

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE

Full Committee Meeting

February 4, 2022

10:00 a.m. – 12:00 p.m.

Committee Members Present:

Jill Fullerton, Clackamas County Fire Department

Scott Strickland, IOUE Local 701

Margaret Weddell, Labor Representative

Tammy Bowers, May Trucking

Sara Duckwall, Duckwall Fruit

Lynn McNamara, Paladin Consulting

Patrick Priest, CityCounty Insurance Services

John McKenzie, JE Dunn Construction

Marcy Grail, IBEW Local 125

Andrew Stolfi, DCBS Director, *ex officio*

Committee Members Excused:

Matt Calzia, Oregon Nurses Association

Staff:

Theresa Van Winkle, MLAC Committee Administrator

Cara Filsinger, Senior Policy Analyst, Workers' Compensation Division

Jeffrey Roddy-Warburton, MLAC Assistant

Brittany Williams, MLAC Assistant

Agenda Item	Discussion
Opening (0:00:00)	Called to order at 10:02am by co-chair Patrick Priest
00:00:56	Theresa Van Winkle called the roll of members and quorum was present.
00:01:40	Minutes were discussed, Tammy Bowers, Patrick Priest, and Lynn McNamara asked if their previously e-mailed edits were added into the new minutes. Theresa Van Winkle answered in the affirmative. Margaret Weddell asked to see the edited minutes. Sara Duckwall requested that the group be able to see the suggested edits to the minutes as well before voting on them. Theresa Van Winkle agreed and edited versions on the minutes will be sent out to the group to review before voting on approval at the next scheduled meeting.
Departmental Updates 00:04:31	The division has a rulemaking hearing scheduled for February 15 th . A follow-up DCBS memo was shared with the group with permanent partial disability trends broken down by industry as requested at the previous meeting.

00:06:43 A moment of silence was taken to honor Austin G. Smith, a firefighter from St. Paul, Oregon who passed away on February 3, 2022 as a result of injuries sustained while responding to barn fire in Marion County as requested by Jill Fullerton.

SB 1560
00:08:27 Theresa Van Winkle summarized SB 1560, pertaining to the term “alien” used to refer to noncitizen persons in Oregon laws. The bill revises statutes to use the term noncitizen as opposed to the term “alien.” California and Colorado have already removed the term language from their laws following guidance from the White House. This is non-substantive change with the first public hearing next Wednesday. Patrick Priest asked for comments , there was no discussion. Sara Duckwall moved to support this bill as presented; Tammy Bowers seconded. A voice vote was taken resulting in a unanimous decision in the affirmative (Matt Calzia excused).

SB 1585
00:14:23 Jessica Giannettino Villatoro, Oregon AFL-CIO, introduced SB 1585 sharing that AFL-CIO has been working with SAIF to get this legislation moving. This legislation makes it possible for Oregon Health Authority to share information about Covid-19 related deaths with DCBS in order to assist the deceased families with applying for and potentially collecting workers’ compensation death benefits. Nothing in the bill changes the workers’ compensation claim process, it only allows notifications about the process and the potential benefit eligibility.

00:18:14 David Barenberg, SAIF, spoke that they are in support of these notifications and the potential of worker’s families receiving these benefits if applicable. Holly O’Dell is also available for questions if there are any from the committee.

00:20:19 Theresa Van Winkle shared that there was a hearing yesterday and a work session scheduled for next week. Theresa Van Winkle mentioned working with Jessica Giannettino Villatoro and Senator Taylor on an amendment for the bill to include some further accountability for the agencies responsibility for carrying out these notifications. There are a few changes to which chapter of Oregon law this bill would fit under, if it is not under chapter 656, MLAC would not necessarily need to vote on this bill.

00:22:53 Tammy Bowers asked it would be helpful to have MLAC’s support moving forward. Theresa Van Winkle clarified that legislative intent was not going to change that having MLAC support before the next work session may be helpful.

