

No. 2020-6511

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

**Official Order  
of the  
Texas Commissioner of Workers' Compensation**

**Date:** 10-15-2020

**Subject Considered:**

City of Austin  
505 Barton Springs Road, Suite 600  
Austin, Texas 78704-1245

Consent Order  
DWC Enforcement File No. 23645

**General remarks and official action taken:**

This is a consent order with City of Austin (Austin). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Austin.

**Waiver**

Austin acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Austin waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

**Findings of Fact**

1. Austin is a self-insured government entity that provides workers' compensation benefits to its employees in accordance with TEX. LAB. CODE Ch. 504.
2. Austin was classified as "average" tier in the 2007 and 2009 Performance Based Oversight (PBO) assessments. Austin was classified as "high" tier in the 2010, 2012, 2014, 2016, and 2018 PBO assessments.

Failure to Timely Pay Attorney Fees Ordered by DWC

3. On [REDACTED], DWC ordered Austin to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Austin to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
4. On [REDACTED], a balance of [REDACTED] in attorney fees was outstanding.
5. On [REDACTED], Austin issued a payment to the injured employee for unpaid impairment income benefits. Austin was required to issue a payment for attorney fees to the injured employee's attorney the same day but did not issue payment until [REDACTED], which was 61 days late.

**Assessment of Sanction**

1. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation system.
2. In assessing the sanction for this case, DWC fully considered the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e):
  - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
  - the history and extent of previous administrative violations;
  - the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
  - the penalty necessary to deter future violations;
  - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - to the extent reasonable, the economic benefit resulting from the prohibited act; and
  - other matters that justice may require, including, but not limited to:
    - PBO assessments;
    - prompt and earnest actions to prevent future violations;
    - self-report of the violation;
    - the size of the company or practice;

- the effect of a sanction on the availability of health care; and
  - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
3. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; and the penalty necessary to deter future violations.
  4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act, as the attorney fees were paid within 24-hours of the issue being brought to attention of the insurance carrier. In addition, the carrier has instituted additional training for all adjusters intended to ensure the error does not occur again.
  5. Austin acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and the proposed sanction is appropriate, including the factors DWC considered under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
  6. Austin acknowledges that, in assessing the sanction, DWC considered the factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

### **Conclusions of Law**

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00114, 402.00116, 402.00128, and 414.002.
2. The commissioner has the authority to dispose of this case informally pursuant to TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE §§ 401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Austin has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of

hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.

4. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to TEX. LAB. CODE § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.
7. Pursuant to TEX. LAB. CODE §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
8. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees have been completely paid or income benefits cease.
9. Austin violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), 415.021(a), and 415.0035(e) and 28 TEX. ADMIN. CODE § 152.1(c) when it failed to timely comply with a DWC order to pay attorney fees.

Commissioner's Order  
City of Austin  
DWC Enforcement File No. 23645  
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**Order**

It is ordered that City of Austin must pay an administrative penalty of \$2,500 within 30 days from the date of this order. City of Austin must pay the administrative penalty by cashier's check or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved Form and Content:



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Amy Norman  
Staff Attorney, Enforcement  
Compliance and Investigations  
Division of Workers' Compensation

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**Affidavit**

STATE OF \_\_\_\_\_

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COUNTY OF \_\_\_\_\_

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Before me, the undersigned authority, personally appeared Emily M. Rice, who being by me duly sworn, deposed as follows:

"My name is Emily M Rice. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Compliance Specialist and am the authorized representative of City of Austin. I am duly authorized by the organization to execute this statement.

City of Austin has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

Emily M. Rice  
Affiant

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 2020.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Commission Expiration