

DWC - 07 - 0148

TITLE 28. INSURANCE
Part 2. Texas Department of Insurance,
Division of Workers' Compensation
Chapter 131. Benefits - Lifetime Income Benefits

Adopted Sections
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CHAPTER 131. Benefits – Lifetime Income Benefits 28 TAC §131.1

1. INTRODUCTION. The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division), adopts the repeal of §131.1, concerning initiation of lifetime income benefits (LIBs). The repeal of this section is adopted without changes to the proposal published in the November 2, 2007 issue of the *Texas Register* (32 TexReg 7856), and as corrected in the proposal published in the November 16, 2007 issue of the *Texas Register* (32 TexReg 8358).

2. REASONED JUSTIFICATION. The repeal of this section is necessary for the Division to conform the provisions related to the initiation of lifetime income benefits to the Texas Court of Appeals' ruling in *Mid-Century Insurance Company v. Texas Workers' Compensation Commission*, 183 S.W.3d 754 (Tex.App – Austin 2006 *no writ*). The *Mid-Century* case held that lifetime income benefits are to be paid from the date an injured employee is determined to be entitled to lifetime income benefits but not prior to that date.

3. HOW THE SECTIONS WILL FUNCTION. The adoption of the repeal will allow the Division to conform the provisions related to the initiation of lifetime income benefits to the *Mid-Century* ruling. The repeal will also clarify for stakeholders precisely when lifetime income benefits begin to accrue and are payable. This repealed rule will not be

replaced with another rule. Labor Code §408.161 already provides that lifetime income benefits are paid until the death of an employee as a result of one of seven specified injuries. The remaining provisions of the rule are merely duplicative of the Texas Labor Code or other Division rules.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

General comments.

Comment: Commenters supported the repeal of §131.1.

Agency Response: The Division agrees the repeal of §131.1 is necessary. The repeal will assist in conforming provisions related to the initiation of lifetime income benefits to the court's ruling in *Mid-Century Insurance Company v. Texas Workers' Compensation Commission*, 183 S.W.3d 754 (Tex.App – Austin 2006 *no writ*).

Comment: A commenter recommends the Division clarify that the repeal is not retroactive and that a carrier may not seek dispute resolution in cases where lifetime income benefits are being paid and then seek reimbursement from the subsequent injury fund. The commenter further recommends that if the proposed repeal is effective retroactively, the Division should state the specific date it becomes effective.

Agency Response: The Division agrees that the repeal of the rule is not retroactive and will become effective 20 days after the date on which the Commissioner's adoption is filed with the Secretary of State. Although adoption of the repeal will not be effective retroactively, the adopted repeal is intended to conform the rule to the current state of

the law as determined by the Mid-Century ruling filed February 24, 2006. The other repealed provisions of §131.1 included unnecessary language that is reiterated or referenced in the Labor Code or addressed in other Division rules but has no new affect on the law.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For: Insurance Council of Texas and Boeing.

For with changes: One individual.

Against: None.

6. STATUTORY AUTHORITY. The repeal is adopted under Labor Code §§408.161, 402.00111 and 402.061. Section 408.161 provides that lifetime income benefits are paid until the death of an employee for (1) total and permanent loss of sight in both eyes; (2) loss of both feet at or above the ankle; (3) loss of both hands at or above the wrist; (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist; (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; (6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or (7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority

of either both hands or one hand and the face. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

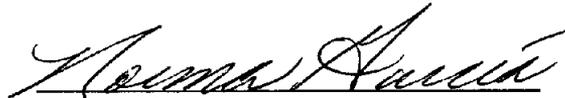
7. TEXT.

CHAPTER 131. Benefits – Lifetime Income Benefits

§131.1. Initiation of Lifetime Income Benefits

CERTIFICATION. This agency certifies that the adopted section has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on December 19, 2007.



Norma Garcia
General Counsel
Texas Department of Insurance
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the repeal of §131.1, concerning lifetime income benefits, is adopted.

AND IT IS SO ORDERED.



ALBERT BETTS
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:



Norma Garcia
General Counsel

COMMISSIONER'S ORDER NO. DWC-07-0148