



Strategic Plan

Fiscal Years 2013-2017

The Office of Injured Employee Counsel

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 round of strategic planning began in March 2010, our nation's economic challenges have persisted, but Texas' commitment to an efficient and limited government has kept us on the pathway to prosperity. Our strong economic position relative to other states and the nation 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 and prudently managed important reserves in our state's "Rainy Day Fund," cut taxes on small businesses, balanced the state budget without raising taxes, protected essential services, and prioritized a stable and predictable regulatory climate to help make the Lone Star State the best place to build a business and raise a family.

Over the last several years, families across this state and nation have tightened their belts to live within their means, and Texas followed suit. Unlike people in Washington, D.C., here in Texas we believe government should function no differently than the families and employers it serves. As we begin this next round in our strategic planning process, we must continue to critically examine 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the core programs and activities necessary for the long-term economic health of our state, while eliminating outdated and inefficient functions.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 continue to adhere to the priorities that have made Texas a national economic leader:

- 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 make sure 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 to chart a strong course for our great state.

Rick Perry
Governor of Texas

THE MISSION OF TEXAS STATE GOVERNMENT

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!

THE PHILOSOPHY OF TEXAS STATE GOVERNMENT

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.

State Priority Goals Relating to OIEC

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;
- 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; and
- Facilitating the seamless exchange of health information among state agencies to support the quality, continuity, and efficiency of health care delivered to clients in multiple state programs.

Benchmark:

- Percentage of people completing vocational rehabilitation services and remaining employed

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 business.

Benchmark:

- Number of utilization reviews conducted for treatment of occupational injuries

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.

Benchmark:

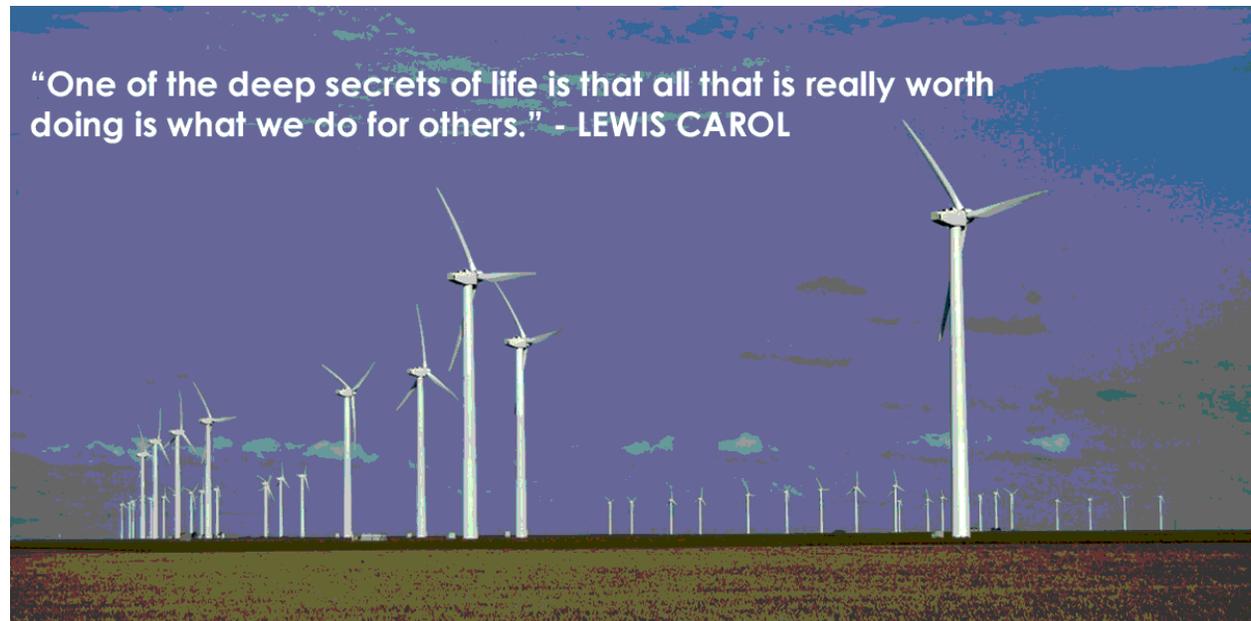
- Total savings realized in state spending by making reports/documents/processes available on the Internet and accepting information in electronic format

AGENCY MISSION

The Office of Injured Employee Counsel's mission is to assist, educate, and advocate on behalf of the injured employees of Texas.

AGENCY 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

Chapter 404 of the Texas Labor Code provides the statutory authority for OIEC. The statute sets out the powers and duties of the agency, which are to represent the interests of injured employees in the Texas Workers' Compensation System. No other state or federal agency in Texas provides advocacy for injured employees as a class.

OIEC is administratively attached to the Texas Department of Insurance (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; 3) facilities; and 4) computer equipment and support.

Historical Perspective

OIEC was established as a State agency 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 TDI as a means to reform the Texas Workers' Compensation System.

HB 7 also transferred TWCC's Ombudsman Program to OIEC, which included 91 full-time equivalent (FTE) staff to assist unrepresented injured employees in the workers' compensation system. The bill also authorized OIEC to employ staff attorneys to advise OIEC employees in providing assistance to injured employees and preparing for administrative dispute resolution proceedings.

At that time, OIEC's Ombudsman Program assisted injured employees only after they had been scheduled for a dispute resolution proceeding. It soon became apparent that injured employees would benefit greatly if OIEC were able to assist them earlier in the process.

In 2007, the 80th Texas Legislature transferred 25 full-time-equivalent staff positions (FTE) from DWC to enable OIEC to resolve disputes between injured employees and workers' compensation carriers prior to a proceeding conducted by DWC. The transfer of these FTEs enabled OIEC's Ombudsman Program to conduct case development functions as well as assign a single point of contact or advocate for each injured employee. The 80th Legislature also provided funding for 36 FTEs to allow OIEC to hire customer service representatives to directly respond to injured employee telephone calls and to educate them about their rights and responsibilities in the workers' compensation system.

The agency underwent a review by the Sunset Advisory Commission (Sunset) in 2011. Sunset legislation was passed during the 82nd Texas Legislature, Regular Session, 2011, to continue the agency through fiscal year (FY) 2017 to coincide with DWC, the regulator's Sunset review.

Affected Populations

OIEC assists, educates, and advocates on behalf of injured employees in Texas. Texas is currently the only state where workers' compensation coverage is not mandatory for all private-sector employers. Based on a 2010 study conducted by TDI's Workers' Compensation Research and Evaluation Group, approximately 68 percent of Texas employers carry workers' compensation insurance while 83 percent of all employees in the State are covered by workers' compensation.¹

OIEC's primary customers are unrepresented injured employees and beneficiaries of injured employees fatally injured on the job who work for employers that participate in the Texas Workers' Compensation System. However, OIEC advocates for *all* injured employees as a class.

OIEC assists other 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 throughout Texas.

Main Functions

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

ASSIST: OIEC assists unrepresented injured employees and beneficiaries free of charge with disputes relating to workers' compensation income or medical benefits. OIEC strives to resolve medical and indemnity disputes prior to entering the workers' compensation administrative dispute resolution system. When this is impossible, Ombudsmen prepare unrepresented injured employees for and assist them during administrative dispute resolution proceedings. Ombudsmen may also assist in filing a request for review by DWC's Appeals Panel if the injured employee is not satisfied with the decision of the Hearing Officer.

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 to help them with:

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

¹ Source: Employer Participation in the Texas Workers' Compensation System: 2010 Estimates conducted by TDI's Workers' Compensation Research and Evaluation Group in October 2010.

The agency provides outreach presentations, workshops, seminars, and speaking engagements 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 advocates on behalf of injured employees as a class by analyzing and participating in workers' compensation system initiatives and encouraging the simplification of the system's procedures and forms. OIEC identifies systemic issues that may increase burdens or create problems for injured employees and addresses those issues in the legislative and rulemaking processes. The agency also files *amicus curiae* (friend of the court) briefs when a case is pending before a court in an effort to provide a positive impact on a large number of injured employees.

Public Perception

Although OIEC has been an independent State agency for more than six years, it is still relatively unknown by many workers' compensation system participants. A 2010 survey of Texas employers² revealed that only 34 percent of the respondents were knowledgeable about the creation of the new agency. In response, OIEC utilizes its website and other technological tools such as Facebook, Twitter, and YouTube; outreach presentations; Public Service Announcements; and educational materials (brochures and flyers) to inform the public about services provided and the role that OIEC plays in the Texas Workers' Compensation System. OIEC has been proactive in identifying innovative ways to provide this information to workers' compensation system stakeholders.

OIEC's responsibilities are often confused with the regulatory functions of TDI and DWC. Although OIEC is administratively attached to TDI, it is a separate Article VIII agency. However, services provided by OIEC do not include regulatory functions. Some injured employees do not realize that OIEC and DWC are two separate agencies. They may contact OIEC to complain about regulatory or system issues such as their designated doctor examination or that the adjuster is not returning their telephone calls. In such cases, OIEC tries to educate the individual about the workers' compensation system and may refer them to DWC, TDI, or other agencies, as appropriate.

A goal of the Texas Workers' Compensation System reform was to ensure injured employee's rights were protected in the administrative dispute resolution system. OIEC's Ombudsman Program was designed to assist injured employees in DWC's administrative dispute resolution system free of charge. 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

² Source: Employer Participation in the Texas Workers' Compensation System: 2010 Estimates conducted by TDI's Workers' Compensation Research and Evaluation Group in October 2010.

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 provide representation in DWC’s administrative dispute resolution system and in district court. See http://www.oiec.texas.gov/resources/atty_info.html. Additionally, OIEC has partnered with the workers’ compensation claimants’ bar and provided a non-exhaustive list of attorney’s that may represent injured employees.

Of the individuals that OIEC assists, most perceive the agency positively. OIEC conducts a Customer Satisfaction Survey each year, and the results of the survey are used for planning agency initiatives and to evaluate the quality of services it provides. The 2011 Customer Satisfaction Survey indicated that approximately 90 percent of the injured employees that responded to the survey said that they were satisfied with the services that they received. OIEC works hard to meet the needs of its customers and is diligent in maintaining a consistently high level of customer service.

OIEC’s website, educational materials (including brochures and flyers), outreach presentations, and surveys are some of the tools utilized to fulfill OIEC’s mission to assist, educate, and advocate on behalf of the injured employees of Texas and to provide useful information to other workers’ compensation system participants. These statutorily required outreach efforts are essential to inform the public about services provided and the role that OIEC plays in the Texas Workers’ Compensation System.

Organizational Aspects

Size and Composition of Workforce

OIEC is authorized to employ 175 full-time equivalent (FTE) positions in FY 2012-2013. OIEC relies on competent, knowledgeable, and diverse staff to effectively and efficiently serve the injured employees of Texas. Officials, administrators, professionals, and para-professionals make up 100 percent of OIEC’s workforce. Females make up 86 percent of the workforce, and Black, Hispanic, and Other ethnicities make up 64 percent of the agency’s workforce as shown in the table below.

EEO Category	Office of Injured Employee Counsel – Workforce Statistics					
	Black	Hispanic	Anglo	Other	Male	Female
Officials, Admin. (A)	0.00%	28.57%	71.43%	0.00%	28.57%	71.43%
Professional (P)	11.43%	50.48%	37.14%	0.95%	18.10%	81.90%
Technical (T)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Para-Professional (Q)	7.50%	67.50%	25.00%	0.00%	2.50%	97.50%
Admin. Support (C)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Skilled Crafts (S)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Service & Maintenance (M)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
All Categories	9.87%	53.95%	35.53%	0.66%	14.47%	85.53%

Organizational Structure

The Public Counsel serves as the executive director 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 1st of each odd-numbered year (Texas Labor Code § 404.051). Public Counsel Norman Darwin was appointed by Governor Rick Perry on December 8, 2005 and reappointed in 2007, 2009, and again in 2011 for a term to expire February 1, 2013.

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 function was established in accordance with the provisions of the Texas Internal Auditing Act, Government Code, Chapter 2102. The internal auditor provides consultation to OIEC management and furnishes independent analysis, 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.

OIEC has four program areas or divisions:

- Ombudsman Program,
- Customer Services,
- Administration and Operations; and
- Internal Audit.

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 them. Ombudsmen strive to resolve disputed issues at the earliest point prior to a 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 DWC's Appeals Panel. Ombudsmen also attend benefit review conferences and contested case hearings with the injured employees and communicate on their behalf with the other system participants, including DWC. Ombudsman assistance is also provided to injured employees in administrative proceedings pending before the State Office of Administrative Hearings (SOAH).

The Ombudsman Program is comprised of 66 Ombudsmen and 20 Ombudsman Associates. The Program is managed by a Director, three Associate Directors, and six Ombudsman Supervisors. The Supervisors provide oversight, direction, and management in the 20 field offices across the State.

Customer Service. The Customer Service Program educates injured employees and the public by responding to questions they have about the workers' compensation system. Customer Service Representatives also identify disputed issues that may arise in an injured employee's workers' compensation insurance claim and try to resolve them within the first 10 business 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 DWC's administrative dispute resolution process. If the Customer Service Representative cannot resolve the dispute, the information is forwarded to the Ombudsman Program for case development and formal dispute resolution. These two programs work closely together to assist and educate the injured employees of Texas.

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 for services in an effort to return the injured employee to work. Referrals are also made to the Texas Workforce Commission, TDI, the Texas Medical Board, or other social and regulatory services.

OIEC's Customer Service Program is comprised of one Director, one Associate Director, two Supervisors, and 43 Customer Service Representatives. Supervisors are located in the Tyler and San Antonio field offices.

Administration and Operations. Administration and Operations includes one Director and three Associate Directors to lead three sections with different responsibilities necessary to fulfill the agency's mission:

- Operations,
- Legal Services, and
- Communications and Outreach.

Operations. The Operations section provides technical and administrative support for the agency including functions such as: strategic planning; budget planning and management; records retention; rulemaking; performance measure monitoring and reporting; staff services; and administering surveys and issuing reports required by statute.

The agency business plan is published each month by Operations staff to keep OIEC employees and the citizens of Texas informed about agency initiatives. The business plan details the agency's most critical initiatives, establishes their due date, identifies the parties responsible for completing them, provides a value ranking the initiative in importance in relation to fulfilling the agency's mission, and a general status update on each initiative.

OIEC is administratively attached to TDI, and Operations staff works in conjunction with services provided by TDI such as human resources, budget, accounting, facilities, and information technology services. Operations staff also administers human resource issues (such as hiring and disciplinary actions).

The Operations section is comprised of one Associate Director, four Staff Services Officers, and two Planners.

Legal Services. Legal Services is comprised of one Associate Director and six Regional Staff Attorneys (RSAs). RSAs provide a resource for the Ombudsmen and Customer Service Representatives as they fulfill their mandate to assist, educate, and advocate for injured employees. RSAs oversee the work of the Ombudsman Program and advise Ombudsmen in providing assistance to injured employees in preparation for administrative proceedings. RSAs conduct Practical Skills Training to help Ombudsmen refine their skills in assisting injured employees in proceedings before DWC.

Legal Services analyzes and provides comments on rules proposed by TDI and DWC 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 provides legal counsel to the agency's program areas regarding policymaking, open records, contracts, human resources, and other issues affecting the daily operations of the agency. The program 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.

Communications and Outreach. The Communications and Outreach section is comprised of one Associate Director and four Communications Specialists (two of the four employees work half time) that utilize a variety of initiatives to raise awareness of the services provided by OIEC. Educational materials, including flyers and brochures, are compiled into information packets for injured employees as well as employers, employee organizations, social service agencies, and other stakeholders. OIEC Communications Specialists coordinate outreach presentations, workshops, information booths, seminars, and statewide speaking engagements; and maintain OIEC's Intranet, Internet, and social media websites, such as Facebook, Twitter, and YouTube accounts – all in an effort to help educate customers and the public about the agency and its services.

The agency's newsletter, "The Quarterly Review" is published every three months by Communications and Outreach staff and is distributed to OIEC employees, workers' compensation system stakeholders, Texas Legislators, and members of the public to provide information and highlight issues in the workers' compensation system from the injured employee's perspective.

The Communications and Outreach section assists legislative offices with constituent issues related to workers' compensation and advocates on behalf of injured employees at the State Capitol as part of the agency's statutorily mandated advocacy function. This section researches opportunities for grant funding, which is a new charge pursuant to the 82nd Legislative Session, 2011; and oversees the agency's succession planning initiatives.

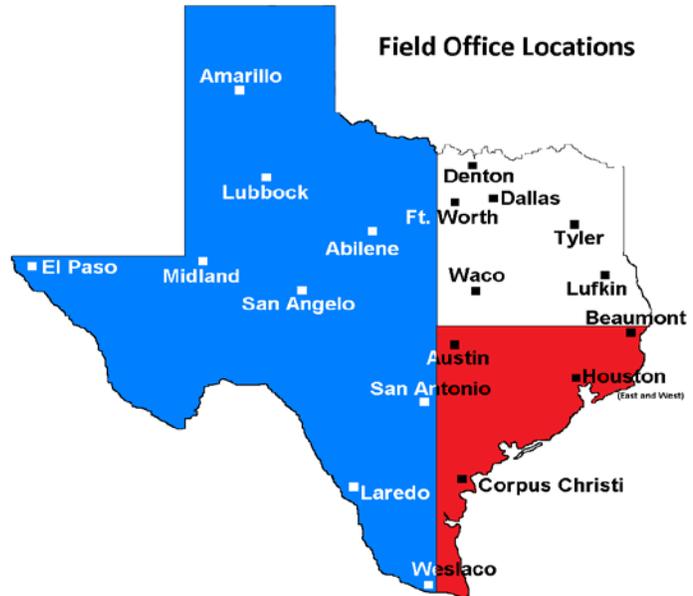
OIEC's Organizational Chart can be found in Appendix B.

Agency Locations

OIEC's central office is located at 7551 Metro Center Drive in Austin, Texas. Approximately 90 percent of staff are located in 20 field offices across the State and approximately 10 percent of agency staff reside in the Austin central office.

Travel. Ombudsmen and other OIEC staff travel throughout Texas to provide adequate support and services for all injured employees.

In situations where there is no field office within 75 miles of an injured employee's residence, DWC is statutorily responsible for providing a place to hold the dispute resolution proceeding within 75 miles of the injured employee's residence. The location of the administrative proceeding is TDI's responsibility as the insurance regulator and host of DWC's workers' compensation system. As field offices close, OIEC incurs more travel expense to attend proceedings. Additionally, Ombudsmen may be required to travel to hold case development and preparation appointments with injured employees if telephone conferencing is not an option.



All state agencies are required to have a management-to-staff ratio of no more than one manager for each 11 staff. TEX. GOV'T. CODE § 651.004. OIEC is in compliance with this requirement. However, most agency Supervisors are not located in the same city/field office as their employees because approximately 90 percent of the agency staff are spread amongst field offices. Therefore, they are obligated to travel to train and support their staff as necessary.

Training is an important initiative at OIEC. At least one year of experience is required to be eligible for designation as an Ombudsman. Experienced Ombudsmen must travel across the State to monitor and ensure appropriate training for each potential Ombudsman. Regional Staff Attorneys conduct Practical Skills Training, which often requires travel. Continuing education requirements for Ombudsmen, Regional Staff Attorneys, and other OIEC staff also may necessitate travel.

Out-of-State Requirements. OIEC staff has not traveled outside the State except for conferences and training.

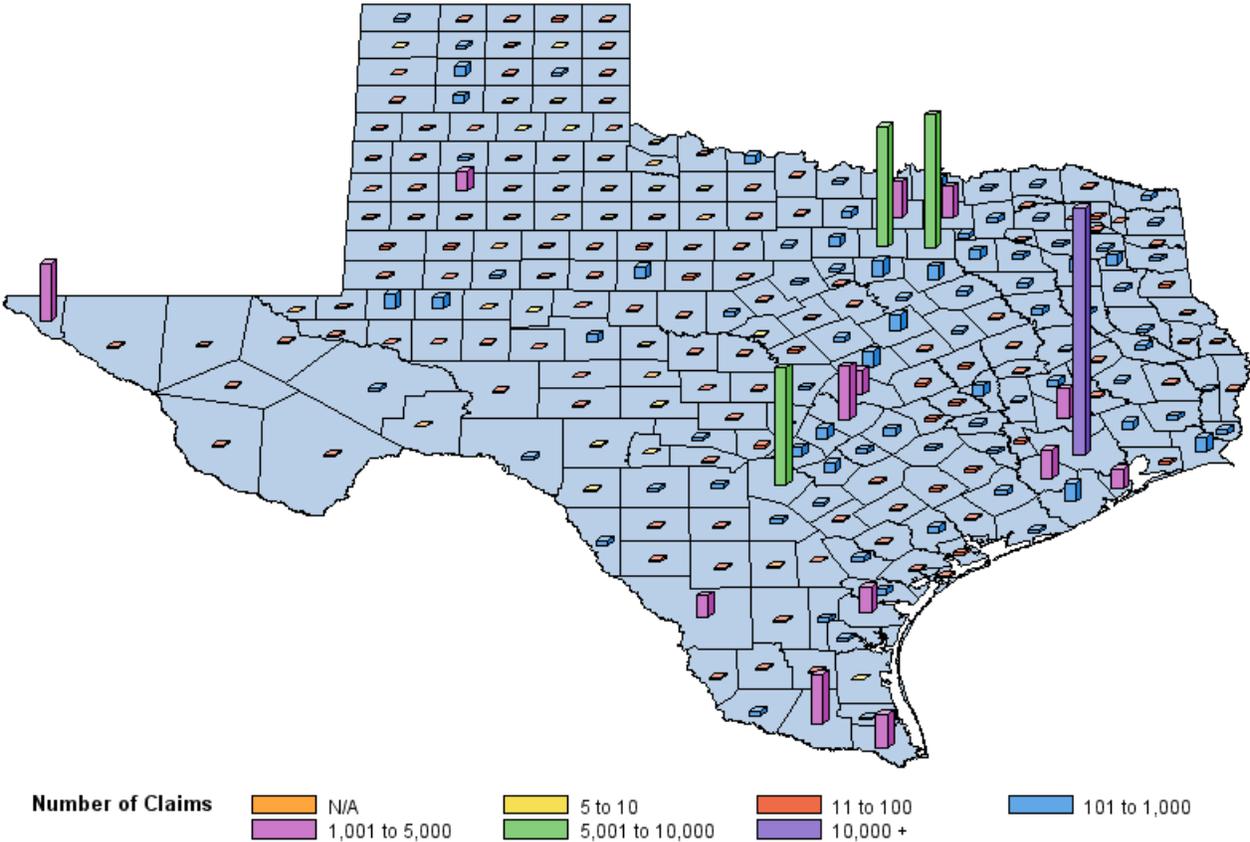
Location of Service Populations

Injury Claims. OIEC provides services to injured employees throughout the State. Although the number of injury claims has decreased over the past few years, which may be partly due to the recent recession, OIEC believes that as individuals go back to work, the number of injury claims in Texas will increase. Below is a table that identifies the number of injury claims that DWC has received since 2007 and a map indicating the number of injury claims per county.

Table of Number of Claims by Calendar Year of Injury

2007	2008	2009	2010	2011
112,081	107,685	96,926	98,297	88,811

Map of Claims by County of Injured Employee Address for Calendar Year of Injury 2011



Source: Texas Department of Insurance, Division of Workers’ Compensation; System Data Report
 (Map of County of Injured Employee Address)
 Workers’ Compensation claim data updated through December 2011.

Physician Participation. According to a recent study conducted by TDI's Workers' Compensation Research and Evaluation Group,³ 70 percent of all workers' compensation claims are in the five largest metro areas. In comparison, 73 percent of all active Texas physicians participating in workers' compensation are located in the same five metro areas.

The study indicates that 45 percent of active Texas physicians participate in workers' compensation, which has decreased since 1999 when the participation rate was 58 percent.

The table below indicates the number of physicians participating in the Texas workers' compensation system in 22 Texas hospital referral regions and the rate of participation. Participation rates for the five metro areas range between 42 percent and 44 percent. Smaller areas all show higher participation rates.

Texas Workers' Compensation Physician Participation			
Hospital Referral Region	Workers' Compensation Participating Physicians	Non- Participants Physicians	Participation Rate
Houston	4,559	6,224	42.30%
Dallas	3,773	5,026	42.90%
San Antonio	1,821	2,464	42.50%
Austin	1,505	1,916	44.00%
Fort Worth	1,444	1,830	44.10%
Tyler	545	484	53.00%
El Paso	393	496	44.20%
Corpus Christi	392	467	45.60%
Lubbock	420	361	53.80%
McAllen	369	369	50.00%
Temple	333	343	49.30%
Beaumont	327	314	51.00%
Harlingen	260	336	43.60%
Amarillo	341	238	58.90%
Waco	265	243	52.20%
Odessa	252	195	56.40%
Bryan	222	205	52.00%
Abilene	241	182	57.00%
Wichita Falls	146	177	45.20%
Longview	177	137	56.40%
San Angelo	160	103	60.80%
Victoria	126	108	53.80%

³ Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group; *Access to Medical Care in the Texas Workers' Compensation System, 1998-2010 – 2012 Results*, April 2012.

Texas-Mexico Border Region (In accordance with Texas Government Code, § 2056.002[b][8]). The Texas-Mexico border makes up 1,254 miles of the 1,900-mile-long United States-Mexico border. This 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.

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

Between 2000 and 2010 the population of the Texas-Mexico border region increased 21 percent. Part of this increase was due to the increase in the Asian and Hispanic populations. The Hispanic population increased 28 percent while the Asian population increased 72 percent. The Hispanic population makes up 73 percent of the total population in this region. Twenty-one percent of the region is white and 3 percent is black.⁴

Two cities within the Texas-Mexico border region, San Antonio and El Paso, were ranked the best in the nation in *The 2011 Milken Institute Best-Performing Cities Index*⁵, which ranks U.S. metropolitan areas by how well they are creating and sustaining jobs and economic growth. The components include job, wage and salary, and technology growth. In 2011, San Antonio was ranked as the top performer among the nation's 200 Best-Performing large metros, and El Paso ranked number two.

Governor Perry released this statement in a press release regarding the designation:

“I’m proud of the environment we’ve created in Texas that allows employers to risk their capital, receive a return on their investment and create jobs, thanks to our low taxes, reasonable and predictable regulatory environment, fair legal system and skilled workforce,” Gov. Rick Perry said. “Each of these cities highlights the reasons Texas is the best place to live, work, and raise a family, and I congratulate them on this recognition.”⁶

Due to the various languages of the population in this region and across Texas, it is important for OIEC to ensure that the agency can effectively communicate with its customers. Language barriers continue to challenge the agency; however, OIEC has successfully implemented many measures to ensure access to the agency’s various programs.

Since one-third of Texans are Spanish speakers, OIEC ensures that nearly all of its offices have OIEC staff that is able to provide personal assistance in Spanish. The population of Texas counties bordering Mexico is mostly Hispanic, and consequently, Spanish is commonly spoken in the region. Therefore, it is extremely important that the field offices in the Texas-Mexico

⁴ Source: Census 2000 and Census 2010 PL94-171 Redistricting Data for Texas.

⁵ Source: <http://bestcities.milkeninstitute.org>, visited March 28, 2012.

⁶ Source: Governor Rick Perry Press Office, 12-16-2011, In Case You Missed It: Texas Dominates List of Best-Performing.

border region include staff that speaks Spanish. More than half of OIEC staff is bilingual, and over 60 percent of the Customer Service Program and 55 percent of the Ombudsman Program are bilingual in Spanish and English. One hundred percent of the field offices in the Texas-Mexico border region include staff that speaks Spanish, as many contested case hearings are conducted solely in Spanish.

Texas-Louisiana Border Region. (Pursuant to Texas Government Code, Section 2056.002[b][8]). The Texas-Louisiana border region includes the following 18 Northeast Texas counties: Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, Smith, Titus, Upshur, and Wood.

Field offices serving counties along the Texas-Louisiana border are located in Tyler, Beaumont, and Lufkin. One dispute proceeding facility is 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 in Amarillo, Tyler, and Denton serve injured employees along the Texas-Oklahoma border. A dispute resolution proceeding location is also provided in Wichita Falls. The Tyler Field Office provides service to injured employees residing in Texas counties bordering Arkansas.

Human Resources Strengths and Weaknesses

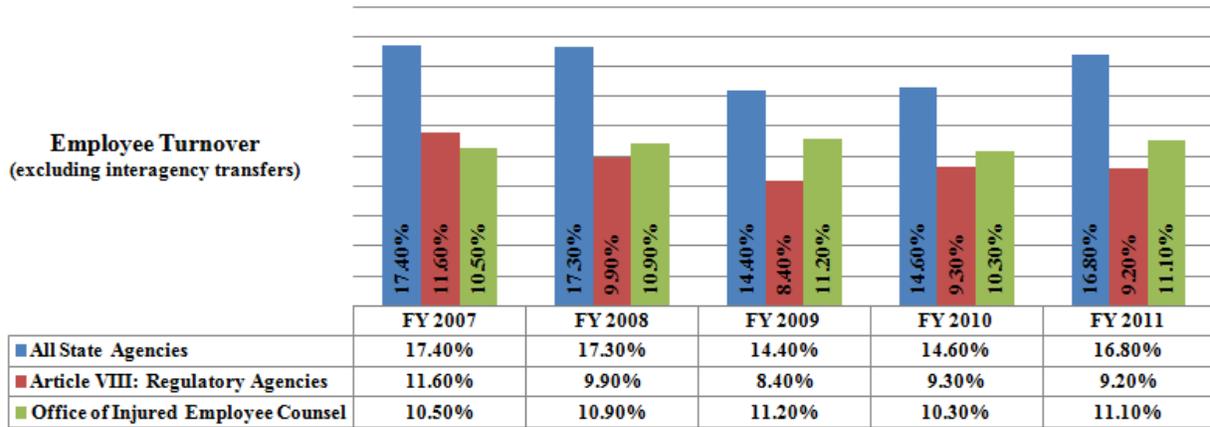
OIEC has a weighty responsibility – to assist hard-working Texans who likely are in pain and may be frustrated by the complexities of the workers’ compensation system. The core of the agency, the Ombudsmen, must know the law, understand aspects of health care, and have the heart of a social worker. The Ombudsmen and Customer Service Representatives must be educators, able to patiently explain laws, rules, processes, and procedures so injured employees and their families can make informed decisions about pursuing their workers’ compensation claim.

OIEC’s overall strength in serving injured employees resides in the knowledge and experience its staff possesses. Even though it only began operating in 2006, OIEC’s staff has approximately 2,000 years of workers’ compensation experience combined. This strength is at risk as experienced staff retires.

Employee Turnover. OIEC has proven to be relatively successful in retaining employees and limiting the costs associated with employee turnover: recruiting, selecting, orienting, and training new employees, leave payout to departing employees, and lower workplace productivity due to vacancies.

OIEC’s turnover rate (excluding interagency transfers) was 10.3 percent in FY 2010 and 11.1 percent in FY 2011.

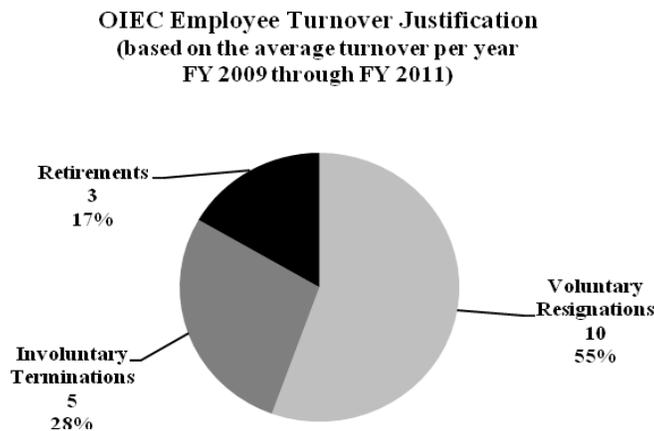
Below is a table of State turnover rates compared to both Article VIII State agencies and OIEC’s turnover rates for FY 2007 through FY 2011.⁷



Of the employees that left the agency in FY 2011, 58 percent worked within the Ombudsman Program, 37 percent worked in the Customer Service Program, and five percent worked in Administration and Operations Program.

OIEC’s most vulnerable program area is the Ombudsman Program. Ombudsmen are required to go through extensive training and obtain an adjuster’s license, which according to an August 19, 2011 WorkCompCentral article, makes them targets for companies wanting to hire qualified and trained adjusters.⁸

More than half of employees who leave OIEC resign voluntarily for reasons other than retirement as shown in the chart below. Most cited personal circumstances as the reason for leaving. Agency turnover and reasons for turnover are expected to change markedly within three to six years based on an analysis of employee retirement eligibility.



⁷ Source: State Auditor’s Office: *Workforce Summary, December 2010, Report No. 11-702 and An Annual Report on Classified Employee Turnover for Fiscal Year 2011, December 2011, Report No. 12-701.*

⁸ Source: WorkCompCentral; OIEC Responds to New Law, Planning Needs and Poaching of Staff; August 19, 2011; By Bill Kidd, Central Bureau Chief.

Employee Retirement. Almost 60 percent of staff has at least 10 years of experience and 40 percent of agency staff has at least 15 years. More than one-fourth of all agency staff are eligible to retire by December 31, 2015, and 43 percent of staff will be able to retire by the end of 2018.

Each of the 20 field offices and the central office are at risk of losing staff and their expertise due to retirement within three to six years. Several offices, including the central office in Austin, Corpus Christi, El Paso, Houston West, Laredo, Lubbock, Lufkin, and Waco have more than 50 percent of staff that can retire within three to six years. The next table cites the percentage of staff eligible to retire at each office by the end of 2015 and 2018 according to data provided by TDI.

**Percentage of Office Staff Eligible to
Retire By December 31,**

	2015	2018
Abilene	0.0	0.0
Amarillo	0.0	33.3
Austin	16.7	16.7
Beaumont	50.0	50.0
Central	23.5	64.7
Corpus Christi	75.0	75.0
Dallas	8.3	41.7
Denton	20.0	40.0
El Paso	28.6	57.1
Fort Worth	40.0	46.7
Houston East	30.0	40.0
Houston West	36.4	54.5
Laredo	33.3	66.7
Lubbock	60.0	60.0
Lufkin	66.7	66.7
Midland	0.0	0.0
San Angelo	25.0	25.0
San Antonio	0.0	14.3
Tyler	25.0	37.5
Waco	20.0	60.0
Weslaco	10.0	30.0

One third of OIEC Directors and Supervisors are eligible to retire by December 31, 2015, and 61 percent will be eligible to retire by the end of 2018. The top of the following page provides the breakdown of Directors and Supervisors in each program area eligible to retire as of a particular date. Total number of staff is indicated in parentheses.

**Percentage of Directors and Supervisors by Program Area
Eligible to Retire By December 31,**

	2015	2018
Ombudsman Program (10)	40% (4)	80% (8)
Customer Service Program (4)	25% (1)	25% (1)
Administration and Operations (4)	25% (1)	75% (3)

OIEC conducted an employee survey in May 2011, which indicated that OIEC will retain about half of its experienced staff beyond retirement eligibility dates. Of the 136 (86.6 percent) employees who participated in the survey, approximately 40 percent stated they will be eligible to retire within six years. Of these, 52.7 percent stated they plan to retire within six years.

Compensation and Benefits. Although employees who have left OIEC voluntarily have not cited pay dissatisfaction as the reason for resigning, the Survey of Employee Engagement has indicated “fair pay” as an area needing improvement in the past three biennial surveys. OIEC executive management agrees and remains concerned about turnover in the Ombudsman Program, as Ombudsmen could become targets of private-sector recruitment efforts.

The latest State Auditor’s Office Workforce Summary report (January 2011) indicates OIEC’s average annual salary in FY 2010 was \$39,584, which is about the same as the statewide average salary but well below the Article VIII average of \$49,835.

To enhance market competitiveness and increase the rate of agency employee retention, OIEC provided salary equity adjustments to selective positions in FY 2012. Despite the increase in salary, an entry level employee (Customer Service Representative III) earns \$30,000, a wage rate that limits the skill sets the agency can attract. An Ombudsman I earns \$38,000, and an Ombudsman II earns \$42,000. As of June 1, 2012, OIEC’s average annual salary is approximately \$42,000.⁹

Succession Planning and Retention. Much of the impetus for formal succession planning at OIEC is the potential for high employee turnover and loss of critical knowledge and experience due to retirements. However, the process exists to preserve continuity in services regardless of the reason for the vacancy – resignation, transfer, termination, death, disability, or retirement. Life can bring sudden changes so even young leaders need to build bench strength, employees who are prepared to perform crucial functions or step into key positions, in case something unexpected happens.

The process of succession planning, a component of OIEC’s strategic and workforce plans, is preparing the agency for the risks associated with loss of knowledge that is critical to achieve its mission. OIEC is doing so by identifying, developing, and transferring knowledge to employees

⁹ Average annual salary is based on OIEC salary figures as of June 1, 2012.

who become highly qualified and capable of filling key positions or perform crucial functions as individuals leave the agency.

