

SUBCHAPTER B. Return to Work
28 TAC §§137.41 – 137.51

1. INTRODUCTION. The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division) adopts amendments to §§137.41 – 137.49 of this title concerning the administration of the Return-to-Work Reimbursement Program that reimburses employers for expenses that facilitate an injured employee's return to work in the same or modified duty. The Division also adopts new §137.50 relating to an Optional Advance of Funds Plan and new §137.51 relating to Monitoring and Enforcement of the program. Sections 137.42 – 137.44, 137.46 and 137.48 – 137.51 are adopted with changes to the proposed text published in the February 5, 2010 issue of the *Texas Register* (35 TexReg 848). Sections 137.41, 137.45 and 137.47 are adopted without changes. The public comment period ended on March 8, 2010. The Division did not receive a request for a public hearing.

2. REASONED JUSTIFICATION. These amendments and new sections are necessary to implement Senate Bill (SB) 1814, enacted by the 81st Legislature, Regular Session, effective June 19, 2009, which, in part, amended Labor Code §413.022 to change this from a pilot program to a permanent Return-to-Work Reimbursement Program for Employers. In addition the amendments address changes to the eligibility requirements and administration of the program. SB

1814 amended Labor Code §413.022 to increase the amount an employer may receive from the program from \$2,500 to \$5,000 for an allowable expense. In addition to having a reimbursement and optional preauthorization plan, SB 1814 allowed for the creation of an optional advance of funds plan for eligible employers who participate in the Return-to-Work Reimbursement Program. Under this plan, an eligible employer may, prior to making workplace modifications, submit to the Division an application that describes the workplace modifications that the employer proposes to make to accommodate an injured employee's return to work. If the Division approves the application, the Division may, up to the permitted amount, advance the funds for the expenses the employer will incur to implement the workplace modifications.

The adopted amendments to §137.41 of this title (relating to Purpose) changes the title from the Return-to-Work Pilot Program for Small Employers and replaces it with a permanent title, the Return-to-Work Reimbursement Program for Employers. In addition to amending §137.41, the Division adds adopted §137.50 of this title (relating to the Optional Advance of Funds Plan) and §137.51 of this title (relating to Monitoring and Enforcement) to the purpose provision of Subchapter B.

The adopted amendments to §137.42 of this title (relating to Definitions) adds definitions for an applicant in §137.42(2), application in §137.42(3), the Division in §137.42(6), and the Return-to-Work Reimbursement Program in §137.42(8). In addition, adopted §137.42(5) changes the definition of an eligible

expense to an allowable expense to conform with the Labor Code. This definition also changes the requirement that a cost must be incurred on or after January 1, 2006 to qualify as an allowable expense to a requirement that a request be submitted no later than one year from the date the cost was incurred, see §137.45(b) of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program) for more information regarding allowable expenses. Also, adopted §137.42 deletes the definition of the Return-to-Work Account and any reference to the Account is deleted from §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers) since no specific account was created by the Texas Legislature for the Return-to-Work Reimbursement Program. Any other reference to the Return-to-Work Account has been deleted from the adopted amendments to §§137.43 – 137.49, accordingly.

Adopted amendments to §137.43 of this title (relating to the Return-to-Work Reimbursement Program Administrator) makes grammatical changes to conform with the revisions to Labor Code §413.022 and makes changes for consistency, clarity, editorial reasons, and to correct typographical errors.

Adopted §137.44(b) changes the total amount that may be disbursed each state appropriation year to an eligible employer for an allowable expense from \$2,500 to \$5,000 in accordance with statutory amendments in SB 1814.

Adopted §137.45 deletes subsection (b) regarding violations of these rules and adopts new §137.51. Adopted §137.45(c) has been added to provide notice

to applicants that the Texas Comptroller of Public Accounts may not release the funds for an approved application if the applicant does not meet the requirements of the Texas Comptroller of Public Accounts. Each applicant's factual circumstances may vary but one such example which could withhold disbursement by the Texas Comptroller of Public Accounts is if an applicant owes back taxes.

Adopted §137.46 of this title (relating to Application for Funds for the Return-to-Work Reimbursement Program) makes grammatical changes to conform with the revisions to Labor Code §413.022 and makes changes for consistency, clarity, editorial reasons, and to correct typographical errors.

Adopted §137.47 of this title (relating to Criteria for Return-to-Work Reimbursement Program Applications) has been revised to enumerate the minimum standards the Division requires to process and approve an application for reimbursement, preauthorization, or for an advance of funds for workplace modifications.

