

No. **2023-8101**

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

Date: 7/28/2023

Subject Considered:

General Motors, LLC
300 Renaissance Center, MC 482-C07-D24
Detroit, Michigan 48265

Consent Order
DWC Enforcement File No. 31354

General remarks and official action taken:

This is a consent order with General Motors, 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 a private employer operating in the State of Texas. Respondent holds a certificate of authority issued by the Texas Department of Insurance, Division of Workers' Compensation (DWC) to act as a Certified Self Insurer pursuant to Tex. Lab. Code, Chapter 407 and 28 Tex. Admin. Code, Chapter 114.
2. Respondent was classified as "average" tier in the 2014, 2016, and 2022 Performance Based Oversight (PBO) assessments, and as "high" tier in 2010, 2012, and 2018 PBO assessments. Respondent was not selected to be tiered in 2007, 2009, or 2020 PBO assessments.

Failure to Timely Comply with a DWC Order for an Advance of Benefits

3. On [REDACTED] DWC approved an *Employee's Request for Advance of Benefits*, (DWC-047). Respondent received the order approving the DWC-046 on [REDACTED]
4. Respondent was required to initiate payment of advance benefits within seven days of receiving the order, or by [REDACTED]
5. Respondent paid [REDACTED] to the injured employee on [REDACTED] which was 11 days late. Respondent paid [REDACTED] in interest on [REDACTED]

Assessment of Sanction

1. Timely compliance with a DWC order is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act. Failure to timely comply with an order for an advance of benefits causes additional harm to the injured employee by delaying a payment which was ordered based upon demonstration of hardship.
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, including three administrative violations for violating a DWC order; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; the penalty necessary to deter future violations; and the size of Respondent's company.
 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 communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that 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.

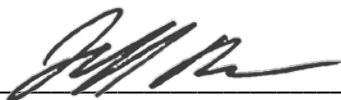
4. Pursuant to Tex. Lab. Code § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. Pursuant to Tex. Lab. Code § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.
6. 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.

Failure to Timely Comply with a DWC Order for an Advance of Benefits

7. Pursuant to Tex. Lab. Code § 408.085 and 28 Tex. Admin. Code § 126.4(d), an insurance carrier shall advance the payment of income benefits to the employee within seven days of receiving the division's order approving the advance.
8. Pursuant to Tex. Lab. Code § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
9. Respondent violated Tex. Lab. Code §§ 408.085; 415.002(a)(17), (20), and (22); 415.0035(e); 415.021(a); and 28 Tex. Admin. Code § 126.4(d) by failing to comply with a DWC order for an advance of benefits.

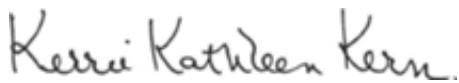
Order

It is ordered that General Motors, LLC must pay an administrative penalty of \$2,300 within 30 days from the date of this order. General Motors 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:



Kathleen Kern
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Michigan_ §
§
COUNTY OF __Wayne__ §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Sherman Perkins. I hold the position of Operations Manager - WC_ and am the authorized representative of General Motors LLC. My business address is: 300 Renaissance Center, Detroit, Wayne, MI, 48265.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

Sherman D. Perkins
Declarant

Executed on June 30, 2023.