

Office of Injured Employee Counsel Stakeholder Meeting
7551 Metro Center Drive, Room 1.107
Monday, June 13, 2011
9:30 a.m. – 12:00 p.m.

AGENDA

Welcome

Brian White, Deputy Public
Counsel/Chief of Staff

Executive Summary of the Office of Injured Employee
Advocacy Efforts

Sunset Commission's Across-the-Board Recommendations
to the Office of Injured Employee Counsel

Proposed Ethics Rules

Amendment to the Notice of Injured Employee Rights and
Responsibilities in the Workers' Compensation System

Adjourn



OIEC Legislation

Executive Summary

OIEC Legislative Recommendations

Texas Labor Code § 404.108 provides that the Public Counsel may recommend proposed legislation to the legislature that the Public Counsel determines would positively affect the interests of injured employees as a class.

Since OIEC's creation in FY 2006, the agency has found legislative sponsors for 100% of its proposed legislation. OIEC has made 21 recommendations for the benefit of injured employees to the Texas Legislature. Of these, 13 (62%) have passed and become law; and include the following:

- *HB 886, 80th Session:* Guarantees that an approved small employer would be reimbursed for expenses incurred modifications made by the employer to accommodate an injured employee's return to work.
- *HB 888, 80th Session:* Requires a health care provider to provide copies of the injured employee's medical records to an OIEC Ombudsman at no cost.
- *HB 1003, 80th Session:* Requires that an independent review organization (IRO) that uses doctors to perform reviews of health care services may only use doctors licensed to practice in Texas and must be of the same specialty.
- *HB 1006, 80th Session:* Requires that Utilization Review Agents (URAs) and insurance carriers use doctors licensed to practice in Texas for performing a utilization review.
- *SB 1169, 80th Session:* Grants authority to a Benefit Review Officer to consider a request and issue an interlocutory order if determined to be appropriate.
- *HB 673, 81st Session:* Clarifies an injured employee's right to seek assistance with a dispute before SOAH; holds Ombudsman and injured employee communications confidential; changes the statutory authority to adopt OIEC's notice to injured employees' rights and responsibilities to the Public Counsel; gives OIEC the right to refuse service to threatening or abusive injured employees or injured employees pursuing a criminal act; and limits the agency from being able to access the regulator's attorney-work product to protect the integrity of the agency and the dispute resolution process.
- *HB 1058, 81st Session:* Prohibits total death benefit payments from exceeding 104 weeks regardless of the number of surviving eligible parents; provides that failure to timely file a claim bars the claim unless good cause exists; and redefines "eligible parent."
- *HB 1774, 82nd Session (includes HB 2691 and HB 2692):* OIEC Sunset Legislation. Also authorizes OIEC to seek and accept grant funding; and changes the due date for OIEC's Legislative Report from December 1 to January 1.

