



# Strategic Plan

**Fiscal Years 2011-2015**

**The Office of Injured Employee Counsel**

*Norman Darwin, Public Counsel*

**July 2, 2010**





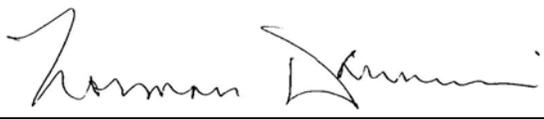
# **AGENCY STRATEGIC PLAN**

**FOR THE FISCAL YEARS 2011-2015**

**BY**

**THE OFFICE OF INJURED EMPLOYEE COUNSEL**

**JULY 2, 2010**

Signed:   
**Norman Darwin, Public Counsel**





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## **STRENGTHENING OUR PROSPERITY: The Statewide Strategic Planning Elements for Texas State Government**

### ***STATEWIDE VISION, MISSION, PHILOSOPHY, GOALS AND BENCHMARKS***

#### **STATEWIDE VISION**

Fellow Public Servants:

Since the last exercise in strategic planning began in March 2008, much has changed in the national economic picture. States across the nation have struggled with severe budget shortfalls and the national economy has yet to rebound as many hoped and predicted. Texas, however, has weathered the economic downturn better than other states and been recognized as an example for other states to follow.

Our position relative to other states is not by accident. Texas has demonstrated the importance of fiscal discipline, setting priorities, and demanding accountability and efficiency in state government. We have built important reserves in our state's "Rainy Day Fund," cut taxes on small businesses, and emphasized a stable and predictable regulatory climate in an effort to show that the Lone Star State is a great place to build a business and raise a family.

Over the last year, families across this state and nation have tightened their belts in response to the economic challenges. Government should be no exception. As we begin this next round in our strategic planning process, we must critically reexamine the role of state government by identifying the core programs and activities necessary for the long-term economic health of our state, while eliminating outdated and inefficient functions. We must set clear priorities that will help maintain our position as a national leader now and in the future by:

- *Ensuring the economic competitiveness of our state by adhering to principles of fiscal discipline, setting clear budget priorities, living within our means, and limiting the growth of government;*
- *Investing in critical water, energy, and transportation infrastructure needs to meet the demands of our rapidly growing state;*
- *Ensuring excellence and accountability in public schools and institutions of higher education as we invest in the future of this state and ensure Texans are prepared to compete in the global marketplace;*
- *Defending Texans by safeguarding our neighborhoods and protecting our international border; and*
- *Increasing transparency and efficiency at all levels of government to guard against waste, fraud, and abuse, ensuring that Texas taxpayers keep more of their hard-earned money to keep our economy and our families strong.*

I am confident we can address the priorities of our citizens with the limited government principles and responsible governance they demand. I know you share my commitment to ensuring that this state continues to shine as a bright star for opportunity and prosperity for all Texans. I appreciate your dedication to excellence in public service and look forward to working with all of you as we continue charting a strong course for our great state.

Rick Perry



## STATEWIDE MISSION

Texas state government must be limited, efficient, and completely accountable. It should foster opportunity and economic prosperity, focus on critical priorities, and support the creation of strong family environments for our children. The stewards of the public trust must be men and women who administer state government in a fair, just, and responsible manner. To honor the public trust, state officials must seek new and innovative ways to meet state government priorities in a fiscally responsible manner.

*Aim high . . . we are not here to achieve inconsequential things!*

## STATEWIDE PHILOSOPHY

The task before all state public servants is to govern in a manner worthy of this great state. We are a great enterprise, and as an enterprise, we will promote the following core principles:

- First and foremost, Texas matters most. This is the overarching, guiding principle by which we will make decisions. Our state, and its future, is more important than party, politics, or individual recognition.
- Government should be limited in size and mission, but it must be highly effective in performing the tasks it undertakes.
- Decisions affecting individual Texans, in most instances, are best made by those individuals, their families, and the local government closest to their communities.
- Competition is the greatest incentive for achievement and excellence. It inspires ingenuity and requires individuals to set their sights high. Just as competition inspires excellence, a sense of personal responsibility drives individual citizens to do more for their future and the future of those they love.
- Public administration must be open and honest, pursuing the high road rather than the expedient course. We must be accountable to taxpayers for our actions.
- State government has a responsibility to safeguard taxpayer dollars by eliminating waste and abuse and providing efficient and honest government.
- Finally, state government should be humble, recognizing that all its power and authority is granted to it by the people of Texas, and those who make decisions wielding the power of the state should exercise their authority cautiously and fairly.



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## STATEWIDE GOALS AND BENCHMARKS

### HEALTH AND HUMAN SERVICES

#### **PRIORITY GOAL**

To promote the health, responsibility, and self-sufficiency of individuals and families by:

- Making public assistance available to those most in need through an efficient and effective system while reducing fraud in the system;
- Restructuring Medicaid funding to optimize investments in health care and reduce the number of uninsured Texans through private insurance coverage;
- Enhancing the infrastructure necessary to improve the quality and value of health care through better care management and performance improvement incentives;
- Continuing to create partnerships with local communities, advocacy groups, and the private and not-for-profit sectors;
- Investing State funds in Texas research initiatives which develop cures for cancer; Addressing the root causes of social and human service needs to develop self-sufficiency of the client through contract standards with not-for-profit organizations and;
- Facilitate the seamless exchange for health information among state agencies to support the quality, continuity, and efficiency of health care delivered to clients in multiple state programs.

#### **BENCHMARKS**

- Number of Texans using call centers and the Internet to apply for Medicaid, food stamps, and other state services
- Percent of people completing vocational rehabilitation services and remaining employed

### ECONOMIC DEVELOPMENT

#### **PRIORITY GOAL**

To provide an attractive economic climate for current and emerging industries that fosters economic opportunity, job creation, capital investment, and infrastructure development by:

- Promoting a favorable and fair system to fund necessary State services;
- Addressing transportation needs;
- Promoting a favorable business climate; and
- Developing a well trained, educated, and productive workforce.

#### **BENCHMARK**

- Number of Texans receiving job training services



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## **REGULATORY**

### **PRIORITY GOAL**

To ensure Texans are effectively and efficiently served by high-quality professionals and businesses by:

- Implementing clear standards;
- Ensuring compliance;
- Establishing market-based solutions; and
- Reducing the regulatory burden on people and businesses.

### **BENCHMARKS**

- Percent of documented complaints to professional licensing agencies resolved within six months
- Number of utilization reviews conducted for treatment of occupational injuries

## **GENERAL GOVERNMENT**

### **PRIORITY GOAL**

To provide citizens with greater access to government services while reducing service delivery costs and protecting the fiscal resources for current and future taxpayers by:

- Supporting effective, efficient, and accountable State government operations;
- Ensuring the State's bonds attain the highest possible bond rating; and
- Conservatively managing the State's debt.

### **BENCHMARKS**

- Number of State employees per 10,000 population
- Number of State services accessible by Internet
- Total savings realized in State spending by making reports / documents / processes available on the Internet and accepting information in electronic format



## **AGENCY MISSION AND PHILOSOPHY**

### **OFFICE OF INJURED EMPLOYEE COUNSEL MISSION**

To assist, educate, and advocate on behalf of the injured employees of Texas.

### **OFFICE OF INJURED EMPLOYEE COUNSEL PHILOSOPHY**

The Office of Injured Employee Counsel (OIEC) is committed to protecting the rights of the injured employees of Texas in the workers' compensation system. OIEC provides the highest level of professional, efficient, and effective customer service and maintains a work environment that values a diverse workforce, ethical management practices, teamwork, respect, and dignity.



## EXTERNAL / INTERNAL ASSESSMENT

### OVERVIEW OF AGENCY SCOPE AND FUNCTIONS

#### Statutory Basis

The statutory authority for OIEC is located in Chapter 404 of the Texas Labor Code. This statute sets out the duties of OIEC, which are to represent the interests of injured employees in the Texas Workers' Compensation System.

OIEC is administratively attached to TDI as provided by Labor Code §404.002(b). TDI provides: 1) administrative assistance and services to OIEC, including budget planning and purchasing; 2) personnel services; and 3) computer equipment and support.

#### Historical Perspective

OIEC was established on March 1, 2006 as a result of the adoption of House Bill (HB) 7, 79th Texas Legislature, Regular Session, 2005. HB 7 abolished the Texas Workers' Compensation Commission (TWCC) and established the Division of Workers' Compensation (DWC) as a division within the Texas Department of Insurance (TDI). HB 7 also transferred TWCC's Ombudsman Program to OIEC, which included 91 full-time equivalent (FTE) staff. The Public Counsel of OIEC was appointed by Governor Rick Perry on December 8, 2005, reappointed on March 9, 2007, and reappointed again in February 2009 for a term to expire February 1, 2011.

*Creation of the Office of Injured Employee Counsel (OIEC). For the first time, the State will have a dedicated agency with the sole focus of helping injured employees. OIEC will oversee the ombudsman program and advocate for the interests of injured employees on key rules and policies, to ensure balance and fairness for all in the system.*

*Source: Governor's Office Website*

An additional 25 FTEs were transferred to OIEC from DWC by the 80<sup>th</sup> Texas Legislature, 2007 to assist in resolving disputes between injured employees and workers' compensation carriers prior to a proceeding conducted by DWC. The transfer of these FTEs enabled the Ombudsman Program to conduct case development functions as well as assign a single point of contact for each injured employee. The 80<sup>th</sup> Legislature also provided funding for 36 FTEs to allow OIEC to directly respond to injured employee telephone calls and proactively contact injured employees to educate them about their rights and responsibilities in the workers' compensation system.

#### Affected Populations

Workers' compensation coverage is not mandatory in Texas; therefore, OIEC's primary service population is injured employees who work for employers that participate in the Texas Workers' Compensation System. Also included in OIEC's primary service population are beneficiaries of injured employees fatally injured on the job whose employers participate in the Texas Workers' Compensation System.



Based on a 2008 study conducted by TDI, Workers' Compensation Research and Evaluation Group, approximately 67 percent of Texas employers carry workers' compensation insurance while 75 percent of all employees in the State are covered by workers' compensation.<sup>1</sup>

OIEC also interacts with other system participants in the workers' compensation system on behalf of injured employees including: health care providers; employers; insurance carriers; attorneys and other representatives; friends and family of injured employees; and other workers' compensation system stakeholders.

OIEC takes pride in the customer service provided to all parties in the workers' compensation system and is committed to assist, educate, and advocate on behalf of the injured employees of Texas.

### **Main Functions**

OIEC was established to represent the interests and provide services to all unrepresented injured employees when assistance is requested. OIEC's main functions are to assist, educate, and advocate on behalf of the injured employees of Texas.

**ASSIST:** OIEC assists unrepresented injured employees with disputes relating to their workers' compensation claim at no cost to the injured employee. OIEC strives to resolve disputes prior to entering the workers' compensation administrative dispute resolution system. When this is not possible, Ombudsmen prepare unrepresented injured employees for and assist them during proceedings.

**EDUCATE:** OIEC educates injured employees about their rights and responsibilities and responds to questions they have about the workers' compensation system. OIEC also refers injured employees to federal, state, or local financial or social services agencies as appropriate.

Outreach presentations, workshops, seminars, and speaking engagements are held across the State regarding OIEC's role and services. Additionally, OIEC provides education and information to health care providers, employers, insurance carriers, attorneys, family members and other system stakeholders on behalf of injured employees individually and as a class.

**ADVOCATE:** OIEC identifies systemic issues that may increase burdens or create problems for injured employees and addresses those issues in the legislative and rulemaking processes. OIEC advocates on behalf of injured employees as a class by analyzing and participating in workers' compensation system initiatives and encouraging the simplification of procedures and forms. Legal Services files amicus curiae (friend of the court) briefs when a case is pending before a court and the decision may impact a large number of injured employees.

<sup>1</sup> Source: Employer Participation in the Texas Workers' Compensation System: 2008 Estimates conducted by TDI, Workers' Compensation Research and Evaluation Group in September 2008.



## Public Perception

Much of the State's population is not familiar with the role of OIEC. According to a 2008 survey of employer participation in the Texas Workers' Compensation System conducted by TDI's Workers' Compensation Research Group, 68 percent of Texas employers said that they had no knowledge about the creation of OIEC or its role in the Texas Workers' Compensation System. This is an increase of only 3 percent from the 2006 survey.<sup>2</sup>

Many individuals confuse OIEC's responsibilities with the regulatory functions of TDI. Although OIEC is administratively attached to TDI, services provided by OIEC do not include regulatory functions.

One of the main goals of the Texas Workers' Compensation System reform was to ensure injured employee's rights were protected in the dispute resolution system. OIEC's Ombudsman Program is designed to assist injured employees in TDI's administrative dispute resolution system. Private attorney concerns that OIEC would deplete business has been alleviated because OIEC assists injured employees who are often turned away by the private attorney community, and OIEC recognizes that there may be cases where attorney representation of an injured employee may be more appropriate. In some cases, OIEC makes referrals to the Texas State Bar for assistance in finding an attorney to represent an injured employee, for instance, in district court where OIEC's Ombudsmen are not permitted to provide assistance to injured employees. OIEC's website provides information pertaining to an injured employee's right to hire an attorney to handle his or her case in TDI's administrative dispute resolution system and in district court. See [http://www.oiec.state.tx.us/resources/atty\\_info.html](http://www.oiec.state.tx.us/resources/atty_info.html).

In September 2010, OIEC will post the 2010 Customer Satisfaction Survey on its website. The survey will also be available at local field offices. The survey serves as a tool to gather critical information that is used for planning agency initiatives as well as evaluate the quality of services it provides. The 2009 Customer Satisfaction Survey indicated that more than 90 percent of the injured employees who took the 2009 survey responded that OIEC's quality of service was "excellent" or "good" in the following categories:

- Staff is courteous and helpful;
- Staff is easily accessible;
- Staff is knowledgeable;
- Staff is responsive to concerns; and
- Staff provided service in a timely manner.

OIEC's website, educational materials (including brochures and retention folders), outreach presentations, surveys, and public service announcements are some of the tools utilized to satisfy OIEC's mission to assist, educate, and advocate on behalf of the injured employees of Texas. These outreach efforts are essential to inform the public about services provided and the role that OIEC plays in the Texas Workers' Compensation System.

<sup>2</sup> Source: Employer Participation in the Texas Workers' Compensation System: 2008 Estimates conducted by TDI, Workers' Compensation Research and Evaluation Group in September 2008



**ORGANIZATIONAL ASPECTS**

**Size and Composition of Workforce**

During the FY 2010-2011 biennium, OIEC is authorized to employ 184 full-time-equivalent positions (FTE’s). As of May 11, 2010 OIEC has 12 vacancies. Approximately 10 percent of staff is located in the central office and 90 percent is located in 23 field offices across the State.

EEO Category	Office of Injured Employee Counsel – Workforce Statistics						
	Black	Hispanic	Anglo	Other	Female	Male	Total Positions
Officials, Admin. (A)	0.0%	20.0%	80.0%	0.0%	60.0%	40.0%	5
Professional (P)	14.6%	41.7%	42.7%	1.0%	84.4%	15.6%	96
Technical (T)	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0
Para-Professional (Q)	0.0%	77.8%	22.2%	0.0%	88.9%	11.1%	9
Admin. Support (C)	8.8%	59.7%	31.6%	0.0%	93.0%	7.0%	57
Skilled Crafts (S)	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0
Service & Maintenance (M)	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0
All Categories	11.4%	49.1%	38.9%	0.6%	86.8%	13.1%	167

To effectively and efficiently serve the injured employees of Texas, OIEC relies on competent, knowledgeable, and diverse staff. Officials, administrators, professionals, and para-professionals make up 66 percent of OIEC’s workforce. A reclassification of administrative support positions, effective in June 2008, will increase this percentage. Females make up 87 percent of the workforce and Black, Hispanic, and Other ethnicity make up 61 percent of the agency’s workforce.

**Organizational Structure**

The Public Counsel is the head of the agency and is appointed by the Governor with the advice and consent of the senate. The Public Counsel serves a two-year term that expires on February 1 of each odd-numbered year (Texas Labor Code §404.051).

The Deputy Public Counsel oversees the daily operations and administration of OIEC and serves as OIEC’s legislative liaison, Public Information Officer, general counsel, and Chief-of-Staff.

The agency’s Internal Audit Section was established in accordance with the provisions of the Texas Internal Auditing Act, Government Code, Chapter 2102. Internal Audit is represented by one FTE who serves as the agency’s Internal Auditor. OIEC’s Internal Auditor furnishes independent analyses, appraisals, and recommendations about the adequacy and effectiveness of the agency's internal control policies, procedures, and the quality of performance in carrying out assigned responsibilities. The Internal Auditor also



provides consultation to OIEC management. Funding for this position was authorized in the 81<sup>st</sup> Texas Legislature, Regular Session, 2009, which increased the agency's FTE cap by one to 184 FTEs.

OIEC's organizational structure is comprised of four program areas:

- Ombudsman Program,
- Customer Services,
- Legal Services, and
- Administration and Operations, which is made up of two sections: the Operations section, and the Quality Assurance section.

***Ombudsman Program.*** The Ombudsman Program consists of highly-trained employees who assist unrepresented injured employees with disputes relating to their workers' compensation claim at no cost to the injured employees of Texas. Ombudsmen strive to resolve disputed issues at the earliest point prior to an administrative dispute resolution proceeding administered by DWC. Ombudsmen assist the unrepresented injured employees in preparing for Benefit Review Conferences (mediation), Contested Case Hearings (administrative hearings), and Appeals of the Hearing Officer's decision through the Appeals Panel. Ombudsmen also attend Benefit Review Conferences and Contested Case Hearings with the injured employee and communicate on their behalf with the other participants. Ombudsman assistance is also provided to unrepresented injured employees in administrative proceedings pending before the State Office of Administrative Hearings (SOAH).

The Ombudsman Program is comprised of 59 Ombudsmen, 21 Ombudsman Assistants, 13 Ombudsman Associates, and one Ombudsman Program Coordinator. The Program is managed by a Director, three Associate Directors, and six Ombudsman Supervisors. The Supervisors provide oversight, direction, and management in the 23 field offices across the State.

***Customer Services.*** The Customer Service Program educates injured employees by responding to questions they have about the workers' compensation system. Outreach presentations, workshops, seminars, and speaking engagements are also held across the State regarding OIEC's role and services.

Customer Service Representatives also identify disputed issues that may arise in an injured employee's claim and try to resolve them within the first seven days after the disputed issue is identified. Appropriate parties are contacted and information is requested in an attempt to resolve the dispute prior to entering TDI's administrative dispute resolution process. Early intervention and resolution of disputes are high priorities for the Customer Service Program. However, educating injured employees on their rights and responsibilities remains paramount.

Customer Service Representatives 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 (DARS) for services in an effort to



return the injured employee to work. Referrals are also made to the Texas Workforce Commission (TWC), TDI, the Texas Medical Board, or other social and regulatory services. Injured employees' complaints regarding health care providers are referred to the appropriate licensing boards or oversight agencies. OIEC also provides education and information to health care providers, employers, insurance carriers, attorneys, family members and other system stakeholders on behalf of injured employees as a class.

One of OIEC's Customer Service standards is to acknowledge written inquiries, complaints, or correspondence as soon as possible but in most cases within 2 business days (16 business hours) after receipt. The standards are included in OIEC's Compact with Texans, which can be found on its website or a paper copy upon request.

OIEC's Customer Service Program is comprised of 40 Customer Service Representatives (CSRs), two Supervisors, and a Director. There is at least one CSR in all of OIEC's 23 field offices. Supervisors are located in the Dallas and San Antonio field offices.

A call center is maintained in the Fort Worth Field Office and is assigned to answer OIEC's toll-free line (1-866-393-6432 • 1-866-EZE-OIEC) and provides back-up support to TDI staff for answering local calls in field offices as necessary.

**Legal Services.** Legal Services provides Regional Staff Attorneys (RSAs) as a resource for the Ombudsmen as they fulfill their mandate to assist, educate, and advocate for injured employees. RSAs supervise the work of the Ombudsman Program and advise Ombudsmen in providing assistance to injured employees in preparation for informal and formal hearings. Legal Services analyzes and provides comments on rules proposed by TDI and suggests legislative recommendations that will protect the interests of injured employees. This program also determines whether there are issues pending before either the Texas appellate courts or the Supreme Court where OIEC needs to serve as a voice for the injured employees of Texas.

Legal Services counsels OIEC management regarding policymaking and other issues affecting the daily operations of the agency. The program develops, reviews, and revises OIEC policies and procedures and is charged with reviewing agency documents for legal accuracy, such as the agency's response to complaints regarding agency policies or systemic workers' compensation issues. Legal Services also administers human relations issues (such as hiring and disciplinary practices) and provides legal counsel to the agency's program areas.

Legal Services is comprised of a Director, one Associate Director, a Legal Assistant, and seven RSAs. At least one RSA is assigned to each regional team throughout the State. The RSA is available to serve as a legal resource for all team members. All OIEC attorneys, including the Public Counsel and the Director of Legal Services, are members of the College of the State Bar.

**Administration and Operations.** Administration and Operations consists of two sections, the Operations Section, and the Quality Assurance Section, which provide quality



assurance, technical, and administrative support to the agency.

- **Operations Section:** Functions within this section include strategic planning and reporting; performance measure monitoring and reporting; communications and outreach initiatives, including website maintenance; training and employee licensure; contracts; policy development and public information. OIEC is administratively attached to TDI, and Administration and Operations staff serves as liaison to services provided by TDI, such as human resources, budget, purchasing, facilities, and information technology.
- **Quality Assurance Section:** Functions within this section include monitoring agency staff to ensure all policies are being followed and developing training specifically tailored to address exceptions from internal and external audits. This section also develops administrative procedures and provides management recommendations for agency requirements to ensure injured employee’s rights are protected statewide. Additionally, the Quality Assurance Section develops and administers agency surveys and provides staff with workload and performance data monthly to ensure efficiency for agency functions.

OIEC’s Organizational Chart can be found in Appendix B.

**Geographical Location**

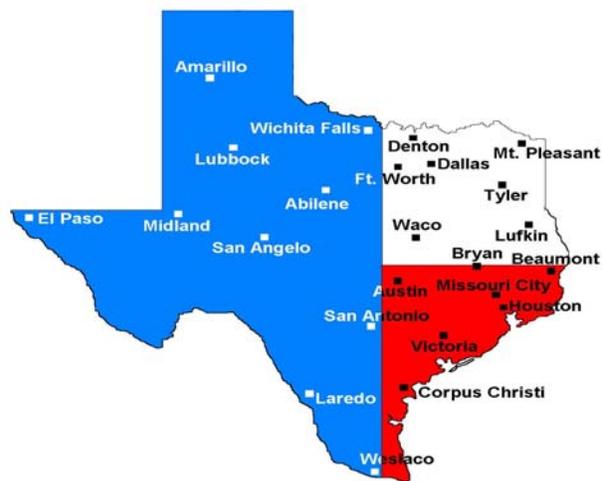
OIEC’s Central Office is located at 7551 Metro Center Drive in Austin, Texas, 78744 and there are 23 field offices strategically located around the State. OIEC staff is housed within the Central Office and each field office. In addition to field offices, satellite offices are located in Wichita Falls, Uvalde, and Mount Pleasant and are provided for the purpose of holding dispute proceedings. TDI provides all facilities for OIEC by statute as a result of the agency’s administrative attachment.

**Travel.** Ombudsman and other OIEC staff travel throughout Texas to provide adequate support and services for each field office, satellite office, and all injured employees.

Satellite offices ensure that injured employees will have to travel no more than 75 miles from their residence to a Benefit Review Conference or Contested Case Hearing.

**Out-of-State Requirements.** OIEC staff has not traveled outside the State except for conferences and training. OIEC staff may travel out-of-state if necessary to protect the rights of an injured employee of Texas.

**Field Office Locations**



### **Location of Service Populations**

Injured employees who live in a bordering state and in a county or parish that is contiguous to the Texas border are typically served by the closest field office handling the workers' compensation claim. The Victoria Field Office handles claims for injured employees living outside Texas in counties that do not adjoin the Texas border.

Much of the population that OIEC serves does not speak English. Approximately 96 percent of the field offices have OIEC staff that is able to provide personal assistance in Spanish. More than half of the Ombudsmen speak Spanish and are available to serve Spanish-speaking injured employees.

OIEC provides interpreter services for non-English speakers through a State employee or a private provider. These services are available for injured employees in various stages of TDI's administrative dispute resolution system. However, when an Ombudsman provides interpreter services to an injured employee during an administrative hearing (i.e. Benefit Review Conference, Contested Case Hearing, or a State Office of Administrative Hearings' proceeding), the injured employee may not be afforded the full assistance that is required from an Ombudsman. While translating the events during a hearing, an Ombudsman may, in an effort to save time, translate only a part of the proceeding, and not word-for-word translation. By providing interpreter services by someone other than the Ombudsman assisting the injured employee at proceedings, the injured employee is afforded an opportunity to hear the entire conversation and discuss the issues with the Ombudsman in order to determine the appropriate way to proceed. OIEC has been diligently advocating to DWC that objective, third-party interpreters who are certified in their service should be provided by the regulator. This issue was also discussed in detail in OIEC's Self-Evaluation Report to the Sunset Advisory Commission under "Policy Issues" ([http://www.oiec.state.tx.us/documents/pub\\_ser\\_2009final.pdf](http://www.oiec.state.tx.us/documents/pub_ser_2009final.pdf)). OIEC believes this will more freely allow Ombudsmen to dedicate resources to fulfilling the agency's mandate.

Pursuant to Texas Labor Code §404.005(a), OIEC shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to OIEC's programs. OIEC is committed to making information and services available to Texans who speak languages other than English. OIEC's recently revised access plan for non-English speakers can be found on OIEC's website at the following location: <http://www.oiec.state.tx.us/resources/publications.html>.

OIEC provides outreach and information materials for injured employees and employers. All literature and materials are available in English, Spanish, and other languages upon request.

Other resources are also available to members of the non-English speaking public. OIEC's toll-free number (1-866-EZE-OIEC • 1-866-393-6432) provides assistance to callers in both English and Spanish. There is also a feature on the OIEC's website ([www.oiec.state.tx.us](http://www.oiec.state.tx.us)) that will translate the OIEC HTML web pages into other languages including: Portuguese, Spanish, French, Italian, German, Dutch, Swedish, Russian, Greek,



Arabic, Simplified Chinese (Mandarin), Traditional Chinese (Cantonese), Korean, and Japanese.

The injured employees' "Rights and Responsibilities" brochure, which is mailed to all injured employees, is available on the internet in six different languages, including English, Spanish, Chinese (Cantonese), Korean, Vietnamese, and Laotian.

OIEC is committed to continue efforts to improve and expand its offerings to non-English speakers in the State. A survey will be distributed to all OIEC staff during the summer of 2010 that will identify all languages other than English that OIEC staff is proficient in reading and writing so that OIEC may provide more effective service to all individuals that speak languages other than English.

***Texas-Mexico Border Regions.*** The Texas-Mexico border makes up 1,254 miles of the 1,900-mile-long United States-Mexico border. The Texas-Mexico border region includes the following 43 South Texas counties: Atascosa, Bandera, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Live Oak, Maverick, McMullen, Medina, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala.

According to the Center for Demographic and Socioeconomic Research and Education, one of the three parts of Texas that has showed the highest levels of population growth included areas along the Texas-Mexico border, and the rate of growth is expected to continue.<sup>3</sup>

The Texas-Mexico border region is one of the poorest regions of the State and the nation from a socio-economic perspective. If Texas border counties comprised the 51st state, it would rank last in per capita personal income and first in poverty and unemployment, according to a report by State Senator Eliot Shapleigh from El Paso titled, "Texas Borderlands 2009: Demographics of the Frontier of the Future."

The percentage of residents born in Mexico is higher in Texas than in Arizona or New Mexico. In the counties located directly on the Texas border, the percentage of residents born in Mexico is almost twice as high as any other state along the border including New Mexico, Arizona, and California.<sup>4</sup>

Field offices serving counties located along the Texas-Mexico border include Corpus Christi, El Paso, Laredo, Midland, San Angelo, San Antonio, Weslaco, and one satellite office located in Uvalde.

***Texas-Louisiana Border Region.*** The Texas-Louisiana border region is the area set out in law that includes the following 18 Northeast Texas counties: Bowie, Camp, Cass, Delta,

<sup>3</sup> Source: A Summary of The Texas Challenge in the Twenty-First Century: Implications of Population Change for the Future of Texas conducted by the Center for Demographic and Socioeconomic Research and Education, December 2002

<sup>4</sup> Source: Report by State Sen. Eliot Shapleigh, District 29, El Paso Texas, *Texas Borderlands 2009, Demographics of the Frontier of the Future*, September 2008.



Franklin, Gregg, Harrison, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, Smith, Titus, Upshur, and Wood.

Field offices serving counties located along the Texas-Louisiana border are located in Tyler, Beaumont, and Lufkin, and one dispute proceeding facility in Mount Pleasant.

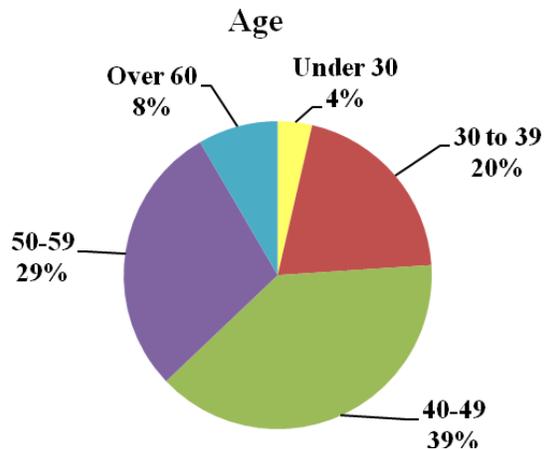
**Texas-New Mexico Border Region.** The Lubbock, Amarillo, and El Paso field offices serve injured employees along the Texas-New Mexico border.

**Texas-Oklahoma/Arkansas Border Region.** Field offices located in Amarillo, Tyler, and Denton serve injured employees along the Texas-Oklahoma border. Dispute proceedings are also provided by the satellite office located in Wichita Falls. The Tyler Field Office provides service to injured employees residing in Arkansas counties bordering Texas.

**Human Resources Strengths and Weaknesses**

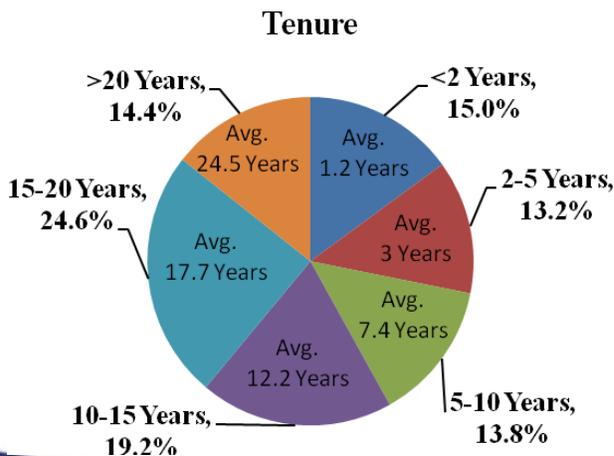
The agency expects to experience a loss of skills and institutional knowledge as retirements increase over the next few years due to the aging workforce. However, OIEC is committed to recruiting, hiring, and employee retention practices that promote a labor force that is reasonably representative of the Texas civilian workforce. OIEC’s policies provide equal employment opportunities to all employees and qualified applicants, regardless of race, color, creed, religion, sex, age, national origin, disability, veteran status, or genetic information.

