



Texas Department of Insurance

Workers' Compensation Research and Evaluation Group

Employer Participation in the Texas Workers' Compensation System

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8. Employer Participation in the Texas Workers' Compensation System

Introduction

Since the Texas workers' compensation law was first enacted in 1913, private sector employers have been allowed to either obtain workers' compensation coverage or opt out of the Texas workers' compensation system.¹ Prior to the 1970's, many states had elective workers' compensation laws. Since the 1972 publication of the National Commission on State Workmen's Compensation Laws' essential recommendations, 22 states have made workers' compensation coverage mandatory for most private-sector employers. Several states with mandatory workers' compensation laws provide statutory exemptions to allow small employers or employers from select industries to opt out of their workers' compensation systems.²

Texas is the only state that permits private-sector employers (regardless of employer size or industry) the option of not obtaining workers' compensation coverage and thus, becoming "nonsubscribers" to the workers' compensation system.³ Employers who do not choose to obtain workers' compensation coverage (either through purchasing an insurance policy or becoming a certified self-insured employer or a member of a certified self-insurance group of employers) lose the protection of statutory limits on liability and may be sued for negligence by their injured employees.

Since 1993, the state has periodically monitored the percentage of employers that are nonsubscribers and the percentage of employees employed by nonsubscribers, as well as the types of alternative occupational benefit programs utilized by nonsubscribers and the reasons employers choose or do not choose to participate in the Texas workers' compensation system. Nonsubscription rates remain an important indicator of the relative "health" of the workers' compensation system since these roughly measure employers' perspectives regarding whether the benefits of participating in the workers' compensation system are greater than the costs of obtaining coverage. For this reason, the 79th Legislature required TDI to monitor and report the effect of HB 7 on employer

¹ Texas governmental entities, including the state and its political subdivisions are currently required to provide workers' compensation insurance coverage to their employees.

² Florida, for example, exempts non-construction employers with less than four employees. New Mexico exempts non-construction employers with less than three employees, but allows some service and ranch employers the option to purchase coverage.

³ In New Jersey all employers are required to have workers' compensation coverage or be self-insured. Non-compliant employers are fined and their injured employees receive income and medical benefits through the Uninsured Employers' Fund.

participation in the Texas workers' compensation system as part of this biennial report.

The first study of employer participation in the Texas workers' compensation system was published in 1993 by Texas A&M University for the Texas Workers' Compensation Research Center. In 1996, the Research Center's successor agency, the Research and Oversight Council on Workers' Compensation (ROC) assumed the responsibility of calculating nonsubscription rates using the same methods. In 2004, TDI acquired this responsibility and currently manages the survey.

Survey Design and Data Collection

A random probability sample, stratified by industry and employment size, was drawn from all year-round private-sector employers in the state using the Texas Workforce Commission's Unemployment Insurance database.⁴ To address changing issues in the workers' compensation system, the original survey instrument designed by the Research Center has been modified slightly over the years. Specifically, TDI's Workers' Compensation Research and Evaluation Group (REG) included questions in the 2012 survey to measure the impacts of the HB 7 legislative reforms on business decisions affecting economic development as well as questions to collect information about the use of arbitration agreements by nonsubscribing employers.

During the months of July through August 2012, the Public Policy Research Institute (PPRI) at Texas A&M University, on behalf of TDI, surveyed more than 2,500 Texas employers. The results of the survey serve as the basis for the estimates provided in this report.⁵ This report presents highlights of the findings from this survey, including:⁶

- Overall employer nonsubscription rates and the percentage of Texas employees employed by nonsubscribers;
- The reasons employers gave for purchasing workers' compensation coverage or becoming nonsubscribers to the workers' compensation system;
- Texas employers' recent experiences with workers' compensation premium costs;
- Employer satisfaction levels for subscribers and nonsubscribers; and
- Employers' perceptions regarding the impact of the HB 7 legislative workers' compensation reforms on economic development.

⁴ For the purposes of this study, "year-round" employers are employers with reported wages for four consecutive quarters. Employers with only seasonal employees were excluded from this analysis.

