

**SUBCHAPTER A. GENERAL PROVISIONS.  
28 TAC §§131.1 - 131.4.**

**SUBCHAPTER B. LIFETIME INCOME BENEFITS--CERTAIN FIRST RESPONDERS.  
28 TAC §§131.10 - 131.14.**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amended 28 TAC §131.1, concerning the initiation of and request to receive lifetime income benefits, the restructuring of §§131.1 - 131.4 into new Subchapter A, new §§131.10 - 131.14, concerning lifetime income benefits for first responders under Texas Labor Code §408.1615. The amendments and new sections will restructure Chapter 131 into two subchapters. New Subchapter A will include the existing sections of Chapter 131, which are §§131.1 - 131.4. New Subchapter B will include the new sections of Chapter 131, which are §§131.10 - 131.14.

New §§131.10, 131.12, and 131.14 are adopted with changes to the proposed text published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3911) and will be republished. In response to public comment, DWC revised the definition of "first responders" to "first responder" in §131.10 to be consistent with the term used in Labor Code §408.1615, replaced the term "electronically" with "electronic transmission" in §131.12(c)(1) to maintain consistency with terminology in other rules, changed "division" to "commissioner" in proposed §131.14(b) to be consistent with the Labor Code, changed proposed §131.14(b) to state that once DWC "reviews" information from the insurance carrier versus "upon receipt" of the information, and added language to §131.12(d) that requires the insurance carrier to include on a first responder's annual certification the date by which the certification must be returned to the insurance carrier under §131.12(c).

Sections 131.1 - 131.4, 131.11, and 131.13 are adopted without changes to the proposed text published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3911) and will not be republished.

**REASONED JUSTIFICATION.** The amendments to §131.1 and new §§131.10 - 131.14 are necessary to implement House Bill (HB) 2468, 88th Legislature, Regular Session (2023). HB 2468 amended Labor Code §408.0041 and enacted Labor Code §408.1615, which allows certain first responders to receive lifetime income benefits.

The amendments and new sections add definitions and create procedures for a first responder's annual certification to the insurance carrier, the suspension and reinstatement of lifetime income benefits, and the dispute of a first responder's continuing entitlement to lifetime income benefits.

The amendments and new sections also include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and improve the rule's clarity.

**Section 131.1** concerns the initiation of lifetime income benefits by the insurance carrier or at the request of the injured employee and provides for the approval or denial of those benefits. Amending §131.1 was necessary to implement Labor Code §408.1615. Section 408.1615 makes certain first responders eligible for lifetime income benefits. The amendments add a reference to Labor Code §408.1615 in §131.1 to include individuals who are eligible to receive lifetime income benefits under §408.1615.

**Section 131.10** concerns definitions in new Labor Code §408.1615. Definitions were added to improve the rule's clarity.

**Section 131.11** concerns applicability for new Subchapter B. New §131.11 is necessary to implement Labor Code §408.1615, which created lifetime income benefits for certain first responders. Section 131.11 lists who may be entitled to these benefits under §408.1615.

**Section 131.12** concerns a first responder's annual certification to the insurance carrier as required by Labor Code §408.1615. New §131.12 is necessary to implement §408.1615 by listing the content, method, and timing of the certification. To help first responders comply with the certification submission required under §408.1615, new §131.12 requires insurance carriers to provide notice to those receiving benefits under §408.1615 by sending the first responder their certification to complete 30 days before the certification is due. The insurance carrier must include on the certification the anniversary date the first responder's benefits began to accrue and the date by which the first responder must return the certification to the insurance carrier.

**Section 131.13** concerns the suspension and reinstatement of lifetime income benefits for first responders under Labor Code §408.1615. New §131.13 is necessary to implement Labor Code §408.1615, which states when an insurance carrier may suspend a first responder's lifetime income benefits under that section and when an insurance carrier must reinstate those benefits. Section 408.1615(i) requires the commissioner, by rule, to ensure that an employee receives reasonable notice of the insurance carrier's basis for the suspension of lifetime income benefits and is provided a reasonable opportunity to complete the annual certification or otherwise respond to the notice. DWC interprets a reasonable opportunity as being 20 days. As a result, new §131.13 requires the insurance carrier to give the first responder a plain-language notice of the basis for the suspension,

and requires the first responder to respond to the notice within 20 days of receiving it, before the insurance carrier may suspend the first responder's benefits. In addition, new §131.13 states that if the suspension is due to a missing annual certification, the insurance carrier must reinstate benefits within seven days of receiving the certification. It also states that if the suspension is due to failure to attend a designated doctor (DD) examination, the insurance carrier must follow §127.25 of this title for suspension and reinstatement of the first responder's benefits. If the first responder believes that the insurance carrier's assertion that the first responder was employed is not correct, then the first responder may request dispute resolution under Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution). If the suspension is due to employment in any capacity, new §131.13 requires the first responder to submit a new request for lifetime income benefits under §131.1. Finally, new §131.13 clarifies that if the insurance carrier suspends or reinstates benefits under §131.13, the insurance carrier must comply with the electronic notification requirements to DWC in §124.2 and Chapter 124, Subchapter B (relating to Insurance Carrier Claim Electronic Data Interchange Reporting to the Division).