**Aging Workforce.** The average age of an OIEC employee is 45. Approximately one-fourth of the employees are under the age of 40 while 39 percent are between the ages of 40 and 49. More than 37 percent of the agency’s employees are 50 or older.



**Average State Tenure.** The average State tenure for an OIEC employee is almost 12 years. Almost 60 percent of OIEC employees have more than 10 years of experience while more than 14 percent of OIEC employees have at least 20 years of experience.

According to the agency’s 2010 Survey of Employee Engagement, 95 percent of OIEC employees see themselves working for this agency in one year. OIEC believes that is a good indicator of how well the organization is doing at retaining its employees. Additional information regarding the survey can be found in Appendix F.



OIEC works hard and is fortunate to have such a diverse and experienced workforce.

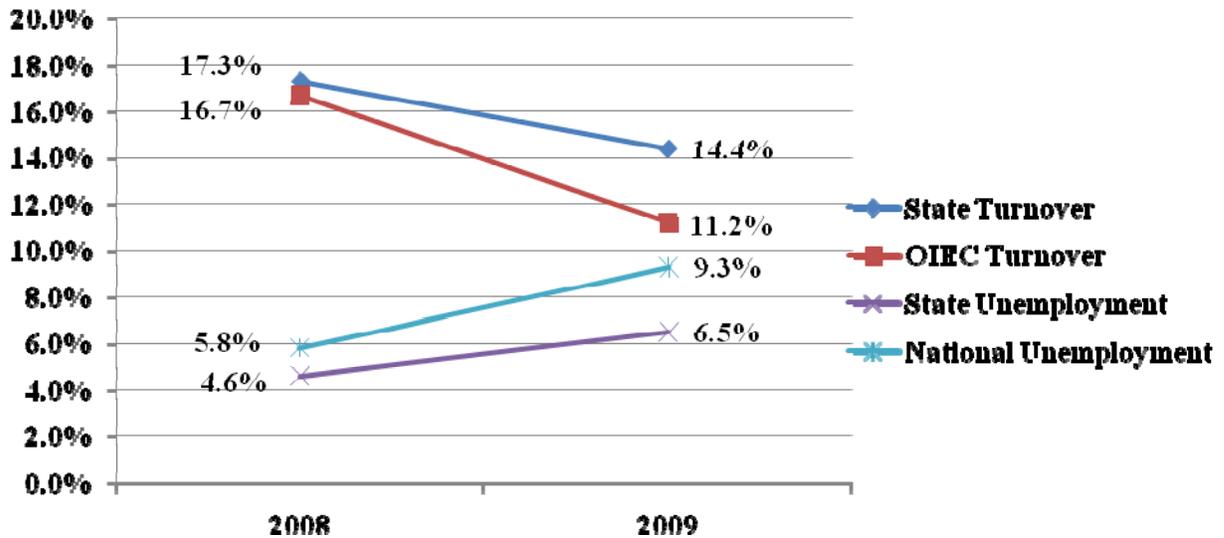
**Turnover.** The average turnover rate for OIEC and that for all State agencies has decreased over the past few years due in part to the economic downturn. Turnover for full- and part-time employees decreased in 2009 to 14.4 percent, down from 17.3 percent in 2008. That’s the lowest rate in the past five years.

Conversely, Texas unemployment rates increased. The statewide unemployment rate increased from 4.6 percent in fiscal year 2008 to 6.5 percent in fiscal year 2009.<sup>5</sup> The national annual average unemployment rate is well above Texas’ unemployment rate which rose from 5.8 percent in 2008 to 9.3 percent in 2009, which is the highest national annual average unemployment rate since 1983 when it was 9.6 percent.<sup>6</sup>

In FY 2008, OIEC’s turnover rate was 16.7 percent, compared to the average state agency turnover rate for FY 2008 of 17.3 percent.

In FY 2009, OIEC’s turnover rate was 11.2 percent, which is lower than the average state agency turnover rate for FY 2009 of 14.4 percent.

The chart below identifies OIEC’s turnover rate compared to the statewide turnover rate for 2008 and 2009 and the State and National unemployment rate comparison for 2008 and 2009.



As of February FY 2010, OIEC’s turnover rate is **1.82 percent**, well below that of two years ago (as of February FY 2008), which was **7.17 percent**.

<sup>5</sup> Source: Texas State Auditor’s Office; *An Annual Report on Classified Employee Turnover for Fiscal Year 2009*.

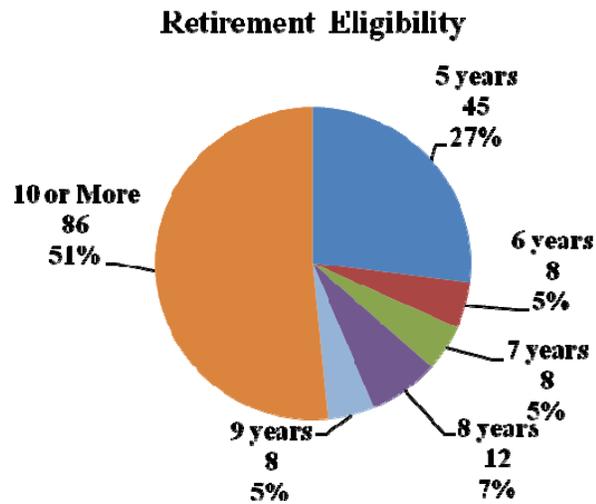
<sup>6</sup> Source: United States Department of Labor, Bureau of Labor Statistics; *Annual average unemployment rate, civilian labor force 16 years and over (percent)* [http://www.bls.gov/cps/prev\\_yrs.htm](http://www.bls.gov/cps/prev_yrs.htm). Viewed 6-21-2010.



**Retirement through FY 2015.** More than one-fourth of OIEC’s workforce will be eligible to retire within five years as reflected in the chart.

Moreover, more than 33 percent of OIEC staff in a supervisory role will be able to retire by the end of 2015.

Recruitment and retention activities, training, and succession planning are key to ensuring a knowledgeable and effective workforce. Cross-functional training is also key to ensure a workforce that will be efficient and effective regardless of the number of staff that leaves the agency.



***Recruitment and Retention Activities.***

OIEC strives to ensure that employees are satisfied with their work environment and enjoy coming to work. Programs and policies are in place to enhance the work environment and help keep employees satisfied.

College Student Recruitment. OIEC is coordinating with various colleges across Texas in order to recruit students before or after they have received their degree. OIEC is anticipating offering both salaried and non-salaried positions to interns interested in working in health care or in an advocacy role.

Alternative Work Schedule Program. This program extends the number of hours that agency staff is available to provide services while also providing our employees with work schedule flexibility. The program is intended to improve customer service and better accommodate customer needs by offering extended service hours from 7:00 a.m. until 7:00 p.m. Monday through Friday. Every effort is made to accommodate the needs of individual employees who are working extended or alternate hours; however, in all instances, business necessity is the overriding factor.

The Performance Planning and Development System (PPDS). This evaluation process provides supervisors the tools to develop an employee’s performance, address performance that does not meet expectations, and handle performance problems in a manner that encourages individual responsibility for results. This system also presents an opportunity for the Supervisor and the employee to look to the future and identify opportunities for the employee’s growth and development. OIEC believes that by periodically communicating performance expectations and satisfaction with co-workers, productivity and morale increase.

Merit Awards. For OIEC employees that meet the criteria for a merit award, OIEC may provide deserving staff with administrative leave. The total amount of leave granted may



not exceed 32 hours per employee during a fiscal year.

OIEC may grant merit salary increases and one-time merit payments to eligible classified employees whose job performance and productivity is consistently above that normally expected or required if the employee has been in his or her current position for at least 6 months. Merit salary increases are granted when funding is available and within guidelines established by the Public Counsel.

*Sick Leave Pool.* The Sick Leave Pool (Pool) has been established to benefit OIEC employees and their immediate family members who suffer a catastrophic illness or injury. The Pool is intended to provide for the alleviation of a hardship caused to an employee and the employee's immediate family, if a catastrophic illness or injury forces the employee to exhaust all leave earned by that employee and to lose compensation from OIEC. The program allows employees to voluntarily contribute sick leave time to the Pool.

OIEC's rule 28 TAC §276.4 was adopted as a result of a requirement of Texas Government Code §661.002(c). The Government Code requires state agencies to adopt rules relating to the agency's sick leave pool program.

*Policy Development Program.* OIEC's Policy Development Program was initiated in an effort to better communicate and receive ideas from all employees. Recognizing the value and ideas of each employee, this program was designed to serve as a channel of communication for "great ideas."

While participation in this program is optional, all OIEC employees are encouraged to submit their ideas on how to improve OIEC, OIEC's policies or procedures, or work environment. OIEC's executive management team review the ideas or recommendations submitted monthly. Confidentiality of employees who submit policy recommendations is being provided to encourage all OIEC employees to participate in providing suggestions to improve our agency.

Since its inception, many ideas have been proposed, and of those, many have been implemented. Administrative leave for outstanding performance has been awarded to OIEC staff whose ideas have been implemented.

*Return-to-Work Program.* The intent of the Return to Work Program is to allow employees with injuries or illnesses, both job-related and non-job related, to return to work as quickly as possible in a meaningful and productive capacity. Participation in the program will be handled on a case-by-case basis in consultation with the employee's physician. It is the employee's responsibility to make all reasonable effort to return to work at the earliest possible time to full duty or alternatively to a light or restricted duty capacity.

*Training and Succession Planning.* Training is a year-round, continuous requirement for OIEC staff. The many complexities of the workers' compensation system and the agency's core value of providing premier service necessitate ongoing training.



*New Employee Training.* All new employees are required to participate in new employee training. Training courses are available on the Intranet and may include a course description page with prerequisite reading, the course itself, and helpful links. Several training modules are available and include the following: Ethics in the Workplace, Employment Law, Computer security, and Workplace Conduct. The training courses consist of slideshows, videos, or videos with a handout. Some courses include audio. All employees are also required to read the employee manual and take core training offered by OIEC and TDI, such as Ethics, Confidentiality, Sexual Harassment, Discrimination, and related agency policy and law training.

*Ethics Training and Committee.* OIEC is dedicated to operating under the highest standards of ethical and professional behavior. To ensure that every effort is made to achieve this goal, it conducts Ethics training and has created an Ethics Committee. Ethics training is conducted for new employees and periodically each year thereafter. The Ethics Committee has been vital to the development of our agency's superior reputation for being a professional and ethical organization. Created in June 2008, the OIEC Ethics Committee addresses the ethical questions and issues presented to it by OIEC employees.

The Committee is comprised of a diverse section of OIEC staff, which includes employees from all divisions of the agency who hold both supervisory and non-supervisory positions. The Ethics Committee has and will continue to convene as necessary to discuss the issues presented to it by OIEC employees and a quarterly update on the issues will continue to be created and sent out to the OIEC Team.

The agency's Ethics Committee has a revolving membership in order to ensure its recommendations reflect the agency's high ethical standards and new voices are heard. OIEC's ethics statement is below:

*Each OIEC employee has an obligation to maintain high ethical standards in the performance of their work responsibilities and in their personal life, realizing that lapses in such judgment will reflect negatively on OIEC. OIEC employees must seek to enhance and implement ethical values based on established principles of sound reasoning and the highest standards of business conduct.*

*Career Ladder Program.* OIEC is committed to developing employees and promoting employee development and initiative by establishing structured career progressions reflecting the agency's business needs and the benefit to employees of having defined career advancement opportunities and requirements.

OIEC recommended additional career ladder opportunities for Ombudsman positions, which was approved for the FY 2010-2011 General Appropriations Act. Three levels were added: Ombudsman Associate, Ombudsman III, and Ombudsman IV. The classification change more clearly reflects the desired career ladder opportunities in OIEC's Ombudsman Program and the nature of the work performed by an OIEC Ombudsman.



*Ombudsman Training Program.* Generally, staff in the Ombudsman Program are hired as Ombudsmen Associates and begin up to a year-long training program at the end of which they will have earned their Type 03 Workers' Compensation Adjuster's Licenses and be reclassified as an Ombudsman I. The training program for an Ombudsman Associate consists of up to one year of training divided into two parts. In Part I (26 weeks) the Ombudsman Associates complete new employee orientation courses, classroom studies, customer services, and observation of activities. After completing Part I, the Associates enter Part II of the program. In Part II (also 26 weeks) the Ombudsman Associates begin conducting meetings with unrepresented injured employees in preparation for dispute resolution hearings and assisting in proceedings while being observed and evaluated by their mentor, trainer, and Supervisor of the Ombudsman Program. The Ombudsman Associates are required to obtain a Type 03 Workers' Compensation Adjuster's License before they finish their training program. Upon successful completion of the training program, Ombudsman Associates are eligible for a career ladder promotion to an Ombudsman I.

The Ombudsman I must have at least one year of workers' compensation experience as required by Texas Labor Code §404.152. They participate in proceedings; assist injured employees to obtain supporting documentation and to appropriately and timely exchange evidence; maintain an index folder; and work closely with the Ombudsman Assistants to effectively assist injured employees. If an Ombudsman I was not previously an Ombudsman Associate, then the Ombudsman I completes a 20-week training program during which time a Type 03 Workers' Compensation Adjuster's License is obtained.

The Ombudsman II is required to have at least two years of Ombudsman I experience. The Ombudsman II must maintain all of the requirements of an Ombudsman I and may be required to assist Ombudsman Supervisors and Associate Directors in the training and mentoring of Ombudsman Associates, Ombudsman Assistants, and Customer Services Representatives. Each Field Office has an Ombudsman Lead who serves as a mentor for all Ombudsman Program staff.

All Ombudsmen assist with case development when injured employees request assistance. The goal of case development is to resolve the issues before going to an administrative proceeding; therefore, Ombudsmen may become involved in a case before it is scheduled for a dispute proceeding.

Ombudsmen must remain current on continuing education requirements in order to maintain their adjuster's licenses. These credits are offered through Practical Skills Training conducted by the agency's Regional Staff Attorneys (RSA), and the agency conferences. Training is also provided through monthly teleconferences.

Additional information regarding the Ombudsman training program and continuing education can be found in OIEC Rule §276.10.

*Practical Skills Training Program.* The Practical Skills Training Program is designed to help Ombudsmen refine their skills in assisting injured employees in proceedings before



TDI and to ensure injured employees' rights are protected.

At least two different practical skills training courses are offered by RSAs each year. The training is delivered in regional locations across the State and the Ombudsmen receive continuing education credits for participating in the training, which helps them fulfill the requirements for maintaining their statutorily required Type 03 Workers' Compensation Adjuster's License.

The courses are designed to give practical, useful information to the Ombudsmen, which they can immediately implement into the performance of their job duties. There is a lecture and discussion component at each training session. In addition, written material is prepared to provide more detailed resource material than can be presented in a lecture. The written materials from each practical skills training are posted on OIEC's intranet for future reference. Finally, each practical skills training includes some practical application of the material to test the participants' knowledge of the subject matter covered in the training. Those exercises provide an excellent opportunity to provide feedback from the trainer and for the participants to learn from each other and determine best practices and strategies.

Practical Skills Training topics that have been conducted include the following:

- Direct Examination and Cross Examination (October 2006);
- Direct Examination and Cross Examination of Expert Witnesses (March 2007);
- Discovery tools, Objections and Responses (November 2007);
- Pre-Hearing Dispute Resolution: Case Management, Assessment & Development (March 2008);
- Advanced Case Development and Formulation of Oral and Written Arguments (May 2008);
- Occupational Disease and Repetitive Trauma Injuries (April 2009);
- Formulation of Arguments to Assist Injured Employees Through the Medical Dispute Resolution Process (August 2009); and
- Effectively Questioning Physicians on Medico-Legal Issues (April 2010).

Following the August 2009 Practical Skills Training on the formulation of arguments in medical dispute resolution, Legal Services determined that the training needed to be supplemented with training on effectively conducting medical research. As a result, one of OIEC's RSAs arranged for and coordinated training by medical school librarians around the State. That training, which was conducted in October and November 2009, was attended by both the RSAs and the Ombudsmen. The training focused on conducting research for the type of evidence-based medical evidence that is critical for establishing the medical necessity of proposed treatment. The training was conducted at the medical school libraries, which also permitted the participants to become familiar with those libraries and the wealth of resources available there.

In order to ensure the continuing effectiveness of the Practical Skills Training, OIEC



surveyed the Ombudsmen to determine the topics on which they wanted to receive training. Legal Services is currently in the process of establishing the training agenda for Practical Skills Training in October 2010, April 2011, and October 2011. The survey results were compiled and are available to Legal Services in establishing the training plan.

*Customer Service Representative (CSR) Training.* A comprehensive training program is provided to each CSR as they are hired so that they will have the information necessary to respond accurately and promptly to the injured employee.

Newly-revised training manuals with copies of the Workers' Compensation Act and Rules are provided to each CSR with the requirement that they be conversant with the information contained therein. Training requirements include completing the OIEC Core Training, workers' compensation modules, customer service training, computer and telephone and soft skills training, and early intervention procedures. Ongoing education includes regular review of the agency website and links, and attendance at the various teleconference training sessions. A monthly review of Appeals Panels decisions is also required as they provide interpretations of the Act and Rules and procedural clarifications.

Before being assigned to providing customer service to injured employees, CSRs are required to observe interaction between injured employees and Ombudsmen staff. In addition, new CSRs choose or are assigned a Senior CSR and an Ombudsman Lead (field office team leader) as a mentor for guidance and advice. They are also required to observe dispute resolution proceedings, preparation appointments, Benefit Review Conferences, and Contested Case Hearings. Training exercises are given that are designed to help CSRs determine the questions to ask injured employees and the information that should be provided based upon the injured employee's needs. This extensive training is designed to produce employees who are well-equipped to provide exceptional customer service.

OIEC CSR staff provides advocacy, assistance, and education about the workers' compensation system while TDI staff processes official and regulatory actions.

*Teleconferences.* Teleconferences are held to ensure OIEC staff in the field and Central Office stays abreast of information necessary to continue to effectively serve the injured employees of Texas. Teleconferences may be held for specific functions, such as Ombudsman or Customer Service Assistants, or as an agency as a whole. RSAs may make presentations on legal issues, or presentations may be made by OIEC staff on new legislation, policies and procedures. Agency staff also has the opportunity to request particular topics be included in the teleconferences via the agency Policy Development Program.

*OIEC Conferences.* Various conferences are held for staff each year. Below is a summary of each type.

- *OIEC's Annual Conference:* OIEC's annual conference is held in June for all OIEC staff to come together in one place. The conference generally lasts over a three day period to allow for travel. Since OIEC staff is located throughout Texas, the



Training sessions are held that promote teamwork and ethics as well as provide information about other aspects of the agency that staff may not be familiar with. Breakout sessions are held on a variety of topics including current legislative activities, changes in workers' compensation laws and rules, and new agency policies and procedures. Information presented at the conference is designed to enhance the skills of staff and increase communication within the agency in order to provide excellent service to the injured employees of Texas. Additionally, the conference provides continuing education credits to help Ombudsmen and other OIEC staff satisfy the requirements for maintaining their Type 03 Workers' Compensation Adjuster's License and for OIEC attorney's to obtain continuing legal education credits.

- *OIEC Leadership Conference:* (Held two times each year). OIEC holds a leadership conference where all management employees meet for training and issue discussion. The leadership conference provides an opportunity for all of the functional areas of the agency (Customer Service, Ombudsman, and Legal Services) to come together and focus our efforts on improving the quality of the service that we provide to the injured employees of Texas. The next leadership conference is scheduled for September 2010. The expected topics for the conference are a Sunset update, status of budget reductions, business plan initiatives for fiscal year 2011, performance measures, the survey of employee engagement, the customer satisfaction survey, revisions to the agency's training program, and a review of the agency's Quality Assurance Program and its plan for going forward in fiscal 2011.
- *Legal Services Conference:* (Held once each year). OIEC conducts a Legal Services conference, where the Regional Staff Attorneys gather with agency executive management to discuss legal issues in the workers' compensation system. The conference also provides an opportunity for candid discussion about how effectively the OIEC Team is serving its mission to assist, educate, and advocate on behalf of the injured employees of Texas and recommendations from the attorneys directly assisting the Ombudsmen and Customer Service Representatives on how we can better serve our mission. A current initiative that OIEC is pursuing concerns extent-of-injury disputes and how the agency can more effectively assist injured employees in such disputes. That issue will undoubtedly be a focus of the next Legal Services conference.

*Training Committee.* The agency's training committee consists of employees from all walks of OIEC. It is a multi-program committee created to design an agency training program. This committee has developed a comprehensive training program for Ombudsman Assistants and Customer Service Representatives. The committee coordinates Legal Services' Regional Staff Attorney (RSA) training, including but not limited to Practical Skills Training.



The Training Committee developed a Core Training Links section of the OIEC intranet site that provides ready access to critical baseline information about workers' compensation that every OIEC field office employee must know or be able to easily locate in order to educate the injured employees of Texas.

Effective June 1, 2010, the Training Committee will be broadened to include OIEC management and the agency's Quality Assurance Section. This expansion of the Committee will ensure effective communication amongst all employees that have a training function at the agency. The Training Committee will meet bi-monthly in FY 2011 to ensure all employees are fully aware of new legislation as a result of the 82<sup>nd</sup> Texas Legislature and the Sunset Advisory Commission Review of the Workers' Compensation System.

*Practical Resource Guide.* Legal Services and the OIEC Training Committee entered into a joint project to produce a Practical Resource Guide for the OIEC Team. The Guide is designed to be a workers' compensation desk book for OIEC staff. The Training Committee identified the core information that OIEC Customer Service Representatives, Ombudsman Assistants, and Ombudsmen needed to know or to readily access. The Training Committee developed an organizational structure to provide that information, which included a description of the topic, important terms and definitions, a discussion of why the topic is important, identity of documents the injured employee needs to provide related to the topic, citations to relevant statutory and rules provision, research related to the topic, and resources that provide additional information about the topic. The members of the Training Committee and the RSAs were assigned various topics and asked to write the entry on those topics. Once the entries were written, they were compiled into a single document that was reviewed and edited to ensure accuracy and consistency. The Practical Resource Guide was completed and distributed to the OIEC Team in May 2010.

### **Capital Asset Strengths and Weaknesses**

Over 92-percent of OIEC's budget is dedicated to salaries for OIEC staff. OIEC's lean operations budget is a testament to the organization's business efficiencies and its commitment to the Statewide Vision, Mission, and Philosophy (See pages 1 and 2 of this report). OIEC's management is extremely proud of its efficiencies and exceptional use of taxpayer funds.

Capital assets are purchased through lapsed salary or provided by TDI if resources are available.

### **Agency Use of Historically Underutilized Businesses (HUB)**

Although OIEC is administratively attached to TDI, which provides purchasing support, OIEC coordinates with TDI regarding procurement of services. OIEC is in compliance with all HUB requirements, and consistently exceeds at least one of the three applicable statewide HUB procurement goals each fiscal year.



Several of the contracts under the "Other Services" category are specialized contracts with low HUB participation, such as proprietary maintenance. Major expenditures in "Commodities" include specialized educational training, other office equipment, and hardware maintenance services.

See Appendix G for OIEC's FY 2009-2010 Comparison to Statewide HUB Procurement Goals.

### **Key Organizational Events and Areas of Change and Impact on Organization**

**Organizational Changes.** OIEC continually identifies innovative ways to increase efficiencies and the effectiveness with which it provides services to injured employees and other participants in the Texas Workers' Compensation System.

**Internal Audit.** The 81<sup>st</sup> Texas Legislature, 2009 provided funding and one FTE to serve as the agency's Internal Auditor. The position was established in accordance with the provisions of the Texas Internal Auditing Act, Government Code, Chapter 2102.

A summary of a few of the internal audits that have been conducted since the internal auditor position was established and results from those audits are below:

- Project # 2009-005 Agency Complaint Process Review

The Agency Complaint Process Review was an audit of the agency's compliance with its policies and procedures for processing complaints about OIEC. The project included determinations of whether the policies and procedures in effect were adequate to reflect management's needs and requirements. The project resulted in several significant findings and recommendations. The recommendations were fully implemented by management. The findings in this audit resulted in the following actions by management:

1. The complaint files have been relocated to a more secure area with custodial responsibility placed in one person.
2. The duties for processing complaints have been assigned to a single employee (with an assigned backup), along with oversight provided by the Deputy Public Counsel.
3. Management has revised OIEC Complaint Procedure ADMIN 08-03 to include modifications of the Complaint Tracking Spreadsheet which includes data fields to capture when certain steps are performed and by whom, and interim deadlines for the completion of certain process steps have been identified more clearly as suggested guidelines.
4. The Complaint Tracking Spreadsheet has also been modified to calculate elapsed days since the complaint was received, and when 25 business days have elapsed from the date of receipt, the Deputy Public Counsel is notified so that corrective action can be taken and a timelier response issued.
5. The procedures for logging incoming complaints and for filing acknowledgements and responses (both electronically and in paper form) have been more clearly detailed in OIEC Complaint Procedure ADMIN 08-03.



- Project # 2009-006 Agency Ombudsman Program Review

The agency Ombudsman Program Review was an audit of the agency's compliance with its policies and procedures for the Ombudsman Program. The audit included determinations of whether the policies and procedures in effect were adequate to reflect management's needs and requirements. The findings in this audit resulted in the following actions by management:

1. The Working Folder Checklist was revised and a directive concerning the required use of this form was issued. Additionally the use of the Working Folder Checklist was discussed with staff and supervisors in several staff meetings and teleconferences.
2. The use of the Ombudsman Assistance Request Form OMB-02 (as well as a recently developed Ombudsman Waiver Request Form OMB-09) has been stressed to staff in training meetings and teleconferences.
3. The use of the Change of Ombudsman Form OMB-05 and DRIS entry code "OMB" in the agency's database used to track performance measures has been emphasized for all staff members and a directive for its use was issued.
4. The agency issued a directive requiring all Ombudsman to assist injured employees in preparing the "Employee's Claim for Compensation for a Work-Related Injury or Disease" (DWC Form 041). This action also requires an entry in the DRIS system, and filing the form on behalf of the injured employee.
5. A Quality Assurance Program was established and staffed within the Administration and Operations Division of the agency. This Program ensures all policies are being followed and develops training specifically tailored to address exceptions from internal audits.

- Project # 2009-007 Payroll/Human Resources Area Follow-Up Review

This was an audit of the agency's compliance with its policies and procedures for the Payroll and Human Resources functions of OIEC. The audit included determinations of whether the policies and procedures in effect were adequate to reflect management's needs and requirements. The findings in this audit resulted in management's directive to staff regarding the use of personnel Form ER-08 "AWOL (Flex/Compressed) Employee Request Form". OIEC staff submitted Form ER-08 which provided management with work schedule information for all staff members.

**Customer Service.** The agency expanded its Customer Service Program from 33 FTE's in FY 2008 to 43 FTE's in FY 2010. The Customer Service Program serves as the first point of contact with injured employees. The expansion in services more effectively ensures that injured employees' receive a seamless transition between program areas. The expansion enhanced the agency's early intervention initiatives to resolve disputed issues prior to entering into TDI's administrative dispute resolution system.

Services were also enhanced to help injured employees and beneficiaries navigate through the workers' compensation system by providing education and referring injured employees



to local, regional, and federal units of government for financial assistance, rehabilitation, and work placement programs, as well as other social services that OIEC considers appropriate. Some of those agencies include:

- The Department of Assistive and Rehabilitative Services (DARS). DARS assists injured employees with rehabilitation services in order to return the injured employee to work as soon as possible.
- The Texas Workforce Commission (TWC). TWC assists injured employees with preparing for and finding employment;
- The Health and Human Services Commission (HHSC) and other social service agencies, such as the Department of Aging and Disability Services (DADS). These agencies assist injured employees in obtaining financial assistance and other social service assistance;
- 2-1-1 services, which provide food, shelter, rent assistance, utility bill assistance, counseling, child care, after-school programs, senior services, disaster relief and other programs in the injured employee's locality; and
- Community-based organizations, including county hospitals, local churches or religious groups, food banks, area relief missions, the Salvation Army, and women's shelters, etc.

***Administration and Operations.*** As of June 2009, the Administration and Operations Division was divided into two Sections: the Operations Section, and the Quality Assurance Section.

- The Operations Section provides technical and administrative support for the agency, including functions such as strategic planning; performance measure tracking, monitoring, and reporting; recommending and tracking legislation; developing and submitting reports required by statute, such as the Legislative Report; budget and fiscal monitoring; and rulemaking. Staff serves as administrative support to the Public Counsel and Deputy Public Counsel and schedules meetings and hearings. Operations' staff also provides support to all OIEC staff in the 23 field offices throughout Texas and the Central Office regarding website maintenance, facility issues, records management, human resource issues, office supply needs, and other purchasing and procurement needs. Finally, Operations' staff receives, reviews, and processes travel vouchers.
- The Quality Assurance Section ensures compliance with agency policies and procedures and considers how policies and procedures can be modified to improve effectiveness and efficiency. The Quality Assurance Section verifies procedures and functions, identifies the quality of programs, initiates and recommends solutions for identified performance issues, and verifies the implementation of the solutions. The Quality Assurance section administers surveys, institutes training initiatives, ensures consistency of services state-wide, and conducts research and evaluation of programs. The mission of the Quality Assurance Section is *Continuous Improvement through Employee Engagement and Empowerment, Teamwork, Training and Best Practices.*



**Medical Expertise.** HB 724, 80<sup>th</sup> Texas Legislature, 2007, was implemented in 2008 and changed the venue for some medical disputes to the State Office of Administrative Hearings (SOAH) for injured employees based on the amount in controversy. This unfunded mandate has affected OIEC’s ability to assist injured employees’ in the medical dispute resolution process. An Ombudsman’s assistance with a medical dispute is particularly helpful to injured employees due to an attorney’s inability to be paid for services rendered when representing an injured employee in a medical dispute.

A Medical Consultant position would be an asset to the agency. The position could provide assistance to Ombudsmen and other OIEC staff regarding medical dispute resolution, medical necessity, medical research, and other related issues, which would aid in assisting injured employees through the medical dispute resolution process, in medical dispute hearings, and may also increase effectiveness in indemnity dispute proceedings.

As indicated in the table below, more than half of the medical dispute resolution proceedings include Ombudsman assistance.

Fiscal Year	Type of CCH	Injured Employee with Ombudsman Assistance		Injured Employee with Attorney Representation		Injured Employee with Other or No Representation	
		Count	Percentage	Count	Percentage	Count	Percentage
FY 2008	Fee	0	0.0%	1	2.22%	44	97.78%
FY 2009		2	5.88%	5	14.71%	27	79.41%
FY 2008	Medical Necessity	66	86.84%	6	7.89%	4	5.26%
FY 2009		147	69.01%	48	22.54%	18	8.45%
<b>FY 2008</b>	<b>Total Medical CCHs</b>	66	54.55%	7	5.79%	48	39.67%
<b>FY 2009</b>		149	60.32%	53	21.46%	45	18.22%

During the 81<sup>st</sup> Legislative session, three additional FTEs and \$128,072 for each year of the biennium was requested and subsequently withdrawn based on Legislative Leadership’s request to reconsider exceptional items due to the economic downturn. Additionally, due to the budget climate for the FY 2012-2013 biennium, OIEC does not anticipate requesting exceptional items pertaining to the medical dispute resolution process in the FY 2012-2013 Legislative Appropriations Request in an effort to follow the Statewide Vision, Mission, and Philosophy.