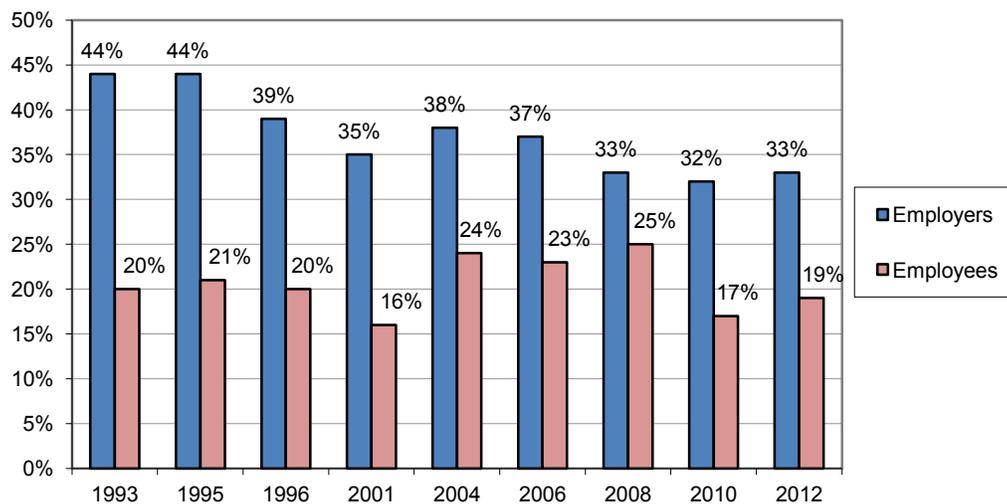
⁵ The response rate for this survey was 41 percent.

⁶ Additional findings from this survey, including information regarding the types of alternative occupational benefit programs offered by nonsubscribers, can be viewed on TDI's website at www.tdi.state.tx.us/reports/report9.html.

Employer Participation and Employee Coverage

The percentage of year-round private Texas employers that are nonsubscribers to the workers' compensation system increased from 32 percent in 2010 to 33 percent in 2012—tied with 2008 with the second lowest percentage since 1993 (an estimated 113,000 employers in 2012). However, in terms of employees covered, an estimated 19 percent of Texas non-public employees (representing approximately 1.7 million employees in 2012) worked for non-subscribing employers – an increase of two percent since 2010, but the third lowest percentage since 1993 (see Figure 8.1). It should be noted that the employee coverage rates in 2012 were affected somewhat by the decision of one of the largest Texas employers to become a nonsubscriber this year.

Figure 8.1: Percentage of Texas Employers that are Nonsubscribers and the Percentage of Texas Employees that are Employed by Nonsubscribers



Source: Survey of Employer Participation in the Texas Workers' Compensation System, 1993 and 1995 estimates from the Texas Workers' Compensation Research Center and the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2012 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

Results from the 2004 through 2012 employer surveys highlighted the trend of larger employers choosing to opt out of the Texas workers' compensation system for reasons that centered primarily on high workers' compensation premium costs and the ability to adequately control medical costs for their injured employees.

However this trend for large employers reversed after 2008. An increased percentage of large employers, especially those with more than 500 employees, chose to purchase workers' compensation coverage in 2010 and to a slightly lesser degree in 2012. The

nonsubscription rates among large employers fell from 26 percent in 2008 to 15 percent in 2010 and 17 percent in 2012 (see Table 8.1). Medium-sized employers increased their nonsubscription rates moderately, while small employers stabilized at the 2008 levels. The decline in nonsubscription rates for large employers after 2008 coincides with a significant economic downturn, and is also at the lowest level since the 2001 recession when the nonsubscription rate was 14 percent. It is possible that tight economic conditions play an influential role in large employers' decisions to purchase coverage in the Texas workers' compensation system since workers' compensation coverage provides additional protection for employers from employee lawsuits that may result from a work-related injury.

