

PRIMA PRESS

a quarterly newsletter for members of



texasprima.org  
Texas Chapter Public Risk Management Association

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THE CELEBRATION OF "25" YEARS IN THE MAKING CONTINUES WITH TEXAS PRIMA ... PRESIDENT'S MESSAGE



Dear Texas PRIMA Sponsors and Members, I've spent the past several months working on preparing and issuing insurance programs/products proposals, reviewing responses with numerous evaluation committees, preparing recommendations to Board of Trustees, finalizing and submitting annual budget, preparing for District summer closure as well as preparing for the pre-hiring of hundreds of new employees that will begin in August. The District's new health insurance program was awarded a couple of weeks ago and I am already busy working with the new carrier on numerous implementation strategies and planning for annual enrollment.

You must be wondering by now why am I sharing all of this information with you. Stay with me because I'm about to tell you. I joined the public sector, specifically school districts 12 years ago

after about 20 years in corporate America. While my background is extensive, preparing for the role of a Risk and/or Benefits Manager in the public sector requires the assistance, support, dedication, commitment, and mentoring of many who are already pros in the system. As we say in school districts, "it takes a village to educate a child." For me personally it took the Texas PRIMA foundation, its leadership, fellowship, and sponsors to help me grow and become the Employee Benefits, Risk Management and Safety Director I am today. I say this with a great deal of pride and humility.

Joining Texas PRIMA and becoming actively involved gave me countless opportunities to partner with great mentors, learn from leaders in the industry and build long-lasting relationships with public sector business community partners. Wow - all of that from Texas PRIMA and then some!!! We are history in the making. In 1988 there were approximately 58 members in Texas PRIMA and today we've grown to over 500 and getting ready to celebrate our 25<sup>th</sup> Texas PRIMA annual

conference in San Antonio November 9-12, 2014. Several conference committees are already busy at work to ensure that your conference experience with Texas PRIMA is second to none.

The membership committee has launched a new member campaign and is busy introducing new members to the vast opportunities available to them via this association. The education committee held a successful Regional Risk Management Seminar in San Marcos in April and is getting ready for the second one in Sugar Land on June 25<sup>th</sup> so please make plans to attend. A "Call" for educational presentations for the Annual Conference has been made and the sponsor and exhibitor prospectus has been released. We hope the end result will produce the high quality level of educational sessions you have grown accustomed to at conference and that your opportunities to network at the exhibit hall with numerous returning and new sponsors and exhibitors is both rewarding and eventful. The conference committee is busy planning all the fancy anniversary-style details for

SAVE THE DATE: TEXAS PRIMA ANNUAL CONFERENCE NOVEMBER 9-12, 2014 VISIT [TEXASPRIMA.ORG](http://TEXASPRIMA.ORG) FOR DETAILS.

a very much awaited and anticipated 25<sup>th</sup> anniversary celebration.

Additionally, we would like to encourage you to submit for Risk Professional of the Year, or Risk Professional Associate of the Year, and/or submit your outstanding Risk Management Program(s). This award platform provided by Texas PRIMA gives you and your organization the opportunity to showcase your accomplishments and receive acknowledgement before and from a group of your peers. Can't get better than that right?

Texas PRIMA is always looking for great people who are willing to get involved in a leadership role and we hope you sincerely consider adding your name to the ballot during election season to serve on the Board effective January 2015. Please stay tuned for more details about opportunities on how you can serve as a member of the Texas PRIMA Board. Who knows, maybe the next President's message will be coming from YOU!!!!

See you in November on the River Walk,  
Irma Hernandez, 2014 Texas PRIMA President



### BOARD MEMBER SPOTLIGHT: CINDY KIRK

Cindy Kirk has been a Texas PRIMA member for about 30 years, and currently serves on the Chapter's Board as Director Emeritus. Cindy, Risk Manager for the City of Bryan, is responsible for the City's risk management programs as well as its employee benefit programs—including an employee health clinic and wellness program. Cindy started her career with the City of Bryan working in Personnel (now Human Resources). Like many, her job responsibilities suddenly expanded to a new area—risk management. Cindy was looking for resources to learn more about risk management and, fortunately, that is when she discovered PRIMA and its members who were more than willing to help.

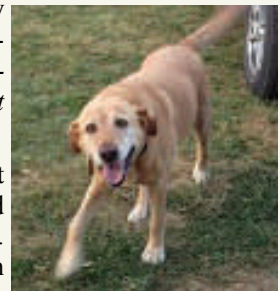
Over Cindy's years with Texas PRIMA, she has served in *almost* every board position—she managed to avoid Treasurer—and has chaired or served on every committee. Her favorite duty has been assisting with the many conferences over the years to put on a quality—and fun—conference. Her least favorite duty was newsletter editor. (Those were the days of print and snail-mail.)

Cindy has attended every conference since the first one held in McAllen in 1989 and looks forward to celebrating the 25<sup>th</sup> conference in San Antonio together with new and long-time members and friends. One of her favorite conference assignments was selecting the Board's attire for 2005's Renaissance theme reception. She, Linda Spacek, and Regan Rychetsky had so much fun matching outfits to personalities. Her worst conference assignment was also at that conference—checking on the coldest golf tournament in Texas PRIMA's history. The golf course's pro shop sold out of everything warm.

Cindy has served National PRIMA on the Conference Committee, Leadership Development Committee, and currently serves on the Chapter Relations Committee. She has also been active on the Board of the State and Local Government Benefit Association (SALGBA), a national association for public entity benefit administrators.

