

**TITLE 28. INSURANCE**  
**PART 2. TEXAS DEPARTMENT OF INSURANCE,**  
**DIVISION OF WORKERS' COMPENSATION**  
**CHAPTER 110: REQUIRED NOTICES OF COVERAGE**  
**SUBCHAPTER B: EMPLOYER NOTICES**  
**Title 28 TAC §110.108 and §110.110**

**1. INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to §110.108, concerning employer notice regarding work-related exposure to communicable disease/HIV: posting requirements; payment for tests; and §110.110, concerning reporting requirements for building or construction projects for governmental entities. Section 110.108 and §110.110 are adopted without changes to the proposed text published in the August 7, 2015, issue of the Texas Register (40 TexReg 5044). There was not a request for public hearing submitted to the division.

In accordance with Government Code §2001.033, the division's reasoned justification for the sections is set out in this order, which includes the preamble. The following paragraphs include a detailed section by section description and reasoned justification for all amendments to §110.108 and §110.110.

**2. REASONED JUSTIFICATION.** The non-substantive amendments to §110.108 and §110.110 are necessary to provide employees with the updated division phone number to report possible exposure to communicable diseases or HIV under §110.108; or to inquire about, verify, or report the lack of coverage at construction project sites under §110.110. Amended §110.108 achieves the goals of Health and Safety Code §81.050(j), concerning mandatory testing of persons suspected of exposing

certain other persons to reportable diseases, including HIV infection; Health and Safety Code §85.116, concerning testing and counseling for state employees exposed to HIV infection on the job; and Government Code §607.002, concerning reimbursement of medical expenses for public safety employees exposed to contagious diseases. The amendments provide updated contact information for the division to employees seeking guidance on exposure to a communicable disease and eligibility for benefits. Amended §110.110 achieves the goals of Labor Code §406.005, concerning employer notice to employees; administrative violation, by providing the division's updated contact information to employees inquiring about the requirements of the workers' compensation system and their employer's coverage.

Section 110.108 addresses **Employee Notice Regarding Work-Related Exposure to Communicable Disease/HIV: Posting Requirements; Payment for Tests**. The division amended Figure: 28 TAC §110.108(d), regarding employer notice, to update the telephone number employees use to contact the division. Amended Figure: 28 TAC §110.108(d) also reflects the change in agency name from "Texas Workers' Compensation Commission" to "Division of Workers' Compensation" and "Texas Department of Health" to "Texas Department of State Health Services." The amendments are necessary to ensure the required notice in §110.108 contains the updated phone number for the division and reflects the current agency names for the division and the Texas Department of State Health Services.

Section 110.110 addresses **Reporting Requirements for Building or Construction Projects for Governmental Entities**. The division amended §110.110 to reflect a change in the agency's name. The division amended §110.110(a)(1), (c)(6), Figure: 28 TAC §110.110(c)(7), and Figure: 28 TAC §110.110(d)(7), by deleting "commission" and adding "division." In §110.110(a)(5), Figure: 28

TAC §110.110(c)(7), and Figure: 28 TAC §110.110(d)(7), the division deleted "Texas Workers' Compensation Commission" and added "Division of Workers' Compensation."

The division amended Figure: 28 TAC §110.110(d)(7), regarding required workers' compensation coverage, by updating the telephone number that employees use to contact the division. Figure: 28 TAC §110.110(d)(7) was also amended to add the phrase "or access the division's website at [www.tdi.texas.gov/wc/indexwc.html](http://www.tdi.texas.gov/wc/indexwc.html)." An injured employee can access the division's website in addition to calling the provided telephone number to receive information on the legal requirements for coverage, to verify whether the employee's employer has the required coverage, or to report an employer's failure to provide coverage.

The division made non-substantive amendments in §110.110(a)(1), (a)(5), and Figure: 28 TAC §110.110(c)(7) to conform to current agency style. The division deleted the form names "TWCC-81, TWCC-82, TWCC-83, or TWCC-84" and added the form names "DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84."

The division amended §110.110(b), Figure: 28 TAC §110.110(c)(7), and (e)(3) to conform to current agency style by deleting the phrase "commission's Division of Self Insurance Regulation" and adding the word "division." The division amended §110.110(c)(7) to replace "Figure 1" with "figure" to conform to current agency style.

