

**CHAPTER 147. DISPUTE RESOLUTION--AGREEMENTS, SETTLEMENTS,
COMMUTATIONS**

**28 TAC §§147.1, 147.4, 147.5, 147.7, 147.10, AND 147.11
REPEAL OF 28 TAC §§147.1 - 147.3, 147.6, 147.8, AND 147.9**

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts new 28 TAC §147.1; amended §§147.4, 147.5, 147.7, 147.10, and 147.11; and the repeals of §§147.1 - 147.3, 147.6, 147.8, and 147.9, concerning agreements, settlements, and commutations in the dispute resolution process.

New §147.1; amended §§147.4, 147.5, 147.7, 147.10, and 147.11; and the repeals of §§147.1 - 147.3, 147.6, 147.8, and 147.9 are adopted without changes to the proposed text published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2165) and will not be republished.

REASONED JUSTIFICATION. The amendments and repeals condense some sections into others, so the chapter is more organized and easier to navigate; remove some sections and subsections that are outdated and unnecessary; update citations; remove obsolete references; and make plain language updates and agency style editorial changes. The amendments and repeals also remove references to penalties specific to certain violations of agreements and settlements since penalties are addressed in Texas Labor Code Chapter 415 and 28 TAC Chapter 180.

The amended sections, new section, and repeals are necessary to organize the chapter and remove unnecessary rules to update and streamline the dispute resolution process. Some sections were deleted because they repeat the Labor Code or existing rules, or require DWC to perform actions that are unnecessary and not required by statute.

Section 147.1 provides a statutory reference to definitions in the dispute resolution process. The repeal of §147.1 removes the reference to the definitions within the section, which are "agreement" and "settlement" because these definitions exist in Labor Code §401.011. Sections 147.2 and 147.3 move into new §147.1, which replaces the repealed text, to better organize the chapter. Also, §147.1 is renamed to better reflect its purpose.

Section 147.2 provides that agreements and settlements must be on a form prescribed by DWC and specifies which forms to use. DWC has repealed §147.2 and moved former §147.2(a), which requires that an agreement or settlement of the dispute resolution process be on a form prescribed by DWC, to §147.1 to better organize the chapter. Subsections 147.2(b) and 147.2(c), which specify certain DWC forms to use, have been repealed because our website contains these forms, and the website is easy to navigate.

Section 147.3 concerned the execution of agreements and settlements in the dispute resolution process. The existing subsections under §147.3 moved to new §147.1 to better organize the rule, and §147.3 has been repealed.

Section 147.4 concerns filing agreements and effective dates in the dispute resolution process. The amendments remove certain procedures for DWC staff that are not required by statute and do not contribute to the purpose of filing agreements. The amendments also remove §147.4(e), which refers to possible penalties imposed if a breach of an agreement occurs, because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties. The amendments also rename §147.4 to better reflect its purpose.

Section 147.5 concerns settlements in the dispute resolution process, including settlement requirements, effective dates, and procedures for informal settlement conferences. The amendments remove subsections 147.5(b), (c), (d), (e), and (g). Those provisions are more appropriate for internal procedures than a rule. Removing them updates and streamlines the settlement process. Subsection 147.5(h) is removed because it exists in Labor Code §408.005(f). Subsection 147.9(c) regarding settlements moved to new subsection 147.5(c). The amendments also rename §147.5 to better reflect its purpose.

Section 147.6 provided that DWC may reject a settlement by an unrepresented employee pending an informal conference. DWC has repealed §147.6 because it is obsolete. Settlements under old law are now covered under Chapter 56 of this title (relating to Structured Compromised Settlement Agreements).

Section 147.7 concerns the effect of previously entered decisions and orders on agreements and settlements in the dispute resolution process. The amendments rename §147.7 to better reflect its purpose.

Section 147.8 provided the circumstances under which a party can withdraw from a settlement. Section 147.8 has been repealed because it repeats Labor Code subsection 408.005(h).

Section 147.9 concerned the requirements for agreements and settlements in the dispute resolution process. Repealing §147.9 removed subsections (a) and (b) because they repeat

the statute. Subsection 147.9(c), regarding settlements, has been moved to subsection 147.5(c) to better organize the rule.

Section 147.10 concerns the commutation of impairment income benefits. The amendments to §147.10 remove subsection (a) because it exists in Labor Code §408.128. Subsection (c) is removed because the DWC form already provides a warning to the employee that commutation terminates the employee's entitlement to additional income benefits, and it exists in Labor Code §408.128. Subsection (d) is removed because it is unnecessary. Subsection (d) states that the employee may contact DWC to get or verify the information required to be included in a request to commute impairment benefits. Employees may contact DWC to get or verify this information without a rule stating so. Therefore, it is unnecessary. The amendments also rename the section to better reflect its purpose.

Section 147.11 concerns notifications to DWC of proposed judgments and settlements within the dispute resolution process. The amendments to §147.11 update the language in subsection (b) and remove subsections (a) and (c) because they exist in Labor Code §410.258. The amendments also remove subsection (d) regarding penalties because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties.

In addition, the adopted amendments to Chapter 147 include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and improve the rule's clarity.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two written comments, and no oral comments. Commenters in support of the proposal were: Office of Injured Employee Counsel (OIEC) and Liberty Mutual. DWC did not receive comments against the proposal.

Comment on Chapter 147. OIEC commented that they support the proposed amendments.

Agency Response to Comment on Chapter 147. DWC appreciates the comment.

