

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full MLAC Meeting
June 30, 2020
1:00 p.m. – 3:00 p.m.

Committee Members Present:

Alan Hartley
Kimberly Wood, Perlo Construction
Diana Winther, IBEW Local 48
Tammy Bowers, May Trucking
Kevin Billman, United Food and Commercial Workers
Lynn McNamara, City County Insurance
Kathy Nishimoto, Duckwall Fruit
Ateusa Salemi, Oregon Nurses Association
Jill Fullerton, Clackamas County Fire Department
Andrew Stolfi, DCBS Director, *ex officio*

Staff:

Theresa Van Winkle, MLAC Committee Administrator
Jeffrey Roddy-Warburton, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Kimberly Wood opened the meeting at 1:00 pm. Kimberly Wood states that MLAC will be meeting multiple times over the next few weeks to discuss COVID-19 and how it is affecting the workers' compensation system and how COVID-19 claims are being filed and processed. Kimberly Wood states the first few meetings will focus on discussing the issues and gathering data and voting and recommendations will be saved for the end. Theresa Van Winkle takes roll call and introduces new DCBS Director Andrew Stolfi.
Department Updates (0:06:00)	Theresa Van Winkle covers the Governor's letter that requests MLAC to identify gaps in the workers' compensation system in regards to COVID-19 and a COVID-19 presumption. Theresa Van Winkle does not go over the whole letter because it is available on the MLAC webpage. The deadline is mid-July. Theresa Van Winkle gives a background on the documents shared at the meeting, two of which are for Sally Coen's presentation and the other is for Julia Hier's presentation.
(0:08:10)	Julia Hier, Claims policy analysis Workers' Compensation Division (WCD) gives her presentation on claims processing, appeals, and timelines.
(0:16:41)	Diana Winther asks if COVID-19 is an occupational disease under the statute. Julia Hier states that she can not answer that question with certainty and the division wouldn't make that determination. Julia Hier

adds generally in regards to an injury the court and the board has described it as a condition developing suddenly or over a discrete period of time. Occupational diseases are generally gradual. Diana Winther also asks where does someone that only needs medical services fit in regarding the quarantine, and compensation for time loss. Julia Hier responds the receipt of temporary disability has to be by an authorized medical provider, so the answer may depend on who is authorizing them to be in quarantine and if that falls under the statute. If they are in quarantine and entitled to time loss benefits because there is an authorized provider taking them off work, then it would be dependent on if the insurer found the claim to be compensable.

- (0:20:45) Ateusa Salemi asks if there is a 14-day lag on the numbers provided about the claims. Kimberly Wood states that question would be a good question for Sally Coen.
- (0:22:32) Kimberly Wood asks how could MLAC get better clarification on whether COVID-19 is an occupational disease or an injury, would that need to be done by legislation. Julia Hier responds yes.
- (0:23:00) Tammy Bowers states that a stress claim for example is usually filed as an occupational disease claim, and every once in a while it is filed as an injury claim because it stems from a specific incident. If you label the injury as one or the other and not both you may be depriving a worker out of different benefits or a different criterion as for a major contributing cause versus material contributing cause. Tammy Bowers states that legal opinions will be needed, and that usually COVID-19 claims would be considered a specific injury. Tammy Bowers states that she isn't sure if it is something we should try and change the legislation on.
- (0:26:10) Sally Coen, acting Administrator WCD, [provides details on the data provided to MLAC in regards to COVID-19 claims](#) that have been reported to WCD as of June 24, 2020. She also provides information [about other states](#).
- (0:28:50) Kimberly Wood asks for clarification about the data. Sally Coen responds all denied claims should be reported to WCD whether they are disabling or nondisabling and WCD will have data on that but there will be a lag. Sally Coen adds that accepted nondisabling claims WCD will have to ask for the Division of Financial Regulation help in doing a data call for insurance carriers. WCD would have the ability to gather that information from self-insured employers because we certify those companies but WCD does not certify insurance carriers. Kimberly Wood responds that is important data that MLAC will need to determine if there are issues. Kimberly Wood asks if WCD is getting information on why the claim was denied. Sally Coen responds that WCD gets a copy of the denial letter but not all of the data is
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coded into the system, but some information is coded. Kimberly Wood asks if the denial letters give details on why the claim was denied. Sally Coen responds that it depends on how the insurance carrier, self-insured employer, or service company words their denial letter. Kimberly Wood asks if first responders are part of WCD's 62 code. Sally Coen responds yes, they are. Kimberly Wood wonders if the first responder's information can be broken off on its own and asks under transportation is that where you would see people in the transit business under code 48. Sally Coen responds yes, she believes so. Kimberly Wood states that she would like to see industries broken off into their own categories (restaurants, retail, etc.). Sally Coen states that WCD follows the North American Industry Classification System and she will talk to the research team to find that coding. Sally Coen also adds that WCD will provide examples of denial letters for MLAC.

