

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full MLAC Meeting
July 2, 2020
8:00 a.m. – 10:00 a.m.

Committee Members Present:

Alan Hartley
Kimberly Wood, Perlo Construction
Tammy Bowers, May Trucking
Lynn McNamara, City County Insurance
Kathy Nishimoto, Duckwall Fruit
Jill Fullerton, Clackamas County Fire Department
Ateusa Salemi, Oregon Nurses Association
Kevin Billman, United Food and Commercial Workers
Diana Winther, IBEW Local 48
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 opens up meeting at 8:00am. Kimberly Wood states that the committee would like to limit each testimony to 10 minutes and 2 minutes after for questions, due to the volume of people that want to testify within the short amount of time available. Kimberly Wood states that the July 2, 2020, meeting will focus on the issues of COVID-19 in the workplace and not the solutions to those issues, that will come at a later meeting.
0:02:58	Theresa Van Winkle does roll call.
0:03:32	Kimberly Wood mentions that Sally Coen, Workers' Compensation Division (WCD) sent additional information on COVID-19 claims and she thanks her for that data (here and here). Sally Coen states that WCD will keep working on gathering additional data.
0:06:30	David Woerms, carpenter from Portland, gives his testimony on educating workers on work place safety and shares his only personal experience with COVID-19 issues and unsafe practices at his former place of work.
0:10:44	Kathy Nishimoto asks David Woerms if he filed a complaint with Oregon OSHA. David Woerms responds yes he did file a complaint and that he was told by OSHA that they had multiple complaints and that they were

not investigating any construction related complaints because of the close proximity to others it would require to investigate so OSHA is ignoring the claims.

12:12 Kimberly Wood asks for clarification on who was ignoring the complaint. David Woerms responds OSHA.

12:55 Ateusa Salemi asks if any of his coworkers tried to file workers' compensation claims for becoming ill or if there was a disincentive to his coworkers to not file. David Woerms responds that he cannot speak for any of his former coworkers.

14:10 Theresa Van Winkle asks for David Woerms to email her so that they can speak more on the OSHA complaint he filed. David Woerms responds yes.

15:00 Jay Pinkerton, Senior Officer of a police Department gives his testimony in regards to his workers' compensation claim that was denied after he tested positive for COVID-19 as well as other complications with loss of leave and lack of insurance coverage.

17:55 Lynn McNamara asks Jay Pinkerton what police agency he works for. Jay Pinkerton responds that he prefers not to disclose that information due to him not wanting that to conflict with his employer.

18:15 Tammy Bowers asks if he has an attorney and if he has appealed his denial. Jay Pinkerton responds yes.

18:42 Kimberly Wood asks if he can share the basis of his denial letter. Jay Pinkerton responds that he got sick and got tested, when it came back positive for COVID-19 he went through the whole paperwork process, and was in quarantine using his own sick leave and then his claim was denied and he hasn't had a hearing or been able to tell his story yet.

20:38 Ateusa Salemi asks if his employer addressed that there was a process to file a claim if you become sick with COVID-19 and it is work related. Jay Pinkerton responds yes there is a process, and he documented his exposures to COVID-19 although he could not prove that the people he was exposed to actually had COVID-19. Jay Pinkerton also states that he felt his employer did support him but you are on your own when you are filing a large amount of paperwork.

22:08 Diana Winther asks on average how many people do you interact with on a daily basis at work, and who is his insurer. Jay Pinkerton responds that it ebbs and flows how many people he comes into contact with on a daily basis but a lot of people that he comes into contact with don't really care about their personal hygiene or social distancing, and that he works for a

