



Biennial Report

to the 86th Legislature

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Public Counsel

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Public Counsel Message

December 31, 2018

The Honorable Greg Abbott, Governor
The Honorable Dan Patrick, Lieutenant Governor
The Honorable Joe Straus, III, Speaker of the House of Representatives
The Honorable René Oliveira, Chair, Business & Industry Committee
The Honorable Kelly Hancock, Chair, Business & Commerce Committee

Dear Governor, Lieutenant Governor, Speaker, and Chairmen:

In accordance with Section 404.106 of the Texas Labor Code, I am pleased to submit the Office of Injured Employee Counsel's Biennial Report to the 86th Texas Legislature.

This report provides an update of the activities of the agency, recommendations for legislative action, and other issues for consideration. As directed, we have included an analysis of the ability of the Texas workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

I am available to discuss any of the issues contained in the report. Please contact me at (512) 804-4170 or jessica.barta@oiec.texas.gov with any questions or if you need additional information.

Respectfully submitted,



Jessica Barta
Public Counsel





Mission Statement

OUR MISSION
IS TO ASSIST,
EDUCATE, AND
ADVOCATE
ON BEHALF OF
THE INJURED
EMPLOYEES OF
TEXAS.



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>> Agency Overview

EMPLOYEES

➔ The **Office of Injured Employee Counsel (OIEC)** is appropriated 175 full-time equivalent employees. OIEC's central office is in Austin, Texas and is home to 16% of OIEC's staff. The remaining 84% of OIEC staff are located in 20 offices throughout the state.

STATUTORY AUTHORITY

➔ Chapter 404 of the Texas Labor Code provides the statutory authority for OIEC. OIEC is administratively attached to the **Texas Department of Insurance (TDI)**. TDI provides: administrative assistance and services to OIEC, including budget planning and purchasing; personnel services; facilities; and information technology. OIEC and the **Texas Department of Insurance, Division of Workers' Compensation (DWC)** share office space in all 20 locations.

>> Field Office Locations

FIGURE 1



WHO WE ARE



PUBLIC COUNSEL

→ The Public Counsel serves as the executive director of the agency and is appointed by the Governor with the consent of the Senate. The Public Counsel serves a two-year term that expires on February 1st of each odd-numbered year. The current Public Counsel, Jessica Barta, was reappointed by Governor Abbott on March 22, 2017.

ADMINISTRATION/ OPERATIONS

→ OIEC's central office staff are located in Austin and is comprised of the Public Counsel, Deputy Public Counsel, General Counsel, liaisons for human resources, budget, travel, and purchasing as well as administrative support staff.

CALL CENTER AGENT (CCA)

→ A CCA is the first point of contact for injured employees at OIEC. CCAs answer questions and educate injured employees about their rights and responsibilities within the workers' compensation system.

CUSTOMER SUPPORT SPECIALIST (CSS)

→ A CSS identifies disputed issues and attempts to resolve disputes through early intervention efforts. If a dispute cannot be resolved, it is assigned to an ombudsman.

OMBUDSMAN PROGRAM

→ Ombudsmen assist unrepresented injured employees prior to and during proceedings and appeals before DWC. This includes requesting supporting documentation, ensuring all issues are identified, and if possible, helping reach agreements prior to a proceeding.

LEGAL SERVICES PROGRAM

→ Legal Services' attorneys assist OIEC staff through all phases of the dispute resolution process. They participate in rule proposals before DWC and file briefs in cases pending before appellate courts on behalf of injured employees as a class.

Dispute Resolution Overview—with OIEC Assistance

The step-by-step guide to resolving your workers' compensation dispute.



CONTACTING OIEC
The injured employee's first contact with OIEC is with a **call center agent (CCA)** who helps answer questions and educates the injured employees about their rights and responsibilities in the workers' compensation system.



EARLY INTERVENTION
The **customer support specialist (CSS)** receives referrals from the CCA and **Division of Workers' Compensation (DWC)**. The CSS identifies issues and attempts to resolve disputes between the injured employee and the insurance carrier. If the dispute is not resolved by the CSS, the injured employee is referred to an OIEC ombudsman, who is a licensed insurance adjuster trained in workers' compensation law.



BENEFIT REVIEW CONFERENCE (BRC)
The ombudsman may request a **benefit review conference (BRC)** on behalf of the injured employee. A BRC is a nonbinding mediation between the parties before DWC. Prior to the BRC, the ombudsman assists the injured employee with obtaining all of the necessary documents and information relevant to the dispute. The ombudsman assists in presenting the injured employee's position at the BRC.