00:23:57	Sara Duckwall asked if there could be a motion that mentioned MLAC’s support if it says in the statute? Theresa Van Winkle confirmed adding that she would rather vote today with a motion that reflects this potential change.
00:24:59	Lynn McNamara made a motion to support the bill, Scott Strickland seconded. A voice vote was taken resulting in a unanimous decision in the affirmative (Matt Calzia, excused)
	The committee recessed for a caucus.
HB 4113 00:28:44	Lynn McNamara began the conversation starting with her thoughts about presumption. She emphasized that presumption shifts the burden of proof on to the employers for a certain number of groups only, but not other groups of employees. The data available is not as solid as she would hope and according to NIOSH’s timetable using the National Firefighter Cancer Registry, they do not expect to have conclusive data until 2024 or later. Things to help move forward with a yes vote would be know what to expect in the future. When the bill was originally passed groups were under the impression that additional cancers would not be added to presumption. She urged that if MLAC moves forward with support, that MLAC should go back and formally look at data once it is available and potentially report to the 2025 legislature about that data.
00:33:24	Jill Fullerton thanked Lynn for sharing her sticking points and wanted to share some of her perspectives. She emphasized that MLAC changes with the times when new information is available. Some of this bill has to do with fairness in regards to covering female reproductive cancers and needs very few data points for support. In regards to fairness when she looks back on the huge impact that these presumptions have had on people that contracted these cancers and that female firefighters should also be eligible . As part of their training, firefighters learn that someone being trapped in a burning building is relatively low possibility but firefighters still take the risk to go inside. The risk to move forward is there because of the limited data but it is a risk that she believes is worth taking.
00:38:09	Tammy Bowers said she would be comfortable voting yes if we could add the section about reevaluating when NIOSH data becomes available. Tammy states there is precedence of this happening with attorney fees in 2015 that was written to include a reevaluation every two years.
00:39:22	Marcy Grail spoke about her experience working in a male dominated field and how due to the small sample size she had to reevaluate her stance on this issue. She also spoke about equity for those that are underrepresented and encouraged to go into the field and how those individuals deserve the same protection as their counterparts.

00:40:55 Patrick Priest added that for over 25 years he has managed local government risks and kept track of workers' compensation funding and available coverages. He was in Colorado when the bill was passed there and when he came to Oregon and the worker's compensation program at CIS was in existence but in jeopardy. Firefighter cancer presumption is not the thing that caused this program to disappear but it did add some difficulties to getting reinsurance and for those cities and counties that are trying to provide cost effective workers' compensation insurance. He also expressed support if there an addition that mandated a revaluation.

00:43:19 Sara Duckwall asked if there is a way to support the inclusion of these presumptions with the understanding that there would reevaluations when more data is available and that these presumptions could potentially change based upon the results of that data?

00:44:20 Scott Strickland said that labor would need to caucus as a group before moving any sort of amendment to legislation forward. But that he appreciates the way that this issue is being framed and the flexibility that the group is granting.

00:46:45 John McKenzie added his support and agreed with Scott's statements and shared his experience working with NIOSH. He echoes Tammy's statement and would feel comfortable using their information to help inform our future decisions.

00:48:15 Tammy Bowers agrees with Marcy and John's statements and reiterates that she feels comfortable moving forward currently with having MLAC request a report be done with NIOSH issues their finding.

00:49:42 Sara Duckwall brought forward the consideration that we could sunset the bill for 2025 based on data.

00:50:10 Margaret Weddell mentioned that she would like to hear from stakeholders specifically Karl Koenig before furthering discussion.

00:51:00 Karl Koenig, Oregon State Firefighters Council, fully supports the NIOSH data and that he would feel comfortable not adding any additional cancers unless data is strong enough to support their inclusion. He shared his concerns about sunseting the bill and shared that he is not sure that they could support that. He thanked Tammy for her statements about follow-up with NIOSH studies. He reiterated that he is in support of revaluation with more conclusive data and is willing to work with Representative Grayber to get that added into the bill. He echoed that he urges support moving forward mentioning that today is world cancer day and that it would be symbolic to move forward with support today.

00:54:07 Sara Duckwall asked if Karl would be more in support of a sunset if the date was further out? Karl Koenig says that he is still hesitant to support a sunset bill. He explained that support of the female reproductive cancer presumption in the bill having the option of being removed in a sunset is something that does not bring equity to Oregon female firefighters as the presumption of male reproductive cancers is not at risk. Karl said that he is dedicated to move forward with what makes sense with the data.

00:58:36 Sara Duckwall asked if the data did not support presumptions would be support removing presumptions? Karl Koenig says that he is not in support of removing presumptions at all and reiterated that he does not feel it would be equitable for female reproductive cancers have the possibility of being removed where male reproductive cancers would not be under that threat. Karl spoke about the moral responsibility as well as the response to data especially as there are growing recruitment efforts to encourage women to become firefighters throughout the state. Sara Duckwall reiterated that the issue is of presumption and where it falls, she believes that she and Karl are in agreement on that.

