

Management Labor Advisory Committee
Thursday, March 17, 2005
Labor & Industries Building Room 260

Committee Members Present:

John Kirkpatrick, IUPAT District Council, Portland, OR
Mike O'Rourke, Plumbing and Steamfitters UA 290, Portland, OR
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR
Sheri Sundstrom, Hoffman Construction Company, Portland, OR
Ken Hector, CNF Service Company, Portland, OR
Diane Janzen, NorPac Foods, Lake Oswego, OR
Lon Holston, AFSCME, Grants Pass, OR
J.L. Wilson, NFIB, Oregon Chapter, Salem, OR

Committee Members Excused:

Lisa Trussell, Associated Oregon Industries, Salem, OR

Staff Present:

Myrna Curzon, Director's Office
Lou Savage, Director's Office
John Shilts, Workers' Compensation Division

Chair JL Wilson called the meeting to order at 8:30 a.m.

REVIEW MINUTES FROM February 24, 2005 SUBCOMMITTEE MEETING

A motion was made and seconded to approve the minutes as submitted. A vote was taken and the following members voted aye: John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Ken Hector, Diane Janzen, Lon Holston, and J.L. Wilson.

STATUS OF SB 386 and discussion of possible amendments

The following five issues were discussed by the committee: 1) definition of gainful occupation, 2) offset to wages from PTD benefits, 3) PTD workers who work part-time, 4) definition of regular work, and 5) definition of medical improvement.

John Shilts, Workers' Compensation Division

Mr. Shilts provided written materials to the committee members regarding the first four issues. He also briefly discussed the issue of material improvement. There is currently nothing in vocational rules that defines material improvement.

Committee Discussion:

Management response to discussion of concepts:

- 1) Definition of gainful employment – current definition fails to address the people who are not and have never worked at that standard. Management recommended that the definition be modified for those workers whose pre-injury earnings were less than the proposed level to be 2/3 of their average weekly wage based on 52 weeks of earnings.
- 2) Offset – the offset should be a direct offset.
- 3) When a worker who is PTD is working and sustains a new injury the only benefits would be impairment and medical.
- 4) Definitions of regular work and essential functions of a job need to be included in the bill for management to support the bill.
- 5) Material improvement vocationally – need to have a definition

Labor Response

The labor members have not caucused, but Bob Shiprack offered a preliminary response to management agreeing with points 1, 2, and 3. Mr. Shiprack also felt that the definition of regular work could be added to PTD, but requested further discussion about adding it to PPD.

Committee Action:

A motion was made by Ken Hector and seconded by Lon Holston to accept Management's proposals with the change that the definition of regular work would only be added to PTD. A vote was taken and the following committee members voted aye: John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Ken Hector, Diane Janzen, Lon Holston, and J.L. Wilson. The amendments will be sent to Legislative Counsel for drafting and then moved to Senate Commerce with a do pass recommendation.

STATUS OF SB 311 and discussion of possible amendments

John Shilts, Workers' Compensation Division

Mr. Shilts presented to the committee a document titled "SB311 Amendment Recommendations from Stakeholders" as requested by Senate Commerce Committee. The recommendations were explained to the committee

Committee Discussion

Management Response:

Management is supportive of the first three amendments regarding changes references to independent medical examinations, changing "conducting medical examinations" to "interactions with independent medical examination providers" and an amendment regarding the request to the director to review the place of the exam.

There was discussion between labor and management about removing sanctions on either the providers or the workers or both, but no agreement was reached

There was a motion to accept amendment 1 to change references in statute to read independent medical examinations, asking the department to determine where the change is necessary. A vote was taken and the following committee members voted aye: John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Ken Hector, Diane Janzen, Lon Holston, and J.L. Wilson. The amendment will be sent to Legislative Counsel for drafting.

There was a motion to accept amendment 2 changing "conducting medical examinations" to "interactions with independent medical examination providers". A vote was taken and the following committee members votes aye: John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Ken Hector, Diane Janzen, Lon Holston, and J.L. Wilson. The amendment will be sent to Legislative Counsel for drafting.

There was a motion to amend proposal 3 regarding appeal to the director about the place of the exam to add language that says if as a result of the workers objection to the location of the exam the director upholds the objection, the director will extend the timeline to accept or deny to 90 days, and send to legislative counsel for drafting. A vote was taken and the following committee

members votes aye: John Kirkpatrick, Mike O'Rourke, Bob Shiprack, Sheri Sundstrom, Ken Hector, Diane Janzen, Lon Holston, and J.L. Wilson. The amendment will be sent to Legislative Counsel for drafting.

The committee discussed concerns expressed by the Oregon Medical Association (OMA) Mr. Shilts assured the committee that the OMA will be invited to participate in the rulemaking process and all details will be done by rule with participation from OMA and the Workers' compensation Medical Advisory Committee.