The scope of OIEC's succession planning includes identifying and developing key talent within the agency for Director, Associate Director, and Supervisor positions in the Ombudsman and Customer Service programs and Administration and Operations, which includes Operations, Legal Services, and Communications and Outreach sections¹⁰. In this first phase of the planning process, staff:

- Researched best practices in succession planning with a literature review and interviews with agencies in Texas and other states. Most agencies have had limited success in developing formal succession plans.
- Assessed the risk of employee turnover. Employees were surveyed about their retirement plans to determine when to expect gaps in staffing, where the gaps will occur by program and location, and the implications for OIEC's ability to provide effective services and achieve its mission over the long term. Staff also considered the risk to OIEC's services for reasons other than retirements, such as salary limitations and office closures.
- Conducted leadership position analyses. Staff reviewed functional job descriptions and job requirements in the Performance Planning and Development System (PPDS) for each Director, Associate Director, and Supervisor and interviewed OIEC leadership to identify critical skills and knowledge (also known as competencies) necessary for success in these positions.
- Discussed bench strength, defined as employees positioned to succeed each Supervisor and Director.
- Identified gaps in competencies for potential successors and how to bridge them.
- Reviewed training, cross-training, mentoring, and other workforce development practices currently used by Directors and Supervisors and methods that could be used in the future.
- Updated career ladder requirements, adding a preference that supervisory job candidates have Team Lead experience.

Staff found in its research that if OIEC acts now, it will have time – three to six years – for training, mentoring, and transferring knowledge before experienced leaders begin to retire in large numbers. The following recommendations would expand succession planning at OIEC to include a more formal system of identifying and developing individuals for greater responsibilities:

1. Appoint a succession planning committee to:
 - Develop succession planning *goals and measures* with responsible parties, and track progress.

¹⁰ This first phase of succession planning excludes four leadership positions: the Public Counsel, who is appointed by the Governor, the Deputy Public Counsel/Chief of Staff, the new Director of Administration and Operations position, and the Internal Auditor, a position that likely will be filled externally due to its unique requirements.

- Examine and adopt across-the-board core *competencies* necessary for OIEC leaders to succeed. Incorporate the adopted competencies into the career ladder requirements and Performance Planning and Development System (PPDS).
 - Create a *Leadership Talent Pool* database that includes assessments of whether the members are “ready now” or need more training and development to step up to leadership positions.
 - Build bench strength by ensuring that employees have the *training and development* programs that will help them to develop the competencies needed for their career moves.
 - Analyze and report on recommended changes to the OIEC *career ladder*.
 - Oversee the creation of an *Intranet page* for employees who want to compare their skills and abilities with those required for other positions in the agency.
 - *Communicate* succession planning activities to the rest of staff.
2. During annual performance evaluations, include formal discussions of goal setting and training strategies and design an *individual development plan* for each employee interested in advancement and inclusion in the Leadership Talent Pool. Directors and Supervisors should consider employees not currently at the top of the list but who show promise and a desire to move into leadership positions. Revise Section V of the PPDS form and the Self-Assessment Tool to incorporate the individual development plan.
 3. Ensure that all potential candidates are made aware of job openings and how to apply for them.
 4. Implement cross-training for Administration and Operations functions.
 5. *Review and refresh* the succession plan as needed (at least annually). This will include questions in the biennial Survey of Employee Engagement to help assess the risk from employee turnover.
 6. For more information regarding OIEC’s Succession Plan, *See Appendix H*.

Experience and Training. In addition to approximately 2,000 years of combined workers’ compensation experience, OIEC staff also has knowledge and experience in a variety of other areas. Through succession planning, policies, procedures, and cross-functional training more than one employee has the knowledge, skills, and abilities to perform any given task to ensure business continuity. Other areas of specialty include:

- Two OIEC staff members are certified as Senior Professionals in Human Resources;
- All OIEC attorneys, including the Public Counsel, Deputy Public Counsel, Regional Staff Attorneys, and the Director of Administration and Operations are members of the State Bar College;
- All OIEC Management staff maintain a law license or adjuster’s license;
- All OIEC Management staff have taken the Senior Management Training at the Governor’s Center for Management Development;
- Two staff members are certified as instructors to teach Mental Health First Aid USA; and

- Approximately 80 percent of OIEC staff is certified in Mental Health First Aid USA. It is anticipated that by the end of FY 2013, all OIEC staff will be certified in Mental Health First Aid USA to facilitate better interaction with agency customers experiencing mental health issues as certified by the National Council for Community and Behavioral Health.

The continually evolving nature of workers' compensation law drives agency management to focus on employee training and development opportunities to ensure injured employees are provided competent and effective customer service. As a result of various interpretations of the recent *Crump* decision, Public Counsel Darwin developed a new training program and personally trained the Ombudsman Supervisors and Regional Staff Attorneys, who in turn delivered the training to other employees. Public Counsel Darwin monitored those training sessions as they occurred with each team across the State. Additional training is described below.

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 agency-related 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, the agency conducts Ethics training and created an Ethics Committee. Ethics training is conducted for new employees and annually 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 convenes as necessary to discuss the issues presented to it by OIEC employees, and a quarterly update on the issues is sent to all agency employees.

The agency's Ethics Committee has a revolving membership 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, employees 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 Workers' Compensation Adjuster's License and will 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 training, 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 Workers' Compensation Adjuster's License before they finish their training program. Upon successful completion of the training program, Ombudsman Associates are eligible for reclassification 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; and work closely with the Customer Service Representatives to effectively assist injured employees.

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 and Customer Services Representatives. Each field office has an Ombudsman Lead who serves as a mentor for all staff in their particular field office. They are vital in administrative efforts, such as disaster recovery or staff services coordination.

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 the annual agency conference and Practical Skills Training conducted by the agency's Regional Staff Attorneys (RSAs). Training is also provided through monthly teleconferences. Additional information regarding the Ombudsman training program and continuing education can be found in Title 28, Texas Administrative Code § 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 DWC and to ensure injured employees' rights are protected. Three 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 legally required 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, determine best practices and strategies, and learn more about the workers' compensation and insurance laws.

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 and 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);
- Effectively Questioning Physicians on Medico-Legal Issues (April 2010);
- Case Assessment and Development to Address Producing Cause and Sole Cause (October 2010);
- Causation in Light of *Transcontinental Ins. Co. v. Crump* and Tips for Effective Cross-Examination of Carrier's Expert (July 2011);
- Writing Effective Appeals (February 2012); and
- Medical Dispute Resolution (April 2012).

Additional Practical Skills Training topics in the future will include new Medical Dispute Resolution rules, causation, presumptions, and medical Contested Case Hearings based on the Public Counsel's position papers.

Customer Service Representative (CSR) Training. A comprehensive training program is provided to each CSR to enable them to respond accurately and promptly to injured employees' questions. 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, telephone, and soft-skills training; and early intervention, administrative training. Ongoing education includes review of the agency website and links, and attendance at the various teleconference training sessions. A monthly review of Appeals Panel decisions is also required as the decisions 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. In addition, new CSRs choose or are assigned a more 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. The agency's Customer Service Program provides advocacy, assistance, and education about the workers' compensation system while DWC staff processes official and regulatory actions.

Old Law Training. Although the majority of workers' compensation claims involve injuries that have occurred after the workers' compensation system reform, there are still claims in the system that occurred prior to 1991, and are referred to as "Old Law" claims. If "settlements" were negotiated in the Old Law cases that resulted in lifetime medical benefits and a dispute occurs, OIEC may receive a request from the injured employee to assist in the resolution of the injured employee's medical dispute. Although Old Law disputes do not arise frequently, it is imperative that OIEC staff is knowledgeable about how to assist an injured employee in these disputes. This bench strength is difficult to monitor given the agency's rate of retirements and growing complexity in the law.

Mental Health First Aid Training. The agency is training all staff in Mental Health First Aid (MHFA) to give OIEC employees the knowledge and tools to assist a customer who may be in emotional or mental distress. MHFA is a public education program, coordinated by the National Council for Community Behavioral Healthcare, which introduces participants to risk factors and warning signs of mental health problems, builds understanding of their impact, and overviews common treatments. MHFA is a 12-hour course, which uses role-playing and simulations to demonstrate how to assess a mental health crisis, select interventions and provide initial help, and connect persons to professional, peer, social, and self-help care.

OIEC's Deputy Public Counsel/Chief of Staff and Associate Director of Communications and Outreach received Instructor Certification in order to teach the MHFA course to all OIEC employees. Half of the agency was trained in 2011 as Mental Health First Aiders, and the remaining agency employees will be trained in 2012. OIEC management is ensuring all agency employees are prepared to act in the event of a psychiatric emergency, understand how to interact with a person in crisis, how to protect themselves, and how to connect the person with professional help. Ultimately, the training allows OIEC to better serve its customers and the human condition.

OIEC perceives a need to extend this training to injured employees and is seeking grant funding to pay for the training materials and other program costs. Texas does not provide mental health services for injured employees through its workers' compensation system. Many injured employees exhibit signs of mental distress, and OIEC receives violent threats each year by emotionally distressed injured employees. They are in an intrinsically emotionally stressful

situation: they are physically injured, may have lost their jobs, and have been denied medical treatment and/or income assistance. MHFA training will enable injured employees to assess themselves and seek appropriate professional help and apply self-help strategies. The earlier the injured employee seeks help for mental health issues, the more likely a lasting recovery will result, which will enable the injured employee to focus on returning to work.

Teleconferences. Teleconferences are held to ensure OIEC staff in the field and central office stays informed of necessary information to continue to effectively serve the injured employees of Texas. Teleconferences may be held for specific agency functions, such as Ombudsmen or Customer Service Representatives, or for the 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. Three in-person meetings are held for staff each year, if budget permits. 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 during work hours. 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 20 locations and central office.

Training sessions promote teamwork and ethics as well as provide information about aspects of the agency that staff may not be familiar with. Breakout sessions address 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 Workers' Compensation Adjuster's License and for OIEC attorneys to obtain continuing legal education credits.

- *OIEC Leadership Meeting:* OIEC holds an annual meeting where management employees meet for training, issue discussion, strategic planning, and employee development. The meeting provides an opportunity for management of all of the program areas of the agency (Customer Service, Ombudsman, and Administration and Operations) to come together and focus efforts on improving communication and the quality of the service provided to the injured employees of Texas.
- *Legal Services Planning and Debriefing Session:* OIEC periodically hosts an in-person meeting for agency attorneys to discuss legal issues in the workers' compensation system and plan legal training for the Ombudsman Program. The meeting also provides an opportunity

for candid discussion about how effectively the agency is serving its mission to assist, educate, and advocate on behalf of the injured employees of Texas.

Emergency Preparedness, Risk Management, and Continuity Plan Training. OIEC conducts periodic training regarding emergency preparedness, risk management, and the agency's Continuity Plan to ensure staff understands what to do in case of emergencies and to circumvent any confusion or adversity resulting from possible disasters. The agency periodically runs drills regarding procedures for handling situations with a potentially threatening injured employee, disaster drills for the Coastal field offices in preparation for the hurricane season, or other various safety drills and tests.

Other Training. Additional training that staff periodically attends includes Employment Law, and SAS (Statistical Analysis Software) training.

Training is one of the most important aspects of the agency and is ultimately beneficial to the injured employees in Texas. Although the agency makes every effort to retain its outstanding staff, the agency's focus on employee development ultimately enables OIEC staff to be extremely competitive in higher-paying job classifications or in the same work in the private sector.

Recruitment and Retention. Recruiting and retaining the depth of knowledge and experience necessary to navigate the complexities of the workers' compensation system is a key factor in fulfilling OIEC's mission of assisting, educating, and advocating for Texans who are injured on the job. Therefore, OIEC carefully selects the most qualified applicant for each position. OIEC has been fortunate in the ability to hire and retain strong employees with varied skill sets who can perform in high-stress, demanding situations.

The economy may be one reason for the agency's strong retention record. More individuals have been searching for work since the recession began, and OIEC has been successful in hiring individuals that possess the necessary knowledge, education, and experience that has enabled the agency to continue to provide injured employees excellent assistance. OIEC has been able to keep some of its most knowledgeable and experienced employees even after their retirement eligibility date. Times are hard, and the thought of no longer working, finding another job, or making less money may make people think twice before leaving the agency.

OIEC provides extensive training and development opportunities to assist employees in performing their jobs to the best of their abilities. OIEC also provides incentives and utilizes various tools to retain its staff, such as the following.

Alternative Work Schedule Program. This program extends the number of hours that agency staff is available to provide services while also providing employees with work-schedule flexibility. 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. Regular assessment of performance levels against expectations increases productivity and morale.

Merit Awards. For OIEC employees who meet the criteria for a merit award, OIEC may provide deserving staff with administrative leave for outstanding performance. The total amount of leave granted may not exceed 32 hours per employee during a fiscal year pursuant to the Government Code.

OIEC may also grant merit salary increases and one-time merit payments to eligible classified employees who meet various administrative qualifications and who have exceeded job performance and can demonstrate increased productivity and deliverables.

Sick Leave Pool. The Sick Leave 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 Title 28, Texas Administrative Code § 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. OIEC's Deputy Public Counsel administers this program.

Policy Development Program. OIEC's Policy Development Program was initiated 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, its policies or procedures, or work environment. OIEC's executive management team reviews the ideas or recommendations submitted monthly. Confidentiality of employees who submit policy recommendations is provided to encourage all OIEC employees to participate in providing suggestions to improve or increase the efficiency of the agency and its resources. Since its inception, many ideas have been proposed and 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 is 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. Public Counsel Darwin, in consultation with the agency's Deputy Public Counsel, personally oversees each employee's return to productive and sustainable work.

Capital Asset Strengths and Weaknesses

Approximately 95 percent of OIEC's budget is dedicated to salaries for OIEC staff. OIEC's lean operations are a testament to the organization's business efficiencies and its commitment to the Statewide Vision, Mission, and Philosophy (See pages 4 through 6 of this report). OIEC's management is extremely proud of its efficiencies and exceptional use of appropriated funds. In addition to agency programs and staff, capital assets are purchased through lapsed salary dollars.

Agency Use of Historically Underutilized Businesses (HUB)

OIEC enjoys TDI's purchasing support services as part of the agency's administrative attachment. OIEC's close coordination with TDI staff enables the agency to be in compliance with all HUB requirements and consistently exceed 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 2010-2011 Comparison to Statewide HUB Procurement Goals.

Key Organizational Events and Areas of Change

Although OIEC employees specialize in different program areas, every employee shares a common mission – to assist, educate, and advocate on behalf of the injured employees of Texas. Over the past six years, legislation has passed that influenced change at the agency and programs designed to address the different aspects of the agency mission

Sunset Advisory Commission Review and Legislation. OIEC underwent the Sunset Advisory Commission Review in 2011, which is the regular assessment of the continuing need for a State agency to exist. Legislation was passed during the 82nd Texas Legislature, Regular Session, 2011, to continue the agency through FY 2016. In addition to continuing the agency for six more years to coincide with DWC's Sunset review, OIEC's Sunset bill, House Bill (HB) 1774 included the following provisions:

- Clarifies that OIEC has access to claim information only when assisting an injured employee
 - *Impact:* This change altered provisions of the Texas Labor Code regarding OIEC's access to the injury and claim information of injured employees. Section 404.111(a) now provides that when assisting an injured employee, OIEC 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. Additionally, § 402.085(a)(5) now provides

that OIEC is only entitled to access injury and claim information of an injured employee when OIEC is assisting the injured employee. OIEC and DWC entered into a Memorandum of Understanding (MOU) to facilitate the implementation of the above provisions of the Texas Labor Code. Due to the MOU, OIEC discontinued its Fatality Outreach Program, which provided helpful information to beneficiaries of workers killed on the job.

- Requires OIEC to maintain complaint information
 - *Impact:* This was a standard across-the-board recommendation from the Sunset Advisory Commission and did not impact the agency. OIEC had been in compliance with the provision since 2006.
- Requires OIEC to encourage the use of its alternative dispute resolution process
 - *Impact:* This was a standard across-the-board recommendation from the Sunset Advisory Commission. OIEC developed alternative procedures for rulemaking and dispute resolution, which conformed to the State Office of Administrative Hearings model guidelines as required by the Commission.
- Authorizes OIEC to seek and accept grant funding
 - *Impact:* This provision authorizes OIEC to seek and accept grant funding. Grants are being sought to help fund two agency priorities: an Expert Witness Program and a program to extend Mental Health First Aid (MHFA) education to injured employees. OIEC is conducting an Expert Witness Pilot Project in which medical doctors serve as expert witnesses for injured employees whose medical or income benefits have been denied. Grant funds would be used to expand this program. (*See page 94 for more information about the pilot project.*) OIEC also would like to use grant funding to help injured employees who may be experiencing mental health issues. OIEC has trained agency staff members in MHFA to help them understand, identify, and address mental illness among the injured employees they serve. By offering the training directly to injured employees, OIEC can help its clients to get the information and resources they need to move on with their lives and go back to work. (*See page 28 for more information about MHFA training at OIEC.*)
- Changes the due date for OIEC's *Legislative Report* from December 1st to January 1st prior to the beginning of the convening of the Texas Legislature.
 - *Impact:* This provision gives the agency an additional month to collect information and submit its biennial *Legislative Report*.

Additional legislation impacting injured employees that was passed during the 82nd Texas Legislature, Regular Session, 2011, includes the following:

- Senate Bill (SB) 809 provides a party the same timeframe (45 days) to appeal an administrative medical dispute decision into district court as exists for an indemnity dispute decision. The bill also provides that DWC is the appropriate venue for resolving issues related to the failure to provide information from the carrier or employer to the injured employee in network disputes.

- DWC's Sunset Bill, HB 2605, provides an injured employee an opportunity to seek the opinion of a treating doctor on the issue of maximum medical improvement and impairment rating. The bill also requires the insurance carrier to pay the cost of the examination.

OIEC believes these provisions will have a positive effect on the injured employees of Texas as the agency strives to increase the fairness and consistency of the workers' compensation law.

Organizational Changes. OIEC continually looks for ways to streamline its processes to enable staff to work more efficiently and effectively while serving the injured employees of Texas. Some of the changes directly affect processes and procedures while others do not. Ultimately, changes that are made reflect the increasing demand for OIEC's services.

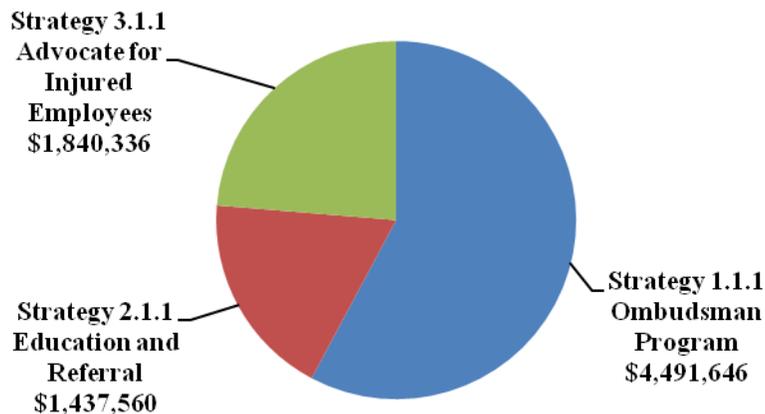
- *Elimination of the Quality Assurance Section* – In FY 2011, the section was disbanded and the function was rolled into the duties of the Associate Directors of the agency. Although the agency did not receive the requested funding and FTE for a Quality Assurance position, the agency was able to absorb the functions within existing staff. This modification will enable the program managers to more closely observe the implementation of agency procedures and determine their effectiveness. It provides opportunities for ongoing, detailed performance reviews and a proactive approach to address training and employee development opportunities.
- *Reorganization of the Customer Service Program and Ombudsman Program* – In FY 2011, the agency merged its Ombudsman Assistant Program into Customer Services and eliminated all agency administrative positions. This business process improvement provided for cross-training and the ability to deliver more qualified direct assistance to injured employees.
- *Creation of the Communications and Outreach Section* – The Communications and Outreach Section was created in FY 2011 to consolidate and streamline the agency's outreach initiatives. The section impacts the agency's mission by coordinating external public speaking engagements, educational events, monthly presentations at each OIEC field office across the State, and other external communications and outreach initiatives. Communications Specialists provide technical support to agency staff by conducting training, administering the agency's development program through grantsmanship, administering both the agency's Internet and Intranet webpages, and social media sites, and serving as a liaison on government relations issues.
- *Reorganization of the Administration and Operations Division* – In FY 2012, the Director of Legal Services was transferred to the newly created position of Director of Administration and Operations. The Legal Services section became part of the Administration and Operations program, which also includes the Operations and Communications and Outreach sections. This change creates a more consistent leadership structure within each of the agency's programs. This new structure facilitates communication and ensures that appropriate employees have the knowledge and cross-training opportunities to achieve the agency's succession planning goals.

Fiscal Aspects

Size of Budget

OIEC's current total budget for the FY 2012-2013 biennium is \$15,539,084. The total expended in FY 2011 was \$8,001,038 due to the unexpended balance transferred of approximately \$200,000 from FY 2010 to FY 2011. The estimated expenditure for FY 2012 is \$7,769,542.

**Distribution of Funds By Strategy
FY 2012-2013**



Method of Finance

OIEC is administratively attached to TDI and is funded from the same operating account – General Revenue (GR) Dedicated Account 36. The funding mechanism is self-leveling and has no fiscal impact on General Revenue.

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.

The agency is not funded for consumables, facilities, or other items as a result of its administrative attachment. As a result, approximately 95 percent of OIEC's budget is dedicated to employee salaries, which is uncommon in State government.

Budgetary Limitations

The Full-Time-Equivalent (FTE) staffing cap for the agency is currently 175. The agency requested a reduction in the FTE cap during the FY 2012-2013 biennium from 184 to 175 due to a number of unfunded positions.

Nine FTE positions were unfunded as a result of:

- the transfer of staff from DWC (as a result of the 80th Texas Legislature, Regular Session, 2007) at a salary higher than the base salary,
- management's decision to pay staff at a competitive salary for retention and equity purposes, and
- salary costs absorbed due to changes to the Position Classification Act as a result of the 81st Texas Legislature, Regular Session, 2009.

Unexpended Balance Authority. Any unexpended balances as of August 31, 2012, not to exceed five percent for any item of appropriations, are appropriated to OIEC for the same purposes for the fiscal year ending August 31, 2013.

Degree to Which Current Budget Meets Current and Expected Needs

OIEC's unique funding mechanism has enabled the agency to be exempt from the budget reductions realized by other State agencies during the previous biennia. However, the 2012-2013 General Appropriations Act § 18.09 required each state agency to contribute an amount equal to 1.0 percent of the total base wages and salaries for each benefits-eligible employee during the State fiscal biennium beginning September 1, 2011 to the Employees Retirement System's Group Benefits Program. Three positions at OIEC were unfunded to make the contribution.

OIEC operates in a fiscally conservative fashion and has a work culture that values innovative ways to operate more efficiently as an organization. For instance, instead of buying resources for each staff member, such as books, OIEC provides each field office with the specific resource and staff members share.

OIEC continues to absorb work without additional funding. For example, as a result of HB 724 in the 80th Legislative Session, OIEC absorbed a large caseload of medical disputes without funding for additional staff to handle the workload. Additionally, in the 81st Legislative Session the agency absorbed a large amount of salary costs associated with changes to the statewide classification. This effectively reduced staffing levels by approximately 10 percent given OIEC's unique funding structure as a result of its administrative attachment.

All aspects of the organization have sustained an increased amount of work; however, the Ombudsman Program has felt the brunt of the agency's increasing workload. During the first two quarters of FY 2012 compared to the first two quarters in FY 2011:

- The number of Benefit Review Conferences with Ombudsman assistance increased 71.44 percent
- The number of Contested Case Hearings with Ombudsman assistance increased 50.17 percent
- The number of injured employees prepared for an appeal by an Ombudsman increased 61.75 percent.

Additional examples of the agency's increased workload can be found throughout this report.

Potential Exceptional Items for the FY 2014-2015 Legislative Appropriations Request

1. *Approximately 20 additional FTEs* – Due to the increased workload that the agency has experienced and the population increase in Texas, especially in the metropolitan areas, OIEC anticipates the need of approximately 20 additional FTEs to provide direct, one-on-one services to customers. According to the U.S. Census Bureau, metropolitan areas such as Dallas, Fort Worth, Houston, San Antonio, Austin, and Laredo experienced a population increase of more than 25 percent from 2000 to 2010. OIEC believes that the additional FTEs will enable the agency to continue to provide exceptional customer service and provide assistance to all injured employees requesting OIEC's services.
2. *Language Line Services* – Many of OIEC's customers do not speak English, and the need for personal translation assistance is imperative in the workers' compensation system. One of the tools the agency uses to ensure effective communication is its *Access Plan for Non-English Speakers*. Pursuant to Texas Labor Code § 404.005(a), OIEC is required to prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to its programs. OIEC's *Access Plan* is available on the agency's Internet at www.oiec.texas.gov/topics/access.

Ombudsmen are sometimes required to provide interpreter services to an injured employee during administrative hearings. In these situations, the injured employee is not afforded the full assistance that is required from an Ombudsman. OIEC has recently contracted with Language Line Services and believes that the need for translation services will increase. OIEC will request exceptional item funding to continue this service and to continue to fulfill the agency's mandate and provide effective and efficient customer service to all non-English speaking injured employees.

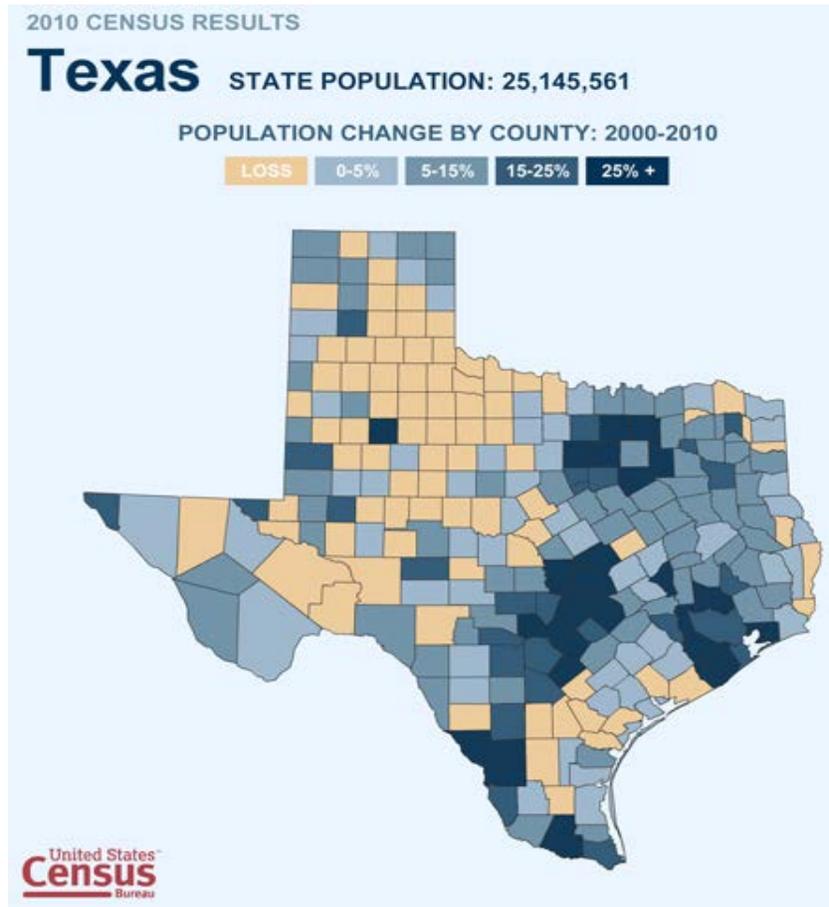
3. *Expert Testimony* – Historically, the workers' compensation system was designed to prove an injured employee's case without expert evidence in most situations. If an injured employee could convince the fact-finder that the injury was caused by the work without an expert's opinion, the injured employee could prevail without the expense of providing expert evidence. Recently, an additional burden has been placed on injured employees to produce expert testimony in cases where it traditionally has not been required. Additionally, DWC is requiring evidence-based medicine (i.e., medicine based upon scientific studies) for propositions, such as one can injure his back when falling down, for which there are no relevant scientific studies. OIEC anticipates that an exceptional item will be necessary to help defray costs associated with obtaining appropriate medical expertise to assist injured employees in proving their entitlement to medical and income benefits.

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

Growing Population. Texas is the second largest state in terms of population (second to California) and area (second to Alaska). In terms of the number of people, Texas' growth exceeded that of all other states between 2000 and 2010. The map below indicates the percentage of population change in Texas from 2000 to 2010.



Many of the counties in Texas grew more than 25 percent from 2000 to 2010, including Hidalgo and Webb Counties in South Texas; Travis, Williamson, Bastrop, Guadalupe, and Comal Counties in Central Texas; and Ellis, Tarrant, Denton and Collin Counties in North Texas. Although approximately two-thirds of Texas counties experienced growth, more than half the counties in the Panhandle Plains Region of Texas experienced a decrease in population.

Texas' metropolitan areas continue to increase in population. Between 2000 and 2010, the Austin-Round Rock-San Marcos area increased more than 37 percent in population, which is the largest increase in the State.¹¹

¹¹ Source: <http://www.census.gov/newsroom/releases/archives/population/cb12-55.html>

The McAllen-Edinburg-Mission area (Hidalgo County) increased almost as much, at 36 percent, during the same time period. The table below shows the change in the population of all metropolitan statistical areas in Texas between 2000 and 2010.

Metropolitan Statistical Areas	2010 Population	Percent change 2000-2010
1. Dallas-Fort Worth-Arlington (Dallas-Plano-Irving MD and Fort Worth-Arlington MD) Dallas-Plano-Irving MD (Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall counties) Fort Worth-Arlington MD (Johnson, Parker, Tarrant, Wise counties)	6,371,773	23.4
2. Houston-Baytown-Sugar Land (Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller counties)	5,946,800	26.1
3. San Antonio-New Braunfels (Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, Wilson counties)	2,142,508	25.2
4. Austin-Round Rock-San Marcos (Bastrop, Caldwell, Hays, Travis, Williamson counties)	1,716,289	37.3
5. El Paso (El Paso County)	800,647	17.8
6. McAllen-Edinburg-Mission (Hidalgo County)	774,769	36.1
7. Corpus Christi (Aransas, Nueces, San Patricio counties)	428,185	6.2
8. Brownsville-Harlingen (Cameron County)	406,220	21.2
9. Killeen-Temple-Fort Hood (Bell, Coryell, Lampasas counties)	405,300	22.6
10. Beaumont-Port Arthur (Hardin, Jefferson, Orange counties)	388,745	0.9
11. Lubbock (Crosby, Lubbock counties)	284,890	14.1
12. Laredo (Webb County)	250,304	29.6
13. Amarillo (Armstrong, Carson, Potter, Randall counties)	249,881	10.3
14. Waco (McLennan County)	234,906	10.0
15. Bryan-College Station (Brazos, Burleson, Robertson counties)	228,660	23.7
16. Longview (Gregg, Rusk, Upshur counties)	214,369	10.5
17. Tyler (Smith County)	209,714	20.0
18. Abilene (Callahan, Jones, Taylor counties)	165,252	3.1
19. Wichita Falls (Archer, Clay, Wichita counties)	151,306	-0.1
20. Odessa (Ector County)	137,130	13.2
21. Midland (Midland County)	136,872	18.0
22. Texarkana (Bowie County, TX, and Miller County, AR)	136,027	4.8
23. Sherman-Denison (Grayson County)	120,877	9.3
24. Victoria (Calhoun, Goliad, Victoria counties)	115,384	3.3
25. San Angelo (Irion, Tom Green counties)	111,823	5.7
Source: U.S. Census Bureau		

Recent U.S. Census Bureau estimates are showing new patterns of growth across the nation. There were nine metro areas that were not among the 100 fastest growing between 2000 and 2010 but were among the 50 fastest growing from 2010 to 2011 in the nation. One of those areas is Odessa, Texas.¹²

¹² Ibid.

Although new patterns of growth have emerged, some trends continue from the past decade. One such example is the growth in Texas. There were five large metro areas with populations of at least 1 million in 2011 that were among the 20 fastest growing in the nation from 2010 to 2011. Four of them were in Texas: Austin (second), San Antonio (16th), Dallas-Fort Worth (17th), and Houston (18th).

Looking at numeric growth, Dallas-Fort Worth and Houston added more people between 2010 and 2011 than any other metro area (155,000 and 140,000, respectively). These two metro areas were the biggest numeric gainers during the 2000 to 2010 period (with Houston gaining more than Dallas-Fort Worth over the decade).

Some other recent national statistics (from April 1, 2010, to July 1, 2011) showing the increase in the Texas population include the following:

- Of the 10 fastest growing metro areas, Austin-Round Rock-San Marcos, Texas ranked second with a 3.9 percent increase, and McAllen-Edinburg-Mission, Texas ranked fourth with a 3 percent increase;
- Of the 10 metro areas with the largest numeric increase, Dallas-Fort Worth-Arlington, Texas ranked first (154,774 increase), Houston-Sugar Land-Baytown, Texas ranked second (139,699 increase), and Austin-Round Rock-San Marcos, Texas ranked tenth (67,230 increase);
- Of the 10 fastest growing micro areas, Andrews, Texas ranked third with a 4.5 percent increase;
- Of the 10 fastest growing counties, Williamson County ranked tenth with an increase of 4.8 percent; and
- Of the 10 counties with the largest numeric increase, Harris County-Texas ranked first (88,452 increase), Dallas County-Texas ranked sixth (47,875 increase), Bexar County-Texas ranked ninth (41,376 increase), and Tarrant County-Texas ranked tenth (40,776 increase).¹³



¹³ Ibid.

Growing Labor Force. According to the U.S. Census Bureau, the population of the Texas labor force continues to increase as the country emerges from the recession. The table below indicates the civilian labor force estimates in the various regions across Texas in January 2012 compared to one year ago.

Civilian Labor Force Estimates for Texas (in thousands)

	January 2012				January 2011			
	Civilian Labor Force	Employment	Unemployment	Rate	Civilian Labor Force	Employment	Unemployment	Rate
United States	153,485.0	139,944.0	13,541.0	8.8	152,536.0	137,599.0	14,937.0	9.8
Texas	12,462.4	11,515.6	946.8	7.6	12,335.9	11,295.7	1,040.2	8.4
Abilene	82.9	77.8	5.1	6.2	84.5	78.9	5.6	6.7
Amarillo	134.5	127.5	7.0	5.2	134.1	126.5	7.6	5.7
Austin-Round Rock-San Marcos	946.5	885.2	61.3	6.5	928.7	862.9	65.8	7.1
Beaumont-Port Arthur	188.8	168.6	20.2	10.7	189.8	167.7	22.1	11.7
Brownsville-Harlingen	162.5	143.7	18.8	11.6	162.6	142.4	20.2	12.4
College Station-Bryan	111.6	104.5	7.1	6.3	114.8	106.9	7.9	6.9
Corpus Christi	218.7	202.6	16.1	7.3	213.1	194.4	18.7	8.8
Dallas-Fort Worth-Arlington	3,283.3	3,038.7	244.6	7.4	3,256.2	2,985.9	270.3	8.3
Dallas-Plano-Irving MD	2,188.6	2,024.2	164.4	7.5	2,175.5	1,994.9	180.6	8.3
Fort Worth-Arlington MD	1,094.6	1,014.5	80.1	7.3	1,080.6	990.9	89.7	8.3
El Paso	328.0	295.3	32.7	10.0	326.7	292.1	34.6	10.6
Houston-Sugar Land-Baytown	3,008.6	2,778.5	230.1	7.6	2,944.2	2,688.7	255.5	8.7
Killeen-Temple-Fort Hood	170.1	156.0	14.1	8.3	170.7	156.8	13.9	8.2
Laredo	103.0	95.2	7.8	7.6	99.0	90.4	8.6	8.7
Longview	114.2	106.8	7.4	6.5	113.0	104.6	8.4	7.4
Lubbock	147.7	139.0	8.7	5.9	146.7	137.3	9.4	6.4
McAllen-Edinburg-Mission	324.3	286.3	38.0	11.7	317.9	276.9	41.0	12.9
Midland	83.9	80.4	3.5	4.1	81.2	77.2	4.0	4.9
Odessa	80.3	76.3	4.0	4.9	75.7	70.5	5.2	6.8
San Angelo	57.1	53.7	3.4	5.9	55.3	51.6	3.7	6.7
San Antonio-New Braunfels	1,008.0	934.7	73.3	7.3	1,004.3	926.1	78.2	7.8
Sherman-Denison	58.4	53.8	4.6	7.9	57.7	52.7	5.0	8.7
Texarkana	67.1	62.1	5.0	7.5	65.9	60.6	5.3	8.0
Tyler	104.9	96.8	8.1	7.7	103.0	94.5	8.5	8.2
Victoria	59.1	55.2	3.9	6.7	60.1	55.6	4.5	7.4
Waco	113.8	105.5	8.3	7.3	115.7	107.0	8.7	7.5
Wichita Falls	71.5	66.6	4.9	6.9	73.6	68.0	5.6	7.6

The increase in labor force has increased the need for OIEC's services. The next table illustrates the number of disputed issues identified in each field office in FY 2010 and FY 2011 and the number of disputed issues projected in FY 2012. It is anticipated that the number of disputed issues identified in claims where an injured employee is assisted by OIEC in FY 2012 will equal or exceed the number of disputed issues identified in the previous couple of years in most field offices.