**Sunset Advisory Commission (Sunset) Review in 2011.** Sunset Review is the regular assessment of the continuing need for a State agency to exist. The Sunset process works by setting a date on which an agency will be abolished unless legislation is passed to continue its functions. This creates a unique opportunity for the Legislature to look closely at each agency and make fundamental changes to an agency’s mission or operations if needed to best provide effective services to Texans.

OIEC began the Sunset Review process by developing and submitting a Self-Evaluation Report (SER) to Sunset. The SER identified problems, opportunities, and issues that the agency felt should be considered in the Review. Sunset Staff solicited input from interest



groups and professional organizations and encouraged public input and discussion of the agency functions. Sunset Staff collected and evaluated information from extensive interviews with agency personnel, performance reports, operational data, and other sources. After the evaluation phase of the review was complete, Sunset staff published a report containing recommendations for statutory change by the Legislature and recommendations for agency management to implement to improve internal operations. The report can be reviewed at OIEC's website ([http://www.oiec.state.tx.us/documents/pub\\_ser\\_2009final.pdf](http://www.oiec.state.tx.us/documents/pub_ser_2009final.pdf)) or the Sunset website (<http://www.sunset.state.tx.us/82.htm#oiec>).

Most notably, the Sunset Staff Report indicated that in a Contested Case Hearing, “an injured employee is nearly four times more likely to win a dispute with Ombudsman assistance than without any legal representation or assistance.” A summary of the findings, recommendations, and OIEC's response to the recommendations is provided below:

***Issue 1: Texas Has a Continuing Need for the Office of Injured Employee Counsel.***

***Findings:***

- Texas has a continuing interest in aiding injured employees navigating the workers' compensation system.
- While other organizational structures exist, the Office's independent structure places it in a unique position to aid injured employees.
- While many other states provide aid to injured employees involved in workers' compensation disputes, the organizational structure and type of assistance provided varies greatly.
- The Office is well-positioned to increase the preparedness of injured employees for informal mediation proceedings at DWC, decreasing unnecessary delays in the process overall.
- The Office's statute does not reflect standard language typically applied across the board during Sunset reviews.

***Key Recommendations:***

- Continue the Office of Injured Employee Counsel for 12 years.

*Agency Response:* The Office of Injured employee Counsel agrees with the Sunset Advisory Commission Staff recommendation to continue the agency as an independent enterprise and its functions.

OIEC agrees with the staff's findings that Texas has a continued interest in aiding injured employees trying to navigate the workers' compensation system and that OIEC is and should continue to be the sole entity that assists, educates, and advocates on behalf of the injured employees of Texas.

- Apply standard Sunset across-the-board requirements to the Office of Injured



## Employee Counsel.

*Agency Response:* OIEC agrees with this recommendation. OIEC management would like to note that the agency takes internal and external complaints seriously. It is a top priority of agency management to ensure complaints are handled promptly and properly, which is exhibited by the two internal audits conducted in the area of complaint handling at the direction of agency management. OIEC management has taken the steps to ensure that the agency is already in compliance with the Sunset Advisory Commission Staff across-the-board recommendation regarding complaints.

OIEC management has formed a committee that is currently developing alternative procedures for rulemaking and dispute resolution, which will conform to the State Office of Administrative Hearings model guidelines. OIEC would like to thank Sunset Advisory Commission Staff for recommending this helpful business process improvement.

- Direct the Office to work with DWC to ensure injured employees are fully prepared by Ombudsmen before attending a DWC Benefit Review Conference.

*Agency Response:* OIEC agrees with this recommendation and has taken numerous steps to ensure injured employees are fully prepared prior to entering the Texas Department of Insurance, Division of Workers' Compensation administrative dispute resolution system. OIEC procedures have been changed to fully implement the agency's early intervention efforts. The fruits of these efforts will be reflected in data which will be available at the end of the fiscal year 2010.

OIEC notes it is difficult to discourage its customers from entering the dispute resolution system if they are not fully prepared but also understands the paramount need to ensure State resources are used efficiently and effectively.

## ***Issue 2: The Office Has Inappropriate Access to Claims Information Held by the Division of Workers' Compensation.***

### ***Findings***

- The Office's access to all claim files unfairly exceeds that of other parties to DWC proceedings.
- The Division cannot restrict the Office's access to claim files at this time.

### ***Key Recommendations***

- Limit the Office's authority to access claim files for injured employees the Office is not directly assisting.

*Agency Response:* As a result of OIEC's Legislative recommendation to the 81<sup>st</sup> Legislature, House Bill (HB) 673 substantially amended Section 404.111 to reduce



OIEC's access to attorney-work product and enhance both civil and criminal penalties for any employee that improperly disclosed confidential claimant information. This statutory change was a direct result of legislation crafted by the author of workers' compensation reform, the Workers' Compensation Commissioner, and the Public Counsel. OIEC agrees with Sunset Advisory Commission Staff that OIEC has not misused its authority. OIEC's management is sensitive to the appearance of impropriety, and as the sole advocacy agency for the injured employee, it understands the importance of confidential claimant information.

Accessing claimant information is necessary for the agency to fulfill its cause and case advocacy roles. The agency accesses individual claimant information only after the injured employee authorizes the release of information and understands the agencies services. Aggregate information is needed to advocate on behalf of injured employees as a class. OIEC abides by restrictions pursuant to HB 673, and believes no further restrictions need to be made in light of the severe penalties laid out in 404.111 for disclosing confidential information.

- Direct the Office to work with DWC to complete firewalls in the new database system.

*Agency Response:* OIEC agrees with this recommendation to work with DWC during its development of the new computer system to include proper firewalls restricting information from field office staff and has formed a committee to work with DWC staff to develop a new system to ensure appropriate access of information to OIEC staff. OIEC's management is sensitive to the appearance of impropriety and is committed to working with TDI-DWC in ensuring that a fair administrative dispute resolution process where issues are resolved satisfactorily amongst system participants.

The Sunset Commission will provide draft legislation to the Legislature to continue the agency for up to 12 years and correct issues identified in the Sunset Review. Although not required by law, the Sunset's legislative members traditionally introduce and carry Sunset legislation. Results of the Sunset Legislation will impact OIEC as of September 1, 2011.

### **Use and Anticipated Use of Consultants**

OIEC does not currently utilize consultant services, and does not anticipate utilizing consultant services in the future.



**FISCAL ASPECTS**

**Size of Budget**

OIEC’s current total budget for the FY 2010-2011 biennium is \$15,539,084. The total expended in FY 2009 was \$7,640,722. The estimated expenditures for FY 2010 is \$7,471,374.

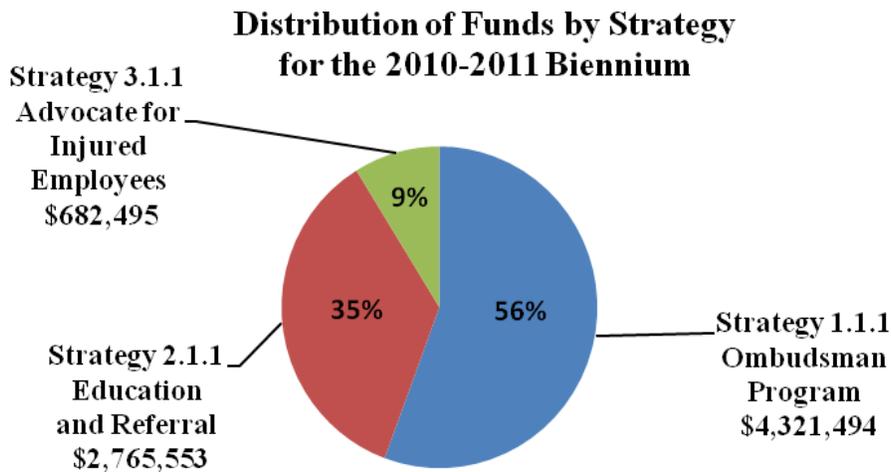
OIEC is administratively attached to the Texas Department of Insurance (TDI). The agency is not funded for consumables, facilities, or other items as a result of its administrative attachment. As a result, approximately 92 percent of OIEC’s budget is dedicated to salaries.

The 81<sup>st</sup> Texas Legislature, Regular Session, 2009, approved one additional FTE and funding to serve as OIEC’s Internal Auditor. The Legislature also approved an additional \$300,000 each year in the biennium to be used to enhance OIEC’s outreach efforts.

**Distribution of Funds by Strategy for the FY 2008-2009**

**Method of Finance**

All appropriations are General Revenue Dedicated from the Texas Department of Insurance Operating Fund Account No. 036.



**Budgetary Limitations**

The FTE cap for FY 2010-2011 is 184 and the agency anticipates reducing this cap as a result of the SAO’s new Classification Act and by finding business operation efficiencies. There are no riders or federal restrictions regarding the appropriations for OIEC.



**Statutory Restrictions.** The General Appropriation Act (GAA) appropriated to OIEC any unexpended balances as of August 31, 2010, not to exceed 5 percent for any item of appropriation, for the same purposes for the fiscal year ending August 31, 2011.

All workers' compensation insurance carriers and certified self-insurers, other than governmental entities, pay an annual maintenance tax to pay the costs of administering the Texas Workers' Compensation System. The maintenance tax assessment may not exceed an amount equal to two percent of the correctly reported gross workers' compensation insurance premiums. Additional information pertaining to the maintenance tax and OIEC funding can be found in the section below: *Degree to Which Current budget Meets Current and Expected Needs.*

Article IX, Section 5.08 of the GAA provides the limitations on travel expenditures. OIEC's out-of-state travel spending may not exceed in either year of the biennium the amount spent for that purpose in the last state fiscal year in which out-of-state travel occurred.

### **Degree to Which Current Budget Meets Current and Expected Needs**

For the FY 2010-2011 biennium, the budget meets the current needs of OIEC. However, OIEC is funded from the same operating account as TDI. TDI's funding mechanism is self-leveling. The Legislature appropriates funds from GR Dedicated Account 36 to various agencies that participate in or contribute to the regulation of insurance, prevention of insurance loss, and administration of workers' compensation. Both the Texas Insurance Code and Texas Labor Code require that the maintenance taxes be set with the intention of collecting the revenue needed to fund authorized expenditures from Fund 36. If OIEC's proposed budget cuts were implemented, spending levels would be reduced, which would result in the maintenance tax being adjusted to collect less revenue. Further, Legislative action would be necessary if additional revenue is required or to ensure the same level of funds necessary in certifying the amount of available revenue. In sum, reducing the agency's budget would have no fiscal impact on General Revenue.

OIEC is a relatively new agency and continues to absorb work without additional funding. For example, as a result of HB 724 in the 80<sup>th</sup> Legislative Session, OIEC absorbed a large caseload of medical disputes without funding. Additionally, in the 81<sup>st</sup> Legislative Session the agency absorbed a large amount of salary costs associated with the mandated statewide classification. This effectively reduced staffing levels by approximately 15 percent given the agency's unique funding structure as a result of its administrative attachment.

OIEC was exempted from reducing its budget by five percent for the FY 2010-2011 biennium based on the request from State Leadership in February 2010 partially due to the agency's funding mechanism. However, OIEC will be required to submit its FY 2012-2013 Legislative Appropriation Requests at a level that is based on a five percent reduction.



More information about the funding was provided in the letter below to the Governor, Lieutenant Governor, and Speaker of the House.

*Dear Governor, Lieutenant Governor, and Speaker of the House:*

*The Office of Injured Employee Counsel (OIEC) has reported to the Legislative Budget Board a proposed 5% budget reduction as requested. The proposed cuts include reductions in travel, training for staff, and reductions in staff levels to satisfy this initiative. OIEC supports the needs of Texas and will respond should the decision be made to implement the budget reductions.*

*OIEC would like to inform you of its unique structure and mechanism for funding as you make this decision.*

*First, OIEC is administratively attached to the Texas Department of Insurance (TDI). The agency is not funded for consumables, facilities, or other items as a result of its administrative attachment. As a result, over 90 percent of OIEC's budget is dedicated to salaries. Implementing additional cuts will result in an agency with a budget that is approximately 95 percent dedicated to salaries with a substantially reduced operating budget for staff to attend administrative dispute resolution hearings.*

*OIEC is funded from the same operating account as TDI. TDI's funding mechanism is self-leveling. The Legislature appropriates funds from GR Dedicated Account 36 to various agencies that participate in or contribute to the regulation of insurance, prevention of insurance loss, and administration of workers' compensation. Both the Texas Insurance Code and Texas Labor Code require that the maintenance taxes be set with the intention of collecting the revenue needed to fund authorized expenditures from Fund 36. If OIEC's proposed budget cuts were implemented, spending levels would be reduced, which would result in the maintenance tax being adjusted to collect less revenue. Further, Legislative action would be necessary if additional revenue is required or to ensure the same level of funds necessary in certifying the amount of available revenue. In sum, reducing the agency's budget would have no fiscal impact on General Revenue.*

*Second, OIEC is a relatively new agency and continues to absorb work without additional funding. For example, as a result of HB 724 in the 80<sup>th</sup> Legislative Session, OIEC absorbed a large caseload of medical disputes without funding. Additionally, in the 81<sup>st</sup> Legislative Session the agency absorbed a large amount of salary costs associated with the mandated statewide classification. This effectively reduced staffing levels by approximately 15 percent given the agency's unique funding structure as a result of its administrative attachment. OIEC prides itself on operating in a fiscally conservative fashion and has a work culture that values innovative ways to operate more efficiently as an organization.*

*OIEC appreciates the opportunity to bring this matter for your consideration. Please do not hesitate to contact me if I can be of further assistance. Thank you.*

*Sincerely,*

*Brian White  
Deputy Public Counsel  
Office of Injured Employee Counsel*



Additionally, a supplement showing how OIEC would reduce its budget by an additional 10 percent is also required due to the current budget climate.

Approximately 92 percent of OIEC's budget is devoted to salaries. A reduction in OIEC's budget of an additional 10 percent will result in a reduction of approximately 20 percent of the agency's FTE's, which will adversely affect OIEC's ability to maintain current levels of service and the ability to fulfill its mission to assist, educate, and advocate on the behalf of the injured employees in Texas.

### **Potential Exceptional Item Requests for the FY 2012-2013 Legislative Appropriation Request**

Approximately 92 percent of OIEC's budget is allocated towards salaries. Due to the proposed 5 percent baseline reduction, and the supplemental reduction of 10 percent, OIEC will be required to reduce its staff by approximately 26 FTE's in the FY 2012-2013 biennium. As a result of this reduction-in-force, OIEC will request these positions as exceptional items in the FY 2012-2013 Legislation Appropriations Request. Additionally, the reduction will make it necessary to reduce the budget that is allocated to outreach activities, which will impact the ability to achieve agency goals; therefore, any additional budget reduction will be requested as an exceptional item.

If the agency's budget is actually reduced in the FY 2012-2013 biennium, eliminating over 15 percent of all agency staff through a reduction-in-force, there would be no savings to the General Revenue Fund of the State as a result of the agency's unique self-leveling funding mechanism.

### **Capital and/or Leased Needs**

This is not applicable because OIEC is administratively attached to TDI. TDI provides field and central office facilities and computer equipment/technology to meet the needs of OIEC. Changes are not anticipated unless there is a statutory change.



### Service Population Demographics

Despite the recent recession, Texas population has shown rapid growth, especially in metropolitan areas, diversification, and aging over the past few years and the trend is for it to continue.

**Growing Population.** Between April 1, 2000 and July 1, 2009, Texas’ population grew at more than double the national rate—18.8 percent versus 9.1 percent.<sup>7</sup>

The chart below indicates the growing population estimates of metropolitan areas in Texas.

**Texas State Data Center Population Estimates Program July 1, 2008 and January 1, 2009  
Estimates of the Total Population of Metropolitan Statistical Areas and 2000-2008 and 2000-2009 Population Change  
for All Metropolitan Statistical Areas in Texas**

Metropolitan Statistical Area*	2000 Census Count	July 1, 2008 Population Estimate	January 1, 2009 Population Estimate	Numerical Change 2000-08	Numerical Change 2000-09	Percent Change 2000-08	Percent Change 2000-09
Abilene	160,245	161,996	161,783	1,751	1,538	1.1	1.0
Amarillo	226,522	247,050	247,434	20,528	20,912	9.1	9.2
Austin-Round Rock-San Marcos	1,249,763	1,637,936	1,675,106	388,173	425,343	31.1	34.0
Beaumont-Port Arthur	385,090	381,808	381,938	-3,282	-3,152	-0.9	-0.8
Brownsville-Harlingen	335,227	393,355	394,346	58,128	59,119	17.3	17.6
College Station-Bryan	184,885	208,379	210,818	23,494	25,933	12.7	14.0
Corpus Christi	403,280	415,882	416,528	12,602	13,248	3.1	3.3
Dallas-Fort Worth-Arlington	5,161,544	6,264,967	6,331,291	1,103,423	1,169,747	21.4	22.7
El Paso	679,622	748,596	748,967	68,974	69,345	10.1	10.2
Houston-Sugar Land-Baytown*	4,715,407	5,718,678	n/a	1,003,271	n/a	21.3	n/a
Killeen-Temple-Fort Hood	330,714	379,806	383,690	49,092	52,976	14.8	16.0
Laredo	193,117	238,269	238,211	45,152	45,094	23.4	23.4
Longview	194,042	204,259	204,443	10,217	10,401	5.3	5.4
Lubbock	249,700	270,086	271,779	20,386	22,079	8.2	8.8
McAllen-Edinburg-Mission	569,463	724,971	727,382	155,508	157,919	27.3	27.7
Midland	116,009	128,717	130,203	12,708	14,194	11.0	12.2
Odessa	121,123	130,849	132,153	9,726	11,030	8.0	9.1
San Angelo	105,781	106,457	107,196	676	1,415	0.6	1.3
San Antonio-New Braunfels	1,711,703	2,028,832	2,052,542	317,129	340,839	18.5	19.9
Sherman-Denison	110,595	118,754	118,830	8,159	8,235	7.4	7.4
Texarkana	89,306	93,354	93,346	4,048	4,040	4.5	4.5
Tyler	174,706	200,466	201,782	25,760	27,076	14.7	15.5
Victoria	111,663	114,897	114,985	3,234	3,322	2.9	3.0
Waco	213,517	228,497	229,559	14,980	16,042	7.0	7.5
Wichita Falls	151,524	150,507	150,657	-1,017	-867	-0.7	-0.6
State of Texas	20,851,820	24,326,974	24,538,335	3,475,154	3,686,515	16.7	17.7

Source: Texas State Data Center, Population Estimates and Projections Program

\* Metropolitan Statistical Areas (MSAs) utilize the 2008 definition specified by the Office of Management and Budget.

\* January 1, 2009 estimates not computed because of insufficient data due to impacts from Hurricane Ike

<sup>7</sup> Source U.S. Census Bureau: State and County QuickFacts.



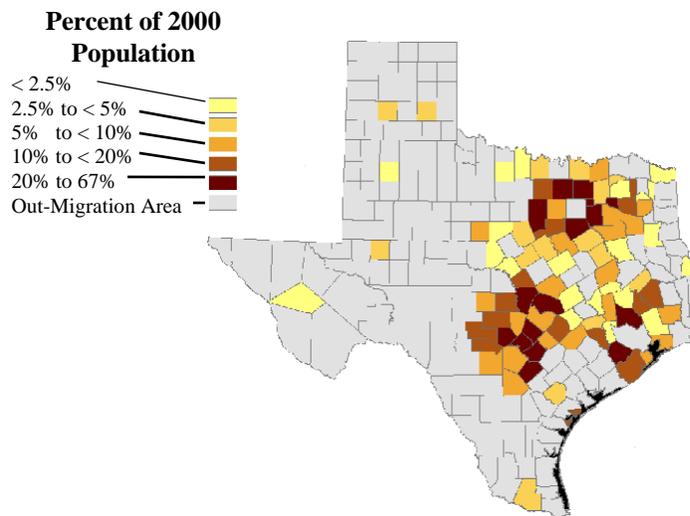
United States Census Bureau data indicates that 10 of the 25 fastest-growing United States counties are in Texas: Harris, Tarrant, Bexar, Collin, Dallas, Travis, Fort Bend, Denton, Williamson, and Hidalgo. The recent recession has slowed the growth of suburban areas somewhat by decreasing movement away from large cities.

The biggest contributing factor to Texas’ growth is net migration, both domestic and foreign, to Texas. Texas also has a high rate of natural growth, which means more births than deaths. Almost three-fourths of Texas’ recent population growth is attributable to increases in racial and ethnic minorities who account for most of the migration and Texas’ high birth rate, according to the Texas State Data Center. The State Data Center estimates that 60 percent of all Texas births are of Hispanic/Latino descent.<sup>8</sup>

According to an article from the Journal of the American Enterprise Institute *How the Recession has changed American Migration* in 2008 and 2009, Texas had 18 percent of the nation’s population growth, 10 percent of its immigration inflow, and by far the highest domestic inflow of any state.<sup>9</sup>

The chart below indicates the internal in-migration in Texas. Note that the at least 10 percent of the increase in population in most of the counties in Central Texas is due to in-migration, and in many counties in Central and North Texas at least 20 percent of the increase in population is due to in-migration.

**Internal In-Migration, 2000 to 2008, as a Percent of 2000 Population<sup>10</sup>**



Source: Texas State Data enter, The University of Texas at San Antonio using Census Bureau 2008 County Estimates.

<sup>8</sup> Source: House Research Organization, Texas House of Representatives; Census 2010: Implications for Texas; <http://www.hro.house.state.tx.us/focus/Census81-10.pdf>; Viewed June 14, 2010.

<sup>9</sup> Source: The Journal of the American Enterprise Institute; Michael Barone; Wednesday, February 17, 2010; [http://www.american.com/archive/2010/february/how-the-recession-has-changed-american-migration/article\\_print](http://www.american.com/archive/2010/february/how-the-recession-has-changed-american-migration/article_print); Viewed June 14, 2010.

<sup>10</sup> Source: Presentation by Lloyd Potter; Texas Demography: Change, Projections, and English Learners; 2010\_04\_08\_TEA.pdf.



***Aging Population.*** The average age of the population in the United States is projected to increase over the next several decades. Much of this aging is due to the baby boom generation moving into the 65 and older population. As the United States population grows older, the racial and ethnic composition of the older population is also expected to change. It is expected that the older population of Hispanics as well as the proportion that is a race other than Anglo will increase.<sup>11</sup>

**Future projections of the aging Texas population indicate:**

- Texans 60-plus are projected to total 8.1 million by 2040, a 193 percent increase from 2000. By 2040, the 60-plus population is projected to comprise 23 percent of the total Texas population.
- The 60-plus population will itself grow older. In 2000, the 85-plus population totaled over 237,000; by 2040, this population is projected to reach about 831,000, a 249.4 percent increase.
- The disparity between males and females is projected to decrease; males accounted for 44 percent of the aged population in 2000, this percentage is projected to increase to 47 percent in 2040.
- Minority populations are growing rapidly; by 2040, they will constitute almost half of all older Texans, with Hispanics comprising 31 percent.
- The Austin-San Marcos Metropolitan Statistical Area will experience the largest percent growth in the 60-plus population by 2040, a 321.7 percent increase.
- Hispanic elders will continue to outnumber other race/ethnicities along the Texas-Mexico Border region.<sup>12</sup>

By 2040, the Texas state demographer projects that the share of the population aged 65 or older in Texas will nearly double to 18.0 percent. Nationally, the United States Census Bureau projects that Americans aged 65 or older will comprise 20.4 percent of the population.<sup>13</sup>

***Diverse Population.*** Between 2000 and 2040, the Hispanic population will increase between 181.9 and 358.9 percent, while the Black population will increase between 40.5 and 71.0 percent. The Anglo population will increase by between 4.1 and 11.8 percent, and other population groups will increase between 195.8 and 568.7 percent. By 2040, the percentage of the population that will be Hispanic is estimated to be between 52.6 and 59.2 percent, the percentage of the population that will be Anglo is estimated to be between

<sup>11</sup> Source: Vincent, Grayson K. and Victoria A. Velkoff, 2010, *The Next Four Decades, The Older Population in the United States: 2010 to 2050*, Current Population Reports, P25-1138, U.S. Census Bureau, Washington, DC.

<sup>12</sup> Department of Aging and Disabilities. Texas Demographics: Older Adults in Texas; April, 2003

<sup>13</sup> Source: Texas Comptroller of Public Accounts; Texas in Focus: A Statewide View of Opportunities; Viewed 6-14-2010; <http://www.window.state.tx.us/specialrpt/tif/population.html>



23.9 and 32.2 percent, the percent that will be Black between 8.0 and 9.5 percent, and the percentage in other population groups between 5.7 and 8.9 percent.<sup>14</sup>

Between 2010 and 2050, the United States population is projected to grow from 310 million to 439 million, an increase of 42 percent. The nation will also become more racially and ethnically diverse, with the aggregate minority population projected to become the majority in 2042. Non-Anglo populations increase faster and come to form increasing proportions of the total population.

The table below identifies the population projections from the Texas State Data Center by gender and race/ethnicity for the years 2010-2019 based on the 2000 Census.<sup>15</sup>

Year	Total Population	Male	Female	Anglo	Black	Hispanic	All Other
2010	25,409,530	12,752,867	12,656,663	11,587,971	2,826,849	9,877,268	1,117,442
2011	25,920,812	13,021,694	12,899,118	11,629,408	2,867,889	10,254,042	1,169,473
2012	26,442,256	13,295,804	13,146,452	11,669,112	2,908,811	10,641,052	1,223,281
2013	26,973,626	13,575,036	13,398,590	11,707,041	2,949,477	11,038,121	1,278,987
2014	27,514,427	13,859,187	13,655,240	11,743,032	2,989,736	11,445,058	1,336,601
2015	28,064,031	14,147,869	13,916,162	11,776,735	3,029,434	11,861,657	1,396,205
2016	28,622,192	14,440,986	14,181,206	11,808,044	3,068,485	12,287,794	1,457,869
2017	29,189,062	14,738,584	14,450,478	11,837,002	3,106,857	12,723,549	1,521,654
2018	29,764,506	15,040,639	14,723,867	11,863,409	3,144,434	13,169,062	1,587,601
2019	30,348,878	15,347,344	15,001,534	11,887,266	3,181,173	13,624,683	1,655,756

**Workforce Demographics.** Texas has fared better during the recession than the nation as a whole. Some key statistics regarding how job growth has been affected in Texas due to the recession include the following:

- Texas’ April 2010 unemployment rate was 8.3 percent, up from 8.2 percent in March 2010. The April United States rate was 9.9 percent, two-tenths of a percentage point above the previous month.
- Total nonfarm employment in Texas increased by 32,500 jobs in April 2010, a 0.3 percent increase from the previous month.
- May 2010 was the fifth consecutive month of gains for the United States. The United States gained 431,000 jobs in May 2010, the biggest monthly gain in jobs since March 2006. However, 411,000 of the new jobs were temporary jobs for the 2010 Census, and the United States lost 585,000 jobs from May 2009 to May 2010.
- The Texas unemployment rate has been at or below the national rate for 40 consecutive months.<sup>16</sup>

<sup>14</sup> Source: New Texas State Data Center Population Projections from The University of Texas at San Antonio. Retrieved June 14, 2010; <http://txsdc.utsa/tpepp/2006projections/summary>.

<sup>15</sup> Source: Texas State Data Center at UT San Antonio. Population Migration Growth Scenario 2000-2002. Version 6/04 [http://www.hhsc.state.tx.us/research/dssi/PopStats/ProjectionsTX\\_GenderRace.html](http://www.hhsc.state.tx.us/research/dssi/PopStats/ProjectionsTX_GenderRace.html). Viewed 6-14-2010.

<sup>16</sup> Source: Texas Comptroller of Public Accounts, Texas Economy in Focus; <http://www.texasahead.org/economy/outlook.html> Retrieved June 14, 2010.



Texas has the fifth-youngest work force in the nation, with a median age of 39.4 years, according to the University of Texas at San Antonio’s Institute for Demographic and Socioeconomic Research.

According to a survey conducted by the Texas Department of Aging and Disability Services about 15 percent of the respondents over 60 said they were employed in 2008. Ten percent of those who were not working were currently looking or planning to look for a job. The table below reflects the various reasons why older adults continue to work:

What is the MAJOR factor in your decision to work now or to look for work?	Percent of respondents	
	2004	2008
<i>Survey Year</i>	2004	2008
Need the money	42%	43%
Enjoy the job/enjoy working	28%	25%
Being productive is a way I can help others	9%	10%
To save for retirement	3%	1%
It makes me feel useful	10%	7%
Need to maintain health insurance	4%	2%
People have an obligation to work if they can	1%	2%
Need to pay for health costs for self/others in family	1%	1%
To fulfill pension requirements/qualify for pension	1%	0%
To qualify for Social Security	0%	1%
Need to support other family members	2%	3%
Other, specify	0%	5%
Total	100%	100%

Of respondents who were not working, 10 percent said they are currently looking or plan to look for a job in the future.<sup>17</sup>

Texas is attracting many of the nation’s college-educated workers who choose to relocate within the United States. In 2006, more than 42,000 college-educated workers moved from other states to join the Texas labor force.<sup>18</sup>

OIEC anticipates it will have a larger customer base with Texas’ economic growth. As the baby boomers age and the number of older people increases, the demand for health care occupations is expected to increase. Personal and home health aides, for example, are projected to gain jobs faster than any other occupation. At the same time, the number of children will increase, although more slowly, and those children will need education and supervision, which is likely to create many new jobs for teachers and childcare employees.<sup>19</sup>

<sup>17</sup> Texas Department of Aging and Disability Services; Aging Texas Well; Indicators Survey Overview Report, April 2009.

<sup>18</sup> Source: Demographic Advantage; Retrieved June 23, 2008. <http://www.texasahead.org/insight/demographics.html>

<sup>19</sup> Source: Employment Occupational Outlook Quarterly, Spring 2008. Bureau of Labor Statistics; Retrieved June 23, 2008. <http://www.bls.gov.opub/ooq/ooqhome.htm>.



**Texas and the U.S. Economic and Population Forecast (Projected)**  
**Fiscal Years 2009-2013**  
**Fall 2007 Forecast**  
**Sources: Texas Comptroller of Public Accounts; Texas State Data Center**

CATEGORY	2008	2009	2010	2011	2012	2013
<b>TEXAS</b>						
Gross State Product						
(2000 dollars in billions)	\$917.5	\$943.8	\$976.0	\$1,007.7	\$1,039.8	\$1,070.3
Annual percentage change	3.2	2.9	3.4	3.2	3.2	2.9
Personal Income						
(current dollars in billions)	928.3	980.3	1038.6	1096.1	1156.7	1215.6
Annual percentage change	5.4	5.6	6.2	6.2	6.7	6.8
Nonfarm Employment						
(in thousands)	10432.7	10620.0	10842.0	11038.8	11219.4	11372.1
Annual percentage change	2.0	1.8	2.1	1.8	1.6	1.4
Unemployment Rate (percentage)	4.7	4.9	4.9	4.9	4.8	4.9
Texas Exports						
(in billions)	184.3	202.4	219.2	235.20	251.90	269.0
Resident Population						
(in thousands)	24,158.2	24536.1	24905.5	25263.8	25617.4	25962.2
Annual percentage change	1.6	1.6	1.5	1.4	1.4	1.3
Resident Population 17 and under						
(in thousands)	6,107.0	6,117.5	6,127.1	6,137.1	6,150.2	6,165.5
Annual percentage change	.2	.2	.2	.2	.2	.2
Resident Population 65 and over						
(in thousands)	2314.7	2400.1	2458.4	2511.8	2608.8	2707.3
Annual percentage change	2.4	2.5	2.4	2.2	3.9	3.8
<b>U.S.</b>						
Gross Domestic Product						
(U.S. 2000 dollars in billions)	\$11,713.0	\$12,033.9	\$12,379.2	\$12,716.4	\$13,058.8	\$13,366.7
Annual percentage change	2.0	2.7	2.9	2.7	2.7	2.4
Consumer Price Index						
(1982-84=100)	210.0	213.5	217.6	221.6	225.5	229.5
Annual percentage change	2.3	1.6	1.9	1.8	1.8	1.8
Prime Interest Rate (percentage)	7.3	7.4	7.8	7.8	7.8	7.7



## Technological Developments

OIEC is administratively attached to TDI, and TDI provides information technology services to OIEC. Services include voice and data connectivity for Field and Central Office Staff, including refreshing obsolete computer equipment; improved office software enhancements; and workers' compensation-related applications (TXCOMP and COMPASS).

