1	11 NCAC 23A	.0104 is amended as published in 34:14 NCR 1290 as follows:
2		
3	11 NCAC 23A	.0104 EMPLOYER'S REQUIREMENT TO FILE A FORM 19 FIRST REPORT OF
4		INJURY
5	(a) The form r	equired to be provided by G.S. 97-92(a) is the Form 19 Employer's Report of Employee's Injury or
6	Occupational D	isease to the Industrial Commission. The Form 19 shall be used when the injury causes the employee
7	to be absent fro	m work for more than one day or when the charges for medical compensation exceed four thousand
8	dollars (\$4,000)	. The Form 19 shall be filed with the Commission in accordance with Rule .0108(d) of this Section.
9	(b) The emplo	yer, carrier, or administrator shall provide the employee with a copy of the completed Form 19
10	Employer's Rep	ort of Employee's Injury or Occupational Disease to the Industrial Commission, along with a blank
11	Form 18 Notic	e of Accident to Employer and Claim of Employee, Representative, or Dependent for use by the
12	employee in ma	king a claim.
13		
14	History Note:	Authority G.S. 97-80(a); 97-92;
15		Eff. March 15, 1995;
16		Amended Eff. November 1, 2014; January 1, 2011; August 1, 2006; March 1, 2001; June 1, 2000;
17		Recodified from 04 NCAC 10A .0104 Eff. June 1, 2018;
18		Amended Eff. December 1, 2020.
19		
20		

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0108

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

<u>NOTE WELL:</u> This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (c), line 21, does your regulated public know what is "necessary to effectuate filing"?

In (f), Pages 2 and 3, what is "temporary" here? Is this determined by the by individual applying for the waiver?

In (g), Page 3, line 5, what are "applicable statutes"? Does your regulated public know?

Why do you need the sentence on lines 5-7? Paragraph (a), lines 9-12 already states this. Why are you restating it here?

Please confirm that you intend for the effective date to be February 1, 2021. Please note the same for all other rules proposed for review with that effective date.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

11 NCAC 23A .0108 is amended as published in 34:20 NCR 1850-51 as follows:

1 2 3

#### 11 NCAC 23A .0108 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

- 4 (a) All documents filed with the Commission in workers' compensation cases shall be submitted electronically in
- 5 accordance with this Rule. Any document transmitted to the Commission in a manner not in accordance with this Rule
- 6 shall not be accepted for filing. Any document filed with the Commission that requires contemporaneous payment of
- a processing fee pursuant to Rule 11 NCAC 23E .0203 shall not be deemed filed until the fee has been paid in full.
- 8 The electronic filing requirements of this Rule shall not apply to employees, medical providers, employees or non-
- 9 insured employers without legal representation. Employees, medical providers, Employees and non-insured employers
- without legal representation may file all documents with the Commission via the Commission's Electronic Document
- 11 Filing Portal ("EDFP"), ("EDFP") or by sending the documents to the Clerk of the Industrial Commission via
- electronic mail, mail (dockets@ic.nc.gov), facsimile, U.S. Mail, private courier service, or hand delivery.
- 13 (b) Except as set forth in Paragraphs (d) and (e) of this Rule, all documents required to be submitted electronically to
- 14 <u>the Commission</u> shall be <u>filed</u> transmitted to the Commission via EDFP. Information regarding how to register for and
- use EDFP is available at http://www.ic.nc.gov/training.html. In the event EDFP is inoperable, all documents required
- to be filed via EDFP shall be transmitted to the Commission via electronic mail to edfp@ic.nc.gov. Documents
- 17 required to be filed via EDFP that are sent to the Commission via electronic mail when EDFP is operable shall not be
- 18 accepted for filing.
- 19 (c) Transcripts of depositions shall be filed with the Commission pursuant to this Rule by the court reporting service.
- Transcripts filed with the Commission shall have only one page of text per page and shall include all exhibits. The
- 21 parties shall provide the Commission's court reporting service with the information necessary to effectuate filing of
- 22 the deposition transcripts and attached exhibits via EDFP. If an exhibit to a deposition is in a form that makes
- 23 submission of an electronic copy impracticable, counsel for the party offering the exhibit shall make arrangements
- 24 with the Commission to facilitate the submission of the exhibit. Condensed transcripts and paper copies of deposition
- 25 transcripts shall not be accepted for filing.
- 26 (d) A Form 19 shall be filed as the first report of injury (FROI) via electronic data interchange (EDI), except in claims
- 27 involving non-insured employers employers, or in claims for lung disease, in claims with multiple employers or
- 28 <u>multiple carriers, or in claims with six-character IC file numbers,</u> in which case the Form 19 shall be filed electronically
- 29 <u>via EDFP</u> to forms@ic.ne.gov, by mail to 1235 Mail Service Center, Raleigh, North Carolina 27699 1235, or as
- 30 otherwise permitted pursuant to Paragraph (a) of this Rule. Information regarding how to register for and use EDI is
- 31 available at www.ncicedi.info.
- 32 (e) The workers' compensation forms and documents listed in Table 1 shall not be required to be transmitted via
- 33 EDFP provided all applicable qualifying conditions are met.

3435

Table 1: Forms and documents exempt from EDFP filing requirements and how to file them:

36

D C CLD (E) III	OLIVE EDITORIC GOVERNMENTONICO	HOW TO FILE
<del>DOCUMENT</del>	QUALIFYING CONDITION(S)	HOW TO FILE

Form 18	No IC file number has been assigned	Electronically to forms@ic.nc.gov, by mail to 1235 Mail Service Center, Raleigh, North Carolina 27699 1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 18B	Always exempt from EDFP filing requirement	Electronically to forms@ic.nc.gov, by mail to 1235 Mail Service Center, Raleigh, North Carolina 27699-1235, or as otherwise permitted pursuant to Paragraph (a) of this Rule
Form 51	Always exempt from EDFP filing requirement	Electronically to forms@ic.nc.gov
Plaintiff's Attorney Representation Letter	No IC file number has been assigned	Electronically to forms@ic.nc.gov
Documents to be filed with the Commission's Compliance & Fraud Investigative Division	Always exempt from EDFP filing requirement	Electronically to fraudcomplaints@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Medical Fees Section	Always exempt from EDFP filing requirement	Electronically to medicalfees@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
Documents to be filed with the Commission's Safety Education & Training Section	Always exempt from EDFP filing requirement	Electronically to safety@ic.nc.gov or as otherwise permitted pursuant to Paragraph (a) of this Rule
A Form 25N to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to 25N@ic.nc.gov
Rehabilitation referrals to be filed with the Commission's Medical Rehabilitation Nurses Section	No IC file number has been assigned	Electronically to rehab.referrals@ie.ne.gov

1 2

(e) Documents to be filed with the Criminal Investigations & Employee Classification Division regarding fraud complaints shall be submitted electronically to fraudcomplaints@ic.nc.gov. Documents to be filed with the Criminal Investigations & Employee Classification Division regarding employee misclassification shall be submitted electronically to emp.classification@ic.nc.gov. Safety rules to be filed with the Commission under 11 NCAC 23A .0411 shall be submitted electronically to safety@ic.nc.gov.

(f) A self-insured employer, carrier or guaranty association, third-party administrator, court reporting service, <u>medical provider</u>, or law firm may apply to the Commission for an emergency temporary waiver of the electronic filing requirement set forth in Paragraph (a) of this Rule when it is unable to comply because of temporary technical problems or lack of electronic mail or internet access. The request for an emergency temporary waiver shall be

1 included with any filing submitted via facsimile, U.S. Mail, or hand delivery due to such temporary technical or access 2 issues. 3 (g) A Notice of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via 4 EDFP or U.S. Mail. EDFP, U.S. Mail, hand delivery, or any other means allowed by the Rules of Appellate Procedure 5 or applicable statutes governing appeals from the General Courts of Justice. Notwithstanding the foregoing, employees 6 and non-insured employers without legal representation may file all documents with the Commission as provided in 7 Paragraph (a) of this Rule. 8 9 History Note: Authority G.S. 97-80; 97-81; 97-86; 10 Eff. February 1, 2016; 11 Amended Eff. February 1, 2017; 12 Recodified from 04 NCAC 10A .0108 Eff. June 1, 2018;

Amended Eff. December 1, 2018;

Amended Eff. February 1, 2021.

13

14

1	11 NCAC 23A .	0109 is amended as published in 34:20 NCR 1852 as follows:
2		
3	11 NCAC 23A	.0109 CONTACT INFORMATION
4	(a) "Contact inf	formation" for purposes of this Rule shall include telephone number, facsimile number, email address,
5	and mailing add	ress.
6	(b) All attorneys	s of record with matters before the Commission shall inform the Commission in writing of any change
7	in the attorney's	contact information via email to dockets@ic.nc.gov. the Commission's Electronic Document Filing
8	Portal ("EDFP")	<u>.</u>
9	(c) All unrepres	ented persons or entities with matters before the Commission shall inform the Commission upon any
10	change to their o	contact information in the following manner:
11	(1)	All employees who are not represented by counsel shall inform the Commission of any change in
12		contact information by filing a written notice via EDFP, the Commission's Electronic Document
13		Filing Portal ("EDFP"), email to forms@ic.nc.gov, facsimile, U.S. Mail, private courier service, or
14		hand delivery.
15	(2)	All non-insured employers that are not represented by counsel shall inform the Commission of any
16		change in contact information by filing a written notice via EDFP, email to dockets@ic.nc.gov,
17		facsimile, U.S. Mail, private courier service, or hand delivery.
18		
19	History Note:	Authority G.S. 97-80;
20		Eff. January 1, 2019;
21		Amended Eff. February 1, 2021.

1 11 NCAC 23A .0302 is amended as published in 34:20 NCR 1852 as follows: 2 3 11 NCAC 23A .0302 REQUIRED CONTACT INFORMATION FROM CARRIERS 4 All insurance carriers, third party administrators, and self-insured employers shall designate a primary contact person 5 for workers' compensation issues in North Carolina and shall maintain and provide annually on July 1 to the Director 6 of Claims Administration of the Commission via the Commission's Electronic Document Filing Portal ("EDFP") email 7 at rule302@ie.ne.gov, the primary contact person's current contact information, including direct telephone and 8 facsimile numbers, mailing addresses, and email addresses. Contact information shall be updated within 30 days of 9 any change. 10 11 History Note: Authority G.S. 97-80(a); 97-94; 12 Eff. January 1, 2011; 13 Amended Eff. November 1, 2014; 14 Recodified from 04 NCAC 10A .0302 Eff. June 1, 2018; 15 Amended Eff. December 1, 2018; 16 Amended Eff. February 1, 2021.

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0408

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule form, Box 8, you state no fiscal note was required. However, in the January 15, 2020 Register, you stated this Rule was part of a combined analysis that affected funds and was approved by OSBM. Please confirm the correct boxes are checked here.

In (a), you refer to filing a Form 33 request for hearing pursuant to Rule 23A .0602 but then don't address how that is handled within this Rule. Instead, the rest of the Rule now exclusively speaks to written requests and Form 18M. Is that process going to be governed by Rule 23A .0602?

Do you still need Paragraph (d)? Are you still administering claims under G.S. 97-25.1 from over 26 years ago?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 30, 2020

1	11 NCAC 23A	0408 is amended as published in 34:14 NCR 1290 as follows:	
2			
3	11 NCAC 23A	.0408 APPLICATION FOR OR STIPULATION TO ADDITIONAL MEDICAL	
4		COMPENSATION	
5	(a) An employ	ree may file an application for additional medical compensation with the Office of the Executive	
6	Secretary for an	order for payment of additional medical compensation within two years of the date of the last payment	
7	of medical or in	demnity compensation, whichever shall last occur. occurs last. An application may be made on a Form	
8	18M Employee'	s Application for Additional Medical <del>Compensation,</del> <u>Compensation or</u> by written <del>request,</del> <u>request. In</u>	
9	the alternative,	an employee may file an application for additional medical compensation or by filing a Form 33	
10	Request that C	aim be Assigned for Hearing with the Commission. Commission pursuant to Rule .0602 of this	
11	Subchapter.		
12	(b) Upon receip	ot of the application, a Form 18M Employee's Application for Additional Medical Compensation or a	
13	written request,	the Commission shall notify the employer, carrier, or administrator that the claim has been received	
14	by providing a copy of the Form 18M Employee's Application for Additional Medical Compensation or the written		
15	request. Within 30 days, the employer, carrier, or administrator may send to the Commission and the employee's		
16	attorney of record or the employee, if unrepresented, a written statement as to whether the request is accepted or		
17	denied. If the request is denied, the employer, carrier, or administrator may state in writing the grounds for the denial		
18	and shall attach	any supporting documentation to the statement of denial.	
19	(c) The parties	s may, by agreement or stipulation consistent with the Workers' Compensation Act, provide for	
20	additional medi	cal compensation.	
21	(d) This Rule a	pplies to injuries occurring on or after July 5, 1994.	
22			
23	History Note:	Authority G.S. 97-25.1; 97-80(a);	
24		Eff. March 15, 1995;	
25		Amended Eff. November 1, 2014; June 1, 2000;	
26		Recodified from 04 NCAC 10A .0408 Eff. June 1, 2018;	
27		Amended Eff. December 1, 2020.	
28			
29			

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0409

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule form, Box 8, you state no fiscal note was required. However, in the January 15, 2020 Register, you stated this Rule was part of a combined analysis that affected funds and was approved by OSBM. Please confirm the correct boxes are checked here.

