



## OKLAHOMA WORKERS' COMPENSATION COMMISSION

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Chairman Mark Liotta · Commissioner Jordan Russell · Commissioner Megan Tilly  
Executive Director Hopper Smith

January 31, 2020

Honorable Kevin Stitt  
Governor of Oklahoma

Honorable Greg Treat  
President Pro Tempore of the Oklahoma Senate

Honorable Charles McCall  
Speaker of the Oklahoma House of Representatives

Governor Stitt, President Pro Tempore Treat, Speaker McCall, and members of the Legislature:

The Oklahoma Workers' Compensation Commission is pleased to present to you its 2020 Biennial Report of administration of the Administrative Workers' Compensation Act for the preceding biennial period. The report is issued pursuant to 85A .S. § 24. No copies of the report were made, but the report is available on the Commission's website at <https://www.wcc.ok.gov>. It was distributed electronically as provided in 74 O.S. § 464 and is compliant with 65 O.S. § 3-114.

Respectfully,

Mark Liotta  
Chair, Oklahoma Workers' Compensation Commission

# **Workers' Compensation**

## **Commission 2020 Biennial Report**

The Workers' Compensation Commission submits this report in compliance with 85A O.S. § 24, which requires the Commission to produce a report of the administration of the Administrative Workers' Compensation Act (AWCA) for the preceding biennial period. The report includes summary information and data pertaining to the Commission's administration of the AWCA.<sup>1</sup>

### **Commissioners**

The Workers' Compensation Commission is composed of three full-time members appointed by the Governor and confirmed by the State Senate for staggered terms. The Commissioners are state officers precluded from having any other employment except as may be permitted by law. The Chair of the Commission is appointed by the Governor from among the Commission members.

Commissioners perform adjudicative, administrative, and regulatory functions. Those functions include: (1) hearing appeals from decisions and awards of the agency's Administrative Law Judges (ALJ); (2) promulgating rules necessary for the administration and operation of the Commission; (3) regulating employers which self-insure their workers' compensation obligations; (4) maintaining the Commission's Vocational Rehabilitation Registry and lists of Independent Medical Examiners and Medical Case Managers; (5) managing the agency's budget; (6) interacting regularly with the Self-insurance Guaranty Fund Board and workers' compensation advisory bodies to the Commission; (7) participating in educational programs, including an annual, Commission-sponsored workers' compensation conference; and (8) such other matters necessary for administration and operation of the agency. Details about the Commissioner's appellate and self-insurance functions follow.

### **Appellate Process**

The three Commissioners act as an appellate tribunal (known as an "en banc panel") in appeals from decisions of the Commission's Administrative Law Judges (ALJ). Unlike most other administrative agencies whose decisions are appealed to the district court, decisions of the panel are appealed directly to the Oklahoma Supreme Court. The law does not allow direct appeals from a ruling by an ALJ to the Supreme Court.

Panel review by the Commissioners involves examining the trial record; reviewing written arguments required to be submitted by the parties; hearing the parties' oral arguments; and deliberating confidentially as authorized by 85A O.S. § 22D in order to render a decision on the appeal. A just and fair consideration of each appeal may require hours of study and demands careful consideration and preparation. The trial record may be quite lengthy depending upon the disputed issues and the documentary and medical evidence submitted. Each Commissioner is responsible for reviewing all authority cited in the written arguments to evaluate proper interpretation and application of the law. The panel of Commissioners deliberates confidentially to discuss each case file twice before each appeals

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<sup>1</sup> The Commission is in the process of validating its data and correcting for errors. This process may alter the data to some extent. More precise data will be reported on the Commission's 2020 Annual Report.

hearing, and it meets on each case before voting and announcing a decision.

The panel may reverse, modify, or affirm decisions or awards made by the Commission's ALJs, or remand the matter to the ALJ for the purpose of taking additional evidence. The decision is made by written order voted upon publicly. In 2018, the Commission heard and issued orders on 77 appeals.

### **Self-Insurance Regulation**

One of the means available to an employer to satisfy its workers' compensation obligations is to qualify as a self-insurer, either as an individual self-insured employer or as part of an approved group association. To self-insure and to be exempted from the statutory workers' compensation insurance requirements, an applicant must furnish satisfactory proof to the Commission of its financial ability to pay compensation from its own pocket, and it must post an established amount of security (usually a letter of credit or surety bond) with the Commission for the employer's performance of its self-insurance obligations. Currently, the Commission regulates 168 individual self-insured employers and 6 group self-insurance associations.

The Commissioners' self-insurance regulatory functions include: (1) taking necessary action upon notice of a self-insured's failure or inability to pay its workers' compensation obligations for any reason, including bankruptcy or other insolvency proceeding; (2) reviewing requests to reduce or release a security deposit posted with the Commission after an individual self-insured employer voluntarily leaves self-insurance; and (3) reviewing requests to release surplus funds to member employers of a group self-insurance association. These issues require the Commissioners to consider the impact of legal filings, closely review financial statements and other documents, evaluate existing and potential injury losses, and assess any anticipated monetary deficits.

The Commissioners' careful oversight of regulatory issues helps maintain the integrity of self-insurance as an alternative to workers' compensation insurance coverage and minimizes resort to the Self-insurance Guaranty Fund (SIGF). The SIGF is a statutorily created fund supported by assessments to address an impaired self-insured's workers' compensation obligations in the event the security posted with the Commission is not sufficient to pay all claims.

### **Records Division**

The primary functions of the Commission's Records Division are to maintain the Commission's file system, which now consists of files for 2014, 2015, 2016, 2017, 2018, and 2019, and to provide support to docketing personnel. The division also performs a litany of other vital functions. In addition to

maintaining the file system, the records division processes all incoming and outgoing mail, distributes mail to the appropriate departments, processes filings of pleadings, serves a variety of data entry functions, responds to copy requests, and provides administrative support, mainly in the form of file distribution, for the administrative law judges.