Number of Disputed Issues Identified for Resolution			
Field Office	Fiscal Year		
	2010	2011	2012 (Projected)
Fort Worth	3,324	3,629	3,616
San Antonio	2,605	3,210	2,968
Houston West	1,477	2,423	2,744
Houston East	1,352	2,325	2,348
Dallas	1,674	1,943	2,150
El Paso	1,764	1,720	2,066
Denton	1,348	1,723	1,978
Weslaco	1,266	1,708	1,646
Austin	747	995	1,364
Corpus Christi	518	759	1,264
Waco	508	568	1,058
Lufkin	842	879	1,056
Abilene	523	812	966
San Angelo	887	844	918
Tyler	706	1,057	876
Midland	455	677	872
Lubbock	687	786	834
Laredo	618	670	814
Amarillo	336	355	588
Beaumont	379	510	464
Bryan (closed 2012)	227	322	166
Victoria	645	551	N/A
Missouri City	687	53	N/A
State Total	23,575	28,519	30,756

OIEC attempts to resolve issues at the earliest point; however, if the issues cannot be resolved, they are forwarded to DWC's administrative dispute resolution process. Mediation is held during a benefit review conference (BRC). If an injured employee's issues are still in dispute after the BRC, then the parties can go to a formal contested case hearing (CCH) for resolution. Similar to the increase in the number of disputes identified, OIEC is anticipating an increase in the number of proceedings in which it will provide assistance to an injured employee.

The table on the next page shows the number and percent of CCHs held at each field office in FY 2010 and FY 2011, and anticipated to be held in FY 2012. The percentages in the table identify the percentage of CCHs held in the specific field office as a percentage of those held across the State.

Number and Percent of Total Indemnity Contested Case Hearings Concluded with Ombudsman Assistance FY 2010-FY 2011-FY 2012 (projected)						
Field Office	FY 2010		FY 2011		FY 2012 (projected)	
Dallas	210	13.9%	224	14.0%	302	16.1%
San Antonio	195	12.9%	176	11.0%	221	11.8%
Fort Worth	150	9.9%	138	8.6%	204	10.9%
Houston West	121	8.0%	128	8.0%	156	8.3%
Houston East	98	6.5%	96	6.0%	149	8.0%
Denton	84	5.5%	136	8.5%	132	7.1%
El Paso	70	4.6%	74	4.6%	98	5.2%
Weslaco	89	5.9%	113	7.0%	98	5.2%
Tyler	75	4.9%	77	4.8%	94	5.0%
Austin	48	3.2%	55	3.4%	67	3.6%
Waco	53	3.5%	56	3.5%	51	2.7%
Laredo	29	1.9%	40	2.5%	46	2.5%
Lubbock	53	3.5%	38	2.4%	43	2.3%
Corpus Christi	14	0.9%	18	1.1%	41	2.2%
Beaumont	22	1.5%	13	0.8%	39	2.1%
Lufkin	30	2.0%	22	1.4%	26	1.4%
Abilene	24	1.6%	25	1.6%	21	1.1%
Amarillo	14	0.9%	27	1.7%	21	1.1%
Bryan	13	0.9%	8	0.5%	15	0.8%
Midland	11	0.7%	18	1.1%	14	0.7%
San Angelo	8	0.5%	13	0.8%	14	0.7%
Victoria	31	2.0%	42	2.6%	14	0.7%
Wichita Falls	12	0.8%	8	0.5%	5	0.3%
Missouri City	60	4.0%	58	3.6%	2	0.1%
Mt Pleasant	2	0.1%	2	0.1%	0	0.0%
Total	1,516	100.0%	1,605	100.0%	1,872	100.0%
% Increase			5.87%		16.64%	

OIEC anticipates that its workload will increase each year as the economy improves. The Bureau of Labor Statistics anticipates that total employment will increase by 10 percent from 2008 to 2018. However, the 15.3 million jobs expected to be added by 2018 will not be evenly distributed across major industry and occupational groups. Changes in consumer demand, improvements in technology, and many other factors will contribute to the continually changing employment structure of the U.S. economy.¹⁴

The next table indicates the number and percentage of injury claims by the type of industry from 2007 through 2011. Data indicate that the percentage of claims in the Health Care and Social Assistance industries has increased 2 percent since 2007. OIEC anticipates this increase to continue at a higher rate over the next few years.

¹⁴ Source: U.S. Bureau of Labor Statistics, Occupational Outlook Handbook, 2010-11 Edition, Overview of the 2008-18 Projections.

Table of Number of Claims by Industry and Calendar Year of Injury

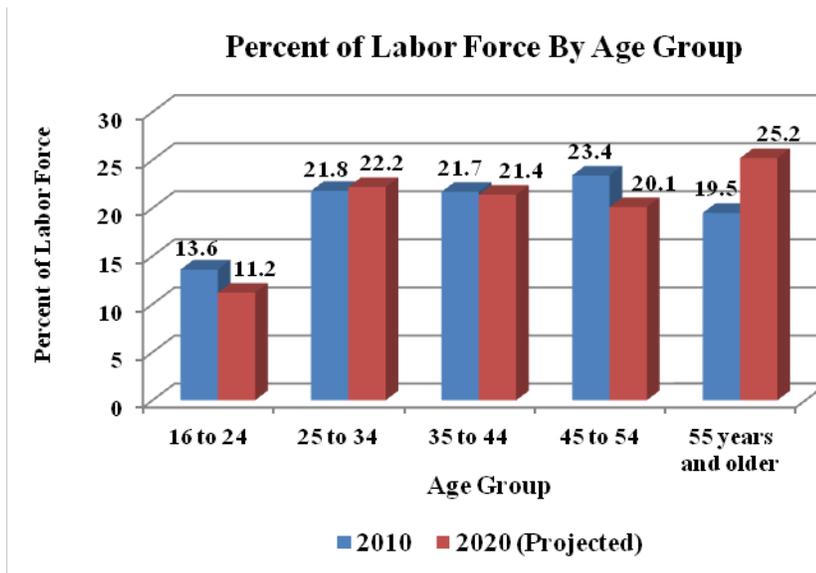
Industry	2007		2008		2009		2010		2011	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Agriculture, Forestry, Fishing and Hunting	1,251	1%	1,228	1%	1,462	1%	2,584	2%	2,286	2%
Mining	3,304	2%	3,718	3%	2,647	2%	3,192	3%	3,318	3%
Utilities	1,546	1%	1,699	1%	1,548	1%	1,645	1%	1,392	1%
Construction	10,757	9%	10,674	9%	9,054	9%	8,813	8%	7,778	8%
Manufacturing	15,811	14%	14,244	13%	11,377	11%	10,408	10%	9,855	11%
Wholesale Trade	4,086	3%	3,696	3%	3,438	3%	3,425	3%	3,053	3%
Retail	10,025	8%	8,977	8%	8,041	8%	7,895	8%	6,421	7%
Transportation, Warehousing	9,075	8%	8,512	7%	7,026	7%	7,356	7%	7,047	7%
Information	2,154	1%	1,816	1%	1,697	1%	1,614	1%	1,488	1%
Finance and Insurance	1,875	1%	1,635	1%	1,667	1%	1,489	1%	1,196	1%
Real Estate and Rental and Leasing	1,920	1%	1,774	1%	1,784	1%	1,716	1%	1,610	1%
Professional, Scientific, and Technical Services	2,212	1%	1,873	1%	1,806	1%	1,707	1%	1,573	1%
Management of Companies and Enterprises	181	0%	204	0%	345	0%	306	0%	248	0%
Administrative and Support and Waste Management and Remediation Services	9,724	8%	9,087	8%	6,789	7%	7,664	7%	7,203	8%
Educational Services	10,807	9%	11,105	10%	11,885	12%	12,944	13%	10,891	12%
Health Care and Social Assistance	6,707	5%	6,708	6%	6,994	7%	7,061	7%	6,546	7%
Arts, Entertainment, and Recreation	1,438	1%	1,388	1%	1,321	1%	1,226	1%	1,108	1%
Accommodation and Food Services	3,476	3%	3,493	3%	3,504	3%	3,363	3%	3,393	3%
Other Services (except Public Administration)	2,238	1%	2,099	1%	1,970	2%	2,045	2%	1,847	2%
Public Administration	10,891	9%	11,828	10%	12,081	12%	11,328	11%	10,158	11%
Not Reported	2,603	2%	1,927	1%	490	0%	516	0%	400	0%
Total	112,081	100%	107,685	100%	96,926	100%	98,297	100%	88,811	100%

Source: Texas Department of Insurance, Division of Workers' Compensation
 Workers' Compensation claim data updated through December 2011.
 Industry based on the six digit NAICS (North American Industrial Classification System) Coding System.

Aging Labor Force. The average age of the population in the United States is 36.8 years. The average age is projected to increase over the next few decades. Much of this aging is due to the baby-boom generation moving into the 65 and older population. Accordingly, older employees account for an increasing share of the U.S. labor force.

According to the Census Bureau, the median age of the Texas population is 33.2 years, versus 36.8 years for the nation as a whole. Texas has the second youngest median population among the states. The Texas State Data Center reports that Texas had the nation’s second youngest work force in 2009 with a median age of 40.3 years.¹⁵

The percentage of older employees in the labor force has steadily increased in the past decade. While those in the 45 to 54 age group have increased slightly to nearly 25 percent, employees aged 55 to 64 have increased from about 10 percent in 2000 to nearly 15 percent in 2010. At the same time, those in the 35 to 44 age group have steadily declined as a share of the labor force. The chart below depicts the percent of labor force by age group in 2010 and the projected percentage in 2020.



As the baby-boom generation moves entirely into the 55 years and older age group by 2020, that age group’s share of the labor force will increase from 19.5 percent in 2010 to 25.2 percent in 2020. The “prime-age” working group (ages 25 to 54) is projected to drop to 63.7 percent of the 2020 labor force. The 16-to 24-year-old age group is projected to account for 11.2 percent of the labor force in 2020.¹⁶

From a workers’ compensation perspective, reassuring findings from a recent study¹⁷ from the National Council on Compensation Insurance (NCCI) suggest an aging workforce may have a less negative impact on the lost cost per employee than many analysts originally thought.

¹⁵ Source: Texas Comptroller of Public Accounts; Texas Ahead: Demographic Advantage Young State, Solid Growth; 2010; Issue 7.

¹⁶ Source: Bureau of Labor Statistics, Division of Industry Employment projections.

¹⁷ Source: National Council on Compensation Insurance Inc.; NCCI Research Brief: *Workers Compensation and the Aging Workforce*; December 2011.

The study indicates that older employees generally tend to have higher costs per employee; however, “older” seems to start with age 35 now with all groups of employees ranging from age 35 to 64 having similar costs per employee. Employees 20 to 24 have markedly lower severities and costs per employee, and employees 25 to 34 fall in the middle.

Differences in costs per employee by age primarily reflect differences in the severity of injuries. Severity for older employees is 51 percent higher than for younger employees. The average medical severity for claims with temporary indemnity payments (claim years 1996 through 2007) was \$5,073 for the 20 to 34 age group and \$7,649 for the 45 to 64 age group.

The NCCI study¹⁸ also reflects a different trend in the frequency of injuries. There has been a long-standing belief that younger employees have much higher injury rates; however, this is no longer true. In 1994, the injury rate for the 20 to 24 age group was 26 percent greater than the rate for all employees, and by 2009 the difference had fallen to 5 percent. The injury rate for the 55 to 64 age group was 16 percent lower than the rate for all employees in 1994 but 1 percent higher in 2009.

In Texas, the frequency in the number of workers’ compensation injury claims has been decreasing overall during the past few years, although the frequency of claims has been similar across age groups. The age groups of 19-29, 30-39, and 40-49 have shown a slight decrease in the percentage of claims through the years, while the age groups of 50-59 and 60 and older have shown a slight increase. OIEC expects this trend to continue for the next five years.

Percentage of Workers’ Compensation Injury Claims By Age Group											
Age Group	2007	2008	2009	2010	2011	2012*	2013*	2014*	2015*	2016*	2017*
0-18	1%	1%	1%	0%	0%	0%	0%	0%	0%	0%	0%
19-29	21%	21%	19%	19%	20%	20%	19%	19%	19%	18%	18%
30-39	23%	23%	23%	23%	22%	22%	22%	22%	21%	21%	21%
40-49	26%	26%	26%	26%	25%	25%	25%	25%	24%	24%	24%
50-59	19%	20%	21%	22%	21%	22%	23%	24%	25%	26%	26%
60+	6%	7%	7%	8%	8%	9%	9%	10%	10%	11%	12%
Total	112,081	107,685	96,926	98,297	88,811	89,000	89,890	90,789	91,697	92,614	93,500

Source: Years 2007 through 2011-Texas Department of Insurance, Division of Workers’ Compensation; Workers’ Compensation claim data updated through December 2011. Years 2012 through 2017 Projections made by OIEC.

Over the next several years, the aging population will change the makeup of the labor force and the characteristics of workplace injuries. In addition, the ethnic diversity of the State will see a significant change in the near future and long-term.

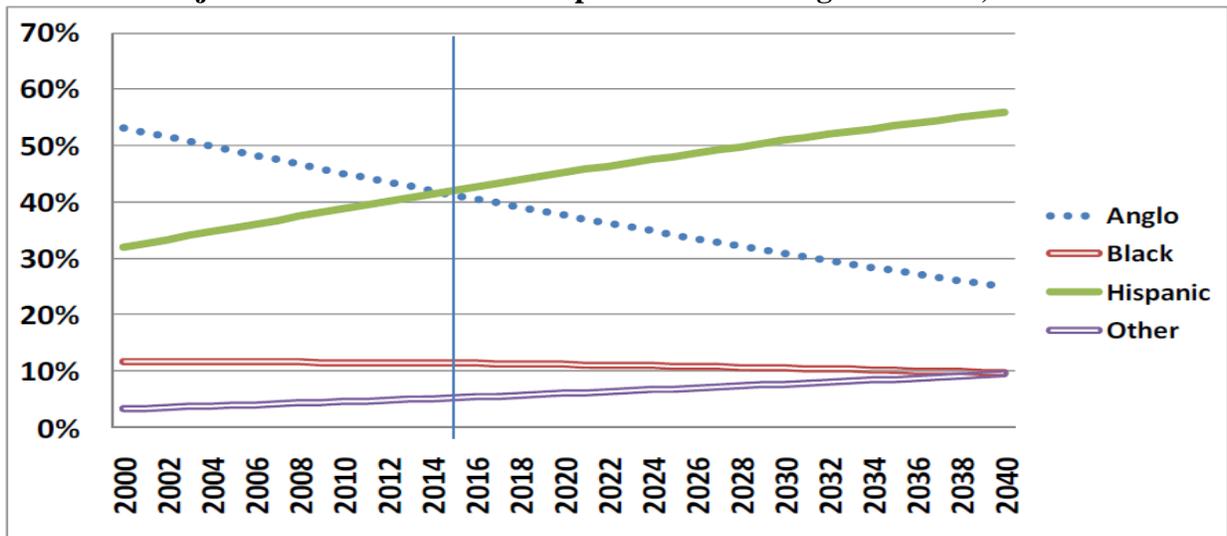
¹⁸ Ibid.

Diverse Labor Force. According to Steve Murdock, a demographer with the Hobby Center for the Study of Texas at Rice University and a former Director of the U.S. Census Bureau, the Anglo population is aging. As of 2011, two out of three children in Texas are minorities.

The Hispanic population contributes to Texas having a younger population than the American average because Hispanic births have outnumbered Anglo births since the early 1990s. In 2007, for the first time since the early nineteenth century, Hispanics accounted for more than half of all births (50.2 percent) while Anglos accounted for just 34.3 percent.

In 2015, the ratio of Anglos and Hispanics will be equal. Thereafter, the population percentage of Anglos is expected to continue to decrease while the population percentage of Hispanics continues to increase. The chart below indicates the projected racial and ethnic population percentage in Texas from 2000 to 2040.

Projected Racial and Ethnic Population Percentages in Texas, 2000-2040



Of the total foreign-born population in Texas in 2010, 3.3 percent were from Africa, 18.6 percent from Asia, and 4.2 percent from Europe. Of the states with the greatest percentages of individuals born in Mexico, Texas ranks third at 62 percent behind New Mexico (72 percent) and Arizona (65 percent).¹⁹

By 2020, the number of Hispanics in the labor force is projected to grow by 7.7 million, or 34.0 percent, and their share of the labor force is expected to increase from 14.8 percent in 2010 to 18.6 percent in 2020. The labor force shares for Asians and blacks are projected to be 5.7 and 12.0 percent, respectively, up slightly from 4.7 and 11.6 percent in 2010.²⁰

¹⁹ Source: *The Geography of Mexican Immigrant Settlement in the U.S.* | Suite101.com; <http://lindsay-withers.suite101.com/the-geography-of-mexican-immigrant-settlement-in-the-united-state-a323957#ixzz1sOo2qf2B>.

²⁰ Source: Bureau of Labor Statistics; Employment Projections 2010-2020 Summary.

Labor Force Education. To date, the educational attainment of Texas Hispanics and blacks has lagged behind that of Anglos. Unless Texas increases the average educational attainment levels of its non-Anglo populations, the future labor force will be less educated than today's. This means that employees will earn less and have fewer skills, and businesses will find it increasingly difficult to hire and retain qualified applicants. If the Texas economy is to continue to thrive, this downward spiral of decreasing educational attainment, a less educated work force and fewer skilled job seekers must be reversed.²¹

Projected Comparison of Labor Force Education Attainment Rates in Texas, 2000 and 2040

Attainment	2000	2040
High School, No Diploma	18.8%	30.1%
High School Diploma	29.0%	28.7%
College < Bachelors	28.7%	23.9%
Bachelors	18.2%	12.9%
Graduate/Professional	5.3%	4.4%

Source: Texas State Data Center, University of Texas at San Antonio.

Although many companies only require on-the-job training, many require some type of higher education. There are a growing number of opportunities in Texas for individuals to continue their education and qualify for employment. Four-year universities may be costly and many cannot afford this path, especially with the current economy. The majority of the State's first-year college students are in community colleges and that share is expected to grow. As tuition rises at four-year universities, many students begin at the less expensive two-year institutions.²²

Labor Force Opportunities. Since 2005, Texas has been ranked the top state for job growth and business development in Chief Executive Magazine's annual survey of CEOs, and 2012 was no exception. Texas received high marks in all areas important for business creation and highlighted the state's business-friendly tax and regulatory environment compared to other states.²³

Some of the reasons that Texas has been ranked the top state for the past eight years include the following:

- Allstate builds \$12 million customer center in San Antonio.
 - Reasons: Weather and lifestyle; Spanish language capabilities.
- Caterpillar building plants in Seguin and Victoria.
 - Reasons: Access to cheaper, non-union labor; proximity to ports for exporting.
- eBay/Pay Pal hiring more than 1,000 and expanding support facilities in Austin.

²¹ Source: Texas Comptroller of Public Accounts; Window on State Government; Demographic Change and Education. <http://www.window.state.tx.us/specialrpt/workforce/demo.php>. Visited 5-2-2012.

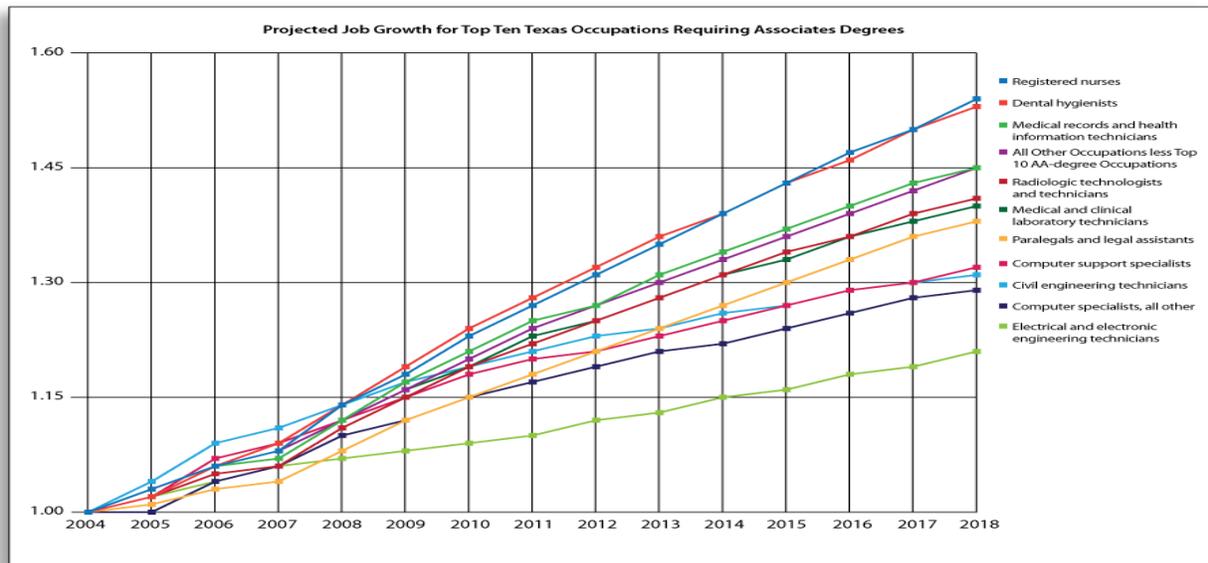
²² Source: Texas Coalition for Excellence in Higher Education. New Report Questions Texas' Higher-Ed Priorities; April 18, 2012, by Reeve Hamilton | The Texas Tribune. <http://texaseducationexcellence.org/news/987>.

²³ Source: Office of the Governor Rick Perry; Press Release: CEO Magazine Ranks Texas Best State for Business for Eighth Consecutive Year, Wednesday, May 02, 2012.

- Reasons: Access to tech talent; \$2.8 million from the Texas Enterprise Fund.
- Facebook opens first U.S. operation outside of California in Austin.
 - Reason: Access to creative and technical talent.
- GE Transportation announces \$96 million locomotive plant in Fort Worth.
 - Reason: Cheaper, non-union labor.
- Grifols USA, California-based subsidiary of Spanish parent, opens blood plasma testing facility in San Marcos.
 - Reasons: Right skills sets; Spanish language capabilities.
- PETCO, based in San Diego, opened its first customer support center outside of California in San Antonio in 2011.
 - Reasons: Access to cheaper space; skilled workers; funding from the Texas Enterprise Fund.²⁴

Employment opportunities are projected to continue. Industries and occupations related to health care, personal care and social assistance, and construction are projected to have the fastest job growth between 2010 and 2020, according to the U.S. Bureau of Labor Statistics.

One-third of the projected fastest-growing occupations are related to health care, reflecting expected increases in demand as the population ages and the health care and social assistance industry grows. More than one-fourth of the projected fastest-growing occupations are related to construction. Employment in most of these occupations, still at low levels in 2010 because of the recent recession, will recover along with the construction industry. But employment in most construction occupations is not expected to reach pre-recession levels.²⁵ Many of the employment opportunities may require a degree. The chart below shows the projected growth for Texas' top ten occupations that require an Associates Degree.²⁶



²⁴ Source: Another Triumph for Texas: Best/Worst States for Business 2012; May 2 2012 by JP Donlon. <http://chiefexecutive.net/best-worst-states-for-business-2012>. Visited 5-2-2012.

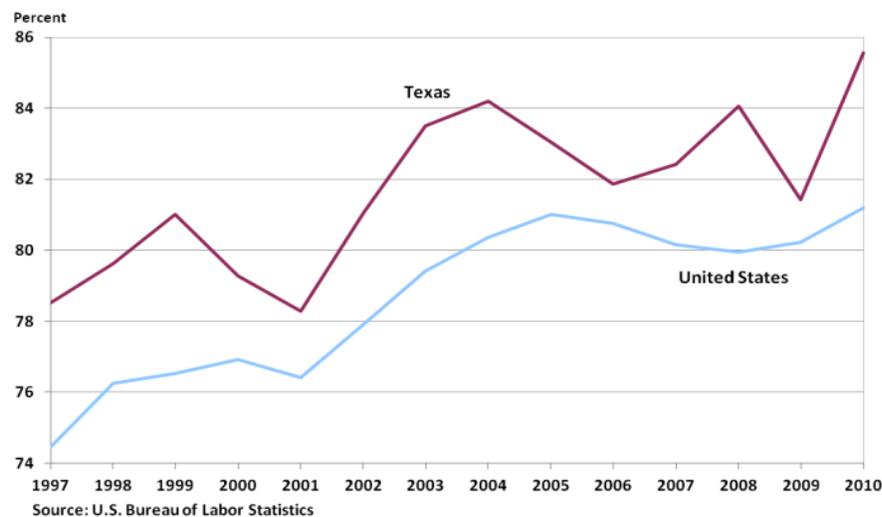
²⁵ Source: Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2012-13 Edition*, Projections Overview, <http://www.bls.gov/ooh/about/projections-overview.htm> (visited April 18, 2012).

²⁶ Source: <http://www.everychanceeverytexan.org/texasjobs/trends/growth.php>. Visited 5-2-2012.

Labor Force Gender and Wages. The ratio of the male and female population in Texas is about half and half. Texas' labor force is made up of approximately 45 percent female and 55 percent male.²⁷

The ratio of women's to men's earnings has generally trended upward since 1997; however, the Bureau of Labor Statistics reported in November 2011 that the ratio of women's to men's earnings climbed sharply in 2010. The ratio fluctuated around 83 percent from 2003 to 2009. In 2010, the ratio climbed to 85.6 percent. In 2010, Texas women who were full-time wage and salary workers had median weekly earnings of \$611 or 85.6 percent of the \$714 median weekly earnings of their male counterparts. Nationwide, women earned \$669 per week or 81.2 percent of the \$824 median for men.²⁸

Chart 1. Women's earnings as a percent of men's, full-time wage and salary workers, Texas and the United States, 1997-2010 annual averages



The number of women in the labor force is projected to grow at a slightly faster rate than the number of men. The male labor force is projected to grow by 6.3 percent from 2010 to 2020, compared with 7.4 percent for the female labor force.²⁹

According to the Bureau of Labor Statistics *Occupational Outlook Handbook*, the employment growth rate of personal care aides and home health care aides, which are occupations included in the health care and social assistance industry, is expected to increase by 70 percent and 69 percent, respectively. Personal care aides and home health care aides are the top two occupations with the highest percentage change of employment projected between 2010 through 2020, and the median pay for 2010 for these two occupations is only approximately \$20,000 per year, which is less than \$10 per hour.

²⁷ Source: <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

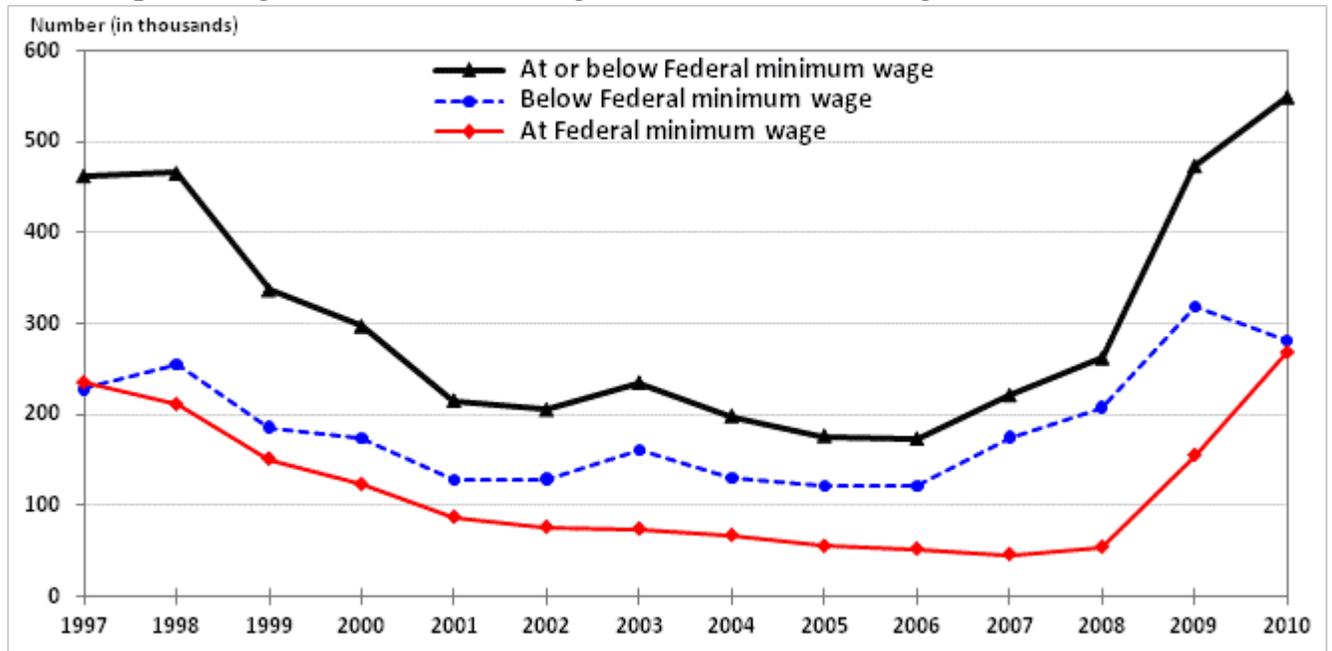
²⁸ Source: Bureau of Labor Statistics; Womens' earnings in Texas - 2010; News Release Wednesday, November 2, 2011.

²⁹ Source: Bureau of Labor Statistics, Division of Industry Employment projections.

The median hourly earnings for all hourly paid wage and salary workers in Texas was \$11.20 per hour in 2010; nationally, the median was \$12.50. For men and for women, the median hourly rates in Texas were \$12.13 and \$10.24, respectively. Nationally, the median hourly rates were \$13.76 for men and \$11.83 for women.

Among hourly paid workers in Texas, 550,000 had earnings at or below the prevailing Federal minimum wage of \$7.25 per hour in 2010 according to the U.S. Bureau of Labor Statistics. (See chart below). Nearly 5.8 million workers were paid at hourly rates, representing 55.7 percent of all Texas wage and salary workers. The number of Texans paid *at or below* the Federal minimum wage increased as the number of workers earning the exact Federal minimum wage rose while the number of Texans paid below the minimum wage declined. Combined, these workers accounted for 9.5 percent of all hourly paid workers in Texas.³⁰

Employed wage and salary workers paid hourly rates with earnings at or below the prevailing Federal minimum wage in Texas, annual averages, 1997-2010



Many of the injured employees that OIEC assists earn low wages. Because OIEC provides free assistance, many injured employees choose Ombudsmen assistance rather than paying an attorney up to 25 percent of their workers' compensation income benefits for representation.

It is notable that although Texas' labor force is made up of approximately 55 percent male and 45 percent female, DWC claim information indicates that approximately 65 percent of workers' compensation injury claims are filed by males and 35 percent by females.

³⁰ Source: http://www.bls.gov/ro6/fax/minwage_tx.htm

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 claims systems (TXCOMP and COMPASS).

OIEC has restricted use of TDI workers' compensation claim systems in order to fulfill its cause and case advocacy roles. Aggregate information is needed to advocate on behalf of injured employees as a class. The agency accesses individual claimant information to fulfill the agency's case advocacy role and assist injured employees in their workers' compensation claim and during the dispute resolution process.

Pursuant to HB 1774, 82nd Texas Legislature, Regular Session, 2011, provisions of the Texas Labor Code were amended regarding OIEC's access to the injury and claim information of injured employees. The change clarifies that OIEC has access to individual claim information only when assisting an injured employee. Section 404.111(a) now provides that when assisting an injured employee, OIEC 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.

OIEC and DWC entered into a Memorandum of Understanding to facilitate the implementation of these Labor Code provisions. OIEC now gains access to claim information by receiving permission directly from the injured employees to access their confidential information.

The current claims systems were also not designed to specifically meet OIEC's needs, (i.e., track OIEC processes and activity); therefore, OIEC has been working with TDI to improve the system in the interim and create other tools that will enhance OIEC's ability to serve its customers more efficiently and effectively. The changes will allow OIEC to calendar preparation appointments, activities, and deadlines to aid the Ombudsmen and Customer Service Representatives in providing assistance to the injured employee throughout the dispute resolution process.

Although TDI provides equipment for Internet and Intranet services for OIEC, the websites are regularly maintained by OIEC staff. OIEC's Intranet website provides a resource for OIEC staff to learn about other program areas within the agency; updates on new or revised policies and procedures; quick links to the agency's business plan, training, and agency directives; and other useful information that allows staff to ensure injured employee rights are protected.

OIEC's Internet website at www.oiec.texas.gov provides a platform for the agency's commitment to open government. OIEC's budget is posted on the Internet to show customers how the appropriated money is spent. OIEC also posts its Strategic Plan, performance measures reports, Legislative Appropriations Request, *Quarterly Review*, and other publications and reports. Information is provided to injured employees, other system participants, and the public to learn about OIEC and the workers' compensation system. There is also a feature on the

website that translates 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.

An online complaint form is available for those who want to file a complaint, and OIEC posts its Customer Satisfaction Survey to obtain feedback. OIEC's Customer Satisfaction Survey can now also be accessed through a Quick Response Code using a smartphone. By downloading a Quick Response Code reader application to a smartphone and launching the Quick Response Code reader application, the code can be scanned using the Quick Response Code reader and the survey will open. The survey can then be completed and submitted from the smartphone.

OIEC utilizes social media (such as Twitter and Facebook) as an inexpensive way to reach out to its customers to provide education information. OIEC has a page on Twitter at <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.

The agency also regularly participates in webinars and online training when available. Regional Staff Attorneys now enjoy Silver Membership in the State Bar College that includes unlimited free access to the State Bar's Online Classroom, including fully accredited video versions of all of Texas Bar Continuing Legal Education (CLE) courses and live webcasts.

OIEC plans to harness technology in the following future initiatives:

- creating a LinkedIn account on the Internet in order to increase business connections;
- participating in the Statewide Social Media Workgroup to create a toolkit and social media policy for use by State agencies;
- creating education videos about workers' compensation to be placed on YouTube;
- creating an Intranet web page for OIEC staff to be used as a medical resource guide; and
- developing Internet-based training designed to provide practical applications by having self-testing available for staff to get immediate feedback on their skills.

Although OIEC continually researches and identifies innovative ways to communicate, streamline operations, and serve its customers through technology, many of the injured employees that OIEC serves do not have technological capabilities, such as access to a computer. According to a report released in February 2011 from the Texas Legislative Study Group³¹, Texas ranks 42nd compared to the other 49 states in the percent of households with Internet access. Given this, it is important that OIEC continues to improve its outreach efforts and provide information in a non-electronic medium.

³¹ Source: Report from the Texas Legislative Study Group on the state of our State: *Texas on the Brink: Fifth Edition*, February 2011.

Economic Variables

The Texas economy is the world's 14th-largest economy.³² Texas added more people (nearly 4.3 million) than any other state between 2000 and 2010, which is an increase of 20.6 percent. The entire United States added only 9.7 percent in the same time period.

According to the Texas Comptroller of Public Accounts, job growth, sales tax collections from business, consumer purchases, and automobile sales signal that the Texas economy has emerged from the recent recession.

Another indicator that the State's economy has been comparatively healthy was the U.S. Census Bureau report that Texas added more people (421,000) than any other state from 2010 to 2011. Although Texas has only 8 percent of the nation's population, the State experienced nearly 19 percent of the nation's population growth for the year.

By December 2011, Texas employers replaced all 427,600 jobs shed during the recession as the economy rebounded more quickly than the U.S. as a whole and continues to add jobs. Nationally, through February 2012 only 39 percent of recession-hit jobs have been recovered.

Texas and the nation returned to economic growth in 2010 and 2011. In 2011, Texas real gross domestic product (GDP) grew by 2.4 percent compared with 1.6 percent GDP growth for the nation.³³

According to a recent press release from the Governor's office³⁴, Texas' economy continues to receive national recognition. More new jobs were added over the past year in Texas than anywhere else in the country, and Texas' unemployment rate remains more than a full point below the national average and continues to decline. According to USA Today, Texas moved past New York as the nation's second largest economy, and the Wall Street Journal has credited the State's low taxes and employer-friendly environment with helping make Texas the job creation capital of the nation. Additionally, Texas consistently ranks among the top states for Fortune 500 headquarters.

Texas has been ranked the top state for job growth and business development for the eighth year in a row in Chief Executive Magazine's annual survey of CEOs. The survey asked 650 CEOs to rank the best states for business based on a wide range of criteria, from taxation and regulation to workforce quality and living environment. Governor Perry said, "Texas' number one ranking as the best state for business for the past eight years by CEOs across the nation is a testament to our successful model for economic prosperity and job creation."

