

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

Dec. 5, 2024
10 a.m.–noon

Committee members present:

Scott Strickland, Sheet Metal Workers Local #16
Patrick Priest, Citycounty Insurance Services (via zoom)
Lorne Bulling, IronWorkers Local 29
Sara Duckwall, Duckwall Fruit
Ryan Hearn, Roseburg Forest Products
Stacy Lewallen, Fortis Construction, Inc. (via Zoom)
Sarah Merrick, City of Salem Fire Department
Kim Schlessinger, Samaritan Health Services
Margaret Weddell, Labor Representative
Andrew Stolfi, DCBS Director, *ex officio* (via Zoom)

Staff:

Teri Watson, MLAC Committee Administrator
Baaba Ampah, MLAC Assistant
Megan Parsons, MLAC Assistant

Agenda Item	Discussion
Opening (00:03:11)	Affirmation and Roll Call Co-Chair Scott Strickland called the meeting to order, and shared an affirmation. Teri Watson called the roll of members. A quorum was present.
(00:04:28)	Director Andrew Stolfi updated the committee that the recruitment for the Workers' Compensation Division administrator would launch the following week. The 30-day public announcement period would conclude around Jan. 10, 2025. The interview process would involve the MLAC co-chairs and other stakeholders. The appointment is expected by February 2025.
(00:05:58)	Director Stolfi shared that the governor released the recommended budget with a substantial increase to the Bureau of Labor & Industries' (BOLI) funding secured by a one-time fund transfer of 15 million dollars from the Workers' Benefit Fund (WBF). This would not impact the services supported by WBF.
(00:07:18)	Sara Duckwall inquired about the impact on workers' compensation rates. Director Stolfi explained the \$15 million revenue transfer and its potential consideration during rate making. However, the impact is uncertain.
(00:08:34)	Public comment No public comments.

(00:08:44)	<p>Review minutes from Nov. 7, 2024 meeting</p> <p>The Nov. 7, 2024, meeting minutes were presented. Sara Duckwall moved to approve the minutes, and Sarah Merrick seconded the motion. The motion passed unanimously.</p>
	<p>Department updates</p>
(00:09:22)	<p>Workers' Compensation Board (WCB) case law updates – Sara Larson</p> <p>No updates from WCB.</p>
(00:09:36)	<p>Workers' Compensation Division (WCD) update – Teri Watson</p> <p>No updates from WCD</p>
	<p>LC Presentations:</p>
(00:10:05)	<p>WCD LC Presentation – Matt West, interim administrator</p> <p>Matt West proposed LC 394, which corrects an oversight in ORS 656.230 related to lump sum payments for permanent partial disability (PPD) awards. The goal of the legislative concept is to allow lump sum payments upon a worker's request if they waive their right to appeal the award, while also allowing insurers to deny these payments if the worker seeks reconsideration of the notice of closure. Additionally, the proposal seeks to increase the automatic lump sum threshold from \$6,000 to a higher, yet-to-be determined amount.</p>
(00:15:52)	<p>Ryan Hearn inquired about the 2023 Court of Appeals case and the decision that resulted in no lump sum being issued. He also asked for clarification about the "final by law" requirement and the insurer not paying the lump sum. Matt West explained that the Court of Appeals case concluded that if an award is not final, the insurer is not required to pay the lump sum.</p>
(00:17:23)	<p>Sara Duckwall asked about a worker who requests the lump sum and receives it, then asks for reconsideration. Matt West explained that the department would deny the request for reconsideration because the worker waived their rights to reconsideration and appeal by requesting a lump sum payment.</p>
(00:18:34)	<p>Lorne Bulling asked what the current number of PPD awards that would fall under the PPD threshold. Matt West responded that in 2023, 47 percent of PPD awards were under \$6,000. He continued that 75 percent of PPD awards averaged 13.7 thousand and 36 thousand were about 90 percent of the awards. WCD will make the data for the PPD awards available to members.</p>
(00:20:25)	<p>Stacy Lewallen asked about possible lost investment income or anything that the department relies on that it would have to recoup with the lump sum payments going out more quickly. Matt West answered that PPD awards are paid by the insurance company.</p>

