

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

March 3, 2023
10:00am-12:00pm

Committee Members Present:

Scott Strickland, Sheet Metal Workers Local #16 via Zoom
Patrick Priest, Citycounty Insurance Services via Zoom
Sara Duckwall, Duckwall Fruit via Zoom
Tammy Bowers, May Trucking via Zoom
Jill Fullerton, Clackamas County Fire Department 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

Committee Members Excused:

Matt Calzia, Oregon Nurses Association
Marcy Grail, IBEW Local 125

Staff:

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

Agenda Item	Discussion
Opening (0:00:03)	Patrick Priest called the meeting to order and shared a brief statement reminding the group about appropriate conduct in MLAC meetings.
(0:01:15)	Scott Strickland added that due to the more informal nature of MLAC the group is able to have great conversation, but the co-chairs want to ensure that comments be directed to the chair as opposed to other witnesses, similar to the code of conduct that lobbyists must follow.
(0:02:58)	Tammy Bowers asked for clarification about how members comments and questions should be directed. Scott Strickland responded that the co-chairs would like to keep the informal nature of MLAC, but are hoping that questions or comments are directed through the co-chairs with follow-up questions and comments as opposed to addressing the speakers directly.
(0:04:33)	Patrick Priest shared an affirmation that Scott Strickland had drafted recognizing the group's difficult but important work.