³² Source: EconPost; Texas Economy Ranking in the World; February 3, 2011; www.econpost.com/texaseconomy/texas-economy-ranking-world; Visited 5-1-2012.

³³ Source: Comptroller of Public Accounts, Texas Economy in Focus, March 23, 2012. <http://www.texasahead.org/economy/outlook.php>

³⁴ Source: Office of the Governor Rick Perry; Press Release: CEO Magazine Ranks Texas Best State for Business for Eighth Consecutive Year, Wednesday, May 02, 2012.

The Texas Comptroller of Public Account's Economic and Population Forecast for fiscal years 2010 through 2017 is provided below as an indication of Texas' future economic climate.

**TEXAS AND THE U.S. ECONOMIC AND POPULATION FORECAST FISCAL YEARS 2010–17,
WINTER 2009 FORECAST**

CATEGORY	2010	2011	2012*	2013*	2014*	2015*	2016*	2017*
TEXAS ECONOMY								
Gross State Product (Billion 2005\$)	1,102.8	1,127.1	1,150.0	1,178.1	1,218.8	1,265.7	1,309.2	1,351.1
Annual Percentage Change	3.7	2.2	2.0	2.4	3.5	3.9	3.4	3.2
Personal Income (Billion Current \$)	979.7	1,035.8	1,080.3	1,120.1	1,175.9	1,243.5	1,311.4	1,382.0
Annual Percentage Change	2.0	5.7	4.3	3.7	5.0	5.7	5.5	5.4
Nonfarm Employment (Thousands)	10,290.6	10,520.3	10,671.4	10,834.3	11,049.5	11,314.2	11,569.1	11,804.6
Annual Percentage Change	-1.1	2.2	1.4	1.5	2.0	2.4	2.3	2.0
Unemployment Rate (Percentage)	8.2	8.3	8.3	8.1	7.5	6.8	6.4	6.0
Texas Exports (Billions of Dollars)	194.7	236.8	266.5	290.6	318.6	349.0	378.9	408.6
Resident Population (Thousands)	25,204.2	25,673.1	26,142.0	26,599.1	27,044.2	27,497.4	27,960.7	28,428.8
Annual Percentage Change	1.9	1.9	1.8	1.7	1.7	1.7	1.7	1.7
Taxable Oil Price (\$ per Barrel)	\$72.75	\$87.85	\$78.65	\$78.67	\$81.45	\$81.98	\$82.81	\$84.52
Taxable Nat. Gas Price (\$ per MCF)	3.96	4.13	3.98	3.93	4.28	4.77	5.12	5.31
U.S. ECONOMY								
Gross Domestic Product (Billion 2005\$)	12,987.3	13,255.8	13,473.8	13,753.0	14,158.7	14,649.2	15,099.7	15,511.1
Annual Percentage Change	2.1	2.1	1.6	2.1	2.9	3.5	3.1	2.7
Cons. Price Index (1982-84=100)	217.0	223.0	227.0	231.0	236.0	241.0	246.0	251.0
Annual Percentage Change	1.4	2.8	1.8	1.8	2.2	2.1	2.1	2.0
Prime Interest Rate (Percentage)	3.3	3.3	3.3	3.3	3.8	5.8	7.0	7.0

* Projected.

Sources: Texas Comptroller of Public Accounts; Texas State Data Center.

As the economy improves, more people are returning to work; however, some injured employees may have more difficulty in returning to the labor force than their healthy counterparts.

Research conducted by the Workers' Compensation Research Institute found that poor economic

conditions made it more difficult for some employers to offer light, transitional, or modified duty to assist their injured employees in returning to sustainable work or to provide permanent job accommodations for injured employees with restrictions.³⁵

Although Texas' economy is faring better than other states, there is room for improvement. According to a report released in February 2011 from the Texas Legislative Study Group on the State of Our State, *Texas on the Brink*,³⁶ Texas is ranked lower than some states in many areas. Texas' ranking compared to other states for some areas are listed below (50th = lowest, 1st = highest):

- Public School Enrollment – 2nd
- Percent of Population 25 and Older with a High School Diploma – 50th
- High School Graduation Rate – 43rd
- Percent of Population with Employer-Based Health Insurance – 48th
- Average Hourly Earnings of Production Workers on Manufacturing Payrolls – 38th
- Government Employee Wages and Salaries – 24th
- Workers' Compensation Coverage – 50th (Workers' compensation coverage is not mandatory in Texas.)

The report stated that, "Texas has the highest percentage of uninsured children in the nation. Texas is dead last in the percentage of residents with their high school diploma and near last in SAT scores. Texas has America's dirtiest air. If we do not change course, for the first time in our history, the Texas generation of tomorrow will be less prosperous than the generation of today... Texas is on the brink, but Texas can do better. The choice is ours."

OIEC remains vigilant in providing quality assistance and services to the hard-working citizens of Texas and protecting their rights in the workers' compensation system during these challenging economic times.

Agency Response to Changing Economic Conditions

Although the workplace is safer than it has ever been, injuries continue to occur and disputes continue to arise. As the economy improves, unemployment decreases, and more people go back to work, OIEC's workload increases. As the labor force becomes more diverse, OIEC must evolve to provide services to all of its customers. This section of the Strategic Plan provides a glimpse of some of the ways OIEC responds to the changing economic conditions.

Increased Workload. OIEC staff has stressed to management that there is not enough time in the day to do all that needs to be done. OIEC management is listening.

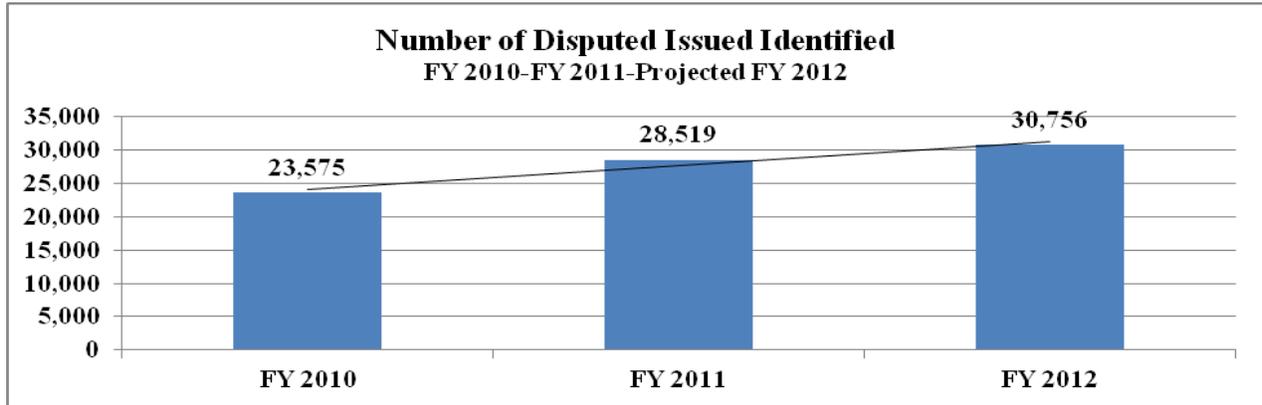
Workload has increased in all aspects of the agency – from cause advocacy to case advocacy; from operations to customer service. OIEC management regularly reviews agency performance

³⁵ Source: Workers' Compensation Research Institute; *Factors Influencing Return to Work for Injured Workers: Lessons from Pennsylvania and Wisconsin, November 2011.*

³⁶ Source: Report from the Texas Legislative Study Group on the State of Our State, *Texas on the Brink: Fifth Edition*, February 2011.

measures and trends and shares the data monthly with all agency staff. Within the past two years, data indicates that workload has significantly increased.

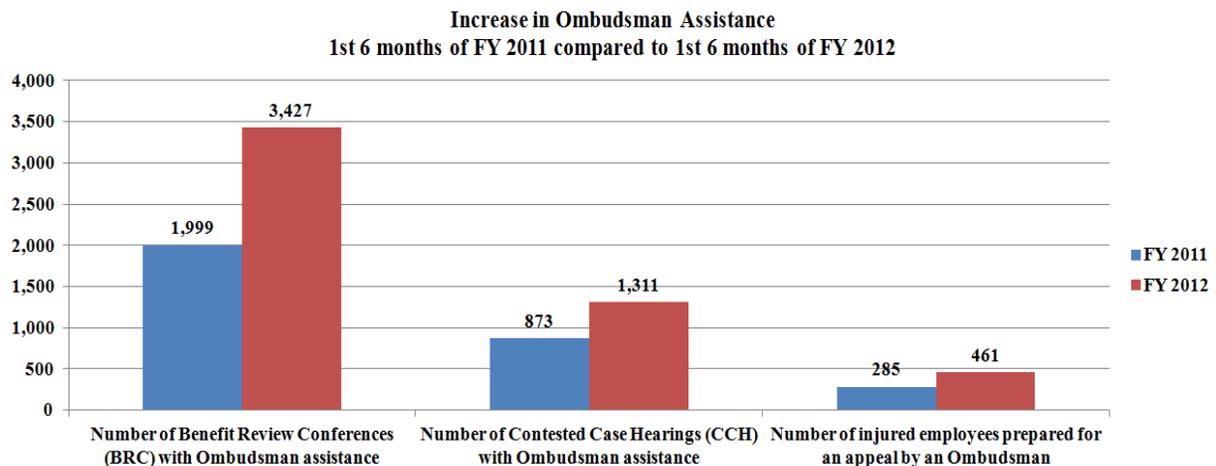
OIEC has realized a 22 percent increase in the number of disputed issues identified during the first two quarters of FY 2012 (15,224) compared to the number of disputed issues identified during the same time period in FY 2011 (12,477). The number of disputed issues identified in FY 2012 is expected to increase 30 percent since FY 2010 as shown in the chart below.



Customer Service Representatives initially attempt to resolve disputes that are identified and are strained with the increase in workload. The quality of customer service deliverables is adversely impacted. Therefore more unresolved disputes are referred to the Ombudsmen after 10 business days, and benefits to injured employees may be delayed.

Ombudsmen have also felt the impact of the agency’s increased workload. The number of proceedings and appeals with Ombudsman assistance has increased dramatically during the first two quarters of FY 2012 compared to the first two quarters in FY 2011:

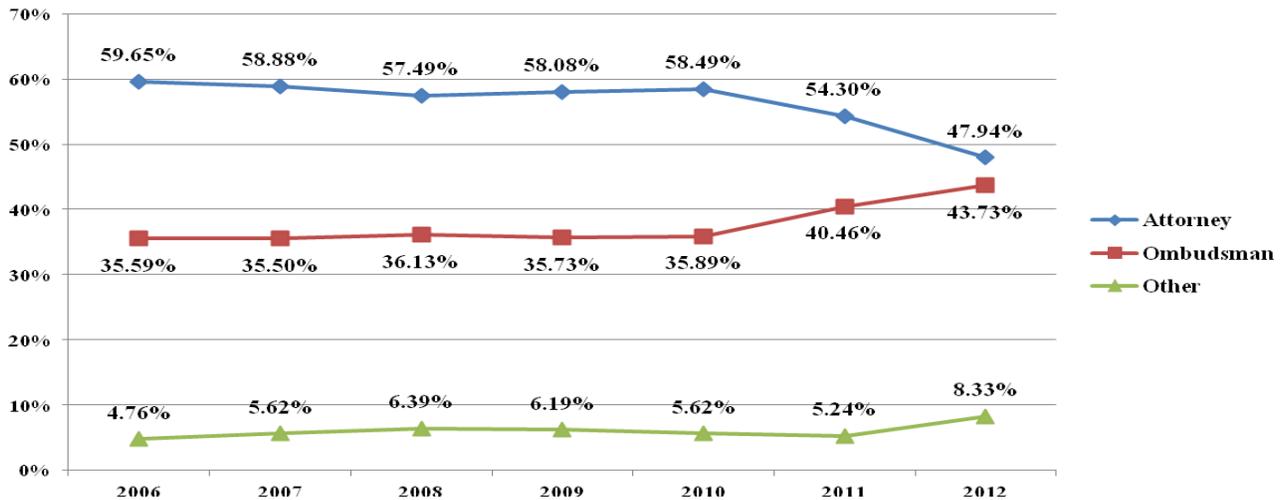
- Number of Benefit Review Conferences with Ombudsman assistance increased 71.44 percent
- Number of Contested Case Hearings with Ombudsman assistance increased 50.17 percent
- Number of injured employees prepared for an appeal by an Ombudsman increased 61.75 percent.



Although the number of disputed issues resolved by OIEC each month prior to entering DWC’s dispute resolution system continues to increase, more issues could be resolved if additional time were available for the Ombudsmen to conduct more thorough case development prior to requesting a Benefit Review Conference.

The percentage of proceedings in which the injured employee is assisted by an Ombudsman increased 15 percent in FY 2012 compared to FY 2011 – 49 percent during the first two quarters of FY 2012 compared to 42 percent during the first two quarters of FY 2011. As shown in the chart below, the trend represents a greater need for Ombudsman Program services.

**Percentage of Assistance Type for the Injured Employee
FY 2006 through 2nd Quarter FY 2012**



Part of the reason for the increase in requests for Ombudsman assistance is likely due to the current economy. Injured employees may choose the free services offered by the Ombudsman Program rather than paying a private attorney up to 25 percent of their indemnity benefits. Another reason for the increase of requests for Ombudsmen may be OIEC’s increased public outreach efforts – more customers are aware of OIEC’s services.

OIEC strives to meet the workload demand; however, it has been a challenge for the agency. Scheduling time for case development and preparation appointments, Benefit Review Conferences, Contested Case Hearings, telephone conferences, training, travel, and other responsibilities can be difficult to balance. Additionally, OIEC’s Compact with Texans directs staff to return telephone calls within 16 business hours. These and other priorities often result in staff working well over regular work hours per week to meet job requirements.

One way OIEC is managing the workload is by filling vacancies as soon as possible. In some instances, a position is posted as soon as the resignation is received, prior to the actual departure. OIEC also has developed a process for Ombudsmen in smaller field offices to assist Ombudsmen in larger field offices with their case development activities, such as requesting medical records and contacting the insurance adjuster. However, OIEC’s policy requires a single Ombudsman to assist the injured employee throughout the life of the workers’ compensation claim; therefore,

communication with the injured employee remains strictly between the injured employee and his or her assigned Ombudsman.

OIEC anticipates that it will be necessary to request additional staff in the FY 2014-2015 Legislative Appropriations Request. These additional staff will ensure that the agency continues to provide excellent customer service and assistance is promptly provided to the injured employees of Texas so as not to delay their medical care and return to work.

Field Office Closures. As a result of the agency's administrative attachment to TDI, OIEC is not funded to lease its own office space. TDI provides all facilities for OIEC by statute. Space is limited in each field office and sometimes causes privacy concerns, especially in the larger field offices. As field offices close and Ombudsmen are relocated to other field offices, there is not always private office space available for them. TDI has been accommodating in providing cubicle space for OIEC staff and increasing the number of staff per office when possible. However, when space is unavailable for an Ombudsman to privately converse with an injured employee, it may prove detrimental to the confidentiality of injured employees and their case.

A number of field offices have closed within the past few years, and additional field offices may be closing in the near future. The Wichita Falls, Victoria, Bryan, and Missouri City field offices have closed. Some OIEC employees were able to transfer to other field offices, but many declined to transfer and resigned due to family obligations where they lived. Individuals that choose to live and work in small communities, where their families were raised, often do not choose to or are unable to relocate.

The agency is not always aware of the field office closure in a timely manner. Uncertainty over office closures affects staff and services as management must decide whether to fill vacancies at offices nearing their lease expiration dates. Management does not want to hire staff and then be forced to conduct layoffs as a result of a field office closure. This would have an adverse impact on OIEC's budget and cause an increase in unemployment benefit costs.

Field office closures also affect the agency's ability to retain its highly trained Ombudsmen. To be eligible for designation as an Ombudsman, the individual must have at least one year of demonstrated experience in workers' compensation. It is challenging for OIEC to retain Statewide services when an Ombudsman receives training throughout the year only to be lost when a field office closes and the individual is unable to relocate. Field office leases due to expire within the next four years include:

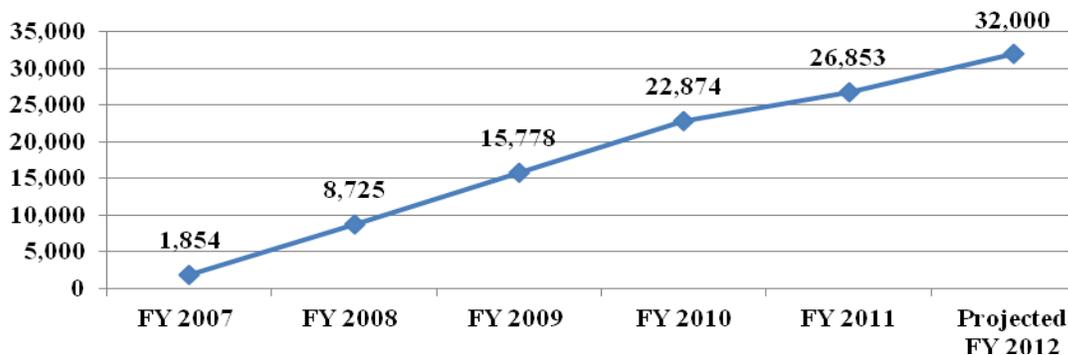
- Abilene (3/31/2013)
- Beaumont (2/28/2013)
- Dallas (6/30/2014)
- Fort Worth (2/28/2014)
- Laredo (4/30/2013)
- Midland (12/31/2016)
- Tyler (4/30/2014)
- Amarillo (7/31/2013)
- Corpus Christi (6/30/2015)
- Denton (12/31/2013)
- Houston West (8/31/2012)
- Lubbock (8/31/2012)
- San Antonio (9/30/2016)
- Weslaco (10/31/2016)

OIEC anticipates that DWC will keep the following offices open long-term: Corpus Christi, Dallas, El Paso, Fort Worth, Houston East, Houston West, Lubbock, and San Antonio. DWC may change the business model for field offices to become hearing sites or to close completely. However, if additional field offices are closed, more jobs could be lost and OIEC services may suffer. Shortage of space may limit how many displaced staff can be accommodated at other field offices.

Another issue that has surfaced pertains to docketing. As OIEC staff fails to relocate to other field offices, Ombudsmen shortages may limit the ability to docket proceedings in a timely manner. Additionally, case development and preparation appointments are necessary during dispute resolution, and limited time available makes it difficult to schedule those appointments as well as dispute resolution proceedings.

The closing of a field office can be difficult for the injured employees that prefer to come into the field office and discuss their dispute in person, particularly for those who have difficulty traveling due to their work-related injury. Some offices may receive up to 20 injured employees per day requiring services from OIEC. As the chart below indicates, the number of injured employees served in person at field offices has increased each year since FY 2007 (even though the number of field office locations has decreased), and OIEC anticipates that this trend will continue.

Number of Injured Employees Assisted at Field Office Locations

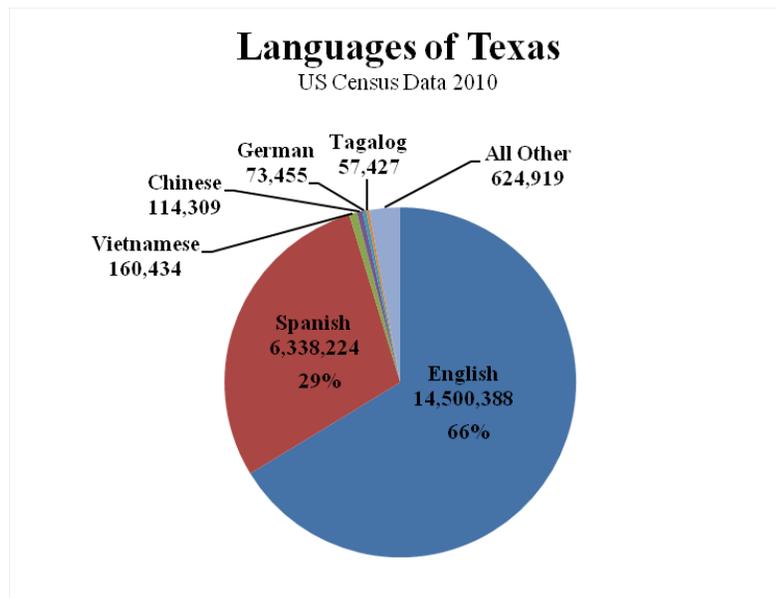


Many injured employees are forced to travel further as field offices close. As provided in § 410.005 of the Labor Code, unless good cause exists, a Benefit Review Conference or Contested Case Hearing may not be conducted at a site more than 75 miles from an injured employee’s residence at the time of the injury. However, as field offices close, the travel distance may be more than 75 miles. Therefore, OIEC staff must travel more often to accommodate this need. Many injured employees that OIEC assists are in poor medical condition, and it is difficult for them to travel long distances. Injured employees may request that a proceeding be held through a telephone conference; however, this does not frequently occur due to legal standards that accompany an administrative hearing.

Access Plan. One challenge that OIEC encounters in providing excellent customer service is language barriers. This challenge is enhanced as the non-English speaking population grows in Texas and nationally.

According to a U.S. Census Bureau report analyzing data from the 2007 American Community Survey, the percentage of speakers of non-English languages grew by 140 percent over the time period from 1980 – 2007 while the nation’s overall population grew by 34 percent. Spanish speakers accounted for the largest numeric increase nationwide. There were 23.4 million more Spanish speakers in 2007 than in 1980, which represents a 211 percent increase. The Vietnamese-speaking population accounted for the largest percentage increase of 511 percent (1.0 million speakers) over the same time period.

Due to the various languages spoken across Texas, it is important for OIEC to ensure that the agency can effectively communicate with its customers. Below is a chart of the different languages spoken throughout the State.



One of the tools the agency uses to ensure effective communication is its *Access Plan for Non-English Speakers*. Pursuant to Texas Labor Code § 404.005(a), OIEC is required to prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to its programs. The *Access Plan* summarizes OIEC’s efforts to ensure access to the agency for non-English speaking individuals. OIEC’s *Access Plan* is available on the agency’s Internet at www.oiec.texas.gov/topics/access.

Since one-third of Texans are Spanish speakers, OIEC ensures that nearly all of its offices have OIEC staff that is able to provide personal assistance in Spanish. More than half of OIEC staff is bilingual, and over 60 percent of the Customer Service Program and 55 percent of the Ombudsman Program speak Spanish. OIEC staff also speaks German and Vietnamese.

OIEC's hiring practices ensure that field office personnel have the skills to speak languages other than English. Additionally, in an effort to increase the number of bilingual staff, OIEC is purchasing tools/resources for interested staff to learn a new language.

OIEC also offers other resources to individuals that do not speak English. OIEC provides outreach and educational materials in Spanish and other languages including but not limited to Chinese (Cantonese), Vietnamese, Laotian, and Korean upon request.

The agency's website (www.oiec.texas.gov) can be translated into several languages as a helpful resource. There is also a feature on the OIEC Internet that translates the OIEC HTML web pages into other languages including Portuguese, Spanish, French, Italian, German, Dutch, Swedish, Russian, Greek, Arabic, Simplified Chinese, Traditional Chinese, Korean, and Japanese. At the top of the OIEC Internet pages, in the upper right hand corner is a weblink that says "Translate Page." This brings the user to the bottom of the page where one can select the language to translate the page.

OIEC's toll-free number (1-866-EZE-OIEC • 1-866-393-6432) provides assistance to callers in both English and Spanish. Interpreter services are also available for injured employees in various stages of the workers' compensation dispute resolution process. OIEC has contracted with Language Line Services through a Texas Department of Information Resources contract to provide translation services to its customers. However, this tool is expensive, and OIEC anticipates that usage will continue to increase.

OIEC is committed to continue efforts to improve and expand its offerings to non-English speakers in the State. In addition to OIEC's efforts to reduce language barriers, the agency is also taking steps to ensure access to its website, including documents that are accessible to individuals with impaired vision and other disabilities.

Grant Funding. With the passage of legislation that allows OIEC to seek and accept grants, the agency has begun applying for grants to help fund two priority programs that address growing needs of injured employees: 1) the need for expert witnesses to provide the evidence necessary to prove their entitlement to income or medical benefits and 2) the need for training to recognize and address mental health issues. Grant funding would be used to augment the agency's budget for these programs. *See* pages 93-94 for more information about evidence-based medicine and the Expert Witness Pilot Project. *See* page 28 for more information about Mental Health First Aid training.

Impact of Federal Statutes/Regulations

Currently, there are no federal statutes/regulations that impact OIEC operations directly; however, the Federal Health Care Reform, the potential federalization of workers' compensation, and other regulations may have an impact on the Texas Workers' Compensation System.

Federal Health Care Reform. 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 became 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.

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"> 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> 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> 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> 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> Prohibits lifetime policy limits. Prohibits policy rescissions. Coverage of preventive health services. Covers dependents up to age 26. Prohibits eligibility based on employee salary Prohibits pre-existing condition exclusions for children. Requires plans to allow enrollees to select PCP or pediatrician. Prohibits pre-authorization or higher cost sharing for ER in-network or out-of-network services. Prohibits preauthorization for OBGYN services. Claims, financial, rating, enrollment/ disenrollment, and cost-sharing information must be in plain language. All plans must comply with standards regarding claims appeal processes. Insurers must report minimum loss ratios to Secretary and states. 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. 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> 	<ul style="list-style-type: none"> Insurers must comply with uniform requirements for summary of benefits and explanation of coverage documents. Requires use of standardized definitions in all policies and standardized explanation of coverage. Insurers must submit annual reports to Secretary on discase management, care coordination, hospital readmission rates, patient safety and provider rate reimbursement structures. 	<ul style="list-style-type: none"> Insurers must comply with standard requirements for electronic eligibility and claims status transactions. 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> 	<ul style="list-style-type: none"> Insurers must comply with guaranteed issuance and renewability provisions and rating requirements. Prohibits preexisting condition exclusions. Prohibits annual limits on coverage. Limits waiting periods to 90 days. Limits deductibles in small group market to \$2,000 individual/\$4,000 family. 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> Creates temporary reinsurance program funded by assessments on group/individual plans. Program terminates 12/31/16. Allows employers to offer rewards to enrollees participating in wellness program. Prohibits insurers from dropping individuals who participate in clinical trials. Insurers must comply with electronic transaction standards. States must develop and implement statewide Health Insurance Exchange for individuals, small businesses that is operational by 01/01/14. TDI certifies plans for Exchange. Redefines small group to 1-100. 	<ul style="list-style-type: none"> 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> Federal regulations issued by 07/01/13. Compacts take effect after 01/01/16. 	<ul style="list-style-type: none"> 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>

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.³⁷

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 employees choose not to file.³⁸

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 employees 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.³⁹

According to a survey conducted by the Texas Comptroller of Public Accounts,⁴⁰ more than 65 percent of the businesses surveyed responded that they felt that the federal health care reform would be bad for business. Businesses that thought otherwise provided the following positive comments:

- “Health care is the most requested benefit for employees. This will help employee retention.”
- “Healthy workers are more productive workers.”
- “Initially premium costs may go up but once fully implemented I believe health care costs will level off. Costs were skyrocketing before the law was passed and was one of the reasons Washington felt the need to pass the reform. Personally, the small business tax credit has already helped my business and we made the decision to continue providing health care benefits for another year thanks in part to the advantages of the credit.”

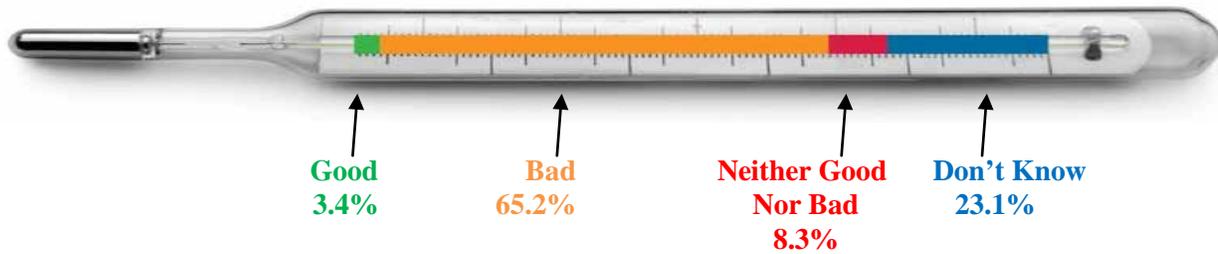
³⁷ Source: Centers for Medicare & Medicaid Services, Office of the Actuary. April 22, 2010.

³⁸ 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. Retrieved 6-18-2010.

³⁹ Source: Ibid. The Rand Corporation.

⁴⁰ Source: Texas Comptroller of Public Accounts; *Texas Business Attitudes Toward Federal Health Care Reform: Taking the Pulse of Business on Federal Health Care Reform*. Publication# 96-1706; Printed April 2012.

Survey Respondent Views of Federal Health Care Reform Legislation



The Patient Protection and Affordable Care Act includes significant private insurance market provisions that will dramatically alter the insurance market in Texas and other states. The law includes a series of reform requirements that began in 2010, with the most dramatic changes occurring in 2014. With a few exceptions, most of the initial reforms effective in 2010 through 2013 primarily affect individuals who already have insurance coverage and will have little impact on individuals who are uninsured or who are enrolled in public plans. However, beginning in 2014, several federal requirements should significantly assist lower income families and employees obtain affordable health insurance, including the following:

- Advanceable tax credits will be available to families earning up to 400 percent of federal poverty level to purchase affordable health insurance;
- Insurance plans must meet certain benefit requirements and cost-sharing provisions designed to ensure benefit plans provide comprehensive services with limited out-of-pocket costs to enrollees;
- Most large employers will be required to offer health insurance benefits that meet minimum requirements or may face penalty payments;
- Insurance plans are prohibited from denying coverage based on an individual's health status;
- Insurance plans will not be able to increase premiums based on an individual's health status or gender, and premium rates for older individuals are limited; and
- Insurance Exchanges will provide access to health insurance plans that meet standard benefit requirements and provide simplified application and enrollment procedures for individuals, small businesses, and Medicaid/Texas Children Health Plan enrollees.⁴¹

Twenty-five states including Texas joined in *State of Florida v. the U.S. Department of Health & Human Services*. On January 31, 2011, U.S. District Judge Roger Vinson declared the individual mandate unconstitutional and further said that the *entire package* of reform legislation is unconstitutional if the mandate is not upheld by the courts. On August 12, 2011, the 11th U.S. Circuit Court of Appeals agreed that the individual insurance mandate is unconstitutional but allowed the rest of the reform package to stand. The Supreme Court heard oral arguments in the case in March 2012 and on June 28, 2012 ruled that the expansion of the federal-state Medicaid program was unconstitutional. However, the court held the law's mandate requiring Americans to carry health insurance or pay a penalty valid under Congress' constitutional authority to levy taxes.⁴²

⁴¹ Source: Biennial Report of the Texas Department of Insurance to the 82nd Legislature.

⁴² Source: Wall Street Journal; *Court Backs Obama on Health Law*; June 29, 2012;

http://online.wsj.com/article/SB10001424052702304898704577480371370927862.html?mod=business_newsreel; visited June 29, 2012.

The provisions of the law will require federal regulations and, in some cases, state legislative and/or regulatory action to fully implement. Until the details of these requirements are finalized, it is impossible to predict the long-term impact. However, the removal of underwriting restrictions, new premium rating reforms, availability of subsidies and limitations on out-of-pocket expenses for low and middle income families should make it easier for many low-income Texans to obtain private insurance.⁴³

Shifting of Costs from Workers' Compensation to Social Security Disability Insurance.

Workers' compensation has proved to be the oldest and most durable social insurance program in the United States. Since its inception a century ago, workers' compensation in the United States has been under the authority of the states, only. No federal laws exist that directly impact the regulation or standards of workers' compensation. Critics of this model of workers' compensation have long pointed to the inequities in benefits provided to injured employees, the coverage of employers and employees, and the rules used to determine eligibility for benefits that exist from state to state. At certain points in history, especially in times of great expansion in federal social insurance programs (New Deal era and Great Society period, specifically), critics of the state-run system have called for the federalization of workers' compensation; however, any effort to federalize workers' compensation either lacked the political willpower or, where there was the willpower, the need to federalize workers' compensation didn't fulfill the purpose of the social insurance program being considered.

In the decades after World War II, the ratio of workers' compensation benefits to wages steadily declined. In addition, the rate of accidents per year including deaths in the workplace increased into the millions. As a result, the call to reform workers' compensation laws spread through the U.S. Congress. In 1970, the Occupational Health and Safety Act was signed into law by President Nixon. For the first time since the turn of the century, the federal government revised the laws governing workplace safety. While the formation of the Occupational Health and Safety Administration (OSHA) was not a direct attempt to federalize workers' compensation, it did lay the groundwork for the creation of the National Commission on State Workmen's Compensation Laws. In 1972 the Commission issued a comprehensive evaluation of the state-run workers' compensation system. In its report⁴⁴, the Commission described the state workers' compensation programs as "in general neither adequate nor equitable." This and other findings of the Commission spurred what could be described as a reformation period for workers' compensation. Over the next five years, state workers' compensation laws were modified to comply with the Commission's recommendations. However, compliance rates virtually plateaued by the end of the 1970's, and by the 1990's, many states had revised their workers' compensation laws to restrict eligibility for benefits by excluding many common medical diagnoses and enacting more rigid evidentiary standards. Over time, the lack of uniformity in workers' compensation from state to state has provided much incentive for employers to find ways to attract new business and industry by adjusting workers' compensation benefits to make themselves more competitive. Many critics have argued that over time this lack of a single

⁴³ Source: Biennial Report of the Texas Department of Insurance to the 82nd Legislature.

⁴⁴ Source: *National Commission on State Workmen's Compensation Laws: 1972*. [The Report can be downloaded from www.workerscompresources.com].

standard is likely to create a “race to the bottom” where lower workers’ compensation benefits mean lower operating costs to employers.⁴⁵

For all the arguments for federalizing workers’ compensation, the system has remained much the way it has always been. However, at various times in its history, the Federal Government has initiated “test cases” in administering workers’ compensation. While not part of an overall scheme to absorb workers’ compensation, one of the most notable examples is the Federal Victims Compensation Fund (to compensate the victims of 9/11). That case largely illustrates the fact that the existing workers’ compensation scheme was deemed unable to handle the task of duly compensating those affected—a telling commentary on both the existing levels of workers’ compensation benefits and, accordingly, the fear that should existing workers’ compensation carriers handle the claims, an adverse public relations event was inevitable and perhaps even more costly, financially. Nevertheless, there is clearly little action in the U.S. Congress to reform workers’ compensation as a result of this experiment in “federal” workers’ compensation.

Workers’ compensation is only the second largest source of cash and medical benefits for disabled employees; the first is Social Security Disability Insurance (SSDI). As its name implies, SSDI is a federal program to assist disabled beneficiaries until they return to work, die, or qualify for social security old age benefits. Workers’ compensation and SSDI have differing, and non-exclusive standards of eligibility. In other words, someone injured on the job may be eligible for both benefits, neither benefit, or one or the other benefit. Therefore, SSDI and workers’ compensation benefits have been coordinated since 1965. By default, SSDI benefits are reduced and workers’ compensation benefits are paid in full; and the combination of the two cannot exceed 80 percent of a claimant’s preinjury wages. Before the law was changed, some states adopted laws which allowed workers’ compensation rates to be reduced in lieu of SSDI reductions. This was known as “reverse offset.”

While the payout of benefits can be coordinated and controlled fairly well, the criteria used to establish eligibility cannot. Because the adequacy and parity of workers’ compensation benefits has been in steady decline for at least two decades, there is mounting evidence that SSDI is paying benefits to employees who were injured in the course and scope of their employment but were not able to qualify for workers’ compensation benefits. If the disparity in workers’ compensation benefits from state to state didn’t provide the urgency for the federal government to absorb workers’ compensation, perhaps there will be greater concern in light of the evidence supporting this claim.

One of the principle authorities on this subject is John F. Burton, PhD. Dr. Burton was the Chairman of the aforementioned National Commission on State Workmen’s Compensation Laws. In November of 2010, he testified before the U.S. House of Representatives Subcommittee on Workforce Protections about the relationship between workers’ compensation and SSDI⁴⁶. Dr. Burton’s purpose in testifying before the Subcommittee was to expose the results of the research that he and his colleague, Xuguang Guo, had conducted showing the

⁴⁵ Source: Christopher Howard, *The Welfare State Nobody Knows: Debunking Myths About U.S. Social Policy* (Princeton Univ. Press 2007).

⁴⁶ Source: *Workers’ Compensation: Recent Developments and the Relationship with Social Security Disability Insurance: Before the H. Committee on Education and Labor, Subcommittee on Workforce Protections*, 111th Cong. (2010)(statement of John F. Burton, Jr., Professor Emeritus, Rutgers and Cornell Universities).

possible shifting of costs from workers' compensation to SSDI; including supporting evidence of the frequency and severity of that cost-shifting. In his testimony, Burton identified four unique ways in which SSDI bears the costs of state workers' compensation programs: 1) reverse offset laws; 2) ability to qualify for SSDI but not workers' compensation for a work-related injury; 3) decreases in one program increases demand for the other; and 4) the reliance on experience ratings to set workers' compensation premiums.

