

# TEXAS Monitor

Published by the Research and Oversight Council on Workers' Compensation

Volume 7, Number 4  
Winter 2002

## Employer Drug-Free Workplace Programs in Texas

by Joseph Shields and Mario Gonzales

Substance abuse is a problem that has been present in the workplace for generations, and it impacts both the safety of workers and the profitability of employers. In an effort to address the issue of drug and alcohol abuse in the workplace, the Texas Legislature passed House Bill (HB) 2600 in 2001, in which Article 13 directs the Texas Workers' Compensation Commission (TWCC) to conduct a drug-free workplace (DFW) study. Specifically, the purpose of the study was to examine the possible effects of adopting a workers' compensation (WC) insurance premium discount program for employers who maintain a drug-free workplace. An

important part of this legislatively-mandated study involved a survey of Texas employers to determine what they are doing to reduce the incidence of drug and alcohol abuse in the workplace.<sup>1</sup>

The research findings contained in this article reflect the collaborative effort of TWCC's Workers' Health and Safety Division, the Research and Oversight Council on Workers' Compensation (ROC), and the Texas Department of Insurance (TDI).<sup>2</sup>

### Research Approach

A stratified, random sample of WC-covered, private-sector employers with 15 or more workers served as the target population for this study. All firms included in this sampling frame are required to comply with the DFW provision of the Texas Workers' Compensation Act. The Act requires employers with 15 or more workers to have a written DFW policy that includes specific elements outlined in TWCC Rule 169.1. A copy of the written DFW policy

must be provided to employees on or before their first day of employment with the company. The results presented in this article are based on 1,218 surveys, which were completed by Texas employers during May and June of 2001. Employers were given the option of completing the survey mailed to them or completing the study online at the TWCC website. A total of 1,000 surveys were received by mail or fax and 218 employers visited the website and completed the survey online.<sup>3</sup>

The survey collected information on a broad array of issues related to drug and alcohol abuse in the workplace, including:

- 1) What percentage of Texas employers are in compliance with the statutory requirement to have a written DFW policy, and what information is typically included in employer policies?
- 2) When do employers typically notify employees about their DFW policy, and what training is provided to em-

### Contents

|   |    |
|---|----|
| Employer Drug-Free Workplace Programs in Texas .....  | 1  |
| Return-to-Work Related Communications: Employer, Health Care Provider, and Insurance Carrier Perspectives ..... | 9  |
| ROC 2002 Biennial Report Approved .....   | 16 |

employees and managers regarding the company's policy?

- 3) How effective do employers perceive their DFW programs to be in a variety of areas (e.g., employee absenteeism, workplace safety, job performance, quality of job applicants, image in the community, employee morale)?
- 4) What proportion of Texas employers have drug-testing programs in place, and what types of testing (e.g., pre-employment, random, post-injury, probable cause) are most commonly utilized?
- 5) What proportion of Texas employers provide group health insurance coverage to their workers that covers (in full or in part) alcohol and drug abuse treatment?
- 6) What percentage of Texas employers have employee assistance programs (EAPs) in place?
- 7) To what extent do employers feel drug and alcohol abuse is a problem in the workplace, and what are employers' perspectives regarding the effectiveness of DFW policies, drug-testing programs, and EAPs?

### Prevalence of Written DFW Policies

All WC-covered Texas employers with 15 or more employees are required by statute to have a written DFW policy. This law has been in effect since January 1, 1991.<sup>4</sup> The vast ma-

ajority (86 percent) of employers indicated that they have a written DFW policy in place. As Figure 1 illustrates, compliance with the written DFW policy requirement is even higher among large firms.

#### *Notification to Employees*

TWCC Rule 169.1(b) requires that Texas employers with WC coverage and 15 or more workers provide a written copy of the DFW policy to each employee on or before the first day of employment. The survey results indicate that the overwhelming majority of such employers (91 percent) report that they are in compliance with the rule.

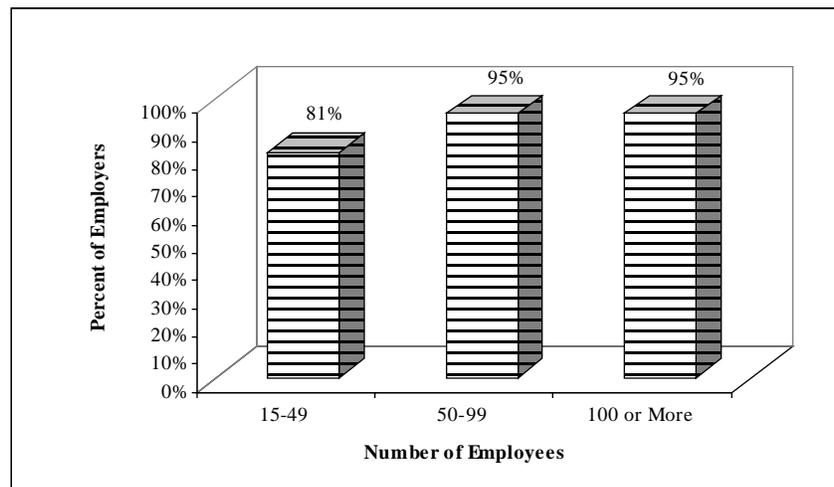
#### *Procedural Guides and Training for Managers*

The majority of Texas employers with written DFW policies (60 percent) indicated that they have detailed procedures

or guidelines in place to assist managers in interpreting and applying the company's DFW policy. Larger companies are somewhat more likely to have such procedures or guidelines in place. Seventy percent of companies with 100 or more workers have detailed guidelines to help managers interpret and apply the company DFW policy, compared to just 56 percent of companies with 15 to 49 workers and 60 percent of firms with 50 to 99 workers.

A smaller proportion of companies with written policies (30 percent) provide managerial employees with special training to help identify and deal with alcohol and drug problems in the workplace. Again, larger companies are more likely to provide this type of training. Forty-four percent of companies with 100 or more employees provide managers with special training versus just a quar-

**Figure 1**  
**Percent of Employers with a Written DFW Policy**



Source: Texas Workers' Compensation Commission and Research and Oversight Council on Workers' Compensation, *Survey of Texas Employers Regarding Drug-Free Workplace Policies*, 2002.

ter (25 percent) of firms with less than 100 workers.

### Employer Perceptions Regarding Effectiveness of DFW Program

Employers were asked to rate the effectiveness of their company’s DFW program as it relates to various goals or outcomes. Texas employers tended to feel that DFW programs were most effective at improving safety. Over three-quarters (78 percent) of the employers with written policies said that their DFW program was effective at improving the overall safety of the work environment and 73 percent indicated that their programs were effective at reducing the number of workplace injuries. Most employers (70 percent) also felt that their DFW program was effective at reducing the incidence of drug and alcohol abuse in the workforce, and at improving the company’s image in the community.

