

Options

A political subdivision, including a college district, shall extend workers' compensation benefits to its employees by:

1. Becoming a self-insurer;
2. Providing insurance under a workers' compensation insurance policy; or
3. Entering into an interlocal agreement with other political subdivisions providing for self-insurance.

Labor Code 504.011

Employee

In Labor Code Chapter 504, unless a different meaning is plainly required by the context, "employee" means a person in the service of a political subdivision, including a college district, who has been employed as provided by law, or a person for whom optional coverage is provided under Labor Code 504.012 or 504.013. A person is not an employee and is not entitled to compensation under Chapter 504 if the person:

1. Is in the service of a political subdivision and is paid on a piecework basis other than by the hour, day, week, month, or year; or
2. Performs services that may benefit a political subdivision, or is employed by or under contract with a performer providing those services, but does not receive payment from the political subdivision for the performance of the services, if the services are performed in connection with the operation or production of a musical, vocal, or theatrical performance, or another entertainment event.

Labor Code 504.001, .014

Notice to TDI

A political subdivision, including a college district, shall notify the Texas Department of Insurance (TDI) of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll. *Labor Code 504.018(a)*

Notice to Employees

A political subdivision shall notify its employees of the method by which the employees will receive benefits and the effective date of the coverage. *Labor Code 504.018(b)*

Employers shall post notices in the workplace to inform employees about workers' compensation issues as required by 28 Administrative Code 110.101. These notices shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where each employee is likely to see the notice on a regular basis. The notices shall be printed with a title in at least 26-point bold

type, subject in at least 18-point bold type, and text in at least 16-point normal type, and shall include English, Spanish, and any other language common to the employer's employee population. The text for the notices shall be the text provided by TDI on the sample notice without any additional words or changes. 28 TAC 110.101(e)

Report to Carrier

First Report of
Injury

The employer, including a college district, shall report to the employer's insurance carrier each death, each occupational disease of which the employer has received notice of injury or has knowledge, and each injury that results in more than one day's absence from work for the injured employee. The term "knowledge" includes receipt of written or oral information regarding diagnosis of an occupational disease, or diagnosis of an occupational disease through direct examination or testing by a doctor employed by the employer.

TDI shall prescribe the form, format, and manner of the employer's first report of injury (report). The report shall contain the information required by 28 Administrative Code 120.1(a) (relating to Employer's Record of Injuries), any additional information prescribed by TDI in accordance with the Labor Code 402.00128(b)(10), and the information necessary for an insurance carrier to electronically transmit a first report of injury to TDI. The report shall be filed with the insurance carrier not later than the eighth day after having received notice of or having knowledge of an occupational disease or death, or not later than the eighth day after the employee's absence from work for more than one day due to a work-related injury. A report is filed when personally delivered, mailed, reported via tele-claims, electronically submitted, or sent via facsimile.

The employer shall maintain a record of the date the report of injury is filed with the insurance carrier.

Labor Code 409.005-.006; 28 TAC 120.2(a)-(c), (f)

Copy to Employee

The employer shall provide a written copy of the report and a written copy of the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice of Rights and Responsibilities) adopted by the Public Counsel of the Office of Injured Employee Counsel to the injured employee by personal delivery, mail, electronic submission or facsimile at the time that the report is made with the insurance carrier. The Notice of Rights and Responsibilities shall be in English and Spanish, or in English and any other language common to the employee. The written report may be the report specified in 28 Administrative Code 120.2(b), or at a minimum shall contain the information listed in 28 Administrative Code 120.1(a).

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The employer shall maintain a record of the date the copy of the report of injury and the date the Notice of Rights and Responsibilities were provided to the employee.

Labor Code 409.005(c), (g); 28 TAC 120.2(d), (f)

Notice of Modified
Duty Program

The employer shall, on the written request of the employee, a doctor, the insurance carrier, or TDI, notify the employee, the employee's treating doctor if known to the employer, 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 employer. If those opportunities or that program exists, the employer shall identify the employer'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.
Labor Code 409.005(j)

Supplemental
Report of Injury

As provided in 28 Administrative Code 129.4 relating to adjustment of temporary income benefit amount, the employer shall file the supplemental report of injury, in the form, format and manner prescribed by TDI. The report shall be filed with the employer's 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 reporting all post-injury earnings as that term is used in 28 Administrative Code Chapter 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 employer's duty to file supplemental reports continues until the employee reaches maximum medical improvement (MMI) or is no longer employed by the employer and the employer has made the required report. The employer may contact the insurance carrier for information regarding the employee's MMI status.

For injuries requiring a First Report of Injury, above, unless the information required in this subsection is provided on the first report, the employer shall file the supplemental report with the employer's carrier and provide a copy to the employee within three days after:

1. The employee begins to lose 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(s) of disability as a result of the injury.

The employer shall file the supplemental report of injury with the carrier by personal delivery, telephone, facsimile or electronic

transmission. The employer shall provide a copy of the report to the employee by facsimile or electronic transmission if the employee has identified a personal facsimile number or a personal email address to be used and the employer has the means of sending such a transmission. Otherwise the report shall be provided by personal delivery or sent by mail.

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

Labor Code 409.005(i); 28 TAC 120.3

**Injury and
Occupational
Disease Report**

An employer that has workers' compensation insurance coverage (subscriber) shall file a report of injury with TDI pursuant to Labor Code 411.032. A subscribing employer's report of injury filed in accordance with Labor Code 409.005 and applicable TDI rules satisfies that employer's requirement to file an injury and occupational disease report under Labor Code 411.032, unless TDI requests that the employer file a report with TDI for a specific injury. *28 TAC 160.3(a)*

Wage Reports

The employer is required to timely file a complete wage statement in the form and manner prescribed by TDI. The term "filed" means "received."

The wage statement shall be filed with the carrier, the claimant, and the claimant's representative, if any, within 30 days of the earliest of:

1. The date the employer 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 the claimant's representative, if any, within seven days of a change in any wage information provided on the previous wage statement, such as because the employer has discontinued providing a nonpecuniary wage that was originally continued after the injury. A wage statement shall be filed with TDI within seven days of receiving a request from TDI.

28 TAC 120.4(a)

Record of Injuries

An employer shall keep a record of all injuries and fatal injuries to employees as reported to an employer, or otherwise made known to an employer. The record shall include:

1. The name, address, date of birth, sex, wage, length of service, social security number, and occupation of the employee;

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2. The reported cause and nature of the injury, the part of the body affected, and a description of any equipment involved;
3. The date, time, and location where the injury occurred;
4. The name of the employee's immediate supervisor;
5. The names of any witnesses (if known);
6. The name and address of the treating health-care provider, if known; and
7. Any voluntary benefits paid by the employer under the Texas Workers' Compensation Act.

These records shall be open to inspection by TDI, upon at least five working days' notice to the employer, at a reasonable time and place. The employer shall retain a record of an injury until the expiration of five years from the last day of the year in which the injury occurred.

28 TAC 120.1(a)–(c)

**Ombudsman
Program**

The Office of Injured Employee Counsel shall maintain an ombudsman program as provided by Labor Code Chapter 404, Subchapter D to assist injured employees and persons claiming death benefits in obtaining benefits under the Texas Workers' Compensation Act.

Each employer, including each college district, shall notify its employees of the ombudsman program. This notice shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where each employee is likely to see the notice on a regular basis. This notice of the Ombudsman Program shall be publicly posted in English, Spanish, and any other language that is common to the employer's employees. The notice shall be printed with a title in at least 15-point bold type and text in at least 14-point normal type. The text of the notice shall be as described by 28 Administrative Code 276.5(c) without any additional words or changes.

Labor Code 404.151(a), .153(a); 28 TAC 276.5(a)–(c)

**First Responder
Liaison**

An employer that employs first responders or supervises volunteer first responders shall notify the first responders of the first responder liaison. The notice shall be posted in the personnel office and in the workplace where employees or volunteers are likely to read the notice on a regular basis. The notice shall be printed with a title in at least 15-point bold type and text in at least 14-point normal type, in English and Spanish or in English and any other language common to the employer's affected employee population.

The text of the notice shall be contained in 28 Administrative Code 276.5(d)(3) without any additional words or changes.

"First responder" means:

1. An individual employed by a political subdivision of this state who is:
 - a. A peace officer under Code of Criminal Procedure Article 2.12;
 - b. A person licensed under Health and Safety Code Chapter 773, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or
 - c. A firefighter subject to certification by the Texas Commission on Fire Protection under Government Code Chapter 419, whose principal duties are firefighting and aircraft crash and rescue; or
2. An individual covered under Labor Code 504.012(a) who is providing volunteer services to a political subdivision of this state as:
 - a. A volunteer firefighter, without regard to whether the volunteer firefighter is certified under Government Code Chapter 419, Subchapter D; or
 - b. An emergency medical services volunteer, as defined by Health and Safety Code 773.003.

Labor Code 404.153(a-1), 504.055(a); 28 TAC 276.5(d)

**Reports of Safety
Violations**

TDI shall maintain a 24-hour toll-free telephone service in English and Spanish for reports of violations of occupational health or safety law. Each employer, including each college district, shall notify its employees of this service.

These notices shall be posted in the personnel office, if the employer has a personnel office, and in the workplace where each employee is likely to see the notice on a regular basis. The notices shall be printed with a title in at least 26-point bold type, subject in at least 18-point bold type, and text in at least 16-point normal type, and shall include English, Spanish, and any other language common to the employer's employee population. The text for the notices shall be the text provided by TDI on the sample notice without any additional words or changes.

An employer may not suspend or terminate the employment of or otherwise discriminate against an employee for using the telephone service to report in good faith an alleged violation of an occupational health or safety law.

Labor Code 411.081-.082; 28 TAC 110.101(e)

**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.

PIE shall include, but not be limited to, the documented weekly amount of:

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

28 TAC 129.2

Offsetting Paid
Leave Against
Workers'
Compensation
Income Benefits

The governing body of a political subdivision, including a college district board of trustees, by majority vote, may provide that while an employee of the political subdivision is receiving workers' compensation benefits, the employee may elect to receive previously accrued sick leave benefits, whether statutory or contractual, in an amount equal to the difference between the workers' compensation benefits and the weekly compensation that the employee was receiving before the injury that resulted in the claim. Sick leave benefits that are received shall be deducted proportionately from the employee's sick leave balance. *Labor Code 504.052*

Unless the governing body 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. [See DEC] *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 discrimination prohibition is liable for reasonable damages incurred by the employee as a result of the violation. An employee discharged in violation of the discrimination prohibition is entitled to reinstatement in the former position of employment. *Labor Code 451.002*

A first responder who alleges a violation of Labor Code 451.001 by a state or local governmental entity, including a college district that employs the first responder, may sue the governmental entity for the 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, this section does not affect that immunity.

"First responder" means a public safety employee or volunteer whose duties include responding rapidly to an emergency. The term includes:

1. A peace officer whose duties include responding rapidly to an emergency;
2. Fire protection personnel under Government Code 419.021;
3. A volunteer firefighter who is certified by the Texas Commission on Fire Protection or by the State Firemen's and Fire Marshalls' Association of Texas or a member of an organized volunteer fire-fighting unit as described by Government Code 615.003;
4. An individual certified as emergency medical services personnel by the Department of State Health Services;
5. An emergency response operator or emergency services dispatcher who provides communication support services for an agency by responding to requests for assistance in emergencies; and

6. Other emergency response personnel employed by an agency.

Labor Code 451.0025; Gov't Code 421.095(1)

Leaves of Absence

The employer 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 employer that terminates an employee for violating a reasonable absence-control policy 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)