

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

July 23, 2009
3:00 p.m. – 4:00 p.m.
Conference Room 260, Labor & Industries Building
350 Winter Street NE, Salem, Oregon

Committee Members Present:

Kathy Nishimoto, Duckwall-Pooley Co., Hood River
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin
Jeri Ray, Timber Products Company, Springfield
Linda Barno, ESIS, Inc., Portland
Lon Holston, Laborers' International, Local 483, Portland

Committee Members Excused:

Cory Streisinger, Ex-Officio Member, Department of Consumer and Business Services, Salem
Greg Miller, Gunderson LLC, Portland
Sheri Sundstrom, Hoffman Construction Company, Portland
John Kirkpatrick, IUPAT District Council, Portland
Tracy Brill, Portland Fire Fighters Association, Portland
Bob Shiprack, Oregon Building Trades Council, Portland

VOLUNTEERS SUBCOMMITTEE

Jeri Ray, subcommittee chair, called the meeting to order at 3:33 p.m.

REVIEW MINUTES

Minutes from June 19, 2009 were approved.

PRESENTATION

Suzanne Lavier, City County Insurance, explained that her company insures different types of volunteers. The company has to look at each volunteer activity individually to see if they will be covered as volunteers of the event or if they are just strictly on their own. Ms. Lavier explained that volunteer firefighters are the only volunteer group receiving some kind of stipend.

Ms. Ray inquired whether volunteers for Meals on Wheels are paid and covered. Ms. Lavier explained that they are not paid workers, but they are covered under volunteer workers and Meals on Wheels chooses to cover them.

Ms. Lavier further explained that City County Insurance provides coverage for board members, non-paid elected officials.

Lou Savage asked if City County Insurance has issues come up where the injured person argues that they should be covered by Workers' compensation. Ms. Lavier explained there are many issues that come up with volunteers. One issue is when a volunteer is self-employed, they are not a subject worker and do not receive supplemental disability benefits, and their assumed wage would be very minimal compared to what they are making.

Ms. Ray asked Ms. Lavier to review assumed wage.

Ms. Lavier explained there are federal guidelines for assumed wage. The wages have to be at least the federal minimum wage. Ms. Lavier noted that City County Insurance typically pays volunteer firefighters two thousand dollars a month because that is what they normally get paid. Ms. Lavier pointed out that the assumed wage is different for different volunteer groups. She noted that board members who receive an annual wage would have much lower assumed wage.

Mr. Savage asked how the assumed wage is calculated.

Ms. Lavier explained that most of them are monthly. The assumed wage is divided by 4.35 to get the average weekly wage, and than two thirds of that are paid.

Mr. Savage asked if City County Insurance has had many issues involving remuneration that volunteers received and later disputed that in fact they should have been covered.

Ms. Lavier said this issue has come up, but the only volunteer group receiving remuneration are volunteer firefighters. City County Insurance processes benefits because they are listed on the roster of volunteer, and City County Insurance requires the volunteer groups to list what exactly they are receiving remuneration for, and clearly state that it is just a reimbursement. Ms. Lavier noted this is a gray area and City County Insurance is making sure the documentation is always correct.

Ms. Ray asked what the biggest challenge is when dealing with an injured volunteer.

Ms. Lavier explained that the assumed wage for volunteers is the biggest challenge, because there are two sides. Some workers who are already getting supplemental disability at full wages and also the assumed wage have lack of motivation and it becomes very difficult. On the other hand, there are volunteers on Medicaid program who do not want to receive any wages, because it changes their Medicaid benefits. Ms. Lavier pointed out that assumed wage is very challenging because in some respects it is an extra bonus. It is a gray area, and it is hard to relate to workers, because it is assumed.

Linda Barno asked how is a notice of claim filed for volunteer.

Ms. Lavier explained that usually the injured volunteer notifies the insurance company. Dale Scott, Liberty Northwest, explained that Liberty Northwest makes distinction between volunteers with statutory coverage and those that do not. Volunteer coverage is traditionally reserved for non-profits and public entities.

Mr. Savage asked who are the groups with volunteers typically insured through Liberty Northwest.

Mr. Scott explained they are hospitals, school districts, and municipal volunteers, such as firefighters and police officers, and added that public entities can elect coverage, and that it is exclusive remedy.

Ms. Ray asked about the definition of hospital volunteer.

Mr. Scott explained there is no statutory provision and employers may elect coverage. Mr. Scott explained that Liberty Northwest can choose to not extend the coverage.

Mr. Scott explained that outside of municipal volunteers, most volunteers were school districts and hospitals.

Mr. Savage asked Mr. Scott if he has ever seen disputes where the entity has chosen not to cover them because the individual is considered a pure volunteer, but the volunteer comes forward claiming he receives a free lunch and therefore he is being compensated and should be covered.

Mr. Scott responded he has not seen a case like this. Mr. Scott explained that Liberty Northwest occasionally receives a claim for a volunteer who is in a category that has not been requested.

Lon Holston asked for clarification of who receives coverage.

Mr. Scott explained that Liberty Northwest reserves the right to ask for the roster.

Ms. Barno asked if all insurance companies have him specify what volunteers they cover or if there is any availability for crossovers.

Mr. Scott explained that insurance companies do not want to provide blanket coverage because it is too nebulous.

Ms. Barno asked Suzanne Lavier if with a self-insured program, the coverage needs to be provided prior to the event.

Ms. Lavier explained that City County Insurance has lots of flexible coverage.

Rob Edwards, Employment Department, presented a handout to the committee and explained that all payments for services to individuals are subject to tax and there are exceptions. One of the exceptions are volunteers listed in ORS 617015. Mr. Edwards brought up the question of adequate reimbursement. Mr. Edwards illustrated on an example of a case of volunteers on Mt. Bachelor who receive seasonal ski pass for their services, and pointed out the question of "contemplation of remuneration."

Mr. Savage asked about an example of volunteers who provide their services at a fundraiser dinner and also receive a meal.

Mr. Edwards responded that there was no “contemplation of remuneration,” therefore there is no remuneration.

Mr. Edwards noted that under the State Federal Partnership that administers unemployment insurance taxes, the Employment Department has to provide coverage to three different types of organizations: non-profits, governmental agencies, and Indian tribes. Those three entities cannot be excluded.

Ms. Ray asked about the number of claims related to volunteers that are processed by the Employment Department each year.

Mr. Edwards responded that he does not know because the cases are not classified as volunteers, and on the tax side the Employment Department investigates on average two to three claims a year involving volunteers.

Gary Humphrey, Department of Revenue, explained volunteer issues in relation to income tax.

Jerry Managhan, Workers’ Compensation Division, presented a one pager from Bureau of Labor and Industries (BOLI) and how this pertains to wage and hour law. Both the Employment Department and BOLI have more specific definitions in the body of law. Workers’ compensation is really case law and is not as specific.

Mr. Managhan brought up HB 3021 passed in 2009 session that deals with emergency volunteers and explained how the bill relates to emergency workers. The subcommittee requested a copy of HB 3021.

Mr. Savage asked about circumstances where similar situations would be treated differently by Workers’ Compensation Division and BOLI.

Mr. Managhan responded that one difference might be adequate compensation.

SUBCOMMITTEE DISCUSSION

There will be testimony from stakeholders at the next meeting on August 28, 2009.
The committee set a goal to be done by January 2010.

The meeting adjourned at 4:02 p.m.