While nearly two-thirds (66 percent) of the employers thought that their DFW policies improved the quality of job applicants and improved job performance among current employees, smaller numbers indicated that the DFW program improved employee morale (52 percent) or decreased employee absenteeism rates (49 percent).<sup>5</sup> Complete results are presented in Table 1.

### Drug Screening/Testing Programs

A significant proportion (63 percent) of the employers indicated that they currently have

**Table 1**  
**Effectiveness of Company’s DFW Program on Various Goals**

| DFW Program Goal/Outcome                                      | Percent of Employers Rating DFW Program as <i>Effective</i> Regarding Outcome | Percent of Employers Rating DFW Program as <i>Ineffective</i> Regarding Outcome |
|---|---|---|
| Decrease Employee Absenteeism                                 | 49%   | 20%   |
| Reduce the Incidence of Drug & Alcohol Abuse in the Workforce | 70%   | 8%  |
| Improve Employee Morale                                       | 52%   | 21%   |
| Improve Job Performance                                       | 66%   | 12%   |
| Improve Overall Safety of Work Environment                    | 78%   | 6%  |
| Reduce the Number of Workplace Injuries                       | 73%   | 8%  |
| Improve Company’s Image in the Community                      | 70%   | 12%   |
| Improve Quality of Job Applicants                             | 66%   | 14%   |

Source: Texas Workers’ Compensation Commission and Research and Oversight Council on Workers’ Compensation, *Survey of Texas Employers Regarding Drug-Free Workplace Policies*, 2002.

Note: Employers were asked to rate the effectiveness of various DFW program outcomes on a scale of 1 to 5, where 1 is “not all effective” and 5 is “extremely effective.” If an employer rated the effectiveness as a “4” or “5”, the program is considered to be *Effective* in the table above. If an employer rated the effectiveness as a “1” or “2”, the program is considered to be *Ineffective* in the table above. If an employer rated the effectiveness as a “3”, the program is considered to be *neither effective nor ineffective* and those percentages are not reported in the table above.

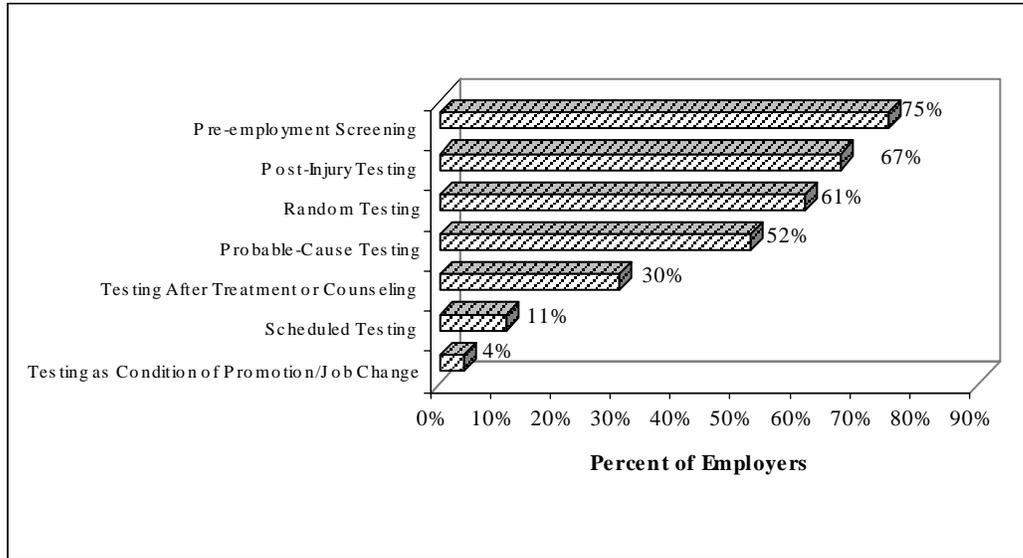
a drug screening or drug-testing program in place. These programs may involve a number of types of testing (e.g., pre-employment, random, post-injury, probable cause). Not surprisingly, the propensity of firms to have drug-testing programs increases significantly with the number of workers they employ. While still over half (54 percent) of smaller companies (those with 15 to 49 workers) had a drug-testing program, a significantly higher percentage of larger employers had such programs — 72 percent of employers with 50 to 99 workers and 82 percent of employers with 100 or more

workers had drug-testing programs in place.

Pre-employment drug screening, post-injury drug-testing, and random drug-testing were the most commonly utilized tests by Texas employers, with probable-cause testing not far behind (see Figure 2).

As was the case with drug testing in general, the propensity of employers to use specific types of drug testing (such as pre-employment drug screening, random drug testing, post-injury testing, and probable cause testing) increased significantly with the number of workers a particular company employs.

**Figure 2**  
**Types of Drug Testing Approaches Utilized by Texas Employers**



Source: Texas Workers' Compensation Commission and Research and Oversight Council on Workers' Compensation, *Survey of Texas Employers Regarding Drug-Free Workplace Policies*, 2002.

Table 2 illustrates differences in the propensity of employers in different industry-risk groups to conduct various types of drug testing. While

three drug testing types (pre-employment, random, and post-injury testing) are clearly used more frequently by medium and high-risk industry employers, it

is the use of post-injury testing that has the greatest disparity between employers in low-risk industries and those in higher risk sectors. Just under half of the employers classified as being in low-risk industries conduct post-injury drug testing compared to approximately three-quarters of those firms in medium (77 percent) or high-risk (75 percent) industries.

**Table 2**  
**Percentage of Employers Conducting Various Types of Drug Testing, By Industry-Risk Categories**

| Type of Testing  | Low Risk | Medium Risk | High Risk |
|--|----------|-------------|-----------|
| Pre-employment Screening                                 | 64%      | 76%         | 83%       |
| Scheduled Testing  | 9%       | 16%         | 8%        |
| Random Testing   | 52%      | 70%         | 60%       |
| Post-Injury Testing                                      | 49%      | 77%         | 75%       |
| Probable Cause Testing (Non-injury related)              | 49%      | 55%         | 54%       |
| Testing as a Condition of Promotion, Job Change/Transfer | 3%       | 5%          | 4%        |
| Post Drug or Alcohol Treatment/Counseling Testing        | 27%      | 32%         | 36%       |

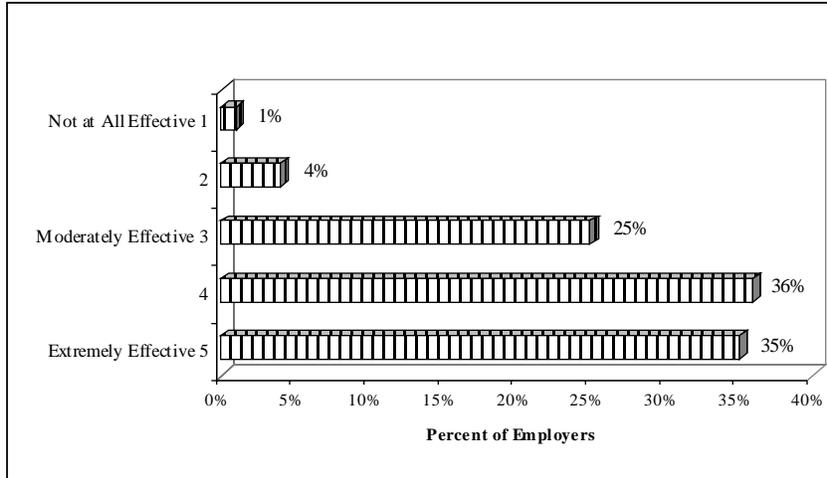
Source: Texas Workers' Compensation Commission and Research and Oversight Council on Workers' Compensation, *Survey of Texas Employers Regarding Drug-Free Workplace Policies*, 2002.

