

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 152: ATTORNEY FEES

Title 28 Texas Administrative Code (TAC) §§152.3 and 152.6

1. INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (division) proposes to amend 28 TAC §152.3 and §152.6. The proposed change replaces "hearing officer" with "administrative law judge." An informal working draft of the rule text was published on the division's website on April 9, 2018, and the division received two comments.

2. BACKGROUND AND PURPOSE. House Bill (HB) 2111, enacted by the 85th Texas Legislature, Regular Session, replaced all references to "hearing officer" in the Texas Workers' Compensation Act with "administrative law judge." The purpose of this proposal is to make conforming changes to the division's rules.

3. FISCAL NOTE. Mr. Kerry Sullivan, deputy commissioner for Hearings, has determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

4. PUBLIC BENEFIT. Mr. Sullivan has also determined that, for each year of the first five years amended §152.3 and §152.6 are in effect, the public benefit will be harmonization of the division's rule language with that of the Texas Labor Code.

5. ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL. Mr. Sullivan anticipates that there will be no costs to comply with these amendments.

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 stated, the division has determined that the proposed amendments will have no cost to system participants.

6. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

The division has determined that adoption of the proposed amendments will not have a direct, adverse economic impact on system participants who qualify as small or micro-businesses or rural communities who may be self-insured insurance carriers.

Therefore, the provisions of Government Code §2006.002(c) do not apply to this rule proposal.

7. GOVERNMENT GROWTH IMPACT STATEMENT. Government Code §2001.0221 requires that a state agency prepare a government growth impact statement describing the effects that a proposed rule may have during the first five years that the rule would be in effect. The division has determined that the proposed rule 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 proposal 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 proposal does not create a new regulation, expand an existing regulation, limit an existing regulation, or repeal an existing regulation. The number of individuals subject to the rule's applicability is neither increased nor decreased by the proposal, and the proposal has no impact on the state's economy.

8. 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 Government Code §2007.043.

9. REQUEST FOR PUBLIC COMMENT. If you would like to submit written comments on this proposal, please submit your comments by 5:00 p.m. CST on December 3, 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 or by mail to Ashley Hyten, Texas Department of Insurance, Division of Workers' Compensation, Office of the General 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.

10. STATUTORY AUTHORITY. Amended §152.3 and §152.6 are proposed under the authority of Labor Code §§402.00111, 402.00116, 402.00128, and 402.061.

Labor Code §402.00111 states that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Texas Workers' Compensation Act.

Labor Code §402.00116 states that the commissioner of workers' compensation is the division's chief executive and administrative officer and shall administer and enforce the Texas Workers' Compensation Act, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner of workers' compensation.

Labor Code §402.00128 states that the commissioner of workers' compensation shall conduct the daily operations of the division and otherwise implement division policy and, among other functions, may delegate; assess and enforce penalties; and enter appropriate orders.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

The proposed amendments affect the Texas Workers' Compensation Act, Texas Labor Code, Title 5, Subtitle A.

11. TEXT.

§152.3. Approval or Denial of Fee by the Division

(a) – (d) (No change.)

(e) After a contested case hearing under subsection (d), an attorney, claimant, or insurance carrier must request review by the appeals panel pursuant to the provisions of §143.3 of this title (Requesting the Appeals Panel To Review the Decision of the

Administrative Law Judge [~~Hearing Officer~~] to contest the division order approving, partially approving, or denying an application for attorney fees.

(f) – (h) (No change.)

§152.6. Attorney Withdrawal

(a) – (f) (No change.)

(g) The administrative law judge [~~hearing officer~~] will determine whether good cause exists for the attorney's withdrawal based on Rule 1.15 of the Texas Disciplinary Rules of Professional Conduct and other factors, including:

(1) – (5) (No change.)

(h) If the administrative law judge [~~hearing officer~~] determines good cause does not exist for the attorney's withdrawal, the attorney must continue to represent the party until resolution of the disputed issues through the division's dispute resolution process provided in Labor Code Chapter 410, Subchapters A - E.

(i) – (j) (No change.)

12. 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 October 17, 2018.

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Division of Workers' Compensation