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To: Texas Workers' Compensation System Participants

From: Kimberly Donovan, Deputy Commissioner of Operations and External Relations

Date: [July 19, 2023](#)

Re: Legislation Enacted – 88th Legislature, Regular Session, 2023

This memo summarizes selected legislation from the 88th Legislature that affect workers' compensation and the individuals and entities that the Texas Department of Insurance, Division of Workers' Compensation (DWC) regulates.

We are only summarizing particular provisions of bills that may apply to workers' compensation. Please refer to the **actual legislation** for the complete content. Bills in this memo link directly to the bill text. You may also access the bills and other legislative information on the [Texas Legislature Online website](#).

While DWC encourages using this memo to aid in your compliance efforts, individuals and entities that DWC regulates are responsible for complying with **all** enacted legislation affecting the business they conduct.

### **[House Bill \(HB\) 90](#) Benefits for members of Texas Military Forces**

Expands [Texas Government Code Chapter 615](#) death benefits to eligible survivors of a member of the Texas Military Forces killed on state active duty. The Employees Retirement System of Texas (ERS) pays out these benefits. These are not workers' compensation benefits and have no bearing on whether there is a compensable work-related injury.

HB 90 defines travel of Texas Military Forces to or from their duty location or while on state training to be within the course and scope of employment. Members of Texas Military Forces may also be eligible to receive workers' compensation benefits for post-traumatic stress disorder as a compensable injury based on one or more events occurring in the course and scope of their state active duty.

HB 90 includes expedited medical benefits for serious bodily injuries as defined by [Texas Penal Code Section 1.07](#). Members of Texas Military Forces injured on state active duty can request expedited dispute resolution proceedings, including contested case hearings and appeals for denied or disputed medical benefits.

To implement HB 90, DWC anticipates rulemaking related to Texas Military Forces members' rights to expedited medical benefits and dispute resolution proceedings.

Effective: September 1, 2023.

### **[HB 679](#) Workers' compensation experience modifier use in public construction contracts**

Amends [Government Code Chapter 2252](#). A governmental entity may not request, require, or consider an experience modifier in a bid, proposal, qualification, offer, or other response submitted as part of the selection process for or when awarding a public construction contract.

Effective: September 1, 2023.

### **[HB 2314](#) Claim for death benefits filed with insurance carrier**

Allows a beneficiary to file a workers' compensation claim for death benefits with either the insurance carrier or DWC. An insurance carrier must maintain a record of any claim for death benefits that they receive and provide written notice to DWC that the person filed the claim.

To implement HB 2314, DWC anticipates rulemaking to create a process for insurance carriers to notify DWC when they get a death benefits claim.

Effective: June 10, 2023.

### **[HB 2468](#) Lifetime income benefits for first responders**

Amends statutes related to lifetime income benefits (LIBs). "Incurable insanity and imbecility" is replaced with a new traumatic brain injury LIBs eligibility standard: "a major permanent neurocognitive disorder . . . for which the employee requires occasional supervision in the performance of routine daily tasks of self-care and . . . that renders the injured employee permanently unemployable." The bill also expands eligibility criteria for third degree burns.

HB 2468 creates new [Labor Code Section 408.1615](#). This section only applies to certain first responders who have sustained a serious bodily injury under [Penal Code Section 1.07](#), which renders the employee permanently unemployable as a qualifying condition to receive LIBs. This new section also authorizes an accelerated dispute process for qualifying first responder LIBs claims, including contested case hearings and appeals. The injured employee must notify DWC of their status as a first responder and request the expedited proceedings.

New Labor Code Section 408.1615 allows for an insurance carrier's periodic review to determine if these certain injured first responders still meet all LIBs requirements. This review may occur only once during a five-year period and must include a designated doctor exam of the injured employee. If the designated doctor determines that the injured first responder no longer meets necessary requirements, their entitlement to LIBs may be suspended.

The injured first responder must also certify annually that they have not been employed in the previous year. An insurance carrier may contest the employee's certification by providing sufficient evidence to DWC that the certification is not accurate. This can initiate a separate review of the injured first responder's entitlement to LIBs regardless of the date it was last reviewed. If approved by the commissioner, this review also includes a designated doctor exam to determine continued LIBs eligibility.

DWC anticipates rulemaking for procedures for reviewing entitlement to LIBs, and to create a process for the injured first responder to certify they were not employed in the prior year. DWC is also considering additional designated doctor training on new requirements and processes.

Effective: September 1, 2023.

### **[HB 3335](#) Travel for emergency response personnel**

Amends [Labor Code Section 401.026](#) to add "peace officer" as a defined first responder who is considered to be in the course and scope of employment while en route to an emergency call.

Effective: June 13, 2023.

**[Senate Bill \(SB\) 1122](#) Exclusion of certain medical exams from sales and use tax**

Amends the definition of “insurance services” in Texas [Tax Code Section 151.0039\(b\)](#) to exclude a medical examination, service, or test performed to determine the appropriate level of benefits under [Labor Code, Title 5, Subtitle A, Chapter 408](#). This change ensures that designated doctor exams, and other similar exams that health care providers conduct in the workers’ compensation system, are not considered “insurance services” subject to sales and use tax.

Effective: June 18, 2023.

**[SB 1659](#) Sunset review**

Adjusts the Sunset Advisory Commission’s review of DWC, TDI, and the Office of Injured Employee Counsel, among other agencies, from 2025 to 2029.

Effective: June 18, 2023.