Note: Industry risk was determined by 2000 Bureau of Labor Statistics (BLS) data for total lost workday incidence rates per 100 employees in Texas. High risk industries included manufacturing, transportation/public utilities, and retail trade. Medium risk industries included wholesale trade, construction, and agriculture/forestry/fishing. Low risk industries included finance/insurance/real estate, mining, and services.

*Overall Effectiveness of Drug-Testing Program*

Employers were asked to rate the overall effectiveness of their company's drug-testing program, using a scale of 1 to 5 (where 1 is *not at all effective* and 5 is *extremely effective*). Employers, regardless of size or industry-risk group, tended to feel that their programs were relatively effective. Over two-thirds (71 percent) of firms with drug-testing programs indicated that

**Figure 3**  
**Overall Effectiveness of Drug Screening/Drug Testing Program**



Source: Texas Workers' Compensation Commission and Research and Oversight Council on Workers' Compensation, *Survey of Texas Employers Regarding Drug-Free Workplace Policies*, 2002.

Note: Percentages may not total to 100 percent due to rounding.

their programs were effective by providing a rating of "4" or "5" on the aforementioned five-point scale (see Figure 3).

**Employee Assistance Programs/ Group Health Coverage for Drug and Alcohol Problems**

*Employee Assistance Programs*

An Employee Assistance Program (EAP) is a worksite-based program designed to assist with the identification and resolution of employee problems related to issues such as substance abuse, marital, financial, legal, health, stress, or emotional concerns that may be adversely affecting an employee's job performance. Overall, just 27 percent of WC-covered employers that employ at least 15 workers have established EAPs for their workers. While EAPs are not very common among small employers, a sig-

nificantly larger proportion of companies with 100 or more workers (40 percent) have EAPs in place. Figure 4 illustrates the percentage of firms with EAPs by employment size.

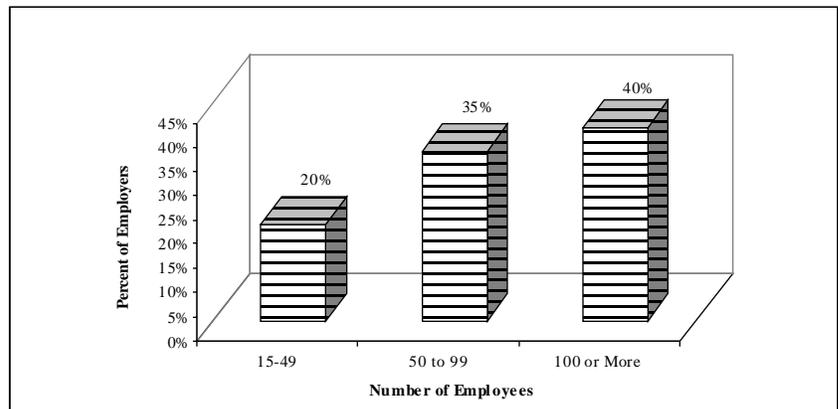
For those companies with EAPs in place, it is most common for services to be provid-

ed entirely by an outside contractor (82 percent). Alcohol and drug abuse were, by far, the most common problems covered by the EAPs. These substance abuse problems were handled by approximately 95 percent of the company EAPs. It is also significant to note that EAPs at larger companies tend to address a wider array of employee issues (e.g., drug and alcohol problems, psychological and emotional problems, marital and family conflict, financial and legal issues, health problems) than smaller firms, whose EAPs are more likely to be limited to drug and alcohol problems.

*Group Health Coverage for Drug/ Alcohol Problems*

The majority of employers included in the survey (81 percent) indicated that they offer group health coverage to their employees. Larger companies were slightly more likely to of-

**Figure 4**  
**Percentage of Employers with Employee Assistance Programs by Firm Size**



Source: Texas Workers' Compensation Commission and Research and Oversight Council on Workers' Compensation, *Survey of Texas Employers Regarding Drug-Free Workplace Policies*, 2002.

fer this coverage than were smaller firms: 78 percent of companies with 15 to 49 workers; 86 percent of companies with 50 to 99 workers; and 88 percent of companies with 100 or more workers indicated that they offer health insurance to their employees.

Of those companies with group health insurance plans, approximately 20 percent reported that inpatient and outpatient drug or alcohol treatment is fully covered under their plan. Approximately 60 percent noted that these treatments were partially covered by their insurance plans. The remaining 20 percent indicated that their group health coverage did not pay for drug or alcohol treatment programs.

### Profile of Employer DFW Programs

While most Texas employers (86 percent of those surveyed) with workers' compensation coverage and at least 15 employees have a written DFW policy, significantly fewer have comprehensive DFW programs (see Table 3). Less than half of the employers (48 percent) have a written DFW policy that includes pre-employment drug testing. Approximately one-third (33 percent) of the employers have a written policy with pre-employment screening and random drug testing requirements. Only 9 percent of employers have the most comprehensive DFW program included in this analysis (i.e., a written policy with pre-employment, random, and probable-

cause drug testing requirements and an EAP).

### Employer Perspectives on Drug and Alcohol Abuse in the Workplace

Employers were asked to rate their level of agreement or disagreement with a series of statements related to drug and alcohol abuse in the workplace, and the effectiveness of DFW

policies, drug-testing programs, and EAPs. Table 4 presents complete results for each of the seven questions posed to employers.

