



TEXAS DEPARTMENT OF INSURANCE

General Counsel Division - Legal Section (MS-4D)

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memo

To: Workers' Compensation System Participants

From: Emily McCoy, Associate General Counsel, Office of General Counsel

Date: June 20, 2018

RE: Proposal: Amended 28 TAC § 180.26, regarding criteria for imposing, recommending and determining sanctions; other remedies, and amended §180.8, regarding notices of violation; notices of hearing; default judgments

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) is accepting public comments on the proposed amended 28 Texas Administrative Code (TAC) §180.26 and §180.8. The public comment deadline has been extended to July 18, 2018.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. Central time on July 18, 2018. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to Rulecomments@tdi.texas.gov or by mail to:

Texas Department of Insurance, Division of Workers' Compensation
Maria Jimenez
Workers' Compensation Counsel MS – 4D
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Austin, Texas 78744-1645

If a hearing is held, TDI-DWC will consider written comments and public testimony presented at the hearing.

The proposal was published in the May 18, 2018 issue of the *Texas Register* and is available at www.sos.state.tx.us/texreg/index.shtml. A courtesy copy is also available on the TDI website at www.tdi.texas.gov/wc/rules/2018rules.html.

The TDI-DWC proposes amendments to 28 TAC §180.26 and §180.8 to implement Senate Bill (SB) 1895, 85th Legislature, Regular Session. SB 1895 revised Texas Labor Code §415.021(c) by requiring the commissioner to consider 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. SB 1895 also added Texas Labor Code § 415.021(c-1) which requires the commissioner to adopt rules to communicate to the person the subject of a penalty information about the penalty, including: (1) the relevant statute or rule violated; (2) the conduct that gave rise to the violation; and (3) the factors considered in determining the penalty. By including the factors considered in determining the penalty, the proposed amendments necessarily incorporate the additional factors required by SB 1895 when assessing an administrative penalty.