The Sunset Advisory Commission Staff recommended to limit OIEC's authority to access claim files for injured employees that OIEC is not directly assisting. This recommendation would remove existing language from the statute that excepts OIEC from the confidentiality requirements surrounding claim file information and that directs DWC to release such information to OIEC. The recommendation would clarify that OIEC has the same access to information that another, similarly situated party has and is allowed access to a claim file when officially assisting an injured employee.

Until the implementation of DWC's new computer system occurs, which is anticipated within the next five years, the changes made by the recommendation would require OIEC to self-enforce the legal limits on its authority to access information. Accessing injured employee information is necessary for the agency to fulfill its cause and case advocacy roles. The agency accesses individual claimant information only after the injured employee authorizes the release of information and understands the agencies services. Aggregate information is needed to advocate on behalf of injured employees as a class. OIEC abides by restrictions pursuant to HB 673, 81<sup>st</sup> Texas Legislative Session, 2009 that reduces OIEC's access to attorney-work product and enhance both civil and criminal penalties for any employee that improperly disclosed confidential injured employee information and believes no further restrictions need to be made in light of the severe penalties laid out in 404.111 for disclosing confidential information.

During its development of the new computer system to include proper firewalls restricting information from OIEC staff, a committee has been formed to work with DWC staff to develop a new system to ensure appropriate access of information to OIEC staff. OIEC's management is sensitive to the appearance of impropriety and is committed to working with DWC in ensuring that a fair administrative dispute resolution process where issues are resolved satisfactorily amongst system participants.

Although TDI provides internet and intranet services for OIEC, the websites are regularly maintained by OIEC staff. OIEC's intranet website provides OIEC staff a resource to learn about other program areas within the agency, updates on new or revised policies and procedures, and general information that allows staff to do the best job they can to ensure injured employee rights are protected.

OIEC's internet is available for customers to learn about the workers' compensation system and services provided by OIEC. An online complaint form is available for those who want to file a complaint, and OIEC will post its 2010 Customer Satisfaction Survey that will provide feedback to OIEC to enable the agency to meet the needs of its customers.



## Economic Variables

Two years ago at this time, the average regular gasoline prices were hovering around \$4.00 per gallon and the United States was about six months into a recession. While other states were deeply affected by the recession at that time, the recession had not hit Texas quite as hard. This recession has proven to be longer and the affects have been more widespread than previous recessions. However, Texas was one of the last states to feel the effects of the recession, and now is one of the first states to recover from the recession.

According to the Texas Comptroller's Economic Outlook dated June 10, 2010 during 2009, Texas' gross state product (GSP) declined more slowly than the United States economy (-1.7 percent versus -2.5 percent.) Additionally, it is anticipated that Texas' GSP will grow by 2.6 percent during calendar 2010. The United States economy should grow at a slower rate of 2.0 percent during the year. The Texas economy, the world's 11th-largest economy, continues to fare better than those of many other states.<sup>20</sup>

The recession has had an impact on all aspects of life, including employment. While it has been difficult for many individuals to find employment, it has been equally difficult for individuals to ensure they maintain their employment. The recession has also had a particular impact on employees who are working and are injured on the job.

A study conducted by the Workers' Compensation Research Institute found that employees who are afraid of being fired are less likely to become longer-term unemployed after an injury. These employees may be more aggressive in seeking return-to-work opportunities, making an extra effort to return to work earlier or taking steps to increase their chances that their job will exist after returning to work.

Additionally, injured employees in areas where unemployment rates are rising or are higher than normal are more likely to fear losing their jobs. The greater the fear, the more likely it is that employees will more actively pursue returning to work, thus reducing the number of employees that experience longer-term unemployment.<sup>21</sup>

According to a January 15, 2010 Insurance Journal article, due to the recession, funding for return-to-work programs, anti-fraud efforts, new regulations, and overall monitoring of state workers' compensation systems is down.<sup>22</sup>

As the economy strengthens and the unemployment rate falls, there will be more job opportunities, less fear of job loss, and perhaps less aggressive efforts by injured employees to seek reemployment.<sup>23</sup> For these reasons, it is important for Texas employers to have a good return-to-work program.

<sup>20</sup> Source: Texas Comptroller of Public Accounts, Texas Economy in Focus; <http://www.texasahead.org/economy/outlook.html> Retrieved June 15, 2010

<sup>21</sup> Source: Worker's Compensation Research Institute; *Recession, Fear of Job Loss, and Return to Work*. Richard A. Victor, Bogdan Savych. April 2010. WC-10-03

<sup>22</sup> Source: Insurance Journal; *Economic Downturn Puts Pressure on Return-to-Work Programs*; by Patricia-Anne Tom; January 15, 2010

<sup>23</sup> Source: Ibid. *Fear of Job Loss, and Return to Work*



The recession has also affected state governments, throughout the United States. In February 2010, the Texas Legislative Leadership requested all State agencies to reduce their FY 2011-2011 appropriations by 5 percent. Additionally, State agencies are required to submit a supplemental schedule in their Legislative Appropriations Requests (LARs) that will include an additional 10 percent reduction in their appropriations.

Although Texans and the rest of the nation have struggled through this recession, it is comforting to know that the worst is behind us, and the best is yet to come.

### **Agency Response to Changing Economic Conditions**

One of the ways OIEC is responding to the recession and the current economic climate is by utilizing its outreach tools. Brochures, outreach folders, and flyers are being sent to various participants in the workers' compensation system to inform everyone about OIEC's role and responsibilities and other pertinent information regarding the workers' compensation system. Outreach presentations are held throughout Texas for individuals interested in learning about OIEC and specific workers' compensation issues and processes. Telephone calls are also made to injured employees to inform them of their rights and responsibilities in the workers' compensation system and of the services provided by OIEC.

Additionally, OIEC and DWC are teaming up to host brown bag education and outreach sessions in each field office from June to the end of August 2010. The purpose of the brown bag educational sessions is for employees and employee organizations, employers, insurance carriers, claim adjusters, case managers, and attorneys to learn about the unique relationship of the two separate state agencies that are co-located in the field offices throughout Texas, and their separate roles and responsibilities. An open forum will also be held in which participants may ask questions. These sessions are free to all system participants and the general public.

Another way OIEC is responding to the changing economic conditions is by reducing OIEC's budget as required by Legislative Leadership. OIEC is also anticipating reducing the FTE cap to 175 FTEs. OIEC's LAR is due in August 2010 and will include a 5 percent reduction in the baseline budget as compared to OIEC's FY 2010-2011 budget. Additionally, a supplemental schedule will be included in the LAR recommending options to reduce OIEC's budget by another 10 percent. However, over 92 percent of the agency's budget is dedicated to salaries for OIEC staff; therefore, most of the budget reduction will include a reduction in significant agency staff. If OIEC's budget is reduced, there will be a significant impact to agency services, which is not believed to be in the best interest to the injured employees of Texas.

Additionally, OIEC may no longer be able to operate in the 23 field office locations throughout the State. Notably, injured employees will have to travel further for assistance even in poor medical condition. Therefore, OIEC will include the reinstatement of these reductions in its exceptional item request.



### Impact of Federal Statutes/Regulations

Currently, there are no Federal Statutes/Regulations that impact OIEC operations; however, the Federal Health Care Reform may have an impact on State workers' compensation insurance.

President Obama signed the Patient Protection and Affordable Care Act of 2009, the federal health care reform bill into law on March 23, 2010. The purpose of the law is to provide accessible health care coverage for an estimated 32 million Americans who are currently uninsured, and it will help people who already have health insurance retain their coverage. Some of the law's provisions are effective in 2010 while others will be phased in through 2020. Below is a document that explains the staggered implementation of the federal health care reform bill that passed recently.

#### Texas Department of Insurance Summary of Key Insurance Implementation Requirements Federal Health Reform – Patient Protection and Affordable Care Act (H.R. 3590)

2010	2012	2013	2014	2016	2017
<ul style="list-style-type: none"> <li>Establishes state consumer assistance program. <i>Action Needed: Governor must designate appropriate agency to serve as ombudsman.</i> <i>Fiscal Impact: State will incur costs to establish ombudsman program. States may apply for federal funds.</i> <i>Federal Funds: \$30 million is appropriated.</i></li> <li>Creates temporary reinsurance program for employers providing insurance to retirees age 55 and over. <i>Action Needed: eligible state programs (ERS, TRS) must apply to participate.</i></li> <li>Creates temporary high risk pool for individuals with preexisting conditions. <i>Action Needed: Governor must designate contact for Texas risk pool program</i> <i>Fiscal Impact: state must work with HHS to apply for and receive funds.</i> <i>Federal Funds: \$5 billion is appropriated through 2013.</i></li> <li>Requires states to establish web portal for individuals and small employers to obtain information on availability of insurance. <i>Fiscal Impact: Depending on web needs, may require additional technology funding.</i></li> <li>Prohibits lifetime policy limits.</li> <li>Prohibits policy rescissions.</li> <li>Coverage of preventive health services.</li> <li>Covers dependents up to age 26.</li> <li>Prohibits eligibility based on employee salary</li> <li>Prohibits pre-existing condition exclusions for children.</li> <li>Requires plans to allow enrollees to select PCP or pediatrician.</li> <li>Prohibits pre-authorization or higher cost sharing for ER in-network or out-of-network services.</li> <li>Prohibits preauthorization for OBGYN services.</li> <li>Claims, financial, rating, enrollment/ disenrollment, and cost-sharing information must be in plain language.</li> <li>All plans must comply with standards regarding claims appeal processes.</li> <li>Insurers must report minimum loss ratios to Secretary and states.</li> <li>Beginning January 2011, rebates must be provided to consumers if the percentage of premium spent on health care is less than 85% for large groups/80% small groups and individual.</li> <li>States to review premium increases; TDI report to HHS. <i>Fiscal Impact: State must apply to receive funds pending direction from federal HHS.</i> <i>Federal Funds: HHS to distribute \$250 million in grants to states over 5-years to assist with rate review activities.</i></li> </ul>	<ul style="list-style-type: none"> <li>Insurers must comply with uniform requirements for summary of benefits and explanation of coverage documents.</li> <li>Requires use of standardized definitions in all policies and standardized explanation of coverage.</li> <li>Insurers must submit annual reports to Secretary on disease management, care coordination, hospital readmission rates, patient safety and provider rate reimbursement structures.</li> </ul>	<ul style="list-style-type: none"> <li>Insurers must comply with standard requirements for electronic eligibility and claims status transactions.</li> <li>States must demonstrate to HHS that Exchange will be operable by January 1, 2014. <i>Action Needed: State must designate entity to serve as Exchange as early as possible to allow time to demonstrate operability by January 2013.</i> <i>Fiscal Impact: States will incur costs to establish Exchange.</i> <i>Federal funds will be available.</i></li> </ul>	<ul style="list-style-type: none"> <li>Insurers must comply with guaranteed issuance and renewability provisions and rating requirements.</li> <li>Prohibits preexisting condition exclusions.</li> <li>Prohibits annual limits on coverage.</li> <li>Limits waiting periods to 90 days.</li> <li>Limits deductibles in small group market to \$2,000 individual/\$4,000 family.</li> <li>Allows states option to merge small group and individual market. <i>Action Needed: State must decide whether to merge markets and take appropriate legislative and regulatory action.</i></li> <li>Creates temporary reinsurance program funded by assessments on group/individual plans. Program terminates 12/31/16.</li> <li>Allows employers to offer rewards to enrollees participating in wellness program.</li> <li>Prohibits insurers from dropping individuals who participate in clinical trials.</li> <li>Insurers must comply with electronic transaction standards.</li> <li>States must develop and implement statewide Health Insurance Exchange for individuals, small businesses that is operational by 01/01/14.</li> <li>TDI certifies plans for Exchange.</li> <li>Redefines small group to 1-100.</li> </ul>	<ul style="list-style-type: none"> <li>States may enter into health care choice compacts allowing cross-state insurance sales. <i>Action Needed: If State decides to allow cross-state sales legislation is required.</i></li> <li>Federal regulations issued by 07/01/13.</li> <li>Compacts take effect after 01/01/16.</li> </ul>	<ul style="list-style-type: none"> <li>States may apply for five-year waiver of certain requirements if demonstrates it provides coverage to all residents as comprehensive as Exchange coverage and does not increase federal deficit. <i>Action Needed: State must decide whether to apply for federal waiver.</i></li> </ul>



According to an April 2010 report by the Centers for Medicare & Medicaid Services about 13 million employees and dependents will gain coverage by 2019 under the federal health care reform due to a variety of factors including a greater proportion of employees opting for coverage from their employers. On the other hand, about 14 million people will lose employer-provided coverage due to a variety of reasons, including more low-wage employees moving to an expanded Medicaid program and some employers, especially smaller companies and those with low average salaries, being “inclined to terminate” coverage. Terminating coverage could be financially attractive to employers and to low-wage employees eligible for “heavily subsidized coverage” through new state health insurance exchanges.<sup>24</sup>

Although workers’ compensation insurance offers full reimbursement for medical expenses and partial reimbursement for wage losses incurred as a result of a workplace injury or illness, the existence of health insurance may discourage covered employees from taking the time to file a workers’ compensation claim, according to a 2005 study by the Rand Corporation. The study indicated that although workers’ compensation provides insurance against job-related injuries, as many as half of injured workers choose not to file.<sup>25</sup>

Additionally, employees without health insurance coverage are actually less likely to file workers’ compensation claims than the insured. The 2005 study indicates that whether or not employers offer health insurance to employees appears most important, much more important even than the insurance status of workers themselves. Even repeat injury-sufferers are more likely to file workers’ compensation claims when their employer offers health insurance but not statistically more likely to file when they themselves are insured. This suggests that the workplace environment and employer provided health care coverage may have a significant, or perhaps even the dominant, impact on workers’ compensation filing.<sup>26</sup>

Part of the Federal Health Care Reform requires states to create an Ombudsman Program, which is estimated at 20 to 30 FTEs for three years at \$30 million funded by the federal grant. The Ombudsman Program will serve as the consumer assistance office to help consumers enroll in plans, file complaints and appeals, solve problems with programs, answer tax questions, and track any problems with implementation of reform. OIEC’s Deputy Public Counsel and its Director of the Ombudsman Program have been asked to participate on a team with HHSC-federal, HHSC-state, and the Office of Public Insurance Counsel to help design the Ombudsman Program, to discuss best practices for the Ombudsman Program, and to aid in the implementation of the health care reform in Texas.

OIEC believes this invitation is a result of the agency’s hard work, and OIEC’s outstanding reputation. Additionally, OIEC remains diligent in working with unrepresented injured employees and other workers’ compensation participants throughout the implementation of the health care reforms.

<sup>24</sup> Source: Centers for Medicare & Medicaid Services, Office of the Actuary. April 22, 2010.

<sup>25</sup> Source: The Rand Corporation; *How Does Health Insurance Affect Workers’ Compensation Filing?* By Darius N. Lakdawalla, Robert T. Reville, Seth A. Seabury [http://www.rand.org/pubs/working\\_papers/2005/RAND\\_WR205-1.pdf](http://www.rand.org/pubs/working_papers/2005/RAND_WR205-1.pdf). Retrieved 6-18-2010.

<sup>26</sup> Source: Ibid. The Rand Corporation.



## Other Legal Issues

### Impact of Anticipated State Statutory Changes

According to a publication titled *The State of the Texas Workers' Compensation System – 2009* by the Insurance Council of Texas, during the 81st session of the Texas Legislature, there were approximately fifty workers' compensation related bills filed and considered. Most of the bills dealt with recommendations from DWC and OIEC, and regulation of nonsubscribers. Despite the small number of bills that passed during the 81st session of the Texas Legislature and many more that did not, it is anticipated that many of the bills that did not pass will arise again next session as proposed bills or be offered as discussion for interim studies.

**Advocacy on Behalf of Injured Employees.** An injured employee without representation can win every issue throughout the administrative workers' compensation process only to lose on a default judgment in district court solely due to a lack of representation. For this reason, OIEC believes it is important for the injured employee to have representation at district court. For the past two legislative sessions, OIEC has recommended that an attorney be appointed to represent injured employees at district court; however, the bill has died in Calendars each session.

OIEC has an obligation to protect the interests of injured employees as a class. This requires that OIEC give thorough and thoughtful comments to the rules proposed by TDI. OIEC also makes legislative recommendations to protect the interests of injured employees and determines whether there are issues pending before either the Texas appellate courts or the Supreme Court where OIEC needs to serve as a voice for the injured employees of Texas.

**Amicus Curiae Briefs.** OIEC also advances the advocacy role of OIEC by pursuing matters before the courts on issues of importance to injured employees as a class. Several *amicus curiae* briefs have been filed with the Texas Supreme Court within the past two years and include the following:

- *Weeks v. Fireman's Fund Ins. Co.*  
An amicus brief was filed in December, 2008 with the Supreme Court of Texas regarding a Court of Appeals decision which would adversely affect injured employees as a class. In keeping with OIEC's charge to advocate on behalf of the injured employees of Texas, OIEC's Public Counsel, Norman Darwin prepared a brief requesting the Supreme Court to grant a Motion for Rehearing and reverse the Court of Appeals' decision. The central issues in the case are whether or not the date of maximum medical improvement (MMI) must be established before an impairment rating (IR) can be assigned and, by extension, whether the determination of MMI includes the concept that material recovery or lasting improvement to the injured employee's injury must be secondary to medical treatment. The Court of Appeals rejected the designated doctor's IR as not having been properly calculated under the American Medical Association's *Guides to the*



*Evaluation of Permanent Impairment*, 4<sup>th</sup> edition. Because it had rejected the designated doctor's IR, the Court of Appeals also rejected the MMI date certified by the designated doctor. The Court of Appeals adopted the date of MMI and IR of a required medical examination doctor who had improperly assigned an earlier date of MMI based on his determination that material or lasting improvement must occur secondary to medical treatment. This assertion is outside of the requirements of the Texas Labor Code. Essentially, the Court of Appeals adopted a rule that would allow MMI to be determined after an IR has been assigned. However, the workers' compensation statute and rules clearly establish that MMI must be reached before an IR is assigned. OIEC hoped to persuade the Supreme Court to grant the petition for review and to establish that the rejection of a doctor's IR does not result in the rejection of the MMI date associated with that IR, unless the medical evidence establishes that the MMI date is also incorrect.

On January 9, 2009, the Supreme Court denied the Motion for Rehearing.

- *State Office of Risk Management v. Lawton*  
In February 2009, OIEC's fourth amicus curiae brief was filed with the Supreme Court of Texas in opposition to a petition for review filed by the State Office of Risk Management (SORM). In that case, an injured employee had sustained an injury to her left knee which became compensable under Texas Labor Code § 409.021(c) because the insurance carrier did not timely dispute the injury. Following the initial report of injury, the injured employee underwent an MRI which revealed additional injuries to the left knee. This report was received by the carrier approximately three weeks after it received its first written notice of the injury. The carrier contested the extent of injury to the left knee 2 months after the 60-day deadline had expired. At the Contested Case Hearing, neither party contested that the injured employee had sustained a compensable injury; the carrier was only contesting the extent of injury issue. The hearing officer found that the carrier waived its right to contest the left-knee injury by reason of waiver. This decision was affirmed at the appeals panel level.

The principle argument presented by OIEC in the amicus brief was that the intended meaning of Texas Labor Code § 409.021 was properly applied by the hearing officer and appeals panel judges, and that the nature of the injury created by the waiver is defined by the statute and the rules, and not by what the carrier is willing to accept as compensable.

Director of Legal Services, Elaine Chaney, presented oral argument before the Supreme Court. Ms. Chaney emphasized the possible effect on injured employees if the decision of the appeals panel were reversed; namely, that the waiver provision of Texas Labor Code § 409.021(c) would largely be read out of existence and insurance carriers would be permitted to "retroactively claim that [they] waived only the lowest form or least expensive kind of injury conceivably involved in the workers' claimed injury." (Respondent's Brief on the Merits, 14).



The Supreme Court reversed the Court of Appeal decision. In so doing, the Court rejected the argument that the injury that becomes compensable by virtue of waiver is defined by the information that was reasonably discoverable during the waiver period.

- *Liana Leordeanu v. American Protection Insurance Company*

On July 1, 2009, OIEC filed an amicus brief with the Texas Supreme Court in support of the Petition for Review in the case of Liana Leordeanu v. American Protection Insurance Company. The central issue in the case was whether or not Ms. Leordeanu was in the course and scope of her employment when she was involved in a motor vehicle accident. Ms. Leordeanu was a pharmaceutical salesperson who worked exclusively from a home office. The employer provided a vehicle and a storage unit which contained product samples and marketing materials. On March 21, 2003, Ms. Leordeanu traveled to doctors' offices in Austin and Bastrop and, afterwards, returned to Austin to conduct an event for a doctor and his staff at a local restaurant. Following that event, Ms. Leordeanu was driving to her storage unit to conduct further work, and then planned to drive home to complete some paperwork for her employer when she was involved in a motor vehicle accident.

In the Contested Case Hearing, Ms. Leordeanu's case hinged around the "dual purpose" doctrine. In her Statement of the Evidence, the hearing officer found that because the route taken to the storage unit was the same as the route home, Ms. Leordeanu had to satisfy both prongs of the "dual purpose" doctrine set out under § 401.011(12)(b) of the Texas Labor Code or be excluded from the course and scope of employment. The hearing officer found that since Ms. Leordeanu would have driven home via the same route whether or not she stopped at the storage unit, she did not satisfy the second prong of the "Dual Purpose" doctrine. The Appeals Panel also returned with an unfavorable decision for Ms. Leordeanu. Specifically, the Appeals Panel found that there was sufficient evidence to support the hearing officer's finding that the travel on March 21, 2003 would have been made had there been no affairs or business of the employer to be furthered by the travel.

In support of the Petition for Review of the Leordeanu case at the Supreme Court of Texas, OIEC argued that the decision of the Court of Appeals failed to correctly apply the "continuous coverage" doctrine to Ms. Leordeanu, who was injured while engaged in business travel. Additionally, OIEC argued that the Court of Appeals erred in finding that the Leordeanu case was a dual purpose case. OIEC believes that the manner in which the Court of Appeals applied the dual purpose doctrine would always remove the return portion of a business trip from the course and scope of employment in the sense that a claimant always has a personal interest in returning home. OIEC was strongly compelled to file an amicus brief in this case because the mis-analysis of the Court of Appeals would drastically reduce coverage for the growing class of employees who office from their homes and travel as an integral part of their work.



Although OIEC believes that the *Leordeanu* case is a continuous coverage case and not a dual purpose case, OIEC’s amicus brief also argued that the Petition for Review should be granted even if the Supreme Court finds that the *Leordeanu* case is a dual purpose case. This would resolve the conflict between the Third Court of Appeals and that of the Fourth Court of Appeals in *St. Paul Fire & Marine Ins. Co. v. Confer*—which has a long-standing interpretation of the dual purpose doctrine that runs contrary to the *Leordeanu* decision.

The Petition for Review was granted and the Supreme Court heard oral argument on April 15, 2010. The case remains pending at the Supreme Court.

- *Transcontinental Insurance Company v. Joyce Crump*

The case of *Transcontinental Insurance Company v. Joyce Crump*, which was filed on January 6, 2010, concerns a widow who was awarded death benefits for the death of her husband, Charles Crump. Beginning in 1975, Mr. Crump received a kidney transplant, underwent spleen and gallbladder removal, and began a daily regimen of immunosuppressants. In May of 2000 he injured his knee on a tape machine while at work. Following this injury, he was admitted to a hospital with an infection of the knee. Over the next eight months, Mr. Crump’s health declined aggressively due to an infection until he passed away in January of 2001. The District Court awarded Mrs. Crump death benefits because they found that the knee injury—a compensable injury—was a producing cause of Mr. Crump’s death. The 14th Court of Appeals in Houston concurred with this decision. On January 20, 2010, the case was heard before the Texas Supreme Court.

OIEC filed an amicus brief on behalf of Respondent, Joyce Crump, urging the Supreme Court to affirm the decision of the Court of Appeals. The case hinges around two main points: (1) whether producing cause can be defined liberally as *a* cause, or whether it should be narrowly defined as a substantial cause; and (2) whether expert medical testimony can come from clinical opinion or whether it must adhere to a more rigid standard—evidence-based medicine.

OIEC argued that part of the liberal interpretation of the workers’ compensation law is that a pre-existing condition is not a reason to deny a workers’ compensation claim, unless the pre-existing condition is proven to be the sole cause of the claimed injury. This idea illustrates the long-held description of workers’ compensation benefits as “limited benefits, liberally provided.” In its brief, OIEC attempted to stress with the court that to rule in favor of the carrier—who argues that a pre-existing condition can be sufficient to deny a claim—on this issue would be to undermine the long-established liberal interpretation of workers’ compensation law. Additionally, OIEC urged the Supreme Court to reject the carrier’s argument that only evidence-based medicine is sufficient in workers’ compensation cases. On this matter OIEC argued that if the court were to determine that the treating doctor’s causation opinion was not sufficient to be an expert opinion, it would unfairly hinder injured employees from obtaining expert testimony and favor insurance carriers who are able to hire experts.



The outcome of *Crump* has the potential, in OIEC's view, to greatly upset the balance between the interests of employers and employees by adopting the stringent legal and evidentiary standards in workers' compensation cases for which the carrier argues.

The Texas Supreme Court heard oral argument in the *Crump* case on January 20, 2010, and has not yet issued its opinion.

- *Bettie Bell v. Zurich American Insurance Company*

The latest brief that OIEC has filed is *Bettie Bell v. Zurich American Insurance Company*, which was filed on January 19, 2010. The central issue in Ms. Bell's case is whether or not the 5th Court of Appeals will rehear a case in which they rendered an impairment rating of 10 percent. Ms. Bell contends that the correct impairment rating should be 20 percent. Initially, a 10 percent impairment rating was made by Dr. M<sup>27</sup>, the treating doctor, according to the 4th Edition of the AMA Guides. This rating was also assigned before the date of maximum medical improvement (MMI) stipulated by the parties. Following spinal fusion surgery, Dr. S<sup>28</sup>, the designated doctor certified that Ms. Bell had reached MMI and assessed a 20 percent impairment rating using Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) Advisory 2003-10. The District Court found the 20 percent impairment rating could not be adopted because the Advisory has been invalidated. Ms. Bell appealed this decision to the 5th Court of Appeals, but the Court concurred with the decision of the lower court. By invalidating the 20 percent rating, the District Court and the Court of Appeals were bound to adopt the only other impairment rating in the case, the 10 percent, which had been assessed prior to the date of MMI.

OIEC filed an amicus brief with the 5th Court of Appeals in support of Ms. Bell's Motion for Rehearing. OIEC's argument begins with the fact that the 10 percent impairment rating was made before Ms. Bell had reached maximum medical improvement. Additionally, the judgment of the trial court was not submitted to TDI-DWC as required by Texas Labor Code § 410.258. This precluded TDI-DWC from being given the opportunity to intervene in the case to protect the fundamental statutory requirement that an impairment rating must reflect the injured employee's condition as of the date of MMI. OIEC argued that to adopt the impairment rating which was made before Ms. Bell reached maximum medical improvement would deprive injured employees of their right *not* to have their impairment ratings prematurely assessed.

The 5th Court of Appeals denied the Motion for Rehearing. Ms. Bell recently filed a Petition for Review with the Texas Supreme Court and OIEC is considering whether it will file an amicus brief in support of that petition.

<sup>27</sup> The name is abbreviated due to confidentiality reasons.

<sup>28</sup> Ibid.



## Impact of Current and Outstanding Court Cases

**Cause No. 05-0272:** *Entergy Gulf States, Inc., Petitioner v. John Summers, Respondent* in the Supreme Court in Texas.

**Issue:** John Summers sued Entergy Gulf States, Incorporated for injuries he sustained while working at Entergy's Sabine Station plant as an employee of International Maintenance Corp. (IMC). IMC had contracted with Entergy to perform construction and maintenance on Entergy's premises. This contract refers to IMC as an "independent contractor" and "contractor," while referring to Entergy and its affiliates as "Entergy Companies." The portion of the contract defining IMC as an independent contractor specifies that this language should not be construed to bar Entergy from raising the "Statutory Employee" defense. Entergy later sent IMC a letter, which included an addendum to the contract, providing that the parties would recognize Entergy as the statutory employer of the IMC employees (while IMC would remain the "direct employer").

Entergy also agreed to provide workers' compensation insurance to IMC's Sabine plant employees in exchange for a lower contract price. Entergy obtained an insurance policy and paid the premiums. While this policy was in effect, Summers was injured at the Sabine plant. He applied for and received benefits under the policy, then sued Entergy, as the premises owner, for negligence. Entergy moved for summary judgment, arguing that it was a general contractor, and thus an employer shielded from Summers's suit under the Texas Workers' Compensation Act as now codified in the Texas Labor Code. The district court agreed and granted summary judgment in Entergy's favor. The court of appeals reversed. The Texas Supreme Court granted the Petition for Review.

**Status:** The Supreme Court reversed the Court of Appeals decision and rendered a new decision that Entergy, the premises owner, qualifies as a "general contractor" and an employer as those terms are defined in the Texas Labor Code. Thus, Entergy was entitled to assert the exclusive remedy defense of Texas Labor Code §408.001 to shield itself from tort liability.

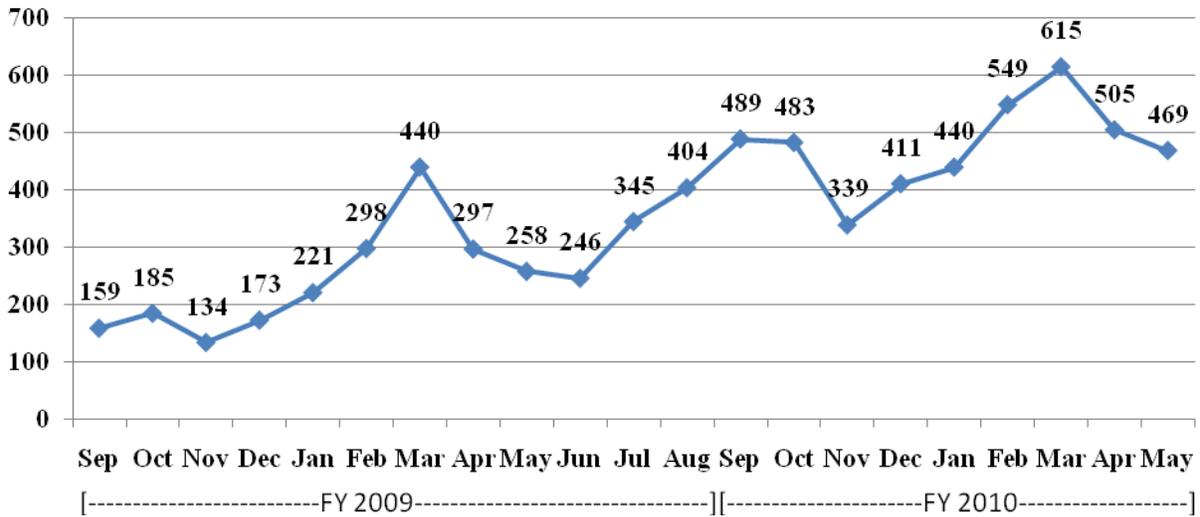
**Impact:** This case extends the workers' compensation exclusive remedy protection to general contractor premises owners and limits injured employees' ability to pursue a third-party negligence action against the premises owner where they are injured. The decision raises questions about the adequacy of workers' compensation benefits to compensate injured employees and may reduce the incentive for a premises owner to maintain a safe workplace by removing the threat of exposure to tort liability.



