



OIEC Quarterly Review

Issue No. 5

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OFFICE OF INJURED EMPLOYEE COUNSEL

Letter from the Public Counsel

The Office of Injured Employee Counsel (OIEC) has been looking forward to the beginning of the legislative session for a number of reasons. It has given us the opportunity to become better acquainted with some of the elected officials and their staffs than we were able to do during 2006, the first year in which we became operational. We have also been able to submit legislative recommendations that we felt would enhance the effectiveness of HB 7, and we are particularly grateful for the positive response that our recommendations have received. State Representatives and Senators, Republicans and Democrats alike, have submitted bills in support of every one of our recommendations.

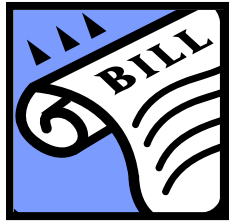
We have also received support for all of our appropriation requests and the programs that they will fund. My confirmation hearing was short and the Senators reacted warmly to me. I feel that the legislative response has been an expression of confidence in OIEC's performance and plans. In early 2006, I stated that my ambition was to make our agency a model agency for the nation, and the legislative support that we have received may enable that dream to come true.

I am frequently asked what should be done in order to have the workers' compensation system work best, and I have consistently given the same answer. Each of the stakeholders in the system must recognize that all of the other stakeholders have legitimate interests that must be respected by the other stakeholders. Employers have a right to expect reasonable premium charges; carriers have a right to a reasonable profit for their stockholders; health care providers must be paid an amount that will enable them to provide quality medical care; and last, but certainly not least, injured workers have a right to quality medical care, prompt payment of indemnity benefits, and an opportunity to return to work as quickly as the limits of their injury will permit.

I am equally certain that the stakeholders will require some encouragement by the Legislature, the Division of Workers' Compensation and the Texas Department of Insurance to create balance in the system, but the Commissioners of those organizations are as committed as I am to the same ultimate goals.



Legislative Update: Bills to Watch



OIEC is thankful for the legislative support it has received during the agency's first legislative session. In the last issue of *The Quarterly Review*, OIEC provided a brief summary of the agency's legislative recommendations found in OIEC's legislative report that is required by section 404.106 of the Texas Labor Code (full report located on the agency's website at: <http://www.oiec.state.tx.us/resources/publications.html>). Since that time, OIEC's recommendations have been authored by various members of the 80th Texas Legislature, Regular Session.

The following is a list of OIEC's recommendations and their respective bill authors:

1. Return to Work (OIEC's Legislative Report, page 36): House Bill (HB) 886 authored by the House of Representatives' Business and Industry Committee Chair Giddings;
2. Peer Review Process (Legislative Report, page 38): HB 1464 authored by Representative Zedler, HB 1006 authored by Chair Giddings, and Senate Bill (SB) 1767 authored by Senator Watson;
3. Interlocutory Orders (Legislative Report, page 41): HB 1465 authored by Representative Zedler;
4. Designated Doctor Disputes (Legislative Report, page 44): HB 1664 authored by Representative Zedler and SB 1387 authored by Senator Van de Putte;
5. OIEC's access to medical records (Legislative Report, page 48): HB 888 authored by Chair Giddings, HB 471 authored by Representative Solomons, and SB 1768 authored by Senator Watson; and
6. Judicial Review (Legislative Report, page 49): SB 287 authored by Senator Lucio and HB 1301 authored by Representative Zedler.

OIEC sends its appreciation to the legislative offices that support the agency and its mission to assist, educate, and advocate on behalf of Texas' injured employees in the workers' compensation system.

OIEC Builds Alliances with Equal Justice Center

The University of Texas' Equal Justice Center released a report that states that the State of Texas through the Texas Department of Insurance's Subsequent Injury Fund pays workers' compensation insurance carriers hundreds of thousands of dollars each year because injured employees are unsuccessful in obtaining attorney representation at the district court level to defend the injured employee's benefits awarded at the administrative level. The report also shows that insurance carriers are twice as likely to file suit to overturn a workers' compensation ruling as an injured employee. The report is titled, "Injustice Added to Injury: Judicial Review in the Texas Workers' Compensation System" and can be found at: <http://texasinjuredworkers.googlepages.com/home>.

OIEC has worked extensively with the author of the report in an effort to heighten public awareness of the hardship faced by injured employees during judicial review. OIEC is hopeful that Senator Lucio's SB 287 and Representative Zedler's companion HB 1301 that sponsor OIEC's recommendation to appoint attorneys to represent those injured employees who prevailed at the administrative level in the insurance carrier's appeal at the district court will mitigate the problem of injured employee's losing their benefits due to a lack of legal representation during judicial review.

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OIEC Regional Staff Attorney News



OIEC is very pleased to be fully staffed with Regional Staff Attorneys. There are six Regional Staff Attorneys located in Austin, Fort Worth, Houston East, Houston West, Weslaco, and San Antonio to provide assistance to the Ombudsmen located across the state. Together the Director of Legal Services and the Regional Staff Attorneys have:

- 35 years of combined workers' compensation experience representing both injured workers and insurance carriers, as well as, experience working for the regulatory agency overseeing workers' compensation;
- 16 years of experience in insurance defense work;
- 10 years of experience in health care subrogation law;
- 7 years of experience representing injured employees in judicial review of workers' compensation administrative decisions in district and county courts;
- Over 3 years combined experience presiding at administrative dispute resolution proceedings;
- 2 years experience in representing a state agency before the State Office of Administrative Hearings and in appeals of final agency orders in county and district courts; and
- 5 years of combined experience as judicial clerks for United States Immigrations Judges, a United States District Court Judge, and the United States Court of Appeals for the Seventh Circuit.

