9. Require information to be maintained on complaints.

Explanation

State agencies should maintain adequate information about complaints received. This provision would require that documentation be maintained on all complaints received by the agency; and that all parties to a complaint are informed about agency complaint investigation procedures, and the status of the complaint until resolution.

Statutory Language

( ) The (*agency*) shall maintain a system to promptly and efficiently act on complaints filed with the (*agency*). The (*agency*) 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.

( ) The (*agency*) shall make information available describing its procedures for complaint investigation and resolution.

( ) The (*agency*) shall periodically notify the complaint parties of the status of the complaint until final disposition.

10. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Explanation

The Legislature has established clear authority for the use of alternative procedures for rulemaking and dispute resolution by state agencies. This provision ensures that each agency develops a written, comprehensive plan that encourages these procedures; and applies those procedures to its rulemaking; internal employee grievances, inter-agency conflicts, contract disputes, actual or potential contested matters, and other appropriate potential conflict areas.

Statutory Language

( ) The (*policymaking body*) shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of (*agency*) 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 (*agency's*) jurisdiction.

( ) The (*agency'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.

( ) The (*agency*) shall:

(1) coordinate the implementation of the policy adopted under Subsection (*the first subsection cited above in this ATB*);

(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.

OIEC PROCEDURE

TITLE: OIEC External Complaint Procedure	NUMBER: ADMIN 08-03
	LAST REVISION DATE: June 2011

Purpose:
To establish a system for handling agency complaints.

Responsibility:
All OIEC staff are responsible for compliance with this procedure.

Definitions:
Justified Complaint – A justified complaint is a complaint regarding OIEC's policies, procedures, or personnel within jurisdiction to resolve.

Unjustified Complaint – An unjustified complaint is a complaint that is not regarding OIEC's policies, procedures, or personnel. Therefore, the complaint is not within OIEC's jurisdiction to resolve in accordance to Texas Labor Code §404.101. These complaints will be forwarded to the appropriate agency for action in accordance to Texas Administrative Code §276.2(3).

Procedure:

1. **Receive complaint.**
   a. All agency complaints shall be date-stamped upon receipt and forwarded to the Customer Complaint Coordinator (Kristi Dowding).
      - For verbal complaints received in field offices, OIEC staff shall advise the complainant to file the complaint in writing or on OIEC's complaint form. All complaints received in field offices shall be forwarded to the Customer Complaint Coordinator in OIEC's central office by fax (512-804-4181). The Field Office Contact shall then forward the hard copy of the complaint by interagency mail to the attention of the Customer Complaint Coordinator.
      - Complaints received via website (oieccomplaint@oiec.state.tx.us) are checked daily in central office by the Customer Complaint Coordinator or by the Customer Service Program Coordinator (Cynthia Sandoval-Hill), if the Customer Complaint Coordinator is absent.

   b. The Customer Complaint Coordinator shall log the complaint and report all necessary information into the Complaint Tracking System available at:
      OIEC N: General/Complaint Process/Complaint Tracking Spreadsheet
   c. It is the responsibility of the Customer Complaint Coordinator to:
      - Place the request in a complaint file reflecting the tracking number;
      - Attach a routing slip to the complaint file;

- Coordinate with the appropriate staff to assure the timeframes referenced in this procedure are met; and
- Ensure that the complainant receives an acknowledgment letter within 2 business days of receipt of the complaint and the agency's written response within 30 business days from the date the complaint was received by the agency.

2. Prioritize complaints according to nature, severity, and impact.

a. The Customer Complaint Coordinator shall evaluate and prioritize all agency complaints.
   - Workers' compensation system complaints are not considered agency complaints and will not be considered through this procedure. Complaints received regarding the workers' compensation system shall be referred to the Texas Department of Insurance (TDI) as the appropriate regulatory agency administering workers' compensation, and the assigned staff shall make the appropriate dispute resolution information system (DRIS) entry (ORF—Other Referral). A standard letter shall be issued to the complainant, which makes the complainant aware that his or her complaint was reviewed by OIEC and was referred to the Texas Department of Insurance. These complaints are referred to TDI by the Customer Service Program Coordinator.
   - External agency complaints are defined as a concern about OIEC, OIEC's staff, or OIEC's policies and procedures. External agency complaints follow this procedure, and assigned staff shall proceed as follows.

b. The Customer Complaint Coordinator shall assign the complaint to appropriate office staff that will be responsible for the complaint. The Customer Complaint Coordinator shall log the assignment in the tracking system and deliver the complaint to the assigned staff.

