

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full MLAC Meeting
July 7, 2020
1:00 p.m. – 4:00 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
Andrew Stolfi, DCBS Director, *ex officio*

Committee Members Excused:

Jill Fullerton, Clackamas County Fire Department

Staff:

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

Agenda Item	Discussion
Opening (0:00:00)	Diana Winther opened the meeting at 1:00 pm. Theresa Van Winkle states that all members, excluding Jill Fullerton are present.
Department Updates (0:03:00)	Theresa Van Winkle discusses the two documents posted in regards to member questions from the July 2, 2020, MLAC meeting, memo that provides details on reported claims by insurer and second memo for reasons COVID-19 claims are denied . Kimberly Wood asks if the division has any information on NCCI choosing not to include COVID-19 employer experience mod rates. Theresa Van Winkle responds that is an item on the table. Diana Winther asks for an elaboration of NCCI. Theresa Van Winkle responds NCCI is the rating entity that Oregon using in regards to workers' compensation which also includes premiums and the item that is under discussion is whether to include claims that are COVID-19 related into the calculation on premiums.
(0:06:15)	Jeff Anderson, Secretary Treasurer of UFCW Local 555, gives details of his written testimony he proved to the committee asking the system to provide the assurances essential front-line workers need during the COVID-19 pandemic.
(0:14:30)	Lynn McNamara asks if the lack of PPE is through the grocery industry or do some chains have it and others do not. Jeff Anderson responds that

when Oregon started to hit Phase 1 which allowed businesses to reopen, it opened up additional competition for the scarce supply of PPE, he also states that he believes the essential workers should have been taken care of first before reopening the economy so that they can to compete for the limited supply of PPE.

- (0:20:01) Tammy Bowers asks in regards to the 77 positive cases asks how many of those workers' compensation claims were accepted. Jeff Anderson responds that from what he has gathered none of them have been applied for and the retail industry is not reflective in workers' compensation claims.
- (0:24:05) Paloma Sparks, Oregon Business and Industry, gives her testimony stating that creating a presumption is not a cure to the problems caused by COVID-19 and that looking at the data and making an informed decision is important.
- (0:26:35) Kimberly Wood asks if she knows what her employers are doing to address employees that do test positive or potentially have COVID-19. Paloma Sparks responds that they are providing their employees with leave to quarantine, they also have health insurance benefits, and every employee is entitled to file a claim.
- (0:28:10) Ateusa Salemi asks what her employers are doing to ensure their employees have access to PPE. Paloma Sparks responds they work with private contractors, government, have shields in place, and have social distancing in place, also they have been proactively leaning and talking to health experts.
- (0:30:00) Kimberly Wood and Ateusa Salemi discuss workplace safety precautions employers should take to prevent COVID-19.
- (0:34:10) Diana Winther asks if her employers are actively informing the rest of the workforce when an employee has tested positive for COVID-19. Paloma Sparks responds yes, absolutely.
- (0:37:07) Benjamin Debney, attorney that represents employers and workers' compensation matters in the Northwest gives his testimony on COVID-19 and background information on case law.
- (0:42:00) Kimberly Wood asks about the case with the virus that he mentioned, asks is in his understanding that if an employee had a provider say you need to quarantine for so many days, regardless if the test was negative or positive, would it be considered a work exposure requiring medical services. Benjamin Debney responds that it would be hard to say how the court would necessarily interpret it.
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- (0:45:35) Diana Winther asks if these questions get asked in litigation, how long would it take to get an answer that would be useful to a worker that is facing that situation. Benjamin Debney responds unless they allow some emergency review, normal cases are on the timeline of years.
- (0:49:12) Keith Semple, Oregon Trial Lawyers Association (OTLA) gives his testimony and shares some of his observations on what he has heard from some of the other testimonies so far and his concerns about the workplace during the COVID-19 crisis.
- (0:53:00) Tammy Bowers asks how the extreme barrier for workers is different than the normal standards. Keith Semple responds that in communicable diseases are extraordinarily difficult claims for a worker to prove. Tammy Bowers also asks on a communicable disease claim, is there a different standard for an injury claim opposed to just a regular injury claim. Keith Semple responds that if it happens over a discrete period of time it can be argued that it is an injury opposed to a disease, but how discrete the period of time needs to be is an open question.
- (0:57:30) Diana Winther asks if we have any basis for figuring out how more likely or not it would be determined in a COVID-19 situation based on the difficulty of the fact that some people may have COVID-19 but may not be symptomatic. Keith Semple responds yes that is the challenge, a worker facing a denial would have to find a medical expert to testify that it is more likely they got COVID-19 at work.
- (1:00:22) Michael Wood, Oregon OSHA goes over some basic numbers and challenges of COVID-19 . Michael Wood states that OSHA does not do claim investigations they look at risk, which is sometimes tied to concerns and reports and claims. OSHA does investigate serious injuries, hospitalizations and deaths. While OSHA is separate from the workers' compensation system they do share information.
- (1:09:40) Kimberly Wood asks if OSHA is monitoring the list that OHA puts out that lists the employers with over five confirmed COVID-19 cases and if so are you reaching out to them. Michael Wood responds that is some industries they do reach out to the employers, and OHA and public health will always be engaging with the places where there are outbreaks. OSHA tends not to focus their resources on where outbreaks occur because OSHA doesn't want to create a situation where they are discouraging employers from supporting for and paying for testing. Kimberly Wood asks if OSHA has the bandwidth and authority to force a posting for workers' compensation claims to educate employees. Michael Wood responds that there is an argument that that reporting has a direct relationship to the safety and health itself because you want people to come forward and
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indicate they have been exposed and have COVID-19. The workers' compensation system already requires a posting, OSHA could arguably enforce that or remind people but he is skeptical of that.