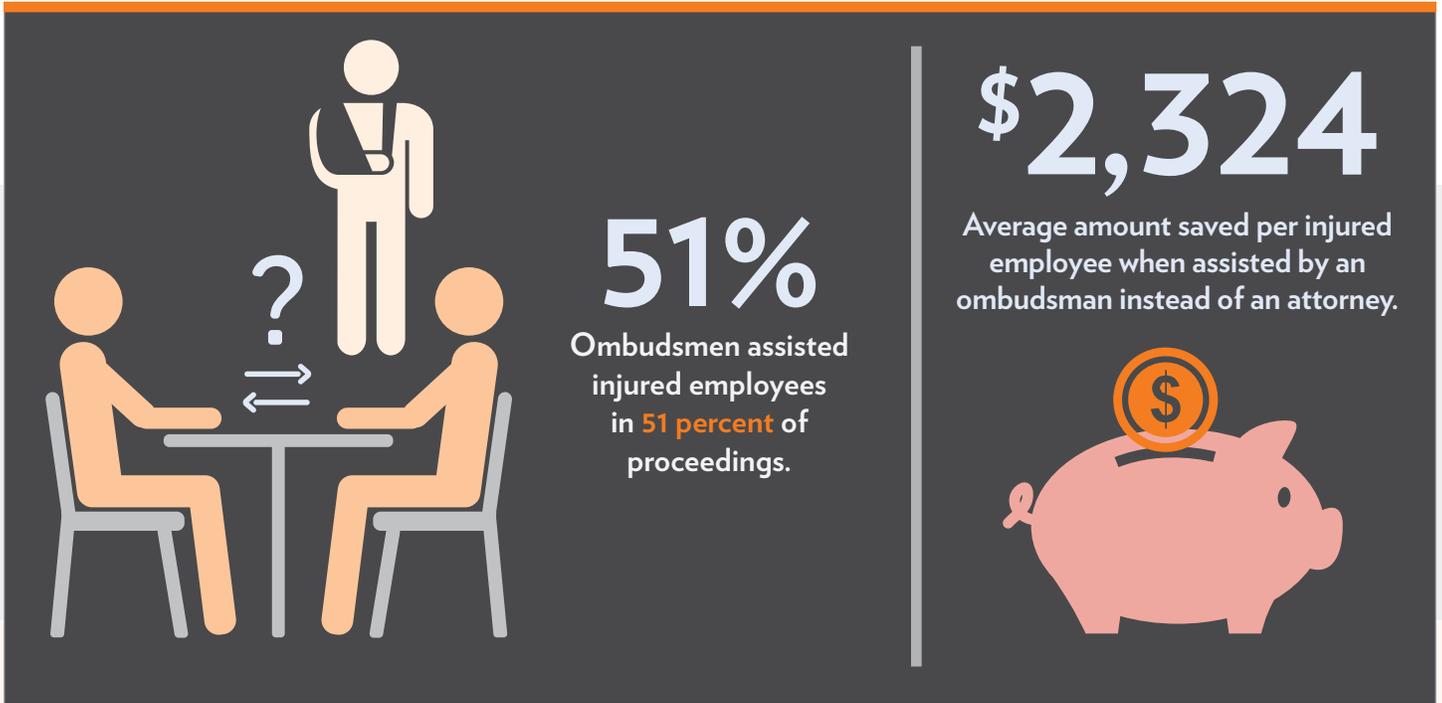
CONTESTED CASE HEARING (CCH)
If a dispute remains unresolved, a **contested case hearing (CCH)** may be held. A CCH is a formal hearing before an **administrative law judge (ALJ)** at DWC. The ombudsman assists the injured employee with presenting evidence and making arguments at the hearing. An ALJ issues a written decision within 10 days of the hearing.



APPEALS PANEL
Either party may file a written appeal of the CCH decision. An ombudsman can help the injured employee file an appeal by requesting a review by the Appeals Panel at DWC. Ombudsmen also assist injured employees with responses to appeals filed by insurance carriers. This is the last step in the dispute resolution process in which OIEC assistance is available.



JUDICIAL REVIEW
Judicial review is the final step in the dispute resolution process. OIEC is statutorily prohibited from assisting at this point. An injured employee will need to hire an attorney or file the claim *pro se*.



AGENCY OVERVIEW

➔ OIEC’s mission is to assist, educate, and advocate for the injured employees of Texas. OIEC’s role in assisting injured employees with their workers’ compensation disputes

continues to grow. In fiscal years (FY) 2017 and 2018, OIEC ombudsmen assisted in 51% of concluded dispute resolution proceedings at the DWC.

In FY18 ombudsmen assisted injured employees in a total of 9,711 concluded proceedings with 17,755

disputed issues.¹ This is in addition to disputes OIEC was able to resolve prior to formal proceedings or via agreement. The majority, 75%, of all disputes OIEC assists with are related to extent of injury, impairment rating, and maximum medical improvement.

TABLE 1

➔ **TOTAL NUMBER OF DISPUTE PROCEEDINGS CONCLUDED BY DWC¹**

FY15	FY16	FY17	FY18
19,692	21,515	22,763	19,216

➔ **TOTAL NUMBER OF PROCEEDINGS WITH OMBUDSMAN ASSISTANCE¹**

FY15	FY16	FY17	FY18
8,362/42%	9,624/45%	11,509/51%	9,711/51%

¹—Texas Department of Insurance, Division of Workers’ Compensation, 2018.

22,761

Individual claims with OIEC assistance.



LANGUAGE
TRANSLATION
SERVICES

42%

of injured employees assisted by OIEC are Spanish speakers.

CUSTOMER SERVICE

→ The call center agents are the first point of contact at OIEC. They educate injured employees on their rights and responsibilities in the workers' compensation system and answer questions about the dispute resolution process. The customer service staff (CSS) in each office work with injured employees to identify issues

and attempt to resolve disputes. The CSS can also refer injured employees to local, state, federal or social services agencies. Over the biennium, the agency has focused on making communication with injured employees more efficient and effective with a plain language initiative. OIEC released a redesigned mobile-friendly website with FAQs and resources in both English and Spanish. This has resulted in an increase of 25% in traffic to the website (www.oiec.texas.gov).

OIEC staff who speak Spanish are paired with Spanish-speaking injured employees resulting in reduced translation costs and improved communication. OIEC continues to see walk-in numbers decline as injured employees increasingly seek assistance via phone and email. In FY17, OIEC assisted 26,801 walk-ins compared to 22,227 in FY18, a decrease of 17%.

→ HISTORIC INDIVIDUAL CLAIMS WITH OIEC ASSISTANCE²

TABLE 2

FY15	FY16	FY17	FY18
28,035	25,606	24,993	22,761

2—Texas Department of Insurance, Division of Workers' Compensation, 2018.



6,458
Number of BRCs with
ombudsman assistance.

BENEFIT REVIEW CONFERENCE

→ A benefit review conference (BRC) is an informal mediation held at the DWC to attempt to resolve a workers' compensation dispute, usually between the injured employee and the insurance carrier.

An injured employee may hire an attorney to assist them or request free assistance from an OIEC ombudsman. Very few injured employees choose to represent themselves at a BRC. Prior to a BRC an ombudsman will identify all issues, assist the injured employee with obtaining supporting medical documentation, and exchange information with the other parties.

More than one issue may be presented at a BRC and parties work to resolve as many issues as possible.

In FY17, ombudsmen assisted injured employees in 7,739 BRCs with 12,953 issues.³ Table 3 shows the number of BRCs held with ombudsman assistance from FY15 to FY18.

TABLE 3

→ TOTAL NUMBER OF BRCs CONCLUDED IN THE TEXAS WORKERS' COMPENSATION SYSTEM³

FY15	FY16	FY17	FY18
13,764	15,175	15,318	12,768

→ NUMBER AND PERCENT OF BRCs WITH OMBUDSMAN ASSISTANCE

FY15	FY16	FY17	FY18
5,920/43%	6,887/45%	7,739/51%	6,458/51%

³—Texas Department of Insurance, Division of Workers' Compensation, 2018.

>> Contested Case Hearing (CCH)



3,253
Number of CCHs with
ombudsman assistance.

CONTESTED CASE HEARING

→ A **contested case hearing (CCH)** is a formal hearing before DWC during which the injured employee and insurance carrier present evidence before an administrative law judge (ALJ).

A record of the hearing, including sworn testimony, is created. A CCH requires an opening and closing statement as well as direct and cross examination of witnesses. Similar to the BRC level, an ombudsman will help the injured employee gather evidence and will assist in presenting their position to the ALJ. At the CCH level an injured employee may hire an attorney or request free assistance from an

ombudsman. It is rare for an injured employee to represent themselves at a CCH. A CCH may also include more than one issue. The number of CCHs held with ombudsman assistance in FY17 was 3,770 including 8,597 disputed issues.⁴ While the number of CCHs has fluctuated, OIEC's involvement continues to be 50% or more of all concluded CCHs.

