

No. 2020-6350

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

Date: 05-21-2020

Subject Considered:

FedEx Ground Package System, Inc.
1000 FedEx Drive
Moon Township, Pennsylvania 15108-9373

Consent Order
DWC Enforcement File No. 22723

General remarks and official action taken:

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

Waiver

FedEx acknowledges that the Texas Labor Code and other applicable laws provide certain rights. FedEx 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. FedEx is a private employer operating in Texas. FedEx currently holds a certificate of authority issued by DWC to act as a certified self-insurer pursuant to TEX. LAB. CODE CH. 407 and 28 TEX. ADMIN. CODE CH. 114.
2. FedEx was classified as "average" tier in the 2007, 2009, 2010, 2016, and 2018 Performance Based Oversight (PBO) assessments. FedEx was classified as "poor"

tier in the 2014 PBO assessment. FedEx was not selected to be tiered in the 2012 PBO assessment.

Failure to Timely Comply with a DWC Order to Produce Documentation

3. On [REDACTED], DWC ordered FedEx to produce a copy of a DWC Form-0 [REDACTED] to DWC by [REDACTED].
4. FedEx produced a copy of the [REDACTED] to the DWC order on [REDACTED], which was 109 days late.

Assessment of Sanction

1. Timely submitting information to DWC and complying with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
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; the history and extent of previous administrative violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; 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.
5. FedEx 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. FedEx 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, 414.002, and 414.003.
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. FedEx 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.

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5. Pursuant to TEX. LAB. CODE §§ 415.0035(e) and 415.021(a), a person regulated by DWC under this title commits an administrative violation if they violate the Texas Workers' Compensation Act, a DWC rule, or a commissioner's order or decision.
6. Pursuant to 28 TEX. ADMIN. CODE § 102.9, DWC requires those subject to the Texas Workers' Compensation Act to provide information as necessary. DWC may follow up on a request for information by issuing an order to produce information.
7. FedEx violated TEX. LAB. CODE §§ 415.0035(e) and 415.021(a) and 28 TEX. ADMIN. CODE § 102.9 when it failed to comply with a DWC order to produce information.

Order

It is ordered that FedEx must pay an administrative penalty of \$1,500 within 30 days from the date of this order. FedEx 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Van B. Moreland
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Affidavit

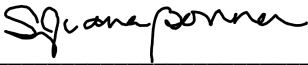
STATE OF Pennsylvania §
§
COUNTY OF Allegheny §

Before me, the undersigned authority, personally appeared Sylvana Bonner, who being by me duly sworn, deposed as follows:

"My name is Sylvana Bonner. 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 Manager - Workers' Compensation and am the authorized representative of FedEx Ground Package System, Inc. I am duly authorized by the organization to execute this statement.

FedEx Ground Package System, Inc. has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."



Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2020.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration