

CHAPTER 122. COMPENSATION PROCEDURES - CLAIMANTS

SUBCHAPTER A. CLAIMS PROCEDURE FOR INJURED EMPLOYEES

§122.1. Notice to Employer of Injury or Occupational Disease.

- (a) Except as provided in subsection (b) of this section, an injured employee, or a person acting on that employee's behalf, shall notify an employer of an injury not later than the 30th day after the date on which the injury occurs. The notice of injury should include the following information:
- (1) the name, address, and telephone number (if any) of the injured employee
 - (2) the date, time, and place the injury occurred;
 - (3) a description of the circumstances and the nature of the injury;
 - (4) the names of any witnesses (if known);
 - (5) the name and location of the health provider that has treated the employee for the injury; and
 - (6) the name of the person (if any) acting on behalf of the injured employee.
- (b) An employee whose injury results from an occupational disease, or a person acting on that employee's behalf, must give notice as required in subsection (a) of this section not later than the 30th day after the date on which the employee knew or should have known that the disease may be related to the employment. This notice must be given to the employer for whom the employee worked on the date of the last injurious exposure to the hazards of the disease.
- (c) Any notice to the employer may be given to any employee of the employer who holds a supervisory or management position.
- (d) Failure to notify the employer shall relieve the employer and the employer's insurance carrier from liability under the Texas Workers' Compensation Act unless:
- (1) the employer, or person eligible to receive notice under subsection (c) of this section, or the insurance carrier, had actual knowledge of the injury;
 - (2) good cause exists for failure to give notice in a timely manner; or
 - (3) the employer or insurance carrier does not contest the claim.

The provisions of this §122.1 adopted to be effective January 28, 1991, 16 TexReg 228.

§122.2. Injured Employee's Claim for Compensation.

- (a) An injured employee, or a person acting on the injured employee's behalf, shall file with the commission a written claim for compensation within one year after the date of the injury's occurrence, except as provided in subsection (b) of this section.
- (b) An employee whose injury results from an occupational disease, or a person acting on that employee's behalf, shall file with the commission a written claim for compensation within one year after the date the employee knew or should have known that the disease was related to the employment.

- (c) The claim should be submitted to the commission either on paper or via electronic transmission, in the form, format, and manner prescribed by the commission, and should include the following:
- (1) the name, address, telephone number (if any), occupation, wage, and social security number of the injured employee;
 - (2) the length of time the employee worked for the employer prior to the date of injury;
 - (3) the date, time, and location the injury occurred (or the date the employee knew or should have known that the occupational disease was related to the employment);
 - (4) a description of the circumstances and nature of the injury;
 - (5) the names of witnesses (if any);
 - (6) the name and location of the employer at the time of the injury (or, if the injury claimed is an occupational disease, the name and location of the employer at the time of the last injurious exposure to the hazards of the occupational disease);
 - (7) the name of the employee's immediate supervisor;
 - (8) the name and address of at least one health care provider that has treated the employee for the injury; and
 - (9) the identity of the person (if any) acting on behalf of the injured employee.
- (d) Failure to file a claim for compensation with the commission no later than one year from the incident shall relieve the employer and the employer's insurance carrier from liability under the Act unless:
- (1) good cause exists for failure to file a claim in a timely manner; or
 - (2) the employer or insurance carrier does not contest the claim.

The provisions of this §122.2 adopted to be effective January 25, 1991, 16 TexReg 173; amended to be effective September 12, 2004, 29 TexReg 8560.

§122.3. Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders.

- (a) This section applies to all law enforcement officers, fire fighters, emergency medical service employees, paramedics, and correctional officers who are either state employees or employees covered under workers' compensation insurance (to include those who are providing services as a volunteer and are covered by workers' compensation insurance).
- (b) For purposes of this section "reportable disease" means communicable diseases and health conditions required to be reported to the Texas Department of Health by the Texas Health and Safety Code, §81.041, as amended, including: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism--adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox; Chlamydia trachomatis infection; cholera; cryptosporidiosis; dengue; diphtheria; ehrlichiosis; encephalitis; Escherichia coli 0157:H7; gonorrhea; Hansen's disease (leprosy); Heamophilus influenzae type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis, acute viral; human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (Rubeola); meningitis; meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; rabies in man; relapsing fever; Rocky Mountain spotted fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; streptococcal disease, invasive Group A; syphilis; tetanus;

trichinosis; tuberculosis; tuberculosis infection in persons less than 15 years of age; typhus; Vibrio infection; viral hemorrhagic fevers; and yellow fever. This list of diseases may change from time to time. To determine the most current list of reportable diseases and exposure criteria refer to Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases.