Table 8.1: Percentage of Texas Employers that are Nonsubscribers by Employment Size, 1995-2012

Employment Size	1995	1996	2001	2004	2006	2008	2010	2012
1-4 Employees	55%	44%	47%	46%	43%	40%	41%	41%
5-9 Employees	37%	39%	29%	37%	36%	31%	30%	29%
10-49 Employees	28%	28%	19%	25%	26%	23%	20%	19%
50-99 Employees	24%	23%	16%	20%	19%	18%	16%	19%
100-499 Employees	20%	17%	13%	16%	17%	16%	13%	12%
500 + Employees	18%	14%	14%	20%	21%	26%	15%	17%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, 1995 estimates from the Texas Workers' Compensation Research Center and the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2012 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

Nonsubscription Rates by Industry

Four of the eight primary industry sectors experienced increases in their nonsubscription rates in 2012. The Other Services sector had the steepest increase from 42 percent of employers reporting that they were nonsubscribers in 2010 to 49 percent in 2012, the highest nonsubscription rate of all the sectors (see Table 8.2). They were followed by the Agriculture/Forestry/Fishing/Hunting sector, with an increase from 25 percent nonsubscription rate in 2010 to 29 percent in 2012. Employers in the Wholesale Trade/Retail Trade/Transportation sector decreased their nonsubscription rate from 32 percent in 2010 to 26 percent in 2012, the second lowest nonsubscription rate among the industry sectors.

Table 8.2: Percentage of Texas Employers that are Nonsubscribers by Industry, 2004-2012 Estimates

Industry Type	Non-subscription Rate				
	2004	2006	2008	2010	2012
Agriculture/Forestry/Fishing/Hunting	39%	25%	27%	25%	29%
Mining/Utilities/Construction	32%	21%	28%	19%	22%
Manufacturing	42%	37%	31%	31%	29%
Wholesale Trade/ Retail Trade/Transportation	40%	37%	29%	32%	26%
Finance/Real Estate/Professional Services	32%	33%	33%	33%	32%
Health Care/Educational Services	41%	44%	39%	32%	35%
Arts/Entertainment/Accommodation/Food Services	54%	52%	46%	40%	40%
Other Services Except Public Administration	39%	42%	36%	42%	49%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, Public Policy Research Institute at Texas A&M University, and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2012.

Note: Industry classifications were based on the 2002 North American Industry Classification System (NAICS) developed by the governments of the U.S., Canada and Mexico, which replaced the Standard Industrial Classification (SIC) system previously used in the U.S. As a result of this change in industry classifications, industry nonsubscription rates for 2004-2012 cannot be compared to previous years.

Reasons Employers Opt Out of the Workers' Compensation System

The 2012 survey results showed a significant shift in the primary reasons why employers said they do not purchase workers' compensation insurance. The three top primary reasons employers cited (17 percent each) included their perception that they had too few employees, they had few-on-the-job injuries, and that they were not required to have workers' compensation insurance by law (see Table 8.3). The most significant change occurred with employers' perception that workers' compensation insurance premiums were too high. The percentage of employers who gave this reason fell from 32 percent in 2010 to 15 percent in 2012.

When these reasons were examined by employer size, the importance of individual reasons varied. For example, 24 percent of large employers with more than 500 employees reported the primary reason for opting out of the system was that they felt medical costs were too high, up from 10 percent in 2010. Another 23 percent of large employers reported that their reason for opting out of the workers' compensation system was that premiums were too high, but this is down significantly from 50 percent in 2010. An additional 20 percent of large employers (down from 29 percent in 2010) reported their perception that they could do a better job than the Texas workers' compensation system at ensuring that injured employees receive appropriate benefits.

Table 8.3: Most Frequent Reasons Non-subscribing Employers Gave for Not Purchasing Workers' Compensation Coverage

Primary Reasons Given by Surveyed Employers	Percentage of Non-subscribing Employers			
	2006	2008	2010	2012
Workers' compensation insurance premiums were too high	35%	26%	32%	15%
Employer had too few employees	21%	26%	25%	17%
Employers not required to have workers' compensation insurance by law	9%	11%	13%	17%
Medical costs in the workers' compensation system were too high	4%	4%	5%	10%
Employer had few on-the-job injuries	9%	9%	12%	17%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, Public Policy Research Institute at Texas A&M University, and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2012.

Reasons Employers Gave for Purchasing Workers' Compensation Coverage

The two most frequent reasons cited by Texas employers for participating in the Texas workers' compensation system in 2012 was that they were concerned with lawsuits (21 percent) and because the employer was able to participate in a health care network (20 percent) (see Table 8.4 and Section 3 of this report for more information about network participation in the Texas workers' compensation system).

