

WORKERS' COMPENSATION  
MANAGEMENT-LABOR ADVISORY COMMITTEE

**Full Committee Meeting**

February 17, 2023

10:00am-12:00pm

***Committee Members Present:***

Scott Strickland, Sheet Metal Workers Local #16  
Patrick Priest, Citycounty Insurance Services via Zoom  
Matt Calzia, Oregon Nurses Association via Zoom  
Sara Duckwall, Duckwall Fruit via Zoom  
Tammy Bowers, May Trucking via Zoom  
Jill Fullerton, Clackamas County Fire Department via Zoom  
Marcy Grail, IBEW Local 125 via Zoom  
Lynn McNamara, Paladin Consulting via Zoom  
Margaret Weddell, Labor Representative via Zoom  
John McKenzie, JE Dunn Construction via Zoom  
Andrew Stolfi, DCBS Director, *ex officio* via Zoom

***Staff:***

Cara Filsinger, MLAC Committee Administrator  
Baaba Ampah, MLAC Assistant  
Brittany Williams, MLAC Assistant

<b>Agenda Item</b>	<b>Discussion</b>
Opening (0:00:05)	Scott Strickland called the meeting to order, and Cara Filsinger called the roll of members. Cara Filsinger presented the minutes from the February 3, 2023 meeting with edits that were submitted by members via e-mail. Marcy Grail moved to approve the minutes as presented with all edits. Sara Duckwall seconded the motion. The motion passed after a voice vote with eight votes in favor, zero opposed, one abstention (McNamara), one absent (McKenzie). A copy of the minutes with all edits visible was sent to members after the meeting.
(0:03:58)	Cara Filsinger announced that the Workers' Compensation Board and Workers' Compensation Division rulemaking have no updates from the ones delivered on February 3, 2023.
(0:04:45)	<b>Legislative Review of LC 3731</b> Catie Theisen, Oregon AFL-CIO, introduced <a href="#">their concept</a> and highlighted the effects that no-rehire, and confidentiality clauses in workers' compensation claim settlements can have on Oregon workers, noting the unique challenges

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that this causes to healthcare workers and rural community members where there are limited employment opportunities.

- (0:11:39) Jovanna Patrick, Oregon Trial Lawyers Association, spoke in support of this concept noting that she believes that this bill will assist in fulfilling the goal of workers' compensation in getting employees healthy and back to work, adding that many employment liability settlements include these clauses as a default. Rural warehouse, food processing, delivery, healthcare, and agricultural work are particularly affected because these skilled workers are not able to be rehired by their employer-at-injury or the employer's parent company/affiliates. Jovanna shared that workers' compensation claims settlements usually prohibit teachers from being hired by another institution within that school district, where they may live. Additionally, Jovanna spoke about the barrier that these clauses cause for workers even in filing claims, noting that many workers don't want to file claims, as they see other workers must leave their positions after settling their claims.
- (0:18:03) Kate Suisman, Northwest Workers' Justice Project, shared an example of workers with language barriers being affected by these clauses. Sharing that often these clauses are presented in English regardless of the workers' primary language. She continued that often workers want to continue with their positions after their claims are settled, leading to workers then facing a situation of negotiating between keeping their job and settling their workers' compensation claim. She concluded by stating that there are also concerns about enforcing this change.
- (0:24:28) Margaret Weddell thanked Kate Suisman and Jovanna Patrick for bringing this issue to MLAC's attention as it falls into the focus on retaliation in the MLAC workplan. Margaret also asked if there has been any thought about coordinating with the Workers' Compensation Board regarding enforcement or if there were any suggestions for enforcement solutions that are currently being discussed.
- (0:26:10) Catie Theisen responded that a lot of the enforcement requirement suggestions currently being discussed are focused around ensuring that the language is as correct as possible to use the current enforcement mechanisms. Kate Suisman added that when she attended the Oregon Trial Lawyers' workgroup on this issue, a suggestion that came from that meeting was to ensure that the termination of employment was suggested by the worker, not the employer via a signed sworn statement.
- (0:27:47) Jovanna Patrick explained that right now the Workers' Compensation Board reviews settlements; this enforcement mechanism could be expanded. The enforcement methods such as sanctions used for the Workplace Fairness Act could also be used in these situations.