**Section 131.14** provides for the dispute of a first responder's continuing entitlement to lifetime income benefits. New §131.14 is necessary to implement Labor Code §408.1615, which allows an insurance carrier to review a first responder's continuing entitlement to lifetime income benefits more than once in a five-year period if the insurance carrier provides evidence to DWC that the first responder's annual certification is not accurate, and the commissioner finds that the evidence is sufficient. If the evidence is sufficient, the insurance carrier must request a DD exam to determine whether the first responder remains eligible to receive lifetime income benefits under §408.1615. New §131.14 details this process. Once the commissioner receives the evidence from an insurance carrier, the

commissioner will issue an order stating whether the insurance carrier is entitled to require the first responder to submit to a DD examination under §408.1615(h). If a DD exam is completed, the parties may dispute the DD's opinion on the first responder's continuing entitlement to lifetime income benefits through DWC's dispute resolution process.

Parties may request dispute resolution. During the dispute resolution process, parties have the right to request an interlocutory order to suspend benefits or require that they continue while the dispute is pending.

### **SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** DWC received three written comments, and no oral comments. Commenters in support of the proposal with changes were: Flahive, Ogden, & Latson (FOL); Office of Injured Employee Counsel (OIEC); and Texas Mutual Insurance Company (TMIC). There were no commenters against the proposal.

**General Comment on the termination of a first responder's lifetime income benefits under Labor Code §408.1615.** TMIC commented that the proposed rules do not provide guidance on terminating a first responder's lifetime income benefits under Labor Code §408.1615.

**Agency Response to Comment.** DWC appreciates the comment but declines to make the suggested change. Section 131.14(c) and (d) provide parties with the ability to seek dispute resolution regarding continual entitlement to lifetime income benefits, including the ability to dispute a DD's opinion on this issue. In the dispute resolution process, parties may seek a final decision on the issue of continuing entitlement to lifetime income benefits.

**Comment on §131.10.** OIEC commented that they support DWC's removal of the definition of "permanently unemployable."

**Agency Response to Comment on §131.10.** DWC appreciates the comment.

**Comment on §131.10.** TMIC suggested that DWC consider revising the definition of "first responders" to "first responder" in §131.10 to be consistent with the term used in Labor Code §408.1615.

**Agency Response to Comment on §131.10.** DWC appreciates and agrees with the suggestion and has revised the defined term to read "first responder."

**Comment on §131.12(c)(1).** TMIC recommended replacing the term "electronically" with the term "electronic transmission" in §131.12(c)(1) to maintain consistency with terminology in other rules.

**Agency Response to Comment on §131.12(c)(1).** DWC appreciates the comment and has replaced the term.

**Comment on §131.14.** FOL commented that, under proposed §131.14(b), the "division" will issue an order stating whether the insurance carrier is entitled to an examination under §408.1615(h). However, under the Labor Code, only the "commissioner" may issue an order or delegate that authority to a designee. There is no authority to delegate the authority to the agency itself.

**Agency Response to Comment on §131.14.** DWC appreciates the comment and has changed "division" to "commissioner" in §131.14(b).

**Comment on §131.12(b).** TMIC suggested that DWC revise §131.12(b) to clarify what information is required on a first responder's annual certification to the insurance carrier when the first responder is not working in any capacity. TMIC also suggested permitting an insurance carrier to issue a notice in circumstances where the first responder submits an incomplete certification. TMIC also recommended that, if the first responder does not respond to the notice after 30 days, the insurance carrier be permitted to suspend lifetime income benefits after 30 days and request a DD examination to determine a first responder's ongoing eligibility for these benefits.

**Agency Response to Comment on §131.12(b).** DWC declines to make the suggested changes. The requirement for the annual certification is a simple, straightforward statement that is either submitted or not. DWC will provide active outreach to first responders to help guide them on the certification and its process. Also, DWC has adopted procedural rules that provide guidance on submitting the annual certification. Labor Code §408.1615 already addresses when an insurance carrier may suspend lifetime income benefits and when an insurance carrier may request a DD exam to determine a first responder's ongoing eligibility for these benefits. Adding additional rules based on an incomplete certification is unnecessary.