01:01:38 Scott Strickland stated that he is not interested in a sunset option, especially in regards to the female reproductive cancers. He wonders if there are sunsets used in other workers' compensation legislation. Theresa Van Winkle mentioned there is precedence for sunsets and shares an example of a DCBS bill about self-insured employers that included provisions that required presentation to MLAC and their review. Scott Strickland mentioned that he is more comfortable with a provision like that.

01:02:37 Karl Koenig speaking as a proponent of the bill stated that he can agree to two things. The commitment to revaluation based on the NIOSH data when it becomes available and not bringing forward any more cancer presumptions until that data is vetted.

The committee recessed to caucus.

01:04:03 Patrick Priest called the meeting back to order and asked the committee for additional comments or a motion.

01:04:15 Jill Fullerton proposed the following motion, I move to approve HB 4113 with the understanding that MLAC will review the data from the NIOSH study and have the legislative records show that there is no intention to bring forward another presumption until that study is complete.

01:05:19 Tammy Bowers seconded the motion with the understanding that Karl Koenig will go back Representative Grayber and have the language

	specifying review what NIOSH data becomes available written into the bill.
01:05:52	Sara Duckwall wanted to make sure that MLAC would review the results of that study and go through the legislative process again based upon those results.
01:06:13	Theresa Van Winkle asked if it would be helpful for her to share an example of how that language might look if written into the legislation.
01:06:25	Karl Koenig shared that ORS 656.790 charges MLAC with the ability to do studies on workers' compensation issues. He responded to Tammy's point about adding an amendment stating that he would be charged with ensuring that Representative Grayber stuck to the agreed upon terms and that the legislative record would show that the Oregon State Firefighters Council would not bring any further cancers to consideration of presumptions until the review of the NIOSH study. He asked for clarification if these were the acceptable terms as opposed to an amendment to the bill, referring to the language in ORS 656.790 that already gives MLAC this responsibility.
01:07:32	Tammy Bowers agreed but mentioned that there have been prior issues with ensuring that these reviews happened and said that as long there was a directive to ensure that the review happened that she is still in agreement. Karl Koenig reaffirmed his commitment and support for MLAC and shared that he supports MLAC adding the statutory language for MLAC review. Tammy requested to hear from Benjamin Debney or Andrew Graham about their thoughts of having a -1 amendment or not.
01:09:27	Andrew Graham spoke about the difference between MLAC language and an amendment. Andrew said that adding in that statutory language would help ensure that a review is done adding that while MLAC has the power to review, it often is not done until the legislature requests it. Tammy Bowers said that his response did help clarify things and that, that is why she would like to have -1 amendment written in so that it ensure that is review is requested and completed.
01:10:30	Scott Strickland committed to have MLAC review and that he would also be fine with this being added as an amendment if that is a more firm commitment.
01:11:49	After receiving technical guidance from Theresa Van Winkle, Jill Fullerton responded that she would be willing to amend her motion to include language specifying for an amendment that detailed the things previously discussed.

01:14:34 Jill Fullerton moved to support House Bill 4113 as submitted with a dash one amendment that would include MLAC review of the NIOSH study when it is complete and that the legislative records will show that no further cancer presumptions will be brought forward until after that time.

01:15:12 Tammy Bowers seconded the motion. A voice vote was taken resulting in a unanimous decision in the affirmative (Matt Calzia, excused).

HB 4138
01:16:08 Patrick Priest praised the group for coming to an agreement before moving on to discussion of House Bill 4138. He introduced Arthur Towers to make a comment.

01:16:39 Arthur Towers, Oregon Trial Lawyers Association, received a proposal from MLAC management on HB 4138 that allows negotiations surrounding worker's access to their medical care to begin. He asked about an identical proposal from an insurance industry and if they should move forward working with MLAC or the insurance company? Patrick Priest responded that they had originally asked for the groups to work together and if they are able to do so they would continue to do that, but that MLAC stands ready to move forward if needed. Patrick asked for any further comments on this bill or business in general.

01:19:30 Scott Strickland thanked the group for their cooperation and the work that they have done today.

01:19:55 Karl Koenig asked if this body had any objection to the OSFFC putting out a press release for national cancer day that MLAC unanimously recommends approval of HB 4113. The group unanimously agrees.

Meeting

Adjourned

Patrick Priest adjourns the meeting at 12:18 p.m.

*These minutes include time stamps from the meeting audio found here:
<https://www.youtube.com/watch?v=de8YoZeyiE>

**Referenced documents can be found on the MLAC Meeting Information page here:
<https://www.oregon.gov/dcbs/mlac/Pages/2022.aspx>