**3. SUMMARY OF COMMENTS.** The division did not receive any comments on the proposed amendments to §110.108 and §110.110.

**4. STATUTORY AUTHORITY.** The amendments are adopted under Labor Code §402.061, concerning adoption of rules; §402.00111, concerning the relationship between commissioner of

insurance and commissioner of workers' compensation; separation of authority; rulemaking; §406.005, concerning employer notice to employees; administrative violation; and §406.009, concerning collecting and maintaining information; monitoring and enforcing compliance.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and administration of the Texas Workers' Compensation Act. 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 §406.005 provides that an employer shall post a notice of whether the employer has workers' compensation insurance coverage, and vests the commissioner with the power to adopt rules relating to the form and content of the notice.

Labor Code §406.009 requires the division to collect and maintain information, to monitor compliance, and to adopt rules as necessary to enforce Subchapter A of Chapter 406.

## 5. TEXT.

### **§110.108. Employer Notice Regarding Work-Related Exposure to Communicable Disease/HIV: Posting Requirements; Payment for Tests.**

(a) Each employer covered by workers' compensation insurance, including state and political subdivision employers, which employ emergency medical service employees, paramedics, fire fighters, law enforcement officers or correctional officers must post the notice contained in subsection (d) of this section, in its workplace to inform employees about Health and Safety Code requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to a reportable communicable disease. The notice shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where employees are likely to read the notice on a regular basis. Specific guidance for employers and employees covered by this subsection is found in

§122.3 of this title (relating to Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders).

(b) Each state agency must post the notice contained in subsection (d) of this section, in its workplace to inform employees about requirements which may affect qualifying for workers' compensation benefits following a work-related exposure to human immunodeficiency virus (HIV). The notice shall be posted in the personnel office and in the workplace where employees are likely to read the notice on a regular basis. Specific guidance for state employers and employees covered by this subsection is found in §122.4 of this title (relating to State Employees: Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements).

(c) The cost of testing for exposure to a reportable communicable disease for emergency medical service employees, paramedics, fire fighters, law enforcement officers and correctional officers shall be paid by the employer's workers' compensation insurance carrier, including state and political subdivision employers.

(d) The following notice shall be printed with a title in at least 15 point bold type and the text in at least 14 point normal type, in English and Spanish or in English and any other language common to the employer's affected employee population. The text of the notice shall be as follows without any additional words or changes:

Figure: 28 TAC §110.108(d)

**§110.110. Reporting Requirements for Building or Construction Projects for Governmental Entities.**

(a) The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in this rule shall have the meaning defined in the Texas Labor Code, if so defined.

(1) Certificate of coverage (certificate)--A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a workers' compensation coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.

(2) Building or construction--Has the meaning defined in the Texas Labor Code, §406.096(e)(1).

(3) Contractor--A person bidding for or awarded a building or construction project by a governmental entity.

(4) Coverage--Workers' compensation insurance meeting the statutory requirements of the Texas Labor Code, §401.011(44).

(5) Coverage agreement--A written agreement on DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84, filed with the Division of Workers' Compensation which establishes a relationship between the parties for purposes of the Texas Workers' Compensation Act, pursuant to the Texas Labor Code, Chapter 406, Subchapters F and G, as one of employer/employee and establishes who will be responsible for providing workers' compensation coverage for persons providing services on the project.

(6) Duration of the project--Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the governmental entity.

(7) Persons providing services on the project ("subcontractor" in §406.096 of the Act)--With the exception of persons excluded under subsections (h) and (i) of this section, includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of

whether that person has employees. This includes but is not limited to independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the project. "Services" includes but is not limited to providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

(8) Project--Includes the provision of all services related to a building or construction contract for a governmental entity.

(b) Providing or causing to be provided a certificate of coverage pursuant to this rule is a representation by the insured that all employees of the insured who are providing services on the project are covered by workers' compensation coverage, that the coverage is based on proper reporting of classification codes and payroll amounts, and that all coverage agreements have been filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading certificates of coverage, or failing to provide or maintain required coverage, or failing to report any change that materially affects the provision of coverage may subject the contractor or other person providing services on the project to administrative penalties, criminal penalties, civil penalties, or other civil actions.

