

NOTICE OF PUBLIC MEETING  
WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE  
SUBCOMMITTEE

April 11, 2008  
9:00 a.m. – 10:30 a.m.  
Conference Room 260, Labor & Industries Building  
350 Winter Street NE, Salem, Oregon  
(A map is available upon request)

***Committee Members Present:***

Linda Barno, ESIS, Inc., Portland  
Tracy Brill, Portland Fire Fighters Association, Portland  
Lon Holston, Laborers' International, Local 483, Portland  
John Kirkpatrick, IUPAT District Council, Portland  
Greg Miller, Gunderson LLC, Portland  
Bob Shiprack, Oregon Building Trades Council, Portland  
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin

***Committee Members Excused:***

Ellen Cutler, Harry and David Operations Corp., Medford  
Cory Streisinger, Ex-Officio Member, Department of Consumer and Business Services, Salem  
Sheri Sundstrom, Hoffman Construction Company, Portland

**MULTIPLE JOBS SUBCOMMITTEE**

Linda Barno, subcommittee chair, called the meeting to order at 9:03 a.m.

***Background on supplemental disability benefit laws and rules – Dan Schmellings***

Dan Schmellings, manager of the Benefits and Certifications Unit of the Workers' Compensation Division, introduced a brief history of supplemental disability.

Mr. Schmellings reviewed SB 485 the 2001 supplemental disability bill:

1. For Workers employed in more than one job, benefits would be calculated based on earnings from all Oregon subject employment – if a person had two jobs at the time of the injury the time loss rate would be calculated from wages of both jobs.
2. The supplemental disability benefits themselves would be paid by the insurers or vendor or the departments depending on who was processing the claims. The worker would then be reimbursed out of the workers' benefit fund and the CPAC would be allowed for reimbursement amounts.
3. The insurer could process the supplemental disability benefit (SBD) themselves or they could opt out of the system. Originally if the insurer opted out it transferred to the Workers' Compensation Division and they had a process for making the payments to get

the benefits to the worker. This did not work well so a processing agent was assigned - ComPro in 2004. ComPro processed claims for insurers that opted out of the system.

Mr. Schmellings presented a packet of information and forms (BULLETIN NO. 325):

*Quarterly Reimbursement Form* – an insurer that has not opted out would use this form on a quarterly or monthly basis or however often they wish to submit this form for reimbursements. ComPro is reimbursed on a monthly basis and insurers that have not opted out are reimbursed on a quarterly basis.

*Supplemental Disability Election Notification Form* – if the insurer themselves has opted out then they complete this form and forward it to the benefits and certification unit. A record is kept so that ComPro knows who has opted out. If ComPro receives a referral from one of these insurers then they expect to process supplemental disability benefits (SDB).

*Physician Authorization of Supplemental Disability* – this form is for the insurer or the assigned processing agent to send to the worker.

Mr. Schmellings explained an example of a weekly time loss and supplemental disability calculation.

Ms. Barno asked if Mr. Schmellings was with the department and working on this issue with MLAC in 2001? Mr. Schmellings said he was not with the department at that time.

Ms. Barno explained that supplemental disability is a relatively new program (only 5 years old) and it is good to come back and revisit the process to see if it is working well. She said that many employers do not have any idea what supplemental disability is since most employees only have one job. Ms. Barno said that initially time loss rate and supplemental disability rate were supposed to be separate. She asked Mr. Schmellings to explain how these rates became combined.

Mr. Schmellings said that SB 485 and statutes were written as a combined rate. An example is taking one wage and another wage and combining these to come to a rate. Rather than separating and adding on wages at the time of injury combined with the wages of the secondary job to determine what that rate of compensation is. The rate is a combination of both the time loss benefits and the supplemental disability benefits to get a total rate of compensation. From Mr. Schmellings view he did not see anywhere where these two rates would be separate.

Mr. Shiprack asked Mr. Schmellings to explain what ComPro is. Mr. Schmellings explained that ComPro is a third party administrator in the state. ComPro bids and has the contracts for processing supplemental disability benefits so they are acting as the processing agent.

Mr. Shiprack asked if ComPro makes a profit? Mr. Schmellings said that ComPro gets their processing fee/administration fee paid from CPAC.

