

**Regulatory Impact Analysis
Agreements for Prompt Payment of Compensation**

Agency: North Carolina Industrial Commission

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Proposed New Rule Title: Agreements for Prompt Payment of Compensation

Rules proposed for amendment: Rule 11 NCAC 23A .0501
(See proposed rule text in Appendix 1)

State Impact: Yes

Local Impact: Yes

Private Impact: Yes

Substantial Economic Impact: No

Statutory Authority: G.S. §§ 97-18; 97-80(a); 97-82

Introduction/Background:

On January 1, 1990, the Industrial Commission implemented Rule 04 NCAC 10A .0501 to govern agreements for payment of compensation pursuant to G.S. § 97-18. The Commission later amended the rule on August 1, 2006 and November 1, 2014. Rule 04 NCAC 10A .0501 was recodified as Rule 11 NCAC 23A .0501 effective June 1, 2018.

The Commission proposes updates to the rule to increase efficiency by specifically requiring the inclusion of a job description in the employee’s medical and vocational records if the employee has permanent work restrictions and has returned to work for the employer of injury. Additionally, the rule adds Form 26A to a list of forms the employer, carrier, administrator, or attorney of record must provide to the employee. The proposed amendments also clarify filings of agreements for payment of compensation must be filed in accordance with Rule 11 NCAC 23A .0108.

Proposed Rule Changes and Their Estimated Impact:

The proposed rule additions and changes include the following:

1. *Amendment of subsection (b) to require inclusion of job description*

a. Description of baseline situation:

In its current form, Rule 11 NCAC 23A .0501 requires “relevant medical and vocational records” to be filed with the Commission. It also allows the Commission to request the parties file “any additional documentation” necessary for the Commission to determine whether the employee is receiving disability compensation for which the employee is entitled.

b. Description of proposed change:

The proposed amendment to this rule in subsection (b) is a clarifying change intended to improve compliance. Currently, the Commission expends time contacting adjusters and attorneys to request copies of job descriptions if they are not provided. The Commission intends to increase the number of job descriptions provided initially with the agreement for permanent disability. The proposed change only requires a job description be provided if it is “known to exist.”

c. Economic impact:

(1) Costs

There are expected to be no costs or minimal costs incurred by the addition of this language. Because the Commission already reaches out to parties and requests a job description if the employee has permanent work restrictions and has returned to work for the employer of injury and the rule currently requires parties to file additional documentation requested by the Commission, the impact of specifically requiring that documentation from the outset is minimal for State and local governments as well as the private sector.

(2) Benefits to the State through the Commission

Commission staff in the Claims Administration Section processes agreements for permanent disability. In the event a job description is necessary and a copy is not already contained in the employee’s relevant medical and vocational records, then a staff member must contact an adjuster or an attorney to obtain the job description.

Staff estimates it takes between 5 and 10 minutes to contact an attorney or adjuster via email or phone to ask them to provide the employee's job description. An Administrative Specialist I with an annual compensation (including benefits) of \$49,482.30 or a Business Manager I with an annual compensation (including benefits) of 106,387.39 would make the phone call or send the email. Assuming the employees work 2040 hours per year, it costs the Administrative Specialist I between \$2.00 and \$4.00 per follow-up and the Business Manager I between \$4.35 and \$8.70 per follow-up phone call or email. The Commission does not have specific data on the number of follow-ups required to obtain job descriptions. For reference, the Commission received 6,501 Form 26As in Fiscal Year 2016-17. Assuming half (3,251) of the Form 26As required a follow-up phone call or email, the opportunity cost would be between \$6,502 and \$28,283.70 per year.

(3) Benefits to State and Local Government and the Private Sector

As explained above, compliance with the proposed amendment will decrease additional Commission contact with employers, carriers, administrators, and attorneys to obtain necessary job descriptions. Instead, employers, carriers, administrators, and attorneys will file the job description initially with all other required documentation, saving them time from having to respond to additional calls and emails. The exact time and savings would be hard to quantify, but it is expected to be minimal.

