and the claimant's representative (if any) within seven days of a change in any wage information provided on the previous wage statement (such as because the employer has discontinued providing a nonpecuniary wage that was originally continued after the injury).
  - (3) The wage statement shall be filed with the commission within seven days of receiving a request from the commission.
- (b) The employer shall ensure timely delivery of the written wage statement, however, if agreed upon by the employer and the carrier, the wage statement filed with the carrier may be filed orally. The carrier may also agree to provide the wage statement to the claimant and the claimant's representative, if any. However, the employer remains responsible for ensuring timely delivery of the wage statement and the employer has the burden of proving that the wage statement was timely filed. Therefore, employers should file the wage statement by verifiable means and maintain a record of the:

- (1) information provided;
- (2) date filed; and
- (3) means of filing with each recipient required to receive the report.
- (c) The wage statement shall include:
  - (1) the employee's name, address, and social security number;
  - (2) the date of the employer's hire of the employee;
  - (3) the date of injury;
  - (4) the employer's name, address, and federal tax identification number;
  - (5) an identification of the employment status (e.g. if the employee works full-time, part-time, etc.);
  - (6) the name of the person submitting the report;
  - (7) the wage information required by subsection (d) of this section; and
  - (8) a certification that the wage information provided includes all wage information required by subsection (d) of this section and that the information is complete and accurate.
- (d) The employer shall provide wage information in accordance with this subsection.
  - (1) Employers other than school districts shall report the employee's wage, as defined in §128.1 of this title (relating to Average Weekly Wage: General Provisions), earned by the employee during the 13 weeks immediately preceding the date of injury and the number of hours the employee worked to earn the wages being reported.
  - (2) School district employers shall report the wages that would be deducted from the employee's salary if the employee were absent from work for one week and did not have personal leave available to compensate for the wages lost that week.
    - (A) For employees employed through a written contract, the employer shall report the full value of the contract that would be paid (including any stipend the employee was earning or scheduled to receive) if the employee were to fully complete the terms of the contract and:
      - (i) the number of days that the employee was required to work under that contract; or
      - (ii) the number of months that the employee was required to work under that contract (whichever is applicable).
    - (B) For employees who are NOT employed through a written contract, the employer shall report the pecuniary wages earned by the employee during the 13 weeks immediately preceding the date of injury and the number of hours the employee worked to earn the wages being reported.
    - (C) For all employees, the employer shall report the pecuniary wages earned by the employee in the 12 months immediately preceding the injury.
  - (3) This subsection applies if the employer is required to report 13 weeks of wage information under subsection (d)(1) or (d)(2)(B) of this section (i.e. it does not apply if the employee was an employee of a school district employed through a written contract).
    - (A) If the employee is paid on a monthly or a semi-monthly basis, the employer may provide the wages earned in the three months immediately preceding the injury; if the employee is paid on a biweekly basis, the employer may provide the wages earned in the 14 weeks immediately preceding the injury; otherwise the employer shall provide the wages earned in the 13 weeks immediately preceding the injury.
    - (B) If the employee was not employed for 13 continuous weeks before the date of injury and the employee was not employed by a school district through a written contract:

- (i) the employer shall identify a similar employee performing similar services, as those terms are defined in §128.3 of this title (relating to Average Weekly Wage Calculation For Full-Time Employees, and For Temporary Income Benefits For All Employees), and list the wages of that similar employee; however if
- (ii) the employer does not have a similar employee who has been employed for 13 continuous weeks prior to the injured employee's date of injury, the employer shall provide the wages earned by the employee during the period the employee was employed.

*The provisions of this §120.4 adopted to be effective May 16, 2002, 27 TexReg 4027.*

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