3. Prepare correspondence.

a. The assigned staff shall screen issues for potential referral and make referrals at this time.
   - Compliance issues should be referred to Texas Department of Insurance (*See* Workers' Compensation Compliance Referral Procedure – ADMIN 08-04).
   - Referrals to Department of Assistive and Rehabilitative Services (DARS), Texas Workforce Commission (TWC), and local, state, and federal financial assistance, rehabilitation, and work placement programs shall be reflected in both the written response to the complainant and with the appropriate DRIS entry.

b. The assigned staff shall draft a written response to the complaint. It is recommended that the response be prepared within 15-business days of the date the complaint was assigned.
   - The written response shall be prepared with the Deputy Public Counsel/Chief of Staff's (Brian White) signature block on the agency's letterhead.
   - The written response may include the agency's plan of action to resolve such complaint (e.g. may include referral to appropriate agency) and may be saved at: OIEC N: General/Complaint Process/Agency Response.
     - The written agency response should be saved using both the complainant's last name and the tracking number (e.g. Smith 08-001).

c. The assigned staff shall submit the draft response along with the complaint file to the Director of Legal Services for review and notify the Customer Complaint Coordinator of such action.

4. **Review response.**
   a. The Director of Legal Services or delegatee shall review the written response and provide feedback to the assigned staff. It is recommended that the review be completed within five days of receipt of the written response.

5. **Send response to complainant.**
   a. The Legal Assistant shall incorporate the Director of Legal Services' recommendations into the written response and return the file and response the Customer Complaint Coordinator. It is recommended that the will be sent to the Deputy Public Counsel/Chief of Staff for review and signature by the 25th business day after the complaint was received by OIEC. If the response is not finalized and ready for review by the Deputy Public Counsel/Chief of Staff by the 25th business day, the Customer Complaint Coordinator will notify the Deputy Public Counsel/Chief of Staff of the need for action to be taken to ensure that the complaint response is sent out by the 30th business day deadline. A notation will be made in the complaint tracking system as to whether the response was mailed out by the 30th business day.
   b. The written response may include the agency's plan of action to resolve such complaint (e.g. may include referral to appropriate agency) and shall be saved at:
      OIEC N: General/Complaint Process/Agency Response.
      - The written agency response shall be saved using both the complainant's last name and the tracking number (e.g. Smith.09-0001).
   c. After the Deputy Public Counsel/Chief of Staff's review and final approval (signature), the Deputy Public Counsel/Chief of Staff shall forward the complaint file, including the response, to the Customer Complaint Coordinator.
   d. The Customer Complaint Coordinator shall log in the Complaint Tracking System the agency action taken on the complaint and send the response to the complainant. If the complaint was regarding an OIEC employee, the referenced employee, the employee's Supervisor, Associate Director, and Director will be sent a copy of the response letter.
      - When closing the file the Customer Complaint Coordinator will ensure the complaint letter, acknowledgment letter, response letter and the routing slip are enclosed in the complaint file. Lastly the Customer Complaint Coordinator will ensure the electronic response is appropriately archived or retained.

6. **<u>Alternative Dispute Resolution (ADR).</u>**

   - <u>The Governmental Dispute Resolution Act (GDR Act) and OIEC accommodates and encourages the use of alternative dispute resolution by state governmental bodies. Furthermore, the Sunset Advisory Commission has strongly endorsed the use of Alternative Dispute Resolution in resolving appropriate disputes before governmental bodies as fairly and expeditiously as possible. OIEC's implementation of Alternative Dispute Resolution is in accordance with the GDR Act and the Texas Civil Procedures and Remedies Code.</u>

   - <u>At any point during the complaint process, enumerated above, the parties may agree to engage in alternative dispute resolution to attempt to resolve a dispute. This process is voluntary and will only take place if both parties agree to participate with the intention of</u>

resolving the dispute. The cost incurred by the mediation shall be split equally by the complainant and OIEC.

- The Deputy Public Counsel will coordinate any alternative dispute resolution with a mediator qualified under Texas Civil Procedures and Remedies Code §154.052. Requests for alternative dispute resolution shall be made by calling (512) 804-4170 or by email at brian.white@oiec.state.tx.us.

- If the complaint is resolved through Alternative Dispute Resolution, the Deputy Public Counsel will send a copy of the agreement to the Customer Complaint Coordinator for closure. The Customer Complaint Coordinator will gather the appropriate data concerning the effectiveness of Alternative Dispute Resolution.

- If the issue is not resolved through Alternative Dispute Resolution, the OIEC complaint process will continue. Any timeframes for completing the complaint response will be suspended during the Alternative Dispute Resolution process and will continue at the end of the Alternative Dispute Resolution process.

- At no point will Alternative Dispute Resolution be applied in a manner that denies a person a right granted under state or federal law or under a local charter, ordinance, or other similar provision, including a right to an administrative or judicial hearing. GDRA §2009-052(b).

DRAFT

Data that is Collected for External Complaints

1. Complaint Number
2. Complainant
3. Complainant Issue(s)
4. Date Received by Central Office
5. 30th Business Day
6. Date 48 Hour Letter Sent
7. Assigned Staff (Name)
8. 15th Business Day (Draft to Legal)
9. 20th Business Day (Legal Review Completed)
10. 25th Business Day (Notification to Deputy Public Counsel/Chief of Staff)
11. Email Sent to Deputy Public Counsel/Chief of Staff (Yes or No)
12. Date Response Issued
13. Total Business Days Taken to Respond
14. Complaint (Justified or Unjustified)
15. *ADR Initiated (Yes or No)
16. *Successful Resolution of ADR (Yes or No)

*Data Fields to be added.

