

No. **2021-7043**

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

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

**Date: 11/4/2021**

**Subject Considered:**

FedEx Ground Package System, Inc.  
1000 FedEx Drive  
Coraopolis, Pennsylvania 15108-9373

Consent Order  
DWC Enforcement File No. 27364

**General remarks and official action taken:**

This is a consent order with FedEx Ground Package System, Inc. (FedEx). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against 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 procedural rights that apply, in consideration of the entry of this consent order.

**Findings of Fact**

1. FedEx holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to TEX. INS. CODE §§ 801.051- 801.053 and is licensed to write workers' compensation/employers' liability insurance in Texas.

2. FedEx was classified as "average" tier in the 2007, 2009, 2010, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments. FedEx was classified as "poor" tier in the 2014 PBO assessment. FedEx was not selected to be tiered in the 2012 PBO assessment.

DWC Audit No. IBA-21-109

3. On [REDACTED] DWC initiated DWC Audit No. IBA-21-109 to determine whether FedEx complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits (DBs), as well as timely submitting claim data to DWC.
4. The audit examined DB payments that FedEx reported issuing between [REDACTED] and [REDACTED]. DWC identified six initial DB claims for audit. A total of four initial DB claims failed to meet selection criteria and were dropped from the audit sample. The remaining two claims were reviewed to determine FedEx's compliance.
5. The audit focused on the accuracy of FedEx's payment of DBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting DB terminations.

*Failure to Timely Pay Accurate DBs*

6. FedEx failed to timely pay accurate DBs for 50% of examined claims (one out of two).
7. Specifically, FedEx underpaid DBs to beneficiaries over a period of 248 weeks in one instance. On [REDACTED] FedEx issued to beneficiaries the combined underpayment plus interest of [REDACTED].

*Failure to Timely Report Claim Data to DWC*

8. Inaccurate reporting of data caused four claims to be erroneously selected for audit. Subsequently, these claims had to be dropped from the audit for failure to meet selection criteria.

### **Assessment of Sanction**

1. Failure to provide DBs 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; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice.

5. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be **mitigating**: FedEx's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act; and other matters that justice may require including prompt and earnest actions to prevent future violations.
6. FedEx acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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. FedEx 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, 414.003, 415.002, and 415.021.
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. FedEx 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 §§ 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.
8. Pursuant to TEX. LAB. CODE § 408.061(d), a weekly DB may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
9. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. The amount of a DB is equal to 75% of the employee's average weekly wage.
10. 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 DBs.
11. 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 DBs 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 DB payments in the manner DWC rules prescribe.
12. Pursuant to 28 TEX. ADMIN. CODE § 132.17(f), an insurance carrier must initiate payment of DBs 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. FedEx violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to timely pay accurate DBs.

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. FedEx 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 FedEx Ground Package System, Inc. must pay an administrative penalty of \$33,000 within 30 days from the date of this order. FedEx Ground Package System, Inc. 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.



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Dan Paschal, J.D.  
Deputy Commissioner  
Policy & Customer Services  
TDI, Division of Workers' Compensation

Approved Form and Content:



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Mackenzie Arthur  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF** Pennsylvania §  
§  
**COUNTY OF** Allegheny §

Pursuant to TEX. CIV. PRAC. & REM. CODE § 132.001(a), (b), and (d), my name is Matt Welch. I hold the position of WC Claims & Litigation Advisor and am the authorized representative of FedEx Ground Package System, Inc. My business address is:

1000 FedEx Drive Moan Township Allegheny PA 15108  
(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.



Declarant

Executed on September 7, 2021.