For large employers (i.e., those with 500 or more employees), the ability to participate in a workers' compensation health care network (20 percent in 2012) continues to be the primary reason given since 2008 for participating in the Texas workers' compensation system. This finding indicates a level of employer interest in workers' compensation health care networks, which may impact employers' decisions to remain a subscriber, enter, or re-enter the Texas workers' compensation system. Other key reasons large subscribers gave for purchasing workers' compensation coverage included concern about lawsuits and the ability to reduce workers' compensation insurance costs through deductibles, certified self insurance, group self-insurance or other premium discounts.

Table 8.4: Most Frequent Reasons Subscribing Employers gave for Purchasing Workers' Compensation Coverage

Primary Reasons Given by Surveyed Employers	Percentage of Subscribing Employers			
	2006	2008	2010	2012
Employer thought having workers' compensation was required by law	22%	25%	22%	19%
Employer was able to provide injured employees with medical care through a workers' compensation health care network	20%	24%	27%	20%
Employer was concerned about lawsuits	20%	14%	18%	21%
Employer needed workers' compensation coverage in order to obtain government contracts	6%	3%	6%	9%
Workers' compensation insurance rates were lower	NA	2%	2%	11%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, Public Policy Research Institute at Texas A&M University, and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2012.

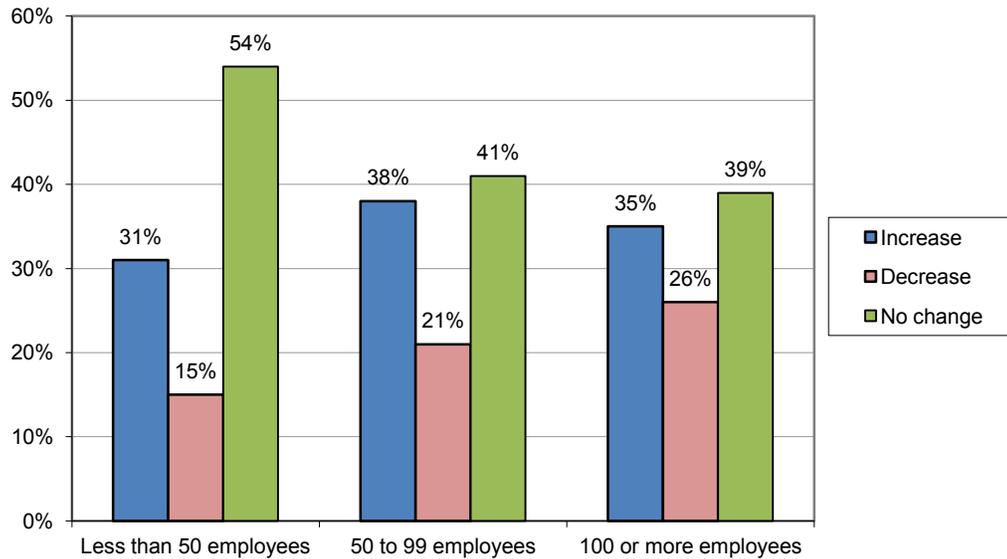
Modest Premium Pressure in 2012

There are indications that in 2012 Texas employers faced modest premium pressures when compared to the declines between 2004 and 2008. While the majority of subscribing employers of all sizes experienced decreases or no changes in their premiums in 2012 (see Figure 8.2), the percentage of those employers reporting increases in their workers' compensation premium have grown after 2008. As Figure 8.3 shows, more than 30 percent of subscribing employers of all sizes experienced premium increases in 2012, compared to 26 percent in 2010 and less than 25 percent in 2008.

Overall, approximately 60 percent of all subscribers experienced either decreases or no changes in their premium in 2012, compared to 74 percent in 2010.

