

# Employer Rights and Responsibilities

Information for Employers from the Division of Workers' Compensation

## Workers' Compensation Insurance Coverage

Workers' compensation insurance coverage provides covered employees with income and medical benefits if they sustain a work-related injury or illness. Except as otherwise provided by law; Texas private employers can choose whether or not to provide workers' compensation insurance coverage for their employees. Except in cases of gross negligence or an intentional act or omission of the employer, workers' compensation insurance limits an employer's liability if an employee brings suit against the employer for damages. Certain building or construction employers who contract with governmental entities are required to provide workers' compensation coverage for each employee working on the public project. Some clients may also require their contractors to have workers' compensation insurance.

## Providing Workers' Compensation Insurance

If employers choose to provide workers' compensation, they must do so in one of the following ways:

- purchase a workers' compensation insurance policy from an insurance company licensed by the Texas Department of Insurance (TDI) to sell the coverage in Texas;
- be certified by the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) to self-insure workers' compensation claims; or
- join a self-insurance group that has received a certificate of approval from the TDI.

*Note:* Political subdivisions may self-insure, buy coverage from insurance companies, or enter into inter-local agreements with other political subdivisions that self-insure.

## EMPLOYER RIGHTS

Covered employers have the following rights:

- the right to contest the compensability of a workers' compensation claim if the insurance carrier accepts liability for payment of benefits;
- the right to be notified of a proposal to settle a claim or of any administrative or judicial proceeding related to resolution of a claim (after making a written request to the insurance carrier);
- the right to attend dispute resolution proceedings related to an employee's claim and present relevant evidence about the disputed issues;

- the right to report suspected fraud to the TDI-DWC or to the insurance carrier;
- the right to contest the failure of the insurance carrier to provide required accident prevention services; and
- the right to receive return-to-work coordination services as necessary to facilitate an employee's return to employment.

To dispute a workers' compensation claim, an employer may file the DWC Form-004, and the DWC Form-045, *Request to Schedule, Reschedule or Cancel a Benefit Review Conference (BRC)*, which may be obtained from the TDI website at <http://www.tdi.texas.gov/forms/form20employer.html> or by calling 1-800-252-7031.

## Non-Reimbursable Employer Payments

An employer is not entitled to and cannot seek reimbursement from the employee or insurance carrier if after a work-related injury or illness they voluntarily:

- continue to pay the injured employee's salary continuation; or
- pay the injured employee salary supplementation to supplement income benefits paid by the insurance carrier.

## Employer Voluntary Payments of Benefits

An employer may voluntarily pay income or medical benefits to an employee during a period in which the insurance carrier has:

- contested compensability of the injury;
- contested liability for the injury; or
- has not completed its initial investigation of the injury. *Note:* an employer is only allowed to pay benefits in this situation for the first two weeks after the injury.

For reimbursement, the employer is required to timely report the injury to the insurance carrier and to let the insurance carrier know, within 7 days of beginning

**For further assistance, call**

**1-800-252-7031 or visit**

<http://www.tdi.texas.gov/wc/employer/index.html>

voluntary payments, that voluntary payments are being made. The insurance carrier is only required to reimburse the employer for the amount of benefits the insurance carrier would have paid. If the employer made payments in excess of what the insurance carrier would have paid, the excess amount is not reimbursable, unless there is a written agreement between the injured employee and the employer that the excess amount can be recouped from future impairment income benefits paid by the insurance carrier, if any. The employer must file the DWC Form-002, *Employer's Report for Reimbursement of Voluntary Payment*. The DWC Form-002 may be obtained from the TDI website at <http://www.tdi.texas.gov/forms/form20employer.html> or by calling 1-800-252-7031.

## **EMPLOYER RESPONSIBILITIES**

### **Reporting Workers' Compensation Insurance Coverage to Employees**

Employers must tell their employees that they carry workers' compensation insurance by providing a written notice of coverage to new employees upon hire. The written notice must inform employees of their right to reject workers' compensation coverage and retain their common law right of action. This notice must be in the wording and format prescribed by TDI-DWC's *New Employee Notice*.

Employers must also post a written notice at their place of business telling their employees that they carry workers' compensation insurance. This notice must be in the wording and format prescribed by TDI-DWC's Notice 6, *Notice to Employees Concerning Workers' Compensation in Texas*. The notice must be in English, Spanish, and any other language that is common to the employees and must be posted at conspicuous locations at the employers' place of business.

A written notice must be provided again to each employee and the Notice 6 must be updated when changes in coverage status (obtained, terminated, or canceled) occur. The TDI-DWC's *New Employee Notice* and Notice 6 may be obtained from the TDI website at <http://www.tdi.texas.gov/forms/form20employer.html> or by calling 1-800-252-7031.

### **Reporting Injuries and Illnesses**

Employers are required to report to its insurance carrier, within 8 days, any:

- work-related injury resulting in the employee's absence from work for more than one day;

- occupational disease of which the employer has knowledge; and
- work-related fatality.

Employers should report these injuries and illnesses using the DWC Form-001, *Employer's First Report of Injury or Illness*. An employer must keep a record of all work-related injuries, illnesses and fatalities for at least 5 years after the date the record was created, or for the period of time required by the Occupational Safety and Health Administration (OSHA), whichever is longer.

The employer must also provide a copy of the completed DWC Form-001 to the injured employee, along with a copy of the *Notice of the Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System*. The DWC Form-001 may be obtained from the TDI website at <http://www.tdi.texas.gov/forms/form20employer.html>. The employee's notice of rights and responsibilities may be obtained from the TDI website at <http://www.oiec.texas.gov/resources/ierightsresp.html>. Both forms may also be obtained by calling 1-800-252-7031.

### **Employer's Wage Statement & Supplemental Report of Injury**

An employer must report an injured employee's wages and other fringe benefits (i.e. health premiums, uniform allowance, etc.) to the insurance carrier. The employer is required to send the DWC Form-003, *Employer's Wage Statement*, to the insurance carrier and the injured employee within 30 days of the earliest of: the date the employer is notified that the employee is entitled to income benefits; or the date of employee's death as a result of a compensable injury.

An employer must also report any changes in an injured employee's pay or employment status to the insurance carrier. The employer must send the DWC Form-006, *Supplemental Report of Injury*, to the insurance carrier and the injured employee within:

- 10 days from the end of a pay period in which an employee's pay changes;
- 10 days from the date an employee resigns or is terminated;
- 3 days from the date the employee begins to lose time from work as a result of the injury;
- 3 days from the date an employee returns to work; and
- 3 days from the date an injury causes an employee to miss additional work after returning to work.

## Safe Workplace

Employers must take all actions reasonably necessary to ensure a safe workplace and take all steps reasonably necessary to protect the life, health and safety of the employees.

## Compliance

Employers that fail to comply with workers' compensation requirements commit an administrative violation and may be subject to administrative penalties. The information provided in this fact sheet and workers' compensation requirements are pursuant to: Texas Labor Code §§406.002, 406.005, 406.007, 406.033, 406.034, 406.096, 408.003, 408.001, 409.011, 409.005, 409.006, 411.032, 411.103 and 413.021; and 28 Texas Administrative Code §§110.101, 120.1, 120.2, 120.3, 120.4, 126.13, 129.7 and 160.3.

If you have any questions regarding reporting requirements or compliance with the law, contact TDI-DWC at 1-800-252-7031. For more information on workers' compensation for employers, visit the TDI website at <http://www.tdi.texas.gov/wc/employer/index.html>.