As mentioned previously, reverse offset laws were adopted by 15 states in order to circumvent a federal law that established that in cases where a claimant receives both workers' compensation and SSDI benefits, workers' compensation benefits must be paid in full and SSDI benefits must be reduced, if necessary, so that the combination of the two benefits does not exceed 80 percent of the claimant's preinjury wages. Therefore, a reverse offset law indicates that SSDI must be paid in full and workers' compensation benefits adjusted, accordingly. In a sense, in states with reverse offset laws, SSDI is forced to cover lost wages for employees when entitlement to workers' compensation has plainly been established.

There is evidence supporting the claim that the SSDI program is paying benefits to claimants who were injured in the course and scope of their employment but were not able to qualify for workers' compensation benefits. In a sample of persons aged 51 to 61 in 1992 who claimed a work-related injury, only 12.3 percent received workers' compensation benefits while 29 percent received SSDI⁴⁷. Not surprisingly, Guo and Burton's research also found an increase in the application rates for SSDI in periods when workers' compensation benefits declined relative to a claimant's average weekly wage⁴⁸. This increase in application rates for SSDI was also compounded during periods when states tightened their eligibility rules for workers' compensation benefits. Adjusted for the growth of an aging population, and the increase of the female workforce, Guo and Burton estimated that the reduction of workers' compensation benefits due to restricted eligibility rules resulted in an increase of 3 to 4 percent in the growth of SSDI applications during the 1990s⁴⁹.

The mechanisms controlling SSDI applications and workers' compensation claims can also be viewed in economic terms; whereby decreases in one program stimulate demand for the other. In this sense, benefits between the two programs follow the laws of supply and demand like any other good or service. This pattern can be seen over a period of 25 years, beginning in the mid to late 1980s, whereby workers' compensation benefits versus SSDI benefits are inversely proportional. However, Burton also notes that this relationship "has received little attention by researchers and is not well understood."⁵⁰ In fact, Burton must concede this point about the bulk of his findings. Critics of these findings have also been quick to capitalize on the tenuous relationship between the rates of SSDI applications versus the levels of workers' compensation benefits. Melissa McInerney and Kosali Simon, in an unreviewed article entitled "The Effect of

⁴⁷ Source: Robert T. Reville and Robert F. Schoeni. 2003/2004. *The Fraction of Disability Caused at Work*. Social Security Bulletin, Vol. 65, No.4:3-17.

⁴⁸ Source: Xuguang Guo and John F. Burton, Jr. 2008. *The Relationship Between Workers' Compensation and Disability Insurance*. In Adrienne E. Eaton, ed. Proceedings of the 60th Annual Meeting of the Labor and Employment Relations Association. Champlain, IL: Labor and Employment Relations Association.

⁴⁹ Ibid.

⁵⁰ Source: Ishita Sengupta, Virginia Reno, and John F. Burton, Jr. 2010, *Workers' Compensation: Benefits, Coverage, and Costs*, 2008. Washington, DC: National Academy of Social Insurance.

State Workers' Compensation Program Changes on the Use of Federal Social Security Disability Insurance", conclude that changes to the laws governing workers' compensation had no meaningful connection to the rise in application rates for SSDI beyond a mere temporal relationship⁵¹.

One final area of workers' compensation that may impact SSDI according to Burton's research is the reliance on experience ratings to determine workers' compensation premiums. Experience ratings work on the principle that the more or less a firm claims in workers' compensation benefits compared to other firms in its industry, the more or less it must pay in insurance premiums, respectively. The idea behind experience ratings is to encourage employers to improve the safety of their business in order to obtain a more favorable premium rate. In addition, experience ratings are used by insurance companies to plan how much could be paid in benefits for a potential policy holder. However, experience ratings also have the effect of encouraging employers to mitigate potential claims within their company by any number of methods. One example is requiring employees—frequently in the petroleum industry—to sign an affidavit on a daily basis indicating that they have not sustained an injury in the course and scope of their employment for that day. Employers may also reward employees, as a group, after a certain number of days pass without an on-the-job injury. In effect, employees are discouraged from filing a claim for fear that their coworkers will not see a financial reward, and employers reap a lower workers' compensation premium. And if employees are discouraged from filing a workers' compensation claim, they may be left with no recourse other than SSDI.

The current state of workers' compensation bears many similarities to the period preceding the formation of the National Commission on State Workmen's Compensation Laws. During that time, the Commission acknowledged that state governments would face a substantial obstacle in trying to balance the need for regulation of workers' compensation with the desire to encourage an environment of profitability and mobility for employers. From a policy perspective, many states have addressed this concern by increasing the standards of evidence necessary to claim benefits while simultaneously capping the amount that can be received in benefits. Other strategies have included reviews of long-standing tenets of workers' compensation. California, for example, no longer follows the adage "the employer takes the worker as he finds him." In other words, California law had long held that if an employee with a previous medical condition suffered a work-related injury that was the result of some interaction of a previous medical condition, the employer was still responsible for all of the consequences of the present injury. California now limits the degree to which a workers' compensation carrier will be responsible for these kinds of injuries. Florida and New York have also adopted this policy.

One of the founding principles of workers' compensation in this country is the idea that workers' compensation is a no-fault system, and that the costs related to insurance premiums should be passed on to the consumer like any other cost of production. The policy changes of the last decade, especially, have abandoned this latter principle for fear that rising premium costs would cause employers to relocate business to another state or country with lower premium costs. In the current political environment, any effort to resolve this by federalizing workers'

⁵¹ Source: Melissa McInerney and Kosali Simon. 2010. *The Effect of State Workers' Compensation Program Changes on the Use of Federal Social Security Disability Insurance*. [Article currently under review].

compensation is highly unlikely; however, this *is* a time when all federal programs are being evaluated for cost savings, and there is some potential to improve workers' compensation through this scrutiny. As an alternative to sweeping change, it is conceivable that modest federal standards for workers' compensation could be enacted. One way to couch this proposal to adversaries of federal intervention would be to highlight the burden that SSDI likely shares in paying on workers' compensation claims. Therefore, a proposal to reform workers' compensation would likely appear as an effort to save tax dollars—not as an effort to increase parity across state laws. Burton also suggests that Congress could enact federal standards that would require states to provide adequate permanent disability benefits using less restrictive causation standards. Congress could also enact legislation changing the manner in which cash benefits are applied for under SSDI similar to the way in which the Medicare Secondary Payer Act works. Under the Medicare Secondary Payer Act, certain workers' compensation claims must set aside funds that might otherwise be shifted to Medicare.

One such effort to reform workers' compensation at the federal level was the Federal Workers' Compensation Modernization and Improvement Act (HR2465). Under that resolution, which was authored by a bipartisan committee, many cost-saving strategies were developed—none of which favored cutting benefits for injured employees as an appropriate way to balance the federal budget. In fact, the bill provides for vast increases in certain types of benefits while also netting \$500 million in potential savings over 10 years⁵². This is accomplished mostly through reductions in administrative costs and better coordination between retirement funds and workers' compensation. The bill is currently under review by the Committee on Homeland Security and Government Affairs. While this resolution only concerns Federal employees, states could take the initiative and model reform legislation after it. It is also possible that if costs continue to shift from workers' compensation to other benefit programs (especially federal programs) the Federal Government will mandate that states reform their workers' compensation laws. Under this scenario, injured employees are perhaps more likely to realize unfavorable reforms as state lawmakers will view a federal mandate as punitive in nature.

Mandatory Workers' Compensation. Texas currently is the only state in which workers' compensation insurance is not mandatory. According to a 2010 survey conducted by the Workers' Compensation Research and Evaluation Group (REG) at TDI,⁵³ 32 percent of Texas employers are non-subscribers and 15 percent of those employers have more than 500 employees. The report indicated that 17 percent of employees are not covered under workers' compensation insurance.

In March 2012, one of the biggest employers in Texas, Walmart, became a nonsubscriber. While non-subscription does save money for the employer, it may negatively impact the injured employee. One issue is the cap on medical and indemnity benefits. Walmart's in-house plan caps total medical coverage at \$300,000 for individual injuries compared with lifetime coverage for the injury under the Texas workers' compensation system. The Walmart plan provides 90

⁵² Source: *Examining the Federal Workers' Compensation Program for Injured Employees: Hearing Before the US Senate Committee on Homeland Security and Governmental Affairs, Subcommittees on Oversight of Government Management, the Federal Workforce, and the District of Columbia*, 112th Cong. (2011)(Statement of Gary Steinberg, Acting Director of the Office of Workers' Compensation Programs).

⁵³ Source: Texas Department of Insurance Workers' Compensation Research and Evaluation Group; *Texas Workers' Compensation System: 2010 Estimates*; October 2010.

percent of lost wages for injured employees for up to 120 weeks compared with up to 70 percent of lost wages for up to 401 weeks under the Texas workers' compensation system. Therefore, an injured employee making \$500 per week would receive more than double the amount of benefits in the workers' compensation system than they would under the Walmart plan.⁵⁴ Another potential issue for non-subscribers is retaliation. Texas law prohibits an employer from terminating or retaliating against an employee because the employee has filed a workers' compensation claim. The public policy behind this law is to encourage employees to report job-related accidents, to seek necessary medical treatment, and to not be subjected to retaliation for doing so. However, this "workers' compensation retaliation" law does not apply to nonsubscribers.⁵⁵

Oklahoma was considering a plan in its 2012 legislative session similar to Texas, which would allow some employers to "opt-out" of coverage. The legislation did not pass. However, the bill would have allowed qualifying employers to offer medical and indemnity benefits under an Employee Retirement Income Security Act (ERISA) plan to employees. ERISA plans are regulated by the federal government. Employers would be eligible to offer an alternative plan if they have either: 1) a workers' compensation experience modifier, as reported by the National Council of Compensation Insurance (NCCI), of greater than one (1.00) for the preceding Oklahoma workers' compensation insurance policy year or 2) total annual incurred claims as reflected in an NCCI experience modifier worksheet or their workers' compensation carrier loss runs greater than \$50,000 in at least one of the three preceding Oklahoma workers' compensation insurance policy years.

Texas does not require employers to offer any minimum level of benefits if they do not subscribe to workers' compensation coverage. Those "non-subscribers" do not have exclusive remedy protection from civil suits by injured employees. Comparatively, Oklahoma's plan would have included minimum benefits and preserved exclusive remedy protections for employers that offer ERISA plans.

According to an article⁵⁶ in WorkCompCentral, business and employer groups, including the Oklahoma State Chamber of Commerce, supported the legislation. Insurers and insurance organizations, including the Property and Casualty Insurers Association of America, were opposed to it. Employers claimed workers' compensation rates in Oklahoma are too high, which makes it difficult to compete with businesses in neighboring states. Employers point to a benchmark report released in 2010 by the Oregon Department of Consumer and Business Services that showed Oklahoma employers paid the fourth-highest workers' compensation premiums in the country behind only Montana, Alaska, and Illinois. The legislation is expected to be considered again in Oklahoma's 2013 legislative session. Other states have also expressed interest in passing similar legislation.

⁵⁴ Source: Texas Tribune; Walmart Stirs Concern over Texas Workers' Compensation System, by Becca Aaronson, April 9, 2012. <http://www.texastribune.org/texas-economy/economy/walmart-stirs-concern-over-workers-compensation-sy/>. Visited 5-8-2012.

⁵⁵ Source: Business Insurance; *Texas Immune From Workers Comp Retaliation Suits: Ruling*, by Judy Greenwald; April 29, 2011. <http://www.businessinsurance.com/article/20110429/NEWS/110429910>. Visited 5-8-2012.

⁵⁶ Source: WorkCompCentral; *Senate Approves Comp Alternative Bill, Returns It to House*. April 19, 2012.

Other Legal Issues

Impact of Anticipated State Statutory Changes

Preventing Opioid Addiction and Dependency. Recently, the harmful effects of the addiction and dependency on prescription painkillers have been gaining national attention. It has become a crisis in the health care industry, and workers' compensation is no exception. The abuse of prescription drugs has resulted in increased crime, higher medical costs, longer disability, and death.

The death toll from overdoses of prescription painkillers has more than tripled in the past decade according to an analysis from the Centers for Disease Control and Prevention.⁵⁷ The report shows that more than 40 people die every day from overdoses involving narcotic pain relievers like hydrocodone (Vicodin), methadone, oxycodone (OxyContin), and oxymorphone (Opana).

The Secure and Responsible Drug Disposal Act was signed into law in 2010, which allows states and local communities to collect and safely dispose of unwanted prescription drugs and support the Drug Enforcement Administration's ongoing national efforts to collect unneeded or expired prescription drugs which have collected over 300 tons of medications over the past year. OIEC has become a partner in this initiative and provides educational information to all its customers about the Act.

In Texas, progress has been made by law enforcement in identifying and putting some "pill mills" out of business. Additionally, based on legislative authority granted to it by the Texas Legislature, DWC has adopted and implemented several rules that provide the tools necessary for the agency and other system participants to track prescription drug utilization and curb unnecessary medical care. These tools include the adoption of evidence-based treatment guidelines, a closed pharmacy formulary, pre-authorization procedures for medical treatment/services, medical dispute resolution processes/procedures, medical billing and coding requirements for pharmacy services, a pharmacy fee guideline, medical data reporting requirements, and doctor monitoring procedures through the Medical Quality Review Panel. OIEC recently provided feedback on DWC's proposed plan-based audit, which is designed to focus attention on the issue of opioid utilization in the Texas Workers' Compensation System through the review of the initial prescribing doctor.

Additional federal and state legislation is anticipated. OIEC remains diligent in monitoring future legislation to alleviate this deadly problem and ensuring that injured employees receive medically necessary and appropriate pain medication for the treatment of their compensable injuries.

Workers' Compensation Rule Activity. OIEC advocates on behalf of injured employees as a class by analyzing and participating in workers' compensation system initiatives and

⁵⁷ Source: Centers for Disease Control and Prevention; Vital Signs: Prescription Painkiller Overdoses in the US; <http://www.cdc.gov/vitalsigns/PainkillerOverdoses/index.html>; Visited site April 30, 2012.

encouraging the simplification of procedures and forms. OIEC provides comments to TDI and DWC during the development phase of rules and forms relating to workers' compensation. Since the last biennium, OIEC has provided comments to DWC on the following informal and formal rules, and forms:

- *July 2010* - Proposal of 28 Texas Administrative Code (TAC) §§ 12.1-12.6, 12.101-12.110, 12.201-12.208, 12.301-12.303, 12.402-12.406, and 12.501-12.502;
- *August 2010* - Proposal to amend 28 TAC §§ 134.500 and 134.506 and add new TAC §§ 134.510, 134.520, 134.530, 134.540, and 134.550 regarding the Pharmacy Closed Formulary; and to amend 28 TAC § 133.306 regarding interlocutory orders for medical benefits;
- *October 2010* - Proposal to repeal 28 TAC § 126.7 and to adopt 28 TAC §§ 127.1, 127.5, 127.10, 127.15, 127.20, and 127.25 regarding designated doctor scheduling and examinations;
- *September 2010* - Proposal of the Chapter 180 rules;
- *September 2010* - Informal proposal of 28 TAC §§ 136.1 and 136.2;
- *October 2010* - Proposal of 28 TAC § 137.5 regarding case manager certification;
- *November 2010* - Informal working draft of 28 TAC §§ 19.2001-19.2021 regarding utilization reviews for health care provided under workers' compensation insurance coverage;
- *December 2010* - Informal proposal of 28 TAC §§ 133.2, 133.240, 133.250, and 134.600 regarding definitions, medical payments and denials, reconsideration for payment of medical bills, and preauthorization, concurrent review, and voluntary certification;
- *December 2010* - Proposed FY 2011 research agenda for the Workers' Compensation Research and Evaluation Group;
- *December 2010* - Medical Quality Review audit plan;
- *December 2010* - Proposed 28 TAC §§ 136.1 and 136.2;
- *May 2011* - Proposed DWC Form-022, Required Medical Examination Notice or Request for Order;
- *July 2011* - Informal proposal to amend 28 TAC §§ 141.2, 141.3, and 143.2;
- *July 2011* - Informal proposal to add 28 TAC §§ 180.4, 180.9, and 180.10 and to amend 28 TAC §§ 180.1, 180.3, 180.5, 180.8, and 180.27;
- *August 2011* - Review of Self-Insurance rules 28 TAC §§ 114.1-114.15;
- *August 2011* - Questions posed in the working draft of the rules regarding the procedures governing the recoupment of overpaid income benefits and the payment of underpaid income benefits;
- *September 2011* - Proposal of 28 TAC §§ 19.2001-19.2021 regarding utilization reviews for health care provided under workers' compensation insurance coverage;
- *September 2011* - Proposal to amend 28 TAC §§ 133.2, 133.240, 133.250, 133.270, and 133.305 regarding general medical provisions, and 28 TAC § 134.600 regarding preauthorization, concurrent utilization review, and voluntary certification of health care;
- *September 2011* - Proposal to amend 28 TAC §§ 141.2, 141.3, and 143.2
- *September 2011* - Informal proposed revisions to the DWC Form-045, Request for a Benefit Review Conference;

- *September 2011* - Informal proposal to add new 28 TAC §§ 126.15 and 125.16 and to amend 28 TAC § 128.1;
- *October 2011* - Proposal to add 28 TAC §§ 180.4, 180.9, and 180.10 and to amend 28 TAC §§ 180.1, 180.3, 180.5, 180.8, and 180.27 regarding monitoring and enforcement;
- *October 2011* - Informal draft rules proposal to amend 28 TAC §§127.1, 127.5, 127.10, 127.20, 127.25, 130.6 and 180.23; to repeal §180.21; and to add new §§127.100, 127.110, 127.120, 127.130, 127.140, 127.200, 127.210, and 127.220 relating to designated doctor procedures and requirements;
- *November 2011* - Proposal to add new 28 TAC §§ 126.15 and 125.16 and to amend 28 TAC § 128.1 regarding procedures for the resolution of underpayments and overpayments of income benefits;
- *November 2011* - Informally proposed Notice of Underpayment of Income Benefits;
- *December 2011* - Informal draft rules relating to notice and reporting requirements for subscribing and non-subscribing employers; and rules relating to notice of Texas Labor Code § 504.053(b)(2) Election by a Self-Insured Political Subdivision;
- *January 2012* - Informal draft of rules relating to medical dispute resolution;
- *January 2011* - Informal draft rule 28 TAC § 127.130(b) regarding designated doctor qualification criteria;
- *January 2012* - Proposal to amend 28 TAC §§133.2 and 133.240 regarding general medical provisions; and 28 TAC § 134.600 regarding preauthorization, concurrent utilization review, and voluntary certification of health care;
- *March 2012* - Review of rules involving Title 28. Part 2, TAC, Chapter 142, Dispute Resolution-Benefit Contested Case Hearing;
- *March 2012* - proposal to amend 28 TAC §§ 127.1, 127.5, 127.10, 127.20, 127.25, 180.23; to repeal §§ 130.6 and 180.21; and to add new §§ 127.100, 127.110, 127.120, 127.130, 127.140, 127.200, 127.210, and 127.220 relating to designated doctor procedures and requirements;
- *March 2012* - Proposed rules relating to notice and reporting requirements for subscribing and non-subscribing employers; and rules relating to notice of Texas Labor Code § 504.053(b)(2) Election by a Self-Insured Political Subdivision;
- *March 2012* - Informally proposed DWC Forms 032, 067 and 068;
- *April 2012* - Proposed amendments to 28 TAC §§ 133.307, 133.308, 144.1–144.7, and 144.9–144.16;
- *April 2012* - Health Care Providers Pain Management Services (Opioid) Plan-Based Audit;
- *April 2012* - Informal Working Draft of 28 TAC §§ 19.1701-19.1719 and §§19.2001-19.2017 relating to utilization review; and
- *June 2012* - Informal draft rule 28 TAC §§ 180.60-180.78 regarding the Medical Quality Review Panel and Medical Quality Review process
- *June 2012* - Review of rules involving Title 28 TAC, Chapter 150, Representation of parties before the agency – Qualifications of representatives

There has been an increase in the amount of TDI and DWC rule activity and form revision during the past couple of years, partly due to both TDI's and DWC's recent Sunset Advisory Commission review. OIEC anticipates that this trend will continue. The level of rule activity; however, is ultimately dependent on statutory changes mandated during legislative sessions.

Notice of Injured Employee Rights and Responsibilities Amended. In December 2011, OIEC adopted amendments to Texas Administrative Code § 276.6 concerning the *Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* (Notice). The amended Notice reflects changes in the workers' compensation system as a result of the Sunset Advisory Commission's comprehensive review of the workers' compensation system as a result of the 82nd Texas Legislature, Regular Session, 2011. The effective date of the amended rule and notice was June 1, 2012. This timeframe allowed system participants adequate time to prepare for the changes resulting from the amended Notice and coincided with the effective date of key Sunset Advisory Commission legislation.

Ethics Rules Adopted. OIEC adopted three new administrative rules to codify the agency's ethical standards. New § 276.7 of the Texas Administrative Code establishes OIEC's ethics statement. Section 276.8 describes OIEC's Ethics Committee and its mission statement. Section 276.13 clarifies that an injured employee must have a legitimate workers' compensation claim when requesting assistance from an OIEC Ombudsman. The new rules were adopted August 2011.

Legislative Recommendations Passed by the 82nd Texas Legislature. As the State agency that represents the interests of injured employees and assists them in the Texas Workers' Compensation System, OIEC takes seriously its role as the voice of the injured employee in carrying forward legislation that improves workers' compensation benefits and the system as a whole.

Pursuant to Labor Code § 404.108, the OIEC Public Counsel may recommend legislation determined to benefit the interests of injured employees as a class. OIEC legislative recommendations that passed during the 82nd Texas Legislature include the following:

- House Bill (HB) 2692/Senate Bill (SB) 807 (amended onto HB 1774): OIEC will have the authority to seek and accept grant funding to enable the office to perform its duties;
- HB 2691 (amended onto HB 1774): OIEC's Legislative Reports will be due on January 1st instead of December 1st;
- HB 1870/SB 809: A party will be allowed 45 days to appeal a medical dispute decision in district court, which is the same timeframe as an appeal of an indemnity dispute decision;
- HB 1872 (amended onto SB 809): DWC will be the appropriate venue for resolving Workers' Compensation Health Care Network disputes in cases where a carrier or employer fails to provide notice of network status information to an injured employee;
- HB 3427/SB 511 (amended onto HB 2605): An injured employee will have the opportunity to seek the opinion of a treating doctor or a referral doctor if he or she is not satisfied by the designated doctor's opinion regarding maximum medical improvement and impairment rating. It requires the insurance carrier to pay the cost of such an examination.

The legislation passed during the 82nd Texas Legislature helps protect the interests of injured employees and upholds the workers' compensation system goal of treating injured employees with dignity and respect.

The agency has had legislative sponsors for 100 percent of its proposed legislation since the agency's inception. OIEC has made 21 recommendations to the Texas Legislature for the benefit of injured employees, and 13 of these recommendations passed.

Legislative Recommendations for the 83rd Legislative Session, 2013. Based on the identification of issues that would benefit the injured employees of Texas, OIEC is anticipating recommending legislation during the 83rd legislative session. A summary of the proposed legislation follows:

1. **Judicial Review** – Enable an attorney to be paid for representing an injured employee in medical benefit cases at judicial review proceedings.
2. **Consistency in Venue for Benefit Disputes** – Provide a change to the venue of a medical benefit case for consistency in benefit dispute venues. Judicial review of indemnity disputes are currently heard in the county in which the injured employee resided at the time of their injury, or if they have moved in the county in which they currently reside. Judicial review of medical disputes is currently heard in Travis County. Venues for benefit disputes should be similarly established as recommended by Sunset Advisory Commission staff.
3. **Challenge of Compensability** – Require carriers to contest compensability at the same time that they contest medical necessity or lose the right to raise a compensability challenge for purposes of that treatment. Such a change would cause preauthorization in workers' compensation to more closely resemble preauthorization in group health. Currently, carriers can contest medical necessity and subsequently contest compensability if they lose, thereby delaying the injured employee's benefits. This process also adds to the "hassle factor" associated with workers' compensation and discourages provider participation in the workers' compensation system.
4. **Dispute of First Certification of Maximum Medical Improvement (MMI) and Impairment Rating (IR)** – A change is needed to prevent an injured employee from being required to prematurely enter the dispute resolution system in order to avoid finality of the first MMI/IR certification. This change would provide the additional time necessary to obtain the evidence required to pursue a dispute and would not force injured employees to enter the administrative dispute resolution process unprepared in order to preserve their rights.
5. **Receipt of Notice by an Ombudsman** – A change is necessary to ensure that any party that is providing assistance or representation to an injured employee at an administrative dispute resolution proceeding be provided notice (or any other pertinent information) from the Division of Workers' Compensation regarding the dispute.

Impact of Current and Outstanding Court Cases

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 three legislative sessions, OIEC has recommended that an attorney be appointed to represent injured employees at district court; however, the bill has died in the Calendars Committee 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 DWC. 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 advances its advocacy role 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:

- In November 2010, OIEC filed an *amicus curiae* brief before the Supreme Court of Texas in support of a Motion for Rehearing. In the first case, *Transcontinental Insurance Co. v. Joyce Crump*, the Supreme Court previously ruled in a manner that OIEC believes is detrimental to injured employees as a class. The court's ruling centers on the definition of producing cause and whether the Supreme Court's definition of producing cause will place a higher burden on injured employees seeking benefits. The Supreme Court, in defining producing cause, drew from a products liability case (*Ford Motor Company v. Ledesma*) in which producing cause was defined as a "substantial factor in bringing about an injury or death." This definition creates a greater burden for injured employees to overcome and arguably relieves a carrier's burden to prove that a past, compensable injury was the sole cause of a newly claimed injury when denying a claim. In a broader sense, the more stringent definition of producing cause clashes with the concept that workers' compensation is a no-fault system. The aspects of producing cause defined in *Ledesma* also differ with the long-standing foundation of workers' compensation as "limited benefits, liberally applied." For these reasons, OIEC was compelled to file an *amicus curiae* brief asking the Supreme Court to rehear the case. The ultimate goal would be to remove the language "substantial factor" from the definition of producing cause.
- Also in November 2010, OIEC filed an *amicus curiae* brief before the Supreme Court of Texas in support of a Motion for Rehearing in the case of *Bettie Bell v. Zurich American Insurance Company*. In Ms. Bell's case, it was undisputed that she sustained a compensable low-back injury. She underwent spinal surgery and a year later was certified at maximum medical improvement by her designated doctor (Dr. S) with a 20 percent impairment rating. The insurance carrier appealed the rating, but a Hearing Officer at DWC affirmed the 20

percent rating. The insurance carrier sought judicial review but failed to notify DWC. The district court ruled that no valid impairment rating existed and that the designated doctor should be allowed to render an appropriate rating. Ms. Bell appealed pro se, and the insurance carrier responded. The Fifth Court of Appeals ruled that the 10 percent impairment rating made by a treating doctor following Ms. Bell's surgery was the correct rating.

OIEC's *amicus curiae* brief in support of Ms. Bell's motion for rehearing was made because the decision of the Fifth Court of Appeals creates two adverse consequences for injured employees. First, injured employees will be deprived of their statutory right to have DWC consider whether to intervene in their cases. Second, injured employees could effectively be deprived of their right to have their impairment ratings assessed only after they have reached maximum medical improvement. Texas Labor Code § 410.258 indicates that parties initiating a proceeding must notify DWC for a 30-day waiting period and failure to do so would render any decision of the court void. In Ms. Bell's case, both parties agreed to the date of maximum medical improvement made by Dr. S, and therefore no previous assessment date or impairment rating could be adopted as a matter of law. If DWC were properly notified, they would have been able to intervene in Ms. Bell's case and point out the correct state of the law — that the 10 percent impairment rating made by the Fifth Court of Appeals could not be the correct rating because it was assigned before the agreed-upon date of maximum medical improvement [a violation of Texas Labor Code § 408.123(a)]. OIEC asks the Supreme Court of Texas to grant Ms. Bell's Motion for Rehearing and find that the judgment of the trial court was void because Texas Labor Code § 410.258 was not followed.

- In May 2011, OIEC filed an *amicus curiae* brief with the Texas Supreme Court in support of the Petitioner's (Texas Mutual Insurance Company) Motion for Rehearing in the case of *Texas Mutual Insurance Company v. Sara Care Child Center, Inc. and Martha Martinez*, No. 10-0885. OIEC believes that the Court of Appeals' decision has a disproportionate impact on the rights of injured employees to seek judicial review. OIEC has determined that the interests of injured employees as a class will be adversely affected if the decision is not reversed in part.

Amicus Curiae Update. On July 1, 2009, OIEC filed an *amicus curiae* 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. OIEC was strongly compelled to file an amicus brief in this case because the misanalysis 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.

On December 3, 2010, the Texas Supreme Court ruled 8-1 in favor of Ms. Leordeanu. This decision will likely have a positive effect on employees who are injured while traveling for work or for injured employees who work remotely.⁵⁸

⁵⁸ The decision can be found at www.supreme.courts.state.tx.us/historical/2010/dec/090330.pdf.

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’ suit under the Texas Workers’ Compensation Act. 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 Texas 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 to shield itself from tort liability.

Impact: This case extends the workers’ compensation exclusive remedy protection to 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 Rulemaking Initiatives. OIEC's central office held a stakeholder meeting on June 13, 2011 to discuss several initiatives including several rulemaking proposals. The meeting was held in an effort to implement the Sunset Advisory Commission's across-the-board recommendation to the agency and to provide additional opportunity for stakeholders to be involved in OIEC's rulemaking process.

OIEC also actively participates in DWC rule initiatives to carry out its statutory mission to advocate on behalf of the injured employees of Texas pursuant to Texas Labor Code §§ 404.101 and 404.104. OIEC analyzes 100 percent of all informal and formal rules to determine the impact on injured employees as a class. OIEC has been successful in recommending changes for the benefit of injured employees on 100 percent of the rules that would have negatively impacted injured employees had the agency not intervened.

The agency continues to be involved in all aspects of rulemaking initiatives that may have a negative impact on the injured employees of Texas.

Injured Employee's Right to Dispute. In November 2010, OIEC petitioned DWC to amend 28 Texas Administrative Code § 130.12 (b) (1). The current language of Rule 130.12 prescribes only two methods to stop the 90-day clock to dispute the first certification of maximum medical improvement or impairment rating: 1) to request a Benefit Review Conference or 2) to request a designated doctor examination if the first certification was made outside of the designated doctor process. By filing a rule petition with DWC, OIEC primarily intended to address instances where a Benefit Review Conference is sought to stop the 90-day clock when a designated doctor has already been appointed, and more specifically, instances where injured employees are not prepared to proceed to a Benefit Review Conference but must request one as the sole method to stop the 90-day clock.

OIEC and the Sunset Advisory Commission share the goal of ensuring that parties are fully prepared to proceed with a dispute of first certification of maximum medical improvement or impairment rating before a Benefit Review Conference is requested. Unfortunately, there are many instances where injured employees come to OIEC close to the expiration of the 90-day period, and the only mechanism available to preserve the injured employee's right to dispute the first certification is to request a Benefit Review Conference. OIEC has addressed the problem by requesting DWC to amend Rule 130.12 to read that parties "may dispute a first certification of MMI or IR by filing a written dispute in the form and manner required by the Division." OIEC feels that this simple fix would spare DWC any premature use of the administrative dispute resolution process, satisfy the Sunset Advisory Commission's recommendation that parties not proceed to Benefit Review Conferences unprepared, and would ensure the injured employee's right to dispute the first certification of maximum medical improvement or impairment rating.

On January 12, 2011, DWC declined the rule petition and to initiate rulemaking to make the proposed change. Its rationale was that the requested amendment, in effect, would allow for a unilateral waiver of dispute resolution under the "90-day rule" for an indefinite period by

allowing the party to file a notice of dispute with DWC without actually requiring the disputing party to request formal resolution of the dispute by DWC.

OIEC continues its effort to change the rule on behalf of the injured employees of Texas.

Safeguarding Confidential Claimant Information: A Top Priority. Assisting injured employees or their beneficiaries is at the heart of OIEC's mission. Effective assistance requires OIEC employees to review workers' compensation claim information. Because OIEC is administratively attached to TDI, the agencies share a computer system, which OIEC uses to fulfill its mission.

Texas Labor Code § 402.083(a) provides that an injured employee's claim file information is confidential and may not be disclosed by DWC except as provided by law. Further, § 402.086(a) provides that information relating to a claim that is confidential under that subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal. In October 2011, DWC and OIEC formalized their processes to ensure OIEC employees only access confidential claim information for customers who have requested OIEC's assistance. The agencies entered into a *Memorandum of Understanding Concerning Confidential Claim Information*, which details the circumstances in which OIEC employees may access confidential claim information. All OIEC employees signed an acknowledgement that they understand and will follow these processes. OIEC continues to protect the confidential claim information entrusted to it by injured employees.

Fatality Claims Outreach Program Ends. Texas workers' compensation law provides that survivors of employees killed on the job may be entitled to receive death and burial benefits. Insurance carriers are required to locate these potential beneficiaries. An OIEC outreach program to help find beneficiaries and assist them with filing these claims ended September 1, 2011 with the enactment of legislation (House Bill 1774) passed by the 82nd Texas Legislature. HB 1774 limits OIEC's access to claim files of injured employees and thereby prevents the agency from proactively investigating fatality claims. OIEC undertook the outreach program in 2008 because it perceived a need to educate and inform survivors or other potential beneficiaries of death and burial benefits. Although work fatalities were being reported, few beneficiaries were pursuing claims for benefits, and OIEC Customer Service Representatives were receiving few inquiries about the benefits. Through this program, OIEC attempted to reach claimants for 1,495 fatalities. OIEC staff also contacted State Senators and Representatives to inform them of work-related fatalities among their constituents in hopes of not only informing the elected representative of the tragedy but the fact that Texas has the highest number of work-related fatalities in the nation.

OIEC still assists potential beneficiaries if they contact the agency with a specific request for help. Otherwise, individuals needing assistance with a fatality claim are now responsible for contacting OIEC unilaterally.

Partnering with Other Entities to Educate. OIEC constantly seeks new opportunities and venues to share information about the agency and its services. OIEC has broadened its public outreach initiatives to reach more customers.

In addition to providing information at speaking engagements and presentations, OIEC hosts educational sessions at exhibition booths free of charge at various organization's conventions.

OIEC has partnered with the Texas Funeral Service Commission in order to educate potential beneficiaries of employees who are killed on the job. OIEC hosted an information booth at a recent Commission conference.

OIEC has also worked with the Workers' Defense Project as an avenue to educate injured employees in the workers' compensation system about OIEC's role and services. The Workers' Defense Project assists low-income employees with the resources to improve their working and living conditions.

OIEC hosted an informational booth at the TexMed 2011 Convention. OIEC was one of more than 200 exhibitors who provided product and services information on a variety of topics that benefit doctors, medical practice staff, and patients. Approximately 1,500 providers attended this event and almost as many visited OIEC's booth.

OIEC hosted a booth and presented at the Second Chance for Success Job Fair 2011. Hundreds of employees from the Rio Grande Valley attended the event organized by South Texas government agencies and federal, state, and local employers.

OIEC's education booth at the Texas Orthopaedic Association Conference proved to be a successful event because some attendees had not heard about OIEC prior to the conference, and OIEC staff was able to provide them with valuable information and resources. The attendees who were aware of OIEC reported that they regularly refer their patients to OIEC and spoke highly of the Ombudsman Program.

Informational booths were also recently staffed at the Texas Medical Association Workers' Compensation Seminars in Austin, San Antonio, Dallas, Fort Worth, McAllen, and Houston. Additionally, public outreach presentations were conducted for the following entities:

- Toyota plant in San Antonio;
- Texas Municipal Police Association
- Mexican Consulate in Dallas;
- AFL-CIO local in Houston;
- Local 540 of the Food and Commercial Workers Union in Dallas;
- Denton Black Chamber of Commerce; and
- Dallas Hispanic Chamber of Commerce.

Public Outreach and Overcoming Technological Barriers. While OIEC explores the opportunity of making information available in electronic media formats such as webinars or videos, other tools that OIEC utilizes to disseminate information about its services is through email and its website. OIEC performs mass email distributions to notify OIEC stakeholders of special events and key agency information. OIEC's website provides a great deal of information

about OIEC and the workers' compensation system. Answers to almost any question about OIEC and the workers' compensation system are provided on OIEC's website or a provided link. Social media use is on the rise by state agencies. OIEC was one of the first agencies to use social media outlets. OIEC can be found by searching for "OIEC" at www.twitter.com and www.facebook.com. OIEC is also in the process of uploading videos concerning workers' compensation topics to YouTube – OIECTube. The videos will enhance OIEC's effort to educate the public concerning the workers' compensation system in Texas.

