

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

JANUARY 30, 2020

PUBLIC HEARING BEFORE THE FULL COMMISSION

REGARDING

PROPOSED RULEMAKING IN SUBCHAPTERS 11 NCAC 23A,
11 NCAC 23B, 11 NCAC 23E AND 11 NCAC 23L

GRAHAM ERLACHER & ASSOCIATES
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336/768-1152

A P P E A R A N C E S

COMMISSIONERS:

Philip A. Baddour, III, Chair
Myra L. Griffin, Vice-Chair
Charlton L. Allen, Commissioner
James C. Gillen, Commissioner
Christopher C. Loutit, Commissioner
Kenneth L. Goodman, Commissioner

I N D E X

<u>SPEAKERS:</u>	<u>PAGE</u>
Gina Cammarano	2
Elias Admassu	6

E X H I B I T S

	<u>IDENTIFIED</u>	<u>ADMITTED</u>
(Cammarano) Exhibit Number 1	3	8
(Cammarano) Exhibit Number 2	3	8

P R O C E E D I N G S

1
2 CHAIR BADDOUR: All right. Good afternoon. We
3 are on the record. It is January 30th, 2020, and it's
4 2:00 PM. I'm Philip Baddour, Chair of the Industrial
5 Commission. In compliance with the requirements of
6 Chapter 138A-15(e) of the State Government Ethics Act,
7 I remind all members of the Commission of their duty
8 to avoid conflicts of interest under Chapter 138A. I
9 also inquire as to whether there are any known
10 conflicts of interest to this matter coming before the
11 Commission at this time. Hearing none, we will
12 proceed. This is a North Carolina Industrial
13 Commission public hearing on proposed rulemaking. The
14 purpose of this hearing is to receive comments from
15 the public regarding the proposed adoption of one rule
16 and a proposed amendment of seven rules as published
17 in the *North Carolina Register* on January 15, 2020.
18 We have received no written comments from the public
19 thus far, and the record will be held open to receive
20 written comments from the public through the close of
21 business on March 16, 2020. At this time, I would
22 like to introduce the other Commissioners:
23 Vice-Chair Myra Griffin, Commissioner Charlton Allen,
24 Commissioner Chris Loutit, Commissioner Ken Goodman
25 and Commissioner Jim Gillen. Anyone who wishes to

1 speak at this hearing must sign up to do so with
2 Gina Cammarano, rulemaking coordinator, so that we
3 have the correct spelling of your name and we can call
4 you in order to speak. If anybody would like to speak
5 and has not yet signed up, please do so now. The
6 first speaker will be Gina Cammarano, followed by
7 members of the public, and I don't know if we have
8 any. Do we have any members of the public at this
9 time who had signed up? Okay. So we have a potential
10 speaker, Mr. Admassu, who is - who is here. So, at
11 this time, we'll hear from Ms. Cammarano.

12 GINA CAMMARANO

13 MS. CAMMARANO: Good afternoon. My name is
14 Gina Cammarano, and I'm the rulemaking coordinator for
15 the North Carolina Industrial Commission.

16 CHAIR BADDOUR: And, Ms. Cammarano, do you have
17 exhibits that you would like to place into the record
18 of these proceedings?

19 MS. CAMMARANO: Yes. I have Exhibit 1, which is a
20 copy of the notice of proposed rulemaking and proposed
21 text of all the rules that are the subject of this
22 proposed rulemaking as published in the *North Carolina*
23 *Register* on January 15th, 2020. And then, next, I have
24 Exhibit 2, which is a copy of the fiscal notes that
25 were deemed the required - or recommended by OSBM for

1 four of the rules, and which have been approved by
2 OSBM.

3 (Exhibit Numbers 1 and 2 are
4 identified for the record.)

5 CHAIR BADDOUR: Would you briefly give us some
6 background and list the rules that would be affected
7 by the proposed rulemaking?

8 MS. CAMMARANO: Yes. We have one rule for
9 adoption, as you mentioned - that is cited as
10 11 NCAC 23B .0106 - and seven rules for amendment,
11 namely 11 NCAC 23A .0104, .0408, .0409, .5 - .0501 and
12 .0903. Then there's 11 NCAC 23E .0104 and 11 NCAC 23L
13 .0103, and all of these rules that are the subject of
14 this proposed rulemaking have a proposed effective
15 date of June 1st, 2020. And there are four main
16 reasons behind this proposed rulemaking, which I'll
17 just set forth for you. First, the Industrial
18 Commission deemed the proposed adoption of the new
19 rule cited as 11 NCAC 23B .0106, with the title of
20 "Notice by the Commission," necessary to give clarity
21 to the regulated entities in state tort claims
22 regarding when notice is complete for Deputy
23 Commissioner decisions and other orders and documents,
24 other than Full Commission D and Os, served on the
25 regulated entities by the Commission via electronic

1 mail. Second, based on an internal review of its
2 rules initiated and conducted by the Commission, and
3 after soliciting and considering informal stakeholder
4 feedback, the Commission deemed it necessary to make
5 changes to the rules cited as 11 NCAC 23A .0104,
6 .0408, .0409, .0501 and .0903 in order to clarify the
7 rules for the regulated entities, provide for
8 increased efficiency in terms of processes and
9 procedures and update these rules to reflect and
10 incorporate Commission practices. Third, in light of
11 the recent changes to Rule 26 of the North Carolina
12 Rules of General Practice regarding secured leave,
13 namely allowing additional leave for the birth or
14 adoption of a child. And in order to update the
15 Commission's secured leave rule not only to align it
16 with Rule 26 changes, but also to clarify the rules
17 for the regulated entities and update the rule to
18 provide for increased efficiency and to reflect
19 current Commission practices, the Commission deemed it
20 necessary to make changes to 11 NCAC 23E .0104, and
21 the Commission sought informal stakeholder feedback on
22 these rule changes and that feedback was incorporated
23 into the changes. Finally, the proposed amendment to
24 the rule cited as 11 NCAC 23L .0103 is a form change
25 to the Form 26A deemed necessary by the Commission in

1 light of the proposed amendment to 11 NCAC 23A .0501
2 regarding a job description needing to be submitted
3 along with a Form 26A when an employee has returned to
4 work for the employer of injury with permanent
5 restrictions and a job description exists. And the
6 Industrial Commission has followed the permanent
7 rulemaking procedures of the Administrative Procedure
8 Act in proposing this rulemaking. Specifically, the
9 proposed rules for adoption and amendment were filed
10 with a notice of text to the Office of Administrative
11 Hearings on December 13th, 2019. They were then
12 published in the January 15, 2020 issue of the *North*
13 *Carolina Register*. And on that same date, the
14 Industrial Commission published a notice of this
15 rulemaking on the Industrial Commission's website with
16 a link to the proposed rules and fiscal notes and,
17 also, emailed a notice of this rulemaking with a link
18 to these proposed rules and fiscal notes to the
19 Industrial Commission Rules Listserv. Copies of the
20 fiscal notes and the rules associated with those
21 fiscal notes also were provided to the North Carolina
22 League of Municipalities and the North Carolina
23 Association of County Commissioners, as well as to the
24 Fiscal Research Division of the General Assembly as
25 required by statute.

1 CHAIR BADDOUR: Thank you. All right. Do any
2 members of the Commission have any questions for
3 Ms. Cammarano? All right. Seeing none,
4 Ms. Cammarano, you may be seated, and we'll proceed to
5 the next speaker.

6 MS. CAMMARANO: Okay.

7 (SPEAKER DISMISSED)

8 CHAIR BADDOUR: All right. Mr. Admassu, would you
9 like to offer some comments at this time?

10 MR. ADMASSU: Yes, Your Honor.

11 CHAIR BADDOUR: All right.

12 MR. ADMASSU: So it's as to the rules---

13 CHAIR BADDOUR: Do you want to come up to the---?
14 If you could, please state your name and tell us whom
15 you represent, if any particular organization. Please
16 also identify the specific proposed rule or rules that
17 you'll be addressing in your remarks and please let us
18 know if you have any written materials that you'd like
19 to submit today to be included in the transcript, and
20 we'll have them marked as an exhibit.

21 ELIAS ADMASSU

22 MR. ADMASSU: So good afternoon. My name is
23 Elias Admassu. I'm here just as a practitioner, and
24 this comment might not apply for today's discussion,
25 but as to Rule 903, this is regarding the Form 90. In

1 comparison to the actual Form 90, there's some
2 inconsistency as to who can be required to fill out
3 the Form 90, and so Rule 903 as currently written says
4 that the employer may require an employee who has
5 filed a claim to complete a Form 90. However, when
6 you look at the Form 90 itself, there's a box where it
7 has the notice to employee that seems narrower in
8 scope, and it indicates that an employee receiving
9 benefits has to fill out a Form 90. It may be a minor
10 issue, but practically speaking, it leads to a lot of
11 hang-ups. A lot of adjusters use the Form 90 to try
12 and get information, as do parties even in denied
13 claims. It's a lot quicker than going through formal
14 discovery or retaining an attorney, and so I was going
15 to point out that - the inconsistency to bring one in
16 compliance with other regardless of which one.

17 CHAIR BADDOUR: All right. Thank you. Let me -
18 let me see if any of the Commissioners have any
19 questions for you. All right. So none. Thank you
20 very much---

21 MR. ADMASSU: Thank you.

22 CHAIR BADDOUR: ---for your comments. And,
23 Mr. Admassu, if you've prepared any sort of written
24 summary of your remarks, if you'll provide them to the
25 court reporter, we'll mark them and make them part of

1 the record. All right. Thank you all for
2 participating in this public hearing. The period for
3 written comments will be held open through the close
4 of business on March 16, 2020, and if you have further
5 comments, please send them to Gina Cammarano as
6 directed in the notice in the *North Carolina Register*
7 and on the Commission's website. I'd strongly
8 encourage anyone intending to submit written public
9 comment to please do so at your earliest convenience.
10 The written comments and the comments at the public
11 hearing today, will be - will be made part of the
12 public record of these proceedings. Please include in
13 the transcript, Mr. Court Reporter, the exhibits
14 submitted by Ms. Cammarano as Exhibits 1 and 2.

15 (Exhibit Numbers 1 and 2 are
16 admitted into the record.)

17 CHAIR BADDOUR: That concludes our business for
18 today. The hearing is now adjourned. It is 2:10.
19 Thank you all for attending.

20 (WHEREUPON, THE HEARING WAS ADJOURNED.)

21 RECORDED BY MACHINE

22 TRANSCRIBED BY: Lisa D. Dollar, Graham Erlacher and
23 Associates

1 STATE OF NORTH CAROLINA

2 COUNTY OF GUILFORD

3 C E R T I F I C A T E

4 I, Kelly K. Patterson, Notary Public, in and for the
5 State of North Carolina, County of Guilford, do hereby
6 certify that the foregoing eight (8) pages prepared under
7 my supervision are a true and accurate transcription of the
8 testimony of this trial which was recorded by Graham
9 Erlacher & Associates.

10 I further certify that I have no financial interest in
11 the outcome of this action. Nor am I a relative, employee,
12 attorney or counsel for any of the parties.

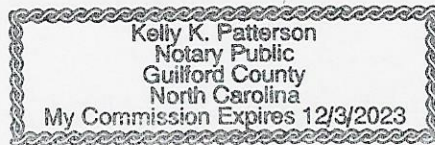
13 WITNESS my Hand and Seal on this 5th day of February
14 2020.

15 My commission expires on December 3, 2023.

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Kelly K. Patterson

NOTARY PUBLIC



TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Industrial Commission intends to adopt the rule cited as 11 NCAC 23B .0106 and amend the rules cited as 11 NCAC 23A .0104, .0408, .0409, .0501, .0903; 23E .0104; and 23L .0103.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ic.nc.gov/proposedGroup3TortSecureLeaveand26ARules.html>

Proposed Effective Date: June 1, 2020

Public Hearing:

Date: January 30, 2020

Time: 2:00 p.m.

Location: Room 240, 2nd Floor, Dept. of Insurance, Albemarle Bldg., 325 N. Salisbury St., Raleigh NC 27603

Reason for Proposed Action: The Industrial Commission (hereinafter "Commission") has deemed the proposed adoption of the new rule cited as 11 NCAC 23B .0106 necessary to give clarity to the regulated entities in State tort claims regarding when notice is complete for decisions, orders, and other documents served on the regulated entities by the Commission via electronic mail. Additionally, on its own initiative, the Commission conducted an internal review of its existing rules and sought informal stakeholder feedback. The proposed amendments to the rules cited as 11 NCAC 23A .0104, .0408, .0409, .0501, and .0903 reflect changes the Commission has deemed necessary to clarify the rules, provide for increased efficiency, or update the rules to reflect current practices. The proposed amendment to the rule cited as 11 NCAC 23E .0104 was deemed necessary by the Commission to clarify and update its secure leave policy, to align the Commission's secure leave policy with the recent changes made to Rule 26 of the North Carolina Rules of General Practice, and to update the rule to reflect current practices. The proposed amendment to the rule cited as 11 NCAC 23L .0103 is a form change deemed necessary by the Commission in light of the proposed amendment to the rule cited as 11 NCAC 23A .0501.