Comment on Chapter 147. Liberty Mutual commented that the changes to the rule are good, making the chapter clearer and should help all parties better understand the process.

Agency Response to Comment on Chapter 147. DWC appreciates the comment.

CHAPTER 147. DISPUTE RESOLUTION--AGREEMENTS, SETTLEMENTS, COMMUTATIONS.

REPEAL OF 28 TAC §§147.1 - 147.3, 147.6, 147.8, AND 147.9.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeals of 28 TAC §§147.1 - 147.3, 147.6, 147.8, and 147.9 under Labor Code §§401.011, 408.005, 410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §401.011 provides definitions used in workers' compensation.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some

disputed issues by agreement or in a settlement, the benefit review officer must reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

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.

§147.1. Definitions.

§147.2. Form.

§147.3. Execution.

§147.6. Settlement Conference.

§147.8. Withdrawal from Settlement.

§147.9. Requirements for Agreements and Settlements.

**CHAPTER 147. DISPUTE RESOLUTION--AGREEMENTS, SETTLEMENTS,
COMMUTATIONS.**

28 TAC §§147.1, 147.4, 147.5, 147.7, 147.10, AND 147.11.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts new 28 TAC §147.1 and amendments to §§147.4, 147.5, 147.7, 147.10, and 147.11 under Labor Code §§408.005, 408.128, 410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §408.128 provides that an employee may elect to commute the remainder of the impairment income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80% of the employee's average weekly wage. An employee who elects to commute impairment income benefits is not entitled to additional income benefits for the compensable injury.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer must reduce

the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

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.

§147.1. Form and Execution.

(a) A settlement or a written agreement must be on a form prescribed by the division.

(b) In addition to the parties, the employee's representative, if any, must sign the written agreement or settlement.

(c) Unless the division finds that an extraordinary circumstance applies, an employee's representative must not sign a written agreement or settlement on behalf of the employee.

(d) The insurance carrier's representative must sign a written agreement or settlement as the agent of the insurance carrier, and the insurance carrier will be bound by the written agreement or settlement.

§147.4. Agreements: Filing and Effective Dates.

(a) An agreement may be reduced to writing and sent to the division. The agreement is effective and binding on the date the division approves it.

(b) An oral agreement reached during a benefit contested case hearing and preserved in the record is effective and binding on the date made.

(c) A signed written agreement, or one made orally, as provided by subsection (b) of this section, is binding on:

(1) an insurance carrier and a claimant represented by an attorney through the final conclusion of all matters relating to the claim, whether before the division or in court, unless set aside by the division or court on a finding of fraud, newly discovered evidence, or other good and sufficient cause; and

(2) a claimant not represented by an attorney through the final conclusion of all matters relating to the claim while the claim is pending before the division, unless set aside by the division for good cause.

§147.5. Settlements: Requirements, Effective Dates, and Informal Settlement Conferences.

(a) A settlement must be sent to the division.

(b) The division may approve or reject it before the 16th day after the date the settlement is submitted to the division.

(c) A settlement must:

(1) establish that the insurance carrier is liable for the claim;

(2) establish that the claim is compensable;

(3) establish that the employee is entitled to benefits;

(4) incorporate by reference all prior oral and written agreements between the parties; and

(5) state that a final resolution has been reached on all issues in the claim, and that the parties waive their rights to subsequent division proceedings, other than those necessary to resolve medical benefit disputes or to enforce compliance with the terms of the settlement.

§147.7. Agreements and Settlements: Effect on Previously Entered Decisions and Orders.

(a) A written agreement on one or more disputed issues addressed in a presiding officer's decision or order, including an interlocutory order, sets aside the decision or

order, as it relates to the agreement, on the date the agreement is approved by the presiding officer.

(b) A settlement filed before a presiding officer's decision becomes final sets aside a presiding officer's decision or order, except for an interlocutory order, on the date received by the division. If the division rejects the settlement, the decision or order will be immediately reentered.

(c) A settlement sets aside an interlocutory order on the date the settlement becomes effective.

§147.10. Notification to the Division of Proposed Judgments and Settlements.

(a) A request to commute impairment income benefits must:

- (1) be in writing on a form prescribed by the division;
- (2) state the date the employee reached maximum medical improvement, the impairment rating, and the employee's weekly impairment income benefit;
- (3) be sent to the insurance carrier; and
- (4) be filed with the division.

(b) The insurance carrier must send a notice of approval or denial of the request to the employee no later than 14 days after receiving the request. A notice of approval must include payment of the commuted impairment income benefits. A notice of denial must include the insurance carrier's reasons for denial. A copy of the notice must be filed with the division.

(c) If the insurance carrier denies the request, the employee may request the division to schedule a benefit review conference to resolve the issue, as provided by §141.1 of this title (relating to Form and Execution).

§147.11. Notification to Division of Proposed Judgments and Settlements. The insurance carrier or its representative must file a copy of a final judgment or settlement with the division no later than the 10th day after a court approves the agreement or settlement.

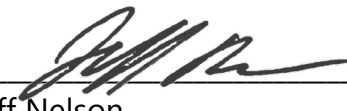
CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on June 18, 2024.



Kara Mace
General Counsel
TDI, Division of Workers' Compensation

The commissioner adopts new 28 TAC §147.1; amended 28 TAC §§147.4, 147.5, 147.7, 147.10, and 147.11; and the repeals of §§147.1 - 147.3, 147.6, 147.8, and 147.9.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2024-8693