

**SUBCHAPTER A. INSURANCE CARRIERS: REQUIRED NOTICES AND MODES OF
PAYMENT
28 TAC §124.8**

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes new 28 TAC §124.8, Receipt, Records, and Notice of Death or Claim for Death Benefits. Section 124.8 implements Labor Code §§408.182 and 409.007, as amended by House Bill (HB) 2314, 88th Legislature, Regular Session (2023).

EXPLANATION. New §124.8 is necessary to implement HB 2314. HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims.

Section 124.8 cross-references the associated rule for beneficiaries filing claims for death benefits (Chapter 122, §122.100 of this title, with proposed amendments to implement HB 2314) for consistency and ease of use, and clarifies an insurance carrier's obligations, consistent with associated rules for electronic data transactions and other existing rules. It requires an insurance carrier that sends a plain-language notice of potential entitlement to workers' compensation death benefits to a potential beneficiary under existing rules to also send a copy of that notice to DWC.

New §124.8 is necessary to ensure that, if an insurance carrier receives a notice of death or a claim for death benefits, the insurance carrier knows what the requirements for recordkeeping and notice to DWC are. It is also necessary to ensure that procedures for receiving information from claimants, maintaining records, and transmitting information to DWC are as consistent as possible with procedures for other similar situations and with

other rules to enhance compliance and reduce confusion. Finally, new §124.8 is necessary to ensure that DWC has the information needed to identify potential claims for death benefits and potential beneficiaries. Having that information is necessary for DWC to ensure that the potential beneficiaries have access to DWC's outreach services, and that insurance carriers have the information they need to process the claims efficiently.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Claims and Customer Services Erica De La Cruz has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. De La Cruz does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Ms. De La Cruz expects that enforcing and administering the proposed new section will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023); enhancing regulatory efficiency, consistency, and transparency; and enabling legal beneficiaries to file claims for death benefits with fewer opportunities for the process to go awry.

Ms. De La Cruz expects that the proposed new section will not increase the cost to comply with Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th

Legislature, Regular Session (2023), because it does not impose requirements beyond those in the statute or that exist in current rules. Instead, it cross-references the associated rule for beneficiaries filing claims for death benefits (Chapter 122, §122.100 of this title) for consistency and ease of use, and clarifies an insurance carrier's obligations, consistent with associated rules for electronic data transactions and other existing rules. In addition, the insurance carriers' ability to send documents to DWC electronically minimizes any possible cost from the requirement in the rule to send DWC a copy of the plain-language notice to potential beneficiaries.

HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims. As a result, any cost associated with the rule does not result from the enforcement or administration of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed new section will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed new section implements legislation and clarifies insurance carriers' obligations on receiving a claim for death benefits. The proposed new section does not change the people the statute affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. In addition, no additional rule amendments are required under Government Code

§2001.0045 because proposed new §124.8 is necessary to implement legislation. The proposed rule implements Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; or
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the new rule is necessary to implement HB 2314. It does not affect additional persons or create duties beyond those the statute imposes.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on October 30, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, PO Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal in a public hearing at 11 a.m., Central time, on October 24, 2023. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

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STATUTORY AUTHORITY. DWC proposes new §124.8 under Labor Code §§408.182, 409.007, 402.00111, 402.00116, and 402.061.

Labor Code §408.182, as amended by HB 2314, 88th Legislature, Regular Session (2023), provides for the distribution of death benefits to eligible beneficiaries of a deceased employee, when a compensable injury to the employee results in death, and allows an eligible parent to file a claim with DWC or an insurance carrier.

Labor Code §409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), requires a person to file a claim for death benefits with DWC or an insurance carrier; and provides that, on receiving such a claim, the insurance carrier must, in the form and manner DWC prescribes, create and maintain a record documenting receipt of the claim and provide written notice to DWC that the person filed the claim.

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

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. New §124.8 implements Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

TEXT.

§124.8. Receipt, Records, and Notice of Death or Claim for Death Benefits.

(a) Definition. In this section, "claim for death benefits" means a claim that is filed under Chapter 122, Subchapter B, §122.100 of this title.

(b) General requirements. An insurance carrier that receives a notice of death in accordance with §132.17 of this title, or a claim for death benefits must comply with all of the requirements in this chapter.

(c) Recordkeeping and notice. An insurance carrier in subsection (b) of this section must:

(1) send the division a copy of the plain-language notice that the insurance carrier must provide to the potential beneficiary under §132.17 of this title not later than the seventh day after receiving the claim for death benefits.

(2) on receiving a claim for death benefits, create and maintain a record documenting receipt of the claim for death benefits. The record must include all of the information in the claim for death benefits. The insurance carrier must maintain the record in accordance with Chapter 102, §102.4 of this title.

(3) send the division a copy of a claim for death benefits the insurance carrier receives from the potential beneficiary not later than the seventh day after receiving it and include any other documents and information the insurance carrier received.

CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on September 13, 2023.



Kara Mace
General Counsel
TDI, Division of Workers' Compensation