

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) proposes amendments to 28 Texas Administrative Code §148.17, *Special Provisions for Administrative Penalties*. 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.

DWC proposes to delete much of the existing text of §148.17 and to replace it with language requiring that, unless otherwise stated in an order from the Commissioner of Workers' Compensation or a court, a charged party must comply with a sanction within 30 days of the order becoming final and unappealable. The rule is also amended to allow for other forms of monetary payments approved by DWC. DWC also proposes to retitle the section and otherwise makes editorial changes to reformat and renumber the rule.

FISCAL NOTE

Marisa Lopez Wagley, associate commissioner for Enforcement, has determined that for each year of the first five years the amended rule will be in effect, there will be no fiscal impact to state and local governments as a result of enforcement or administration of the proposed amendment. There will be no measureable effect on local employment or the local economy due to the proposal. The amendments to §148.17 reflect the statutory changes made to Labor Code §415.035 by HB

1456 and do not impose any additional requirements that would cause a fiscal impact as a result of the rules.

PUBLIC BENEFIT AND COSTS

Ms. Wagley has determined that for each year of the first five years the amendments are in effect the public will benefit from the rule being aligned with the statute and by not having to pay an administrative penalty or post a bond while pursuing judicial review. HB 1456 reduced the costs to persons seeking judicial review by removing the requirement that they pay a penalty or post a bond while seeking judicial review. No public costs are anticipated.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL

For the first five years the amendments are in effect, DWC does not anticipate that there will be any cost to persons due to these amendments. As these amendments will not impose any costs, DWC is in compliance with Texas Government Code §2001.0045.

Local Employment Impact

There will be no measurable effect on local employment or local economies as a result of the proposed amendments. The proposal reflects the statutory changes made by HB 1456 to Labor Code §415.035 and does not impose any additional requirements that would cause a fiscal impact as a result of the amendments.

ECONOMIC IMPACT AND REGULATORY FLEXIBILITY ANALYSIS

Government Code §2006.002(c) provides that if a proposed rule may have an adverse economic effect on small businesses, micro businesses, or rural communities, state agencies must prepare as part of the rulemaking process a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. DWC has determined that the proposed rule will not

have an adverse economic effect on small or microbusinesses or on rural communities. Therefore, a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

DWC has found that, during the first five years the proposed amendments will be in effect, they will neither:

- create or eliminate a government program,
- require the creation of new employee positions or result in the elimination of existing positions,
- require an increase or decrease in future legislative appropriations,
- create a new regulation,
- increase nor decrease the number of individuals subject to the rule, nor
- have either a positive or negative impact on the state economy.

The proposed amendments will effectively result in a decrease in fees as parties will no longer be required to pay a penalty or post a bond while pursuing judicial review. As required by HB 1456, the amendments will repeal the existing regulation that required that a person must pay an administrative penalty or post a bond while seeking judicial review.

TAKINGS IMPACT ASSESSMENT

DWC has determined that no private real property interests will be affected by these amendments and that these amendments will not restrict or limit an owner's right to property that would otherwise exist in the absence of government. Therefore, a takings impact assessment under Government Code §2007.043 is not required.

REQUEST FOR PUBLIC COMMENT

If you would like to comment on the proposed amendments or request a public hearing, please submit your written comments or hearing request by 5:00 p.m. CST on December 10, 2018. Written comments or a hearing request may be submitted by e-mail to Rulecomments@tdi.texas.gov or by mail to Ashley Hyten, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, DWC will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY

The amendments are proposed under Labor Code §§402.00111, 402.00128, 402.061, and 415.035. Section §402.00111, *Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation Division*, 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, *General Powers and Duties of Commissioner*, authorizes the commissioner to conduct the daily operations of DWC and otherwise implement division policy. Section 402.061, *Adoption of Rules*, 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, *Judicial Review*, provides for judicial review of decisions under §415.034, relating to hearing procedures. The proposed amendments support the implementation of the Texas Workers' Compensation Act, Texas Labor Code Title 5, Subtitle A.

TEXT

§148.17. Special Provisions for Sanctions [~~Administrative Penalties~~].

(a) Unless otherwise stated in an order from the commissioner or a court, a charged party must comply with a sanction no [Required Response to Assessment of Sanctions. Not] later than the 30th day after the order becomes final and unappealable.

(b) If an order imposing a sanction assesses a penalty against the charged party, [a party receives notification of an assessment of a sanction,] the charged party must [shall] file the amount of the penalty with the Chief Clerk of Proceedings[:

~~—(1) the amount of the sanction,] in the form of a cashier's check, a certified check, [or] a certified draft, or other form of payment authorized by the division [; or~~

~~—(2) a bond for the amount of the sanction. The bond must be:~~

~~——(A) executed by a licensed surety company authorized to do business in Texas;~~

~~——(B) approved by the division;~~

~~——(C) made payable to the Texas Department of Insurance; and~~

~~——(D) must be effective until all judicial review is final].~~

CERTIFICATION

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on October 23, 2018

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