

No. **2022-7716**

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

Date: 12/29/2022

Subject Considered:

TBC Holdings d/b/a NTW, LLC
2123 Louisiana Street
Houston, Texas 77002-8623

Consent Order
DWC Enforcement File No. 27578 & 28119

General remarks and official action taken:

This is a consent order with TBC Holdings d/b/a NTW, LLC (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent 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. Respondent is an employer in the State of Texas and a participant in the Texas workers' compensation system.
2. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016 2018, or 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Submit an Employer's Wage Statement

Enforcement File No. 27578

3. On [REDACTED] Respondent received a first notice of injury demonstrating that the injured employee's first day of disability was on [REDACTED]
4. Respondent was required to file a complete DWC-003 with the insurance carrier, the injured employee, and the injured employee's representative, if any, within 30 days of the earlier of the employee's eighth day of disability or the date that the employer was notified that the employee was entitled to income benefits, which in this case was [REDACTED]
5. Respondent failed to file a DWC-003 with the insurance carrier, the injured employee, and the injured employee's representative.

Failure to Timely Comply with a DWC Order to Produce Documents

Enforcement File No. 28119

6. On [REDACTED] DWC ordered Respondent to produce a completed DWC-003 with the value included for the non-pecuniary wage types of health insurance, laundry/cleaning, and clothing/uniform for each period listed.
7. On [REDACTED] Respondent received the subject order for production and was required to produce the requested information to DWC by [REDACTED]
8. Respondent failed to produce the requested information, as required.

Assessment of Sanction

1. Timely submission of information to DWC and compliance with DWC orders are 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, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and other matters that justice may require. Specifically, Respondent had not complied with the law by providing the wage statement at issue, has a recent history of a similar violation resulting in a warning letter, and thus a heightened awareness of the legal duty to comply with the law.
4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
5. Respondent 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. Respondent 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)(6) (7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent 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 § 401.011(18), "Employer" means, unless otherwise specified, a person who makes a contract of hire, employs one or more employees, and has workers' compensation insurance coverage. The term includes a governmental entity that self insures, either individually or collectively.
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 Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

Failure to Timely Submit an Employer's Wage Statement

7. Pursuant to Tex. Lab. Code § 408.063(b) and (c), not later than the 30th day after the date the employer receives notice of an injury to the employee, the employer must file a wage statement showing the amount of all wages paid to the employee. An employer who fails to file a wage statement commits an administrative violation.

Commissioner's Order
TBC Holdings d/b/a NTW, LLC
DWC Enforcement File No. 27578 & 28119
Page 5 of 7

8. Pursuant to 28 Tex. Admin. Code § 120.4(a)(1) and (2), the employer is required to timely file a complete wage statement in the form and manner prescribed by DWC.
9. Pursuant to 28 Tex. Admin. Code § 120.4(a)(3), the wage statement must be filed with DWC within seven days of receiving a request from DWC.
10. Respondent violated Tex. Lab. Code §§ 408.063(c), 415.0035(e), 415.021(a), and 28 Tex. Admin. Code § 120.4(a)(1)-(3) by failing to timely file a DWC-003 in the form and manner prescribed by DWC.

Failure to Timely Comply with a DWC Order to Produce Documents

11. 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.
13. Respondent violated Tex. Lab. Code §§ 415.0035(e), 415.021(a), and 28 Tex. Admin. Code § 102.9 by failing to comply with a DWC order to produce documents.

Commissioner's Order
TBC Holdings d/b/a NTW, LLC
DWC Enforcement File No. 27578 & 28119
Page 6 of 7

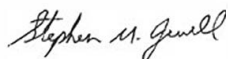
Order

It is ordered that TBC Holdings d/b/a NTW, LLC must pay an administrative penalty of \$3,500 within 30 days from the date of this order. TBC Holdings d/b/a NTW, LLC must pay the administrative penalty by company check, 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 AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Stephen M. Jewell
Staff Attorney, Enforcement
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