

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

January 28, 2022
1:30 p.m. – 3:30 p.m.

Committee Members Present:

Jill Fullerton, Clackamas County Fire Department
Scott Strickland, IOUE Local 701
Margaret Weddell, Labor Representative
Tammy Bowers, May Trucking
Sara Duckwall, Duckwall Fruit
Lynn McNamara, Paladin Consulting
Matt Calzia, Oregon Nurses Association
Patrick Priest, Citycounty Insurance Services
Andrew Stolfi, DCBS Director, *ex officio*
John McKenzie, JE Dunn Construction

Committee Members Excused:

Marcy Grail, IBEW Local 125

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Cara Filsinger, Senior Policy Analyst, Workers' Compensation Division
Jeffrey Roddy-Warburton, MLAC Assistant
Brittany Williams, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Scott Strickland opens meeting at 1:33 p.m. Theresa Van Winkle does roll call all members are present except Marcy Grail. Theresa Van Winkle goes over the timing system that will be put into place to keep public testimony to a time limit so everyone gets a chance to testify. Theresa Van Winkle begins the discussion of LC 38.
LC 38 (0:03:10)	Jessica Giannettino Villatoro, AFL-CIO, gives her testimony on LC 38 and states that she doesn't have much to add from her testimony last week but that she wanted to clarify that she forgot to mention removing the employer threshold that provides discrimination and retaliation protections for employees that work for employers sized six or less. Jessica Giannettino Villatoro states she is open for questions.
(0:04:00)	Theresa Van Winkle adds that bill analysis for LC 38 , LC 56 , and LC 96 are all posted on the committee webpage, and if the MLAC members would like to ask WCD any questions Sally Coen, and others are available for questions.

-
- (0:04:30) Tammy Bowers asks in regards to the bill analysis for LC 38 and the questions that were brought up by staff and asked if those were resolved. Jessica Giannettino Villatoro responds yes those were resolved. Lynn McNamara asked for clarification about the “spouses living in states of abandonment” language used in the bill. Jessica Giannettino Villatoro responds that the way that it was drafted was to clarify that one spouse can receive the benefit at a time and got rid of the cohabiting language and tied it to the family law statutes.
- (0:06:40) Paloma Sparks, Oregon Business and Industry, discussed the hole in the retaliation statute currently that deals with people inquiring about their benefits and them not being covered in the way that the statute is written. Their group supports this bill and is comfortable with the changes to death benefits.
- (0:08:00) David Barenberg, SAIF Corporation, testifies that SAIF is fully in support of the bill and it makes a much-needed modernization to the death benefits and SAIF urges MLAC support of this bill.
- (0:10:00) Scott Strickland moved to support LC 38 as submitted. Lynn McNamara seconded. Patrick Priest asked for a final call of discussion from stakeholders before voting. Paloma Sparks adds that she had not heard any objections to language from her end and even from the attorneys on her end. Kirsten Adams, Associated General Contractors, seconds those statements. All members present voted in favor to support LC 38 (Marcy Grail, excused).
- LC 56**
(0:13:10) Theresa Van Winkle begins the discussion on LC 56 and calls upon Jovanna Patrick and Keith Semple from the [Oregon Trial Lawyers Association to give their public testimony](#). Jovanna Patrick stated that the bill would not give additional benefits but would enable injured workers to receive benefits that they would normally be entitled to if not for “claw backs” which the bill intends to remove. Jovanna Patrick adds that the bill would limit backdating of the medically stationary date to 60 days, currently insurers can backdate medically stationary dates as far back as the beginning of the claim while time loss authorization can only be backdated 14 days. This bill also mandates that timely notice be given to the worker and that they have enough time to correct the backdating if necessary. She adds that sometimes workers have no understanding that there is a problem until they have missed their first check and if it has already been 14 days there is nothing they can do to fix it. Jovanna Patrick adds that the bill also creates an exception to the need for authorization during the time the claim is in litigation. Jovanna Patrick states this bill also gives the workers and insurers the same amount of time to go back and look for errors, currently insurers have unlimited time to do this and injured workers only have two years.
-

