

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA INDUSTRIAL COMMISSION

MARCH 2, 2018

PUBLIC HEARING BEFORE THE FULL COMMISSION

REGARDING

PROPOSED RULE AMENDING 04 NCAC 10A .0107

GRAHAM ERLACHER & ASSOCIATES
3504 VEST MILL ROAD - SUITE 22
WINSTON-SALEM, NORTH CAROLINA 27103
336/768-1152

A P P E A R A N C E S

COMMISSIONERS:

Charlton L. Allen, Chairman

Yolanda K. Stith, Vice-Chairman

Philip A. Baddour, III, Commissioner

Christopher C. Loutit, Commissioner

Tammy R. Nance, Commissioner

I N D E X

SPEAKERS:

PAGE

Kendall Bourdon 2

E X H I B I T S

IDENTIFIED ADMITTED

(Bourdon) Exhibit Number 1 3 6
(Bourdon) Exhibit Number 2 3 6

P R O C E E D I N G S

1
2 CHAIRMAN ALLEN: Good morning. We are on the
3 record. Today is March 2nd, 2018. I am
4 Charlton Allen, Chairman of the North Carolina
5 Industrial Commission. In compliance with the
6 requirements of Chapter 138A-15(e) of the State
7 Government Ethics Act, I remind all members of the
8 Commission of their duty to avoid conflicts of
9 interest under Chapter 138A. I also inquire as to
10 whether there is any known conflict of interest to the
11 matter coming before the Commission at this time.

12 VICE-CHAIRMAN STITH: No.

13 CHAIRMAN ALLEN: Okay. Hearing none, we will
14 proceed. This is a North Carolina Industrial
15 Commission public hearing on proposed rulemaking. The
16 purpose of this hearing is to receive comments from
17 the public regarding the amendment to 04 NCAC 10A
18 .0107 proposed for permanent rulemaking by the
19 Commission and published in the *North Carolina*
20 *Register* on January 16, 2018. We have received no
21 written comments from the public thus far, but the
22 record will be held open to receive written comments
23 from the public through the close of business on
24 March 19, 2018. At this time, I would like to
25 introduce the other Commissioners. To my immediate

1 right is Vice-Chairman Yolanda Stith, and then further
2 to the right is Commissioner Christopher Loutit. To
3 my immediate left is Commissioner Tammy Nance, and
4 further to the left is Commissioner Philip Baddour.
5 Anyone who wishes to speak at this hearing must
6 sign-up to do so with Kendall Bourdon so that we have
7 the correct spelling of your name and can call you in
8 order to speak. If anybody would like to speak and
9 has not yet signed up, please do so now. The first
10 speaker will be Kendall Bourdon, rulemaking
11 coordinator of the North Carolina Industrial
12 Commission, followed by the members of the public in
13 the order that they signed up. Ms. Bourdon, please
14 approach the podium.

15 KENDALL BOURDON

16 MS. BOURDON: Good morning.

17 CHAIRMAN ALLEN: Good morning.

18 VICE-CHAIRMAN STITH: Good morning.

19 CHAIRMAN ALLEN: Ms. Bourdon, will you please
20 state your name, your position and whom you work for?

21 MS. BOURDON: My name is Kendall Bourdon, and I am
22 the rulemaking coordinator for the North Carolina
23 Industrial Commission.

24 CHAIRMAN ALLEN: Do you have any prepared exhibits
25 that you would like to place into the record of these

1 proceedings?

2 MS. BOURDON: Yes. I have Exhibit 1, which is a
3 copy of the proposed rule as published in the
4 *North Carolina Register* on January 16th, 2018. Next, I
5 have Exhibit 2, which is a copy of the letter from
6 Carrie Hollis at OSBM stating that OSBM reviewed the
7 proposed changes and determined that the amendments
8 have little to no impact on State or local governments
9 and no substantial economic impact; therefore, a
10 Fiscal Note is not required.

11 (Exhibit Numbers 1 and 2 are
12 identified for the record.)

13 CHAIRMAN ALLEN: Would you briefly give us some
14 background and list the rule that would be affected by
15 the proposed rule change?

16 MS. BOURDON: Yes. We have one rule for
17 amendment. This rule is found in Title 04 of the
18 Administrative Code, Subchapter 10A. We propose to
19 amend Rule .0107, which is titled "Computation of
20 Time." The proposed effective date is May 1st, 2018.
21 It is submitted to you as Exhibit 1. In the
22 Appropriations Act of 2017, Session Law 2017-57,
23 Section 15.17, the General Assembly amended provisions
24 of the North Carolina General Statute 97-86 pertaining
25 to the method of sending notice of Commission awards.

