JURISDICTION:  TEXAS

ENVIRONMENT


Labour Force  8 million (1997)

Demographic and Economic Indicators  Texas has enjoyed a prolonged period of strong growth which is expected to continue for the foreseeable future. Growth areas include high-technology and construction. Real gross domestic product is growing at a rate of about 3.5% annually, employment is growing at 2% per year, inflation is about 3% and the unemployment rate is about 6%. The population of the state is growing by about 1.5% per year.

The average weekly wage in Texas is $508.26 (1997).
GOVERNANCE & ADMINISTRATION

Nature of System  A state-based, voluntary\(^1\) workers compensation program with a competitive state fund\(^2\).

Principles and Mandate  The objective of the Texas workers compensation scheme is to provide competitive, low cost workers compensation coverage. Given the voluntary nature of the system, the state competitive fund is intended to increase the availability and affordability of workers compensation insurance by providing quality service and controlling costs. The state fund is also the insurer of last resort.

Access to Litigation  Employees covered by workers compensation insurance have no right to sue their employer with respect to covered injuries.

Scope of System

Who is Covered?  All employees of employers who elect to obtain coverage are covered by the scheme. Insurance is mandatory for public entities.

A 1996 study estimated that about 61% of employers carry workers compensation coverage. This means that about 39% of employers representing about 25% of employees have elected not to have workers compensation insurance or to be certified self-insurers.

What is Covered?  All injuries and diseases directly resulting from employment, including occupational diseases.

Mental trauma injuries are covered by workers compensation insurance, but mental or emotional trauma that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury.

\(^{1}\) In only three U.S. states is workers’ compensation insurance voluntary: Texas, New Jersey and South Carolina. Other examples of countries with voluntary systems include Argentina, Hong Kong and Bermuda.

\(^{2}\) The competitive state fund began writing policies in 1992; the Texas Workers Compensation Insurance Facility was retired in January 1, 1994.
Self Insurance

Self-insurance is permitted and self-insurers must be certified by the Texas Workers Compensation Commission (TWCC). There is no provision for group self-insurance.

Organizational Framework

The Texas Workers Compensation Insurance Fund (state fund) is a publicly owned competitive fund administered by the TWCC. The state fund and private insurers are regulated by the Texas Department of Insurance and the TWCC.

The TWCC is the agency primarily responsible for the administration of workers compensation in Texas. The TWCC is responsible for service delivery and the regulation of workers compensation in the state as well as the mediation and adjudication of disputes. The state fund is now the largest underwriter of workers compensation insurance in Texas. In 1995, in addition to its head office in Austin, the TWCC had four full service regional offices and one field office and 1,551 employees.

A related agency is the Research and Oversight Council on Workers Compensation (ROCWC, or commonly called the ROC), a Texas state agency created on September 1, 1995, by the merger of the Texas Workers Compensation Research Center and the Legislative Oversight Committee on Workers Compensation Insurance. The mission of the ROC is to support the development of an effective and efficient workers compensation system serving all Texans. The ROC carries out its mission by conducting professional studies and research; monitoring, assessing and making recommendations concerning the operational system; and providing the general public with information and assistance (extract ROC internet website).

The Council is governed by a board of directors composed of three senators appointed by the lieutenant governor; three members of the house of representatives, appointed by the speaker of the house; a member of the TWCC, appointed by the TWCC from the members who are wage earners; a member of the TWCC, appointed by the TWCC from the members who are employers; and the commissioner of insurance or a person designated by the commissioner.
Both the TWCC and the ROC are funded through an assessment or a maintenance tax collected annually from all insurance carriers, except governmental entities.

**Governance Structure**

The TWCC is governed by six commissioners appointed by the governor. Three commissioners represent employers and three represent workers, with a rotating chair alternating between employer and worker representatives. The commissioners are responsible for hiring and directing the TWCCs executive director and internal auditor. The primary responsibility of the commissioners is to establish rules to implement and enforce the workers' compensation act and related legislation. The day to day operations of the TWCC are the responsibility of the executive director.

The state fund is governed by a nine member board of directors appointed by the governor. The board of directors is responsible for directing the affairs and operations of the fund.

**Policy Development**

Commissioners are responsible for establishing rules to support and enforce the Texas workers' compensation legislation. Commissioners also play a role in recommending changes to the Act to the legislature. The rule-making process is normally initiated by a staff proposal or a petition submitted by a private organization or individual. The TWCC staff and legal counsel review and consider proposals and then fine tune the proposal and draft a specific proposal for approval by the commissioners.

