

# Legislative and case law update

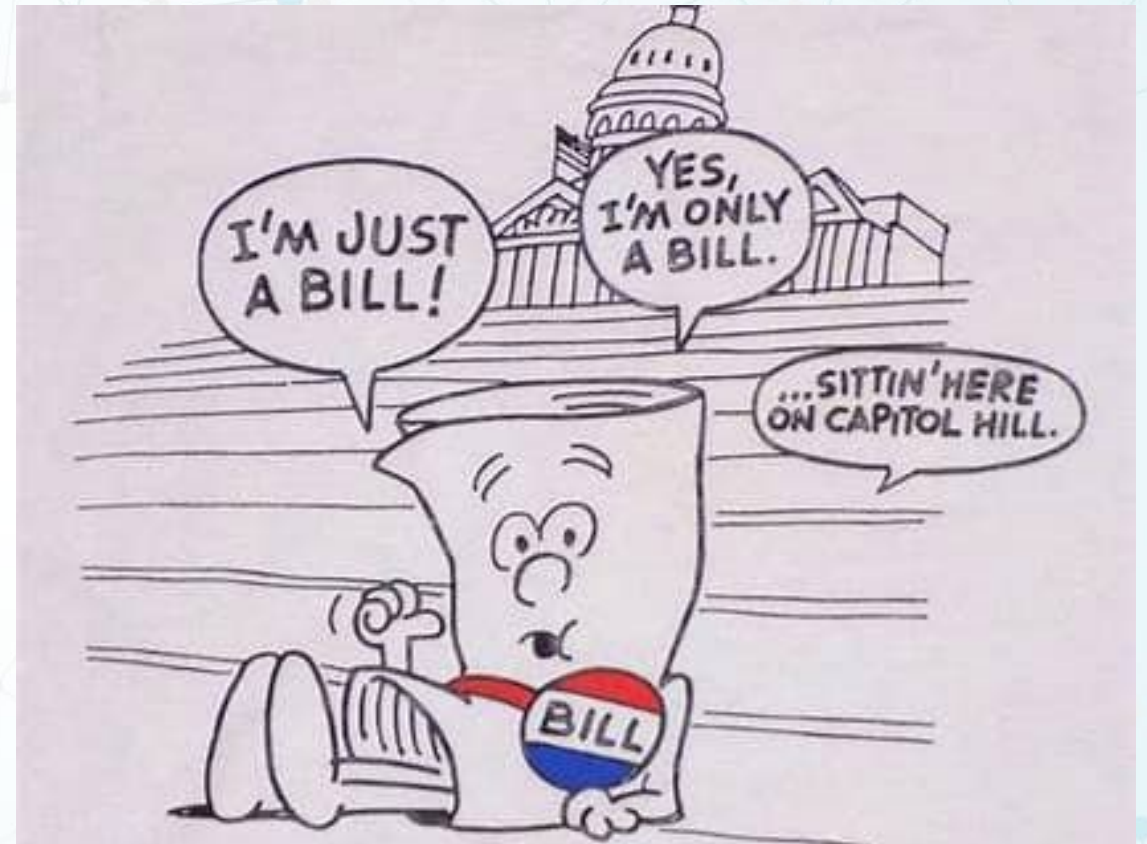
Kate Sidora, Director of External and Media Relations  
Britt Clark, Assistant General Counsel

A background network diagram with nodes and connecting lines in shades of blue and orange.

