

LABOR CODE

TITLE 5. WORKERS' COMPENSATION

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

CHAPTER 401. GENERAL PROVISIONS

SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

Sec. 401.001. SHORT TITLE. This subtitle may be cited as the Texas Workers' Compensation Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.003. ACTIVITIES OF THE STATE AUDITOR. (a) The division is subject to audit by the state auditor in accordance with Chapter 321, Government Code. The state auditor may audit:

(1) the structure and internal controls of the division;

(2) the level and quality of service provided by the division to employers, injured employees, insurance carriers, self-insured governmental entities, and other participants;

(3) the implementation of statutory mandates by the division;

(4) employee turnover;

(5) information management systems, including public access to nonconfidential information;

(6) the adoption and implementation of administrative rules by the commissioner; and

(7) assessment of administrative violations and the penalties for those violations.

(b) Nothing in this section limits the authority of the state auditor under Chapter 321, Government Code.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 7.02, eff. June 17, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.002, eff. September 1, 2005.

SUBCHAPTER B. DEFINITIONS

Sec. 401.011. GENERAL DEFINITIONS. In this subtitle:

(1) "Adjuster" means a person licensed under Chapter 4101, Insurance Code.

(2) "Administrative violation" means a violation of this subtitle, a rule adopted under this subtitle, or an order or decision of the commissioner that is subject to penalties and sanctions as provided by this subtitle.

(3) "Agreement" means the resolution by the parties to a dispute under this subtitle of one or more issues regarding an injury, death, coverage, compensability, or compensation. The term does not include a settlement.

(4) "Alien" means a person who is not a citizen of the United States.

(5) "Benefit" means a medical benefit, an income benefit, a death benefit, or a burial benefit based on a compensable injury.

(5-a) "Case management" means a collaborative process of assessment, planning, facilitation, and advocacy for options and services to meet an individual's health needs through communication and application of available resources to promote quality, cost-effective outcomes.

(6) "Certified self-insurer" means a private employer granted a certificate of authority to self-insure, as authorized by this subtitle, for the payment of compensation.

(7) "Child" means a son or daughter. The term includes an adopted child or a stepchild who is a dependent of the employee.

(8) "Commissioner" means the commissioner of workers' compensation.

(9) "Commute" means to pay in a lump sum.

(10) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.

(11) "Compensation" means payment of a benefit.

(12) "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that

is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of the transportation are under the control of the employer; or

(iii) the employee is directed in the employee's employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

(12-a) "Credentialing" has the meaning assigned by Chapter [1305](#), Insurance Code.

(13) "Death benefit" means a payment made under this subtitle to a legal beneficiary because of the death of an employee.

(13-a) "Department" means the Texas Department of Insurance.

(14) "Dependent" means an individual who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood if the individual is eligible for distribution of benefits under Chapter [408](#).

(15) "Designated doctor" means a doctor appointed by mutual agreement of the parties or by the division to recommend a resolution of a dispute as to the medical condition of an injured employee.

(16) "Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

(16-a) "Division" means the division of workers' compensation of the department.

(17) "Doctor" means a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(18) "Employer" means, unless otherwise specified, a person who makes a contract of hire, employs one or more employees, and has workers' compensation insurance coverage. The term includes a governmental entity that self-insures, either individually or collectively.

(18-a) "Evidence-based medicine" means the use of current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

(19) "Health care" includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) a prescription drug, medicine, or other remedy; and

(F) a medical or surgical supply, appliance,

brace, artificial member, or prosthetic or orthotic device, including the fitting of, change or repair to, or training in the use of the appliance, brace, member, or device.

(20) "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(21) "Health care practitioner" means:

(A) an individual who is licensed to provide or render and provides or renders health care; or

(B) a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor.

(22) "Health care provider" means a health care facility or health care practitioner.

(22-a) "Health care reasonably required" means health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with:

(A) evidence-based medicine; or

(B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

(23) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent.

(24) "Impairment rating" means the percentage of permanent impairment of the whole body resulting from a compensable injury.

(25) "Income benefit" means a payment made to an employee for a compensable injury. The term does not include a medical benefit, death benefit, or burial benefit.

(25-a) "Independent review organization" has the same meaning as in Section [1305.004\(a\)\(11\)](#), Insurance Code.

(26) "Injury" means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease.

(27) "Insurance carrier" means:

- (A) an insurance company;
- (B) a certified self-insurer for workers' compensation insurance;
- (C) a certified self-insurance group under Chapter 407A; or
- (D) a governmental entity that self-insures, either individually or collectively.