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- (0:29:22) Sara Duckwall echoed Margaret Weddell's comments, thanking Kate Suisman for bringing this issue to MLAC and agreed that this does fall under their workplan. Sara asked for any data or further explanation about the scope of this issue, noting that the anecdotal stories do help to understand the issues, but that data would also be appreciated.
- (0:30:05) Kate Suisman responded that she would also like more data on this issue as well but that it is difficult as there is often a confidentiality aspect involved in these settlements. Kate Suisman explained that she had reached out to the Workers' Compensation Division asking for this data prior to presenting this issue and was told that this data was not readily available.
- (0:31:13) Lynn McNamara noted in her experience with global settlement claims, it occurs because there is a workers' compensation claim and an additional employment issue but that they are two separate things, handled by separate attorneys. She asked if in the cases cited, the two types of claims are combined. Jovanna Patrick explained that there are two separate areas of agreements. Global settlement agreements include workers signing multiple agreements; settlements are conditional with all of them needing to be approved for the settlement to be completed. Jovanna added that in her experience, there have only been two cases where these agreements could be separated.
- (0:33:47) Lynn McNamara asked if Workers' Compensation Division would be permitted to get involved in these employment issues via current employment law. Jovanna Patrick responded that although there are two separate things, part of the problem is that there is no one protecting these workers or keeping an eye on these agreements especially if the worker is not represented by an attorney.
- (0:35:35) Robert Pardington, Oregon Workers' Compensation Board, said that the board does see these employment separation agreements routinely presented and that he believes that the board's jurisdiction only includes the four elements of workers' compensation as outlined in ORS Chapter 656.
- (0:36:54) Matt Calzia noted that it would be helpful to get more data for these issues but that this is something that he has also heard anecdotally from the members that he works with, adding that in the healthcare system that he works in, there is a chilling effect in filing or settling claims because of these clauses. Matt reiterated that more data is needed as many of the workers who have settled these claims also had to sign confidentiality agreements. He added anecdotally that this feels like the consequences fall on the worker as he does know many nurses and healthcare providers who have had to move or take travel contracts due to these clauses being included in settlements.
- (0:39:30) Ryan Hearn, Roseburg Forest Products, shared that normally when they have agreements such as these in place it is usually because of compensability issues. He added that there is concern from employers about agreeing to settlements
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without a worker release in place, noting that it could encourage workers to view the settlement process as a type of piggybank to get the lump sum of money from less than legitimate claims, while retaining their position. He added that workers can always turn down the settlement to retain their employment, noting that in cases with employment releases, the value of that release is reflected in the settlement offer.

- (0:41:24) Tammy Bowers shared that from her employer’s perspective, any time a worker is offered a settlement they have the option to turn it down. Tammy shared that within her company the number of people who are affected by these clauses is minimal, noting that often these clauses are used when the employee is disgruntled or not interested in continuing with employment after settlement. She continued that there must be a way for this to remain an option but to better protect workers going through this process from being taken advantage of.
- (0:44:03) Tammy Bowers asked Jovanna Patrick for clarification around her comments about a proposed solution of a worker or their attorney only being able to bring up the worker release in settlement negotiations. Jovanna Patrick responded that that is her understanding of the written language for this concept. Adding that in her experience these clauses come from the employer and are non-negotiable, she believes that it is best to have these clauses come from the worker or their counsel.
- (0:45:50) Marcy Grail noted that she is appalled that discussion is needed on this issue, noting that often the workers that she represents do not have a choice in whether to continue on in their employment, regardless of a settlement that they may be receiving, as it often a matter of a family’s survival. She added that whether this is an MLAC issue or belongs somewhere else, employees, even if they are disgruntled, have the right to not be barred from employment especially at a time when it is harder than ever to retain workers.
- (0:48:56) Scott Strickland thanked Marcy for her statement and reiterated the [MLAC’s common values](#) including balance and fairness as well as adequacy of benefits. He noted his concerns about practices that would undermine things like the worker reeducation program.
- (0:49:51) Rebecca Watkins, SBH Legal, noted that this legislation could cause large changes in the ability to settle claims. She stated that this issue does not really fit within the workers’ compensation system according to ORS Chapter 656, stating that this is an employment relationship issue and not a workers’ compensation claim related issue. She mentioned that there are already laws that address discrimination, and the Reinstatement Reemployment Act which ensures injured workers have the ability to return to work, adding that the Workplace Fairness Act does restrict the ability to include certain clauses into settlements but that these circumstances are broader than the Act details. Specifying that this impacts settlements in workers’ compensation she said
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there is value in the workers' ability to return to work in the form of re-education and vocational services. Settling these claims and then granting the worker the ability to return to their position, undermines the value of the claim, she said. Rebecca added that the effects of this legislative concept could create a chilling effect on workers and employers reaching settlements. She highlighted that an employment settlement and the ability of workers to access workers' compensation benefits are two separate things.