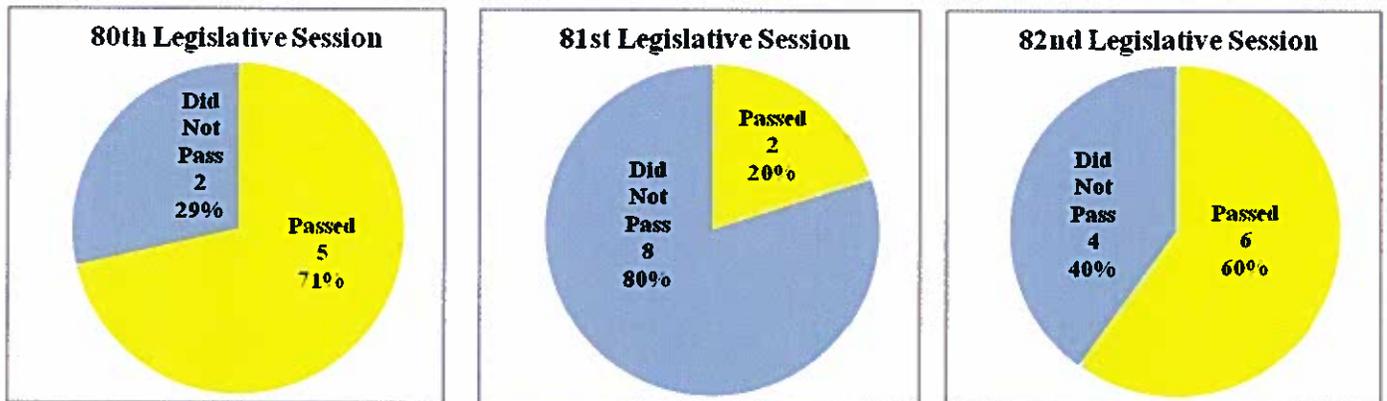


OFFICE OF INJURED EMPLOYEE COUNSEL

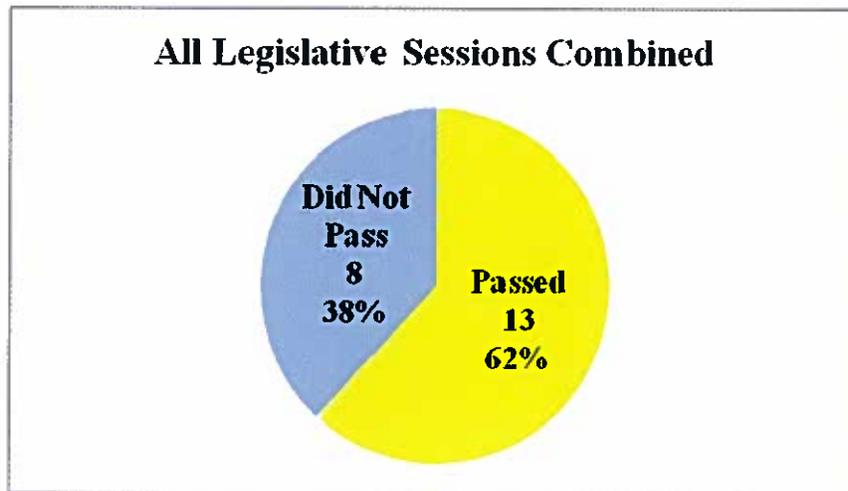
NORMAN DARWIN, PUBLIC COUNSEL

- *SB 809, 82nd Session (includes HB 1872):* Provides a party the same timeframe (45 days) to appeal an administrative medical dispute decision as an indemnity dispute decision into district court; and provides that DWC is the appropriate venue for failure to provide information from the carrier or employer to the injured employee in Workers' Compensation Healthcare Network disputes.
- *SB 511, 82nd Session:* Provides an injured employee the opportunity to seek the opinion of a treating doctor if not satisfied by the designated doctor's opinion regarding maximum medical improve and impairment rating, and requires the insurance carrier to pay the cost of such examination.
- *HB 2605, 82nd Session (includes HB 2198 from 81st Session):* DWC Sunset Legislation. Provides that a medical benefit dispute involving a political subdivision is adjudicated at DWC.

Percentage of OIEC Recommendations that Became Law



- Results for each session do not equal the result for all sessions combined due to recommendations made and passed in subsequent sessions.



Note: In FY 2008-2009, OIEC received appropriations to initiate a Customer Service Program to transfer the agency into a one-stop-shop to best service injured employees.

AN ACT

relating to the continuation and functions of the office of injured employee counsel under the workers' compensation program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 404.003, Labor Code, is amended to read as follows:

Sec. 404.003. SUNSET PROVISION. The office of injured employee counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2017 [~~2011~~].

SECTION 2. Subchapter A, Chapter 404, Labor Code, is amended by adding Sections 404.007 and 404.008 to read as follows:

Sec. 404.007. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The office shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of office rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's

jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The office shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

(d) The office's alternative dispute resolution policy does not affect the manner in which the office participates in the division's administrative dispute resolution process or the department's alternative dispute resolution process through the office's administrative attachment to the department.

Sec. 404.008. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing

its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

SECTION 3. Section 404.101, Labor Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The office may seek and accept grant funding to enable the office to perform its duties under this subtitle. This subsection does not authorize the office to seek or accept payment from an injured employee.

SECTION 4. Section 404.111(a), Labor Code, is amended to read as follows:

(a) When assisting an injured employee, the office is entitled to the same access to information related to the employee's injury and workers' compensation claim as the employee or any other party to the claim. [~~Except as otherwise provided by this section, the office may access information from an executive agency that is otherwise confidential under a law of this state if that information is necessary for the performance of the duties of the office, including information made confidential under Section 402.091.~~]

SECTION 5. Section 402.082(b), Labor Code, is amended to read as follows:

(b) On request from the office of injured employee counsel, the [The] division shall provide [information maintained under Subsection (a)] to the office the identity, claim number, and

contact information of claimants receiving assistance from the office [of injured employee counsel]. [~~The confidentiality requirements imposed under Section 402.083 apply to injury information maintained by the division.~~]

SECTION 6. Section 402.085(a), Labor Code, is amended to read as follows:

(a) The division shall release information on a claim to:

(1) the Texas Department of Insurance for any statutory or regulatory purpose, including a research purpose under Chapter 405;

(2) a legislative committee for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 402.084(b), if the request for assistance is provided to the division;

(4) the attorney general or another entity that provides child support services under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), relating to:

(A) establishing, modifying, or enforcing a child support or medical support obligation; or

(B) locating an absent parent; or

(5) the office of injured employee counsel for any statutory or regulatory purpose that relates to a duty of that office as provided by Section 404.111(a).

SECTION 7. Section 404.106(a), Labor Code, is amended to read

as follows:

(a) The office shall report to the governor, lieutenant governor, speaker of the house of representatives, and the chairs of the legislative committees with appropriate jurisdiction not later than January 1 [~~December 1~~] of each odd-numbered [~~even-numbered~~] year. The report must include:

(1) a description of the activities of the office;

(2) identification of any problems in the workers' compensation system from the perspective of injured employees as a class, as considered by the public counsel, with recommendations for regulatory and legislative action; and

(3) an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

SECTION 8. Section 404.111(d), Labor Code, is repealed.

SECTION 9. The changes in law made by this Act to Sections 402.082(b), 402.085(a), and 404.111, Labor Code, apply to a claim for workers' compensation benefits based on a compensable injury regardless of whether the injury occurred before, on, or after the effective date of this Act.

SECTION 10. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 1774 was passed by the House on April 18, 2011, by the following vote: Yeas 144, Nays 1, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1774 was passed by the Senate on May 19, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED:

Date

Governor