Comments may be submitted to: Gina Cammarano, 1240 Mail Service Center, Raleigh, NC 27699-1240; phone (919) 807-2524; email gina.cammarano@ic.nc.gov

Comment period ends: March 16, 2020

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 23 - INDUSTRIAL COMMISSION

SUBCHAPTER 23A - WORKERS' COMPENSATION RULES

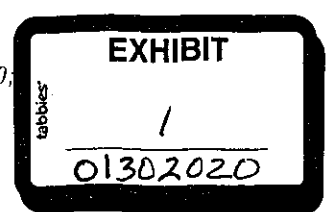
SECTION .0100 - ADMINISTRATION

11 NCAC 23A .0104 EMPLOYER'S REQUIREMENT TO FILE A FORM 19 FIRST REPORT OF INJURY

(a) The form required to be provided by G.S. 97-92(a) is the Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission. The Form 19 shall be used when the injury causes the employee to be absent from work for more than one day or when the charges for medical compensation exceed four thousand dollars (\$4,000). The Form 19 shall be filed with the Commission in accordance with Rule .0108(d) of this Section.

(b) The employer, carrier, or administrator shall provide the employee with a copy of the completed Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission, along with a blank Form 18 Notice of Accident to Employer and Claim of Employee, Representative, or Dependent for use by the employee in making a claim.

History Note: Authority G.S. 97-80(a); 97-92; Eff. March 15, 1995; Amended Eff. November 1, 2014; January 1, 2011; August 1, 2006; March 1, 2001; June 1, 2000; Recodified from 04 NCAC 10A .0104 Eff. June 1, 2018;



SECTION .0400 – DISABILITY, COMPENSATION, FEES

11 NCAC 23A .0408 APPLICATION FOR OR STIPULATION TO ADDITIONAL MEDICAL COMPENSATION

(a) An employee may file an application for additional medical compensation with the Office of the Executive Secretary for an order for payment of additional medical compensation within two years of the date of the last payment of medical or indemnity compensation, whichever ~~shall last occur~~; occurs last. An application may be made on a Form 18M Employee's Application for Additional Medical Compensation; Compensation or by written request; request. In the alternative, an employee may file an application for additional medical compensation or by filing a Form 33 Request that Claim be Assigned for Hearing with the Commission. Commission pursuant to Rule .0602 of this Subchapter.

(b) Upon receipt of ~~the application~~; a Form 18M Employee's Application for Additional Medical Compensation or a written request, the Commission shall notify the employer, carrier, or administrator that the claim has been received by providing a copy of the Form 18M Employee's Application for Additional Medical Compensation or the written request. Within 30 days, the employer, carrier, or administrator may send to the Commission and the employee's attorney of record or the employee, if unrepresented, a written statement as to whether the request is accepted or denied. If the request is denied, the employer, carrier, or administrator may state in writing the grounds for the denial and shall attach any supporting documentation to the statement of denial.

(c) The parties may, by agreement or stipulation consistent with the Workers' Compensation Act, provide for additional medical compensation.

(d) This Rule applies to injuries occurring on or after July 5, 1994.

History Note: Authority G.S. 97-25.1; 97-80(a);
Eff. March 15, 1995;
Amended Eff. November 1, 2014; June 1, 2000;
Recodified from 04 NCAC 10A .0408 Eff. June 1, 2018;
Amended Eff. _____.

11 NCAC 23A .0409 CLAIMS FOR DEATH BENEFITS

(a) An employer shall notify the Commission of the occurrence of a death resulting from an injury or occupational disease allegedly arising out of and in the course of employment by filing a Form 19 Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission within five days of knowledge thereof; of the death. In addition, an employer, carrier, or administrator shall file with the Commission a Form 29 Supplemental Report for Fatal Accidents, within 45 days of knowledge of a death or allegation of death resulting from an injury or occupational disease arising out of and in the course of employment.

(b) An employer, carrier, or administrator shall ~~make a good faith effort to discover~~ conduct an investigation to determine the names and addresses of decedent's potential beneficiaries under G.S. 97-38 and identify them on the Form 29 Supplemental Report for Fatal ~~Accident~~; Accidents. The Form 29 Supplemental Report for Fatal Accidents shall be filed with the Commission within 45 days of notification of a death or allegation of death resulting from an injury or occupational disease arising out of and in the course of employment.

(c) If the employer, carrier, or administrator disputes that an employee's death is compensable or denies it has liability for the claim, the employer, carrier, or administrator shall notify the Commission on a Form 61 Denial of Workers' Compensation Claim. When the employer, carrier, or administrator denies liability for a claim involving an employee's death, the employer, carrier, or administrator shall send the form to all known potential beneficiaries, their attorneys of record, if any, all health care providers that have submitted bills to the employer, carrier, or administrator, and the Commission.

(d) If the employer, carrier, or administrator accepts liability for a claim involving an employee's death and there are no issues necessitating a hearing for determination of beneficiaries or their respective rights, the parties shall submit either a Form 30 Agreement for Compensation for Death as set forth in Rule .0501 of this Subchapter or a proposed Opinion and Award.

(e) If the parties submit a Form 30 Agreement for Compensation for Death, the agreement shall be filed in accordance with Rule .0108 of this Subchapter with the following:

- (1) a stipulation as to average weekly wage;
- (2) any affidavits regarding dependents;
- (3) the employee's death certificate;
- (4) a Form 29 Supplemental Report for Fatal Accidents;
- (5) a Form 42 Application for Appointment of Guardian ad Litem, if any beneficiary is a minor or incompetent;
- (6) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
- (7) a funeral bill or stipulation as to payment of the funeral benefit;
- (8) a Form 30D Award Approving Agreement for Compensation for Death; and
- (9) an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking fees for representation of one or more beneficiaries.

(f) If the parties seek a written Opinion and Award from the Commission regarding the payment of death benefits in lieu of submitting a Form 30 Agreement for Compensation for Death, the parties shall file, in accordance with Rule .0108 of this Subchapter, a proposed Opinion and Award with the following:

- (1) a stipulation regarding all jurisdictional matters;
- (2) the decedent's name, social security number, employer, insurance carrier or servicing agent, and the date of the injury giving rise to this claim;
- (3) a stipulation as to average weekly wage;

- (4) any affidavits regarding dependents;
- (5) the employee's death certificate;
- (6) a Form 29 Supplemental Report for Fatal Accidents;
- (7) a Form 42 Application for Appointment of Guardian ad Litem, if any beneficiary is a minor or incompetent;
- (8) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
- (9) medical records, if any;
- (10) a statement of payment of medical expenses incurred, if any;
- (11) a funeral bill or stipulation as to payment of the funeral benefit; and
- (12) an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking fees for representation of one or more beneficiaries.

(g) If an issue exists as to whether a person is a beneficiary pursuant to G.S. 97-38 or if any other disputed issue exists in an accepted claim, the employer, carrier, administrator, potential beneficiary, or any person asserting a claim for benefits may request a hearing by filing a Form 33 Request that Claim be Assigned for Hearing in accordance with Rule .0602 of this Subchapter.

(h) Upon approval by the Commission of a Form 30 Agreement for Compensation for Death or upon the issuance of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38, payment shall be made by the employer, carrier, or administrator directly to the beneficiaries, with the following exceptions:

- (1) any applicable award of attorney's fees shall be paid directly to the attorney; and
- (2) benefits due to a minor or incompetent.

(i) In all cases involving minors and incompetent persons who are potential beneficiaries, a guardian ad litem shall be appointed pursuant to Rule .0604 of this Subchapter.

(j) Any benefits due to a minor pursuant to G.S. 97-38 shall be paid directly to the minor's parent, legal guardian, or legal custodian, if the minor remains in the physical custody of such person, or another person if ordered by the Commission for good cause shown, for the exclusive use and benefit of the minor. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.

(k) The Commission shall order that the benefits for an incompetent beneficiary shall be paid to the person or entity authorized to receive funds on behalf of the beneficiary pursuant to a federal or state court order, or to the Clerk of Court in the county in which the beneficiary resides, for the beneficiary's exclusive use and benefit.

(l) Upon a change in circumstances, any interested party may request that the Commission amend the terms of any award with respect to a minor or incompetent person to direct payment to another party on behalf of the minor or incompetent person.

(m) In the case of benefits commuted to present value, only those sums that have not accrued at the time of the approval of a Form 30 or entry of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38 are subject to commutation pursuant to Rule .0406 of this Subchapter.

~~(e) In all cases involving minors or incompetents who are potential beneficiaries, a guardian ad litem shall be appointed pursuant to Rule .0604 of this Subchapter.~~

~~(d) If an issue exists as to whether a person is a beneficiary under G.S. 97-38, the employer, carrier, administrator, or any person asserting a claim for benefits may file a Form 33 Request that Claim be Assigned for Hearing for a determination by a Deputy Commissioner.~~

~~(e) If the employer, carrier, or administrator accepts liability for a claim involving an employee's death and there are no issues necessitating a hearing for determination of beneficiaries or their respective rights, the parties shall submit an agreement executed by all interested parties or their representatives to the Commission. All agreements shall be submitted to the Commission on a Form 30 Agreement for Compensation for Death as set forth in Rule .0501 of this Subchapter.~~

~~(f) The agreement shall be submitted along with all relevant supporting documents, including death certificate of the employee, any relevant marriage certificate and birth certificates for any dependents.~~

~~(g) If the employer, carrier, or administrator denies liability for a claim involving an employee's death, the employer, carrier, or administrator shall send a letter of denial to all potential beneficiaries, their attorneys of record, if any, all known health care providers that have submitted bills to the employer, carrier, or administrator, and the Commission. The denial letter shall state the reasons for the denial and shall further advise of a right to hearing.~~

~~(h) Any potential beneficiary, the employer, the carrier, or the administrator may request a hearing as provided in Rule .0602 of this Subchapter.~~

~~(i) Upon approval by the Commission of a Form 30 Agreement for Compensation for Death, or the issuance of a final order of the Commission directing payment of death benefits pursuant to G.S. 97-38, payment shall be made by the employer, carrier, or administrator directly to the beneficiaries, with the following exceptions:~~

- ~~(1) any applicable award of attorney fees shall be paid directly to the attorney; and~~
- ~~(2) benefits due to a minor or incompetent.~~

~~(j) Any benefits due to a minor pursuant to G.S. 97-38 shall be paid directly to the parent as natural guardian of the minor for the use and benefit of the minor if the minor remains in the physical custody of the parent as natural guardian. If the minor is not in the physical custody of the parent as natural guardian, payment shall be made through some other person appointed by a court of competent jurisdiction or to such other person under such terms as the Commission finds is in the best interests of the parties. When a beneficiary reaches the age of 18, any remaining benefits shall be paid directly to the beneficiary.~~

~~(k) In order to protect the interests of a beneficiary who is incompetent, the Commission shall order that benefits be paid to the beneficiary's appointed general guardian for the beneficiary's exclusive use and benefit, or to the Clerk of Court in the county in which the beneficiary resides for the beneficiary's exclusive use and benefit as determined by the Clerk of Court.~~

~~(l) Upon a change in circumstances, any interested party may request that the Commission amend the terms of any award with respect to a minor or incompetent to direct payment to another party on behalf of the minor or incompetent.~~

(m) In the case of benefits commuted to present value, only those sums that have not accrued at the time of the entry of the Order are subject to commutation.

(n) ~~Where the parties seek a written opinion and award from the Commission regarding the payment of death benefits in uncontested cases in lieu of presenting testimony at a hearing before a Deputy Commissioner, the parties may make application to the Commission for a written opinion by filing a written request with the Docket Director.~~

(o) The parties shall file, electronically, by joint stipulation, affidavit or certified document, a proposed opinion and award or order along with the following information:

- (1) a stipulation regarding all jurisdictional matters;
- (2) the decedent's name, social security number, employer, insurance carrier or servicing agent, and the date of the injury giving rise to this claim;
- (3) a Form 22 Statement of Days Worked or Earnings of Injured Employee or stipulation as to average weekly wage;
- (4) any affidavits regarding dependents;
- (5) the death certificate;
- (6) a Form 29 Supplemental Report for Fatal Accidents;
- (7) Guardian ad litem forms, if any beneficiary is a minor or incompetent;
- (8) proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;
- (9) medical records, if any;
- (10) a statement of payment of medical expenses incurred, if any; and
- (11) a funeral bill or stipulation as to payment of the funeral benefit.

(p) Any attorney seeking fees for representation in an uncontested claim shall file an affidavit or itemized statement in support of an award of attorney's fees.

History Note: Authority G.S. 97-38; 97-39; 97-80(a);
Eff. June 1, 2000;
Amended Eff. November 1, 2014; January 2, 2011;
Recodified from 04 NCAC 10A .0409 Eff. June 1, 2018;
Amended Eff. _____.

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~~ agreement on Commission forms. These forms include the Form 21 Agreement for Compensation for Disability, Form 26 Supplemental Agreement as to Payment of Compensation, Form 26A Employer's Admission of Employee's Right to Permanent Partial Disability, Form 26D Agreement for Payment of Unpaid Compensation in Unrelated Death Cases, and Form 30 Agreement for Compensation for Death.

(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. 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 shall submit the memorandum of agreement within 20 days to the Commission for review and approval. 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.~~ employee, unless amended by an award, in which event the Commission shall return the award with the agreement.

(d) ~~The~~ Upon submission to the Commission of the executed agreement, 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 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: with a copy of the executed agreement that was submitted to the Commission.

