

# Office of Injured Employee Counsel

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## Agency at a Glance

The Office of Injured Employee Counsel (Office) was created in 2005, when the Legislature abolished the Texas Workers' Compensation Commission, transferred its regulatory duties to the Texas Department of Insurance (TDI), and moved its employee assistance functions to this newly established state agency. The Office represents the interests of workers' compensation claimants. To achieve its mission, the Office carries out the following key activities.

- Assists unrepresented injured employees in navigating the Division of Workers' Compensation's (DWC) dispute resolution process.
- Advocates on behalf of injured employees as a class in rulemaking and judicial proceedings.
- Educates injured employees regarding the Texas workers' compensation system.

## Summary

Nearly six years after the sweeping reforms made by the 79th Legislature, the Sunset review of the Office found the agency, and the workers' compensation system as a whole, still in the wake of incredible transition. Overall the system seems to be healthier, with stabilizing medical costs, fewer claims and disputes, lower insurance rates, fewer lost days of work, and better return-to-work outcomes. The structural transition of the Office has worked, by providing useful assistance to injured workers, thus allowing DWC to focus on its role in the system. The Sunset Commission focused on evaluating the Office's role within the evolving system and identifying possibilities to fine-tune past reform efforts.

The following material summarizes Sunset Commission's recommendations on the Office of Injured Employee Counsel.

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*Created as part of the 2005 reforms, the Office provides beneficial education and assistance to individuals with workers' compensation claims.*

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## Issue 1

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### ***Texas Has a Continuing Need for the Office of Injured Employee Counsel.***

The Sunset Commission found that Texas has a continuing need to help injured employees navigate the complex workers' compensation system. The Commission further concluded that the Office is well-positioned to positively affect the efficiency of DWC's dispute resolution process by helping to resolve disputes quickly and as informally as possible to avoid the need for more formal and lengthy proceedings.

### **Recommendations**

#### ***Change in Statute***

##### **1.1 Continue the Office of Injured Employee Counsel for six years.**

This recommendation would continue the Office of Injured Employee Counsel as an independent agency, responsible for aiding injured employees in the workers' compensation system. The shorter continuation date coincides with that of DWC, giving the Legislature the opportunity to monitor the ongoing implementation of major reforms from 2005.

##### **1.2 Apply standard Sunset across-the-board requirements to the Office of Injured Employee Counsel.**

This recommendation would require the Office to maintain a system to promptly and efficiently act on complaints filed with the Office. The language would require the Office to maintain information on the parties to a complaint, the subject matter, a summary of results, and the disposition. The recommendation also would require the Office to make information about its complaint procedures public and periodically notify the complaint parties of the status of the complaint.

The recommendation would also ensure that the Office develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution, conforming to the extent possible to model guidelines by the State Office of Administrative Hearings. The agency would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. Because the recommendation only requires the agency to develop a policy for this alternative approach to solving problems, it would not require additional staffing or other expense. This requirement for alternative dispute resolution would not affect the way the Office participates in DWC's administrative dispute resolution process. In addition, the required policy would not affect dispute resolution that falls under TDI's authority through the Office's administrative attachment to that agency.

#### ***Management Action***

##### **1.3 Direct the Office to work with DWC to ensure injured employees are fully prepared by Ombudsmen before attending a DWC Benefit Review Conference.**

The review found that DWC struggles with the inefficiency of more than 13,000 rescheduled Benefit Review Conferences a year, mostly due to unprepared parties. The office can play a role in reducing these inefficiencies.

This recommendation directs the Office to take steps toward reducing the number of rescheduled proceedings at DWC, through efforts by Ombudsmen to fully prepare injured employees they are assisting. These efforts could include refraining from scheduling proceedings until after an Ombudsman

has initially met with an injured employee, scheduling the Ombudsman's initial meeting with an injured employee within a certain timeframe before a proceeding, or ensuring certain important documents are possessed by the injured employee before attending a proceeding.

## Issue 2

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### ***The Office Has Inappropriate Access to Claims Information Held by the Division of Workers' Compensation.***

The Office performs two of its primary roles – assisting injured employees in dispute resolution hearings and advocating for injured employees as a class – in adversarial proceedings in which the Office acts as one of several interested parties before a neutral regulator, such as DWC. The Sunset Commission found that the Office's administrative attachment to DWC, and statutory language allowing the Office to obtain otherwise confidential information, gives the Office access to information that other parties cannot receive. This situation places the Office in a potentially more favorable position than other parties in the workers' compensation system. Limiting this access would remove the appearance of impropriety, as well as solidify the Office's independence from DWC without preventing the Office from fulfilling its statutory duties.

### **Recommendations**

#### ***Change in Statute***

##### **2.1 Limit the Office's authority to access claim files for injured employees the Office is not directly assisting.**

This recommendation would remove existing language that excepts the Office from the confidentiality requirements surrounding claim file information and that directs DWC to release such information to the Office. The recommendation would also remove language granting the Office broad access to information from all executive agencies. Instead, the recommendation would clarify that the Office has the same access to information that another, similarly situated party has and is allowed access to a claim file when officially assisting an injured employee.

Until the implementation of DWC's new computer system occurs, the changes made by the recommendation would require the Office to self-enforce the legal limits on its authority to access information. The Office would be required to work with DWC to implement new procedures by which the Office will request information from DWC. These procedures should reflect the practical needs of the Office's day-to-day use of the DWC computer system, yet strive to reflect the manner in which other system participants request and access information.

In addition, the recommendation would not restrict the Office's access to information it uses to generally educate injured employees and death beneficiaries about the existence of the Office and its services, which it does to fulfill its statutory duty to assist them in obtaining workers' compensation benefits. Such information may include the names and contact information of employees whose injuries are reported to DWC, but would not include other information included in the claims files, such as sensitive medical claim information.

### ***Management Action***

#### **2.2 Direct the Office to work with DWC to complete firewalls in the new database system.**

This recommendation directs the Office to work with DWC during its development of the new computer system to include proper firewalls restricting information. These firewalls would ensure that the Office has the appropriate access to information needed to perform its duties without receiving information that is statutorily protected.

### **Fiscal Implication Summary**

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None of the recommendations regarding the Office would result in additional costs to the State.