



JAMES M. LOUGHLIN* | Partner

jloughlin@slsaustin.com

512.343.1300 P | 512.343.1385 F

P.O. Box 30111 | Austin, TX 78755

3508 Far West Blvd., Ste. 200 | Austin, TX 78731

The DWC and WC Carrier Claim Files

To: Ron Luke

From: James Loughlin

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Introduction

In any lawsuit where the plaintiff or his/her employer has filed a workers' compensation claim for the same injury, defense counsel should obtain the Division of Workers' Compensation (DWC) claim file and the workers' compensation (WC) carrier claim file. These files contain a great deal of valuable information. This memo will show you how to obtain these files and why you should.

- **How to determine if the plaintiff's employer is a WC subscriber**

To determine whether the plaintiff's employer had workers' compensation coverage on the date of the plaintiff's injury, check DWC's coverage verification [website](#).¹

- **If the plaintiff or the employer filed a claim, how to determine the DWC claim number**

There is a specific exception to the Texas Workers' Compensation Act's confidentiality provisions² that allows the defendant in a related lawsuit to obtain the DWC claim file. However, the DWC claim number is required to request the DWC claim file.

To obtain the DWC claim number for the injury made the basis of the lawsuit, the defendant should first request a Record Check to obtain the DWC claim number and then file the request for the DWC claim file and other confidential information. DWC will generally not provide the claim number over the phone.

The attached [DWC153 form](#)³ is used to request both a Record Check and copies of confidential claim information including the DWC file. Requesters eligible to receive this information include: "A third-party litigant in a lawsuit, in which the cause of action arises from the incident that gave

¹ <https://www.ewccv.com/cvs/?ref=https://www.tdi.texas.gov>.

² Tex. Lab. Code § 402.081 et seq.

³ <https://www.tdi.texas.gov/forms/dwc/dwc153rec.pdf>.

*Board Certified – Workers' Compensation Law
Texas Board of Legal Specialization

rise to the injury.” The DWC-153 form states that in this situation, the requester must provide the injured employee’s date of injury and attach a copy of the petition and answer.

In response to a request for a Record Check, DWC will provide a list of all workers’ compensation claims filed by that employee with the DWC claim number, date of injury, and employer.

Even if defense counsel has the DWC claim number, a Record Check is helpful to see if the plaintiff had any prior WC injuries other than the one made the basis of the current lawsuit.

The DWC153 form cannot be used to request both a record check and confidential claim information at the same time. This is explained in more detail in the instructions on the form.

- **What does the DWC claim file contain?**

The DWC claim file includes DWC forms that are required to be filed with DWC, certain medical reports, Claim Details, DRIS Notes, and any other document a party files with DWC.

- 1. Forms that must be filed with DWC**

Here are the most common DWC forms that must be filed with DWC:

- DWC022 Request for a required medical examination (RME)
- DWC024 Benefit Dispute Agreement
- DWC032 Request for designated doctor examination
- DWC041 Employee’s Claim for Compensation for a Work-Related Injury
- DWC042 Claim for workers’ compensation death benefits
- DWC045 Request to schedule a Benefit Review Conference (BRC)
- DWC052 Supplemental Income Benefits (SIBS) Application -- first quarter
- DWC053 Employee Request to Change Treating Doctor
- DWC068 Designated doctor examination data report
- DWC069 Report of Medical Evaluation
- DWC150 Notice of Representation
- PLN01 Notice of Denial of Compensability/Liability and Refusal to Pay Benefits
- PLN11 Notice of Disputed Issues and Refusal to Pay Benefits
- PLN12 Notice of Potential Entitlement to Workers’ Compensation Death Benefits

There are some forms that are not required to be filed with DWC and that are just sent to the injured employee or the carrier. For example, the DWC001 is called the Employer’s First Report of Injury. However, it is not filed with DWC. The instructions on the DWC001 state, “Send this form to your workers’ compensation insurance carrier and to the injured employee or the injured employee’s representative. Do not send this form to the Texas Department of Insurance, Division of Workers’ Compensation unless DWC specifically requests it.”

A complete list of DWC forms can be found on DWC's website [here](#). Most forms include FAQs or instructions for the use of that form including whether to file it with DWC.

2. Certain medical reports

The doctor's report most likely to be in the DWC file is the required narrative report that accompanies the [DWC069 form](#),⁴ Report of Medical Evaluation, which must be filed with DWC.

The DWC069 form with required narrative report may be filed by the treating doctor, doctor selected by the treating doctor, designated doctor, or carrier-selected RME doctor. There may be more than one DWC069 form with the narrative report in the DWC file.

