



Texas Department of Insurance

Division of Workers' Compensation, Office of the Commissioner

7551 Metro Center Drive, Ste 100, MS 1, Austin, Texas 78744-1609
512-804-4400 telephone • 512-804-4401 fax • www.tdi.state.tx.us

October 1, 2008

The Honorable Rick Perry,
Governor

The Honorable David Dewhurst,
Lieutenant Governor

The Honorable Tom Craddick,
Speaker of the House of Representatives

Dear Governors and Speaker:

In accordance with House Bill 7, Section 8.011 (79th Legislature, Regular Session, 2005), the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) submits the enclosed report regarding implementation of the Return-to-Work Pilot Program for Small Employers in Texas. The report details the status of the program, and recommendations regarding the continuation of the pilot program, including any changes required to enhance its effectiveness.

If you have any questions regarding this report, please contact me at 512-804-4403.

Sincerely,

A handwritten signature in black ink, appearing to read "Rod Bordelon".

Rod Bordelon,
Commissioner of Workers' Compensation

cc: Members of the Legislature
Mike Geeslin, Commissioner of Insurance

Implementation of the Return-to-Work Pilot Program for Small Employers in Texas



Texas Department of Insurance
Division of Workers' Compensation

Rod Bordelon, Commissioner of Workers' Compensation
October 1, 2008

Implementation of the Return-to-Work Pilot Program for Small Employers in Texas

Introduction

House Bill (HB) 7, Section 8.011 (79th Legislature, Regular Session, 2005), requires Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) to issue a report to the Governor, Lieutenant Governor, Speaker, and the Texas Legislature regarding the implementation of the Return-to-Work (RTW) Pilot Program for Small Employers in Texas. This report provides information on the status of the RTW pilot program and recommendations regarding the continuation of it, including any changes required to enhance the program's effectiveness.

Legislative History

One of the fundamental goals for the Texas workers' compensation system established by HB 7 is to ensure that each injured employee receives services to facilitate his or her return to work as soon as it is considered safe and appropriate by the employee's health care provider. The same legislation created a RTW pilot program for eligible small employers to reimburse them for allowable expenses that they incur, up to \$2,500, to make workplace modifications necessary to accommodate an injured employee's return to modified or alternative work (Texas Labor Code §413.022). Workplace modifications may include special equipment, tools, furniture or devices, or other associated adjustments that can allow an injured employee to stay at or return to work. The legislation also established a reimbursement fund of \$100,000 per year; and the fund is financed through administrative penalties.

HB 886 (80th Legislature, Regular Session, 2007), modified the RTW pilot program to include a preauthorization option for employers that guarantees reimbursement of the expenses incurred by the employer in implementing the modifications and changes, unless TDI-DWC determines that the modifications and changes differ materially from what was preauthorized. The current RTW pilot program funding expires on September 1, 2009.

RTW Pilot Program for Small Employers Implementation

The Commissioner of Workers' Compensation adopted rules to define the terms for and purpose of the RTW pilot program, provide for the appointment of a TDI-DWC RTW pilot program account administrator and the administrator's responsibilities, define the reimbursement fund and approval criteria, define employer eligibility criteria and potential violations for misuse of the program, and delineate application requirements and criteria for evaluation of applications, (28 Texas Administrative Code (TAC) §§137.41-137.48, effective February 22, 2006). The Commissioner of Workers' Compensation later adopted 28 TAC §137.49, effective February 7, 2008, to implement the optional preauthorization plan authorized in HB 886.

Publicizing the RTW Pilot Program for Small Employers

TDI-DWC has mailed approximately 2,700 brochures and sent approximately 7,400 e-mails to Texas employers with less than 50 employees and chambers of commerce. TDI-DWC also issued news releases describing the RTW pilot program in February 2006, and again in February 2008 upon the adoption of the optional preauthorization rules.

TDI-DWC collaborated with the Texas Workforce Commission (TWC), which published articles about the RTW pilot program in its *Texas Business Today* quarterly newsletter in Summer 2005, Winter/Spring 2006, and Spring 2007. In 2007, TWC reported that this newsletter had 100,000 subscribers. TWC also invited TDI-DWC staff to present information about the RTW pilot program at 30 Texas Business Conferences that were held statewide from February 2006 through August 2008.

Between the effective date of the RTW pilot program rule in February 2006 and September 2008, approximately 16,000 people received RTW training by TDI-DWC outreach and education staff, which included discussions about the RTW pilot program and its benefits to eligible small employers. TDI-DWC staff also provided informational material about RTW and the RTW pilot program to approximately 6,400 employers through the TDI-DWC Occupational Safety and Health Consultation (OSHCON) program. TDI-DWC also maintains information about RTW programs on its website.

TDI-DWC staff routinely delivers RTW training, which includes modules on the RTW pilot program, to Department of Assistive and Rehabilitative Services (DARS) vocational counselors and encourages them to explain the program to employers as an option for injured employees returning to the workplace.

Applicants and Reimbursements Issued

Since the implementation of the RTW pilot program in February 2006, TDI-DWC has received five applications for reimbursement. Two applications did not meet the statutory requirements for eligibility, one application was withdrawn due to some unexpected medical issues that arose for the injured employee, and two were successfully reimbursed. Feedback from both employers after their reimbursements were complete indicated that they were very pleased with the process and outcome of using the RTW pilot program.

Recommendations

TDI-DWC suggests the following recommendations that may increase employer participation in the program:

- The RTW Pilot Program for Small Employers should be extended for two years.
- Increase the current maximum reimbursement amount for workplace modifications from \$2,500 to \$5,000. This may encourage participation by small employers who may need more extensive or sophisticated modifications in order to return an injured employee to meaningful employment.
- Restructure the program to allow employers to receive some or all of the funding in advance. If this is allowed, TDI-DWC envisions that agency staff would need to verify the modifications that are made by the employer to ensure that the funds were used for the intended modifications.

Although TDI-DWC has marketed the RTW pilot program to thousands of businesses in Texas, very few employers have availed themselves of this resource. These recommendations, if implemented, would strengthen the agency's ability to market the program. TDI-DWC will continue to work with stakeholders to identify specific injured employee populations and employers who would benefit from the RTW pilot program for small employers.