



AGENCY TRAINING ACTIVITIES REVIEW

Audit Report # 2011-007

By:

The Office of Injured Employee Counsel

INTERNAL AUDIT DIVISION

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The Office of Injured Employee Counsel (OIEC) was established March 1, 2006 as a result of House Bill 7, passed during the 79th Texas Legislature, Regular Session, in 2005. House Bill 7 abolished the Texas Workers' Compensation Commission (TWCC) and established the Division of Workers' Compensation (DWC) within the Texas Department of Insurance (TDI). House Bill 7 also preserved and moved TWCC's Ombudsman Program to OIEC.

OIEC's mission is to assist, educate, and advocate on behalf of the injured employees of Texas. OIEC fulfills its mission of assisting injured employees through its Ombudsman Program and Customer Service Program.

The Ombudsman Program assists unrepresented injured employees with disputes relating to their workers' compensation claim at no cost to the injured employee. Ombudsmen strive to resolve disputed issues at the earliest point prior to an administrative dispute resolution proceeding administered by DWC. Ombudsmen assist the injured employees in preparing for Benefit Review Conferences, Contested Case Hearings, and appeals of the Hearing Officer's decision through the Appeals Panel. Ombudsmen also attend Benefit Review Conferences and Contested Case Hearings with injured employees and communicate on their behalf with the other participants.

Legislation enacted by the 80th Texas Legislature in 2007 mandated that OIEC should become a "One Stop Shop" and provide service to all unrepresented injured employees in Texas at any point in their claim when assistance is requested. As a result, OIEC was given additional funding through the legislative appropriations process to develop a Customer Service Program.

OIEC's Customer Service Representatives (CSRs) provide advocacy assistance by educating and assisting injured employees in person or by telephone. They answer questions about the workers' compensation process or assist in other ways, such as identifying and completing various claim forms and identifying and rectifying problems or disagreements. CSRs are involved in various projects in which they reach out to injured employees, their beneficiaries, and their health care providers to supply them with information and educational brochures. CSRs also begin the early intervention process of identifying and attempting to resolve disputes.

CSRs work with injured employees and refer them to federal, state, or local financial or social services agencies as appropriate. Referrals are made to the Department of Assistive and Rehabilitative Services for services in an effort to return the injured employee to work. Referrals also are made to the Texas Workforce Commission, TDI, or other social and regulatory services. Injured employees' complaints regarding health care providers are referred to the Texas Medical Board or other appropriate licensing boards or oversight agencies.

OIEC educates and informs health care providers, employers, insurance carriers, attorneys, family members, and other workers' compensation system stakeholders on behalf of injured employees as a class.

The requirements for agency-wide training programs are contained in the Texas Labor Code, Title 5, Subtitle A, Chapter 404, Sections 404.103(b) and 404.152(1)(c) and in the Texas Administrative Code, Title 28, Part 6, Chapter 276, Subchapter B, Rule §276.10. In addition, the Texas Labor Code, Title 2, Subtitle A, Section 21.010 requires that all state employees take mandatory training in employment discrimination and sexual harassment every two years.

OIEC fulfills these training requirements in several ways: formal training meetings, an annual conference attended by all employees, one-on-one contacts between Regional Staff Attorneys and Ombudsmen or CSRs, one-on-one training between an Ombudsman Supervisor and Ombudsman Associate trainee, teleconferences, resources available on the agency's intranet, and attendance at training provided by TDI.

In addition to these methods, the agency has developed the following resources for staff in the Customer Service and Ombudsman programs:

- a. Customer Service Training Handbook and Appendix
- b. Ombudsman Training Handbook
- c. Ombudsman Handbook

Regional Staff Attorneys serve as a legal resource for all OIEC staff but particularly for Ombudsmen as they fulfill their mandate to assist, educate, and advocate for injured employees. Regional Staff Attorneys monitor the work of the Ombudsman Program and advise Ombudsmen as they prepare injured employees for informal and formal proceedings.

Additionally, Legal Services provides Practical Skills Training and other training to Ombudsmen and CSRs several times each year, leadership to the OIEC Training Committee, and information to Ombudsmen and other OIEC staff in monthly teleconferences.

Prior to September 2009, the agency's Training Committee oversaw the development of training materials for live presentations and written materials for publication on the agency's intranet and also provided overall guidance to the agency in fulfilling its training responsibilities.

All new employees of OIEC were required to complete the following training modules offered on the agency's intranet.