(e) All memoranda of ~~agreements~~ agreement for cases that are calendared for hearing before a Commissioner or Deputy Commissioner shall be ~~sent directly~~ addressed to that Commissioner or Deputy 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~~ agreement 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;
 Amended Eff. _____.

SECTION .0900 – REPORT OF EARNINGS

11 NCAC 23A .0903 EMPLOYEE'S OBLIGATION TO REPORT EARNINGS

(a) A self-insured employer, ~~carrier~~ carrier, or third-party administrator may require the employee who has filed a claim to complete a Form 90 Report of Earnings when reasonably necessary but not more than once every six months.

(b) The Form 90 Report of Earnings shall be sent to the employee by certified mail, return receipt requested, and shall include a self-addressed stamped envelope for the return of the form. When the employee is represented by an attorney, the Form 90 Report of Earnings shall be sent only to the attorney for the employee and shall be sent by any method of transmission that provides proof of receipt, including electronic mail, facsimile, or certified mail return receipt requested, and not to the employee.

(c) The employee shall complete and return the Form 90 Report of Earnings within 15 days after receipt of a Form 90 Report of Earnings. If the employee fails to complete and return the Form 90 Report of Earnings within 30 days of receipt of the form, the self-insured employer, ~~carrier~~ carrier, or third-party administrator may seek ~~an order from the Executive Secretary allowing the suspension of benefits. The self-insured employer, carrier or third-party administrator shall not suspend benefits without Commission approval pursuant to the Workers' Compensation Act. to suspend compensation being paid pursuant to G.S. 97-29 by filing a Form 24 Application to Terminate or Suspend Payment of Compensation as allowed by G.S. 97-18.1 and Rule .0404 of this Subchapter. If the Commission suspends benefits for failure to complete and return a Form 90 Report of Earnings, the self-insured employer, carrier or third-party administrator shall reinstate benefits to the employee with back payment as soon as the Form 90 Report of Earnings is submitted by the employee. If benefits are not reinstated, the employee shall submit a written request for an Order from the Executive Secretary instructing the self-insured employer, carrier or third-party administrator to reinstate benefits. If the employee's earnings report does not indicate continuing eligibility for partial or total disability compensation, the self-insured employer, carrier or third-party administrator may apply to the Commission to terminate or modify benefits by filing a Form 24 Application to Terminate or Suspend Payment of Compensation or Form 33 Request that Claim be Assigned for Hearing.~~

(d) If compensation is suspended pursuant to Paragraph (c) of this Rule and the employee subsequently completes and returns the Form 90 Report of Earnings, the self-insured employer, carrier, or third-party administrator shall reinstate payment of compensation to the employee with back payment. However, if the Form 90 Report of Earnings does not indicate continuing eligibility for disability compensation, the self-insured employer, carrier, or third-party administrator is not required to reinstate payment of compensation. If the Form 90 Report of Earnings indicates continuing eligibility for temporary partial disability compensation, the self-insured employer, carrier, or third-party administrator shall make payment of compensation pursuant to G.S. 97-30 with back payment within 14 days of receipt of documentation establishing the amount of compensation due. If payment of compensation is not reinstated following submission of the completed Form 90 Report of Earnings and the employee claims entitlement to ongoing disability compensation, the employee may seek reinstatement by filing a Form 23 Application to Reinstate Payment of Disability Compensation or Form 33 Request that Claim be Assigned for Hearing.

History Note: Authority G.S. 97-80(a); 97-88.2;
 Eff. June 1, 2000;
 Amended Eff. November 1, 2014; August 1, 2006;
 Recodified from 04 NCAC 10A .0903 Eff. June 1, 2018;
 Amended Eff. _____.

SUBCHAPTER 23B – TORT CLAIMS RULES

SECTION .0100 – ADMINISTRATION

11 NCAC 23B .0106 NOTICE BY THE COMMISSION

(a) If service is provided by electronic mail, "receipt of such notice" pursuant to G.S. 143-292 is complete one hour after it is sent by the Commission, provided that:

- (1) notice sent after 5:00 p.m. shall be complete at 8:00 a.m. the following State business day; and
- (2) notice sent by electronic mail that is not readable by the recipient is not complete. Within five State business days of receipt of an unreadable document, the receiving party shall notify the Commission of the unreadability of the document.

(b) If service shall be provided by electronic mail, notice of orders or other documents issued pursuant to G.S. 143-296 is complete in accordance with the same provisions set forth in Paragraph (a) of this Rule.

History Note: Authority G.S. 143-300;
 Eff. _____.

SUBCHAPTER 23E – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION

SECTION .0100 – ADMINISTRATION

11 NCAC 23E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS

(a) Any attorney may request one or more secure leave periods each year as provided in this Rule.

~~(b) For the purpose of this Paragraph only, a "secure leave period" is defined as a partial calendar week or a complete calendar week. During any~~ Within a calendar year, an attorney's secure leave periods pursuant to this Rule shall not exceed an aggregate of three weeks. ~~attorney is entitled to obtain secure leave periods totaling up to 15 business days for any purpose.~~

~~(c) For the purpose of this Paragraph only, a "secure leave period" is defined as a complete calendar week. Within a 24-week period surrounding the birth or adoption of an attorney's child, that attorney is entitled to have the benefit of up to 12 additional secure leave periods.~~

~~(e) To request a secure leave period an attorney shall file a written request, by letter or motion, containing the information required by Paragraph (d) of this Rule with the Office of the Chair within the time provided in Paragraph (e). Upon such filing, the Chair shall review the request and, if the request complies with Paragraphs (d) and (e) of this Rule, issue a letter allowing the requested secure leave period. The attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during that secure leave period.~~

~~(d) To request a secure leave period, an attorney shall file a written request, by letter or motion, containing the information required by Paragraph (e) of this Rule with the Office of the Chair within the time period provided in Paragraph (f) of this Rule. Upon such filing, the Chair shall review the request. If the request is made pursuant to Paragraph (b) or Paragraph (c) of this Rule and the request complies with Paragraphs (e) and (f) of this Rule, the Chair shall issue a letter allowing the requested secure leave period. The attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during a secure leave period that is allowed.~~

~~(d) The request shall contain the following information:~~

- ~~(1) the attorney's name, address, telephone number and state bar number;~~
- ~~(2) the date(s) for which secure leave is being requested;~~
- ~~(3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;~~
- ~~(4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding; and~~
- ~~(5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, tentatively set, or noticed for trial, hearing, deposition or other proceeding during the designated secure leave period.~~

~~(e) The request shall contain the following information:~~

- ~~(1) the attorney's name, mailing address, telephone number, email address, and state bar number;~~
- ~~(2) the date(s) for which secure leave is being requested;~~
- ~~(3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;~~
- ~~(4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering, or interfering with the disposition of any matter in any pending action or proceeding;~~
- ~~(5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the designated secure leave period; and~~
- ~~(6) for secure leave requests that arise under Paragraph (c) of this Rule, the expected birth date or adoption date of the child.~~

~~(e) To be allowed, the request shall be filed:~~

- ~~(1) no later than 90 days before the beginning of the secure leave period; and~~
- ~~(2) before any trial, hearing, deposition or other matter has been regularly scheduled, peremptorily set or noticed for a time during the designated secure leave period.~~

~~An untimely request will be denied by letter. In the event that a party has been denied secure leave because the request was not timely filed and there are extraordinary circumstances, the attorney may file a motion requesting an exception. If the case has been scheduled for hearing before a Deputy Commissioner, the motion shall be addressed to the Deputy Commissioner. If the matter is scheduled for hearing before the Full Commission, the motion shall be addressed to the Chair of the Panel before which the hearing will be held. In all other cases, the motion should be directed to the Office of the Chair.~~

~~(f) The request shall be filed:~~

- ~~(1) no later than 90 days before the beginning of the secure leave period; and~~
- ~~(2) before any trial, hearing, deposition, or other matter has been scheduled, peremptorily set, or noticed for a time during the designated secure leave period.~~

~~(f) If, after a secure leave period has been allowed pursuant to this Rule, any trial, hearing, deposition, or other proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the Deputy Commissioner or chair of the Full Commission panel before which the matter was calendared or set, and serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt, the proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.~~

~~(g) The Chair may, as set forth in Rule .0301 of this Subchapter, make exception to the 15-day aggregate limit set forth in Paragraph (b) of this Rule, the requirement set forth in Subparagraph (e)(5) of this Rule, and the limitations set forth in Subparagraphs (f)(1) and (f)(2) of this Rule. An attorney requesting that the Chair make this exception under this Paragraph shall inform the Chair of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period. The attorney also shall provide notice to all opposing parties or, if represented, opposing counsel of record in all cases subject to the jurisdiction of the Industrial Commission of the beginning and ending dates of the requested secure leave period and of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period.~~

(g) ~~If, after a secure leave period has been allowed pursuant to this Rule, any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period.~~

(h) After a secure leave period has been allowed pursuant to this Rule, if any trial, hearing, or other proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the Deputy Commissioner or Chair of the Full Commission panel before which the matter was calendared or set, and serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt, the proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.

(i) After a secure leave period has been allowed pursuant to this Rule, if any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period.

*History Note: Authority G.S. 97-80(a);
Eff. July 1, 2014;
Recodified from 04 NCAC 10E .0104 Eff. June 1, 2018;
Amended Eff. _____.*

SUBCHAPTER 23L – INDUSTRIAL COMMISSION FORMS

SECTION .0100 – WORKERS' COMPENSATION FORMS

11 NCAC 23L .0103 FORM 26A – EMPLOYER'S ADMISSION OF EMPLOYEE'S RIGHT TO PERMANENT PARTIAL DISABILITY

(a) (Effective until July 1, 2015) The parties to a workers' compensation claim shall use the following Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, for agreements regarding the employee's entitlement to and the employer's payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues agreed upon by the parties, such as election of payment of temporary partial disability pursuant to G.S. 97-30, may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501, where applicable. The Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, shall read as follows:

North Carolina Industrial Commission
Employer's Admission of Employee's Right to Permanent Partial Disability
(G.S. §97-31)

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name

Address

City State Zip

Home Telephone Work Telephone

Social Security Number: _____ Sex: M F Date of Birth: _____

Employer's Name Telephone Number

Employer's Address City State Zip

Insurance Carrier

Carrier's Address City State Zip

Carrier's Telephone Number Carrier's Fax Number

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and _____ is the Carrier/Administrator for the Employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on _____.
3. The injury by accident or occupational disease resulted in the following injuries: _____.
4. The employee was was not paid for the 7 day waiting period.
If not, was salary continued? yes no. Was employee paid for the date of injury? yes no
5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$ _____. This results in a weekly compensation rate of \$ _____.
6. The employee has has not returned full time to work for _____ on _____, at an average weekly wage of \$ _____.
7. Claimant was released with permanent restrictions without permanent restrictions.
8. Permanent partial disability compensation will be paid to the injured worker as follows:
 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
 Total amount of permanent partial disability compensation is \$ _____. Date of first payment: _____.
9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other: _____.
10. An overpayment is claimed in the amount of \$ _____. Overpayment was calculated as follows: _____.
If overpayment claimed, a Form 28B, Report of Compensation and Medical Compensation Paid, is attached. yes no
11. If applicable, the Second Injury Fund Assessment is \$ _____. A check is is not included.
12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree otherwise.
Check one of the boxes below if the award is more than \$3,000.00:
 The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.
 The employee and employer have agreed that the employer will pay the entire fee.

The undersigned hereby certify that the material medical and vocational reports related to the injury have been provided to the employee or the employee's attorney and have been filed with the Industrial Commission for consideration pursuant to G.S. 97-82(a) and Rule 11 NCAC 23A .0501.

Name Of Employer Signature Title Date

Name Of Carrier/Administrator Signature Direct Phone Number Title Date

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on pages 2 and 3 of this form.

Signature of Employee Address Date

Signature of Employee's Attorney Address Date

Check box if no attorney retained.

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner Date

Attorney's fee approved

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS
Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

~~IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS~~

~~If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at <http://www.ic.nc.gov/forms.html>.~~

~~IMPORTANT NOTICE TO EMPLOYER~~

~~The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 11 NCAC 23A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and Medical Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.~~

~~NEED ASSISTANCE?~~

~~If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.~~

Form 26A
11/2014

Self-Insured Employer or Carrier Mail to:
NCIC - Claims Administration
4335 Mail Service Center
Raleigh, North Carolina 27699-4335
Main Telephone: (919) 807-2500
Helpline: (800) 688-8349
Website: <http://www.ic.nc.gov/>

(a) (Effective July 1, 2015) The parties to a workers' compensation claim shall use the following Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, for agreements regarding the employee's entitlement to and the employer's payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues agreed upon by the parties, such as election of payment of temporary partial disability pursuant to G.S. 97-30, may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501, where applicable. The Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, shall read as follows:

North Carolina Industrial Commission
Employer's Admission of Employee's Right to Permanent Partial Disability
(G.S. §97-31)

IC File # _____
Emp. Code # _____
Carrier Code # _____
Carrier File # _____
Employer FEIN _____

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Employee's Name

Address

City

State

Zip

Home Telephone

Work Telephone

Social Security Number: _____ Sex: M F Date of Birth: _____

Employer's Name

Telephone Number

Employer's Address _____ City _____ State _____ Zip _____

Insurance Carrier _____

Carrier's Address _____ City _____ State _____ Zip _____

Carrier's Telephone Number _____ Carrier's Fax Number _____

WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and _____ is the Carrier/Administrator for the Employer.
2. The employee sustained an injury by accident or the employee contracted an occupational disease arising out of and in the course of employment on _____.
3. The injury by accident or occupational disease resulted in the following injuries: _____.
4. The employee was was not paid for the 7 day waiting period.
If not, was salary continued? yes no. Was employee paid for the date of injury? yes no
5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances, was \$ _____. This results in a weekly compensation rate of \$ _____.
6. The employee has has not returned full time to work for _____ on _____, at an average weekly wage of \$ _____.
7. Claimant was released with permanent restrictions without permanent restrictions. If claimant was released with permanent restrictions and has returned to work for the employer of injury, attach a job description if known to exist.
8. Permanent partial disability compensation will be paid to the injured worker as follows:
 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
 Total amount of permanent partial disability compensation is \$ _____. Date of first payment: _____.
9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial disability, waiting period or other: _____.
10. An overpayment is claimed in the amount of \$ _____. Overpayment was calculated as follows: _____.
- If overpayment claimed, a Form 28B, Report of Compensation and Medical Compensation Paid, is attached. yes no
11. If applicable, the Second Injury Fund Assessment is \$ _____. A check is is not included.