→ TOTAL NUMBER OF CCHs CONCLUDED IN THE TEXAS WORKERS' COMPENSATION SYSTEM⁴

TABLE 4

FY15	FY16	FY17	FY18
5,928	6,340	7,445	6,530

→ NUMBER AND PERCENT OF CCHs WITH OMBUDSMAN ASSISTANCE

FY15	FY16	FY17	FY18
2,442/41%	2,737/43%	3,770/51%	3,253/50%

4—Texas Department of Insurance, Division of Workers' Compensation, 2018.



1,099

Number of injured employees prepared for an appeal by an ombudsman.

OIEC APPEALS & JUDICIAL REVIEW

→ Either party may file a written appeal of the CCH decision. An ombudsman can help the injured employee file a written appeal with the DWC Appeals Panel.

Ombudsmen also assist injured employees with responses to appeals filed by insurance carriers. Total appeals have increased significantly since FY15 (see Table 5). As the burden on injured employees has continued to increase, so have the number of appeals.

Judicial review is the final step in the dispute resolution process. OIEC is statutorily prohibited from assisting at this point.⁵ Injured employees may seek attorney representation or represent themselves. OIEC is recommending the 86th Legislature increase the deadline to file for Judicial Review from 45 days to 90 days.

TABLE 5

→ TOTAL NUMBER OF CONCLUDED APPEALS⁶

FY15	FY16	FY17	FY18
2,552	2,590	3,079	3,042

→ NUMBER OF INJURED EMPLOYEES PREPARED FOR AN APPEAL BY AN OMBUDSMAN.

FY15	FY16	FY17	FY18
694/27%	891/34%	1,087/35%	1,099/36%

5—Texas Labor Code Section 404.101

6— Texas Department of Insurance, Division of Workers' Compensation, 2018.

OUTREACH PRESENTATIONS

→ OIEC's mission of educating parties about the Texas workers' compensation system is executed through outreach presentations to system participants. OIEC has more than tripled the number of outreach presentations over the past four years. Below is a small sample of our outreach partners.



267

Number of public outreach presentations in FY18.



Workers Defense Project
Proyecto Defensa Laboral



FIRST RESPONDER CLAIMS

→ FIRST RESPONDER OUTREACH EVENTS

On September 1, 2017, House Bill 2082 went into effect establishing a First Responder Liaison at OIEC. The liaison is the single point of contact for all disputes involving first responders. The agency has also conducted educational sessions for first responders in Lubbock, Houston, Wichita Falls and San Antonio.

122

Number of first responder claims assisted since House Bill 2082.

Increase the Deadline to File for Judicial Review



IF AN INJURED EMPLOYEE DISAGREES WITH THE DWC APPEALS PANEL DECISION, THEY MUST APPEAL THE DECISION TO THE APPROPRIATE COURT WITHIN 45 DAYS. IF NOT, AN INJURED EMPLOYEE FORFEITS THE RIGHT TO ANY FURTHER APPEALS.

LEGISLATIVE RECOMMENDATION:

➔ *Modify Texas Labor Code Section 410.252 to increase the deadline to file for judicial review from 45 days to 90 days.*

ISSUE:

➔ Texas Labor Code Section 410.252 permits a party to seek judicial review by filing suit no later than the 45th day after the date on which DWC mailed the party the decision of the Appeals Panel.

If the party does not file within 45 days, they forfeit their right to any further appeals for their claim.

PROBLEM:

➔ Appealing a DWC decision to court requires filing a civil lawsuit. As with any civil lawsuit most individuals seek assistance from an attorney with the process. OIEC ombudsmen are not attorneys, and the Labor Code prohibits OIEC assistance outside of the administrative dispute process. Therefore, OIEC can only educate injured employees generally about judicial review and provide a list of legal resources in their area.

Additionally, the 45 day deadline includes mailing time, so often the actual amount of time to find representation is much less than 45 days.

IMPACT ON INJURED EMPLOYEES:

➔ Increasing the filing deadline provides more time to find an attorney. Currently, injured employees struggle to find an attorney to consult with prior to the 45 day filing deadline.

In many cases a suit may be filed *pro se*, without understanding of the judicial process. Injured employees who file their own claims are more likely to miss other deadlines and not know how to respond to pleadings from insurance carrier attorneys.

UNTIL 2019, THE DEADLINE TO FILE WAS 40 DAYS. HOUSE BILL 4545 (81ST TEXAS LEGISLATURE) AMENDED THE DEADLINE TO 45 DAYS.