Mr. Shiprack asked what is CPAC? Mr. Schmellings explained CPAC stands for Claims Processing Administrative Costs. This is a bulletin that is published once a year and runs from 17-20% - it is used for all of the division's reimbursement programs where there are administrative fees such as employer injury benefits where they receive an administrative fee back from processing. He added that SDB that are paid are supposed to be separate from the time loss benefits so they do not affect the employer.

Mr. Shiprack said that recently one of his affiliates purchased a supplemental workers' compensation policy and he had never heard of this before. The members are Brick layers and because their injuries are repetitive motion related and it takes so much time to get compensation or they are denied their claims, that particular union decided to purchase this insurance. The members are then compensated while the system goes on.

Ms. Barno asked if this was a supplemental disability policy. Mr. Shiprack responded yes and that it was similar to AFLAC. He said this insurance was for all injuries that were work related.

Mr. O'Roarke asked what is the cost of the insurance? Mr. Shiprack said that it was a very modest amount.

Mr. Shiprack also wished to discuss with the committee repetitive motion injuries. He said it is very difficult to get workers' compensation claims when workers have done these motions and had injuries for years. He thought that it was not a very good reflection on the system.

Mr. Kirkpatrick added that he believes the system has worked pretty well.

Mr. Schmellings said that when there is a new system such as the supplemental disability not everything can be fully anticipated. The supplemental disability letter that went out on December 13, 2006 discussed the performance audit and the findings and clarifications regarding the supplemental disability process.

Mr. Kirkpatrick asked about the issue that is not addressed and was brought up in the special districts regarding a volunteer firefighter. In the case of a volunteer firefighter they have assumed wage not a paid wage. The volunteer could get a benefit and they can still work there job at full salary.

Mr. Schmellings said prior to SB 485 if a volunteer was volunteering for someone that had workers' compensation benefits and they were injured and not able to continue that volunteer work, then they would receive time loss benefits based on that assumed wage. Post SB 485, the volunteer would still receive time loss benefits and if they had a second job they were missing due to injury then they could be eligible for supplemental disability benefits, for that secondary job.

Mr. Kirkpatrick said that is the exact issue that was discussed. Is it reasonable for someone to receive benefits for an assumed wage when they can still perform all the functions of their full paying job?

Mr. Schmellings responded that pre SB 485 the injured volunteer would have received full time loss benefits even if they were able to do their secondary job. The time loss of the assumed wage wasn't changed by SB 485.

Ms. Barno said when the issue with supplemental disability was discussed the primary job would be compensated and if a person had secondary job time loss then they would get supplemental disability. The issue is if a volunteer was injured and the volunteer work was a secondary job then suddenly the person is getting wages for something they were never paid for.

Mr. Schmellings said the volunteer job has assumed wages and if someone is unable to do the volunteer work (secondary job) because of an injury that did not occur during the volunteer work and they request supplemental disability are they entitled to that? The department's position is that the worker is entitled to the supplemental disability because of the assumed wages for that volunteer work. Mr. Schmellings asked ComPro and other insurers if this has ever happened and so far since this program began it has not happened where the worker receives supplemental disability for their volunteer work.

Mr. Miller asked if a person works in Vancouver, WA and they volunteer across the river in Oregon and are injured during the volunteer work will they get paid assumed wage for a firefighter in Oregon and not get supplemental disability for his primary job in Washington?

Mr. Schmellings agreed to this statement, the person would not be eligible for supplemental disability benefits because the Washington employment is not Oregon subject.

### ***Issues on supplemental disability benefit laws and rules – Susan Lavier***

Susan Lavier, Oregon Self-Insurers Association, presented information on issues that have come up with supplemental disability and some proposed fixes. When supplemental disability first began time loss benefits and supplemental disability benefits were calculated separately. There were limitations since the benefits could not exceed the average weekly wage. Now time loss benefits and supplemental disability are calculated together.

Ms. Lavier said as supplemental disability benefits progressed there have been unintended consequences with the merged calculations, such as a three day wait, and scheduled days off which are based on the primary job and not the supplemental job. Additionally, supplemental disability benefits are not recalculated at aggravation.

The other unintended consequences is with volunteers who receive an assumed wage. Volunteer time is often so varied and this is sometimes effected by the three day wait. Reimbursement was discussed as a possible solution, where volunteers would be reimbursed for mileage rather than time loss. Ms. Lavier said prior to the senate bill that put supplemental disability into effect it

was deemed appropriate to pay assumed wages to workers because this would reimburse them for possibly every job they could have.