Cindy says she has been very blessed, personally and professionally, with the contacts and friendships she has made through Texas PRIMA. She credits the growth and success of Texas PRIMA to hard work, perseverance, vision, the support of committed sponsors, and the team work of its leaders and members. Cindy urges all members to get more involved in Texas PRIMA for its resources and to be a resource. *"The challenge for every organization is to build a feeling of oneness, of dependence on one another...because the question is usually not how well each person works, but how well they work together."* \_ Vince Lomardi

Cindy is a Sam Houston State University graduate, but her orange runs a bit on the burnt side. She enjoys bantering during football season with a few Aggies, Bears, and a Red Raider. She and her husband, Jack, live outside of Snook with their yellow lab, Charlie. They have two children, Nicolas and Erika, and one granddaughter, Olivia, who will turn six on July 4<sup>th</sup>.



*Cindy's Yellow Lab,  
Charlie*

## MEMBERS ON THE MOVE



The State Office of Risk Management announced that after more than 26 years with the State of Texas and ten years as Executive Director of the Office, **Jonathan Bow** has decided to retire at the end of June, 2014.

"My time here at the Office has been the capstone of a long and satisfying state career," said Mr. Bow. "I truly love this agency, its mission, and its staff. We have been actively preparing for well over a year to ensure an orderly transition on my eventual retirement, and I'm confident that it is this moment which represents the best time to begin the next stage of my own and the agency's development. There is important work to be done, and I know the Office and those it serves will be in the best hands with the incredible talent we have on board."

"Jonathan has earned the gratitude of the Board, the staff, and the State of Texas for his dedication and service," said Stephanie Simmons, Chair of the Office's Board of Directors. "We sincerely thank him for the many years that he has devoted to the mission and development of the Office. Jonathan's personal and professional accomplishments and the outcomes attained are a testament to his leadership of the agency as it has redefined the value of risk management in this state."

The Board of Directors will conduct the process to choose Mr. Bow's successor, considering both internal and external candidates. Every effort will be made to assess the best and most qualified candidates within a reasonable time in an effort to maintain continuity. Upon posting of the position, consideration will begin immediately and remain ongoing until the position is filled.

**Jeremy Diller**, Director of Risk Management for Texas Association of Public Schools completed his CPCU designation in May.

**Melanie Hill** was promoted to Risk Manager for the City of Grapevine in April 2014.

**Judyann Robinson, CSR, CTSBO** earned the CSR, CTSBO – from TASBO (certified Texas school business official) and Texas Adjuster's License.

**Stephen Sandberg** recently moved into the Texas Sales Director position for Origami Risk; the fastest growing provider of Risk Management Information Systems (RMIS). He is currently responsible for business development and strategic alliances, as well as for providing innovative software solutions to address client requirements.

## WELCOME NEW MEMBERS

Michael Bennett, Risk Manager-City of Round Rock, TX  
Bridget Chustz-Morrison, Safety Program Manager-Fort Bend ISD  
Bernard Cousin, Loss Consultant  
Hunter Cox, Owner-H C Investigations  
Shelly Heard, HR Manager-San Patricio County Drainage District  
Frank Morales, Risk Control Consultant-Argo Group US  
Becky Murray, Insurance Manager-City of Richardson  
Lindsey Rumburg, Benefits Coordinator-City of Richardson  
Stephen Sandberg, ARM, MBA, Director Sales-Origami Risk LLC  
Nila Smith, Benefits Coordinator-City of Texarkana, Texas  
Raul Soqui, Human Resources Specialist  
Monica Tharp, Benefits Administrator-Dallas Housing Authority



## 2014 TEXAS PRIMA MEMBERSHIP DRIVE

**CALLING ALL MEMBERS!** The Membership Committee needs you to help us spread the word to reach our goal of increasing membership by 5% by June 15, 2014. That's only 25 new members!

- "New" members will be entered into a drawing for a one complimentary conference registration to the 2014 Annual Texas PRIMA Conference in San Antonio, Texas
- "New" members must have never been a prior Texas PRIMA member. They must sign up and pay their membership dues by June 15, 2014

The drawing will be done June 20, 2014 during the Summer Board Meeting

**CHALLENGE TO ALL SPONSORS!** In addition to the chance for your "New" members to win the 2014 complimentary conference registration, the sponsor who brings in the most new members will receive the following:

- Recognition at the 2014 conference Membership Luncheon

Referring sponsor must ensure that the "New" member lists their company name on the membership application in order to be eligible for recognition

Stay tuned for updates on our progress. Be sure to check out the goal thermometer posted on the Texas PRIMA website homepage.

GO! 16

25

## S P O N S O R H I G H L I G H T



**Aetna** was founded in Hartford, Connecticut in 1853 and is one of the nation's leading providers of health care, dental, pharmacy, group life, disability insurance, and employee benefits. Building on their 160-year heritage, Aetna is a leader in cooperating and working with doctors, hospitals, employers, patients, public officials and the community in general to build a stronger, more effective health care system. They want make sure healthcare is high quality and affordable for all. Aetna believes it can help create a better health care system and this belief drives their daily decisions as one of the nation's leading health care benefits companies. They work hard to provide their members with information and resources to assist them to make the most informed decisions about their health. Aetna lives by a core set of values and the people who use their services are the focus of everything they do so that they can deliver on their mission to help people achieve health and financial security by providing easy access to cost-effective, high-quality health care. Aetna continually develops new products and services that will have a positive impact.