### Self-Evaluation and Opportunities for Improvement

OIEC began its third year as a functioning agency on March 1, 2008, and it has matured into an agency well qualified to fulfill its statutory mandates.

**Early Intervention.** As the level of experience of the Customer Service Representatives and Ombudsmen increases, so does their ability to resolve disputes prior to a Benefit Review Conference through diligent early intervention and injured employee case development efforts. The chart below illustrates the increasing ability by Customer Service Representatives and Ombudsmen to resolve disputes prior to holding a proceeding.



A few examples of disputes successfully resolved through early intervention and case development initiatives include the following:

In Fort Worth, staff provided information and relevant portions of the law to an insurance carrier to prove that they had not properly disputed the injured employee's initial impairment rating, had only paid one week of impairment income benefits (IIBs), and had waived its right to dispute the extent-of-injury issue. After reviewing OIEC's information, the adjuster paid the remaining IIBs for the original impairment rating and discontinued its pursuit of the extent-of-injury dispute.

In San Antonio, staff assisted an injured employee to overcome a denial of supplemental income benefits (SIBs). Staff performed extensive research to determine which of the five maximum medical improvement and impairment rating assessments was the correct assessment. Staff then coordinated with DWC to correct the error. The corrected assessment also changed the deadline for submission of the initial SIBs application, which the injured employee will submit by the recalculated future due date.

In Tyler, staff discovered that the injured employee's first certification of maximum



medical improvement/impairment rating, with which he did not agree, was invalid. Staff was instrumental in getting the treating doctor to submit written confirmation that he did not refer the injured employee for the maximum medical improvement/impairment rating. With this information, DWC determined that it was invalid and temporary income benefits were resumed.

In El Paso, staff was able to assist an injured employee in obtaining medical treatment. Staff educated the treating doctor to submit a rebuttal to the insurance carrier's peer review report (which did not support the requested treatment). Upon reviewing the doctor's rebuttal report, the insurance carrier adjuster agreed to authorize the additional medical treatment.

These are just a few of the ways that OIEC makes a meaningful impact on the injured employees it assists.

***OIEC Now on Twitter and Facebook.*** OIEC now has a page on Twitter! <http://twitter.com/OIEC>. It is another way OIEC's customers can receive updates about the agency. Twitter is a free social networking service that enables its users to send and read messages known as *tweets*. Tweets are text-based posts of up to 140 characters displayed on the author's profile page and delivered to the author's subscribers who are known as *followers* via mobile texting, instant message, or the web.

OIEC also has a Facebook page. The OIEC page has its contact info, explanation of services, upcoming events (monthly public outreach), as well as other helpful information. When a person becomes a "Fan," they will automatically be notified when something is added to the OIEC page.

Social media (such as Facebook and Twitter) are becoming mainstream and inexpensive ways for businesses and government to reach out to their customers to provide education information.

***Other Outreach Efforts.*** OIEC's outreach efforts are a key element in serving the injured employees of Texas. It has been a continuing effort to inform the public about the services offered to injured employees and other parties in the Texas Workers' Compensation System.

As of May 31, 2010, OIEC has participated in 46 presentations, workshops, seminars, speaking engagements, and other forums in FY 2010 where OIEC staff spoke to workers' compensation system stakeholders regarding OIEC, its role, and its services. It is anticipated that approximately 20 more outreach programs will be performed in FY 2010 to meet the target of the output measure: Number of presentations performed by OIEC.

OIEC is currently maximizing outreach efforts to ensure Texans are aware of the public service OIEC provides. OIEC's increased outreach initiatives include:



- comprehensive education and resource materials for injured employees, employers, and health care providers;
- a public service announcement, both in English and Spanish, that encourages injured employees' return to work;
- a new Communications Specialist to coordinate outreach efforts among the multiple program areas and improve both internal and external communications;
- a dynamic and user-friendly website relaying latest workers' compensation developments that impact injured employees, which is also available for OIEC's non-English-speaking customers; and
- an aggressive Customer Service initiative whereby injured employees upon reporting a work-related injury are contacted by OIEC in order to educate the customer about their rights and responsibilities in the workers' compensation system and OIEC's services.

In addition, families of employees who are fatally injured at work are contacted to inform them of death and burial benefits that may be available. OIEC also contacts the decedent's local State Senator and Legislative Representative to inform them of a work-related fatality among their constituency.

***Fatality Initiatives.*** Through the effort to inform injured employees and their beneficiaries of the services provided by OIEC, it was determined that many beneficiaries of a fatality claim were unaware of the existence of their potential benefits. As a result, OIEC initiated an outreach program to inform potential beneficiaries of those benefits and assist them in filing a death or burial benefit claim if they expressed a desire for OIEC to do so.

OIEC also has been notifying the appropriate elected representatives that a constituent has been involved in a fatal work-related accident. Many elected representatives have used that information to extend condolences to the family, which OIEC believes has been very much appreciated as a result of customer feedback.

Death claims are both serious and unique in many ways. It is frequently difficult to identify children born out of wedlock, common law spouses, and other beneficiaries living out-of-state or even out of the country.

There have been many gratifying instances in the past year where OIEC has identified and located family members of a fatally injured employee. Through the cooperation of employers and perseverance by our Customer Service and Ombudsmen staff, in one instance, OIEC located an adult son who has now filed for reimbursement for the cost of his father's funeral. In another instance OIEC located a child as a result of a State Representative's efforts. OIEC is thankful to all Legislative staff efforts in helping these families during these difficult times.

Texas recorded 457 work-related fatalities in 2008, a 13 percent decrease compared to 2007 when 528 fatalities occurred. Nationally, there were 5,071 fatal work injuries in 2008, a decrease of 20 percent from the revised total of 5,657 in 2007 according to the most recently available data released August 20, 2009 by the United States Department of



Labor, Bureau of Labor Statistics (BLS), Census of Fatal Occupational Injuries (CFOI).

Motor vehicle operators experienced the largest number of fatalities in Texas in 2008 (104 incidents), which was a 30 percent increase from 2007. Eighty-one percent of those fatalities were due to transportation incidents.

The chart below identifies the number and cause of occupational fatalities since 1998.<sup>29</sup>

**Annual Number of Fatal Occupational Injuries in Texas by Event, 1998-2008**

Event or exposure	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Contact with objects and equipment	77	68	91	85	65	70	77	80	88	86	69
Struck by object	41	35	53	53	38	44	49	52	52	47	42
Falls	59	55	76	68	69	52	61	54	60	77	57
Fall to lower level	57	51	73	65	64	47	58	50	54	72	53
Exposure to harmful substances or environments	74	54	64	54	42	51	35	63	54	66	32
Contact with electrical current	42	35	34	34	26	36	21	38	35	39	14
Transportation incidents	213	204	216	209	158	201	194	200	202	193	200
Highway incidents	122	130	135	141	104	118	121	132	129	133	137
Aircraft incidents	15	9	25	12	7	29	28	7	6	5	16
Fires and explosions	21	16	21	22	19	27	18	31	23	17	23
Assaults and violent acts	79	71	101	96	63	90	54	67	59	86	76
Homicides	60	59	82	69	54	69	37	46	45	70	55
Other or not reported	-	-	3	-	-	-	-	-	3	-	-

**Joint Brown Bag Educational Sessions.** OIEC and DWC are jointly hosting brown bag education sessions in each field office from June to the end of August 2010. The purpose of the brown bag educational sessions is for employees and employee organizations, employers, insurance carriers, claim adjusters, case managers, attorneys, and the general public to learn more about the unique relationship of the two separate state agencies that are co-located in the field offices throughout Texas and their different roles and responsibilities. An open forum will also be held in which participants may ask questions and have a general discussion. These sessions are free to all participants. Individual injured employee workers' compensation cases are discouraged at these sessions to protect injured employee confidential medical information.

**OIEC Rulemaking.** Recently OIEC completed and adopted two new rulemaking initiatives: §276.4 Sick Leave Pool Program and §276.6 Notice of Injured Employee Rights and Responsibilities. Section 276.4 was adopted as a result of a requirement of Texas Government Code §661.002(c). The Government Code requires state agencies to adopt rules relating to the agency's sick leave pool program. Adopted new §276.4 alleviates hardship caused to an OIEC employee and an employee's immediate family if a

<sup>29</sup> Source: Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC), Census of Fatal Occupational Injuries (CFOI) in cooperation with the Bureau of Labor Statistics, U.S. Department of Labor.



catastrophic injury or illness forces an employee to exhaust all sick leave and lose compensation from the state. This section is also needed to designate a pool administrator and to establish policy, operating procedures, and forms for the administration of the sick leave pool.

Section 276.6 was adopted to implement Texas Labor Code §404.109 as a result of House Bill 673 (Sponsor: Chairman Solomons) that was passed by the 81st Texas Legislature, Regular Session, 2009. Texas Labor Code requires the Public Counsel to adopt the *Notice of Injured Employee Rights and Responsibilities* in the form and manner prescribed by the Public Counsel, after consultation with the Commissioner of Workers' Compensation to be distributed by DWC.

***Four-Year Review of All Agency Rules.*** In May 2010, OIEC considered for re-adoption, revision, or repeal all sections of its existing rules as required by Texas Government Code §2001.039, which specifies that all state agencies review their rules every four years. OIEC's existing rules are in Chapter 276 of Title 28, Part 6, of the Texas Administrative Code and include:

- §276.1 Definitions
- §276.2 The Mission of the Office of Injured Employee Counsel
- §276.3 Rulemaking Petition
- §276.4 Sick Leave Pool
- §276.5 Employer's Notification of Ombudsman Program to Employees
- §276.6 Notice of Injured Employee Rights and Responsibilities
- §276.10 Ombudsman Training Program and Continuing Education
- §276.11 Access to Injured Employee Medical Documentation
- §276.12 Procedures for Private Meetings with Unrepresented Injured Employees Prior to a Workers' Compensation Proceeding

OIEC considered whether the reasons for initially adopting the rules continue to exist and whether the rules should be repealed, re-adopted, or re-adopted with amendments. OIEC also considered whether this chapter was obsolete or was consistent with current procedures and practices of OIEC. Notice of the review was published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3509). OIEC received no written comments regarding the review of Chapter 276. OIEC has determined at this time that the reasons for adopting Chapter 276 continue to exist, and are re-adopted in their present form.

***Deepwater Horizon Oil Spill Impact on OIEC.*** A memorandum of understanding (MOU) between the Occupational Safety and Health Administration (OSHA), Department of Labor, and the Federal on Scene Coordinator, Department of Homeland Security has been signed concerning worker safety and health issues related to the Deepwater Horizon oil spill response in the Gulf of Mexico. The MOU solidifies the close working relationship between the Coast Guard and OSHA, and establishes a specific mechanism for



coordination between the Deepwater Horizon FOSC and OSHA. The MOU furthers joint efforts to monitor compliance with safety standards and to protect workers.<sup>30</sup>

Although efforts are being made to minimize the number of injuries that may be sustained in the cleanup process of the oil spill, there are many risks. Marine oil spill responders face a variety of health and safety hazards, including fire and explosion, oxygen deficiency, exposure to carcinogens and other chemical hazards, heat and cold stress, and safety hazards associated with working around heavy equipment in a marine environment.<sup>31</sup>

While some injuries that may be sustained during the cleanup process of the oil spill may be covered under the Longshore and Harbor Workers' Compensation Act, or other state's workers' compensation laws, some of the injures may be covered under the Texas Workers' Compensation System.

In an article published by David Depaolo, president of WorkCompCentral, he stated “this disaster will also prove to be a huge burden on the workers' compensation industry for many, many years and that rates both in the directly affected states, and even those not directly affected will sky rocket. I anchor my belief in several disassociated factors;

- 1) toxic exposure – workers who come into contact with the environment polluted by this spill are going to be subjected to significant toxic levels of hydrocarbon, and they don't need to be in direct contact with it.
- 2) payroll decomposition – work comp is based on payroll; entire industries along the Gulf coast are going to disappear, ergo so are jobs, ergo so will premium.
- 3) reinsurance availability – IF reinsurance is going to be offered in the next few years, it will cost a fortune; already reinsurance for Gulf states insurers are being raised by 50 percent, and this is just the start.
- 4) double-dip recession – the economists have warned at the beginning of this recession that this one was different, and that there was a real risk of a “double-dip” recession should consumers not step and start spending or if there was a big enough disaster; we now have a disaster that will decimate hundreds of thousands of jobs and with that any prospect of increased consumer spending (and that doesn't count the decline in spending when the price tag of this spill hits the pumps in the form of fuel price increases and taxes to pay for the clean up).”<sup>32</sup>

<sup>30</sup> Source: OSHA News Release Number: 10-0825-NAT; [06/10/2010]. Retrieved June 11, 2010, from the United States Department of Labor Website at <http://www.dol.gov/opa/media/press/osh/OSHA20100825.htm>. To download a copy of the MOU, go to: [https://www.osha.gov/pls/oshaweb/owadispl.show\\_document?p\\_table=MOU&p\\_id=1002](https://www.osha.gov/pls/oshaweb/owadispl.show_document?p_table=MOU&p_id=1002).

<sup>31</sup> Source U.S. Department of Labor publication *Training Marine Oil Spill Response Workers under OSHA's Hazardous Waste Operations and Emergency Response Standard* <http://www.osha.gov/Publications/3172/3172.html>. Viewed June 11, 2010.

<sup>32</sup> Deepwater Horizon is a Work Comp Disaster (All States) by David Depalo on Mon Jun 07, 2010 5:07 am. Viewed June 11, 2010 at <http://forums.workcompcentral.com/viewtopic.php?f=37&t=803&sid=018598daebf1d18c6544cc9d6460741#p3266>.



It remains to be seen how the oil spill will affect the Texas Workers' Compensation System; however, OIEC will be available to assist, educate, and advocate on behalf of all employees who are injured on the job or acquire an occupational disease due to this disaster.

***Sunset Advisory Commission Review.*** OIEC began the Sunset Review process by developing and submitting a Self Evaluation Report (SER) to the Sunset Advisory Commission in 2009. The SER identified problems, opportunities, and issues that the agency felt should be considered in the Sunset Review. Sunset Staff solicited input from interest groups and professional organizations, and encouraged public input and discussion of the agency functions. Sunset Staff collected and evaluated information from extensive interviews with agency personnel, performance reports, operational data, and other sources. After the evaluation phase of the review was complete, Sunset Staff published a report containing recommendations for statutory change by the Legislature and recommendations for agency management to implement to improve internal operations.

A summary of key recommendations by Sunset Advisory Commission Staff and OIEC's response to the recommendations are identified below:

- ***Continue OIEC for 12 years.***  
This recommendation would continue OIEC as an independent agency, responsible for aiding injured employees in the workers' compensation system.

OIEC agrees with the staff's findings that Texas has a continued interest in aiding injured employees trying to navigate the workers' compensation system and that OIEC is and should continue to be the sole entity that assists, educates, and advocates on behalf of the injured employees of Texas.

- ***Apply standard Sunset across-the-board requirements to the Office of Injured Employee Counsel.***

This recommendation would require OIEC to maintain a system to promptly and efficiently act on complaints filed with OIEC. The language would require OIEC to maintain information on the parties to a complaint, the subject matter, a summary of results, and the disposition. The recommendation also would require OIEC to make information about its complaint procedures public and periodically notify the complaint parties of the status of the complaint.

The recommendation would also ensure that OIEC develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expense. This requirement for alternative dispute resolution would not affect the way OIEC participates in TDI's



administrative dispute resolution process. In addition, the required policy would not affect dispute resolution that falls under TDI's authority through OIEC's administrative attachment to that agency.

OIEC takes internal and external complaints seriously. It is a top priority of agency management to ensure complaints are handled promptly and properly, which is exhibited by the two internal audits conducted in the area of complaint handling at the direction of agency management. OIEC has taken the steps to ensure that the agency is already in compliance with the Sunset Staff Across-The-Board Recommendation regarding complaints and the complaint resolution process.

OIEC has formed a committee that is currently developing alternative procedures for rulemaking and dispute resolution, which will conform to the State Office of Administrative Hearings model guidelines. OIEC would like to thank Sunset Advisory Commission Staff for recommending this helpful business process improvement.

- ***Direct OIEC to work with DWC to ensure injured employees are fully prepared by Ombudsmen before attending a DWC Benefit Review Conference.***

This recommendation would direct OIEC to take steps toward reducing the number of rescheduled proceedings at DWC, through efforts by Ombudsmen to fully prepare injured employees they are assisting. These efforts could include refraining from scheduling proceedings until after an Ombudsman has initially met with an injured employee, scheduling the Ombudsman's initial meeting with an injured employee within a certain timeframe before a proceeding, or ensuring certain important documents are possessed by the injured employee before attending a proceeding. This recommendation would work in concert with recommendation one of DWC recommendations, which would require all parties to communicate preparedness before attending a Benefit Review Conference.

OIEC has taken numerous steps to ensure injured employees are fully prepared prior to entering the DWC administrative dispute resolution system. OIEC procedures have been changed to fully implement the agency's early intervention efforts. The fruits of these efforts will be reflected in data which will be available at the end of the fiscal year 2010.

OIEC notes it is difficult to discourage its customers from entering the dispute resolution system if they are not fully prepared but also understands the paramount need to ensure State resources are used efficiently and effectively.

- ***Limit OIEC's authority to access claim files for injured employees OIEC is not directly assisting.***

This recommendation would remove existing language that excepts OIEC from the confidentiality requirements surrounding claim file information and that directs DWC to release such information to OIEC. The recommendation would also remove language granting OIEC broad access to information from all executive



agencies. Instead, the recommendation would clarify that OIEC has the same access to information that another, similarly situated party has and is allowed access to a claim file when officially assisting an injured employee.

Until the implementation of DWC's new computer system occurs, the changes made by the recommendation would require OIEC to self-enforce the legal limits on its authority to access information. OIEC would be required to work with DWC to implement new procedures by which OIEC will request information from DWC. These procedures should reflect the practical needs of OIEC's day-to-day use of the DWC computer system, yet strive to reflect the manner in which other system participants request and access information. The recommendation is not intended to require OIEC to use the Public Information Act to request information from DWC, which would be unnecessarily time consuming.

In addition, the recommendation would not restrict OIEC's access to information it uses to generally educate injured employees and death beneficiaries about the existence of OIEC and its services, which it does to fulfill its statutory duty to assist them in obtaining workers' compensation benefits. Such information may include the names and contact information of employees whose injuries are reported to DWC, but would not include other information included in the claims files, such as sensitive medical claim information.

As a result of OIEC's Legislative recommendation to the 81<sup>st</sup> Legislature, House Bill (HB) 673 substantially amended Section 404.111 to reduce OIEC's access to attorney-work product and enhance both civil and criminal penalties for any employee that improperly disclosed confidential claimant information. This statutory change was a direct result of legislation crafted by the author of workers' compensation reform, the Workers' Compensation Commissioner, and the Public Counsel. OIEC agrees with Sunset Advisory Commission Staff that OIEC has not misused its authority. OIEC's management is sensitive to the appearance of impropriety, and as the sole advocacy agency for the injured employee, it understands the importance of confidential claimant information.

Accessing claimant information is necessary for the agency to fulfill its cause and case advocacy roles. The agency accesses individual claimant information only after the injured employee authorizes the release of information and understands the agencies services. Aggregate information is needed to advocate on behalf of injured employees as a class. OIEC abides by restrictions pursuant to HB 673, and believes no further restrictions need to be made in light of severe penalties laid out in 404.111 for disclosing confidential information.

- ***Direct OIEC to work with DWC to complete firewalls in the new database system.*** This recommendation would direct OIEC to work with DWC during its development of the new computer system to include proper firewalls restricting information. These firewalls would ensure that OIEC has the appropriate access to information needed to perform its duties without receiving information that is



statutorily protected.

OIEC will work with DWC during its development of the new computer system to include proper firewalls restricting information from field office staff and has formed a committee to work with DWC staff to develop a new system to ensure appropriate access of information to OIEC staff. OIEC’s management is sensitive to the appearance of impropriety and is committed to working with TDI-DWC in ensuring that a fair administrative dispute resolution process where issues are resolved satisfactorily amongst system participants.

Sunset will provide draft legislation to the Legislature to continue the agency for up to 12 years, and correct issues identified in the Sunset review. Although not required by law, the Commission’s legislative members traditionally introduce and carry Sunset legislation. Results of the Sunset legislation will impact OIEC as of September 1, 2011.

**Selected FY 2009 and FY 2010 Outcome Measure Results.** As a result of OIEC’s continuing effort to meet its goals, OIEC’s performance in FY 2010 has proven to exceed the performance of FY 2009.

Measure	FY 2009	FY 2010 (6 months)
<i>Outcome Measure 1.1 oc 1</i> Percentage of Disputes Resolved by the Office of Injured Employee Counsel Prior to Holding a Texas Department of Insurance Administrative Dispute Resolution Proceeding	22%	50%
<i>Outcome Measure 1.1 oc 2</i> Percentage of Proceedings Held Before the Division of Workers' Compensation in Which the Injured Employee was Assisted by an Ombudsman	38%	39%
<i>Outcome Measure 3.1 oc 3</i> Percentage of Issues Raised at Contested Case Hearings (CCH) Where the Injured Employee Prevailed When Assisted by an Ombudsman	39%	39%
<i>Outcome Measure 3.1 oc 4</i> Percentage of Issues Raised on Appeal Where the Injured Employee Prevailed When Assisted by an Ombudsman	35%	36%

**Review of Personnel Policies and Procedural Systems.** Pursuant to Texas Labor Code §21.451-456 and Texas Administrative Code, Title 40, Part 20, Chapter 819, Rule §819.17, the Texas Workforce Commission’s - Civil Rights Division conducted a management review of OIEC’s personnel policies and procedural systems. It was determined through the review that OIEC’s personnel policies and procedures comply with the Texas Commission on Human Rights Act. OIEC was certified as compliant in all categories of the review, which include hiring and promotions, performance evaluations, disciplinary actions, work place accommodations, and the EEO policy including sexual harassment.



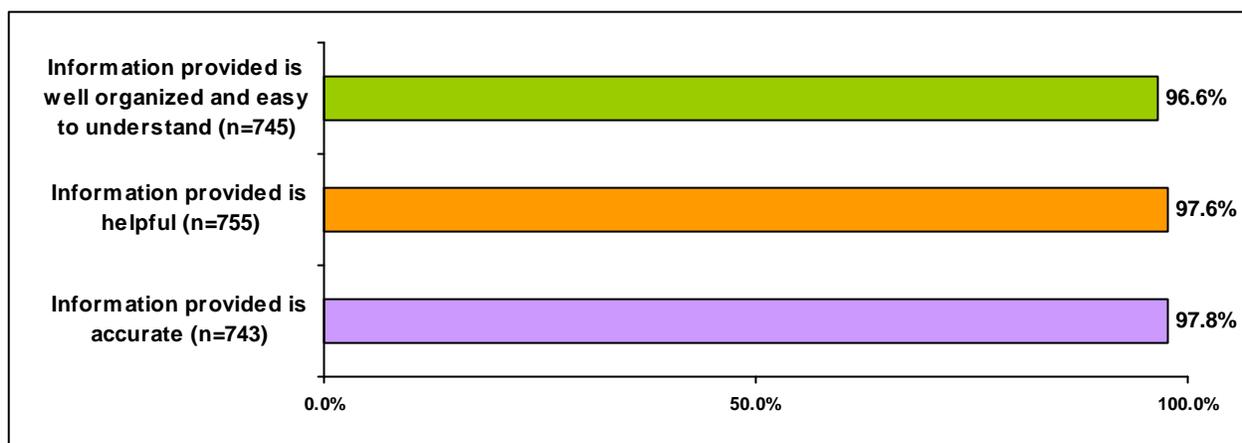
**Benchmarking Efforts.** OIEC is a member of the International Association of Industrial Accident Boards and Commissions (IAIABC). The IAIABC is an association of government agencies that administer and regulate their jurisdiction’s workers’ compensation acts. Along with these government entities, various private organizations involved in the delivery of workers’ compensation coverage and benefits participate in the IAIABC. Since its inception in 1914 the IAIABC has worked to improve and clarify laws, identify model laws and procedures, develop and implement standards, and provide education and information sharing. OIEC shares “Best Practices” with the IAIABC and incorporates other states’ best practices that would enhance the services provided to the injured employees of Texas.

**Customer Satisfaction Survey.** In an effort to measure and continually improve the service that OIEC provides to its customers, OIEC enlarged the scope of the agency’s Customer Satisfaction Survey. The revised survey includes questions about internet usage, purpose of visits to OIEC, and the quality of services and information provided. The survey is available to all customers who have contact with OIEC and measures the quantity and quality of service it provides.

The 2009 Customer Satisfaction Survey indicated that more than 90 percent of the injured employees who took the 2009 survey responded that OIEC’s quality of service was “excellent” or “good” in the following categories:

- Staff is courteous and helpful;
- Staff is easily accessible;
- Staff is knowledgeable;
- Staff is responsive to concerns; and
- Staff provided service in a timely manner.

Additionally, more than 95% of survey participants rated the quality of information provided as “excellent” or “good” as shown in the chart below.



A new 2010 survey is being developed and will be available on OIEC's website and at each field office location by September 1, 2010.

***Commitment to Open Government.*** In an effort to promote better communication internally and externally, OIEC has made available the following information on its website:

- OIEC's Business Plan -- to provide an operational road map for achieving agency goals, consistent with its enabling statute, mission, strategic planning goals, and strategies to internal and external customers. The plan describes in specific terms who is responsible, what actions will be taken, within what time frame, and how the agency will know when it has accomplished the items in its plan. The plan is an accountability and coordination tool to keep all employees focused on the most important activities in order to fulfill the organization's mission effectively and efficiently. A copy of the agency's business plan can be found on OIEC's website under Miscellaneous at <http://www.oiec.state.tx.us/resources/publications.html>.
- OIEC's Organizational Chart -- to provide internal and external customers a view of the organization of agency staff. OIEC's Organization Chart can also be found in Appendix B.
- OIEC's Budget -- to provide internal and external customers a view of the agency's budget and how taxpayer's money is spent.
- OIEC's quarterly performance measure reports -- to keep interested parties updated on how the agency is doing in meeting their targeted goals.
- OIEC's Reports -- to provide information to the public about OIEC's Strategic Plan, Legislative Report, and other reports that highlight OIEC's role, activities, successes, issues, and future initiatives.

***Referral Services Assistance.*** OIEC refers injured employees to the Department of Assistive and Rehabilitative Services (DARS), the Texas Workforce Commission (TWC), TDI or other social or regulatory services, such as the Health and Human Services Commission (HHSC) or licensing boards, to assist injured employees with:

- ✓ finding employment,
- ✓ training opportunities,
- ✓ returning to work,
- ✓ filing complaints with appropriate licensing boards or other regulatory agencies,
- ✓ obtaining financial assistance, and
- ✓ reporting alleged administrative violations.

OIEC, TDI, and DARS have entered into a Memorandum of Agreement (MOA) to ensure that the most effective referral process exists between agencies.

OIEC also makes referrals to the State Bar for assistance in finding legal representation of



an injured employee, for instance, district court cases, where an attorney is critical and the Ombudsman are not permitted to provide assistance. Additionally, the Deputy Public Counsel serves as a Director of the plaintiff's Bar of the Workers' Compensation section of the State Bar to gather attorney input and increase advocacy amongst the community of attorneys who represent injured employees.

In FY 2009, OIEC made over 6,000 referrals to other agencies, social, and regulatory services. During the first six months of FY 2010, OIEC has already made more than 4,500 referrals.

***Miscellaneous OIEC Accomplishments.*** Other miscellaneous accomplishments by OIEC include the following:

- Ombudsman Leads in all of the field offices updated the social services directory.
- Developed procedure/guidelines for OIEC employees to use when dealing with potentially violent, suicidal, and homicidal injured employees.
- Conducted medical workshops for the medical community across Texas.
- Created a standardized letter for the OIEC Team to use to request evidence-based medical opinions to establish medical necessity from the injured employee's treating doctor.
- Coordinated training in medical research with medical school librarians.
- Updated, reviewed and finalized many procedures.
- Developed an Early Intervention/Index checklist.
- Created "Helpful Tips" and posted on website.
- Developed specialized form letters for consistency and posted on website.
- Developed a telephone monitoring evaluation process.
- Developed a uniform policy to ensure injured employees file a DWC041 form.
- Provided a directive that contains in-depth direction for providing professional customer service.
- All RSAs are part of the College of State Bar.
- Director of Legal Services nominated for public service award for Texas Women in State Government.
- OIEC Administration and Operations staff serve as Chair and Vice-Chair of the Mid-Size Agency Coordinating Council (MACC).

***Survey of Employee Engagement.*** At the beginning of calendar year 2010, OIEC employees were asked to participate in the *Survey of Employee Engagement*, formerly known as the *Survey of Organizational Excellence*. The survey provides information about the employees' perceptions of the effectiveness of the agency, and the employees' satisfaction with the agency. The survey is provided by the University of Texas at Austin, School of Social Work, and most state agencies participate in the survey.

This is the second time OIEC employees have taken this survey. In 2008, OIEC had a response rate of 82%. This year, 100% of OIEC employees responded. OIEC is very proud of this outstanding response rate, which is the first time in State history that the



survey was completed with a 100% response rate. The 100% response rate means that OIEC employees have an investment in the organization, want to see the organization improve, and generally have a sense of responsibility to the organization. Results were provided to OIEC employees, and a committee was formed to identify ways to focus on and improve the areas of concern; most specifically, employee compensation.

According to the survey results, the three areas of agency strengths include the following:

➤ **Supervision Score: 439**

The Supervision construct provides insight into the nature of supervisory relationships within the organization, including aspects of leadership, the communication of expectations, and the sense of fairness that employees perceive between supervisors and themselves.

High Supervision scores indicate that employees view their supervisors as fair, helpful, and critical to the flow of work.

➤ **Strategic Score: 430**

The Strategic construct reflects employees' thinking about how the organization responds to external influences that should play a role in defining the organization's mission, vision, services, and products. Implied in this construct is the ability of the organization to seek out and work with relevant external entities.

High scores indicate employees view the organization as able to quickly relate its mission and goals to environmental changes and demands. It is viewed as creating programs that advance the organization and having highly capable means of drawing information and meaning from the environment.

➤ **External Communication Score: 427**

The External Communication construct looks at how information flows into the organization from external sources, and conversely, how information flows from inside the organization to external constituents. It addresses the ability of organizational members to synthesize and apply external information to work performed by the organization.

High scores indicate that employees view their organization as communicating effectively with other organizations, its clients, and those concerned with regulation.