However, not all of OIEC's customers have access to the Internet and are unable to take advantage of recent technological developments. According to OIEC's 2011 Customer Satisfaction Survey, approximately 40 percent of injured employees said that they do not have Internet access at home. This finding is similar to 45 percent of respondents from two years ago that indicated no computer access.

To overcome this barrier, OIEC provides outreach and information materials for injured employees and other system participants in paper form. All literature and materials are available in English, Spanish, and other languages upon request.

Additionally, once a month every OIEC field office holds an hour-long presentation to educate its customers on a given topic. Recent topics include "Ten Things to Know About Compensability and Extent of the Injury," "What to Expect at Your Designated Doctor Examination," and "Early Return to Work Benefits Everyone." These outreach efforts are essential to inform injured employees and the public about the role that OIEC plays in the Texas Workers' Compensation System.

Other Outreach Initiatives. OIEC partnered with VRC Industries of Austin (formerly Vocational Rehabilitative Services) to complete an outreach project to prepare and disseminate more than 30,000 informational packets to injured employees, employers, health care providers, legislators, and other workers' compensation system stakeholders across the State. VRC Industries employs Texans with disabilities.

Another project was completed with VRC Industries of Austin in a partnership that resulted in disseminating an additional 40,000 informational packets in English and Spanish that include updated brochures and information based on statutory changes from the recent legislative session.

OIEC Staff Certified as Mental Health First Aiders. OIEC staff is constantly interacting with Texans who are dealing with life stress. Job loss, physical pain, and income reduction or elimination are some of the most stressful life events yet are commonplace among OIEC customers. The agency is training all staff in Mental Health First Aid (MHFA) to give OIEC employees the knowledge and tools to assist a customer who may be in emotional or mental distress.

MHFA is a public education program coordinated by the National Council for Community Behavioral Healthcare, which introduces participants to risk factors and warning signs of mental health problems, builds understanding of their impact, and overviews common treatments.

MHFA is a 12-hour course that uses role-playing and simulations to demonstrate how to assess a mental health crisis, select interventions and provide initial help, and connect persons to professional, peer, social, and self-help care. The program uses a five-step action plan to support someone developing signs and symptoms of mental illness or in an emotional crisis:

1. Assess for risk of suicide or harm;
2. Listen non-judgmentally;
3. Give reassurance and information;
4. Encourage appropriate professional help; and
5. Encourage self-help and other support strategies.

OIEC’s Deputy Public Counsel/Chief of Staff and Associate Director of Communications and Outreach received Instructor Certification in order to teach the MHFA course to all OIEC employees. Over 80 percent of the agency has been trained as Mental Health First Aiders, and the remaining agency employees will be trained in 2012. OIEC staff is now better prepared to act in the event of a psychiatric emergency, understand how to interact with a person in crisis, how to protect themselves, and how to connect the person with professional help. Ultimately, the training allows OIEC to better serve injured employees.

FY 2010 and FY 2011 Outcome Measure Results and Projected Performance for FY 2012.

The table below identifies some of OIEC’s outcome measure performance for FY 2010 and FY 2011 and the projected performance anticipated for FY 2012.

Performance Measure	FY 2010	FY 2011	FY 2012
	Actual	Actual	Projected
Percentage of Disputes Resolved by the Office of Injured Employee Counsel Prior to Holding a Texas Department of Insurance Administrative Dispute Resolution Proceeding	57.82%	65.68%	64.00%
Percentage of Proceedings Held Before the Division of Workers’ Compensation in Which the Injured Employee was Assisted by an Ombudsman	38.83%	45.12%	50.00%
Percentage of Issues Raised at Contested Case Hearings (CCH) Where the Injured Employee Prevailed When Assisted by an Ombudsman	36.81%	33.90%	30.00%
Percentage of Workers’ Compensation Rules Changed for the Benefit of the Injured Employee as a Result of OIEC Participation	86%	100%	100%

Highlights of OIEC’s performance include the following:

- The percentage of disputes resolved by OIEC prior to an administrative proceeding increased almost 8 percent from FY 2010 to FY 2011. OIEC attempts to resolve disputes prior to entering DWC’s administrative dispute resolution system. OIEC has been

successful in achieving this goal and currently resolves approximately 600 disputed issues each month prior to holding a proceeding. Among the dozens of potential issues that could be disputed, some may include the appropriate average weekly wage, the correct date of injury, the existence of a compensable injury, plus many more.

- The percentage of proceedings in which an injured employee was assisted by an Ombudsman increased more than 16 percent from FY 2010 to FY 2011 and is anticipated to increase an additional 5 percent in FY 2012. OIEC believes that more injured employees are requesting Ombudsman assistance due in part to the economy and OIEC's increased public outreach efforts. More injured employees are choosing free assistance from an Ombudsman rather than paying up to 25 percent of their income benefits for attorney representation. An injured employee is saved nearly \$2,300 by using OIEC's services as opposed to hiring an attorney.
- The percentage of issues raised at Contested Case Hearings (CCH) where the injured employee prevailed when assisted by an Ombudsman has decreased more than 6 percent since FY 2010 due to the complexity of disputes that reach the appeal level and the evidence needed to prove the injured employee's case. The prevail rate continues to decrease for injured employees despite the type of assistance or representation. The prevail rate when assisted by an attorney at a CCH has decreased 9 percent since FY 2008.
- The percentage of workers' compensation rules changed for the benefit of the injured employee as a result of OIEC participation is 100 percent. OIEC analyzes and actively participates in DWC rule initiatives to carry out its statutory mission to advocate on behalf of the injured employees of Texas.

Ombudsman Best Practices Survey. OIEC stays abreast of assistance and advocacy programs for injured employees in other states by consulting WCRI/IAIABC reports and conducting its own research. A survey of programs in 15 states conducted by OIEC in April/May 2012 sought "best practices" to enhance the agency's services to injured employees; however, the responses indicate that OIEC's advocacy functions go beyond those in most of the other states. The survey respondents included Alabama, Arizona, Arkansas, California, Florida, Kansas, Kentucky, Maine, Nevada, New Mexico, New York, North Dakota, Ohio, Oregon, and Washington. Most of the ombudsman programs must maintain impartiality and assist all parties to a claim with the aim of facilitating the process and preventing litigation often by offering voluntary mediation services. In general, their staffs do not attend hearings. Ombudsman programs in Florida, Maine, Nevada, North Dakota, Oregon, and Washington focus primarily on assisting injured employees. Maine and Nevada offer attorney assistance to injured employees through the administrative and judicial processes. Some of the survey findings follow.

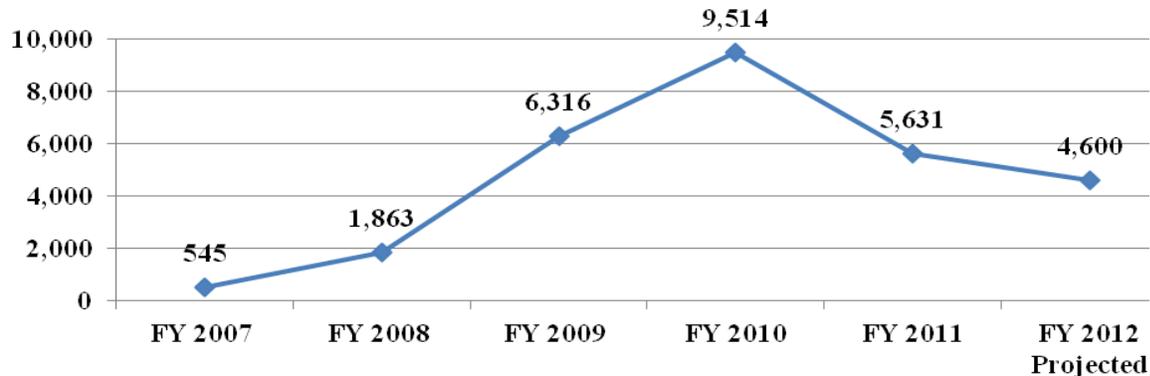
- ***Florida*** – The structure of Florida's Bureau of Employee Assistance and Ombudsman Office (EAO) is closest to that of OIEC. The staff, divided into three teams, has the authority to be more proactive than OIEC in initiating contact with injured employees. The First Report of Injury Team uses the Florida Division of Workers' Compensation

data to identify employees who have lost more than seven days of work due to job-related injuries, educates them about the system, advises them of their responsibilities, and informs them of EAO's services. (By statute, OIEC staff does not have access to this data.) The Injured Worker Helpline Team fields telephone calls from all stakeholders, assists injured employees with problems obtaining benefits, attempts to facilitate resolution, and refers disputes needing extensive investigation to the Ombudsman Team. The Ombudsman Team assists in resolving complex and contentious disputes and provides early intervention services to employees with catastrophic or severe injuries. This team tries to anticipate whether the injured employee may decide to litigate and intervenes to offer assistance with addressing their concerns.

- **Kentucky** – The Kentucky Division of Ombudsman and Workers' Compensation Specialist Services facilitates the exchange of information among the parties to a claim and can submit enforcement complaints to the Commissioner of the Office of Workers' Claims who has the authority to levy fines if the parties do not process claims in a timely manner or respond promptly to communications.
- **Nevada** – The Nevada Attorney for Injured Workers (NAIW) uses medical expert witnesses on behalf of injured employees in selected cases. The staff often writes specific opinion letters to treating physicians and offers the responses as evidence. NAIW has a small budget to pay for the review of medical records or evaluation of the claimant but usually has the claimant pay for the service, if necessary. Nevada law allows NAIW to have input on the choice of physician for performing an independent medical evaluation at the insurer's expense.
- **North Dakota** – The North Dakota Decision Review Office (DRO) educates and assists injured employees with concerns and disputes about their claim. Injured employees who are dissatisfied with the review process outcome can appeal to an administrative hearing. The regulatory agency, the Workforce Safety and Insurance (WSI), pays for an initial legal consultation with an attorney so the injured employee can obtain an independent legal opinion. WSI also pays attorney fees if the employee prevails on appeal. Like OIEC, DRO advocates for injured employees as a class by suggesting improvements to claim procedures or applications of statute and recommending new legislation to enhance benefits.
- **Oregon** – The Oregon Ombudsman for Injured Workers participates on a Management-Labor Advisory Committee that reports on court decisions having significant impact on the workers' compensation system, the adequacy of benefits, and medical and system costs.
- **Washington** – The Washington Office of the Ombudsman for Self Insured Workers sponsors an Ombudsman Workgroup consisting of stakeholder groups to share information and foster communication. The Office also issues periodic e-news alerts to educate employers about specific issues or concerns coupled with regulatory and policy guidelines.

Referral Services Assistance. One of the statutory duties of OIEC is to assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, and other social services. TEX. LAB. CODE § 404.101. 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

Number of Referrals to DARS, TWC, TDI and Others



(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.

Data indicates that the number of referrals has decreased within the past couple of years. Management believes that one reason for the decrease may be that staff is not entering the referral into the computer system each time a referral is made. Data entry is one area that has suffered due to the increase in workload. However, the agency has increased training efforts to ensure that referrals made on behalf of the injured employees are entered into the computer system accurately.

Workers' Compensation Fraud Prevention Efforts. Fraud costs the workers' compensation system millions of dollars each year. According to TDI's Fraud Unit 2011 Annual Report, the agency's fraud unit received 11,124 fraud reports and identified \$23,814,341 in referred cases. The report indicated that four percent of the referrals for prosecution pertained to workers' compensation insurance fraud.⁵⁹

Currently, TDI provides funding for an insurance fraud prosecutor and an insurance investigator in three Texas counties (Dallas County, Harris County, and Bexar County) whose functions are solely devoted to prosecuting individuals that commit insurance fraud.⁶⁰

⁵⁹ Source: Texas Department of Insurance Fraud Unit FY 2011 Annual Report; <http://www.tdi.texas.gov/fraud/documents/11COIAnnualReport.pdf>.

⁶⁰ Source: Article from MySanAntonio.com website, by Craid Kapitan; DA's Office to Focus on Insurance Fraud with new Position; http://www.mysanantonio.com/news/local_news/article/DA-s-office-to-focus-on-insurance-fraud-with-new-3580756.php#ixzz1vpH45Vdo. Viewed 5-24-2012.

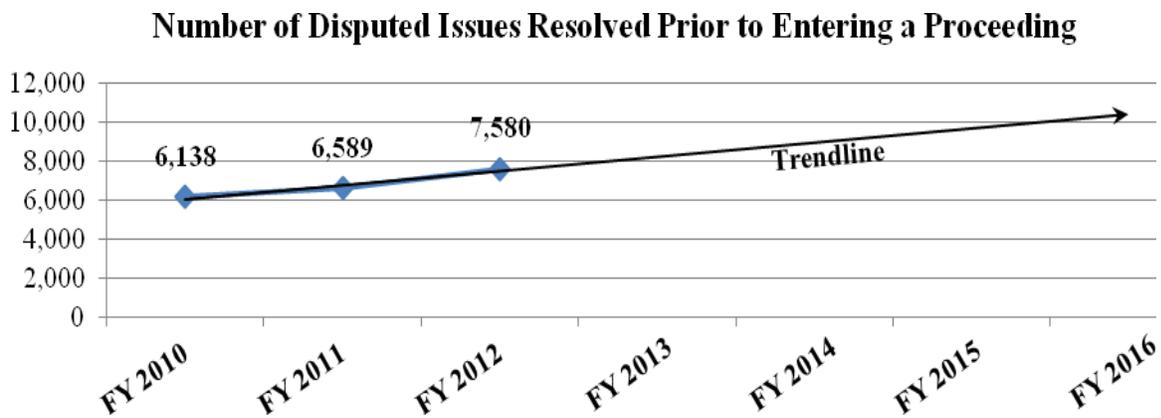
OIEC’s efforts to prevent workers’ compensation fraud are pursuant to Labor Code § 404.1015: OIEC may refuse to provide or terminate services to injured employees that request assistance in claiming benefits not provided by law. Additionally, Labor Code § 404.1015(c) provides that OIEC shall notify and cooperate with the appropriate law enforcement authority and TDI’s Fraud Unit if OIEC becomes aware that an injured employee or a person acting on the injured employee’s behalf commits or threatens to commit a criminal act.

Although OIEC is not the agency charged with regulating the workers’ compensation system, it also assists customers in referring their complaints about a participant in the workers’ compensation system to the appropriate agency, such as the Texas Medical Board, TDI, or other licensing or regulatory agency.

Early Intervention Efforts. Although it has been difficult for the agency to keep up with the increased workload, OIEC continues to be successful in resolving disputed issues prior to entering DWC’s dispute resolution process. As a result of OIEC’s early intervention efforts, more cases are resolved prior to entering DWC’s dispute resolution system. This results in fewer dispute proceedings and has a positive financial impact for DWC and the State of Texas.

However, due to the increase in workload, Customer Service Representatives may not be able to resolve a dispute within 10 business days, as required by agency procedure. The dispute is forwarded to an Ombudsman for case development and resolution if it is not resolved within the 10-day timeframe. The Ombudsman attempts to resolve the issues prior to entering DWC’s dispute resolution process; however, as the number of Benefit Review Conferences, Contested Case Hearings, and appeals increase, little time is available for early intervention and case resolution. OIEC will request additional FTEs to meet the needs of the agency’s early intervention efforts in its FY 2014-2015 Legislative Appropriations Request.

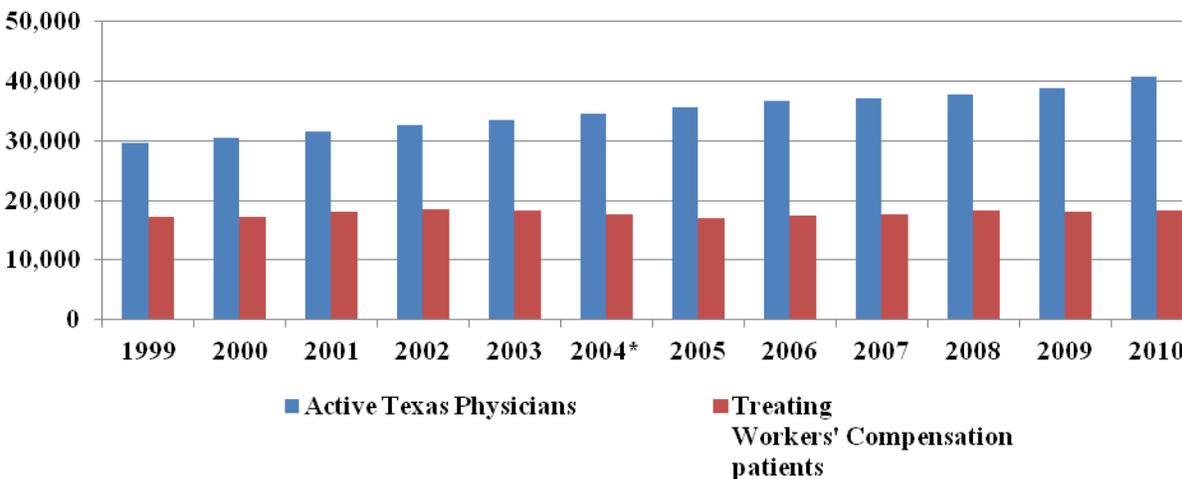
The chart below illustrates the projected trend of dispute resolution prior to entering DWC’s dispute resolution system based on sufficient staffing provided to the agency to perform early intervention. Continued insufficient staffing may cause an increase in the number of Benefit Review Conferences, Contested Case Hearings, and Appeals.



Medical Care in the Workers’ Compensation System. Results from a recent study conducted by TDI’s Workers’ Compensation Research and Evaluation Group⁶¹ shows that the number of physicians participating in the workers’ compensation system is stable, and the total number of doctors practicing in Texas is increasing. The study reported that the number of active physicians grew from 29,579 in 1999 to 40,724 in 2010, a 38 percent increase and a steady pace of 3 percent a year. During the same period, workers’ compensation participating physicians grew from 17,150 to 18,284, a total increase of 7 percent. The result is a decreasing participation rate for doctors in the workers’ compensation system (from 58 percent in 1999 to 45 percent in 2010).

The chart below illustrates the number of physicians participating in the Texas Workers’ Compensation System compared to the number of active physicians licensed in the State.

Number of Physicians Participating in the Texas Workers’ Compensation System Compared to the Number of Active Physicians Licensed in Texas



The study also indicates that some non-metro areas and border regions have a higher number of workers’ compensation patients per physician. Any lack of physician access is primarily due to the low total number of physicians practicing in these areas rather than a low workers’ compensation participation rate.

According to a report by the Texas Legislative Study Group on the State of Our State,⁶² by 2015 Texas would need more than 4,500 additional primary care doctors and other medical professionals in order to serve all of the State’s medically disenfranchised population.

⁶¹ Source: Texas Department of Insurance, Workers’ Compensation Research and Evaluation Group; “Access to Medical Care in the Texas Workers’ Compensation System, 1998-2010 – 2012 Results,” April 2012.

⁶² Source: Report by the Texas Legislative Study Group on the State of Our State, *Texas on the Brink: Fifth Edition*, February 2011.

The lack of physicians in a particular area may be harmful to an injured employee. An injured employee may seek medical care from a doctor that is not permitted to treat workers' compensation patients, especially in border regions. Only doctors licensed in Texas can legally treat injured employees in Texas. Out-of-state doctors must be licensed in the jurisdiction where care is being provided.

The Texas Medical Board, which is responsible for licensing doctors to practice in Texas, is supposed to review a doctor's malpractice and disciplinary action when it renews a license but is not required to review or disclose cases of medical malpractice when a doctor moves from another state. All state medical boards have full access to the National Practitioner Data Bank, which lists malpractice cases and disciplinary actions taken against doctors. Because the Data Bank charges for queries it would cost Texas too much to check on every doctor licensed in Texas.⁶³

OIEC empathizes with injured employees' challenge in locating a doctor to provide sufficient care for their injury. OIEC's outreach presentations and information provided to injured employees and health care providers across the State may alleviate some of the problems. Additionally, OIEC is working with health care providers to alleviate problems that may occur during the dispute resolution process involving extent-of-injury disputes.

American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment.

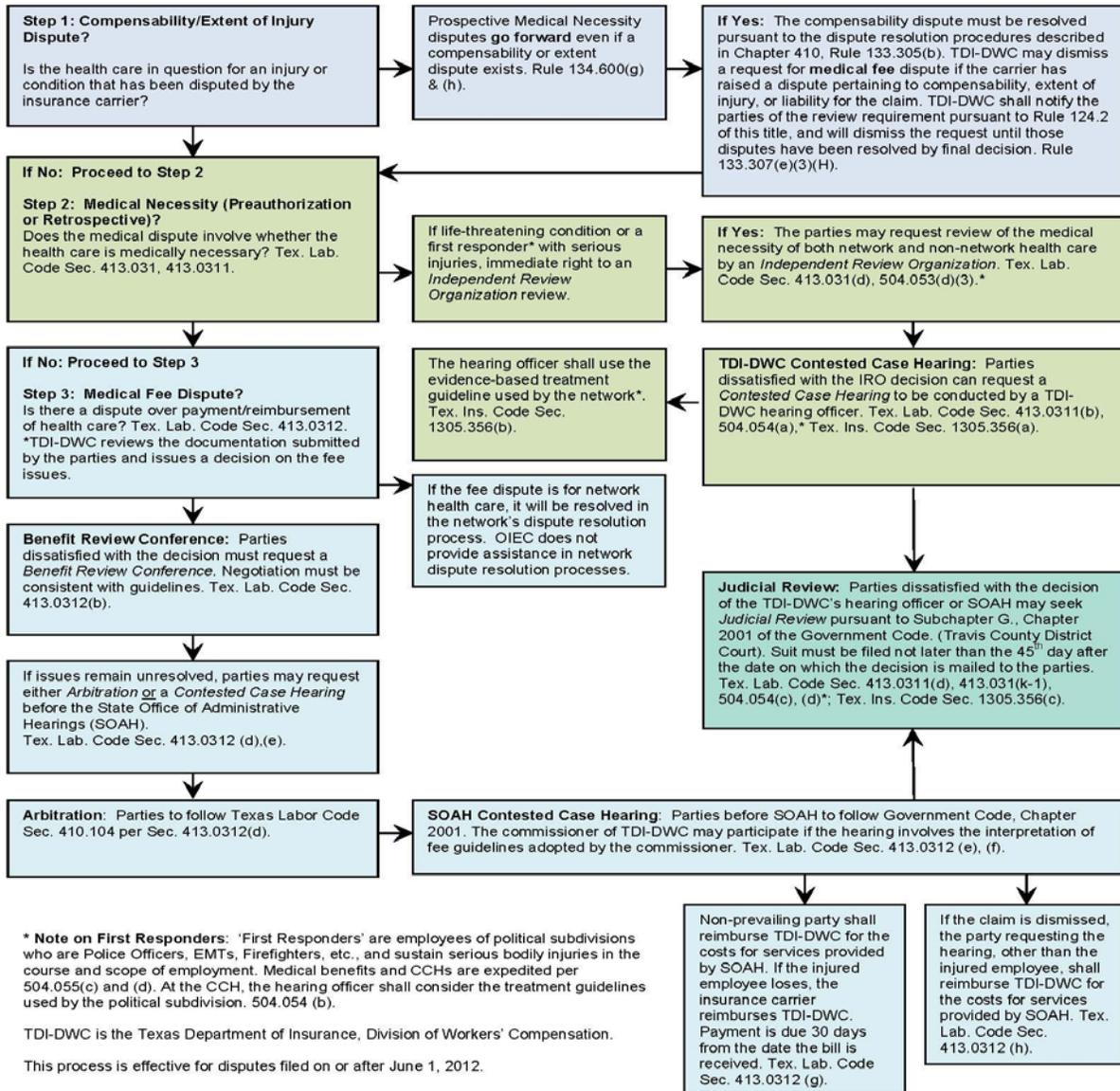
Recently a great deal of emphasis has been placed on understanding and implementing the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment. The 4th and 5th editions do not have a provision for awarding an impairment rating of 15 percent for a lumbar spinal injury. Less serious injuries were rated below 15 percent, and the more serious injuries were rated at least 20 percent thereby making the statutorily mandated 15 percent plateau for supplemental income benefits a nullity.

In 2012 and beyond, OIEC seeks to upgrade the process of providing assistance to injured employees when medical treatment is denied. Educating treating doctors in the presentation of evidence-based medicine for their prescribed course of treatment is a high priority for OIEC.



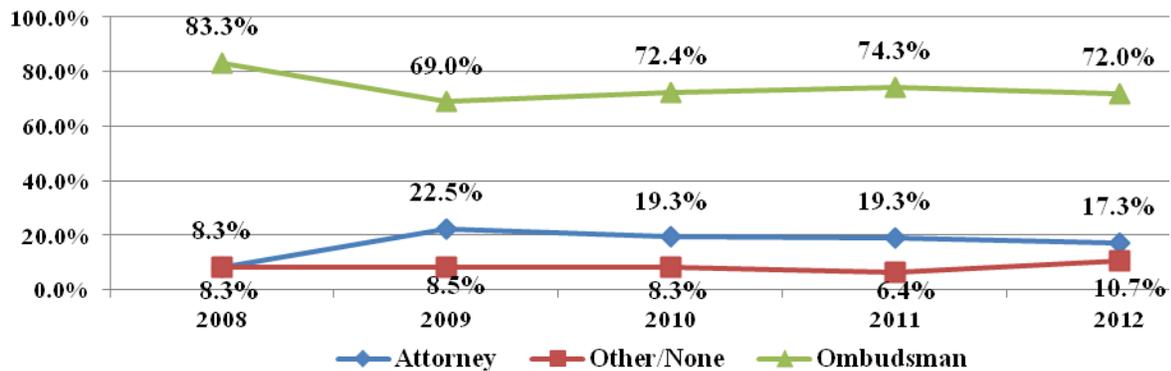
⁶³ Source: <http://www.texaswatch.org/2011/08/trail-of-tears-leads-to-texas/>. Viewed April 5, 2012.

Medical Dispute Resolution. Workers’ compensation medical benefits pay for reasonable and necessary medical care to treat an injured employee’s compensable work-related injury or illness. Injured employees may request dispute resolution for preauthorization and concurrent medical necessity and for retrospective medical necessity when reimbursement is denied for health care paid by the injured employee. Below is a flowchart of the medical dispute resolution process.



Ombudsman assistance is particularly needed in disputes where the only issue is denial of medical benefits because attorneys are prohibited from obtaining payment for representing injured employees in the medical dispute resolution system. Attorneys are reimbursed for services by taking up to 25 percent of the injured employee’s income benefits. Because Ombudsmen services are provided at no cost, injured employees request Ombudsman assistance in approximately 75 percent of all medical necessity disputes as shown in the chart below.

Injured Employee Assistance Type at Medical Necessity Dispute Resolution

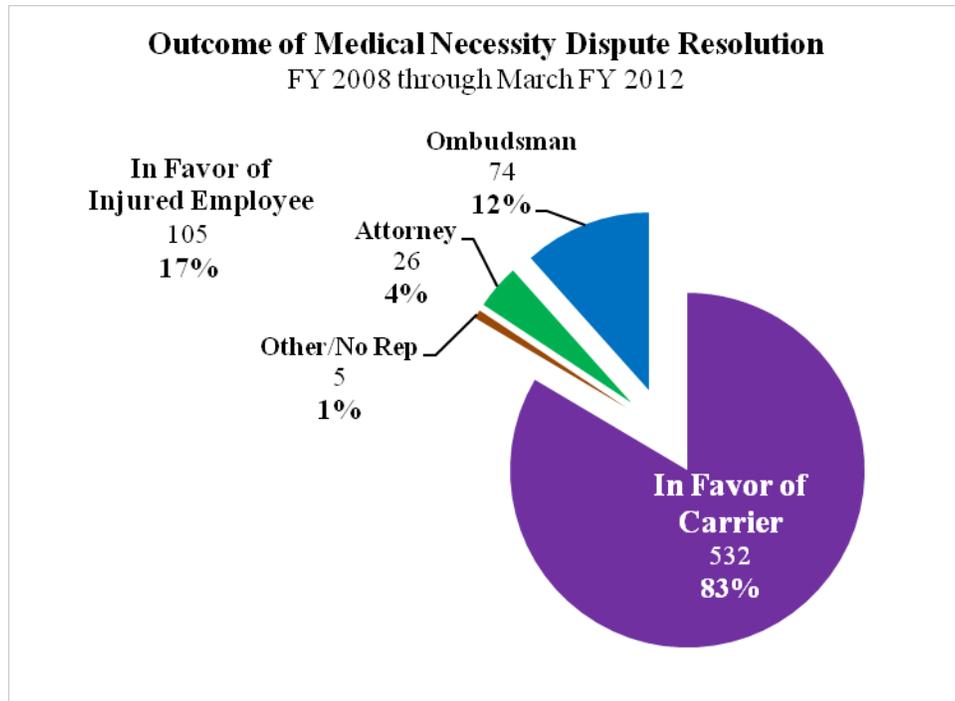


It may also be difficult for an injured employee to find attorney representation because attorneys are able to select their cases while Ombudsmen are required to assist all non-represented injured employees that have a dispute regardless of the circumstances and difficulty of successfully resolving the case in the injured employee’s favor.

Due to evidentiary requirements and other reasons such as the lack of expert testimonials, it may be difficult for the injured employee to prevail in medical necessity disputes regardless of the type of representation, as illustrated in the table below.

Number and Percent of Disputes Where the Injured Employee Prevails in Medical Necessity Dispute Resolution by Assistance Type										
Type of Assistance	2008		2009		2010		2011		2012 (through March 2012)	
Attorney	3	42.9%	5	10.4%	8	22.9%	4	19.0%	6	42.9%
Other/None	2	33.3%	0	0.0%	0	0.0%	2	33.3%	1	11.1%
Ombudsman	14	20.0%	22	15.0%	15	11.5%	11	13.6%	12	21.1%
Total	19	22.6%	27	12.7%	23	12.7%	17	15.6%	19	23.8%

Since FY 2008, an injured employee has prevailed in only 17 percent of all medical necessity disputes as shown in the chart below.



In medical fee dispute resolution, an injured employee is represented at a proceeding in only 20 percent of the cases since FY 2008 with a prevail rate of approximately 32 percent.

Common Experience versus Evidence-Based Medicine. Originally, the workers' compensation system was designed so that an injured employee was able to prove his or her case without expert evidence in most cases. If an injured employee could convince the fact finder that the injury was caused by the work without an expert's opinion, the injured employee could prevail without the expense of providing expert evidence. The only limitation placed upon this was when the nature of the injury was so beyond the realm of common experience, such as the work causing cancer, that scientific evidence was required.

Because some experts in cases requiring expert evidence were relying on junk science, the courts and legislature began restricting expert evidence to evidence-based medicine. The problem is now that DWC is requiring expert evidence of causation in nearly all cases, not just in cases where the injury is beyond common experience. This has put additional burden on injured employees to produce expert testimony even in cases where such evidence traditionally has not been required. Even worse, DWC is requiring evidence-based medicine for propositions – such as one can sustain a back injury when falling down – for which there are no relevant scientific studies. The requirement of evidence-based medicine should be limited only to those cases where the nature of the injury is truly beyond the realm of common experience, such as the work causing cancer.

OIEC will work with health care providers and encourage the medical expertise necessary to bring about a systemic change by improving injured employees' ability to establish the full

nature and extent of their injury, their entitlement to income benefits, and their need of medical care in its effort to advocate on behalf of the injured employees in Texas.

OIEC is researching opportunities through grants to help defray costs associated with obtaining the appropriate medical expertise.

Expert Witness Pilot Project. Injured employees in Texas are facing unprecedented challenges in proving their cases within the administrative dispute resolution process. Data kept for fiscal years 2009-2011 shows that injured employees assisted by OIEC prevailed in indemnity disputes only 35 percent, 34 percent, and 30 percent of the time, respectively. For medical disputes in the same timeframe, injured employees prevailed only 15 percent, 12 percent, and 12 percent of the time, respectively. For indemnity disputes in which injured employees received attorney representation, injured employees prevailed 45 percent, 42 percent, and 39 percent of the time for fiscal years 2009, 2010, and 2011, respectively.

One key factor motivating this trend is the ever-increasing evidentiary standard required to prove entitlement to benefits. This is especially true in medical disputes. While there are certainly other factors at play—factors over which OIEC has no control—OIEC may be in a position to reverse this trend by assisting injured employees in meeting the evidentiary standards necessary to prove entitlement to income and medical benefits. In order to do this, OIEC will use agency funds to procure medical doctors to serve as expert witnesses in certain cases. OIEC has designated this initiative the “Expert Witness Pilot Project.”

As part of its recently granted authority to pursue grant funding, OIEC plans to fund an expanded program of procuring expert witnesses and use the Expert Witness Pilot Project as a model for that endeavor.

Grant Funding Initiatives. OIEC is seeking grant funding for the Expert Witness program described above and for training injured employees in Mental Health First Aid (MHFA). OIEC is in the process of training all staff in MHFA and sees a need to extend this valuable information and resources to injured employees in the workers’ compensation system. Physical injuries and job loss are leading causes of mental distress; however, Texas does not provide mental health care in the workers’ compensation system. Offering mental health training directly to clients will:

- Reduce the stigma of shame and fear associated with mental illness;
- Empower individuals to seek help for themselves or loved ones experiencing mental health illness; and
- Provide referrals to appropriate services that result in mental wellness and the ability of the employee to return to the workforce.

OIEC is seeking grant funding to partially fund the personnel, the course manuals, and the training facilities necessary to offer the MHFA course to injured employees around the State.

Business Plan Provides Framework for Agency Initiatives. OIEC uses a business-planning process, known as the Agency Business Plan, to detail the agency's most critical objectives, the date by which the objectives must be met, and the parties responsible for completing them. The Business Plan is detailed and includes many initiatives and projects that OIEC must perform in support of the agency's mission to assist, educate, and advocate on behalf of the injured employees of Texas. The business plan demonstrates OIEC's commitment to completing tasks in a timely and effective manner as well as the agency's commitment to open government as the plan is published monthly on the agency's website. The current plan is available on the OIEC Publications webpage at http://www.oiec.texas.gov/documents/pub_busplanoiec.pdf.

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 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 taxpayers' money is spent.
- OIEC's Performance Measure Reports – to keep interested parties updated quarterly on the agency's progress in meeting its 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.
- 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 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.

Staff Involvement in Policy and Procedural Systems. OIEC's Directives and Policy Oversight Committee (DPOC) was originally created to identify agency training needs, specifically rule and statutory change training. DPOC has expanded to include procedural issues. Although DPOC is made up of Associate Directors, the entire agency became involved with the process of creating more efficient and effective processes when the agency held a team challenge to update a key field procedure.

The Committee discussed the concerns of OIEC staff regarding the excessive workload and responded to staff requests to eliminate or ease the administrative processes of the Early Intervention and Case Development Procedure. The Committee determined that in order to best revise the procedure and incorporate staff suggestions, input should be gathered on a team basis. OIEC is divided into six teams consisting of Ombudsmen, Customer Service Representatives, Regional Staff Attorneys, Teams Leads, and Supervisors that represent the 20 field offices across the State. The teams were challenged to make a change in their own daily administrative duties

by re-writing the procedure. The most efficient process changes will be implemented Statewide by the beginning of FY 2013.

Internal and External Audits Conducted. OIEC's internal auditor conducts audits and makes recommendations about the adequacy and effectiveness of the agency's systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities. Audits are performed in accordance with the Standards for the Professional Practice of Internal Auditing, the Code of Ethics contained in the Professional Practices Framework as promulgated by the Institute of Internal Auditors, and generally accepted government auditing standards. Recent audits include:

- Administration and Operations Division Review No. 2010-009;
- Post Payment Audit No. 2011-005;
- Complaint Process Review No. 2011-006;
- Agency Training Activities Review No. 2011-007;
- Customer Service Program Audit No. 2011-009;
- Agency Ombudsman Program Review No. 2011-010;
- Legal Services Division Review No. 2012-005; and
- Customer Services Program Audit No. 2012-008.

