

**CHAPTER 147. DISPUTE RESOLUTION--AGREEMENTS, SETTLEMENTS,
COMMUTATIONS**

**~~[28 TAC §§147.1, 147.2, 147.3, 147.6, 147.8, AND 147.9]~~
28 TAC §§147.1, 147.4, 147.5, 147.7, 147.10, AND 147.11**

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §147.4, concerning filing and effective dates for agreements in the dispute resolution process; §147.5, concerning settlements in the dispute resolution process; §147.7, concerning the effect on previously entered decisions and orders for agreements and settlements; §147.10, concerning the commutation of impairment income benefits; and 147.11, concerning notification to DWC of proposed judgments and settlements. DWC proposes to repeal §147.1, concerning definitions; §147.2, concerning the form of agreements and settlements; §147.3, concerning the execution of agreements and settlements; §147.6, concerning settlement conferences; §147.8, concerning the withdrawal from a settlement; and §147.9, concerning requirements for agreements and settlements. DWC proposes to adopt new §147.1, concerning the form and execution of agreements and settlements. Chapter 147 implements Texas Labor Code §§401.011, 408.005, 410.029, 410.030, and 410.258.

EXPLANATION. Amending Chapter 147 is necessary to organize the chapter and remove unnecessary rules to update and streamline the process. Some sections will be deleted because they repeat the Labor Code or require DWC to perform actions that are unnecessary and not required by statute. The amendments are also necessary to remove references to penalties specific to certain violations of agreements and settlements since penalties are addressed in Labor Code Chapter 415 and 28 TAC 180.

The amendments will also condense some sections into others, so the chapter is more organized and easier to navigate; remove some sections and subsections that are

outdated and unnecessary; update citations; remove obsolete references; and make plain language updates and agency style editorial changes.

Section 147.1 provides a statutory reference to definitions in the dispute resolution process. The repeal of §147.1 removes the reference to the definitions within the section, which are "agreement" and "settlement," because these definitions exist in Labor Code §401.011. Sections 147.2 and 147.3 will move into new §147.1, which will replace the repealed text, to better organize the chapter. Also, §147.1 will be renamed to better reflect its purpose.

Section 147.2 provides that agreements and settlements must be on a form prescribed by DWC and specifies which forms to use. DWC proposes repealing §147.2 and moving §147.2(a), which requires that an agreement or settlement of the dispute resolution process be on a form prescribed by DWC, to §147.1 to better organize the chapter. Subsections 147.2(b) and 147.2(c), which specify certain DWC forms to use, will be repealed because our website contains these forms, and the website is easy to navigate.

Section 147.3 concerns the execution of agreements and settlements in the dispute resolution process. The existing subsections under §147.3 will move to new §147.1 to better organize the rule, and §147.3 will be repealed.

Section 147.4 concerns filing agreements and effective dates in the dispute resolution process. The amendments remove certain procedures for DWC staff that are not required by statute and do not contribute to the purpose of filing agreements. The amendments also remove §147.4(e), which refers to possible penalties imposed if a breach of an

agreement occurs, because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties. The amendments will also rename §147.4 to better reflect its purpose.

Section 147.5 concerns settlements in the dispute resolution process, including settlement requirements, effective dates, and procedures for informal settlement conferences. The amendments remove subsections 147.5(b), (c), (d), (e), and (g). Those provisions are more appropriate for internal procedures than a rule. Removing them will update and streamline the settlement process. Subsection 147.5(h) will be removed because it exists in Labor Code §408.005(f). Section 147.9(c) regarding settlements will move to new §147.5(c). The amendments will also rename §147.5 to better reflect its purpose.

Section 147.6 provides that DWC may reject a settlement by an unrepresented employee pending an informal conference. DWC is repealing §147.6 because it is obsolete. Settlements under old law are now covered under Chapter 56 of this title (relating to Structured Compromised Settlement Agreements).

Section 147.7 concerns the effect on previously entered decisions and orders for agreements and settlements in the dispute resolution process. The amendments will rename §147.7 to better reflect its purpose.

Section 147.8 provides the circumstances under which a party can withdraw from a settlement. Section 147.8 will be removed because it repeats Labor Code §408.005(h).