Adopted §137.48 of this title (relating to Return-to-Work Reimbursement Program Administrator Determinations) makes grammatical changes to conform with the revisions to Labor Code §413.022 and makes changes for consistency, clarity, editorial reasons, and to correct typographical errors. Adopted §137.48(d) clarifies that the administrator may use any of the criteria enumerated throughout §§137.44 – 137.47 to evaluate an application.

Adopted §137.49 of this title (relating to the Optional Preauthorization Plan) makes grammatical changes to conform with the revisions to Labor Code §413.022 and makes changes for consistency, clarity, editorial reasons, and to correct typographical errors. In addition, §137.49(b)(1) – (b)(3) and (c) – (e) have been deleted since they repeated the criteria of §§137.44 – 137.48 and references to these sections have been inserted into adopted §137.49.

Adopted new §137.50 specifies who is eligible to apply for an advance of funds. Generally, for an employer to be eligible to receive an advance of funds from the program, the advance of funds should expedite the delivery of the approved workplace modifications to accelerate an injured employee's return to work. This adopted rule states that an eligible employer, which is defined by Labor Code §413.022(a)(2) and §137.42(4), may apply for an advance of funds. Adopted §137.50(a) states that an eligible employer, as provided by §137.45, may apply for an advance of funds for allowable expenses. Adopted new §137.50(b) specifies how an eligible employer applies for an advance of funds. It requires the employer to submit to the Division a completed application as defined by §137.47, which includes a description of the proposed workplace modifications, the estimated costs of those modifications, and a copy of the Division's "Work Status Report" from the injured employee's doctor. Adopted new §137.50(b) also provides that the Division will make the application form available on the Division's website and will provide the form to an employer upon request in accordance with §137.46. Adopted new §137.50(c) provides that the

Division will review applications in accordance with §137.48. Adopted new §137.50(d) allows the Division to advance funds to the employer for the costs the employer will incur in making the approved workplace modifications after receipt of an application and subject to §137.44. This adopted new section does not allow the employer to make workplace modifications that materially differ from the accepted application unless the employer receives prior written approval from the Division. Adopted new §137.50(e) requires the employer to complete the approved workplace modifications within six months of receiving funds from the Division or the funds must be returned unless an extension is requested and granted in writing. Adopted new §137.50(f) requires the employer to submit to the Division proof, in the form of a receipt, when the approved workplace modifications have been made. The adopted amendments to §§137.41 – 137.48 have been updated to allow for both reimbursements and advancements.

Adopted new §137.51 gives notice to participating employers that the Division may inspect the employer's business before any funds have been given by the Division or spent by the employer to insure that the proposed workplace modifications are appropriate. The Division may also inspect the business after any funds have been spent to insure that the funds were used appropriately and the new rule would allow for the Division to request records or information from the employer regarding the requested or spent funds. In addition, new §137.51 gives notice to participating employers that misuse of funds provided by this program shall be considered an administrative violation by the Division.

The Division has changed some of the language in the text of the rule previously published in the proposal. These changes introduce no new subject matter and do not affect persons in addition to those subject to the proposal as published. The changes were made for consistency, clarity, editorial reasons, and to correct typographical or grammatical errors.

3. HOW THE SECTION(S) WILL FUNCTION. The amendment to §137.41 clarifies that the Return-to-Work Pilot Program for Small Employers has been replaced with the permanent Return-to-Work Reimbursement Program for Employers. The terms, conditions, and requirements for this program are set forth in §§137.41 – 137.51.

The adopted amendments to §137.42 clarifies and adds definitions for the Return-to-Work Reimbursement Program for Employers. Adopted §137.42(5) changes the definition of an eligible expense to an allowable expense to conform with the Labor Code. The definition for applicant was added to adopted §137.42(2), the definition for application was added to §137.42(3), the definition for the Division was added to §137.42(6), and the definition for the Return-to-Work Reimbursement Program was added to §137.42(8).

Adopted §137.43 requires the Commissioner to appoint an administrator for the Return-to-Work Reimbursement Program.

Adopted §137.44 clarifies how the Division may process applications and disburse funds for approved applications. Adopted §137.44(b) changes the total

amount that may be disbursed each state appropriations year to an eligible employer for an allowable expense from \$2,500 to \$5,000.

