

**ADVISORY NO. 95**

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**TOPIC: NEW RULE 128.2 CARRIER PRESUMPTION OF EMPLOYEE'S WAGE;  
EMPLOYER WAGE STATEMENT REQUIRED**

TWCC Commissioners adopted the attached Rule 128.2 on July 22, 1993, and the rule was published in the Texas Register. The rule became effective September 1, 1993.

To expedite payment of income benefits, the Carrier is required to presume that the last payment to the employee based on a full week (partial work week is to be prorated for a full week), is the employee's wage until:

1. The employer files a wage statement; or
2. The correct wage is determined by other evidence if the employer fails to file a wage statement.

The employer is required to file a wage statement with the carrier within thirty days of the date benefits begin to accrue, or within seven days when requested by the commission. Form TWCC-3 is required to be properly completed with certification by the employer.

If the employee was not employed for thirteen weeks prior to the date of injury, a wage statement on a similar employee who performs similar services as defined in Rule 128.3, is required.

Note that the wage statement must certify and include the fair market value of non-pecuniary benefits not provided after the date of injury.

The employee's status as full time, part time or seasonal worker, plus whether the employee was also a student, apprentice or trainer is required information on the TWCC-3.

The employer is required to file a subsequent wage statement within seven days if any information previously submitted changes.

A carrier that fails to promptly begin payment of benefits may be assessed an administrative penalty.

An employer that fails to file a complete wage statement without good cause may be assessed an administrative penalty not to exceed \$500.00.