**Comment on §131.12(c)(2) and (d).** As proposed, §131.12(d) requires the insurance carrier to send the certification form to a first responder 30 days before their annual certification is due. Under §131.12(c)(2), a first responder must then submit the certification to the insurance carrier no later than 30 days after the anniversary of the lifetime income benefits accrual date. TMIC commented that the rule appears to reference the same 30-day response date in two different subsections, leading to confusion about whether there are two 30-day periods. TMIC recommended changing the timeframe that

the insurance carrier must send the annual certification to the first responder from 30 days to no later than the anniversary date of when the first responder's benefits began to accrue.

**Agency Response to Comment on §131.12(c)(2) and (d).** DWC declines to make the suggested change. There are two 30-day periods that exist in §131.12, and each is clearly laid out in two different subsections with different titles. Section 131.12(c)(2) states that the first responder must submit the certification to the insurance carrier no later than 30 days after the date the first responder's benefits began to accrue. Section 131.12(d) requires the insurance carrier to send the first responder the certification to complete 30 days before it is due. Requiring insurance carriers to send the certification to the first responder 30 days before it is due will give first responders notice that they must complete the certification and allows them sufficient time to read, understand, and complete the certification.

**Comment on §131.12.** OIEC commented that they support the rule requiring an insurance carrier to provide the annual certification to the first responder 30 days before the annual certification is due.

**Agency Response to Comment on §131.12.** DWC appreciates the comment.

**Comment on §131.12(d).** TMIC recommended adding language to §131.12(d) that requires the insurance carrier to include on a first responder's annual certification the date the certification must be returned to the insurance carrier under §131.12(c).

**Agency Response to Comment on §131.12(d).** DWC appreciates the comment and has revised the text to require insurance carriers to include on the certification the date the first responder must return the certification to the insurance carrier.

**Comment on §131.13.** TMIC recommended that §131.13(c) be revised to clarify that the insurance carrier must reinstate benefits, unless the completed annual certification indicates that the first responder was employed in some capacity during the preceding year, and that the insurance carrier has the right to dispute ongoing entitlement under §131.14.

**Agency Response to Comment on §131.13.** DWC declines to make the recommended changes. Section 131.13(a) follows Labor Code §408.1615(i), stating that an insurance carrier may suspend lifetime income benefits to a first responder during and for a period in which the first responder fails to complete the annual certification as required by Labor Code §408.1615(e). Section 408.1615(e) requires a first responder receiving lifetime income benefits under §408.1615 to certify to the insurance carrier annually that the first responder was not employed in any capacity during the preceding year. If the first responder was employed in any capacity, §131.13(a)(3) allows the insurance carrier to suspend the payment of lifetime income benefits. Also, §131.13(e) states that, if an insurance carrier suspends benefits under §131.13(a)(3), the first responder must submit a new request for lifetime income benefits under §131.1. As a result, the statute and rules already address the scenario when a completed annual certification indicates that the first responder was employed in some capacity during the preceding year.

**Comment on §131.14.** FOL suggested that DWC provide the standard it will use to determine if the first responder's annual certification is not accurate. FOL further suggested that the commissioner's order should contain specific findings of facts explaining why the request was denied if it is denied.

**Agency Response to Comment on §131.14.** DWC declines to make the suggested changes because they are unnecessary and not required by the statute. Labor Code §408.1615(g) states the commissioner will decide if the information contained on the annual certification "may not be accurate." If the insurance carrier disagrees with that determination, it may request dispute resolution. As part of the dispute resolution process, an insurance carrier may request an interlocutory order. DWC declines to adopt a requirement that the commissioner provide specific findings of fact on the order due to the lack of statutory basis for such a requirement in Labor Code §408.1615.

**Comment on §131.13.** OIEC commented that they support the change in time that a first responder must respond to an insurance carrier before the insurance carrier may suspend lifetime income benefits under §131.13(a) from 30 days to 20 days.

**Agency Response to Comment on §131.13.** DWC appreciates the comment.

**Comment on §131.13.** TMIC recommended removing the requirement in §131.13(b) that insurance carriers must send a notice to the first responder if the first responder has not turned in their annual certification, allowing the first responder 20 days to respond before suspending lifetime income benefits under §131.13. TMIC stated that the 20-day notice is inconsistent with Labor Code §408.1615.

**Agency Response to Comment on §131.13.** DWC declines to make the suggested changes. Labor Code §408.1615(i) states that a first responder's lifetime income benefits may be suspended under certain circumstances. Section 408.1615(i) requires the commissioner to adopt rules that ensure that a first responder receives reasonable notice of the insurance carrier's basis for the suspension and is provided a reasonable opportunity to complete the annual certification under subsection (e), or otherwise

respond to the notice. The Labor Code allows suspension under certain circumstances under §408.1615, but it also requires the commissioner to adopt rules that ensure a first responder is allowed a reasonable opportunity to respond. A "reasonable opportunity" to respond to the notice means that the first responder is allowed time to respond by completing their annual certification *before* an insurance carrier may suspend their lifetime income benefits. The people receiving benefits under this rule are first responders who have sustained serious injuries. Giving them 20 days' notice before an insurance carrier may suspend lifetime income benefits is appropriate and aligns with the requirements under Labor Code §408.1615(i).

