

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Minutes

March 30, 2007
10:00 a.m. – 12:00 p.m.

Conference Room 260
Labor & Industries Building, 350 Winter Street NE, Salem, OR

Committee Members Present:

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

Committee Member Excused:

Ellen Cutler, Harry and David, Medford, OR

Meeting Agenda:

Review Minutes from March 16, 2007 Full MLAC and MLAC Legislative Subcommittee meetings
Minutes were reviewed and a request was made that the minutes of the full committee meeting be corrected to show that Cory Streisinger was present. A motion was made and seconded that the minutes of both meetings be approved with the correction requested on the minutes of the full committee meeting. A vote was taken and the following members voted aye: Linda Jefferson, Greg Miller, Sheri Sundstrom, Lisa Trussell, Tracy Brill, Lon Holston, John Kirkpatrick, Mike O'Rourke, and Bob Shiprack. Motion passed.

Proposed Legislation:

SB 404 –Authorizes payment of certain reasonable fees, expenses and costs associated with litigation of workers' compensation claim if claimant prevails against claim denial.

Martin Alvey, Oregon Trial Lawyers' Association

Mr. Alvey provided amended language for the bill. As suggested at the last meeting, the amended language includes a cap on the fees--absent showing of extraordinary circumstances. Mr. Alvey also clarified that the language needs to be changed to accurately reflect that the fees in (2)(c) are payment for a witness and are payable in addition to the award to the injured worker, not out of the award to the worker.

Ronald Atwood, Oregon Self-Insured Association (OSIA)

Mr. Atwood was asked to confirm agreement with the suggested additional conceptual amendment. Mr. Atwood suggested that the phrase be added at the end of (2)(a) "payable in addition to and not out of compensation paid to the claimant."

Discussion: The Chair asked that the amendments be brought back to the committee for review after being drafted by the Office of Legislative Counsel.

Action: A motion was made and seconded to send the conceptual amendments to Legislative counsel for drafting and a request was made that the amendments be brought back to the committee for review. The following members voted aye: Linda Jefferson, Greg Miller, Sheri Sundstrom, Lisa Trussell, Tracy Brill, Lon Holston, John Kirkpatrick, Mike O'Rourke, and Bob Shiprack. Motion passed.

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

A proposal with amendment language was made and is included in the record. The proposal would limit the bill to professional paid firefighters only; apply the presumption to colon, stomach, multiple myeloma, non-hodgkins lymphoma, testicular, prostate and brain cancers; and make no change to the current statutory presumption with respect to the “clear and convincing” standard or “unrelated”.

Ken Armstrong – Oregon Fire Chief's Association

Mr. Armstrong testified in opposition to SB 560 in its current form. In addition, he testified that he would still have concerns with the bill if amended as suggested by MLAC. He recommended that the objective be to see firefighters that legitimately get cancer as a result of employment get coverage in the workers' compensation system while protecting the workers' compensation system. Mr. Armstrong suggested that this could be done by limiting the presumption to the 3 cancers recognized as probabilities. He also expressed concern with excluding volunteers and suggested including volunteers, but including limits on the coverage for volunteers.

Committee Discussion: Currently if volunteer gets cancer and there is a preponderance of evidence that it is a result of the exposure the worker can file a claim. This expanded presumption would not apply to volunteers, but it would not change the opportunity to file a claim based on a preponderance of evidence.

Scott Winkles, League of Oregon Cities

Mr. Winkles testified in opposition to SB 560. In addition, he stated that the League of Oregon Cities would continue to oppose the bill with the –2 amendments due to scanty scientific evidence for some of the cancers listed. The bill would cause significant increased costs to cities.

Committee discussion: Committee members discussed the difficulty of coming to a decision on the bill. The committee expressed a desire to track the impact on units that provide fire services.

Action: A motion was made and seconded to support the –2 amendment. A clarification was made that the motion is to only vote on that part of the bill that applies to the presumption issue as it relates to subject workers. The following members voted aye: Linda Jefferson, Greg Miller, Sheri Sundstrom, Lisa Trussell, Tracy Brill, Lon Holston, John Kirkpatrick, Mike O'Rourke, and Bob Shiprack. Motion passed.

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.

Mr. Shilts reported on discussions with OSIA on SB504. The department worked with Oregon Self-Insured Association as well as the Ombudsman for Injured Workers and Lon Holston regarding these bills. Mr. Shilts recommended that the department continue to work on the bills and that they be brought back to the committee at the next meeting.

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

John Shilts, Workers' Compensation Division

Mr. Shilts reported on discussions with OSIA on SB564. The department worked with Oregon Self-Insured Association as well as the Ombudsman for Injured Workers and Lon Holston regarding these bills. Mr. Shilts recommended that the department continue to work on the bills and that they be brought back to the committee at the next meeting.

HB 3362- Relating to workers' compensation coverage for home care workers.

Karla Spence – SEIU Local #503

Ms. Spence provided a brief explanation of the bill. Because the worker is serving a client the bill would make a change so that the worker is not guaranteed the right to return to the client, but guaranteed the right to return to the state-wide registry to be interviewed by other clients. The employer is the Home Care Commission.

Committee Discussion: The committee discussed return to work options for home care workers.

Mary Schwabe, Workers' Compensation Division

Ms. Schwabe gave a brief explanation of the difference between SB 158 and HB 3362.

Chirs Davie, SAIF Corporation

Mr. Davie testified that MLAC voted to support SB158 with a technical amendment that is not included in HB 3362.

Action: A motion was made and seconded to support the bill and rely on the legislature to determine whether SB 158 or HB 3362 should be passed. Discussion: A recommendation was made that the bill be amended to include the technical amendment mentioned by Mr. Davie. Ms. Spence committed to including the amendment. A vote was taken and the following members voted aye: Linda Jefferson, Greg Miller, Sheri Sundstrom, Lisa Trussell, Tracy Brill, Lon Holston, John Kirkpatrick, Mike O'Rourke, and Bob Shiprack. Motion passed

SB 835 - Requires Workers' Compensation Management-Labor Advisory Committee to study adequacy of workers' compensation death benefits.

John Shilts, Workers' Compensation Division

Mr. Shilts provided a summary of the policy proposal in the bill. The bill requires a study of four parts of death benefits: current burial benefits, the formula for benefits, categories entitled to benefits, feasibility of lump sum benefit payments. This bill would also address Representative Cannon's intent in HB 2706. Mr. Shilts recommended a do pass recommendation on the bill.

Discussion – Committee discussed the frequency of the review required, the effect of putting a mandate for a one-time study in statute, and the last review by MLAC of death benefits.

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

SB 917 – Workers' compensation claim records of injured workers.

Jennifer Flood, Ombudsman for Injured Workers

At the request of the committee Ms. Flood provided a brief summary of the amendments being submitted by Mr. Johnston to address concerns of the Workers' Compensation Division.

Ed Johnston

Mr. Johnston provided information regarding the difficulties he had in his case with getting records. This bill is to protect the records of the injured worker.

Chris Davie, SAIF Corporation

Mr. Davie testified in opposition to the introduced SB917. He testified to the difficulties of the provisions of the bill with administering the claims.

Committee Discussion: Members requested that at the next meeting the Ombudsman for Injured Workers provide information on the number of complaints from injured workers regarding access to records and the method of resolution. The committee also asked that the Workers' Compensation Division review the administrative rules related to the retention of records and worker access to records and report back to the committee.

Action: No Action.

Meeting adjourned at 11:15 a.m.