- (0:58:46) Patrick Priest thanked everyone for their explanations and expressed his sadness in hearing the anecdotes that were shared. He added that he is not sure if this issue fits within MLAC's statutes and guidelines. Patrick asked the Workers' Compensation Division for guidance about if this issue fits within MLAC's authority and purpose.
- (0:59:44) Sally Coen, Workers' Compensation Division Administrator, responded that workplace practices would be outside of authority under Chapter 656. She added that only workers' compensation claim settlements may be under the jurisdiction of the Workers' Compensation Board.
- (1:01:03) Cara Filsinger noted that the bill language is not completed and that there was discussion of placing this legislation outside of Chapter 656, so it could be advantageous to have these discussions and understand the issue in case it is determined that it is indeed within the division's jurisdiction when the official bill is dropped. Catie Theisen responded that Legislative Counsel put this issue within 656 when drafted for a specific reason, but she is happy to have that clarifying conversation with them.
- (1:02:34) Benjamin Debney, Wallace, Klor, Mann, Capener, and Bishop, P.C., shared his objections to LC 3731 as presented, respectfully objecting to its inclusion in ORS chapter 656. Benjamin Debney noted that he seconded Rebecca Watkins' testimony across the board. He objects to LC 3731 as written, noting that it impacts the ability to reach settlements, adding that a settlement is an agreement between two parties with the option to not reach agreement. He noted that not only would there be a chilling effect on reaching settlements if this concept is passed, it would inhibit the ability to settle completely. He responded to some of the previous testimony, sharing anecdotal examples of settlements being reached without employment releases. He detailed that word of settlement amounts could get around to other employees and cause a wave of unfounded claims to ensue by other workers hoping to receive large settlements. He continued that employers need to have the ability to include these provisions on the settlements in response to distrust that can develop between the employer and worker. He shared an example of a worker that settled a claim with an employer without a release and returned to work bragging about the horse that he purchased for his daughter with the settlement money that he had received. Benjamin Debney said that often settlements are reached by employers paying more than they wanted to pay and workers
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receiving less than they wanted, noting that the spirit of settlement is often with the employment release being part of that finality.