The DWC069 form is used to indicate whether the employee has reached clinical or statutory maximum medical improvement and if so, the employee's permanent impairment rating, if any. Therefore, the DWC069 form will usually be filed near the end of the claim.

The DWC file may also include the narrative report that must accompany the [DWC068 form](#),⁵ Designated doctor exam data report. The DWC068 form is used when the designated doctor is asked to address extent of injury, disability, or other similar issues. The DWC069 is the MMI/IR report. It must be filed with a narrative report. Work status reports are not filed with DWC unless a DD is asked to address disability or return to work.

3. Claim Details

The DWC claim file also includes a document titled "Claim Details" with categories of information reported to DWC through its Electronic Data Interchange (EDI) system including Policy Details, Injured Worker Personal Information, and Claim Information.

4. DRIS Notes

For each claim, DWC also maintains what it calls "Dispute Resolution Information System (DRIS) Notes" or "DRIS Contact Data." The DRIS Notes/Contact Data include a summary of phone and written contacts with DWC by the parties to the claim including the claimant, carrier, employer, and their legal representatives. The Office of Injured Employee Counsel (OIEC) also uses the DRIS Notes system so some discussions between the claimant and OIEC or one of OIEC's ombudsmen may also be recorded in the DRIS Notes.

- **How to request the DWC claim file**

To request the DWC claim file and other confidential claim information use the attached [DWC153 form](#). The DWC claim number is required.

⁴ <https://www.tdi.texas.gov/forms/dwc/dwc069medrpt.pdf>.

⁵ <https://www.tdi.texas.gov/forms/dwc/dwc068ddrpt.pdf>.

Other confidential claim information that may be requested with the DWC153 form includes the DRIS Notes only, medical fee dispute resolution file (if there was a medical fee dispute), and indemnity dispute resolution file (if there was a disputed issue in the claim).

- **What does the indemnity dispute resolution file contain?**

If there is a disputed issue in a claim, DWC maintains a separate file for that dispute which may include a benefit review conference report, contested case hearing decision, and appeals panel decision, exhibits from the contested case hearing, and an audio recording of the hearing.

- **How to request the indemnity dispute resolution file**

The dispute resolution file is not included in the DWC claim file and must be requested separately by selecting the appropriate box on the DWC153 form.

- **Updating requests for active DWC files**

Defense counsel should submit periodic requests for the DWC claim file during the course of the lawsuit. Injured employees are entitled to lifetime medical benefits and may continue to treat even after reaching clinical or statutory maximum medical improvement. The injured employee may also receive income benefits for up to 401 weeks or for certain injuries, their lifetime.

- **How to identify the WC carrier**

The WC carrier may be identified through the DWC file or DWC's coverage verification [website](#). This site provides the name of the carrier that wrote the policy and its contact information.

- **What is in the carrier claim file that is not in the DWC claim file?**

The carrier claim file will include documents not found in DWC's file such as additional forms, preauthorization decision letters, medical records and bills, explanations of benefits (EOBs), the medical and indemnity payment history, and claim notes. The EOBs show the fair and reasonable amount paid under DWC's fee guidelines for medical services provided to the plaintiff.

The carrier claim file may also include documents related to a certified workers' compensation health care network. Some carriers give their insured employers the option for employees to receive health care through a certified workers' compensation health care network. The employer must select the network endorsement to its workers' compensation policy for the network to apply. The employee must be given notice of the network requirements and the employer must obtain a signed acknowledgment form from the employee. The notice of network requirements must include a list of network providers (usually provided by website link) and the employee is required to treat with a network provider except in an emergency.

- **Information to include in a subpoena to the WC carrier**

Defense counsel can obtain the WC carrier's claim file with a subpoena duces tecum that lists the name and address of the WC carrier and provides identifying information for the claim including the plaintiff's name, date of injury, employer's name, and DWC number, if available.

The subpoena must describe the documents sought with reasonable particularity. For example, "All documents in the claim file for the above-referenced injured worker, whether maintained in paper, electronic, or any other format, including but not limited to the Employer's First Report of Injury and Wage Statement, all Division of Workers' Compensation forms, claim notes, medical bills, explanations of benefits, correspondence (including email) between the carrier and the injured worker, employer, treating physicians, or the Division, medical records, preauthorization decision letters, medical and indemnity payment logs."

The WC carrier does not have valid grounds to withhold its claim file although it can withhold privileged materials such as attorney-client communications.

- **The WC carrier's subrogation rights**

The Texas Workers' Compensation Act provides the WC carrier with the first right of recovery from any third-party defendant up to the amount of its lien which consists of the workers' compensation benefits it has paid.⁶ The WC carrier may, but is not required to, intervene in the employee's lawsuit to protect its subrogation lien. The WC carrier is generally aligned with the employee in terms of proving the third-party defendant's liability in order to recover its lien.