(1:13:45) Tammy Bowers asks for clarification on whether OSHA has done in-person inspections in the past few months during the pandemic. Michael Wood responds that OSHA has two on-site activities, enforcement visits and consultations. On-site consultations were discontinued for a period of time but OSHA has started them up again. Enforcement visits were never discontinued but they were scaled back. Tammy Bowers asks in regard to the testimony last week where the speaker stated that they contacted OSHA and OSHA told them they were too busy to help her, asks what kind of time will it take to get through the 750 complaints. Michael Wood responds that there were some faults in responding and screen complaints but there are going to try and work with the speaker from last week to get that figured out. Telecommuting made it more difficult to go out and respond to complaints. He also states responses via phone fax take a week or so and but letter two and half to three weeks.

(1:20:01) Tammy Bowers asks if OSHA has changed their normal prioritization unless there is a complaint that is connected to an active case. Michael Wood responds yes they don't necessarily always go on site but they and local public health are always in contact with places where there has been an outbreak and program inspections have been largely discontinued and a tool has been added to the toolkit that is tailored for COVID-19. Tammy Bowers asks what is the responses to complaints about not having proper PPE and face masks. Michael Wood responds typically in complaints about not having proper PPE it is people wanting to have an N-95 respirator and in most situations we would not expect their employer to give them an N-95 respirator. He also states that most PPE complaints OSHA has concluded that the employer could not do more than what they were already doing. He also responds that facial coverings are not a question on the adequacy, because if it covers your nose and mouth it satisfies the requirement, the issue of the facial coverings is the enforcement of their use. Tammy Bowers asks if OSHA is still getting complaints from hospital, emergency and health care workers about N-95 respirators. Michael Wood responds not very many, more recently 90% of the complains have been about face coverings.

(1:27:40) Ateusa Salemi asks related to healthcare settings and OHA's guidelines, how does OSHA respond to employers not notifying workers of an exposure to COVID-19. Michael Wood responds the starting point would be that the employer needs to comply with the guidelines they have received from public health authorities and OHA's guidance. It does indicate that you cannot share someone's medical condition with their coworkers, but when the medical condition becomes a risk to other

coworkers that does become more challenging but there is ways to communicate about the exposure without the risk that has occurred. Ateusa Salemi states that she believes MLAC should look into the OHA guidelines.

- (1:34:00) Diana Winther asks how many citations has OSHA issued up to this point related to COVID-19. Michael Wood responds 12 to 15, and have completed approximately 29 inspections that did not result in a citation. Diana Winther asks what is the process when you are getting a letter back from an employer about what they are or are not doing. Michael Wood responds that they do an evaluation of the letter and their response to determine if they think that it appears to be sufficient and OSHA also shares it with the complaint if they have contact information so they have the opportunity to respond.
- (1:41:09) **The committee takes a short break**
- (1:42:05) Diana Winther asks Paloma Sparks if she has changed her opinion on customer masks since her testimony at the House Business and Labor Committee. Paloma Sparks responds that she thinks every member of the public should wear a mask, but we have significant concerns about asking businesses to enforce that requirement and we would like to see that enforcement come from the state rather than businesses.
- (1:44:09) Larry Bishop, Technical Standards and Compliance Advisor for Sedgwick, gives [his testimony and provides some data](#) (as of June 30th) on claims Sedgwick has processed.
- (1:49:30) Lynn McNamara asks what is the universe to which these claims apply, how many employers how many employees are you processing claims for. Larry Bishop responds in terms of total numbers it is over 300 employers which includes employers that don't have active claims, the majority of the claims he reviewed belonged to a single health care provider.
- (1:50:50) Tammy Bowers in regards to the Sedgwick spreadsheet, nine of the denials had no medical care, does that mean the worker wanted to file a claim instead of just report and incident and they were not prevented from filing a claim and is there a difference between those two things. Larry Bishop responds not if it was a denied claim where there was medical treatment.
- (1:52:52) Kimberly Wood asks for clarification on some of the incidence reports and whether they are employer reported because there was a potential for a claim. Larry Bishop responds that in some cases that maybe true, some employers encourage their employees to report directly Sedgwick. He also adds some employers do want to track potential exposures and that is why
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those were reported. Kimberly Wood asks if the incidents will show up as denied claims. Larry Bishop responds no.

(1:55:09) Diana Winther asks if quarantine is considered treatment. Larry Bishop responds if a physician quarantines them it is being considered a period of disability because it is authorized by the doctor. Diana Winther asks if they are paying time loss for those quarantined by their doctor. Larry Bishop responds yes.

(1:58:10) Diana Winther asks is the data correct that there have been no retail workers quarantined. Larry Bishop responds that the way the system runs the report he would not get that information. Diana Winther asks if they can get that data somehow. Larry Bishop responds he expects that they will be providing information after the data call.

(2:00:01) Sam Hutchison, Bureau Director for the City of Portland Fire Police Disability and Retirement gives [his testimony and provides some details of his written testimony](#) on what their plan is going forward and the administrative rule that have created for COVID-19 claims.

(2:05:00) Tammy Bowers asks if they have zero denials. Sam Hutchison responds that is correct.

(2:05:46) Diana Winther asks what lead you to decide to go with this high level presumption. Sam Hutchison responds part of it is our stakeholders wanted it, the final decision was approved by a full board of trustees.

Additional testimony submitted for the record:

- [Oregon Manufacturer and Commerce](#)
- [Information from Amazon](#)
- [City of Salem](#)

Meeting

Adjourned

Kimberly Wood adjourns the meeting at 3:21 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>