(28) "Insurance company" means a person authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(29) "Legal beneficiary" means a person entitled to receive a death benefit under this subtitle.

(30) "Maximum medical improvement" means the earlier of:

- (A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;

- (B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or

- (C) the date determined as provided by Section 408.104.

(31) "Medical benefit" means payment for health care reasonably required by the nature of a compensable injury and intended to:

- (A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of an occupational disease before and after the employee knew or should have known the nature of the disability and its relationship to the employment;

- (B) promote recovery; or

- (C) enhance the ability of the employee to return to or retain employment.

(31-a) "Network" or "workers' compensation health care

network" means an organization that is:

(A) formed as a health care provider network to provide health care services to injured employees;

(B) certified in accordance with Chapter 1305, Insurance Code, and rules of the commissioner of insurance; and

(C) established by, or operates under contract with, an insurance carrier.

(32) "Objective" means independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests, or signs confirmable by physical examination.

(33) "Objective clinical or laboratory finding" means a medical finding of impairment resulting from a compensable injury, based on competent objective medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the subjective symptoms perceived by the employee.

(34) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

(34-a) "Orthotic device" means a custom-fitted or custom-fabricated medical device that is applied to a part of the human body to correct a deformity, improve function, or relieve symptoms related to a compensable injury or occupational disease.

(35) "Penalty" means a fine established by this subtitle.

(35-a) "Prosthetic device" means an artificial device designed to replace, wholly or partly, an arm or leg.

(36) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment.

(37) "Representative" means a person, including an

attorney, authorized by the commissioner to assist or represent an employee, a person claiming a death benefit, or an insurance carrier in a matter arising under this subtitle that relates to the payment of compensation.

(38) "Research center" means the research functions of the Texas Department of Insurance required under Chapter 405.

(38-a) "Retrospective review" means the utilization review process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

(39) "Sanction" means a penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of this subtitle or a rule, order, or decision of the commissioner.

(40) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be resolved under the terms of this subtitle.

(41) "Subjective" means perceivable only by an employee and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

(42) "Treating doctor" means the doctor who is primarily responsible for the employee's health care for an injury.

(42-a) "Utilization review" has the meaning assigned by Chapter 4201, Insurance Code.

(42-b) "Utilization review agent" has the meaning assigned by Chapter 4201, Insurance Code.

(42-c) "Violation" means an administrative violation subject to penalties and sanctions as provided by this subtitle.

(43) "Wages" includes all forms of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration.

(44) "Workers' compensation insurance coverage"

means:

(A) an approved insurance policy to secure the payment of compensation;

(B) coverage to secure the payment of compensation through self-insurance as provided by this subtitle; or

(C) coverage provided by a governmental entity to secure the payment of compensation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 275, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.003, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 133 (H.B. 1003), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 147 (S.B. 458), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 13, eff. September 1, 2009.

Sec. 401.012. DEFINITION OF EMPLOYEE. (a) In this subtitle, "employee" means each person in the service of another under a contract of hire, whether express or implied, or oral or written.

(b) The term "employee" includes:

(1) an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business;

(2) a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer; and

(3) a person who is a trainee under the Texans Work

program established under Chapter 308.

(c) The term "employee" does not include:

(1) a master of or a seaman on a vessel engaged in interstate or foreign commerce; or

(2) a person whose employment is not in the usual course and scope of the employer's business.

(d) A person who is an employee for the purposes of this subtitle and engaged in work that otherwise may be legally performed is an employee despite:

(1) a license, permit, or certificate violation arising under state law or municipal ordinance; or

(2) a violation of a law regulating wages, hours, or work on Sunday.

(e) This section may not be construed to relieve from fine or imprisonment any individual, firm, or corporation employing or performing work or a service prohibited by a statute of this state or a municipal ordinance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 456, Sec. 6, eff. Sept. 1, 1997.

Sec. 401.013. DEFINITION OF INTOXICATION. (a) In this subtitle, "intoxication" means the state of:

(1) having an alcohol concentration to qualify as intoxicated under Section 49.01(2), Penal Code; or

(2) not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(A) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code;

(C) a dangerous drug, as defined by Section 483.001, Health and Safety Code;

(D) an abusable glue or aerosol paint, as defined by Section 485.001, Health and Safety Code; or

(E) any similar substance, the use of which is

regulated under state law.

(b) The term "intoxication" does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance:

(1) taken under and in accordance with a prescription written for the employee by the employee's doctor; or

(2) listed under Subsection (a) by inhalation or absorption incidental to the employee's work.