(00:21:35)	The department will provide more information about the 2023 Court of Appeals case.
(00:22:18)	Sara Duckwall asked for a stakeholder perspective on the LC. Matt West shared that there is general support from both insurer and worker representatives. Ivo Trummer, SAIF Corporation, mentioned that SAIF is in full alignment with the bill.
(00:25:08)	Matt West presented LC 390 , aimed at updating the worker leasing statute, ORS 656.850, to incorporate professional employer organizations (PEOs). He explained that the current statute does not accurately reflect modern industry practices. LC 390 seeks to replace the term “worker leasing company” with PEOs, and reduce administrative burdens by utilizing electronic data interchange (EDI) for reporting. Additionally, the concept would allow the division to adopt rules on how to ensure correct policies cover PEO clients, allow the division to share certain coverage data information, and subject PEOs to the same requirements as worker leasing companies.
(00:31:38)	Sara Duckwall asked a clarifying question, about the logistics of PEOs currently, and if worker leasing companies provide coverage to a client, then they are obligated to provide coverage to all those client’s workers. Matt West confirmed that PEOs are required to cover all client workers, unless the client employer has secured their own workers compensation insurance policy to cover the workers, so it is an all or none.
(00:34:10)	Margaret Weddell brought up the PEO issue from the last short legislative session and the questions around exclusive remedy. Matt West explained that the exclusive remedy statute includes worker leasing companies, so replacing worker leasing company with PEOs will not change current statute.
(00:36:11)	Ryan Hearn added on to Margaret Weddell’s question related to the 2023 legislative session PEO bill and asked about stakeholder involvement. Matt West explained that a similar bill was introduced in 2023, however, the bill was pulled. In 2024, a legislator introduced HB 4005, but the National Association of Professional Employer Organizations (NAPEO) and other stakeholders had concerns about it. However, LC 390 has the support of NAPEO.
(00:39:11)	Anne Donovan, Xenium HR, provided a testimony asking MLAC to support LC 390, explaining that it will modernize the statute to reflect current industry practices.
(00:41:25)	Jenny Dressler, lobbyist for NAPEO, explained that 2023’s Senate Bill 881 was NAPEO’s collaboration with Paid Leave Oregon to address reporting issues and identified the outdated term “worker leasing company.” She mentioned the 2024 House Bill 4005 was to address the issue, but was introduced without NAPEO’s input, threatening their business model and resulting in the bill’s withdrawal.

(00:44:15)	Scott Strickland asked about additional stakeholders who may have provided input regarding LC 390. Matt West named several stakeholders whose feedback has been incorporated into the legislative concept.
(00:45:04)	Scott Strickland stated the term “co-employment” and “co-employee” is confusing when only used for this one purpose. He asked if there is another term that could be used to refer to workers. Jenny Dressler and Anne Donovan explained that co-employment and joint-employment are different based on services provided. Co-employment is an essential term for the PEO model and has been used for years. Matt West also offered to receive feedback on the term “co-employment” which comes from the NAIC model language.
(00:50:58)	Scott Strickland suggested including all the terms of co-employment in the definition to make it clearer.
(00:51:28)	Lorne Bulling asked about the kind of business types or industries that PEOs serve. Ann Donovan explained that PEOs serve a wide variety of industries, particularly small businesses, and each PEO may choose specific niches to focus on.
(00:53:46)	Scott Strickland asked if the co-employment status expands exclusive remedy. Matt West clarified that co-employment does not affect exclusive remedy provisions.
	AFSCME LC Presentation – Odalis Aguilar-Aguilar, political coordinator, AFSCME
(00:56:56)	Odalis Aguilar-Aguilar, AFSCME, presented LC 3235, related to ORS 656.210, to address wage disparities in short-term disability benefits by proposing full wage replacement for low-income earners and establishing potential cap and floor levels. She plans to present an updated draft in January.
(01:01:25)	Sara Duckwall wondered where the LC is going to land related to the wage disparity. Odalis Aguilar-Aguilar explained that the floor and cap will be kept, but the 66 and 2/3 rule will be replaced with full wage replacement for low-income earners.
(01:02:28)	Ryan Hearn stated that average weekly wage is calculated off of gross earnings. He asked if the full wage replacement will be based on gross or net wages. Odalis Aguilar-Aguilar answered that full wage replacement will be based on net income.
(01:06:38)	Members requested data and examples of the wage thresholds and the impact of the 66 and 2/3 rule on different income groups versus LC 3235, as well as the burden on the system.