-
- (0:24:00) Keith Semple gives his testimony on LC 56 and gives a brief recap of the history of this concept and the discussions around it that started back in 2018, this current concept brought forward in 2019, and then in 2020 discussions shifted to COVID presumptions. Keith Semple states that in discussions with other stakeholders, their biggest concern is about open-ended work restrictions. Keith Semple also addressed that the current system of work restrictions expiring every 30 days as an extreme burden on injured workers and doctors. He states that this bill would give doctors the authority to give work restrictions as they see best. He states that this is a major shift away from the parity type proposals OTLA is talking about in their legislative proposal. Keith Semple added that he hoped that MLAC would be problem solvers in this discussion and urged that the discussion focus on the issues at hand and not bring other concepts into the conversation that are major departures from the current law.
- (0:32:00) Tammy Bowers asked Jovanna Patrick about telemedicine visits and asks for clarification that there is nothing in the rules that prevent injured workers using telemedicine visits. Jovanna Patrick responds yes telemedicine visits are perfectly acceptable. Tammy Bowers in regards to the open-ended time loss issue asks for clarification about the ways that time loss payments can be stopped and discussed the ways she knows time loss can be terminated (workers are issued a valid job offer after light duty release, doctor declares medically stationary, or they fail to respond to the 14-day letter). Tammy asks if there is a fourth way. Keith Semple responded that worker being issued a valid job offer after light duty release is the most important way. Tammy Bowers asks for clarifications on a “14 day start date after the job offer.” Keith Semple responds they don’t have to give 14 days to reply, the employer can give a start date and if the worker decided not to respond even if the doctor has agreed to it then they get offset for their wage loss. Tammy Bowers asks about what happens when the worker fails to go to their doctor appointment, and bug letters after the 30 days. Keith Semple responds that the best approach for the employer would be to send a job offer to the doctor based off the restrictions of the workers last doctor appointment.
- (0:42:00) Keith Semple adds that there is no floor to how minimal a modified work job offer can be. Tammy Bowers states that in reading the bill proposed it looks to her as though a worker can receive 90 days of time loss benefits off of one doctor appointment and she doesn’t understand how that can help an injured worker get better. Keith Semple responds that he doesn’t believe that is a correct understanding of the bill, he adds currently doctors can write work restrictions however they would like, doctors can leave it open ended and it doesn’t mean workers are trying to avoid the doctor.
-

-
- Tammy Bowers states that in the LC 56 there are about 6 changes and a couple of them she has no problem with, but also a couple of them seem to be asking for too much and there needs to be some negotiating. Tammy Bowers asks if the stakeholders would be willing to do some negotiating. Keith Semple responds that they have already had discussions with stakeholders and talks have come to a halt because of the disagreement on work restrictions and when they should end.
- (0:45:00) Sara Duckwall asked in regards to parity, would OTLA support a two-year limit being imposed on insurance providers as opposed to it being open ended on each side. Keith Semple and Jovanna Patrick agreed yes. Sara Duckwall asked why is ensuring regular contact between an injured worker and their medical team a problem, because telemedicine is available and reduces the burden. Keith Semple agrees with that, what he doesn't want is a worker having to tell doctor they need to be seen this often or they will lose benefits.
- (0:47:20) Lynn McNamara states that she would like to see the parties meet again and find language that would work for everyone so that MLAC could decide on the bill with assurance that both sides are getting what they need. Jovanna Patrick responds that OTLA does not have a problem continuing discussions as long as the focus is on LC 56 and tailoring the language.
- (0:50:00) Matt Calzia asked for clarification about who can authorize work restrictions. Keith Semple responded that it is not solely physicians that can authorize work restrictions but that it is complicated for injured workers to navigate who can and who cannot authorize work restrictions. Matt Calzia also brought up the disparities in telemedicine access and the burden that these 30-day requirements would put on our healthcare system. Keith Semple and Jovanna Patrick brought up their support for questioning the 30-day appointment requirement and brought up that they support following the doctor's orders as opposed to enforcing the 30-day requirements despite what orders the doctors had previously given. [\[Note: provider authority chart was provided to committee after the meeting\]](#)
- (0:57:10) Scott Strickland states that he is a medically stationary injured worker that has navigated this system himself, he had to fight to get in to see his provider to get his updated work restrictions. Scott reminded everyone that on MLAC there are a common set of values and that he would like to hear more questions about those values moving forward.
- (0:59:30) Paloma Sparks, Oregon Business and Industry, testifies on some of her concerns in the bill and wanting to make sure that the system is not just about payments and money, it is also about making sure workers get better. Paloma Sparks adds that their concern is creating a more open ended and a longer time between doctors visits is concerning to them. Paloma stated,
-

the Medical Advisory Committee had the same concerns and the 30 days made the most sense to them. Scott Strickland, asked for clarification for the time loss that is currently written into LC 56. Paloma Sparks responded no it changes to the amount of time of limiting retroactive time loss. Paloma Sparks adds that they have been asking OTLA to have this conversation with them but not had any success yet. Scott Strickland responds that he is concerned this doesn't address an issue that it is silent on. Paloma Sparks states that if the bill makes this sort of fundamental change, generally we should also address other issues related to time loss. Scott Strickland asks if there a reason why they wouldn't bring their own separate bill to do that. Paloma Sparks responds because this is the bill related to time loss and it seems reasonable to identify problems in the same area in the same bill.