The Regional Staff Attorneys bring a wealth of varied experience to OIEC and are eager to provide legal assistance to the Ombudsmen as they provide assistance to the injured employees of Texas in navigating the workers' compensation system.

Regional Staff Attorneys Perform Ombudsman Training

In an ongoing effort to provide practical, hands-on training to the Ombudsmen to help them provide assistance to injured employees in the workers' compensation dispute resolution process, OIEC Regional Staff Attorneys are conducting a second session of small-group practical skills training. This training follows the model problem that was the subject of the direct and cross-examination practical skills training conducted in October 2006. In this training, there is a presentation made by a Regional Staff Attorney that addresses the training topic: direct and cross-examination of expert witnesses. Then small groups of Ombudsmen have the opportunity to conduct a direct and cross-examination of a person playing the role of an expert witness. The mock hearing is followed by a session where the Ombudsmen are provided constructive feedback about the examinations they conducted.

As part of the training, the Regional Staff Attorneys have also developed issue-specific guidelines for the Ombudsmen to consider when they are called upon to provide assistance to injured employees in cases where expert evidence is required to prove an element of the injured employee's case and where they assist injured employees in responding to the expert evidence presented by the insurance carrier.

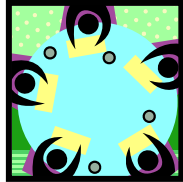
OIEC has become a registered provider of continuing education, which permits the agency to create and provide training to allow the Ombudsmen to obtain the necessary credits to maintain the required workers' compensation adjuster's license. For attending and participating in the practical skills training, the Ombudsmen receive three hours of continuing education units.

In this training, there is a presentation made by a Regional Staff Attorney that addresses the training topic: direct and cross-examination of expert witnesses.



Ombudsman Team Lead and Regional Staff Attorney Conference

On March 1 and 2, 2007, the seven Team Lead Ombudsmen and the six Regional Staff Attorneys traveled to Austin for a conference. This conference provided an opportunity for the Team Lead Ombudsmen and the Regional Staff Attorneys to discuss many topics which impact their work environment. OIEC believes that by bringing its employees from the field, who are responsible for the bulk of service delivery to the injured employees of Texas, to Austin, a foundation for collaboration and team work is established that leads to increased success as we work together to serve OIEC's mission to advocate, educate, and assist.



Second Annual OIEC Conference Scheduled

The second annual OIEC Conference has been scheduled for July 11 - 13, 2007. At this conference, the Ombudsmen, Ombudsman Assistants, and Regional Staff Attorneys from around the state will travel to Austin for two full days of meetings/training. The conference provides a forum for presenting agency updates to ensure that all OIEC employees receive consistent information about the agency, its mission, and its objectives. It will also afford an opportunity for OIEC to celebrate its accomplishments and to formulate a plan to meet the challenges and opportunities that remain in protecting the interests of the injured employees of Texas in the workers' compensation system.

Employer's Notification of Ombudsman Program to Employees

All employers participating in the workers' compensation system must post notice of the OIEC Ombudsman Program.

As of December 20, 2006, all employers participating in the workers' compensation system must post notice of OIEC's Ombudsman Program. This notice must be posted in the personnel office (if the employer has a personnel office) and in the workplace where each employee is likely to see the notice on a regular basis.

The notice is available at <http://www.oiec.state.tx.us/resources/employernotice.html>.

The notice must be publicly posted in English, Spanish, and any other language that is common to the employer's employees. The notice is currently available in English, Spanish, Chinese, and Vietnamese.



Brochures Available Online



Two brochures are now available on the OIEC website: *About the Office of Injured Employee Counsel* and *Injured Employees' Rights and Responsibilities*. The brochures are available in English and Spanish and can be downloaded at: <http://www.oiec.state.tx.us/resources/publications.html>. The brochures are also available in every local Texas Department of Insurance, Division of Workers' Compensation field office.

Also, the traditional two-page format of the Injured Employees' Rights and Responsibilities is still available on the OIEC website at: <http://www.oiec.state.tx.us/resources/ierightsresp.html>. This version is now available in English, Spanish, Chinese, Korean, and Vietnamese.

OIEC Website Update

The OIEC website has been up and running for almost one year and the number of hits the website receives per month has nearly quadrupled in that amount of time! Last quarter the OIEC website received over 54,000 hits.

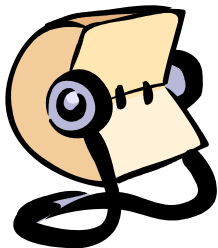
The areas of most interest include:

- Employer Notification of OIEC's Ombudsman Program (over 8800 hits this quarter)
- Injured Employees' Rights and Responsibilities in English (over 2400 hits this quarter)
- Injured Employees' Rights and Responsibilities in Spanish (over 600 hits this quarter)
- Ombudsman Program (over 1800 hits this quarter)

*The OIEC website
address is:
www.oiec.state.tx.us*

OIEC will continue to improve and expand the information that is provided on the OIEC website in an effort better serve the injured employees in Texas.

Contact Us



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Please provide feedback, ask questions, or send a request to be added to the *Quarterly Review* distribution list at: OIECinbox@oiec.state.tx.us.