

**SUBCHAPTER B. SUPPLEMENTAL INCOME BENEFITS.
28 TAC §130.102.**

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amended 28 TAC §130.102, concerning eligibility for supplemental income benefits (SIBs). Section 130.102 implements Texas Labor Code §408.1415, which sets standards for SIBs recipients to demonstrate an active effort to get employment.

The amendments to §130.102 are adopted with changes to the proposed text published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5589). DWC replaced the word "for" with "to obtain" in §130.102(d)(1)(D). Section 130.102 will be republished.

REASONED JUSTIFICATION. The amendments align the rule text with the statutory text. They add a reference to submitting job applications to mirror the language in Labor Code §408.1415(a)(3) and (b)(2), define "job application," and conform references to work search efforts. The amendments also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity. In response to comments, DWC replaced the word "for" with "to obtain" in §130.102(d)(1)(D) to match the wording in Labor Code §408.1415(a).

Amending §130.102 is necessary to eliminate confusion that has resulted from differences between the wording in the rule and the wording in the statute. It is also necessary to clarify that a job application is submitted to provide an employer or its designated representative information about a candidate for a specific position, and that a job application may be a physical or electronic form or other document. This ensures

that the application is directed at a specific position, is about a specific candidate, can be physical or electronic, and can be a document other than a form.

Labor Code §408.1415 requires a person receiving SIBs to provide evidence to DWC of active participation in a vocational rehabilitation program, active participation in work search efforts through the Texas Workforce Commission (TWC), or active work search efforts documented by job applications submitted by the SIBs recipient.

DWC invited public comments on an informal draft posted on DWC's website on April 28, 2025. DWC considered the comments it received on the draft when drafting the proposal. DWC also held a public hearing on the proposal on October 1, 2025.

SUMMARY OF COMMENTS AND INFORMATION SUBMITTED, AND AGENCY RESPONSE.

Commenters: DWC received eight written comments from 34 commenters, and one oral comment at the October 1, 2025, public hearing. No commenters included information, data, research, or analysis about the cost, benefit, or effect of the proposal. The Office of Injured Employee Counsel (OIEC) commented in support of the proposal. Commenters in support of the proposal with changes were: American Safety Services, Inc., Odessa, TX; Barrilleaux Energy Services, LLC, Magnolia, TX; Black Label Services, Inc., Windsor, CO; Blakely Construction Co., Inc., Odessa, TX; Branson Sherman Construction Inc. d/b/a WTB, Midland, TX; Casing Specialties, Midland, TX; Charger Services, LLC, Midland, TX; Deutsche Windtechnik d/b/a DWT, Inc., Humble, TX; G&W ESP Services, LLC, Midland, TX; Gran Lago Services, LLC, Midland, TX; J. Irwin Co., Bastrop, TX; John Gibson, The Law Offices of John Gibson & Associates; Klein Automation & Electric, Inc., Hobbs, NM; Legacy Safety & Consulting, LLC, Hobbs, NM; Lone Start Instrumentation & Electric, Odessa, TX; Lucky Services, Inc., Hobbs, NM; Mesa Well Servicing, LLP, Hobbs, NM; N & B Well Service, LLC,

Monahans, TX; Oil States Industries, Arlington, TX; Onyx Contractors, LP, Midland, TX; Paul L. Kelley, Paul Kelley Law, PLLC (at the hearing); Sage Enviro Tech Ltd., Corpus Christi, TX; S&S Fishing & Rental, Inc., Andrews, TX; Smith Laydown and Casing Services, LLC, Midland, TX; Steve Dennis, Reid, Dennis & Frick; Texas Association of School Boards; TCI Casing Specialties, Midland, TX; Tejas Completion Services, Richmond, TX; Tejas Hot Shot Services & Transportation, LLC, Odessa, TX; Texas Cotton Ginners' Trust; The Wireline Group, Houston, TX; Trey Trucks, Ltd., Crane, TX; Waukesha-Pearce Industries, Houston, TX; and Wrangler Trucking, LLC, Gonzales, TX. No commenters were against the proposal.

Comment on §130.102. A commenter supported amending §130.102 to conform with the statutory language in the Labor Code regarding work search efforts. The commenter also supported the new definition of "job application" to include both a physical or electronic form or other document.