- (1:03:30) Matt Calzia states that he has similar questions in regards to the bill not addressing both issues on time loss. Paloma Sparks states that both parties have changes they would like to see on time loss and she hopes for some reasonable conversations about those concerns.
- (1:05:10) Tammy Bowers in regards to the questions on why the focus is on time-loss, states that it is because if the worker doesn't see a doctor every 14 days or a compromise of every 6 weeks, then someone could have a doctor appointment every 90 days of time-loss and that seems very unfair and she would like to see parties compromise.
- (1:06:40) Lynn McNamara states she would like to hear from SAIF Corporation on some of these questions at hand.
- (1:08:00) Kirsten Adams, Associated General Contractors, states that she wants to echo a lot of what Paloma Sparks had to say. Kirsten Adams added that their concern is equal treatment across the system for injured workers and quadrupling the days does not serve that goal. Kirsten Adams stated while time loss limits are not included in LC 56 she understands that this is something that should be addresses. She also mentioned that the Medical Advisory Committee has recommended the 30-day limit and that they felt it was appropriate.
- (1:10:10) David Barenberg and Elaine Schooler from [SAIF give their testimony on LC 56](#). Elaine Schooler discusses time-loss and what they are seeking in the solution to the issues that are being addressed in LC 56. Elaine Schooler discussed two types of time loss, temporary total disability and temporary partial disability. She adds that currently there is no limit to the amount of time that a doctor may authorize time loss nor is there is a standard recommendation. Elaine Schooler states that the solution presented in LC 56 addresses retroactive benefits. She stated that SAIF wants to focus more on contact with their medical care providers not

specifically appointments. Elaine Schooler stated there were things they were willing to compromise with OTLA on. Elaine Schooler added that after both sides exchanged language for the bill that is what talks broke down.

(1:18:20) Scott Strickland asks when the last Medical Advisory Committee meeting was. [The Medical Advisory Committee meeting referenced was on May 21, 2021.](#)

(1:18:40) Matt Calzia asks if there is anything that prevents physicians from saying they want to see the patient back in 24-30 days, can physicians do that. Elaine Schooler responded that there is nothing preventing that and that they are not asking for these 30 days to be tied to an appointment, but that there needs to be contact with the workers at least every 30 days.

(1:20:00) Patrick Priest in regards to the 30-days being an unreasonable request asks, what happens if worker misses an appointment. Elaine Schooler responds that is why this issue has a prospective and retroactive piece to it, she adds that under LC 56 the worker could still contact the doctor and the doctor could reissue those restrictions after missing an appointment if the doctor feels it is appropriate. Tammy Bowers states that workers miss appointments all the time and that doesn't stop the time loss, but if they miss an appointment the insurer of self-insured employer shall notify the worker by certified mail that temporary disability benefits will be suspended if the worker fails to attend the rescheduled appointment.

(1:24:20) Kevin Anderson, SBH Legal, testifies that he agrees with what SAIF had laid out about the negotiations. Kevin Anderson also agrees with Keith Semple's statement that MLAC's assistance is needed on this issue.

(1:26:45) Patrick Priest asked if there were no remedies for workers that do not continue on with their medical care. Kevin Andersen responded it depends on each case individually.

(1:28:25) Jill Fullerton asks how often these open-ended time loss authorizations get made. Kevin Anderson responds that he does not have a specific number but it does pop up on most of his cases, and varies by doctor and clinic. Jill Fullerton asked if this is something that could be solved with something such as putting a line in the paperwork that specifies when the next appointment date would be. Kevin Anderson responds yes he thinks so, but we would need input from doctors. Jill Fullerton asks who is on the MAC committee. Theresa Van Winkle puts the link to the [MAC members page](#) in the chat.