The undersigned hereby certify that the material medical and vocational ~~reports~~ records related to the ~~injury~~ injury, including any job description known to exist if the employee has permanent restrictions and has returned to work for the employer of injury, have been provided to the employee or the employee's attorney and have been filed with the Industrial Commission for consideration pursuant to G.S. 97-82(a) and Rule 11 NCAC 23A .0501.

Name Of Employer	Signature	Title	Date

Name Of Carrier/Administrator	Signature	Direct Phone Number	Email Address	Title	Date

By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 3 of this form.

Signature of Employee	Address	Email Address	Date

Signature of Employee's Attorney	Address	Email Address	Date

Check box if no attorney retained.

North Carolina Industrial Commission
The Foregoing Agreement Is Hereby Approved:

Claims Examiner	Date

Attorney's fee approved _____

IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM PAYMENTS
Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial Commission in writing within two years from the date of receipt of your last compensation check or your rights to these benefits may be lost.

IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS
 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL MEDICAL BENEFITS

If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several factors. Your right to payment of future medical compensation will terminate two years after your employer or carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think you will need future medical compensation, you must apply to the Industrial Commission in writing within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at <http://www.ic.nc.gov/forms.html>.

IMPORTANT NOTICE TO EMPLOYER

The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 11 NCAC 23A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and Medical Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

NEED ASSISTANCE?

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688-8349.

Form 26A
~~7/2015~~ 6/2020

Self-Insured Employer or Carrier Mail to:
 NCIC - Claims Administration
 4335 Mail Service Center
 Raleigh, North Carolina 27699-4335
 Main Telephone: (919) 807-2500
 Helpline: (800) 688-8349
 Website: <http://www.ic.nc.gov/>

(b) A copy of the form described in Paragraph (a) of this Rule can be accessed at <http://www.ic.nc.gov/forms/form26a.pdf>. The form may be reproduced only in the format available at <http://www.ic.nc.gov/forms/form26a.pdf> and may not be altered or amended in any way.

*History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;
 Eff. November 1, 2014;
 Recodified from 04 NCAC 10L .0103 Eff. June 1, 2018;
 Amended Eff. _____.*

**Regulatory Impact Analysis
Employer's Requirement to File a Form 19**

Agency:	North Carolina Industrial Commission
Contact:	Gina Cammarano – (919) 807-2524
Proposed New Rule Title:	Employer's Requirement to File First Report of Injury
Rule Proposed for Amendment:	Rule 11 NCAC 23A .0104 (see proposed rule text in Appendix A)
State Impact:	Yes
Local Impact:	Yes
Private Impact:	Yes
Substantial Economic Impact:	Possible
<i>Statutory Authority:</i>	<i>G.S. § 97-80(a); § 97-92.</i>

Background and Purpose of Proposed Rule Changes:

The purpose of Rule 11 NCAC 23A .0104 is to provide notice and guidance to the regulated entities about the requirement, when certain thresholds are met, for the employer, carrier, or administrator to file with the Industrial Commission a report of the employee's injury or occupational disease on the form established for this purpose by the Industrial Commission, which is the Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission*.

There are two thresholds that trigger the requirement to file a Form 19, and the Form 19 must be filed upon the first of these thresholds being met. One threshold is when the employee misses more than one day of work due to the injury or occupational disease. The other threshold is when the medical compensation charges paid by the employer, carrier, or administrator exceed the amount set by the Industrial Commission.

The purpose of the Form 19 is for an employer to report workplace injuries to the Industrial Commission once the first of the two thresholds is met in terms of time out of work or medical charges paid.

It should be noted that the filing of a Form 19 does not constitute the filing of an employee's claim for compensation. The Form 19 is merely a report of injury. But, upon the receipt of a Form 19, the Industrial Commission assigns an "IC File Number" to the case, which will be the file number used going forward, if and when the employee files a claim for compensation. Additionally, when an employer files a Form 19, the rule requires the employer to send a blank Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent* to the employee. The Form 18 is the most common method by which an employee files a claim for workers' compensation benefits.



The rule, in its current form, does not tell the regulated entities the medical compensation dollar amount set by the Industrial Commission, even though G.S. 97-92(a) states that the need to file a report of injury is triggered if medical compensation exceeds "the amount set by the Commission."

Currently, in order to determine this dollar amount, the regulated entities have to refer to the April 20, 1992 *Minutes, Medical Procedure Changes*¹ of the Industrial Commission. In S.L. 2013-294, however, the legislature directed the Industrial Commission to review all prior minutes and administrative rulings of the Commission and, where necessary, adopt rules related to the processes and procedures outlined in the prior minutes and administrative rulings, in accordance with Article 2A of Chapter 150B of the General Statutes. Therefore, it appears necessary for the Commission to amend Rule 104 and state the current dollar amount set by the Commission.

Proposed Rule Changes and Their Estimated Impact:

The proposed amendments to this rule achieve three main objectives:

- (1) The proposed amendment to subsection (a) gives needed clarity to the regulated entities by clearly describing the situations that trigger the compulsory filing of a Form 19 under the statute and by specifically stating the dollar amount of medical charges that has been set by the Industrial Commission as the amount over which the need to file a Form 19 is triggered in cases where the employee has not missed more than one day of work.² The proposed increase of the medical charges dollar amount over which the need to file a Form 19 is triggered in cases where the employee has not missed more than one day of work from \$2,000.00 (the amount that was set by the Commission in 1992) to \$4,000.00 sets a dollar amount that reasonably reflects the increase in North Carolina workers' compensation medical expenses (prescriptions and other medical treatment costs common to North Carolina workers' compensation cases) that has occurred between 1992 and 2019 and strikes a good balance from a cost-benefit analysis

¹ The Commission's April 20, 1992 *Minutes, Medical Procedure Changes* increased the amount of medical charges set by the Commission from \$1,000.00 to \$2,000.00 effective July 1, 1992. Prior to the 1992 increase, the dollar amount was increased from \$800.00 to \$1,000.00 effective July 1, 1989 in the Commission's May 1, 1989 *Office Memorandum for "Medical Only" Claims*. The Commission's records do not contain any documents between May 1, 1989 and August 12, 1959 memorializing the dollar amount. The Commission's August 12, 1959 *Amendment to Instructions and Rules Applicable to Certain "Medical Only" Cases* increased the dollar amount from \$10.00 to \$15.00 effective September 1, 1959. Prior to that, the Commission's July 18, 1951 *Amendment to Instructions and Rules Applicable to Certain "Medical Only" Cases* set the dollar amount at \$10.00 effective August 1, 1951.

² In cases where the employee has missed more than one day of work, a Form 19 must be filed, regardless of the amount of medical charges.

standpoint. It should be noted that the Commission informally sought stakeholder input and feedback regarding this rule change, and both employee representatives and employer representatives support setting the dollar amount at \$4,000.00.

- (2) The proposed amendment to subsection (a) also carries out the legislative mandate of S.L. 2013-294, which required the Industrial Commission to review all prior minutes and, where necessary, adopt rules related to the processes and procedures outlined in the prior minutes in accordance with Article 2A of Chapter 150B of the General Statutes.

The remaining proposed changes are technical edits intended to clarify existing procedure with no expected impact to regulated entities.

Economic impact:

(1) Number of cases affected annually

The amendment to subsection (a) of the rule is expected to result in some decrease in the number of Forms 19 filed. However, the number by which the Forms 19 will decrease cannot be precisely determined due to limitations in the available data, namely the fact that neither the Industrial Commission nor any of the regulated entities keeps data on the number of cases where the employee has not missed more than one day of work and where the employee's medical charges are greater than \$2,000.00 but not greater than \$4,000.00.

Based on the data obtained from the North Carolina Rate Bureau (NCRB) (which is based on data from the National Council on Compensation Insurance (NCCI)), during policy years 2011 through 2017, in about 5.8% of North Carolina workers' compensation cases, the medical expenses ranged from \$2,001.00- \$4,000.00 and the employee missed seven or fewer days of work. Unfortunately, neither NCCI or NCRB nor any other known entity keeps data in a way that separates out workers' compensation cases where the medical expenses range from \$2,001.00- \$4,000.00 and the employee has missed no more than one day of work.

Because of the limits on the data, the number of cases that will be affected by increasing the dollar amount of the medical charges that trigger the Form 19 filing requirement by \$2,000.00 cannot be precisely determined. However, based on the available data from policy years 2011-2017, the maximum number of cases that could be affected is approximately 3,300 per year, assuming all of the

individuals in the “seven-or-fewer-days-missed” category missed no more than one day of work.³

These numbers are the maximum number of cases affected, but the true number of cases affected will likely be less (and could be significantly less) because if and when any of the employees in any of these cases were to miss more than one day of work, the employer, carrier or administrator will be required to file a Form 19 regardless of the amount of medical charges. It is probably fair to assume that as the dollar amount of medical charges increases, the chance that an employee will miss more than one day of work due to the injury also increases.

(2) The State through the Industrial Commission:

The Industrial Commission can expect processing time savings of approximately \$6,600.00 per year resulting from a decrease in the number of Forms 19 filed.

Based on the information obtained from the Director of Claims Administration at the Industrial Commission, it takes the average Claims Examiner about five minutes to process a Form 19 in a typical case where the coverage is clear and there are not any other issues. The Claims Examiner salary at the Industrial Commission is \$31,200.00, equating to \$50,140.00 including salary and benefits. Based on a 40-hour work week and a 52-week year, each Claims Examiner costs \$24.00 per hour or .40 per minute. Therefore, the cost of processing a Form 19, assuming it takes five minutes to process, is \$2.00.

In a given year, if the Industrial Commission processes a maximum of 3,300 fewer Forms 19 and if it costs \$2.00 of Claims Examiner time to process each Form 19, this is a cost savings of up to \$6,600.00 per year to the State through the Industrial Commission.

(2) The Private Sector as Employees/Plaintiffs:

When an employer files a Form 19, the rule requires the filer of the Form 19 to send a blank Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent* to the employee. The Form 18 is the most common method by which an employee files a claim for workers' compensation benefits.

³ See attached chart for policy years 2011-2015 and policy years 2016-17

Since the amendment to subsection (a) of the rule is expected to reduce the number of Forms 19 filed by up to a maximum of 3,300 cases annually, this means that fewer employees will receive direct notification in the form of a blank Form 18 about the need to file a claim for workers' compensation benefits if they wish to do so. Under the proposed rule change, employers will not send a blank Form 18 to employees in these cases unless and until the employees miss more than one day of work due to their workplace injuries.

This could result in fewer employees filing claims for workers' compensation benefits and it also could result in some of those employees failing to timely file claims for workers' compensation benefits, meaning that their right to claim benefits will be time-barred.⁴ If a claim becomes time-barred, the employee is no longer eligible to claim benefits for lost compensation or medical expenses associated with the disabling workplace event for the remainder of their lifetime. These foregone benefits could be substantial. However, because it is not possible to determine how many fewer claims will be filed, and of those cases, how many will develop complications and incur costs after the statute of limitations has passed, the frequency and cost of this potential outcome is unquantified.

On the other hand, stakeholders from both the employer and employee side have indicated that their experience over the years with claims and with adjuster behavior indicates that adjusters often voluntarily pay medical claims up to the \$2000 dollar threshold - *before* an employee takes any action to file a claim through a Form 18 or other means - because adjusters do not have to accept liability for the claim (or even deny the claim) until the employee takes action by filing the claim. Raising the dollar amount from \$2,000 to \$4,000 could benefit employees because adjusters may make voluntary payments for a longer period of time, thereby extending the employee's statute of limitations for filing a claim. However, it is not possible to reliably predict future adjuster behavior in terms of whether or not (or, if so, for how long), they are likely to voluntarily to pay additional medical compensation beyond \$2,000.00 if the dollar threshold is raised to \$4,000.00.

⁴ In an injury by accident claim, an employee has two years from the date of accident or from the date of the employer/carrier/administrator's last payment of medical compensation, whichever is later, to file a claim for workers' compensation benefits. In an occupational disease claim, the two years runs from the later of: (1) the last payment of medical compensation or (2) the date by which the employee is both disabled from the occupational disease and has been informed by competent medical authority of the nature and work-related cause of the disease.