- Offers a broad range of insurance and employee benefits products.
- The first national, full-service health insurer to offer a consumer-directed health plan.
- Full line of consumer-directed health care products.
- Offers a wide array of programs and services that help control rising employee benefits costs while striving to improve the quality of health care, such as case management; disease management and patient safety programs; integrated medical, dental, pharmaceutical, behavioral health and disability information.
- Provides members with access to convenient tools and easy-to-understand information that can help them make better-informed decisions about their health and protect their finances against health-related risks.

For more information please visit [www.aetna.com](http://www.aetna.com)



**AS&G Claims Administration, Inc.** is the nation's premier provider of claims administration services to the public risk sector. For 30 years, they have been a single source provider of workers' compensation, general liability, automobile liability, professional liability and property claims expertise to local governments and municipal organizations.

AS&G has 7 offices in Texas and 17 offices nationwide that service the Gulf Coast, South East and Mid-Atlantic states. Their goal is to reduce clients' costs through proactive claims handling and experienced decision making. AS&G's dedication is to deliver quality service that exceeds expectations.

## JOIN THE TEXAS PRIMA BOARD

Texas PRIMA, recognized as THE most important professional organization available to public risk management professionals in Texas, is looking for qualified candidates to serve on its Board of Officers and Directors. As a board member, you will play an integral role in the premier public risk management organization in the state. In addition, an opportunity exists to help support your fellow risk management professionals while sharpening your leadership skills.



The Nominating Committee will soon be soliciting nominations to serve on the Texas PRIMA Board. In this regard, we invite all members to seriously consider involvement in the leadership of our Chapter through Board membership. Active participation provides the opportunity to influence the goals and activities of the organization. On a personal level, serving can help impact the future of the profession and the society as a whole. On a professional level, serving provides invaluable networking opportunities with risk management professionals in Texas, as well as nationwide. It can also create invaluable connections to aid in your professional development and enhance both personal and career leadership skills. Consider nominating yourself or someone you know with a true passion for the risk management profession.

The elected Board is comprised of two Past Presidents (Immediate Past and Past President), four Officers (President, President Elect, Secretary, and Treasurer) and four Directors-at-Large. Elections are conducted in October, and new Board terms begin in January. The Board typically meets four times a year, and again at the annual conference.

Nominees must be a member of Texas PRIMA, employed by a qualified governmental entity, have responsibility for risk management functions, insurance, benefits and/or safety management, and be able to attend Board meetings in accordance with the bylaws. Consideration is given to experience, demonstrated leadership, participation in the Chapter, and proven commitment to the organization and profession.

The call for nominations will be sent out in August. If you have questions before then, feel free to contact Texas PRIMA at 512-394-0719.

## REGIONAL RISK MANAGEMENT SEMINARS

The Texas PRIMA Education Committee is hard at work putting together Regional Risk Management Seminars for 2014. The first Regional seminar in the City of San Marcos on April 9, 2014 was a great success. The second Regional is set for June 25, 2014 in Sugar Land and to get more bang for your buck, we have six educational sessions scheduled. See the line-up of topics, speakers and register now at [www.texasprima.org](http://www.texasprima.org). The third, and last before Conference, will be held in Grand Prairie on September 18, 2014. Be sure and save both dates on your calendar.

To better serve our membership in developing risk management topics of relevance and interest we want to hear from you. Do you have a specific topic of interest you want to see presented? Is there a topic YOU would like to present yourself? Send your submission to [info@texasprima.org](mailto:info@texasprima.org) and we look forward to seeing you in Sugar Land on June 25!!

*Donna Parker Stirman, Education Committee Chair*

### Sugar Land—June 25th Agenda:

8a – 9a	Registration / Continental Breakfast sponsored by AS&G
9a – 10a	<b>Generational Diversity: Can We Just All Get Along?</b> — David Kester, Harris County
10a – 10:15a	Networking Break
10:15a – 11:15a	<b>ADA for Employers</b> — Eileen Begle, Harris County
11:15a – 12:15p	<b>What's Going on in Workers' Comp: Appeals Panel and Court Case Update</b> — Jane Suchma, Pappas & Suchma
12:15p – 1p	Lunch sponsored by CCMSI
1p – 2p	<b>Loss Control Inspections: What to Look For and How to Conduct Them</b> — Jeremy Diller, TAPS
2p – 2:15p	Networking Break
2:15p – 3:15p	<b>Distracted Driving</b> — Lisa Robinson, National Safety Council
3:15p – 4:15p	<b>Risk Management Challenges in Public Safety</b> — Manuel Trejo, City of Sugar Land



## CALL FOR CONFERENCE PRESENTATIONS

The Texas PRIMA Education Committee is currently calling for presentations for its 25<sup>th</sup> Annual Conference which will be held at the Grand Hyatt Hotel in San Antonio, Texas, November 9 - 12. We encourage interested presenters to submit their presentation proposal before the June 13, 2014 deadline. You can visit our website [www.texasprima.org](http://www.texasprima.org) and complete our on-line application. For information regarding topic diversity, selection criteria, presentation proposal outline or to find answers to other questions you may have regarding the submission and selection process, please review our call for [presentation information document](#). We thank you for your time and effort and look forward to receiving your submissions and seeing you at Conference in November!