In (e)(7), line 34, and (f)(11), Page 2, line 16, is this intended to capture the "burial expenses" provided for in G.S. 97-38?

I am simply inquiring – I note that the requirements in (f)(9) and (10) are not required for the filing in (e). Is this because the Commission will need the records to make the determination required for the payment?

In (j), line 32, what is "good cause shown"? Will this be determined by the Commission based upon its statutory discretion as a court?

I suggest ending the sentence after "good cause shown." Then begin a new sentence, "The benefits shall for the exclusive..."

On lines 32 and 36, how is this determination of "for the exclusive use and benefit" of be determined?

In (m), Page 3, line 5, I am only asking – do you wish to provide the full name of the form, as you do elsewhere in this Rule?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 30, 2020

1	11 NCAC 23A	.0409 is amended as published in 34:14 NCR 1291-92 as follows:	
2			
3	11 NCAC 23A	.0409 CLAIMS FOR DEATH BENEFITS	
4	(a) An employ	er shall notify the Commission of the occurrence of a death resulting from an injury or occupational	
5	disease allegedl	y arising out of and in the course of employment by filing a Form 19 Employer's Report of Employee's	
6	Injury or Occup	ational Disease to the Industrial Commission within five days of knowledge thereof. of the death. In	
7	addition, an em	ployer, carrier, or administrator shall file with the Commission a Form 29 Supplemental Report for	
8	Fatal Accidents	within 45 days of knowledge of a death or allegation of death resulting from an injury or occupational	
9	disease arising of	out of and in the course of employment.	
10	(b) An employ	ver, carrier, or administrator shall make a good faith effort to discover conduct an investigation to	
11	determine the n	ames and addresses of decedent's potential beneficiaries under G.S. 97-38 and identify them on the	
12	Form 29 Supple	emental Report for Fatal Accidents. Accidents. The Form 29 Supplemental Report for Fatal Accidents	
13	shall be filed w	ith the Commission within 45 days of notification of a death or allegation of death resulting from an	
14	injury or occupa	ational disease arising out of and in the course of employment.	
15	(c) If the emplo	yer, carrier, or administrator disputes that an employee's death is compensable or denies it has liability	
16	for the claim, the	ne employer, carrier, or administrator shall notify the Commission on a Form 61 Denial of Workers'	
17	Compensation (	Claim. When the employer, carrier, or administrator denies liability for a claim involving an employee's	
18	death, the employer	oyer, carrier, or administrator shall send the form to all known potential beneficiaries, their attorneys	
19	of record, if any, all health care providers that have submitted bills to the employer, carrier, or administrator, and the		
20	Commission.		
21	(d) If the emplo	yer, carrier, or administrator accepts liability for a claim involving an employee's death and there are	
22	no issues necess	sitating a hearing for determination of beneficiaries or their respective rights, the parties shall submit	
23	either a Form 3	O Agreement for Compensation for Death as set forth in Rule .0501 of this Subchapter or a proposed	
24	Opinion and Av	vard.	
25	(e) If the parties	s submit a Form 30 Agreement for Compensation for Death, the agreement shall be filed in accordance	
26	with Rule .0108	of this Subchapter with the following:	
27	<u>(1)</u>	a stipulation as to average weekly wage;	
28	<u>(2)</u>	any affidavits regarding dependents;	
29	<u>(3)</u>	the employee's death certificate;	
30	<u>(4)</u>	a Form 29 Supplemental Report for Fatal Accidents;	
31	<u>(5)</u>	a Form 42 Application for Appointment of Guardian ad Litem, if any beneficiary is a minor or	
32		incompetent;	
33	<u>(6)</u>	proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;	
34	<u>(7)</u>	a funeral bill or stipulation as to payment of the funeral benefit;	
35	<u>(8)</u>	a Form 30D Award Approving Agreement for Compensation for Death; and	
36	<u>(9)</u>	an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking	
37		fees for representation of one or more beneficiaries.	

1	(f) If the parties	seek a written Opinion and Award from the Commission regarding the payment of death benefits in	
2	lieu of submittin	g a Form 30 Agreement for Compensation for Death, the parties shall file, in accordance with Rule	
3	.0108 of this Subchapter, a proposed Opinion and Award with the following:		
4	<u>(1)</u>	a stipulation regarding all jurisdictional matters;	
5	<u>(2)</u>	the decedent's name, social security number, employer, insurance carrier or servicing agent, and the	
6		date of the injury giving rise to this claim;	
7	<u>(3)</u>	a stipulation as to average weekly wage;	
8	<u>(4)</u>	any affidavits regarding dependents:	
9	<u>(5)</u>	the employee's death certificate;	
10	<u>(6)</u>	a Form 29 Supplemental Report for Fatal Accidents;	
11	<u>(7)</u>	a Form 42 Application for Appointment of Guardian ad Litem, if any beneficiary is a minor or	
12		incompetent:	
13	<u>(8)</u>	proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;	
14	<u>(9)</u>	medical records, if any:	
15	<u>(10)</u>	a statement of payment of medical expenses incurred, if any;	
16	<u>(11)</u>	a funeral bill or stipulation as to payment of the funeral benefit; and	
17	<u>(12)</u>	an affidavit or itemized statement in support of an award of attorney's fees if an attorney is seeking	
18		fees for representation of one or more beneficiaries.	
19	(g) If an issue ex	xists as to whether a person is a beneficiary pursuant to G.S. 97-38 or if any other disputed issue exists	
20	in an accepted c	laim, the employer, carrier, administrator, potential beneficiary, or any person asserting a claim for	
21	benefits may rec	uest a hearing by filing a Form 33 Request that Claim be Assigned for Hearing in accordance with	
22	Rule .0602 of th	is Subchapter.	
23	(h) Upon approx	val by the Commission of a Form 30 Agreement for Compensation for Death or upon the issuance of	
24	a final order of t	he Commission directing payment of death benefits pursuant to G.S. 97-38, payment shall be made	
25	by the employer	, carrier, or administrator directly to the beneficiaries, with the following exceptions:	
26	<u>(1)</u>	any applicable award of attorney's fees shall be paid directly to the attorney; and	
27	<u>(2)</u>	benefits due to a minor or incompetent.	
28	(i) In all cases i	nvolving minors and incompetent persons who are potential beneficiaries, a guardian ad litem shall	
29	be appointed pur	rsuant to Rule .0604 of this Subchapter.	
30	(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

(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.

age of 18, any remaining benefits shall be paid directly to the beneficiary.

12 2 of 4

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- 1 (1) Upon a change in circumstances, any interested party may request that the Commission amend the terms of any
- 2 award with respect to a minor or incompetent person to direct payment to another party on behalf of the minor or
- 3 <u>incompetent person.</u>
- 4 (m) In the case of benefits commuted to present value, only those sums that have not accrued at the time of the
- 5 approval of a Form 30 or entry of a final order of the Commission directing payment of death benefits pursuant to
- 6 G.S. 97-38 are subject to commutation pursuant to Rule .0406 of this Subchapter.
- 7 (c) In all cases involving minors or incompetents who are potential beneficiaries, a guardian ad litem shall be
- 8 appointed pursuant to Rule .0604 of this Subchapter.
- 9 (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
- 11 determination by a Deputy Commissioner.
- 12 (e) If the employer, carrier, or administrator accepts liability for a claim involving an employee's death and there are
- 13 no issues necessitating a hearing for determination of beneficiaries or their respective rights, the parties shall submit
- 14 an agreement executed by all interested parties or their representatives to the Commission. All agreements shall be
- 15 submitted to the Commission on a Form 30 Agreement for Compensation for Death as set forth in Rule .0501 of this
- 16 Subchapter.

28

- 17 (f) The agreement shall be submitted along with all relevant supporting documents, including death certificate of the
- 18 employee, any relevant marriage certificate and birth certificates for any dependents.
- 19 (g) If the employer, carrier, or administrator denies liability for a claim involving an employee's death, the employer,
- 20 carrier, or administrator shall send a letter of denial to all potential beneficiaries, their attorneys of record, if any, all
- 21 known health care providers that have submitted bills to the employer, carrier, or administrator, and the Commission.
- 22 The denial letter shall state the reasons for the denial and shall further advise of a right to hearing.
- 23 (h) Any potential beneficiary, the employer, the carrier, or the administrator may request a hearing as provided in
- 24 Rule .0602 of this Subchapter.
- 25 (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
- 27 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
- 29 <del>benefits due to a minor or incompetent.</del>
- 30 (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
- 31 minor for the use and benefit of the minor if the minor remains in the physical custody of the parent as natural guardian.
- 32 If the minor is not in the physical custody of the parent as natural guardian, payment shall be made through some other
- 33 person appointed by a court of competent jurisdiction or to such other person under such terms as the Commission
- 34 finds is in the best interests of the parties. When a beneficiary reaches the age of 18, any remaining benefits shall be
- 35 paid directly to the beneficiary.
- 36 (k) In order to protect the interests of a beneficiary who is incompetent, the Commission shall order that benefits be
- 37 paid to the beneficiary's appointed general guardian for the beneficiary's exclusive use and benefit, or to the Clerk of

3 of 4 13

1	Court in the col	anty in which the beneficiary resides for the beneficiary's exclusive use and benefit as determined by	
2	the Clerk of Court.		
3	(l) Upon a change in circumstances, any interested party may request that the Commission amend the terms of any		
4	award with respect to a minor or incompetent to direct payment to another party on behalf of the minor or incompetent		
5	(m) In the case	of benefits commuted to present value, only those sums that have not accrued at the time of the entry	
6	of the Order are	subject to commutation.	
7	(n) Where the p	parties seek a written opinion and award from the Commission regarding the payment of death benefits	
8	in uncontested o	eases in lieu of presenting testimony at a hearing before a Deputy Commissioner, the parties may make	
9	application to th	ne Commission for a written opinion by filing a written request with the Docket Director.	
10	(o) The parties	shall file, electronically, by joint stipulation, affidavit or certified document, a proposed opinion and	
11	award or order	along with the following information:	
12	<del>(1)</del>	a stipulation regarding all jurisdictional matters;	
13	<del>(2)</del>	the decedent's name, social security number, employer, insurance carrier or servicing agent, and the	
14		date of the injury giving rise to this claim;	
15	<del>(3)</del>	a Form 22 Statement of Days Worked or Earnings of Injured Employee or stipulation as to average	
16		weekly wage;	
17	<del>(4)</del>	any affidavits regarding dependents;	
18	<del>(5)</del>	the death certificate;	
19	<del>(6)</del>	a Form 29 Supplemental Report for Fatal Accidents;	
20	<del>(7)</del>	Guardian ad litem forms, if any beneficiary is a minor or incompetent;	
21	<del>(8)</del>	proof of beneficiary status, such as marriage license, birth certificate, or divorce decree;	
22	<del>(9)</del>	medical records, if any;	
23	<del>(10)</del>	a statement of payment of medical expenses incurred, if any; and	
24	<del>(11)</del>	a funeral bill or stipulation as to payment of the funeral benefit.	
25	(p) Any attorne	ey seeking fees for representation in an uncontested claim shall file an affidavit or itemized statement	
26	in support of an	award of attorney's fees.	
27			
28	History Note:	Authority G.S. 97-38; 97-39; 97-80(a);	
29		Eff. June 1, 2000;	
30		Amended Eff. November 1, 2014; January 2, 2011;	
31		Recodified from 04 NCAC 10A .0409 Eff. June 1, 2018;	
32		Amended Eff. December 1, 2020.	
33			

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0501

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule form, Box 8, you state no fiscal note was required. However, in the January 15, 2020 Register, you stated this Rule was part of a combined analysis that affected funds and was approved by OSBM. Please confirm the correct boxes are checked here.

In (b), line 9, what are "relevant" records here? Does your regulated public know?

On line 11, what is "known to exist in the case"? Known by whom? The parties?