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- (0:05:50) Cara Filsinger called the roll of members. Patrick Priest presented the minutes from the February 17, 2023 meeting. Scott Strickland shared he had submitted edits to the minutes shortly before the meeting began and shared those edits with the group. Lynn McNamara made a motion to approve the minutes as presented with Scott Strickland's edits included. Margaret Weddell seconded the motion. The motion passed with a voice vote of eight in favor, none in the opposition, two members excused (Matt Calzia and Marcy Grail).
- (0:10:23) Cara Filsinger shared that there was not a Workers' Compensation Board case law update at this time. Robert Pardington, Workers' Compensation Board, confirmed. Cara Filsinger also noted that there was no Workers' Compensation Division rulemaking update for this meeting as the division tries not to engage in rulemaking during the legislative session.
- (0:10:59) Cara Filsinger introduced Kelli Borushko, Information Technology and Research Section, Department of Consumer and Business Services, who shared the required annual update for the Workers' Benefit Fund [update](#) and [summary](#).
- (0:17:55) Scott Strickland asked if the decrease in the rate of claims was due to safer work environments or if they still occur but are handled outside of the workers' compensation system. Kelli Borushko answered that she believes that the reduced number of claims is due to the safer work environment.
- (0:20:15) Patrick Priest asked how reimbursements from the fund occur. Sally Coen, Workers' Compensation Division, explained that by statute, insurers are required to pay current benefit amounts and that on request the division reimburses the insurer for the eligible portion.
- (0:20:53) Sara Duckwall noted that the reserve is currently over double the mandated amount and asked if there was consideration given to lowering that rate. She asked whether excess funds are invested or what happens with them when they are in excess of the reserve. Kelli Borushko responded that the goal is to not drastically change assessment amounts to keep them steady regardless of the number of workers in the program. The excesses are kept in order to be prepared for any potential unknowns and avoid causing financial burden due to rate increases. Kelli Borushko noted that she can research what happens with the excess funds and report back at the next meeting. Patrick Priest thanked her and noted that he would be interested in hearing those answers as well.
- (0:23:55) Andrew Stolfi added that there is a previous slide that shows the history of fund balances, noting that the fund has not always been in such a robust position. He said that every year the agency undergoes an analysis to decide the rates. He confirmed Kelli Borushko's previous statement that DCBS would be happy to report more specifics at the next MLAC meeting.
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- (0:25:30) Scott Strickland added that he believes that Andrew Stolfi was discussing the yearly analysis that DCBS completes but he would also like more information at the next meeting.
- SB 418**
- (0:30:37) Cara Filsinger shared that a copy of the [proposed amendment](#) and [analysis](#) completed by the division was shared with MLAC members and posted to the MLAC webpage.
- (0:31:22) Joe Baessler, AFSCME, shared that the new -1 amendment to the bill would eliminate the four-hour requirement before time loss will be paid. He recognizes that there will be a cost to employers with this bill but noted that the goal is to remove the burden from employers. Joe Baessler noted that he had spoken to SAIF and has submitted an additional amendment that will delay the implementation date.
- (0:34:23) David Barenberg, SAIF, shared that they are working on completing an analysis on the impact of the bill from their perspective. He reiterated that the bill has been narrowed quite a bit. David Barenberg shared that there are three types of workers that would be affected by this bill: workers who are completely off work and receiving time-loss benefits, workers performing modified work with an open disabling claim, and workers performing regular work with an open disabling claim. SAIF looked at places where average weekly wage would be applied and broke that down to an average hourly wage; this turned out to approximately \$1.9 million per hour of leave. David Barenberg noted that complete information will be provided at the next meeting.
- (0:39:43) Scott Strickland asked what methodology was used to complete the analysis that SAIF used. David Barenberg shared that they took the number of appointments that were over four hours and multiplied it by the average weekly wage broken down into the hourly rate.
- (0:41:15) Tammy Bowers shared that as an employer, the policy that they use is having the workers work at least 6.5 hours on an appointment day to receive full wage. She asked if that could still occur under this legislation, and if there was any negotiation to change the requirement from four hours to zero hours, and suggested that two hours may be a good solution.
- (0:43:13) Joe Baessler responded that the change in the law would be minimal and that policies like the one that Tammy Bowers shared that should still be able to be used as long as they met the minimum requirements of the law. Joe Baessler also responded that while the change from a four-hour requirement to a zero hour requirement may seem drastic, his members are also making compromises in wages for injuries that they received on the job. He reiterated that it was hard for them to judge an employer's perspective on time away from work.
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- (0:44:48) Patrick Priest added that there was discussion between the co-chairs about the two-hour suggestion supported by management as opposed to a zero hour requirement . Tammy Bowers added that the numbers shared by David Barenberg seem quite staggering and that she wants to ensure that members receive their full benefits if they are eligible.
- (0:45:42) Lynn McNamara thanked Joe Baessler for taking MLAC’s concerns into account for the amendments. She noted that she still has concerns about the law as presented, including how overtime that the worker usually works would be handled and the impact of the emergency clause on implementation. Joe Baessler responded that he had spoken to SAIF and that the date of implementation will be changed via an additional amendment.
- (0:47:17) Patrick Priest asked Joe Baessler if there was anything else that AFSCME planned to address by amendment. Joe Baessler responded that at this time the implementation timeframe is the only thing that is going to be addressed.
- (0:48:19) David Barenberg, SAIF, thanked Joe Baessler for his willingness to work with SAIF on this legislation. He added that the implementation time frame adjustment was done to avoid conflict with the notice requirements for the ending of time-loss in legislation passed last session which takes effect January 1st.
- (0:49:23) Scott Strickland added that he would like to see the data that David Barenberg spoke about. He added that the lens that he looks at these issues through is that the cost of a dollar is very different for each party involved and he would like to see the numbers to better understand what those costs look like for workers.
- (0:51:31) David Barenberg, SAIF, responded that the report that he spoke about is imminent and that he expects to be able to share those numbers within the next few days.
- (0:51:58) Tammy Bowers and Patrick Priest thanked Joe Baessler and SAIF for working together to come together on this bill.
- (0:52:39) Patrick Priest noted that in the analysis that was completed by Workers’ Compensation Division said that the cost was ambiguous. Patrick Priest asked why this was noted as not knowable. Cara Filsinger responded that she believes that is because that is something that the insurers keep track of.
- (0:54:18) Lynn McNamara asked if there was a reason that the bill was not brought to MLAC sooner to enable more time for consideration. Joe Baessler responded that they are currently working on a lot of different bills. Additionally, he noted that MLAC’s role can be a bit difficult to understand for people outside of the workers’ compensation system.
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- (0:56:13) Sara Duckwall asked for clarification as to how overtime would be taken into consideration with this bill. Joe Baessler responded that he is not sure how overtime would affect things. Currently the law does not take effect until the worker has taken off more than four hours so he is not sure how that would calculate, but it does not seem like it would radically change things.
- (0:57:42) Dan Schmelling, SAIF, responded that they also have that question about how time loss would be paid for overtime.
- (0:59:19) Sara Duckwall commented that there is a cost associated with this action and that she would also like to see the data to fully understand the issue. She added support to Tammy Bowers' previous comments about hoping for a two-hour requirement as opposed to the zero hour requirement. Additionally, she was wondering if there are any paperwork requirements associated with this bill to ensure that employees are actually going to their appointments.
- (1:00:01) Joe Baessler responded that supporting documentation is not currently required and that adding to that requirement would be problematic.
- (1:01:20) Jill Fullerton asked how the data was gathered to understand how workers currently going to doctor appointments of less than four hours are being accounted for. Dave Barenberg, SAIF, responded they took the appointments that they are paying for and looked at the appointments that they are not paying for.
- (1:02:45) Patrick Priest noted that the meeting is running long on time and would like to move forward.
- (1:03:06) Tammy Bowers and Scott Strickland added that they would like to hear from the stakeholders currently raising their hands and asked that they provide testimony at our next meeting. Scott Strickland also encouraged stakeholders to provide testimony and submit via e-mail.
- HB 3412**
- (1:05:02) Taylor Sarman, Oregon Society of Physician Assistants, introduced House Bill 3412 which would change the current physician assistant status noting that a few amendments are being drafted to address a few other places in law that would be affected by a change in physician assistants' status.
- HB 3471**
- (1:07:02) Catie Theisen, AFL-CIO, thanked MLAC for its work and its consideration of non-compete and no rehire agreements in this bill. She noted that she heard agreement from both sides that this bill would be more appropriate in employment law and not workers' compensation law. Catie Theisen shared that she has spoken to Legislative Counsel and that this change has been made.
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invited anyone that is interested in providing any further input to do so through that forum.