Adopted §137.45 clarifies the requirements for an allowable expense and for an employer to be eligible to receive a disbursement from the Return-to-Work Reimbursement Program. Adopted §137.45(c) has been added to provide notice to applicants that the Texas Comptroller of Public Accounts may not release the funds for an approved application if the applicant does not meet the requirements of the Texas Comptroller of Public Accounts.

Adopted §137.46 clarifies how employers should submit requests for disbursements from the Return-to-Work Reimbursement Program to the Division, where employers can obtain an application, and how applications will be processed.

Adopted §137.47 enumerates the minimum standards the Division requires to process and approve an application for reimbursement, preauthorization, or for an advance of funds for workplace modifications.

Adopted §137.48 clarifies the determinations the Return-to-Work Reimbursement Program administrator shall make and the standards the Return-to-Work Reimbursement Program administrator shall use to make those determinations.

Adopted §137.49 sets forth the terms, conditions, and requirements for a participating employer to receive a preauthorization for the disbursement of funds from the Return-to-Work Reimbursement Program.

Adopted new §137.50 sets forth the terms, conditions, and requirements for a participating employer to receive an advance of funds from the Return-to-Work Reimbursement Program.

Adopted new §137.51 clarifies that the Division may inspect a participating employer's business or records before or after any funds have been given by the Division or spent by the employer to insure that the proposed workplace modifications are appropriate and that the funds were used appropriately. In addition, new §137.51 gives notice to participating employers that misuse of funds provided by this program shall be considered an administrative violation by the Division.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

Comment: A commenter supports the proposed rule but believes the Division should promote the program more and should help develop return-to-work programs with employers who do not have such programs.

Agency Response: The Division appreciates the supportive comments and agrees the Return-to-Work Reimbursement Program should be promoted. Notice of this program must be distributed by an insurance carrier to employers in accordance with Labor Code §413.021(a). Currently, the Division provides notice of the Return-to-Work Reimbursement Program on the Division's website and the Division promotes the program at employer related seminars and conferences that the Division presents at or hosts.

Comment: A commenter supports the proposed rule and the commenter requests that the Division elaborate in its responses to comments in the adoption order on whether it would consider the cost of providing the injured employee a helper as eligible "other costs" entitled to reimbursement from the program.

Agency Response: The Division appreciates the supportive comment but the Division declines to provide a detailed set of examples of "other costs" that the Division would consider as allowable expenses eligible for reimbursement from the Return-to-Work Reimbursement Program as part of the adoption order. Adopted §137.42 defines "allowable expense" broadly as "an expenditure of funds, costs incurred, or costs that will be incurred by an eligible employer for workplace modifications or other costs that are necessary to reasonably assist an injured employee's doctor-identified restrictions that are intended to facilitate the early and sustained return to work of an employee who has a compensable injury." The review of a workplace modification to determine if it qualifies as an "allowable expense" is conducted by the Division on a case-by-case basis and depends upon numerous factors which are defined by and elaborated in the adopted rules.

Comment: A commenter supports the proposed rule and believes the proposed rule is necessary to implement SB 1814.

Agency Response: The Division agrees and appreciates the supportive comment.

Comment: A commenter supports the proposed rule but questions why language regarding the return-to-work account was deleted in §137.44(a). The commenter believes that a reference to the \$100,000.00 cap per year on spending for this program, per Labor Code §413.022(d), is necessary and will prevent any confusion regarding the continued application of the mandatory statutory restrictions on the program. The commenter requests that the language that was deleted by the proposal in §137.44(a) be included.

Agency Response: The Division appreciates the supportive comment but declines to make the recommended change. Labor Code §413.022 was originally created by HB 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005. All funds and accounts in the state treasury must be separately created or recreated by each legislature. SB 1605, enacted by the 79th Legislature, Regular Session, effective June 18, 2005, did not create a return-to-work reimbursement account. In 2009 during the 81st legislature no statutory authority was enacted to create the return-to-work reimbursement account. The Division will fund approved applications on a case-by-case basis as funds become available. Labor Code §413.022(f) sets restrictions on the distribution of funds regarding this program; the Division may distribute funds

only to the extent that funds are available. Adopted §137.44(a), (e) and (f) address this statutory restriction found in Labor Code §413.022(f).

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Property Casualty Insurers Association of America; Office of Injured Employee Counsel; One individual.

For with changes: American Insurance Association.

Against: None.

Neither for nor against, with recommended changes: None.

6. STATUTORY AUTHORITY. These amendments and new sections are adopted under Labor Code §§413.022, 402.00111, 402.061, and 415.0036.

