



## TEXAS DEPARTMENT OF INSURANCE

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# memo

To: Workers' Compensation System Participants

From: Nicholas Canaday III, General Counsel, Office of General Counsel

Date: January 9, 2019

RE: Adoption: Amended 28 TAC §180.26, regarding criteria for imposing, recommending, and determining sanctions; other remedies, and 28 TAC §180.8, regarding notices of violation; notices of hearing; default judgments

On December 20, 2018, Commissioner of Workers' Compensation Cassie Brown adopted with changes amendments to 28 Texas Administrative Code (TAC) §180.8, *Notices of Violation; Notices of Hearing; Default Judgments and 28 TAC §180.26, Criteria for Imposing, Recommending and Determining Sanctions; Other Remedies*. The adopted amendments were filed with the Office of the Secretary of State on December 27, 2018, and will be published in the January 11, 2019, issue of the *Texas Register* at [www.sos.state.tx.us/texreg/index.shtml](http://www.sos.state.tx.us/texreg/index.shtml). A courtesy copy will also be available on the TDI website at [www.tdi.texas.gov/wc/rules/2018rules.html](http://www.tdi.texas.gov/wc/rules/2018rules.html).

These amendments implement Senate Bill (SB) 1895, 85th Legislature, Regular Session. SB 1895 amended and reenacted Texas Labor Code §415.021(c) to require the commissioner to consider whether an administrative violation had a negative impact on the delivery of benefits to an injured employee as well as the system participant's history of compliance with electronic data interchange requirements. SB 1895 also added Texas Labor Code §415.021(c-1) which requires the commissioner to adopt rules to communicate information about a penalty, including:

- the relevant statute or rule violated;
- the conduct that gave rise to the violation; and
- the factors considered in determining the penalty.

The amendments to 28 TAC §180.8 ensure that a Notice of Violation will set forth the following: a description of the underlying facts considered for each of the factors in Labor Code §415.021(c), identification of factors determined by DWC to produce a mitigating or aggravating effect, and a description of the proposed sanction for each violation or violation type in repeated violation cases. DWC is also required to include this information in its notice to the charged party when scheduling a hearing with the State Office of Administrative Hearings.

The amendments to 28 TAC §180.26 require DWC to communicate the following in consent orders: the relevant statute or rule violated, the facts that show the violation occurred, and how DWC considered the factors under Labor Code §415.021(c), and other matters that justice may require. The consent order must include the description of factors under Labor Code §415.021(c) and (e) that DWC considered aggravating or mitigating, and a statement that the system participant acknowledges that the required communication occurred.