Agency Response to Comment on §130.102. DWC appreciates the comment.

Comment on §130.102. A commenter stated that carriers can't verify job searches because the rule doesn't require injured workers to give carriers copies of their job applications.

Agency Response to Comment on §130.102. DWC appreciates the comment but declines to require injured workers to submit copies of their job applications to insurance carriers. Such a change would be beyond the scope of this rule, which is to align the rule text with the statutory text, not to address verification methods.

Comment on §130.102. Seven commenters stated that the rule doesn't address situations where injured workers apply for positions for which they are not qualified. They

stated that applying for jobs the injured worker cannot perform or has no intention of accepting is not an active effort to obtain employment.

Agency Response to Comment on §130.102. DWC appreciates the comment but declines to amend the rule to address injured workers' individual qualifications or intent. Such a change would be beyond the scope of this rule, which is to align the rule text with the statutory text, not to opine on an employee's qualifications or suitability for a particular job.

Comment on §130.102(d)(1)(D). Thirty-two commenters stated that DWC should replace "for" with "to obtain" in §130.102(d)(1)(D) to align the rule with the statutory requirement that the documented activities that entitle a claimant to SIBs are those taken "to obtain employment."

Agency Response to Comment on §130.102(d)(1)(D). DWC appreciates the comment and has made the change.

Comment on §130.102(d)(1)(D). Nineteen commenters stated that DWC should add "prescribed by the employer" after "a physical or electronic form" in §130.102(d)(1)(D) to reflect employers' common practice of requiring job applications on the employer's specified form.

Agency Response to Comment on §130.102(d)(1)(D). DWC appreciates the comment but declines to make this change because codifying a common, but not universal, practice could have the unintended effect of excluding valid job applications. Such a change would also be beyond what the Labor Code requires.

Comment on §130.102(f). A commenter stated that solo job seekers should not use TWC's work search contacts to qualify for SIBs. The commenter stated that the rule should distinguish between the minimum number of work search contacts through TWC and the minimum number of job applications that solo job seekers must submit. The commenter recommends the following replacement language in §130.102(f): "... an injured employee must provide documentation sufficient to establish that he or she has, each week during the qualifying period, made work search efforts through the TWC or submitted job applications totaling at least the minimum number established by the TWC Local Workforce Development Board for entitlement to unemployment compensation in the injured employee's county of residence."

Agency Response to Comment on §130.102(f). DWC appreciates the comment but declines to make this change. TWC's published guidance includes submitting job applications in its list of acceptable work search activities. In addition, Section 130.102(d)(1) requires at least one or any combination of efforts, including returning to work, participating in vocational rehabilitation, work search efforts through TWC, or work search efforts documented by job applications. Any of those qualify as an active effort to obtain employment to qualify for SIBs. As a result, including submitting the minimum number of job applications in the types of work search efforts required is appropriate.

Comment on §130.102. A commenter supported the proposed changes to require employees to submit job applications themselves, rather than allowing others to do it for them, and to require a documentary job application. The commenter stated that these changes are consistent with the statute.

Agency Response to Comment on §130.102. DWC appreciates the comment.

Comment on §130.102(d)(1). A commenter stated that DWC should add a subparagraph (3) to §130.102(d)(1) that states, "If there exist factors affecting the availability of employment, such as access to employment in rural areas, economic conditions in the claimant's county of residence, or other appropriate employment availability factors, these factors shall be considered in evaluating work search efforts." The commenter stated that Labor Code §408.1415(f)(3) requires DWC to adopt rules that consider factors affecting the availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors. The commenter stated that nothing in the proposed rule differentiates between urban and rural work search efforts, or the economic conditions in the claimant's county of residence which can vary widely depending upon the part of the state.

Agency Response to Comment on §130.102(d)(1). DWC appreciates the comment, but declines to make the change. Section 408.1415(b)(3) requires the commissioner to consider factors affecting the availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors, in adopting rules under Section 408.1415. It does not require that the rule text itself distinguish between rural and urban areas in requiring a minimum number of work search efforts. That said, TWC's published guidance for the required number of work search activities varies by county, so it does take into account different economic conditions based on each county, urban or rural. For example, TWC currently only requires one work search activity in Edwards County, while it requires five in Bexar County.