1. New Employee Orientation
 - a. Welcome to OIEC
 - b. Workplace Conduct: Sexual Harassment and Discrimination
 - c. Employment law, covering the Family and Medical Leave Act (FMLA), workers' compensation, and Americans With Disabilities Act (ADA)
 - d. Automated Leave Accounting System (ALAS)
 - e. Computer Security, covering passwords and a wide range of internet security issues
 - f. HIV and AIDS, covering general and specific information about HIV and AIDS in the workplace
2. Ethics
 - a. Texas Ethics Commission (for State employees)
 - b. Ethics Training, covering mandatory Standards of Conduct for all State employees
3. Confidentiality, covering what is confidential claim information and the consequences of failing to protect confidential information
4. Return to Work/Stay at Work, covering basic principles to be applied following work-related injuries (for both OIEC staff and the injured employees of Texas that OIEC serves)

In addition, position-specific training for a new Ombudsman Associate follows a detailed training outline and is documented by the use of the Training Checklist. This training is conducted by an Ombudsman Supervisor and/or an experienced Ombudsman who is designated as a trainer over a period of from six to 12 months. After satisfactory completion of all training requirements and obtaining a workers' compensation adjuster license from TDI, the new Ombudsman Associate is released to conduct all aspects of an Ombudsman's duties. They may also be eligible for reclassification from an Ombudsman Associate to an Ombudsman.

The satisfactory completion of this training and release are evidenced through the completion of the Certificate of Eligibility for Promotion from Ombudsman Associate to Ombudsman I, Form OMB-07, approved by the Ombudsman Supervisor or Trainer and an Associate Director of the Ombudsman Program as well as upper management.

Training for a new CSR follows a detailed Training Certification Checklist that outlines the various materials to be covered. After completion of each section, the new employee initials and dates the outline to signify completion, and the trainer assigned also initials to indicate the section has been completed.

Recently, the agency's reorganization eliminated the Ombudsman Assistant positions and transferred each of the former Assistants to either an Ombudsman Associate or a CSR position. The agency is in the process of providing additional CSR training, which includes duties formerly performed by Ombudsman Assistants. This training follows a similar outline, which has been distributed in draft form.

Scope and Methodology

The initial scope of this review included reviews of training manuals, intranet training resources, minutes or materials from training meetings and the OIEC Annual Conference, and OIEC procedures covering observations by Regional Staff Attorneys and by Ombudsman Supervisors.

The personnel folders of a sample of OIEC employees were reviewed for evidence of completion of the mandatory employment discrimination and sexual harassment training. In addition to the reviews noted above, a sample of Ombudsman and CSR personnel folders were reviewed for inclusion of training outlines specific to their positions. Any exceptions noted in these reviews were reported to management.

The period covered by this review was from September 1, 2008 through March 15, 2011.

This project was conducted in accordance with generally accepted government auditing standards and the *Standards for the Professional Practice of Internal Auditing* as set forth by the Institute of Internal Auditors (IIA).

Overall Conclusion

In my opinion, the agency has complied with the training requirements set forth in the Texas Labor Code, Title 5, Subtitle A, Chapter 404, Sections 404.103(b) and 404.152(1)(c) and in the Texas Administrative Code, Title 28, Part 6, Chapter 276, Subchapter B, Rule §276.10.

There was one recommendation that the agency formally re-establish the Training Committee for direction and oversight of agency-wide training activities.

With the exception of Issue 1 – Formalization of the Agency Training Committee, management has agreed with the findings and recommendations in this review.

I would like to thank each of the Program and Division Directors, Catherine Waltman, Donna Raney, and Brian White, Deputy Public Counsel/Chief of Staff for their cooperation and assistance during the conduct of this review.

DETAILED ISSUES AND MANAGEMENT RESPONSES

Issue 1 – Training Committee

Prior to September 1, 2009, the agency had a Training Committee with primary duties to develop a training plan for OIEC, identify topics, develop written training materials, and gather and maintain core training links on the intranet.

In September 2009, these duties were reassigned to the newly created Quality Assurance Section. This section was dissolved effective September 1, 2010.

Management should formally re-establish the Training Committee.

Management Response

Management appreciates and notes the recommendation that OIEC re-establish the Training Committee. This Committee was initially organized when OIEC was first established. At that time, the Committee was a useful tool in identifying, planning, and implementing the training needs of a new agency. OIEC has now evolved into an agency with well-established training for its various program areas.

Currently, Supervisors coordinate and provide the training needed for both the Ombudsman Program and Customer Service employees. Additionally, Legal Services develops and delivers training for OIEC field office staff. The Director of Legal Services essentially serves as the agency training coordinator. She provides her expertise and advice in developing, writing, and delivering all OIEC training.

Management provides the Director of Legal Services the authority to form ad hoc groups/committees to address specific training needs as they arise. We believe this current structure adequately addresses OIEC's training needs. Therefore, OIEC Management disagrees with the recommendation to re-establish the training committee; however, a procedure to formalize the process of making ad hoc appointments is under consideration.