2. *Amendment of subsection (d) to include the Form 26A*

a. Description of baseline situation:

Currently, the rule only requires employers, carriers, administrators, or attorneys of record to provide the employee's attorney or the employee, if unrepresented, a copy of a Form 21, Form 26, Form 26D, and a Form 30. In practice, employers, carriers, administrators, and attorneys of record are already providing copies of Form 26As to employees or their attorneys. The current rule requires the form be provided when it is signed.

b. Description of proposed change:

The proposed amendment adds the Form 26A to the list of forms which must be provided to the employee. The Form 26A was implemented via Rule 11 NCAC 23L .0103 on November 1, 2014, the same day this rule was last amended. The Forms listed in subsection (d) are agreements to facilitate the payment of compensation, and the proposed amendment adds Form 26A to the list because it is also an agreement to facilitate the payment of compensation. The rule clarifies the completed form must be provided to the employee or the employee's attorney upon submission to the Commission, when the form is finalized.

c. Economic impact:

(1) Costs to the State:

The Commission receives 6,501 Form 26A agreements annually.¹ The additional cost for the State to send this form is minimal. In most cases, a paralegal or administrative assistant would attach the form to an email to send to the employee or the employee's attorney. In some cases, the paralegal or administrative assistant may mail the form to the employee or employee's attorney. Assuming the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 11%² of Form 26As filed with the Commission (715 Form 26As) are from attorneys employed by State or local government. Based on an hourly total compensation rate of \$35.71,³ assuming 95% of the Form 26As (679) are sent via email, and assuming an estimate of 3 minutes to send the Form via email, it would cost \$1,212.35 annually. Based on the price of a standard U.S. Mail stamp of \$0.49, the cost of mailing the remaining 36 Form 26As would be \$17.64 annually.

The Commission is not involved sending forms pursuant to subsection (d) of this rule and therefore there is no cost to the State through the Commission.

(2) Costs to the Private Sector

¹ Industrial Commission 2016-2017 Annual Report, <http://www.ic.nc.gov/2017AnnualReport.pdf>.

² Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

³ 2017 wage estimates for paralegals and legal assistants in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES).

The Commission receives 6,501 Form 26A agreements annually.⁴ The additional cost for the State to send this form is minimal. In most cases, a paralegal or administrative assistant would attach the form to an email to send to the employee or the employee's attorney. In some cases, the paralegal or administrative assistant may mail the form to the employee or employee's attorney. Assuming the type of filer (public or private) follows the same breakdown as the type of employment in NC, about 89%⁵ of Form 26As filed with the Commission (5,786 Form 26As) are from the private sector. Based on an hourly total compensation rate of \$34.50,⁶ assuming 95% of the Form 26As (5,497) are sent via email, and assuming an estimate of 3 minutes to send the Form via email, it would cost \$9,482.33 annually. Based on the price of a standard U.S. Mail stamp of \$0.49, the cost of mailing the remaining 289 Form 26As would be \$141.61 annually.

3. *Amendment of subsection (e) to require filing in accordance with Rule 11 NCAC 23A .0108*

The amendment to subsection (e) has no fiscal impact because agreements for payment of compensation are already required to be filed in accordance with Rule 11 NCAC 23A .0108. Rule 11 NCAC 23A .0108(b) requires all documents to be transmitted to the Commission via EDFP. Form 26As are not listed as an exemption to the EDFP filing requirement in Rule .0108. Therefore, the requirement to file Form 26As via EDFP is already accounted for in the fiscal note for Rule 11 NCAC 23A .0108.

Summary of Economic Impact:

⁴ Industrial Commission 2016-2017 Annual Report, <http://www.ic.nc.gov/2017AnnualReport.pdf>.

⁵ Governing website. Governing Data. States with Most Government Employees: Per Capita Rates by Job Type. <http://www.governing.com/gov-data/public-workforce-salaries/states-most-government-workers-public-employees-by-job-type.html>

⁶ 2017 wage estimates for paralegals and legal assistants in North Carolina reported by NC Department of Commerce, Occupational Employment and Wages in North Carolina (OES). <https://d4.nccommerce.com/OESSelection.aspx>

Benefits as a percent of total compensation reported by Bureau of Labor Statistics. Employer Costs per Hour Worked for Employee Compensation and Costs as a Percentage of Total Compensation: Private industry workers. March 2018 (Release Date June 8 2018).