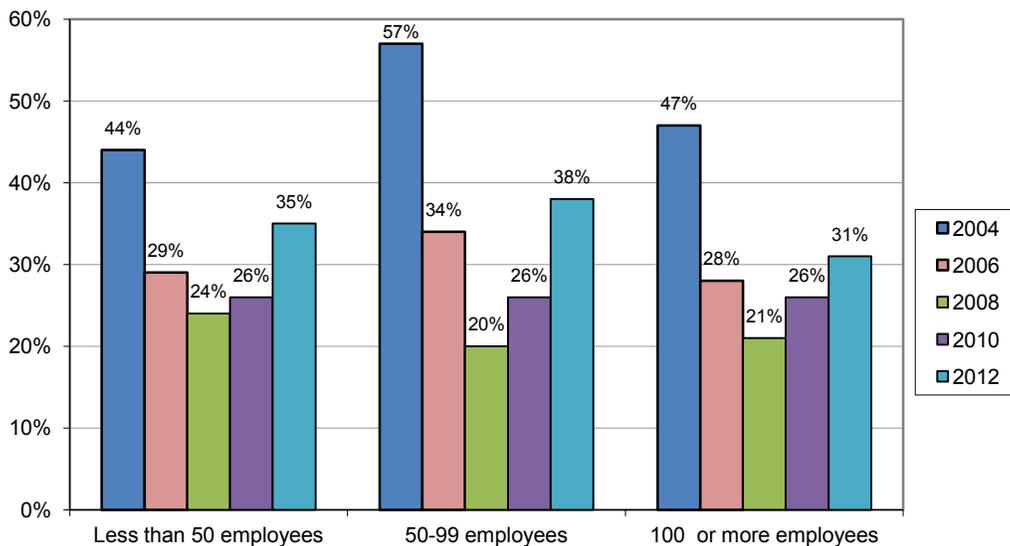
It is not clear from the survey to tell if these premium increases reported are the result of increased workers' compensation rates or the result of payroll increases resulting from the ongoing economic recovery in Texas or both. However, it should be noted that mid-2006, some insurance companies started offering premium credits for participating in their workers' compensation health care network. See Section 2 of this report for information regarding the range of premium credits filed by numerous insurance companies, and whether premium credits are on the decline.

Figure 8.2: Percentage of Subscribers that Experienced an Increase, Decrease, or No Change in their Premium, by Employer Size



Source: Survey of Employer Participation in the Texas Workers' Compensation System, 1995 estimates from the Texas Workers' Compensation Research Center and the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2012 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

Figure 8.3: Percentage of Subscribing Employers that Experienced an Increase in their Workers' Compensation Premiums Compared to Previous Policy Years, by Employer Size



Source: Survey of Employer Participation in the Texas Workers' Compensation System, 1995 estimates from the Texas Workers' Compensation Research Center and the Public Policy Research Institute (PPRI) at Texas A&M University; 1996 and 2001 estimates from the Research and Oversight Council on Workers' Compensation and PPRI; and 2004-2012 estimates from the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group and PPRI.

Other Types of Insurance Coverage Carried by Texas Employers

Although employer participation in the Texas workers' compensation system is the focus of this section of the report, it is important to note that there may be a general difference in the propensity of certain employers to carry various types of insurance coverage than other types of employers. As Table 8.5 indicates, in 2012 a slightly higher percentage of large subscribers than large nonsubscribers (i.e., employers with 500 or more employees) reported offering disability and commercial auto insurance benefits to their employees while a slightly higher percentage of large nonsubscribers provided general health insurance and voluntary accidental death and dismemberment insurance coverage to their employees.

However, this reflects a sharp increase in the percentage of large nonsubscribers that offered each of the insurance coverage to their employees. The percentage of nonsubscribers offering disability insurance to their employees increased from 57 percent in 2008 to 84 percent in 2012, while the percentage of subscribers offering the same coverage increased from 77 percent to 87 percent over the same period.

Industry differences affect the likelihood of an employer offering certain insurance benefits to employees or purchasing various types of insurance coverage, but it is important to note that employers' decisions to be nonsubscribers are likely part of broader decisions these employers make regarding their insurance needs.

Table 8.5: Other Types of Insurance Coverage Carried by Large Texas Employers (500 or more employees)

Type of Insurance Coverage	2008		2010		2012	
	Subscriber	Non-subscriber	Subscriber	Non-subscriber	Subscriber	Non-subscriber
General health insurance for employees (excluding dental or vision insurance coverage)	86%	68%	90%	91%	95%	97%
Life insurance for employees	83%	56%	87%	83%	92%	91%
Disability insurance for employees (short-term or long-term or both)	77%	57%	84%	78%	87%	84%
Voluntary accidental death and dismemberment insurance (A, D & D)	73%	62%	72%	70%	83%	85%
General liability insurance (to protect your company against liability for bodily injuries that might occur on your premises)	92%	76%	87%	91%	95%	87%
Property insurance	83%	75%	84%	91%	90%	94%
Commercial auto insurance	79%	60%	80%	76%	84%	81%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, Public Policy Research Institute at Texas A&M University, and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2012.

