

**SUBCHAPTER B. CLAIMS PROCEDURE FOR BENEFICIARIES OF INJURED
EMPLOYEES
28 TAC §122.100**

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §122.100, Claim for Death Benefits. Section 122.100 implements Labor Code §§408.182 and 409.007, as amended by House Bill (HB) 2314, 88th Legislature, Regular Session (2023).

EXPLANATION. Amending §122.100 is necessary to clarify how legal beneficiaries may file claims, consistent with the statute and other rules about notice to insurance carriers, and outline what happens after filing. HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims.

Section 122.100 provides requirements for legal beneficiaries to file claims for death benefits. The proposed amendments clarify that they may file a claim with DWC or an insurance carrier. The proposed amendments also cross-reference the associated rule for insurance carriers that receive notices of death or claims for death benefits (Chapter 124, §124.8 of this title, newly proposed to implement HB 2314), clarify that beneficiaries may provide additional evidence electronically, and include nonsubstantive editorial and formatting changes to conform the section to the agency's current style and to improve the rule's clarity and readability. The proposed amendments are necessary to ease administrative barriers for legal beneficiaries to claim the benefits to which they are

entitled, and to ensure that, regardless of the way the claim was initially filed, DWC receives the documentation necessary to process the claim effectively and efficiently.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner for Claims and Customer Services Erica De La Cruz has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the section, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. De La Cruz does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. De La Cruz expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023); enhancing regulatory efficiency, consistency, and transparency; and enabling legal beneficiaries to file claims for death benefits with fewer opportunities for the process to go awry.

Ms. De La Cruz expects that the proposed amendments will not increase the cost to comply with Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), because they do not impose requirements beyond those in the statute or that exist in current rules. Instead, they cross-reference the associated rule for insurance carriers that receive notices of death or claims for death

benefits (Chapter 124, §124.8 of this title); clarify how legal beneficiaries may file claims, consistent with the statute and other rules about notice to insurance carriers; and outline what happens after filing.

HB 2314 amended Labor Code §§408.182 and 409.007 to enable eligible beneficiaries to file claims for death benefits with DWC or an insurance carrier, and imposed recordkeeping and notice requirements on insurance carriers that receive those claims. As a result, any cost associated with the rule does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments implement legislation, clarify filing requirements, and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. In addition, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments to §122.100 are necessary to implement legislation. The proposed amendments implement Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; or
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the amendments to the rule are necessary to implement HB 2314. The amended rule does not affect additional persons or create duties beyond those the statute imposes.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on October 30, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance,

Division of Workers' Compensation, Legal Services, MC-LS, PO Box 12050, Austin, Texas 78711-2050.

DWC will also consider written and oral comments on the proposal in a public hearing at 11 a.m., Central time, on October 24, 2023. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

SUBCHAPTER B

28 TAC §122.100

STATUTORY AUTHORITY. DWC proposes amended §122.100 under Labor Code §§408.182, 409.007, 402.00111, 402.00116, and 402.061.

Labor Code §408.182, as amended by HB 2314, 88th Legislature, Regular Session (2023), provides for the distribution of death benefits to eligible beneficiaries of a deceased employee, when a compensable injury to the employee results in death, and allows an eligible parent to file a claim with DWC or an insurance carrier.

Labor Code §409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023), requires a person to file a claim for death benefits with DWC or an insurance carrier; and provides that, on receiving such a claim, the insurance carrier must, in the form and manner DWC prescribes, create and maintain a record documenting receipt of the claim and provide written notice to DWC that the person filed the claim.

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 §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. The amendments to §122.100 implement Labor Code §§408.182 and 409.007, as amended by HB 2314, 88th Legislature, Regular Session (2023).

TEXT.

§122.100. Claim for Death Benefits

(a) Filing. For ~~[In order for]~~ a legal beneficiary, other than the subsequent injury fund, to receive the benefits available because ~~[as a consequence]~~ of the death of an employee that ~~[which]~~ results from a compensable injury, a person must ~~[shall]~~ file a written claim for death benefits ~~[compensation with the Division]~~ within one year after the date of the employee's death.

(b) An insurance carrier that receives a claim for death benefits under this section must comply with §124.8 of this title (relating to Receipt, Records, and Notice of Death or Claim for Death Benefits).

(c) ~~(b)~~ Form and information requirements. The claim should be submitted to the division or insurance carrier ~~[Division]~~ either on paper or via electronic transmission, in the form, format, and manner prescribed by the division ~~[Division]~~, and should include the following:

(1) the potential beneficiary's [~~claimant's~~] name, address, telephone number (if any), Social Security [~~social security~~] number, and relationship to the deceased employee;

(2) the deceased employee's name, last address, Social Security [~~social security~~] number (if known) and workers' compensation claim number (if any); and

(3) other information, as follows:

(A) a description of the circumstances and nature of the injury (if known);

(B) the name and location of the employer at the time of the injury;

(C) the date of the compensable injury, and date of death; and

(D) other known legal beneficiaries.

(d) [~~(c)~~] Required documents. A potential beneficiary [~~claimant~~] must [~~shall~~] file with the division or insurance carrier [~~Division~~] a copy of the deceased employee's death certificate and any additional documentation or other evidence that establishes that the potential beneficiary [~~claimant~~] is a legal beneficiary of the deceased employee.

(1) If the claim is filed [~~with the Division~~] in paper format, the additional evidence regarding legal beneficiary status must [~~shall~~] be filed at the same time as the claim.

(2) If the claim is filed via electronic transmission, the additional evidence regarding legal beneficiary status may be filed separately in paper or electronic format and sent either by mail, facsimile, [~~or~~] hand delivery, or secure upload.

(e) [~~(d)~~] One claim per person. Each person must file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person.

(f) [~~(e)~~] Deadline. Failure to file a claim for death benefits within one year after the date of the employee's death bars [~~shall bar~~] the claim of a legal beneficiary, other than the subsequent injury fund, unless:

(1) that legal beneficiary is a minor or otherwise legally incompetent;

(2) except as provided by paragraph (3) of this subsection, good cause exists for failure to file the claim on time [~~in a timely manner~~]; or

(3) for a legal beneficiary who is an eligible parent as defined by §132.6(e) of this title (relating to Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits), the parent submits proof satisfactory to the commissioner [~~Commissioner of Workers' Compensation~~] of a compelling reason for the delay in filing the claim for death benefits.

CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on September 13, 2023.



Kara Mace
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TDI, Division of Workers' Compensation