**SUBCHAPTER B. SUPPLEMENTAL INCOME BENEFITS.
28 TAC §130.102.**

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §130.102 under Labor Code §§408.1415, 402.00111, 402.00116, and 402.061.

Labor Code §408.1415 requires a person receiving SIBs to provide evidence to DWC of active participation in a vocational rehabilitation program, active participation in work search efforts through the TWC, or active work search efforts documented by job applications submitted by the SIBs recipient. It also requires the commissioner of workers' compensation to adopt rules setting out compliance standards for these requirements.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

TEXT.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

(a) General. An injured employee is not entitled to supplemental income benefits until the expiration of the impairment income benefit period.

(b) Eligibility Criteria. An injured employee who has an impairment rating of 15% or greater, who has not commuted any impairment income benefits, who has not permanently lost entitlement to supplemental income benefits and who has completed

and filed an Application for Supplemental Income Benefits in accordance with this subchapter is eligible to receive supplemental income benefits if, during the qualifying period, the injured employee:

(1) has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury; and

(2) has demonstrated an active effort to obtain employment in accordance with Labor Code §408.1415 and this section.

(c) Direct Result. An injured employee has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings.

(d) Work Search Requirements.

(1) An injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period:

(A) has returned to work in a position which is commensurate with the injured employee's ability to work.

(B) has actively participated in a vocational rehabilitation program as defined in §130.101 of this title (Definitions).

(C) has actively participated in work search efforts conducted through the Texas Workforce Commission (TWC).

(D) has performed active work search efforts documented by job applications the injured employee submitted. For purposes of this section, "job application" means a physical or electronic form or other document that is submitted to

an employer or its designated representative to provide information about a candidate to obtain a specific position.

(E) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor that specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

(2) An injured employee who has not met at least one of the work search requirements in any week during the qualifying period is not entitled to SIBs unless the injured employee can demonstrate that he or she had reasonable grounds for failing to comply with the work search requirements under this section.

(e) Vocational Rehabilitation. As provided in subsection (d)(1)(B) of this section, regarding active participation in a vocational rehabilitation program, an injured employee must provide documentation sufficient to establish that he or she has actively participated in a vocational rehabilitation program during the qualifying period.

(f) Work Search Efforts. As provided in subsection (d)(1)(C) and (D) of this section regarding active participation in work search efforts and active work search efforts, an injured employee must provide documentation sufficient to establish that he or she has, each week during the qualifying period, made the minimum number of work search efforts, including submitting the minimum number of job applications, consistent with the work search efforts established by TWC that are required for unemployment compensation in the injured employee's county of residence under the TWC Local Workforce Development Board requirements.

(1) If the required number of work search efforts changes during a qualifying period, the lesser number of work search efforts is the required minimum number of work search efforts for that period.

(2) If the injured employee is residing out of state, the minimum number of work search efforts required is the number required by the public employment service under applicable unemployment compensation laws for the injured employee's place of residence.

(g) Calculation of amount. Subject to any approved reduction for the effects of contribution, the monthly supplemental income benefit payment is calculated quarterly as follows:

- (1) multiply the injured employee's average weekly wage by 80% (.80);
- (2) add the injured employee's wages for all 13 weeks of the qualifying period;
- (3) divide the total wages by 13;
- (4) subtract this figure from the result of paragraph (1) of this subsection;
- (5) multiply the difference by 80% (.80);
- (6) if the resulting amount is greater than the maximum rate under the Act, Labor Code, §408.061, use the maximum rate; and
- (7) multiply the result by 4.34821.

(h) Maximum Medical Improvement and Impairment Rating Disputes. If there is no pending dispute regarding the date of maximum medical improvement or the impairment rating before the expiration of the first quarter, the date of maximum medical improvement and the impairment rating is final and binding.

(i) Services Provided by a Carrier Through a Private Provider of Vocational Rehabilitation Services. The insurance carrier is responsible for reasonable travel expenses incurred by the injured employee if the employee is required to travel in excess of 20 miles one way from the injured employee's residence to obtain vocational rehabilitation services from a private provider.

CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on December 4, 2025.



Kara Mace
General Counsel
TDI, Division of Workers' Compensation

The commissioner adopts amended 28 TAC §130.102.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2025-9641