

WORKERS' COMPENSATION  
**MANAGEMENT-LABOR ADVISORY COMMITTEE**

**Full MLAC Meeting**

February 20, 2015

10 a.m. – Noon

***Committee Members Present:***

Aida Aranda, Oregon & Southern Idaho Laborers-Employers Training Trust, Corvallis (by telephone)

Guy Boileau, Louisiana-Pacific Corporation, Portland

James Denham, ATI, Albany

Carol Duncan, General Sheet Metal, Clackamas

Paul Goldberg, Oregon Nurses Association, Tualatin

John Mohlis, Oregon Building Trades Council, Portland

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

Patrick Allen, DCBS Director, *ex-officio*

Theresa Van Winkle, MLAC Committee Administrator

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**Agenda Item**

**Discussion**

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**Opening**

(0:00:00)

Guy Boileau called the meeting to order at 10:03 am.

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**Review of December 11, 2014 and January 23, 2015**

**MLAC Minutes**

(0:00:18)

Paul Goldberg moved to approve the December 11, 2014 minutes. Jim Denham seconded the motion. The minutes were approved unanimously.

Jim Denham moved to approve the January 23, 2015 minutes. Ben Stange seconded the motion. The minutes were approved unanimously.

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**2015 Legislation Review**

HB 2797

(0:00:48)

Larry Bishop, Oregon Self-Insurers Association (OSIA) and Sue Cline-Quinones, City of Portland, spoke on [HB 2797](#). Mr. Bishop stated that amendments are in progress. Current law states that first payment be made to an injured worker within 14 days of the employer's knowledge of the injury. This bill would change this, so that first payment would be due to the worker within 14 days from when the worker starts his or her time loss. Ms. Cline-Quinones indicated that this change would bring the statute into alignment with situations where the attending physician does not authorize temporary disability until after the 14 days have passed and with aggravation claims. There would be no penalty to the injured worker.

HB 2211

(0:04:44)

Larry Bishop, Oregon Self-Insurers Association, Eric Sorem, Gallagher Bassett, and Lynn Hamers, Intermountain Claims, spoke on [HB 2211](#). Mr. Bishop addressed annual audits for third party administrators (TPAs). There are 13 categories where TPAs are audited. This proposal would allow the Worker's Compensation Division (WCD) to penalize TPAs. Currently they penalize insurance companies, many of which use multiple TPAs, so if an insurance company is audited each separate TPA gets its penalty allocation from the insurance company. This is a tedious process for the insurers. Ms. Hamers stated that the bill would streamline this process. Mr. Bishop stated that while WCD provided an [analysis](#) of the bill, there are amendments coming. The penalty categories each have a cap for how much can be assessed.

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Guy Boileau asked about the penalty caps and if this change would allow TPAs to pay fewer penalties. Mr. Bishop stated that potentially this could happen, as caps on categories are set by rule. They are happy to work with WCD to adjust the caps if necessary. Mr. Sorem stated that the purpose is to make the process easier administratively and more timely, not to pay less in penalties. John Mohlis asked if the proponents were working with WCD on the amendments. Mr. Bishop stated that they were, and that the initial version of the bill did not include examiner certification penalties. Theresa Van Winkle, Committee Administrator, asked if the methodology for the audits would be addressed in the amendments. Mr. Bishop stated that they would. Paul Goldberg asked if this change would cause an increase in workload for WCD. Mr. Bishop says he thinks it would be no more difficult after talking to the audit unit at WCD. Mr. Sorem stated that he believed it might actually be easier for WCD. John Shilts, Administrator, Workers' Compensation Division stated that he asked about this as well and the answer he was given by his staff was that it would likely be no more difficult. He added that the way the statute is written contemplates an earlier model, where insurers did most of the claims administration themselves. More and more insurers are using multiple service providers. Mr. Shilts indicated that WCD was working with proponents on the bill on amendments.