Section 147.9 concerns the requirements for agreements and settlements in the dispute resolution process. Repealing §147.9 will remove subsections (a) and (b) because they

repeat the statute. Subsection 147.9(c) regarding settlements will be moved to §147.5(c) to better organize the rule.

Section 147.10 concerns the commutation of impairment income benefits. The amendments to §147.10 will remove subsection (a) because it exists in Labor Code §408.128. Subsection (c) will be removed because the DWC form already provides a warning to the employee that commutation terminates the employee's entitlement to additional income benefits, and it exists in Labor Code §408.128. Subsection (d) will be removed because it is unnecessary. Subsection (d) states that the employee may contact DWC to get or verify the information required to be included in a request to commute impairment benefits. Employees may contact DWC to get or verify this information without a rule stating so. Therefore, it is unnecessary. The amendments also rename the section to better reflect its purpose.

Section 147.11 concerns notifications to DWC of proposed judgments and settlements within the dispute resolution process. The amendments to §147.11 update the language in subsection (b) and remove subsections (a) and (c) because they exist in Labor Code §410.258. The amendments also remove subsection (d) regarding penalties because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties.

In addition, the proposed amendments to Chapter 147 include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Hearings Allen Craddock has determined that during each year of the first five years the proposed amendments and repeals 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 and repeals 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 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 and repeals are in effect, Deputy Commissioner Craddock expects that enforcing and administering the proposed amendments and repeals will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.005 and 410.258 and have a clearer set of rules about the dispute resolution process that is current, accurate, and readable, which promotes transparent and efficient regulation.

Deputy Commissioner Craddock expects that the proposed amendments and repeals will not increase the cost to comply with Labor Code §§408.005 and 410.258 because they do not impose requirements beyond those in the statute or that exist in current rules. As a result, any cost associated with the rules does not result from the enforcement or administration of the proposed amendments and repeals.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments and repeals 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 and repeals remove unnecessary language and better organize the rule. They do not change the people the

statute 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. Also, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments and repeals remove unnecessary language and requirements for parties involved in the dispute resolution process.

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 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 and repeals will remove unnecessary language and better organize the rule, so the dispute resolution process is easier to navigate and understand. DWC made these determinations because the proposed amendments enhance efficiency and clarity; conform the language to

current agency structure, practice, and related rules; and make editorial changes for plain language and agency style. They 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 PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on May 6, 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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~~[28 TAC §§147.1, 147.2, 147.3, 147.6, 147.8, AND 147.9]~~

STATUTORY AUTHORITY. DWC proposes repealing §§147.1, 147.2, 147.3, 147.6, 147.8, and 147.9 under Labor Code §§401.011, 408.005, 410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §401.011 provides definitions used in workers' compensation.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer must reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

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. Sections 147.1, 147.2, 147.3, 147.6, 147.8, and 147.9 implement Labor Code §§401.011, 408.005, 410.029, 410.030, and 410.258. Section 401.011 was enacted by Senate Bill 1, 71st Legislature, 2nd Called Session (1989). Section 408.005 was enacted by House Bill (HB) 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 410.029 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 410.030 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 410.258 was enacted by HB 3137, 75th Legislature, Regular Session (1997) and amended by HB 7, 79th Legislature, Regular Session (2005) and HB 2061, 85th Legislature, Regular Session (2017).

TEXT.

§147.1. Definitions.

§147.2. Form.

§147.3. Execution.

§147.6. Settlement Conference.

§147.8. Withdrawal from Settlement.

§147.9. Requirements for Agreements and Settlements.

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STATUTORY AUTHORITY. DWC proposes adding new §147.1 and amending §§147.4, 147.5, 147.7, 147.10, and 147.11 under Labor Code §§408.005, 408.128, 410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §408.128 provides that an employee may elect to commute the remainder of the impairment income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80 percent of the employee's average weekly wage. An employee who elects to commute impairment income benefits is not entitled to additional income benefits for the compensable injury.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer must reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters

relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

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. New §147.1 and amended §§147.4, 147.5, 147.7, 147.10, and 147.11 implement Labor Code §§408.005, 408.128, 410.029, 410.030, and 410.258. Section 408.005 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 408.128 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 410.029 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 410.030 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 410.258 was enacted by HB 3137, 75th Legislature,

Regular Session (1997) and amended by HB 7, 79th Legislature, Regular Session (2005) and HB 2061, 85th Legislature, Regular Session (2017).