<https://www.bls.gov/news.release/ecec.t05.htm>

Adjusted for private sector wage growth estimate of 2.74% for North Carolina professional and business service sectors. Reported by IHS Connect. Regional Economics Database. North Carolina Annual Forecast Data. Accessed June 13, 2018.

Overall, the proposed amendments to Rule 11 NCAC 23A .0501 will have an estimated aggregate impact of an estimated benefit of between \$6,502 and \$28,283.70 for the State through the Commission annually. The proposed amendments will also have an estimated total cost to the State as an employer of \$1,229.99 annually and an estimated cost to the private sector of \$9,623.94 annually, for an overall estimated cost of \$10,853.93. Therefore, the overall impact of the proposed amendments is estimated at between a cost of \$4,351.93 or a benefit of \$17,429.77 annually.

APPENDIX 1

Rule 11 NCAC 23A .0501 is proposed for amendment as follows:

SECTION .0500 – AGREEMENTS

11 NCAC 23A .0501 AGREEMENTS FOR PROMPT PAYMENT OF COMPENSATION

- (a) To facilitate the payment of compensation within the time prescribed in G.S. 97-18, the Commission shall accept memoranda of agreements on Commission forms.
- (b) No agreement for permanent disability shall be approved until the relevant medical and vocational ~~records~~ records, including a job description if the employee has permanent work restrictions and has returned to work for the employer of injury, known to exist in the case have been filed with the Commission. When requested by the Commission, the parties shall file any additional documentation necessary to determine whether the employee is receiving the disability compensation to which he or she is entitled and that an employee qualifying for disability compensation under G.S. 97-29 or G.S. 97-30, and G.S. 97-31 has the benefit of the more favorable remedy.
- (c) All memoranda of agreements shall be submitted to the Commission. Agreements conforming to the provisions of the Workers' Compensation Act shall be approved by the Commission and a copy returned to the employer, carrier, or administrator, and a copy sent to the employee, unless amended by an award, in which event the Commission shall return the award with the agreement.
- (d) The employer, carrier, administrator, or the attorney of record, if any, shall provide the employee, beneficiary, or attorney of record ~~employee's attorney of record or the employee, if any, unrepresented,~~ a copy of a Form 21 *Agreement for Compensation for Disability*, a Form 26 *Supplemental Agreement as to Payment of Compensation*, a Form 26A *Employer's Admission of Employee's Right to Permanent Partial Disability*, a Form 26D *Agreement for Payment of Unpaid Compensation in Unrelated Death Cases*, and a Form 30 *Agreement for Compensation for Death*, ~~when the employee or appropriate beneficiary signs the forms.~~ upon submission to the Commission of the executed form or agreement.
- (e) All memoranda of agreements for cases that are calendared for hearing before a Commissioner or Deputy Commissioner shall be ~~addressed sent directly~~ sent directly to that Commissioner or Deputy ~~Commissioner-Commissioner,~~ Commissioner, and filed in accordance with Rule .0108 of this Subchapter. Before a case is calendared, or once a case has been continued or removed, or after the filing of an Opinion and Award, all memoranda of agreements shall be ~~directed~~ addressed to the Claims Section of the ~~Commission.~~ Commission, and filed in accordance with Rule .0108 of this Subchapter.
- (f) After the employer, carrier, or administrator has received a memorandum of agreement that has been signed by the employee and the employee's attorney of record, if any, the employer, carrier, or administrator has 20 days within which to submit the memorandum of agreement to the Commission for review and approval or within which to show cause for not submitting the memorandum of agreement signed only by the employee.

History Note: Authority G.S. 97-18; 97-80(a); 97-82;

Eff. January 1, 1990;

*Amended Eff. ****, ****; November 1, 2014; August 1, 2006;
Recodified from 04 NCAC 10A .0501 Eff. June 1, 2018.*