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## September 2016 Workers' Compensation Law Update

### **New newsletter format coming in October**

In October, we will start sending our newsletter via email software. Just prior to sending it out via the new format, we will send an email asking you to be on the lookout for it. If, for some reason, you don't get Stone Loughlin & Swanson's October's newsletter, please let us know!

### **Kids' Chance of Texas, Inc. Inaugural Reception to be held October 22, 2016 in Austin**

This event is by invitation only and is sure to be an important and fun event for system stakeholders. If you would like an invitation and a chance to bid on some amazing silent auction items, contact us here at the firm. There are trips to Napa, Cabo San Lucas, Marfa (star parties and gallery tours), and Colorado, and other one-of-a kind items such as flight in a vintage T-34 "Mentor" Air Force trainer. Visit [www.kidschanceoftexas.org](http://www.kidschanceoftexas.org) for more information. We are proud to announce that we already have two scholarship recipients, Christi Campbell and Meghan Hill, who will be at the event to receive their awards!

### **Recent enforcement actions against Health Care Providers**

The Division has issued an updated list of health care providers restricted in the workers' compensation system. The list includes enforcement actions against health care providers that involve practice restrictions, doctors removed or suspended from the Designated Doctors List (DDL), and health care providers removed from or denied access to the former Approved Doctors List (ADL). Gary Pritchett, DC has been suspended from the DDL from 9/23/16 through 9/23/19. Jerome Carter, MD was removed from the ADL indefinitely as of 9/20/16. Ray Altamirano, MD was removed from the ADL through 7/19/18.

A full list of health care providers restricted in the workers' compensation system can be found at <http://www.tdi.texas.gov/wc/hcprovider/status.html>.

### **Changes in Fort Worth and Waco Field Offices**

We bid farewell to Judge Phillip Brown, who retired as Hearing Officer with the Division of Workers' Compensation late last month. Judge Brown was a Hearing Officer in the Fort Worth Field Office.

Judge Kara Squier, formerly at the Waco Field Office, has been transferred to Fort Worth to take over some of its docket. The Division has hired attorney Amber Morgan as the new Waco Hearing Officer following Judge Kara Squier's transfer. Ms. Morgan formerly worked at Helton &

Associates in Waco as an advocate for injured workers. She is a graduate of Baylor Law School, where she received her J.D. in 1999.

### **“Opt Out” declared unconstitutional in Oklahoma**

This month the Oklahoma Supreme Court struck down the controversial “opt out” provision of its workers’ compensation law. The provision had allowed employers to “opt out” of Oklahoma’s workers compensation system and write their own plans, establishing terms for what injuries would be covered, how workers would be compensated, which doctors workers could see, and providing for a dispute resolution process.

In a 7-to-2 ruling, the Court held that the provision is an unconstitutional “special law” conferring employers the ability to provide inequitable treatment for their injured employees, stating that the provision “creates impermissible, unequal, disparate treatment” for those workers, and a violation of the Oklahoma Constitution.

At this time, Texas is the only state that allows employers not to carry workers’ compensation.

### **You don’t really need my social security number for this, do you?**

The Division is evaluating whether it is necessary to request social security numbers on certain forms, and is accepting public comments on these proposed revisions. The Division’s website includes a full list of forms that have been identified as warranting either: (1) removal of the social security number field entirely (e.g. DWC-2, DWC-25, DWC-31, DWC-33, DWC-35, DWC-45M, DWC-46, DWC-48, DWC-49, DWC-51, DWC-54, DWC-55, DWC-56), or (2) requesting only the last four digits of the social security number (e.g., DWC-6, DWC-24, DWC-32, DWC-45A, DWC-47, and DWC-52). The revisions would apply to both the English and Spanish versions of the forms.

If you’d like to comment on the proposed revisions to the forms, the Division has asked that you submit your written comments by 5:00 p.m. Central time on October 4, 2016. Written comments may be emailed ([Rulecomments@tdi.texas.gov](mailto:Rulecomments@tdi.texas.gov)) or physically mailed to: Texas Department of Insurance, Division of Workers’ Compensation, Maria Jimenez, Workers’ Compensation Counsel MS - 4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

### **Division revises Weekly Benefit Rates for October 1, 2016 through September 30, 2017**

The Division has set the state average weekly wage (AWW), maximum weekly benefit, and minimum weekly benefit rate for 10/01/16 through 9/30/17 dates of injury. The state AWW has been set at \$912.69. The maximum weekly benefit rate is set at \$913, and the minimum weekly benefit rate is set at \$137.

The maximum and minimum weekly benefit rates for dates of injury from 10/01/15 through 9/30/15 were \$895 and \$134, respectively.

A table showing maximum and minimum weekly benefit amounts for all dates of injury after 1/01/91 is available on the Texas Department of Insurance website at [www.tdi.texas.gov/wc/employee/maxminbens.html](http://www.tdi.texas.gov/wc/employee/maxminbens.html).

### **Division determines discount rate and interest rate for October 1, 2016, through December 31, 2016**

The Division has determined that any interest or discount provided for in the Act shall be at the rate of 4.11 percent. The method for computing the interest rate is based on the treasury constant maturity rate for one-year treasury bills issued by the United States Government, as published by the Federal Reserve Board, detailed in Texas Labor Code §401.023. This new interest rate is effective beginning 10/01/16, through 12/31/16. The rate in effect for the previous period (7/01/16 through 9/30/16) was 4.03 percent.

### **Comment period extended for attorney fee rule proposal and accompanying form revisions**

The Division has extended the comment period for the rule proposing modification of the cap on attorneys' fees and withdrawal of representation, as well as the proposed modifications to forms relating to attorneys' fees, attorney representation, and attorney withdrawal from representation. If you'd like to comment on the rule proposals or proposed form revisions, please submit your written comments by 5:00 p.m. Central time on October 4, 2016. Written comments may be emailed ([Rulecomments@tdi.texas.gov](mailto:Rulecomments@tdi.texas.gov)) or physically mailed to: Texas Department of Insurance, Division of Workers' Compensation, Maria Jimenez, Workers' Compensation Counsel MS - 4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

The Division has also issued a notice that comments that were submitted via email between 8/01/16 and 9/19/16 may not have been received, and is encouraging you to resubmit your comment if it was submitted via email during that time-frame.

### **Scanning...scanning everywhere.**

The Division started work in September to convert a backlog of hard copy records to digital format. The project apparently involves scanning 21,000 boxes of files— specifically, “millions of claim files”. Once the project is complete, the Division hopes to see an improvement in data security, as well as quicker and easier fulfillment of records requests.

### **NWCDN Chicago conference another success**

The National Workers' Compensation Defense Network (NWCDN) put on another great seminar this month. The seminar was held at the Intercontinental Hotel on the Magnificent Mile in Chicago. Seminar topics included traumatic brain injury, reducing/avoiding narcotics abuse, and negotiation skills. Additionally, there was a regional break-out session to discuss medical issues specific to different states. The seminar was sandwiched between two lively and engaging cocktail receptions, and many attendees took the opportunity to see Chicago's many sights, such as the John Hancock Tower, museums, and the architecture boat tour.

Next year's conference will be held in Atlanta, Georgia. Attendance is by invitation only, and is reserved for clients and potential clients of NWCDN member firms.