Survey results also indicated the three areas of concern, which are identified below:

➤ **Pay Score: 257**

The Pay construct addresses perceptions of the overall compensation package offered by the organization. It describes how well the compensation package 'holds up' when employees compare it to similar jobs in other organizations.

Low scores suggest that pay is a central concern or reason for satisfaction or



discontent. In some situations pay does not meet comparables in similar organizations. In other cases individuals may feel that pay levels are not appropriately set to work demands, experience and ability. Cost of living increases may cause sharp drops in purchasing power, and as a result, employees will view pay levels as unfair.

➤ **Information Systems Score: 374**

The Information Systems construct provides insight into whether computer and communication systems enhance employees' ability to get the job done by providing accessible, accurate, and clear information. The construct addresses the extent to which employees feel that they know where to get needed information, and that they know how to use it once they obtain it.

Average scores suggest that room for improvement exists and there is frustration with securing needed information. In general, a low score stems from these factors: traditional dependence on word of mouth, low investment in appropriate technology, and possibly some persons using their control of information to control others. Remediating Information Systems problems requires careful study to determine the correct causative factors.

➤ **Job Satisfaction Score: 384**

The Job Satisfaction construct addresses employees' attitudes about the overall work situation. This construct looks at the degree to which employees intrinsically like their jobs and the total work environment. It focuses upon both the job itself and the availability of resources to do the job.

High scores indicate that employees are pleased with working conditions and their opportunity to make accomplishments at work.

Although the area of Job Satisfaction scored relatively high at 384, this area was one of the three lowest scoring constructs.

Additional information regarding the Survey of Employee Engagement can be found in Appendix F.



## AGENCY GOALS

**Goal 1 -- To assist injured employees in the workers' compensation system and protect their rights.**

**Goal 2 -- To increase injured employee education regarding their rights and responsibilities and refer them to local, state, and federal programs.**

**Goal 3 -- To advocate on behalf of injured employees as a class.**



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## OBJECTIVES AND OUTCOME MEASURES

**Objective 1.1** -- To provide assistance to all unrepresented injured employees requesting assistance in each year through 2015.

### Outcome Measures

**1.1 oc 1** Percentage of disputed issues that are resolved by the Office of Injured Employee Counsel prior to holding a Texas Department of Insurance administrative dispute resolution proceeding

**1.1 oc 2** Percentage of Texas Department of Insurance administrative dispute resolution proceedings in which an Ombudsman assisted an unrepresented injured employee

**1.1 oc 3** Percentage of issues raised at Contested Case Hearings where the injured employee prevailed when assisted by an Ombudsman

**1.1 oc 4** Percentage of issues raised on appeal where the injured employee prevailed when assisted by an Ombudsman

**Objective 2.1** To increase the knowledge of all injured employees and refer them to local, state, and federal programs each year through 2015.

### Outcome Measures

**2.1 oc 1** Percentage of injured employees reached about their rights and responsibilities in the workers' compensation system

**Objective 3.1** -- To advocate on behalf of injured employees as a class in judicial, legislative, rulemaking, and administrative processes and ensure injured employee's rights are protected each year through 2015.

### Outcome Measures

**3.1 oc 1** Percentage of adopted workers' compensation rules analyzed

**3.1 oc 2** Percentage of adopted workers' compensation rules in which the Office of Injured Employee Counsel participated

**3.1 oc 3** Percentage of adopted workers' compensation rules changed for the benefit of injured employees as a result of the Office of Injured Employee Counsel participation



**STRATEGIES and OUTPUT,  
EFFICIENCY, and EXPLANATORY MEASURES**

**Strategy 1.1.1** -- Prepare unrepresented injured employees and assist them in Texas Department of Insurance's administrative dispute resolution proceedings.

**Output Measures**

**1.1.1 op 1** Number of injured employees prepared for Benefit Review Conference by an Ombudsman

**1.1.1 op 2** Number of Benefit Review Conferences with Ombudsman assistance

**1.1.1 op 3** Number of injured employees prepared for a Contested Case Hearing by an Ombudsman

**1.1.1 op 4** Number of Contested Case Hearings with Ombudsman assistance

**1.1.1 op 5** Number of injured employees prepared for an appeal by an Ombudsman

**Efficiency Measures**

**1.1.1 ef 1** Average number of days to resolve a disputed issue prior to entering the Texas Department of Insurance administrative dispute resolution system

**Explanatory Measures**

**1.1.1 ex 1** Average indemnity cost avoided per injured employee assisted by an Ombudsman

**1.1.1 ex 2** Number of disputed issues resolved prior to entering the Texas Department of Insurance administrative dispute resolution system

**Strategy 2.1.1** -- Provide injured employees with information about their rights and responsibilities and refer them to local, state, and federal programs offering financial assistance, rehabilitation, work placement, or social services.

**Output Measures**

**2.1.1 op 1** Number of injured employees reached about their rights and responsibilities in the workers' compensation system

**2.1.1 op 2** Number of telephone calls made or received by the Office of Injured Employee Counsel where injured employees were educated or assisted

**2.1.1 op 3** Number of in-person visits (walk-ins) by injured employees assisted at



local field offices by the Office of Injured Employee Counsel

**2.1.1 op 4** Number of public outreach presentations performed

**2.1.1 op 5** Number of referrals to the Department of Assistive and Rehabilitative Services, the Texas Workforce Commission, the Texas Department of Insurance, or other social or regulatory services

**Efficiency Measure**

**2.1.1 ef 1** Average number of days from the date of injury to the date an injured employee is sent the *Notice of Injured Employee Rights and Responsibilities in the Workers' Compensation System*

**Strategy 3.1.1** -- Advocate on behalf of injured employees as a class in judicial, legislative, rulemaking, and administrative processes and ensure injured employee's rights are protected.

**Output Measures**

**3.1.1 op 1** Number of adopted workers' compensation rules analyzed by the Office of Injured Employee Counsel

**3.1.1 op 2** Number of adopted workers' compensation rules in which the Office of Injured Employee Counsel participated

**3.1.1 op 3** Number of adopted workers' compensation rules changed for the benefit of injured employees as a result of the Office of Injured Employee Counsel participation

**3.1.1 op 4** Number of assists a Regional Staff Attorney provides to an Ombudsman

**Explanatory Measure**

**3.1.1 ex 1** Number of workers' compensation rules adopted



## **TECHNOLOGY RESOURCES PLANNING**

This section is not applicable to OIEC. OIEC is administratively attached to TDI, and TDI, in cooperation with OIEC, handles all technology issues. Technology Resources Planning in the Texas Workers' Compensation System may be examined by referring to TDI's Strategic Plan and other State filings.





# *Appendices*





## APPENDIX A

### Description of the Agency's Planning Process

OIEC's planning process is a progressive aspect of the agency's continuing effort to effectively serve the injured employees of Texas. A management (business) plan was developed as a tool to reach OIEC's goals and performance measures, and serves as a communication medium to coordinate the agency's programs. The business plan is updated and provided to all OIEC employees each month to reflect changing needs and priorities and identify accomplishments. A copy of the agency's business plan can be found on OIEC's website at <http://www.oiec.state.tx.us/resources/publications.html> under Miscellaneous.

Additionally, internal performance measures are analyzed and submitted monthly to all OIEC staff throughout the year to keep everyone informed of their performance. This information is distributed to each field office and includes performance by location and team. A performance comparison of each field office is included and staff can see how well they are doing and where there are opportunities for improvement.

Key Strategic Plan performance measures are reported to the LBB each quarter through ABEST, including an explanation of any variance for measures in which the performance is more than five percent above or below the targeted goal. A report of all Strategic Plan performance measures is provided to all OIEC staff each quarter. The report includes the monthly, quarterly, and year-to-date performance for each outcome, output, efficiency, and explanatory measure. OIEC staff is also provided with highlights of outstanding performance, and areas in which more focus may be needed during the next quarter.

The five-year Strategic Plan document is developed each even numbered year according to the instructions for preparing and submitting agency strategic plans received from the Legislative Budget Board (LBB) and the Governor's Office of Budget, Planning, and Policy (GOBPP).

The current budget structure is carefully reviewed and recommendations for changes to the budget structure are submitted to the LBB and GOBPP by the required deadline. The revised structure includes the deletion of measures that are not relevant to the appropriation process, revision of the verbiage of measures for clarity and consistency, and the addition of measures that represent OIEC's overall goals, objectives, and strategies.

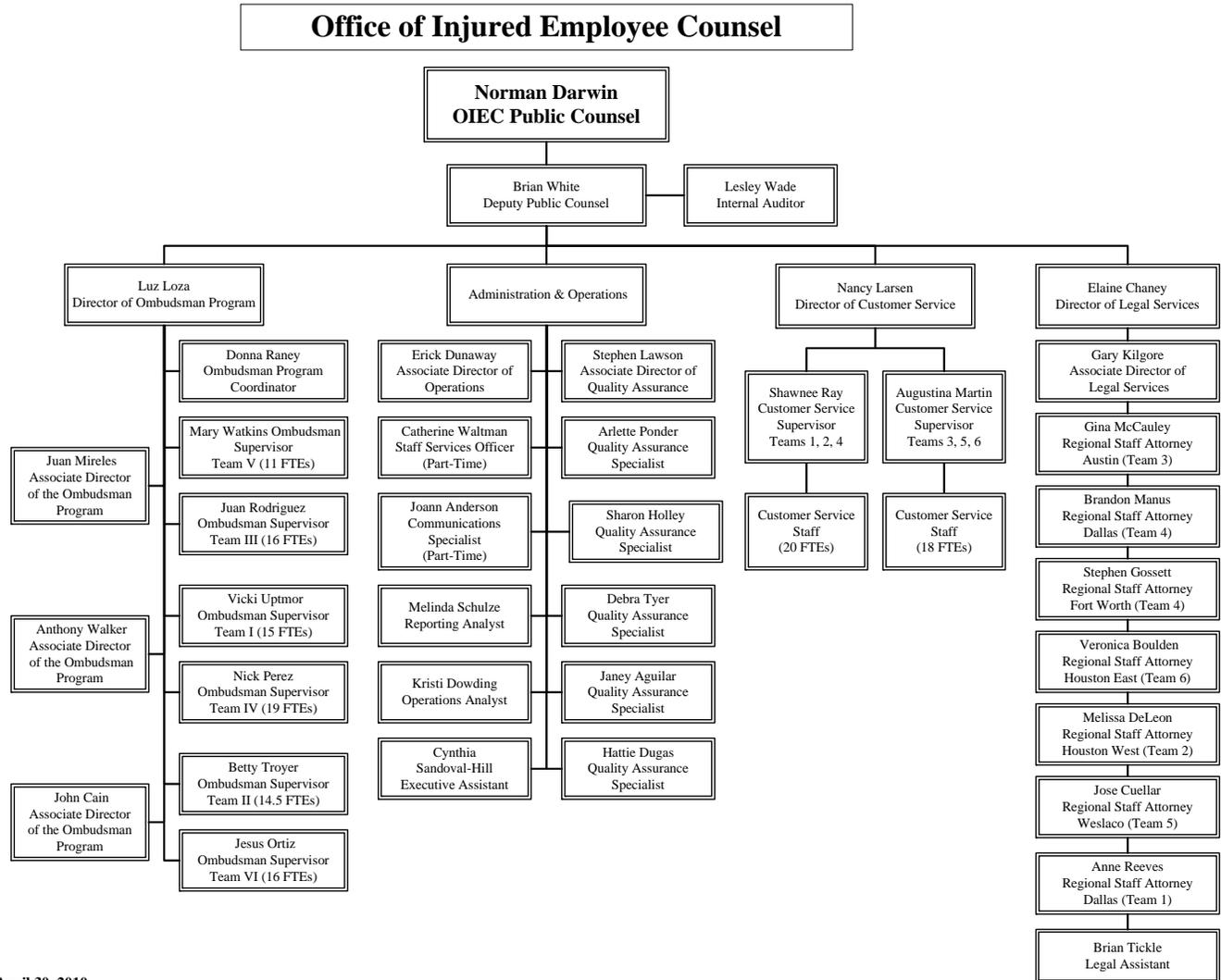
Meetings are held with agency staff as needed to brainstorm and discuss the substance of information included in the Strategic Plan.

A draft of the Strategic Plan document is prepared and provided to staff for review and revision. The final draft is approved by the Public Counsel and Deputy Public Counsel, and submitted according to the strategic plan distribution list by the required deadline.



APPENDIX B

Current Organizational Chart



April 30, 2010



APPENDIX C

Five-year Projections for Outcomes

OUTCOME MEASURE	2011	2012	2013	2014	2015
<b>1.1 oc 1</b> Percentage of disputed issues that are resolved by the Office of Injured Employee Counsel prior to holding a Texas Department of Insurance administrative dispute resolution proceeding	35%	35%	35%	35%	35%
<b>1.1 oc 2</b> Percentage of Texas Department of Insurance administrative dispute resolution proceedings in which an Ombudsman assisted an unrepresented injured employee	41%	41%	41%	41%	41%
<b>1.1 oc 3</b> Percentage of issues raised at Contested Case Hearings where the injured employee prevailed when assisted by an Ombudsman	39%	39%	39%	39%	39%
<b>1.1 oc 4</b> Percentage of issues raised on appeal where the injured employee prevailed when assisted by an Ombudsman	36%	36%	36%	36%	36%
<b>2.1 oc 1</b> Percentage of injured employees educated about their rights and responsibilities in the workers' compensation system	96%	96%	96%	96%	96%
<b>3.1 oc 1</b> Percentage of adopted workers' compensation rules analyzed	100%	100%	100%	100%	100%
<b>3.1 oc 2</b> Percentage of adopted workers' compensation rules in which the Office of Injured Employee Counsel participated	100%	100%	100%	100%	100%
<b>3.1 oc 3</b> Percentage of adopted workers' compensation rules changed for the benefit of injured employees as a result of the Office of Injured Employee Counsel participation	78%	78%	78%	78%	78%



## APPENDIX D

### LIST OF MEASURE DEFINITIONS FY 2012-2013

**Goal 1** -- To assist injured employees in the workers' compensation system and protect their rights.

**Objective 1.1** -- To provide assistance to all unrepresented injured employees requesting assistance in each year through 2015.

#### Outcome Measures

**1.1 oc 1** Percentage of disputed issues that are resolved by the Office of Injured Employee Counsel prior to holding a Texas Department of Insurance administrative dispute resolution proceeding

Definition: The percentage of disputed issues that are received and resolved by the Office of Injured Employee Counsel before a Texas Department of Insurance administrative dispute resolution proceeding is held.

Disputed issues: Disagreements pertaining to workers' compensation income or medical benefits (including but not limited to: compensability, average weekly wage, disability, impairment rating, maximum medical improvement, etc.).

Resolved: A satisfactory agreement reached by both parties of a disputed issue that is facilitated by the Office of Injured Employee Counsel which does not proceed to the Texas Department of Insurance administrative dispute resolution system.

Data Limitations: Particular data, such as the issue code and date, can be extracted as long as the information is entered in the same location in each log. Data entry errors may affect the confidence level of the data reported. Disputed issues in abeyance-status are included in this measure as a resolution.

Data Source: A claims database maintained by the Texas Department of Insurance is used to enter and maintain disputed issue codes and action codes. Disputed issues are received by the Office of Injured Employee Counsel from an unrepresented injured employee. The disputed issues are entered into a log in the database and identified by a specific issue code. The action codes identify the action performed on the disputed issue, such as 1) dispute is identified, 2) dispute is resolved, and 3) dispute is in abeyance-status.

Methodology: Sum the number of disputed issues that are resolved prior to holding a Benefit Review Conference during the reporting period to obtain total (A). Sum the total number of disputed issues that were placed in abeyance-status during the reporting period to obtain total (B). Sum (A) and (B) to obtain total (C). Sum the number of disputed



issues that were received during the reporting period to obtain total (D). Divide (C) by (D) to determine the percentage.

Purpose: The purpose of this measure is to monitor the Office of Injured Employee Counsel's early intervention effectiveness in resolving disputed issues for unrepresented injured employees prior to holding an administrative dispute resolution proceeding. Disputes resolved early in the process provide injured employees a prompt resolution to the dispute while saving the State resources by resolving disputes prior to entering into the Texas Department of Insurance's administrative dispute resolution system.

Calculation Type: N

New Measure: N

Desired Performance: H

**1.1 of 2** Percentage of Texas Department of Insurance administrative dispute resolution proceedings in which an Ombudsman assisted an unrepresented injured employee

Definition: The percentage of Texas Department of Insurance administrative dispute resolution proceedings in which an Ombudsman assisted an unrepresented injured employee. In this measure, a Texas Department of Insurance administrative dispute resolution proceeding is defined as a Benefit Review Conference and/or Contested Case Hearing.

Data Limitations: Data entry errors by Texas Department of Insurance staff may serve as a data limitation.

Data Source: An agency claim database maintained by the Texas Department of Insurance is used to capture the proceeding information. Information is entered by Texas Department of Insurance staff.

Methodology: Sum the total number of Benefit Review Conferences and Contested Case Hearings during the reporting period to capture total (A). Sum the total number of proceedings where an Ombudsman assisted an unrepresented injured employee during the reporting period to capture total (B). Obtain the percentage that (B) represents of (A) by dividing (B) by (A) to determine value (C). Submit (C) represented as a percentage.

Purpose: This measure addresses the agency's statutory duty to assist unrepresented injured employees, through its Ombudsman program, in the Texas Department of Insurance's administrative dispute resolution system.

Calculation Type: N

New Measure: N



Desired Performance: H

**1.1 oc 3** Percentage of issues raised at Contested Case Hearings where the injured employee prevailed when assisted by an Ombudsman

Definition: The percentage of issues raised at a Texas Department of Insurance Contested Case Hearing where an unrepresented injured employee prevailed when assisted by an Ombudsman. One or more disputed issues may be raised at a Contested Case Hearing. An issue where the injured employee prevailed is determined by counting the number of issues where the Hearing Officer rules in favor of the injured employee.

Data Limitations: None

Data Source: A claim database maintained by the Texas Department of Insurance is used to capture the issue/proceeding outcome information. Information is entered by Texas Department of Insurance staff.

Methodology: Sum the total number of issues raised in Texas Department of Insurance Contested Case Hearings where the injured employee was assisted by an Ombudsman during the reporting period to capture value (A). Sum the number of issues where an injured employee prevailed on an issue when assisted by an Ombudsman during the reporting period to capture value (B). Obtain the percentage that (B) represents of (A) by dividing (B) by (A) to determine value (C). Submit (C) represented as a percentage.

Purpose: This measure addresses the agency's statutory duty to assist unrepresented injured employees, through its Ombudsman Program, in the Texas Department of Insurance's administrative dispute resolution system.

Calculation Type: N

New Measure: N

Desired Performance: H

**1.1 oc 4** Percentage of issues raised on appeal where the injured employee prevailed when assisted by an Ombudsman

Definition: The percentage of issues raised on appeal where the unrepresented injured employee prevailed when assisted by an Ombudsman. One or more disputed issues may be raised on appeal. An issue where the injured employee prevailed is determined by counting the number of issues where the Appeals Panel rules in favor of the injured employee.

Data Limitations: None

Data Source: A claim database maintained by the Texas Department of Insurance is used to



capture the issue/proceeding outcome information. Information is data entered by Texas Department of Insurance staff.

Methodology: Sum the total number of issues raised on appeal where the unrepresented injured employee was assisted by an Ombudsman during the reporting period to capture value (A). Sum the number of issues where an injured employee prevailed on an appealed issue when assisted by an Ombudsman during the reporting period to capture value (B). Obtain the percentage that (B) represents of (A) by dividing (B) into (A) to determine value (C). Submit (C) represented as a percentage.

Purpose: This measure addresses the Office of Injured Employee Counsel's statutory duty to assist unrepresented injured employees, through its Ombudsman Program, in the Texas Department of Insurance's administrative dispute resolution system.

Calculation Type: N

New Measure: N

Desired Performance: H

**Strategy 1.1.1** -- Prepare unrepresented injured employees and assist them in Texas Department of Insurance's administrative dispute resolution proceedings.

### **Output Measures**

**1.1.1 op 1** Number of injured employees prepared for Benefit Review Conference by an Ombudsman

Definition: The total number of injured employees prepared for a Benefit Review Conference by an Ombudsman during the reporting period. Ombudsmen meet with each injured employee prior to a Benefit Review Conference to ensure proper preparation for the proceeding.

Data Limitations: None

Data Source: A claim database maintained by the Texas Department of Insurance is used to capture the proceeding preparation information. Information is regularly entered by the Office of Injured Employee Counsel staff.

Methodology: Sum the total number of Benefit Review Conference preparations conducted during the reporting period to capture (A). Submit (A) as a whole number. This calculation excludes counting more than one preparation per dispute and sequence number. Preparation time spent by the Ombudsman without the injured employee present (in person or by telephone) is not counted in this measure.

Purpose: This measure addresses the Office of Injured Employee Counsel's Ombudsman



Program's statutory duty to prepare unrepresented injured employees for a Texas Department of Insurance administrative dispute resolution proceeding.

Calculation Type: C

New Measure: N

Desired Performance: H

**1.1.1 op 2** Number of Benefit Review Conferences with Ombudsman assistance

Definition: The total number of Benefit Review Conferences that occurred during the report period where the unrepresented injured employee was assisted by an Ombudsman.

Data Limitations: None

Data Source: A claim database maintained by the Texas Department of Insurance is used to capture the proceeding attendance information. Information is entered by Texas Department of Insurance staff.

Methodology: Sum the total number of Benefit Review Conferences during the reporting period where the injured employee was assisted by an Ombudsman, including every Benefit Review Conference attended regardless of dispute or sequence number to capture (A). Submit (A) as a whole number.

Purpose: This measure addresses the agency's statutory duty to assist unrepresented injured employees through its Ombudsman Program.

Calculation Type: C

New Measure: N

Desired Performance: H

**1.1.1 op 3** Number of injured employees prepared for a Contested Case Hearing by an Ombudsman

Definition: The total number of injured employees prepared for a Contested Case Hearing by an Ombudsman during the reporting period. An Ombudsman meets with an injured employee prior to a Contested Case Hearing to ensure proper preparation for the proceeding.

Data Limitations: None

Data Source: A claim database maintained by the Texas Department of Insurance is used to capture the proceeding preparation information. Information is entered by Office of



Injured Employee Counsel staff.

Methodology: Sum the total number of Contested Case Hearing preparations conducted during the reporting period to capture (A). Submit (A) as a whole number. The calculation excludes counting more than one preparation per dispute and sequence number to capture (A). Preparation time spent by the Ombudsman without the injured employee present (in person or by telephone) is not counted in this measure.

Purpose: This measure addresses the Office of Injured Employee Counsel’s Ombudsman Program’s statutory duty to prepare unrepresented injured employees for a Texas Department of Insurance administrative dispute resolution proceeding.

Calculation Type: C

New Measure: N

Desired Performance: H

**1.1.1 op 4** Number of Contested Case Hearings with Ombudsman assistance

Definition: The total number of documented Ombudsman attendance at Contested Case Hearings with unrepresented injured employees during the reporting period.

Data Limitations: None

Data Source: A claim database maintained by the Texas Department of Insurance is used to capture the proceeding attendance information. Information is entered by Texas Department of Insurance staff.

Methodology: Sum the total number of Contested Case Hearings during the reporting period where the injured employee was assisted by an Ombudsman, including every Contested Case Hearing attended regardless of dispute and sequence number to capture (A). Submit (A) as a whole number.

Purpose: This measure addresses the agency’s statutory duty to assist unrepresented injured employees through its Ombudsman Program.

Calculation Type: C

New Measure: N

Desired Performance: H

**1.1.1 op 5** Number of injured employees prepared for an appeal by an Ombudsman

Definition: The total number of injured employees prepared by an Ombudsman for an



appeal proceeding before the Texas Department of Insurance during the reporting period. Ombudsmen meet prior to the deadline for filing an appeal with each unrepresented injured employee involved in the appellate process.

Data Limitations: None

Data Source: A claim database maintained by the Texas Department of Insurance is used to capture the proceeding preparation information. Information is entered by Office of Injured Employee Counsel staff.

Methodology: Sum the total number of appeal preparations conducted during the reporting period to capture (A). Submit (A) as a whole number. The calculation excludes counting more than one preparation per dispute and sequence number to capture (A). Preparation time spent by the Ombudsman without the injured employee present (in person or by telephone) is not counted in this measure.

Purpose: This measure addresses the agency's statutory duty to assist unrepresented injured employees through its Ombudsman Program.

Calculation Type: C

New Measure: N

Desired Performance: H

### **Efficiency Measures**

**1.1.1 of 1** Average number of days to resolve a disputed issue prior to entering the Texas Department of Insurance administrative dispute resolution system

Definition: The average number of days to resolve a disputed issue prior to entering the Texas Department of Insurance administrative dispute resolution system.

Disputed Issue: A disagreement pertaining to workers' compensation income or medical benefits (including but not limited to: compensability, average weekly wage, disability, impairment rating, maximum medical improvement, etc.).

Resolved: A satisfactory agreement reached by both parties of a disputed issue that is facilitated by the Office of Injured Employee Counsel which does not proceed to the Texas Department of Insurance administrative dispute resolution system.

Data Limitations: Particular data, such as the issue code and date, can be extracted as long as the information is entered in the same location in each log. Data entry errors may affect the confidence level of the data reported. Disputed issues in abeyance-status are not included in this measure as a resolution.



Data Source: A claims database maintained by the Texas Department of Insurance is used to enter and maintain disputed issue codes and action codes. Disputed issues are received by the Office of Injured Employee Counsel from an unrepresented injured employee. The disputed issues are entered into a database log and identified by a specific issue code. The action codes identify the action performed on the disputed issue, such as 1) dispute is identified, 2) dispute is resolved, and 3) dispute is in abeyance-status.

Methodology: Sum the total number of days from the date the disputed issue is identified to the date the disputed issue was updated in the system as resolved during the reporting period to obtain value (A). Sum the number of disputed issues that are resolved prior to entering into the dispute resolution system during the reporting period to obtain total (B). Divide (A) by (B) to determine the average number of days to resolve the issue.

Purpose: The purpose of this measure is to monitor the Office of Injured Employee Counsel's early intervention effectiveness in resolving disputed issues for unrepresented injured employees prior to entering into an administrative dispute resolution proceeding. Disputes resolved early in the process provide injured employees a prompt resolution to the dispute while saving the State resources by resolving disputes prior to entering into the Texas Department of Insurance's administrative dispute resolution system.

Calculation Type: N

New Measure: Y

Desired Performance: L

### **Explanatory Measures**

**1.1.1 ex 1** Average indemnity cost avoided per injured employee assisted by an Ombudsman

Definition: The average indemnity cost avoided for all injured employees resulting from Ombudsman assistance. Attorneys charge fees for their services and submit fees to the Texas Department of Insurance for approval for payment. An average of these charges on attorney-assisted cases would presumably be charged to any represented injured employee. The Office of Injured Employee Counsel provides Ombudsman assistance free of charge, and therefore, injured employees assisted by an Ombudsman do not incur potential attorneys' fees, which could then be subtracted from their indemnity benefits.

Data Limitations: This methodology is actually calculating (estimating) the average indemnity benefits paid to attorneys. It is assumed this is the average cost saved by injured employees accepting Ombudsman assistance.

Data Source: An attorney fee system database maintained by the Texas Department of Insurance is used to document the attorneys' fees charged against an injured employee's indemnity benefits. Attorneys or Texas Department of Insurance staff enters data into the



system.

Methodology: Sum the fees approved by the Texas Department of Insurance to be paid to attorneys from indemnity benefits during the reporting period to capture value (A). Sum the number of claims with approved attorney fees during the report period to capture value (B). Divide value (B) by (A) to obtain value (C), which is the amount of attorney's fees an injured employee saved by electing Ombudsman assistance. The calculation excludes cases where attorneys' fees were approved but no proceedings-related charges were filed.

Purpose: This measure addresses the cost savings that the Office of Injured Employee Counsel assisted injured employees experience by using the free services of an Ombudsman and not retaining the services of an attorney.

Calculation Type: N

New Measure: N

Desired Performance: H

**1.1.1 ex 2** Number of disputed issues resolved prior to entering the Texas Department of Insurance administrative dispute resolution system

Definition: The total number of disputed issues resolved prior to entering the Texas Department of Insurance administrative dispute resolution system.

Disputed Issue: A disagreement pertaining to workers' compensation income or medical benefits (including but not limited to: compensability, average weekly wage, disability, impairment rating, maximum medical improvement, etc.).

Resolved: A satisfactory agreement reached by both parties of a disputed issue that is facilitated by the Office of Injured Employee Counsel which does not proceed to the Texas Department of Insurance administrative dispute resolution system.

Data Limitations: Particular data, such as the issue code and date, can be extracted as long as the information is entered in the same location in each log. Data entry errors may affect the confidence level of the data reported. Disputed issues in abeyance-status are not included in this measure as a resolution.

Data Source: A claims database maintained by the Texas Department of Insurance is used to enter and maintain disputed issue codes and status codes. Disputed issues are received by the Office of Injured Employee Counsel from an unrepresented injured employee. The disputed issues are entered into a log in the database and identified by a specific issue code.

Methodology: Sum the number of disputed issues that are resolved prior to entering into the dispute resolution system during the reporting period to obtain total (A). Submit (A) as



a whole number.

**Purpose:** The purpose of this measure is to monitor the Office of Injured Employee Counsel's early intervention effectiveness in resolving disputed issues for unrepresented injured employees prior to entering into an administrative dispute resolution proceeding. Disputes resolved early in the process provide injured employees a prompt resolution to the dispute while saving the State resources by resolving disputes prior to entering into the Texas Department of Insurance's administrative dispute resolution system.

**Calculation Type:** N

**New Measure:** Y

**Desired Performance:** H

**Goal 2 --** To increase injured employee education regarding their rights and responsibilities and refer them to local, state, and federal programs.

**Objective 2.1** To increase the knowledge of all injured employees and refer them to local, state, and federal programs each year through 2015.

### Outcome Measures

**2.1 oc 1** Percentage of injured employees reached about their rights and responsibilities in the workers' compensation system

**Definition:** The percentage of *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* received by injured employees.

**Data Limitations:** This measure does not include the Office of Injured Employee staff's manual distribution in each field office, or *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* returned to sender.

**Data Source:** A claims database is maintained by the Texas Department of Insurance and includes claims reported by the injured employee or insurance carrier on behalf of the employer. The Office of Injured Employee Counsel tracks returned *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System*.

**Methodology:** Sum the total number of *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* mailed during the reporting period to capture total (A). Sum the total number of employees reached about their Rights and Responsibilities during the reporting period by capturing the total number of *Notices of Injured Employee Rights and Responsibilities in the Workers' Compensation System* mailed minus those returned to sender to capture total (B). Obtain the percentage that (B) represents of (A) by dividing (B) by (A) to determine value (C). Submit (C) represented as a percentage.



Purpose: This measure addresses the agency's statutory duty to educate and assist injured employees.

Calculation Type: N

New Measure: N

Desired Performance: H

**Strategy 2.1.1** -- Provide injured employees with information about their rights and responsibilities and refer them to local, state, and federal programs offering financial assistance, rehabilitation, work placement, or social services.

### Output Measures

**2.1.1 op 1** Number of injured employees reached about their rights and responsibilities in the workers' compensation system

Definition: The total number of *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* that were received by an injured employee.

Data Limitations: Data included in this measure does not include *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* returned to sender. Additionally, this measure does not include the Office of Injured Employee staff's manual distribution in each field office, or *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* returned to sender.

