

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

August 28, 2009
1:30 p.m. – 3:30 p.m.
Conference Room 260, Labor & Industries Building
350 Winter Street NE, Salem, Oregon

Committee Members Present:

Sheri Sundstrom, Hoffman Construction Company, Portland
Jeri Ray, Timber Products Company, Springfield
Lon Holston, Laborers' International, Local 483, Portland
Bob Shiprack, Oregon Building Trades Council, Portland

Committee Members Excused:

Kathy Nishimoto, Duckwall-Pooley Co., Hood River
Cory Streisinger, Ex-Officio Member, Department of Consumer and Business Services, Salem
Greg Miller, Gunderson LLC, Portland
Linda Barno, ESIS, Inc., Portland
John Kirkpatrick, IUPAT District Council, Portland
Tracy Brill, Portland Fire Fighters Association, Portland
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin

VOLUNTEERS SUBCOMMITTEE

Jeri Ray, subcommittee chair, called the meeting to order at 1:32 p.m.

Jeri Ray indicated the follow up information from the department is a copy of House Bill 3021 from last session.

PRESENTATION

Christie Hammond, Wage and Hour Division, Bureau of Labor and Industries, explained that in order for state or federal wage and hour laws to apply, there needs to be an employment relationship. The definition for "employee" does not include a volunteer. The work must be done for a religious or nonprofit group and is done without contemplation of payment. For example, a teacher cannot volunteer for work that they would do during the day.

Ms. Hammond pointed out there cannot be any connection between payment and the activity being performed. Federal law provides examples of "reasonable" benefits, such as group insurance, workers' compensation insurance, pension plans.

Lou Savage asked whether a quid pro quo situation ("you do something to get this") would be an employment relationship. Ms. Hammond indicated you look at the situation whether there are services rendered for payment rather than a thank you for volunteering.

Ms. Ray asked if there is a monetary limit or threshold. Ms. Hammond said there is no dollar limit.

Ms. Hammond discussed the recent legislative activity related to ski patrol volunteers. She indicated there are few issues that come up with this.

Chris Davie, SAIF Corporation

Mr. Davie explained that volunteers are not subject unless they get remuneration. Municipal volunteers are different and have a separate statute to allow an election of coverage. When an election is made, the employer keeps a roster of volunteers and an assumed wage is set for the volunteers to establish the premium for the volunteer. If a claim is filed, the benefits are based on the assumed wage.

Mr. Davie noted that SAIF typically doesn't have problems approving election of coverage for volunteers, with rare exceptions, such as a school district had parent volunteers that volunteered to re-roof school buildings.

Once election of coverage happens, the volunteer becomes a subject worker for purpose of the law. There is some case law on this topic, the most recent relating to a volunteer at a horse stable cleaning stalls where the receipt of free riding lessons was "remuneration" enough. As another example, state park camp hosts receive free camping in exchange for park host services.

This most recent session created a new situation mandating coverage for emergency service volunteers that are not currently required to be covered.

Mr. Davie provided a handout that shows an indication of the types of claims for volunteers. He said it is more difficult to determine because the classification codes used for volunteers are not all the same. The handout shows the types of injuries incurred by a variety of volunteers and are similar to regular types of injuries. For example, firefighters get heat exhaustion. Most of the claims are not high dollar amounts.

Mr. Savage asked if there is a general way to determine how much it would cost to add volunteers to a particular employer. Mr. Davie said if it is a nonprofit, chances are the employees are not paid large amounts, so the payroll for the volunteer would be based on a "wage" slightly lower than the federal minimum wage.

Mr. Savage asked about the amount of premium charged for a volunteer . Mr. Davie indicated it would be based on an assumed wage, around the minimum wage.

Bob Shiprack asked about the risk aspect of the volunteer and whether that would be a factor in writing the policy that covers volunteers. Mr. Davie explained the volunteer would go into the same classification as the paid employees. Any employer that elects coverage will also be subject to Oregon OSHA regulation. The insurer would work with the employer about loss control for volunteers along with regular employees.