**Comment on §131.13.** TMIC recommended that §131.13 be revised to clarify that an insurance carrier may suspend lifetime income benefits immediately in conjunction with a DD opinion concluding that the first responder is no longer eligible for lifetime income benefits. They commented that this change would follow the precedent in §127.25 and Labor Code §408.0041(e) that a DD's report has presumptive weight on the issue that was assigned to the DD, unless the report is overturned during the dispute resolution process. Under this recommendation, if a first responder successfully disputes the DD report, then the dispute decision can order lifetime income benefits to be reinstated, similar to how all other income benefit disputes are generally handled. Likewise, if the first responder's dispute of the DD report is not successful, then lifetime income benefits are terminated until a first responder meets the eligibility requirements again at a later date.

**Agency Response to Comment on §131.13.** DWC declines to make the recommended changes. Labor Code §408.0041(j) states that an employee is not entitled to lifetime income benefits under §408.1615, and an insurance carrier is authorized to suspend the payment of those benefits, during and for a period in which the employee fails to submit

to a DD examination required by §408.0041(a) or (f) or, if applicable, §408.1615(h), unless the commissioner determines that the employee had good cause for failing to submit to the examination. Section 408.0041(j) also states that the commissioner, by rule, must ensure that the employee receives reasonable notice of the insurance carrier's basis for suspension and that the employee is provided a reasonable opportunity to reschedule a DD examination for good cause. Further, Labor Code §408.1615(i) requires the commissioner to adopt rules that ensure that an employee receives reasonable notice of the insurance carrier's basis for suspension and is provided a reasonable opportunity to respond to the notice. Twenty days is a reasonable opportunity to allow the first responder to respond by rescheduling their DD examination *before* an insurance carrier may suspend benefits. As a result, giving first responders 20 days' notice before an insurance carrier may suspend benefits is appropriate and aligns with the commissioner's requirements under Labor Code §408.1615(i).

Section 131.13(b) does not conflict with §127.25 and §131.13(d) because requiring notice does not change any of those sections' provisions or impair how they function. Section 131.13(d) states that, if an insurance carrier suspends benefits because the first responder fails to attend a DD examination without good cause, the insurance carrier must follow §127.25 for suspension and reinstatement of the first responder's benefits. Section 127.25 allows an insurance carrier to suspend lifetime income benefits if a first responder fails, without good cause, to attend a DD examination. Neither §127.25 nor §131.13(d) disallow the first responder to receive notice by the insurance carrier and to respond to the insurance carrier. Requiring notice and an opportunity to respond simply ensures that the injured first responder's benefits are not needlessly and unjustly interrupted. As a result, requiring insurance carriers to send a first responder 20 days'

notice to allow the first responder to reschedule a DD examination under §131.13(b) does not conflict with §131.13(d) and §127.25.

DWC declines to make TMIC's suggested change that §131.13 be revised to clarify that an insurance carrier may suspend lifetime income benefits immediately in conjunction with a DD opinion concluding that the first responder is no longer eligible for lifetime income benefits. As with reasonable notice before suspending a first responder's lifetime income benefits for submitting a late annual certification or rescheduling a missed DD exam, Labor Code §408.1615(i) requires the commissioner to adopt rules that ensure a first responder receives reasonable notice of an insurance carrier's basis for suspension and be provided a reasonable opportunity to respond to the notice. Adopted §131.13 provides the first responder a timeframe to have a reasonable opportunity to respond to the notice before an insurance carrier may suspend lifetime income benefits.

**Comment on §131.13.** FOL commented that the proposed 20-day notice requirement in §131.13(b)(2) prevents a political subdivision from suspending lifetime income benefits immediately. Further, if the injured employee notifies the insurance carrier of the DD exam or simply requests a benefit review conference, the political subdivision must continue to pay benefits. FOL commented that this exceeds the statute, as notice is not a precondition for suspension. FOL stated that continued payments without entitlement results in unjustified payments, violating constitutional limits on public funds, when the "carrier" is a self-insured political subdivision or state agency.

