

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE

Full MLAC Meeting

February 8, 2013

9 a.m. – Noon

Committee Members Present:

Tami Cockeram, City of Hillsboro
Carol Duncan, General Sheet Metal, Clackamas
Elana Guiney, Oregon AFL-CIO, Salem
John Mohlis, Oregon Building Trades Council, Portland
Kathy Nishimoto, Duckwall-Pooley Co., Hood River
Ben Stange, Polk County Fire District. No.1, Independence
Theresa Van Winkle, MLAC Committee Administrator

Members Excused:

Paul Goldberg, Oregon Nurses Association, Tualatin
Jaron Sue, Marquis Autumn Hills, Portland
Bridget Quinn, NECA-IBEW Electrical Training Center, Portland
David Andersen, Andersen Construction Company, Portland (via telephone)
Patrick Allen, DCBS Director, *ex-officio*

Agenda Item

Discussion

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

John Mohlis called the meeting to order at 9:05 A.M. Kathy Nishimoto moved to accept the minutes from [December 14, 2012](#)** and [January 25, 2013](#). The motion was seconded, and approved unanimously.

Department Reports and information
(0:00:50)

The committee decided to meet next on March 8, 2013 (but decided to convene sooner re: HB 2634 - see notes toward the end of the meeting).

(0:02:00) **Biennial report, Mike Manley, Central Services Division** - gave an overview of the [Workers' Compensation Division Biennial Report](#) for 2012. The report gives a high-level overview of the changes that happened in the 2011-2012 biennium. Mr. Manley went through some of the highlights of the report, which has remained for the most part stable and healthy through the biennium.

(0:21:21) **Dr. Steven Shea, OHSU Center for Research on Occupational & Environmental Toxicology (CROET)** – Dr. Shea is the new director for CROET as of August 2012, and gave a slideshow presentation overview of some of the CROET programs and research currently under way, and the benefit of that research for worker safety. Part of the reason for Mr. Shea's presentation was to introduce to the committee legislation that will be forthcoming to change CROET's name to Oregon Institute of Occupational Health Sciences. Dr. Shea feels this name would more accurately reflect the work that CROET currently does, as environmental toxicology is only a very small portion of that work.

(0:37:51) **John Shilts, Workers' Compensation Division (WCD) Administrator** -

Gave the committee an [overview of workers' compensation for self-insured employers](#) in Oregon. Employers in Oregon have the option of self-insuring for workers' compensation, and there are financial security requirements to ensure continued payments of claims if the business fails. Employers who wish to self-insure may form groups, and share future claims liability. The committee asked what the rationale was at its inception behind requiring self-insured groups to pay both the security deposit and the 30 percent of future liabilities. Mr. Shilts was not aware of the reasoning for the decision to assess groups in that manner, and said WCD could research that and get back to the committee. The committee also asked if any self-insured employer had disputed the amount at which they were assessed for future liabilities, and if there is a process for appeal. Mr. Shilts responded that it had happened, and that though a company can appeal, it is possible that the liability may be found to be higher rather than lower upon re-assessment.

2013 Legislation Review
(0:53:34)

[HB 2634, Alternative security fund](#) - Mark Davison, President of Oregon Self-Insured Association (OSIA), the bill creates a fund for self-insured employers, and would require any self-insured employer that is not part of an employer group to participate in the fund as the surety mechanism for future claims. The fund would be part of a 501-C (non-profit) entity managed by a board. There is still work being done on the bill. Mr. Davison proposed forming a subcommittee or meeting separately solely for the purpose of discussing the bill and proposed changes.

Keith Semple, Oregon Trial Lawyers Association – Has concerns whether all parties would be treated equally with regards to what would be required to be part of the fund.

Todd Henley, past president of OSIA – opposed to the bill because the architects of the bill are looking to duplicate California's system, where large corporations enjoy the benefits of the self-insured fund, but leaves companies that are not publicly rated at a large disadvantage. The current version of the bill excludes public entities and self-insured groups.

(1:09:22) [HB 2681, Disputed claim settlement not compensable](#) – Ms. Van Winkle gave an overview of the bill, which changes an injured worker's reemployment right in that an employee who settles a workers' compensation claim through a disputed claims settlement (DCS), does not have a right to employment reinstatement or reemployment rights based upon any injury in the settlement.

Chris Frost, Oregon Trial Lawyers Association, said she has some concerns about the bill, changes the claims settlement process, and makes cases harder to settle. Part of this is due to changes in employment rights for reinstatement and reemployment, which are necessarily part of the workers' comp process.

Keith Semple spoke in opposition to HB 2681 because it bundles all settlement claims for a single case together, whether some of those claims are disputed or not. Even if some of the settlements are not disputed, if any part of the claim is disputed, it would render all of the settlements in the claim non-compensable. Employment disputes would significantly change return to work ability of injured workers.

Michael Roth, employment law attorney – Spoke in opposition to the bill. He said that many injured workers do not use the services of an attorney, and may not realize that they would be giving up their reemployment and reinstatement rights by settling a disputed claim. The change the bill would make would have a ripple effect on other statutes regarding reemployment rights for injured workers, which Mr. Roth feels are already effective.

SB 96, Lynn McNamara, Citycounty Insurance Services ([written testimony](#)) - The legislation would give cities and counties in self-insured groups prove their ability to meet financial obligations in the same way as individually self-insured cities and counties.

(1:30:30) **LC 2957** (now **SB 533**) - Ms. Van Winkle summarized the concept, which compiles all of the subcommittee recommendations into a single bill.

Jack Dempsey, Oregon Nurses Association - expressed thanks to the committee for their work on the issue and his support for the bill.

Ramona St. George, Majoris Health Systems - has some concerns about the bill, but does not want the additional treatment time authorized in the bill to interfere with an MCO's determination that a provider is not medically appropriate for an injured worker. Also, she does not agree with some of the appeal rights granted by the bill – the bad actor and come-along provisions could allow a provider to apply for membership in an MCO and appeal a denial over and over again, creating bottlenecks. Also, providers denied for lack of need of a provider in a given area could continue to appeal after every application. She feels the appeal rights already in place are strong enough to protect providers and injured workers, and would prefer to see the appeal piece removed from the bill. She suggested that she would support a requirement for an MCO to report on the number of come-along providers were granted or revoked.

Courtnei Dresser, Oregon Medical Association (OMA) - OMA had just received the bill language and was still reviewing it, but has some concerns workers receiving appropriate care at the appropriate time, and being referred to specialty providers when necessary.

The committee recessed at 10:55, and reconvened at 11:04.

Closing
(1:50:11)

The committee agreed to meet before the next scheduled MLAC meeting of March 8, 2013 to discuss HB 2634.

Mr. Mohlis adjourned the meeting at 11:07 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>