

April 2, 2021

Management Labor Advisory Committee

Re: SB 489

Dear MLAC members,

I write to you on behalf of a group of workers' compensation stakeholders representing business, insurers, and defense attorneys with respect to SB 489. Many of us participated in the 2019 session where OTLA introduced HB 3022. In its original form, HB 3022 was a 93 page, drastic re-write of ORS 656, submitted without management and stakeholder input. As a result, MLAC asked OTLA to narrow its issues in HB 3022. Following many hours of negotiations an agreement on amendments to the bill was reached. After the 2019 legislative session closed, MLAC asked OTLA to engage with stakeholders prior to introducing legislative changes to avoid the roadblocks that arose when HB 3022 was initially introduced.

Following the 2019 session, Art Towers succinctly summarized the plan moving forward with respect to time loss in a September 24, 2019 email to MLAC co-chairs Kimberly Wood and Diana Winther and others, stating "[o]ur plan is to report on what we are seeing, discuss it with MLAC and other stakeholders, and collaboratively determine what is best for rulemaking and what needs to be addressed through legislation."

In February 2020, representatives from both sides discussed the time loss issues. Keith Semple and I led the discussions for our respective groups. Following the initial discussion, further outreach was done by management. Below is a brief timeline.

- March 25, 2020 Zoom meeting with Arthur Towers, Keith Semple, David Barenberg, Jaye Frazer, other coalition members and myself. The parties discussed time loss issues that were of concern to both sides.
- April 2020, I reached out to Keith regarding time loss. His response was that they were focused on COVID issues and he was not sure they had much to offer at the moment.
- May 2020, I emailed Keith asking to touch base. We spoke over the phone and he indicated that their members lacked the appetite at the time to discuss the issue while acknowledging that the conversation cannot be delayed forever.
- July 2020, I left Keith a voicemail and emailed him to touch base on time loss among other issues. We connected on July 14th where Keith again represented that OTLA remains focused on a Covid presumption and there was limited bandwidth for other issues. We also discussed whether OTLA planned on bringing legislation for 2021, which was unknown at that time. If OTLA proceeded, then they would share draft language and would not take legislation forward without vetting it with MLAC and other stakeholders to gather consensus.

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- On July 27, 2020, I shared a list of counter proposals with Keith, which were limiting time loss authorizations to 30 days from the date of issuance; requiring the attending physician to address work restrictions only with respect to the accepted conditions; and sending disputes over the rate at which time loss is paid to the Workers' Compensation Division. I asked him to let me know when OTLA would like to revisit the issues as fall was right around the corner. Keith's response was that he would get back to me as soon as he can.

However, there was no outreach by OTLA until January when we were notified that OTLA filed a bill on time loss. Because bills must be sent for drafting by September 25th at the latest, OTLA choose to draft and file a bill without engaging with us or MLAC despite multiple representations that they would follow this approach prior to submitting a bill.

Once the bill was filed, it again fell upon management to reach out and engage with OTLA in February. In March, we discussed the time loss issues including our concern with open ended releases and were told that OTLA was only willing to discuss their bill and not consider any other time loss issues. Finally, on March 19th, the parties met as a small group. We had been told by OTLA that they were not planning on moving a bill this session. SAIF and two defense attorneys were prepared to discuss the improvements needed in time loss and to put the discussions that were abandoned a year ago back on track to develop legislation for 2022. OTLA's negotiators were surprised to learn that SAIF had been told that the bill would not advance but tentatively agreed that if it was not moving forward then we would begin the discussions and conduct a broad review of time loss issues. Following the meeting despite what we had been told, the bill was posted for a hearing and possible work session.

Now we are in the position where the behind the scenes work was not done by the parties. The situation has been presented as one where we must agree to OTLA's issues and negotiate in those limited areas. If OTLA engaged with us and MLAC early on then we could have presented a consensus. Instead OTLA's lack of engagement resurrects the same problem created by HB3022. No stakeholder input. No consensus.

SAIF and management urge MLAC to adhere to its recommendation in 2019 that the stakeholders get together, put in the hard work and reach a consensus during and after this session so we can present a joint bill that improves benefits for workers and claim management for employers.

Thank you for your consideration.

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Sincerely,

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