

DETAIL ON 10 STANDARDS FOR QCARE DESIGNATION

(revised 9-27-19)

“QCARE” means a Qualified Compensation Alternative for Recovering Employees, and is the next big innovation in injured worker care. QCARE has been created by the Association for Responsible Alternatives to Workers’ Compensation (ARAWC) as a **simple, no-cost, online designation** to recognize employers with a responsible Texas injury benefit program. Based upon extensive dialogue with workers’ compensation industry thought leaders and research, 10 standards emphasize legal compliance, fairness in benefit delivery, insurance protections, and professional claims administration. The QCARE designation confirms a socially responsible expectation for all Texas employers to provide either workers’ compensation or injury benefit coverage for all Texas workers and their families. QCARE is like a “Seal of Approval” for employers that provide quality injury benefit coverage.

Not every employer that provides Texas injury benefit coverage will satisfy these 10 QCARE standards. As described in the QCARE Designation Procedures, the QCARE Committee maintains discretionary and final authority to interpret and implement the provisions of this program and discretion to select programs for further verification that some or all of the QCARE standards have been met.

Program Effective October 2, 2019.

The following “Ten Standards” define the QCARE designation:

- 1. Awareness of Negligence Liability Exposure.** Texas employers with workers’ compensation coverage, as well as employers with a QCARE program, want to protect workers as their most valuable asset, support return-to-work and productivity, and maintain reasonable insurance premium rates by promoting workplace safety and good medical outcomes. Exposure to unlimited economic and non-economic damage claims by injured workers for any employer negligence that caused the injury provides an additional incentive for employers to provide training, safe workplaces and injured employee care. By indicating that it complies with the 10 QCARE standards, an employer that does not provide Texas workers’ compensation coverage acknowledges this negligence liability exposure.
 - a. Context.** An understanding of this negligence liability context is fundamental to an understanding of QCARE injury benefit plan design and administration.
 - b. A Powerful Force for Good.** All Texas employers without workers’ compensation coverage have this exposure to negligence liability claims by injured workers, and cannot defend against such claims with common law defenses of assumption of risk, contributory (or comparative) negligence, or negligence of a fellow employee. Losing the “exclusive remedy” protection of workers’ compensation is a powerful force for good among QCARE employers. They commonly support robust job training and safety programs, and are required by common sense and their insurance carrier to voluntarily commit in writing to payment of quality injury benefits. This exposure to negligence liability claims also incentivizes design of injury benefit plans that provide broad coverage and generous benefits.
 - c. Negligence Liability Exposure is Real.** Although manageable and fully insurable, negligence liability exposure for employers outside of Texas workers’ compensation

is real. It has resulted in development of a deep body of case law and an experienced group of attorneys representing employers and injured workers. Over the past three decades, over 100 nonsubscriber negligence liability settlements and judgments have been identified in the amount of \$1 million or more (with the highest known to date at \$22 million).

2. **Compliance with State Law Employee Notices and Filings.** QCARE employers provide employee notices required under Texas law and regulatory filings with the State of Texas.¹
 - a. **Annual Notice to State.** Designated legal entities must notify the Texas Division of Workers' Compensation (DWC) that it elects not to obtain coverage by submitting a DWC Form-005, Employer Notice of No Coverage or Termination of Coverage. This election is made on an entity-specific basis for all Texas employees of such entity.
 - b. **Notices to Employees.** Such employers must notify Texas employees in writing and through workplace posters, in English, Spanish, and any other appropriate language.
 - c. **Monthly Reports of Injury, Illness or Fatality.** Such employers with five or more employees must report each work-related fatality, occupational disease, and injury that results in more than one day of lost time on DWC Form-007, Employer's Report of Non-covered Employee's Occupational Injury or Disease.
 - d. **Enforcement.** DWC is a division of the Texas Department of Insurance and has enforcement authority for the above reporting and disclosure requirements.
3. **Defined Injury Benefits.** QCARE programs provide specific medical, wage replacement, death and dismemberment benefits with clearly defined benefit levels. QCARE does not specify what these benefit or insurance levels should be (such as specific coverage duration or dollar amounts) because such specificity is required by ERISA and all insurance markets (see #9 below). Employers and insurers have developed market standards within the context of incentives for workplace safety and employee care mentioned above – including negligence liability exposure – and a self-regulated marketplace that has successfully functioned for three decades.
4. **Fair, Well-Communicated Injury Reporting Standards.** QCARE benefit plans permit injury reporting within a specified timeframe that has been clearly communicated in advance to the employee, is triggered when the employee knew or should have known of the accident or injury, is subject to a good cause exception, and is administered by a fiduciary (as determined under the Employee Retirement Income Security Act of 1974, as amended (ERISA))² in the best interests of the injured worker. Extended timeframes are required for occupational disease and cumulative trauma based upon medical diagnosis or knowledge of the employee.
5. **Broadly Defined Covered Injuries.** QCARE benefits are available in the event of a work-related accident, occupational disease, or cumulative trauma that occurs in the course and scope of employment.