-
- (1:33:00) Elaine Schooler responds to Jill Fullerton's earlier questions about doctors adding a line in paper work and states that where that becomes problematic is doctors use different software and different medical chart technology.
- (1:34:00) Lynn McNamara asks if the stakeholders would be willing to meet to discuss the situations that arise when doctor's follow-up does not fall within these 30 days. Elaine Schooler responds that SAIF is always willing to engage in discussions.
- (1:36:00) Scott Strickland states that having personally been through this process, he is hesitant to believe that workers are not actively engaging with their providers and would like to see some information presented about the situations discussed about workers not engaging with their medical care.
- (1:38:20) Lynn McNamara asked for clarification from SAIF and OTLA because from what she is hearing both parties are wanting something additional in the bill, but are not objecting to what is being presented. Elaine Schooler responds that is both true and false as SAIF agrees with a lot of things in the bill, but have some minor issues with some technical things in the bill but SAIF would like to continue negotiations.
- (1:40:00) Benjamin Debney, attorney, stated he does not agree with claw backs being discussed and mentioned that other states such as Washington actually make claimants pay all of that money back. Benjamin Debney also stated that these claw backs are not entitlements to the worker and that they should be returned to the employer. He adds that he has many other disagreements with what was presented by the OTLA but will not go into those right now. Benjamin Debney is also open to working together with stakeholders.
- (1:44:00) Jennifer Flood, Ombuds for Oregon Workers, stated that most of the concerns that she hears from workers are issues about access to medical care, either waiting for an appointment or waiting for an insurance company's approval of a procedure. She adds the current statute gives the insurance companies the ability to call the doctor for clarification in the instance of an open-ended work release and insurance companies can end time loss benefits if the worker missing the appointment is within their control. Jennifer Flood stated that tighter claim management on things might be helpful but putting the burden on workers to navigate these time loss issues themselves would be problematic and she fears that this might cause more doctors to drop out the workers' compensation system.
- (1:49:00) Patrick Priest asks what the definition of overpayment and claw backs were. Keith Semple responds with a summary of what those terms mean in the bill. Benjamin Debney states that from his perspective, overpayments
-

are money that the worker was not entitled too, therefore that is why the money is being giving back.

(1:56:00) Lynn McNamara states that there are a lot of good questions in the bill analysis for LC 56 that she would like to see responded to from the proponents. Scott Strickland agrees with that. Tammy Bowers wants to know how we are leaving LC 56, is MLAC asking the stakeholder to back and finalize these last few pieces. Scott Strickland asks if there is any deadline that is coming up for the bill. Theresa Van Winkle responds there would only be one if it was scheduled for hearing, and we can formulate a plan that can be announced at the next meeting. Scott Strickland states that he would like to start focusing on more of what it is in the bill and less about what is not in the bill.

(2:00:00) Sara Duckwall asked what is the harm of the stakeholder going back to meet and talk about LC 56. Scott Strickland responds that he wouldn't say there really is a harm in that unless the intent was to kill the bill. Sara Duckwall sees the stakeholders meeting and discussing the bill as a good thing. Scott Strickland agrees, but MLAC has been asking for them to unify on this bill since 2018 and it has not happened. Tammy Bowers states that she doesn't understand why people say we are discussing items not in the bill when in fact we are discussing direct consequences of the bill. This is an issue. Tammy Bowers added that she expected to have a bill before MLAC that all the parties had met and agreed upon.

LC 96
(2:04:00) Theresa Van Winkle begins the discussion on LC 96. Holly O'Dell, SAIF Corporation, she states that at the last MLAC meeting she testified on the proposed presumption and there were questions regarding medical evidence and studies on the link between firefighting and different types on cancers. Holly O'Dell discussed Dr. Orwell's literature review of the two studies that were presented in the firefighters testimony last week. Holly O'Dell states that the finding from the literature review showed no significant correlation between the incidents between bladder cancer or cancers of women's reproductive organs in firefighters. Holly O'Dell also goes into more detail of what Dr. Orwell's findings were from both studies.

(2:11:40) Dacia Grayber, State Representative for House District 35, states how she finds it interesting how everyone can look at the same studies yet come up with different conclusions. Rep. Grayber states that she has been coming to the MLAC meetings for two reasons, one is she is the chief sponsor of both bills and two because she is standing up for and protecting workers. Rep. Grayber states that she is disappointed that people think workers are "bad actors" and not injured enough or worthy enough of this protection. Rep. Grayber adds that workers' compensation rates have been dropping over the last decade and that reflects excellent business practices. Rep. Grayber

asks that when everyone is making their decision in regards to this bill please consider the people who are counting on you to stand you and be their voice when they don't have that choice.

(2:15:00) Scott Strickland tasks the caucuses to meet and requests the written testimony to review. Theresa Van Winkle reiterated that there are two new bills coming up and that additional information will be sent out as it becomes in available by next week.

**Meeting
Adjourned**

Scott Strickland adjourns the meeting at 3:49 p.m.

*These minutes include time stamps from the meeting audio found here:
<https://www.oregon.gov/dcbs/mlac/Pages/2022.aspx>

**Referenced documents can be found on the MLAC Meeting Information page here:
<https://www.oregon.gov/dcbs/mlac/Pages/2022.aspx>