

**TITLE 28. INSURANCE**  
**PART 2. TEXAS DEPARTMENT OF INSURANCE,**  
**DIVISION OF WORKERS' COMPENSATION**  
**CHAPTER 110: REQUIRED NOTICES OF COVERAGE**  
**Title 28 TAC §110.105**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (division) proposes amendments to 28 Texas Administrative Code (TAC) §110.105, *Employer Requirements for Notifying the Division of Termination of Coverage*.

In House Bill (HB) 2112, the 85th legislature primarily amended or repealed certain reporting and notification requirements throughout the Labor Code, including Labor Code §406.007, *Termination of Coverage by Employer; Notice*. Labor Code §406.007(a) requires an employer who terminates workers' compensation insurance coverage to file a written notice with the division not later than the 10<sup>th</sup> day after the date the employer notified the insurance carrier to terminate the coverage. HB 2112, which became effective June 9th, 2017, amended §406.007(a) to remove the requirement that the written notice be sent to the division by certified mail. The amendment to §110.105 is necessary to implement this legislative change.

Section 110.105 addresses **Employer Requirements for Notifying the Division of Termination of Coverage**. Section 110.105 requires an employer who terminates workers' compensation insurance coverage to file written notice of the termination of coverage with the division within ten days and provides the required information the notice must contain. The division amended §110.105(b) to delete the

requirement that the notice be filed “by certified mail or electronically on the form” and added “in the form and manner” to reflect the legislative changes. An employer may now submit the required notice a number of different ways, including electronically through the division’s website, by fax, email, or mail. In conjunction with the proposed amendment, the DWC Form-005, *Employer Notice of No Coverage or Termination of Coverage*, will be updated to provide information for each submission option.

**FISCAL NOTE.** Dan Paschal, Deputy Commissioner of TDI-DWC Affairs & Strategic Planning, has determined that for each year of the first five years the amended section is in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposed amendment. Any economic costs to those state and local governments that provide workers’ compensation coverage are discussed below.

**PUBLIC BENEFITS.** Mr. Paschal has also determined that for each of the first five years amended §110.105 is in effect, the public benefits anticipated include: (1) easing employer reporting requirements by allowing multiple options for submitting the notice of termination of coverage to the division; (ii) reducing printing and certified mail costs for employers when submitting written notice to the division; and, (iii) implementing the legislative change to ensure consistency between the Labor Code, rules, and forms.

**ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL.** Mr. Paschal anticipates that, for each of the first five years amended §110.105 is in effect, there will be no costs to persons required to comply with the section. Instead, the amendment results in a cost savings to employers by removing existing reporting requirements that specify the method of filing.

Government Code §2001.0045 requires a state agency to offset any costs associated with a proposed rule by: (1) repealing a rule imposing a total cost that is equal to or greater than that of the proposed rule; or (2) amending a rule to decrease the total cost imposed by an amount that is equal to or greater than the cost of the proposed rule. As described above, the division has determined that the proposed amendment will not impose a cost on system participants. The amendment instead provides a cost savings by removing the existing requirement for employers to file a notice of termination of coverage with the division by certified mail. Employers use the DWC Form-005 to notify the division of termination of coverage, as well as when notifying the division of no coverage. The division estimates that as a result of legislative and division rule changes, an individual cost savings of \$6.74 is available to employers who would have previously mailed the notice of termination of coverage by certified mail. In Calendar Year 2016 the division estimates that approximately 354 DWC Form-005s were filed notifying the division of termination of coverage. Based on this estimate, the division anticipates the cost savings to system participants could total \$2,386 (the individual certified mail cost multiplied by the number of DWC Form-005s filed notifying the division of termination of coverage) for each of the first five years.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.**

Government Code §2006.002(c) provides that if a proposed rule may have an adverse economic effect on small businesses, micro-businesses, or rural communities, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines “micro business” similarly to “small business” but specifies that such a business may not have more than 20 employees. Government Code §2005.001(1-a) defines a “rural community” as a municipality with a population of less than 25,000.

In accordance with Government Code §2006.002(c), the division has determined that the proposed amendment will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Government Code §2001.0221 requires that a state agency prepare a government growth impact statement that reasonably describes the effects a proposed rule may have during the first five years it

is in effect. The division has determined that the proposed amendment to §110.105 will not create or eliminate a government program, and will not require an increase or decrease in fees paid to the division. Implementation of the proposed amendment will not require the creation or elimination of employee positions, and will not require an increase or decrease in future legislative appropriations to the division.

The proposed amendment does not create a new regulation, expand an existing regulation, or repeal an existing regulation. However, the amendment will limit an existing regulation by removing the reporting requirement that an employer file a notice of termination of coverage with the division by certified mail. The number of individuals subject to the rule's applicability is neither increased nor decreased by the proposed amendment, and the proposed amendment has no impact on the state's economy.

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

**REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on February 26, 2018. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [Rulecomments@tdi.texas.gov](mailto:Rulecomments@tdi.texas.gov) or by mail to Maria

Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Office of Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. If a hearing is held, the division will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** Amended §110.105 is proposed under the authority of Labor Code §402.00111, *Relationship Between Commissioner of Insurance and Commissioner of Workers' Compensation, Separation of Authority, Rulemaking*; Labor Code §402.061, *Adoption of Rules*; and, Labor Code §406.007, *Termination of Coverage by Employer; Notice*.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and enforcement of the Act.

Labor Code §406.007 requires an employer who terminates workers' compensation insurance coverage to file a written notice with the division not later than the 10<sup>th</sup> day after the date the employer notified the insurance carrier to terminate the coverage.

**TEXT.**

**§110.105. Employer Requirements for Notifying the Division of Termination of Coverage.**

(a) (No change.)

(b) The employer shall file the notice of termination required by subsection (a) of this section in the form and manner ~~[by certified mail or electronically on the form]~~ prescribed by the division. The notice shall contain:

(1) (No change.)

(2) (No change.)

(3) (No change.)

(4) (No change.)

(5) (No change.)

(6) (No change.)

(7) (No change.)

(8) (No change.)

(9) (No change.)

(c) (No change.)

(1) (No change.)

(2) (No change.)

(d) (No change.)

(e) (No change.)

(f) (No change.)

### **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 at Austin, Texas, on January 10, 2018.

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Texas Department of Insurance,  
Division of Workers' Compensation