Compensation For Medical Causation Letter/Narrative



→ Under workers' compensation, injured employees receive monetary and medical benefits for covered injuries, illness, and deaths without regard to fault or liability. In exchange for these benefits, injured employees forfeit all other legal remedies related to their injury. When a dispute arises between the injured employee and insurance carrier, the injured employee has the burden of establishing "producing cause" (medical causation). Medical causation in workers' compensation claims refers to the burden that the injured employee has to prove that the injury was caused by the work accident. Despite the heightened burden on the injured employee, they do not have the same access to medical causation as insurance carriers.

Since 2011, there has been a significant increase in the number of disputes before the Division of Workers' Compensation (DWC) involving extent of injury, maximum medical improvement, and impairment rating. This increase is attributed to both the August 2010 ruling by the Texas Supreme Court in *Transcontinental Insurance Company v. Crump*⁸, and rules implemented by DWC in 2011.

Crump established the burden of proof needed to show a work-related activity was the "producing cause" of the employee's injury. This decision required that an injured employee provide a medical narrative on causation from a provider in order to prevail in disputes.

If a carrier requests a medical causation letter, the carrier will compensate the physician. If an injured employee or their representative (including OIEC) requests the same letter, they must compensate the physician. Other than attorney's fees, if they choose to retain one, this is the only instance in the Texas workers' compensation system where an injured employee must pay out-of-pocket expenses. Most injured employees who need such documentation do not have the financial means to compensate a physician. Nor does OIEC have money appropriated to pay for these letters, therefore both rely on a physician to do the work pro-bono.

In 2011, DWC implemented new benefit review conference rules requiring a benefit review conference be requested to dispute the first certification of the impairment rating and maximum medical improvement within 90 days. In the majority of these cases, extent of injury is also an issue and a medical causation is needed to prevail (see Table 6 below). The number of disputes requiring medical causation continues to grow. These three issues now comprise over 60% of all disputes before DWC and over 75% of cases which OIEC assists.

In 2006, 28 Texas Administrative Code (TAC) Section 134.120 - Reimbursement for Medical Documentation was adopted. OIEC commented on the rule proposal encouraging reimbursement for medical causation narratives. DWC specifically declined to include such a provision with respect to OIEC. There is no historical information explaining that decision.

Percentage of Disputed Issues at the BRC Level Involving Extent-of-Injury, Designated Doctor IR, and Designated Doctor MMI Date, Calendar Year 2009-2017⁹

TABLE 6

2010	2011	2012	2013	2014	2015	2016	2017
34%	48%	60%	59%	61%	61%	61%	65%

8—*Transcontinental Insurance Company, v. Crump*, 330 S.W.3d 211 (Tex.2010).

9—Texas Department of Insurance, Division of Workers' Compensation, 2018.

Firefighter and EMT Cancer Presumption



➔ Over the last biennium there has been an increase in the number of workers’ compensation claims filed by first responders. Of these claims, the vast majority are being denied by self-insured cities, municipalities, and intergovernmental risk pools. In 2016, 94% of all first responder cancer claims were initially denied. In 2017, 100% of all first responder cancer claims were initially denied (see Table 7).

Ordinarily, injured employees bear the burden of proving a claimed medical condition is related to their work. The “cancer presumption” under Texas Government Code, Chapter 607, shifts the burden in cancer claims from firefighters and EMTs to workers’ compensation carriers.

Self-insured cities or municipalities and intergovernmental risk pools have taken the position that the cancer presumption only applies to prostate cancer, testicular cancer, and non-Hodgkin’s lymphoma. The Division of Workers’ Compensation has applied the cancer presumption to a wider range of cancers.

Only a tiny percentage of firefighters and EMTs file disputes after an initial denial. In 2018, there were 43 first responder cancer claims filed of which 35 were denied. Only two of these claims went through the dispute resolution process. Currently, the only way the cancer presumption can be applied is if the dispute reaches a contested case hearing (a formal hearing before an administrative law judge).

When early intervention and treatment are essential to beating cancer, firefighters and EMTs may be reluctant to enter into dispute resolution for several reasons:

- A desire to focus energy on fighting the disease instead of entering a lengthy administrative dispute battle with insurers.
- A dispute with the workers’ compensation insurer about a cancer denial may delay treatment.
- Greater degree of flexibility in selecting providers and treatment centers outside of the workers’ compensation system.
- Availability of group health insurance benefits as an alternative to workers’ compensation medical benefits.
- Lack of awareness about the high likelihood of prevailing at a hearing if they choose to dispute the denial.

