

**ADVISORY NO. 119**

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**TOPIC: OCCUPATIONAL DISEASE CLAIM DEFENSES**

The Texas Health Code contains a little known and, until now, unused provision that may provide a defense to many occupational disease claims. In particular, it has dramatic ramifications for HIV infections and AIDS cases.

The Texas Health Code provides for various controls on certain reportable diseases. In its relevant part, that statute provides as follows:

For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a reportable disease, including HIV infection, must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the date of the exposure, the employee had a test result that indicated an absence of the reportable disease, including HIV infection. Section 81.050 (j) TEX. HEALTH CODE (Effective September 1, 1991).

We have requested and obtained the attached list of reportable diseases, including amendments through March 1994. Among those are HIV infections, including AIDS, Asbestosis, Hepatitis, Lyme Disease, Silicosis, and Tuberculosis.

If the statute is given its full potential effect, those employees who fail to document that they did not have the disease for a full 10-days after their exposure (thus permitting the stronger inference that a subsequently developing infection was in fact due to the exposure), are thereafter barred from collecting benefits. Note that the statute does not clearly state that benefits may be denied. Because that inference is clear, you should take note of this provision of the statute and invoke it by notice of refusal in the event you have a claim involving one of the reportable diseases as per the attached.