

North Carolina Workers' Compensation Update (5)

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Media Contact

Powers Tanis
Director of Strategic Marketing and
Communications 803.221.4907
email@mgclaw.com

Changes to Industrial Commission Rules and Forms

In a year full of changes, the North Carolina Department of Insurance recently approved several updates to Industrial Commission Rules and Forms. These revisions went into effect on December 1, 2020. This summary outlines the major substantive changes affecting employers and workers' compensation carriers.

The biggest impact falls on filing methods and procedures. Apart from a few exceptions, *all documents required to be submitted electronically* to the Commission must be filed via the Electronic Document Filing Portal ("EDFP"). Rule 108 outlines the limited times when documents should be sent via electronic mail rather than EDFP. Carrier contact information required under Rule 302 must also be submitted via EDFP rather than email.

The duty to file a Form 19 *First Report of Injury* is now triggered when the injury either causes the employee to be absent from work for more than one day or results in charges for medical compensation exceeding four thousand dollars (\$4,000).

In claims for death benefits, carriers are now required to "*conduct an investigation to determine*" the identity of the decedent's potential beneficiaries. Previously, carriers only needed to "make a good faith effort to discover" potential beneficiaries. The new heightened duty suggests that carriers need to prove affirmative investigation steps were taken to identify beneficiaries, although Rule 409 does not specify how much investigation is necessary. No penalty is provided for failure to investigate, but it may delay claim resolution if the Commission determines that investigation efforts were insufficient.

When the parties seek the Commission's approval of an agreement to pay permanent partial disability, *a job description* may be required in certain situations. A job description must be submitted if the employee has permanent work restrictions and has returned to work for the employer of injury. The Form 26A *Employer's Admission of Employee's Right to Permanent Partial Disability* was modified to reflect this change and now requires the carrier to certify that "any job description *known to exist*" was produced if the employee has permanent restrictions and returned to work for the employer of injury. Notably, a job description is not required if the claimant returned to work for a different employer. A good practice would be to obtain a job description from the employer anytime a claimant returns to work, whether in their pre-injury job or a new position.

Finally, Rule 903 simplified the service process for Form 90 *Report of Earnings*. When a claimant is represented, the Form 90 should be sent only to the claimant's attorney and may be sent via *any method that provides proof of receipt*, including email, fax or certified mail return receipt requested. A copy does not need to be sent directly to the employee unless they are unrepresented.

For more information, please contact an [MGC attorney](#).

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