Even though fewer employees will receive direct notification by (or on behalf of) their employer of their right to file a Form 18 if the dollar threshold is raised, these employees still will be notified that they should file a Form 18 if they are claiming workers' compensation benefits through the Form 17 *N.C. Workers' Compensation Notice to Injured Workers and Employers* (which must be prominently posted at the employee's place of employment if the employer has workers' compensation insurance or qualifies as a self-insured employer).

And employees will remain able to obtain a copy of a blank Form 18 by printing it out from the Industrial Commission website or by calling the Industrial Commission's Workers' Compensation Information Specialists who can mail a copy of a blank Form 18 to the employee. An employee also may obtain a copy of a blank Form 18 from the Information Specialists by scheduling an appointment to come to the Industrial Commission to pick up the blank Form 18. The phone number for the Industrial Commission's HELP LINE (which is answered by the Industrial Commission's Workers' Compensation Information Specialists is posted on the Form 17.

It also should be noted that once an employee misses more than one day of work due to his or her injury or occupational disease, the employer will have to file a Form 19 and send a Form 18 to the employee, regardless of the dollar amount of the medical charges. Further, if an employee has not missed more than one day of work due to an injury then the employee may not need to file a workers' compensation claim at that time.

(2) The State as an Employer, Local Government as an Employer, and the Private Sector as Self-Insured Employers, Carriers and Administrators/Defendants

The amendment to subsection (a) of the rule is expected to result in some decrease in the number of Forms 19 filed. This means that there will be fewer Forms 19 for adjusters with the State, Local Government and private sector to process electronically and to mail to employees (along with a blank Form 18), which will result in a savings of adjuster time and compensation costs attributable to the Form 19 process, as well as other Form 19-related costs, such as postage. These savings amount to a maximum of \$43,000 annually. Detailed calculations are available in Appendix B.

The amendment also may result in a decrease in the number of Forms 18 filed by employees to claim workers compensation benefits. This outcome could reduce compensation costs and administrative processing time. If no Form 18 is filed and the claim becomes time-barred, the employer is not obligated to pay workers compensation benefits. Due to the uncertainty about the frequency of this occurrence, these potential savings are not quantified. If no Form 18 is filed the employer is not required to respond to the claim by accepting or denying the claim.

Summary of Economic Impact:

The proposed rule amendment increases the workers' compensation medical expense threshold that obligates an employer to file a Form 19 when the employee has not missed more than one day of work from \$2,000.00 to \$4,000.00.

The amendment will result in fewer Forms 19 being filed or, at the very least, Forms 19 being filed at a later point (the point at which the medical compensation exceeds \$4,000.00) in cases where the employee has not missed more than one day of work. Likewise, fewer employees will receive direct notification from employers in the form of a blank Form 18 about how to file a claim for workers' compensation benefits.

This could result in fewer employees filing timely claims for workers' compensation benefits, meaning that their right to claim benefits could be time-barred – a cost to employees and savings to self-insured employers, carriers, and administrators. These foregone benefits could be substantial, but the frequency and cost of this potential outcome is unquantifiable. However, increasing the filing threshold could also benefit employees because adjusters may make voluntary payments for a longer period of time, thereby extending the employee's statute of limitations for filing a claim. However, it is not possible to reliably predict future adjuster behavior. The net effect of these rules on employees and self-insured employers, carriers, and administrators is unknown.

Based on the available data, in a given year, the maximum number of affected cases is approximately 3,300. It should be noted, however, that the actual number is likely to be far less than this maximum number since as soon as any of these employees misses more than one day of work they will be sent a blank Form 18 (along with a copy of the Form 19) by the employer. Additionally, there is no data available indicating how many employees file a Form 18 only because a blank Form 18 was mailed to them by their employer versus how many employees file a Form 18 independent of having been mailed a blank Form 18 by their employer. Therefore, it is difficult, if not impossible, to monetize the effect on claims filing behavior of fewer employees receiving a blank Form 18 from the employer.

Administrative cost savings associated with reduced Form 19 processing could reach up to \$18,000 per year for State government (both through the Industrial Commission and as an Employer, \$1,760 for Local Government, and \$23,250 for the Private Sector.

It is anticipated the rule will go into effect on April 1, 2020 or May 1, 2020, and it is anticipated that the same or similar aggregate economic impact and behavioral effects will recur each year, although over time and with medical inflation the impact and effects may lessen.

Alternatives

The Industrial Commission considered several alternatives to the \$4,000 dollar amount, namely leaving the dollar amount at \$2,000, raising the dollar amount to \$3,500.00, and raising the dollar amount to \$5,000.00. Leaving the dollar amount at \$2,000.00 was rejected because the amount was set at \$2,000.00 in 1992, which was 27 years ago, and it is undisputed that medical costs have gone up since then.

Raising the dollar amount to \$5,000.00 also was rejected, even though this amount was given serious consideration, because a comparison of the January 1, 1993 North Carolina Industrial Commission Fee Schedule reimbursement rates versus the current North Carolina Industrial Commission Fee Schedule reimbursement rates for 11 common types of medical treatment in workers' compensation cases showed an average of a 93% increase in facility reimbursement rates. Therefore, it was decided that raising the dollar amount by 150%, even when factoring in the cost savings and the benefits to employees of potentially having more medical compensation paid over a longer period of time, was too high of an increase.

Raising the dollar amount to \$3,500.00 also was given serious consideration but, ultimately, rejected in favor of \$4,000.00 because \$3,500.00 only represents a 75% increase in dollar amount as compared with the 93% average increase in Fee Schedule facility reimbursement rates between January 1, 1993 and 2019 and because the cost savings benefits and benefits to employees of potentially having more medical compensation paid over a longer period of time are higher at the \$4,000.00 level than at the \$3,500.00 level.

Appendix A – Proposed Rule Text

11 NCAC 23A .0104 is proposed for amendment as follows:

11 NCAC 23A .0104 **EMPLOYER'S REQUIREMENT TO FILE A ~~FORM 19~~FIRST REPORT OF INJURY**

(a) The form required to be provided by G.S. 97-92(a) is the Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission*. The Form 19 shall be used when the injury causes the employee to be absent from work for more than one day or when the charges for medical compensation exceed four thousand dollars (\$4,000). The Form 19 shall be filed with the Commission in accordance with Rule .0108(d) of this Section.

(b) The employer, carrier, or administrator shall provide the employee with a copy of the completed Form 19 *Employer's Report of Employee's Injury or Occupational Disease to the Industrial Commission*, along with a blank Form 18 *Notice of Accident to Employer and Claim of Employee, Representative, or Dependent* for use by the employee in making a claim.

History Note: Authority G.S. 97-80(a); 97-92;
 Eff. March 15, 1995;
 Amended Eff. November 1, 2014; January 1, 2011; August 1, 2006; March 1, 2001; June 1, 2000;
 Recodified from 04 NCAC 10A .0104 Eff. June 1, 2018;
 Amended Eff. _____.

Appendix B - Adjuster Time and Postage Savings

Adjuster Time Savings

The average amount of time that it takes for an adjuster to handle the filing and mailing of a Form 19 (and mailing of the copy of the blank Form 18) appears to vary, depending on whether the adjuster works for the State, Local Government or private sector.

Based on the information obtained from the North Carolina Office of State Human Resources, the total estimated time it takes personnel to file the Form 19 and prepare the acknowledgement packet sent to the employee containing the blank Form 18, a copy of the Form 19, and a cover letter is about 16 minutes. The North Carolina League of Municipalities estimated a processing time of 30 minutes, while a third party adjusting firm in the private sector estimated 20 minutes.

Based on the information obtained from the Workers' Compensation Manager at the North Carolina Office of State Human Resources, the average salary of a person who handles the filing and mailing of the Form 19 (and mailing of the copy of the blank Form 18) for the State as an Employer is \$32,000.00 per year, equating to \$51,268.00 in total compensation including salary and benefits. The per-minute cost for this position is \$0.41.

Based on the information obtained from the Manager of Workers' Compensation Claims at the North Carolina League of Municipalities, the average salary of a "Med Only" adjuster who handles the filing and mailing of the Form 19 (and mailing of the copy of the blank Form 18) for Local Government as an Employer is \$62,850.00 per year, equating to \$109,134.00 in total compensation including salary and benefits. The per-minute cost for this position is \$0.87.

Based on the information obtained from an Officer and Claims Manager of a third party adjusting firm in the private sector that handles many North Carolina workers' compensation cases, for large insurance companies in the private sector the salary of an adjuster who handles the filing and mailing of the Form 19 (and mailing of the copy of the blank Form 18) can range from a low of \$35,000.00 to a high of \$75,000.00, but the average adjuster salary in a large insurance company is believed to be about \$60,000.00 (without a bonus), equating to \$86,831.00 in total compensation including salary and benefits. The per-minute cost for this position is \$0.70.

The League of Municipalities reported that their claims accounted for approximately 2% of the total claims affected by this rule. In the absence of data, this analysis assumes the remainder of cases are evenly split between state government and private sector employers.

Using these percentages (49% State, 2% Local Government, and 49% Private Sector), the annual cost savings to the State as an Employer would be \$10,628

(\$6.57 savings per affected case x 1617 cases), the annual cost savings to Local Government as an Employer would be \$1,731 (\$26.23 savings per affected case x 66 cases), and the annual cost savings to the Private Sector would be \$22,501.00 (\$13.92 savings per affected case x 1617 cases).

Postage Annual Savings

Assuming the cost of \$0.46 per letter (the current metered rate) for mailing a cover letter, one Form 19, and one blank Form 18 to an employee, and using the percentages immediately above, the annual cost savings in postage for the State as an Employer would be \$743.82, the annual cost savings in postage for Local Government as an Employer would be \$30.36, and the annual cost savings in postage for the Private Sector would be \$743.82.

North Carolina
Medical Only, Lost-Time, and Total Claims Distribution By Incurred Medical Loss Amount
Policy Years 2011-2015

Incurred Medical Loss Amount Range	Percent of Medical Only Claims in Range	Percent of Lost-Time* Claims in Range	Percent of Total Claims in Range
\$0 - \$1,000	77.895%	18.005%	63.438%
\$1,001 - \$2,000	12.525%	9.193%	11.721%
\$2,001 - \$3,000	4.149%	6.897%	4.812%
\$3,001 - \$4,000	1.877%	5.064%	2.646%
\$4,001 - \$5,000	1.047%	4.099%	1.784%
\$5,001 - \$6,000	0.629%	3.441%	1.308%
\$6,001 - \$7,000	0.425%	3.008%	1.049%
\$7,001 - \$8,000	0.311%	2.757%	0.902%
\$8,001 - \$9,000	0.219%	2.488%	0.767%
\$9,001 - \$10,000	0.159%	2.315%	0.680%
\$10,001 - \$20,000	0.577%	15.634%	4.212%
\$20,001 - \$30,000	0.113%	8.832%	2.218%
\$30,001 - \$40,000	0.040%	5.323%	1.315%
\$40,001 - \$50,000	0.014%	3.299%	0.807%
\$50,001 - \$60,000	0.008%	2.155%	0.526%
\$60,001 - \$70,000	0.004%	1.495%	0.364%
\$70,001 - \$80,000	0.003%	1.129%	0.275%
\$80,001 - \$90,000	0.001%	0.839%	0.203%
\$90,001 - \$100,000	0.001%	0.632%	0.153%
\$100,001 and greater	0.002%	3.395%	0.821%
Total Number of Claims	284,918	90,664	375,582

*Claims where an injured employee has received wage replacement benefits due to a compensable workplace injury.

North Carolina
Medical Only, Lost-Time, and Total Claims Distribution By Incurred Medical Loss Amount
Policy Years 2016-2017

Incurred Medical Loss Amount Range	Percent of Medical Only Claims in Range	Percent of Lost-Time* Claims in Range	Percent of Total Claims in Range
\$0 - \$1,000	78.919%	17.705%	64.151%
\$1,001 - \$2,000	11.888%	9.781%	11.380%
\$2,001 - \$3,000	3.921%	6.894%	4.638%
\$3,001 - \$4,000	1.737%	5.196%	2.572%
\$4,001 - \$5,000	0.991%	4.371%	1.807%
\$5,001 - \$6,000	0.613%	3.731%	1.366%
\$6,001 - \$7,000	0.394%	3.275%	1.089%
\$7,001 - \$8,000	0.292%	2.963%	0.936%
\$8,001 - \$9,000	0.230%	2.720%	0.831%
\$9,001 - \$10,000	0.202%	2.827%	0.836%
\$10,001 - \$20,000	0.617%	16.224%	4.382%
\$20,001 - \$30,000	0.126%	8.975%	2.261%
\$30,001 - \$40,000	0.035%	5.086%	1.254%
\$40,001 - \$50,000	0.020%	3.030%	0.746%
\$50,001 - \$60,000	0.003%	1.878%	0.455%
\$60,001 - \$70,000	0.004%	1.211%	0.295%
\$70,001 - \$80,000	0.004%	0.884%	0.216%
\$80,001 - \$90,000	0.001%	0.586%	0.142%
\$90,001 - \$100,000	0.002%	0.465%	0.113%
\$100,001 and greater	0.001%	2.197%	0.531%
Total Number of Claims	111,676	35,509	147,185

*Claims where an injured employee has received wage replacement benefits due to a compensable workplace injury.

