

**SUBCHAPTER A. GENERAL PROVISIONS
28 TAC §276.7 and §276.8**

1. INTRODUCTION. The Office of Injured Employee Counsel (OIEC) proposes new §276.7 and §276.8 concerning OIEC's standards regarding ethics. Ethics can be defined as moral values, which affect personal and professional actions. Ethical standards are fundamental to the successful operation of an agency to ensure public funds are used efficiently.

There are many areas in which ethical issues may emerge. Common areas are gifts from outside sources, confidentiality, use of state property, outside employment, drug-free workplace, firearms and weapons, political activities, conflict of interest, post-employment, publicity, and fraudulent activity. A detailed guide regarding ethics can be obtained from the Texas Ethics Commission (A Guide to Ethics Laws for State Officers and Employees, Revised April 24, 2008). The Texas Ethics Commission and the Office of the Attorney General are available resources if it is determined clarification is needed on a particular issue.

Texas Labor Code §404.110(b) provides that an employee of the OIEC may not be compelled to disclose information communicated to the employee by an injured employee on any matter relating to the injured employees claim.

New section 276.7 provides for OIEC's ethics statement. New section 276.8 provides for the function of OIEC's Ethics Committee and OIEC's Ethics Committee mission statement.

2. FISCAL NOTE. Mr. Brian White, Deputy Counsel/Chief of Staff, has determined that for each year of the first five years the proposed section shall be in effect, there shall be no fiscal impact to state and local governments as a result of the enforcement or administration of this rule. There shall be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Brian White, Deputy Public Counsel, has determined that for each year of the first five years the proposed new sections are in effect the public and workers' compensation stakeholders will be notified of agency requirements for staff, which include the highest ethical standards of conduct. OIEC's rules will now reflect requirements set in Texas Government Code §572.051 and the agency's handling of ethics issues through the Ethics Committee. New §276.7 and §276.8 ensure ethical issues are addressed promptly and accurately which will safeguard the agency and allow it to more effectively fulfill its mission to assist, educate and advocate on behalf of the injured employees of Texas.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. OIEC has determined that the proposal will not have an adverse economic effect on small or micro-business.

OIEC has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225 and therefore a regulatory flexibility analysis is not required.

5. **TAKINGS IMPACT ASSESSMENT.** OIEC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under the Texas Government Code §2007.043.

6. **REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June 10, 2011, to Brian White, Deputy Public Counsel/Chief of Staff, Office of Injured Employee Counsel, Mail Code 50, 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the Deputy Public Counsel/Chief of Staff.

7. **STATUTORY AUTHORITY.** New section 276.7 is proposed pursuant to Texas Labor Code §§404.106, 404.1015, 404.110 and 404.111. Section 404.106 provides the Public Counsel rulemaking authority to adopt rules. Section 404.1015 provides for refusal to provide or terminate services. Section 404.110 provides for applicability to Public Counsel of confidentiality requirements. Section 404.111 provides access to information. Texas Government Code §572.051 provides the standards of conduct and state agency ethics policy.

8. **CROSS REFERENCE TO STATUTE.** The following sections are affected by this proposal:

Rule

Statute

§276.7

TEXAS LABOR CODE §§404.106,
404.1015, 404.110, 404.111.
TEXAS GOVERNMENT CODE
§572.051.

9. TEXT. §276.7. Agency's Ethics Statement and Employee Requirements.

(a) 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 lapse in such judgment will reflect negatively on OIEC. OIEC employees must seek to enhance and implement ethical values based on established principals of sound reasoning and the highest standards of business conduct.

(b) An OIEC employee should not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the employee or employee knows or should know is being offered with the intent to influence employee's official conduct;
- (2) accept other employment or engage in a business or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information acquired by reason of the position;
- (3) accept other employment or compensation that could reasonably be expected to impair the employee's independence of judgment in the performance of the employee's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the employee's official powers or employee's official duties in favor of another.

§276.8 Ethics Committee.

(a) OIEC's Ethics Committee shall be made up of OIEC staff who serve two-year staggered terms. The Ethics Committee is made up of the agency's ethics officer, who is an attorney and shall serve as the chair of the committee, and a cross section of employees from various agency programs. The ethics officer also provides training, specific consultation to the Public Counsel and Deputy Public Counsel, and serves as the legal counsel for all matters regarding ethics. The Ethics Committee meets to address ethical issues that are submitted to the committee and to recommend resolution.