Labor Code §413.022 requires the Commissioner of Workers' Compensation to adopt rules to implement the Return-to-Work Reimbursement Program for Employers; it also allows for the establishment by rule of an optional advance of funds plan for eligible employers who participate in the program and states that an employer who willingly applies for or receives reimbursement knowing that the employer is not eligible commits an administrative violation. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rule making authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Labor Code §415.0036 provides that an employer may be held responsible for an act that violates the Labor Code or applicable rules.

7. TEXT.

§137.41. Purpose.

The purpose of §§137.41 – 137.51 of this title (relating to Disability Management) is to set forth the terms, conditions, and requirements for the return-to-work reimbursement program for employers.

§137.42. Definitions.

The following words and terms shall have the following meanings only for the purposes of the return-to-work reimbursement program for employers:

(1) Allowable expense--An expenditure of funds, costs incurred, or costs that will be incurred by an eligible employer for workplace modifications or other costs that are necessary to reasonably assist an injured employee's doctor-identified restrictions that are intended to facilitate the early and sustained return to work of an employee who has a compensable injury. An indemnity benefit, medical benefit, or health care for which an insurance carrier is liable is not an allowable expense under the program.

(2) Applicant--the employer requesting funds from the return-to-work reimbursement program.

(3) Application--the return-to-work reimbursement program application provided by the division for reimbursement, preauthorization, or advancement of funds used or proposed to be used by employers for workplace modifications.

(4) Alternative duty--Job duties that are different from the injured employee's normal or regular pre-injury job duties and that are assigned specifically to facilitate the injured employee's doctor-identified work restrictions or limitations.

(5) Eligible employer--Any employer that:

(A) is not a state agency or political subdivision of the state;

(B) employed at least two but not more than 50 employees on each business day during the preceding calendar year; and

(C) has workers' compensation insurance coverage in Texas.

(6) Division--The Texas Department of Insurance, Division of Workers' Compensation.

(7) Modified duty--The injured employee's normal or regular pre-injury job with workplace modifications to facilitate doctor-identified work restrictions or limitations.

(8) Return-to-work reimbursement program (program)--The division's program for the reimbursement, preauthorization, or advancement of funds to eligible employers for allowable expenses which facilitate the early and sustained return to work of an employee who has a compensable injury.

(9) Return-to-work reimbursement program administrator (administrator)--

The administrator of the Texas Department of Insurance, Division of Workers' Compensation return-to-work reimbursement program for employers.

(10) Single employer--An employer operating one or more businesses under the same federal employer identification number. In the absence of a federal employer identification number, a single employer is established by the employer's social security number.

(11) State appropriation year--The State of Texas' fiscal accounting year that begins September 1 and ends August 31 of the following year.

(12) Workplace modification--Physical modifications to the worksite; equipment, devices, furniture, or tools; or other reasonable costs necessary to facilitate an employee's return to restricted, modified or alternative duty.

§137.43. Return-to-Work Reimbursement Program Administrator.

The Commissioner of Workers' Compensation shall appoint a qualified employee of the Texas Department of Insurance, Division of Workers' Compensation to serve as the return-to-work reimbursement program administrator to implement the provisions of this subchapter.

§137.44. Return-to-Work Reimbursement Program for Employers.

(a) Disbursements of funds for the program are dependent on the availability of funds identified by the division.

(b) The disbursement that any single employer may receive from the program may not exceed \$5,000 for all workplace modification expenditures made during the state appropriation year for all injured employees.

(c) Disbursements from the program to approved eligible employers shall be made on a reimbursement basis, or at the discretion of the commissioner or the commissioner's designee on an advancement basis, subject to verification of employer eligibility, receipts and expenditures, workplace modifications, the employee's return to work, approval of the employer's application, and any other requirements listed in §§137.45 – 137.50 of this title (relating to the Return-to-Work Reimbursement Program).

(d) Applications shall be processed in the order that completed applications are received by the division.

(e) Approved applications shall be funded from the program as funds become available.

(f) Applications may be denied in whole or in part due to the lack of available funds for the program or if the division determines that all or part of the application does not meet the requirements listed in §§137.45 – 137.50 of this title.

§137.45. Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program.

(a) In order to be eligible to receive a disbursement from the program, an employer must:

(1) be an eligible employer that has incurred or will incur an allowable expense;

(2) have Texas workers' compensation insurance coverage in effect on the date the employee is injured and be able to provide proof of coverage;

(3) submit an application for funds from the program;

(4) timely provide any additional or supplemental information to the administrator that may be deemed necessary by the division; and

(5) the application must be approved by the division.