### WC System Cost Driver

A large majority (70 percent) of Texas employers subject to the DFW requirement feel that drug and alcohol abuse

**Table 3**  
**Estimated Number of Texas Employers with Various Types of DFW Programs**

| Scope of DFW Program  | Estimated Percentage of WC-Covered Private Sector Employers with 15+ Workers with DFW Program | Estimated Number of WC-Covered Private Sector Employers with 15+ Workers with DFW Program   |
|---|---|---|
| Written DFW policy  | 86.3%   | Total = 44,093<br><i>Employer Size Distributions:</i><br>15 to 49 Workers: 26,456<br>50 to 99 Workers: 7,452<br>100 or More Workers: 10,185 |
| Written DFW policy with a pre-employment drug-testing requirement   | 47.9%   | Total = 24,451<br><i>Employer Size Distributions:</i><br>15 to 49 Workers: 13,194<br>50 to 99 Workers: 4,220<br>100 or More Workers: 7,037  |
| Written DFW policy with pre-employment and random drug-testing requirements   | 33.4%   | Total = 17,081<br><i>Employer Size Distributions:</i><br>15 to 49 Workers: 9,598<br>50 to 99 Workers: 2,689<br>100 or More Workers: 4,794   |
| Written DFW policy with a comprehensive drug testing program (which includes pre-employment, random, and probable cause drug-testing requirements) and an EAP | 9.4%  | Total = 4,809<br><i>Employer Size Distributions:</i><br>15 to 49 Workers: 2,082<br>50 to 99 Workers: 811<br>100 or More Workers: 1,916      |

Source: Texas Workers' Compensation Commission and Research and Oversight Council on Workers' Compensation, *Survey of Texas Employers Regarding Drug-Free Workplace Policies*, 2002.

Notes: These estimates do not include employers with less than 15 employees that were excluded from the sampling frame for this study (approximately 260,000 employers have 1 to 14 employees; however, a significant proportion of these small firms do not carry WC coverage). The figures reported above are based on an estimated population base of 51,093 private sector, WC-covered employers, with 15 or more workers. Survey data from the 172 employers, with less than 15 employees, who returned surveys indicate that approximately 52 percent have written DFW policies, 28 percent have a drug-testing program of some nature, and 9 percent have EAPs. However, since this sub-group of small employers was not representatively sampled, these percentages may not be reflective of the total population of employers with less than 15 workers.

is a major cost driver for the Texas WC system. This finding is consistent across all employer size and industry-risk groups.

*WC Claim Rates/  
Workplace Safety*

It is clear from this study that most employers believe that DFW programs have a positive influence on workplace safety in general, and the number of WC claims, specifically. Over three quarters (77 percent) of Texas companies surveyed were in agreement that “employers with comprehensive DFW programs tend to have fewer WC claims.” This reinforces an earlier finding reported in Table 1, which shows that a large majority of employers feel that their DFW programs

have been effective at reducing work-related injuries and improving safety at their companies.

*Drug/Alcohol Abuse at  
Company Level and Industry Level*

When companies were asked if they agreed that “drug and alcohol abuse is a serious problem among employees *at my company*,” over three quarters of the survey respondents (76 percent) disagreed with the assertion. Only 14 percent of the survey respondents agreed with the statement. Larger employers and firms in high-risk industries tend to be more open to the possibility that serious drug and alcohol problems exist at their company.

Next, employers were asked to assess the following statement: “Drug and alcohol abuse is a significant problem among employers *in my industry*.” Employers were much more likely to feel that drug and alcohol abuse might be occurring at *other similar companies* (but not their own). Thirty-nine percent of the survey respondents agreed that these problems exist in their industry, compared to 40 percent who disagreed with the assertion. Some of the variation that was observed between small and large employers (when the focus was company level) disappeared when employers were asked to speak to the problem at an industry level. Again, larger firms and companies in high-risk industries were more

**Table 4  
Employers’ Level of Agreement or Disagreement With Statements Related to  
Drug and Alcohol Abuse and Its Effects on the Workplace**

| DFW-Related Statement  | Strongly Disagree | Somewhat Disagree | Neither Agree or Disagree | Somewhat Agree | Strongly Agree |
|--|-------------------|-------------------|---------------------------|----------------|----------------|
| Drug and alcohol abuse is a major cost driver for the Texas workers’ compensation system.  | 3%                | 11%               | 16%                       | 41%            | 29%            |
| Employers with comprehensive drug-free workplace policies tend to have fewer workers’ compensation claims.                         | 3%                | 7%                | 14%                       | 39%            | 38%            |
| Drug and alcohol abuse is a serious problem among employees <i>at my company</i> .   | 56%               | 21%               | 10%                       | 8%             | 6%             |
| Drug and alcohol abuse is a significant problem among employers <i>in my industry</i>  | 21%               | 19%               | 22%                       | 26%            | 13%            |
| Drug-testing programs cost companies more money to implement than they save  | 29%               | 28%               | 21%                       | 15%            | 7%             |
| Drug-free workplace policies in general, and drug-testing policies in particular have a <i>negative impact</i> on employee morale. | 42%               | 29%               | 15%                       | 10%            | 5%             |
| Company-provided employee assistance programs are appropriate and effective in rehabilitating workers.                             | 8%                | 15%               | 33%                       | 28%            | 16%            |

Source: Texas Workers’ Compensation Commission and Research and Oversight Council on Workers’ Compensation, *Survey of Texas Employers Regarding Drug-Free Workplace Policies*, 2002.

Note: Percentages in each row may not total to 100 percent due to rounding.

likely to agree that there is a drug and alcohol problem among workers in their respective industries than were their smaller and lower-risk counterparts.

#### *Cost Effectiveness of Drug-Testing Programs*

Relatively few employers (22 percent) believe that drug-testing programs cost more to implement than they save. Over half of the employers (57 percent) disagreed with this assertion. While this general finding held for employers of all sizes, larger firms were significantly more likely than smaller companies (probably due to economies of scale issues) to believe in the cost effectiveness of drug-testing programs.

#### *Impact of DFW Policies and Drug-Testing on Employee Morale*

In keeping with the previously reported finding (see Table 1) that DFW programs are moderately effective at improving employee morale, the majority of employers (71 percent) disagreed with the notion that DFW policies (in general) and drug-testing programs (in particular) have a negative impact on employee morale. Only 15 percent of the survey respondents felt that these programs adversely impact employee morale.

#### *Effectiveness of EAPs in the Rehabilitation of Workers*

Forty-four percent of the survey respondents agreed that EAPs were “appropriate and effective in rehabilitating workers” compared to 23 percent who dis-

agreed with this statement. A significant proportion of the employer population (33 percent) was neutral on the issue.

#### **Conclusion**

This study reveals that many employers who are required by law to have a written DFW policy report that they not only have a written policy, but that their DFW program is even more comprehensive (e.g., it includes drug testing and/or an EAP) than is required by statute or TWCC rule. According to self-reported survey findings, the lion’s share (86 percent) of Texas employers with 15 or more workers report that they are in compliance with the WC statute and TWCC rules, which require that they have a written DFW policy. In addition, a significant proportion (63 percent) of these Texas employers with WC coverage (and 15 or more workers) have drug-testing programs in place. The DFW programs that have been implemented vary significantly in scope from pre-employment testing or probable-cause testing only to a full range of drug tests including random testing of active employees and post-injury testing.