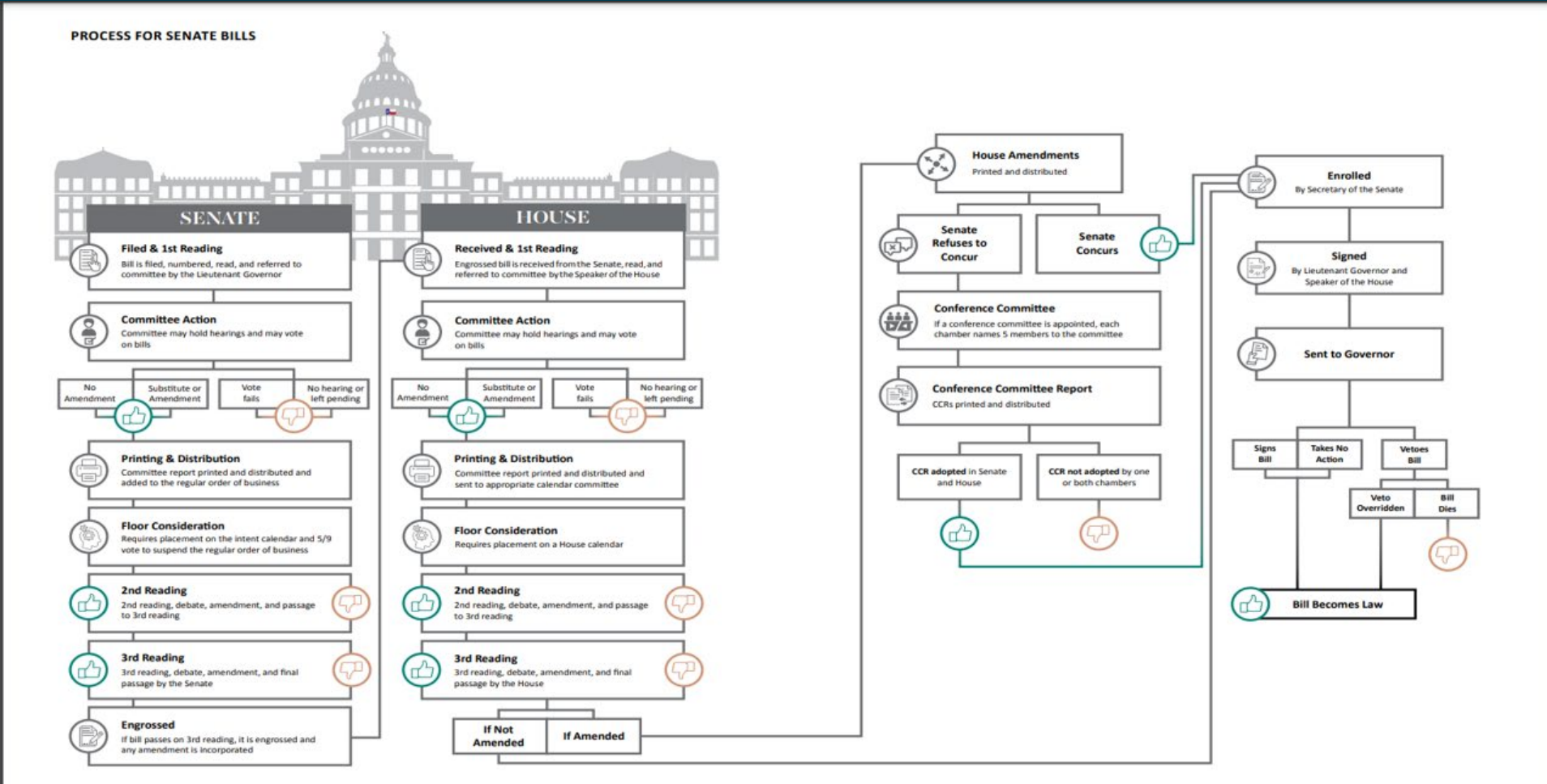
# Legislative update

# Overview

- How a bill becomes a law.
- Key dates for the 89th legislative session.
- DWC's role.
- Review of 88th Texas Legislature.
- What to watch in the 89th legislative session.



# Process for Senate bills



# Key dates

**November 11, 2024**

First day legislators and legislators-elect may file bills for the 89th Legislature.

**March 14, 2025**

60-day deadline for bill filing.

**January 14, 2025**

89th Legislature convenes at noon.

**June 2, 2025**

Sine die (last day of 89th Regular Session).