HB 3467

- (1:08:44) Catie Theisen introduced the bill, sharing that the problems that they are trying to address are serious onsite injuries treated by onsite care providers that are not being reported to insurance providers. She continued that she would like to get data from insurers about this issue and noted that there is some data available from the state, but that data may be limited due to issues with workers being empowered to make those reports. Catie Theisen thanked SAIF for working with them and providing them information. Catie [shared information](#) about current rules and the bill.
- (1:18:58) Scott Strickland asked if there was information through WCD about how frequently this occurs, and if it is possible to get that information from SAIF or the insurers. Cara Filsinger answered that WCD does have [complaint information](#) that was shared with Catie Theisen and that they can share that information with MLAC as well. David Barenberg, SAIF, added they do not have information on things that were not reported but that they will share the information that they do have relating to the OSHA 300 logs.
- (1:21:28) Scott Strickland expanded his question, asking if there were major employers that may be able to provide input. Tammy Bowers shared that within her company they do keep data on OSHA 300 logs on certain things. Tammy Bowers noted that some of the companies that she works with have nurses or EMTs on site but that everyone has been keeping records, such as for bloodborne pathogens, which is fairly common. She reiterated that even though there are EMTs and nurses at some of the sites where her company has employees, it is always her employee's choice as to whom they are seen by.
- (1:25:32) Amber McMurry, Multnomah County, shared that she does not have data on this issue but does have concerns about the bill, specifically noting that the bill would require employers to file claims but does not give the option to accede to an employee's wishes to not file a claim, or to withdraw a claim.
- (1:27:23) Sara Duckwall thanked Catie Theisen for sharing the side by side on the screen and noted that there seemed to be a lot of similarities between the bill and the current statute, and that this seems to be an issue with enforcement. Sara Duckwall asked why the current mechanisms are not being examined about how current law can be better implemented. Sara Duckwall also noted that she does have concerns about employers having a role in the claim filing process. Catie Theisen asked for clarification about Sara's concerns about employers being involved in the claim filing process. Catie Theisen noted that the bill clarifies that an injury or accident would need to be reported. Sara Duckwall asked Patrick Priest if there were already a required five-day reporting window
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in place. Patrick Priest responded that he was unsure, but Jovanna Patrick may know.