1 Previously, the statute allowed for notice to be sent
2 by registered or certified mail. Currently, the
3 statute, as amended, specifies that notice shall be
4 sent by any class of U.S. mail that is fully prepaid
5 or electronic mail. Therefore, the Commission is
6 engaging in permanent rulemaking to establish a time
7 certain for the sending of notices pursuant to
8 N.C. General Statute 97-86. The statutory basis for
9 these changes are North Carolina General Statutes
10 97-80, 97-81, 97-84, 97-86 and Session Law 2017-57,
11 Section 15.17. The Commission has followed the
12 permanent rulemaking procedures of the Administrative
13 Procedure Act in proposing these rules. Prior to
14 proposing the rule amendment, the Commission consulted
15 with OSBM regarding whether a Fiscal Note would be
16 necessary. OSBM reviewed the proposed changes to the
17 rule in accordance with G.S. 150B-21.4. As submitted
18 to you in Exhibit 2, it was OSBM's determination that
19 the amendments have little to no impact on State or
20 local governments and no substantial economic impact;
21 thus, a Fiscal Note was not required. The relevant
22 dates involved include the following: The proposed
23 rule amendment was filed with a notice of text to the
24 Office of Administrative Hearings on December 19th,
25 2017; they were then published in the January 16, 2018

1 issue of the *North Carolina Register*, and on that same
2 day - January 16th - the Commission published a notice
3 of this rule amendment on the Commission's website, as
4 required, and also emailed notice with a link to this
5 proposed rule to the Industrial Commission's Listserv.
6 It is an interested person's Listserv that we are
7 required to maintain for rulemaking purposes. Copies
8 of the rule were also provided to the North Carolina
9 League of Municipalities and the North Carolina
10 Association of County Commissioners as required by
11 statute.

12 CHAIRMAN ALLEN: Ms. Bourdon, the rule in question
13 is found in Title 04, but it is subject to be
14 transferred to Title 11 due to the Commission's
15 transfer to the Department of Insurance together with
16 all other Industrial Commission rules at some date to
17 be determined, is that correct?

18 MS. BOURDON: Yes, that is correct. Any transfer
19 in the code of the Industrial Commission rules will be
20 subsequent to this currently pending rulemaking. It
21 is the intention of the Commission to transfer the
22 rules from Title 04 to Title 11 by approximately May
23 1st, 2018, to be in line with the proposed effective
24 date of this rule amendment. At such time as the
25 title of the Industrial Commission's rules are

1 transferred in the North Carolina Administrative Code,
2 this rule will then be 11 NCAC 10A .0107.

3 CHAIRMAN ALLEN: Okay. Do any of the members of
4 the Commission have questions for Ms. Bourdon? Okay.
5 All right. Thank you, Ms. Bourdon.

6 (SPEAKER DISMISSED)

7 CHAIRMAN ALLEN: Are there any other speakers who
8 wish to address the Commission regarding this proposed
9 rule? Seeing and hearing none, thank you all for
10 participating in the public hearing. The period for
11 written comments will be held open through the close
12 of business on March 19, 2018, so if you have any
13 further comments, please send them to Kendall Bourdon
14 as directed in the hearing notice in the *North*
15 *Carolina Register* and as found on the Commission
16 website. The written comments and the comments made
17 at the hearing today will be made part of the public
18 record of these proceedings. We would like to include
19 in the transcript of the proceeding the material
20 submitted by Ms. Bourdon as Exhibit 1 and Exhibit 2,
21 and they are entered into the record.

22 (Exhibit Numbers 1 and 2 are
23 admitted into the record.)

24 CHAIRMAN ALLEN: Are there any further matters to
25 come before the public hearing? Hearing none, the

1 hearing is adjourned, and we will go off the record.

2 Thank you very much.

3 (WHEREUPON, THE HEARING WAS ADJOURNED.)

4 RECORDED BY MACHINE

5 TRANSCRIBED BY: Lisa D. Dollar, Graham Erlacher and

6 Associates

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1 STATE OF NORTH CAROLINA

2 COUNTY OF GUILFORD

3 C E R T I F I C A T E

4 I, Kelly K. Patterson, Notary Public, in and for the
5 State of North Carolina, County of Guilford, do hereby
6 certify that the foregoing seven (7) pages prepared under
7 my supervision are a true and accurate transcription of the
8 testimony of this trial which was recorded by Graham
9 Erlacher & Associates.