**Agency Response to Comment on §131.13.** DWC declines to make the suggested changes. A political subdivision or state agency that is self-insuring its workers' compensation liabilities is acting as a workers' compensation insurance carrier and must comply with the workers' compensation statutes and rules. Labor Code §408.0041(j)

requires the commissioner, by rule, to ensure that the first responder receives reasonable notice of the insurance carrier's basis for suspension and that the employee be provided a reasonable opportunity to reschedule a DD examination for good cause. Further, Labor Code §408.1615(i) requires the commissioner to adopt rules that ensure a first responder receives reasonable notice of the insurance carrier's basis for suspension and be provided a reasonable opportunity to respond to the notice under all scenarios in which a first responder's lifetime income benefits may be suspended under §408.1615(i). A "reasonable opportunity" to respond to the notice is one that gives the first responder time to respond *before* an insurance carrier may suspend benefits. As a result, giving first responders 20 days' notice before an insurance carrier may suspend lifetime income benefits is appropriate and aligns with the commissioner's requirements under Labor Code §408.1615(i).

**Comment on §131.14.** TMIC suggested that DWC recognize the insurance carrier's ability to request a DD examination to evaluate a first responder's ongoing eligibility for lifetime income benefits at least every five years, as well as those circumstances where a first responder has failed to submit the annual certification and lifetime income benefits have been suspended.

**Agency Response to Comment on §131.14.** DWC declines to make the suggested changes. Labor Code §408.1615(f) states that an insurance carrier may periodically review a first responder's continuing entitlement to lifetime income benefits no more than once during any five-year period, subject to the exception contained in Labor Code §408.1615(g) regarding an annual certification that may not be accurate. Because the insurance carrier's ability to request a DD examination is specified in the Labor Code, DWC declines to duplicate that authority in the rules.

Labor Code §408.1615(f) and (g) do not mention a situation where a first responder does not submit a timely annual certification. DWC disagrees that Labor Code §408.1615 permits an insurance carrier to request a DD examination before the five-year time period in Labor Code §408.1615(f) if the first responder does not timely submit the annual certification.

**Comment on §131.14.** FOL commented that that it's not clear if the insurance carrier must continue to pay lifetime income benefits if the insurance carrier requests a DD appointment prior to five years, that request is denied, and it seeks dispute resolution to dispute that denial.

**Agency Response to Comment on §131.14.** DWC declines to add to the rule text to address an issue that is already clear in the statute. Labor Code §408.0041(f) states that, unless otherwise ordered by the commissioner, the insurance carrier must pay benefits based on the opinion of the DD during the pendency of any dispute. If the most recent DD examination on the issue of entitlement to lifetime benefits has found that the first responder meets the requirements for qualification, the insurance carrier must pay benefits during the pendency of any dispute.

**Comment on §131.13.** OIEC asked DWC to reconsider adding a good cause exception to an insurance carrier's ability to suspend lifetime income benefits found in proposed Rule 131.13. OIEC commented that DWC provides a good cause exception for failing to attend a DD examination in Rule 131.13(a)(2) because Labor Code §408.1615(i) requires DWC to consider a good cause exception for any statutorily mentioned scenario for suspension. OIEC suggested that the word "unless" in the statute modifies any of the preceding list of scenarios, not only failing to attend a DD examination. OIEC suggested adding new Rule

131.13(b) as follows: (b) The insurance carrier may not suspend lifetime income benefits if the commissioner determines that there is good cause.

**Agency Response to Comment on §131.13.** DWC appreciates the comment but declines to make the suggested change. Under Labor Code §408.1615(i), the good cause exception only applies to §408.0041(j), where a first responder fails to submit to a DD examination under §408.0041(a) or (f) or §408.1615(h), and to §408.0041(k-1) where a DD report indicates that the first responder is no longer entitled to lifetime income benefits. If DWC applied the good cause exception to each scenario under which suspension could occur in §408.1615(i), DWC would have to apply the good cause exception for situations where the first responder has worked in some capacity, which is incompatible with the rest of the language in the statute, particularly with the wording "permanently unemployable."

**Comment on §131.14.** OIEC commented that it supports DWC's inclusion of a dispute resolution option for parties who disagree with DWC's order regarding whether an insurance carrier is entitled to request an examination under Labor Code §408.1615(h).

**Agency Response to Comment on §131.14.** DWC appreciates the comment.

**General Comment on Rule Guidance and Training Addressing a Physically Traumatic Injury to the Brain.** OIEC commented that they would like DWC to create rules addressing a physically traumatic injury to the brain in §408.161(a)(6). OIEC recommended rules and training for DDs to determine whether a physically traumatic injury to the brain results in a permanent major neurocognitive disorder, whether the injured employee requires occasional supervision in performing daily tasks or self-care, and whether the injured employee is permanently unemployable. OIEC also recommended that the rule clarify that the DD is qualified to render those opinions. Alternatively, if the DD is not

competent to render those decisions, OIEC commented that the training should include guidance for the DD to refer the matter to qualified occupational specialists or others for necessary opinions.