- **What if the employer was not a workers' compensation subscriber?**

An employer that is a nonsubscriber may still have a workplace injury program as part of its ERISA plan. These programs are administered internally or through a TPA or independent adjuster and the benefits are often provided under an occupational accident insurance policy which is different than a workers' compensation insurance policy.

If the plaintiff's employer is a non-subscriber, interrogatories should be sent to the plaintiff and/or employer⁷ to determine whether the plaintiff is receiving benefits under a workplace injury program. If so, a production request or subpoena duces tecum should be sent to the employer and/or administrator for its claim file. See above for documents to request.

⁶ Tex. Lab. Code § 417.001 et seq.

⁷ The employer will most likely be named as a defendant if it is a non-subscriber.

- **DWC filing requirements for non-subscribers**

If the plaintiff's employer was not a subscriber, the employer is required to file a [DWC007 form](#),⁸ Employer's report of noncovered employee's work-related injury or illness.

A non-subscribing employer is required to file this report with DWC "for each on-the-job injury that results in the employee's absence from work for more than one day and for an occupational disease of which the employer has knowledge." However, not all non-subscribers, particularly small firms, comply.

⁸ <https://www.tdi.texas.gov/forms/dwc/dwc007injnc.pdf>.



REQUEST FOR RECORD CHECK OR COPIES OF CONFIDENTIAL CLAIM INFORMATION

This form must be signed by a party eligible to receive the information requested.

Este formulario está disponible en español en el sitio web de la División en
www.tdi.texas.gov/forms/dwc/dwc153srec.pdf.

Para obtener asistencia en español, llame a la División al 800-252-7031.

I. INJURED EMPLOYEE INFORMATION

1. DWC Claim Number (Required if box 15 is not checked.)	2. Employee Social Security Number
3. Employee Name (First, Middle, Last)	
4. Date of Birth (mm-dd-yyyy)	5. Date of Injury (mm-dd-yyyy) (Required if box 15 is not checked.)
6. Employee Address (Street or P.O. Box, City, State, ZIP Code)	

II. REQUESTER INFORMATION

7. Name (First, Middle, Last)	8. DWC Representative Box Number (if applicable)
9. Position or Title (if applicable)	10. Firm Name (if applicable)
11. Address (Street or P.O. Box, City, State, ZIP Code)	12. Email Address
13. Phone Number	14. Fax Number

III. INFORMATION REQUESTED Please check a box to indicate the information you are requesting.

RECORD CHECK	
<input type="checkbox"/> 15. Record Check: Requesters will be provided the DWC claim number, date and nature of the injury, employer at the time of injury, whether the injured employee has received income benefits, and disposition of the claim for dates of injury before January 1, 1991.	
OR	
COPIES OF CONFIDENTIAL CLAIM INFORMATION	
<input type="checkbox"/> 16. Claim File <input type="checkbox"/> DRIS Notes Only	<input type="checkbox"/> 17. Medical Fee Dispute Resolution File (date of injury after January 1, 1991) Tracking Number*: <input style="width: 100%;" type="text"/> <input type="checkbox"/> Complete File <input type="checkbox"/> Specific Document: <input style="width: 100%;" type="text"/>
<input type="checkbox"/> 18. Indemnity Dispute Resolution File (date of injury after January 1, 1991) Dispute Sequence No: <input style="width: 100%;" type="text"/>	
<input type="checkbox"/> Complete File <input type="checkbox"/> Specific Document: <input style="width: 100%;" type="text"/> <input type="checkbox"/> Audio Recording of Hearing <input type="checkbox"/> Video or Audio Evidence (if any)	
19. Certified copy? <input type="checkbox"/> Yes <input type="checkbox"/> No	20. Format to receive documents: <input type="checkbox"/> Electronic or <input type="checkbox"/> Paper

*Required for a copy of a medical fee dispute resolution file.



IV. REQUESTER ELIGIBILITY

21. Requester Categories

The Texas Labor Code limits the release of confidential claim information to the requesters below. **Requester represents that he or she is entitled to the information requested and has authority to request the information.**

Check only one box:

- The employee.
- The employee's legal beneficiary. (**Attach documentation**)
- The employee's or the legal beneficiary's representative. (**Attach documentation**)
- The employer at the time of injury. Requester must provide injured employee's period of employment. (**Attach documentation**)
- The workers' compensation insurance carrier.
- The insurance carrier's legal counsel or representative. (**Attach documentation**)
- The Texas Certified Self-Insurer Guaranty Association established under Texas Labor Code, Chapter 407, Subchapter G, if that association has assumed the obligations of an impaired employer.
- The Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company.
- A third-party litigant in a lawsuit, in which the cause of action arises from the incident that gave rise to the injury. Requester must provide injured employee's date of injury. (**Attach copy of Petition and Answer**)
- Health care provider who is a party to a medical dispute under Texas Labor Code Section 413.031(c).