On line 12, will this be what is necessary for the Commission to make this determination?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

11 NCAC 23A .0501 is amended as published in 34:14 NCR 1292-93 as follows:

1 2 3

#### 11 NCAC 23A .0501 AGREEMENTS FOR PROMPT PAYMENT OF COMPENSATION

- 4 (a) To facilitate the payment of compensation within the time prescribed in G.S. 97-18, the Commission shall accept
- 5 memoranda of agreements agreement on Commission forms. These forms include the Form 21 Agreement for
- 6 Compensation for Disability, Form 26 Supplemental Agreement as to Payment of Compensation, Form 26A
- 7 Employer's Admission of Employee's Right to Permanent Partial Disability, Form 26D Agreement for Payment of
- 8 Unpaid Compensation in Unrelated Death Cases, and Form 30 Agreement for Compensation for Death.
- 9 (b) No agreement for permanent disability shall be approved until the relevant medical and vocational records records.
- 10 <u>including a job description if the employee has permanent work restrictions and has returned to work for the employer</u>
- 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
- 13 compensation to which he or she is entitled and that an employee qualifying for disability compensation under G.S.
- 14 97-29 or G.S. 97-30, and G.S. 97-31 has the benefit of the more favorable remedy.
- 15 (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
- 18 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
- 20 to the employee, employee, unless amended by an award, in which event the Commission shall return the award with
- 21 the agreement.
- 22 (d) The Upon submission to the Commission of the executed agreement, the employer, carrier, administrator, or the
- 23 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
- 25 Supplemental Agreement as to Payment of Compensation, a Form 26D Agreement for Payment of Unpaid
- 26 Compensation in Unrelated Death Cases, and a Form 30 Agreement for Compensation for Death, when the employee
- 27 or appropriate beneficiary signs the forms, with a copy of the executed agreement that was submitted to the
- 28 <u>Commission.</u>
- 29 (e) All memoranda of agreements agreement for cases that are calendared for hearing before a Commissioner or
- 30 Deputy Commissioner shall be sent directly addressed to that Commissioner or Deputy Commissioner. Commissioner,
- 31 and filed in accordance with Rule .0108 of this Subchapter. Before a case is calendared, or once a case has been
- 32 continued or removed, or after the filing of an Opinion and Award, all memoranda of agreements agreement shall be
- 33 directed addressed to the Claims Section of the Commission. Commission, and filed in accordance with Rule .0108
- 34 of this Subchapter.
- 35 (f) After the employer, carrier, or administrator has received a memorandum of agreement that has been signed by
- 36 the employee and the employee's attorney of record, if any, the employer, carrier, or administrator has 20 days within

16 1 of 2

1	which to submit	the memorandum of agreement to the Commission for review and approval or within which to show
2	cause for not su	bmitting the memorandum of agreement signed only by the employee.
3		
4	History Note:	Authority G.S. 97-18; 97-80(a); 97-82;
5		Eff. January 1, 1990;
6		Amended Eff. November 1, 2014; August 1, 2006;
7		Recodified from 04 NCAC 10A .0501 Eff. June 1, 2018;
8		Amended Eff. December 1, 2020.
9		
10		

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23A .0903

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule form, Box 8, should the box "This Rule was part of a combined analysis" also be checked?

In (a), line 6, what is "reasonably necessary"? Who determines this? The self-insured employer, carrier, or third-party administrator?

In (b), line 10, please insert a comma after "certified mail" to be consistent with the term on line 7.

In (c), line 18, please insert a comma after "Compensation"

In (d), lines 30 and 31, what do you mean by "indicate"? Is this checking a box on the form?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder Commission Counsel Date submitted to agency: October 30, 2020 11 NCAC 23A .0903 is amended with changes as published in 34:14 NCAC 1293-94 as follows:

1 2 3

#### 11 NCAC 23A .0903 EMPLOYEE'S OBLIGATION TO REPORT EARNINGS

- 4 (a) A self-insured employer, earrier carrier, or third-party administrator may require the employee who has filed a
- 5 claim and is receiving wage loss benefits under G.S. 97-29 or G.S. 97-30 to complete a Form 90 Report of Earnings
- 6 when reasonably necessary but not more than once every six months.
- 7 (b) The Form 90 Report of Earnings shall be sent to the employee by certified mail, return receipt requested, and shall
- 8 include a self-addressed stamped envelope for the return of the form. When the employee is represented by an attorney,
- 9 the Form 90 Report of Earnings shall be sent only to the attorney for the employee and shall be sent by any method
- 10 of transmission that provides proof of receipt, including electronic mail, facsimile, or certified mail return receipt
- 11 requested. and not to the employee.
- 12 (c) The employee shall complete and return the Form 90 Report of Earnings within 15 days after receipt of a Form
- 13 90 Report of Earnings. If the employee fails to complete and return the Form 90 Report of Earnings within 30 days of
- 14 receipt of the form, the self-insured employer, earrier carrier, or third-party administrator may seek an order from the
- 15 Executive Secretary allowing the suspension of benefits. The self-insured employer, carrier or third party
- 16 administrator shall not suspend benefits without Commission approval pursuant to the Workers' Compensation Act.
- 17 to suspend compensation being paid pursuant to G.S. 97-29 by filing a Form 24 Application to Terminate or Suspend
- 18 Payment of Compensation as allowed by G.S. 97-18.1 and Rule .0404 of this Subchapter. If the Commission suspends
- 19 benefits for failure to complete and return a Form 90 Report of Earnings, the self-insured employer, carrier or third-
- 20 party administrator shall reinstate benefits to the employee with back payment as soon as the Form 90 Report of
- 21 Earnings is submitted by the employee. If benefits are not reinstated, the employee shall submit a written request for
- 22 an Order from the Executive Secretary instructing the self insured employer, carrier or third party administrator to
- 23 reinstate benefits. If the employee's earnings report does not indicate continuing eligibility for partial or total disability
- 24 compensation, the self-insured employer, carrier or third party administrator may apply to the Commission to
- 25 terminate or modify benefits by filing a Form 24 Application to Terminate or Suspend Payment of Compensation or
- 26 Form 33 Request that Claim be Assigned for Hearing.
- 27 (d) If compensation is suspended pursuant to Paragraph (c) of this Rule and the employee subsequently completes
- 28 and returns the Form 90 Report of Earnings, the self-insured employer, carrier, or third-party administrator shall
- 29 reinstate payment of compensation to the employee with back payment. However, if the Form 90 Report of Earnings
- 30 does not indicate continuing eligibility for disability compensation, the self-insured employer, carrier, or third-party
- 31 <u>administrator is not required to reinstate payment of compensation. If the Form 90 Report of Earnings indicates</u>
- 32 continuing eligibility for temporary partial disability compensation, the self-insured employer, carrier, or third-party
- 33 administrator shall make payment of compensation pursuant to G.S. 97-30 with back payment within 14 days of
- 34 receipt of documentation establishing the amount of compensation due. If payment of compensation is not reinstated
- 35 following submission of the completed Form 90 Report of Earnings and the employee claims entitlement to ongoing
- 36 <u>disability compensation, the employee may seek reinstatement by filing a Form 23 Application to Reinstate Payment</u>

1 of 2

37 of Disability Compensation or Form 33 Request that Claim be Assigned for Hearing.

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2	History Note:	Authority G.S. 97-80(a); 97-88.2;
3		Eff. June 1, 2000;
4		Amended Eff. November 1, 2014; August 1, 2006;
5		Recodified from 04 NCAC 10A .0903 Eff. June 1, 2018
6		Amended Eff. December 1, 2020.
7		
8		

20 2 of 2

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0104

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b), line 11, I note that you deleted "register for and" in Rule 23A .0108. Did you wish to remove the language here, as well?

In (c), Page 2, what is "temporary" here? Is this determined by the by individual applying for the waiver?

In (d), line 6, I take it that using EDFP will count as the requirement to allow electronic mail for the notice of appeal as the statute was amended by SL 2020-78?

On line 7, what are "applicable statutes"? Does your regulated public know?

Why do you need the sentence on lines 7-8? Paragraph (a), lines 6-8, already states this. Why does it need to be repeated?

In the History Note, why are you citing to G.S. 143-291.2?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

11 NCAC 23B .0104 is amended as published in 34:20 NCR 1852-53 as follows:

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#### 11 NCAC 23B .0104 ELECTRONIC FILINGS WITH THE COMMISSION; HOW TO FILE

- 4 (a) All filings to the Commission in tort claims shall be submitted electronically in accordance with this Rule. Any
- 5 document transmitted to the Commission in a manner not in accordance with this Rule shall not be accepted for filing.
- 6 Plaintiffs without legal representation may file all documents with the Office of the Clerk of the Commission via the
- 7 Commission's Electronic Document Filing Portal (EDFP), ("EDFP") or by sending the documents to the Clerk of the
- 8 <u>Industrial Commission via</u> electronic mail, mail (dockets@ic.nc.gov), facsimile, U.S. Mail, private courier service, or
- 9 hand delivery.
- 10 (b) Except as set forth in Paragraph (c) of this Rule, all documents shall be transmitted to the Commission via EDFP.
- 11 Information regarding how to register for and use EDFP is available at http://www.ic.nc.gov/training.html. In the
- 12 event EDFP is inoperable, all documents required to be filed via EDFP shall be transmitted to the Commission via
- electronic mail to edfp@ic.nc.gov. Documents required to be filed via EDFP that are sent to the Commission via
- electronic mail when EDFP is operable shall not be accepted for filing.
- 15 (c) The tort claims forms and documents listed in Table 1 shall not be required to be transmitted via EDFP provided
- 16 all applicable qualifying conditions are met.

17 18

Table 1: Forms and documents exempt from EDFP filing requirements and how to file them:

DOCUMENT	QUALIFYING CONDITION(S)	HOW TO FILE
Form T 1	No IC file number has been	Hand delivery to the Industrial
	assigned	Commission's main office or by
		mail to 1236 Mail Service Center,
		Raleigh, North Carolina 27699
		<del>1236.</del>
Form T-3	No IC file number has been	Email to dockets@ic.nc.gov,
	assigned	hand delivery to the Industrial
		Commission's main office, or by
		mail to 1236 Mail Service Center,
		Raleigh, North Carolina; 27699
		<del>1236</del>
Pre affidavit motion under Rule	No IC file number has been	Hand delivery to the Industrial
9(j)(3) of the Rules of Civil	assigned.	Commission's main office or by
Procedure to extend the Statute of		mail to 1236 Mail Service Center,
Limitations.		Raleigh, North Carolina 27699
		<del>1236.</del>

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(d) A one year waiver shall be granted to an attorney who notifies the Commission of the attorney's inability to comply with the electronic filing requirements in Paragraph (a) of this Rule due to a lack of the necessary internet technology resources. The notification shall indicate why the attorney is unable to comply with the rule and outline the attorney's plan for coming into compliance within the one year period. The notification shall be filed with the Office of the Clerk of the Commission via facsimile or U.S. Mail. This Paragraph shall expire one year from the effective date of this Rule.

1	(c)(e) Any party	may apply to the Commission for an emergency temporary waiver of the electronic filing requirement
2	set forth in Para	graph (a) of this Rule if it is unable to comply because of temporary technical problems or lack of
3	electronic mail	or internet access. The request for an emergency temporary waiver shall be included with any filing
4	submitted via fa	csimile, U.S. Mail, or hand delivery due to such temporary technical or access issues.
5	(d)(f) A Notice	of Appeal to the North Carolina Court of Appeals shall be accepted for filing by the Commission via
6	EDFP or U.S. M	lail. EDFP, U.S. Mail, hand delivery, or any other means allowed by the Rules of Appellate Procedure
7	or applicable sta	tutes governing appeals from the General Courts of Justice. Notwithstanding the foregoing, plaintiffs
8	without legal re	presentation may file all documents with the Commission as provided in Paragraph (a) of this Rule.
9		
10	History Note:	Authority G.S. 143-291; 143-291.2; 143-293; 143-297; 143-300;
11		Eff. May 1, 2000;
12		Amended Eff. July 1, 2014;
13		Recodified from 04 NCAC 10B .0104 Eff. June 1, 2018;
14		Amended Eff. March 1, 2019;
15		Amended Eff. February 1, 2021.

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0105

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I note that this Rule mirrors the language in 23A .0109, but some of it is different. Consider making minor revisions to this Rule to more closely mirror Rule 23A .0109 by:

- In (b), line 6, replace "advise" with "inform"
- On line 7, replace "upon" with "of"
- On line 8, replace "electronic mail" with "email" and state "email to contactinfo@ic.nc.gov,"
- In (c), line 14, replace "advise the Commission upon" with "inform the Commission of"

In (c), line 11, please just state "30 days"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 11 NCAC 23B .0105 is amended with changes as published in 34:20 NCR 1853 as follows: 2 **CONTACT INFORMATION** 3 11 NCAC 23B .0105 4 (a) "Contact information" for purposes of this Rule shall include telephone number, facsimile number, email address, 5 and mailing address. 6 (b) All persons or entities without legal representation who have matters pending before the Commission shall advise 7 the Commission upon any change in contact information by filing a written notice via the Commission's Electronic 8 Document Filing Portal ("EDFP"), electronic mail, [mail (dockets@ic.nc.gov),] mail (contactinfo@ic.nc.gov), 9 facsimile, U.S. Mail, private courier service, or hand delivery. 10 (c) A plaintiff without legal representation who was an inmate in the North Carolina Division of Adult Corrections at 11 the time of filing his or her tort claim, shall, within thirty (30) days of release, provide the Commission with written 12 notice of his or her post-release contact information in any manner authorized in Paragraph (b) of this Rule. Following 13 the initial written notice of post-release contact information, the previously incarcerated plaintiff shall continue to 14 advise the Commission upon all changes in contact information in accordance with Paragraph (b) of this Rule. 15 (d) All attorneys of record with matters before the Commission shall inform the Commission in writing of any change in the attorney's or the represented party's contact information via email to dockets@ic.nc.gov. EDFP. 16

History Note: Authority G.S. 143-291; 143-300;

19 Eff. March 1, 2019;

17 18

20 <u>Amended Eff. February 1, 2021.</u>

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23B .0106

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule form, Box 8, you state this was approved by OSBM. However, in the January 15, 2020 Register, you stated this Rule was part of a combined analysis that affected funds and was approved by OSBM. Please confirm the correct boxes are checked here.