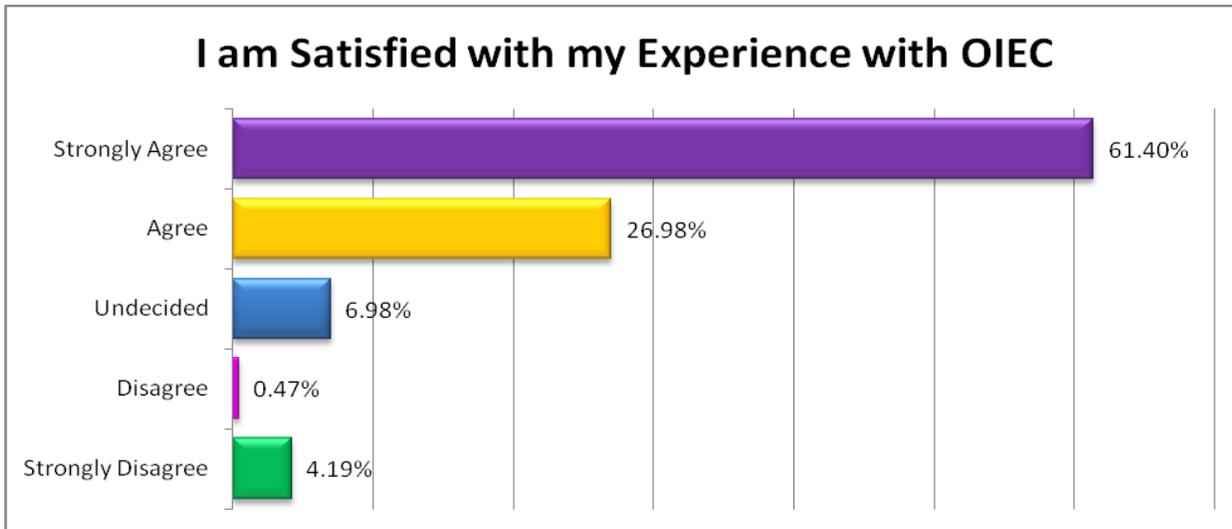
OIEC is also subject to audits conducted by the Texas State Auditor's Office and other State agencies. Recent audits include the following:

- Risk Management Program Review conducted by the State Office of Risk Management (SORM) on April 7, 2011.
- On-Site Consultation by SORM on September 22, 2011 to discuss the TDI/OIEC Disaster Recovery Plan/Business Continuity Plan.
- Post Payment Audit was completed November 29, 2011 by the Texas Comptroller of Public Accounts and evaluated OIEC's purchase, travel, and payroll transactions.

Customer Satisfaction Survey. Each year OIEC surveys its customers to assess the satisfaction level of the customers that have had recent contact with OIEC and identify areas of opportunity to improve the agency's customer service.

One area that the agency will attempt to improve is the number of respondents taking the survey. One way OIEC is trying to increase the number of respondents is to attach a self-addressed envelope to paper surveys, which are given to customers when visiting each field office.

The results of the 2011 Customer Satisfaction Survey showed the recent satisfaction level of OIEC customers. More than 88 percent of the respondents were satisfied with their OIEC experience. Although the satisfaction level is relatively high, there is room for improvement.



One of the areas with the highest percentages of survey responses of Strongly Agree or Agree was received in answer to a question regarding the knowledge of OIEC staff. A high percentage of respondents (92.1 percent) agreed or strongly agreed that OIEC staff members were able to answer their questions. One of the top priorities of the agency is the training provided to staff, and OIEC anticipates that the results will be higher in the 2012 survey.

OIEC provides continuous training to staff throughout their tenure with the agency, which is necessary because of the various aspects and complexity of the workers' compensation system. One of OIEC's key initiatives is future training efforts to ensure that Customer Service Representatives, Ombudsmen, and other OIEC staff are familiar with all facets of the workers' compensation system and stay abreast with dispute resolution rules and processes.

A complete copy of OIEC's 2011 Customer Satisfaction Survey Report and other survey reports can be found on OIEC's website. The 2012 Customer Satisfaction Survey Report is now available on OIEC's website and at each field office.

Survey of Employee Engagement. At the beginning of calendar year 2012, OIEC employees were asked to participate in the *Survey of Employee Engagement*. The survey provides information about the employees' perceptions of the effectiveness of the agency and the employees' satisfaction with the agency. The survey is conducted by The University of Texas at Austin, School of Social Work, and most State agencies participate in the survey.

This is the third time OIEC employees have taken this survey, and OIEC is very proud of the outstanding response rates realized each year. In 2008, OIEC had a response rate of 82 percent. In 2010, 100 percent of OIEC employees responded, which was the first time in State history that the survey was completed with a 100 percent response rate. This year OIEC had a response rate of 99 percent, which is the second highest response rate in Texas' history. A high 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 are provided

to OIEC employees, and a committee is formed to identify ways to focus on and improve the areas of concern. According to the survey results, the three areas of agency strengths include the following:

- **Supervision Score: 424**

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.

- **Employee Development Score: 422**

The Employee Development construct is an assessment of the priority given to employees' personal and job growth needs. It provides insight into whether the culture of the agency sees human resources as the most important resource or as one of many resources. It directly addresses the degree to which the agency is seeking to maximize gains from investment in employees. High scores indicate that employees feel the agency provides opportunities for growth in agency responsibilities and personal needs.

- **Strategic Score: 417**

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.

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

- **Pay Score: 250**

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.

- **Job Satisfaction Score: 358**

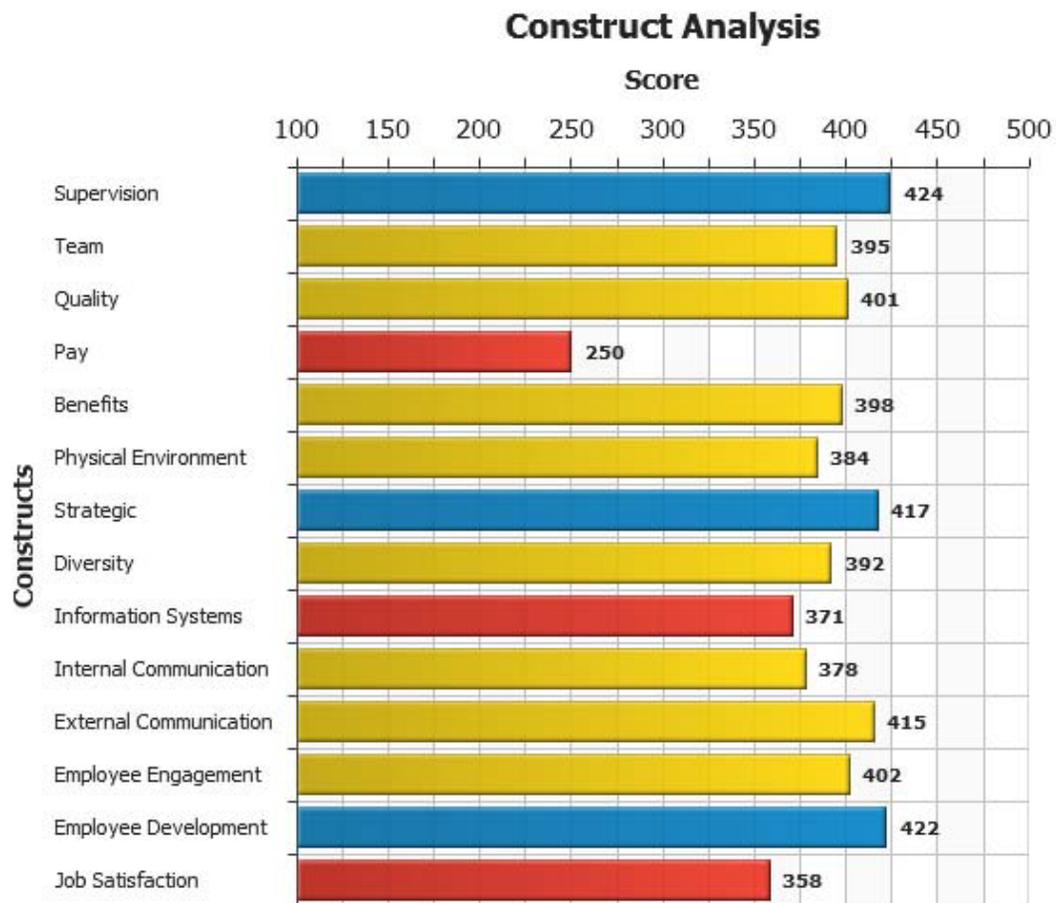
The Job Satisfaction construct addresses employees' attitudes about the overall work situation. This construct looks at the degree to which employees intrinsically like their jobs and the total work environment. It focuses on both the job itself and the availability of resources to do the job. Moderate levels of job satisfaction can result in good but not excellent work. In general job satisfaction stems from these factors: supervisory effectiveness, manageability of the workload,

supportiveness of the environment, and the level of pay and benefits. Although the area of Job Satisfaction scored relatively high at 358, this area was one of the three lowest scoring constructs.

- **Information Systems Score: 371**

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.

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.**



OBJECTIVES AND OUTCOME MEASURES

Objective 1.1 -- To provide assistance to all unrepresented injured employees requesting assistance in each year through 2017.

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 2017.

Outcome Measure

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 2017.

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 dollar amount saved per injured employee when 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

1.1.1 ex 3 Number of preparation appointments held prior to a Benefit review Conference by an Ombudsman

1.1.1 ex 4 Number of preparation appointments held prior to a Contested Case Hearing by an Ombudsman

1.1.1 ex 5 Number of preparation appointments held for an appeal by an Ombudsman

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 telephone calls made or received by the Office of Injured Employee Counsel where injured employees were educated or assisted

2.1.1 op 2 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 3 Number of public outreach presentations performed

2.1.1 op 4 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 educational sessions provided to or on behalf of injured employees per month

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.

The Technology Obsolescence Project, based on TDI's Information Technology Services Obsolescence Plan, encompasses the replacement of deteriorated or functionally obsolete hardware for all aspects of TDI's and OIEC's technical infrastructure including desktop and laptop computers, network printers, portable printers, scanners, and monitors. The project also includes acquisition or upgrades of software to replace obsolete versions or manual systems.

Additionally, the current claims systems were also not designed to specifically meet OIEC's needs, (i.e., track OIEC processes and activity); therefore, OIEC has been working with TDI to improve the system in the interim and create other tools that will enhance OIEC's ability to serve its customers more efficiently and effectively. The changes will allow OIEC to calendar preparation appointments, activities, and deadlines to aid the Ombudsmen and Customer Service Representatives in providing assistance to the injured employee throughout the dispute resolution process.

TDI's Information Resources planning is inclusive of the automation needs of OIEC as required by statute.

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

The planning process at the Office of Injured Employee Counsel (OIEC) is a progressive aspect of the agency's continuing effort to effectively serve the injured employees of Texas. A 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.texas.gov/resources/publications.html> under Miscellaneous.

Additionally, internal performance measures are analyzed and submitted monthly to all OIEC staff. 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 members can see how well they are doing and where there are opportunities for improvement.

Key Strategic Plan performance measures are reported electronically to the Legislative Budget Board (LBB) and the Governor's Office of Budget, Planning, and Policy (GOBPP) each quarter through ABEST. The report includes an explanation of any variances greater than five percent above or below the 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 LBB and the GOBPP.

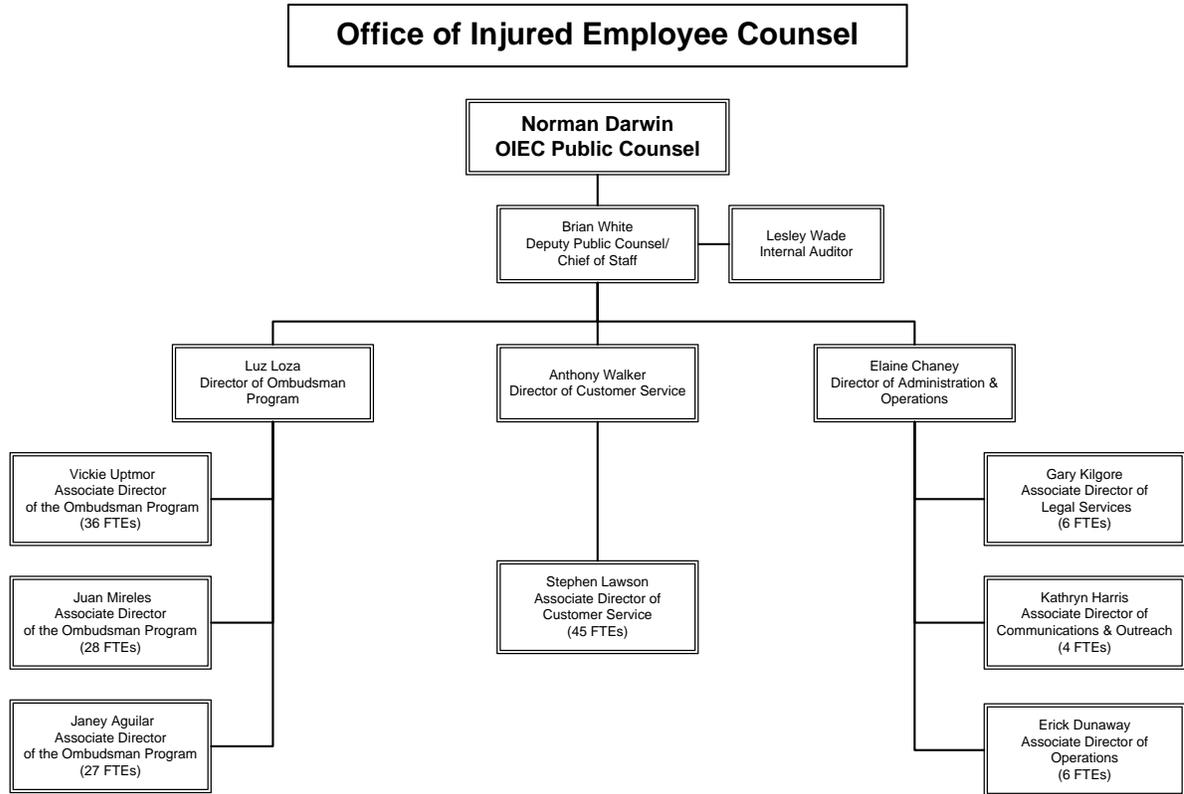
The current budget structure is carefully reviewed and recommendations for changes are submitted to the LBB and GOBPP by the required deadline. The revised structure includes the deletion of measures that are not relevant to the appropriation process, revision of the verbiage of measures for clarity 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 Organization Chart



July 1, 2012

APPENDIX C

Five-Year Projections for Outcomes

OUTCOME MEASURE	2013	2014	2015	2016	2017
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	55%	55%	55%	55%	55%
1.1 oc 2 Percentage of Texas Department of Insurance administrative dispute resolution proceedings in which an Ombudsman assisted an unrepresented injured employee	44%	44%	44%	44%	44%
1.1 oc 3 Percentage of issues raised at Contested Case Hearings where the injured employee prevailed when assisted by an Ombudsman	25%	25%	25%	25%	25%
1.1 oc 4 Percentage of issues raised on appeal where the injured employee prevailed when assisted by an Ombudsman	23%	23%	23%	23%	23%
2.1 oc 1 Percentage of injured employees educated about their rights and responsibilities in the workers' compensation system	96%	96%	96%	96%	96%
3.1 oc 1 Percentage of adopted workers' compensation rules analyzed	100%	100%	100%	100%	100%
3.1 oc 2 Percentage of adopted workers' compensation rules in which the Office of Injured Employee Counsel participated	100%	100%	100%	100%	100%
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	78%	78%	78%	78%	78%

APPENDIX D

List of Performance Measure Definitions FY 2014-2015

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 2017.

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 oc 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 of 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 ef 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: N

Desired Performance: L

Explanatory Measures

1.1.1 ex 1 Average dollar amount saved per injured employee when assisted by an Ombudsman

Definition: The average dollar amount saved 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. 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 an injured employee's cost savings by assessing the Office of Injured Employee Counsel's Ombudsman Program services in lieu of hiring 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: N

Desired Performance: H

1.1.1 ex 3 Number of preparation appointments held prior to a Benefit Review Conference by an Ombudsman

Definition: The total number of preparation appointments held by an Ombudsman with an unrepresented injured employee to attempt to resolve the dispute and prepare for a Benefit Review Conference.

Data Limitations: None

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

Methodology: Sum the total number of preparation appointments conducted prior to a Benefit Review Conference during the reporting period to capture (A). Submit (A) as a whole 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: Y

Desired Performance: H

1.1.1 ex 4 Number of preparation appointments held prior to a Contested Case Hearing by an Ombudsman

Definition: The total number of preparation appointments held by an Ombudsman with an unrepresented injured employee to prepare for a Contested Case Hearing 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 preparation appointments conducted during the reporting period to capture (A). Submit (A) as a whole 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: Y

Desired Performance: H

1.1.1 ex 5 Number of preparation appointments held for an appeal by an Ombudsman

Definition: The total number of preparation appointments conducted prior to the 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. 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

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 2017.

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 that are entered into the claims database.

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. Texas Department of Insurance staff enters returned *Notices of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System* into the claims database.

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 by capturing the total number of *Notices of Injured Employee Rights and Responsibilities in the Workers' Compensation System* mailed during the reporting period 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 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 2 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 3 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 outreach presentations for the agency. Agency staff enters information on a regular basis.

Methodology: Sum the number of public outreach presentations 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 4 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 Educational Sessions Provided To Or On Behalf Of Injured Employees Per Month

Definition: The average number of educational session provided to or on behalf of injured employees per month. An educational session includes in-person visits to field offices by injured employees; outreach presentations performed, including workshops, seminars, speaking engagements, or other forums; and telephone calls made by or to the Office of Injured Employee Counsel on behalf of an injured employee. Each session may include education pertaining to an injured employee's dispute, the agency's role and services provided, and general workers' compensation system information that may affect an injured employee.

Data Limitations: While there is extensive training given regarding tracking telephone calls and walk-ins, data entry errors may affect the confidence level of the data reported.

Data Source: A claims database maintained by the Texas Department of Insurance is used to document all telephone contacts and walk-ins. Code values are assigned to the Office of Injured Employee Counsel to log calls and walk-ins. An agency database is utilized to track all outreach presentations performed by the agency.

Methodology: Sum the total number of Office of Injured Employee Counsel contact codes in the Texas Department of Insurance's claim database that represents the total number of telephone calls and the number of in-person visits (walk-ins) by injured employees, plus the number of outreach presentations performed by the Office of Injured Employee Counsel during the reporting period to capture total (A). Sum the number of months in the reporting period to capture total (B). Obtain the average number of educational sessions by dividing (A) by (B) to determine value (C). Submit (C) represented as a whole number.

Purpose: This measure addresses the agency's statutory duties to educate and assist injured employees, and inform system stakeholders of services provided and the role of the Office of Injured Employee Counsel.

Calculation Type: N

New Measure: Y

Desired Performance: H

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 2017.

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

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 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.

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:

- Assisting injured employees in the workers' compensation system by providing free Ombudsman services in DWC's administrative dispute resolution system;
- Educating injured employees about their rights and responsibilities and improving their ability to effectively navigate through the workers' compensation system; and
- 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), Texas Department of Insurance (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

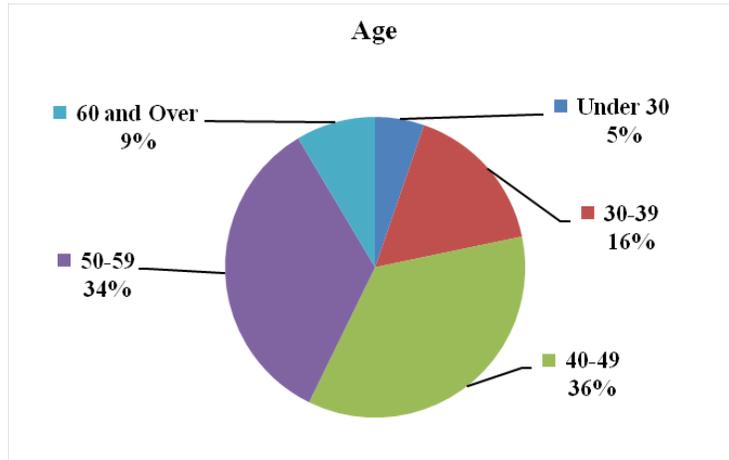
The 2012-2013 budget structure was carefully reviewed and recommendations for changes to the 2014-2015 budget structure were submitted to the Legislative Budget Board (LBB) and the Governor's Office of Budget, Planning, and Policy (GOBPP) on April 20, 2012.

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

II. CURRENT WORKFORCE PROFILE (SUPPLY ANALYSIS)

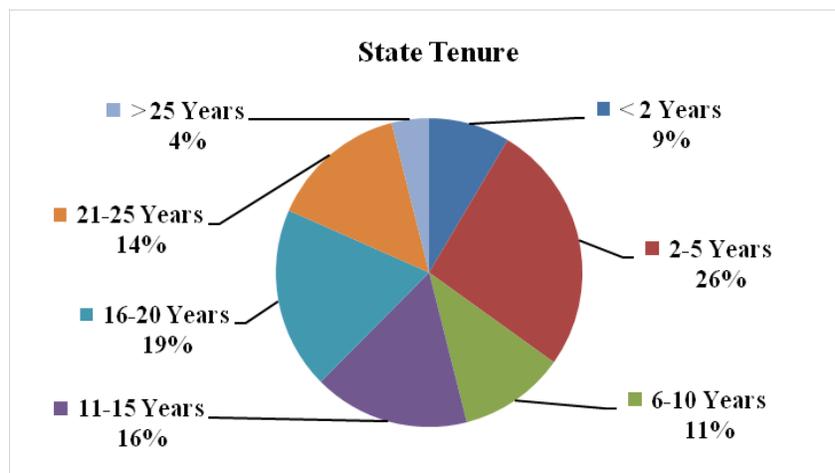
Demographics information, including age, gender, and length of service

Aging Workforce. The average age of an OIEC employee is 47.6. Only five percent of the employees are under the age of 30 while 43 percent of the agency's employees are 50 or older.



Gender of OIEC Employees. According to the Statewide Civilian Workforce Composition, 45 percent of employees in Texas are female. The percent of female employees at OIEC is well above this number at 86 percent.

Average State Tenure. The average State tenure for an OIEC employee is 12.3 years. Almost 60 percent of OIEC employees have at least 10 years of experience and 18 percent have more than 20 years of experience. According to the agency's 2011 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.

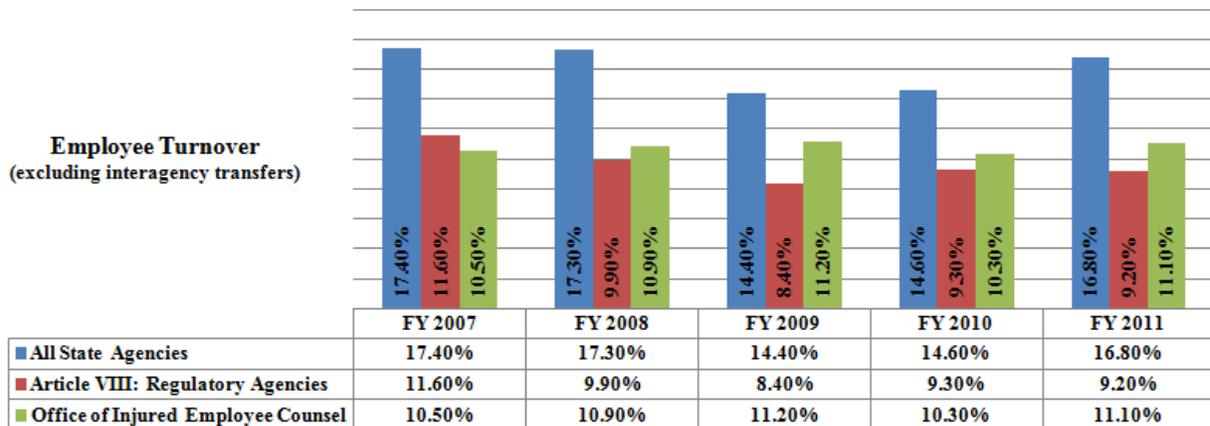


Ethnicity. OIEC’s percentage of Hispanic employees is well above the Statewide Civilian Workforce Composition with 54 percent Hispanics. The Statewide Composition of the Hispanic Workforce is made up of 35 percent Hispanics. OIEC’s percentage of Black employees is slightly below the Statewide Composition (11 percent) at 10 percent. The Statewide Composition of the Anglo Workforce is 53 percent and OIEC’s percentage is 36 percent.

EEO Category	Office of Injured Employee Counsel – Workforce Statistics					
	Black	Hispanic	Anglo	Other	Male	Female
Officials, Admin. (A)	0.00%	28.57%	71.43%	0.00%	28.57%	71.43%
Professional (P)	11.43%	50.48%	37.14%	0.95%	18.10%	81.90%
Technical (T)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Para-Professional (Q)	7.50%	67.50%	25.00%	0.00%	2.50%	97.50%
Admin. Support (C)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Skilled Crafts (S)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Service & Maintenance (M)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
All Categories	9.87%	53.95%	35.53%	0.66%	14.47%	85.53%

Employee Turnover. OIEC has proven to be relatively successful in retaining employees and limiting the costs associated with employee turnover: recruiting, selecting, orienting, and training new employees, leave payout to departing employees, and lower workplace productivity due to vacancies.

OIEC’s turnover rate (excluding interagency transfers) was 10.3 percent in FY 2010 and 11.1 percent in FY 2011. Below is a table of State turnover rates compared to both Article VIII State agencies and OIEC’s turnover rate for FY 2007 through FY 2011.⁶⁴



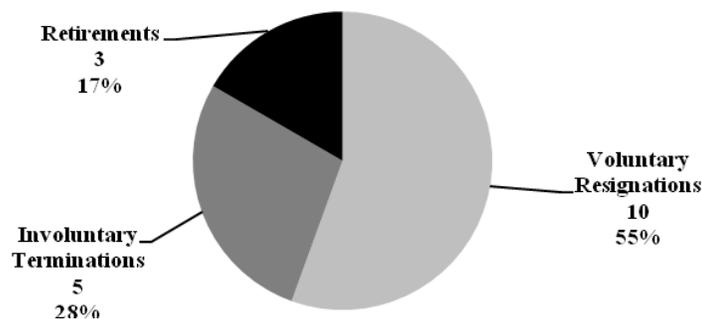
⁶⁴ Source: State Auditor’s Office: *Workforce Summary, December 2010, Report No. 11-702* and *An Annual Report on Classified Employee Turnover for Fiscal Year 2011, December 2011, Report No. 12-701*.

Of the employees that left the agency in FY 2011, 58 percent worked within the Ombudsman Program, 37 percent worked in the Customer Service Program, and five percent worked in Administration and Operations Program.

OIEC's most vulnerable program area is the Ombudsman Program. Ombudsmen are required to go through extensive training and obtain an adjuster's license, which according to an August 19, 2011 WorkCompCentral article, makes them targets for companies wanting to hire qualified and trained adjusters.⁶⁵

More than half of employees who leave OIEC resign voluntarily for reasons other than retirement as shown in the chart below. Most cited personal circumstances as the reason for leaving. Agency turnover and reasons for turnover are expected to change markedly within three to six years based on an analysis of employee retirement eligibility.

OIEC Employee Turnover Justification
(based on the average turnover per year
FY 2009 through FY 2011)



Projected Employee Turnover Rate over the Next Five Years

OIEC anticipates that the turnover rate over the next five years is likely to increase due to retirement eligibility.

Employee Retirement. Almost 60 percent of staff has at least 10 years of experience, and 40 percent of agency staff has at least 15 years. More than one-fourth of all agency staff is eligible to retire by December 31, 2015, and 43 percent of staff will be able to retire by the end of 2018.

One-third of OIEC Directors and Supervisors are eligible to retire by December 31, 2015, and 61 percent will be eligible to retire by the end of 2018.

⁶⁵ Source: WorkCompCentral; OIEC Responds to New Law, Planning Needs and Poaching of Staff; August 19, 2011; By Bill Kidd, Central Bureau Chief.

Below is the breakdown of Directors and Supervisors in each program area eligible to retire as of a particular date. Total number of staff is indicated in parentheses.

**Percentage of Directors and Supervisors by Program Area
Eligible to Retire By December 31,**

	2015	2018
Ombudsman Program (10)	40% (4)	80% (8)
Customer Service Program (4)	25% (1)	25% (1)
Administration and Operations (4)	25% (1)	75% (3)

Each of the 20 field offices and the central office are at risk of losing staff and their expertise due to retirement within three to six years. Several offices, including the central office in Austin, Corpus Christi, El Paso, Houston West, Laredo, Lubbock, Lufkin, and Waco have more than 50 percent of staff that can retire within three to six years. The next table cites the percentage of staff eligible to retire at each office by the end of 2015 and 2018 according to data provided by TDI.

**Percentage of Office Staff Eligible to
Retire By December 31,**

	2015	2018
Abilene	00.0	00.0
Amarillo	00.0	33.3
Austin	16.7	16.7
Beaumont	50.0	50.0
Central	23.5	64.7
Corpus Christi	75.0	75.0
Dallas	8.3	41.7
Denton	20.0	40.0
El Paso	28.6	57.1
Fort Worth	40.0	46.7
Houston East	30.0	40.0
Houston West	36.4	54.5
Laredo	33.3	66.7
Lubbock	60.0	60.0
Lufkin	66.7	66.7
Midland	0.0	0.0
San Angelo	25.0	25.0
San Antonio	0.0	14.3
Tyler	25.0	37.5
Waco	20.0	60.0
Weslaco	10.0	30.0

OIEC conducted an employee survey in May 2011, which indicated that the agency will retain about half of its experienced staff beyond retirement eligibility dates. Of the 136 (86.6 percent) employees who participated in the survey, approximately 40 percent stated they will be eligible to retire within six years. Of these, 52.7 percent stated they plan to retire within six years.

Workforce Skills Critical to the Mission and Goals of the Agency

The agency is staffed with professional, skilled, and well-qualified employees. Maintaining a workforce with particular knowledge and skill sets is critical to the agency's ability to operate effectively and efficiently in achieving its mission and goals. These skill sets include:

- Providing exceptional customer service;
- Interpreting, implementing, and explaining legal/regulatory statutes;
- Providing and applying legal and workers' compensation research and analysis;
- Managing and providing leadership to staff;
- Planning and coordinating outreach efforts to stakeholders;
- Communicating effectively in English and Spanish;
- Recognizing and responding appropriately to mental and emotional stress among customers; 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 nor a change in its mission and goals. However, OIEC has realized an increase in workload; therefore, the agency will request approximately 20 additional FTEs in the FY 2014-2015 Legislative Appropriations Request. These additional Ombudsmen and Customer Service Representatives would help staff OIEC's larger field offices where urban growth and accompanying on-the-job injuries have created a heavier workload. In addition, OIEC must plan for the eventual loss of highly experienced staff due to retirements. OIEC also has seen a trend of declining prevail rates for injured employees due to the ever-increasing evidentiary standard required to prove entitlement to workers' compensation benefits. These factors affect the knowledge, skills, and abilities OIEC needs to continue achieving its mission and goals.

Future Workforce Skills Needed

In addition to the critical skills cited above, OIEC needs staff who can provide medical research and analysis to help OIEC customers prove their entitlement to workers' compensation benefits.

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

In response to an increase in workload at the larger field offices, the agency anticipates an increase in approximately 20 FTEs to satisfy the agency's mission and ensure injured employee rights are protected.

Critical Functions that Must Be Performed to Achieve the Strategic Plan

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

IV. GAP ANALYSIS

Anticipated Surplus or Shortage in Staffing Levels

In response to an increase in workload at the larger field offices, the agency will seek an increase of approximately 20 FTEs in the Customer Service and Ombudsman programs to satisfy the agency's mission and ensure injured employee rights are protected.

Anticipated Surplus or Shortage of Skills

As experienced staff retires over the next few years, the agency anticipates a greater need for skills in training, mentoring, and transferring knowledge to less-experienced employees in all program areas. In addition, greater skill in medical research and analysis is required to address the trend of declining prevail rates for injured employees due to the ever-increasing evidentiary standard required to prove entitlement to benefits.

V. STRATEGY DEVELOPMENT

Specific Goals to Address Workforce Competence Gaps or Surpluses

Recruitment and Retention. Recruiting and retaining the depth of knowledge and experience necessary to navigate the complexities of the workers' compensation system is a key factor in fulfilling OIEC's mission of assisting, educating, and advocating for Texans who are injured on the job. Therefore, OIEC carefully selects the most qualified applicant for each position. OIEC has been fortunate in the ability to hire and retain strong employees with varied skill sets who can perform in high-stress, demanding situations.

The economy may be one reason for the agency's strong retention record. More individuals have been searching for work since the recession began, and OIEC has been successful in hiring individuals that possess the necessary knowledge, education, and experience that has enabled the agency to continue to provide injured employees excellent assistance. OIEC has been able to keep some of its most knowledgeable and experienced employees even after their retirement eligibility date. Times are hard, and the thought of no longer working, finding another job, or making less money may make people think twice before leaving the agency.

OIEC provides extensive training and development opportunities to assist employees in performing their job to the best of their abilities. OIEC also provides incentives and utilizes various tools to retain its staff, such as the following.

Alternative Work Schedule Program. This program extends the number of hours that agency staff is available to provide services while also providing employees with work-schedule flexibility. 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. Regular assessment of performance levels against expectations increases productivity and morale.

Merit Awards. For OIEC employees who meet the criteria for a merit award, OIEC may provide administrative leave for outstanding performance. The total amount of leave granted may not exceed 32 hours per employee during a fiscal year pursuant to the Government Code.

OIEC may also grant merit salary increases and one-time merit payments to eligible classified employees who meet various administrative qualifications and who have exceeded job performance and can demonstrate increased productivity and deliverables.

Sick Leave Pool. The Sick Leave 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 Title 28, Texas Administrative Code § 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. OIEC's Deputy Public Counsel administers this program.

Policy Development Program. OIEC's Policy Development Program was initiated 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, its policies or procedures, or work environment. OIEC's executive management team reviews the ideas or recommendations submitted monthly. Confidentiality of employees who submit policy recommendations is provided to encourage all OIEC employees to participate in providing suggestions to improve or increase the efficiency of the agency and its resources. Since its inception, many ideas have been proposed and 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 is 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. Public Counsel Darwin, in consultation with the agency's Deputy Public Counsel, personally oversees each employee's return to productive and sustainable work.

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.

The continually evolving nature of workers' compensation law drives agency management to focus on employee training and development opportunities to ensure injured employees are provided competent and effective customer service. As a result of various interpretations of the recent *Crumph* decision, Public Counsel Darwin developed a new training program and personally trained the Ombudsman Supervisors and Regional Staff Attorneys, who in turn delivered the training to other employees. Public Counsel Darwin monitored those training sessions as they occurred with each team across the State. Additional training is described below.

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 agency-related 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, the agency conducts Ethics training and created an Ethics Committee. Ethics training is conducted for new employees and annually 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 convenes as necessary to discuss the issues presented to it by OIEC employees, and a quarterly update on the issues is sent to all agency employees.

The agency's Ethics Committee has a revolving membership 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, employees 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 Workers' Compensation Adjuster's License and will 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 service training, 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 Workers' Compensation Adjuster's License before they finish their training program. Upon successful completion of the training program, Ombudsman Associates are eligible for reclassification as 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; and work closely with the Customer Service Representatives to effectively assist injured employees.

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 and Customer Services Representatives. Each field office has an Ombudsman Lead who serves as a mentor for all staff in their particular field office. They are vital in administrative efforts, such as disaster recovery or staff services coordination.

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 the annual agency conference and Practical Skills Training conducted by the agency's Regional Staff Attorneys (RSAs). Training is also provided through monthly teleconferences.

Additional information regarding the Ombudsman training program and continuing education can be found in Title 28, Texas Administrative Code § 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 DWC and to ensure injured employees' rights are protected.

Three 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 legally required 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, determine best practices and strategies, and learn more about the workers' compensation and insurance laws.

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 and 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);
- Effectively Questioning Physicians on Medico-Legal Issues (April 2010);
- Case Assessment and Development to Address Producing Cause and Sole Cause (October 2010);
- Causation in Light of Transcontinental Ins. Co. v. Crump and Tips for Effective Cross-Examination of Carrier's Expert (July 2011);
- Writing Effective Appeals (February 2012); and
- Medical Dispute Resolution (April 2012).

Additional Practical Skills Training topics in the future will include new Medical Dispute Resolution rules, causation, presumptions, and medical Contested Case Hearings based on Public Counsel's position papers.

Customer Service Representative (CSR) Training. A comprehensive training program is provided to each CSR to enable them to respond accurately and promptly to injured employees' questions.

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, telephone, and soft-skills training; and early intervention, administrative training. Ongoing education includes regular review of the agency website and links, and attendance at the various teleconference training sessions. A monthly review of Appeals Panel decisions is also required as the decisions 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. In addition, new CSRs choose or are assigned a more 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.

The agency's Customer Service Program provides advocacy, assistance, and education about the workers' compensation system while DWC staff processes official and regulatory actions.

Old Law Training. Although the majority of workers' compensation claims involves injuries that have occurred after the workers' compensation system reform, there are still claims in the system that occurred prior to 1991, and are referred to as "Old Law" claims. If "settlements" were negotiated in the Old Law cases that resulted in lifetime medical benefits and a dispute

occurs, OIEC may receive a request from the injured employee to assist in the resolution of the injured employee's medical dispute. Although Old Law disputes do not arise frequently, it is imperative that OIEC staff is knowledgeable about how to assist an injured employee in these disputes. This bench strength is difficult to monitor given the agency's rate of retirements and growing complexity in the law.

A training presentation for the Ombudsman and Customer Service Programs on how to obtain, provide, and review information regarding Old Law cases was conducted in 2010 and 2011. The presentation focused on providing preliminary Old Law assistance and assistance to injured employees with pre-hearing conferences.

