

No. 2019 6107

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: OCT 14 2019

Subject Considered:

FEDEX GROUND PACKAGE SYSTEM, INC.
1000 FedEx Drive
Moon Township, Pennsylvania 15108-9373

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 19999

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against FedEx Ground Package System, Inc. (FedEx).

WAIVER

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

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. FedEx is a private employer operating in the State of Texas. FedEx currently 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. FedEx was classified as "average" tier in the 2007, 2009, 2010, 2016, and 2018 Performance Based Oversight (PBO) assessments; and as "poor" tier in the 2014 PBO assessment. FedEx was not selected to be tiered in the 2012 PBO assessment.

DWC AUDIT NO. IP-19-106

3. On [REDACTED] DWC initiated Audit No. IP-19-106 to determine whether FedEx was complying with the Texas Labor Code and related rules regarding the timely payment of initial temporary income benefits (TIBs) and the timely and accurate submission of initial payment information to DWC.

- 4.1 The audit examined TIBs payments reported to have been issued between [REDACTED] and [REDACTED]. DWC identified 24 initial TIBs payments for audit. Two initial TIB payments failed to meet selection criteria and were dropped from the audit sample. The remaining 22 payments were reviewed to determine FedEx's compliance.
- 5.1 The audit focused on timeliness of payment of initial TIBs and Electronic Data Interchange (EDI) reporting. The EDI audit focused on timeliness of reporting initial TIBs payments and the accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs From Date, TIBs End Date, and Initial TIBs Payment Date).

Failure To Timely Pay Initial Temporary Income Benefits

- 6.1 FedEx failed to timely initiate TIBs for 23% of payments examined (5 out of 22).
- 7.1 Specifically, FedEx issued payments to injured employees less than six working days late in three instances; between six and 15 working days late in one instance; and between 16 and 30 days late in one instance.

Failure To Submit Timely And Accurate Information Regarding The Initiation Of Temporary Income Benefits To DWC

- 8.1 FedEx failed to timely report Initial Payments of TIBs for 9% of payments examined (2 out of 22).
- 9.1 FedEx failed to accurately report the First Date of Disability for 27% of payments examined (6 out of 22).
- 10.1 FedEx failed to accurately report the Date of First Written Notice for 5% of payments examined (1 out of 22).
- 11.1 FedEx failed to accurately report the TIBs From Date for 5% of payments examined (1 out of 22).
- 12.1 FedEx failed to accurately report the TIBs End Date for 14% of payments examined (3 out of 22).
- 13.1 FedEx failed to accurately report the Date of Initial Payment for 5% of payments examined (1 out of 22).

ASSESSMENT OF SANCTION

- 14.1 Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
- 15.1 Timely submission of information and documentation to DWC is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

16. DWC relies on claims information submitted by the insurance carriers for a variety of 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 taken on claims.
17. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with EDI requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
18. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation; the history and extent of previous administrative violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and the penalty necessary to deter future violations.
19. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act.
20. FedEx acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
21. FedEx acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury or the seventh day after the accrual date unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
7. FedEx violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to timely initiate payment of TIBs.
8. 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 on or events occurring in a claim as specified by rule in the form and manner prescribed by DWC. Inherent in this duty is the requirement that insurance carriers report this information accurately.
9. FedEx violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to accurately notify DWC and the injured employee of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.

ORDER

FedEx Ground Package System, Inc. is ORDERED to pay an administrative penalty of \$6,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

Cassie Brown

Cassie Brown *Netu*
Commissioner of Workers' Compensation

Approved as to Form and Content:

ANorman signed for

Van B. Moreland
Staff Attorney, DWC Enforcement
Texas Department of Insurance