I take it that the change made to Paragraph (a) was due to the change to G.S. 143-293 made by SL 2020-78, Section 16.1, which states:

INDUSTRIAL COMMISSION USE ELECTRONIC MAIL TO SEND DECISIONS

**SECTION 16.1.(a)** G.S. 143-293 reads as rewritten:

"§ 143-293. Appeals to Court of Appeals.

Either the claimant or the State may, within 30 days after receipt of the decision and order of the full Commission, to be sent by registered or certified registered, certified, or electronic mail, but not thereafter, appeal from the decision of the Commission to the Court of Appeals. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the Commission shall be conclusive if there is any competent evidence to support them. The appellant shall cause to be prepared a statement of the case as required by the rules of the Court of Appeals. A copy of this statement shall be served on the respondent within 45 days from the entry of the appeal taken; within 20 days after such service, the respondent shall return the copy with his the respondent's approval or specified amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk of the Court of Appeals as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved. The chairman chair of the Industrial Commission shall have the power, in the exercise of his-the chair's

Amanda J. Reeder Commission Counsel Date submitted to agency: October 30, 2020 discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counterstatement of case.

If the case on appeal is returned by the respondent with objections as prescribed, or if a countercase is served on appellant, the appellant shall immediately request the chairman chair of the Industrial Commission to fix a time and place for settling the case before him. case. If the appellant delays longer than 15 days after the respondent serves his the countercase or exceptions to request the chairman chair to settle the case on appeal, and delays for such period to mail mail, as provided in this section, the case and countercase or exceptions to the chairman, chair, then the exceptions filed by the respondent shall be allowed; or the countercase served by him shall constitute the case on appeal; but the time may be extended by agreement of counsel.

The <u>chairman-chair</u> shall forthwith notify the attorneys of the parties to appear before <u>him-the chair</u> for that purpose at a certain time and place, which time shall not be more than 20 days from the receipt of the request. At the time and place stated, the <u>chairman-chair</u> of the Industrial Commission or <u>his-the chair's</u> designee shall settle and sign the case and deliver a copy to the attorneys of each party. The appellant shall within five days thereafter file it with the clerk of the Court of Appeals, and if <u>he-the appellant</u> fails to do so the respondent may file <u>his-the</u> respondent's copy.

No appeal bond or supersedeas bond shall be required of State departments or agencies."

**SECTION 16.1.(b)** This section becomes effective July 1, 2020, and applies to decisions and orders sent on or after that date.

In (b), line 11, consider replacing "shall" with "will" or "is" Or are you saying there are statutes that will require the use of only electronic service?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1	11 NCAC 23B.	0106 is adopted with changes as published in 34:14 NCAC 1294 as follows:
2		
3	11 NCAC 23B	0106 NOTICE BY THE COMMISSION
4	(a) If service is	provided by electronic mail, "receipt of such notice" pursuant to G.S. 143-292 and "receipt of the
5	decision and or	der" of the Full Commission pursuant to G.S. 143-293 is complete one hour after it is sent by the
6	Commission, pr	ovided that:
7	<u>(1)</u>	notice sent after 5:00 p.m. shall be complete at 8:00 a.m. the following State business day; and
8	<u>(2)</u>	notice sent by electronic mail that is not readable by the recipient is not complete. Within five State
9		business days of receipt of an unreadable document, the receiving party shall notify the Commission
10		of the unreadability of the document.
11	(b) If service sh	nall be provided by electronic mail, notice of orders or other documents issued pursuant to G.S. 143-
12	296 is complete	in accordance with the same provisions set forth in Paragraph (a) of this Rule.
13		
14	History Note:	Authority G.S. 143-300;
15		Eff. December 1, 2020.
16		

28 1 of 1

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23E .0104

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule form, Box 8, should the box "This Rule was part of a combined analysis" also be checked?

In (e)(1), line 34, since you allow out of state attorneys to practice, I take it "state" can be any state, not just NC? If you do mean only NC, then please capitalize "State"

In (g), Page 2, line 29, I suggest replacing "Subparagraphs (f)(1) and (f)(2)" with "Paragraph (f)"

Also on line 29, replace "this" before "exception" with "an"

So that I'm clear – the notice to all opposing parties on lines 32-35 will only occur if the attorney is seeking the exceptions, and not if a "regular" request for secure leave is submitted?

And what will the Chair base the waiver determination upon? Will this be on a case-by-case basis? Will the Chair take into account opposition by the opposing parties?

In (i), Page 3, line 8, you say the attorney "may" serve the letter on the opposing party regarding depositions. Is this intended to allow an attorney to not exercise his or her secure leave? (I note that in (h), you say the attorney "shall" file a copy of the letter.)

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 30, 2020

1	11 NCAC 23E	.0104 is amended as published in 34:14 NCR 1294-95 as follows:
2		
3	11 NCAC 23E	
4	•	ey may request one or more secure leave periods each year as provided in this Rule.
5	• •	pose of this Paragraph only, a "secure leave period" is defined as a partial calendar week or a complete
6		During any Within a calendar year, an attorney's secure leave periods pursuant to this Rule shall not
7	exceed an aggr	egate of three weeks. attorney is entitled to obtain secure leave periods totaling up to 15 business days
8	for any purpose	<u>e.</u>
9	(c) For the pur	pose of this Paragraph only, a "secure leave period" is defined as a complete calendar week. Within a
10	24-week period	d surrounding the birth or adoption of an attorney's child, that attorney is entitled to have the benefit of
11	up to 12 addition	onal secure leave periods.
12	(c) To reques	t a secure leave period an attorney shall file a written request, by letter or motion, containing the
13	information rec	<del>juired by Paragraph (d) of this Rule with the Office of the Chair within the time provided in Paragraph</del>
14	(e). Upon such	filing, the Chair shall review the request and, if the request complies with Paragraphs (d) and (e) of
15	this Rule, issue	a letter allowing the requested secure leave period. The attorney shall not be required to appear at any
16	trial, hearing, d	eposition, or other proceeding before the Commission during that secure leave period.
17	(d) To reques	t a secure leave period, an attorney shall file a written request, by letter or motion, containing the
18	information red	quired by Paragraph (e) of this Rule with the Office of the Chair within the time period provided in
19	Paragraph (f) o	of this Rule. Upon such filing, the Chair shall review the request. If the request is made pursuant to
20	Paragraph (b) c	or Paragraph (c) of this Rule and the request complies with Paragraphs (e) and (f) of this Rule, the Chair
21	shall issue a let	ter allowing the requested secure leave period. The attorney shall not be required to appear at any trial,
22	hearing, deposi	tion, or other proceeding before the Commission during a secure leave period that is allowed.
23	(d) The reques	t shall contain the following information:
24	<del>(1)</del>	the attorney's name, address, telephone number and state bar number;
25	<del>(2)</del>	the date(s) for which secure leave is being requested;
26	<del>(3)</del>	the dates of all other secure leave periods during the current calendar year that have previously been
27		designated by the attorney pursuant to this Rule;
28	(4)	a statement that the secure leave period is not being designated for the purpose of delaying, hindering
29		or interfering with the timely disposition of any matter in any pending action or proceeding; and
30	<del>(5)</del>	a statement that no action or proceeding in which the attorney has entered an appearance has been
31		scheduled, tentatively set, or noticed for trial, hearing, deposition or other proceeding during the
32		designated secure leave period.
33	(e) The reques	t shall contain the following information:
34	<u>(1)</u>	the attorney's name, mailing address, telephone number, email address, and state bar number;
35	<u>(2)</u>	the date(s) for which secure leave is being requested;
36	(3)	the dates of all other secure leave periods during the current calendar year that have previously been
37	<del></del>	designated by the attorney pursuant to this Rule;

30 1 of 3

1	<u>(4)</u>	a statement that the secure leave period is not being designated for the purpose of delaying,
2		hindering, or interfering with the disposition of any matter in any pending action or proceeding;
3	<u>(5)</u>	a statement that no action or proceeding in which the attorney has entered an appearance has been
4		scheduled, tentatively set, or noticed for trial, hearing, deposition, or other proceeding during the
5		designated secure leave period; and
6	<u>(6)</u>	for secure leave requests that arise under Paragraph (c) of this Rule, the expected birth date or
7		adoption date of the child.
8	(e) To be allow	ed, the request shall be filed:
9	<del>(1)</del>	no later than 90 days before the beginning of the secure leave period; and
10	<del>(2)</del>	before any trial, hearing, deposition or other matter has been regularly scheduled, peremptorily set
11		or noticed for a time during the designated secure leave period.
12	An untimely rec	quest will be denied by letter. In the event that a party has been denied secure leave because the request
13	was not timely f	iled and there are extraordinary circumstances, the attorney may file a motion requesting an exception.
14	If the case has b	een scheduled for hearing before a Deputy Commissioner, the motion shall be addressed to the Deputy
15	Commissioner.	If the matter is scheduled for hearing before the Full Commission, the motion shall be addressed to
16	the Chair of the	Panel before which the hearing will be held. In all other cases, the motion should be directed to the
17	Office of the Cl	<del>nair.</del>
18	(f) The request	shall be filed:
19	(1)	no later than 90 days before the beginning of the secure leave period; and
20	<u>(2)</u>	before any trial, hearing, deposition, or other matter has been scheduled, peremptorily set, or noticed
21		for a time during the designated secure leave period.
22	(f) If, after a s	ecure leave period has been allowed pursuant to this Rule, any trial, hearing, deposition, or other
23	proceeding is so	cheduled or tentatively set for a time during the secure leave period, the attorney shall file with the
24	Deputy Commis	ssioner or chair of the Full Commission panel before which the matter was calendared or set, and serve
25	on all parties, a	copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt,
26	the proceeding	shall be rescheduled for a time that is not within the attorney's secure leave period.
27	(g) The Chair i	may, as set forth in Rule .0301 of this Subchapter, make exception to the 15-day aggregate limit set
28	forth in Paragra	ph (b) of this Rule, the requirement set forth in Subparagraph (e)(5) of this Rule, and the limitations
29	set forth in Sub	paragraphs (f)(1) and (f)(2) of this Rule. An attorney requesting that the Chair make this exception
30	under this Para	graph shall inform the Chair of all known actions or proceedings involving that attorney that are
31	scheduled, tenta	atively set, or noticed for trial, hearing, deposition, or other proceeding during the requested secure
32	leave period. T	he attorney also shall provide notice to all opposing parties or, if represented, opposing counsel of
33	record in all cas	ses subject to the jurisdiction of the Industrial Commission of the beginning and ending dates of the
34	requested secur	e leave period and of all known actions or proceedings involving that attorney that are scheduled,
35	tentatively set, o	or noticed for trial, hearing, deposition, or other proceeding during the requested secure leave period.
36	(g) If, after a se	scure leave period has been allowed pursuant to this Rule, any deposition is noticed for a time during
37	the secure leave	period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing

1 the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time 2 that is not within the attorney's secure leave period. 3 (h) After a secure leave period has been allowed pursuant to this Rule, if any trial, hearing, or other proceeding is 4 scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the Deputy 5 Commissioner or Chair of the Full Commission panel before which the matter was calendared or set, and serve on all 6 parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon receipt, the 7 proceeding shall be rescheduled for a time that is not within the attorney's secure leave period. 8 (i) After a secure leave period has been allowed pursuant to this Rule, if any deposition is noticed for a time during 9 the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing 10 the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time 11 that is not within the attorney's secure leave period. 12 13 History Note: *Authority G.S.* 97-80(*a*); 14 Eff. July 1, 2014; 15 Recodified from 04 NCAC 10E .0104 Eff. June 1, 2018; Amended Eff. December 1, 2020. 16 17

32 3 of 3

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23L .0101

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 4, I am only asking – do you need to retain the information for injuries incurred before July 5, 1994?

On Page 5, line 40, should this state "be provided a copy of the form when the agreement..." in order to be consistent with the language in Rule 23L .0102?

