

TITLE 28. INSURANCE
PART 2. TEXAS DEPARTMENT OF INSURANCE,
DIVISION OF WORKERS' COMPENSATION
CHAPTER 148. HEARINGS CONDUCTED BY THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Section 148.17

INTRODUCTION

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts with changes amendments to §148.17, relating to Administrative Penalties, now retitled Special Provisions for Sanctions. The proposed amendments were published in the *Texas Register* on November 9, 2018 (43 TexReg 7445). DWC received two comments on the proposed amendments. No public hearing was requested.

REASONED JUSTIFICATION

These amendments will align the rule with changes made to Texas Labor Code §415.035, *Judicial Review*, by House Bill (HB) 1456, 85th Legislature, Regular Session (2017). HB 1456 deleted the requirement that, when an administrative penalty is assessed, a person must pay the penalty or post a bond while seeking judicial review of the administrative decision.

Adopted amendments to §148.17 delete much of the existing text and replace it with language requiring, unless otherwise stated in a final and unappealable order from the commissioner of workers' compensation or a court, that a charged party must comply with a sanction within 30 days of the order becoming final and unappealable. The adopted amendments also allow for other forms of monetary payments of penalties approved by DWC. The adopted amendments also retitle the section, and otherwise make editorial changes to reformat and renumber the rule.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

COMMENT: One commenter supported the amendments as proposed.

RESPONSE: DWC appreciates the supportive comment. No change was made in response to the comment.

COMMENT: One commenter suggested that §148.17(a) be revised to clarify that neither the commissioner nor a court may require compliance with a sanction before an order is final and unappealable.

RESPONSE: DWC appreciates the comment. This clarification is consistent with DWC's intent for the proposed rule. Subsection (a) has been revised so that it provides that "unless otherwise stated in a final, unappealable order from the commissioner or a court, a charged party must comply with the sanctions no later than 30 days after the order becomes final and unappealable."

COMMENT: One commenter proposed that §148.17(b) be revised to clarify that penalties must be paid according to the schedule provided for in subsection (a).

RESPONSE: DWC appreciates the comment but disagrees that any clarification is necessary. The Code Construction Act provides a presumption that an entire statute or rule is intended to be effective, that a just and reasonable result is intended, and that a result feasible of execution is intended. Texas Government Code §311.021. This requires that the rule be read as whole, that subsections (a) and (b) be read together. Subsection (a) addresses when parties must comply with ordered sanctions. Subsection (b) sets forth how any penalties resulting from a sanction are to be paid and does not address, nor is it intended to address, the timing of those payments. No change was made in response to this comment.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL

For: Office of Injured Employee Counsel

For, with changes: Texas Medical Association

STATUTORY AUTHORITY

The amendments are adopted under Labor Code §§402.00111, 402.00128, 402.061, and 415.035. The adopted amendments support the implementation of the Workers' Compensation Act, Texas Labor Code Title 5, Subtitle A.

Section §402.00111, provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Section 402.00128, authorizes the commissioner to conduct the daily operations of DWC and otherwise implement division policy.

Section 402.061, provides that the commissioner of workers' compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Section 415.035, provides for judicial review of decisions under §415.034, relating to hearing procedures.

TEXT

§148.17. Special Provisions for Sanctions.

(a) Unless otherwise stated in a final, unappealable order from the commissioner or a court, a charged party must comply with a sanction no later than 30 days after the order becomes final and unappealable.

(b) If an order imposing a sanction assesses a penalty against the charged party, the charged party must file the amount of the penalty with the Chief Clerk of Proceedings in the form of a cashier's check, a certified check, a certified draft, or other form of payment authorized by the division.

CERTIFICATION

The agency certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of DWC's legal authority.

Issued at Austin, Texas, on the 20th day of December, 2018.

Cassie Brown
Commissioner of Workers' Compensation

COMMISSIONER'S ORDER NO. _____

ATTEST:

Nicholas Canaday III
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation