

Initial Forms Procedure for Work Comp in North Carolina

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Media Contact

Erica Gianetti

Marketing & Communications Supervisor

erica.gianetti@mgclaw.com

Forms practice in North Carolina is conducted pursuant to a maze of statutes and North Carolina Industrial Commission Rules, which can lead to quite a bit of confusion. Of course, initial forms procedure is key in limiting liability and avoiding sanctions. A review of the controlling statutes and rules is helpful in determining what forms should be filed within what deadlines.

The first form that may need to be completed is the Form 19, *Employer's Report of Employee's Injury to the Industrial Commission*. According to Rule 104 of the Workers' Compensation Rules of the Industrial Commission, a Form 19 must be filed within five days of knowledge or allegation of an injury if it causes the employee to be absent from work for more than one day or if the employee's medical compensation exceeds the amount periodically established by the Industrial Commission, which is currently \$2,000.00. The Form 19 must be sent both to the Industrial Commission and to the employee. A blank Form 18, *Notice of Accident to Employer and Claim of Employee*, must also be provided to the employee along with the Form 19.

Once the employee files a Form 18, the carrier must decide whether to accept or deny the claim. The three relevant forms are: Form 60, Employer's Admission of Employee's Right to Compensation; Form 61, Denial of Workers' Compensation Claim; and Form 63, Notice to Employee of Payment of Compensation without Prejudice or Payment of Medical Benefits Only without Prejudice.

According to N. C. Gen. Stat. § 97-18, if the employer or insurer denies the employee's right to compensation, the Commission should be notified within 14 days after written or actual notice of the injury and advise the employee of its decision. The proper form to use in this situation is the Form 61. The Form 61 must contain a detailed statement of the grounds upon which the right to compensation is denied. If the Form 61 does not contain a sufficiently detailed statement in support of the denial, the employee can move the Commission to Order that the employer/insurer do so pursuant to Rule 601 of the Industrial Commission Rules.

N.C. Gen. Stat. § 97-18 also provides that, if the employer or insurer is uncertain with regard to compensability or liability, compensation may be initiated without prejudice. The proper form to use in this situation is the Form 63. Note, however, that payments may be made without prejudice only for 90 days from the date of actual notice of the injury—not from the date of filing the Form 63. If payments are made past the 90 day deadline, the claim is deemed fully accepted. An extension of time may be requested, but the extension must be requested prior to the expiration of the initial 90 days. Additionally, if indemnity payments are initiated pursuant to a Form 63, the initial payment to the employee must be accompanied by a copy of the Form 63. Practically speaking, this part of the Form 63 is rarely used because it requires a second filing within 90 days. The Form also contains a section for accepting a claim for payment of medical benefits only without prejudice. If only this portion of the form is completed, then the carrier reserves the right to subsequently deny a claim by filing a Form 61 if only medical benefits have been paid.

Finally, according to N.C. Gen. Stat. § 97-18, where the employee's right to compensation is admitted, the first installment of compensation payable becomes due 14 days after the employer has written or actual notice of the injury. The appropriate form in this situation is the Form 60. A carrier should conduct a thorough investigation of the claim prior to filing the Form 60 because, once submitted, the Form 60 cannot be withdrawn and compensability cannot later be contested.

The Industrial Commission will sanction employers and insurer for failure to file a responsive form after the employee submits a Form 18 pursuant to Rule 601. Once the Form 18 is submitted to the Commission, the Commission issues correspondence to the employer/insurer notifying them of a 30 day deadline in which to file a responsive form (Form 60,61 or 63). If the employer/insurer fails to comply with the deadline, sanctions are assessed by the Commission. The current amount of sanctions for failure to comply with this deadline is \$200.00. In certain situations the sanction for failing to comply with this deadline may be waived by the Commission, but only in limited circumstances.

Another important rule to keep in mind when completing the initial work-up of a claim is Rule 608 of the Industrial Commission Rules. If a recorded statement is taken from the claimant, the claimant must be provided a copy within 45 days of requesting the statement. Also, if the claimant requests a hearing and a recorded statement was taken, the recorded statement must be provided to the claimant or his attorney within 45 days from the date of filing of the Form 33, *Request that Claim be Assigned for Hearing*, whether or not requested by the claimant or his attorney. Failure to comply with the deadlines of this rule gives the claimant grounds to request that the recorded statement be omitted from evidence.

Always be meticulous with form deadlines and cautious as to the appropriate form to file. If there is a question regarding the proper form to submit, contact a defense attorney to ensure the appropriate course of action.

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ABOUT THE AUTHOR

Cassie Keen is an attorney with McAngus Goudelock & Courie. MGC is a metrics-driven law firm built specifically to meet the needs of insurance companies and their customers. From ten regional offices, we serve clients across the Southeast. Keen may be reached at 919-719-8237 or by [email](#).