On line 53, please change the date to February 2021, as that will be the effective date of this amendment.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder Commission Counsel Date submitted to agency: October 30, 2020

```
1
      11 NCAC 23L .0101 is amended as published in 34:20 NCR 1853-58 as follows:
 2
 3
      11 NCAC 23L .0101
                               FORM 21 – AGREEMENT FOR COMPENSATION FOR DISABILITY
 4
      (a)(Effective until July 1, 2015) The parties to a workers' compensation claim shall use the following Form 21,
 5
      Agreement for Compensation for Disability, for agreements regarding disability and payment of compensation
 6
      therefor pursuant to G.S. 97 29 and 97 30. Additional issues agreed upon by the parties such as payment of
      compensation for permanent partial disability may also be included on the form. This form is necessary to comply
 7
 8
      with Rule 11 NCAC 23A .0501, where applicable. The Form 21, Agreement for Compensation for Disability, shall
 9
      read as follows:
10
11
      North Carolina Industrial Commission
12
      Agreement for Compensation for Disability
13
      (G.S. 97-82)
14
15
      IC File#
      Emp. Code #
16
17
      Carrier Code #
18
      Carrier File #
19
      Employer FEIN
20
21
      The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act
22
23
24
      Employee's Name
25
26
      Address
27
28
      City
                              State
                                           Zip
29
30
      Home Telephone
                                                       Work Telephone
      Social Security Number: Sex: DM D F Date of Birth:
31
32
33
34
      Employer's Name
                                                  Telephone Number
35
      Employer's Address
                                                      City State
36
                                                                   Zip
37
      Insurance Carrier
38
39
40
      Carrier's Address
                                                      City State
41
42
      Carrier's Telephone Number
                                                       Carrier's Fax Number
43
44
      We, The Undersigned, Do Hereby Agree And Stipulate As Follows:
              All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and
45
46
                 is the carrier/administrator for the employer.
47
              The employee sustained an injury by accident or the employee contracted an occupational disease arising out
      of and in the course of employment on or by
48
             The injury by accident or occupational disease resulted in the following injuries:
49
50
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The employee was/ was not paid for the entire day when the injury occurred.

34 1 of 6

read V subject to remification unless athor	rrian namand raman in Is	come () le al arri
was \$, subject to verification unless others  b. Disability resulting from the injury or occu		
7. The employer and carrier/administrator her		
per week beginning, and cont		
8. The employee $\Box$ has $/\Box$ has not returned to		Weeks.
on, at an average weekly wage		
9. State any further matters agreed upon, in		nt, permanent partial, or temporary
disability:		<del></del>
10. If applicable, the Second Injury Fund Asse	ssment is \$	Check ☐ is ☐ is not attached.
11. The date of this agreement is Do	ate of first payment: _	Amount:
12. IMPORTANT NOTICE TO EMPLOYEE		
is \$300.00 to be paid in equal shares by the employ		
the fee in advance, and if your award is \$3,000.00 c		
award is more than \$3,000.00, the employer shall o	deduct \$150.00 from	<del>your award, unless you and your em</del>
agree otherwise.		
Check one of the boxes below if the award is more t		
☐ The employer will deduct \$150.00 from the amou		
☐ The employee and employer have agreed that the	<del>e employer will pay th</del>	<del>e entire fee.</del>
Name Of Employer	Signature	Title
Name Or Employer	Signature	Fille
Name Of Carrier / Administrator	Signature	Title
value of carrier / rammistrator	Signature	THE
2:	A 11	
Signature of Employee	Address	
Signature of Employee Signature of Employee's Attorney	Address Address	
Signature of Employee's Attorney		
Signature of Employee's Attorney  North Carolina Industrial Commission		
Signature of Employee's Attorney		
Signature of Employee's Attorney  North Carolina Industrial Commission  The Foregoing Agreement Is Hereby Approved:		
Signature of Employee's Attorney  North Carolina Industrial Commission		
Signature of Employee's Attorney  North Carolina Industrial Commission  The Foregoing Agreement Is Hereby Approved:		
Signature of Employee's Attorney  North Carolina Industrial Commission  The Foregoing Agreement Is Hereby Approved:  Claims Examiner Date		
North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved: Claims Examiner Date Attorney's Fee Approved		
North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved: Claims Examiner Date Attorney's Fee Approved  Check Box If No Attorney Retained.		
North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved: Claims Examiner Date Attorney's Fee Approved		
North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved: Claims Examiner Date Attorney's Fee Approved  Check Box If No Attorney Retained.		L WEEKLY CHECKS OR LUMP
Signature of Employee's Attorney  North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner Date  Attorney's Fee Approved  □ Check Box If No Attorney Retained. □ Check Box If Employee Is In Managed Care.		L WEEKLY CHECKS OR LUMP
Signature of Employee's Attorney  North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner  Date  Attorney's Fee Approved  Check Box If No Attorney Retained.  Check Box If Employee Is In Managed Care.		L WEEKLY CHECKS OR LUMP
Signature of Employee's Attorney  North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner  Date  Attorney's Fee Approved  Check Box If No Attorney Retained.  Check Box If Employee Is In Managed Care.		L WEEKLY CHECKS OR LUMP
Signature of Employee's Attorney  North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner Date  Attorney's Fee Approved  ☐ Check Box If No Attorney Retained. ☐ Check Box If Employee Is In Managed Care.  IMPORTANT NOTICE TO EMPLOYEE CLAIM PAYMENTS	— Address ———————————————————————————————————	
Signature of Employee's Attorney  North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner Date  Attorney's Fee Approved  Check Box If No Attorney Retained.  Check Box If Employee Is In Managed Care.  IMPORTANT NOTICE TO EMPLOYEE CLAIM PAYMENTS  Once your compensation checks have been stopped,	— Address ———————————————————————————————————	ompensation, you must notify the Ind
North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner Date  Attorney's Fee Approved  Cheek Box If No Attorney Retained.  Check Box If Employee Is In Managed Care.  IMPORTANT NOTICE TO EMPLOYEE CLAIM PAYMENTS  Once your compensation checks have been stopped, Commission in writing within two years from the commission.	— Address ———————————————————————————————————	ompensation, you must notify the Ind
Signature of Employee's Attorney  North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner Date  Attorney's Fee Approved  Check Box If No Attorney Retained.  Check Box If Employee Is In Managed Care.  IMPORTANT NOTICE TO EMPLOYEE CLAIM PAYMENTS  Once your compensation checks have been stopped,	— Address ———————————————————————————————————	ompensation, you must notify the Ind
North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner  Date  Attorney's Fee Approved  Check Box If No Attorney Retained.  Check Box If Employee Is In Managed Care.  IMPORTANT NOTICE TO EMPLOYEE CLAIM PAYMENTS  Once your compensation checks have been stopped, Commission in writing within two years from the othese benefits may be lost.	Address  MING ADDITIONA:  if you claim further elate of receipt of you	ompensation, you must notify the Ind r last compensation check or your rig
North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner  Date  Attorney's Fee Approved  ☐ Check Box If No Attorney Retained. ☐ Check Box If Employee Is In Managed Care.  IMPORTANT NOTICE TO EMPLOYEE CLAIM PAYMENTS  Once your compensation checks have been stopped, Commission in writing within two years from the cithese benefits may be lost.  IMPORTANT NOTICE TO EMPLOYEE INJU	Address  MING ADDITIONA:  if you claim further elate of receipt of you	ompensation, you must notify the Ind r last compensation check or your rig
North Carolina Industrial Commission The Foregoing Agreement Is Hereby Approved:  Claims Examiner  Date  Attorney's Fee Approved  Check Box If No Attorney Retained.  Check Box If Employee Is In Managed Care.  IMPORTANT NOTICE TO EMPLOYEE CLAIM PAYMENTS  Once your compensation checks have been stopped, Commission in writing within two years from the othese benefits may be lost.	Address  MING ADDITIONA:  if you claim further elate of receipt of you	ompensation, you must notify the Ind r last compensation check or your rig

2 of 6

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.

4 5

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 earrier/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 Form 18M, Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at http://www.ie.ne.gov/forms.html.

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#### **IMPORTANT NOTICE TO EMPLOYER**

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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 earrier/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.

20 21 22

#### **NEED ASSISTANCE?**

23 24

If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at (800) 688 8349.

25 26 27

Form 21

11/2014 28

29 30

- Self Insured Employer or Carrier, Mail to:
- NCIC Claims Section 31
- 4335 Mail Service Center 32
- 33 Raleigh, NC 27699 4335
- 34 Telephone: (919) 807-2502
- 35 Helpline: (800) 688-8349
- 36 Website: http://www.ic.nc.gov/

37

- 38 (a) (Effective July 1, 2015) The parties to a workers' compensation claim shall use the following Form 21, Agreement
- 39 for Compensation for Disability, for agreements regarding disability and payment of compensation therefor pursuant
- 40 to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent
- 41 partial disability may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501,
- 42 where applicable. The Form 21, Agreement for Compensation for Disability, shall read as follows:

43

- 44 North Carolina Industrial Commission
- 45 Agreement for Compensation for Disability
- (G.S. 97-82) 46

47

- 48 IC File#
- 49 Emp. Code #
- 50 Carrier Code #
- 51 Carrier File #
- 52 Employer FEIN

Employee's N	Jame						
Address							
City	State	Zip					
Home Teleph Last 4 digits	none of Social Security Number	ber: Sex:	/ork Telep □ M □	hone F Date o	f Birth:		
Employer's N	lame	Teleph	one Numb	er			
Employer's A	ddress	Cit	y State	Zip			
Insurance Car	rrier						
Carrier's Add	ress	Cit	y State	Zip			
Carrier's Tele	phone Number	C	arrier's Fa	x Number			
	is the carrier/administra						
2. The	employee sustained an icourse of employment of injury by accident or oc	injury by accident	or the emp				
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4 of 6

1	North Carolina Industrial Commission
2	The Foregoing Agreement Is Hereby Approved:
3	
4	Claims Examiner Date
5	
6	Attorney's Fee Approved
7	
8	☐ Check Box If No Attorney Retained.
9	☐ Check Box If Employee Is In Managed Care.
10	

11 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM 12 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 file an application for additional medical compensation pursuant to G.S. 97-25.1 within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M, Employee's Application for Additional Medical Compensation (G.S. 97-25.1),available at http://www.ie.ne.gov/forms.html. An application for additional medical compensation may be made on a Form 18M Employee's Application for Additional Medical Compensation or by written request. In the alternative, an employee may file an application for additional medical compensation by filing a Form 33 Request that Claim be Assigned for Hearing pursuant to 11 NCAC 23A .0602. All Industrial Commission forms are available at https://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. 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.

- 52 Form 21
- 53 <del>7/2015</del> <u>8/2020</u>

- 55 Self-Insured Employer or Carrier, File via Electronic Document Filing Portal ("EDFP"): Carrier, Mail to:
- 56 NCIC Claims Section

38 5 of 6

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1
      4335 Mail Service Center
 2
      Raleigh, NC 27699-4335
 3
      Telephone: (919) 807-2502
 4
      Helpline: (800) 688-8349
 5
      Website: http://www.ic.nc.gov/
 6
      https://www.ic.nc.gov/docfiling.html
 7
      Contact Information:
 8
      NCIC- Claims Administration
 9
      Telephone: (919) 807-2502
10
      Helpline: (800) 688-8349
11
      Website: https://www.ic.nc.gov
             The copy of the form described in Paragraph (a) of this Rule can be accessed at
12
      (b)
13
      http://www.ic.nc.gov/forms/form21.pdf. https://www.ic.nc.gov/forms/form21.pdf. The form may be reproduced only
14
      in the format available at http://www.ic.ne.gov/forms/form21.pdf https://www.ic.nc.gov/forms/form21.pdf and may
15
      not be altered or amended in any way.
16
17
      History Note:
                      Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;
18
                      Eff. November 1, 2014;
19
                      Recodified from 04 NCAC 10L .0101 Eff. June 1, 2018;
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Amended Eff. February 1, 2021..

20

6 of 6

# **REQUEST FOR TECHNICAL CHANGE**

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23L .0102

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 4, I am only asking – do you need to retain the information for injuries incurred before July 5, 1994?

On line 44, please change the date to February 2021, as that will be the effective date of this amendment.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

11 NCAC 23L .0102 is amended as published in 34:20 NCR 1858-62 as follows: 1 2 3 11 NCAC 23L .0102 FORM 26 - SUPPLEMENTAL AGREEMENT AS TO PAYMENT OF 4 **COMPENSATION** 5 (a)(Effective until July 1, 2015) If the parties to a workers' compensation claim have previously entered into an 6 approved agreement on a Form 21, Agreement for Compensation for Disability, or a Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, they shall use the following Form 26, Supplemental Agreement 7 8 as to Payment of Compensation, for agreements regarding subsequent additional disability and payment of 9 compensation pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of 10 compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501, where applicable. The Form 26, Supplemental Agreement as to Payment of 11 12 Compensation, shall read as follows: 13 14 North Carolina Industrial Commission Supplemental Agreement as to Payment 15 16 of Compensation (G.S. §97-82) 17 IC File# 18 19 Emp. Code # 20 Carrier Code # Carrier File # 21 22 Employer FEIN 23 24 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act 25 26 27 Employee's Name 28 29 Address 30 31 State City-32 33 Home Telephone Work Telephone Social Security Number: Sex: \(\pi\) M \(\phi\) F Date of Birth: 34 35 36 37 Employer's Name Telephone Number 38 39 Employer's Address City State 40 41 Insurance Carrier 42 43 Carrier's Address City State Zip 44 45 Carrier's Telephone Number Carrier's Fax Number 46 47 We, The Undersigned, Do Hereby Agree and Stipulate As Follows: 48 — Date of injury: \_\_\_\_

