

No. 2023-7758

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

Date: 1/26/2023

Subject Considered:

General Motors, LLC
300 Renaissance Center, MC482-C07-D24
Detroit, Michigan 48265

Consent Order
DWC Enforcement File Nos. 29268 and 30394

General remarks and official action taken:

This is a consent order with General Motors, LLC (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, Chapter 407 and 28 Tex. Admin. Code, Chapter 114.
2. Respondent was classified as "average" tier in the 2014 and 2016 Performance Based Oversight (PBO) assessments, and as "high" tier in 2010, 2012, and 2018 PBO assessments. Respondent was not selected to be tiered in 2007, 2009, or 2020 PBO assessments.

File No. 29268

Failure to Timely Pay Initial Temporary Income Benefits (TIBs)

3. On [REDACTED], Respondent received notice of an injury to an injured employee. The date of injury was [REDACTED], with the date of accrual on [REDACTED].
4. Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, payment was due by [REDACTED].
5. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	28
2.	[REDACTED]	[REDACTED]	[REDACTED]	28

Failure to Timely Pay Accrued TIBs

6. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay accrued TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	22
2.	[REDACTED]	[REDACTED]	[REDACTED]	15
3.	[REDACTED]	[REDACTED]	[REDACTED]	8
4.	[REDACTED]	[REDACTED]	[REDACTED]	1

7. Respondent paid [REDACTED] in initial and accrued TIBs on [REDACTED].

File No. 30394

DWC Audit No. IP-22-103

8. On [REDACTED] DWC initiated DWC Audit No. IP-22-103 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of initial TIBs and timely and accurate submission of initial payment information to DWC.
9. The audit examined TIBs payments that Respondent reported issuing between [REDACTED], through [REDACTED] DWC identified 50 initial TIBs payments for audit. A total of 2 initial TIBs payments failed to meet selection criteria and were dropped from the audit sample. The remaining 48 payments were reviewed to determine Respondent's compliance.
10. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and 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 TIBs

11. Respondent failed to timely initiate TIBs for 70.83% of examined payments (34 out of 48).
12. Specifically, Respondent issued payments to injured employees less than six days late in six instances, between six and 15 days late in eight instances, between 16 and 30 days late in seven instances, and over 30 days late in 13 instances.

Failure to Timely or Accurately Report EDI Data to DWC

13. Respondent failed to timely report initial TIBs payments for 2.08% of examined payments (1 out of 48).
14. Respondent failed to accurately report the First Date of Disability for 39.58% of examined payments (19 out of 48).

15. Respondent failed to accurately report the Date of First Written Notice for 8.33% of examined payments (4 out of 48).
16. Respondent failed to accurately report the initial TIBs from Date for 2.08% of examined payments (1 out of 48).
17. Respondent failed to accurately report the initial TIBs End Date 2.08% of examined payments (1 out of 48).

Assessment of Sanction

1. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. Timely submitting information and documents to DWC is imperative for it to implement and enforce the Texas Workers' Compensation Act.
3. 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.
4. 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;
 - 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.
5. 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; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice.
6. DWC finds the following factors mitigation, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): 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; prompt and earnest actions to prevent future violations; and "high" PBO assessments. Specifically, an unexpected employee departure precipitated delay in TIBs payments. A trained replacement and new director are in place to prevent future issues. Additionally, the audit reflects past difficulties in communication between Respondent and employer. As a result, Respondent was not receiving accurate notice of work status and pay. These communication and reporting errors were discovered through an internal review (prior to the audit) and corrected by Respondent. This self-correction in dates was reflected in the audit as inaccurate reporting.
7. 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).
8. 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 § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. 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.
7. 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 TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
8. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22) each time Respondent failed to timely initiate payment of TIBs.
9. 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.

10. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 by failing to timely initiate payment of TIBs.
11. Respondent violated Tex. Lab. Code §§ 409.021, 415.002(a)(16), (20) and (22), and 28 Tex. Admin. Code §§ 124.3 and 124.7 by failing to timely pay accrued TIBs.
12. Respondent violated Tex. Lab. Code § 415.002(a)(20) each time it 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 General Motors, LLC must pay an administrative penalty of \$65,000 within 30 days from the date of this order. General Motors, LLC 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:



Kathleen Kern
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Michigan §
§
COUNTY OF Wayne §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Sherman Perkins. I hold the position of Manager - Workers' Comp and am the authorized representative of General Motors, LLC. My business address is:
300 Renaissance Center, Detroit, Wayne, MI, 48265.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

Sherman D. Perkins
Declarant

Executed on January 5, 2023.