I certify that I am entitled to receive the confidential claim information requested. **I understand** that it is a Class A misdemeanor to unlawfully receive, publish, disclose, or distribute confidential information in or derived from an employee's claim file. Texas Labor Code Sections 402.064, 402.081, 402.083, 402.084, 402.086, and 402.091.

22. Signature of Requester

23. Printed Name of Requester

24. Date of Signature (mm-dd-yyyy)

Frequently Asked Questions

Request for Record Check or Copies of Confidential Claim Information (DWC Form-153)

Who may request confidential claim file information?

Only the requester categories listed in Section IV are entitled to receive confidential claim information. See Texas Labor Code Section 402.084. Governmental agencies or political subdivisions requesting copies of confidential claim information in a capacity other than as an employer should not complete this form. Please contact DWC Legal Services at 512-804-4275 for more information on eligibility to receive confidential information.

- An eligible insurance carrier must have handled a workers' compensation claim for the injured employee. Documentation of a workers' compensation claim must be provided to determine eligibility.
- A lay person, legal representative, or other party may be eligible to receive confidential claim file information if the injured employee authorizes them to request and receive the information on their behalf. To establish eligibility, the party must provide documentation of representation (for example, a letter of representation from the client, copy of the contract between the client and the representative, or the defendant's original answer).



What are my options for receiving confidential claim file information?

- **Electronic** – Documents and other requested media will be provided through the GovQA website and notice will be sent to the requester's email. Insurance carriers will receive their copies through their Austin representative's secure file transfer protocol box.
- **Paper** – Documents will be printed and mailed to the requester. A fee may be charged depending on the number of printed documents. See below for more information about fees.
- **Certified** – The copy of the information requested will have a letter of certification attached, which is signed and stamped by the Custodian of Records and attests to the authenticity of the attached documents.

Are any fields on the DWC Form-153 optional?

All applicable fields must be completed each time a DWC Form-153 is submitted.

- **Section I** – all fields are required for claim file and indemnity dispute resolution file requests. Employee name, Social Security number, and date of birth are required for record check requests. All fields except date of birth are required for the medical fee dispute resolution file.
- **Section II** – all fields are required, if applicable. An email address is required to notify that electronic documents are ready for pick up. The email address is confidential under Texas Government Code Section 552.137 and will not be released without your consent.
- **Section III** – enter information in the specified fields for records you are requesting. The medical dispute resolution file tracking number is required for a copy of a medical fee dispute resolution file.
- **Section IV** – you must indicate the legal basis on which you are eligible to receive requested confidential claim information and provide any additional information in the documentation you attach to the request.

Incorrect or incomplete forms will be returned.

Can I request a record check and copies of confidential claim information for the same injured employee on the same request?

No. Injured employees may have multiple claims, so you must submit a separate DWC Form-153 to request copies of confidential claim information for a specific claim.

How do I submit the DWC Form-153?

The original signed form can be attached to an open records request at tdi.texas.gov/open-records.html, faxed to DWC Legal Services at 512-804-4276, mailed, or personally delivered. Do not fax this request to any other DWC fax number. You must submit a separate DWC Form-153 for each injured employee.

Will I be charged a fee for copies of confidential claim file information?

DWC will give you electronic copies at no cost. We may charge a fee if you ask for paper copies, depending on the number of pages.

How can I get more information?

If you are requesting copies of a claim file or for help completing this form, call DWC Legal Services at 512-804-4703.

IMPORTANT: *By submitting DWC Form-153, the requester represents that he or she is entitled to the information requested and that he or she has full authority to act as a requester. It is a Class A misdemeanor for an unauthorized person to receive confidential claim file information or to disclose such information to an unauthorized person. Texas Labor Code Sections 402.064, 402.081, 402.083, 402.084, 402.086, and 402.091.*

Note: With few exceptions, on your request, you are entitled to:

- be informed about the information DWC collects about you.
- receive and review the information (Government Code Sections 552.021 and 552.023); and
- have DWC correct information that is incorrect (Government Code Section 559.004).

For more information, contact DWCLegalServices@tdi.texas.gov or refer to the Corrections Procedure section at www.tdi.texas.gov/commissioner/legal/lccorprc.html