

No. 2022-7588

**Official Order
of the
Texas Commissioner of Workers' Compensation**

Date: 11/2/2022

Subject Considered:

Sherwin Williams Company
101 West Prospect Avenue
Cleveland, Ohio 44115

Consent Order
DWC Enforcement File No. 25634

General remarks and official action taken:

This is a consent order with Sherwin Williams Company (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

Findings of Fact

1. Respondent is a private employer operating in the State of Texas. Respondent holds a certificate of authority issued by the Texas Department of Insurance, Division of Workers' Compensation (DWC) to act as a Certified Self-Insurer pursuant to Tex. Lab. Code Ch. 407 and 28 Tex. Admin. Code Ch. 114.
2. Respondent was not selected to be tiered in any year's Performance Based Oversight (PBO) assessments.

DWC Audit No. IBA-20-119

3. On [REDACTED] DWC initiated DWC Audit No. IBA-20-119 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of death benefits, as well as timely submitting claim data to DWC.
4. The audit examined death benefit payments that Respondent reported issuing between [REDACTED] and [REDACTED] DWC identified four initial death benefit claims for audit. These four claims were reviewed to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of death benefits, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting death benefit terminations.

Failure to Timely Pay Accurate Death Benefits

6. Respondent failed to timely pay accurate death benefits for 50% of examined payments (2 out of 4).
7. Specifically, Respondent issued payments to beneficiaries more than 14 days late in one instance, and in another instance where Respondent underpaid death benefits by [REDACTED] per week to the beneficiary and issued a lump sum for the underpayment more than 430 days late.

Failure to Timely Report Claim Data to DWC

8. Respondent failed to timely report the total number of death benefit terminations for 100% of examined payments (1 out of 1).
9. Specifically, Respondent failed to timely report the true death benefit terminations of examined payments in one instance.

Assessment of Sanction

1. Failure to provide death benefits in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.

2. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.
3. In assessing the sanction for this case, DWC fully considered the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e):
 - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee or their beneficiaries;
 - the history of compliance with EDI requirements;
 - to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice may require, including, but not limited to:
 - PBO assessments;
 - prompt and earnest actions to prevent future violations;
 - self-report of the violation;
 - the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee or their beneficiaries; and other matters that justice may require, including the size of the company or practice.

5. DWC found the following mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's prompt and earnest actions to prevent future violations as outlined in Respondent's action plan in response to the audit.
6. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that the proposed sanction is appropriate, including the factors DWC considered under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
7. Respondent acknowledges that, in assessing the sanction, DWC considered the factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, 409.021, 414.002, and 414.003.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.
4. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
6. Pursuant to Tex. Lab. Code § 415.002(a)(16), an insurance carrier or its representative commits an administrative violation each time the carrier fails or

refuses to pay benefits from week to week as and when due directly to the person entitled to the benefits.

7. Pursuant to Tex. Lab. Code § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Pay Accurate Death Benefits

8. Pursuant to Tex. Lab. Code § 408.061(d), a weekly death benefit may not exceed 100% of the state average weekly wage (AWW) rounded to the nearest whole dollar.
9. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. The amount of a death benefit is equal to 75% of the employee's AWW.
10. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of death benefits no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or death benefit payments in the manner DWC rules prescribe.
11. Pursuant to 28 Tex. Admin. Code § 124.2(e)(4)-(6), the insurance carrier must notify DWC and the claimant of any changes, resumptions, or terminations involving death benefits.
12. Pursuant to 28 Tex. Admin. Code § 132.17(f), an insurance carrier must initiate payment of death benefits to eligible claimants. If the insurance carrier believes a claimant is not eligible, it must file a notice of dispute of eligibility in the form and manner DWC prescribes.
13. Respondent violated Tex. Lab. Code §§ 408.181; 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3; 124.7; and 132.17 each time Respondent failed to timely pay accurate death benefits.

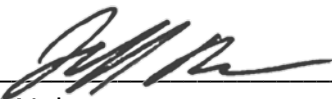
Failure to Timely Report Claim Data to DWC

14. Pursuant to 28 Tex. Admin. Code § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.

15. Respondent violated Tex. Lab. Code § 415.002(a)(20) each time Respondent failed to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.


Order

It is ordered that Sherwin Williams Company must pay an administrative penalty of \$4,300 within 30 days from the date of this order. Sherwin Williams Company must pay the administrative penalty by company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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