**Agency Response to Comment.** DWC declines to make the requested changes because they are out of scope of this rule. In addition, DWC's rules already address qualifications for DDs to evaluate traumatic brain injuries, including the ability to refer those injuries to specialists when necessary. Also, DWC already provides in-depth training for DDs in performing their duties.

## **SUBCHAPTER A. GENERAL PROVISIONS.**

### **28 TAC §§131.1 - 131.4.**

**STATUTORY AUTHORITY.** The commissioner of workers' compensation adopts new Subchapter A, Chapter 131; amendments to §131.1; and relocating §§131.1 - 131.4 under Subchapter A under Labor Code §§408.0041, 408.161, 408.1615, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides that the commissioner may order a DD exam to resolve questions about an individual's injuries. It also provides that an insurance carrier may suspend benefits for a period in which the individual does not attend the required DD exam, and provides for when the insurance carrier must reinstate benefits.

Labor Code §408.161 provides lifetime income benefits for certain injuries.

Labor Code §408.1615 provides lifetime income benefits for certain first responders who sustain a serious bodily injury, other than an injury described by §408.161, in the course and scope of the employee's employment or volunteer service as a first responder that renders the employee permanently unemployable.

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.

**TEXT.**

**Subchapter A. General Provisions.**

**§131.1. Initiation of Lifetime Income Benefits; Notice of Denial.**

(a) The insurance carrier must initiate the payment of lifetime income benefits without a final decision, order, or other action of the commissioner if an injured employee meets the eligibility criteria for lifetime income benefits listed under Labor Code §408.161 or §408.1615 as a result of the compensable injury.

(b) An injured employee may submit a written request for lifetime income benefits to the insurance carrier. The insurance carrier must either initiate lifetime income benefits or deny the injured employee's eligibility for lifetime income benefits considering all of the eligibility criteria listed under Labor Code §408.161 or §408.1615 within 60 days of receiving the injured employee's written request. An insurance carrier's failure to respond to the request for lifetime income benefits within the timeframes described in this subsection does not constitute a waiver of the insurance carrier's right to dispute the injured employee's eligibility for lifetime income benefits.

(c) The insurance carrier must make the first payment of lifetime income benefits on or before the 15th day after the date the insurance carrier reasonably believes that the injured employee is eligible for lifetime income benefits as a result of the compensable injury. The initiation of lifetime income benefits without a final decision, order, or other action of the commissioner does not waive the insurance carrier's right to contest the compensability of the injury under Labor Code §409.021(c).

(d) If the injured employee submits a written request for lifetime income benefits, and the insurance carrier denies that the injured employee is eligible for lifetime income benefits, the insurance carrier must deny eligibility by sending a plain-language notice of denial of eligibility to the division, the injured employee, and the injured employee's representative, if any, in the form and manner prescribed by the division up to the 60th day after it receives the written request. The notice of denial of eligibility must include:

(1) a full and complete statement describing the insurance carrier's reasons for denial. The statement must contain sufficient claim-specific substantive information to enable the injured employee to understand the insurance carrier's position or action taken under the claim. A generic statement that simply states the insurance carrier's position with phrases such as "not part of compensable injury," "not meeting criteria," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the denial does not satisfy the requirements of paragraph (1) of this subsection;

(2) contact information, including the adjuster's name, toll-free telephone and fax numbers, and email address; and

(3) a statement informing the injured employee of his or her right to request a benefit review conference to resolve the dispute.

(e) An injured employee may contest the insurance carrier's denial of eligibility for lifetime income benefits or failure to respond to the written request for lifetime income benefits by requesting dispute resolution as provided by Chapters 141 - 144 and 147 of this title (relating to Dispute Resolution).

(f) Nothing in this section is intended to limit an insurance carrier's duty to initiate payment of lifetime income benefits before the time limit established in subsection (c) of this section.

### **§131.2. Calculation of Lifetime Income Benefits.**

(a) Lifetime income benefits shall be calculated by multiplying the employee's average weekly wage by .75. The lifetime income benefit payable each week under this formula shall not exceed the weekly maximum benefit under the Workers' Compensation Act, §4.11, for the first year of benefits.

(b) Each year on the anniversary date of the day lifetime income benefits began to accrue, the amount of those benefits being paid shall be increased by 3.0%. The employee is entitled to the annual increase without regard to the limits imposed by the maximum weekly benefit. The increase shall be paid without further action by the commission.

### **§131.3. Carrier's Petition for Payment of Benefits by the Subsequent Injury Fund.**

(a) When an insurance carrier reasonably believes that an injured employee may be eligible for lifetime benefits from the subsequent injury fund, the insurance carrier shall petition the commission for payment of lifetime income benefits from the subsequent injury fund. The petition shall be in writing and contain the following:

- (1) the employee's name and social security number;
- (2) the date of each injury;

(3) the workers' compensation number assigned to the claim (if any) for each injury;

(4) the name and address of the employer for whom the employee was working at the time of each injury; and

(5) any information upon which the carrier bases its request.