FIRST RESPONDER WORKERS' COMPENSATION CLAIMS REPORTED TO DWC, INJURY YEARS 2012–OCTOBER 2018¹⁰ TABLE 7

Injury Year	Number of Claims	Number of Claims Denied by Insurance Carrier	Number of Claims Where Denial Was Disputed
2012	16	13	3
2013	13	10	7
2014	14	12	4
2015	23	29	5
2016	35	33	7
2017	24	24	2
2018	43	35	2
TOTAL	168	146	30

¹⁰—Division of Workers’ Compensation, Biennial Report to the 86th Texas Legislature.

Overview of the Texas Workers' Compensation System



→ Workers' compensation was established over 100 years ago as a “grand bargain” between employees and labor. Injured employees give up their ability to sue employers in civil court for on-the-job injuries; in exchange injured employees receive defined benefits in a no-fault system. Workers' compensation provides income, medical, death, and burial benefits to employees who have a work-related injury or illness. Income and medical benefits are the two primary benefits employees most often utilize. The Texas workers' compensation system has undergone major reforms first in 1989 and then again in 2005. These reforms have resulted in significantly reduced costs for employers, more participation in the system, and improved outcomes for injured employees.

The number of claims, disputes, and medical costs continue to decline. Throughout the next several pages we will address the system in greater detail.

TEXAS WORKERS' COMPENSATION SIGNIFICANT DATES

- 1913—*Industrial Accident Board* established
- 1989—*Texas Workers' Compensation Act* passes
- 2005—*House Bill 7 (Workers' Compensation Reforms)* passes
- 2006—*Office of Injured Employee Counsel* opens

STATUTORY AUTHORITY

→ The Texas Labor Code Section 404.106 requires OIEC to provide an analysis of the ability of the Texas workers' compensation system to provide adequate, equitable and timely benefits to injured employees at a reasonable cost to employers.

BENEFITS FOR COVERED EMPLOYEES

→ For employees who are injured on the job and are covered under their employer's workers' compensation insurance, there are four types of workers' compensation benefits:

Income benefits (other than impairment income benefits) replace a portion of wages lost because of a work-related injury or illness.

Medical benefits pay for necessary medical care to treat a work-related injury or illness.

Death benefits replace a portion of lost family income for eligible family members of employees killed on the job.

Burial benefits pay for some of the deceased employee's funeral expenses to the person who paid the funeral expenses.

Types of Income Benefits



→ Income benefits replace a portion of wages an injured employee loses because of a work-related injury.

Temporary income benefits (TIBs) – TIBs are paid during the period of temporary disability (lost time from work or underemployment) while the injured employee is recovering from an on-the-job injury.

Impairment income benefits (IIBs) – IIBs are paid to compensate injured employees for permanent impairment when the injured employee reaches maximum medical improvement.

Supplemental income benefits (SIBs) – SIBs are paid to injured employees for ongoing disability after IIBs have been exhausted. Only employees with at least a 15 percent impairment rating and who are unemployed or underemployed as a result of their work-related injuries are eligible to receive SIBs.

Lifetime Income Benefits (LIBs) – LIBs are paid for the life of the injured employee for specific catastrophic injuries as set forth in Section 408.161 of the Texas Labor Code.

Income benefits are determined based on the calculation of the injured employee's average weekly wage (average amount of weekly wages earned during the 13 weeks immediately before the injury).

The maximum and minimum benefit rates for workers' compensation income benefits are set pursuant to Labor Code Section 408.047. These figures are adjusted annually. Table 8 shows minimum and maximum weekly benefit amounts.

Workers' compensation income or death benefit payments can be paid by a check, direct deposit, or access card. An access card is any card or other payment method that may be used by an injured employee to initiate an electric fund transfer from an insurance carrier's bank account.

Allowing for payment methods other than check helps injured employees in many ways. The check does not need to be physically deposited, making the funds available more quickly to the injured employee. It also eliminates the possibility of the check being lost in the mail. In extreme circumstances like Hurricane Harvey, injured employees who chose to have their benefits delivered by direct deposit or electronic fund transfer were still able to access their benefits even if they were temporarily displaced or the mail could not be delivered.