(b) The mission statement for OIEC's Ethics Committee is to practice and promote the highest standards of ethical behavior within OIEC. In order to set the highest standards of conduct, including the appearance of propriety in the operation of our goals to assist, educate and advocate on behalf of injured employees in Texas, the members of the Ethics Committee are committed to: assuring honesty and confidentiality in all matters that come before the committee, faithfully adhering to the agency's code of ethics, educating the agency on ethics and standards of conduct, and making recommendations and providing solutions.

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Issued at Austin, Texas, on _____, 2011.

Brian White
Deputy Public Counsel/Chief of Staff
Office of Injured Employee Counsel

SUBCHAPTER B. OMBUDSMAN PROGRAM
28 TAC §276.13

1. INTRODUCTION. The Office of Injured Employee Counsel (OIEC) proposes new §276.13 concerning OIEC's Ombudsman Programs mandatory requirements regarding ethics. Ethics are moral values which affect personal and professional actions which are fundamental to the success of an agency. Practicing ethics also allows limited resources to be utilized in the most efficient manner.

New §276.13 clarifies that an injured employee have a legitimate workers' compensation claim when requesting assistance from OIEC. Texas Labor Code §404.1015 authorizes the Public Counsel may refuse to provide or may terminate services of the office to any claimant who: is abusive or violent to or who threatens any employee of the office; requests assistance in claiming benefits not provided by law; or commits or threaten to commit a criminal act in pursuit of a workers' compensation claim. If the Public Counsel determines that the services of the office should be refused or terminated, the office shall inform the affected claimant in writing and notify the division. The office shall notify and cooperate with the appropriate law enforcement authority and the Texas Department of Insurance, Fraud Unit, if the office becomes aware that the claimant or person acting on the claimant's behalf commits or threatens to commit a criminal act.

New §276.13 protects the integrity of the ombudsman program as well as requires ethical behavior between the ombudsman and the injured employee.

2. FISCAL NOTE. Mr. Brian White, Deputy Counsel/Chief of Staff, has determined that for each year of the first five years the proposed section shall be in effect, there shall be no fiscal impact to state and local governments as a result of the enforcement or administration of this rule. There shall be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT. Brian White, Deputy Public Counsel, has determined that for each year of the first five years the proposed new section is in effect the public benefit will be a clear understanding of an Ombudsman's role in the workers' compensation system. OIEC's rules will now reflect requirements established by Texas Labor Code §404.1015, which prohibit an Ombudsman from assisting an injured employee with a frivolous claim for income or medical benefits. New §276.13 provides a public benefit to both the agency and taxpayer by ensuring OIEC's limited resources are used efficiently to fulfill the agency's mission to assist, educate, and advocate on behalf of the injured employees of Texas.

4. COST NOTE AND ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. OIEC has determined that the proposal will not have an adverse economic effect on small or micro-business

OIEC has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225 and therefore a regulatory flexibility analysis is not required.

5. **TAKINGS IMPACT ASSESSMENT.** OIEC has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. Therefore, this proposal does not constitute a taking or require a takings impact assessment under the Texas Government Code §2007.043.

6. **REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June 10, 2011, to Brian White, Deputy Public Counsel/Chief of Staff, Office of Injured Employee Counsel, Mail Code 50, 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the Deputy Public Counsel/Chief of Staff.

7. **STATUTORY AUTHORITY.** New section 276.13 is proposed pursuant to Texas Labor Code §§404.006, 404.1015 and 404.110. Section 404.006 provides the Public Counsel rulemaking authority to adopt rules. Section 404.1015 provides for refusal to provide or termination of services. Section 404.110 provides for the applicability to Public Counsel of confidentiality requirements.

8. **CROSS REFERENCE TO STATUTE.** The following sections are affected by this proposal:

Rule	Statute
§276.13	TEXAS LABOR CODE §§404 .006, 404.1015 and 404.110.

9. TEXT. §276.13. Ombudsman Program Ethics Code of Conduct.

(a) Definition. Groundless--for purposes of this rule means no basis in law or fact and not warranted by a good faith argument for the extension, modification, or reversal of existing law.

(b) Office of Injured Employee Counsel Ombudsmen shall adhere to the ethical standards as reflected in Rule 13 of the Texas Rules of Civil Procedure in that groundless factual or legal assertions will not be made. This shall not be construed as a limitation on the ability of Ombudsmen to assist, educate, or advocate on behalf of injured employee in the pursuit of valid claims or issues.

Issued at Austin, Texas, on _____, 2011.

Brian White
Deputy Public Counsel/Chief of Staff
Office of Injured Employee Counsel