**Accountability**

In addition to scrutiny and review by the ROC (see section on Organizational Framework), the TWCC is subject to legislative oversight and ongoing monitoring through the Texas Department of Insurance, over and above the regulatory and solvency requirements established in the legislation. The operations and performance of the TWCC are also subject to sunset review by the legislature and limited review by the state auditor.

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3 Although most actions by the commissioners simply require a majority vote, the appointment of the executive director requires equal support from both employers and employee representatives on the TWCC.
Comparative Review

Texas

Performance Assessment

A 1995 Administrative Inventory undertaken by the Workers Compensation Research Institute, examined the effect of the 1989 reform of workers compensation law and administration in Texas, including an analysis of the systems performance and its weaknesses.

Claims Adjudication Process

Employers must file a report with their insurance carrier. The carrier must file the first report of injury with the TWCC, which monitors claims handling by all carriers, including the state fund. There are penalties for failure to file with the TWCC and for failure to begin paying compensation within seven days. Notice of termination of claims must also be given to the TWCC.

Dispute Resolution

Mediation/Conciliation

The first step in dispute resolution is an off the record informal Benefit Review Conference with a TWCC Benefit Review Officer. If an issue is not resolved through this process, the parties may elect to submit to binding arbitration (no appeal).

Compromise settlement agreements are not permitted.

Appeals Process

If an issue is not resolved through an Informal Benefit Review Conference, or sent to binding arbitration, it is referred to a formal Contested Case Hearing process presided over by a TWCC Hearing Officer, who is an administrative law judge. The hearing is recorded and the rules of evidence apply. Decisions at this level can then be appealed to the three-member Appeals Panel of the TWCC.

Judicial review of Appeal Panel decisions, based on existing evidence only, can then be pursued through the state courts.

Lawyer fees are regulated and approved by TWCC and are limited to a maximum of 25% of the claimants award.
## ASSESSMENTS / FINANCING

| Assessment or Premium Setting Process | Premiums are set by the individual insurers, including the state fund, using industry and firm experience rating and standard (for the U.S.) rate setting methodology. The fund is self-supporting\(^4\), putting it on a competitive basis with private insurers. |
| Assessment/Premium Rates | Rates are filed with the Department of Insurance for review on an exception basis (prescribed rates apply unless the Department of Insurance orders otherwise). |
| Second Injury Funds / Disaster Funds | Texas has a second injury fund which pays the difference between the full costs of an injury and the cost that would have been incurred if there were no pre-existing condition, to encourage employers to hire previously injured employees. There is no requirement that the first injury be work related or that the employer be aware of the pre-existing injury. The second injury fund is funded by death benefits where there is no dependent. |

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\(^4\) The state fund pays premium and maintenance taxes.
## COMPENSATION

### BENEFITS

#### Claim Rate

In 1995, there were 92,069 claims for which income or death benefits were paid. In 1995, 295,461 injuries were reported; injuries per 100 workers is not available for 1995. In 1994, 312,212 injuries were reported; amounting to 7.1 injuries per 100 workers.

#### Medical Aid

**Nature of Aid**

All medical care reasonably required by the nature of the injury is covered.

**Choice of Provider**

The employee may choose their health care provider from a list of approved providers. Changes may only be made with TWCC approval.

**Medical Cost Containment Initiatives**

Managed care is permitted but not mandatory. Utilization review is encouraged by the TWCC. The TWCC monitors medical and hospital bills.

#### Rehabilitation

**Physical/Occupational/Vocational**

Physical and vocational rehabilitation are provided through the Texas Rehabilitation Commission on referral by the TWCC. An injured employee must accept referral or risk the loss of benefits.

**Social**

None identified.

**Rehabilitation Incentives**

None identified.

**Trends in Treatment of Subjective Complaints**

None identified.
## Disability Benefits

### Short-Term Benefits - Temporary Disability

**Weekly loss of earnings or wage loss compensation:**

**Rate:** For the first 26 weeks, 70% of gross earnings (pre-tax) where the pre-injury wage is over $8.50 per hour (75% if less than $8.50 per hour) to a minimum of 15% of SAWW and a maximum of 70% of SAWW.

**Indexed:** No.

**Duration:** Until employee reaches maximum Medical Improvement, or maximum of 104 weeks.

**Taxable:** No.

**Employer's Excess / Waiting Periods:** There is a seven day waiting period for employees; paid retroactively if the disability continues for more than four weeks.

### Long-Term Benefits - Permanent Partial and Total Disability

**Economic loss of earnings or wage loss awards or pensions:**

**Rate:** 75% of gross earnings, to a minimum of 15% of SAWW and a maximum of 75% of SAWW depending on the degree of disability.

