

NOTICE OF PROPOSED INDUSTRIAL COMMISSION RULEMAKING

DATE: NOVEMBER 15, 2017

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Industrial Commission intends to amend the rule cited as 04 NCAC 10E .0203.

This proposed rule amendment was also published on November 15, 2017 in Volume 32, Issue 10, of the North Carolina Register at Pages 965-966, available at <http://www.oah.state.nc.us/rules/register/Volume%2032%20Issue%2010%20November%2015,%202017.pdf>.

Proposed Effective Date: *March 1, 2018*

Oral comments on the proposed rule amendment may be made at the Public Hearing before the Industrial Commission:

Date: *December 21, 2017*

Time: *10:00 a.m.*

Location: *Room 240, 2nd Floor, Department of Insurance's Albemarle Building, 325 North Salisbury Street, Raleigh, NC 27603*

Written comments on the proposed rule amendment may be submitted to: *Kendall M. Bourdon 1233 Mail Service Center, Raleigh, NC 27699-1233; phone (919) 807-2644; email kendall.bourdon@ic.nc.gov*

The written comment period ends: *January 16, 2018*

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.

Reason for Proposed Action: *In the Appropriations Act of 2017, Session Law 2017-57, Section 15.19, the General Assembly established the process for the gradual funding for the Commission to replace its case management system. This project will be funded through both receipts and appropriated funds over four years, through June 30, 2021. In addition to the appropriated funds, the General Assembly authorized the Commission to retain additional revenue up to one million two hundred thousand dollars (\$1,200,000) of the fee charged to parties for the filing of compromise settlement agreements to be used for the purpose of replacing and maintaining the Industrial Commission's case management systems and related expenditures. This fee retention authorization explicitly expires on June 30, 2021. Therefore, the Commission is engaging in permanent rulemaking to increase the fee by \$30 for a 40-month period in order to collect the funds authorized by the General Assembly.*

Fiscal impact (check all that apply).

- State funds affected**
- Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
- Local funds affected**
- Substantial economic impact (\geq \$1,000,000)**
- Approved by OSBM**
- No fiscal note required by G.S. 150B-21.4**

The approved fiscal note is available on the Industrial Commission website at <http://www.ic.nc.gov/proposed10E0203FiscalNote.pdf> and on the website of the Office of State Budget and Management at https://files.nc.gov/ncosbm/documents/files/IC_2017-10-23.pdf.

Text of Proposed Rule Amendment:

CHAPTER 10 – INDUSTRIAL COMMISSION

SUBCHAPTER 10E – ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION

SECTION .0200 – FEES

04 NCAC 10E .0203 FEES SET BY THE COMMISSION

~~(a) (Effective until July 1, 2015)~~ In workers' compensation cases, the Commission sets the following fees:

- ~~(1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;~~
- ~~(2) three hundred dollars (\$300.00) for the processing of a Form 21 Agreement for Compensation for Disability, Form 26 Supplemental Agreement as to Payment of Compensation, or Form 26A Employer's Admission of Employee's Right to Permanent Partial Disability to be paid by the employee and the employer or the employer's carrier in equal shares. The employer or the employer's carrier shall pay such fee in full when submitting the agreement to the Commission. Unless the parties agree otherwise or the award totals three thousand dollars (\$3,000) or less, the employer and the employer's carrier shall be entitled to a credit for the employee's 50 percent share of such fee against the award;~~
- ~~(3) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, Report of Mediator, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and~~
- ~~(4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I Intervenor's Request that Claim be Assigned for Hearing, to be paid by the intervenor.~~

(a) ~~(Effective July 1, 2015)~~ (Effective until July 1, 2021) In workers' compensation cases, the Commission sets the following fees:

- (1) ~~four hundred dollars (\$400.00)~~ four hundred thirty dollars (\$430.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;
- (2) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, Report of Mediator, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and
- (3) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I Intervenor's Request that Claim be Assigned for Hearing, to be paid by the intervenor.

(a) (Effective July 1, 2021) In workers' compensation cases, the Commission sets the following fees:

- (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full when submitting the agreement to the Commission and, unless the parties agree otherwise, shall be entitled to a credit for the employee's 50 percent share of such fee against settlement proceeds;
- (2) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, Report of Mediator, to be paid 50 percent by the employee and 50 percent by the employer(s) or the employer's carrier(s). The employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's share of such fees when the case is concluded from any compensation that may be determined to be due to the employee. The employer(s) or the employer's carrier(s) may withhold funds from any award for this purpose; and

(3) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the General Court of Justice for the processing of a Form 33I Intervenor's Request that Claim be Assigned for Hearing, to be paid by the intervenor.

(b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the Superior Court division of the General Court of Justice.

Authority G.S. 7A-305; 97-17; 97-26(i); 97-73; 97-80; 143-291.2; 143-300; S.L 2014-77; S.L. 2017-57.