STATE AVERAGE WEEKLY WAGE (SAWW)—MAXIMUM/MINIMUM WEEKLY BENEFITS¹¹

TABLE 8

Fiscal Year	SAWW* State Average Weekly Wage	Temporary Income Benefits (TIBs) max	TIBs min	Impairment Income Benefits (IIBs) max	IIBs min	Supplemental Income Benefits (SIBs) max	SIBs min	Lifetime Income Benefits (LIBs) max	LIBs min	Death Benefits max	Death Benefits min
2019 (10/1/18- 09/30/19)	\$937.70	\$938.00	\$141.00	\$656.00	\$141.00	\$656.00	N/A	\$938.00	\$141.00	\$938.00	N/A
2018 (10/1/17- 09/30/18)	\$913.37	\$913.00	\$137.00	\$639.00	\$137.00	\$639.00	N/A	\$913.00	\$137.00	\$913.00	N/A

11—Texas Department of Insurance, Division of Workers' Compensation website <http://www.tdi.texas.gov/wc/employee/maxminbens.html>.

Adequate/Equitable/Timely Income Benefits



➔ Income benefits, which are sometimes called indemnity or lost wages benefits, replace a portion of wages that are lost because of a work-related injury or illness. In Texas there are five types of income benefits.

There are limits to workers' compensation income benefits. You will only receive a portion of lost wages. In addition, injured employees cannot receive any payment for pain and suffering above income benefits. The maximum amount of time that an injured employee may be eligible receive TIBs, IIBs, and SIBS is 401 weeks.

In terms of indemnity benefits, the 2018 Workers' Compensation Research Institute Report found that Texas was among the lowest of the 18 states studied. The study looked at TIBs, IIBs, and SIBs paid between 2014 and 2017 and found that the amount of indemnity benefits per claim was 33% lower than the median of the states studied.¹²

An injured employee will become eligible for TIBs after they miss 8 days of work. TIBs payments are paid on a weekly basis in the manner requested by the injured employee. According to the 2018 Workers' Compensation Research Institute Report, injured employees in Texas are receiving payments more quickly than in 2009.¹²

In 59 percent of the claims in Texas the first income benefit payment was made within 21 days of an injury. That is a higher percentage than many states, indicating faster first income benefit payments on average. (Notice of injury to the insurance carrier and the injury reporting time affect the time of the first income benefit payment.)

If there is a financial hardship, an injured employee may request an advance of their workers' compensation benefits (if they are likely to be entitled to income benefits sufficient to cover the amount of the advance). An advance will reduce the amount of future income benefits. Payments will be paid in this reduced amount until the insurance carrier recovers the amount advanced.

IN 59 PERCENT
OF THE CLAIMS IN
TEXAS THE FIRST
INCOME BENEFIT
PAYMENT WAS MADE
WITHIN 21 DAYS OF
AN INJURY.

¹²—Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, Setting the Standard: An Analysis of the Impact of the 2005 Legislative Reforms on the Texas Workers' Compensation System, 2018 Results.

>> Analysis of the Texas Workers' Compensation System

and occupational therapists also provide medical care to injured employees.

Like other health care delivery systems, the use of physician extenders (i.e., physician assistants and nurse practitioners) has increased in the Texas workers' compensation system, especially for initial medical visits. For example, in 2005, only about one percent of injured employees saw a physician assistant on their initial medical visit, compared to roughly 12 percent of injured employees in 2016.¹⁵ The increasing use of physician extenders and their changing role in treating injured employees is a topic that DWC should continue to monitor in the future.

Chiropractors. Chiropractors do not generally serve as network treating doctors, but rather as referral providers. This differs from non-network medical care, because the Texas Labor Code and DWC rules allow non-network employees to select chiropractors as well as MDs, DOs, podiatrists, dentists, and optometrists as treating doctors. As a result, the doctors who serve as treating doctors in networks are providers who are authorized to write prescriptions and use pharmacy services as part of their treatment protocols.

Pharmacy. In 2011, DWC adopted one of the first workers' compensation pharmacy closed formularies in the nation. Prescription drugs that are excluded from the formulary require preauthorization by the insurance carrier before they can be dispensed. DWC and the Workers' Compensation Research and Evaluation Group (REG) have tracked the positive results of the pharmacy closed formulary since 2011, including fewer claims receiving "N" (not recommended) drugs, fewer opioids prescribed to injured employees, and lower pharmacy costs system wide.¹⁵

Opioids. In particular, the pharmacy closed formulary has had a tremendous impact on the use of opioids in the Texas workers'

compensation system. Overall, the total number of opioid prescriptions declined by 11 percent and the number of "N" drug opioid prescriptions declined by 81 percent between 2011 and 2012. The pharmacy closed formulary also impacted opioid dosage levels for injured employees, which reduces the potential for overdoses and possible deaths.

