

Minutes
WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
April 20, 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
Greg Miller, Gunderson LLC, Portland, OR
Lisa Trussell, Associated Oregon Industries, Salem, OR
Bob Shiprack, Oregon Building Trades Council, Portland, OR
Lon Holston, Grants Pass, OR
John Kirkpatrick, IUPAT District Council, Portland, OR
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR
Ellen Cutler, Harry and David, Medford, OR

Committee Members Excused:

Tracy Brill, Port of Portland, Portland
Linda Jefferson, City of Portland, Portland, OR
Cory Streisinger, Department of Consumer & Business Services, Salem, OR

Meeting Agenda:

Review Minutes from March 30, 2007 Full MLAC meeting.

Action: A motion was made and seconded to approve the March 30, 2007, minutes as written. A vote was taken and the following members voted aye: Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, and Ellen Cutler. (Lisa Trussell not in attendance at the time vote was taken.)
Motion passed.

Proposed legislation

HB 2783 – Relating to termination of workers' compensation coverage. (Review amendments) A copy of the bill, analysis, and fiscal impact statement were provided to the committee. The documents are part of the record.

John Shilts, Workers' Compensation Division

Mr. Shilts testified to the general changes this bill proposes and the –2 amendments. He gave an overview of the effect the –2 amendments will have on the current system. Mr. Shilts explained that SB 559 affects HB 2783 and that HB 2783 will need to be conformed with SB 559. The –2 amendments were submitted by Liberty Northwest, Representative Shields, and SAIF Corporation.

David Lake, Liberty Northwest

Mr. Lake testified in support of HB 2783 and the –2 amendments. He testified regarding background that led to the submission of HB 2783. Mr. Lake testified that many other states already have a working system like the one proposed in this bill.

Committee Discussion: None

Action: A motion was made and seconded to support HB 2783 with the –2 amendments. A vote was taken and the following members voted aye: Greg Miller, Mike O'Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, and Ellen Cutler. (Lisa Trussell not in attendance at the time vote was taken.)
Motion passed.

SB 404 –Authorizes payment of certain reasonable fees, expenses and costs associated with litigation of workers' compensation claim if claimant prevails against claim denial. (Review amendments discussed at 3/30 MLAC as well as possible amendment to allow attorney fee lien on worker settlement [LC 1050]) A copy of the bill, analysis, and fiscal impact statement were provided to the committee. The documents are part of the record.

Martin Alvey, OLTA

Mr. Alvey testified in support of the –1 amendments, which include the cap on fees. When asked about OTLA’s intentions on LC 1050 as it related to SB 404, Mr. Alvey clarified OTLA had decided to keep LC 1050 separate from SB 404 and deal with it in another bill.

Committee discussion: None

Action: A motion was made and seconded to support the –1 amendments to SB 404. A vote was taken and the following members voted aye: Greg Miller, Mike O’Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, and Ellen Cutler. (Lisa Trussell not in attendance at the time vote was taken.) Motion passed.

Action: A motion was made and seconded to support SB 404 as amended with a do pass recommendation. A vote was taken and the following members voted aye: Greg Miller, Mike O’Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, and Ellen Cutler. (Lisa Trussell not in attendance at the time vote was taken.) Motion passed.

LC 1050 discussion – Attorney lien privilege

Randy Elmer, OTLA

Mr. Elmer gave an overview of the change LC 1050 is proposing. He described a situation where prior to resolution of the claim an injured worker terminated an attorney who was instrumental in getting a settlement, a new condition accepted, or increased time loss prior to the claim being resolved. Mr. Elmer provided clarification of situations where this bill would allow an attorney to assert a lien.

Martin Alvey, OTLA

Mr. Alvey talked about this bill providing a vehicle for attorneys to assert a lien for time spent helping a worker to prevail on a claim.

Chris Davie, SAIF Corporation

Mr. Davie testified that SAIF Corporation does not object to this proposed change. SAIF’s concern is the tight time frames allowed for making payment and this change may cause a liability if information on liens is received at the last minute. Mr. Davie testified that he just became aware of the amendments and may have further comment after review by SAIF’s attorneys.

Cia Hart, Liberty Northwest

Ms. Hart testified that she just became aware of the amendments. She requested that MLAC hold off on making a recommendation on this bill. She asked that this LC be brought back to the next MLAC meeting for further discussion.

Ed Johnston

Mr. Johnston testified to his experience with attorneys and that he is not in support of this bill.

Linda Barno, OSIA

Ms. Barno testified that she too had just seen this LC. She testified in opposition to the LC.

Committee discussion: The committee decided LC 1050 would be discussed at the next scheduled MLAC meeting.