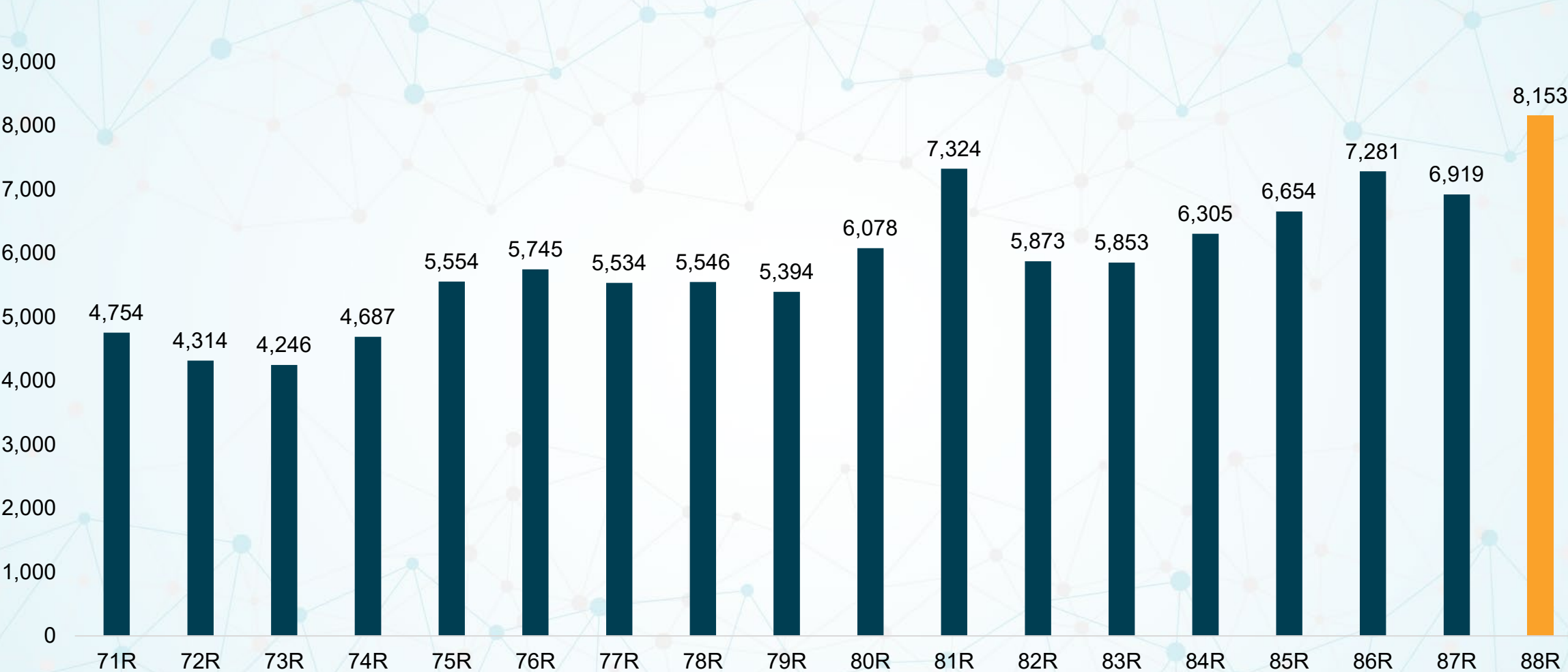
# DWC's role in the legislative process

- Educate on Texas workers' compensation system.
- Act as a resource for committees of jurisdiction.
- Provide fiscal impact information for potential legislation.
- Implementation and rulemaking.



# Review of the 88th Texas Legislature

# Total bills and joint resolutions filed through 60-day filing deadline



Source: Legislative Reference Library of Texas, March 14, 2023



# Key workers' compensation legislation

## Senate Bill 1122

Excludes certain medical exams and services from sales tax.

## House Bill 2468

Lifetime income benefits.

## House Bill 2314

Filing death benefit claims.

## House Bill 90

Texas Military Forces.

## House Bill 3335

Course and scope.

## Senate Bill 1659

Sunset review dates for DWC, OIEC, TDI, and OPIC.

# Information on bill implementation

## DWC memos page

The screenshot shows the Texas Department of Insurance website. The top navigation bar includes 'Home', 'Injured Employees', 'Empleados Lesionados', 'Employers', 'Health Care Providers', and 'Carriers'. The 'Workers' Compensation' tab is selected. The main content area is titled 'Memos to system participants' and lists various updates for 2024, including reminders about medical improvement and impairment rating billing, proposals for rule changes, and information about designated doctor procedures.

**2024**

- Reminder: Changes to designated doctor and maximum medical improvement and impairment rating billing and reimbursement rules 9/6/24
- Proposal to correct the title of Section 147.10, Notification to the Division of Proposed Judgments and Settlements 8/20/24
- Notice of Proposed Rule Review: 28 TAC Chapters 126-128 8/14/24
- Proposed rule on Chapter 134, Subchapter F, Pharmaceutical Benefits 8/12/24
- Workers' Compensation Research and Evaluation Group Proposes Fiscal Year 2025 Research Agenda 8/12/24
- DWC Form-209, Governmental Entity Coverage Information 8/9/24
- Opportunity to comment on informal draft rule text to allow treating doctors to perform maximum medical improvement (MMI) examinations by telemedicine 7/15/24
- Revised DWC Form-052, Supplemental Income Benefits (SIBs) Application 7/2/24
- Adopted New Section, Amendments, and Repeals of Chapter 147, Dispute Resolution—Agreements, Settlements, Commutations 6/24/24
- Adopted rule on gifts, grants, and donations 6/24/24
- Revised DWC Form-001, Employer's First Report of Injury or Illness; DWC Form-002, Employer's Report for Reimbursement of Voluntary Payment; and DWC Form-006, Supplemental Report of Injury 6/5/24
- Proposed rules on designated doctor procedures and requirements and lifetime income benefits to implement House Bill 2468 5/31/24
- Rule Review and Readoption: 28 TAC Chapters 120, 122, and 124 5/28/24
- Adopted rule on medical billing complaints 5/9/24
- Proposed updates to rule on gifts, grants, and donations 5/1/24



