

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

FULL COMMITTEE
Labor & Industries Building, Room 260
350 Winter Street NE, Salem, OR

Friday, March 22, 2019
11 a.m - noon

MLAC Members Present:

Aida Aranda
Kevin Billman
Jill Fullerton
Ateusa Salemi, phoned in
Diana Winther
Tammy Bowers
Alan Hartley
Kathy Nishimoto, phoned in
Kimberly Wood

Absent:

Lynn McNamara
Cameron Smith, *ex officio*

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Adonia Stevens, Administrative Assistant, DCBS Director's Office

Agenda Item

Discussion

Opening

00:01:00 **Minutes.** Kimberly Wood calls meeting to order and reviews minutes of February 22 and March 8.
Kevin Billman moved, and Diana Winther seconded to approve the minutes from February 22, 2019. All members present vote aye.
Alan Hartley moved, and Kevin Billman seconded to approve minutes from the March 9, 2019 meeting. All members present vote aye.

Department updates: Theresa Van Winkle, no updates to the administrative rule making calendar. So, she reviewed the status of 2019 legislation.

- HB 2087 has passed the Senate and heading to Governor's desk
- HB 2406 also passed the Senate and is going to the Governor's desk
- HB 2788 is in Ways and Means, waiting to be assigned to a subcommittee
- HB 3003 is scheduled in House Business and Labor, March 27
- HB 3022 has an MLAC subcommittee meeting the afternoon of March 22
- HB 2418/SB507 had its first subcommittee meeting on the morning of March 22, and the next is on March 29
- HB 3146 is scheduled to have a public hearing in House Judiciary next week

00:03:59 **HB 2407** – Vocational assistance changes. Kimberly Wood introduces HB2407 and invites Adel Bostwick and Kathy Wallace to testify.

00:04:30 Adele Bostwick and Kathy Wallace to testify.

Adele Bostwick is talking about a person that was injured on the job as a union carpenter and the training he went through to be able to find a new employment with new skills after retraining. He not only had physical injuries to his head, back, and shoulders, but a “closed brain” injury as well. Through the course of treatment with the brain injury specialties it was clear he wasn't going to be able to return to work as a carpenter. SAIF Corporation then referred him to Adel Bostwick and Kathy Wallace as vocational rehabilitation therapists.

Kimberly Wood asks for a review of changes they have made to HB2407.

00:07:45 Adele Bostwick: Leaving the 80% test of employability in the law and removing the 90% proposal original to the bill (page 2 line 45.) They will add if a worker's suitable wage is below minimum wage they would be eligible for vocational assistance (page 3, line 9.) Removing “would have include the employer paid health benefits added into the average weekly wage calculations” (page 3 line 8.)

00:09:11 Kathy Wallace: Retain the requirement for insurers to pay time loss for training programs that are approved up to a 21 months' duration, page 4, lines 4-13.

Kevin Billman: Asked for clarification that they are deleting the health care paid benefits from the weekly wage and just going with the “raw” wage.

Adele Bostwick responded yes.

Kimberly Wood: On the second item, where suitable wage is determined to be less than minimum wage would any minimum wage person who is injured is automatically going to qualify for vocational assistance?

Adele Bostwick: We look at if the worker has the skills, knowledge and abilities to work at a job that is minimum wage or higher. If they are able to work a stationary, sitting, desk type job and have no skills for that work, then yes, they would qualify.

If they have had jobs, such as a data entry clerk, and have those skills, then no they wouldn't be eligible.

Alan Hartley: Anyone can work for minimum wage. So, isn't the suitable wage automatically the minimum wage?

00:12:00 Kathy Wallace: There are cases when someone can't be on their feet and also do not have any computer skills.

Alan Hartley: So, you are saying they are unemployable?

Kathy Wallace and Adele Bostwick: They could be.

Kimberly Wood: The provision isn't automatically just one criteria if their suitable wage is below minimum wage. They have to have PPD and permanent restrictions preventing them from returning to the minimum wage job they already had. Any other criteria?

Adele Bostwick: You have to evaluate their skills verbal, education, work history, and jobs that related to ones they have had in the past. It wouldn't be automatic. If you have an injured 50-year-old worker that has had one type of job his whole life, you have to look and see what else they could be doing. They wouldn't be able to work as a fast food worker, but maybe as a security guard.

Kimberly Wood: The concern is that if you have a fast food worker who is injured on the job and could no longer work there that they automatically would qualify to get a two-year degree. So, it's only if they can't return to that job because of permanent disability.

Adele Bostwick: There are rules that cover your point, that a fast food worker isn't going to be given a training program with an associate degree. The rules say we help them get as close as possible to the wage of injury with vocational assistance. There is no obligation from the insurer or self-insured employer to pay for more than that. If the plan that was submitted for that worker included a two-year degree it should be denied.

00:15:00 Kimberly Wood: Is the wording in the bill acceptable? It doesn't automatically without all of the other criteria.

Alan Hartley: Hasn't seen the bill either, so he would like to see the verbiage.

Kimberly Wood: Comments they have eased her concerns but wants to make sure the wording is clear in the actual bill.

Kathy Wallace: Gives an example of someone who is a cook and they are 23 or 24 and they have had computer classes from school, and other jobs before that was an office helper, they would have other transferable skills and we would evaluate that and use that in our criteria to get them back to work.