The Records Division is located on the basement floor of the Denver Davison Building, with a counter for the public to file claims and pleadings. Computer terminals provide public access to workers' compensation information and prior claims, and a copier is also available for public use.

The Records Division processes public requests for file searches and copies, and it collects any applicable search fees associated with those requests. The Commission Clerk's office is a part of the records division. The Commission Clerk certifies copies of Commission file contents, processes appeal filings to the Workers' Compensation Commission, and prepares records for appeals to the Oklahoma Supreme Court.

### **Compliance Division**

The Compliance Division is charged with enforcing 85A O.S. § 38, which requires employers to secure compensation, either through traditional workers' compensation insurance coverage, or through self-insurance. Title 85A O.S. § 40 grants the Commission the discretion to assess up to \$1,000 per day against an employer who fails to secure payment of compensation.

### **Counselors' Division**

The mission of the Counselors' Division is primarily to provide information about the workers' compensation process, rules, and law to injured workers, employers, insurance carriers, medical providers, and other members of the public. To fulfill this mission, in 2018 and 2019, the division responded to over 13,000 phone calls, emails, and walk-in inquiries.

As the Commission's primary public information unit, the Division develops informational materials for employees, employers, and medical providers, consistent with 85A O.S. § 109. Informational materials are available to the general public on the Commission's website.

### **Permitting Services Division**

The Permitting Services Division has a variety of responsibilities, including but not limited to, processing new and renewal applications for self-insured employers and group self-insurance associations, calculating various rates for assessments imposed by Title 85A of the Oklahoma Statutes, and issuing Certificates of Non-Coverage.

In 2018 and 2019, Permitting Services processed 407 new and renewal applications for Own Risk Self-insured Employers, Group Self-insurance Associations, and Third-party Administrators. The Division also reviewed and made recommendations to the Commission regarding the following: applications from Group Self-insurance Associations to add or change Association members; requests from Group Self-insurance Associations to distribute surplus funds to Association members; and requests from former Own Risk Self-insured Employers to reduce or release security deposits.

Permitting Services collected data and calculated the 2017-2018 and 2018-2019 MITF assessment rates, mailed notice of the calculated assessment rates, and received notifications of quarterly MITF payments from Own Risk Self-insured Employers. Permitting Services maintained the Proof of Coverage database for the Commission and provided expiration/cancellation reports to the Compliance Division. Proof of Coverage information was maintained on the Commission's website for physicians' staff, injured workers, and interested parties to access online. Although this information was online, the division also responded to daily phone calls, emails, and visitors regarding employer coverage.

### **Administrative Division**

The Commission relies on its Administrative Division to perform several different important agency functions. In 2015, the Administrative Support Team coordinated the Commission's annual educational conference independent of an outside vendor. The division has continued to provide this function in 2018-2019, and will continue to do so for the foreseeable future. This operation in the Administrative Division creates an opportunity for the Commission to comply with the requirements of SB1062 to train and educate stakeholders about the new Workers' Compensation system. It also enables the agency to add a small supplement to its self-funded, non-appropriated budget needs. The Administrative Support team has also modernized the Commission's website by creating online forms for more efficient, timely, and cost-effective filing for insurance carriers, employers, and other stakeholders.

In 2016, the Administrative Division developed the agency newsletter and subscription database, which distributes widespread alerts and important email and text notifications to key groups. The Commission also recognized the superiority in service that a live switchboard operator can provide over an automated call system. Accordingly, to improve customer service the Commission now provides a full-time switchboard operator to answer and direct calls.

### **Claims Process and Systemic Improvements**

The Commission's objective is to provide fair and timely resolutions to injured workers, employers, medical providers, and other stakeholders, while working to maintain a system in which workers' compensation premiums remain affordable.

The WCIS system serves as the linchpin for the Commission's operations, but for numerous reasons, it is not a sustainable solution for future Commission operations. The new case system will serve as a foundation for operations in almost every major division, including Case Commencement, Docketing, Order Writing, Permitting Services, and Compliance. The case system project will effectuate an evolution in the filing, docketing, and ultimate disposition of cases. It will minimize the use of paper forms, dispensing with or clarifying antiquated terminology, and by creating efficiencies in the Commission's business processes. The new case system will feature another noteworthy improvement- a module that supports operations in the Compliance Division. Because the compliance function was inherited by the Commission from the Department of Labor in 2014, the Commission's existing case system does not adequately support compliance operations, and numerous suboptimal adaptations have been implemented to work around this complication. Principal development of the case system began August 15, 2017, and it is scheduled to conclude in the end of 2020.

The total number of filings has decreased significantly from the old system; CC-Form-3 filings totaled 7,935 for 2018, as compared to 14,737 Form 3 filings in 2012 in the Workers' Compensation Court. Commission Administrative Law Judges issued 16,273 orders in 2018. Total case settings (pre-hearing conferences and hearings) in that year were 36,155.

Compared to the prior workers' compensation system, several improvements can be noted. The Commission currently has a lower ratio of cases to judges than the old court system, facilitating more timely resolution. All of the Commission's judges travel between Tulsa and Oklahoma City, which allows for more flexibility in docketing. Hearings are less formal, and as a result, more accessible and less intimidating to injured workers. Orders are much more detailed and fact-oriented, and must be filed within thirty (30) days of a hearing. The Commission also implemented electronic data interchange effective September 1, 2018.

The Commissioners are proud to announce these improvements, and look forward to making further enhancements in the methods by which the Commission accomplishes its mission to administer the Administrative Workers' Compensation Act in 2020 and beyond.