

CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PRIVISIONS
28 TAC §102.2

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §102.2, concerning gifts, grants, and donations. Section 102.2 implements Texas Labor Code §402.062.

EXPLANATION. The proposed amendments update the language in §102.2 and remove obsolete provisions. Amending §102.2 is necessary to reflect the current agency structure to ensure that the rule is clear and accurate. Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules. The proposed amendments also explain DWC's process for providing notice of gifts, grants, and donations, and include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner Landrum does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefits of streamlining the Texas Administrative Code by removing or updating obsolete provisions, as well as ensuring that DWC's rules conform to Labor Code §402.062 and are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner Landrum expects that the proposed amendments will not increase the cost to comply with Labor Code §402.062 because they do not impose requirements beyond those in the statute. Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules. The proposed amendments do not impose additional requirements on regulated persons. As a result, any associated cost does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments update the language, remove obsolete provisions, and make editorial changes and updates for plain language and agency style only. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. As a result, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposed amendments update the language, remove obsolete provisions, and make editorial changes and updates for plain language and agency style only. They do not affect additional people or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on June 17, 2024. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. DWC proposes amendments to §102.2 under Labor Code §§402.062, 402.00111, 402.00116, and 402.061.

Labor Code §402.062 permits DWC to accept gifts, grants, or donations as provided by DWC rules.

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.

CROSS-REFERENCE TO STATUTE. Section 102.2 implements Labor Code §402.062, recodified by House Bill (HB) 752, 73rd Legislature, Regular Session (1993), and last amended by HB 7, 79th Legislature, Regular Session (2005).

TEXT.

§102.2. Gifts, Grants, and Donations.

~~(a) The division may accept and use gifts, grants, and donations in accordance with applicable law, including the Labor Code and the Government Code. [The commission may accept gifts, grants, and donations made to the Texas Workers' Compensation Commission as follows:~~

~~(1) If the value of a gift or donation is \$500 or more, the commissioners must, by a majority vote at a public meeting, acknowledge the gift or donation, no later than the 90th day after the date it is accepted.~~

~~(2) The Executive Director may accept a gift or donation on behalf of the commission. The Executive Director shall report all accepted gifts and donations to the commissioners.~~

~~(3) The Commission may accept a grant from the Texas Workers' Compensation Insurance Fund for the purpose of implementing steps to control and lower medical costs in the workers' compensation system and to ensure the delivery of quality medical care. The commission must additionally:~~

~~(A) publish the name of the grantor and the purpose and conditions of the grant in the *Texas Register*;~~

~~(B) provide a 20-day public comment period prior to acceptance of the grant; and~~

~~(C) acknowledge acceptance at a public meeting.~~

~~(4) The Executive Director may accept all other grants on behalf of the Commission and shall report all accepted grants to the Commissioners.]~~

~~[(b) The acceptance or acknowledgment of a gift, grant, or donation made in accordance with subsection (a)(1) or (a)(3) of this section must be reflected in the minutes of the public meeting at which the gift, grant, or donation was accepted or acknowledged. The minutes must include the name of the donor/grantor; a description of the gift, grant, or donation; and a general statement of the purpose for which the gift, grant, or donation will be used.~~

~~(c) The Executive Director shall forward all money or financial instruments received as a gift, grant, or donation to the Comptroller of Public Accounts, for deposit in the appropriate commission fund.~~

~~(d) The Executive Director shall, where appropriate, convert non-monetary gifts, grants, and donations to cash.]~~

(b) On receiving a gift, grant, or donation of \$500 or more, the division will post on the public website for at least five years from the date it was received:

(1) The date the division received the gift, grant, or donation.

(2) The identity of the donor.

(3) The amount of the gift, grant, or donation.

(4) If applicable, the stated purpose of the gift, grant, or donation.

(c) [(e)] A donor may direct the use of the gift, grant, or donation in writing. The division will follow this ~~[This]~~ direction ~~[will be followed by the commission,]~~ as nearly as practicable, and in accordance with state and federal law.

(d) [(f)] The division ~~[Commission]~~ may not accept a gift or donation of \$500 or more from a person who is a party to a contested case before the agency until the 30th day after the decision in the case becomes final under §2001.144 of the Texas Government Code. For purposes of this rule, "contested case" has the meaning assigned by §2001.003 of the Texas Government Code.

CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on April 29, 2024.



Kara Mace
General Counsel
TDI, Division of Workers' Compensation