TEXT.

§147.1. Form and Execution.

(a) A settlement or a written agreement must be on a form prescribed by the division.

(b) In addition to the parties, the employee's representative, if any, must sign the written agreement or settlement.

(c) Unless the division finds that an extraordinary circumstance applies, an employee's representative must not sign a written agreement or settlement on behalf of the employee.

(d) The insurance carrier's representative must sign a written agreement or settlement as the agent of the insurance carrier, and the insurance carrier will be bound by the written agreement or settlement.

§147.4. [Filing] Agreements [with the Commission]; Filing and Effective Dates.

(a) An agreement [~~reached before a benefit proceeding has been scheduled~~] may be reduced to writing and sent to the division [~~commission field office handling the claim~~]. [~~If the parties include a request for commission approval, the~~] The agreement is effective and binding on the date the division approves it [~~approved by the commission~~].

~~[(b) A written agreement reached after a benefit proceeding has been scheduled, whether before, during, or after the proceeding has been held, shall be sent or presented to the presiding officer. The presiding officer will review the agreement to ascertain that it complies with the Texas Workers' Compensation Act and these rules; if so, sign it, and~~

~~furnish copies to the parties. A written agreement is effective and binding on the date signed by the presiding officer.]~~

~~(b) [(e)] An oral agreement reached during a benefit contested case hearing and preserved in the record is effective and binding on the date made.~~

~~(c) [(d)] A signed written agreement, or one made orally, as provided by subsection (b) [(e)] of this section, is binding on:~~

~~(1) an insurance [a] carrier and a claimant represented by an attorney through the final conclusion of all matters relating to the claim, whether before the division [commission] or in court, unless set aside by the division [commission] or court on a finding of fraud, newly discovered evidence, or other good and sufficient cause; and~~

~~(2) a claimant not represented by an attorney through the final conclusion of all matters relating to the claim while the claim is pending before the division [commission], unless set aside by the division [commission] for good cause.~~

~~[(e) Breach of an agreement approved by the commission, done knowingly, is a Class C administrative violation, with a penalty not to exceed \$1,000.]~~

§147.5. Settlements: Requirements, Effective Dates, and Informal Settlement Conferences [Filing Settlements with the Commission; Effective Dates].

~~(a) A settlement [reached before a benefit proceeding has been scheduled] must [shall] be sent to the division [commission field office handling the claim].~~

~~[(b) A settlement reached after a benefit proceeding has been scheduled, whether before, during, or after the proceeding has been held, shall be sent or presented to the presiding officer.~~

~~(c) The commission employee receiving a settlement will sign it, mark it with the date received, and forward it to the director of the division of hearings.~~

~~(d) A properly completed and executed settlement shall be deemed received by the director of the division of hearings on the second day after it is filed with any commission field office, as provided by subsection (a) of this section, or any presiding officer, as provided by subsection (b) of this section.~~

~~(e) The director of the division of hearings shall approve a settlement determined to be in compliance with the requirements established in the Texas Workers' Compensation Act, §4.33(e).]~~

~~(b) [(f)] The division [~~director~~] may[,] approve or reject it before the 16th day after the date the settlement is submitted to the division [~~within 15 days of the date the settlement was received~~]:~~

~~(1) approve it by signing it, and marking it with the date signed; or~~

~~(2) reject it by marking it "Rejected," signing it, and marking it with the date signed].~~

~~[(g) The director shall promptly furnish copies of the approved or rejected settlement to all parties by first class mail or personal delivery. A rejected settlement shall be accompanied by a written statement of the reasons for rejection.~~

~~(h) Unless previously expressly rejected by the director of the division of hearings, a settlement is effective and binding on the earlier of:~~

~~(1) at the close of business day of the date approved by the director of the division of hearings; or~~

~~(2) the 16th day after the date filed with the director of the division of hearings.]~~

(c) A settlement must:

(1) establish that the insurance carrier is liable for the claim;

(2) establish that the claim is compensable;

(3) establish that the employee is entitled to benefits;

(4) incorporate by reference all prior oral and written agreements between the parties; and

(5) state that a final resolution has been reached on all issues in the claim, and that the parties waive their rights to subsequent division proceedings, other than those necessary to resolve medical benefit disputes or to enforce compliance with the terms of the settlement.

