

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full MLAC Meeting

April 5, 2019
1:30 p.m.

Committee Members Present:

Alan Hartley
Kathy Nishimoto, Duckwall Fruit
Kimberly Wood, Perlo Construction
Kevin Billman, United Food and Commercial Workers
Diana Winther, IBEW Local 48
Jill Fullerton, Clackamas County Fire Department { via teleconference }
Lynn McNamara, City County Insurance
Aida Aranda, Oregon and Southern Idaho Labor-Employers Trust
Tammy Bowers, May Trucking

Committee members excused:

Ateusa Salemi, Oregon Nurses Association
Cameron Smith, *Ex officio*

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Becka Hunt, Workers' Compensation Division

Agenda Item	Discussion
Opening (0:00:00)	Diana Winther opened the meeting at 1:30 pm.
Meeting Minutes (0:00:10)	Theresa Van Winkle advised the committee there were additional corrections to the March 22 and March 27, 2019 MLAC meeting minutes that were caught but haven't been changed, however they were not substantive. Kathy Nishimoto moved to have both sets of minutes approved with corrections. Diana Winther seconded the motion and all members present voted yes (Excused: Ateusa Salemi) .
Department Updates (0:01:23)	Theresa Van Winkle, Committee Administrator, provided the update: <ul style="list-style-type: none">- Theresa Van Winkle stated that there are no upcoming rulemaking hearings.

**2019
Legislation
Review**
(0:01:30)

Theresa Van Winkle gave a general legislation update; Tuesday is the first chamber deadline meaning that bills will either be voted out, go to the floor, or go to another committee. She advised that among the bills under MLAC review, there are two that were in House Business and Labor that will move: [HB 2418](#) (PTSD bill, and this is procedural move to keep it alive. It will go to a separate Rules committee than its Senate bill counterpart) and [HB 3022](#) will have a work session to also move it to Rules Committee. [HB 3146](#) is scheduled for a work session next Monday in House Judiciary, [SB 507](#) is going to Senate Rules as-is, and [HB 2413](#) is now a dead bill.

[HB 2413](#)
(0:04:07)

Kathy Wallace of the Oregon Chapter of the International Association of Rehabilitation Professionals, and Adele Bostwick of Bostwick Krier & d'Autremont, proponents of the vocational assistance bill [HB 2413](#), spoke about their desire to continue getting advice from the committee to find language that is amenable to all stakeholders. Based on the last meeting , it seemed that they were leaning towards language that focused on a worker who is not part time, or “earns less than an average of 32 to 40 hours a week who lacks the skills, knowledge, or ability to gain work that pays 80% of his or her wage and for which a reasonable labor market exists, should be found eligible and found eligible if their 80% wage falls below minimum wage.”

(0:06:14)

- Diana Winther expressed that the committee would like to have more education on how the process works. She stated that SAIF has more information that would help MLAC move forward.

(0:07:06)

- Kathy Wallace brought up that part of the bill they'd like to pursue next year relates to time loss during training. Diana Winther requested the division provide data showing whether or not the discrepancy between 16/21 month could be addressed through administrative rule. Lou Savage agreed to provide information.

(0:07:47)

- Kimberly Wood asked Kathy Wallace to wait until the summer months before requesting to be put back on the MLAC agenda to which Kathy Wallace agreed.

(0:08:23)

Theresa Van Winkle brought to the committee's attention the [Division's memo](#) in their packets on seasonal workers and income.

(0:09:29)

David Barenberg of SAIF Corporation presented [his documentation](#) regarding average weekly wage range to get a better picture of how many workers are actually below that 80% range, what the ranges were, and the amount of disabling claims there are. He states they will work with this further and try to format the charts and dates better.