Data Source: A claims database is maintained by the Texas Department of Insurance and includes claims reported by the injured employee or insurance carrier on behalf of the employer. The Office of Injured Employee Counsel tracks *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* returned to sender.

Methodology: Sum the total number of employees reached about their Rights and Responsibilities by capturing the total number of Notices of Injured Employee Rights and Responsibilities in the Workers' Compensation System mailed minus those mailings returned to sender during the reporting period to capture total (A). Submit (A) as a whole number.

Purpose: This measure addresses the agency's statutory duty to educate and assist injured employees.

Calculation Type: C



New Measure: N

Desired Performance: H

**2.1.1 op 2** Number of telephone calls made or received by the Office of Injured Employee Counsel where injured employees were educated or assisted

Definition: The total number of telephone calls in which injured employees were educated or assisted as a result of a telephone call made by or to the Office of Injured Employee Counsel. This includes telephone calls received on the Office of Injured Employee toll-free number, calls received on any other telephone line that are subsequently transferred to the Office of Injured Employee Counsel and calls made by the Office of Injured Employee Counsel to parties on behalf of the injured employee. This measure includes telephone calls made through the agency's outreach efforts.

Data Limitations: While there is extensive training given regarding tracking such telephone calls, data entry or human error may affect the confidence level of the data reported. An injured employee may be counted more than once in a reporting period.

Data Source: A claims database maintained by the Texas Department of Insurance is used to document all telephone contacts with the Office of Injured Employee Counsel staff. Code values are assigned to the Office of Injured Employee Counsel to log calls.

Methodology: Sum the total number of Office of Injured Employee Counsel contact codes in the Texas Department of Insurance's claim that represents the total number of telephone calls made or received during the reporting period to capture total (A). Submit (A) represented as a whole number.

Purpose: This measure addresses the Office of Injured Employee Counsel's statutory duty to educate and assist injured employees.

Calculation Type: C

New Measure: N

Desired Performance: H

**2.1.1 op 3** Number of in-person visits (walk-ins) by injured employees assisted at local field offices by the Office of Injured Employee Counsel

Definition: The total number of injured employees assisted in-person (walk-in) who visit the Office of Injured Employee Counsel during the reporting period.

Data Limitations: Data entry errors may affect the confidence level of the data reported.

Data Source: A Texas Department of Insurance claims database is used to document all



assistance provided to a walk-in customer by the Office of Injured Employee Counsel Code values are assigned to the Office of Injured Employee Counsel staff to log “in-person” assistance.

Methodology: Sum the total number of contact codes in the Texas Department of Insurance’s claim database specific to the Office of Injured Employee Counsel that represents the number of in-person visits (walk-ins) by injured employees assisted by the Office of Injured Employee Counsel during the reporting period to capture total (A). Submit (A) represented as a whole number. One injured employee may be counted multiple times during the reporting period.

Purpose: This measure addresses the agency’s statutory duty to educate and assist injured employees.

Calculation Type: C

New Measure: N

Desired Performance: H

#### **2.1.1 op 4** Number of public outreach presentations performed

Definition: The total number of outreach presentations, workshops, seminars, speaking engagements, or other forums during the reporting period where Office of Injured Employee Counsel staff speaks to workers’ compensation system stakeholders regarding the Office of Injured Employee Counsel, its role, and its services.

Data Limitations: At least one member of the public must be present to be counted in this measure. Data entry or human error may affect the confidence level of the data reported.

Data Source: An agency database is maintained and utilized to track all speaking engagements for the agency. Agency staff enters information on a regular basis.

Methodology: Sum the number of public outreach sessions, presentations, or seminars conducted by the Office of Injured Employee staff where at least one member of the public is present during the reporting period to capture total (A). Submit (A) represented as a whole number.

Purpose: This measure addresses the agency’s statutory duty to inform the employees, employers, and other system stakeholders regarding the role of the Office of Injured Employee Counsel’s services.

Calculation Type: C

New Measure: N



Desired Performance: H

**2.1.1 op 5** Number of referrals to the Department of Assistive and Rehabilitative Services, the Texas Workforce Commission, the Texas Department of Insurance, or other social or regulatory services

Definition: The number of referrals made by the Office of Injured Employee Counsel on behalf of the injured employee. Referrals are made to the Department of Assistive and Rehabilitative Services, the Texas Workforce Commission, the Texas Department of Insurance or other social or regulatory services, such as the Health and Human Services Commission or licensing boards, to assist injured employees with 1) finding employment, 2) training opportunities, 3) returning to work, 4) filing complaints with appropriate licensing boards or other regulatory agencies, 5) obtaining financial assistance, and 6) reporting alleged administrative violations.

Data Limitations: In some cases the injured employee may choose not to contact the entity which is referred by the Office of Injured Employee Counsel.

Data Source: A claims database maintained by the Texas Department of Insurance is used to document all referrals made by Office of Injured Employee Counsel staff. Code values are used for particular types of referrals.

Methodology: Sum the total number of codes in the Texas Department of Insurance's claim system specific to the Office of Injured Employee Counsel which represents the total number of referrals made during the reporting period to capture total (A). Submit (A) represented as a whole number.

Purpose: This measure addresses the agency's statutory duty to refer injured employees to local, state, and federal financial assistance, rehabilitation, work placement programs, and other regulatory and social services.

Calculation Type: C

New Measure: N

Desired Performance: H

### **Efficiency Measure**

**2.1.1 ef 1** Average number of days from the date of injury to the date an injured employee is sent the *Notice of Injured Employee Rights and Responsibilities in the Workers' Compensation System*

Definition: The average number of days between the date an injured employee is injured and the date the injured employee is mailed the *Notice of Injured Employee Rights and Responsibilities in the Workers' Compensation System*.



Data Limitations: The Texas Department of Insurance only creates claims where lost time (greater than one day) has occurred. The *Notice of Injured Employee Rights and Responsibilities in the Workers' Compensation System* is only generated for the claims established with the Texas Department of Insurance and would not represent all workers' compensation claims reported to insurance carriers in Texas. There are time delays in the process between the date the employee reports the injury to their employer, the date the employer reports it to the carrier, and the date the carrier reports the injury to the Texas Department of Insurance. All of these delays factor into the resulting average in this measure. Additionally, this measure does not include the Office of Injured Employee staff's manual distribution in each field office, or *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* returned to sender.

Data Source: A claim database maintained by the Texas Department of Insurance is used to capture the injured employee's date of injury and the date the employee is mailed the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System. The date of injury is either supplied by the injured employee online, the insurance carrier, or through manual data entry by Texas Department of Insurance staff.

Methodology: Sum the total number of calendar days between the date of injury that is reported for all claims established during the reporting period (using the date of injury field in the claim system) and the date the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System is mailed to the injured employee during the reporting period to capture total (A). Sum the number of Notices mailed during the reporting period to capture total (B). Obtain the average days that (B) represents of (A) by dividing (B) by (A) to determine value (C). Submit (C) represented as a whole number. The calculation excludes claims where the Notice was returned to sender.

Purpose: This measure addresses the agency's statutory duty to educate injured employees regarding the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System.

Calculation Type: N

New Measure: N

Desired Performance: L

**Goal 3 --** To advocate on behalf of injured employees as a class.

**Objective 3.1 --** To advocate on behalf of injured employees as a class in judicial, legislative, rulemaking, and administrative processes and ensure injured employee's rights are protected each year through 2015.



## Outcome Measures

### 3.1 oc 1 Percentage of adopted workers' compensation rules analyzed

Definition: The percentage of adopted workers' compensation rules, which were analyzed by the Office of Injured Employee Counsel. Analyzed rules include informal and formal rules, excluding repeals, by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel, which are analyzed to determine if they affect or have the potential to affect injured employees as a class.

Data Limitations: The rulemaking process may take months to complete. The rule analysis may have occurred in a previous month or year; however, the analysis is not counted for the purpose of this measure until the rule is finally adopted. A rule is considered one preamble submission by an agency and may contain several sections with the submission.

Data Source: An Office of Injured Employee Counsel database is maintained and utilized to track rule projects and processes for the agency. Office of Injured Employee Counsel staff enters information on a regular basis. Data is collected from various sources, including the *Texas Register*.

Methodology: Sum the total number of workers' compensation rules adopted by the Texas Department of Insurance, Division of workers' Compensation, or the Office of Injured Employee Counsel during the reporting period to capture total (A). Sum the total number of rules analyzed by the Office of Injured Employee Counsel during the reporting period to capture total (B). Obtain the percentage that (B) represents of (A) by dividing (B) by (A) to determine value (C). Submit (C) represented as a percentage.

Purpose: This measure addresses the Office of Injured Employee Counsel's statutory duty to advocate on behalf of injured employees as a class in all workers' compensation matters.

Calculation Type: N

New Measure: N

Desired Performance: H

### 3.1 oc 2 Percentage of adopted workers' compensation rules in which the Office of Injured Employee Counsel participated

Definition: The percentage of adopted workers' compensation rules that the Office of Injured Employee Counsel provided verbal or written public comment on behalf of the injured employee to either informal or formal workers' compensation rules, excluding repeals, proposed by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel.

Data Limitations: The rulemaking process may take months to complete. Participation



(verbal or written rule recommendations) may have occurred in a previous month or year; however, the participation is not counted for the purpose of this measure until the rule is finally adopted. Rules that do not affect injured employees are not included in this measure. A rule is considered one preamble submission by an agency and may contain several sections with the submission.

Data Source: An Office of Injured Employee Counsel database is maintained and utilized to track rule projects and processes for the agency. Office of Injured Employee Counsel staff enters information on a regular basis. Data is collected from various sources, including the *Texas Register*.

Methodology: Sum the total number of rules adopted by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel that impact injured employees during the reporting period to capture total (A). Sum the total number of adopted rules that impact injured employees that the Office of Injured Employee Counsel participated to capture total (B). Obtain the percentage that (B) represents of (A) by dividing (B) by (A) to determine value (C). Submit (C) represented as a percentage.

Purpose: This measure addresses the Office of Injured Employee Counsel's statutory duty to advocate on behalf of injured employees as a class in all workers' compensation matters.

Calculation Type: N

New Measure: N

Desired Performance: H

**3.1 oc 3** Percentage of adopted workers' compensation rules changed for the benefit of injured employees as a result of the Office of Injured Employee Counsel participation

Definition: The percentage of adopted workers' compensation rules changed for the benefit of injured employees as a result of the Office of Injured Employee Counsel's verbal or written public comments on behalf of the injured employee to either informal or formal workers' compensation rules, excluding repeals, proposed by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel.

Data Limitations: The rulemaking process may take months to complete. Participation (verbal or written rule recommendations) may have occurred in a previous month or year; however, the participation is not counted for the purpose of this measure until the rule is finally adopted. Rules that do not affect injured employees are not included in this measure. A rule is considered one preamble submission by an agency and may contain several sections with the submission.

Comments that are non-substantive, such as word-smithing recommendations to rules will not be included as a comment or as a credit to the Office of Injured Employee Counsel if



incorporated.

Data Source: An Office of Injured Employee Counsel database is maintained and utilized to track rule projects and processes for the agency. Office of Injured Employee Counsel staff enters information on a regular basis. Data is collected from various sources, including the *Texas Register*.

Methodology: Sum the total number of rules that impact injured employees adopted by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel during the reporting period in which the Office of Injured Employee Counsel participated to capture total (A). Sum the total number of adopted rules where the Office of Injured Employee Counsel's recommendations were incorporated into the adopted rule text to capture total (B). Obtain the percentage that (B) represents of (A) by dividing (B) by (A) to determine value (C). Submit (C) represented as a percentage.

Rule comments from the Office of Injured Employee Counsel may be accepted in whole or in part by the Texas Department of Insurance and will likely not be accepted verbatim. Partial comments accepted will count equal to full comments accepted as long as a benefit to injured employees remains included in the portion of the comment that was accepted and ultimately adopted as final rule text.

Purpose: Achieving a positive outcome in the rulemaking process for the benefit of injured employees addresses the agency's statutory duty to advocate on behalf of injured employees as a class in all workers' compensation matters.

Calculation Type: N

New Measure: N

Desired Performance: H

**Strategy 3.1.1** -- Advocate on behalf of injured employees as a class in judicial, legislative, rulemaking, and administrative processes and ensure injured employee's rights are protected.

### **Output Measures**

**3.1.1 op 1** Number of adopted workers' compensation rules analyzed by the Office of Injured Employee Counsel

Definition: The total number of adopted workers' compensation rules, which were analyzed by the Office of Injured Employee Counsel. Analyzed rules include informal and formal rules, excluding repeals, by the Texas Department of Insurance or Office of Injured Employee Counsel that are reviewed to determine if they affect or have the potential to affect injured employees.



Data Limitations: The rule adoption process may take months to complete. Analysis may have occurred in a previous month or year; however, the analysis is not counted for the purpose of this measure until the rule is finally adopted. A rule is considered one preamble submission by an agency and may contain several sections with the submission.

Data Source: An Office of Injured Employee Counsel database is maintained and utilized to track rule projects and processes for the agency. Office of Injured Employee Counsel staff enters information on a regular basis.

Methodology: Sum the total number of workers' compensation rules adopted by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel during the reporting period that are analyzed by the Office of Injured Employee Counsel to capture total (A). Submit (A) represented as a whole number.

Purpose: This measure addresses the Office of Injured Employee Counsel's statutory duty to advocate on behalf of injured employees as a class in all workers' compensation matters.

Calculation Type: C

New Measure: N

Desired Performance: H

**3.1.1 op 2** Number of adopted workers' compensation rules in which the Office of Injured Employee Counsel participated

Definition: The number of adopted workers' compensation rules, in which the Office of Injured Employee Counsel provided verbal or written public comments that offer the injured employee viewpoint to either informal or formal workers' compensation rules, excluding repeals, proposed by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel.

Data Limitations: The rulemaking process may take months to complete. Participation (verbal or written rule recommendations) may have occurred in a previous month or year; however, the participation is not counted until the rule is finally adopted.

Data Source: An Office of Injured Employee Counsel database is maintained and utilized to track rule projects and processes for the agency. Office of Injured Employee staff enters information on a regular basis. Data is collected from various sources, including the *Texas Register*.

Methodology: Sum the total number of rules adopted by the Texas Department of Insurance or Office of Injured Employee Counsel during the reporting period in which OIEC participated to capture total (A). Submit (A) represented as a whole number.

Purpose: This measure addresses the Office of Injured Employee Counsel's statutory duty



to advocate on behalf of injured employees as a class in all workers' compensation matters.

Calculation Type: C

New Measure: N

Desired Performance: H

**3.1.1 op 3** Number of adopted workers' compensation rules changed for the benefit of injured employees as a result of the Office of Injured Employee Counsel participation

Definition: The number of adopted workers' compensation rules changed for the benefit of injured employees as a result of the Office of Injured Employee Counsel's verbal or written public comments that offer the injured employee viewpoint to either informal or formal workers' compensation rules, excluding repeals, proposed by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel.

Data Limitations: The rulemaking process may take months to complete. Participation (verbal or written rule recommendations) may have occurred in a previous month or year; however, the participation is not counted for the purpose of this measure until the rule is finally adopted. A rule is considered one preamble submission by an agency and may contain several sections with the submission.

Data Source: An Office of Injured Employee Counsel database is maintained and utilized to track rule projects and processes for the agency. Office of Injured Employee Counsel staff enters information on a regular basis. Data is collected from various sources, including the *Texas Register*.

Methodology: Sum the number of rules adopted during the reporting period where the Office of Injured Employee Counsel's recommendations were incorporated into the rule text to capture total (A). Submit (A) represented as a whole number.

Comments that are non-substantive, such as word-smithing recommendations to rules will not be included as a comment or as a credit to the Office of Injured Employee Counsel if incorporated. Rule comments from the Office of Injured Employee Counsel may be accepted in whole or in part by the Texas Department of Insurance and will likely not be accepted verbatim. Partial comments accepted will count equal to full comments accepted as long as a benefit to injured employees remains included in the portion of the comment that was accepted and ultimately adopted as final rule text.

Purpose: Achieving a positive outcome in the rulemaking process to the benefit of injured employees addresses the agency's statutory duty to advocate on behalf of injured employees as a class in all workers' compensation matters. Participating and advocating for injured employees is one of the primary goals of this agency.

Calculation Type: C



New Measure: Y

Desired Performance: H

### **3.1.1 op 4** Number of assists a Regional Staff Attorney provides to an Ombudsman

Definition: The total number of assists a Regional Staff Attorney provides to an Office of Injured Employee Counsel (OIEC) staff member. The agency's Regional Staff Attorneys supervise the work of the Ombudsman Program and advise Ombudsmen in providing assistance to injured employees and preparing for informal and formal hearings. A Regional Staff Attorney assist is defined as a response to an OIEC employee's request for legal assistance. The legal assistance may involve legal consultation or analysis on the workers' compensation law or may consist of legal research and consultation with an OIEC employee regarding a specific injured employee's claim.

Data Limitations: None

Data Source: A claims database maintained by the Texas Department of Insurance is used to document all assists made by Regional Staff Attorneys to an OIEC staff member. Code values are used for these assists, and the attorneys enter the code value into that system for each assist.

Methodology: Sum the total number of assists provided by Regional Staff Attorneys to an OIEC staff member during the reporting period to capture total (A). Submit (A) represented as a whole number.

Purpose: This measure addresses the agency's statutory duty to assign Regional Staff Attorneys to supervise and advise Ombudsmen through the Ombudsman Program.

Calculation Type: C

New Measure: N

Desired Performance: H

### **Explanatory Measure**

#### **3.1.1 ex 1** Number of workers' compensation rules adopted

Definition: The total number of workers' compensation informal and formal rules, excluding repeals, adopted by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel during the reporting period.

Data Limitations: The rule adoption process may take months to complete; however, the rule is not counted for the purpose of this measure until it is finally adopted. A rule is



considered one preamble submission by an agency and may contain several sections with the submission.

Data Source: An Office of Injured Employee Counsel database is maintained and utilized to track rule projects and processes for the agency. Office of Injured Employee Counsel staff enters information on a regular basis.

Methodology: Sum the total number of workers' compensation rules adopted by the Texas Department of Insurance, Division of Workers' Compensation, or Office of Injured Employee Counsel during the reporting period to capture total (A). Submit (A) represented as a whole number.

Purpose: This measure represents the total number of workers' compensation rules adopted. Adopted rules may or may not affect injured employees as a class.

Calculation Type: C

New Measure: N

Desired Performance: H



## APPENDIX E

### The Office of Injured Employee Counsel (OIEC)

#### WORKFORCE PLAN



As part of the strategic plan required under Texas Government Code, Section 2056.002, each State agency is required to conduct a strategic staffing analysis and develop a workforce plan according to guidelines developed by the State Auditor. Workforce planning is an organized process for:

- Identifying the number of employees and the types of employee skill sets required to meet agency goals and strategic objectives; and
- Developing a plan of action to ensure that the appropriate workforce will be available to provide quality services to the citizens of Texas.



## I. OVERVIEW

### *OIEC Mission*

*To assist, educate, and advocate on behalf of the injured employees of Texas*

### *OIEC Strategic Goals and Objectives*

**Goal 1** -- *To assist injured employees in the workers' compensation system and protect their rights.*

**Objective 1.1** -- *To provide assistance to all unrepresented injured employees requesting assistance in each year.*

**Goal 2** -- *To increase injured employee education regarding their rights and responsibilities and refer them to local, state, and federal programs.*

**Objective 2.1** -- *To increase the knowledge of all injured employees and refer them to local, state, and federal programs each year.*

**Goal 3** -- *To advocate on behalf of injured employees as a class.*

**Objective 3.1** -- *To advocate on behalf of injured employees as a class in judicial, legislative, rulemaking, and administrative processes and ensure injured employee's rights are protected each year.*

### **Core Business Functions**

OIEC was established to represent the interests and provide services to all unrepresented injured employees when assistance is requested. OIEC's core business functions include:

- 1) Assisting injured employees in the workers' compensation system by providing free Ombudsman services in TDI's administrative dispute resolution system;
- 2) Educating injured employees about their rights and responsibilities and improve their ability to effectively navigate through the workers' compensation system; and
- 3) Advocating on behalf of injured employees as a class in order to achieve a balanced workers' compensation system and protect their rights.

OIEC also refers injured employees to the Department of Assistive and Rehabilitative Services (DARS), the Texas Workforce Commission (TWC), TDI or other social or



regulatory services, such as the Health and Human Services Commission (HHSC) or licensing boards, to assist injured employees with 1) finding employment, 2) training opportunities, 3) returning to work, 4) filing complaints with appropriate licensing boards or other regulatory agencies, 5) obtaining financial assistance, and 6) reporting alleged administrative violations.

Additionally, OIEC provides outreach presentations, workshops, seminars, speaking engagements, or other forums to workers' compensation system stakeholders regarding OIEC, its role, and its services.

**Anticipated Changes to the Mission, Strategies, and Goals Over the Next Five Years**

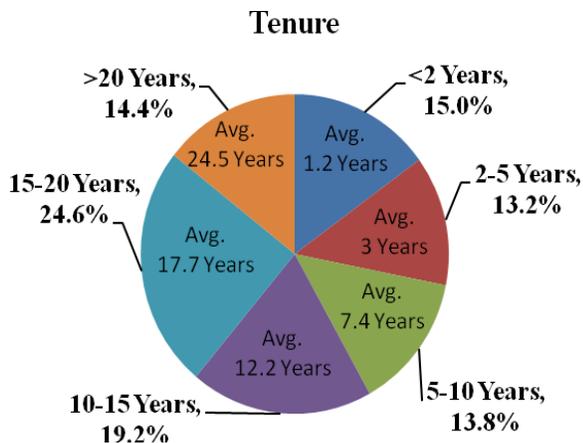
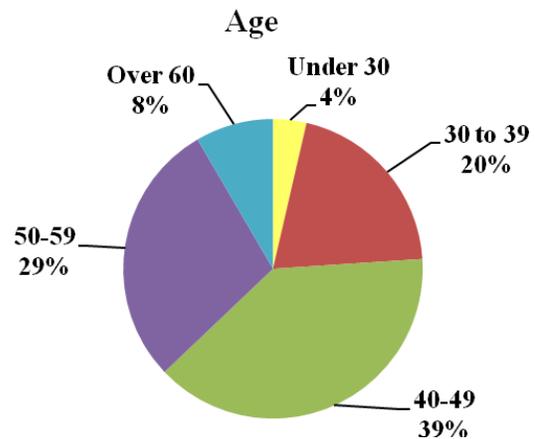
The 2010-2011 budget structure was carefully reviewed and recommendations for changes to the 2012-2013 budget structure were submitted to the LBB and GOBPP on April 16, 2010.

Changes to the mission, strategies, and goals for the 2014-2015 biennia are not anticipated at this time.

**II. CURRENT WORKFORCE PROFILE (SUPPLY ANALYSIS)**

**Demographics information, including age, gender, and length of service**

**Aging Workforce.** The average age of an OIEC employee is 45. Approximately one-fourth of the employees are under the age of 40 while 39 percent are between the ages of 40 and 49. More than 37 percent of the agency's employees are 50 or older.



**Average State Tenure.** The average State tenure for an OIEC employee is almost 12 years. Almost 60 percent of OIEC employees have more than 10 years of experience while more than 14 percent of OIEC employees have at least 20 years of experience. According to the agency's 2010 Survey of Employee Engagement, 95 percent of OIEC employees see themselves working for this agency in one year. OIEC believes that is a good indicator



of how well the organization is doing at retaining its employees. Additional information regarding the survey can be found in Appendix F.

OIEC works hard and is fortunate to have such a diverse and experienced workforce.

**Gender of OIEC Employees.** According to the Statewide Civilian Workforce Composition, 46 percent of employees in Texas are female. The percent of female employees at OIEC is well above this number at 87 percent.

**Ethnicity.** OIEC’s percentage of Hispanic employees is well above the Statewide Civilian Workforce Composition with 49 percent Hispanics. The Statewide Composition of the Hispanic Workforce is made up of 28 percent Hispanics. OIEC’s percentage of Black employees is equal to the Statewide Composition at 11 percent.

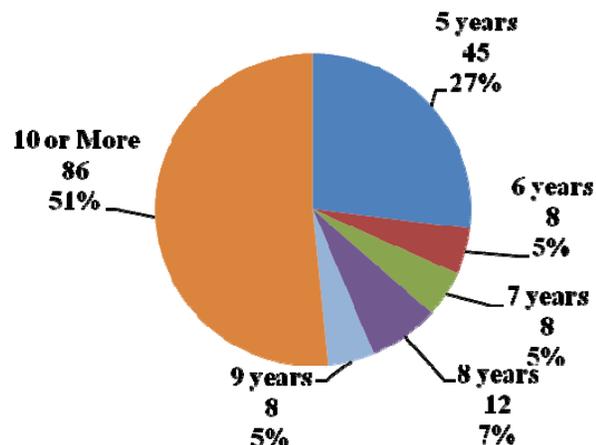
EEO Category	Office of Injured Employee Counsel – Workforce Statistics						
	Black	Hispanic	Anglo	Other	Female	Male	Total Positions
Officials, Admin. (A)	0.0%	20.0%	80.0%	0.0%	60.0%	40.0%	5
Professional (P)	14.6%	41.7%	42.7%	1.0%	84.4%	15.6%	96
Technical (T)	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0
Para-Professional (Q)	0.0%	77.8%	22.2%	0.0%	88.9%	11.1%	9
Admin. Support (C)	8.8%	59.7%	31.6%	0.0%	93.0%	7.0%	57
Skilled Crafts (S)	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0
Service & Maintenance (M)	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0
All Categories	11.4%	49.1%	38.9%	0.6%	86.8%	13.1%	167

**Retirement through FY 2015.** More than 25 percent of OIEC’s workforce will be eligible to retire within five years as reflected in the chart. Additionally, 44 percent will be able to retire within the next eight years.

From a management perspective, more than 33 percent of OIEC staff in a Supervisory role will be able to retire by the end of 2015.

Recruitment and retention activities, training, and succession planning are

**Retirement Eligibility**



key to ensuring a knowledgeable and effective workforce. Cross-functional training is also key to ensure a workforce that will be efficient and effective regardless of the number of staff that leaves the agency.

**Agency Turnover**

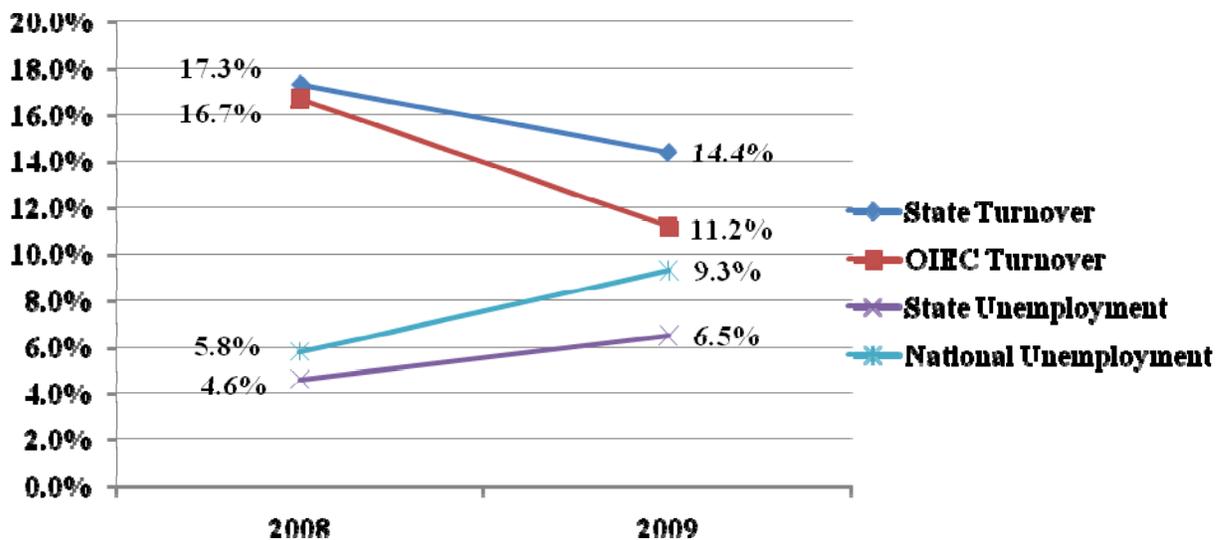
**Turnover.** The average turnover rate for OIEC and that for all State agencies has decreased over the past few years due in part to the economic downturn. Turnover for full- and part-time employees decreased in 2009 to 14.4 percent, down from 17.3 percent in 2008. That’s the lowest rate in the past five years.

Conversely, Texas unemployment rates increased. The statewide unemployment rate increased from 4.6 percent in fiscal year 2008 to 6.5 percent in fiscal year 2009.<sup>33</sup> The national annual average unemployment rate is well above Texas’ unemployment rate which rose from 5.8 percent in 2008 to 9.3 percent in 2009, which is the highest national annual average unemployment rate since 1983 when it was 9.6 percent.<sup>34</sup>

In FY 2008, OIEC’s turnover rate was 16.7 percent, compared to the average state agency turnover rate for FY 2008 of 17.3 percent.

In FY 2009, OIEC’s turnover rate was 11.2 percent, which is lower than the average state agency turnover rate for FY 2009 of 14.4 percent.

The chart below identifies OIEC’s turnover rate compared to the statewide turnover rate for 2008 and 2009 and the State and National unemployment rate comparison for 2008 and 2009.



<sup>33</sup> Source: Texas State Auditor’s Office; *An Annual Report on Classified Employee Turnover for Fiscal Year 2009*.

<sup>34</sup> Source: United States Department of Labor, Bureau of Labor Statistics; *Annual average unemployment rate, civilian labor force 16 years and over (percent)* [http://www.bls.gov/cps/prev\\_yrs.htm](http://www.bls.gov/cps/prev_yrs.htm). Viewed 6-21-2010.



As of February FY 2010, OIEC's turnover rate is **1.82 percent**, well below that of two years ago (as of February FY 2008), which was **7.17 percent**.

### ***Projected Employee Turnover Rate over the Next Five Years***

OIEC anticipates that the turnover rate over the next five years will be less than 15 percent.

### ***Workforce Skills Critical to the Mission and Goals of the Agency***

The agency has many professional, skilled, and well-qualified employees. Maintaining a workforce with particular knowledge and skill sets is critical to the agency's ability to operate efficiently. These skill sets include:

- Providing appropriate customer service;
- Interpreting legal/regulatory statutes;
- Providing legal and workers' compensation research and analysis;
- Managing and providing leadership to staff;
- Coordinating outreach efforts among the multiple program areas to improve both internal and external communications;
- Providing medical research and analysis; and
- Performing audit, quality assurance, and administrative functions.

## **III. FUTURE WORKFORCE PROFILE (DEMAND ANALYSIS)**

### ***Expected Workforce Changes Driven by Factors such as Changing Missions, Goals, Strategies, Technology, Work, Workloads, and Work Processes***

OIEC does not foresee the elimination of any of its responsibilities over the next five-year period or a significant change in the number of staff available to perform those functions.

### ***Future Workforce Skills Needed***

- Providing appropriate customer service;
- Interpreting legal/regulatory statutes;
- Providing legal and workers' compensation research and analysis;
- Managing and providing leadership to staff ;
- Coordinating outreach efforts among the multiple program areas;
- Providing medical research and analysis; and
- Performing audit, quality assurance, and administrative functions.

### ***Anticipated Increase or Decrease in the Number of Employees Needed To Do the Work***

In response to the economic downturn and efficiencies identified, OIEC anticipates reducing its FTE cap from 184 to 175 FTEs.