Mental Health First Aid Training. The agency is training all staff in Mental Health First Aid (MHFA) to give OIEC employees the knowledge and tools to assist a customer who may be in emotional or mental distress. MHFA is a public education program, coordinated by the National Council for Community Behavioral Healthcare, which introduces participants to risk factors and warning signs of mental health problems, builds understanding of their impact, and overviews common treatments. MHFA is a 12-hour course which uses role-playing and simulations to demonstrate how to assess a mental health crisis, select interventions and provide initial help, and connect persons to professional, peer, social, and self-help care.

OIEC's Deputy Public Counsel/Chief of Staff and Associate Director of Communications and Outreach received Instructor Certification in order to teach the MHFA course to all OIEC employees. Half of the agency was trained in 2011 as Mental Health First Aiders, and the remaining agency employees will be trained in 2012. OIEC management is ensuring all agency employees are prepared to act in the event of a psychiatric emergency, understand how to interact with a person in crisis, how to protect themselves, and how to connect the person with professional help. Ultimately, the training allows OIEC to better serve its customers and the human condition.

Teleconferences. Teleconferences are held to ensure OIEC staff in the field and central office stays informed of necessary information to continue to effectively serve the injured employees of Texas. Teleconferences may be held for specific agency functions, such as Ombudsmen or Customer Service Representatives, or for the 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. Three in-person meetings are held for staff each year, if budget permits. 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 during work hours. 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 20 locations and central office.

Training sessions promote teamwork and ethics as well as provide information about aspects of the agency that staff may not be familiar with. Breakout sessions address 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 Workers' Compensation Adjuster's License and for OIEC attorneys to obtain continuing legal education credits.

- *OIEC Leadership Meeting:* OIEC holds an annual meeting where management employees meet for training, issue discussion, strategic planning, and employee development. The meeting provides an opportunity for management of all of the program areas of the agency (Customer Service, Ombudsman, and Administration and Operations) to come together and focus efforts on improving communication and the quality of the service provided to the injured employees of Texas.
- *Legal Services Planning and Debriefing Session:* OIEC periodically hosts an in-person meeting for agency attorneys to discuss legal issues in the workers' compensation system and plan legal training for the Ombudsman Program. The meeting also provides an opportunity for candid discussion about how effectively the agency is serving its mission to assist, educate, and advocate on behalf of the injured employees of Texas.

Emergency Preparedness, Risk Management, and Continuity Plan Training. OIEC conducts periodic training regarding emergency preparedness, risk management, and the agency's Continuity Plan to ensure staff understands what to do in case of emergencies to circumvent any confusion or adversity resulting from possible disasters. The agency periodically runs drills regarding procedures for handling situations with a potentially threatening injured employee, disaster drills for the Coastal field offices in preparation for the hurricane season, or other various safety drills and tests.

Other Training. Additional training that staff periodically attends includes Employment Law, and SAS (Statistical Analysis Software) training.

Training is one of the most important aspects of the agency and is ultimately beneficial to the injured employees in Texas. Although the agency makes every effort to retain its outstanding staff, the agency's focus on employee development ultimately enables OIEC staff to be extremely competitive in higher-paying job classifications or in the same work in the private sector.

Succession Planning. The process of succession planning, a component of OIEC’s strategic and workforce plans, is preparing the agency for the risks associated with loss of knowledge that is critical to achieve its mission. OIEC is doing so by identifying, developing, and transferring knowledge to employees who become highly qualified and capable of filling key positions or perform crucial functions as individuals leave the agency.

The scope of OIEC’s succession planning includes identifying and developing key talent within the agency for Director, Associate Director, and Supervisor positions in the Ombudsman and Customer Service programs and Administration and Operations, which includes the Legal Services, Communications and Outreach Services, and Operations sections.

A copy of OIEC’s Succession Plan is attached in Appendix H.

APPENDIX F

2012 Survey of Employee Engagement Results and Utilization Plan

At the beginning of calendar year 2012, OIEC employees were asked to participate in the *Survey of Employee Engagement*. The survey provides information about the employees' perceptions of the effectiveness of the agency and the employees' satisfaction with the agency. The survey is conducted by The University of Texas at Austin, School of Social Work, and most State agencies participate in the survey.

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

This is the third time OIEC employees have taken this survey, and OIEC is very proud of the outstanding response rates realized each year. In 2008, OIEC had a response rate of 82 percent. In 2010, 100 percent of OIEC employees responded, which was the first time in State history that the survey was completed with a 100 percent response rate. This year OIEC had a response rate of 99 percent, which is the second highest response rate in Texas' history. A high 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 are provided to OIEC employees, and a committee is formed to identify ways to focus on and improve the

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

- **Supervision Score: 4.24**

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.

- **Employee Development Score: 4.22**

The Employee Development construct is an assessment of the priority given to employees' personal and job growth needs. It provides insight into whether the culture of the agency sees human resources as the most important resource or as one of many resources. It directly addresses the degree to which the agency is seeking to maximize gains from investment in employees. High scores indicate that employees feel the agency provides opportunities for growth in agency responsibilities and personal needs.

- **Strategic Score: 4.17**

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.

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

- **Pay Score: 2.50**

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.

- **Job Satisfaction Score: 3.58**

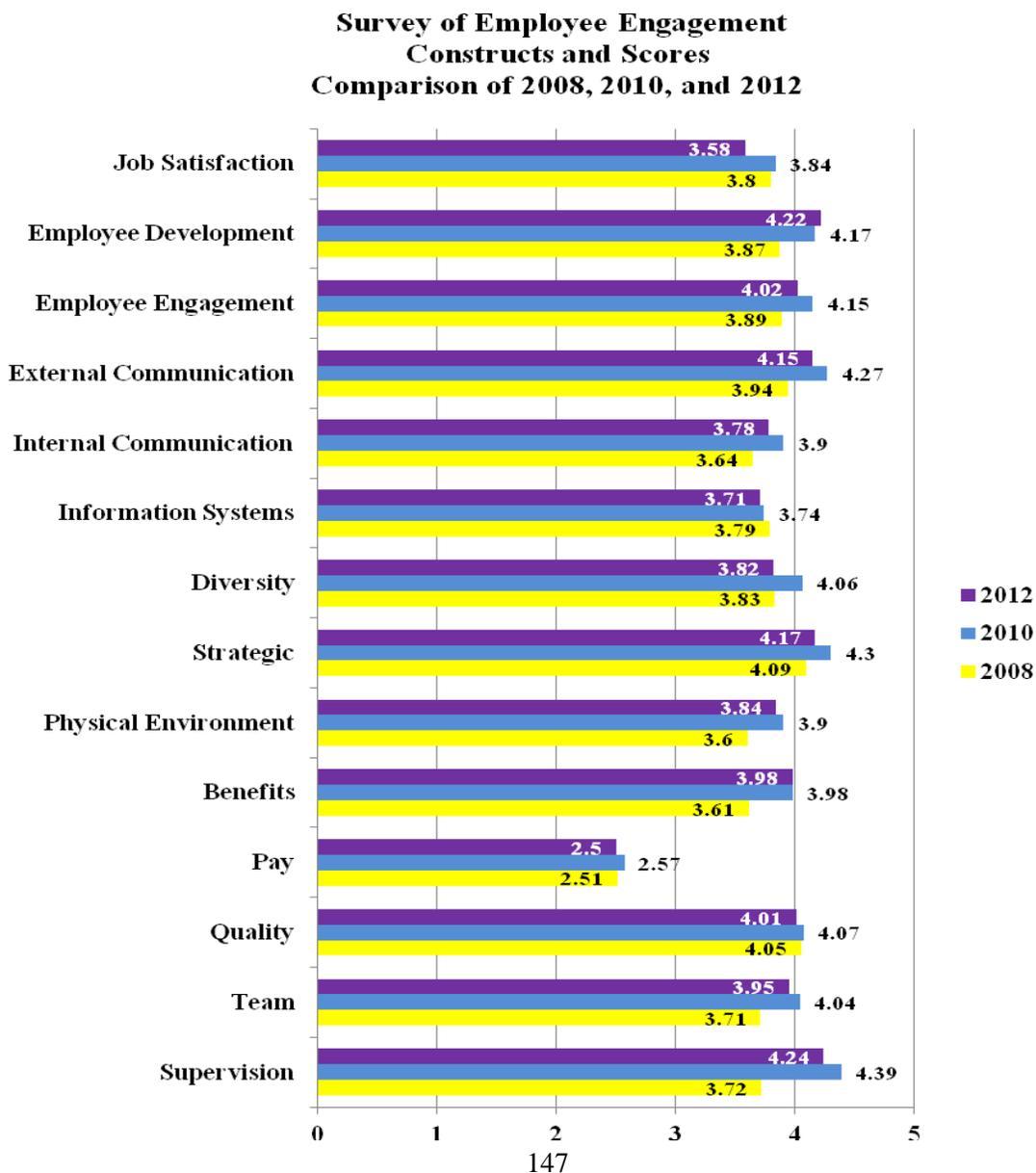
The Job Satisfaction construct addresses employees' attitudes about the overall work situation. This construct looks at the degree to which employees intrinsically like their jobs and the total work environment. It focuses on both the job itself and the availability of resources to do the job. Moderate levels of job satisfaction can result in good but not excellent work. In general job satisfaction stems from these factors: supervisory effectiveness, manageability of the workload, supportiveness of the environment, and the level of pay and benefits. Although the area of Job

Satisfaction scored relatively high at 3.58, this area was one of the three lowest scoring constructs.

- **Information Systems Score: 3.71**

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.

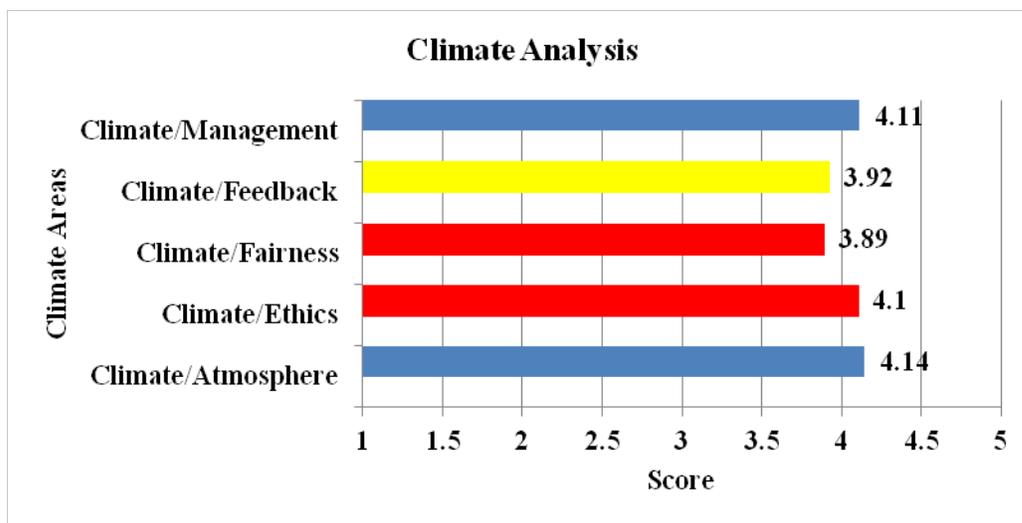
The chart below illustrates a comparison of OIEC scores from the 2008, 2010, and 2012 surveys.



When compared to other agencies with similar size and missions, OIEC scored higher in almost 80 percent of the constructs in the 2012 survey.

Climate Analysis. The climate in which employees work does, to a large extent, determine the efficiency and effectiveness of an organization. The appropriate climate is a combination of a safe, non-harassing environment with ethical abiding employees who treat each other with fairness and respect. Moreover, it is an organization with proactive management that communicates and has the capability to make thoughtful decisions. Climate Areas have been color coded to highlight the organization's areas of strength and areas of concern. The two highest scoring climate areas are blue (Atmosphere, Management), the two lowest scoring climate areas are red (Fairness, Feedback), and the remaining climate area is yellow (Ethics).

Each Climate Area is displayed below with its corresponding score. Scores above 3.5 suggest that employees perceive the issue more positively than negatively, and scores of 3.75 or higher indicate areas of substantial strength. Conversely, scores below 3.5 are viewed less positively by employees, and scores below 3.25 should be a significant source of concern for the organization and should receive immediate attention.



Climate Analysis Definitions.

Atmosphere: The aspect of climate and positive atmosphere of an organization must be free of harassment in order to establish a community of reciprocity.

Ethics: An ethical climate is a foundation of building trust within an organization where not only are employees ethical in their behavior, but that ethical violations are appropriately handled.

Fairness: Fairness measures the extent to which employees believe that equal and fair opportunity exists for all members of the organization.

Feedback: Appropriate feedback is an essential element of organizational learning by providing the necessary data in which improvement can occur.

Management: The climate presented by Management as being accessible, visible, and an effective communicator of information is a basic tenant of successful leadership.

Utilization Plan

Employee satisfaction is one of OIEC's primary concerns. Ninety-nine 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 percent 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 more favorable results in most categories.

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 2010-11 HUB Expenditure Information

Procurement Category	Statewide HUB Goals	HUB Expenditures FY 2010		Total Expenditures FY 2010	HUB Expenditures FY 2011		Total Expenditures FY 2011
		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	\$0.00	0.00%	\$0.00	\$0.00
Professional Services	20.00%	0.00%	\$0.00	\$0.00	0.00%	\$0.00	\$0.00
Other Services	33.00%	.088%	\$116.00	\$131,308.00	1.80%	\$667.00	\$37,085.00
Commodities	12.60%	50.4%	\$11,791.00	\$23,391.00	67.73%	\$9,866	\$14,566.00
Total Expenditures		7.69%	\$11,907.00	\$154,700.00	20.39%	\$10,533.00	\$51,651.00

Assessment of Fiscal Year 2010-11 Efforts to Meet HUB Procurement Goals

Attainment:

The agency attained or exceeded one of the three goals, or 33 percent, of the applicable statewide HUB procurement goals in FY 2010 and FY 2011.

Applicability:

OIEC functions do not include construction; therefore, "Heavy Construction," "Building Construction," and "Special Trade Construction" categories are not applicable to the agency.

Factors Affecting Attainment:

Professional Services: No expenditures were made under "Professional Services" procurement category for FY 2010 and FY 2011.

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 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.

APPENDIX H

*Office of Injured Employee Counsel
Succession Plan*

February 2012

Office of Injured Employee Counsel Succession Plan

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Executive Summary

By failing to prepare, you are preparing to fail. — Benjamin Franklin

The Office of Injured Employee Counsel (OIEC) has a weighty responsibility – to assist hard-working Texans who likely are in pain and may be frustrated by the complexities of the workers' compensation system. The core of the agency, the Ombudsmen, must know the law, understand aspects of health care, and have the heart of a social worker. The Ombudsmen and Customer Service Representatives also must be educators, able to patiently explain laws, rules, processes, and procedures so that injured employees and their families can make informed decisions about pursuing their claims.

OIEC's overall strength in serving injured employees resides in the knowledge and experience its staff possesses. The young state agency, which began operating in 2006, has a staff of 152 (as of January 1, 2012) with a combined 2,100 years of workers' compensation experience, or an average of 13 years per staff member. This strength soon will be at risk as experienced staff becomes eligible for retirement.

Much of the impetus for formal succession planning at OIEC is the potential for high employee turnover and loss of critical knowledge and experience due to retirements. However, the process exists to preserve continuity in services regardless of the reason for the vacancy – resignation, transfer, termination, death, disability, or retirement. Life can bring sudden changes so even young leaders need to build bench strength, employees who are prepared to perform crucial functions or step into key positions, in case something unexpected happens.

The process of succession planning, a component of OIEC's strategic and workforce plans, is preparing the agency for the risks associated with loss of knowledge that is critical to achieve its mission. OIEC is doing so by identifying, developing, and transferring knowledge to employees who become highly qualified and capable of filling key positions or performing crucial functions as individuals leave the agency.

The scope of OIEC's succession planning includes identifying key talent within the agency for Director, Associate Director, and Supervisor positions in the Ombudsman and Customer Service programs and Administration and Operations, which includes the Legal Services, Communications and Outreach Services, and Operations sections⁶⁶. In this first phase of the planning process, staff:

- Researched best practices in succession planning with a literature review and interviews with agencies in Texas and other states. Most agencies contacted have had limited success in developing formal succession plans.
- Assessed the risk of employee turnover. Employees were surveyed about their retirement plans to determine when to expect gaps in staffing, where the gaps will occur by program and location, and the implications for OIEC's ability to provide effective services and achieve its

⁶⁶ This first phase of succession planning excludes four leadership positions: the Public Counsel, who is appointed by the Governor, the Deputy Public Counsel/Chief of Staff, the new Director of Administration and Operations position, and the Internal Auditor, a position that likely will be filled externally due to its unique requirements.

mission over the long term. Staff also considered the risk to OIEC's services for reasons other than retirements, such as salary limitations and office closures.

- Conducted leadership position analyses. Staff reviewed functional job descriptions and job requirements in the Performance Planning and Development System (PPDS) for each Director, Associate Director, and Supervisor and interviewed OIEC leadership to identify critical skills and knowledge (also known as competencies) necessary for success in these positions.
- Discussed bench strength, defined as employees positioned to succeed each Supervisor, Associate Director, and Director.
- Identified gaps in competencies for potential successors and how to bridge them.
- Reviewed training, cross-training, mentoring, and other workforce development practices currently used by Directors and Supervisors and methods that could be used in the future.
- Updated career ladder requirements, including a preference that supervisory job candidates have Team Lead experience.

Staff found in its research that if OIEC acts now, it will have time – three to six years – for training, mentoring, and transferring knowledge before experienced leaders begin to retire in large numbers. The following recommendations would expand succession planning at OIEC to include a more formal system of identifying and developing individuals for greater responsibilities.

Recommendations

1. Appoint a succession planning committee to:
 - Develop succession planning **goals and measures** with responsible parties, and track progress. Some goals and measures are recommended on page 5 of this report.
 - Examine and adopt across-the-board core **competencies** necessary for OIEC leaders to succeed. Incorporate the adopted competencies into the career ladder requirements and Performance Planning and Development System (PPDS). A list of proposed competencies begins on page 10.
 - Create a **Leadership Talent Pool** database that includes assessments of whether the members need more training and development to step up to leadership positions.⁶⁷
 - Build bench strength by ensuring that employees have the **training and development** programs that will help them to develop the competencies needed for their career moves. Suggested training improvements are on page 12.
 - Analyze and report on recommended changes to the OIEC **career ladder**. These recommendations begin on page 12.
 - Oversee the creation of an **Intranet page** for employees who want to compare their skills and abilities with those required for other positions in the agency.
 - Begin a **legacy project** with video or audio recordings of departing staff's key knowledge and documenting his or her contacts, reports, databases, and other resources.
 - **Communicate** succession planning activities to the rest of staff.

⁶⁷ Grooming internal candidates to promote from within gives them an edge but does not guarantee a promotion.

2. During annual performance evaluations, include formal discussions of goal setting and training strategies and design an **individual development plan** for each employee interested in advancement and inclusion in the Leadership Talent Pool. Directors and Supervisors should consider employees not currently at the top of the list but who show promise and a desire to move into leadership positions. Revise Section V of the PPDS form and the Self-Assessment Tool to incorporate the individual development plan.
3. Ensure that all potential candidates are made aware of **job openings** and how to apply for them.
4. Implement **cross training** for Administration and Operations functions.
5. **Review and refresh** the succession plan as needed (at least annually). This will include questions in the biennial Survey of Employee Engagement to help assess the risk from employee turnover.

This report provides more detail on OIEC's mission and the risks to achieving it due to retirements, salary limitations, office closures, and other factors contributing to employee turnover. The report also presents in more detail the agency's current succession planning activities and recommended strategies to address the risk of employee turnover.

Agency Mission, Philosophy, Goals, and Strategies

Mission

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

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.

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.

Strategies

Strategy 1 – Prepare unrepresented injured employees and assist them in the Texas Department of Insurance's administrative dispute resolution proceedings.

Strategy 2 – 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.

Strategy 3 – Advocate on behalf of injured employees as a class in judicial, legislative, rulemaking, and administrative processes, and ensure injured employees' rights are protected.

OIEC Succession Planning Mission, Policy, Goals, and Measures

Mission

- To develop and maintain a workforce that effectively assists, educates, and advocates on behalf of the injured employees of Texas.

Policy

- To train and promote from within whenever possible.
- To help employees develop to their full potential and achieve realistic career goals by offering appropriate training and development opportunities.
- To review and revise the succession plan at least annually or as circumstances change.

Goals

Goal 1 – Avoid disruptions in quality customer service by ensuring a ready supply of internal talent for key positions when they are vacated.

Goal 2 – Partner with veteran staff to train and develop employees who want to take on greater responsibilities in serving injured employees as leaders in the agency.

Goal 3 – Create efficiencies and reallocate funds to pay for training or pay for functions that would improve services to injured employees.

Goal 4 – Help employees find satisfaction in their jobs.

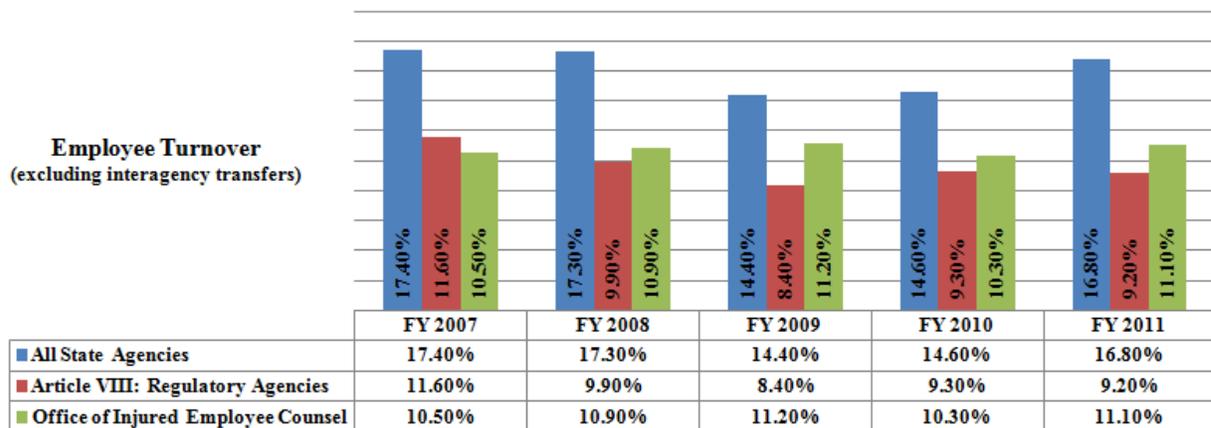
Measures

- Amount of savings achieved by retaining employees.
- Amount of funds reallocated to pay for training employees or improving services.
- Average rate of employee turnover.
- Average amount of time leadership positions remain vacant.
- Percent of executive-level vacancies filled with internal promotions.
- Percent of employees in Leadership Talent Pool.
- Percent of promotions from Leadership Talent Pool.
- Percent of employees satisfied with training and opportunities for advancement.
- Number of training sessions attended by employees.
- Percent of employee-requested training sessions OIEC is able to provide.
- Number and percent of veteran staff (staff with more than five years of experience) who help train and develop less experienced employees.

OIEC Mission’s Long-term Risk to Employee Turnover

Overview

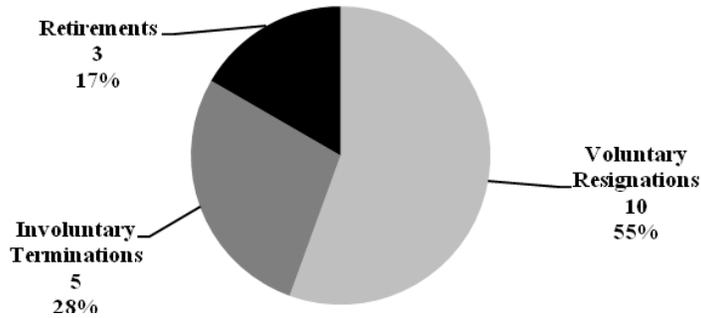
OIEC is relatively successful in retaining employees and limiting the costs associated with employee turnover: recruiting, selecting, orienting, and training new employees, leave payout to departing employees, and lower workplace productivity due to vacancies. The agency’s 10.3 percent employee turnover rate in fiscal year (FY) 2010 was about 30 percent lower than the combined state-agency rate of 14.6 percent, as shown in the table below. (Source: State Auditor’s Office Workforce Summary, December 2010, Report No. 11-702) Data kept by OIEC indicate a 12 percent turnover rate in FY 2011.



The section most vulnerable to employee turnover is the Ombudsman Program. Of the 18 employees who left OIEC in FY 2011, 58 percent worked in the Ombudsman Program, 37 percent in Customer Service, and 5 percent in Legal Services and Administration and Operations. Losing Ombudsmen is costly to the agency, which invests about a year of supervisory time and \$40,000 in training, materials, and licensing for each apprentice (Ombudsman Associate).

More than half of employees who leave OIEC resign voluntarily for reasons other than retirement, as shown in the next chart. Most cited personal circumstances as the reason for leaving. That is expected to change markedly within three to six years, based on an analysis of employee retirement eligibility and a survey of employee retirement plans.

**OIEC Employee Turnover Justification
(based on the average turnover per year
FY 2009 through FY 2011)**



Retirement Eligibility

OIEC’s dedicated staff has over 2,100 years of combined workers’ compensation experience. More than two-thirds of staff has at least 10 years of experience and half has at least 15 years. Retaining this depth of knowledge and experience with the complexities of the workers’ compensation system is a key factor in fulfilling OIEC’s mission of assisting, educating, and advocating for Texans who are injured on the job. Therefore, OIEC gauged the risks from retirements, particularly among Directors and Supervisors, beginning with a look at earliest retirement eligibility dates.

About one-fourth of all staff (152 were employed as of January 1, 2012) and more than 26 percent of Directors and Supervisors are eligible to retire within three years. Within six years, 42 percent of Directors and Supervisors will be eligible to retire. Here is the breakdown by program area. Number of staff is indicated in parentheses.

**Percentage of Directors and Supervisors
Eligible to Retire By December 31,
(Within each program area)**

	2015	2018
Ombudsman Program (10)	30%	70%
Customer Service Program (4)	50%	50%
Legal Services (2)	50%	100%
Administration & Operations (3)	0%	33%

Each of the 20 field offices and the Central Office are at risk of losing staff to retirement within three to six years. Several offices — including Amarillo, Central, Corpus Christi, El Paso, Fort Worth, Houston West, Laredo, Lubbock, Lufkin, and Waco — could lose to retirement more than 50 percent of staff within that time frame. The next table cites the percentage of staff eligible to

retire at each office by the end of 2015 and 2018, according to data provided by the Texas Department of Insurance.

Percentage of Office Staff Eligible to Retire By December 31,

	2015	2018
Abilene	33.3	33.3
Amarillo	66.7	100. ^
Austin	16.7	16.7
Beaumont	50.0	50.0
Central	27.8	66.7
Corpus Christi	80.0	80.0
Dallas	7.1	35.7
Denton	20.0	40.0
El Paso	28.6	57.1
Fort Worth	50.0	56.3
Houston East	25.0	41.7
Houston West	41.7	58.3
Laredo	33.3	66.7
Lubbock	60.0	60.0
Lufkin	66.7	66.7
Midland	0.0	0.0
San Angelo	25.0	25.0
San Antonio	0.0	15.4
Tyler	28.6	42.9
Waco	40.0	60.0
Weslaco	11.1	33.3

Retirement Plan Survey

An employee survey conducted in May 2011 indicates that OIEC will retain about half of its veteran staff beyond retirement eligibility dates. Of the 136 (86.6 percent) employees who participated in the survey, about 40 percent stated they will be eligible to retire within six years. Of these, 52.7 percent stated they plan to retire within six years. Here is a breakdown by program.

- **Ombudsman Program (76 respondents)**
 - 33 (43.4 percent) of 76 are eligible for retirement in the next six years
 - 16 (48.5 percent) of 33 will retire in the next six years

- 3 (18.8 percent) of 16 will retire in the next 12 months
 - 3 (18.8 percent) of 16 will retire in 1 to 2 years
 - 3 (18.8 percent) of 16 will retire in 3 to 4 years
 - 7 (43.8 percent) of 16 will retire in 5 to 6 years
- **Customer Service Program (41 respondents)**
 - 16 (39.0 percent) of 41 are eligible for retirement in the next six years
 - 10 (62.5 percent) of 16 will retire in the next six years
 - 2 (20.0 percent) of 10 will retire in the next 12 months
 - 1 (10.0 percent) of 10 will retire in 1 to 2 years
 - 6 (60.0 percent) of 10 will retire in 3 to 4 years
 - 1 (10.0 percent) of 10 will retire in 5 to 6 years
- **Legal Services (8 respondents)**
 - 2 (25.0 percent) of eight are eligible for retirement in the next six years
 - 1 (50.0 percent) of 2 will retire in the next six years
 - 1 (100.0 percent) of 1 will retire in 3 to 4 years
- **Administration and Operations (11 respondents)**
 - 4 (36.4 percent) of 11 are eligible for retirement in the next six years
 - 2 (50.0 percent) of 4 will retire in the next six years
 - 2 (100.0 percent) of 4 will retire in 5 to 6 years

Salary Limitations

OIEC’s average annual salary in FY 2010 was \$39,584, about the same as the statewide average, according to a State Auditor’s Office Workforce Summary report. However, an entry-level employee (Customer Service Representative III) earned \$29,145, a wage rate that limits the skill sets the agency can attract. An Ombudsman I made \$36,764 and an Ombudsman II made \$42,000. Although employees who have left OIEC voluntarily have not cited pay dissatisfaction as the reason for resigning, the Survey of Employee Engagement indicates “fair pay” as an area needing improvement. OIEC executive management agrees and is especially concerned that Ombudsmen could become targets of private-sector recruitment efforts. However, State agencies must adhere to the State Job Classification and Salary Schedule in the General Appropriations Act. Also, OIEC management — sensitive to the perception that Ombudsmen compete with attorneys in private practice for workers’ compensation claimants — must keep salaries below what attorneys could expect in the public sector. (Note: Ombudsmen assist claimants; they do not represent them.) Nonetheless, management is evaluating salaries throughout the agency with the goal of eliminating inequities and improving OIEC’s ability to attract and keep capable employees.

Field Office Closures

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) provides office space for OIEC and, as leases near expiration, assesses whether to keep field offices open. TDI-DWC has closed the Wichita Falls and Victoria field offices and the Missouri City Satellite Office over the past few years and has decided to close the Bryan Field Office on June 1, 2012. The majority of OIEC employees in Victoria and Missouri City were able to transfer to other field offices, but the two Wichita Falls employees declined to transfer to Dallas due to the distance and resigned. If additional offices are closed, more jobs could be lost and OIEC services may suffer. Shortage of space may limit how many displaced staff can be accommodated at other field offices. Uncertainty over office closures affects staff and services as executive management must decide whether to fill vacancies at offices nearing their lease expiration dates.

Strategies to Reduce Risks from Employee Turnover

Although mass retirements of veteran staff do not appear to pose an immediate threat to director and supervisory positions, OIEC needs to prepare employees now to lead the agency as successfully as those they will succeed. To gain insight on how to retain and prepare future OIEC leaders, staff worked with current organizational leaders to analyze their positions, identify required job functions and competencies, and assess bench strength. Competencies were defined as the skills, abilities, and characteristics required for exemplary performance and success in each leadership position. Bench strength was defined as the person or persons in the agency who could step into the leadership position and succeed.

Interviews with leadership indicated that revisions to the career ladder procedure and training and development programs would help OIEC retain employees and prepare them for leadership.

Across-the-Board Leadership Competencies for Committee Consideration

The managerial, interpersonal, and technical competencies and other requirements identified in the leadership analysis that are applicable across the board to each leadership position are listed below. The Succession Planning Committee will consider leadership competencies and adopt those that are core, or most crucial, to the agency's success at achieving its mission.⁶⁸ The adopted competencies will be incorporated into the OIEC career ladder requirements and PPDS and will help shape training opportunities for current and potential leaders.

Managerial competencies

- Strategic planning
- Change management: Ability to communicate, motivate, and inspire enthusiasm for change
- Employee development

⁶⁸ The committee could consider other competency models, such as the federal government's Executive Core Qualifications (<http://www.opm.gov/ses/recruitment/ecq.asp>).

- Creative thinking
- Persistence
- Activator: Marketing the agency mission
- Maturity
- Knowledge and application of employment law
- Ability to inspire a strong sense of ownership
- Ability to make decisions without reacting impulsively
- Conflict resolution
- Team leadership/team building
- Organization
- Deal with employees in a fair and impartial way
- Promote employees' confidence in their abilities
- Maintain confidentiality
- Formulate solutions to improve performance of individual employees, teams, and OIEC overall
- Understanding of how a program's performance affects the agency as a whole

Interpersonal competencies

- Customer service
- Negotiation/mediation
- External relations
- Passion for the work
- Collaboration/teamwork
- Active listening/empathy
- Effective oral and written communication in English and Spanish
- Open-mindedness

Technical competencies

- Problem solving and decision making
- Knowledge of administrative law
- Skill in applying and explaining workers' compensation laws and OIEC rules and procedures
- Keeping up to date on new technology
- Clear and concise writing
- Budgeting
- Process improvement
- Knowledge of state and federal labor laws and regulations
- Ability to extract and analyze data

Other leadership position requirements/preferences

- Workers' compensation insurance adjuster's license
- Graduation from accredited four-year college or university or veteran's status (for individuals with fewer than five years of workers' compensation experience)
- Community service

- Experience on a board of directors
- Location in Austin (for Directors)
- Frequent travel

Career Ladder

The OIEC career ladder is not traditional; except for Ombudsman Associates, employees are not automatically promoted when they become qualified. They must compete for promotion when a position opens. Therefore, some employees perform at the same level of responsibility and competency as their peers but for less compensation, which can affect motivation. Unless the two supervisory positions open, Customer Service Representatives (CSRs) can move up the career ladder and earn more money only by transferring into the Ombudsman Program.

The career ladder should be a tool for employees and their supervisors to design, plan, and direct employee professional development and career management decisions. Employees should be able to readily identify the skills required to move to a specific position within the agency, including lateral moves. Improvements suggested by leadership include:

- Create CSR IV positions to better compensate qualified Team Leads for their added responsibilities and to provide an alternative promotional opportunity for CSRs who prefer to stay with the Customer Service program.
- Add a third Customer Service Supervisor position to improve oversight of field offices and provide more opportunity for advancement.
- Add a second Customer Service Associate Director position to improve program planning and training and provide more opportunity for advancement.
- Make Team Lead experience a preference for promotion to Supervisor in the Ombudsman and Customer Service programs.
- Define Team Lead responsibilities and include them in the PPDS.
- Develop an Intranet page for employees to learn about their options in the career ladder and any other positions in the agency they may be interested in.

Training and Development

OIEC provides on-the-job training opportunities to its employees and sends them to classes as funds are available. Directors and Supervisors suggested improvements to leadership training and development to improve OIEC's bench strength:

- Create a Leadership Talent Pool⁶⁹ database with assessments of whether the participants need more training and development to close gaps in competencies and step up to leadership positions. Include target completion dates, responsible parties, and required resources.
- Design a development plan for each employee interested in advancement and/or inclusion in the Leadership Talent Pool, basing the plan on leadership competencies. Revise Section V of

⁶⁹ The Leadership Talent Pool would be a group of individuals whose growth the agency wants to accelerate. No promotion promises would be made, but the agency would commit to preparing them for higher levels of responsibilities.

the PPDS form and the Self-Assessment Tool and use them to incorporate the individual development plan.

- Allow Team Leads to attend Supervisor team meetings and Supervisors to attend Directors meetings on a rotating basis.
- Begin a legacy project to capture knowledge of retirees and other departing staff through documentation/video, including contacts, networks, location of documents, best practices, and other resources.
- Provide new CSRs with more in-person training by their Team Lead, Supervisor, and Associate Director, in addition to the standard of independent study and telephone interaction.
- Give CSRs more time off the telephone queue to participate in training and development.
- Train Ombudsman Associates in the Customer Service Program for the first six months before they begin Ombudsman training.
- Form focus groups consisting of Ombudsmen Team Leads, Supervisors, and CSRs to work together on an issue or task.

Leadership Talent Pool

The succession planning process thus far has identified all Director, Associate Director, and Supervisor positions as mission critical for one or more of the following reasons:

- Key contributor to mission
- Performs vital function that would stop if the position were left vacant
- Requires specialized skill sets that are difficult to replace
- Geographic – only one of its kind at a particular location/necessary at that location
- Potential high turnover job class due to retirements or other reasons

Some organizations have found that developing a pool of leadership candidates, as opposed to one-to-one replacement mapping, strengthens their ability to meet succession needs as well as improving performance of the organization as a whole. These organizations have developed a profile of successful leadership and developed a pool of leaders who meet this profile and have a range of functional and technical skills. The OIEC succession planning committee could consider the merits of this approach when deciding whether to create a Leadership Talent Pool. The participants could be tracked in a database with an assessment of their strengths, gaps in competencies, and strategies to bridge the gaps. The Leadership Talent Pool database would be regularly monitored and updated to reflect the participants' development of leadership competencies.