## SCHOLARSHIP PROGRAM

The scholarship application process for Texas PRIMA's 25th Silver Anniversary Conference at The Grand Hyatt Hotel in San Antonio, Texas, November 9-12, 2014 is getting close. There are many deserving people who may not be aware of the scholarship program Texas PRIMA offers. We are encouraging members to get the word out to any of your public entity colleagues and clients who might qualify. The scholarship program is designed to assist risk management professionals whose public entity might not be able to afford the cost of attending the Annual Conference. Full and partial scholarships will be awarded and may include up to the following:

- Conference Registration Costs
- Costs related to attending the conference, including travel and lodging at the conference hotel
- Complimentary membership in Texas PRIMA through 2015

This will be our third year to include scholarship donation opportunities for our sponsors. It has been a huge success and their generosity has enabled us to bring more recipients to the conference than ever before! We look forward to their support again this year and topping last year's recipient numbers.

Look for an email in mid July with specific details to include the application process. Applications will be accepted July 14 through September 5. We appreciate your help in spreading the word about the Texas PRIMA 25th Silver Anniversary Annual Conference and scholarship program.

## SEEKING THE BRILLIANCE OF SHOOTING STARS CALL FOR AWARDS NOMINATIONS

Shooting Stars are far and few between, but when they appear everyone notices. Texas PRIMA is looking for these Shooting Stars. When we look up to the skies and see them we tell our family and friends of the amazing contour they leave. We want to acknowledge the same excitement and amazement with our colleagues and coworkers. We know they are out there and we want to give them the opportunity to be recognized.



**Texas PRIMA is looking for public entity Risk Management Professionals and Risk Management Programs that will shine and ensure that these individuals and programs get the recognition that is deserved.** Texas PRIMA wants to recognize the Silver Lining in everyone with three award categories: Risk Professional of the Year - honoring individuals who exemplify the title through continual innovation and commitment to the risk management field, Risk Associate of the Year - individuals that contribute to the risk management field and Risk Management Programs - honoring public entities with creative and successful risk management programs that benefit the success of the organization.

We would like to see a meteor shower of Shooting Stars in all categories. Please take the time to nominate a Risk Management Professional for Risk Professional of the Year or Risk Associate of the Year or a Public Entity for the Risk Management Program Achievement Award. The nomination process is easy. Nomination forms and qualifications for all three awards can be found by visiting [www.texasprima.org](http://www.texasprima.org). A list of previous winners and programs can also be found on the website. Award recipients for Risk Professional and Associate will be announced and recognized during the Awards Luncheon at the Annual Conference in San Antonio, receive a wall plaque, be recognized in the newsletter, Texas PRIMA Press, recognized on the Texas PRIMA web page and be reimbursed for the conference registration and one night of hotel accommodation costs. Notification of the award will be sent to the award winners' supervisor.

The nomination deadline is September 12, 2014. Any questions concerning the award process can be addressed to Norma Jean Rivera, Chairman of the Awards Committee at [nrivera@co.-san-patricio.tx.us](mailto:nrivera@co.-san-patricio.tx.us) or call Texas PRIMA at 512-394-0719.

See you at the 25<sup>th</sup> Anniversary Texas PRIMA Conference in San Antonio on November 9-12, 2014.

## Risk Management Tidbits

### Subrogation:

Generally, what is subrogation?

Subrogation allows insurance companies to seek reimbursement for its workers' compensation lien when a third-party is responsible for the injured worker's injuries. Workers' compensation insurance carriers are able to step into the shoes of the injured worker and make a claim against a third party that is responsible for the injury. Texas Labor Code Section 417.002 provides that the workers' compensation insurance carrier has the first right to a recovery in a subrogation matter. The carrier is able to recover indemnity and medical benefits paid to and on behalf of the injured worker.

Example: Joe Courier is rear ended by Mary Cellphone while making a delivery in the course and scope of his employment. Comp Carrier pays \$10,000 in medical and income benefits to and on behalf of Joe Courier. If Mary Cellphone is found liable for Joe Courier's injuries, then Comp Carrier has the first right of money if there's a settlement or judgment from Mary Cellphone's liability carrier. Comp Carrier can receive up to \$10,000 to recover its workers' compensation lien from the payment of medical and income benefits.

What is a waiver of subrogation?

A waiver of subrogation prevents the insurance carrier from getting reimbursed for its subrogation lien because the carrier has waived its rights to subrogation. When the carrier seeks subrogation recovery, there's normally some type of litigation to recover the comp lien. The general purpose of waiver of subrogation is to avoid the hassle of litigation and allocate the risk of loss related to the contract to the comp carrier. You will normally see waiver of subrogation in construction contracts.

Example: Bob's Construction is the general contractor for a new football stadium. Phil's Electric wants a contract to do the electrical work on the stadium. Bob tells Phil that in exchange for a job as a subcontractor, Phil will need to waive subrogation against Bob. Phil accepts the offer and signs a new workers' compensation insurance policy that includes a waiver of subrogation against Bob's Construction. One of Phil's electricians is injured when one of Bob's construction workers drops a wrench on his head. Even though Bob's Construction was at fault for the injury, Phil's workers' compensation carrier is barred from pursuing a claim for the benefits that it paid on behalf of the injured worker.

*Source: Ricky Green Law Offices*

### MARKET CONDITIONS:

Remarks in this section are our opinions based solely on our observations of what we see happening, and not from company supplied information. For that reason companies occasionally take issue with the contents herein, but what we see is what we see. One of the smaller risk pools has announced a 15% midyear increase and has been increasing renewal rates with short notice. Better take a close look at their audited financial statements (we have not been able to obtain copies). Another is increasing rates and requiring complete packages, while another is not writing new business. The state's largest school risk pool has realigned its policy structure such that deductibles for several lines of coverage may have increased dramatically: Crime, Equipment Breakdown, Scheduled Property and General Liability.

