

**In this issue ...**

- ★ **2010 Texas Elections Begin in Earnest**
- ★ **Workers' Compensation Issues Among Interim Study Charges Released By Lt. Governor**
- ★ **Legislator Proposes Nonsubscription for Oklahoma**
- ★ **Work-Related Injuries and Illnesses Decline in Texas for Second Year**
- ★ **March 5<sup>th</sup> New Member Recruitment Luncheon Slated for Dallas**
- ★ **Federal Legislation of Interest**
- ★ **Important Compliance Information for Nonsubscribers**
- ★ **Dates of Future Board Meetings**

**2010 Texas Elections Begin in Earnest**

January 4<sup>th</sup> was the filing deadline for federal, state and local offices for this year's primary and general elections. Based on the number of candidate filings, it appears that the 2010 political season will be a busy one. This year's election includes races for the top statewide offices, the Texas Supreme Court, Texas Legislature and the United States Congress.

Party primaries will be held on Tuesday, March 2<sup>nd</sup> and if necessary run-off elections will be conducted on Tuesday, April 13<sup>th</sup>. The general election will be November 2, 2010.

For the first time in several election cycles the state's top statewide offices will be contested in this fall's general election. Incumbent Governor Rick Perry faces two challengers in the Republican Party primary while Democrats also have two candidates vying for the state's top post.

Here's the lineup of the major candidates for the state's top offices:

**Governor**

Republican	Democrat
Governor Rick Perry (I) Sen. Kay Bailey Hutchison Debra Medina (CEO)	Farouk Shami (businessman) Bill White (former Houston mayor)

**Lt. Governor**

Republican	Democrat
Lt. Governor David Dewhurst (I)	Linda Chavez-Thompson (union leader) Ronnie Earle (former district attorney) Marc Katz (Austin deli owner)

**Attorney General**

Republican	Democrat
Atty. General Greg Abbott (I)	Barbara Radnofsky (attorney)

### General Land Commissioner

Republican	Democrat
Jerry Patterson (I)	Bill Burton (real estate instructor) Hector Uribe (former legislator)

### Agriculture Commissioner

Republican	Democrat
Todd Staples (I)	Hank Gilbert (businessman) Kinky Friedman (author)

I – Incumbent

A total of 308 individuals filed for state legislative races compared to 300 in 2008. Nine incumbent state legislators, compared to 20 in 2008, indicated they are retiring and did not file for reelection. Those legislators retiring include: Senator Eliot Shapleigh (D-El Paso), Representatives Joe Crabb (R-Kingwood), Frank Corte (R-San Antonio), David Farabee (D-Wichita Falls), Kino Flores (D-Mission), Dan Gattis (R-Georgetown), Carl Isett (R-Lubbock), Brian McCall (R-Plano), and David Swinford (R-Amarillo).

Senator Kip Averitt (R-Waco) filed for reelection but announced after the filing deadline that he would not pursue reelection due to health reasons. His decision has thrown the future of the senate seat he has held since 2002 into limbo with Republican Darren Yancy as the only other candidate having filed for the office. Because Senator Averitt's decision to not seek reelection came after the deadline to have his name removed as a candidate, he will remain on the primary ballot. Should he win the primary, the Republican and Democratic parties would select candidates for the November general election.

Republicans currently hold a majority in both the chambers of the Texas Legislature with a 19-12 advantage in the Senate and 78 Republicans and 72 Democrats in the House of Representatives.

A total of seventy-seven incumbent legislators are running unopposed in 2010 compared to 64 in 2008.

Thirty of Texas' 32 members of Congress will face opponents.

### Workers' Compensation Issues Among Interim Study Charges Released by Lt. Governor

Lt. Governor David Dewhurst has released the interim study charges that could serve as a preview to legislation to be considered when the 82<sup>nd</sup> Texas Legislature convenes in January of 2011. The issues addressed will be researched and analyzed by members of the Texas Senate during the interim leading up to the next legislative session. Public hearings covering the topics are a possibility.

Two of the charges assigned to the Senate State Affairs Committee address issues related to the state's workers' compensation system including an assessment of the adequacy of workers' compensation benefits and a review to determine whether subrogation of claims by writers of workers' compensation policies should be limited or prohibited.

The interim charge related to the adequacy of benefits is in response to the much debated Texas Supreme Court ruling in the *Entergy v. Summers* case. In this case the court determined a premises owner could be considered a general contractor rather than a third party affording them protections from injured employee lawsuits if the premises owner has workers' compensation coverage. During the 2009 session, several legislators objected to the court's ruling and legislation to overturn the decision was considered but did not pass.

During the debate legislators discussed the possibility of increasing benefit levels to compensate for the loss incurred by an injured employee unable to recover damages from a premises owner. Requiring all employers to participate in the system was an idea that was mentioned during the debate in order to spread the costs that might be necessary if benefit levels were raised.

As it had done since the *Entergy v. Summers* ruling was announced, the Alliance will continue to follow the issue including developments involving the interim charge on benefit adequacy.

