

28 TAC §131.5.

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes new 28 TAC §131.5, concerning verification by the Subsequent Injury Fund (SIF). Section 131.5 implements Labor Code §§408.081, 408.161, and 408.162.

House Bill (HB) 2468, 88th Legislature, Regular Session (2023) made changes to Labor Code §408.161 that define traumatic brain injury and make other combinations of third-degree burns eligible for lifetime income benefits (LIBs). Although this proposed rule does not directly implement HB 2468, the proposed new section will impact LIBs recipients paid by the SIF, including injured employees that are eligible for LIBs under the changes made by HB 2468.

EXPLANATION. The new section requires the SIF to verify that the LIBs recipient is living, receiving LIBs payments, and their contact information has not changed. The new section also requires the LIBs recipient 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. 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.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Claims and Customer Services Erica De La Cruz has determined that during each year of the first five years the proposed new section is 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 new section does 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 new section 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 new section.

Deputy Commissioner De La Cruz 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 new section is in effect, Deputy Commissioner De La Cruz expects that enforcing and administering the proposed new section will have the public benefits of increasing efficiency and transparency, and preventing the waste of public funds, as well as ensuring that DWC's rules conform to Labor Code §§408.081(d), 408.161, and 408.162 and are current and accurate, which promotes transparent and efficient regulation.

Deputy Commissioner De La Cruz expects that the proposed new section will not increase the cost to comply with Labor Code §§408.081(d), 408.161, and 408.162 because

it does not impose requirements beyond those actions that are required to comply with the statute. Labor Code §408.081(d) requires that an employee's entitlement to LIBs end on the death of the employee. Labor Code §408.161(a) requires that LIBs are paid until the death of the employee. Together, the statutes require DWC to determine if the employee is living at the time the SIF makes the LIBs payment. As a result, the cost associated with verification by the SIF and certification by the employee does not result from the enforcement or administration of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed new section will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed new section makes changes required to conform DWC rules to Labor Code §§408.081, 408.161, and 408.162. The proposed new section does not change the people the rule affects or impose additional costs beyond what is required by the statutes. 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 new section is 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 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 enhances efficiency and transparency, and is necessary to prevent the waste of public funds. The proposed rule does not change the people the law 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 PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on October 28, 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 §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.

CROSS-REFERENCE TO STATUTE. Section 131.5 implements Labor Code §§408.081, 408.161, and 408.162, enacted by HB 752, 73rd Legislature, Regular Session (1993).

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 lifetime income benefit recipient:

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

(b) The lifetime income benefits recipient 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.

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 September 13, 2024.



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