§147.7. Agreements and Settlements: Effect on Previously Entered Decisions and Orders.

(a) A written agreement on one or more disputed issues addressed in a presiding officer's decision or order, including an interlocutory order, sets aside the decision or order, as it relates to the agreement, on the date the agreement is approved by the presiding officer.

(b) A settlement filed before a presiding officer's decision becomes final sets aside a presiding officer's decision or order, except for an interlocutory order, on the date received by the division [~~director of the division of hearings~~]. If the division [~~director of the division of hearings~~] rejects the settlement, the decision or order will [~~shall~~] be immediately reentered.

(c) A settlement sets aside an interlocutory order on the date the settlement becomes effective.

§147.10. Notification to the Division of Proposed Judgments and Settlements [~~Commutation of Impairment Income Benefits~~].

~~[(a) An employee may elect to commute impairment income benefits when the employee has returned to work for at least three months, earning at least 80% of the employee's average weekly wage.]~~

(a) ~~[(b)]~~ A request to commute impairment income benefits must:

(1) be in writing on a form prescribed by the division ~~[commission-prescribed form]~~;

(2) state the date the employee reached maximum medical improvement, ~~[i]~~ the impairment rating, ~~[j]~~ and the employee's weekly impairment income benefit;

(3) be sent to the insurance carrier; and

(4) be filed with the division ~~[commission field office managing the claim]~~.

~~[(c) The commission-prescribed form shall include a warning to the employee that commutation terminates the employee's entitlement to additional income benefits for the injury.~~

~~(d) The employee may contact the commission field office managing the claim to obtain or verify the information required to be included in the request.]~~

(b) ~~[(e)]~~ The insurance carrier must ~~[shall]~~ send a notice of approval or denial of the request to the employee no later than 14 days after receiving ~~[receipt of]~~ the request. A notice of approval must ~~[shall]~~ include payment of the commuted impairment income benefits. A notice of denial must ~~[shall]~~ include the insurance carrier's reasons for denial. A copy of the notice must ~~[shall]~~ be filed with the division ~~[commission field office managing the claim]~~.

(c) ~~[(f)]~~ If the insurance carrier denies the request, the employee may request the division ~~[commission]~~ to schedule a benefit review conference to resolve the issue, as provided by §141.1 of this title (relating to Form and Execution ~~[Requesting and Setting a Benefit Review Conference]~~).

§147.11. Notification to Division ~~[of Commission]~~ of Proposed Judgments and Settlements.

~~[(a) The party who requested judicial review under Chapter 410, Subchapter F or G shall file a copy of any proposed judgment or settlement with the executive director of the Commission by filing it with the General Counsel of the Commission not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement. A proposed judgment or settlement must be sent by certified mail return receipt requested.]~~

~~[(b)] The insurance carrier or its representative must [shall] file [with the General Counsel of the Commission] a copy of a final judgment or settlement with the division no [not] later than the 10th day after a court approves the agreement or settlement.~~

~~[(c) For suits seeking judicial review filed under Chapter 410, Subchapter F (regarding Judicial Review General Provisions) or Subchapter G (regarding Judicial Review of Issues Regarding Compensability or Income or Death Benefits), on or after September 1, 1997, a judgment or settlement which is not filed with the commission in compliance with subsections (a) and (b) of this section is void.]~~

~~[(d) A party who violates this section may be subject to an administrative penalty, including a penalty of up to \$1,000 pursuant to the Texas Labor Code, §415.0035 or up to \$10,000 pursuant to the Texas Labor Code, §415.021 for repeated violations.]~~

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 March 21, 2024.



Kara Mace
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TDI, Division of Workers' Compensation