(01:10:42)	A brief break was taken so that MLAC members could meet in caucus rooms.
(01:12:09)	MLAC asked to table the two WCD LCs at this time. Co-chair Scott Strickland recapped that members requested information on the 2023 Court of Appeals case, the LC 394 data sheet, questions regarding the expansion of exclusive remedy, and stakeholder feedback on the terms “co-employment” and “co-employee.”
	Injured Worker Panel
(01:15:37)	Robert Austin shared his story as an injured worker, sustaining a work-related injury four years ago, which led to multiple surgeries and ongoing medical issues. He detailed the financial hardships caused by delayed and insufficient benefit payments, including a drop in his credit score and the need to take out loans, the interest on which are not reimbursed, to cover expenses.
(01:02:50)	Judy Britten dropped off the call.
(01:22:10)	Jesús Gonzalez Govea, translated by Jackie Hernandez, assistant Ombuds for Oregon workers, recounted his work-related injury as a roofer, where he fell from a third-floor roof, resulting in broken ribs, a back injury, and a lung injury. The non-compliant employer did not have workers’ compensation insurance. He did not receive benefits, forcing his family to endure financial and emotional hardships, and uncertainty about his future ability to return to work.
(01:29:46)	Ryan Hearn asked about the date of injury. Jesús indicated the date of injury was Sept. 20, 2024, and he was in the hospital for four days following the accident.
(01:30:00)	Attorney Apolinar Montero-Sanchez, representing Jesús, noted that the employer did not have workers’ compensation insurance, leading to a 90-day investigative period where the injured worker was not getting paid. These cases are uncommon.
(01:31:18)	Sara Duckwall asked about how the system works in these cases. Matt West explained that when an employer does not have workers’ compensation coverage, WCD has a 60-day period to investigate the claim and, upon confirming noncompliance imposes civil penalties and requires the employer to pay all claims cost. He also confirmed that it can take 120 days before the claim is accepted or denied, and the payment starts at 14 days with the amount owed.
(01:35:51)	Scott Strickland asked about where the civil penalty assessed on the employer goes. Matt West answered that the Workers’ Benefit Fund reimburses the claims processor for any payments made to the worker. Scott then asked if the WBF had provisions to pay the workers or only the claim processors. Matt indicated that WBF pays the claim processor their fee for processing the claim, and time

loss and medical payments for the worker. Those amounts are added to the penalties assessed to the non-complying employer that WCD tries to recover. Scott then asked about any penalties, interest, or fees that the worker may have received during this time. Matt indicated that the fund can only be used for claims costs and administrative fees. The worker has no access to the WBF.

(01:37:13) Margaret Weddell asked if the department has considered doing something about the time during the compensability investigation. Matt West answered that a potential interim benefit fund for workers during compensability investigations is in discussion, as current statute does not allow for that.

(01:37:55) Matt West answered that there are proactive audits on employers, as WCD's goal is employer compliance.

(01:39:28) Scott Strickland suggested that WCD collaborate with the Construction Contractors Board to obtain licensed contractor lists in order to address issues in the construction industry. Matt West agreed, adding that WCD partners with CCB to make sure contractors have coverage. WCD is open to additional tips to address the issue.

(01:41:45) Lorne Bulling asked about a rule violation and if there is a mechanism to go to CCB and say this business is not eligible to have a contract. Matt West will look into it, as he is unsure of the communication shared with CCB.

(01:42:46) Josh McNeal, Corvel Corporation, shared his experience with multiple contractors having their CCB licenses suspended for noncompliance.

(01:43:38) Ryan Hearn asked for data on how long compensability investigation takes.

(01:46:39) Scott Strickland encouraged everyone to support and reach out to individuals and families during the holiday times.

Upcoming meetings –January 9, 2025, in-person meeting and January 23, 2025, virtual meeting.

Meeting Scott Strickland adjourned the meeting at noon.
Adjourned

*These minutes include time stamps from the meeting video found here:
https://www.youtube.com/watch?v=YQgt2x_Oh2Q

**Referenced documents can be found on the MLAC Meeting Information page here:
<https://www.oregon.gov/E/DCBS/mlac/Pages/2024-meetings.aspx>