**Regulatory Impact Analysis
Employee's Obligation to Report Earnings**

Agency:	North Carolina Industrial Commission
Contact:	Gina Cammarano – (919) 807-2524
Proposed New Rule Title:	Employee's Obligation to Report Earnings
Rule Proposed for Amendment:	Rule 11 NCAC 23A .0903 (see proposed rule text in Appendix 1)
State Impact:	Yes
Local Impact:	Yes
Private Impact:	Yes
Substantial Economic Impact:	No
<i>Statutory Authority:</i>	<i>G.S. § 97-80(a).</i>

Background and Purpose of Proposed Rule Changes:

On June 1, 2000, the Industrial Commission implemented Rule 903¹ of its *Workers' Compensation Rules of the North Carolina Industrial Commission* to establish a way for self-insured employers, carriers, and third-party administrators who are paying disability benefits to an employee to periodically verify the employee's continuing eligibility for disability benefits by sending the employee a form requesting information as to whether or not the employee has received earnings from work or has worked for any business or person during the time period covered by the form. (The form created by the Industrial Commission is called the *Form 90 Report of Earnings*). The receipt of earnings during the time period covered by the Form 90 may, though does not necessarily, indicate that the employee is no longer eligible for continuing disability compensation.²

¹ The rule was subsequently amended on August 1, 2006, and after the Industrial Commission's rules became subject to The Administrative Procedure Act as part of Session Laws 2011-287, the rule was adopted pursuant to the requirements of The Administrative Procedure Act effective November 1, 2014. The rule was codified as 04 NCAC 10A .0903 in 2014, but the Industrial Commission's rules were recodified from Title 04 Chapter 10 of the North Carolina Administrative Code to Title 11 Chapter 23 of the North Carolina Administrative Code effective June 1, 2018. Therefore, the rule currently is codified as 11 NCAC 23A .0903.

² In a situation, for example, where the employee has received earnings that are lower than the employee's pre-injury average weekly wage, that employee may be eligible for continuing disability compensation based on partial wage loss pursuant to N.C. Gen. Stat. §97-30. In a situation, for example, where the employee had a second job at the time of the workplace injury and has continued to receive the same earnings in that second job while unable to earn wages at the employer of injury, that employee may be eligible for continuing disability compensation based on total wage loss pursuant to N.C. Gen. Stat. §97-29.

Rule 11 NCAC 23A .0903(c) states that if the employee does not complete and return the Form 90 to the self-insured employer, carrier, or third-party administrator within 30 days of receipt, the self-insured employer, carrier, or third-party administrator may seek an order from the Executive Secretary allowing the suspension of disability benefits.

Rule 11 NCAC 23A .0903(c) also states that if the Industrial Commission suspends the employee's disability benefits for failure to complete and return the Form 90 within 30 days of receipt, the self-insured employer, carrier, or third-party administrator shall reinstate the employee's benefits with back payment as soon as the employee completes and returns the Form 90. This part of the rule, in its current form, presents a potential problem because it compels the self-insured employer, carrier, or third-party administrator to automatically reinstate total wage loss benefits with back payment upon receipt of the completed, albeit late, Form 90 without any regard to the earnings information provided by the employee on that Form 90.

This means that these regulated entities, who have already gone through one administrative procedure allowing them to suspend total disability compensation (the Form 24 procedure), must un-do that suspension of compensation and go through a second administrative procedure (another Form 24 procedure) or, in the alternative, a longer adjudicatory procedure (a full evidentiary hearing) in order to be able to suspend the reinstated benefits, even if the information provided by the employee on the late Form 90, on its face, demonstrates that the employee is no longer eligible for continuing disability compensation, either total or partial. This can result in unrecoverable payments of reinstated total disability compensation that were paid when ultimately not due.

Proposed Rule Changes and Their Estimated Impact:

The proposed amendments to this rule achieve four main objectives:

- (1) Creating an exception to the "automatic reinstatement of compensation with back payment" provision of the rule in cases where an initial Form 24 Application has been approved under subsection (c) of the rule and the employee subsequently completes and returns the Form 90 but the earnings information on the Form 90 does not indicate continuing eligibility for disability compensation. This amendment is consistent with the statutory definition of "disability," namely, "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment."³ In its current form, the rule requires reinstatement of compensation with back payment following an approved Form 24

³ G.S. §97-2(9)

Application that was filed pursuant to subsection (c) of the Rule if and when the employee subsequently completes and returns the Form 90, even when, for example, the earnings information provided by the employee on the Form 90 indicates that the employee has returned to work earning the same or greater wages in the same or any other employment.

- (2) Specifying that if the Form 90 indicates continuing eligibility for temporary partial disability compensation, the self-insured employer, carrier, or third-party administrator shall pay temporary partial disability compensation with back payment to the employee, pursuant to G.S. §97-30, with this compensation being due within 14 days of receipt of documentation establishing the amount of this compensation due, consistent with the statute. This specification provides needed clarity for the regulated parties subject to this rule and it is in line with the statute, which provides, in relevant part, that “where the incapacity for work resulting from the injury is partial, the employer shall pay. . . to the injured employee during such disability, a weekly compensation equal to sixty-six and two-thirds percent. . . of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter. . .”⁴ This specification also is consistent with G.S. §97-18(e) and (g), which govern when installments of compensation are due. While the last sentence of the rule, in its current form, implies that temporary partial disability benefits should be paid pursuant to G.S. §97-30 when a Form 90 is completed and returned after the suspension of compensation is allowed under subsection (c) of the rule and the earnings information on the Form 90 shows partial wage loss, a clearer, more direct statement of what should happen in these circumstances will be beneficial to the regulated parties. This change is not expected to have any impact on regulated entities or on Industrial Commission processes, outside of giving clarity to the regulated entities about the proper procedure to be followed under the statute when the information on the Form 90 indicates entitlement to partial disability compensation.
- (3) Specifying the statutory scheme under which an employee can request an order for reinstatement of compensation when the Industrial Commission has allowed suspension of compensation under subsection (c) of the rule and the employee subsequently completes and returns the Form 90 and claims entitlement to ongoing disability compensation, but the self-insured employer, carrier, or third-party administrator fails to reinstate either total or partial disability

⁴ G.S. §97-30

compensation. In its current form, the rule does not specify the Industrial Commission forms that can be filed by the employee to request reinstatement of compensation and it does not explain that in lieu of requesting reinstatement at the administrative level from the Executive Secretary's office via a Form 23, the employee may request reinstatement in the context of a full evidentiary hearing in front of a Deputy Commissioner via a Form 33 (which the employee may want to do if it appears to the employee that findings of fact will need to be made by a Deputy Commissioner in order for the Industrial Commission to make a ruling on the reinstatement request). This specification of the alternative Industrial Commission forms that can be filed to request reinstatement provides needed clarity for the regulated parties subject to this rule. This change is not expected to have any impact on regulated entities or on Industrial Commission processes, outside of giving clarity to employees about the proper forms to use when requesting reinstatement of compensation.

- (4) Specifying the statutory scheme under which the employee's disability compensation may initially be suspended for failure to complete and return a Form 90. This specification of the proper procedure and form to be filed (the Form 24 procedure) provides needed clarity for the regulated parties who are subject to this rule. This change is not expected to have any impact on regulated entities or on Industrial Commission processes because most entities already know that the correct procedure and form to use is the Form 24 procedure. But because the rule, in its current form, does not specify this procedure but, instead, just says that the employer, carrier, or third-party administrator may "seek an order from the Executive Secretary allowing the suspension of benefits," every once in awhile a party will file a general motion seeking an order instead of using the Form 24 Application to seek the order. This proposed change corrects this error and codifies the proper procedure in current practice and under the statute.

Economic impact:

Only the first proposed amendment to the rule discussed above (the exception to the “automatic reinstatement of compensation with back payment” provision of the rule) is expected to have an economic impact. The economic impact of this proposed amendment to the rule is discussed immediately below. The other proposed rule amendments technical edits intending to clarify existing procedure with no expected impact to regulated entities other than helping the regulated entities better understand Industrial Commission procedure and their rights and responsibilities under the North Carolina Workers’ Compensation Act.

(1) The State through the Industrial Commission:

Costs

The costs to the State through the Commission are likely to be *de minimus*. There may be a small increase in the number of Forms 23 and/or Forms 33 filed requesting reinstatement of disability compensation since the proposed amendment allows the self-insured employer, carrier or third-party administrator to not automatically reinstate compensation in some circumstances, which may lead to a corresponding increase in requests for reinstatement. However, as discussed below under the “Benefits” section of “*The State through the Industrial Commission*,” any increase in the number of Forms 23 and/or Forms 33 filed should be offset by a corresponding decrease in the number of second Forms 24 filed on the grounds that the earnings information subsequently provided by the employee on the Form 90 after approval of the first Form 24 Application filed pursuant to subsection (c) of the Rule indicates that the employee is no longer eligible for continuing disability compensation.

The Executive Secretary’s Office has records from Fiscal Year 2017-18 and Fiscal Year 2018-19 tracking each Form 24 Application based on the grounds for the Form 24. According to these records, there were no cases in Fiscal Year 2017-18 or Fiscal Year 2018-19 that would be affected by the proposed amendment to the automatic reinstatement provision of the rule.

Presumably, however, in some fiscal years prior to 2017-18 and/or in future fiscal years, some cases would be affected by the proposed amendment to the automatic reinstatement provision of this rule. The number of cases is likely to be very small, however, based on the experience over past two fiscal years and based on discussions with the Industrial Commission personnel who handle the Form 24 Applications.

The Deputy Commissioner Section does not track its Form 33 hearing requests based on the grounds for the hearing request, so it is not possible to measure how many, if any, Forms 33 were filed in recent fiscal years to request permission to stop compensation based on the earnings information provided on a Form 90 after an initial Form 24 Application was approved allowing compensation to be suspended for failure to timely complete and return the Form 90. However, it is likely that the number of Forms 33 would be lower than the number of second Forms 24 filed under these circumstances since the Form 24 procedure is a much quicker procedure than going the full evidentiary hearing route by filing a Form 33.

Benefits

Fewer second Form 24 Applications (or, in the alternative Form 33 hearing requests) will be filed because in cases where the initial Form 24 Application has been approved under subsection (c) of the rule and the employee subsequently completes and returns the Form 90 but the information on the Form 90 does not indicate continuing eligibility for partial or total disability compensation, the defendants will not have to automatically reinstate compensation upon receipt of the Form 90 and, therefore, will not need to file a second Form 24 (or, in the alternative Form 33 hearing request) for permission to suspend or terminate the reinstated compensation. This means that the Industrial Commission will have fewer Form 24 Applications on which to rule or fewer hearings to hold. However, as discussed above in the “Costs” section of “*The State through the Industrial Commission*,” this reduction in second Form 24 Applications may be offset, in whole or part, by an increase in Form 23 Applications and/or Form 33 Requests for Hearing by employees whose compensation has not been automatically reinstated after having their benefits suspended under subsection (c) of the rule and then subsequently completing and returning the Form 90.

- (2) The State and Local Government as Employers and the Private Sector as Defendants/Self-Insured Employers, Carriers, and Third Party Administrators:

Costs

The costs to the State and Local Government as Employers and to the Private Sector as Defendants/Self-Insured Employers, Carriers, and Third Party Administrators, if any, would include the costs of defending against an employee’s request for reinstatement of compensation via either a Form 23 Application or a Form 33 Request for Hearing.

Based on the Fiscal Year 2017-18 and 2018-19 data regarding the Form 24 Applications, the proposed amendment to the rule regarding the automatic reinstatement provision would not have affected the outcome of any cases and, therefore, no additional costs would have been incurred in those years by these entities if the proposed amendment had been in effect.

Assuming, however, that the proposed amendment would affect the outcome of at least some cases in fiscal years prior to 2017-18 or fiscal years subsequent to 2018-19, there could be a small increase in the number of employees who would request reinstatement of compensation because it was not automatically reinstated after they completed and returned the Form 90 subsequent to their benefits being suspended under subsection (c) of the rule. However, as discussed below under “Benefits” section of *“The State and Local Government as Employers and the Private Sector as Defendants/Self-Insured Employers, Carriers, and Third Party Administrators,”* any increase in the number of Forms 23 and Forms 33 will be offset by a corresponding decrease in the number of Forms 24 that these entities need to file since a second Form 24 Application will no longer be needed in cases where an initial Form 24 Application was approved under subsection (c) of the rule and the employee subsequently completes and returns the Form 90 but the earnings information on the Form 90 indicates that the employee is not eligible for ongoing disability compensation. (Likewise, in these cases where these entities would have filed a Form 33 hearing request, instead, to request permission to stop paying the reinstated benefits, they will no longer need to do so). Since there should be a complete offset of the costs, no data was obtained to determine how much money is spent by these entities to defend against reinstatement requests.