00:16:13

Kimberly Wood: Asks if a minimum wage job needs training. The concern is what the training would be. If they are a fast food worker and can't do that any longer and they need a sedentary job answering phones, it would be an entry level position and they wouldn't need training for that.

Adele Bostwick: Minimum wage jobs generally require some level of physical capacity.

If a worker's permanent restrictions are in a sedentary range, desk work is the best way to describe it. We have to prove that they have abilities to be able to work at a desk.

Kimberly Wood: The concern is that would could be improving the person's employability and that is not the intent of worker's compensation.

Adele Bostwick: If a worker is injured, say on a tree farm and is no longer able to do a physical job, but has no office skills we would find them training to do work. It might be a 60-day program to train them to be a data entry clerk, or a security guard. But it wouldn't be a two-year program.

We have to offer him a program that would get him to his wage of injury.

Diana Winther: Currently you are obligated to get him to the wage that gets him closest to what he was making. So, if you were to get him a two-year associates degree program it would be denied?

Adele Bostwick and Kathy Wallace: Absolutely.

Diana Winther: The system as it functions now is not designed to allow significant improvement of someone's status or life because of how vocational assistance works.

Adele Bostwick: Correct. If you are going to be trained as a widget maker and the program is 60 days, that is what you get, 60 days. If you are a higher earner and need to be trained as an internet operator and the program is 16 months, that is what you get. The way this works is it depends on the labor market. The higher

wage workers could get a longer program to bring them closer to their wage at the time of injury. Nothing is automatic.

Kathy Wallace: We are not supposed to train them to earn a higher wage than what they were making. Your job is to get them to as close as possible to the wage they were making.

If they were making \$12 an hour and are now not able to work on their feet and had no computer skills, yes you might be training them for a higher paying job, in my experience.

00:20:40 Ateusa Salemi: Understands that physical and technical jobs are different. But some people who have been trained or gone to college are still making minimum wage or not much more than minimum wage.

Adele Bostwick: You have to take into account that in a year and a half the minimum wage will be over \$14 an hour and that means if you make \$17 an hour your suitable wage is going to be minimum wage.

Alan Hartley: In the next couple years you will be looking at a vocational rehabilitation program that would get them close to \$17/hour but not more.

00:23:49: Jenny Bates, SAIF Corporation, return to work manager: Referencing the injured tree farm worker who is no longer able to work a physical labor job due to his injuries. She states that under the current system he would already have access to the vocational rehabilitation program. She is unclear how this bill would change that.

Diana Winther: That was just an example of how things worked for people who are at minimum wage. When really the bill is trying to address those, who are above minimum wage, especially with the increasing minimum wage.

Kimberly Wood: If anyone who is making min wage and doesn't have the skills to go back into that minimum wage job is eligible for the program and it's a fix we don't need to make?

00:26:30 Jenny Bates: Yes, it doesn't matter if your skills are at or above or below minimum wage. If you are unable to return to work, then you would be eligible for training. Being below minimum wage could have to do with the number of hours you work in a week. If you make \$20 an hour but only work 20 hours a week, you make below minimum wage for a 40-hour work week. This could unfairly target employers who hire part-time workers.

00:27:15 Kimberly Wood: Working full time for minimum wage and injured and can no longer do that same job, you don't automatically qualify for the program. Are you saying, you don't believe it's necessary for a minimum wage worker to get training to go back to a minimum wage job?

Jenny Bates: If a person can go back to working a minimum wage job then they are essentially vocationally and financially whole.

Alan Hartley: So, if they can now only work part time, and minimum wage is \$12 an hour, we would need to get them a job that pays \$24 an hour and that training could take 16 months to 2 years?

Adele Bostwick: Right.

00:29:15 Kimberly Wood: If someone works part time at \$20 an hour, you don't look at 80% of \$20 an hour you look at 80% of their average weekly wage and they are automatically qualified?

Jenny Bates: You look at the average weekly wage.

Alan Hartley: Maybe it should reflect hourly wage. How can we structure this so that it is not unfairly benefiting part time workers?

Adele Bostwick: The concern is as the wage goes up it will effect their career.

Kimberly Wood: If a worker's suitable hourly wage is below the average wage, does that address SAIF's concern?

Talking about the wording and looking at data as the wage goes down be what are the effects as the wage goes down.

There seems to be a group of workers that are above minimum wage, but not making a high wage that seem to be disadvantaged by the system and the best way to include them in this.

Jenny Bates: The way the hourly weekly wage is determined is taken of the average of 52 weeks.

Kimberly Wood: Looking at how would they be affected by the hourly weekly wage if their hourly wage is closer to minimum wage. These are the workers that could be losing out on the way this is currently written.

00:37:10 Kathy Nishimoto: Asks how seasonal workers would work in this process.

Kimberly Wood: Asking SAIF to add in seasonal workers to her data report.

Lou Savage, Workers Compensation Division introducing Matt West, Employment Services Team.

Matt West: There are provisions to the rules for seasonal workers. And the calculations are slightly different for seasonal workers.

Diana Winther: How would this effect seasonal workers in their access to vocational assistance?

Lou Savage and Matt West will look at how it would impact them.

00:39:40 Next meeting: April 5
Theresa Van Winkle this will be added to the bills in subcommittees right now.

Adjourned 00:42:28