(c) A governmental entity that enters into a building or construction contract on a project shall:

(1) include in the bid specifications, all the provisions of paragraph (7) of this subsection, using the language required by paragraph (7) of this subsection;

(2) as part of the contract, using the language required by paragraph (7) of this subsection, require the contractor to perform as required in subsection (d) of this section;

(3) obtain from the contractor a certificate of coverage for each person providing services on the project, prior to that person beginning work on the project;

(4) obtain from the contractor a new certificate of coverage showing extension of coverage:

(A) before the end of the current coverage period, if the contractor's current certificate of coverage shows that the coverage period ends during the duration of the project; and

(B) no later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project;

(5) retain certificates of coverage on file for the duration of the project and for three years thereafter;

(6) provide a copy of the certificates of coverage to the division upon request and to any person entitled to them by law; and

(7) use the language contained in the following figure for bid specifications and contracts, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

Figure: 28 TAC §110.110(c)(7)

(d) A contractor shall:

(1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

(3) provide the governmental entity, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

(4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

(7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other division rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the division on the sample notice, without any additional words or changes:

Figure: 28 TAC §110.110(d)(7)

(8) contractually require each person with whom it contracts to provide services on a project to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e)(3) of this section;

(D) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person with whom it contracts, and provide to the contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each other person with whom it contracts, to perform as required by subparagraphs (A)-(H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

(e) A person providing services on a project, other than a contractor, shall:

(1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

(2) provide a certificate of coverage as required by its contract to provide services on the project, prior to beginning work on the project;

(3) have the following language in its contract to provide services on the project: "By signing this contract or providing or causing to be provided a certificate of coverage, the person signing this contract is representing to the governmental entity that all employees of the person signing this contract who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions."

(4) provide the person for whom it is providing services on the project, prior to the end of the coverage period shown on its current certificate of coverage, a new certificate showing extension

of coverage, if the coverage period shown on the certificate of coverage ends during the duration of the project;

(5) obtain from each person providing services on a project under contract to it, and provide as required by its contract:

(A) a certificate of coverage, prior to the other person beginning work on the project; and

(B) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(6) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(7) notify the governmental entity in writing by certified mail or personal delivery, of any change that materially affects the provision of coverage of any person providing services on the project and send the notice within ten days after the person knew or should have known of the change; and

(8) contractually require each other person with whom it contracts to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to it prior to that other person beginning work on the project;

(C) include in all contracts to provide services on the project the language in paragraph (3) of this subsection;

(D) provide, prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person under contract to it to provide services on the project, and provide as required by its contract:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the contract;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each person with whom it contracts, to perform as required by this subparagraph and subparagraphs (A)-(G) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

(f) If any provision of this rule or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

(g) This rule is applicable for building or construction contracts advertised for bid by a governmental entity on or after September 1, 1994. This rule is also applicable for those building or construction contracts entered into on or after September 1, 1994, which are not required by law to be advertised for bid.

(h) The coverage requirement in this rule does not apply to motor carriers who are required pursuant to Texas Civil Statutes, Article 6675c, to register with the Texas Department of Transportation and who provide accidental insurance coverage pursuant to Texas Civil Statutes, Article 6675c, §4(j).

(i) The coverage requirement in this rule does not apply to sole proprietors, partners, and corporate officers who meet the requirements of the Act, §406.097(c), and who are explicitly excluded from coverage in accordance with the Act, §406.097(a) (as added by House Bill 1089, 74th Legislature, 1995, §1.20). This subsection applies only to sole proprietors, partners, and corporate executive officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

**10. CERTIFICATION.** This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on \_\_\_\_\_, 2015.

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Dirk Johnson  
General Counsel

Texas Department of Insurance, Division of  
Workers' Compensation Counsel

The commissioner adopts amendments to §110.108 and §110.110.

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Ryan Brannan  
Commissioner of Workers' Compensation

COMMISSIONER'S ORDER NO. \_\_\_\_\_

ATTEST:

X

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Dirk Johnson  
General Counsel  
Texas Department of Insurance, Division of Workers' Compensation Counsel

COMMISSIONER'S ORDER NO. \_\_\_\_\_