

NOTICE OF PUBLIC MEETING

WORKERS' COMPENSATION MANAGEMENT-LABOR ADVISORY COMMITTEE Meeting Minutes

**Thursday, February 22, 2007
9:00 a.m. – 12:00 p.m.**

Conference Room 260
Labor & Industries Building, 350 Winter Street NE, Salem, OR
(A map is available upon request)

Committee Members Present:

Sheri Sundstrom, Hoffman Construction Company, Portland, OR
Linda Jefferson, City of Portland, Portland, OR
Greg Miller, Gunderson LLC, Portland, OR
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR
John Kirkpatrick, IUPAT District Council, Portland, OR
Tracy Brill, Port of Portland, Portland
Lon Holston, Grants Pass, OR
Lisa Trussell, Associated Oregon Industries, Salem, OR
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR

Committee Member Excused:

Ellen Cutler, Harry and David, Medford, OR

Meeting Agenda

Approve minutes of February 9, 2007

A motion was made and seconded to approve the February 9, 2007, minutes as written. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, and Linda Jefferson. Motion passed.

Proposed Legislation

SB 268 Judicial review of orders of the Workers' Compensation Board. A copy of the bill, analysis, and fiscal impact statement were provided to the committee. The documents are part of the record.

Public testimony:

James Nass, Oregon Supreme Court, Court of Appeals
Mr. Nass provided testimony to the changes proposed by SB 268 and brief history of the process. Three main changes are proposed. First, the bill replaces references to "appeal" with "judicial review." Second, the bill corrects prior amendments that had unintended consequences. Lastly, the bill clarifies that the Workers Compensation Board has jurisdiction to approve a disputed claims settlement if there is no case pending judicial review. Written testimony was provided and made part of the record.

Abbie Herman, Workers' Compensation Board

Ms. Herman responded to a request from the committee on the Board's position on the proposed changes. She confirmed the Board does support SB 268.

Committee discussion: None

Action: A motion was made and seconded to move support SB 268. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, and Linda Jefferson. Motion passed.

SB 559 Guaranty Contracts (LC 1941). A copy of the bill, analysis, and fiscal impact statement were provided to the committee. The documents are part of the record.

David Lake, Liberty Northwest Insurance

Mr. Lake, provided brief testimony. This bill eliminates the current process of the guaranty contract as the form in which insurers provided proof of coverage to the Department. The proposed system would be an electronic notification to the department.

John Shilts, Workers' Compensation Division

Mr. Shilts provided testimony in support of SB 559. The bill is a streamlining change and will reduce costs to the system. He also provided an overview of the amendments suggested by the Workers' Compensation Division. These amendments were provided in the bill analysis. Mr. Shilts asked the committee to support this bill with the suggested amendments. He provided information on the reciprocity for out of state employers with workers working in the State of Oregon.

Committee discussion: The committee asked that OSHA be invited to a future meeting to discuss the experience rating for out-of-state employers.

Action: A motion was made and seconded to support SB 559 with the technical amendments. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, and Linda Jefferson. Motion passed.

HB 2244-2 Sunset removal- Permanent Partial Disability - review amendment language. A copy of the bill, amendments, analysis, and fiscal impact statement were provided to the committee. The documents are part of the record.

John Shilts, Workers' Compensation Division

Mr. Shilts gave a brief historical overview of the changes made by SB 757 and HB 2408. The goal was to develop a system that was more fair, simpler, supported return to work, and that was cost neutral. He also gave a brief overview of the 2006 study. Mr. Shilts testified in favor of this bill and amendments repealing the sunset. He also testified regarding the risks of not removing the sunset.

Mark Davison, Oregon Self Insurer Association

Mr. Davison testified regarding the value of MLAC in the state of Oregon. He also testified that OSIA's opposes removing the sunsets and believes that there is value in the sunset. He suggested that the bill be amended to keep the sunset.

Linda Barno, Oregon Self Insured Association

Mr. Barno also testified regarding the value of MLAC as a process in Oregon. She believes that the sunset is the trigger needed to keep this topic on the MLAC table.

Committee Discussion: The committee discussed the proposed changes and supports removing the sunsets as the bill recommends.

Action: A motion was made and seconded to make a conceptual amendment to the -2 amendments to require MLAC to both study and make recommendation on permanent partial disability benefits

each biennium. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, Lisa Trussell, and Linda Jefferson. Motion passed.

Action: A motion was made and seconded to support HB 2244-2 amendments as amended. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, Lisa Trussell, and Linda Jefferson. Motion passed.

HB 2247 –1 Sunset removal– Nurse Practitioners – review amendment language.

John Shilts, Workers' Compensation Division

Mr. Shilts provided brief testimony regarding the –2 amendments. He was asked and provided clarification to the differences that bill proposes from the other care provider bill proposed by the Management-Labor Advisory Committee.

Committee discussion: None

Action: A motion was made and seconded to support HB 2247-1 amendment as presented. A vote was taken and the following members voted aye: Tracy Brill, Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, Lisa Trussell, and Linda Jefferson. Motion passed.

SB 560 Establishes presumption that certain cancers are compensable occupational diseases for firefighters.

Kelly Bach, Oregon State Firefighter Council

Mr. Bach testified regarding the importance of SB 560 and the presumption it proposes. He also testified about his experience as a firefighter and gave general testimony of the proposed cancer presumption. Written testimony was provided for the committee. The documents are part of the record.

Kerry Kuehl, M.D, Dr. P.H., M.S., Oregon Health and Science University

Dr. Kuehl provided extensive testimony regarding reducing cancer and heart disease risks among firefighters and the associations between firefighting and chemical-induced cancers.. He testified in support of the bill. Dr. Kuehl discussed the role of personal protective equipment in the prevention of cancer. Written testimony was provided for the committee. The documents are part of the record.