HB 7 Reforms and Employers' Perceptions on Economic Development in Texas

A required element of TDI evaluation of the impact of the HB 7 reforms on the affordability and availability of workers' compensation insurance is an analysis of the reforms' effect on economic development. Given the low level of employer knowledge about these reforms seen in previous years, it is not surprising that a great majority (between 74 and 79 percent) of Texas employers in 2012 said the reforms had no impact on their business decisions (see Table 8.6).

However, the percentage of employers reporting that the reforms had a positive effect on their economic decisions has doubled since 2010. The percentage of employers who reported that the reforms positively affected their decisions to hire more employees increased from 5 percent in 2010 to 13 percent in 2012. Likewise the percentage of employers who reported that the reforms positively affected their decisions to expand operations in Texas (13 percent) and to purchase or maintain workers' compensation coverage (18 percent) showed measureable increases over the 2010 results.

The economic-development impact of the HB 7 reforms appears to be primarily dependent on employer knowledge about the key component of these reforms, particularly workers' compensation health care networks.

In 2010, 60 percent of Texas employers reported they were not knowledgeable about the availability of workers' compensation health care networks. Previous surveys also showed that employers who reported they were extremely knowledgeable about the availability of workers' compensation health care networks under HB 7 were much more likely to report that they would be more willing to hire more employees, expand business operations in Texas, and to purchase or maintain workers' compensation coverage than employers who were somewhat or not knowledgeable at all about the workers' compensation health care network provisions in HB 7.

While TDI will continue to monitor the impact of the HB 7 reforms in future reports, recent survey results indicate that expanded employer education efforts about key aspects of the HB 7 reforms can positively impact employers' business decisions in Texas.

Table 8.6: Impact of the 2005 Workers' Compensation Reforms on Texas Employers' Business Decisions

Employers' Decisions	Percent of all Employers Surveyed								
	Positive			Negative			No Change		
	2008	2010	2012	2008	2010	2012	2008	2010	2012
Employer's plan to hire more employees	6%	5%	13%	2%	3%	8%	92%	92%	79%
Employer's plan to expand business operations in Texas	9%	6%	13%	7%	2%	3%	89%	91%	78%
Employer's decision to purchase or maintain its workers' compensation coverage	14%	10%	18%	10%	2%	8%	84%	87%	74%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, Public Policy Research Institute at Texas A&M University, and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2012.

Nonsubscribers' and Subscribers' Satisfaction with Their Programs

While the gap in overall satisfaction levels between nonsubscribers and subscribers narrowed after 2006, for the first time in recent surveys and across all measures, subscribing employers in 2012 reported higher satisfaction levels with their workers' compensation coverage than nonsubscribers with their alternative occupational benefit programs (see Table 8.7).

On their perceptions of benefit adequacy and value, subscribers reported satisfaction levels as much as 15 percentage points higher than nonsubscribers. Seventy-two percent of subscribers reported that they were overall, extremely or somewhat satisfied compared to 63 percent for nonsubscribers.⁷

Overall, employer satisfaction levels vary by employer size. Gaps in satisfaction between nonsubscribers and subscribers became more pronounced as the size of the employer increased. Sixty-three percent of large nonsubscribers with 100 or more employees indicated that they were extremely or somewhat satisfied with their experience as nonsubscribing employers, compared to 71 percent of large subscribers (see Figure 8.4). This satisfaction gap between large nonsubscribers and large subscribers might partially explain the increase in subscription rates among large employers who opted into the workers' compensation system since 2008 (see Table 8.1). However, satisfaction alone may not be the overriding factor in employers' decisions to be subscribers or nonsubscribers in the workers' compensation system.

⁷ Complete results from the *Employer Participation in the Texas Workers' Compensation System: 2012 Estimates* are available at www.tdi.state.tx.us/reports/report9.html.