HB2294 and 2405

A recommendation was made that language from 2405 regarding the manner of notice be inserted into HB2294 so there is consistency. Management also recommended that statutory definitions of regular work and essential functions of the job be put into HB2294.

Chris Moore – Oregon State Bar (OSB) Workers' Compensation Section

HB2405 was brought forward with the intent of separating the aggravation form from the documentation which constitutes aggravation. This proposal would require the same form when the claimant wants the claim reopened under own motion. Mr. Moore expressed that his clients would like the process as unambiguous as possible. He would need additional time to be able to present the amendment to OSB Workers' Compensation Section.

Bob Shiprack requested that Mr. Moore provide the committee with a response from the OSB at the next meeting. Regarding the proposal to put the definition of regular work into PPD. In response to the recommendation that the definition of regular work and essential functions of the job be put into HB 2294, Mr. Shiprack suggested a possible study of the data during the interim to determine if there are unintended consequences of SB757 that this amendment would address.

Judy Johnson, Attorney LNW

Submitted written testimony to the committee with an attachment identifying 66 disabling claims showing the claims before 757 and the claims after 757. Ms. Johnson stated that the net result is an increase of 26% in the cost of claims based on the data provided. Liberty would like to support defining regular work with respect to essential functions. Ms. Johnson also submitted an alternative definition of essential functions that is used in federal law and is already in administrative law – it would then be consistent with current case law.

Committee Discussion:

The committee discussed the proposal and took no action. The bill will be put on the next agenda for further discussion.

HB2588

Vern Saboe, Chiropractic Association of Oregon

The bill asks for a 5-year comparison study comparing the cost of chiropractic treatment of injured workers vs the cost of other current statutory methods of treatment. Mr. Saboe also identified areas where he is willing to amend the bill to address stakeholder concerns and concerns from the Workers' Compensation Division.

Chris Davie – SAIF Corp

Mr. Davie testified that he has met several times with Dr. Saboe and has also had two meetings with OHSU. Mr. Davie recommended that the study should be broader than SAIF. He also suggested a phase release of the money. The initial phase could be just getting to the bottom of the unanswered questions and then come back to DCBS, MLAC or E-Board to release rest of the money.

Linda Barno, OSIA

Current position is opposition. Mr. Barno expressed concern about how to make the study neutral and non-biased. Are the chiropractors going to be blind to who participates in the study, or would they create an artificial effect? Would the workers involved in the study be blind to their participation in the study?

Committee Discussion

Committee members discussed some of the concerns mentioned by the department as well as a concern about the number of proposals wanting to draw from the Worker Benefit Fund. Would there be enough similarity in the type of injuries to be able compare apples to apples? The study is for a potential study group of 200,000 workers, not 200,000 injured workers.

HB2790

Michael Mason, attorney representing Oregon Doctors of Chiropractic Medicine, accompanied by two chiropractic physicians, Dr. John Schmidt and Dr. Roger Satira

The bill would extend the period of chiropractic care from 30 days to 90 days

Dr. Roger Satira, Chiropractic Physician

Studies show that chiropractic care is the most effective method of treating spinal trauma. Most treated and improved within 90 days

Dr. John Schmidt, Chiropractic Physician

Purpose of chiropractic care is to promote healing with restoring motion. Patient would have a higher probability of returning to work.

Committee Discussion

The committee discussed the time frame and asked about typical timeframes for improvement with chiropractic care.

SB669

Art Keil, Lobbyist for Oregon Association of Naturopathic Physicians

The bill would add naturopath to the definition of attending physician and limit the length of time that a naturopathic physician could act as attending physician to 30 days from the first visit or 12 visits whichever occurs first.

Aris Campbell, Naturopathic Physician

Mr. Campbell presented written testimony to the committee presenting background of a workers' comp claim in which the worker was told the naturopathic physician could not treat them.

Committee Discussion

Committee members discussed current law related to naturopathic physicians in treating injured workers.

SB1001

Marshall Coba, Oregon Society of Physician Assistants

Scot Byer, Oregon Society of Physician Assistants

The bill broadens authority from 30 days to 90 days, allows palliative care, close a claim.

Written testimony was provided to the committee.

SB804

Ed Johnson, Toledo Oregon

The bill requires inventory of workers' compensation claims records be provided and claims records made available to workers. Requires director investigation, civil penalties, and addresses evidentiary effect in workers' compensation legal proceedings when claims records are lost, destroyed or made unusable. Mr. Johnson gave a copy of multiple documents to the committee. He read a portion of the document titled Response to LC2322. The origin of the document is not clear.

The meeting was adjourned at 12:00 p.m.

The next meeting is set for March 24, 2005 at 8:30 a.m.