## DWC rulemaking page

The screenshot shows the Texas Department of Insurance website. The top navigation bar is the same as the previous page. The main content area is titled '2024 DWC proposed and adopted rules'. It features a list of years from 2024 to 2015, with 2024 selected. Below the list, there are expandable sections for various rule categories, such as 'Commutation of impairment income benefits', 'Pharmaceutical benefits', 'Telemedicine, telehealth, and teledentistry services', 'Lifetime income benefits (HB 2468)', 'Gifts, grants, and donations', 'Dispute resolution—agreements, settlements, commutations', 'Medical billing complaints', and 'Accident prevention services'.

**2024 DWC proposed and adopted rules**

2024 | 2023 | 2022 | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | adoptions prior to March 2015

Rules marked with a star ★ are open for comment.  
Need to search the page? Select **Open all** first.

**Open all** **Close all**

- Commutation of impairment income benefits ▼
- Pharmaceutical benefits ▼
- Telemedicine, telehealth, and teledentistry services ▼
- Lifetime income benefits (HB 2468) ▼
- Gifts, grants, and donations ▼
- Dispute resolu—agreements, settlements, commutations ▼
- Medical billing complaints ▼
- Accident prevention services ▼



# Workers' compensation topics next session

- Extent-of-injury.
- First responder issues.
- Medical benefits.
- Exclusive remedy.
- Marijuana.
- Scope of practice.
- Virtual contested case hearings.



# Case law update

# Air ambulance

## Cases:

Texas Supreme Court – *Phi Air v. Texas Mutual Insurance Company*

5th Circuit Court of Appeals – *Air Evac EMS v. Sullivan*

## Issues:

- Does the 1978 Airline Deregulation Act preempt one or more of the following:
  - DWC’s “fair and reasonable” payment standard.
  - The “balance billing” prohibition (Texas Labor Code §413.042).
- Can the State Office of Administrative Hearings (SOAH) declare the meaning and effect of a federal injunction?

*Air Evac EMS, Inc. v. Sullivan*, 8 F.4th 346 (5th Cir. 2021).

*Tex. Mut. Ins. Co. v. PHI Air Med., LLC*, 610 S.W.3d 839 (Tex. 2020, cert. denied).

# Supplemental income benefits (SIBs)

## Case:

Austin Court of Appeals – *TDI-DWC v. Accident Fund Insurance Company of America and Texas Cotton Ginner's Trust*

## Issue:

- Dispute regarding 28 Texas Administrative Code (TAC) §130.102(d)(1)(C) and (D):

(d) Work Search Requirements.

(1) An injured employee demonstrates an active effort to obtain employment by...

(C) has actively participated in work search efforts conducted through the Texas Workforce Commission (TWC);

(D) has performed active work search efforts documented by job applications...

## Declarations:

- Distinction between (C) and (D).
- DWC's determination that a job application can be verbally asking for a job is not counter to the objective of the SIBs statute.
- "The true complaint" – DWC's application to situations in which documented evidence is not a job application is not challenged through a facial rule challenge.

# Enforcement

## Case:

Austin Court of Appeals – *Texas Political Subdivisions Joint Self Insurance Fund v. TDI-DWC*

## Issue:

- The fund argued it was immune from DWC administrative penalties.

## Holding:

- Held that political subdivisions that self-insure under the Texas Workers' Compensation Act have always been subject to administrative penalties issued by DWC.
- The subdivision's immunity is a shield against private parties and not against actions brought by the state exercising its regulatory authority.

*Texas Political Subdivisions Joint Self-Insurance Fund v. Tex. Dep't of Ins. - Div. of Workers' Comp.*, 681 S.W.3d 491 (Tex. App. –Austin 2023, pet. denied).



# Course and scope

## Case:

Amarillo Court of Appeals – *Old Republic v. Evans*

## Issue:

- If you forget your laptop at home and retrieve it, are you in the course and scope of employment?

Old Republic Ins. Co. v. Evans, 2024 WL 3249336, (Tex. App. –Amarillo June 28, 2024, pet. filed).

