

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 (\geq \$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, preemptorily 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, preemptorily 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:

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(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

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Form 26A

~~7/2015~~ 6/2020

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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. _____.