- (1:09:58) Scott Strickland stated his interest in this matter compared to the MLAC values, noting that sometimes workers are represented by attorneys, but he has concern about the equity in the process and the power dynamics in place between workers and their employers. He would like more evidence or data to support the equal bargaining power within the settlement process.
- (1:11:02) Jovanna Patrick responded to some of the previous testimony, saying that workers and employers do not come to settlement discussions on a level playing field, because employers are able to continue paying their bills regardless of whether they settle or not; that is not always the case for the workers coming into settlement discussions. She explained further that even if workers have an attorney, workers are often not in an equal position to begin negotiations and often have disputed medical bills. There is value to the worker continuing their employment and currently that value is not being taken into consideration. Jovanna Patrick noted that she is offended by the assertions the workers are fraudulent or wasting money from settlements, adding that it is a worker's prerogative on how they spend their money from settlements. She added that there are employers that have clauses that state workers cannot return to work with a settlement, regardless of the situation surrounding the injury, adding that by allowing employers to have these blanket policies it punishes workers with compensable injuries. Jovanna Patrick emphasized that the goal of this legislation is not aiming to take separation agreements off the table completely, but to give some of the power back to the employee in that area of negotiating.
- (1:15:34) Kirsten Adams, Associated General Contractors, asked if she could respond to Jovanna Patrick's testimony. Jovanna Patrick responded that she is finished but believes that other people were waiting to speak. Kristen Adams responded that she feels it is appropriate to have a business response to Jovanna Patrick's testimony, but that is happy to wait. Scott Strickland confirmed that the order to speak based on order of request would be Keith Semple, Kirsten Adams, and then Tammy Bowers.
- (1:15:58) Keith Semple, Oregon Trial Lawyers Association, spoke in support of Jovanna Patrick's previous testimony, saying that he is disappointed but not surprised by the testimony today. He noted that unequal bargaining power in these issues is important to consider. Keith Semple shared examples of legislation that impact the ability of settlements, including the Employer Fairness Act which impacts the ability to reach settlement but does not impede that ability.
- (1:19:42) Kirsten Adams, Associated General Contractors, responded to Jovanna Patrick's previous testimony noting that she does not feel that it was appropriate for employers to be called liars and that it is important for both
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sides to contribute anecdotal evidence. Kirsten Adams also noted issues that MLAC and the management caucus had worked on previously, specifically trying to find solutions for employees and their benefits. She added that members of her board care deeply about their employees.

- (1:21:01) Jovanna Patrick clarified that she did not call the business community liars, but noted that the comments that she has heard from employers and presented today indicate that employers believe that workers are lying or fraudulently filing claims to use the workers' compensation system as a cash cow.
- (1:21:33) Kristen Adams, AGC responded to Jovanna Patrick stating that by saying that she interprets Jovanna Patrick to be saying that the business community sees this issue a certain way.
- (1:21:40) Jovanna Patrick responded, stating that if the question is that all employers think that employees are lying about a claim, then yes, she thinks that is a lie.
- (1:21:50) Kirsten Adams responded that she does not think that is what was said. Jovanna Patrick agreed that that was not what was said, noting that numerous people provided testimony during the meeting implicating that workers are committing fraud or return to work disgruntled. Jovanna Patrick stated that the beliefs that were expressed via the employer and insurance side that workers are being fraudulent being fraudulent by default offends her.
- (1:22:35) Tammy Bowers stated that she is unsure if the previous comments are in reference to something that she stated previously but that she and her employer cares about their workers very much and that she would like to keep this issue on track with the focus on ensuring that this system is fair to employers and fair to injured workers. Tammy added that her concern is that the separation agreement must be brought up from the worker first. She added that it does not make sense to her that attorneys from both sides cannot discuss this issue between themselves before bringing the option up to the worker versus the employee bringing it up to their attorney first.
- (1:24:06) Jovanna Patrick responded that she was not commenting on Tammy's comments of her treatment of her workers. She noted that Tammy had shared how she treats her workers and was commenting on some of the other testimony that was given. Jovanna Patrick further explained that even if some workers are being represented by an attorney, they do not have the power to take the chance to wait for further litigation.
- (1:25:25) Tammy Bowers responded that she understands how it may not be fair for the employer to bring this issue up with the employee, but she does not understand the issue between two attorneys speaking about this and bringing the option to the worker separate from the employer. Jovanna Patrick responded that whether a worker is represented by an attorney or not, it does not change their
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circumstances or their ability to settle. She noted that even if there is not a power imbalance between the attorneys working on the case there is still a power imbalance between the employer and the worker.