*Source: Bob Reim Newsletter*

### REPORT SHOWS SIGNIFICANT COST SAVINGS WHEN NURSES WORK IN RETAIL CLINICS

A new study co-led by UnitedHealth Group's Center for Nursing Advancement shows that nurse practitioners practicing in retail clinics have the potential to deliver significant cost savings when treating a range of common conditions, with the greatest savings occurring in states that allow nurse practitioners to practice independently.<sup>1</sup>

Retail clinics, also called convenience care clinics, offer diagnosis and treatment for common, low-acuity conditions in retail settings such as pharmacies, grocery stores and big-box retailers. In 2010 there were more than 1,200 retail clinics operating in forty-five states.<sup>2</sup>

Researchers have estimated that up to 27% of emergency-related visits could have been handled appropriately at retail clinics and urgent care centers, offering cost savings of \$4.4 billion per year.<sup>3</sup>

The research did not show any decrease in effectiveness of treatment, as measured through excess ER visits or hospitalizations following use of the retail clinic – meaning cost savings can be realized without lowering the quality of care.

#### Study Findings

The study, "Scope-Of-Practice Laws For Nurse Practitioners Limit Cost Savings That Can Be Achieved In Retail Clinics," published in the November issue of Health Affairs, examines the impact of scope-of-practice regulations for nurse practitioners on health care use and costs in retail clinics. Scope-of-practice laws - which regulate how practitioners deliver health care - vary from state to state for nurse practitioners. Some states allow nurse practitioners to practice independently, and others require direct supervision by or collaboration with physicians.

The research sheds light on an opportunity to increase consumer access to care for a range of common conditions and promote broad cost savings as a result. The study also underscores the importance of care providers being able to practice at the top end of their training and licensure, or "top of license," in order to meet the nation's evolving health care needs - particularly as millions of people are poised to enter the health system as a result of health reform.

#### Cost and Health Benefits of Nurse Practitioners Practicing at "Top of License"

The data reveals the clear cost benefits of nurse practitioners practicing at the top end of their training and licensure:

- Nurse practitioner visits in retail clinics were associated with lower costs per visit for common conditions, including upper respiratory, ear, urinary tract and eye infections, allergies and influenza;
- The costs associated with treating these conditions were consistently lower when nurse practitioners practiced independently; and
- The rate of emergency room and urgent care visits, and hospitalizations associated with retail clinic visits was lower than with nonretail visits for these conditions.
- The evidence suggests that eliminating restrictions on nurse practitioners' scope of practice could potentially increase the overall savings achieved by retail clinics. The researchers project that if all states nationwide allowed nurse practitioners to both practice and prescribe medication independently, cost savings in 2015 could increase by as much as \$472 million.

Source: *United HealthCare*

#### HOW DO RULES LIMITING WAITING PERIODS APPLY TO EMPLOYEES CURRENTLY IN A WAITING PERIOD?

Recently, the National Legal and Research Group (NLRG) was asked whether an employer-provided group health plan could continue to apply a pre-2014 waiting period to eligible employees who had not yet met the plan's requirement when it becomes subject in 2014 to the mandate limiting waiting periods to no more than 90 days. Final regulations, recently issued by the agencies responsible for implementing the health care reform law (the Departments of Treasury, Labor and Health and Human Services), provide guidance on this issue.



#### Background

Under the 90-day waiting period rule, a group health plan cannot apply a waiting period that exceeds 90 days. Individuals who are otherwise eligible cannot be required to wait more than 90 days before their health coverage becomes effective. All calendar days are counted beginning on the enrollment date, including weekends and holidays. A waiting period is the period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll in the plan can become effective. Being otherwise eligible to enroll in a plan means having met the plan's eligibility conditions. The requirement applies to group health plans (both grandfathered and non-grandfathered) as of the first day of the plan year beginning on or after January 1, 2014.

#### Application of New Requirements to Employees in Existing Waiting Periods

The preamble to the final regulations states that, for employees who are in the middle of a waiting period as of the date that the 90-day waiting period rule becomes effective in 2014, a plan cannot impose a waiting period longer than 90 days, as measured from the date that the employee's waiting period started before the beginning of the 2014 plan year. For example, if an employee has reached the 80th day of the waiting period as of May 30, 2014 under a plan with a plan year that starts June 1 and a pre-June 1, 2014 waiting period of 120 days, the employee's coverage must be effective June 9, 2014, not July 9, 2014. In effect, the employee must receive credit for "time served" under the old waiting period when the new waiting period is applied beginning in 2014.

In summary, when implementing the 90-day waiting period guidelines, employers should be careful to design the waiting period aspect of their plans in order to comply with the rules as of the date those rules become effective for their plans in 2014.

Source: *Willis Human Capital Practice Team*



## **W o r k e r s ' C o m p e n s a t i o n U p d a t e**

The Division recently sent out a memo to all Texas Workers' Compensation Participants announcing that benefit review officers (BROs) will begin issuing scheduling orders after the first benefit review conferences (BRCs). These new orders have the potential to significantly change the dispute resolution process in Texas.