(b) In order for an expense to be eligible for a disbursement from the program, the expense must not have been incurred by the employer beyond one year prior to submitting the application to the division. For good cause, the division or the administrator may extend this one year requirement.

(c) After approval of an application by the division, release of funds are contingent upon the approval of the Texas Comptroller of Public Accounts. Approval of an application by the division is not a guarantee of release of funds from the Texas Comptroller of Public Accounts.

§137.46. Application for Funds from the Return-to-Work Reimbursement Program.

(a) An eligible employer seeking funds from the program shall submit to the division an application as defined in §137.42 of this title (relating to Definitions).

(b) Applications shall be available on the division's website (www.tdi.state.tx.us/wc) and through the division. Upon request, the division shall provide an application form to an employer.

(c) Applications shall be submitted to the division in the form prescribed by the division and must meet the minimum requirements provided in §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications).

(d) The date the completed application is received by the division shall be the official date for purposes of processing the application. An application shall not be processed for approval until all required or requested documentation has been received by the division and any other applicable requirements listed on the application have been met.

(e) An application that has information missing or that does not include the information described in §137.47 of this title, receipts, or other documentation necessary to support the application and to justify the workplace modification may be returned to the employer for completion, documentation supplementation, or the application may be denied.

§137.47. Criteria for Return-to-Work Reimbursement Program Applications.

In order to be processed and approved by the division an application must contain at a minimum:

(1) The date the employee returned to work or will return to work, and the injured employee's name, date of injury, and Texas Department of Insurance, Division of Workers' Compensation claim number.

(2) An employer's statement or certification that the injured employee returned to work or will return to work in either a modified or alternative duty capacity.

(3) An employer's statement or certification that the employer was able or will be able to sustain the employment of the injured employee as a result of the workplace modification.

(4) A copy of the division's "Work Status Report" as provided by §129.5 of this title (relating to Work Status Reports) from the injured employee's doctor that specifies the injured employee's physical restrictions or limitations, which necessitated the provision of a workplace modification in order for the employee to return to work in a modified or alternative duty capacity and additional documentation, if any.

(5) A detailed description of the workplace modification, including any supporting information such as receipts, photos or diagrams of the modification, and how the modification facilitates the doctor-identified physical restrictions or limitations.

(6) Documentation of the expenses, including receipts, that provided the workplace modification or other costs necessary to facilitate the injured employee's return to work or the estimated costs in making those proposed workplace modifications.

(7) A signature by the employer or the employer's authorized representative.

§137.48. Return-to-Work Reimbursement Program Administrator Determinations.

(a) The administrator shall make determinations regarding the following:

- (1) the employer's eligibility to participate in the program;
- (2) the appropriateness of the workplace modification in facilitating the injured employee's return to work based on doctor-identified restrictions;
- (3) the effectiveness of the workplace modification in facilitating the injured employee's early and sustained return to work;
- (4) the cost of the workplace modification in relation to usual and customary costs of the same or similar modification; and
- (5) the appropriateness of other costs incurred or to be incurred by the employer to return the injured employee to work in a modified or alternative duty capacity.

(b) The administrator or designee may make an on-site evaluation or request information from the employer or providers of a workplace modification in order to verify that:

- (1) the workplace modification was or will be provided;
- (2) the workplace modification was or will be a reasonable modification and expenditure; and
- (3) the injured employee returned to work as a result of the workplace modification.

(c) The administrator may utilize the National Institute of Health's "Searchable Online Accommodation Resource," U.S. Department of Labor resources, Texas Department of Assistive and Rehabilitative Services resources, or similar resources in evaluating and verifying workplace modifications and associated costs. The administrator may consult with a rehabilitation counselor or specialist when verifying the appropriateness of workplace modifications and costs.

(d) The administrator may approve or deny in whole or in part the employer's request for funds from the program pursuant to §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers), §137.45 of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program), §137.46 of this title (relating to the Application for Funds from the Return-to-Work Reimbursement Program), and §137.47 of

this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications).

(e) Decisions regarding approval or denial of applications, the reason for approval or denial of an application, and the amount to be disbursed from the program are final, may not be appealed, and are the discretion of the administrator.

(f) Upon completion of the application evaluation, the employer will be notified in writing of the approval or denial of the application by the administrator.