- (0:36:25) Diana Winther states that she is curious how the division thinks the Governor's determination of who is an essential worker has affected the system. Diana Winther also states that a list of presumptions that other states have that were similar to Oregon and wonders if the division can do some analysis on how different Oregon's situation is. Sally Coen states that is a good point and WCD will discuss that and see what kind of analysis they can put together. Tammy Bowers states that she would like to see that as well. Tammy Bowers adds that out of the 129 denials she would like to know how many of those people tested negative for COVID-19 and how many never got medical care. Sally Coen says WCD will see that they can do.
- (0:39:49) Diana Winther asks are the self-insurers required to answer WCD if they ask these questions. Sally Coen responds yes, they are.
- (0:41:10) Kimberly Wood asks if there is a list of carriers and contact information to reach out to people for data. Sally Coen responds that they do collect contact information for the carriers and one option could be to reach out to the service companies in Oregon who process the vast majority of claims. Kimberly Wood asks if that can be sorted by volume. Sally Coen responds that they can look at the data and they will need the Division of Financial Regulation's help.
- (0:44:00) Diana Winther states that she would like to see the information broken down by carrier.
- (0:44:30) Ateusa Salemi asks if the data collected is by other socio-economic demographics and are we collecting data on people from diverse backgrounds and people of color because there is a disproportionate impact from COVID-19 on that demographic. Sally Coen states that the claims are coded by gender, but she does not believe that they are coded by any other
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demographics but she will check. Kimberly Wood states that she does not recall seeing that on the 801 form. Tammy Bowers states that when OSHA requires their survey of disabling claims they collect that information.

(0:47:00) Diana Winther asks where do farm workers fall and does manufacturing cover the factory workers. Sally Coen states that she is not sure if they would show up in these categories and that she will get a more detailed list of what the categories are.

(0:49:17) Ateusa Salemi states that she would like to know what the process is to get the 801 form updated, she also states that farm workers, people that work in food production, etc. are probably being discouraged from filing workers' compensation claims for fear of retaliation and would like to see the data on that. Ateusa Salemi stated that the National Employment Law Project released a report that articulated workers that are people of color were more likely to report that they feared filing a report and being retaliated against.

(0:51:36) Kimberly Wood states that the workers' compensation system isn't failing if you don't file a claim, it only fails when you file a claim that gets denied when it should have been accepted. Kimberly Wood also states that better education is needed, and she would look at the department for help with that. Sally Coen responds that WCD does have a team that investigates those types of claims that come in if workers are being pressured not to file a claim, and WCD does have the authority to contact employers and take action.

(0:57:40) Kimberly Wood reiterates the importance of looking at the data and finding the problems before we start looking at solutions. Lynn McNamara asks if Andrew Stolfi could reach out to all parties to get some data. Andrew Stolfi responds that the department is going to do everything that they can to gather data, Sally Coen seconds that statement.

(0:59:00) Both Diana Winther and Kimberly Wood encourage anyone with data or information that they want to provide and want to testify to please come forward and do so.

Note: the following items were submitted for the committee record:

- [Letter from Rep. Barbara Smith Warner](#)

**Meeting
Adjourned**

Kimberly Wood adjourns the meeting at 3:00 p.m.

*These minutes include time stamps from the meeting audio found here:
<https://www.oregon.gov/dcbs/mlac/Pages/2020.aspx>

**Referenced documents can be found on the MLAC Meeting Information page here:
<https://www.oregon.gov/dcbs/mlac/Pages/2020.aspx>