Bill Humbert, Firefighter

Mr. Humbert testified regarding his experience as a firefighter that has suffered cancer from an on – the-job exposure. He asked the committee to support this bill.

Carolyn Higely

Mrs. Higely testified regarding her husband's experience suffering and later dying from cancer related to his work as a Portland firefighter. Ms. Higley asked the committee to support this bill.

Nelson R. Hall

Mr. Hall provided clarification on the presumption and that this bill would not affect the benefit levels of the firefighter. He stated that he represented Mr. Higley in his workers' compensation litigation case in proving his cancer was work related. He stated medical issues follow the claimant

over a lifetime. Mr. Hall discussed the definition of “equivalent”– he stated that statute used include this, but it was removed because it was difficult to define.

Hasina Squires, Special Districts Association of Oregon, League of Oregon Cities, Oregon Fire District Directors Association

Ms. Squires testified regarding the change this bill proposes and provided data representing the fiscal impact this change would mean to employers. After a question from the committee, Ms. Squires provided clarification that some of the data she provided was not related exclusively to cancer related claims. Written testimony was provided for the committee. The documents are part of the record.

Dr. Noel Weiss, M.D., University of Washington Department of Epidemiology

Dr. White provided testimony regarding causation of cancer related to firefighters. He provided clarification regarding the studies used for previous testimony and the use of “possibly” vs. “probably.” Written testimony was provided for the committee. The documents are part of the record.

George Goodman J.D., Cummins, Goodman for SDAO

Mr. Goodman testified that he represents the position of Special Districts Association of Oregon on this bill. His testified regarding the impact of the changes this bill would have and the Special District Association of Oregon’s opposition to the bill. Mr. Goodman provided clarification that the difference from the heart and lung presumption is that the science is settled on the heart and lung presumption. The science on the cancer presumption is very unsettled. He provided that the fire districts could opt to cover volunteers. Written testimony was provided for the committee. The documents are part of the record.

Chris Davie, SAIF Corporation

Mr. Davie testified regarding possible case law that volunteers are covered under the presumption. He also testified regarding the need for the presumption. Mr. Davie suggested this topic be studied by MLAC as well as other possible conditions that should be covered by presumptions. CROET may be a resource for some of the needed data.

Committee discussion: The committee asked the Department to come back to MLAC with the following information:

- Other state laws for firefighter presumptions (what kind of presumption, who is covered, type of conditions)
- Other state’s premium costs for firefighters
- Case law about whether volunteers are covered, as well as on current presumptions
- Whether volunteers take the required pre-employment physical
- OR-OSHA or possibly CROET review of meta-analysis study
- Review and briefing on the Master’s Report

SB 565 Modifies method for determining average weekly wage for worker with more than one job at time of injury.

Public Testimony:

Linda Barno, Oregon Self-Insured Association

Ms. Barno testified regarding the problem that is being addressed by this bill. She testified to that the changes in the bill are to ensure workers are being reimbursed for all wages lost due to an accepted injury. Written testimony was provided for the committee. The documents are part of the record.

Susan Havier, City County Insurance

Mrs. Havier provided testimony regarding the unintended consequence of the current system for calculation of wages of workers with multiple jobs

Chip Bartell, Special Districts Association of Oregon

Mr. Bartell provided testimony regarding the impact of the current system and the unintended consequences. He discussed the system impact to employers with volunteers. He recommends that the department be instructed to form a sub-committee of stakeholders to study the current system and come back to MLAC with recommendations. Written testimony was provided for the committee. The documents are part of the record.

SB 506 Defines "direct medical sequelae" for purposes of workers' compensation claims.

Public Testimony:

Ronald Atwood, Oregon Self-Insurers Association

Mr. Atwood provided testimony with examples of how direct medical sequelae effects the current system for rating of accepted conditions at claim closure. He suggests the committee either define or remove the reference to direct medical sequelae from the statute. He provided clarification that a worker has no time limit for claiming a condition related to the accepted condition that has not been previously claimed. Written testimony was provided for the committee. The documents are part of the record.

SB 504 Requires physician serving as attending physician for workers' compensation claim to be responsible for treatment of worker's compensable injury on ongoing basis.

Public Testimony:

Anthony Miller, Oregon Self-Insured Association

Mr. Miller provided brief testimony of his frustration with the current system and his position supporting the change this bill proposes. He stated that this is a technical change that will make it very clear who can act as the attending physician and what benefits they can authorize. Written testimony was provided for the committee. The documents are part of the record.

SB 564 Allows closure of workers' compensation claims if preponderance of evidence supports closure and attending physician fails to provide closing report after request.

Public Testimony:

Ronald Atwood, Oregon Insurers Association

Mr. Atwood provided testimony that this bill is designed to fix a technical error to the system if the attending physician is uncooperative.

SB 503 Defines "regular work" for purposes of workers' compensation statutes.

Public Testimony:

Judy Johnson, Oregon Self-Insured Association

Ms. Johnson provided brief testimony regarding the previous changes relating to awards of permanent partial disability for workers returning to their regular job. She stated that this bill would define "regular work" throughout the statutes and would limit expensive work disability awards to workers who have returned to regular work. Written testimony was provided for the committee. The documents are part of the record.

Judy Arizala, Liberty Northwest

Ms. Arizala provided testimony regarding the impact this change would have to the system. She also provided a practical example. Written testimony was provided for the committee. The documents are part of the record.

Committee Discussion: The committee asked a subcommittee to meet and bring back recommendations on SB 503, SB 504, SB 506, SB 564, SB 565.

Public Testimony:

Edward Johnson

Mr. Johnson provided testimony regarding his experience as an injured worker and his opposition to SB 503, SB 504, SB 506, SB 564, and SB 565.

Meeting was adjourned.