Table 8.7: Percentage of Employers that Indicated They Were Extremely or Somewhat Satisfied with Their Programs

Areas of Satisfaction	2006		2008		2010		2012	
	Sub-subscriber	Non-sub-subscriber	Sub-subscriber	Non-sub-subscriber	Sub-subscriber	Non-sub-subscriber	Sub-subscriber	Non-sub-subscriber
Overall Satisfaction	56%	70%	61%	69%	59%	68%	72%	63%
Adequacy of occupational benefits paid to injured workers	53%	66%	53%	62%	54%	60%	61%	47%
Whether workers' compensation or occupational benefits plan is a good value for company	54%	73%	56%	69%	58%	68%	73%	58%
Ability to manage medical and wage replacement costs	50%	63%	50%	68%	48%	65%	62%	54%

Source: Survey of Employer Participation in the Texas Workers' Compensation System, Public Policy Research Institute at Texas A&M University, and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2012.

Summary

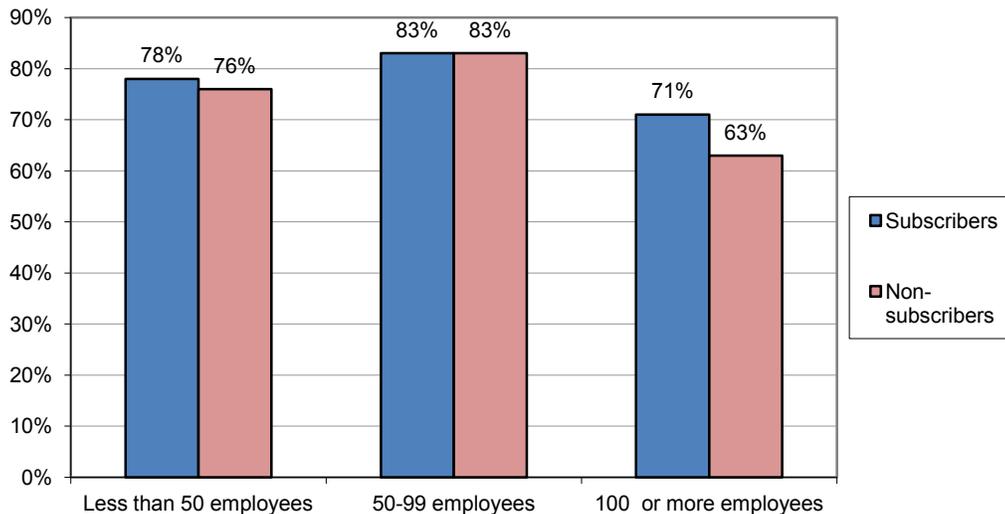
Overall, the 2012 employer survey reflects slight changes to the subscription rates in the Texas workers' compensation since 2010. The subscription rate among employers decreased one percent to 67 percent, while the percent of employers covered in the workers' compensation system decreased two percent, from 83 percent to 81 percent. These 2012 rates are among the highest subscription rates for employers and employees since Texas conducted the first survey in 1993.

Subscribers cite the option to participate in workers' compensation networks and their concerns about lawsuits among their primary reasons for opting into the system. However premium experience might also contributed to subscribing trends. While 32 percent of nonsubscribers cite high premiums as their primary reason for opting out in 2010, that percentage fell to 23 percent in 2012. Almost 70 percent of subscribers continue to experience either premium decreases or no premium changes from previous years.

While subscribers report that the network option under HB 7 was their primary reason for subscribing, previous surveys show that less than 10 percent of Texas employers are knowledgeable about the 2005 legislative reforms, including the availability of workers' compensation health care networks. There is some evidence that employers knowledgeable about the reforms view them as having a positive impact on their decisions to hire more employees, expand business operations in Texas, and purchase or obtain workers' compensation coverage. Over all, the percentage of employers reporting that the reforms had a positive effect on their economic decisions has doubled since 2010.

Given the uncertain economic climate and pending federal health care reforms that employers face, it is difficult to isolate fully the impact of the recent HB 7 reforms on employer decisions to obtain workers' compensation coverage or opt out of the system. Yet, subscribing employers report favorably on the network option and their satisfaction levels with key areas has improved since 2006. For the first time in recent surveys, subscribing employers report higher overall satisfaction levels than nonsubscribers.

Figure 8.4: Percentage of Employers that Indicated They Were Extremely or Somewhat Satisfied, by Employer Size



Source: Survey of Employer Participation in the Texas Workers' Compensation System, Public Policy Research Institute at Texas A&M University, and the Texas Department of Insurance, Workers' Compensation Research and Evaluation Group, 2012.