	large agency so he comes into contact with a lot of people every day. Jay Pinkerton states that he has CorVel Insurance.
24:08	Kevin Billman asks how has getting the denial letter added to your overall stress level and your ability to take care of yourself. Jay Pinkerton responds that it was honestly devastating, and it made him feel devalued and lost. Kevin Billman thanks him for sharing how he is feeling.
26:41	Megan Haring, nurse from Hood River gives her testimony on the lack of safety protocols at the hospital she is employed at during the COVID-19 outbreak. Megan Haring states that there was a lack of testing for COVID-19 meaning nobody knew if the coworkers you were working with were positive for COVID-19, and a lack of masks available for the employees. Megan Haring stated that she tested positive for COVID-19 and knows that she got it from an exposure at work because nobody else in her home tested positive. So she filed a workers' compensation leave of absence requesting the days that she missed due to COVID-19 be paid for, the request was quickly denied because she could not prove exposure on the job. All 11 of the other COVID-19 claims by employees at her hospital have been denied. The day after her positive test the hospital that she works for instituted testing and safety protocols to protect staff.
31:56	Tammy Bowers asks if she is appealing her denial. Megan Haring responds yes she has an attorney and they are working on appealing the denial. Tammy Bowers asks if the other 11 claims from her coworkers were early on in the COVID-19 outbreak like hers was. Megan Haring responds she does not know.
33:25	Ateusa Salemi asks if she knows who the workers' compensation insurer is. Megan Haring responds Sedgwick.
33:40	Kimberly Wood asks if the claim was just time loss or was there medical involved too. Megan Haring responds it was just for the time loss but they would cover the cost of the COVID-19 test, but that has not been paid for yet. Kimberly Wood asks if her absence was paid or unpaid. Megan Haring was recommended to file a leave of absences, she is a per diem nurse she is not eligible for paid time off, and the second doctor she spoke with recommended filing it as a Workers Compensation claim.
36:00	Kevin Billman asks how did the denial effect your stress level and your potential recovery of COVID-19. Megan Haring responds that it felt like a betrayal by the whole system and she had no guidance or anyone advocating for her but herself and her manager. Kevin Billman thanks her for sharing her experience and asks if her attorney gave her a timeline on how long the process might take for the appeal. Megan Haring responds

	that she doesn't know an exact timeline but she does have a court date set in September.
39:00	Diana Winther asks if there is a resurgence of COVID-19, does she think her employer will struggle to provide the necessary PPE. Megan Haring responds that she is not able to speak on that topic because of the unknowns.
40:25	Enesha Yurchak, on-site medical representative providing first aid to injured warehouse associates at the Amazon warehouse in Salem gives her testimony on Amazon management down playing the risk of COVID-19 and not taking proper action to protect its employees. There were two confirmed cases of COVID-19 at Amazon in April of 2020 and Amazon did not inform their employees of the risk of exposure and employees came to work sick because they could not afford to take unpaid leave. Enesha Yurchak also states that supervisors would be in the medical examination room with the employees as part of an intimidation factor to keep them from filing workers' compensation claims, as well as Amazon not wanting employees to see outside doctors.
47:08	Tammy Bowers asks if anyone has contacted OSHA and filed a complaint. Enesha Yurchak responds that she believes a lot of workers have contacted OSHA to get their attention on what is going on.
48:27	Kathy Nishimoto, Vice President and COO of Duckwall Fruit in Hood River gives her testimony on her experiences with COVID-19 at her company. Kathy Nishimoto states that her company has been working on COVID-19 policies and procedures since the first of February and has been following multiple different recommendations from the CDC, FDA, ODA, and OHA. Duckwall Fruit implemented multiple COVID-19 safe guards. Duckwall Fruit falls under the critical food infrastructure rules which our employees are considered essential workers. Kathy Nishimoto states that on May 26th she was notified that one of her employees had tested positive for COVID-19. The employee had last worked on May 21st and after talking with Oregon OSHA Consultation it was determined that the facility had been cleaned and sanitized twice since the employee had last worked and since they were on the rotating crew, it was safe to work. Duckwall Fruit increased its touch point sanitizing along with many other safety measures and encouraged employees to wear masks, but employees pushed back because it was not a requirement yet. Kathy Nishimoto states that on May 27th two more employees reported that they were positive for COVID-19, and they worked the same shift as the first employee that tested positive. Duckwall Fruit decided to shut down the plant and have a third-party company come in to clean and sanitize the entire plant. Duckwall Fruit remained closed and tested all its employees for COVID-

19 even though it was not required. Kathy went on to say that they knew that they would lose order's but did it any way as an overabundance of precaution and because it was the right thing to do for their employees.

