

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

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 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.

EXPLANATION. 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. 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, or active work search efforts documented by job applications submitted by the SIBs recipient. The amendments also include nonsubstantive editorial and formatting changes that make updates for plain language and agency style to improve the rule's clarity.

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 this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Chief Administrative Law Judge Allen Craddock has determined that during each year of the first five years the proposed amendments are in effect, there will be no or minimal 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 and state government entities are only involved in enforcing or complying with the proposed amendments when acting in the capacity of a workers' compensation insurance carrier. Those entities will be impacted in the same way as an insurance carrier and will realize the same benefits from the proposed amendments.

Chief Administrative Law Judge Craddock does not anticipate any 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, Chief Administrative Law Judge Craddock expects that enforcing and administering the proposed amendments will have the public benefits of aligning the rule text with text of Labor Code §408.1415; promoting clarity, consistency, and stability in the workers' compensation system; and ensuring that DWC's rules are current and accurate, which promotes transparent and efficient regulation.

Chief Administrative Law Judge Craddock expects that the proposed amendments will not increase the cost to comply with Labor Code §408.1415 because they do not impose requirements beyond those in the statute. 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, or active work search efforts documented by job applications submitted by the SIBs recipient. As a result, any cost associated with the proposed amendments 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 align the text of the rule with the text of the statute and make editorial 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 rule conforms the language to the statute, enhances efficiency and clarity, and makes editorial changes for plain language and agency style. The proposed amendments do not change the people the rule affects 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 INFORMATION AND PUBLIC COMMENT. DWC requests public comments on the proposal, including information related to the cost, benefit, or effect of the proposal and any applicable data, research, and analysis. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on October 6, 2025. 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.

DWC will also consider written and oral comments on the proposal at a public hearing at 11 a.m., Central time, on October 1, 2025. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

SUBCHAPTER B. SUPPLEMENTAL INCOME BENEFITS.

28 TAC §130.102.

STATUTORY AUTHORITY. DWC proposes §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 Texas Workforce Commission, 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.

CROSS-REFERENCE TO STATUTE. Section 130.102 implements Labor Code §408.1415, enacted by House Bill 7, 79th Legislature, Regular Session (2005).

TEXT.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

(a) - (c) (No change.)

(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 (~~[relating to]~~ 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 for a specific position.~~[; or]~~

(E) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor that ~~[which]~~ 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 ~~shall~~ 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 ~~shall~~ 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, ~~and or work search contacts~~ consistent with the work search efforts ~~contacts~~ established by TWC that ~~which~~ are required for unemployment compensation in the injured employee's county of residence under ~~pursuant to~~ the TWC Local Workforce Development Board requirements.

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

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

(g) (No change.)

(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 [~~prior to~~] the expiration of the first quarter, the date of maximum medical improvement and the impairment rating is [~~shall be~~] final and binding.

(i) (No change.)

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 August 13, 2025.



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