Scheduling orders will be issued only at the end of the first BRC. The Division believes that the scheduling orders will help the parties to timely exchange information for the second BRC. The law only allows two BRCs, so the Division wants all important information to be exchanged before this second/last BRC. The Division's memo identified two situations where the BRO would issue a scheduling order. The first situation would be the BRO issuing a scheduling order to direct one or both of the parties to exchange existing information that wasn't exchanged at the first BRC. The second type of scheduling order would be based on any commitments the parties made at the first BRC to obtain additional, new information. For example, if one of the parties at the first BRC wants to get a designated doctor for extent of injury, then the scheduling order will give a deadline for the party to request a designated doctor. If the party doesn't request the designated doctor by the scheduling order deadline, then the BRO could cancel the second BRC and send the case straight up to a CCH.

The scheduling order will set out a timeframe in which additional information is to be obtained and exchanged. If a second BRC is set and a party cannot obtain the information in the set timeframe, the party must file a DWC-45 to reset the second BRC. The request to reset must include an explanation of the party's efforts to obtain and exchange the information in the time provided. The second BRC will only be reset on a showing of good cause. The BRO has the discretion to cancel the BRC and schedule a CCH based upon the first BRC. Requests to add issues or delay the CCH would require a showing of good cause.

The potential is there for a major shakeup in the effectiveness of BRCs. It is unknown how this new policy will function in practice. Insurance carriers and injured workers will need to fully consider their options prior to requesting and/or attending the first BRC. If the parties cannot commit to a course of action during the first BRC, the BRO has the power to force the parties to a CCH. Links to the Division's memos can be found below. Our office will be more than happy to discuss these changes with you and will share our experience once the scheduling orders are put into action.

*Source: Ricky Green Law Offices*

## **S a f e t y**

### **N E W S T U D Y : " O T H E R D R I V E R S " A R E A B I G G E R T H R E A T O N T H E R O A D**

Financial services provider USAA asked the Texas A&M Transportation Institute (TTI) to conduct the study to research attitudes and reported driving behaviors of drivers throughout Texas. The study, which was conducted between April 25 and May 30, 2013, utilized two different research methods to gain better insight on Texans' opinions about distracted driving. The researchers first used a questionnaire in driver license offices around the state to gain a one-time, broad look at Texans' driving habits. Focus groups were then used to collect more detailed answers on distracted driving issues.

Three-fourths of Texas drivers in a recent survey say they have talked on a cell phone behind the wheel within the past month, about the same number as those who reported speeding. Nearly half say they have texted while driving, slightly more than the number who ran a stop sign or red light.

Read the full article here: [http://tti.tamu.edu/2014/04/21/new-study-other-drivers-are-a-bigger-threat-on-the-road/?utm\\_medium=twitter&utm\\_source=twitterfeed](http://tti.tamu.edu/2014/04/21/new-study-other-drivers-are-a-bigger-threat-on-the-road/?utm_medium=twitter&utm_source=twitterfeed)

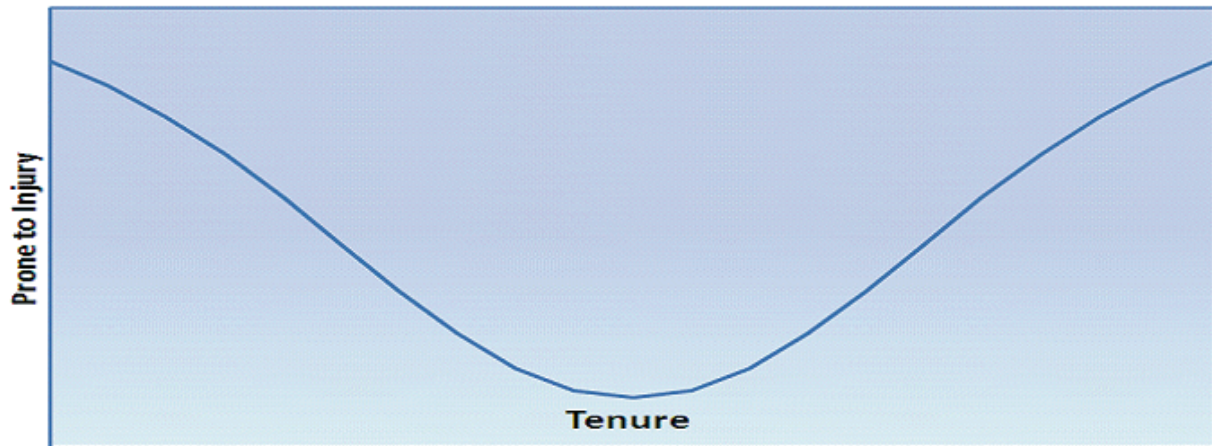
*Lisa R. Robinson, CFLE, Program Manager, NSC Texas Employer Safety Program*

### **H O W T O M I N I M I Z E Y O U R W O R K P L A C E I N J U R Y R I S K S**

You can successfully contain your workers' compensation costs and minimize risk by proactively establishing a safety minded culture. With directives and training – as well as safety awareness from top management to employees on the front line – both new and veteran workers will be less prone to on-the-job injury.

Statistics reveal that new hires and aging veterans are typically more prone to injury. Targeting these groups with a comprehensive safety program and consistent training can reduce their risk of injury. Include safety training refreshers and regular safety meetings

### Typical Risk Curve



#### New Worker

- New employees require extensive safety and equipment training

#### Best of Both Worlds

- An experienced worker is safety conscious, less susceptible to injury
- Continued safety training important as tenure increases

#### Veteran Worker

- Experienced worker, but less adept physically
- Employs short cuts to safe operating procedures
- Requires safety training refreshers

#### Loss Control Techniques

To control these losses resulting from workplace injuries, make safety a top priority at your company. The following are elements to an effective safety program.