Duckwall Fruit had 43 employees test positive for COVID-19, of the 246 employees tested, 12 out of the 43 positives did not have any symptoms, nor were they related to the swing shift crew where the problem was and that through the Hood River County contact tracing interviews of the positive employees and their close contact employees, Kathy was told that it likely was community spread. Kathy Nishimoto stated that she spoke to a few of the employees that tested positive and found that there was a wedding and a BBQ that many of the employees attended. Duckwall Fruit did all that they could to keep their employees safe and other houses even toured their facility to see how they could improve their own. Kathy Nishimoto said that she can't say that all 43 positives were community spread infected but if this presumption was in place, all 43 employees would have been automatically a comp claim for Duckwall. Kathy Nishimoto asked, why do we have to change something that will hurt all employers to take care of a few bad acting employers? Kathy Nishimoto stated that the 43 employees who tested positive received up to 80 hours of pay at 100% wages, vs 66 2/3 that they would have received if they filed a comp claim.

Many decided to take a few more weeks off before they returned, they were able to file unemployment and receive an extra \$600.00 a week!

59:17

Jennifer Flood, Ombudsmen for Injured Workers at DCBS gives her testimony and answers some questions from the last MLAC meeting. Jennifer Flood states that the in regards to the volume of the complaints they were not tracked specifically to COVID-19 but overall the call volume is actually down. In regards to the calls that they have received about COVID-19, workers have been calling in and asking if COVID-19 is covered by workers' compensation and wanting to know about the process. Jennifer Flood states that there are employers that have stepped up and are helping their employees by providing paid leave and a safe work environment but regardless there are still employees fear for of losing their jobs. Jennifer Flood states that most of the complaints are from workers that had regular claims not COVID-19 claims. Jennifer Flood states that they have received called regarding safety in the workplace and proper PPE and they are working with Oregon OSHA about that. Jennifer Flood states that the issue of proving you were exposed at work is very high. Jennifer Flood suggest that employers should not be discouraging their employees to not file a claim because it has been longer than 90 days, that should be the insurers decision. Jennifer Flood believes that the

presumption would take away some of the concerns for workers and heighten the awareness of making sure workers are in a safe environment.

1:07:40 Hasina Wittenberg, Special Districts Association of Oregon; states that she wants to specifically speak to the agenda item that says, “Identify problems or gaps in the worker’s compensation system relative to the COVID-19”. SDAO doesn’t see any problems or gaps in the workers’ compensation system. Hasina Wittenberg discusses the [details of SDAO written testimony](#).

1:10:48 Kathy Gehring, SAIF Vice President of Claims and Holly O’Dell, SAIF VP of Legal and Strategic Services go over the [details of the written testimony that they provided in regards to SAIF’s understanding of coverage for COVID-19](#) under existing Oregon law, their approach to processing claims and their detailed claims data. SAIF is also interested to listening to other people’s testimony to identify problems and gaps in the system and work with MLAC to fix them.

1:16:55 Diana Winther asks in regards to SAIF’s choice to cover the denied claims, asks if that is something SAIF felt statutorily required to do. Holly O’Dell responds they paid interim compensation during the 14-day quarantine while the claim was in process and they would pay the bills for testing and doctors office visits, but they have not seen benefit needs beyond that. Diana Winther asks if what they do is required by all insurers. Holly O’Dell responds everyone is required to pay interim time loss while the claim is in a deferred status if there is authorization to be off of work and they consider quarantine by a medical director of public health authority to be that authorization and that would be something all insurers would need to pay with that interpretation. Diana Winther asks if she is aware of any other insurers that are doing the same process of reaching out to employers when there is a known COVID-19 case. Holly O’Dell responds that she is not aware of what other insurers are doing. Holly O’Dell responds that there are three categories to benefits, the first might be one that would be required to be paid by statute in any circumstance, a second might be benefits that could be interpreted as being required to be paid under statute given a liberal an worker-friendly interpretation of the law, and the third would be voluntary benefits that would not be required to pay under statute. SAIF is working in all three of those categories and she details how SAIF interprets each of those categories.

1:27:00 Kimberly Wood states that they hope SAIF keeps participating in the MLAC meetings and states that MLAC looks forward to working with SAIF to find a solution.