SB 291  
(0:14:14)

Deb Bogart, Department of Administrative Services (DAS) Risk Management spoke regarding the proposed [amendments](#) to [SB 291](#). Oregon has two policies regarding reinstatement of injured workers; temporary and permanent placement. American Federation of State, County and Municipal Employees (AFSCME) proposed that these two policies be adopted as administrative rules, which happened in the 2009 legislative session. Those policies remain unchanged. The rule regarding temporary placement in modified duty uses a hierarchy of placement. First, an agency places the injured worker in his or her original position. If that is not possible, the employer looks to find a position within the agency. If there is nothing suitable, the agency may look to place the injured worker into another state agency in a modified position. Permanent placement is similar, but requires that the agency must look at placing the injured worker in another agency in a permanent position as the third step rather than making it an option. DAS has seen that this is often misinterpreted. Placing an employee in another agency in a temporary capacity is tedious from the employer perspective and is stressful for the temporary employee. SB 291 would clarify that state agencies are not required to place an injured worker in another state agency on a temporary basis. Ms. Bogart reviewed the proposed amendments. John Mohlis asked when they were given to committee. Theresa Van Winkle, Committee administrator, stated that they had been received late yesterday in a hand engrossed version. Ms. Bogart stated that the amendments have not yet been submitted to Legislative Counsel, but they will submit them soon. Mr. Mohlis indicated that he would like AFSCME to review the bill and the amendments. Patrick Allen, Director, Department of Consumer and Business Services (DCBS) asked if the committee had any concerns regarding the bill, which at this time the committee did not.

SB 371  
(0:22:35)

Theresa Van Winkle, Committee Administrator, discussed the previous presentation regarding [SB 371](#). The Oregon State Bar Association (OSBA) provided her with [information](#) they used within the OSBA. Current statute requires that an insurer or self-insured employer pays fees for court reporters and transcripts. SB 371 clarifies

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that interpreter services should be paid by insurers as well. Guy Boileau stated that the committee has no outstanding issues with the bill.

John Mohlis moved that MLAC recommend SB 371 to the Legislature. Guy Boileau seconded the motion. The motion passed on a unanimous vote.

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**Public Testimony  
SB 649**

(0:24:50)

Chris Moore, Oregon Trial Lawyer's Association (OTLA) spoke regarding [SB 649](#). He presented a [history](#) regarding *Brown v. SAIF*. The bill represents a significant change in law. Thus far, there are few cases impacted by *Schleiss v. SAIF* or *Brown*. Connie Wolf stated that the Workers' Compensation Board has granted an award in two related cases since *Schleiss*. The reconsideration process is cumbersome. Julene Quinn discussed OTLA's [analysis](#) on SB 649.

**HB 2211/HB 2797**

(0:41:06)

Bill Cross stated that HB 2211 and HB 2797 are scheduled for next Friday in House Business and Labor. The technical amendments to the bills are not ready as of today but should be available by the hearing date.

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**Committee  
Discussion**

(0:42:26)

Guy Boileau discussed Associated Oregon Industries' bill regarding *Schleiss/Brown* (SB 649) and Oregon Trial Lawyers Association's bill dealing with attorney fees (HB 2764). Mr. Boileau stated that in general the members of MLAC are not experts in all areas of workers' compensation, but are keenly interested in the subject. He asked those parties on behalf of the committee to meet in order to find areas of mutual consent for discussion, which would make the process much smoother for the committee. MLAC still wants to see what the different sides are after, but on an initial discussion basis common ground would be helpful.

Arthur Towers, Oregon Trial Lawyers Association, stated that his organization would be happy to speak with Associated Oregon Industries about the bills, and that some of the issues will be addressed in pending amendments. He reiterated OTLA's view that the rights that are being taken away in SB 649 aren't rights of lawyers, but of injured workers. Mr. Boileau stated that the committee is looking for consensus, not a bargaining away of the rights of injured workers.

Theresa Van Winkle stated that the committee would meet again on March 6, 2015. Some new bills will be coming to the committee's attention. The start time will be adjusted to allow Representative Holvey time to come to the meeting from the Capitol.

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**Meeting Adjourned**

(0:47:10)

Guy Boileau adjourned the meeting at 10:50 a.m.

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\*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>