OFFICE OF INJURED EMPLOYEE COUNSEL
NORMAN DARWIN, PUBLIC COUNSEL

MEMORANDUM

Date: June 7, 2011

To: OIEC Administration and Operations

From: Brian White, Deputy Public Counsel/Chief of Staff

RE: Directive Regarding Alternative Dispute Resolution Clause in Signed Contracts

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Effective immediately, OIEC shall include language from Texas Government Code, Chapter 2260 in all purchase orders and contracts to which it is a party. This language mandates that any breach of contract claim against a governmental body must be mediated before a party can file suit. The purpose of including this language is to inform all parties that Alternative Dispute Resolution is a required process before a contract dispute can proceed to tort.

In all contracts to which OIEC is a party, it shall include:

> "The State of Texas has adopted a policy and process encouraging the use of negotiation and mediation to resolve contract claims against the state. All contract claims made against the Office of Injured Employee Counsel must adhere to the process under Texas Government Code, Chapter 2260, Resolution of Certain Contract Claims Against the State."

Please contact the Associate Director of Operations, Erick Dunaway if you have any questions about this memorandum. Thank you.

7551 METRO CENTER DRIVE, SUITE 100, MS-50 ★ AUSTIN, TX 78744-1609
(512) 804-4170 ★ FAX (512) 804-4181
WWW.OIEC.STATE.TX.US

OIEC PROCEDURE

TITLE: OIEC Employee Complaints and Grievances Procedure	NUMBER: ER-10-02
	LAST REVISION DATE: June 2011

PURPOSE

To define the procedure of the Office of Injured Employee Counsel (OIEC) with regard to employee complaints and grievances.

RESPONSIBILITY

The Deputy Public Counsel, the Director of Legal Services, and the Staff Services Officer are primarily responsible for administering this procedure; however, all agency employees should comply with the following guidance.

NONDISCRIMINATION

OIEC will comply fully with the nondiscrimination provisions of all Federal and State laws and regulations by ensuring that no person will be excluded from consideration for recruitment, selection, appointment, training, promotion, retention, or any other personnel action or be denied any benefits or participation in any educational programs or activities, which it operates, on the grounds of race, color, creed, religion, sex, age, national origin, disability, veteran status, genetic information, or sexual orientation (except where age, sex, or disability constitute a bona fide occupational qualification necessary to proper and efficient administration and except where any such grounds are required or authorized by law to be utilized in personnel actions).

PROCEDURE

1. Employee Complaints

- An employee complaint is an expression of dissatisfaction relating to hiring, selection, promotion, evaluation, wages, hours of work, the administration of personnel policies, disciplinary actions not otherwise covered in the grievance process, or other conditions of employment.
- Employees are encouraged to attempt to resolve issues and concerns informally with their Supervisors and Directors. However, if this is not successful, employees may use the formal complaint process.
- If an employee wishes to file a complaint, the Employee Complaint Form ER-05 should be completed and sent to the Staff Services Officer.
- Complaints involving a Director should be sent directly to the Deputy Public Counsel for processing and action.

- The Staff Services Officer will send an acknowledgment letter to the employee within two business days of receiving the complaint and oversee the inquiry related to the filed complaint.
- The Staff Services Officer will consult with the appropriate Director and/or Supervisor and the Deputy Public Counsel to recommend an appropriate course of action.
- At the conclusion of the complaint investigation, the Staff Services Officer, Director of Legal Services, or the Deputy Public Counsel will inform the employee in writing if any appropriate action was taken or that the inquiry revealed nothing to support the issues raised in the complaint. Generally, inquiries and investigations are completed within 30 business days after the receipt of the complaint.
- If the employee is not satisfied with the outcome of the complaint, the employee may request an executive review by the Deputy Public Counsel (if the initial complaint review was conducted by the Staff Services Officer) or the Public Counsel (if the initial complaint review was conducted by the Deputy Public Counsel) no later than 10 business days after receipt of the findings. The decision of the executive review is final in all cases.

2. Employee Grievances

- Grievances are formal written complaints by a current or former employee regarding an adverse employment decision of termination, disciplinary demotion, or suspension without pay.
- An employee who wants to file a grievance must complete the Grievance Form ER-06 within 10 business days from the date of the adverse action. The grievance form must be sent to the Director of Legal Services. The Director of Legal Services will send an acknowledgment letter to the employee within two business days of receiving the grievance.
- After receiving the grievance, the Director of Legal Services will promptly provide the Deputy Public Counsel with the grievance and any documents relevant to the adverse employment action.
- The Deputy Public Counsel will review the information in the grievance and make inquiries or investigations, as appropriate.
- The Deputy Public Counsel will issue a written response to the grievance to the employee with a copy to the Public Counsel. Generally, this written response will be made within 30 business days after receipt of the grievance.
- If the employee or management is not satisfied with the Deputy Public Counsel's decision, a written appeal may be filed to the Public Counsel no later than 10 business days after receipt of the Deputy Public Counsel's decision.
- The Public Counsel will follow the same process of reviewing the grievance. The decision of the Public Counsel regarding the grievance is final.