While Texas employers appear to be doing a good job of notifying employees of their DFW policies,<sup>6</sup> it was less common for employers to have EAPs in place (27 percent), detailed procedures and guidelines for managers to apply the company DFW policies (60 percent), or to provide managerial employees with special training to help identify and deal with alcohol and

drug problems in the workplace (30 percent). These are clearly areas where DFW programs can be improved in Texas.<sup>7</sup>

The general consensus among employers is that drug and alcohol abuse in the workplace is a significant WC system cost driver and that comprehensive DFW programs help to reduce on-the-job injuries and create a safer work environment for employees. Employers also indicated that they felt their DFW programs were effective at improving the company’s image in the community, improving the quality of job applicants, and improving the job performance of active employees. Please see *A Study of Drug Free Workplace Programs*, a report published by TWCC and submitted to the Texas Legislature and the Research and Oversight Council on Workers’ Compensation for complete DFW study results and TWCC recommendations.

#### **Notes to pages 1-8**

<sup>1</sup> Also included in the full report to the Legislature and the ROC are the results of a national canvass of state drug-free workplace laws, a survey of insurance carriers regarding drug-free workplace issues, and an analysis of workers’ compensation claims disputed or controverted because of drug or alcohol reasons. See Section 411.093, Texas *Labor Code*.

<sup>2</sup> Special thanks go to the participants in the Drug-Free Workplace Study work group meetings sponsored by TWCC, and to Bill DeCabooter and Glenn McConnell at TWCC, for their hard work which contributed to the success of the online component of the employer survey.

<sup>3</sup> This represents a response rate of 24 percent, based on the 5,139 surveys suc-

# Return-to-Work Related Communications: Employer, Health Care Provider and Insurance Carrier Perspectives

by Dana Baroni and Joseph Shields

Returning an injured worker to productive employment in a safe and timely manner is a vital aspect of the workers' compensation (WC) process. Improving return-to-work (RTW) outcomes has been a focus of the Texas Legislature in the past few legislative sessions, along with addressing medical cost and quality of care issues.

During the 1999 session, the 76<sup>th</sup> Legislature, through the passage of House Bill (HB) 3697, charged the Research and Oversight Council on Workers' Compensation (ROC) with conducting research related to the cost and quality of medical care administered to injured workers and their post-injury RTW experiences. These studies, published by the ROC in 2001, found that medical costs were significantly higher in Texas than other comparable states and that RTW outcomes for injured employees in Texas were worse than in comparable states. These studies also pointed out that employers, employees, health care providers and insurance carriers all have difficulty communicating with each other about RTW issues.<sup>1</sup>

These findings led to the passage of HB 2600 in 2001 by the 77<sup>th</sup> Legislature. HB 2600 contained several provisions

intended to improve RTW outcomes for injured workers in Texas. These statutory changes included:

- 1) Requiring employers to disclose, upon request, the existence (or absence) of modified duty RTW programs at their company to an injured worker, his/her treating doctor, the insurance carrier, and the Texas Workers' Compensation Commission (TWCC);<sup>2</sup> and
- 2) Requiring insurance carriers to notify employers of the availability of RTW coordination services (e.g., job analysis, job modification and restructuring assessments, medical and/or vocational case management),<sup>3</sup> and to provide those services, with the agreement of a participating employer.

In addition to these statutory provisions enacted in 2001, TWCC implemented the use of the Work Status Report (i.e., the TWCC-73 form) in 2000.<sup>4</sup> The report is completed by the injured worker's treating or referral doctor following an examination to assess the employee's ability to perform job-related duties. This examination is often referred to as a Functional Capacity Exam and

describes any restrictions on the employee's ability to work. By rule, the Work Status Report must be faxed or submitted electronically to the insurance carrier and employer by the end of the second working day following the date of the exam. TWCC rule 129.5 requires that doctors complete this report after the initial examination of the injured worker, when the injured worker experiences a change in work status or a substantial change in condition, or upon request of the insurance carrier (or the employer through its carrier).<sup>5</sup>

The purpose of the study upon which this article is based is to assess familiarity with HB 2600 changes, use of the Work Status Report, and other RTW-related communications issues.

## Research Methodology

Three separate data collection efforts – with employers, health care providers, and insurance carriers – were conducted to capture the data reported in this article, specifically:<sup>6</sup>

- 1) Information related to the employer perspective on RTW issues is drawn from 680 completed mail/online surveys from a stratified, random sample of Texas

companies with WC coverage and 15 or more workers;<sup>7</sup>

- 2) Information related to the health care provider perspective on RTW issues is based on 311 completed mail surveys from physicians, chiropractors, and physical therapists with experience treating WC patients;<sup>8</sup> and
- 3) Information related to the insurance carrier perspective on RTW issues is based on 28 completed mail surveys from WC insurance carrier groups.<sup>9</sup>

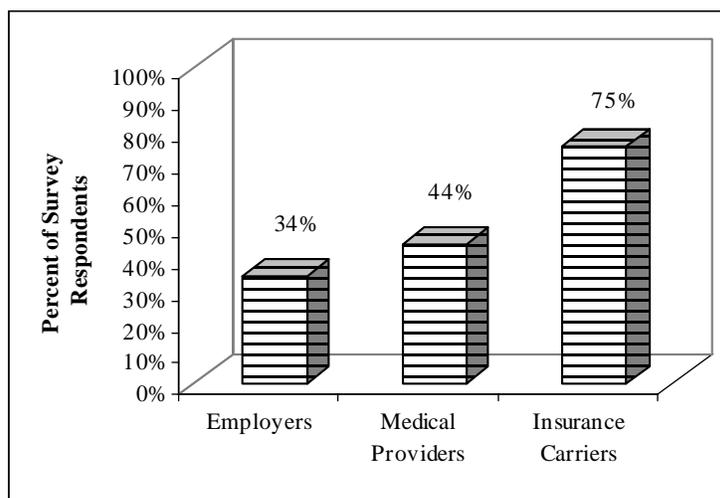
#### House Bill 2600 RTW-Related Provisions

During the course of the surveys, employers, health care providers, and insurance carriers were asked about their knowledge of, and experience with, two new statutory RTW-related requirements that became effective on September 1, 2001. Key findings from those queries are as follows:

#### Employer RTW Program Disclosure Requirement

As Figure 5 illustrates, relatively few employers (34 percent) and health care providers (44 percent) were aware of the HB 2600 requirement that they disclose, upon request, information regarding opportunities for modified duty. A higher proportion of insurance carriers (75 percent) indicated that they were aware of this new disclosure requirement.

**Figure 5**  
Percent of Employers, Health Care Providers and Insurance Carriers Aware of HB 2600 Modified Duty RTW Program Disclosure Requirement



Source: *Surveys of Employers, Health Care Providers, and Insurance Carriers regarding Return-to-Work Programs for Injured Workers*, Research and Oversight Council on Workers Compensation, 2002.

Even fewer employers (16 percent) noted that they have received a request for this RTW-related information and for those who had, the most likely requestor was the insurance carrier. Although just 44 percent of health care providers indicated that they were aware of the HB 2600 employer dis-

closure requirements, 48 percent of providers surveyed revealed that they had requested RTW information from employers.