10 I further certify that I have no financial interest in
11 the outcome of this action. Nor am I a relative, employee,
12 attorney or counsel for any of the parties.

13 WITNESS my Hand and Seal on this 12 day of March 2018.

14 My commission expires on December 3, 2018.

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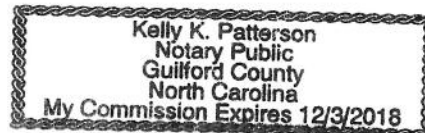
Kelly K. Patterson

20

NOTARY PUBLIC

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PROPOSED RULES

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Industrial Commission intends to amend the rule cited as 04 NCAC 10A .0107.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ic.nc.gov/proposed/0A0107Notice-011618.pdf>

Proposed Effective Date: May 1, 2018

Public Hearing:

Date: March 2, 2018

Time: 10:30 a.m.

Location: Room 240, 2nd Floor, Department of Insurance, Albemarle Building, 325 North Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: In the Appropriations Act of 2017, Session Law 2017-57, Section 15.17, the General Assembly amended provisions of NC General Statute § 97-86 pertaining to the method of sending notice of Commission awards. Previously, the statute allowed for notice to be sent by registered or certified mail. Currently, the statute, as amended, specifies that notice shall be sent by any class of U.S. mail that is fully prepaid or electronic mail. Therefore, the Commission is engaging in permanent rulemaking to establish a time certain for the sending of notices pursuant to NC General Statute § 97-86.

Comments may be submitted to: Kendall Bourdon, 1233 Mail Service Center, Raleigh, NC 27699-1233; phone (919) 807-2644; email Kendall.Bourdon@ic.nc.gov

Comment period ends: March 19, 2018

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 10 - INDUSTRIAL COMMISSION

SUBCHAPTER 10A - WORKERS' COMPENSATION RULES

SECTION .0100 - ADMINISTRATION

04 NCAC 10A .0107 COMPUTATION OF TIME AND NOTICE BY THE COMMISSION

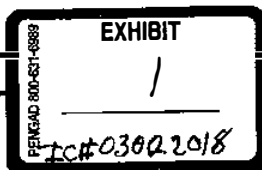
(a) Except as otherwise provided by statute or rule, in computing any period of time prescribed or allowed by the Commission Rules, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, or a holiday established by the State Personnel Human Resources Commission, in which event the period runs until the end of the next day that is not a Saturday, a Sunday or a holiday established by the State Personnel Human Resources Commission. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of any document, document by mail, three days shall be added to the prescribed period.

(b) If service is provided by electronic mail, notice pursuant to G.S. 97-86 is complete one hour after it is sent, provided that:

- (1) notice sent after 5:00 p.m. is complete at 8:00 a.m. the following business day; and
- (2) notice sent by electronic mail that is not readable by the recipient is not complete. Within five business days of receipt of an unreadable document, the receiving party shall notify the Commission of the unreadability of the document.

(c) If service is provided by U.S. Mail, notice pursuant to G.S. 97-86 is complete upon the Commission's placing the item to be served, enclosed in a wrapper addressed to the party to be served, in the custody of the Mail Service Center or an official depository of the United States Postal Service.

Authority G.S. 97-80; 97-81; 97-84; 97-86; S.L. 2017-57; s. 15.17.



Bourdon, Kendall

From: Hollis, Carrie
Sent: Monday, December 18, 2017 2:51 PM
To: Bourdon, Kendall
Cc: Masich, Molly; McGhee, Dana; Grozav, Anca
Subject: Review - 04 NCAC 10A .0107, Computation of Time and Notice by the Commission
Attachments: 04 NCAC 10A .0107 Amendment.docx

OSBM has reviewed the Industrial Commission’s proposed changes to rule 04 NCAC 10A .0107 in accordance with G.S. 150B-21.4. OSBM has determined the amendments have little to no impact on state or local governments and no substantial economic impact. A fiscal note is not required.

Please let me know if you have any questions.
Regards,
Carrie

Carrie Hollis
Economic Analyst
Demographic and Economic Analysis Section
NC Office of State Budget and Management

919 807 4757 office
carrie.hollis@osbm.nc.gov

116 West Jones Street
20320 Mail Service Center
Raleigh, NC 27699-0320



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