1 of 6

2. The employee 🗗 returned to w	ork / 🗠 was rated on	_ (date), at a weekly wage of
3. The employee became totally d	lisabled on	
	age □ was reduced / □ was incre	eased on from \$
per week to \$ per week.		, <del></del> , <u>+</u>
	nistrator hereby undertake to pay	compensation to the employee at the
of \$ per week.	F-J	
Beginning, and continuing	for weeks. The type	e of disability compensation is
6. State any further matters agreed	d upon, including disfigurement of	or temporary partial disability:
		<del></del>
7. IMPORTANT NOTICE TO E		
is \$300.00 to be paid in equal shares by		
the fee in advance, and if your award is		
award is more than \$3,000.00, the emp	loyer shall deduct \$150.00 from	your award, unless you and your en
agree otherwise.		
Check one of the boxes below if the awa		
☐ The employer will deduct \$150.00 from	om the amount to be paid pursuar	nt to this agreement.
The employee and employer have agr	reed that the employer will pay th	ne entire fee.
8. The date of this agreement is _	<del></del>	
N. OCE 1	G:	Tr' d
Name Of Employer	Signature	<del>Title</del>
NI OCC ' /All''		m'al
Name Of Carrier/Administrator	Signature	<del>Title</del>
Signature of Employee	Address	
Cionatura of Employada Attamay	Address	
Signature of Employee's Attorney	Address	
☐ Check box if no attorney retained.		
Check box if no attorney retained.		
North Carolina Industrial Commission		
The Foregoing Agreement Is Hereby Ar	<del>mroved:</del>	
Claims Examiner	Date	
Attorney's fee approved		
IMPORTANT NOTICE TO EMPLOY	YEE CLAIMING ADDITIONA	L WEEKLY CHECKS OR LUM
<del>PAYMENTS</del>		
Once your compensation checks have be		
Commission in writing within two year	's from the date of receipt of you	<del>ir last compensation check or your r</del>
these benefits may be lost.		
IMPORTANT NOTICE TO EMPLO		
MEDICAL BENEFITS	YEE INJURED BEFORE JUI	LY 5, 1994 CLAIMING ADDIT
10		
	1994, you are entitled to medica	nl compensation as long as it is rea
If your injury occurred before July 5, necessary, related to your workers' com	1994, you are entitled to medica	nl compensation as long as it is rea
necessary, related to your workers' com	1994, you are entitled to medical pensation case, and authorized by	al compensation as long as it is rea y the carrier or the Industrial Commi
	1994, you are entitled to medical pensation case, and authorized by	al compensation as long as it is rea y the carrier or the Industrial Commi

42 2 of 6

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 Form 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**

1 2

This form shall be used only to supplement Form 21, Agreement for Compensation for Disability (G.S. 97-82), or an award in cases in which subsequent conditions require a modification of a former agreement or award. The employee must be provided a copy of the form 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 26 11/2014

- Self-Insured Employer or Carrier Mail to:
- 28 NCIC Claims Administration
- 29 4335 Mail Service Center
- 30 Raleigh, North Carolina 27699 4335
- 31 Main Telephone: (919) 807-2500
- 32 Helpline: (800) 688-8349
- 33 Website: http://www.ic.nc.gov/

 (a) (Effective July 1, 2015) If the parties to a workers' compensation claim have previously entered into an approved agreement on a Form 21, Agreement for Compensation for Disability, or a Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, they shall use the following Form 26, Supplemental Agreement as to Payment of Compensation, for agreements regarding subsequent additional disability and payment of compensation pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501, where applicable. The Form 26, Supplemental Agreement as to Payment of Compensation, shall read as follows:

- North Carolina Industrial Commission
- 46 Supplemental Agreement as to Payment
- 47 of Compensation (G.S. §97-82)

- 49 IC File # \_
- 50 Emp. Code # \_\_\_\_\_ 51 Carrier Code # \_\_\_\_\_
- 52 Carrier File #
- 53 Employer FEIN

The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

Address					-	
		<u>.</u>			-	
City	State	*				
Home Telephone		Wo	rk Telep		-	
<u>Last 4 digits of So</u>	cial Security Numb	ber: Sex: [	] M 🗆	F Date of	of Birth:	
Employer's Name		Telephor	ne Numb	per	-	
Employer's Addre	SS	City	State	Zip	-	
Insurance Carrier					-	
Carrier's Address		City	State	Zip	-	
Carrier's Telephon	ne Number	Car	rier's Fa	x Numbe	- r	
We, The Undersig		gree and Stipulate A	s Follov	ws:		
The empl	njury: loyee 🗖 returned to	o work / □ was rated	d on		(date), at a we	eekly wage of \$
The empl	loyee became totall	y disabled on wage □ was reduc				
4. Employe	e's average weekly	wage  was reduced	ed /	was incre	eased on	, from S
<u></u> 1_ 4						
per week to \$ 5	per week.	ministrator hereby i				
5. The empl	loyer and carrier/ad	ministrator hereby t				
5. The empl \$ per	oyer and carrier/adweek.	ministrator hereby t	ındertak	te to pay c	ompensation t	to the employee
5. The empl \$ per Beginning	oyer and carrier/ad week, and continui	ng for	ındertak weeks. ´	te to pay c	ompensation t	to the employee ompensation is
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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 file an application for additional medical compensation pursuant to G.S. 97-25.1 within two years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M, Employee's Application for Additional Medical Compensation (G.S. 97-25.1), available at http://www.ic.nc.gov/forms.html. An application for additional medical compensation or by written request. In the alternative, an employee may file an application for additional medical compensation by filing a Form 33 Request that Claim be Assigned for Hearing pursuant to 11 NCAC 23A .0602. All Industrial Commission forms are available at https://www.ic.nc.gov/forms.html.

IMPORTANT NOTICE TO EMPLOYER

This form shall be used only to supplement Form 21, Agreement for Compensation for Disability (G.S. 97-82), or an award in cases in which subsequent conditions require a modification of a former agreement or award. The employee must be provided a copy of the form 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. 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.

43 Form 26 44 <del>7/2015</del>8/2020

- 46 Self-Insured Employer or Carrier, File via Electronic Document Filing Portal ("EDFP"): Carrier Mail to:
- 47 NCIC Claims Administration
- 48 4335 Mail Service Center
- 49 Raleigh, North Carolina 27699 4335
- 50 Main Telephone: (919) 807-2500
- 51 Helpline: (800) 688-8349
- 52 Website: http://www.ic.nc.gov/
- 53 https://www.ic.nc.gov/docfiling.html
- 54 <u>Contact Information:</u>
- 55 NCIC- Claims Administration
- 56 Telephone: (919) 807-2502

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1	<u> Helpline: (800)</u>	<u>688-8349</u>
2	Website: https:/	//www.ic.nc.gov
3		
4	(b) The c	opy of the form described in Paragraph (a) of this Rule can be accessed a
5	http://www.ic.n	c.gov/forms/form26.pdf. https://www.ic.nc.gov/forms/form26.pdf. The form may be reproduced only
6	in the format a	vailable at http://www.ic.nc.gov/forms/form26.pdf https://www.ic.nc.gov/forms/form26.pdf and mag
7	not be altered o	r amended in any way.
8		
9	History Note:	Authority G.S. 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;
10		Eff. November 1, 2014;
11		Recodified from 04 NCAC 10L .0102 Eff. June 1, 2018;
12		Amended Eff. February 1, 2021.

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# REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23L .0103, Eff. December 1, 2020

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

So that I'm clear – the agency's intent is to make these minor amendments while awaiting the effective date of the amendment to Rule 23A .0108 and implementing the larger changes with the version of this Rule effective February 1, 2021?

On the Submission for Permanent Rule form, Box 8, you state this was approved by OSBM. However, in the January 15, 2020 Register, you stated this Rule was part of a combined analysis that affected funds and was approved by OSBM. Please confirm the correct boxes are checked here.

On Pages 7 and 8, I am only asking – do you need to retain the information for injuries incurred before July 5, 1994?

On Page 8, line 23, please change the date to December 2020, as that will be the effective date of this amendment.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1	11 NCAC 23L .0103 is amended as published in 34:14 NCR 1295-1300 as follows:
2	
3	11 NCAC 23L .0103 FORM 26A – EMPLOYER'S ADMISSION OF EMPLOYEE'S RIGHT TO
4	PERMANENT PARTIAL DISABILITY
5	(a) (Effective until July 1, 2015) The parties to a workers' compensation claim shall use the following Form 26A
6	Employer's Admission of Employee's Right to Permanent Partial Disability, for agreements regarding the employee's
7	entitlement to and the employer's payment of compensation for permanent partial disability pursuant to G.S. 97-31
8	Additional issues agreed upon by the parties, such as election of payment of temporary partial disability pursuant to
9	G.S. 97-30, may also be included on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501
10	where applicable. The Form 26A, Employer's Admission of Employee's Right to Permanent Partial Disability, shall
11	read as follows:
12	
13	North Carolina Industrial Commission
14	Employer's Admission of Employee's Right to Permanent Partial Disability
15	(G.S. §97-31)
16	
17	IC File #
18	Emp. Code #
19	Carrier Code #
20	Carrier File #
21	Employer FEIN
22	
23	The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act
24	
25	
26	Employee's Name
27	
28	Address
29	
30	City State Zip
31	
32	Home Telephone Work Telephone
33	Social Security Number: Sex:   M  F Date of Birth:
	Social Security NumberSex.   Wi   1 Date of Dittil
34	
35	Employer's Name Telephone Number
36	Employer's Name Telephone Number
37	

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<del>Employe</del>	er's Address City State Zip	
Insurance	<del>ce Carrier</del>	
Carrier's	s Address City State Zip	
Carrier's	s Telephone Number Carrier's Fax Number	
<del>WE, THI</del>	IE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:	
1.	All the parties hereto are subject to and bound by the provisions of the Workers' Co	mpensation Act and
	is the Carrier/Administrator for the Employer.	
<del>2.</del>	The employee sustained an injury by accident or the employee contracted an occupation	al disease arising ou
of and in	n the course of employment on	
3.	The injury by accident or occupational disease resulted in the f	Collowing injuries
4 <del>.</del>	The employee □ was □ was not paid for the 7 day waiting period.	<del>-</del>
I <del>f not, wa</del>	vas salary continued? □ yes □ no. Was employee paid for the date of injury? □ yes □ no	
<del>5.</del>	The average weekly wage of the employee at the time of the injury, including overtime	e and all allowances
was \$	. This results in a weekly compensation rate of \$	
<del>6.</del>	The employee □ has □ has not returned full time to work for	
on	, at an average weekly wage of \$	
<del>7.</del>	${\color{red} \textbf{Claimant was released}} \; {\color{red} \sqcup} \; \textbf{with permanent restrictions} \; {\color{red} \sqcup} \; \textbf{without permanent restrictions}.$	
<del>8.</del>	Permanent partial disability compensation will be paid to the injured worker as follows:	
wee	eeks of compensation at rate of \$ per week for% rating to(	<del>body part)</del>
wee	eeks of compensation at rate of \$per week for% rating to(	<del>body part)</del>
wee	eeks of compensation at rate of \$per week for% rating to(	<del>body part)</del>
<del>Total am</del>	nount of permanent partial disability compensation is \$ Date of first payment	nt:
<del>9.</del>	State any further matters agreed upon, including disfigurement, loss of teeth, election	of temporary partia
disability	ty, waiting period or	<del>other</del>
<del>10.</del>	An overpayment is claimed in the amount of \$ Overpayment	<del></del> - <del></del>
follows:_		<del>.</del>
<del>If overpa</del>	payment claimed, a Form 28B, Report of Compensation and Medical Compensation Paid	, is attached. □ yes □
<del>no</del>		
<del>11.</del>	If applicable, the Second Injury Fund Assessment is \$ A check E	is □ is not included
<del>12.</del>	IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for process	ing this agreement is
\$300.00	to be paid in equal shares by the employee and the employer. You are not required to pa	y your portion of the

2 of 9 49

1	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
2	is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer agree
3	otherwise.
4	Check one of the boxes below if the award is more than \$3,000.00:
5	The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.
6	The employee and employer have agreed that the employer will pay the entire fee.
7	
8	The undersigned hereby certify that the material medical and vocational reports related to the injury have been
9	provided to the employee or the employee's attorney and have been filed with the Industrial Commission for
10	consideration pursuant to G.S. 97-82(a) and Rule 11 NCAC 23A .0501.
11	
12	
13	Name Of Employer Signature Title Date
14	
15	Name Of Carrier/Administrator Signature Direct Phone Number Title Date
16	
17	By signing I enter into this agreement and certify that I have read the "Important Notices to Employee"
18	printed on pages 2 and 3 of this form.
19	
20	
21	Signature of Employee Address Date
22	
23	Signature of Employee's Attorney AddressDate
24	
25	☐ Check box if no attorney retained.
26	
27	North Carolina Industrial Commission
28	The Foregoing Agreement Is Hereby Approved:
29	
30	Claims Examiner Date
31	
32	Attorney's fee approved
33	
34	IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM
35	PAYMENTS

3 of 9

1	Once your compensation checks have been stopped, if you claim further compensation, you must notify the Industrial
2	Commission in writing within two years from the date of receipt of your last compensation check or your rights to
3	these benefits may be lost.
4	
5	IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL
6	MEDICAL BENEFITS
