
Options	<p>The ESC shall extend workers' compensation benefits to its employees by choosing one of the following options:</p> <ol style="list-style-type: none">1. Becoming a self-insurer.2. Providing insurance under workers' compensation insurance contracts or policies.3. Entering into interlocal agreements with other political subdivisions providing for self-insurance. <p><i>Labor Code 504.011</i></p>
Definition	<p>For the purposes of this policy, "employee" means every person in the service of the ESC who has been employed as provided by law or for whom the ESC provides optional coverage. No person paid on a basis other than by the hour, day, week, month, or year shall be considered an "employee." <i>Labor Code 504.001, .014</i></p>
Optional Coverages	<p>By majority vote of the board, an ESC may cover elected officials as employees. <i>Labor Code 504.012(b)</i></p>
Notice	<p>The ESC shall notify the Texas Department of Insurance (TDI) of the method by which ESC employees shall receive benefits, the approximate number of employees covered, and the estimated amount of payroll. Notice of the provision for workers' compensation benefits and the effective date of the coverage shall be given to the ESC's employees. <i>Labor Code 504.018</i></p>
Report to Carrier	<p>The ESC shall provide to the ESC's insurance carrier a report on each:</p>
First Report of Injury	<ol style="list-style-type: none">1. Death;2. On-the-job injury that results in an employee's absence from work for more than one day; and3. Occupational disease of which the ESC has received notice of injury or has knowledge. "Knowledge" means receipt of written or verbal information regarding diagnosis or diagnosis through examination or testing by a doctor employed by the ESC.
	<p>The report shall be in the form, format, and manner, and shall contain the information prescribed by the TDI and be filed no later than the eighth day after the employee's absence from work for more than one day or upon first knowledge of absence for more than one day. The ESC shall maintain a record of the date the report of injury is filed with the insurance carrier.</p>
Copy to Employee	<p>A copy of the report of injury, including a summary of the employee's rights and responsibilities under the Texas Labor Code, shall</p>

be sent to the injured employee at the time the report is filed with the insurance carrier. The summary shall be written in plain language in English and Spanish, or in English and any other language common to the employee, and shall contain the words prescribed by the TDI.

Notice of Modified
Duty Program

The ESC shall, on the written request of the employee, a doctor, the insurance carrier, or the TDI, notify the employee, the employee's treating doctor if known to the ESC, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the ESC. If those opportunities or that program exists, the ESC shall identify the ESC's contact person and provide other information to assist the doctor, the employee, and the insurance carrier to assess modified duty or return-to-work options.

Supplemental
Report of Injury

A supplemental report shall be filed with the ESC's insurance carrier and provided to the employee within ten days after:

1. The end of each pay period in which the employee has a change in earnings, including all post-injury earnings as defined in 28 Administrative Code 129 [see Offsetting Paid Leave Against Workers' Compensation Income Benefits, below], as a result of the injury; or
2. The employee resigns or is terminated.

The ESC's duty to file supplemental reports continues until the employee reaches "maximum medical improvement" or is no longer employed by the ESC and the ESC has made the required report.

For injuries that require the filing of a First Report of Injury, the ESC shall file the supplemental report with the ESC's insurance carrier and provide a copy to the employee within three days after:

1. The employee begins losing time from work as a result of the injury;
2. The employee returns to work; or
3. The employee, after returning to work, experiences an additional day of disability as a result of the injury.

The ESC shall maintain a record of the date the supplemental report is filed with the carrier and provided to the employee.

Labor Code 409.005; 28 TAC 120.2, .3

**Injury and
Occupational
Disease Report**

The ESC's report of injury filed in accordance with Texas Labor Code 409.005 [see First Report of Injury, above] shall satisfy the

ESC's requirement to file an injury and occupational disease report under Texas Labor Code 411.032. *28 TAC 160.3*

Wage Reports

The ESC is required to timely file a complete wage statement on a form prescribed by the TDI.

The wage statement shall be filed with the carrier, the claimant, and any claimant representative. The wage statement should be filed and received within 30 days of the earliest of:

1. The date the ESC is notified that the employee is entitled to income benefits; or
2. The date of the employee's death as a result of a compensable injury.

A subsequent wage statement shall be filed with the carrier, the claimant, and any claimant representative within seven days of a change in any wage information provided on the previous wage statement. A wage statement shall also be filed with the TDI within seven days of receiving a request from the TDI.

28 TAC 120.4(a)

Ombudsman Program

The ESC shall notify its employees, in the manner prescribed by the Office of Injured Employee Counsel, of the ombudsman program to assist injured workers and persons claiming death benefits in obtaining benefits under the Texas Workers' Compensation Act.

An ESC that employs first responders, as defined in Labor Code 504.055, or supervises volunteer first responders shall notify the first responders, in the manner prescribed by the Office of Injured Employee Counsel, of the first responder liaison, who shall assist an injured first responder during a workers' compensation administrative dispute resolution process.

Labor Code 404.153

Reports of Safety Violations

The ESC shall notify its employees, in the manner prescribed by the TDI, of the 24-hour-a-day toll-free telephone system for reporting violations of an occupational health or safety law. The ESC shall not suspend, terminate, or otherwise discriminate against an employee for making a good faith report of a violation of an occupational health or safety law. *Labor Code 411.081, .082*

Relation to Paid Leave

Once temporary income benefits (TIBs) accrue, an injured employee is entitled to TIBs to compensate the employee for lost wages due to the compensable injury during a period in which the employee has a disability and has not reached maximum medical improvement.

“Lost wages” are the difference between the employee’s gross average weekly wage (AWW) and the employee’s gross post-injury earnings (PIE). If the employee’s PIE equals or exceeds the employee’s AWW, the employee has no lost wages.

“Post-injury earnings” includes, among several other components:

1. The value of any full days of accrued sick or annual leave that the employee voluntarily elects to use after the date of injury; and
2. The value of any partial days of accrued or annual leave that the employee has voluntarily elected to use after the date of injury that, when combined with the employee’s TIBs, exceeds the AWW.

28 TAC 129.2

Offsetting Paid
Leave Against
Workers’
Compensation
Income Benefits

The board may provide that while an employee is receiving workers’ compensation benefits, the employee may elect to receive previously accrued sick leave benefits in an amount equal to the difference in the workers’ compensation benefits and the weekly compensation the employee was receiving before the injury that resulted in the claim, with a proportionate deduction in the employee’s sick leave balance. [See DEB(LOCAL)] *Labor Code 504.052*

Unless the board adopts the option provided by Labor Code 504.052, sick leave benefits and annual leave benefits shall not be offset against benefits paid under the Workers’ Compensation Law. *Atty. Gen. Op. JC-0040 (1999)*

**Prohibited
Discrimination**

A person may not discharge or in any other manner discriminate against an employee because the employee has:

1. Filed a workers’ compensation claim in good faith.
2. Hired a lawyer to represent the employee in a claim.
3. Instituted or caused to be instituted in good faith a proceeding under the Texas Workers’ Compensation Act.
4. Testified or is about to testify in a proceeding under the Texas Workers’ Compensation Act.

Labor Code 451.001

A person who violates the above provision is liable for reasonable damages incurred by the employee as a result of the violation, and an employee discharged in violation of the above provision is entitled to reinstatement in the former position of employment. The burden of proof in a proceeding alleging violation of the above provision is on the employee. *Labor Code 451.002*

Claims by First
Responder

A first responder, as defined in Government Code 421.095, who alleges a violation of Labor Code 451.001 [at Prohibited Discrimination, above] by an ESC that employs the first responder may sue the ESC for relief provided by Labor Code Chapter 451. Sovereign or governmental immunity from suit is waived and abolished to the extent of liability created by Chapter 451. To the extent a person has official or individual immunity from a claim for damages, these provisions do not affect that immunity. *Labor Code 451.0025*

Note: A retaliatory discharge claim may not be brought against a political subdivision without its consent. Labor Code Chapter 451 notwithstanding, current state law does not waive a political subdivision's immunity and provide consent. *Labor Code 504.053(e); Travis Cent. Appraisal Dist. v. Norman, 342 S.W.3d 54 (Tex. 2011)*

Leaves of Absence

The ESC shall not terminate an employee who is on an unpaid leave of absence and receiving workers' compensation benefits, except when the termination is for a legitimate reason independent from the employee's workers' compensation claim. *Atty. Gen. Op. JM-227 (1984)*

An ESC that terminates an employee for violating a reasonable absence-control rule cannot be liable for prohibited discrimination as long as the rule is uniformly enforced. *Continental Coffee Products Co. v. Cazarez, 937 S.W.2d 444 (Tex. 1996)* [See DEB(LEGAL) at Absence Control]