**Indexed:** Changes to minimum and maximum rate in accordance with changes in SAWW.

**Duration:** Lifetime or 401 weeks, depending on severity.

**Taxable:** No.

**Offset Against Other Social Security Benefits:** No.

**Award for permanent physical impairment:**

**Periodic (pension or annuity):** No separate award for permanent physical or functional impairment.

**Lump-sum:** No.

**Covers Disfigurement:** No.

**Impairment Schedule:** AMA Guides, 2nd Edition.

**Supplemental Awards:** None identified.

**Hearing Loss**

Covered if the direct result of employment.
## Comparative Review

### Texas

#### Death Benefits

##### Funeral Expense Benefits

*Funeral Costs:* A grant of $2,500.00 to cover immediate emergency expenses and funeral costs is provided.  
*Emergency Lump-sum:* Included above.

#### Survivor Benefits

<table>
<thead>
<tr>
<th>Survivor Category</th>
<th>Lump-sum</th>
<th>Pension</th>
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<tbody>
<tr>
<td>Surviving spouse</td>
<td>Only on remarriage, a lump-sum payment equal to 104 weeks of death benefits.</td>
<td>75% of average weekly wage of deceased worker, subject to a minimum of 15% SAWW and maximum of 75% SAWW available for life or until remarriage.</td>
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<tr>
<td>Dependent children</td>
<td>None.</td>
<td>Receive benefits until 18 or 25 years if full time student (amount of benefits unknown).</td>
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If there is no eligible spouse or dependent children or grandchildren, surviving dependents of the deceased who are parents, siblings, or grandparents of the deceased, death benefits, equal to 364 weeks of death benefits payments, must be paid in equal shares to any surviving dependents.
HEALTH & SAFETY & PREVENTION

Organization Structure

**Agencies Responsible**

The federal OSHA has overall responsibility for occupational health and safety in Texas, but the TWCC is assigned certain responsibilities under state law.

As a prerequisite for a license to write workers compensation insurance in Texas, an insurance carrier must maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders operations. Field Safety Representatives of insurance companies providing accident prevention services must meet education and experience requirements established by the TWCC. The TWCC inspects each insurance company at least every two years, and each year, any insurance company offering workers compensation insurance, must submit a report concerning its accident prevention activities to the TWCC.

**Source of Funding**

Each insurance carrier, other than a government entity, must pay an annual maintenance tax, established by the TWCC, not to exceed two percent of reported gross workers compensation premiums. Companies authorized to self insurance pay fees and maintenance taxes. The TWCC charges employers for inspections under the Extra-Hazardous Employer Program and the insurance of last resort program, and these funds are placed in the general revenue fund to the credit of the TWCC. Funds collected through the imposition of administrative penalties are also placed in the general revenue fund and credited to the TWCC. The voluntary consultation program is partly funded by federal OSHA.

Expenditures by the TWCC are authorized by legislative appropriation.

**Accident Reporting**

All accidents must be reported to the insurance carrier and the carrier must file a report with the TWCC.
OHS Representatives & Committees

There are no legislative provisions respecting OHS committees or representatives. However, companies which self insure, employers who obtain insurance as a last result through the state fund, and employers whose injury frequency rate substantially exceeds those of their business or industry (Extra-Hazardous Employer Program) must establish and maintain an accident prevention plan as established by the TWCC.

Offenses and Penalties

Contraventions of the Legislation

There have been no criminal prosecutions involving health and safety issues.

Administrative Penalties

Administrative penalties may be assessed by the TWCC if an insurance company fails to provide the required OHS services. Administrative penalties have been limited to insurance companies, with seven companies impacted in 1995 and four companies impacted in 1996.

OHS Legislative Review

All legislation relating to the TWCC is subject to change through regular or special sessions of the legislature. Unless continued in existence by legislation, the TWCC is abolished effective September 1, 2007.

Health and Safety and Loss Prevention Initiatives

The TWCC provides a voluntary consultation program to small employers to assist them in developing effective health and safety programs (the focus is on employer with 250 employers or less and about 2,800 consultations are undertaken each year).

The TWCC administers the Extra-Hazardous Employer Program. Under this program employers with substantially higher injury rates than their industry group are required to obtain a safety consultation and establish an accident prevention plan.

The TWCC also maintains a Resource Centre, open to the public, which contains safety information, publication and videos on safety topics. The TWCC develops its own safety publications and provides safety training to Texas employers.
FRAUD PREVENTION

The state fund has a Special Investigations Division with 22 in-house investigators dedicated to fraud detection. In 1996, 2,917 investigations were carried out, in 1995, 2,716 investigations were undertaken. In 1996, there were 23 successful prosecutions and in 1995, there were 21.