



## ADVISORY NO. 504

### TOPIC: WORKERS' COMPENSATION SURVIVES ANOTHER LEGISLATIVE SESSION

---

Almost lost among the hubbub of sanctuary cities, use of public bathrooms and state budget concerns, the Texas Legislature adjourned May 29, 2017, having passed 18 bills affecting the Texas Workers' Compensation system this session. Two of those bills were companion bills, so, after an initial filing of 53 comp-related bills at the beginning of the session, the Legislature sent a total of 17 new workers' comp laws to the Governor's desk.

Prominent among the bills that passed are new laws that waive governmental immunity in the workers' compensation system for public entities, direct the Commissioner in how to impose administrative penalties for unintentional EDI violations, expressly provide for the recovery of benefits by a first responder who suffers PTSD in the course and scope of employment, and make it easier for OIEC to hire Ombudsmen to assist injured workers.

A number of bills were on everyone's workers' compensation watch list, *but did not pass this session*. Among those bills that system stakeholders were watching were efforts to revive the bad faith cause of action in workers' compensation, provide cost of living increases to death benefits, require carriers to pay for medical causation reports for injured workers, and protect from disclosure any communications between carrier's counsel and a policyholder.

#### Workers' Comp Bills that Passed this Session

**HB 2053** Increases the authority of the Division to enforce the Act, with particular emphasis on Chapter 418 violations.

**HB 2061** Petitions in suits for judicial review must be filed with DWC; Requires more disclosure of the terms of agreed judgments, default judgments and settlements.

**HB 2111** Changes the statutory references to Hearing Officers and replaces that language with "administrative law judges" in the Labor Code.

**SB 1895** Requires DWC to consider whether a violation negatively impacts the payment of benefits to an injured worker; DWC should refrain from assessing penalties solely for EDI violations where carrier made a good-faith effort to comply.

**HB 2056** Designated doctors are required to disclose copies of their contracts with vendors to the Division upon request.

**HB 2112** This is an omnibus clean up bill that, among other things, eliminates the requirement that certain forms be filed with the Division.

**SB 1497 & HB 2060** Eliminate the requirement that people hired as Ombudsmen have prior experience in workers' compensation.

**HB 2082** Requires OIEC to designate a liaison to assist law enforcement claimants.

**HB 451** Waives governmental immunity for public entities from lawsuits filed by first responders that allege retaliatory discharge claims following the reporting of or filing of a workers' compensation claim. The bill caps the damages at \$100,000 per person and \$300,000 per occurrence.

**SB 877** Political subdivisions that pursue subrogation recovery waive governmental immunity for attorneys' fees payable to the attorney that makes the recovery.

**HB 2119** Provides that, regardless of the date of death, a surviving spouse of a first responder is entitled to death benefits even if they have remarried.

**HB 1983** Provides that a first responder who suffers PTSD has a compensable injury if caused by an event in the course and scope of employment and the employee's work was a substantial contributing factor to the diagnosis.

**HB 2546** Permits a physician assistant to sign certain workers' compensation medical reports.

**HB 1456** Eliminates the payment or bond requirement when appealing an enforcement penalty to SOAH.

**HB 919** This bill requires workers' compensation coverage for members of intrastate fire mutual aid system teams and regional incident management teams deployed during times of disaster. The bill covers those disaster responders in the same manner that coverage is provided to members of the Texas Task Force 1 Urban Search and Rescue Team.

**HB 1989** Requires a self-insured employer that wants to buy a WC policy to certify that the policy covers all of its current claims.

**HB 1990** Eliminates the \$2 million cap on the balance of the Texas Certified Self-Insurer Guarantee Trust Fund, which covers self-insurer's claims if they cannot pay them.

**Prominent Workers' Comp Bills that Did Not Pass this Session**

**HB 499** This bill would have partially reversed the Ruttiger decision and established liability in court for unfair settlement practices with respect to WC Insurance claims.

**HB 2326** This bill would have required carriers to reimburse claimant's doctors for the creation of a medical causation narrative.

**HB 1477** This bill would have required the purchase of workers' compensation insurance coverage for building and construction contractors and sub-contractors.

**HB 2830** This bill would have allowed DWC to exclude by rule any compound medications from the closed formulary.

**HB 1678** This bill would have protected communications between representatives of insurers and policyholders that have a self-insured retention from disclosure.

**HB 2054** This bill would have required an annual cost of living adjustment to apply to death benefits.

**HB 2055** This bill would have allowed eligible spouses to continue to receive death benefits even after remarriage.

Most of the bills that have passed will operate prospectively based on date of injury. Highly popular bills take effect on Governor's signature (usually in late May or early June). Any remaining bills will take effect August 28, 2017.