

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: **AUG 30 2019**

**Subject Considered:**

**CITY OF HOUSTON**  
611 Walker Street  
Houston, Texas 77002-4903

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 16841

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against the City of Houston.

**WAIVER**

City of Houston acknowledges that the Texas Labor Code and other applicable laws provide certain rights. City of Houston waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

The commissioner makes the following findings of fact:

1. City of Houston is a self-insured government entity that provides workers' compensation benefits to its employees in accordance with TEX. LAB. CODE Ch. 504.
2. City of Houston was classified as "high" tier in the 2007, 2010, 2012, 2014, and 2018 Performance Based Oversight (PBO) assessments. City of Houston was classified as "average" tier in the 2009 and 2016 PBO assessments.
3. On September 25, 2017, Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated DWC Audit No. IBA-18-105 to determine whether City of Houston was accurately paying death benefits (DBs) and lifetime income benefits (LIBs), and whether claim information was being timely and accurately reported to DWC.
4. The audit examined DB and LIB claims with dates of injury between [REDACTED], and [REDACTED]. DWC identified 44 claims for audit. Twenty claims failed to meet audit selection criteria and were dropped from the audit. The remaining 24 claims were reviewed.

**FAILURE TO PAY ACCURATE INDEMNITY BENEFITS**

5. City of Houston failed to accurately pay DBs in 42% of the claims reviewed (8 out of 19).
6. City of Houston failed to accurately pay LIBs in 20% of the claims reviewed (1 out of 5).
7. All outstanding benefit underpayments identified in the audit were paid by City of Houston, with interest, on or before [REDACTED]. City of Houston issued payments plus interest totaling \$ [REDACTED].

**FAILURE TO TIMELY REPORT CLAIMS DATA**

8. City of Houston failed to timely report LIBs annual increases in 57% of the claims reviewed (13 out of 23).
9. City of Houston failed to timely report a LIBs termination in 100% of the claims reviewed (1 out of 1).
10. City of Houston failed to timely report DBs terminations to DWC in 100% of the claims reviewed (6 out of 6).

**FAILURE TO REPORT ACCURATE CLAIM DATA**

11. City of Houston inaccurately reported claims data to DWC on 20 claims. This inaccurate information caused 20 claims to be erroneously selected for audit.

**ASSESSMENT OF SANCTION**

12. Failure to provide appropriate DBs and LIBs in a manner that is timely and cost-effective is harmful to injured employees and beneficiaries of injured employees and to the Texas workers' compensation system.
13. DWC relies on claims information submitted by the insurance carriers for a variety of purposes, including, but not limited to, providing required information and reports to the legislature; ensuring that insurance carriers comply with the Texas Labor Code and DWC rules; and detecting patterns and practices in actions taken on claims.
14. In assessing the penalty for this case, DWC appropriately and fully considered the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e):
  - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
  - the history and extent of previous administrative violations;
  - the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
  - the penalty necessary to deter future violations;

- whether the administrative violation has a negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - other matters that justice may require, including but not limited to:
    - PBO assessments;
    - the promptness and earnestness of actions to prevent future violations;
    - self-report of the violation;
    - the size of the company or practice;
    - the effect of a sanction on the availability of health care; and
    - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules; and
  - to the extent reasonable, the economic benefit resulting from the prohibited act.
15. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations (three previous violations); the penalty necessary to deter future violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and the history of compliance with electronic data interchange requirements.
16. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the history and extent of previous administrative violations (the previous violations did not have a negative impact on the delivery of benefits to an injured employee); the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act (City of Houston promptly paid the underpaid benefits as identified during the audit); and other matters that justice may require including but not limited to being classified as "high" tier in the 2007, 2010, 2012, 2014, and 2018 PBO assessments.
17. City of Houston acknowledges that DWC and City of Houston have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
18. City of Houston acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

**CONCLUSIONS OF LAW**

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, and 414.002.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. LAB. CODE § 402.00128(b)(7) and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death. Subject to TEX. LAB. CODE § 408.061, the amount of a death benefit is equal to 75 percent of the employee's average weekly wage.
7. City of Houston violated TEX. LAB. CODE § 415.002(a)(22) and TEX. LAB. CODE § 408.181(a) and (b) each time it failed to pay accurate DBs to legal beneficiaries.
8. Pursuant to TEX. LAB. CODE § 408.161(c), LIBs shall be increased at a rate of 3% a year notwithstanding TEX. LAB. CODE § 408.061.
9. City of Houston violated TEX. LAB. CODE § 415.002(a)(22) and TEX. LAB. CODE § 408.161(c) each time it failed to timely report annual LIBs increases.
10. Pursuant to 28 TEX. ADMIN. CODE § 124.2(e)(6), insurance carriers must notify the DWC within 10 days of termination of LIBs or DBs.
11. City of Houston violated TEX. LAB. CODE § 415.002(a)(20) and 28 TEX. ADMIN. CODE § 124.2(e)(6) each time it failed to timely notify the DWC of termination of LIBs and DBs.

**ORDER**

City of Houston is ORDERED to pay an administrative penalty of \$40,000 within 30 days from the date of this Order.

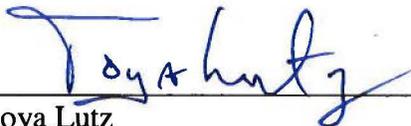
The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



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Cassie Brown *NCTI*  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Toya Lutz  
Staff Attorney  
DWC Enforcement  
Compliance and Investigations  
Texas Department of Insurance