Benefits

Second Form 24 Applications will no longer need to be filed in cases where permission to suspend compensation was granted under subsection (c) of the rule and then the employee subsequently completes and returns the Form 90 but the information on the Form 90 does not indicate continuing eligibility for disability compensation. As discussed above in the “Costs” section of *“The State through the Industrial Commission,”* this reduction in second Form 24 Applications may be offset, in whole or part, by an increase in Form 23 Applications and/or Form 33 Requests for Hearing by employees whose compensation has not been automatically reinstated after having completed and returned the Form 90. However, there is a benefit to the integrity of the workers’ compensation system by correcting a problematic situation that may arise where unrecoverable payments of

reinstated total disability compensation are paid when ultimately not due. It should be noted that informal stakeholder feedback was sought by the Industrial Commission while the proposed amendments to this rule were being considered, and stakeholders on both the employer and employee side of the workers' compensation system agreed that the automatic reinstatement provision should be corrected in the rule to allow an exception to automatic reinstatement when the information provided by the employee on the late Form 90 does not indicate continuing eligibility for disability compensation.

Based on the Fiscal Year 2017-18 and 2018-19 data regarding the Form 24 Applications, the proposed amendment to the rule regarding the automatic reinstatement provision would not have affected the outcome of any cases and, therefore, no benefits would have been realized in those years if the proposed amendment had been in effect.

Assuming, however, that the proposed amendment would affect the outcome of at least some cases in fiscal years prior to 2017-18 or fiscal years subsequent to 2018-19, as a result of the proposed amendment to the automatic reinstatement provision of the rule, there should be a benefit/savings in compensation paid by these entities of an average of eight (8) weeks' worth of disability compensation per case, based on the comparison set forth in Table 1 of Appendix 2.

The range of the weekly compensation rates that employees are paid in workers' compensation cases is a statutory minimum of \$30 per week and a maximum of \$1,028 for injuries that occurred in 2019.⁵ A particular employee's weekly compensation rate for total disability is calculated by multiplying the employee's "average weekly wage" by two-thirds. An employee's "average weekly wage" generally is calculated by averaging all the wages earned by the employee in the employment of injury during the 52 weeks prior to the injury.

Based on data for the percent of nonfatal and fatal workplace injuries in North Carolina by industry and based on data regarding the average weekly compensation in North Carolina in these same industries, the weighted average weekly wage for North Carolina injured workers was \$860.04 in 2018. Two-thirds of this amount is \$567.63, which represents the weighted average weekly compensation rate for North Carolina injured workers in 2018. This data and these calculations are set forth in Appendix 3.

⁵The weekly maximum compensation rate is adjusted annually, historically upwards. The maximum compensation rate for 2020 will be \$1,066 per week. The maximum compensation rates over the last 10 years were: \$992 for 2018, \$978 for 2017, \$944 for 2016, \$920 for 2015, \$904 for 2014, \$844 for 2013, \$862 for 2012, \$836 for 2011, \$834 for 2010, and \$816 for 2009.

So assuming an average weekly compensation rate of \$567.63 and assuming a savings of 8 weeks' worth of compensation per case under the proposed amendment to the automatic reinstatement provision of the rule, this would amount to a savings of \$4,541.02 per case.

Again, based on the Industrial Commission's data, the cases that will be affected by this proposed amendment to the rule are few and far between, but for cases that are affected there should be a benefit of approximately \$4,500 per case to these entities.

(3) The Private Sector as Plaintiffs/Employees:

Costs

For employees whose compensation has been suspended under subsection (c) of the rule and who subsequently complete and return the Form 90 and provide earnings information on the Form 90 that indicates that they are no longer entitled to disability compensation (either total or partial), the costs to these employees would be the loss of automatic reinstated total disability compensation with back payment for a period of time that is likely to be an average of 8 weeks, as explained immediately above in the "Benefits" section of "*The State and Local Government as Employers and the Private Sector as Defendants/Self-Insured Employers, Carriers, and Third Party Administrators.*" Assuming that the average employee has a weekly compensation rate for total disability of \$567.63, as calculated and explained above in the "Benefits" section of "*The State and Local Government as Employers and the Private Sector as Defendants/Self-Insured Employers, Carriers, and Third Party Administrators,*" this is an average cost per affected employee of \$4,541.02 in total disability compensation.

However, assuming that the regulated entities who receive the late Form 90 from the employee properly exercise their discretion to not automatically reinstate the compensation that they previously were given permission to suspend under subsection (c) of the rule when the information provided by the employee on that Form 90 does not indicate continuing eligibility for any disability compensation, then the loss to the employee of automatically reinstated compensation that is paid when ultimately not due (because, for example, the employee has returned to work earning the same or greater wages) is a good result for the workers' compensation system as a whole.

And because the rule provides an avenue for employees whose compensation is not automatically reinstated after suspension of their compensation was approved by the Industrial Commission for failure to timely complete and return the Form 90 to ask the Commission to

order the self-insured employer, carrier, or third-party administrator to reinstate the compensation, this builds in a safeguard for employees against the risk that a regulated entity who receives the late Form 90 will improperly fail to reinstate disability compensation.

However, the proposed rule amendment shifts responsibility to the employee, if the employee believes that the employer, carrier, or third party administrator improperly failed to reinstate payment of disability compensation after the employee completed and returned the late Form 90 following approval of a Form 24 Application. While none of the cases in Fiscal Years 2017-18 or 2018-19 is squarely on point because none of them dealt with a Form 90 that was not completed and returned on time, they do show that sometimes the Industrial Commission does not agree with the position of the employer, carrier, or third party administrator on the issue of whether the employee is eligible for continuing disability compensation because in four cases during these two Fiscal Years, the Industrial Commission disapproved a Form 24 Application that was filed on the grounds that an employee was no longer eligible for continuing disability compensation based on the earnings information provided on the employee's Form 90.

So had these cases fallen into the category of cases that would be affected by the proposed amendment to the rule, which would have happened if the employees had failed to complete and return the Forms 90 on time and Forms 24 Applications were approved on these grounds, then that would mean that these employees would have experienced a delay in payment of compensation for a period of time that would likely range from an average of 8 weeks (if the employee requested reinstatement of compensation via the Form 23 procedure) to an average of 6-12 months (if the employee requested reinstatement of compensation via a full evidentiary hearing by filling a Form 33 Request for Hearing. And not only would these employees experience a delay in compensation payments, but they also likely would incur other costs if, for example, they had to hire legal counsel to help them win reinstatement of benefits. Or, the employees could end up never getting their benefits reinstated if, for example, they failed to request reinstatement via a Form 23 or Form 33.

Benefits

The proposed amendments to this rule are unlikely to provide any measurable direct economic benefits to the Private Sector as Plaintiffs/Employees, but the clarity that the proposed amendments provide regarding the two different Industrial Commission forms that can be filed by employees to request reinstatement of compensation and the clarity regarding what compensation is due when the earnings

information provided by the employee indicates that the employee is eligible for temporary partial disability compensation will benefit the Private Sector as Plaintiffs/Employees by helping them understand their rights under the North Carolina Workers' Compensation Act.

Summary of Economic Impact:

This rule is proposed for amendment so that employers, carriers, and third party administrators will no longer be compelled to automatically reinstate suspended disability compensation payments when an employee's benefits have been suspended by the Industrial Commission for failure to timely complete and return a Form 90 and then the employee subsequently completes and returns the Form 90 (albeit late) and the employer, carrier, or third party administrator determines that the information on the Form 90 does not indicate that the employee is eligible for continuing disability compensation. The amendments also clarify current administrative processes and regulated parties' rights and responsibilities under the North Carolina Workers' Compensation Act.

Situations in which an employee's benefits are suspended by the Commission for failure to timely complete and return a Form 90 and then must be reinstated because the employee subsequently completes and returns the Form 90, even though the benefits are no longer owed, occur very infrequently, based on recent data and experience. However, for each case avoided in the future, parties who pay total disability compensation could expect savings averaging \$4,500 in avoided payments and employees would experience an equivalent loss of excess payments.

If employee benefits are terminated improperly and not reinstated, the employee must request reinstatement by filing either a Form 23 Application or a Form 33 Request for Hearing. These events are also expected to be infrequent, but for each future case, employees would incur the time and expense to complete the reinstatement process and compensation could be delayed an average of 8 weeks under the Form 23 procedure (at a cost of approximately \$4,500 in delayed compensation) or an average of 6-12 months under the full evidentiary Form 33 Request for Hearing option (at a cost of approximately \$13,500- \$27,000 in delayed compensation).

For parties who pay benefits and the Commission, the resource expenditures associated with an increase in reinstatement requests is expected to be offset by a decrease in requests to stop compensation payments.

Appendix 1

11 NCAC 23A .0903 is proposed for amendment as follows:

11 NCAC 23A .0903 EMPLOYEE'S OBLIGATION TO REPORT EARNINGS

(a) A self-insured employer, ~~carrier~~ carrier, or third-party administrator may require the employee who has filed a claim to complete a Form 90 *Report of Earnings* when reasonably necessary but not more than once every six months.

(b) The Form 90 *Report of Earnings* shall be sent to the employee by certified mail, return receipt requested, and shall include a self-addressed stamped envelope for the return of the form. When the employee is represented by an attorney, the Form 90 *Report of Earnings* shall be sent only to the attorney for the employee and shall be sent by any method of transmission that provides proof of receipt, including electronic mail, facsimile, or certified mail return receipt requested, and not to the employee.

(c) The employee shall complete and return the Form 90 *Report of Earnings* within 15 days after receipt of a Form 90 *Report of Earnings*. If the employee fails to complete and return the Form 90 *Report of Earnings* within 30 days of receipt of the form, the self-insured employer, ~~carrier~~ carrier, or third-party administrator may seek ~~an order from the Executive Secretary allowing the suspension of benefits.~~ The self-insured employer, carrier or third-party administrator shall not suspend benefits without Commission approval pursuant to the Workers' Compensation Act. to suspend compensation being paid pursuant to G.S. 97-29 by filing a Form 24 *Application to Terminate or Suspend Payment of Compensation* as allowed by G.S. 97-18.1 and Rule .0404 of this Subchapter. ~~If the Commission suspends benefits for failure to complete and return a Form 90 *Report of Earnings*, the self-insured employer, carrier or third-party administrator shall reinstate benefits to the employee with back payment as soon as the Form 90 *Report of Earnings* is submitted by the employee. If benefits are not reinstated, the employee shall submit a written request for an Order from the Executive Secretary instructing the self-insured employer, carrier or third-party administrator to reinstate benefits. If the employee's earnings report does not indicate continuing eligibility for partial or total disability compensation, the self-insured employer, carrier or third-party administrator may apply to the Commission to terminate or modify benefits by filing a Form 24 *Application to Terminate or Suspend Payment of Compensation* or Form 33 *Request that Claim be Assigned for Hearing*.~~

(d) If compensation is suspended pursuant to Paragraph (c) of this Rule and the employee subsequently completes and returns the Form 90 *Report of Earnings*, the self-insured employer, carrier, or third-party administrator shall reinstate payment of compensation to the employee with back payment. However, if the Form 90 *Report of Earnings* does not indicate continuing eligibility for disability compensation, the self-insured employer, carrier, or third-party administrator is not required to reinstate payment of compensation. If the Form 90 *Report of Earnings* indicates continuing eligibility for temporary partial disability compensation, the self-insured employer, carrier, or third-party administrator shall make payment of compensation pursuant to G.S. 97-30 with back payment within 14 days of receipt of documentation establishing the amount of compensation due. If payment of compensation is not reinstated following submission of the completed Form 90 *Report of Earnings* and the employee claims entitlement to ongoing disability compensation, the employee may seek reinstatement by filing a Form 23 *Application to Reinstate Payment of Disability Compensation* or Form 33 *Request that Claim be Assigned for Hearing*.

History Note: Authority G.S. 97-80(a);
 Eff. June 1, 2000;
 Amended Eff. November 1, 2014; August 1, 2006;
 Recodified from 04 NCAC 10A .0903 Eff. June 1, 2018;
 Amended Eff. _____.

APPENDIX 2

Table 1: Comparison of Typical Case Under Current Version of Rule and Under Proposed Amended Version of Rule

<u>Current Version of Rule</u>	
<u>F24 Filed</u>	1/1/19
<u>Response Due</u>	1/18/19
<u>Hearing Date</u>	1/26/19
<u>Decision Date</u>	1/31/19
<u>TTD Stopped</u>	1/31/19
<u>Form 90 Showing Earnings of Same or Greater Wages Received on 2/28/19 =</u>	
<u>TTD Must Be Reinstated Retroactively to 1/31/19</u>	
<u>Second Form 24 Filed</u>	3/1/19
<u>Response Date</u>	3/18/19
<u>Hearing Date</u>	3/26/19
<u>Decision Date</u>	3/31/19
<u>TTD Stopped</u>	3/31/19
<u>Proposed Amended Version of Rule</u>	
<u>F24 Filed</u>	1/1/19
<u>Response Due</u>	1/18/19
<u>Hearing Date</u>	1/26/19
<u>Decision Date</u>	1/31/19
<u>TTD Stopped</u>	1/31/19
<u>Form 90 Showing Earnings of Same or Greater Wages Received on 2/28/19 =</u>	
<u>TTD Need Not be Reinstated</u>	

Conclusion: Proposed rule amendment is likely to result in 8 fewer weeks of disability compensation being paid (compensation stopped on 1/31/19 and not re-started as opposed to compensation stopped on 1/31/19, re-started as of 1/31/19 and not finally stopped until 3/31/19) in cases where the earnings information on the Form 90 does not indicate continued eligibility for disability compensation.