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- 1:28:19 Kate Suisman, attorney at the Northwest Workers Justice Project in Portland provides details on the [written testimony on workers' compensation retaliation that she brought to MLAC](#). Kate Suisman discusses some of the retaliation fears that NWJP clients have in regards to their COVID-19 claims they have filed. Kate Suisman adds that many of their clients are immigrants.
- 1:34:22 Kathy Nishimoto asks if NWJP asked the employees if they received FFCRA pay for the first 80 hours of leave. Kate Suisman states that they always make sure their workers are aware of their coverage. Kathy Nishimoto asks if it is possible that workers didn't file a claim because they got FFCRA? Kate Suisman responds yes it is possible.
- 1:35:13 Tammy Bowers in regards to the 73% of the non-health care setting claims being denied asks do you know the reason of those denials. Kate Suisman responds there is some information on that in the data she provided but there is no one reason why they were denied.
- 1:37:20 Christina Stevenson, attorney represents workers in employment discrimination matters, states 30% of the people she represents have been retaliated against for filing workers' compensation claims, and another 20% of the people she represents have been retaliated against for reporting unsafe work places. Christina Stevenson gives her testimony on the gaps and issues in the workers' compensation system that she believes there are.
- 1:40:00 Tammy Bowers asks what would be the next steps for a worker that was fired for filing a workers' compensation claim against their employer. Christina Stevenson responds they can file a complaint with BOLI or they can file a civil lawsuit, but there are gaps in that system.
- 1:41:15 Kevin Billman asks hypothetically 10 to 20 years down the road and employees still haven't filed a claim for COVID-19 what is their recompense, what are their rights. Christina Stevenson responds that's a great question but she would refer that to people that work in the workers' compensation system, but generally if a worker gives up his claim in the first instance they will find it very hard down the road to open a new claim.
- 1:42:53 Diana Winther in regards to the retaliation cases asks if a worker is successful what does that look like in terms of the penalty to the employer. Christina Stevenson responds right now the main mechanism within the law are related to employee compensation for the harm rather than employer penalty for the harm.
- 1:44:40 Ateusa Salemi asks how can a bad experience with one employer affect an employee when they go to a new employer that is good. Christina
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- Stevenson responds that it can leave them fearful of bringing a claim forward with their next employer.
- 1:46:15 Jessica Giannettino Villatoro, Political Director Oregon ALF-CIO provides details of her [written testimony in support of COVID-19 presumptions and stronger discrimination and retaliation provisions in workers' compensation](#).
- 1:52:55 Kimberly Wood in regards to workers' compensations discrimination protection only applying to employers with six or more employees asks if that is something that workers' compensation can fix or does it need to be fixed in the discrimination laws. Jessica Giannettino Villatoro responds it is a worker' compensation fix. Kimberly Wood asks Jessica Giannettino Villatoro to return to MLAC when solutions are being discussed.
- 1:54:20 Alan Hartley in regards to the 7% of Providence health care workers claims that are accepted asks, what was the reason for the other 93% being denied. Jessica Giannettino Villatoro responds that the data collected doesn't include much information on denials and they would need the denial letters to determine that, but she would like to highlight all of the false-negative test that were in the beginning of the pandemic.
- 1:55:30 Kathy Nishimoto wanted to clarify on the Form 801 and in "a guide to recently injured employees F 440-3283 on the bottom in bold it states that employees do not have to provide a Social Security number on the 801 and 827. Jessica Giannettino Villatoro responds that even the mere appearance that a SSN is required can provide a significant chilling effect even if further in the department it says that you don't have to. Kathy Nishimoto asks where on the form it says the SSN is required. Jessica Giannettino Villatoro responds that if an undocumented worker sees a box that asks for a SSN at the top of the document it can be discouraging to move forward.
- 1:57:20 Kimberly Wood asks is the SSN statutorily required that it is on the form and would look to DCBS for some clarification on that.
- 1:58:51 Tammy Bowers asks if Michael Wood from Oregon OSHA can speak at one for the meeting to get a perspective from OSHA. Michael Wood responds that he would be happy to do that.
- Note: the following items were submitted for the record:
[Written testimony Oregon State Fire Fighters Council](#)
[Written testimony United Food and Commercial Workers 555](#)
[Written testimony Immigrant and Refugee Community Organization](#)
[Written testimony from AFSCME](#)

Meeting Adjourned Kimberly Wood adjourns meeting at 10:00am.

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