- (1:30:51) Jovanna Patrick, Oregon Trial Lawyers Association, answered that the current rules are that an employer must notify their insurers within five days of the injury. Jovanna Patrick shared that this is not the part of the paper trail that she sees as missing, noting that there are a lot of reasons that workers may wait a few days to file a claim. Previously, there was a clear definition about when accidents and injuries with no claim occurred and this may be a good way to add some clarity back into that process.
- (1:38:01) Tammy Bowers asked about language on page 8, which says that employers must report incidents that may become a claim, noting that having to report incidents that do not ever evolve into claims would generate a large increase in volume. Catie Theisen responded that she is happy to take Tammy's concerns into consideration moving forward.
- (1:40:36) Lynn McNamara shared that she is hearing this statute actually addresses problems that can be solved through better enforcement, education, and rulemaking, noting that she would hate to add another statute to the books that may not be followed.
- (1:41:51) Patrick Priest asked WCD if they could do anything to assist in collecting the data that has been discussed.
- (1:42:27) Sally Coen, WCD, answered that they have complaint-driven data that the division has been compiled and will send that to MLAC for review.
- (1:43:30) Kate Suisman, Northwest Workers' Justice Project shared they do not practice workers' compensation law, but that they do often hear about these issues from individuals that they work with.
- (1:47:50) Sara Duckwall asked if there was data about the system of on-site care and noted that it seems like an enforcement issue.
- (1:48:01) Catie Theisen thanked Sara Duckwall for her comments and noted that she is also grappling with that issue and would like to hear more about the enforcement options from the division.
- (1:49:17) Jovanna Patrick added that the problem with enforcement at this point is that enforcement requires workers to be informed that they can report these issues and that with the onus being on the workers, they tend to fall through the cracks.

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- (1:50:43) Scott Strickland shared that he also sees the need to analyze this issue further and see how the burden of reporting can be shared or transferred to the employer.
- (1:53:16) Cara Filsinger asked for clarification about the data being requested. Scott Strickland responded that he would like any data that can help them understand the scope of this issue. Scott noted that it sounds like there is gap in the information that is being reported and that this bill seems to be a good way to bridge that gap, but that he would like to hear from management if there are any other suggestions as to how this information can be collected.
- (1:55:50) Sara Duckwall asked if it would be appropriate to form a work group around this issue as the MLAC workplan does have retaliation claims as one of its objectives. Patrick Priest responded that it does seem appropriate to him to form a work group around this issue. Scott Strickland responded that he feels that a work group around retaliation seems appropriate but worries that a work group about this bill specifically may be an issue of timeliness, as the deadline for this legislation is approaching.
- (1:57:55) Cate Theisen requested a “temperature check” on the main data that is needed for further discussion.
- (1:58:55) Patrick Priest noted that he would like to have seen this bill earlier to enable more time to collect data.
- (2:00:15) Lynn McNamara noted that SB 418 is slated to go to hearing and asked if there was anything additional that was needed from MLAC to meet the legislative requirements.
- (2:00:59) Cara Filsinger noted that because of the robust agenda ahead of MLAC she will be discussing extending meetings in the future to meet the looming legislative deadlines.
- (2:02:02) Patrick Priest asked for a motion to adjourn, Sara Duckwall moved to adjourn the meeting, Lynn McNamara seconded the motion. The motion passed.
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Meeting

Adjourned Patrick Priest 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>