(b) The commission shall order the payment of lifetime income benefits from the subsequent injury fund if it finds that the effects of the two injuries combined entitle the employee to lifetime income benefits.

(c) The insurance carrier shall pay to the employee weekly benefits as ordered by the commission.

(d) The subsequent injury fund shall compensate the employee for the remaining lifetime income benefits for which the insurance carrier is not liable.

**§131.4. Change in Payment Period; Purchase of Annuity for Lifetime Income Benefits.**

(a) Upon the request of an injured employee entitled to lifetime income benefits (LIBs) as defined in the Act, the insurance carrier and an injured employee may agree to change the frequency of LIBs payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing and is only required to be filed with the Commission if the Commission requests a copy. To relieve the insurance carrier of the responsibility to pay LIBs weekly a valid written agreement must include the following terms and conditions:

(1) the agreement for the monthly payment of LIBs shall be effective the first calendar day of the month following the month in which the written agreement was entered into by the insurance carrier and the injured employee;

(2) monthly LIBs shall be issued on or before the seventh day of the month for which benefits are due;

(3) weekly LIBs payments shall continue through the end of the month in which the agreement was signed;

(4) payment of the last week of LIBs to transition from weekly payment of LIBs to monthly payments shall be prorated to the end of the month to ensure the injured employee receives LIBs through the last day of the month;

(5) the monthly compensation rate shall be calculated by multiplying the weekly compensation rate by 4.34821;

(6) if less than the maximum weekly compensation rate in effect on the date of the compensable injury is being paid, a completed Employer's Wage Statement must be included with the injured employee's copy of the written agreement; and

(7) A clear statement regarding the due date of the annual three percent increase in LIBs must be included.

(b) At any time after signing the agreement for the monthly payment of LIBs, the injured employee or the insurance carrier may notify the other party in writing that it no longer agrees to the monthly payment of LIBs. In this case, the insurance carrier shall pay all accrued but unpaid LIBs at the end of the current monthly cycle and shall continue to pay LIBs weekly as and when they accrue and are due. The last monthly payment shall be prorated to ensure the insurance carrier pays the appropriate amount of LIBs.

(c) The insurance carrier and the injured employee entitled to LIBs may agree that the carrier will purchase an annuity for payment of LIBs. An application for payment of LIBs by annuity must be submitted to the Commission for approval in the form, format, and manner required by the Commission. If less than the maximum weekly compensation

rate in effect on the date of the compensable injury is being paid, a complete Employer's Wage Statement must be included with the application.

(d) An annuity for the payment of LIBs shall meet the following terms and conditions.

(1) LIBs payments shall be initiated no later than the 45th day after the date the written agreement was approved by the Commission.

(2) The company providing an annuity for the payment of LIBs must be licensed to do business in Texas and must have a current A. M. Best rating of B+ or better or have a Standard & Poor's rating of claims paying ability of A or better.

(3) The workers' compensation insurance carrier must guarantee the payments provided by the annuity company in the event of default.

(4) The annuity contract must include funds for payment of the annual three percent increase in LIBs required by the Act, compounded annually.

(5) The injured employee, or guardian if applicable, shall not be allowed to assign the right to receive LIBs from an annuity. All LIBs must be paid to the order of the injured employee or the legal guardian, if applicable.

(6) An annuity cannot be purchased to fund the payment of medical costs incurred by an injured employee entitled to LIBs.

(7) The annuity company shall pay LIBs either weekly or monthly as indicated in the application for payment of LIBs by annuity.

(8) If monthly payments are agreed to by the insurance carrier and the injured employee, the transition from weekly to monthly benefits paid by annuity shall be the same as that for LIBs paid by the responsible insurance carrier set out in subsection (a) of this section.

(e) This section applies only to agreements entered into on or after January 1, 2000, for payment of LIBs under the provisions of the Act.

**SUBCHAPTER B. LIFETIME INCOME BENEFITS--CERTAIN FIRST RESPONDERS.**

**28 TAC §§131.10 - 131.14.**

**STATUTORY AUTHORITY.** The commissioner of workers' compensation adopts new §§131.10 - 131.14 under Labor Code §§408.0041, 408.1615, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides that the commissioner may order a DD exam to resolve questions about an individual's injuries. It also provides that an insurance carrier may suspend benefits for a period in which the individual does not attend the required DD exam, and provides for when the insurance carrier must reinstate benefits.

Labor Code §408.1615 provides lifetime income benefits for certain first responders who sustain a serious bodily injury, other than an injury described by §408.161, in the course and scope of the employee's employment or volunteer service as a first responder that renders the employee permanently unemployable.

