

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE

Full MLAC Meeting

January 25, 2013

9 a.m. – Noon

Committee Members Present:

David Andersen, Andersen Construction Company, Portland (via telephone)

Tami Cockeram, City of Hillsboro

Carol Duncan, General Sheet Metal, Clackamas

Paul Goldberg, Oregon Nurses Association, Tualatin

Elana Guiney, Oregon AFL-CIO, Salem

Kathy Nishimoto, Duckwall-Pooley Co., Hood River

Bridget Quinn, NECA-IBEW Electrical Training Center, Portland

Jaron Sue, Marquis Autumn Hills, Portland

Ben Stange, Polk County Fire District. No.1, Independence

Theresa Van Winkle, MLAC Committee Administrator

Members Excused:

John Mohlis, Oregon Building Trades Council, Portland

Patrick Allen, DCBS Director, *ex-officio*

Agenda Item

Discussion

Opening, Approving Meeting Minutes
(0:00:00)*

Kathy Nishimoto called the meeting to order at 9:04 a.m.

Department Reports and information
(0:00:41)

Mike Manley, Information Management Division (IMD) - Presented the [attorney fee report](#) required by HB 3345 from 2009. The committee voted unanimously to approve and forward the report to the legislature.

Theresa Van Winkle presented a [summary of the legislative proposal](#) approved by MLAC for improved access to medical treatment. The summary included the statutes that would change, and what those changes might be. The committee asked questions regarding the changes in authority for chiropractic physicians, and Ms. Van Winkle clarified that there is no change to authority, only to add a "come along" provision for Managed Care Organizations (MCO)

Blue Research Presentation
(0:09:45)

Dr. Paul Abel, Blue Research, [Quantitative Provider Survey presentation](#) – presented the final results of the Blue Research quantitative provider survey with a slideshow. The main items that providers indicated would make them more likely to participate in the workers' compensation system were a streamlining of the administrative process (standardized forms from insurers and employers, less complicated process), increased reimbursement rates, and reimburse providers more quickly.

**2013 Legislation
Review**
(0:30:46)

[HB 2068](#), LLC member liability – JL Wilson, Associated Oregon Industries (AOI), submitted a [memo dated January 25, 2013](#). The proposed legislation is a response to changes to the workers’ compensation exclusive remedy protection for employers that are members of an LLC resulting from the case *Cortez v. NACCO Materials Handling Group, Inc.* (referred to as “Cortez”). The reason this decision has caused alarm is that LLC’s are currently the most popular form of incorporation, and ORS 656 was amended (establishing workers’ compensation exclusive remedy) the same year as Oregon’s LLC statute. In *Cortez*, the court held that the legislature’s failure to incorporate LLC-specific language in the exclusive remedy statute indicated an intent to exclude LLC’s. AOI disagrees with this, and believes that HB 2068 returns the exclusive remedy law to “status quo” for all employers and injured workers that existed before February 28, 2012. There is no intent to confer any additional protections that did not exist before that time.

John Rakowitz, Associated General Contractors - underscored Mr. Wilson’s contentions that the intent of the proposed legislation is to restore the status quo that existed before the *Cortez* decision, where employers have the exclusive remedy protection of the workers’ compensation system.

Scott Nelson, Jobs and Economy Policy Advisor, and Duke Shepard, Labor and Human Resources Policy Advisor for Governor Kitzhaber - The Governors’ Office supports the legislation as written, and believes it returns workers’ compensation laws to the status quo that existed before February 2012. They will be providing a memo to MLAC stating the Governor’s position.

Steve Piucci, Oregon Trial Lawyers Association (OTLA) – ([Written testimony](#)) Said that the removal of liability from LLC members may go too far by giving entities that are members of multiple LLC’s effective immunity from litigation for negligence, to the detriment of injured workers in Oregon.

Chris Davie, SAIF Corporation – SAIF supports the bill as written, and feels that it is more important to preserve the protections available to all other types of employers and restore the status quo as it was, despite the financial advantage the Cortez case would give to SAIF and other workers’ compensation insurers.

[HB 2069](#) – Grace Smith OARP – This bill gives department option to extend time loss for temporary total disability (TTD) during vocational retraining under certain conditions. It is unclear exactly how many workers would be affected, about 285 workers were eligible to complete training last year, but the number are considered to be relatively small.

John Shilts, Workers’ Compensation Administrator, said a bill passed in 2009 inadvertently prevented an injured worker from disputing a termination of disability/time loss payments. A bill nearly identical to HB 2069 was presented to MLAC in 2011 and approved, but was later amended in a way that was not approved by MLAC, and the bill did not pass. The bill as written would allow an injured worker to appeal denial of TTD payments when a vocational training plan has been approved. The role of the department is to act as a mediator in these disputes, and

this bill would restore the department's previous authority to review an injured worker's appeal and render a decision.

[SB 190](#), Abigail Herman, Chair of the Workers' Compensation Board (WCB) - This bill allows WCB to make rules to accept and send electronic transmissions for document filing and reporting. When last presented, the recommendation was made that the bill be made to more clearly specify applicability to WCB only. Since the bill has already been drafted, this change would be accomplished with an amendment, and the committee agreed that they would endorse the bill with that amendment.

Public Testimony
(1:09:55)

Vern Saboe, D.C., Oregon Chiropractic Association - gave public testimony regarding the Access to Medical Treatment Subcommittee proposal. Dr. Saboe commented on the Blue Research presentation, and he feels that it reinforces his position that money can be saved with better patient outcomes by making more use of chiropractic physicians. The committee asked what mechanisms Dr. Saboe would suggest to expand the use of chiropractic physicians in workers' compensation. He responded that a required expansion of access to MCO panels would be helpful.

Votes
(1:18:10)

Elana Guiney moved to recommend SB 190 to the legislature with the condition that it is accompanied by the proposed amendment as discussed earlier in the meeting. The motion was seconded, and approved unanimously.

Ms. Guiney moved to recommend HB 2069 to the legislature. The motion was seconded, and approved unanimously.

Kathy Nishimoto adjourned the meeting at 10:45 a.m.

*These minutes include time stamps from the meeting audio, found here:
<http://www.oregon.gov/DCBS/MLAC/audio.shtml> .

**Referenced documents can be found on the MLAC Supporting Documents page here:
<http://www.oregon.gov/DCBS/MLAC/pages/support.aspx>