(0:11:34)

- Kimberly Wood asked if David Barenberg would provide training on the vocational assistance process and walk the committee
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- through a couple of instances. David Barenberg agreed, and stated he is working with the Division and Theresa Van Winkle to put that together. Kimberly Wood states that she will give ample amount of time before it is put back on the schedule so he can prepare.
- (0:12:21) - Kevin Billman asked David Barenberg to let the proponents of the bill know when that training will be provided to which David Barenberg agreed.
- HB 2418/SB 507** Theresa Van Winkle deferred to the subcommittee co-chairs to update on the status as they haven't finished their work. Lynn McNamara stated that last time the subcommittee met, the parties led by Nelson Hall and George Goodman, informed them they have had conversations but have not met since they were last together, but plan to do so. There is not a meeting scheduled for the subcommittee next week, however they might set one up. Kevin Billman states that he agrees with Lynn McNamara's assessment, stating that they should tentatively schedule a meeting for next week.
- (00:12:55)
- (00:14:41) - Kimberly Wood said that it's her understanding that the proponents are working with Special Districts and once they have gotten an understanding and some language that is agreeable, they will reach out to cities and counties, and then to SAIF, the state, and other players to make sure they also agree. Kevin Billman agreed with this assessment. Kimberly Wood asked Andy Graham from Special Districts to speak about the language negotiations.
- (00:15:26) Andy Graham from Cummins, Goodman, Denley & Vickers, and the Special Districts Association, stated that on Monday they had met and Nelson Hall had asked them for language that would narrow the language associated with adjustment disorders; tailoring it to trauma that would be of the type that would give rise to PTSD; as well as different burden of proof standard for rebutting the presumption that would fall somewhere between the material part and the major contributing cause. On Monday or Tuesday of last week, he gave Nelson Hall some ideas, and Nelson was to get back to him today (Friday) or Monday. Nelson Hall has sent him something already but he hasn't had time to review it. The plan is to speak to him on the phone to discuss the details.
- (00:17:35) - Kathy Nishimoto asked if next Friday will give him enough time to get an update to which Andy Graham agreed, saying that early next week he can let the subcommittee know where they stand.
- (00:18:12) - Kimberly Wood asked how he would go about updating them and Andy Graham said he could call or send an e-mail.
- (00:18:26) - Kevin Billman clarified, asking if Andy Graham had just gotten an e-mail from Nelson Hall and he would be reviewing it today or Monday, and Andy agreed.
- (00:18:58) - Lynn McNamara emphasized that there was value to having a face to face or telephonic meeting. Kevin Billman and Kimberly Wood agreed. Kimberly Wood said that next Friday they will have a
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- (00:20:00) meeting so that if negotiations stall out the subcommittee can make recommendations and encourage them to get where others have gone.
- Diana Winther asked Theresa Van Winkle to schedule a meeting for next Friday, asked Andy Graham for a check-in, and to give the subcommittee access to the language ahead of time to which Andy Graham agreed.
- HB 3022**
(00:21:05) Keith Semple with the Oregon Trial Lawyers Association and Elaine Schooler with SAIF Corporation gave an update on **HB 3022**. Keith Semple advised that per the subcommittee this morning, they have an **agreement on language** with ceases denials and associated applicability date and the diagnostic services and the applicability date..
- (0:22:08) - Diana Winther asked if everyone received the new language; everyone had.
 - (00:22:28) - Kimberly Wood asked if the document was word-for-word accurate. Keith Semple said the only caveat is the effective date applicability language is somewhat paraphrased and may not be exactly how Legislative Counsel will draft it, but the understanding and the concept is understood by both sides. The paraphrasing is pretty close as to what the effective date would be, and he will get that date exacted quickly.
- (00:23:33) Kevin Billman moved to approve the conceptual language, Kimberly Wood seconded the motion. All members present voted aye (Excused - Ateusa Salemi).

Meeting Meeting adjourned at 1:54 PM.
Adjourned
(0:24:11)

*These minutes include time stamps from the meeting audio found here:
<https://www.oregon.gov/dcbs/mlac/Pages/2019.aspx>

**Referenced documents can be found on the MLAC Meeting Information page here:
<https://www.oregon.gov/dcbs/mlac/Pages/2019.aspx>