- Establish a written safety policy for all employees and new hires to review and understand.
- Educate employees on hazard identification and safe workplace practices.
- Form a safety committee that solicits workflow improvements and implements the corrective action necessary.
- Conduct monthly safety meetings to further educate employees and bring safety to the forefront of their minds.

Source: Frost Insurance

### EMPLOYMENT PRACTICES LIABILITY POLICIES AND EEOC CHARGES—DON'T CONFUSE COVERAGE WITH THE REQUIREMENT TO REPORT A CLAIM

Most employment practices liability (EPL) insurance policies, although referred to as “claims made” policies, are in fact “claims made and reported” policies. These policies require both that the claim be made against the insured and that the insured report the claim **during the policy period** or, at the latest, during an “extended reporting period” of 30 days after the policy period expires.

The purpose of this advisory is to emphasize that, in managing claims under “claims made and reported” policies, insureds must not confuse the concept of “coverage” with the requirement that a “claim” (as defined under the policy) be timely reported to the carrier. If a written demand or grievance against the insured is a “claim,” it must be reported, **even if it does not trigger coverage** as it is currently presented. This is particularly true of EPL policies, because many employment disputes start out as administrative charges which are not typically covered under an EPL policy, and later evolve into civil actions that are in fact covered under an EPL policy.

#### Typical EPL coverage and exclusions

Most EPL policies cover certain specifically enumerated employment wrongful acts, such as wrongful dismissal, discharge, or termination, discrimination (which may include age, gender, race, color, national origin, religion, sexual orientation, or disability), retaliation, wrongful failure to pay, demotion or wrongful failure to promote, etc. Additionally, most EPL policies exclude claims related to any federal, state, local, or foreign wage and hour laws, including the federal Fair Labor Standards Act (FLSA)\*. Most EPL policies contain a definition of the term “claim,” which either expressly or impliedly includes an EEOC or similar state agency charge. Finally, most EPL policies (and most “claims made and reported” policies) treat all

claims that are “related,” or that arise out of wrongful acts that are “related,” to be one single claim that is deemed “made” as of the date of the first one.

***The evolution of the typical employment grievance***

Federal law requires employment grievances involving discrimination to be first filed as an administrative charge with the federal Equal Employment Opportunity Commission (EEOC) before the employee may file a civil action in a court of law against the employer. Many state laws similarly require certain employment grievances to be first brought as an administrative proceeding. This means that many employment disputes initially take the form of an administrative charge at the EEOC or state equivalent, before they evolve into a lawsuit.

\*Several insurance carriers, depending on the insured and its industry classification, do offer limits of between \$100,000 and \$250,000 for defense costs only of a wage and hour claim.

Many of the employment disputes that commence at the administrative level are those that allege wage and hour violations that are typically not covered under an EPL policy, such as:

Employee misclassification as exempt

Failure to pay overtime after the 40th hour worked in the week (under the FLSA) or the 9th hour in the day (under California wage and hour law)

Failure to pay for work before checking in or after clocking out, such as “donning” and “doffing” required uniforms

Failure to pay for work during rest or meal breaks

Errors calculating “regular rate” of pay (failure to include bonuses or shift differentials)

Unlawful tip pooling arrangements

Failure to reimburse the cost of uniforms or other employment related expenses

However, many administrative proceedings involving these violations also include other theories of liability that are specifically covered by EPL policies — these other theories are “tort” based, such as harassment, discrimination, and wrongful termination. At the conclusion of the administrative proceeding, the employee is frequently permitted the “right to sue” the employer in a civil action for the same and/or related grievances.

The presence in the typical EPL policy of the wage and hour exclusion mentioned above, means that the initial EEOC or state equivalent charge will not be covered. However, that charge is most likely a “claim” as that term is defined in the typical EPL policy. And, unless that “claim” is timely reported to the carrier (even if it triggers no coverage), the operation of the “interrelated claims” clause will mean that the subsequent filing of a complaint in a court of law against the employer, by the same employee and containing the same or similar factual allegations or theories of liability, may not be covered, even if such complaint is reported to the carrier immediately upon service of process upon the insured employer. To summarize: the EEOC or equivalent state charge is likely not covered under the EPL policy, but it must be reported to the carrier nonetheless in order for the insured to protect coverage of the eventual civil action that can easily evolve out of the same underlying employment dispute.

***Recent case emphasizes the need to report the initial claim***

A recent California case illustrates an even more direct relationship between an initial administrative charge for alleged wage and hour violations and “tort” based conduct covered under an EPL policy. In *Vasquez v. Franklin Management Real Estate Fund, Inc.*, the Court of Appeal ruled that under certain circumstances a Labor Code violation (which is typically not covered by an EPL policy) may constitute conduct on the part of an employer that causes a constructive discharge (which is a claim typically covered by an EPL policy).

Franklin employed Vasquez as a maintenance technician and paid him an hourly wage of \$10, but would not reimburse Vasquez for work-related expenses that he incurred driving his personal truck on work-related errands. California Labor Code Section 2802 requires employers to reimburse work-related expenses incurred by their employees. Vasquez apparently told his supervisors that he could not afford the gasoline and vehicle maintenance costs, and requested reimbursement, but to no avail. Eventually, Vasquez had to resign because he could not make ends meet. Vasquez claimed that the refusal to reimburse work related expenses effectively reduced his hourly wage below the hourly legal minimum wage. Vasquez sued Franklin for violation of Labor Code Section 2802 and for constructive discharge in violation of public policy.