Following are the two charges to the Senate State Affairs Committee as they were released by the Lt. Governor:

*-Study the adequacy of workers' compensation benefits in the following categories: lifetime income benefits, wage benefits for the high wage earner, and workers whose wage benefits stop before Social Security benefits begin. In order to determine the impact of increased benefits in one or more of these categories, work with the Texas Department of Insurance to develop a publicly accessible model to predict the costs related to those enhanced benefits, the effect of those costs on workers' compensation premiums, and whether enrollment in the workers' compensation system will be adversely impacted by increasing the benefits in one or more of the stated categories.*

*-Study whether subrogation claims by writers of workers' compensation policies should be limited or prohibited. Study the effect on workers' compensation premiums, if any, if subrogation claims by writers of workers' compensation policies are limited or prohibited. Consider the feasibility of developing a publicly accessible model to predict the impact on workers' compensation premiums, if any, if subrogation claims by writers of workers' compensation policies are limited or*

*prohibited, while protecting confidentiality as required by law and study whether the impact on workers' compensation premiums, if any, would adversely impact enrollment in the workers' compensation system.*

Senator Robert Duncan (R-Lubbock) is chair of the Senate State Affairs Committee.

### **Legislator Proposes Nonsubscription for Oklahoma**

Oklahoma State Rep. David Dank (R-Oklahoma City) has introduced legislation modeled after the Texas nonsubscription laws allowing employers to “opt-out” of the state’s workers’ compensation system. The bill, House Bill 2881, would require an employer to notify the state’s Workers’ Compensation Court that it elects not to obtain coverage or face administrative penalties. The employer would also be required to notify employees of the absence of coverage.

The proposed legislation removes certain defenses for employers not providing coverage who are sued for damages suffered by an employee injured in the course and scope of employment. In such lawsuits, employers would not be allowed the following defenses:

1. The employee was guilty of contributory negligence;
2. The employee assumed the risk of the injury or death; or
3. The injury or death was caused by the negligence of a fellow employee.

Employers would be allowed to claim that an injury was caused:

1. By an act of the employee intended to bring about the injury; or
2. While the employee was in a state of intoxication.

The proposal also prohibits any waivers for a cause of action by the employee prior to an injury or death and places restrictions on waivers occurring after an injury.

The Oklahoma Legislature meets annually with this year’s session convening on February 1<sup>st</sup> and ending on May 28<sup>th</sup>.

### **March 5<sup>th</sup> New Member Recruitment Luncheon Slated for Dallas**

March 5<sup>th</sup> has been selected as the date for the Alliance’s first new member outreach event in 2010. The luncheon is slated for Dallas. Time and location details are being finalized. The event will focus on introducing the Alliance to key nonsubscribers in the area and will include a brief program on the history of the organization, its mission and a preview of issues that the nonsubscription community will face during the

2011 state legislative session. Associate members interested in assisting with the sponsorship of the event or who have suggestions of companies the might be invited should contact Tim Conger at [tim@nonsubscriberalliance.org](mailto:tim@nonsubscriberalliance.org).

### **Work-Related Injuries and Illness Decline in Texas for Second Year**

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) reported 234,559 total cases of nonfatal injuries and illnesses in Texas in 2008, based on data from the Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illnesses. TDI-DWC is now reporting the circumstances of those injuries and illnesses that involved days away from work (DAFW), as well as the characteristics of the employees involved.

<b>Nonfatal occupational injuries and illnesses involving days away from work, private industry, 2006-2008</b>				
	Texas			National
	2006	2007	2008	2008
Number of nonfatal occupational injuries and illnesses involving days away from work <sup>(1)</sup>	72,660	69,320	64,700	1,100,000
Incidence rates of nonfatal occupational injuries and illnesses involving days away from work <sup>(2)</sup>	104.4	94.3	84.6	113
Median days away from work <sup>(3)</sup>	8	9	8	8

Private industry employers in Texas reported a total of 64,700 nonfatal occupational injuries and illnesses involving DAFW for 2008. This is a 6.7 percent decrease from the 69,320 cases reported in 2007. The survey revealed that there were 84.6 injuries and illnesses per 10,000 full-time equivalent workers in Texas. This rate was 9.7 percent lower than the rate of 94.3 in 2007 and is lower than the national rate of 113.

The median for days away from work – a key measure of severity of injuries and illnesses – for Texas in 2008 was 8, which is lower than the median of 9 days away from work for 2007 and the same as the median for days away from work reported nationally.

The annual BLS Survey of Occupational Injuries and Illnesses is conducted in cooperation with the TDI-DWC. The TDI-DWC collects

survey data in order to assist employers, safety professionals and policymakers in identifying occupational safety and health issues in the state. This is the first time public sector data has been collected and released through this survey. To view 2008 industry, demographic, occupation, and case characteristics specific data, charts and tables, visit the TDI website at: <http://www.tdi.state.tx.us/wc/safety/sis/index.html>.