About a third of insurance carriers surveyed (32 percent) indicated that they requested the information on all claims, and another 32 percent indicat-

**Table 4**  
Awareness of Insurance Carriers' Responsibility to Provide RTW Coordination Services and Propensity of Employers to Request Assistance

| Number of Employees                     | Percentage of Employers Aware that Carriers are Required to Provide RTW Coordination Services | Percentage of Employers Requesting RTW Coordination Services from Carriers | Proportion of those Employers Aware of Requirement that Actually Requested RTW Coordination Services from Carriers |
|---|---|--|--|
| 15 to 49 Employees                      | 27%   | 12%  | 44%  |
| 50 to 99 Employees                      | 43%   | 20%  | 47%  |
| 100 or More Employees                   | 53%   | 35%  | 66%  |
| All Employers with 15 or More Employees | 35%   | 18%  | 51%  |

Source: *Employer Survey of Return-to-Work Programs for Injured Workers*, Research and Oversight Council on Workers Compensation, 2002.

ed that they did so on most claims. The vast majority (92 percent) of insurance carriers felt that employers were at least “somewhat cooperative” in providing the requested RTW information.

#### *Carrier-Provided RTW Coordination Services*

Despite the fact that insurance carriers are required to inform employers about the availability of RTW coordination services, just 35 percent of the employers indicated that they were aware that carriers were required to provide these RTW services to policyholders upon request. Large companies, with 100 or more workers, were significantly more likely (53 percent vs. 27 percent of smaller companies with 15 to 49 employees) to be aware of the statutory provision.

Since the majority of Texas employers were not aware of the statutory provision requiring insurance carriers to provide RTW coordination services to policyholders upon request, it is not surprising that very few employers indicated that they requested their WC insurance carrier to provide these services. Overall, just 18 percent of the Texas employers included in the sampling frame requested RTW assistance from their insurance carrier.

Significantly, once employers were made aware that RTW coordination services were available through their insurer, a substantial proportion of

these firms tended to take advantage of it. Over half (51 percent) of all employers that knew insurance carriers were required to provide RTW assistance to policyholders who requested it, asked their carrier for assistance. Larger employers (those with 100 or more workers) are more likely both to be aware of the statutory requirement and to have actually requested RTW assistance from their insurer. Approximately two-thirds (66 percent) of these larger firms, that knew insurance carriers were required to provide RTW assistance to policyholders upon request, asked for RTW coordination services from their carrier.

The overwhelming majority of insurance carriers were aware of the new statutory requirements – 82 percent of the carriers responding to the survey indicated that they knew about the HB 2600 requirement that they must provide RTW coordination services to employers upon request. However, since so few employers knew about the coordination services, just 27 percent of insurance carriers reported their coordination services were requested during the most recent 12-month period.

Almost three quarters of employers (77 percent) who received RTW coordination services from their insurance carrier were satisfied with the services provided.<sup>10</sup> Most employers (68 percent) also agreed that the services were provided in a prompt manner.

#### **Work Status Report (TWCC-73 Form)**

There is general agreement among employers, carriers and health care providers that the Work Status Report is a useful tool to help facilitate optimal RTW outcomes for injured workers; however, as the following results indicate, there is room for improvement in some key areas.<sup>11</sup>

#### *Usefulness of Work Status Report*

Most employers indicated that the Work Status Report (TWCC-73) information was either *always* (29 percent), *often* (36 percent), or *occasionally* (22 percent) useful in facilitating an injured employee’s return to work. A substantial proportion of employers (62 percent) and health care providers (45 percent) agreed that the Work Status Report is a valuable tool in facilitating an injured worker’s return to employment. The majority of health care providers (70 percent) also noted that the instructions on the TWCC-73 form are easy to follow.

Insurance carriers indicated that they use the Work Status Report regularly for claims management purposes. Fifty percent of insurance carriers reported that their adjusters *always* use the information on the Work Status Report to facilitate an injured worker’s return to work and 46 percent noted that their adjusters *often* use the information to help promote RTW.

### Timeliness of Report Submission

A substantial percentage of both employers and insurance carriers reported that Work Status Reports were often not received in a timely manner, i.e., within two days after the date of the examination as required by TWCC Rule 129.5 (see Figure 6 for a breakdown of employer responses). The key driver behind late reports appears to be the method of delivery. Approximately 37 percent of employers and 31 percent of insurance carriers indicated that TWCC-73 forms are typically received via standard mail—as opposed to fax or electronic transmission as prescribed in TWCC Rule 126.5 (h).

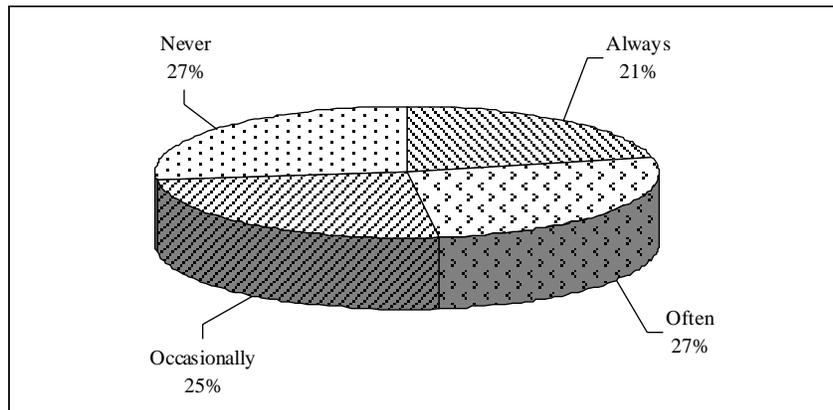
### Quality of Information Contained in Work Status Reports

According to insurance carriers and employers, the quality of the information contained on the Work Status Report can be improved. A significant proportion of insurance carriers (74 percent) reported that providers were not stating work restrictions clearly and were not specifying when an injured worker could return to work (40 percent). Almost half (47 percent) of the employers surveyed agreed that treating doctors often fail to state work restrictions clearly.

### Related Findings

Most health care providers agreed that functional job descriptions and task analysis (57 percent), and information about company RTW programs (64

**Figure 6**  
**How Frequently Employers Receive Work Status Reports from Health Care Providers Within 2 Days of the Medical Exam**



Source: *Employer Survey of Return-to-Work Programs for Injured Workers*, Research and Oversight Council on Workers Compensation, 2002.

percent), provided by employers are useful to them when they complete the Work Status Report. However, as Table 5 indicates, the vast majority of providers (88 and 94 percent, respectively) reported that these key pieces of information are not provided to them on a consistent basis.<sup>12</sup>

There also seems to be concern among health care providers regarding employers who do

not follow the work restrictions documented on the TWCC-73 form after the injured employee has returned to work with restrictions. Over three quarters (77 percent) of providers believe that employers do not adhere to the stated work restrictions, and the majority of health care providers (73 percent) and insurance carriers (54 percent) felt that employers are hesitant to take injured workers back to

**Table 5**  
**How Frequently Health Care Providers Receive Information from the Employer**

| Type of Information   | Always | Frequently | Occasionally | Never |
|---|--------|------------|--------------|-------|
| Functional job description  | 3%     | 9%         | 56%          | 32%   |
| Job task analysis   | 2%     | 4%         | 44%          | 50%   |
| Availability of alternate work opportunities  | 3%     | 9%         | 56%          | 32%   |
| A description of the return-to-work/modified duty program in place at the company     | 2%     | 4%         | 46%          | 46%   |
| Name of a contact person at the injured workers company to contact with any questions | 10%    | 16%        | 46%          | 28%   |

Source: *Health Care Provider Survey of Return-to-Work Programs for Injured Workers*, Research and Oversight Council on Workers Compensation, 2002.

work until they are fully recovered.

