

CHAPTER 131. BENEFITS--LIFETIME INCOME BENEFITS
SUBCHAPTER A. GENERAL PROVISIONS
28 TAC §§131.1 AND 131.5
SUBCHAPTER B. LIFETIME INCOME BENEFITS--CERTAIN FIRST RESPONDERS
28 TAC §§131.10, 131.11, 131.12, AND 131.13

TEXT.

Subchapter A. General Provisions

§131.1. Initiation of Lifetime Income Benefits; Notice of Denial.

(a) The insurance carrier must ~~[shall]~~ initiate the payment of lifetime income benefits without a final decision, order, or other action of the commissioner if an injured employee meets the eligibility criteria for lifetime income benefits listed under Labor Code §408.161 or §408.1615 as a result of the compensable injury.

(b) An injured employee may submit a written request for lifetime income benefits to the insurance carrier. The insurance carrier must ~~[shall]~~ either initiate lifetime income benefits or deny the injured employee's eligibility for lifetime income benefits considering all of the eligibility criteria listed under Labor Code §408.161 or §408.1615 within 60 days of receiving ~~[from the receipt of]~~ the injured employee's written request. An insurance carrier's failure to respond to the request for lifetime income benefits within the timeframes described in this subsection does not constitute a waiver of the insurance carrier's right to dispute the injured employee's eligibility for lifetime income benefits.

(c) The insurance carrier must ~~[shall]~~ make the first payment of lifetime income benefits on or before the 15th day after the date the insurance carrier reasonably believes that the injured employee is eligible for lifetime income benefits as a result of the compensable injury. The initiation of lifetime income benefits without a final decision, order, or other action of the commissioner does not waive the insurance carrier's right to contest the compensability of the injury under ~~[in accordance with]~~ Labor Code §409.021(c).

(d) If the injured employee submits a written request for lifetime income benefits, and the insurance carrier denies that the injured employee is eligible for lifetime income benefits, the insurance carrier must ~~[shall]~~ deny eligibility by sending a plain-language ~~[plain language]~~ notice of denial of eligibility to the division, the injured employee, and the injured employee's representative, if any, in the form and manner prescribed by the division up to the 60th day after it receives ~~[receipt of]~~ the written request. The notice of denial of eligibility must ~~[shall]~~ include:

(1) a full and complete statement describing the insurance carrier's reasons for denial. The statement must contain sufficient claim-specific substantive information to enable the injured employee to understand the insurance carrier's position or action taken under the claim. A generic statement that simply states the insurance carrier's position with phrases such as "not part of compensable injury," "not meeting criteria," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the denial does not satisfy the requirements of paragraph (1) of this subsection;

(2) contact information, including the adjuster's name, toll-free telephone and fax numbers, and email address; and

(3) a statement informing the injured employee of his or her right to request a benefit review conference to resolve the dispute.

(e) An injured employee may contest the insurance carrier's denial of eligibility for lifetime income benefits or failure to respond to the written request for lifetime income benefits by requesting dispute resolution ~~[a benefit review conference]~~ as provided by Chapters 141 - 144 and 147 ~~[Chapter 141]~~ of this title (relating to Dispute Resolution) ~~[(relating to Dispute Resolution -- Benefit Review Conference)]~~.

(f) Nothing in this section is intended to limit any insurance carrier's duty to initiate payment of lifetime income benefits before the time limit established in subsection (c) of this section.

~~[(g) Effective date. This section is effective on June 1, 2015].~~

§131.2. Calculation of Lifetime Income Benefits. (No change.)

§131.3. Carrier's Petition for Payment of Benefits by the Subsequent Injury Fund.
(No change.)

§131.4. Change in Payment Period; Purchase of Annuity for Lifetime Income Benefits. (No change.)

§131.5. Definitions.

(a) In this chapter, "permanently unemployable" means unable to earn wages at or above the federal poverty level as a result of impairment from the compensable injury, and the impairment is expected to continue for the rest of the individual's life.

(b) In Subchapter B of this chapter:

(1) "First responders" means "first responders" as defined in Labor Code §408.1615.

(2) "Serious bodily injury" means "serious bodily injury" as defined in Penal Code §1.07.

Subchapter B. Lifetime Income Benefits--Certain First Responders

§131.10. Applicability. This subchapter applies to a first responder who sustains a serious bodily injury:

- (1) other than an injury described by Labor Code §408.161;
- (2) in the course and scope of the first responder's employment or volunteer service as a first responder; and
- (3) that renders the first responder permanently unemployable.

§131.11. First Responder's Annual Certification to Insurance Carrier.

(a) Requirement. A first responder receiving lifetime income benefits under §408.1615 must file a certification with the insurance carrier annually.

(b) Content. The certification must state that the first responder was not employed in any capacity during the preceding year.

(c) Method and Timing. The first responder must submit the certification to the insurance carrier in the form and manner prescribed by the division:

- (1) by first class mail, by personal delivery, or electronically;
- (2) no later than 30 days after the anniversary of the date the first responder's lifetime income benefits began to accrue.

§131.12. Suspension and Reinstatement of Lifetime Income Benefits.

(a) An insurance carrier may suspend lifetime income benefits of a first responder during and for a period in which:

- (1) The first responder fails to complete the annual certification as required by §408.1615(e).
- (2) The first responder, without good cause, fails to attend a designated doctor examination as required by §408.0041(j).
- (3) The first responder is employed in any capacity.
- (4) A designated doctor's report indicates that the first responder is no longer entitled to lifetime income benefits as provided in §408.0041(k-1).

(b) Before an insurance carrier may suspend benefits under this section, the insurance carrier must send a plain-language notice to the first responder that explains the basis for the suspension.

(1) Within 30 days of receiving this notice, the first responder must respond to the insurance carrier's notice by:

(A) submitting the annual certification;

(B) notifying the insurance carrier of an examination under §127.25 of this title (relating to Failure to Attend a Designated Doctor Examination); or

(C) requesting dispute resolution under Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution).

(2) If the first responder does not respond to the insurance carrier within 30 days of receiving this notice, the insurance carrier may suspend the first responder's benefits.

(c) If an insurance carrier suspends benefits under subsection (a)(1) of this section (missing annual certification), the insurance carrier must reinstate benefits effective on the date the first responder submits the annual certification to the insurance carrier.

(d) If an insurance carrier suspends benefits under subsection (a)(2) of this section (failure to attend a designated doctor examination), the insurance carrier must follow §127.25 of this title for suspension and reinstatement of the first responder's benefits.

(e) If an insurance carrier suspends benefits under subsection (a)(3) of this section (employment in any capacity), the first responder must submit a new request for lifetime income benefits under §131.1 of this chapter (relating to Initiation of Lifetime Income Benefits; Notice of Denial).

§131.13. Dispute of Continuing Entitlement of Lifetime Income Benefits. After receiving the designated doctor's report under Labor Code §408.1615(h), a party may

dispute the designated doctor's opinion on continuing entitlement to lifetime income benefits through the dispute resolution processes outlined in Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution).