

EMPLOYMENT LAW SUMMARY

Texas: Workers' Compensation - Employer Penalties



Because You're Different

While participation in Texas' workers' compensation program is optional, employers that do participate must comply with all provisions of the Texas Workers' Compensation Act (TWCA). The TWCA outlines responsibilities for employers and includes penalties for employers that do not comply. The Texas Division of Workers' Compensation (DWC), part of the Texas Department of Insurance (TDI), enforces these provisions. This Employment Law Summary provides a general overview of the penalties that the DWC and Texas courts may impose on employers that violate the law.

ADMINISTRATIVE PENALTIES

Most TWCA violations are considered administrative violations, punishable by fines of up to \$25,000 per day, per occurrence. Each day of non-compliance is a separate violation. Penalties are only assessed after a violator has had an opportunity to defend itself. When determining a penalty, the DWC will consider:

- The seriousness of the violation, including its nature, circumstances, consequences, extent and the gravity of the act;
- The violator's prior history, if any, of violations;
- The violator's good-faith behavior, including any actions taken to rectify the consequences of the violation;
- Any measures that are likely to deter future violations;
- Whether the violation has a negative impact on the delivery of TWCA benefits to an injured employee; and
- The violator's history of compliance with electronic data interchange requirements.

CEASE AND DESIST ORDERS

The DWC can also issue cease-and-desist orders against employers and individuals who:

- Commit repeated administrative violations;
- Allow the commission of repeated administrative violations; or
- Violate an order or decision issued by the DWC.

If the DWC believes an employer's alleged conduct will result in harm to the health, safety or welfare of another person, the employer may be subject to a cease-and-desist order before it has a chance to defend its conduct. In these cases, alleged violators are entitled to a hearing within 30 days to defend their conduct.

OTHER SANCTIONS

The DWC may revoke an individual's license, certification or permit to practice in the field of worker's compensation. These sanctions may be appealed but must be observed until they are lifted. The DWC also has the authority to reduce or deny a fee, to issue public or private reprimands and to refer and petition additional action from other licensing and disciplinary authorities.

FRAUD

As an administrative violation, an individual commits fraud if he or she makes a false or misleading statement knowingly or with the intention of obtaining, altering or denying benefits. Making false or misleading statements includes misrepresenting or concealing a material fact and fabricating, altering or destroying a document. Individuals who commit fraud are also required to repay any funds they were not entitled to receive, plus interest at a rate determined by the DWC. Alternatively, an individual's benefits may be discounted to recover a loss. Fraudulent activities may also result in criminal charges. The violations and penalties for fraud depend on the value of the benefits sought or received through fraud, as shown in the table below.

Value of Benefits	Violation	Punishment
\$1,500 or higher	State jail felony	Fine of up to \$10,000, imprisonment between 180 days and two years or both
Less than \$1,500	Class A misdemeanor	Fine of up to \$4,000, imprisonment for up to one year or both.

EXEMPLARY DAMAGES

The TWCA allows the DWC and the state's courts to impose additional fines on violators as exemplary damages. This penalty is payable to the surviving spouse or dependents of a worker who died because of an intentional act or omission of the employer or because of an employer's gross act of negligence. The penalties are called "exemplary" because they are intended to serve as an example and deter other employers from committing acts of gross negligence. If an employer commits gross negligence, it is irrelevant whether the injury was compensable. Under the TWCA, gross negligence is an act or omission which objectively involves an extreme degree of risk of harm to others. For gross negligence to take place, the employer must also have an actual, subjective awareness of the risk and must remain indifferent to the rights, safety or welfare of others.

MORE INFORMATION

Visit the DWC website or contact Heffernan Insurance Brokers for more information on workers' compensation laws in Texas.

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