In a possibly related finding, nearly two-thirds of the insurance carriers (63 percent) agreed with the statement that treating doctors in Texas are reluctant to release injured employees to return to work.

Despite its perceived usefulness, overall the Work Status Report does not earn high marks due to the deficiencies noted above. To gauge its overall effectiveness, system stakeholders were asked if communications regarding RTW issues had improved significantly since the Work Status Report was introduced in 2000. Only 26 percent of health care providers, 31 percent of insurance carriers, and 33 percent of employers were in agreement that communications have improved significantly.

### Communication between Employers, Providers and Insurance Carriers

Despite the fact that some employers, providers, and insurance carriers indicated that RTW-related communications have improved significantly over the past few years, it is clear from this research that there is substantial room for improvement in the communications between these parties. Specific findings related to RTW-related communications are as follows:

#### Employer Perceptions

Employers were split fairly evenly between being “dissatis-

fied” (32 percent), “somewhat satisfied” (32 percent), or “satisfied” (36 percent) with the communications flow regarding RTW issues between them and the health care providers treating their injured employees. The majority of employers (79 percent) reported that they communicate (either always, frequently, or occasionally) with their injured worker’s health care provider regarding RTW issues. However, only 45 percent of employers reported that providers were “more than willing” to return their phone calls (see Figure 7).

#### Health Care Provider Perceptions

Over two-thirds (67 percent) of health care providers felt that it was rare to hear from an employer regarding RTW issues involving injured workers they were treating. Providers also perceived that insurance carriers are typically unfair and unreasonable about the medical care they approved (66 per-

cent) and were a consistent source of pressure to return the injured worker to their job too soon (61 percent). See Table 6 for a provider perspective on a variety of issues related to RTW communications.

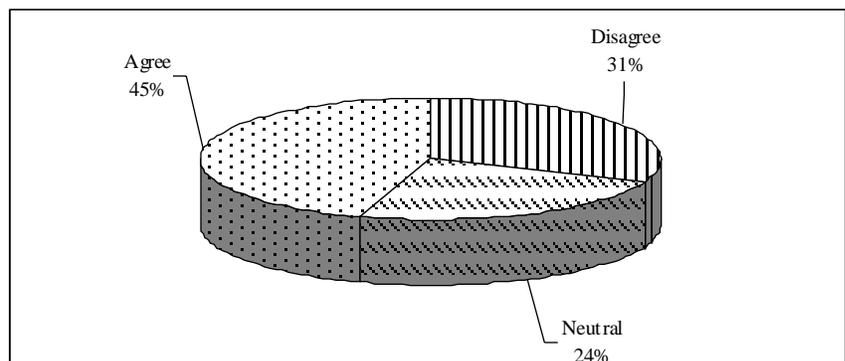
#### Insurance Carrier Perceptions

Forty-two percent of insurance carriers felt dissatisfied with the flow of RTW-related communication between their companies and health care providers, compared to just 19 percent that expressed satisfaction with carrier/provider communications. While the majority of insurance carriers (82 percent) report that it is common for the carrier’s adjuster to contact the health care provider, 73 percent felt the provider was uncooperative and unwilling to return phone calls.

### Conclusion

Recent efforts to improve RTW outcomes in Texas have included the implementation of

**Figure 7**  
**Level of Agreement or Disagreement among Employers that “Providers are More than Willing to Return Phone Calls to Discuss RTW Options”**



Source: *Employer Survey of Return-to-Work Programs for Injured Workers*, Research and Oversight Council on Workers Compensation, 2002.

**Table 6**  
**Health Care Provider Perceptions Regarding RTW Issues**

|  | Strongly Disagree | Somewhat Disagree | Neither Agree or Disagree | Somewhat Agree | Strongly Agree |
|--|-------------------|-------------------|---------------------------|----------------|----------------|
| I feel that employers do not want their injured workers back to work unless they are fully recovered.                          | 7%                | 12%               | 8%                        | 38%            | 35%            |
| It is rare for me to hear from an employer regarding return to work issues.  | 7%                | 18%               | 9%                        | 29%            | 38%            |
| Too many different parties (e.g., employers, insurance carriers) call me about the same claim.                                 | 7%                | 16%               | 21%                       | 21%            | 35%            |
| Insurance carriers are typically fair and reasonable about the type of care an injured worker receives.                        | 33%               | 33%               | 9%                        | 21%            | 4%             |
| Insurance carriers typically pressure me to return injured workers back to their job too soon.                                 | 6%                | 14%               | 19%                       | 27%            | 34%            |
| I feel that the workers' compensation system is effective at facilitating an injured workers' return to productive employment. | 20%               | 27%               | 17%                       | 29%            | 7%             |

Source: *Health Care Provider Survey of Return-to-Work Programs for Injured Workers*, Research and Oversight Council on Workers Compensation, 2002.

Note: Percentages in each row may not total to 100 percent due to rounding.

the Work Status Report in 2000 and two communications-related RTW provisions in HB 2600 (77<sup>th</sup> Legislature) in 2001. Survey results summarized in this article – gathered from employers, health care providers, and insurance carriers – show some positive trends and specific areas for further improvement.

HB 2600 required that employers provide information regarding the availability of modified duty options upon request, and that insurance carriers notify employers about the availability of RTW coordination services and to provide such services upon request. The present survey shows that awareness of these legislatively-mandated changes is low. However, it is encouraging to

see that among those employers who knew about the new requirements, half to two-thirds took advantage of their carrier's RTW coordination services. This finding strongly suggests that if employers are more cognizant of the fact that they can receive help from their carrier on RTW matters, a significant percentage of them would request RTW coordination services. Thus, efforts should be made by TWCC, business associations, and the insurance carrier community to educate employers and other system participants about the changes affecting RTW that were implemented as part of the HB 2600 legislation in 2001.

Of significance is the fact that while HB 2600 granted

TWCC the authority to draft rules to govern RTW communication, such rules cannot be adopted prior to January 1, 2004 to allow system participants time to develop their own communication processes. The low awareness levels found in the present study suggest that it will be necessary for TWCC to adopt rules to regulate how this communication will take place.