- (c) An employee listed in subsection (a) of this section will not be entitled to workers' compensation benefits for a reportable disease unless the employee:
 - (1) had a test performed within 10 days of an exposure to the reportable disease that indicated the absence of the reportable disease (Exposure criteria and testing protocol must conform to Texas Department of Health requirements. This rule does not prohibit a decision-maker's consideration of other factors.); and
 - (2) provided the employer with a sworn affidavit of the date and circumstances of the exposure and a copy of the results of the test required by paragraph (1) of this subsection.
- (d) The employer's insurance carrier, including state and political subdivision employers, shall be liable for the costs of test(s) required by subsection (c) of this section, regardless of the results of the test(s), in addition to any other benefits required to be paid by the Texas Workers' Compensation Act or administrative rules. The cost of a state employee's testing, regardless of the results of the test, shall be paid from funds appropriated for payment of workers' compensation benefits to state employees.
- (e) Section 110.108 of this title (relating to Employer Notice Regarding Work-Related Exposure to Communicable Diseases/HIV: Posting Requirements; Payment for Tests) requires each employer with employees covered by this section to post the notice contained in subsection (d) of that section in its workplace to inform employees of the requirements of this section.
- (f) Emergency responders and employers of emergency responders should also refer to the Texas Health and Safety Code, Chapter 81 and Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases, to ensure compliance with all applicable requirements.

The provisions of this §122.3 adopted to be effective October 15, 1997, 22 TexReg 9682.

§122.4. State Employees Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements.

- (a) This section applies to all employees of the state of Texas.
- (b) A state employee shall not be entitled to workers' compensation benefits for a work-related exposure to human immunodeficiency virus (HIV) infection unless the employee:
 - (1) had a test performed within 10 days of an exposure to HIV that indicated the absence of HIV infection (Exposure criteria and testing protocol must conform to Texas Department of Health requirements.); and
 - (2) provided the employer with a written statement of the date and circumstances of the exposure to HIV and a copy of the results of the test required by paragraph (1) of this subsection.
- (c) The cost of a state employee's test(s) required by subsection (b) of this section, regardless of the results of the test(s), shall be paid from funds appropriated for payment of workers' compensation benefits to state employees, in addition to any other benefits required to be paid by the Texas Workers' Compensation Act or administrative rules.

- (d) Section 110.108 of this title (relating to Employer Notice Regarding Work Related Exposure to Communicable Disease/HIV: Posting Requirements; Payment for Tests) requires each state agency to post the notice contained in subsection (d) of that section in its workplace to inform employees of the requirements of this section.
- (e) State employers and state employees should also refer to the Texas Health and Safety Code, Chapter 85 and Texas Department of Health rules, 25 TAC Chapter 97, Communicable Diseases, to ensure compliance with all applicable requirements.

The provisions of this §122.4 adopted to be effective October 15, 1997, 22 TexReg 9682.

§122.5. Employee's Multiple Employment Wage Statement.

- (a) Definitions. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.
 - (1) Claim Employer – Employer with whom the claimant filed a claim for workers' compensation benefits and for whom the injured employee (employee) was working at the time of the on-the-job injury.
 - (2) Non-Claim Employers – Employers other than the claim employer by whom the employee was employed at the time of the on-the-job injury.
- (b) For an injury which occurs on or after July 1, 2002, a claimant may file a Multiple Employment Wage Statement for each employer the employee was working for on the date of injury.
- (c) If a claimant who is permitted by subsection (b) of this section chooses to file a Multiple Employment Wage Statement, it is the claimant's responsibility to obtain the required wage information from the Non-Claim Employer(s), providing any necessary corrections to the wage information, and filing the information on the Multiple Employment Wage Statement with the insurance carrier and commission. The carrier is not required to make an adjustment to AWW until the employee provides a complete Multiple Employment Wage Statement as described in subsections (d) and (e) of this section.
- (d) The Multiple Employment Wage Statement shall include:
 - (1) the employee's name, address, and social security number;
 - (2) the date of the Non-Claim Employer's hire of the employee;
 - (3) the date of injury;
 - (4) the Non-Claim Employer's name, address, and federal tax identification number;
 - (5) the name and phone number of a person at the Non-Claim Employer who can be contacted to verify the wage information (unless the wage information was not provided by a person at the Non-Claim Employer – such as if the wage information came from the Texas Workforce Commission or the employee's pay stubs);
 - (6) the wage information required by subsection (e) of this section with documentation that supports the wage information being reported; and
 - (7) a certification that the wage information provided includes all wage information required by subsection (e) of this section and that the information is complete and accurate.
- (e) The wage information required to be provided in a Multiple Employment Wage Statement includes the employee's Non-Claim Employer wages, as defined in §128.1 of this title (relating to Average Weekly Wage: General Provisions), earned during the 13 weeks immediately preceding the date of injury and the number of hours the employee worked to earn the wages being reported. The wages are limited to those reportable for federal income tax purposes.
 - (1) If the employee is paid by the Non-Claim Employer:

- (A) on a monthly or a semi-monthly basis, the claimant may provide the wages earned in the three months immediately preceding the injury;
 - (B) on a biweekly basis, the claimant may provide the wages earned in the 14 weeks immediately preceding the injury;
 - (C) on other than a monthly, semi-monthly, or biweekly basis, the claimant shall provide the wages earned in the 13 weeks immediately preceding the injury.
- (2) If the employee was not employed for 13 continuous weeks before the date of injury:
- (A) the claimant shall report the wages of 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); or
 - (B) if the Non-Claim Employer does not have a similar employee who has been employed for 13 continuous weeks prior to the employee's date of injury (or the claimant is unable to obtain the wage information on a similar employee), the claimant shall provide the wages earned by the employee during the period the employee was employed.
- (f) Employees who file Multiple Employment Wage Statements are required to report all changes in employment status and/or earnings at the Non-Claim Employer to the carrier until the employee reaches Maximum Medical Improvement.
- (1) The employee shall report all changes in employment status at the Non-Claim Employer including termination or resignation within 7 days of the date the change takes place.
 - (2) The employee shall report within 7 days of the end of the pay period in which a change in earnings at the Non-Claim Employer related to the compensable injury took place. This would include both reductions and increases in wages as compared to the prior week as long as the difference was caused by the compensable injury such as because the employee's ability to work changed or the employer was more or less able to provide work that met the employee's work restrictions.

The provisions of this §122.5 adopted to be effective May 16, 2002, 27 TexReg 4032.

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SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED EMPLOYEES

§122.100. Claim for Death Benefits.

- (a) In order for a legal beneficiary, other than the subsequent injury fund, to receive the benefits available as a consequence of the death of an employee which results from a compensable injury, a person shall file a written claim for compensation with the Division within one year after the date of the employee's death.
- (b) The claim should be submitted to the Division either on paper or via electronic transmission, in the form, format, and manner prescribed by the Division, and should include the following:
 - (1) the claimant's name, address, telephone number (if any), social security number, and relationship to the deceased employee;
 - (2) the deceased employee's name, last address, social security number (if known) and workers' compensation claim number (if any); and
 - (3) other information, as follows:
 - (A) a description of the circumstances and nature of the injury (if known);
 - (B) the name and location of the employer at the time of the injury;
 - (C) the date of the compensable injury, and date of death; and
 - (D) other known legal beneficiaries.
- (c) A claimant shall file with the Division a copy of the deceased employee's death certificate and any additional documentation or other evidence that establishes that the claimant is a legal beneficiary of the deceased employee.
 - (1) If the claim is filed with the Division in paper format, the additional evidence regarding legal beneficiary status shall be filed at the same time as the claim.
 - (2) If the claim is filed via electronic transmission, the additional evidence regarding legal beneficiary status may be filed separately in paper format and sent either by mail, facsimile, or hand delivery.
- (d) Each person must file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person.
- (e) Failure to file a claim for death benefits within one year after the date of the employee's death shall bar the claim of a legal beneficiary, other than the subsequent injury fund, unless:
 - (1) that legal beneficiary is a minor or otherwise legally incompetent;
 - (2) for a legal beneficiary other than an eligible parent, good cause exists for failure to file the claim in a timely manner; or
 - (3) for a legal beneficiary who is an eligible parent, the parent submits proof satisfactory to the Commissioner of Workers' Compensation of a compelling reason for the delay in filing the claim for death benefits.

The provisions of this §122.100 adopted to be effective January 25, 1991, 16 TexReg 174; amended to be effective September 12, 2004, 29 TexReg 8560; amended to be effective October 12, 2008, 33 TexReg 8393.

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