

TODD K. BROWN
ACTING EXECUTIVE DIRECTOR



ID# 13935
mJ

TEXAS
WORKERS' COMPENSATION COMMISSION
SOUTHFIELD BUILDING, 4000 SOUTH IH-35, AUSTIN, TEXAS 78704-7491
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October 8, 1991

The Honorable Dan Morales
Attorney General of Texas
Post Office Box 12547
Austin, Texas 78711-2547

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Opinion Committee

Dear General Morales:

This letter seeks an attorney general opinion as to a possible conflict between the Americans With Disabilities Act of 1990 and the Texas Workers' Compensation Act. Specifically, may the commission lawfully carry out Article 8308-2.33 (relating to pre-employment inquiries for workers' compensation claims information) on and after the effective date of the federal ADA? If not, may the commission decline to answer pre-employment questions regarding an individual's worker's compensation claim?

The Americans With Disabilities Act, P.L. 101-336, which becomes effective on July 26, 1992 with regard to discriminatory practices, defines the term "discriminate" so as to include pre-employment medical examinations and inquiries.

The federal regulations, recently promulgated, which pertain to this issue are found at 29 CFR §1630.13(a). Section 1630.13(a) provides that it is unlawful for an employer "to conduct a medical examination of an applicant or to make inquiries as to whether an applicant is an individual with a disability or as to the nature or severity of such disability."

The appendix to part 1630 contains interpretative guidance for section 1630.13(a) as follows:

"This provision makes clear that an employer cannot inquire as to whether an individual has a disability at the pre-offer stage of the selection process. Nor can an employer inquire at the pre-offer stage about an applicant's workers' compensation history."

From this federal law it is clear that covered employers, on and after July 26, 1992, are prohibited from making inquiries into the work injury history of a job applicant.

Under the current Texas Workers' Compensation Act, an employer with authorization from the job applicant is entitled to obtain information on a job applicant's prior work injuries by making inquiry to the Texas Workers' Compensation Commission. See Arts. 8308-2.33 and 8308-2.34, V.T.C.S.

Therefore, there is an apparent conflict between the federal law and state law, at least as to employers covered by the federal law, as to whether such information will be legally obtainable by employers on and after July 26, 1992.

At present the Texas Workers' Compensation Commission is complying fully with the Workers' Compensation Act and is responding to pre-employment inquiries authorized by the Act. If the federal law has preempted the state law, the Commission must make plans so as to comply with the mandate of the federal law.

Your attention to this request is appreciated.

Very truly yours,

A handwritten signature in black ink that reads "Todd K. Brown". The signature is written in a cursive style with a large initial "T" and "B".

Todd K. Brown
Acting Executive Director

TKB/jbp