

No. 2019 6163

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: NOV 26 2019

Subject Considered:

BEXAR COUNTY
101 West Nueva, Suite 901
Paul Elizondo Tower
San Antonio, Texas 78205-3446

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 21305

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Bexar County.

WAIVER

Bexar County acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Bexar County 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. Bexar County is a self-insured governmental entity that provides workers' compensation benefits to its employees in accordance with TEX. LAB. CODE Ch. 504.
2. Bexar County was classified as "average" tier in the 2009, 2014, and 2016 Performance Based Oversight (PBO) assessments; and "high" tier in the 2012 and 2018 PBO assessments. Bexar County was not selected to be tiered in the 2007 or 2010 PBO assessments.

FAILURE TO ACCURATELY PAY [REDACTED] BENEFITS

3. From [REDACTED], through [REDACTED], Bexar County paid [REDACTED] weekly to [REDACTED] at the rate of [REDACTED].
4. From [REDACTED], through [REDACTED], Bexar County paid [REDACTED] weekly to the [REDACTED] at the rate of [REDACTED].
5. The correct weekly [REDACTED] rate was [REDACTED] per the average weekly wage of [REDACTED]. Therefore, Bexar County had underpaid [REDACTED] to the [REDACTED] in the amount of [REDACTED].

6. On [REDACTED], Bexar County issued a payment for the deficit, plus interest, to the [REDACTED] totaling [REDACTED].

ASSESSMENT OF SANCTION

7. Failure to provide appropriate [REDACTED] benefits in a manner that is timely and cost-effective is harmful to beneficiaries and to the Texas workers' compensation system.
8. In assessing the sanction for this case, the Texas Department of Insurance, Division of Workers' Compensation (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 electronic data interchange 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.
9. 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, including the nature, circumstances, consequences, extent, and gravity 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; and other matters that justice may require including the size of the company or practice.
10. 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; and other matters that justice may require including PBO assessments, self-report of the violation, and the fact that Bexar County is a self-insured, political subdivision.

11. Bexar County acknowledges that DWC and Bexar County have communicated 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).
12. Bexar County 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, 414.003, 415.002, and 415.021.
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 §§ 408.041 and 408.181 and 28 TEX. ADMIN. CODE §§ 128.1, 128.3, and 132.1, an insurance carrier shall pay accurate [REDACTED] to [REDACTED] as and when benefits accrue.
7. Bexar County violated TEX. LAB. CODE §§ 415.002(a)(20) and (22) each time it failed to pay accurate [REDACTED] to the [REDACTED]

ORDER

Bexar County is ORDERED to pay an administrative penalty of \$5,000 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 
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

