

No. **2022-7282**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

**Official Order
of the
Texas Commissioner of Workers' Compensation**

Date: 3/31/2022

Subject Considered:

City of Austin
PO Box 1088
Austin, Texas 78767-1088

Consent Order
DWC Enforcement File No. 27741

General remarks and official action taken:

This is a consent order with City of Austin (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

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

Findings of Fact

1. Respondent is a self-insured government entity that provides workers' compensation benefits to its employees in accordance with TEX. LAB. CODE Ch. 504.
2. Respondent was classified as "average" tier in the 2007 and 2009 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2010, 2012, 2014, 2016, 2018, and 2020 PBO assessments.

Failure to Accept Notice of Injury

3. On [REDACTED] DWC faxed a letter to Respondent which contained the elements necessary to be considered a notice of injury for an injured employee on [REDACTED]. As of [REDACTED] Respondent had not received a DWC Form-001, *Employer's First Report of Injury or Illness* (DWC Form-001) from the employer. Respondent was therefore required to accept the notice from DWC as a notice of injury.
4. On the following dates, DWC contacted Respondent to verify receipt of the fax: [REDACTED] and [REDACTED]. On these dates, Respondent confirmed the fax had been received but did not create a record of the injury.
5. On [REDACTED] Respondent filed a PLN-01, *Notice of Denial of Compensability/Liability and Refusal to Pay Benefits* denying compensability of the workers' compensation claim.

Assessment of Sanction

1. Failure to timely create a written record on paper or in an electronic format at the time the insurance carrier receives the earliest notice of injury is not cost-effective and is harmful to injured employees and the Texas workers' compensation system.
2. In assessing the sanction for this case, DWC fully considered the following factors 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 violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice may require, including, but not limited to:

- PBO assessments;
 - prompt and earnest 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.
3. DWC found the following factors 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 history and extent of previous administrative violations; the penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
 4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: whether the administrative violation had a negative impact on the delivery of benefits to an injured employee. The injured employee has never claimed lost work due to the injury. He has never contacted the insurance carrier about this claim for any reason.
 5. Respondent acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and the proposed sanction is appropriate, including the factors DWC considered under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
 6. Respondent acknowledges that, in assessing the sanction, DWC considered the factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, 414.003, and 415.021.
2. The commissioner has the authority to dispose of this case informally pursuant to TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE §§ 401.021 and 402.00128(b)(6)-(7), and 28 TEX. ADMIN. CODE § 180.26(h) and (i).

3. Respondent has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.
4. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to TEX. LAB. CODE § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation if they violate a DWC rule or fail to comply with a provision of this subtitle.
6. Pursuant to 28 TEX. ADMIN. CODE § 124.1(a)(1)-(3), written notice of injury, as used in TEX. LAB. CODE § 409.021, consists of the insurance carrier's earliest receipt of the Employer's First Report of Injury as described in 28 TEX. ADMIN. CODE § 120.2, a notification from DWC as described in 28 TEX. ADMIN. CODE § 124.1(e), or if no Employer's First Report of Injury has been filed, any other communication regardless of source, which fairly informs the insurance carrier of the name of the injured employee, the identity of the employer, the approximate date of the injury and information which asserts the injury is work related.
7. Pursuant to 28 TEX. ADMIN. CODE § 124.1(d), the date of receipt of a written notice of injury shall be deemed to be the earliest date the carrier receives the information identified in subsections (a)(1), (2), or (3) of this section. Upon request of the Commission, a carrier shall provide an affidavit indicating the receipt or non-receipt of a notice of injury received and the receipt date.
8. Respondent violated TEX. LAB. CODE § 415.002(a)(20) when it failed to immediately create a record of injury after receiving a notice of injury.

Order

It is ordered that City of Austin must pay an administrative penalty of \$7,000 within 30 days from the date of this order. City of Austin must pay the administrative penalty by company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.



Dan Paschal, J.D.
Deputy Commissioner,
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Texas §
§
COUNTY OF Travis §

Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is Kayla Wilson. I hold the position of Risk Analyst and am the authorized representative of City of Austin. My business address is:

City of Austin, P O Box 1088, Risk 5202 .

(Street) Austin (City) Travis (County) TX
(State) 78741 (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

Kayla S. Wilson

Declarant

Executed on March 14, 2022.

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