HB 3357 – Modifies conditions under which injured worker may lose reinstatement and reemployment rights. (Review amendments) A copy of the bill and summary of proposed amendments were provided to the committee. The documents are part of the record.

Mary Botkin, AFSCME

Ms. Botkin gave an overview of the proposed amendments to HB 3357 and described a situation where a state worker was unable to return to any work in the institution where he worked and was later terminated as a result. Ms. Botkin clarified that return to work for state workers should not be limited to one agency and that the State of Oregon should be treated as one employer. The proposed task force will determine if the changes will work and report back to the next legislative assembly.

Mark Rasmussen, DAS

Mr. Rasmussen testified regarding a memo and executive order he provided to the committee. He talked about the changes in the system included in the executive order. Mr. Rasmussen testified to the proposed amendments and suggested deleting the section stating, “defines entry level and light duty assignment” and the section regarding the taskforce. He testified that DAS does not support having a taskforce defined in statute but are willing to have an adhoc committee look at the system once it has had time to work. Mr. Rasmussen clarified the responsibilities of the worker as well as the agency in the reemployment process.

John Shilts, Workers’ Compensation Division

Mr. Shilts testified regarding conversations the Workers’ Compensation Division is having with DAS about the injured worker programs –Employer At Injury Program (EAIP) and Preferred Worker Program (PWP). The EAIP is used more by state agencies than PWP. Workers are reluctant to designate themselves as an injured worker. Mr. Shilts talked about a possible change to allow employers to initiate the programs instead of just injured workers being allowed to initiate the program. Mr. Shilts clarified that the proposed amendments could not be dealt with by administrative rule.

Committee discussion: None

Action: A motion was made and seconded to support the HB 3357 conceptually as amended. A vote was taken and the following members voted aye: Greg Miller, Mike O’Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, Lisa Trussell, and Ellen Cutler. 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. A copy of the bill and summary of proposed amendments were provided to the committee. The documents are part of the record.

Ronald Atwood, OSIA

Mr. Atwood testified that the proposed amendments provided to the committee had an error. He also testified the –1 amendments also had an error from Legislative Counsel.

Ed Johnston

Mr. Johnston testified opposing the bill as written but supported it with the correction from three days to 14 days.

Committee discussion: None

Action: A motion was made and seconded to support the conceptual amendments. A vote was taken and the following members voted aye: Greg Miller, Mike O’Rourke, Sheri Sundstrom, Lon Holston, John Kirkpatrick, Bob Shiprack, Lisa Trussell, and Ellen Cutler. Motion passed.

SB 564 – Allows closure of workers’ compensation claims if preponderance of evidence supports closure and attending physician fails to provide closing report after request. A copy of the bill was provided to the committee. The documents are part of the record.

Ronald Atwood, OSIA

Mr. Atwood testified that this bill is not ready and suggested it be worked on in the interim.

Committee discussion: Suggested the department work on this issue in the interim.

SB 917 – Workers’ compensation claim records of injured workers. A copy of the bill, analysis, and fiscal impact statement were provided to the committee. The documents are part of the record.

John Hofer, Workers’ Compensation Division

Mr. Hofer testified in response to a request at the March 30, 2007 MLAC meeting. He testified regarding the current requirements in rule regarding the insurers receiving and retaining claims documents.

Jennifer Flood, Department of Consumer and Business Services, Office of Injured Worker

Ms. Flood testified in response to a request at the March 30, 2007 MLAC meeting. Ms. Flood described a current situation her office similar to the one that prompted this proposed legislation and their experience getting the claim records. She also spoke briefly to the 2001 changes to the rules that changed the requirements for retaining claim documents.

Ed Johnston

Mr. Johnston testified to his experience as an injured worker.

Committee discussion: The committee decided that records retention as a whole should be studied in the interim.

Other items

Discussion of Court of Appeals case (*Karjalainen v. Curtis Johnston & Pennywise, Inc., 208 Or App 674*)(2006)– impact on preexisting conditions and combined conditions law.

John Shilts, Workers’ Compensation Division

Mr. Shilts testified regarding the recent meetings with stakeholders regarding pre-existing conditions and the recent Court of Appeals case *Karjalainen v. Curtis Johnston & Pennywise, Inc.*. After discussions with interested parties it was determined that this topic should be looked at in the interim. Mr. Shilts suggested looking at classes of cases when studying the topic. He suggested studying the six most litigated issues. The division provided a memo, which was made a part of the record.

Committee discussion: The committee recommends looking at the top six litigated issues that affect labor and management, e.g. the *Karjalainen v. Curtis Johnston & Pennywise, Inc., 208 Or App 674*)(2006) case. The committee also discussed recent case law defining arthritis.

Meeting adjourned 12:15 p.m.