¹See the DWC summary of these requirements, including links to forms and citations to Texas Labor Code provisions and administrative rules at ["Information for Employers without Workers' Compensation Insurance Coverage"](#) and ["Reporting Requirements for Employers without Workers' Compensation"](#) (Texas Division of Workers' Compensation 2015).

² See standard #8 below.

- 6. Benefits Paid Without Regard to Fault.** QCARE benefits are available without regard to employee, employer or third party fault in causing the injury (subject to any required drug and alcohol testing). For example, QCARE programs do not deny benefit coverage simply because injury results from a workers' failure to follow a safety rule; and QCARE programs do not condition eligibility for benefits on an injured worker's agreement to a post-injury waiver of negligence liability claims.
- 7. Employer Pays 100% of Cost from Date of Hire.** QCARE programs are fully funded by the sponsoring employer and insurance coverage, with no employee co-pays, deductibles, co-insurance, payroll deduction or other contribution by employees to participate.
- 8. Compliance with ERISA Federal Employee Benefit Laws.** QCARE employers sponsor an injury benefit plan that delivers a certainty of response to injured worker medical, disability and other needs when an accident occurs. Like other employer-sponsored group health, disability and retirement plans, these injury benefit plans must comply with widely-utilized and accepted reporting, communication, fiduciary obligation and claim payment consistency standards under ERISA. For example:

 - a. Reporting and Disclosure of Employee Rights and Responsibilities** under ERISA is accomplished by, among other things, (1) adopting a formal injury benefit plan document listing specific benefits, (2) providing each covered employee with a summary plan description (SPD) calculated to be understood by the average plan participant and explaining how the plan works, what injury benefits are provided, any exclusions and limitations on coverage, and how injury benefits can be obtained, and (3) filing a Form 5500 annual report with the U.S. Department of Labor for injury benefit plans that cover more than 100 employees.
 - b. Employer Accountability and Fiduciary Responsibility** – ERISA requires every injury benefit plan to establish reasonable procedures for administration of plan benefits in the interests of covered employees and beneficiaries. As recognized by the U.S. Supreme Court for decades, ERISA and U.S. Department of Labor regulations provide for a full and fair review of all claims and numerous administrative safeguards. Key features include very specific criteria for (1) filing a claim; (2) an initial benefit determination by the employer or insurance company and notification to the employee; (3) the right to an internal appeal of any denial of benefits; and (4) access to the courts for an independent review of any denial of benefits.
 - c. Enforcement.** Enforcement actions under ERISA can be brought by covered workers, beneficiaries, their representatives, and the U.S. Department of Labor.
- 9. Broad Insurance Coverage.** QCARE programs support financial security for injured workers and employers through insurance policies that cover benefits, negligence liability settlements and judgments, and expenses related to an employee injury claim. QCARE standards include such insurance coverage, which is available from many large, reputable carriers rated "A-XIII" or better by A.M. Best.

ARAWC members providing Texas nonsubscriber insurance coverage for QCARE programs include Combined Group (Swiss Re), CPro Associates (Nationwide), Great American Insurance Company, Midlands Management Corporation (Lloyds and Safety National), and Special Insurance Services (ACE). Other insurance markets may be available. Insurance coverage may also be written through a captive insurance company. This is a highly-

developed insurance marketplace writing approximately \$100 million in annual nonsubscriber insurance premium. These programs are supported by deep expertise and a long track record of operating experience and claims payment, delivering an immediate response to workplace injury for employers of all sizes and all industries.

Rather than provide its own analysis of these insurance products and detail on the terms of injury benefit plans, ARAWC relies upon individual employers, insurance agents/brokers and insurance companies to do so. These insurers require clarity in their obligations and their injury benefit commitments are very explicit. Insurers and insurance agents provide their own marketing materials and coverage comparisons. Insurers also insist on the employer's commitment to pay quality benefits coverage. Such insurance company requirements for the payment of quality injury benefits and approval of the claims administration services provider (as noted in #10 below) ensures appropriate oversight, mitigation and control over negligence liability claims.

Employers also insist on certainty of benefits coverage in order to understand the contractual commitments they are making to employees, and to know what insurance coverage the employer is paying for. ERISA also requires all benefits to be "definitely determinable" and fully communicated to all covered employees and beneficiaries.

As noted in #1 above, the employer's negligence liability exposure must be considered in any comparison of benefit levels between a QCARE program and workers' compensation.

10. Approved Claims Administration. QCARE benefits are professionally administered by an insurance company, licensed third party administrator approved by the insurance company, or other insurance company-approved claim adjusters.

No Guarantee of Compliance. Neither ARAWC nor this QCARE program guarantee any particular employer program is in compliance with any state or federal law or best practice, nor shall the designation provide any guarantee of employer program performance.

Amendment and Termination. ARAWC shall have the right and power at any time and from time to time to update or otherwise amend these 10 Standards for QCARE Designation, in whole or in part, and at any time to terminate the QCARE program or any employer's participation therein. Any such amendment or termination shall be pursuant to formal written action of ARAWC's QCARE Committee.

[Click here](#) for other QCARE program details.

[Click here](#) for other resources on Texas Injury Benefit Plans.