

SUBCHAPTER A. GENERAL PROVISIONS.
28 TAC §131.5.

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts new 28 TAC §131.5, concerning verification by the Subsequent Injury Fund (SIF).

New §131.5 is adopted with changes to the proposed text published in the September 27, 2024, issue of the *Texas Register* (49 TexReg 7837). Section 131.5 will be republished. In response to comments, DWC replaced the terms "lifetime income benefits recipient" and "recipient" with "injured employee" to be consistent with other income benefit rules, and added a sentence to clarify that, if the injured employee is unable to provide the required information, the SIF will hold any pending benefit payments until verification is complete.

REASONED JUSTIFICATION. The new section requires the SIF to verify that the lifetime income benefits (LIBs) recipient (injured employee) is living, receiving LIBs payments, and their contact information has not changed. The new section also requires the injured employee to certify the information with the SIF each month over a telephone call, video call, or other online verification system to receive the LIBs payment from the SIF. It clarifies that the SIF will hold any pending benefit payments until the injured employee verifies the information in subsection (a). New §131.5 is necessary to implement Labor Code §§408.081, 408.161, and 408.162.

Labor Code §§408.081 and 408.161 pertain to when and how injured employees receive LIBs and require that LIBs are payable only while the injured employee is alive. New §131.5 is necessary to implement those sections effectively by ensuring that DWC is notified of

the injured employee's death before the SIF issues a LIBs payment to that injured employee.

Labor Code §408.162 applies when an injury combines with a subsequent injury to qualify an injured employee for LIBs. In these situations, the insurance carrier for the subsequent injury pays benefits for the subsequent injury as if the previous injury did not happen, and the SIF pays the difference between the LIBs and the amount the insurance carrier pays for the subsequent injury. New §131.5 is necessary for DWC to verify that the injured employee is still alive, preventing the waste of public funds when the SIF makes these payments to the injured employee.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two written comments, and no oral comments. The Office of Injured Employee Counsel (OIEC) requested several clarifications. Texas Mutual Insurance Company (TMIC) commented in support of the proposal with changes.

Comment. OIEC asked DWC to clarify that any income payments withheld because a recipient failed to verify the required information will only be placed on hold and released to the recipient once verification is made.

Agency Response to Comment. DWC appreciates the comment. Under §131.5, the SIF will release the withheld payments when the recipient provides the information required by subsection (a). In addition, DWC has added a sentence to subsection (b) to clarify that any benefits that are on a temporary hold will be released once verification is complete.

Comment. OIEC asked DWC to clarify that DWC will continue to make monthly outreach to injured employees and that the intent of the rule is not to shift the burden to the injured employees.

Agency Response to Comment. DWC appreciates the comment. The SIF will attempt to contact the injured employee before the SIF makes each payment. The injured employee must provide the information required by subsection (a) to the SIF.

Comment. OIEC asked DWC to clarify that an authorized representative is permitted to verify the information.

Agency Response to Comment. DWC appreciates the comment. A representative, as defined by Labor Code §401.011 and 28 TAC §150.3, can verify the information required by this rule. A representative that fails to comply with the Labor Code or a DWC rule may be subject to sanctions as provided by law.

Comment. TMIC expressed concern that the proposed rule does not provide for notice to the insurance carrier that the injured employee has not provided the required verification, because the insurance carrier may also be making payments to an injured employee under §131.3. TMIC recommended that the proposed rule be revised to provide sufficient written notice to the injured employee and the insurance carrier if the SIF suspends or later reinstates LIBs.

Agency Response to Comment. DWC appreciates the comment but declines to make the change. DWC's practice is to communicate with the insurance carrier only if the insurance carrier is paying a portion of the LIBs.

Comment. TMIC recommended that DWC consider providing a clear process in the rule to suspend or reinstate benefits if verification is later completed or the injured employee becomes entitled to LIBs again under the provisions of Labor Code §408.1615.

Agency Response to Comment. DWC appreciates the comment and has added a sentence to the rule to clarify that any LIBs payments that were left pending due to the injured employee not completing the required verification will be issued once the verification is complete.

Comment. TMIC recommended that the proposal be revised to replace the term "lifetime income benefit recipients" with "injured employees."

Agency Response to Comment. DWC appreciates the comment and has replaced the terms "lifetime income benefit recipient" and "recipient" with "injured employee" to be consistent with other income benefit rules.

SUBCHAPTER A. GENERAL PROVISIONS.

28 TAC §131.5.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts new 28 TAC §131.5 under Labor Code §§402.00111, 402.00116, 402.00128, 402.021, 402.061, 408.081, 408.161, and 408.162.

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 §402.00128(b)(12) provides that the commissioner may exercise other powers and perform other duties as necessary to implement and enforce the Workers' Compensation Act.

Labor Code §402.021(b)(3) provides that the workers' compensation system must provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective.

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.

Labor Code §408.081(d) provides that an employee's entitlement to LIBs ends on the death of the employee.

Labor Code §408.161(a) provides that LIBs are paid until the death of the employee.

Labor Code §408.162(a) provides that, when an injury combines with a subsequent injury to qualify an injured employee for LIBs, the insurance carrier for the subsequent injury pays benefits for the subsequent injury as if the previous injury did not happen. Section 408.162(b) requires the SIF to pay the difference between the amount of LIBs and the amount the insurance carrier pays for the subsequent injury.

TEXT.

§131.5. Verification by the Subsequent Injury Fund.

(a) The Subsequent Injury Fund must confirm the following information before making a payment to the injured employee:

- (1) the injured employee is living;
- (2) lifetime income benefits are being received; and
- (3) the injured employee's contact information is correct.

(b) The injured employee must provide the information required by subsection (a)(1) - (3) to the Subsequent Injury Fund each month over a telephone call, video call, or other online verification system to receive the lifetime income benefit payment from the Subsequent Injury Fund. If the injured employee is unable to provide the information, the Subsequent Injury Fund will hold any pending payments until verification is complete.

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 January 29, 2025.



Kara Mace
General Counsel
TDI, Division of Workers' Compensation

The commissioner adopts new 28 TAC §131.5.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2025-9108