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.

**TEXT.**

**Subchapter B. Lifetime Income Benefits--Certain First Responders.**

**§131.10. Definitions.** In Subchapter B of this chapter:

(1) "First responder" means "first responder" as defined in Labor Code §408.1615.

(2) "Serious bodily injury" means "serious bodily injury" as defined in Penal Code §1.07.

**§131.11. Applicability.** This subchapter applies to a first responder who sustains a serious bodily injury:

(1) that is an injury described under Labor Code §408.1615;

(2) in the course and scope of the first responder's employment or volunteer service as a first responder; and

(3) that renders the first responder permanently unemployable.

**§131.12. First Responder's Annual Certification to Insurance Carrier.**

(a) Requirement. A first responder receiving lifetime income benefits under §408.1615 must file a certification with the insurance carrier annually.

(b) Content. The certification must state that the first responder was not employed in any capacity during the preceding year.

(c) Method and Timing. The first responder must submit the certification to the insurance carrier in the form and manner prescribed by the division:

- (1) by first class mail, by personal delivery, or by electronic transmission; and
- (2) no later than 30 days after the anniversary of the date the first responder's lifetime income benefits began to accrue.

(d) Notice. Every year, 30 days before the first responder's annual certification is due, an insurance carrier must send the annual certification to complete to the first responder. The certification must include the anniversary date the first responder's lifetime income benefits began to accrue and the date by which the first responder must return the certification to the insurance carrier.

### **§131.13. Suspension and Reinstatement of Lifetime Income Benefits.**

(a) An insurance carrier may suspend the payment of lifetime income benefits to a first responder during and for a period in which:

- (1) The first responder fails to complete the annual certification as required by §408.1615(e).
- (2) The first responder, without good cause, fails to attend a designated doctor examination as required by §408.0041(j).
- (3) The first responder is employed in any capacity.
- (4) A designated doctor's report indicates that the first responder is no longer entitled to lifetime income benefits as provided in §408.0041(k-1).

(b) Before an insurance carrier may suspend lifetime income benefits under this section, the insurance carrier must send a plain-language notice to the first responder that explains the basis for the suspension.

(1) Within 20 days of receiving this notice, the first responder must respond to the insurance carrier's notice by:

- (A) submitting the annual certification to the insurance carrier;
- (B) notifying the insurance carrier of an examination under §127.25 of this title (relating to Failure to Attend a Designated Doctor Examination); or
- (C) requesting dispute resolution under Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution).

(2) If the first responder does not respond within 20 days of receiving this notice, the insurance carrier may suspend the first responder's benefits.

(c) If an insurance carrier suspends benefits under subsection (a)(1) of this section, the insurance carrier must reinstate benefits effective on the date the insurance carrier receives the first responder's annual certification. The reinstatement of benefits must occur no later than the seventh day following the date the insurance carrier receives the annual certification.

(d) If an insurance carrier suspends benefits under subsection (a)(2) of this section (failure to attend a designated doctor examination), the insurance carrier must follow §127.25 of this title for suspension and reinstatement of the first responder's benefits.

(e) If an insurance carrier suspends benefits under subsection (a)(3) of this section (employment in any capacity), the first responder must submit a new request for lifetime income benefits under §131.1 of this chapter (relating to Initiation of Lifetime Income Benefits; Notice of Denial).

(f) If the insurance carrier suspends or reinstates benefits under this section, the insurance carrier must also comply with the electronic notification requirements to DWC in §124.2 and Chapter 124, Subchapter B (relating to Insurance Carrier Claim Electronic Data Interchange Reporting to the Division).

**§131.14. Dispute of Continuing Entitlement of Lifetime Income Benefits.**

(a) If the insurance carrier disputes the accuracy of the first responder's annual certification under Labor Code §408.1615(g), the insurance carrier must provide a copy of the annual certification along with supporting evidence to the commissioner and to the first responder.

(b) Upon review of the information in subsection (a) of this section, the commissioner will issue an order stating whether the insurance carrier is entitled to an examination under Labor Code §408.1615(h).

(c) The parties may dispute the determination of the division through the dispute resolution processes outlined in Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution).

(d) After receiving the designated doctor's report under Labor Code §408.1615(h), a party may dispute the designated doctor's opinion on continuing entitlement to lifetime income benefits through the dispute resolution processes outlined in Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution).

**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 November 1, 2024.



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Kara Mace  
General Counsel  
TDI, Division of Workers' Compensation

The commissioner adopts amended 28 TAC §131.1, the restructuring of §§131.1 - 131.4 into new Subchapter A, new §§131.10 - 131.14, and the structuring of §§131.10 - 131.14 into new Subchapter B.



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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Commissioner's Order No. 2024-8930