

No. 2019 6038

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION
AUG 09 2019

Date: _____

Subject Considered:

UNITED AIRLINES, INC.
77 West Wacker Drive
Chicago, Illinois 60601

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 19659

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against United Airlines, Inc. (United).

WAIVER

United acknowledges that the Texas Labor Code and other applicable laws provide certain rights. United waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. United is a private employer operating in the State of Texas. United currently holds a certificate of authority issued by the Texas Department of Insurance, Division of Workers' Compensation (DWC) to act as a Certified Self-Insurer pursuant to TEX. LAB. CODE, Chapter 407 and 28 TEX. ADMIN CODE, Chapter 114.
2. United was classified as "average" tier in 2016 Performance Based Oversight (PBO) assessment and "high" tier in the 2018 PBO assessment. United was not selected to be tiered in the 2007, 2009, 2010, 2012, or 2014 PBO assessments.

FAILURE TO TIMELY PAY IMPAIRMENT INCOME BENEFITS

3. On [REDACTED] United received a DWC Form-69, or a designated doctor (DD) report, from the DD.
4. In the DD report, the DD certified the injured employee at maximum medical improvement on [REDACTED], with a [REDACTED]% impairment rating. United, therefore, was required to initiate impairment income benefits (IIBs) within five days of receipt of the DD report and to pay IIBs weekly since it did not enter into an agreement with the injured employee to pay IIBs monthly in accordance with 28 TEX. ADMIN. CODE § 130.11.

5. United timely initiated IIBs but failed to timely pay IIBs for the week of [REDACTED] through [REDACTED], which was due on [REDACTED]. United did not pay IIBs for the week of [REDACTED], through [REDACTED], until [REDACTED], which was six days late.

ASSESSMENT OF SANCTION

6. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
7. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e):
- the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of actions to prevent future violations;
 - self-report of the violation;
 - the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
8. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the penalty necessary to deter future violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require including the size of the company or practice.
9. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act; and other matters that justice may require including PBO assessments.
10. United acknowledges that DWC and United have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred;

and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

11. United acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, 414.003, 415.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.
5. Pursuant to TEX. LAB. CODE §§ 415.002(a)(16), 409.023, and 408.081, insurance carriers are required to pay benefits weekly, as and when the benefits accrue, and without order from the commissioner unless the employee and the insurance carrier have entered into an agreement under 28 TEX. ADMIN. CODE § 130.11, in which case IIBs are to be paid monthly.
6. United violated TEX. LAB. CODE §§ 415.002(a)(16) and (22) and 409.023 when it failed to timely pay IIBs for the week of July 4, 2018, through July 10, 2018.

ORDER

United Airlines, Inc. is ORDERED to pay an administrative penalty of \$1,500 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown *WCTP*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

2019 6038

AFFIDAVIT

STATE OF Texas §
COUNTY OF Harris §
§

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Rat Claiborne. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Director, Managed Care and am the authorized representative of United Airlines, Inc.. I am duly authorized by said organization to execute this statement.

United Airlines, Inc. waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

United Airlines, Inc. is voluntarily entering into this consent order. United Airlines, Inc. consents to the issuance and service of this consent order."

Rat Claiborne
Affiant

SWORN TO AND SUBSCRIBED before me on July 02, 2019.

(NOTARY SEAL)

Elaine P. Clark
Signature of Notary Public

Elaine P. Clark
Printed Name of Notary Public

May 18, 2021
Commission Expiration Date

