

ADVISORY NO. 265

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TOPIC: PAYMENT OF INTEREST PURSUANT TO H.B. 2510

Section 11 of H.B. 2510 amended Section 408.081 of the Labor Code. Under this amendment, insurance carriers are obligated to pay interest on accrued, but unpaid benefits without order of the Commission.

In a later part of the bill, Section 21(e), the Legislature further provided:

Sections 408.081, 408.161, and 408.181 Labor Code, as amended by this Act, take effect September 1, 1999 and apply only to an agreement regarding payment of workers' compensation income benefits or death benefits that are entered into on or after that date.

[emphasis added]. Texas Workers' Compensation Commission appears to now have no statutory authority to require the payment of interest absent the payment of benefits "by agreement." Agreement is a defined statutory term. Section 401.011(3) TEX.LAB.CODE.

This firm has filed a comment with the Commission objecting to current proposed Rule 126.12. That rule implements Section 11 of the bill, and does not consider Section 21. It is our argument that TWCC may no longer order the payment of interest and we have no obligation to pay interest voluntarily unless it is paid pursuant to an agreement regarding payment of workers' compensation income benefits. We believe that this interpretation is compelled by the Act.

This portion of H.B. 2510 became effective on September 1st. It is clear that the Commission currently expects carriers to pay interest voluntarily on all late payments. It is likewise clear that this expectation is based on an incomplete reading of the bill. This is perfectly understandable in view of the fact that this provision occurs out of context and at the very end of the bill. It is quite possible that this is an oversight on the part of the Legislature and that they never intended to limit the effect of the obligation to pay interest. Nevertheless, the very clear language of the statute limits the obligation to pay interest and this can be read consistently with the rest of the statute. We accordingly believe that the effect of the interest obligation is limited to agreements, and may not be interpreted otherwise.

We are pressing the Commission for clarification of their proposed rule and will endeavor to obtain this interpretation. In the meantime, if you have a substantial interest obligation, or if you are faced with a threatened Compliance & Practices action for the failure to pay interest voluntarily, we recommend that you contact Jack Latson of the firm to discuss further handling.