

## **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) proposes 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.

These non-substantive amendments are necessary to provide employees with the updated Division phone number to report possible exposure to communicable diseases or HIV under §110.108; or when inquiring about, verifying, or reporting the lack of coverage at construction project sites under §110.110. Amended §110.108 fulfills the purposes 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 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 fulfills the purposes of Labor Code §406.005, concerning employer notice to employees; administrative violation, by providing 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. Figure: 28 TAC §110.108(d) was also amended to reflect 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 that the required notice in §110.108 contains the updated phone number for the Division. The amendments are also necessary to ensure that the required notice in §110.108 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 by deleting the phrase "Texas Workers' Compensation Commission" and the term "commission," and adding the phrase "Division of Workers' Compensation" and the term "division."

In §110.110(a)(1), (c)(6), Figure: 28 TAC §110.110.(c)(7), and Figure: 28 TAC §110.110 (d)(7), the term "commission" was deleted and the term "division" was added. In §110.110(a)(5), Figure: 28 TAC §110.110(c)(7), and Figure: 28 TAC §110.110 (d)(7), the phrase "Texas Workers' Compensation Commission" was deleted and the phrase "Division of Workers' Compensation" was added.

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*." In addition to calling the provided telephone number, an employee can access the Division's website 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."

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

**2. FISCAL NOTE.** Mr. Brent Hatch, Director of Return-to-Work and Special Initiatives, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal impact to state or local governments that provide workers' compensation coverage as a result of enforcing or administering the amendments, except to the extent set forth below. There will be no measurable effect on local employment or the local economy as a result of the proposed amendments. Labor Code §2001.024(4), concerning content of notice, requires an explanation of any additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule. Any economic costs to those state and local governments that provide workers' compensation coverage are discussed below.

**3. PUBLIC BENEFIT/COST NOTE.** Mr. Hatch has also determined that, for each of the first five years amended §110.108 and §110.110 are in effect, there are several public benefits anticipated, as well as potential, minimal costs for persons to comply with the proposal.

The public benefits anticipated as a result of the proposed amendments include: (i) ensuring employees have proper contact information for the Division and are able to receive information; (ii) promoting a safe and healthy workplace pursuant to the goals of Labor Code §402.021, and (iii) furthering the Division's goals of regulating and administering the business of workers' compensation in Texas established in Labor Code §402.00114 by providing access to correct Division contact information for employees to inquire about the legal requirements for employer coverage, verify employer coverage, and report the failure of an employer to provide coverage.

Mr. Hatch anticipates that there will be an initial, minimal cost to employers required to comply with the amendments to §110.108 and §110.110 and no further costs during each year of the first five years that the rule will be in effect. Specifically, the phone number and contact information changes will require employers to update the posted notices in the workplace required by §110.108 and §110.110. The Division notes that a posting notice may be printed on one 8.5 x 11 piece of paper, with an estimated printing cost of \$.10 per page. The Division will provide on its website a compliant posting notice that employers may download, print, and post to comply with the notice requirements under §110.108 and §110.110. Accordingly, the Division anticipates that the individual or entity required to comply with a proposed provision will have the information necessary to determine its individual cost, including the number of pages that will need to be printed, and whether in-house printing costs or out-of-house printing costs will be incurred. The printing costs may vary or be slightly higher if in-house printing is not used.

**4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES.** Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the

proposed rule on small businesses 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.

In accordance with Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on small and micro-businesses because they will be required to print and post the notices under §110.108 and §110.110(d)(7). Since the Division has determined that the proposed amendments may have an adverse economic effect on small or micro-businesses, this proposal contains the required economic impact statement, as detailed under Government Code §2006.002.

According to the Texas Department of Insurance records, there are currently 547,190 employers doing business in the state of Texas. The Division does not know the total number of regulated entities that will be small or micro-businesses under Government Code §2006.002(c). The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses. Therefore, the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses.

Two alternative regulatory methods of achieving the purposes of the amendments without adversely affecting small or micro-businesses are (i) not adopting the proposed amendments; and (ii) exempting small or micro-businesses from the requirements of the proposed amendments. Under §2006(c-1), an agency is required to consider alternative regulatory methods only if the alternative methods are consistent with the health, safety, environmental and economic welfare of the state. The

Division has determined that the proposed amendments substantially contribute to the health and safety of Texas citizens by ensuring the notices required under §110.108 and §110.110(d)(7) contain the correct information for employees to contact the Division. Any variance in the requirements to post these notices would not be consistent with the health, safety, environmental and economic welfare of the state. Therefore, the Division has further determined that there are no regulatory alternatives, including the waiving or modifying of the requirements of proposed amendments, which will sufficiently protect the health, safety, and economic interests of consumers and the economic welfare of the state.

**5. 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 and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**6. REQUEST FOR PUBLIC COMMENT.** To be considered, submit written comments on the proposal no later than 5:00 p.m., Central Time, on Tuesday, September 8, 2015. All comments should be submitted 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. Comments received after the close of comment will not be considered.

A request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744 by 5:00 p.m. CST before the comment period closes. If a hearing is held, written comments and public testimony presented at the hearing will be considered.

**7. STATUTORY AUTHORITY.** The amendments are proposed under the authority of 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 rule-making 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.

**8. CROSS REFERENCE TO STATUTE.** The following statutes are affected by this proposal: Labor Code §406.005 and §406.009.

**9. TEXT.**

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

(a) - (c) (No change.)

(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 [~~commission~~], or a workers' compensation coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), [~~TWCC-81, TWCC-82, TWCC-83, or TWCC-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) - (4) (No change.)

(5) Coverage agreement--A written agreement on DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84, [~~form TWCC-81, form TWCC-82, form TWCC-83, or form TWCC-84~~], filed with the Division of Workers' Compensation [~~Texas Workers' Compensation Commission~~] 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) - (8) (No change.)



(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. [~~commission's Division of Self-Insurance Regulation.~~] 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) - (5) (No change.)

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

(7) use the language contained in the following figure [~~Figure 4~~] 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) - (6) (No change.)

(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 [~~commission~~] 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 [~~commission~~] on the sample notice, without any additional words or changes: Figure: 28 TAC §110.110(d)(7).

(8) (No change.)

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

(1) -(2) (No change.)

(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. [~~commission's Division of Self-Insurance Regulation.~~] Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions."

(4) - (8) (No change.)

(f) - (i) (No change.)

## 10. 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 July 27, 2015.

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Dirk Johnson  
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