According to TDI's report, 2018 Setting the Standard, 60 percent of employees surveyed in 2018 reported "no problem" in getting the medical care they felt they needed for their work-related injury, a small improvement from 53 percent in 2016.¹⁵ The availability of doctors who are accepting workers' compensation patients continues to be an issue that should be monitored closely.

60 PERCENT OF INJURED EMPLOYEES SURVEYED REPORTED "NO PROBLEM" IN GETTING THE MEDICAL CARE THEY NEEDED.

THE TOTAL NUMBER OF ACTIVE PHYSICIANS WHO TREATED WORKERS' COMPENSATION CLAIMS, SERVICE YEARS 2000-2015

TABLE 9

Fiscal Year	2013	2014	2015	2016	2017
ACTIVE IN TEXAS MEDICAL BOARD (TMB)	45,353	47,137	50,120	50,275	51,930
TREATING WC PATIENTS	18,567	18,375	18,458	18,597	18,419

Source: Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2016. Notes: 'Active in TMB' refers to the total number of active physicians licensed by the Texas Medical Board. 'Treating WC patients' refers to the number of participating physicians who billed at least one service in a given service/calendar year according to the medical billing data. *2004 shows an average of 2003 and 2005 due to incomplete data.

Reasonable Costs to Employees



TEXAS IS THE ONLY STATE WHERE
WORKERS' COMPENSATION
INSURANCE IS NOT MANDATORY.

➔ In order for employers to be able to provide workers' compensation insurance coverage for their employees, it is important that workers' compensation insurance premiums are competitive. This is especially true in Texas where traditional workers' compensation coverage is not mandatory.

Texas had a lower workers' compensation premium rate in 2018 than 42 other states. Texas' premium rate is approximately 21 percent below the median premium rate in the nation, according to Oregon's Workers' Compensation Premium Rate Ranking Summary.¹⁶ The Oregon study is considered the definitive ranking for workers' compensation costs in the nation. It compares the average premium rates for all 50 states and

the District of Columbia. The 2018 DWC Biennial Report indicates that the average workers' compensation premium cost for Texas employers per \$100 of payroll was \$0.76 in 2016 and has continued to steadily decrease since major legislative reforms in 2005.¹⁷

Since 2003 the average premium per \$100.00 payroll has decreased from \$2.32 to \$0.76 in 2016, a reduction of 305%.

INCREASE IN NUMBER OF EMPLOYEES COVERED IN TEXAS

➔ According to the 2018 DWC Biennial Report, 72 percent of Texas employers carried workers' compensation insurance in 2018. This is a decrease from 78 percent in 2016.

This equates to approximately 1.8 million employees who work for non-subscribing employers. This does not mean the employee has no coverage because many non-subscribing employers offer alternative occupational benefit plans covering work related injuries. About 64 percent of the non-subscriber employee population are covered by some form of an alternative plan.¹⁷

THE AVERAGE PREMIUM PER \$100 OF PAYROLL BY POLICY YEAR

TABLE 10

Fiscal Year	2011	2012	2013	2014	2015	2016
AVERAGE PREMIUM	\$1.05	\$1.01	\$.99	\$.96	\$.85	\$.76

Source: The Texas Workers' Compensation Financial Data Call and data compiled by the National Council on Compensation Insurance, 2018.

16—Oregon Department of Consumer & Business Services Workers' Compensation Premium Rate Ranking, October 2018.

17—Division of Workers' Compensation, Biennial Report to the 86th Legislature.



Conclusion

➔ Since the major legislative reforms within the workers' compensation system in 2005, the Texas workers' compensation system has continued to improve. Premiums and costs to employers have dropped significantly resulting in more employees being covered by a workers' compensation plan. Access to medical care, timeliness of treatment, and earlier return to work timeframes have all improved, making Texas a model for other states.

OIEC assists injured employees in over half of all proceedings within the workers' compensation system and

continues to see an increase in the number of disputed issues per proceeding. Additionally, OIEC has seen a noticeable shift in the nature and complexity of disputes, specifically an increase in disputes which require "producing cause" (medical causation).

OIEC and the services it provides are unique to Texas. No other state offers the level of assistance, education, and advocacy to injured employees. OIEC looks forward to continuing to work with the 86th Texas Legislature to set the national standard for injured employee assistance.

This document is available online at www.oiec.texas.gov/resources/reports.html

The source for the data in the report comes from the Office of Injured Employee Counsel's internal workload reports and performance measure unless otherwise stated. Some percentages may be rounded.



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