### ***Critical Functions that Must Be Performed to Achieve the Strategic Plan***

- Customer service functions
- Legal research and analysis functions
- Medical research and analysis functions
- Workers' compensation research and analysis functions
- Managerial functions
- Audit, quality assurance, and administrative functions.

## **IV. GAP ANALYSIS**

### ***Anticipated Surplus or Shortage in Staffing Levels***

In response to the economic downturn and efficiencies identified, OIEC anticipates reducing its FTE cap from 184 to 175 FTEs.

### ***Anticipated Surplus or Shortage of Skills***

*Medical Background.* A staff member with a medical background is necessary to provide assistance and serve as a professional medical resource to Ombudsmen and other OIEC staff regarding medical dispute resolution, medical necessity, medical research, and other related issues.

## **V. STRATEGY DEVELOPMENT**

### ***Specific Goals to Address Workforce Competence Gaps or Surpluses***

*Recruitment and Retention Plans.* It takes competent and motivated employees to assist, educate, and advocate for injured employees. To recruit and retain such employees, OIEC must be a place where people are proud to work.

Supervisors within OIEC can influence motivation and serve as ethical role models. Research supports that employees who know that they are working for a noble purpose can be expected to be loyal and dependable. In "Managing Business Ethics," the authors note that "in a survey by a national opinion research firm, ethical corporate behavior, honest company communications, and respectful treatment ranked among employee's five top ranked goals, before good pay, which was 11<sup>th</sup> on the list and job security, which ranked 14<sup>th</sup>."

OIEC fosters a positive organizational culture and uses proven search and retention strategies to recruit, develop, and retain the best employees possible. To encourage employee involvement in decision making, OIEC has established a Policy Committee comprised of staff at various levels within the organization, to solicit, review and make



recommendations for positive change. All employees at OIEC are encouraged to play a role in fostering a dynamic, positive culture. Many of OIEC's recruitment and retention activities include the following.

- College Student Recruitment. OIEC is coordinating with various colleges across Texas in order to recruit students before or after they have received their degree. OIEC is anticipating offering both salaried and non-salaried positions to interns interested in working in health care or in an advocacy role.
- Alternative Work Schedule Program. This program extends the number of hours that agency staff is available to provide services while also providing our employees with work schedule flexibility. The program is intended to improve customer service and better accommodate customer needs by offering extended service hours from 7:00 a.m. until 7:00 p.m. Monday through Friday. Every effort is made to accommodate the needs of individual employees who are working extended or alternate hours; however, in all instances, business necessity is the overriding factor.
- The Performance Planning and Development System (PPDS). This evaluation process provides supervisors the tools to develop an employee's performance, address performance that does not meet expectations, and handle performance problems in a manner that encourages individual responsibility for results. This system also presents an opportunity for the Supervisor and the employee to look to the future and identify opportunities for the employee's growth and development. OIEC believes that by periodically communicating performance expectations and satisfaction with co-workers, productivity and morale increase.
- Merit Awards. For OIEC employees that meet the criteria for a merit award, OIEC may provide deserving staff with administrative leave. The total amount of leave granted may not exceed 32 hours per employee during a fiscal year.

OIEC may grant merit salary increases and one-time merit payments to eligible classified employees whose job performance and productivity is consistently above that normally expected or required if the employee has been in his or her current position for at least 6 months. Merit salary increases are granted when funding is available and within guidelines established by the Public Counsel.

- Sick Leave Pool. The Sick Leave Pool (Pool) has been established to benefit OIEC employees and their immediate family members who suffer a catastrophic illness or injury. The Pool is intended to provide for the alleviation of a hardship caused to an employee and the employee's immediate family, if a catastrophic illness or injury forces the employee to exhaust all leave earned by that employee and to lose compensation from OIEC. The program allows employees to voluntarily contribute sick leave time to the Pool.

OIEC's rule 28 TAC §276.4 was adopted as a result of a requirement of Texas Government Code §661.002(c). The Government Code requires state agencies to



adopt rules relating to the agency's sick leave pool program.

- **Policy Development Program.** OIEC's Policy Development Program was initiated in an effort to better communicate and receive ideas from all employees. Recognizing the value and ideas of each employee, this program was designed to serve as a channel of communication for "great ideas."

While participation in this program is optional, all OIEC employees are encouraged to submit their ideas on how to improve OIEC, OIEC's policies or procedures, or work environment. OIEC's executive management team review the ideas or recommendations submitted monthly. Confidentiality of employees who submit policy recommendations is being provided to encourage all OIEC employees to participate in providing suggestions to improve our agency.

Since its inception, many ideas have been proposed, and of those, many have been implemented. Administrative leave for outstanding performance has been awarded to OIEC staff whose ideas have been implemented.

- **Return-to-Work Program.** The intent of the Return to Work Program is to allow employees with injuries or illnesses, both job-related and non-job related, to return to work as quickly as possible in a meaningful and productive capacity. Participation in the program will be handled on a case-by-case basis in consultation with the employee's physician. It is the employee's responsibility to make all reasonable effort to return to work at the earliest possible time to full duty or alternatively to a light or restricted duty capacity.

**Organizational Training and Employee Development.** Training is a year-round, continuous requirement for OIEC staff. The many complexities of the workers' compensation system and the agency's core value of providing premier service necessitate ongoing training. Various committees and training activities are discussed below:

- **Training Committee.** The agency's training committee consists of employees from all walks of OIEC. It is a multi-program committee created to design an agency training program. This committee has developed a comprehensive training program for Ombudsman Assistants and Customer Service Representatives. The committee coordinates Legal Services' Regional Staff Attorney (RSA) training, including but not limited to Practical Skills Training.

The Training Committee developed a Core Training Links section of the OIEC intranet site that provides ready access to critical baseline information about workers' compensation that every OIEC field office employee must know or be able to easily locate in order to educate the injured employees of Texas.

Effective June 1, 2010, the Training Committee will be broadened to include OIEC management and the agency's Quality Assurance Section. This expansion of the Committee will ensure effective communication amongst all employees that have a



training function at the agency. The Training Committee will meet bi-monthly in FY 2011 to ensure all employees are fully aware of new legislation as a result of the 82<sup>nd</sup> Texas Legislature and the Sunset Advisory Commission Review of the Workers' Compensation System.

- *New Employee Training.* All new employees are required to participate in new employee training. Training courses are available on the Intranet and may include a course description page with prerequisite reading, the course itself, and helpful links. Several training modules are available and include the following: Ethics in the Workplace, Employment Law, Computer security, and Workplace Conduct. The training courses consist of slideshows, videos, or videos with a handout. Some courses include audio. All employees are also required to read the employee manual and take core training offered by OIEC and TDI, such as Ethics, Confidentiality, Sexual Harassment, Discrimination, and related agency policy and law training.
- *Ethics Training and Committee.* OIEC is dedicated to operating under the highest standards of ethical and professional behavior. To ensure that every effort is made to achieve this goal, it conducts Ethics training and has created an Ethics Committee. Ethics training is conducted for new employees and periodically each year thereafter. The Ethics Committee has been vital to the development of our agency's superior reputation for being a professional and ethical organization. Created in June 2008, the OIEC Ethics Committee addresses the ethical questions and issues presented to it by OIEC employees.

The Committee is comprised of a diverse section of OIEC staff, which includes employees from all divisions of the agency who hold both supervisory and non-supervisory positions. The Ethics Committee has and will continue to convene as necessary to discuss the issues presented to it by OIEC employees and a quarterly update on the issues will continue to be created and sent out to the OIEC Team.

The agency's Ethics Committee has a revolving membership in order to ensure its recommendations reflect the agency's high ethical standards and new voices are heard. OIEC's ethics statement is below:

*Each OIEC employee has an obligation to maintain high ethical standards in the performance of their work responsibilities and in their personal life, realizing that lapses in such judgment will reflect negatively on OIEC. OIEC employees must seek to enhance and implement ethical values based on established principles of sound reasoning and the highest standards of business conduct.*

- *Ombudsman Training Program.* Generally, staff in the Ombudsman Program are hired as Ombudsmen Associates and begin up to a year-long training program at the end of which they will have earned their Type 03 Workers' Compensation Adjuster's Licenses and be reclassified as an Ombudsman I. The training program for an Ombudsman Associate consists of up to one year of training divided into two parts. In



Part I (26 weeks) the Ombudsman Associates complete new employee orientation courses, classroom studies, customer services, and observation of activities. After completing Part I, the Associates enter Part II of the program. In Part II (also 26 weeks) the Ombudsman Associates begin conducting meetings with unrepresented injured employees in preparation for dispute resolution hearings and assisting in proceedings while being observed and evaluated by their mentor, trainer, and Supervisor of the Ombudsman Program. The Ombudsman Associates are required to obtain a Type 03 Workers' Compensation Adjuster's License before they finish their training program. Upon successful completion of the training program, Ombudsman Associates are eligible for a career ladder promotion to an Ombudsman I.

The Ombudsman I must have at least one year of workers' compensation experience as required by Texas Labor Code §404.152. They participate in proceedings; assist injured employees to obtain supporting documentation and to appropriately and timely exchange evidence; maintain an index folder; and work closely with the Ombudsman Assistants to effectively assist injured employees. If an Ombudsman I was not previously an Ombudsman Associate, then the Ombudsman I completes a 20-week training program during which time a Type 03 Workers' Compensation Adjuster's License is obtained.

The Ombudsman II is required to have at least two years of Ombudsman I experience. The Ombudsman II must maintain all of the requirements of an Ombudsman I and may be required to assist Ombudsman Supervisors and Associate Directors in the training and mentoring of Ombudsman Associates, Ombudsman Assistants, and Customer Services Representatives. Each Field Office has an Ombudsman Lead who serves as a mentor for all Ombudsman Program staff.

All Ombudsmen assist with case development when injured employees request assistance. The goal of case development is to resolve the issues before going to an administrative proceeding; therefore, Ombudsmen may become involved in a case before it is scheduled for a dispute proceeding.

Ombudsmen must remain current on continuing education requirements in order to maintain their adjuster's licenses. These credits are offered through Practical Skills Training conducted by the agency's Regional Staff Attorneys (RSA), and the agency conferences. Training is also provided through monthly teleconferences.

Additional information regarding the Ombudsman training program and continuing education can be found in OIEC Rule §276.10.

- *Practical Skills Training Program.* The Practical Skills Training Program is designed to help Ombudsmen refine their skills in assisting injured employees in proceedings before TDI and to ensure injured employees' rights are protected.

At least two different practical skills training courses are offered by RSAs each year. The training is delivered in regional locations across the State and the Ombudsmen



receive continuing education credits for participating in the training, which helps them fulfill the requirements for maintaining their statutorily required Type 03 Workers' Compensation Adjuster's License.

The courses are designed to give practical, useful information to the Ombudsmen, which they can immediately implement into the performance of their job duties. There is a lecture and discussion component at each training session. In addition, written material is prepared to provide more detailed resource material than can be presented in a lecture. The written materials from each practical skills training are posted on OIEC's intranet for future reference. Finally, each practical skills training includes some practical application of the material to test the participants' knowledge of the subject matter covered in the training. Those exercises provide an excellent opportunity to provide feedback from the trainer and for the participants to learn from each other and determine best practices and strategies.

Practical Skills Training topics that have been conducted include the following:

- Direct Examination and Cross Examination (October 2006);
- Direct Examination and Cross Examination of Expert Witnesses (March 2007);
- Discovery tools, Objections and Responses (November 2007);
- Pre-Hearing Dispute Resolution: Case Management, Assessment & Development (March 2008);
- Advanced Case Development and Formulation of Oral and Written Arguments (May 2008);
- Occupational Disease and Repetitive Trauma Injuries (April 2009);
- Formulation of Arguments to Assist Injured Employees Through the Medical Dispute Resolution Process (August 2009); and
- Effectively Questioning Physicians on Medico-Legal Issues (April 2010).

Following the August 2009 Practical Skills Training on the formulation of arguments in medical dispute resolution, Legal Services determined that the training needed to be supplemented with training on effectively conducting medical research. As a result, one of OIEC's RSAs arranged for and coordinated training by medical school librarians around the State. That training, which was conducted in October and November 2009, was attended by both the RSAs and the Ombudsmen. The training focused on conducting research for the type of evidence-based medical evidence that is critical for establishing the medical necessity of proposed treatment. The training was conducted at the medical school libraries, which also permitted the participants to become familiar with those libraries and the wealth of resources available there.

In order to ensure the continuing effectiveness of the Practical Skills Training, OIEC surveyed the Ombudsmen to determine the topics on which they wanted to receive training. Legal Services is currently in the process of establishing the training agenda



for Practical Skills Training in October 2010, April 2011, and October 2011. The survey results were compiled and are available to Legal Services in establishing the training plan.

- Customer Service Representative (CSR) Training. A comprehensive training program is provided to each CSR as they are hired so that they will have the information necessary to respond accurately and promptly to the injured employee.

Newly-revised training manuals with copies of the Workers' Compensation Act and Rules are provided to each CSR with the requirement that they be conversant with the information contained therein. Training requirements include completing the OIEC Core Training, workers' compensation modules, customer service training, computer and telephone and soft skills training, and early intervention procedures. Ongoing education includes regular review of the agency website and links, and attendance at the various teleconference training sessions. A monthly review of Appeals Panels decisions is also required as they provide interpretations of the Act and Rules and procedural clarifications.

Before being assigned to providing customer service to injured employees, CSRs are required to observe interaction between injured employees and Ombudsmen staff. In addition, new CSRs choose or are assigned a Senior CSR and an Ombudsman Lead (field office team leader) as a mentor for guidance and advice. They are also required to observe dispute resolution proceedings, preparation appointments, Benefit Review Conferences, and Contested Case Hearings. Training exercises are given that are designed to help CSRs determine the questions to ask injured employees and the information that should be provided based upon the injured employee's needs. This extensive training is designed to produce employees who are well-equipped to provide exceptional customer service.

OIEC CSR staff provides advocacy, assistance, and education about the workers' compensation system while TDI staff processes official and regulatory actions.

- Teleconferences. Teleconferences are held to ensure OIEC staff in the field and Central Office stays abreast of information necessary to continue to effectively serve the injured employees of Texas. Teleconferences may be held for specific functions, such as Ombudsman or Customer Service Assistants, or as an agency as a whole. RSAs may make presentations on legal issues, or presentations may be made by OIEC staff on new legislation, policies and procedures. Agency staff also has the opportunity to request particular topics be included in the teleconferences via the agency Policy Development Program.
- OIEC Conferences. Various conferences are held for staff each year. Below is a summary of each type.
  - OIEC's Annual Conference: OIEC's annual conference is held in June for all OIEC staff to come together in one place. The conference generally lasts over a



three day period to allow for travel. Since OIEC staff is located throughout Texas, the conference provides an opportunity to get to know each other - providing a face with a name, building OIEC's network, and increasing agency relations to overcome geographical barriers among OIEC's 23 locations.

Training sessions are held that promote teamwork and ethics as well as provide information about other aspects of the agency that staff may not be familiar with. Breakout sessions are held on a variety of topics including current legislative activities, changes in workers' compensation laws and rules, and new agency policies and procedures. Information presented at the conference is designed to enhance the skills of staff and increase communication within the agency in order to provide excellent service to the injured employees of Texas. Additionally, the conference provides continuing education credits to help Ombudsmen and other OIEC staff satisfy the requirements for maintaining their Type 03 Workers' Compensation Adjuster's License and for OIEC attorney's to obtain continuing legal education credits.

- *OIEC Leadership Conference:* (Held two times each year). OIEC holds a leadership conference where all management employees meet for training and issue discussion. The leadership conference provides an opportunity for all of the functional areas of the agency (Customer Service, Ombudsman, and Legal Services) to come together and focus our efforts on improving the quality of the service that we provide to the injured employees of Texas. The next leadership conference is scheduled for September 2010. The expected topics for the conference are a Sunset update, status of budget reductions, business plan initiatives for fiscal year 2011, performance measures, the survey of employee engagement, the customer satisfaction survey, revisions to the agency's training program, and a review of the agency's Quality Assurance Program and its plan for going forward in fiscal 2011.
- *Legal Services Conference:* (Held once each year). OIEC conducts a Legal Services conference, where the Regional Staff Attorneys gather with agency executive management to discuss legal issues in the workers' compensation system. The conference also provides an opportunity for candid discussion about how effectively the OIEC Team is serving its mission to assist, educate, and advocate on behalf of the injured employees of Texas and recommendations from the attorneys directly assisting the Ombudsmen and Customer Service Representatives on how we can better serve our mission. A current initiative that OIEC is pursuing concerns extent-of-injury disputes and how the agency can more effectively assist injured employees in such disputes. That issue will undoubtedly be a focus of the next Legal Services conference.
- *Practical Resource Guide.* Legal Services and the OIEC Training Committee entered into a joint project to produce a Practical Resource Guide for the OIEC Team. The Guide is designed to be a workers' compensation desk book for OIEC staff. The Training Committee identified the core information that OIEC Customer Service



Representatives, Ombudsman Assistants, and Ombudsmen needed to know or to readily access. The Training Committee developed an organizational structure to provide that information, which included a description of the topic, important terms and definitions, a discussion of why the topic is important, identity of documents the injured employee needs to provide related to the topic, citations to relevant statutory and rules provision, research related to the topic, and resources that provide additional information about the topic. The members of the Training Committee and the RSAs were assigned various topics and asked to write the entry on those topics. Once the entries were written, they were compiled into a single document that was reviewed and edited to ensure accuracy and consistency. The Practical Resource Guide was completed and distributed to the OIEC Team in May 2010.

- *Career Ladder Program.* OIEC is committed to developing employees and promoting employee development and initiative by establishing structured career progressions reflecting the agency's business needs and the benefit to employees of having defined career advancement opportunities and requirements.

OIEC recommended additional career ladder opportunities for Ombudsman positions, which was approved for the FY 2010-2011 General Appropriations Act. Three levels were added: Ombudsman Associate, Ombudsman III, and Ombudsman IV. The classification change more clearly reflects the desired career ladder opportunities in OIEC's Ombudsman Program and the nature of the work performed by an OIEC Ombudsman.



APPENDIX F

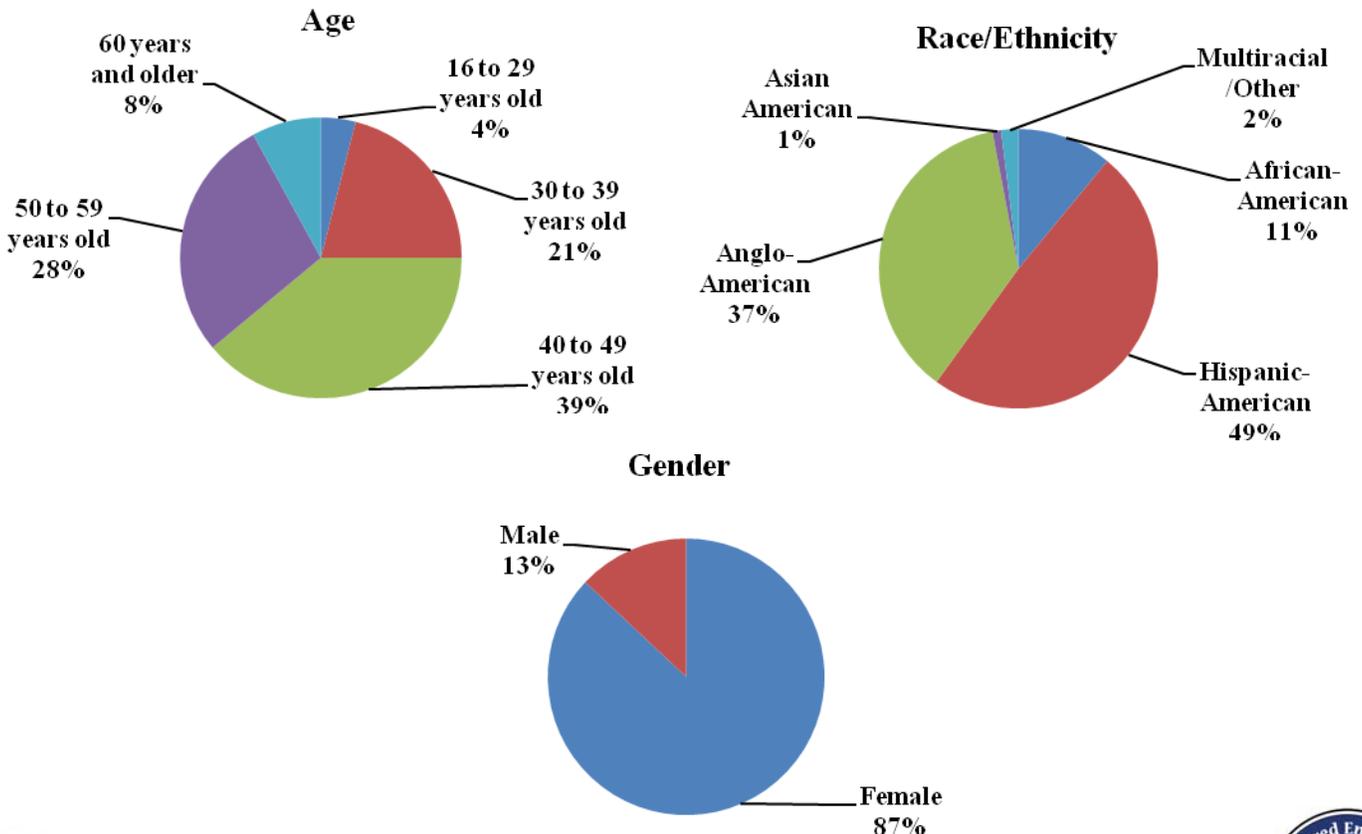
**2010 Survey of Employee Engagement  
Results and Utilization Plan**

**Overview**

At the beginning of calendar year 2010, OIEC employees were asked to participate in the Survey of Employee Engagement, formerly known as the Survey of Organizational Excellence. The survey provides information about the employees' perceptions of the effectiveness of the agency, and the employees' satisfaction with the agency. The survey is provided by the University of Texas at Austin, School of Social Work, and most state agencies participate in the survey.

This is the second time OIEC employees have taken this survey. In 2008, OIEC had a response rate of 82%. This year, 100% of OIEC employees responded. OIEC is very proud of this response rate. The 100% response rate means that OIEC employees have an investment in the organization, want to see the organization improve and generally have a sense of responsibility to the organization. The charts below illustrate the profile of OIEC that participated in the survey. Note that percentages may be different from employee profiles highlighted in other sections of this Strategic Plan due to the date that the information was provided, and the number of participants providing the information.

**Participant Profile**



Survey Year	Surveys Distributed	Total Respondents	Response Rate
2010	167	167	100%
2008	152	124	82%

The Survey of Employee Engagement is a framework, which at the highest level, consists of five Workplace Dimensions capturing the total work environment. Each Workplace Dimension is composed of several Survey Constructs designed to broadly profile areas of strength and concern so that interventions may be targeted appropriately.

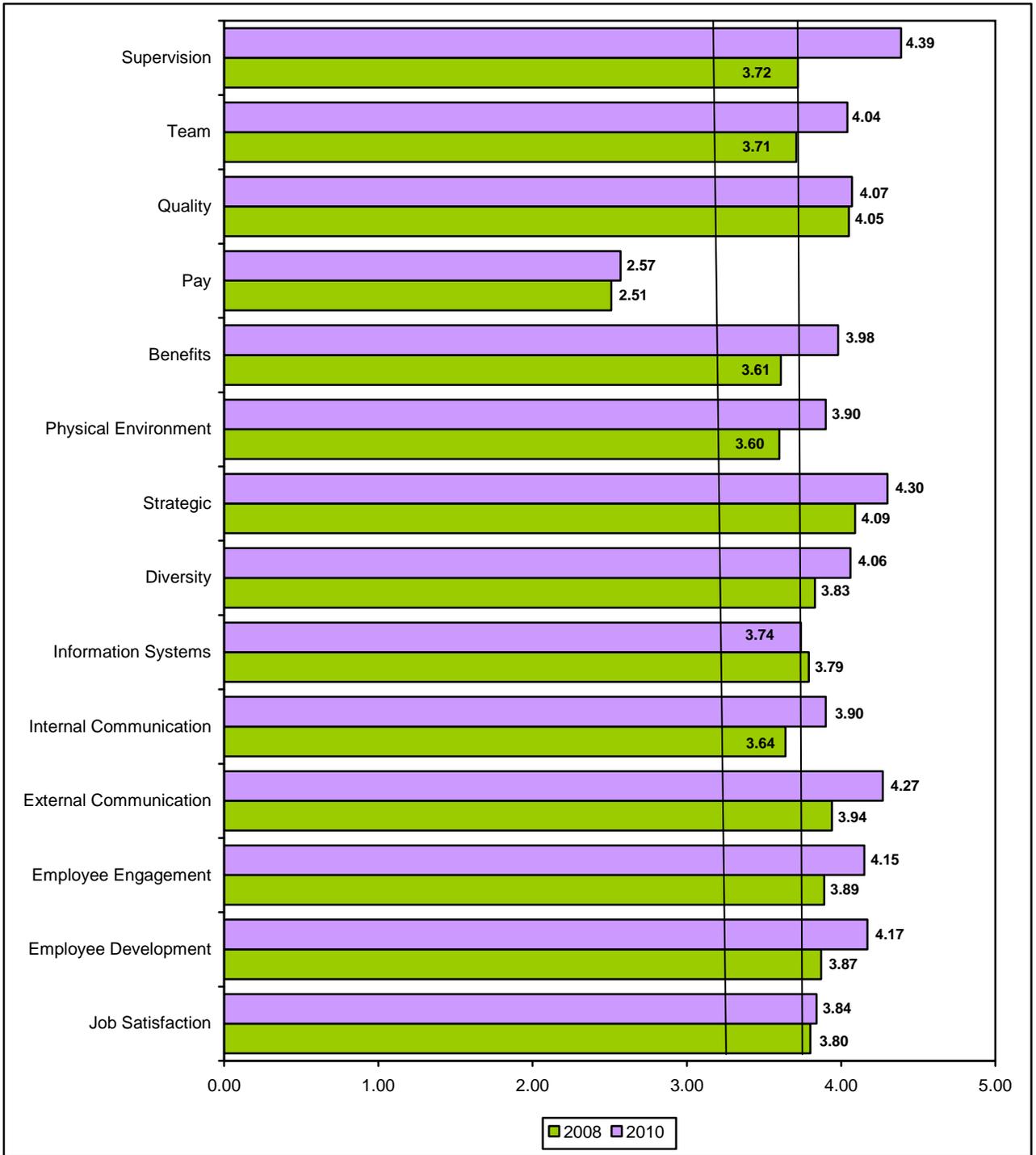
#### Workplace Dimensions

1. Work Group
  - a. Supervision
  - b. Team
  - c. Quality
2. Accommodations
  - a. Pay
  - b. Benefits
  - c. Physical Environment
3. Organization
  - a. Strategic
  - b. Diversity
4. Information
  - a. Information System
  - b. Internal Communication
  - c. External Communication
5. Personal
  - a. Employee Engagement
  - b. Employee Development
  - c. Job Satisfaction

Regardless of the construct average, scores range from areas of strength to areas of concern. In general, most scores are between 3.25 and 3.75. Scores of 3.75 and higher indicate areas of substantial strength because they indicate that they are perceived very positively. Conversely, scores below 3.25 should be a significant source of concern for the organization because they indicate general dissatisfaction; therefore, they should receive immediate attention.



**Constructs and Scores for the 2008 and 2010 Surveys**



The figure above shows the following findings in the 2010 survey compared to the results from the 2008 survey:



- Improvement in the score of 13 of 14 of the constructs.
  - In 10 of them, the increase in score may be statistically significant.
  - The construct “Information Systems” which had a lower score (3.74) in 2010, as compared to the (3.79) score in 2008, may not be statistically significant.
- 12 of 14 constructs received scores higher than 3.75 which indicate that employees perceived these areas to be of substantial strength.
- One of the constructs received a score of 3.74 (Information Systems), which is perceived by employees as more positively than negatively since the score was higher than 3.5.
- Although the “Pay” construct showed an improvement from the 2008 survey, its score of 2.57 indicate that it is an issue of concern for the organization and should receive immediate attention.

### **Utilization Plan**

Employee satisfaction is one of OIEC’s primary concerns. One-hundred percent of OIEC staff participated in the Survey of Employee Engagement, which is considered a very high response rate. High response rates mean that employees have an investment in the agency, want to see the agency improve, and generally have a sense of responsibility to the agency.

It is pleasing to know that 95% of OIEC employees see themselves working for this agency in one year, and OIEC believes that is a good indicator of how well the organization is doing at retaining its employees. Also encouraging is that compared to employees in organizations of similar size or mission OIEC has slightly more favorable results.

OIEC management will continue to strive to make OIEC a great place to work, and as OIEC’s philosophy states, “OIEC is committed to protect the rights of the injured employees of Texas. We will provide the highest level of professional, efficient, and effective customer service; and maintain a work environment that values a diverse workforce, ethical management practices, teamwork, respect, and dignity.”



## APPENDIX G

## HISTORICALLY UNDERUTILIZED BUSINESS (HUB)

## COMPARISON TO STATEWIDE HUB PROCUREMENT GOALS

## Fiscal Year 2009-10 HUB Expenditure Information

Procurement Category	Statewide HUB Goals	HUB Expenditures FY 2009		Total Expenditures FY 2009	HUB Expenditures FY 2010		Total Expenditures FY 2010
		HUB %	HUB \$		HUB %	HUB \$	
Heavy Construction	11.90%	0.00%	\$0.00	\$0.00	0.00%	\$0.00	\$0.00
Building Construction	26.10%	0.00%	\$0.00	\$0.00	0.00%	\$0.00	\$0.00
Special Trade Construction	57.20%	0.00%	\$0.00	\$150.00	0.00%	\$0.00	\$0.00
Professional Services	20.00%	100.00%	\$11,686.00	\$11,686.00	0.00%	\$0.00	\$0.00
Other Services	33.00%	.113%	\$286.00	\$251,222.00	0.00%	\$0.00	\$109,442.00
Commodities	12.60%	55.30%	\$19,483.00	\$35,213.00	52.20%	\$7,935	\$15,184.00
<b>Total Expenditures</b>		10.50%	\$31,455.00	\$298,514.00	6.36%	\$7,935.00	\$124,626.00

## Assessment of Fiscal Year 2009-10 Efforts to Meet HUB Procurement Goals

**Attainment:**

The agency attained or exceeded two of the three goals, or 67 percent, of the applicable statewide HUB procurement goals in FY 2009. In FY 2010, OIEC exceeded one of the three goals, or 33 percent, of the applicable statewide HUB procurement goals in FY 2010.

**Applicability:**

OIEC functions do not include construction; therefore, "Heavy Construction," "Building Construction," and "Special Trade Construction" categories are not applicable to the agency. However, OIEC did incur incidental construction expenses associated with building maintenance through the Special Trade category FY 2009.

**Factors Affecting Attainment:**

**Professional Services:** No expenditures were made under "Professional Services" procurement category for FY 2010; however, in FY 2009, OIEC contracted with a HUB for internal audit purposes.

**Other Services and Commodities:** Several of the contracts under the "Other Services" category were specialized contracts with low HUB participation, such as proprietary maintenance. Major expenditures in "Commodities" included specialized educational training, other office equipment and hardware maintenance services.

**"Good Faith" Efforts:** Since TDIs Purchasing Department is responsible for OIEC's procurement process, OIEC was able to be a part of TDI HUB Forums hosted since FY 2006.