Health care providers, insurance carriers, and employers affirmed the usefulness of the information contained in the Work Status Report (TWCC-73 form). However, this usefulness is compromised by problems with timeliness of submission and missing information. Though electronic submission is required (within two days after the medical examination), a significant proportion of both employers and insurance carriers still receive these reports by standard mail, resulting in delayed delivery. Due to the time-sensitive nature of this information, it is important that employers make sure that the health care providers have their correct fax number or e-mail address for timely transmission, and that health care providers use the designated fax or e-mail contact information.

It is also critical that the health care provider, when releasing an injured employee to return to work, clearly specifies any work restrictions in the Work Status Report. If the worker is not being released to go back to work, the Work Sta-

tus Report should state the reasons why. The quality of the information that the health care provider submits, in turn, can be improved if employers provide information about the physical requirements of the injured worker's job (e.g., functional job description, job task analysis) and alternative duties that might be available.

There is clearly room for improvement in RTW-related communications among system participants. There seems to be a significant degree of conflict and distrust among health care providers, employers, and insurance carriers, which may be contributing to less than optimal RTW outcomes for injured workers in Texas. Health care providers expressed concern that employers will not adhere to work restrictions documented on the Work Status Report and felt that they were being pressured by insurance carriers to release injured workers to return to work before they are ready. There is a strong perception among medical providers and insurance carriers that employers are reluctant to accept employees with restrictions back at work, and there is a feeling among carriers and employers that medical providers are unwilling to release injured workers to return to employment. While there are fundamental reasons (i.e., financial, philosophical) why the various parties may disagree about RTW-related decisions, it is clear that employers, providers,

and carriers must find a way to work together in more positive ways to improve the RTW outcomes of injured workers in Texas.

The full report upon which this article is based will be available from the ROC in February 2003.

#### Notes to pages 9-15

<sup>1</sup> See Research and Oversight Council on Workers' Compensation, *Striking the Balance: An Analysis of the Cost and Quality of Medical Care in the Texas Workers' Compensation System* (2001), *Returning to Work: An Examination of Existing Disability Duration Guidelines and their Application to the Texas Workers' Compensation System* (2001), and *Recommendations for Improvements in Texas Workers' Compensation Safety and Return-to-Work Programs* (2001).

<sup>2</sup> It was anticipated that this provision would serve to improve the dialogue between employers, injured workers, health care providers, and insurance carriers regarding potential RTW options at the company for injured employees. HB 2600 specified that TWCC was not allowed to adopt rules on these regulations until January 1, 2004 to give employers, carriers, and doctors the opportunity to work out communication issues amongst themselves, without rules dictating how the communication needed to happen.

<sup>3</sup> It is important to note that RTW coordination services do not include physical workplace modifications paid for by the insurance carrier.

<sup>4</sup> See TWCC Rules 129.5, 129.6 and 130.111. The requirement came from HB 2513 passed by the 76th Legislature, which said that an employer, insurance carrier, injured worker, or TWCC could request a functional capacity exam from the treating doctor.

<sup>5</sup> Carrier requests for Work Status Reports may not exceed one report every two weeks and must be based upon the doctor's scheduled appointments with the injured worker.

<sup>6</sup> The surveys were conducted between September 12, 2002 and November 20, 2002.

<sup>7</sup> The survey of employers also contained an online option, whereby the employer could visit TWCC's web site and complete the survey online. A total of 129 surveys were completed by employers online, and 551 completed surveys were returned to the ROC via business reply envelope or facsimile. A total of 3,692 surveys were effectively delivered to employers, resulting in a response rate of approximately 19 percent.

<sup>8</sup> A total of 3,245 surveys were effectively delivered to health care providers, resulting in a response rate of approximately 10 percent. As is the case with all surveys, due to the imperfect response rates reflected here, non-response bias may exist.

<sup>9</sup> A total of 116 surveys were mailed to insurance groups, which represent approximately 260 companies licensed to write WC insurance in Texas (24 percent response rate). It is unknown what percentage of the workers' compensation insurance market these companies represent.

<sup>10</sup> Medical case management rehabilitation was by far the most common RTW service received by employers (53 percent). Just over a third (34 percent) obtained assistance with job task analysis and 29 percent of employers who received RTW assistance got help in the area of job modification.

<sup>11</sup> Only employers with lost workday injury cases were included in the analysis related to the Work Status Report.

<sup>12</sup> These percentages reflect employers that indicated the information was never received or occasionally received from health care providers.

Abstracts of all ROC research reports and back issues of the *Texas Monitor* are available at [www.roc.state.tx.us](http://www.roc.state.tx.us).

**Research and Oversight Council  
on Workers' Compensation**

9800 N. Lamar Blvd., Suite 260  
Austin, TX 78753

Pre-Sorted Standard  
U.S. Postage  
PAID  
Permit No. 2271  
Austin, TX

**RETURN SERVICE REQUESTED**

*Continued from page 8—*

cessfully delivered to employers that met all of the sampling requirements.

<sup>4</sup> See Texas *Labor Code* § 411.091.

<sup>5</sup> It is important to note that this reflects the employer perspective on employee morale. How employees may feel about the DFW program may differ.

<sup>6</sup> A total of 91 percent of employers indicated that they provide a written copy of the company DFW policy to employees on or before the first day of employment.

<sup>7</sup> According to a recent canvass of states regarding DFW premium credit programs by the TWCC and the ROC, it is common for states to require that employer DFW programs include employee education, required supervisor training, and treatment assistance/EAP referral services (among others) in order to qualify for the premium. This highlights the perceived importance of these DFW program components.

**ROC 2002 Biennial Report  
Approved**

The *2002 Biennial Report* of the Research and Oversight Council on Workers' Compensation was approved by the ROC Board of Directors on December 12, 2002. The report includes information on the activities of the ROC, the status of the workers' compensation system in general, and identification of problems in the system, with recommendations for statutory or regulatory changes.

In all, the *2002 Biennial Report* identifies 21 issues for which legislative or regulatory action may be warranted. The report also includes ROC staff's responses to 23 requests for legislative changes adopted by TWCC Commissioners.

The 2002 Biennial Report is available on the ROC's website at [www.roc.state.tx.us](http://www.roc.state.tx.us).

---

**Research and Oversight Council  
on Workers' Compensation**

**Board of Directors**

**Chair**

Rep. Scott Hochberg

**Vice Chair**

Sen. John Carona

**Members**

Sen. Troy Fraser

Nancy Moore

Rebecca F. Olivares

Sen. Leticia Van de Putte

Lonnie Watson

**Executive Director**

Scott McAnally

---

9800 N. Lamar Blvd., Suite 260  
Austin, Texas 78753  
Telephone: (512) 469-7811  
Fax: (512) 469-7481  
E-mail: [info@roc.state.tx.us](mailto:info@roc.state.tx.us)  
Web: <http://www.roc.state.tx.us>