# Intentional injury doctrine

## Case:

Fort Worth Court of Appeals – *Long v. R.E. Watson & Associates, Inc.*

## Issue:

- Altercation between plaintiff and his foreman. The employer has a workers' compensation policy.
- Plaintiff seeks damages against the employer under the “intentional injury” exception. Employer claimed exclusive remedy.

## Holding:

- Held that the foreman was not its vice principle or alter ego, so the intentional injury exception does not apply.

# Employer/employee relationship & exclusive remedy

## Case:

Austin Court of Appeals – *Gonzalez v. Dynamic Motors*

## Issue:

- Plaintiff said he was not an employee because he was only hired to detail cars and was injured after being directed to work on a roof.
- Written job duties were: “car detailing, lot maintenance, taking trash out, detailing vehicles, removing property from vehicles, storing detailing equipment, **[and] other duties as assigned.**”

## Holding:

- Court agreed that the plaintiff was injured in course and scope of employment and workers’ compensation was his sole remedy.

*Gonzalez v. Dynamic Motors, Inc.*, 2023 WL 6883671 (Tex. App. –Austin Oct. 19, 2023, no pet.)

# DWC exclusive jurisdiction

## Cases:

Austin Court of Appeals – *In re Recess Arcade Bar, LLC*

Corpus Christi Court of Appeals – *University of Texas Rio Grande Valley v. Oteka*

## Holding:

- Denied writ of mandamus on a personal injury claim because the merits of the claims do not turn on whether the plaintiff is eligible for workers' compensation benefits (*In re Recess Arcade Bar, LLC*).
- Held that the plaintiff in this case was not required to exhaust administrative remedies with DWC before filing a personal injury suit (*University of Texas Rio Grande Valley v. Oteka*).

*In re Recess Arcade Bar, LLC*, 2024 WL 3048577 (Tex. App. –Austin, June 19, 2024, no pet.).

*Univ. of Tex. Rio Grande Valley v. Oteka*, 2023 WL 413587 (Tex. App. –Corpus Christi Jan. 26, 2023, pet. filed).

# 90-day rule

## Case:

Austin Court of Appeals – *Engel v. TDI-DWC*

## Issue:

- Plaintiff said that the 90-day finality rule for impairment ratings (IRs) conflicts with the one-year law for the injured employee to file a claim and the 104-week statutory limit to reach maximum medical improvement (MMI).

## Holding:

- Held that the one-year filing rule is for filing and there is no conflict.
- No irreconcilable conflict between the 104-week period to reach MMI and the 90-day rule. Even if there was a conflict, the 90-day rule was enacted later and would prevail.

*Engel v. Tex. Dep't of Ins. - Div. of Workers' Comp.*, 2024 WL 3432250, (Tex. App. –Austin July 17, 2024, no pet. h.).

# Constitutional challenge

## Case:

Austin Court of Appeals – *Engel v. TDI-DWC*

## Issue:

- Plaintiff argued the 90-day rule makes the Texas Workers' Compensation Act unconstitutional.

## Holding:

- Court found that the 90-day deadline appears to be intended to simplify and streamline the procedure for finalizing an injured employee's IR. The court noted there are exceptions to the 90-day deadline.

Engel v. Tex. Dep't of Ins. - Div. of Workers' Comp., 2024 WL 3432250, (Tex. App. –Austin July 17, 2024, no pet. h.).

# Reclassification of income benefits

## Case:

Amarillo Court of Appeals – *Lubbock County v. Reyna*

## Issue:

- Can an insurance carrier reclassify prior paid income benefits into lifetime income benefits?

## Holding:

- Court stated that prior benefits can be redesignated and agreed with DWC's interpretation based upon agency deference.

# More on agency deference

## Case:

U.S. Supreme Court – *Loper Bright Enterprises v. Raimondo*

- Overrules *Chevron* doctrine that provided federal administrative agencies deference.

## Texas standard from the Texas Supreme Court

- We have never expressly adopted...Chevron...but we agree...that the analysis in which we engage is similar.
- In our “serious consideration” inquiry, we will generally uphold an agency’s interpretation of a statute it is charged by the Legislature with enforcing so long as the construction is reasonable and does not contradict the plain language of the statute.



# Common law marriage

## Case:

Dallas Court of Appeals – *City of Euless v. Danylyk*

## Issue:

- Dispute as to informal marriage after death of a police officer.
- City of Euless attacked the legal and factual sufficiency of the jury's finding and jury charge.

## Holding:

- Court held that there was sufficient evidence to support a finding of informal marriage and rejected the objection to the jury charge.

*City of Euless v. Danylyk*, 2023 WL 8595687, (Tex. App. –Dallas December 12, 2023, pet. filed).



# Questions?