(c) On the voluntary introduction into the body of any substance listed under Subsection (a)(2)(B), based on a blood test or urinalysis, it is a rebuttable presumption that a person is intoxicated and does not have the normal use of mental or physical faculties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.48, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.004, eff. September 1, 2005.

Sec. 401.014. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this subtitle, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this subtitle made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 6, eff. September 1, 2015.

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Sec. 401.021. APPLICATION OF OTHER ACTS. Except as otherwise provided by this subtitle:

(1) a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by the following subchapters and sections of Chapter 2001, Government Code:

(A) Subchapters A, B, D, E, G, and H, excluding Sections 2001.004(3) and 2001.005;

(B) Sections 2001.051, 2001.052, and 2001.053;

(C) Sections 2001.056 through 2001.062; and

(D) Section 2001.141(c);

(2) a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by Subchapters A and B, Chapter 2002, Government Code, excluding Sections 2002.001(3) and 2002.023;

(3) Chapter 551, Government Code, applies to a proceeding under this subtitle, other than:

(A) a benefit review conference;

(B) a contested case hearing;

(C) a proceeding of the appeals panel;

(D) arbitration; or

(E) another proceeding involving a determination on a workers' compensation claim; and

(4) Chapter 552, Government Code, applies to a workers' compensation record of the division, the department, or the office of injured employee counsel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.92, 5.95(82), (88), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.005, eff. September 1, 2005.

Sec. 401.022. DISCRIMINATION PROHIBITED. (a) This subtitle may not be applied to discriminate because of race, sex,

national origin, or religion.

(b) This section does not prohibit consideration of an anatomical difference in application of the impairment guidelines under Chapter 408 in rating an injury or a disease such as, but not limited to, breast cancer or an inguinal hernia. If an impairment rating assigns different values to the same injury for males and females, the higher value shall be applied.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.023. INTEREST OR DISCOUNT RATE. (a) Interest or a discount under this subtitle shall be computed at the rate provided by this section.

(b) The division shall compute and publish the interest and discount rate quarterly, using the treasury constant maturity rate for one-year treasury bills issued by the United States government, as published by the Federal Reserve Board on the 15th day preceding the first day of the calendar quarter for which the rate is to be effective, plus 3.5 percent. For this purpose, calendar quarters begin January 1, April 1, July 1, and October 1.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 2, eff. Oct. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 15.01, eff. June 17, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.006, eff. September 1, 2005.

Sec. 401.024. TRANSMISSION OF INFORMATION. (a) In this section, "electronic transmission" means the transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method.

(b) Notwithstanding another provision of this subtitle that specifies the form, manner, or procedure for the transmission of specified information, the commissioner by rule may permit or require the use of an electronic transmission instead of the specified form, manner, or procedure. If the electronic transmission of information is not authorized or permitted by rule, the transmission of that information is governed by any applicable

statute or rule that prescribes the form, manner, or procedure for the transmission, including standards adopted by the Department of Information Resources.

(c) The commissioner may designate and contract with one or more data collection agents to fulfill the data collection requirements of this subtitle. To qualify as a data collection agent, an organization must demonstrate at least five years of experience in data collection, data maintenance, data quality control, accounting, and related areas.

(d) The commissioner may prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission, including requirements related to security, confidentiality, accuracy, and accountability.

(e) A data collection agent may collect from a reporting insurance carrier, other than a governmental entity, any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier.

(f) A reporting insurance carrier, other than a governmental entity, shall pay the fee to the data collection agent for the data collection services provided by the data collection agent.

(g) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 954, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.007, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 410 (S.B. 800), Sec. 1, eff. June 17, 2011.

Sec. 401.025. REFERENCES TO COMMISSION AND EXECUTIVE DIRECTOR. (a) A reference in this code or other law to the Texas Workers' Compensation Commission or the executive director of that commission means the division or the commissioner as consistent with the respective duties of the commissioner and the division under this code and other workers' compensation laws of this state.

(b) A reference in this code or other law to the executive

director of the Texas Workers' Compensation Commission means the commissioner.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.008, eff. September 1, 2005.

Sec. 401.026. APPLICABILITY TO CERTAIN EMERGENCY RESPONSE PERSONNEL. For purposes of this subtitle, the travel of a firefighter or emergency medical personnel en route to an emergency call is considered to be in the course and scope of the firefighter's or emergency medical personnel's employment.

Added by Acts 2015, 84th Leg., R.S., Ch. 365 (H.B. 2771), Sec. 1, eff. September 1, 2015.