7	If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably
8	necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.
9	
10	IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL
11	MEDICAL BENEFITS
12	If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
13	factors. Your right to payment of future medical compensation will terminate two years after your employer or
14	carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
15	you will need future medical compensation, you must apply to the Industrial Commission in writing within two years,
16	or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, Employee's
17	Application for Additional Medical Compensation (G.S. 97-25.1), available at http://www.ic.nc.gov/forms.html.
18	
19	IMPORTANT NOTICE TO EMPLOYER
20	The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 11 NCAC
21	23A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or
22	carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the
23	agreement. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and Medical
24	Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.
25	
26	NEED ASSISTANCE?
27	If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
28	<del>(800) 688-8349.</del>
29	
30	Form 26A
31	<del>11/2014</del>
32	
33	Self Insured Employer or Carrier Mail to:
34	NCIC Claims Administration
35	4335 Mail Service Center
36	Raleigh, North Carolina 27699 4335

37

Main Telephone: (919) 807 2500

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1	Helpline: (800) 688-8349			
2	Website: http://www.ic.nc.go	<del>)v/</del>		
3				
4	(a) (Effective July 1, 2015	) The parties to a	workers' compensation c	claim shall use the following Form 26A
5	Employer's Admission of Em	nployee's Right to P	ermanent Partial Disability	y, for agreements regarding the employee'
6	entitlement to and the emplo	yer's payment of co	ompensation for permanen	t partial disability pursuant to G.S. 97-31
7	Additional issues agreed upo	on by the parties, su	ch as election of payment	of temporary partial disability pursuant to
8	G.S. 97-30, may also be inc	luded on the form.	This form is necessary to	comply with Rule 11 NCAC 23A .0501
9	where applicable. The Form	26A, Employer's A	dmission of Employee's R	eight to Permanent Partial Disability, shall
10	read as follows:			
11				
12	North Carolina Industrial Co	mmission		
13	Employer's Admission of Em	nployee's Right to P	ermanent Partial Disability	y
14	(G.S. §97-31)			
15				
16	IC File #			
17	Emp. Code #			
18	Carrier Code #			
19	Carrier File #			
20	Employer FEIN	_		
21				
22	The Use Of This Form Is Rec	quired Under The P	rovisions of The Workers'	Compensation Act
23				
24				-
25	Employee's Name			
26				-
27	Address			
28				-
29	City	State	Zip	
30				-
31	Home Telephone		Work Telephone	
32	Social Security Number:	Sex: $\Box$ M $\Box$ F	Date of Birth:	
33				
34				
35	Employer's Name		Telephone Number	
36				-
37	Employer's Address	City Stat	te Zip	

52 5 of 9

Carrier's Address City St	ate Zip	
Carrier's Telephone Number	Carrier's Fax Number	
WE, THE UNDERSIGNED, DO HEREBY AC	GREE AND STIPULATE AS I	FOLLOWS:
1. All the parties hereto are subject to ar	nd bound by the provisions of	f the Workers' Compensation Act and
is the Carrier/A	dministrator for the Employer.	
2. The employee sustained an injury by acc	cident or the employee contrac	ted an occupational disease arising ou
of and in the course of employment on	·	
3. The injury by accident or	occupational disease resu	ulted in the following injuries
4. The employee □ was □ was not paid for	the 7 day waiting period.	
If not, was salary continued? $\square$ yes $\square$ no. W	as employee paid for the date of	of injury? □ yes □ no
5. The average weekly wage of the employe		• •
\$ This results in a weekly of		_
6. The employee □ has □ has not returned f		
on, at an aver		
7. Claimant was released □ with permanent		
with permanent restrictions and has returned		
to exist.	a to morning the transfer of the	ajarji amari ajee aesenpion n mem
8. Permanent partial disability compensation	on will be paid to the injured wo	orker as follows:
weeks of compensation at rate of \$		
weeks of compensation at rate of \$		
weeks of compensation at rate of \$		
Γotal amount of permanent partial disability co		
9. State any further matters agreed upon,		
disability, waiting	period	or other
	-	
		Overpayment was calculated as
10. All overpayment is claimed in		_ 1 7
follows:		

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including any job description known to exist if the employee has permanent restrictions and has returned to work for							
the employer of injury, have been	-			•		led with	
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	e Number	Email Address	Title	Date	
By signing I enter into this agreer	nent and certify	that I have read t	he "Importa	nt Notices to Emp	loyee"		
printed on Page 3 of this form.							
Signature of Employee		Address	<u>Email</u>	Address	Date		
Signature of Employee's Attorney	7	Address	<u>Email</u>	Address	Date		
☐ Check box if no attorney retain	ed.						
North Carolina Industrial Commi	ssion						
The Foregoing Agreement Is Her	eby Approved:						
Claims Examiner				Date			
Attorney's fee approved							
IMPORTANT NOTICE TO EN	MPLOYEE CLA	AIMING ADDIT	TONAL W	EEKLY CHECKS	S OR LU	JMP SU	
PAYMENTS							
Once your compensation checks h	nave been stoppe	ed, if you claim fu	arther compo	ensation, you must	notify th	e Indust	
Commission in writing within tw	o years from the	e date of receipt	of your last	compensation che	eck or yo	ur right	
these benefits may be lost.							
IMPORTANT NOTICE TO E	MPLOYEE IN.	JURED BEFOR	E JULY 5	, 1994 CLAIMI	NG ADI	DITION	
MEDICAL BENEFITS							
If your injury occurred before Ju	ıly 5, 1994, you	are entitled to	medical cor	npensation as long	g as it is	reasona	
necessary, related to your workers	s' compensation	case, and authori	zed by the c	arrier or the Indus	trial Con	nmissior	

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- 2 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL
- 3 MEDICAL BENEFITS
- 4 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
- 5 factors. Your right to payment of future medical compensation will terminate two years after your employer or
- 6 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,
- 8 or your right to these benefits may be lost. To apply you may also use Industrial Commission 18M, Employee's
- 9 Application for Additional Medical Compensation (G.S. 97-25.1), available at http://www.ic.nc.gov/forms.html.

10

- 11 IMPORTANT NOTICE TO EMPLOYER
- 12 The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 11 NCAC
- 13 23A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or
- 14 carrier/administrator must submit the agreement to the Industrial Commission, or show cause for not submitting the
- 15 agreement. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and Medical
- 16 Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a penalty.

17

- 18 NEED ASSISTANCE?
- 19 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
- 20 (800) 688-8349.

21

- 22 Form 26A
- 23 7/2015 6/2020

24

- 25 Self-Insured Employer or Carrier Mail to:
- 26 NCIC Claims Administration
- 27 4335 Mail Service Center
- 28 Raleigh, North Carolina 27699-4335
- 29 Main Telephone: (919) 807-2500
- 30 Helpline: (800) 688-8349
- 31 Website: http://www.ic.nc.gov/

32

- 33 (b) A copy of the form described in Paragraph (a) of this Rule can be accessed at
- 34 http://www.ic.nc.gov/forms/form26a.pdf. The form may be reproduced only in the format available at
- 35 http://www.ic.nc.gov/forms/form26a.pdf and may not be altered or amended in any way.

36

37 History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77;

8 of 9 55

1	Eff. November 1, 2014;
2	Recodified from 04 NCAC 10L .0103 Eff. June 1, 2018,
3	Amended Eff. December 1, 2020.
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56 9 of 9

# REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23L .0103, Eff. February 1, 2021

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Pages 5, I am only asking – do you need to retain the information for injuries incurred before July 5, 1994?

On Page 6, line 8, to mirror Rule 23L .0101 should this state, "provided a copy of the form when the agreement..."?

On line 20, please change the date to February 2021, as that will be the effective date of this amendment.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder Commission Counsel Date submitted to agency: October 30, 2020

	mended as published in 34:20 NCR 1862-67 as follows:
11 NCAC 23L .0103	FORM 26A - EMPLOYER'S ADMISSION OF EMPLOYEE'S RIGHT
	PERMANENT PARTIAL DISABILITY
(a) (Effective until Jul	1, 2015)The parties to a workers' compensation claim shall use the following Form
	Employee's Right to Permanent Partial Disability, for agreements regarding the emplo
	ployer's payment of compensation for permanent partial disability pursuant to G.S. S
_	upon by the parties, such as election of payment of temporary partial disability pursu
<del>3.S. 97-30, may also be</del>	ncluded on the form. This form is necessary to comply with Rule 11 NCAC 23A .0501, v
<del>pplicable. The Form 2</del>	A, Employer's Admission of Employee's Right to Permanent Partial Disability, shall re
<del>llows:</del>	
North Carolina Industri	
	Employee's Right to Permanent Partial Disability
<del>(G.S. §97-31)</del>	
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Smp. Code #	-
Carrier Code #	- 
Carrier File #	
Employer FEIN	
	—— Required Under The Provisions of The Workers' Compensation Act
The Use Of This Form I	Required Under The Provisions of The Workers' Compensation Act
The Use Of This Form I  Employee's Name	Required Under The Provisions of The Workers' Compensation Act
The Use Of This Form I  Employee's Name  Address	
The Use Of This Form I  Employee's Name  Address	Required Under The Provisions of The Workers' Compensation Act  State Zip
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Employee's Name  Address  City  Home Telephone	State Zip  Work Telephone
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Employee's Name  Address  City  Home Telephone  Social Security Number  Employer's Name  Employer's Address	State Zip  Work Telephone  Sex: - HM - H - F Date of Birth:  Telephone Number
The Use Of This Form I  Employee's Name  Address  City  Home Telephone  Social Security Number  Employer's Name  Employer's Address  Insurance Carrier  Carrier's Address	State Zip  Work Telephone Sex:- IM - II F Date of Birth:  Telephone Number  City State Zip
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58 1 of 6

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	was \$						<del>-</del>	
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<del>11.</del>	If applicable, to	<del>he Second I</del> i	n <del>jury Fund Ass</del>	sessment is \$		A	l <del>check □ is</del>	
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Name O	of Carrier/Admin	istrator	Signature	Direct	Phone Number	Title	——————————————————————————————————————	
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1 <u>Attorney's fee approved</u>

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
- 39 4335 Mail Service Center
- 40 Raleigh, North Carolina 27699 4335
- *Main Telephone: (919) 807-2500*
- *Helpline:* (800) 688 8349
- 43 Website: http://www.ic.nc.gov/

45 (a) (Effective July 1, 2015) The parties to a workers' compensation claim shall use the following Form 26A,

- 46 Employer's Admission of Employee's Right to Permanent Partial Disability, for agreements regarding the employee's
- 47 entitlement to and the employer's payment of compensation for permanent partial disability pursuant to G.S. 97-31.
- 48 Additional issues agreed upon by the parties, such as election of payment of temporary partial disability pursuant to
- 49 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:

60 3 of 6

(G.S. §97-31)	ssion of Employee'	C			•		
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If overpayment claimed, a Form 28B, Report of Compensation and Medical Compensation Paid, is attached.  □ 1. If applicable, the Second Injury Fund Assessment is \$	overpayment claimed, a Form 28B, Report of Compensation and Medical Compensation Paid, is attached.  If applicable, the Second Injury Fund Assessment is \$		med in the amount	of \$	Overpayment v	vas calcula
In of 11. If applicable, the Second Injury Fund Assessment is \$	If applicable, the Second Injury Fund Assessment is \$	If overpayment claimed, a Form 2	8B Report of Compe	nsation and Medical Com	nensation Paid is	attached
11. If applicable, the Second Injury Fund Assessment is \$	If applicable, the Second Injury Fund Assessment is \$		ob, report or compe	insution and Medical Con-	ipensation raid, is	attachea.
The undersigned hereby certify that the material medical and vocational *reports* records* related to the *injury* including any job description known to exist if the employee has permanent restrictions and have been filed vince the employee of injury. Now been provided to the employee or the employee's attorney and have been filed vindustrial 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 *Email Address* Title*  By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 3 of this form.  Signature of Employee Address *Email Address* Date*  Signature of Employee's Attorney Address *Email 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 LUMI PAYMENTS  Once your compensation checks have been stopped, if you claim further compensation, you must notify the In Commission in writing within two years from the date of receipt of your last compensation check or your r these benefits may be lost.  IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITI MEDICAL BENEFITS  If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reas necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commis IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITI MEDICAL BENEFITS  If your injury occurred to one after July 5, 1994, your right to future medical compensation will depend on factors. Your right to payment of future medical compensation will terminate two years after your emplearrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you will need future medical c	the undersigned hereby certify that the material medical and vocational reports records related to the injury. Indiang any iob description known to exist if the employee has permanent restrictions and have been filed we distributed to the injury. Note been provided to the employee or the employee's attorney and have been filed we distributed to make the provided to the employee or the employee's attorney and have been filed we distributed to make the filed with the f		Injury Fund Assessr	nent is \$	. A chec	k □ is □