Mr. Savage indicated it would be workplace related. Mr. Davie agreed and said the insurer has some flexibility about how to charge employers for their policy. The underwriters are able to look at the unique risk of each employer to determine the premium.

Mr. Holston asked about the claims listed on the handout provided by Mr. Davie.

Mr. Shiprack gave the example of Portland Public School volunteer effort to work around schools. He asked if the volunteers are supervised or whether SAIF Corporation asks about that. Mr. Davie said that SAIF doesn't routinely ask this question, but probably would inquire when the employer elected coverage in the first instance.

Deb Bogart, Department of Administrative Services (DAS)

Ms. Bogart provided a handout describing the three options state agencies have to address volunteers and workers' compensation: no coverage, election of workers' compensation, and volunteer injury coverage.

For no coverage, DAS provides forms to the volunteers. They are not covered by workers' compensation.

For traditional workers' compensation insurance, DAS usually advises agencies not to pursue this option unless they can afford it.

Mr. Savage asked about "uncapped liability" issue. Ms. Bogart said SAIF and DAS have a different relationship. DAS pays direct costs instead.

Mr. Savage asked if the state is "self-insured." Ms. Bogart explained that the state does pay premium.

Ms. Ray asked if the state has a stop loss policy. Ms. Bogart said no.

Mr. Davie indicated the state is on a 10 year retrospective rating plan that is similar to self insurance but not quite.

The third kind of coverage is called "Volunteer Injury Coverage (VIC)." This is similar to personal injury protection insurance. DAS pays secondary to other medical coverage or motor vehicle coverage. The VIC pays what the other primary insurance does not pay. The funds come from the state's self insurance fund. There is a maximum of \$10,000 of medical expenses and \$25,000 total on any claim. Although these amounts seem low, the average claim is about \$6,000.

Sixty four agencies have opted for VIC coverage, seven for workers' compensation, and the rest have no specific coverage.

Ms. Bogart reviewed data for the past five years. There were 63 workers' compensation claims and 46 VIC claims. Most claims from the Oregon State Department of Parks and Recreation and Department of Fish and Wildlife.

Ms. Ray asked about the cost amounts listed on the table. Ms. Bogart said it is total amount of payments made for the claims for the five year period.

Ms. Sundstrom asked about claims under VIC and whether any third party lawsuits filed after the fact. Ms. Bogart looked to see if there were any tort claims for personal injury and did not see any.

Ms. Ray asked for clarification about the secondary coverage. Ms. Bogart indicated if there was no coverage, they would be primary.

David Solomon, Risk Manager for State Parks and Recreation

Mr. Solomon provided the committee a handout from himself and Mr. Walkoski. State Parks has about 4,700 volunteers each year. The duties for the volunteer vary depending on the type of park and location of the park. Volunteers tend to be older and retired.

Most State Park volunteers are covered under workers' compensation insurance through SAIF Corporation. Other non-park host volunteers are covered under VIC.

There are challenges with park host volunteers and workers' compensation insurance. For example, they move around a lot, live out of state, making loss control and return to work issues a challenge. Time loss payments and wage subsidy do not fit well. There has been some disagreement about "remuneration" and whether the value of the camping site is considered remuneration.

The VIC coverage is not sufficient for volunteers that have a catastrophic loss. There is concern about providing only VIC coverage and making the host use their own medical coverage.

State Parks would like a fourth option that provides more flexibility and fits their volunteer situation better.

Mr. Savage asked whether the issue is the time loss, wage replacement, or the medical portion. Mr. Solomon indicated that it is mostly medical costs.

Mr. Savage asked if the medical costs are the issue or the lost time. Mr. Solomon said it is medical issues.

Ms. Ray asked whether the frustration is managing the medical costs. Mr. Solomon said if they were regular employees, they would bring them back to light duty job and help them get back to normal. Frequently when injured, the volunteer goes back home (e.g. retiree goes back to Arizona) so they cannot manage the claim well.

Mr. Savage asked how to cover with medical that is cheaper or easier than workers' compensation insurance. Mr. Solomon said there is a strong argument to cover with workers' compensation insurance. They have frustration they cannot do claims management as they do with other employees. The agency cannot compel the volunteers to provide medical information as for a regular employee that is on site.