Franklin demurred to the complaint, contending that the failure to reimburse for mileage was not sufficiently intolerable or aggravated to support a claim of constructive discharge. The trial court agreed with Franklin, finding that the complaint failed to allege facts sufficient to constitute a constructive discharge. The Court of Appeal disagreed, reversed the granting of the demurrer, and found that Vasquez could have stated a claim for constructive discharge based on the facts alleged.

The Court of Appeal acknowledged that an employer’s failure to reimburse expenses that should have been borne by the employer would not create such intolerable working conditions that the employee would have to resign. However, the Court of Appeal found it persuasive that Vasquez alleged not only that Franklin violated the Labor Code by failing to reimburse expenses, but also that the extent of the required driving meant that the reimbursement to which he was entitled represented a significant percentage of his already low salary. Vasquez alleged that he was unable to pay basic living expenses, and the

Court of Appeal noted that had he continued he would soon have found himself with no job and no vehicle. As precedent, the Vasquez decision is a narrow one. It involved a reversal of a demurrer, where an employee had actually resigned, and is limited to a specific Labor Code violation that reduced the effective rate of pay. However, the Vasquez decision illustrates a point that has always been worth emphasizing: that wage and hour disputes frequently evolve into litigation that is covered by the typical EPL policy, and that the failure to timely report the initial claim (even though it is not covered) may jeopardize coverage later.

We reiterate the need to carefully scrutinize all employee demands and grievances presented against employers, because they may potentially trigger coverage under an EPL policy. If there is the slightest possibility for coverage, the claim should be reported immediately.

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# OUR DRIVING CONCERN

## TEXAS EMPLOYER TRAFFIC SAFETY PROGRAM

A PROGRAM OF THE NATIONAL SAFETY COUNCIL



### The Our Driving Concern:

Texas Employer Safety Program, funded by a grant from the Texas Department of Transportation, provides necessary traffic safety information to keep employees safe on Texas roads.

We work with Texas employers to promote safe driving practices among their employees both on- and off-the-job, and proactively combat the costly toll of crashes by helping them understand risky driving behaviors and liability exposure.

ODC provides resources on distracted driving, aggressive driving, passenger restraint, impaired driving and other traffic safety topics. The Our Driving Concern program offers **FREE** tools and resources to managers, HR professionals and safety instructors to help build your companywide traffic safety program, including:

- Comprehensive training programs
- Train-the-trainer workshops
- Webinars
- Newsletters
- Safety talk materials and handouts
- Diverse speakers
- Resources for company health fairs
- **NEW** Texas Employer Traffic Safety Award
- Fact sheets, posters and MORE!

With the bottom line at stake, can you afford not to incorporate traffic safety into your safety program?



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For information or to schedule a training contact:  
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**Our Driving Concern:** Texas Employer Traffic Safety program is funded by a traffic safety grant from the Texas Department of Transportation

### CRASHES: KNOW THE IMPACT

MOTOR VEHICLE CRASHES ARE ONE OF **THE LEADING CAUSES** OF UNINTENTIONAL WORKPLACE DEATHS IN THE UNITED STATES.

THE AVERAGE WORKPLACE MOTOR VEHICLE CRASH COSTS AN EMPLOYER MORE THAN \$24,000.

IF THE EMPLOYEE IS INJURED, THE AVERAGE COST INCREASES TO **MORE THAN \$125,000.**

**TEXAS EMPLOYERS SPEND \$3.5 BILLION EVERY YEAR AS A RESULT OF ON-AND-OFF THE JOB TRAFFIC INJURIES AND FATALITIES. (NHTSA)**

ACCORDING TO TXDOT 25% OF CRASHES ARE ATTRIBUTED TO DISTRACTED DRIVING.



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Assistant Editor: Ashley Waggoner

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## **About This Newsletter**

This newsletter is published quarterly for the benefit of Texas PRIMA members. However, the opinions expressed in the newsletter are those of the writers and do not necessarily represent the views of Texas PRIMA. The aim of this newsletter is to provide information to our members about Chapter events and risk management issues. Please send news, information, comments, etc. to the editor via email, [info@texasprima.org](mailto:info@texasprima.org).

MEMBERS: VISIT THE  
MEMBER'S ONLY WEBSITE TO  
POST IN THE COMMUNITY  
FORUM!

## **LETTER FROM THE EDITOR**

This is my second edition of the PRIMA PRESS. The year is half way over and the risks facing us continue. But, as Risk Managers, we are constantly faced with a multitude of decisions that can and do affect our entities. The weather is certainly a challenge for all of us as we watch the storms of destruction pound away. Property insurance is a real challenge for all as are other aspects of risk management. Safety of our employees and others still looms large as school violence and workplace violence escalate. It is my intent to include information that can be helpful in our jobs and maybe strike a chord that will enable us to breathe easier. Texas PRIMA is the organization that can provide that networking that enables all of us to do a better job for our entities. With our partners, we are able to control some of the risks we face. The challenges will continue but that is what makes this profession the exciting and never ending challenge it is. Keep the information rolling in and I will attempt to pass it on to our membership. Please feel free to contact me to contribute to this publication. The more the better.  
Bill Tarro, CSRM  
Editor