APPENDIX 3

Industry	Percent of total fatal and nonfatal injuries, 2017	NC average weekly compensation, 2018
Public administration	24.0%	\$960
Educational and health services	18.3%	\$946
Manufacturing	16.8%	\$383
Leisure and hospitality	10.1%	\$383
Wholesale and retail trade	9.2%	\$987
Professional and business services	6.9%	\$1,263
Construction	4.5%	\$1,049
Transportation and utilities	3.8%	\$1,380
Financial activities	1.9%	\$1,678
Other services, except public administration	1.6%	\$677
Mining, quarrying, and oil and gas extraction	1.1%	\$1,188
Agriculture, forestry, fishing and hunting	1.0%	\$701
Information	0.9%	\$1,607
Weighted average weekly wage for NC injured workers		\$860
2/3 of average weekly rate - typical WC payment		\$568
8 weeks of WC payments		\$4,541

Fatal and nonfatal injury incident counts for NC can be accessed at <https://www.bls.gov/iif/oshstate.htm#NC>

NC average weekly wage data by industry can be accessed at <https://d4.nccommerce.com/QCEWSelection.aspx>

**Regulatory Impact Analysis
Notice by the Commission**

Agency: North Carolina Industrial Commission
 Contact: Gina Cammarano – (919) 807-2524
 Proposed New Rule Title: Notice by the Commission
 Rules proposed for amendment: Rule 11 NCAC 23B .0106
 (See proposed rule text in Appendix 1)

State Impact: No
 Local Impact: No
 Private Impact: No
 Substantial Economic Impact: No

Statutory Authority: *G.S. §143-300.*

Overview:

The Commission proposes to establish a time certain for notice when service of a decision, order or other document (in other words, when service of anything other than a Full Commission Decision and Order) is provided via electronic mail in claims brought pursuant to the State Tort Claims Act. This Rule mirrors 11 NCAC 23A .0107, which has proven successful in establishing a time certain for notice in workers' compensation claims.

Baseline:

Currently, the Commission serves documents via email and U.S. Mail. While a Full Commission Decision and Order must be sent via registered or certified mail pursuant to N.C. Gen. Stat. § 143-293, other decisions (*i.e.*, a Deputy Commissioner Decision and Order) are only required to be sent in writing pursuant to N.C. Gen. Stat. § 143-292, which means that they can be sent via email.

Currently, Decisions and Orders from the Deputy Commissioner Section are sent via certified mail to prison inmates and other *pro se* parties. With the exception of Full Commission Decision and Orders, attorneys receive all orders and decisions via email.

Unlike 11 NCAC 23A .0107, this proposed Rule does not address the time certain for notice when service of a decision, order or other document is sent via mail because Rule 6 of the North Carolina Rules of Civil Procedure governs the calculation of time under these circumstances. The purpose of this Rule is solely to clarify the time for notice related to decisions, orders and other documents sent via email. This rule does not change the method of service for any documents sent by the Commission.

If an order is served via email, the time certain for notice is currently not clarified in the rule. For example, is notice via email received when received in the inbox, when the recipient clicks the read receipt, the day after the email is sent, or some other time? In order to calculate the

timeline for parties to file appeals, motions, or other responsive filings, the time certain for receipt of notice must be clearly defined.

Conclusion:

This Rule will have no effect on Commission funds because all documents will continue to be sent via the same method of service. The Rule will lead more certainty and could reduce communications between the Commission and parties and attorneys due to the establishment of a time certain. The only change for parties will be to change, or rather set, the beginning of the timeline for filing responsive motions, briefs, appeals, or any other action in response to a document served by the Commission. In other words, the clock may start one day earlier or later than a party would have guessed without the rule in place.

APPENDIX 1

Rule 11 NCAC 23B .0106 is proposed for adoption as follows:

11 NCAC 23B .0106 NOTICE BY THE COMMISSION

(a) If service is provided by electronic mail, "receipt of such notice" pursuant to G.S. 143-292 is complete one hour after it is sent by the Commission, provided that:

(1) notice sent after 5:00 p.m. shall be complete at 8:00 a.m. the following State business day; and

(2) notice sent by electronic mail that is not readable by the recipient is not complete. Within five State business days of receipt of an unreadable document, the receiving party shall notify the Commission of the unreadability of the document.

(b) If service shall be provided by electronic mail, notice of orders or other documents issued pursuant to G.S. 143-296 is complete in accordance with the same provisions set forth in Paragraph (a) of this Rule.

History Note: Authority G.S. 143-300;

Eff. _____.

**Regulatory Impact Analysis
Secure Leave Periods for Attorneys**

Agency:	North Carolina Industrial Commission
Contact:	Gina Cammarano – (919) 807-2524
Proposed Amended Rule Title:	Secure Leave Periods for Attorneys
Rule Proposed for Amendment:	Rule 11 NCAC 23E .0104 (see proposed rule text in Appendix 1)
State Impact:	No
Local Impact:	No
Private Impact:	Yes
Substantial Economic Impact:	Undetermined but unlikely
<i>Statutory Authority:</i>	<i>G.S. § 97-80(a).</i>

Background and Purpose of Proposed Rule Changes:

The purpose of this rule is to establish and regulate the procedure for attorneys who appear before the Industrial Commission to request one or more secure leave periods each year. A secure leave period means a period of time during which the attorney who has been granted the secure leave is excused from having to appear in any trial, hearing, deposition, or other proceeding.

Rule 104 of the Administrative Rules of the Industrial Commission, in its current form, does not specifically state that a secure leave period may be a partial calendar week, as opposed to having to be a complete calendar week. This lack of specificity in the Industrial Commission's rules has created some confusion because the rules of the North Carolina superior and district courts do not allow a secure leave period to be less than a complete calendar week. Therefore, even though a partial calendar week is not disallowed under the Industrial Commission rules, in order to provide clarity for the regulated parties it seems reasonably necessary to clarify that a secure leave period may be a partial calendar week or a complete calendar week.

Rule 104 of the Administrative Rules of the Industrial Commission, in its current form, also does not allow any additional secure leave periods to be requested for the birth or adoption of a child. However, the North Carolina Chief Justice's Commission on Professionalism recently voted unanimously in support of the expansion of court rules to allow up to 12 additional weeks of secure leave for the birth or adoption of an attorney's child.

Finally, Rule 104 of the Administrative Rules of the Industrial Commission, in its current form, specifically allows the Commission to make an exception to the requirement that the request for secure leave be filed no later than 90 days before the beginning of the secure leave period and before any trial, hearing, deposition or other matter has been scheduled but it does not specifically allow the Commission

to make an exception to the maximum aggregate number of secure leave periods that is allowed in a calendar year. However, because extraordinary circumstances arise where it is reasonable for the Commission to make an exception to the maximum aggregate number of secure leave periods generally allowed in a calendar year and where the Commission has done so in the past, both the Commission and the stakeholder groups believe it is necessary to clarify that the Commission may make such exception in appropriate circumstances.

Summary of Aggregate Impact:

It is expected that there will be great benefits to the regulated parties as attorneys in terms of work-life balance. The legal profession is inherently stressful, as recognized by the American Bar Association Task Force on Lawyer Well-Being. Allowing attorneys who practice before the Industrial Commission to request secure leave periods that consist of partial calendar weeks and longer periods after birth or adoption will help them better fulfill and coordinate work and family obligations. Likewise, allowing additional secure leave periods to cover the recent birth or adoption of an attorney's child is intended to help alleviate some of the stress and juggling of schedules and responsibilities that accompanies the recent birth or adoption of a child. Finally, specifically allowing the Commission to make an exception to the general limit on the aggregate number of secure leave periods allowed in a calendar year, just like the Commission is specifically allowed to do with regard to the general 90-day filing rule, will enable the Commission to exercise appropriate discretion in extraordinary circumstances and reasonably accommodate attorneys who are faced with unexpected, exceptional medical or other situations. While clearly valuable, it is difficult to monetize these non-market benefits and it is not known how many attorneys will avail themselves of the more flexible amended secure leave rules. Therefore, these benefits cannot be quantified.

These proposed rule changes are not expected to have any state or local impact of significance. The Industrial Commission already has processes and procedures in place for blocking out secure leave periods for attorneys, and allowing partial calendar weeks and additional periods of time for the birth or adoption of a child is not expected to create additional work for the Industrial Commission that would result in anything more than *de minimus*, if any, costs. Assuming attorney staffing is sufficient, allowing additional secure leave is not expected to disrupt normal business operations.

APPENDIX 1- Proposed Rule Text

11 NCAC 23E .0104 is proposed for amendment as follows:

11 NCAC 23E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS

- (a) Any attorney may request one or more secure leave periods each year as provided in this Rule.
- (b) ~~For the purpose of this Paragraph only, a "secure leave period" is defined as a partial calendar week or a complete calendar week. During any~~ Within a calendar year, an attorney's secure leave periods pursuant to this Rule shall not exceed an aggregate of three weeks; attorney is entitled to obtain secure leave periods totaling up to 15 business days for any purpose.
- (c) ~~For the purpose of this Paragraph only, a "secure leave period" is defined as a complete calendar week. Within a 24-week period surrounding the birth or adoption of an attorney's child, that attorney is entitled to have the benefit of up to 12 additional secure leave periods.~~
- (e) ~~To request a secure leave period an attorney shall file a written request, by letter or motion, containing the information required by Paragraph (d) of this Rule with the Office of the Chair within the time provided in Paragraph (e). Upon such filing, the Chair shall review the request and, if the request complies with Paragraphs (d) and (e) of this Rule, issue a letter allowing the requested secure leave period. The attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during that secure leave period.~~
- (d) ~~To request a secure leave period, an attorney shall file a written request, by letter or motion, containing the information required by Paragraph (e) of this Rule with the Office of the Chair within the time period provided in Paragraph (f) of this Rule. Upon such filing, the Chair shall review the request. If the request is made pursuant to Paragraph (b) or Paragraph (c) of this Rule and the request complies with Paragraphs (e) and (f) of this Rule, the Chair shall issue a letter allowing the requested secure leave period. The attorney shall not be required to appear at any trial, hearing, deposition, or other proceeding before the Commission during a secure leave period that is allowed.~~
- (d) ~~The request shall contain the following information:~~
- ~~(1) the attorney's name, address, telephone number and state bar number;~~
 - ~~(2) the date(s) for which secure leave is being requested;~~
 - ~~(3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;~~
 - ~~(4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding; and~~
 - ~~(5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, tentatively set, or noticed for trial, hearing, deposition or other proceeding during the designated secure leave period.~~
- (e) ~~The request shall contain the following information:~~
- ~~(1) the attorney's name, mailing address, telephone number, email address, and state bar number;~~
 - ~~(2) the date(s) for which secure leave is being requested;~~
 - ~~(3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;~~
 - ~~(4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering, or interfering with the disposition of any matter in any pending action or proceeding;~~
 - ~~(5) a statement that no action or proceeding in which the attorney has entered an appearance has been scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the designated secure leave period; and~~

(6) for secure leave requests that arise under Paragraph (c) of this Rule, the expected birth date or adoption date of the child.

~~(e) To be allowed, the request shall be filed:~~

- ~~(1) no later than 90 days before the beginning of the secure leave period; and~~
- ~~(2) before any trial, hearing, deposition or other matter has been regularly scheduled, peremptorily set or noticed for a time during the designated secure leave period.~~

~~An untimely request will be denied by letter. In the event that a party has been denied secure leave because the request was not timely filed and there are extraordinary circumstances, the attorney may file a motion requesting an exception. If the case has been scheduled for hearing before a Deputy Commissioner, the motion shall be addressed to the Deputy Commissioner. If the matter is scheduled for hearing before the Full Commission, the motion shall be addressed to the Chair of the Panel before which the hearing will be held. In all other cases, the motion should be directed to the Office of the Chair.~~

(f) The request shall be filed:

- (1) no later than 90 days before the beginning of the secure leave period; and
- (2) before any trial, hearing, deposition, or other matter has been scheduled, peremptorily set, or noticed for a time during the designated secure leave period.

~~(f) If, after a secure leave period has been allowed pursuant to this Rule, any trial, hearing, deposition, or other proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the Deputy Commissioner or chair of the Full Commission panel before which the matter was calendared or set, and serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt, the proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.~~

(g) The Chair may, as set forth in Rule .0301 of this Subchapter, make exception to the 15-day aggregate limit set forth in Paragraph (b) of this Rule, the requirement set forth in Paragraph (e)(5) of this Rule, and the limitations set forth in Paragraphs (f)(1) and (f)(2) of this Rule. An attorney requesting that the Chair make this exception under this Paragraph shall inform the Chair of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period. The attorney also shall provide notice to all opposing parties or, if represented, opposing counsel of record in all cases subject to the jurisdiction of the Industrial Commission of the beginning and ending dates of the requested secure leave period and of all known actions or proceedings involving that attorney that are scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period.

~~(g) If, after a secure leave period has been allowed pursuant to this Rule, any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period.~~

(h) After a secure leave period has been allowed pursuant to this Rule, if any trial, hearing, or other proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the Deputy Commissioner or chair Chair of the Full Commission panel before which the matter was calendared or set, and serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt, the proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.

(i) After a secure leave period has been allowed pursuant to this Rule, if any deposition is noticed for a time during the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time that is not within the attorney's secure leave period.

*History Note: Authority G.S. 97-80(a);
Eff. July 1, 2014;
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