- (1:26:58) Lynn McNamara shared that she was not aware of these types of global settlements with mandatory separation agreements in place. She spoke about whether the language that is presented really addresses the issues being discussed, adding that having the worker bring up employment release first does not solve the problem of power imbalance in these negotiations.
- (1:28:06) Catie Theisen noted that the goal of this concept is not to take away the option of an employment release completely but that having the worker bring it up would skirt the power dynamic and that the language was written to mirror language that has been passed on similar issues.
- (1:28:57) Kate Suisman brought up the power dynamic between employees and their attorneys, stating that when an attorney tells a worker to take a settlement that is also a power dynamic where the worker has less power. She said she would like to see sanctions and penalties for attorneys improperly using these agreements. She asked the stakeholders who have expressed that they do not understand why this concept is needed if they would at least be willing to acknowledge that there is a problem with large multinational companies saying that to settle claims, a worker must quit their job, noting that she has not even heard agreement of that issue. She added that she is appreciative of Jovanna Patrick's testimony and that it did hurt her to workers being spoken about in a manner that she feels was inappropriate.
- (1:30:06) Lynn McNamara shared that the information that was discussed today was impactful for her. She does want to go back to the discussion about a claimant's attorney not doing their job in this case and is not sure about the appropriateness of having this issue on MLAC's agenda under chapter 656. Kate Suisman does not feel that there will not be protest from worker advocates in moving this issue out of chapter 656.
- (1:31:18) Sara Duckwall asked if this issue is going to be moved out of chapter 656, then should discussion even continue. Scott Strickland responded that he feels that there has been thorough discussion and there are other items on the agenda to cover. As the meeting time is running out, he suggests putting a pin in further discussion on this issue after those that are currently waiting to speak.
- (1:31:52) David Barenberg, SAIF, shared that he is frustrated that often anecdotal evidence is taken from examples and used to extrapolate the behavior to all employers or workers. He noted that he feels that is inappropriate behavior and moves the conversation away from civility.



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- (1:33:34) Scott Strickland noted that it seems that there seems to be a lot of frustration that the discussion today has been limited to a dispute over the scope of the issue without any acknowledgment of the issue itself. He stated that he has concerns about what he views as a potentially existential threat to the guiding concept of balance and fairness in workers' compensation, for which there is no data available due to the use of non-disclosure agreements. He echoed the request for civility in discourse about the problem.
- (1:34:46) Sara Duckwall voiced support for Kate Suisman's question that was submitted in the Zoom chat at 11:34 a.m, in the chat reading: "I'm going to repeat my question from above in the chat- Has the division ever surveyed how many workers return to their job at injury, and if not, what is the reason they are not able to?"
- (1:35:20) Cara Filsinger read Kate Suisman's question aloud and responded that it is not something that the division tracked. The Workers' Compensation Division may have data about the number of workers that have returned to work after injury but does not keep data about why they did or did not return to work.
- (1:35:41) Sara Duckwall asked if MLAC could ask for an opinion about whether or not this issue belongs on MLAC's agenda. Scott Strickland responded that he feels that is appropriate, proposing that further discussion on this legislative concept be delayed while MLAC waits for an answer.

**A brief break was taken so that MLAC members could meet in caucus rooms.**

**Legislative Review of HB 3150**

- (1:36:54) Scott Strickland welcomed the group back to the meeting after the caucus break.
- (1:37:18) Dr. Vern Saboe, Oregon Chiropractic Association, gave a [presentation](#) about HB 3150, in this presentation, Dr. Saboe responded to feedback from his prior presentation, [noting the federal and state action](#) that has been taken to comply with the provider non-discrimination language from the Affordable Care Act. Dr. Saboe highlighted under the current system, where injured workers have to be referred to chiropractic physicians, they are not able to be present for closing exams.

**Legislative Review of SB 214**

- (1:46:53) Cara Filsinger shared that the division is still working on the feedback about the language used from the Oregon Trial Lawyers Association and that once that is completed, it will be shared with MLAC members.
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**Legislative Review of SB 418**

(1:47:14) Cara Filsinger also gave the update on SB 418 on behalf Joe Baessler, AFSCME, noting that he had to leave to attend another meeting at noon. Joe Baessler has requested an amendment to limit the bill to only affect those workers who have an accepted workers' compensation claim with time loss and wage replacement. Workers must be cleared to go back to work and the insurer, not the employer would pay for leave time that the worker has to use to receive treatment, attend a doctor's visit or physical therapy.

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**Meeting**

**Adjourned** Scott Strickland adjourned the meeting at 12:05pm.

\*These minutes include time stamps from the meeting audio found here:

<https://www.oregon.gov/dcbs/mlac/Pages/2023.aspx>

\*\*Referenced documents can be found on the MLAC Meeting Information page here:

<https://www.oregon.gov/dcbs/mlac/Pages/2023.aspx>