Issue 2 – Periodic management reviews of training resources on the intranet

Tests of intranet training resource links revealed a few instances in which the links to training materials were faulty. Although these instances were rare, periodic reviews by management or assigned staff should be performed throughout the year. Faulty links should be reported to the agency's Communications Specialist responsible for maintenance of the internet and intranet websites for OIEC.

Management Response

Management agrees with the recommendation to conduct a periodic review of training resources on the intranet. Management is aware of certain hyperlink problems, and an ongoing review is in process.

The agency's Communications Specialist is continuously reviewing the pages on the intranet and the internet to ensure any broken links are quickly corrected. Corrections to the internet are the top priority, and fixes are made as soon as they are known. The IT Division of TDI provides OIEC with the Web Link Validator's Report on a regular basis. The Communications Specialist uses this report to fix broken links as needed.

Issue 3 – New Employee Training Outline

Prior to FY 2010 all new employees of OIEC were required to complete the following training modules offered on the agency's intranet and initial a training outline.

1. New Employee Orientation
 - a. Welcome to OIEC
 - b. Workplace Conduct : Sexual Harassment and Discrimination
 - c. Employment law, covering the Family and Medical Leave Act (FMLA), workers' compensation, and Americans With Disabilities Act (ADA)
 - d. Automated Leave Accounting System (ALAS)
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4. Return to Work/Stay at Work, covering basic principles to be applied following work-related injuries (for both OIEC staff and the injured employees of Texas that OIEC serves)

This training outline was replaced with an acknowledgement form that the new employee had "accessed and read the information contained in the Core Training Links (on the OIEC intranet) as directed by my supervisor."

After this change, employee training outlines specific to the Ombudsman and Customer Service Representative positions were developed.

The effects of these changes are that the Core Training Links on the intranet are repetitive of the training outlines specific to some positions.

Management should revise the Core Training Links to include those that are applicable to all new staff and eliminate (or move to position-specific pages) links that are applicable only to the Ombudsman and Customer Service Program staff.

An outline of the training required of all new employees should be developed, initialed as completed by each new employee, approved by their respective supervisors, and placed in their personnel files.

Management Response

Management agrees with the recommendation that the Core Training Links on the intranet be revised to address only the training required for new employees. Other training for current Ombudsmen and Customer Service staff should be moved to a separate and easily identified location for the respective program area.

Management appreciates the recommendation of designing a new training acknowledgment form. After a discussion with the Director of Legal Services and receiving her input, a decision will be made on the development of a new training acknowledgment form. The Supervisors and Directors of the program areas will also be involved in determining any changes to the training outlines and forms.

Issue 4 – Employment Discrimination and Sexual Harassment Training

During the reviews of employee personnel files for documentation that Employment Discrimination and Sexual Harassment Training was attended within 30 days of initial employment and at least once every two years thereafter, it was noted that several tenured employees had not attended or viewed the training within the past two years. In these instances, employees exceeded the two-year requirement by only a few months.

Employees who exceeded the two-year requirement were reported to management. Since only a sample of employees was tested, it is recommended that management perform a review of all personnel files and direct any employee that has not completed the training within the past two years to view and document the training modules on the TDI intranet website.

Management Response

Management notes and agrees with the Internal Audit recommendation of reviewing the status of sexual harassment training. TDI's Human Resources has informed OIEC that it is late in revising and sending out the online supplemental sexual harassment training. TDI provides this online training as part of the administrative attachment with OIEC.

OIEC is aware that this training must be done every two years to remain current; however, the updated online training has not been made available. TDI cannot provide OIEC with a date in the near future when the new training will be available. The Human Resources Director at TDI has discussed this issue with the State Auditor's Office (SAO) to receive clarification on the two-year requirement for mandated sexual harassment training. It is the SAO's opinion that there is no specific definition on the two-year cycle of training; therefore, the training does not have to take place exactly two years from the date it was initially delivered.

Although OIEC is not out of compliance with this requirement, to ensure best practices an e-mail, dated April 11, 2011, was sent to all employees. In the e-mail, employees were provided the link to the currently available sexual harassment training that is on the intranet. Employees were given a deadline of April 30, 2011 to complete the training and all OIEC employees are now in compliance with management's best practices request. The acknowledgment forms will be placed in all OIEC personnel files. With the new schedule of training, all employees will be placed on the same two-year schedule for future training.

The Staff Services Officer will make a spreadsheet and track the employment discrimination and sexual harassment training of all OIEC employees to ensure that all staff is trained every two years. Additionally, OIEC is exploring the option of offering its own sexual harassment training to supplement the training done by TDI as part of OIEC's administrative attachment.