§137.49. Optional Preauthorization Plan.

(a) An eligible employer, as provided by §137.45 of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program), who participates in the return-to-work reimbursement program for employers may apply to the division for a preauthorized reimbursement of allowable expenses from the program prior to making workplace modifications designed to accommodate an injured employee's return to work.

(b) To apply for a preauthorized reimbursement of allowable expenses, an eligible employer must submit to the division a properly completed application as provided in §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications). The application may be obtained from the division as provided by §137.46 of this title (relating to the Application for Funds from the Return-to-Work Reimbursement Program).

(c) Applications will be reviewed in accordance with §137.48 of this title (relating to Return-to-Work Reimbursement Program Administrator Determinations).

(d) Upon receipt of division approval of the application, the employer may begin all approved workplace modifications set out in the approved application. Upon completion of the approved workplace modifications, the employer may obtain reimbursement from the program by submitting to the division sufficient documentation and receipts to show that the approved workplace modification has been completed.

(e) Upon receipt of the information described in subsection (d) of this section and subject to §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers), the division shall reimburse the employer the costs incurred by the employer in making the approved workplace modifications unless the division determines that the modifications differ materially from the employer's application.

(f) Release of funds are subject to §137.45(c) of this title.

§137.50. Optional Advance of Funds Plan.

(a) An eligible employer, as provided by §137.45 of this title (relating to Employer Eligibility for Disbursements from the Return-to-Work Reimbursement Program), who participates in the return-to-work reimbursement program for employers may apply to the division for an advance of funds for allowable

expenses from the program prior to making workplace modifications designed to accommodate an injured employee's return to work.

(b) To apply for an advance of funds for allowable expenses, an eligible employer must submit to the division a properly completed application as provided in §137.47 of this title (relating to the Criteria for Return-to-Work Reimbursement Program Applications). The application may be obtained from the division as provided by §137.46 of this title (relating to the Application for Funds from the Return-to-Work Reimbursement Program).

(c) Applications will be reviewed in accordance with §137.48 of this title (relating to Return-to-Work Reimbursement Program Administrator Determinations).

(d) Upon receipt of a completed application and subject to §137.44 of this title (relating to the Return-to-Work Reimbursement Program for Employers), the division may advance funds to the employer to make approved workplace modifications. The employer shall not make workplace modifications that materially differ from the employer's approved application unless the employer receives written approval from the division for the materially different modifications.

(e) Upon the receipt of the advanced funds from the division, the employer shall complete all approved workplace modifications set out in the approved application within six months of receiving funds from the division. For good cause, the division or the administrator may extend this six-month

requirement. Any extension of time for completing workplace modifications must be granted by the division in writing and for a determinable period of time.

(f) Upon completion of the approved workplace modifications, the employer shall submit to the division all receipts for the payments made by the employer for the approved modifications. Any funds not spent after the six-month time frame must be immediately returned to the division.

(g) Release of funds are subject to §137.45(c) of this title.

§137.51. Monitoring and Enforcement.

(a) Once an application is submitted, the commissioner or the commissioner's designated representative(s), including the administrator, may inspect the applicant's business to insure that the funds have been or will be spent according to what was or could be authorized. The commissioner or the commissioner's designated representative(s), including the administrator, are authorized to make a complete on-site review of the operations of each applicant at the place of business where the workplace modification has been or will be made, as often as is deemed necessary.

(b) At a minimum, notice of an on-site inspection shall be in writing and be presented by the commissioner or the commissioner's designated representative(s), including the administrator, upon arrival. On-site inspections shall not be conducted during legal holidays as defined in the Government Code §662.003(a).

(c) During an on-site review or upon written request of the commissioner or the commissioner's designated representative(s), including the administrator, the applicant shall make available all records relating to the requested or spent funds. Employers must maintain all relevant records for at least one year from the date of disbursement from the division.

(d) An employer commits an administrative violation if any part of the reimbursed or advanced funds are not used for the purpose or in the manner that the division previously approved in writing. Any unused funds must be returned to the division within six months of disbursement and any funds that are used not in accordance with the plan approved by the division must be immediately returned to the division.

CERTIFICATION. This agency hereby certifies that the adopted amendments have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on April _____, 2010.

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

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the amendments to §§137.41 – 137.51 specified herein, concerning the Return-to-Work Reimbursement Program for Employers, are adopted.

AND IT IS SO ORDERED

ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

Dirk Johnson
General Counsel

COMMISSIONER'S ORDER NO.