

28 TAC §120.2.

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §120.2, concerning employer's first report of injury and notice of injured employee rights and responsibilities. DWC adopts §120.2 without changes to the proposed text published in the October 25, 2024, issue of the *Texas Register* (49 TexReg 8544). The rule will not be republished.

REASONED JUSTIFICATION. The amendments correct the addresses and websites contained in 28 TAC §120.2 to reflect the current addresses and websites of DWC and the Office of Injured Employee Counsel (OIEC). The amendments are necessary to ensure that the information in the rule is current and accurate. The adopted amendments also make updates for plain language and agency style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received one written comment. Commenters in support of the proposal were: OIEC.

Comment on §120.2. OIEC commented in support of the proposed amendments.

Agency Response to Comment on §120.2. DWC appreciates the comment.

28 TAC §120.2.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §120.2 under Labor Code §§404.109, 402.00111, 402.00116, and 402.061.

Labor Code §404.109 provides that the public counsel of OIEC shall adopt, in the form and manner prescribed by the public counsel and after consultation with the commissioner of workers' compensation, a notice of injured employee rights and responsibilities to be distributed by the division as provided by commissioner or commissioner of insurance rules.

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 the division 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.

TEXT.

§120.2. Employer's First Report of Injury and Notice of Injured Employee Rights and Responsibilities.

(a) The employer shall report to the employer's insurance carrier each death, each occupational disease of which the employer has received notice of injury or has knowledge, and each injury that results in more than one day's absence from work for the injured employee. As used in this section, the term "knowledge" includes receipt of written or oral information regarding diagnosis of an occupational disease, or the diagnosis of an occupational disease through direct examination or testing by a doctor employed by the employer.

(b) The Division shall prescribe the form, format, and manner of the employer's first report of injury (report). The report shall contain:

(1) the information required by §120.1(a) of this title (relating to Employer's Record of Injuries);

(2) any additional information prescribed by the Division in accordance with the Labor Code §402.00128(b)(10); and

(3) the information necessary for an insurance carrier to electronically transmit a first report of injury to the Division.

(c) The report shall be filed with the insurance carrier not later than the eighth day after having received notice of or having knowledge of an occupational disease or death, or not later than the eighth day after the employee's absence from work for more than one day due to a work-related injury. For purposes of this section, a report is filed when personally delivered, mailed, reported via tele-claims, electronically submitted, or sent via facsimile.

(d) The employer shall provide a written copy of the report and a written copy of the Notice of Injured Employee Rights and Responsibilities in the Texas Workers'

Compensation System (Notice of Rights and Responsibilities) adopted by the Public Counsel of the Office of Injured Employee Counsel (Public Counsel) to the injured employee by personal delivery, mail, electronic submission or facsimile. The Notice of Rights and Responsibilities shall be in English and Spanish, or in English and any other language common to the employee. The written report may be the report specified in subsection (b) of this section, or at a minimum shall contain the information listed in §120.1(a) of this title.

(e) The Public Counsel must adopt the Notice of Rights and Responsibilities after consultation with the commissioner of workers' compensation. Until the Public Counsel adopts any new notice in accordance with Labor Code §404.109, the notice previously adopted under this section will remain in effect. A copy of the Notice of Rights and Responsibilities adopted by the Public Counsel will be distributed through or provided at:

- (1) the department's website at www.tdi.texas.gov;
- (2) the Office of Injured Employee Counsel's website at www.oiec.texas.gov;
- (3) The Texas Department of Insurance, Division of Workers' Compensation, 1601 Congress Avenue, Austin, Texas, 78701 or any office of the Texas Department of Insurance, Division of Workers' Compensation; or
- (4) The Office of Injured Employee Counsel, 1601 Congress Avenue, Austin, Texas, 78701 or any office of the Office of Injured Employee Counsel.

(f) The employer shall maintain a record of the date the copy of the report of injury and the date the Notice of Rights and Responsibilities were provided to the employee. The employer shall also maintain a record of the date the report of injury is filed with the insurance carrier.

(g) If the insurance carrier has not received the report, the employer has the burden of proving that the report was filed within the required time frame. If the carrier receives the report by mail, it will be presumed that the report was mailed four days prior to the date received by the carrier. The employer has the burden of proving that good cause exists if the employer failed to timely file or provide the report.

(h) A party who fails to comply with this section commits an administrative violation.

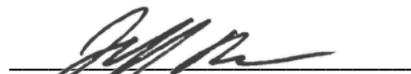
CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on March 6, 2025.



Kara Mace
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The commissioner adopts amended 28 TAC §120.2.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2025-9172