Ms. Ray asked whether the same issue would occur if there were other kinds of insurance. Mr. Solomon responded that the medical-only would be easier, and the agency wouldn't have to do return-to-work and other aspects of the workers' compensation system.

Ms. Ray asked if the agency has the same claims adjuster. Mr. Solomon said yes.

Ms. Sundstrom asked about the kinds of safety training provided for volunteers. Mr. Solomon said park hosts are trained that they are on duty if they are in the park. So a host that slips while leaving their RV to let the dog out would be "job related." Park hosts tend to be older and have pre-existing conditions, so when injured it tends to be more severe and difficult to recover.

Ms. Ray asked for clarification about when the park host is "on duty." Mr. Solomon said SAIF has advised that it is when they are in the park because they are on duty 24-7.

Ms. Ray asked if hosts have specific job hours. Mr. Solomon said yes, but there is some gray area.

Ms. Sundstrom indicated that if workers' compensation is provided, they have third party immunity under the system and there is value to that. She gave the example of the parking lot on job sites.

Kathleen Joy, Oregon Volunteers!

Ms. Joy discussed the previous work relating to ski patrol volunteers. Ms. Joy indicated that nonprofit organizations also have issues with a variety of employment laws and how they are treated differently under each area of law.

She asked whether there could be one definition of volunteer, like there is for "independent contractor." She acknowledged that Employment Department has federal law issues.

Mr. Savage asked about whether there should be a requirement for covering volunteers with workers' compensation. Ms. Joy indicated she has struggled with the issue and that it probably relates to the kind of work that the volunteer is doing. For example, the AmeriCorps volunteers are covered by workers' compensation and that is a good thing because of the work they are doing (e.g. forestry projects).

Mr. Savage asked how to do that because it would make the statute complicated. Ms. Joy said it would have to come back to the department to decide who was covered. She said the common definition would be the starting place.

COMMITTEE DISCUSSION

Mr. Shiprack described the process to write the independent contractor definition. It does make it difficult when each agency uses a different interpretation. He said this is a task force with a lot of people around it.

Mr. Shiprack also agreed with Ms. Sundstrom's comment regarding providing workers' compensation coverage. He said there should be medical coverage, at least, for volunteers. He said if there were claims for a very serious injury and there was no remedy, it might dissuade future volunteerism.

Ms. Sundstrom said that wages for volunteers' supplemental disability benefits, volunteer wages are not included if it is the secondary job. It is covered if it is the primary job. She said medical benefits, mileage to appointments, and the like should be covered.

Jennifer Flood, Ombudsman for Injured Workers, said that the volunteer will get time loss based on assumed wage, if it is the primary job. The supplemental disability benefits for a volunteer secondary job is what is being discussed in the rules process.

Ms. Sundstrom said the volunteer should get medical benefits, but not sure about time loss benefits. Ms. Flood indicated that a volunteer injured at a volunteer job will get time loss based on an assumed wage.

Ms. Sundstrom relayed the conversation from the supplemental disability discussion about volunteers.

Mr. Savage said there could be a policy decision that requires medical coverage for volunteers but not for time loss. Ms. Sundstrom said she does not volunteer to have time reimbursed. The examples of claims from SAIF Corporation are mostly firefighters.

Ms. Ray said the first phase of the subcommittee work is done. The second phase is to determine if there is a problem and whether to make recommendations. Mr. Savage indicated there are some options on the table to discuss.

Mr. Shiprack asked for more information about whether the private market offers medical-only type benefits similar to the VIC program at the state.

Jerry Managhan said during conversations on House Bill 3021, some employers said they do opt to add volunteers to their medical plans.

John Shilts said we can check on it. He said there has been an issue with medical plans that they deny claims for benefits that arise out of "work."

Ms. Ray asked whether the agencies and organizations are concerned about tort actions. Mr. Shilts said there is a concern from his perspective.

Ms. Sundstrom provided the example of the bill that would have exempted retired State Police volunteers.

The meeting adjourned at 2:41 p.m.