

Regulatory Impact Analysis Employee's Obligation to Report Earnings

Agency:	North Carolina Industrial Commission
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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.

⁵ The 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>