- 1) "Days away from work" cases include those that result in days away from work with or without job transfer or restriction.
  - 2) "Incidence rates" represent the number of injuries and illnesses per 10,000 full-time employees and were calculated as:  
 $(N / EH) \times 20,000,000$  where, N=number of injuries and illnesses, EH=total hours worked by all employees during the calendar year, 20,000,000=base for 10,000 full-time equivalent workers (working 40 hours per week, 50 weeks per year).
  - 3) "Median days away from work" is the measure used to summarize the varying lengths of absences from work among the cases with days away from work. Half of the cases involved more days and half involved less days than a specified median. Median days away from work are represented in actual values.
- SOURCE: Bureau of Labor Statistics, U.S. Department of Labor, November 24, 2009.**

### **Federal legislation being monitored by the Alliance is listed below:**

**HR 635** by Rep. Baca (D-CA)

**Description:** Establishes the National Commission on State Workers' Compensation Laws.

**STATUS:** Referred to the House Committee on Education and Labor on January 22, 2009.

**HR 991** by Rep. Gutierrez (D-IL)

**Description:** *Consumer Fairness Act of 2009* - Amends the Consumer Credit Protection Act to treat as an unfair and deceptive trade act or practice under federal or state law any written provision in a consumer transaction or contract that requires binding arbitration to resolve a controversy arising out of or related to the transaction or contract, or the failure to perform any part. Declares such a provision unenforceable. Permits a written agreement to determine an existing controversy by binding arbitration if the parties agree after the controversy has arisen.

**STATUS:** Referred to the House Committee on Financial Services on February 11, 2009.

**HR 1020** by Rep. Johnson (D-GA)

**Description:** *Arbitration Fairness Act of 2009* - Declares that no pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of: (1) an employment, consumer, or franchise dispute, or (2) a dispute arising under any statute intended to protect civil rights.

Declares, further, that the validity or enforceability of an agreement to arbitrate shall be determined by a court, under federal law, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement. Exempts from this Act arbitration agreements in collective bargaining agreements.

**STATUS:** Referred to the Subcommittee on Commercial and Administrative Law on March 16, 2009.

**HR 1237** by Rep. Sanchez (D-CA)

**Description:** *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.

**STATUS:** Referred to the House Committee on Judiciary on February 26, 2009.

Referred to the Subcommittee on Commercial and Administrative Law on March 16, 2009.

Referred to the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law and the Subcommittee on Crime, Terrorism, and Homeland Security on July 23, 2009.

**HR 3590** by Rep. Rangel (D-NY)

**Description:** *Patient Protection and Affordable Care Act* - This is the vehicle for the version of the health care reform proposals that will be debated in the Senate.

**STATUS:** Passed Senate with an amendment and an amendment to the Title by 60-39 vote on December 24, 2009.

**HR 3962** by Rep. Dingell (D-MI)

**Description:** *Affordable Health Care for America* - House proposal for health care reform.

**STATUS:** Read the second time. Placed on the Senate Legislative Calendar under General Orders. Calendar No. 210.

**S 512** by Sen. Martinez (R-FL)

**Description:** *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.

**STATUS:** Read twice and referred to the Committee on the Judiciary on March 3, 2009.

### **Important Compliance Information for Nonsubscribers**

State law requires employers in Texas that do not carry workers' compensation insurance to file DWC Form-5 with the Texas Department of Insurance-Division of Workers' Compensation (TDI-DWC). Additional information on DWC Form-5 is available at: <http://www.tdi.state.tx.us/forms/dwc/dwc005nocov.pdf>.

Nonsubscriber employers with four or more employees are also required to use form DWC Form-7 to report each work-related injury resulting in more than one day of lost time, all occupational diseases of which the employer has knowledge (regardless of lost time), and all

fatalities occurring during the calendar month. The completed form reporting all such injuries that have occurred during a calendar month must be filled with the TDI-DWC no later than the 7th day of the following month. For more information on DWC Form-7 go to: **<http://www.tdi.state.tx.us/forms/dwc/dwc7.pdf>**.

Failure to comply with either requirement is an administrative violation and could result in administrative penalties. The Alliance encourages its members and all nonsubscribers to comply with these requirements.

Links to DWC-Forms 5 and 7 are available on the Alliance Web site at: **[www.nonsubscriberalliance.org](http://www.nonsubscriberalliance.org)**.

#### **Future Board Meetings (All calls are 1:00 p.m. CST)**

- **March 17, 2010 – Conference call**
- **May 19, 2010 – Conference call**
- **July 21, 2010 – Conference call**
- **September 15, 2010 – Conference call**
- **October 20, 2010 – Annual meeting in Dallas**



#### **The Texas Alliance of Nonsubscribers**

An employer-driven, nonprofit trade association dedicated to ensuring that nonsubscription interests are better prepared, more cohesive, and strategically proactive in preserving their choice to manage occupational injury claims.

P.O. Box 685227  
Austin, TX 78768

Phone: 512-480-0637  
Fax: 512-542-9977