including amy job description known to exist if the employee has permanent restrictions and has returned to we the employer of injury, have been provided to the employee or the employee's attorney and have been filed we lindustrial Commission for consideration pursuant to G.S. 97-82(a) and Rule 11 NCAC 23A .0501.  Name Of Employer Signature Title Date  Name Of Employer Signature Direct Phone Number Email Address Title  By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on Page 3 of this form.  Signature of Employee Address Email Address Date  Signature of Employee's Attorney Address Email 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 LUMI PAYMENTS  Once your compensation checks have been stopped, if you claim further compensation, you must notify the In Commission in writing within two years from the date of receipt of your last compensation check or your r these benefits may be lost.  IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONED REPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONED REDICAL BENEFITS  If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reas necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commis MEDICAL BENEFITS  If your injury occurred on or after July 5, 1994, you rright to future medical compensation will depend on factors. Your right to payment of future medical compensation will terminate two years after your emploarrier/administrator last pays any medical compensation or other compensation, whicheve occurs last If ye you will need future medical compensation, you must apply to the Industrial Commission in writing file an app	chading any job description known to exist if the employee has permanent restrictions and has returned to we employer of injury, have been provided to the employee or the employee's attorney and have been filed we dustrial Commission for consideration pursuant to G.S. 97-82(a) and Rule 11 NCAC 23A .0501.  Interest of Employer  Signature  Title  Date  Interest of Employer  Signature  Direct Phone Number  Email Address  Title  resigning I enter into this agreement and certify that I have read the "Important Notices to Employee" inted on Page 3 of this form.  Interest of Employee  Address  Email Address  Date  Check box if no attorney retained.  Orth Carolina Industrial Commission  The Foregoing Agreement Is Hereby Approved:  Interest of Employee  Address  Email Address  Date  Torney's fee approved  IPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP (AMPONE)  The Commission in writing within two years from the date of receipt of your last compensation, you must notify the Incommission in writing within two years from the date of receipt of your last compensation check or your rises benefits may be lost.  IPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIEDICAL BENEFITS  your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reas cessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commiss (PORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIEDICAL BENEFITS  your injury occurred before July 5, 1994, your right to future medical compensation will depend on a clors. Your right to payment of future medical compensation or other compensation, whichever occurs last. If you will need future medical compensation or other compensation, whichever occurs last. If you will need future medical compensation, you must apply to the Industrial Commission in writing file an apply to the Industrial Commission in writing file an apple to the Industrial Commission in writing file a	included.	3 3			
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Signature of Employee Address Email Address Date  Signature of Employee's Attorney Address Email 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 LUMI PAYMENTS  Once your compensation checks have been stopped, if you claim further compensation, you must notify the In Commission in writing within two years from the date of receipt of your last compensation check or your rethese benefits may be lost.  IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL BENEFITS  If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is rear 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 BENEFITS  If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on factors. Your right to payment of future medical compensation will terminate two years after your emplicarrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you will need future medical compensation, you must apply to the Industrial Commission in writing file an app	gnature of Employee Address Email Address Date  gnature of Employee's Attorney Address Email Address Date  Check box if no attorney retained.  Orth Carolina Industrial Commission the Foregoing Agreement Is Hereby Approved:  aims Examiner Date  IPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP AYMENTS to be benefits may be lost.  IPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL BENEFITS  your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reas cessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission in William Address  PORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL BENEFITS  your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reas cessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission in William Address  PORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL BENEFITS  your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on stors. Your right to payment of future medical compensation will terminate two years after your emplor trier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you will need future medical compensation, you must apply to the Industrial Commission in writing file an apply to the Industrial Commission in writing file an apply to the Industrial Commission in writing file an apple to the Industrial Commission in writing file an apple to the Industrial Commission in writing file an apple to the Industrial Commission in writing file an apple to the Industrial Commission in writing file an apple to the Industrial Commission in writing file an apple to the Industrial Commission in writing file an apple to the Industrial Commission in writing file an apple to the Industrial Commission in writing file a	By signing I enter into this agreem	ent and certify that I	have read the "Important"	Notices to Employ	/ee"
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1 Compensation (G.S. 97 25.1), available at http://www.ic.ne.gov/forms.html. An application for additional medical 2 compensation may be made on a Form 18M Employee's Application for Additional Medical Compensation or by 3 written request. In the alternative, an employee may file an application for additional medical compensation by filing a Form 33 Request that Claim be Assigned for Hearing pursuant to 11 NCAC 23A .0602. All Industrial Commission 4 5 forms are available at https://www.ic.nc.gov/forms.html. 6 7 IMPORTANT NOTICE TO EMPLOYER 8 The employee must be provided a copy when the agreement is signed by the employee. Pursuant to Rule 11 NCAC 9 23A .0501, within 20 days after receipt of the agreement executed by the employee, the employer or 10 carrier/administrator must submit the agreement to the Industrial Commission. Commission, or show cause for not submitting the agreement. The employer or carrier/administrator shall file a Form 28B, Report of Compensation and 11 Medical Compensation Paid, within 16 days after the last payment made pursuant to this agreement or be subject to a 12 13 penalty. 14 15 NEED ASSISTANCE? 16 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at 17 (800) 688-8349. 18 19 Form 26A 20 <del>7/2015</del> <del>6/2020</del>8/2020 21 22 Self-Insured Employer or Carrier, File via Electronic Document Filing Portal ("EDFP"): Carrier Mail to: NCIC - Claims Administration 23 24 4335 Mail Service Center 25 Raleigh, North Carolina 27699 4335 Main Telephone: (919) 807-2500 26 Helpline: (800) 688-8349 27 Website: http://www.ic.nc.gov/ 28 https://www.ic.nc.gov/docfiling.html 29 30 Contact Information: 31 NCIC- Claims Administration Telephone: (919) 807-2502 32 Helpline: (800) 688-8349 33 34 Website: https://www.ic.nc.gov 35 36 (b) A copy of the form described in Paragraph (a) of this Rule can be accessed at 37 http://www.ic.nc.gov/forms/form26a.pdf. https://www.ic.nc.gov/forms/form26a.pdf. The form may be reproduced only in the format available at http://www.ie.ne.gov/forms/form26a.pdf https://www.ic.nc.gov/forms/form26a.pdf and 38 39 may not be altered or amended in any way. 40 41 History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-81(a); 97-82; S.L. 2014-77; 42 Eff. November 1, 2014; Recodified from 04 NCAC 10L .0103 Eff. June 1, 2018; 43 44 Amended Eff. December 1, 2020;

Amended Eff. February 1, 2021.

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# REQUEST FOR TECHNICAL CHANGE

AGENCY: Industrial Commission

RULE CITATION: 11 NCAC 23L .0105

**DEADLINE FOR RECEIPT: Friday, November 13, 2020** 

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 22, what is a "reputable person closely connected"? Is this language from a statute or case law?

On line 25, and elsewhere the term is used, what is "fit and proper"? Again, is this from statute or case law?

On Page 2, line 17, can't the individuals fax and email this form as well, as per the amendment to Rule 23B .0104(a)?

And I take it the allowed courier service in Rule .0104(a) will be addressed by the provision of the physical address for hand delivery?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder Commission Counsel Date submitted to agency: October 30, 2020

1	11 NCAC 23L .0105 is amended as published in 34:20 NCR 1867-68 as follows:
2	
3	11 NCAC 23L .0105 FORM T-42 – APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM
4	(a) Persons seeking to appear on behalf of an infant or incompetent shall apply on a Form T-42, Application for
5	Appointment of Guardian Ad Litem, in accordance with Rule 11 NCAC 23B .0203. The Form T-42, Application for
6	Appointment of Guardian Ad Litem, shall read as follows:
7	
8	North Carolina Industrial Commission
9	
10	IC File # TAApplication for Appointment of Guardian Ad Litem
11	The use of this Form is required under Rule 11 NCAC 23B .0203
12	
13	Plaintiff(s) vDefendant(s)
14	
15	To the North Carolina Industrial Commission:
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7	The undersigned respectfully shows unto the North Carolina Industrial Commission that is
8	an infant or incompetent without general or testamentary guardian in this State, and that by reason thereof can
9	bring an action only by a guardian ad litem; that the infant or incompetent has a cause of action against the defendants
) 1	on account of the following matter and things:
1 2	The undersigned is a reputable person closely connected with the infant or incompetent having the relationship with
3	the infant or incompetent as follows:
4	the infant of incompetent as follows.
5	Wherefore, the undersigned prays the Commission that a fit and proper person be appointed Guardian Ad Litem for
6	the infant or incompetent for the purpose of bringing on his or her behalf an action as above set out.
7	Signature of Applicant Date
8	
9	(Please complete page 2 of form)
0	
l	Order Appointing Guardian Ad Litem
2	
3	It appearing to the North Carolina Industrial Commission from the above application that is
1	an infant or incompetent having no general or testamentary guardian within this State and that said infant or
5	incompetent appears to have a good cause of action against the defendant(s); and it further appearing to the
6	Commission after due inquiry that is a fit and proper person to be appointed guardian ad litem for the infant or incompetent for the purpose of bringing this action on his or her behalf;
7	litem for the infant or incompetent for the purpose of bringing this action on his or her behalf;
3	It is therefore ordered that be and is hereby appointed guardian ad litem of to bring action on his or her behalf.
)	to bring action on his or her behalf.
)	TI.:- 1£
)	This day of
,	Commissioner or Deputy Commissioner Commissioner, Deputy Commissioner, or Executive Secretary
4 5	
5	Please type or print:
7	Treme type or prints
) )	Full name and address of minor or incompetent:
0	Birth date of minor:
ĺ	Full name and address of proposed guardian ad litem:
2	

1 of 2

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      Important Information for Parties
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      Parties should take notice of the provisions set forth in Rule 11 NCAC 23B .0203.
 4
 5
                                Infants and Incompetents
 6
      (a) Persons seeking to appear on behalf of an infant or incompetent, in accordance with G.S. 1A-1, Rule 17, shall
 7
      apply on a Form T-42 Application for Appointment of Guardian ad Litem. The Commission shall appoint a fit and
 8
      proper person as guardian ad litem, if the Commission determines it to be in the best interest of the minor or
 9
      incompetent. The Commission shall appoint the guardian ad litem only after due inquiry as to the fitness of the person
10
      to be appointed.
      (b) The Commission may assess a fee to be paid to an attorney who serves as a guardian ad litem for actual services
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12
      rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the
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      ATTORNEYS: File via Electronic Document Filing Portal ("EDFP")
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      https://www.ic.nc.gov/docfiling.html
17
      UNREPRESENTED PLAINTIFFS: File via EDFP, https://www.ic.nc.gov/docfiling.html OR
      Mail to: Industrial Commission Clerk's Office, 1236 Mail Service Center, Raleigh NC 27699-1236 OR
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19
      File via hand delivery: Business days from 8 a.m. – 5 p.m., Dobbs Building, 6th floor, 430 N. Salisbury Street,
20
      Raleigh NC 27603.
21
22
      SEND TO:
23
      dockets@ic.nc.gov
24
      Office of the Clerk
25
      1236 Mail Service Center
26
      Raleigh, NC 27699-1236
27
      Main telephone: (919) 807-2500
28
      Helpline (800) 688-8349
29
      Website: http://www.ic.nc.gov
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31
      FORM T-42
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33
      (b) A copy of the form described in Paragraph (a) of this Rule can be accessed at http://www.ie.ne.gov/formt42.pdf.
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      https://www.ic.nc.gov/forms/formt-42.pdf. The form shall be reproduced only in the format available at
35
      http://www.ic.nc.ogv/forms/formt42.pdf https://www.ic.nc.gov/forms/formt-42.pdf and shall not be altered or
36
      amended in any way.
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      History Note:
                       Authority G.S. 143-291; 143-295; 143-300;
39
                       Eff. March 1, 2019;
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Amended Eff. February 1, 2021.