Another problem with the assumed wage and supplemental disability benefits is motivating people to return to work when they receive both. If they have no other income then there is no problem with the assumed wage. The insurer wishes to be fair to all workers in this respect. She said they would like the departments input regarding this issue.

Ms. Lavier said the timeline for verifiable documents was removed from the administrative rules because it was not supported in statute. An additional issue came to their attention regarding communication. Workers had no idea that they had a timeline to provide documentation. Ms. Lavier believes there should be a limit and should not have to track down supplemental disability documentation. She explained that there will not be any enforcement. It is possible that years later if a worker provides the verifiable documentation they will receive benefits since the timeline was removed.

Mr. Kirkpatrick asked whether it is fair to assume that they will deal with the fair wage issue at the same time. Ms. Lavier replied yes they will try to figure out how it meshes together, make it fair for everyone, try to be cleaner and make the supplemental disability more a reimbursement.

Ms. Lavier said that by having this issued as a reimbursement workers who had a second job at the time of injury but not at aggravation won't be issued benefits that aren't due and likewise, workers who have a second job at the time of aggravation will be able to receive benefits.

Mr. Kirkpatrick said he would appreciate combining all these issues to one piece of legislation or keep them together in a package. This would simplify things for the committee if they were packaged together.

Ms. Barno asked currently how does the worker receive notice that they get supplemental disability benefits?

Ms. Lavier replied there is an 827, 207 and 801 where they can check a box that asks if the worker has other employment. If the injured worker checks the box then the insurer has to send a letter to them in 5 days to notify them that they are eligible for supplemental disability. The letter explains what verifiable documentation is needed and another letter is sent to their doctor to authorize supplemental disability.

Ms. Barno asked if this information is located in the book for when you've been injured on the job? Ms. Lavier was not certain. Her understanding is that just a letter is not sufficient notice to the worker.

Ms. Barno asked what is required of the worker to document for supplemental disability? Ms. Lavier said usually it is a pay stub - proof that the worker received a check up to the time of the injury or a letter from their employer.

Ms. Barno said the supplemental disability employer is not involved in the claim. Do insurers have problems getting information from that employer as to returning to work? Ms. Lavier said she has not encountered this problem.

Ms. Barno clarified there is now an open timeline for when a worker can request reimbursement. She asked if the request does not have to be in when the claim is closed? Mr. Schmellings replied that old 801s have never been taken out of the system and these do not have the check box for secondary employment. This is one of the division's concerns in placing a limitation on the worker having to get the information in or notify by a certain time period. The employer might have handed the worker an old 801. This makes it difficult to hold the worker accountable to a time frame when they have not received notification that they might be eligible for the benefit.

Mr. Kirkpatrick asked about non-profit volunteers/workers, are there other clients that have assumed wage? Ms. Lavier replied assumed wage is only covered in municipalities as it is written in the statues. Mr. Schmellings said it can depend on who the insurer is. For instance, some self-insurers can elect to or not cover with assumed wage.

Mr. Kirkpatrick asked if it would be possible to get a number of those in the state that fall under the assumed wage? Mr. Schmellings said for the self-insurer staff could put together a rough estimate on some of the volunteers that they elect to cover.

Ms. Barno asked Mr. Schmellings if he knows what data has been captured or is this something that needs to be looked at in terms of what data is captured in supplemental disability?

Mr. Schmellings said a few reports have been captured however, the difficulty is some of the insurers have opted out in the use of ComPro as their processing agent for supplemental disability benefits (SDB). He said for 2007 there were approximately 450 to 500 claims a determination was made on supplemental disability benefits. If an insurer refers a claim to ComPro they will make a determination on eligibility. Out of the number that goes to ComPro only a percentage are paid SDB while others might be found ineligible. An insurer that has not opted out would only report these claims on the part they received reimbursement for anything else the person was found not eligible for SDB is not reported to the department. Mr. Schmellings said this makes it somewhat difficult to get comparable data.

Ms. Barno said for the next meeting possibly Chris Davie and others to bring together some ideas of what they would like to see.

Ms. Barno said itemized issues need to be reviewed at the next meeting:

1. What's the impact on the workers' benefit fund?
2. Feel for the scope of the problem by the number of people impacted.
3. More details of the categories which are covered by assumed wage issue.

Ms. Filsinger will work with Mr. Schmellings and staff to get the requested information.

The meeting adjourned at 9:38 a.m.