

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting

June 8, 2023
10:00 a.m.-12:00 p.m.

Committee Members Present:

Patrick Priest, Citycounty Insurance Services
Scott Strickland, Sheet Metal Workers Local #16
Sara Duckwall, Duckwall Fruit
Ryan Hearn, Roseburg Forest Products
Margaret Weddell, Labor Representative (via zoom)
Tammy Bowers, May Trucking
Matt Calzia, Oregon Nurses Association
John McKenzie, JE Dunn Construction (via zoom)
Andrew Stolfi, DCBS Director, *ex officio*

Excused:

Jill Fullerton, Clackamas County Fire Department
Marcy Grail, IBEW Local 125

Staff:

Cara Filsinger, MLAC Committee Administrator
Teri Watson, MLAC Committee Administrator
Baaba Ampah, MLAC Assistant

Agenda Item	Discussion
Opening (00:00:00)	Patrick Priest opened the meeting at 10:00 a.m.
(00:00:26)	Cara Filsinger called the roll of members and quorum was confirmed. Sara Duckwall moved to approve the minutes from the May 12 th meeting. Ryan Hearn seconded the motion. All present members voted aye.
(00:01:51)	Andrew Stolfi and John McKenzie were present.
(00:02:06)	New member and staff introduction Patrick Priest introduced Ryan Hearn and praised him for being a wonderful addition to the Management Caucus. Ryan Hearn expressed his enthusiasm to be a part of MLAC and to advise on workers' compensation. Patrick Priest then welcomed Sarah Merrick, soon-to-be MLAC member from the City of Salem Fire Department. Sarah Merrick introduced herself and expressed her excitement to learn about a different side of how the state operates and to

advise on future labor and management conversations. Cara Filsinger clarified that Sarah Merrick's official membership confirmation is pending the Senate's approval.

- (00:04:05) Patrick Priest then recognized Cara Filsinger, MLAC committee administrator, for her excellent work in MLAC. This prompted a round of applause from everyone. Cara Filsinger introduced the new MLAC committee administrator, Teri Watson. Teri Watson introduced herself and explained that she will be coming next month after Cara Filsinger's departure.

Department Updates

Workers' Compensation Board (WCB) case law updates

- (00:06:03) Robert Pardington, WCB managing attorney, commented that he had no updates to share but he is available to clarify any questions. He stated that the next full MLAC update on cases is in early July, covering the three-month period ending in June.

Workers' Compensation Division (WCD) rulemaking update

- (00:06:36) Cara Filsinger reported that there are currently no rulemaking activities, but WCD is preparing for legislation implementation. She explained that there are two bills in progress and may not require rulemaking.

WCD follow-up information – return-to-work program data

- (00:07:07) Cara Filsinger reminded the group about the previous meeting's request for follow-up information on the effectiveness of the return-to-work programs. Matt West, WCD deputy administrator, presented the data from the [May 17 memo](#).

- (00:10:15) Scott Strickland asked about the large disparity between the Employer-at-Injury program, vocational programs, and Preferred Worker Program. Matt West answered that the Employer-at-Injury Program can be used for almost any claim, resulting in a higher number of workers using it with a regular work release. Also, the severity of the injury may lead to lower wage recovery. While the Preferred Worker Program requires qualification, and vocational programs require permanent restrictions preventing workers from returning to regular work. Matt West concluded that there are more significant barriers in the Preferred Worker Program and the vocational program compared to the Employer-at-Injury Program.

- (00:11:46) Scott Strickland followed up with a question, asking whether the 13 quarters are counted from the initial injury or the medically stationary date, and why 13 quarters was selected as a useful measure. Matt West clarified that 13 quarters is approximately 3 years, and most claims would be resolved within that timeframe. This would give a better sense of wage recovery and employment.

(00:12:48) Scott Strickland asked if there is data breakdown for resolved injuries, medically stationary injuries, and open claims. Matt West responded that he would take it back to the researchers and provide a response.

Matt West concluded his presentation.

2023 legislative session updates

(00:13:55) Cara Filsinger commented that SB 418 and HB 3412 passed and were signed by the governor. She continued that the bills are waiting for further action due to the current legislative session.

(00:14:38) Andrew Stolfi provided an update on the agency's budget, mentioning that there was a continuing resolution passed that would allow the agency to continue operating with all staff starting July 1, and will expire September 15. Andrew Stolfi highlighted that the governor prioritizes the budget and mentioned that there will be a special session, if necessary.

Committee workplan – member discussion and prioritization

66 and 2/3 Rule

(00:18:25) Scott Strickland expressed his interest in exploring the topic of the adequacy of the 66 and two-thirds rule for lower income workers as a wage replacement measure. He inquired if there is any data available to MLAC and whether any additional details are required to explore this topic. Scott Strickland clarified he is not suggesting immediate action from MLAC; however, he has heard stakeholders bring this issue up in the past.

(00:20:03) Sara Duckwall wondered if the topic falls under MLAC's purview to address and stated that it seems beyond the committee's scope. Tammy Bowers agreed and highlighted that exclusive remedy and the first aid bill that came before MLAC with opportunities for the committee to provide feedback. MLAC's responsibility is to explore a bill properly and then provide advice for bill authors. She shared that it should not be up to MLAC to address the 66 and two-thirds rule, and she feels that it adequately addresses workers' needs from what she has heard. Ryan Hearn agreed with Tammy Bowers' stance, stating that the national standard is close to that two-thirds calculation, and he sees no immediate need for MLAC to address it.

(00:22:00) Margaret Weddell questioned members about their concerns of the topic and emphasized that while MLAC was putting together their work plan, they made a commitment to be more proactive. Sara Duckwall responded that the workplan is already robust and she is uncertain about where any additional topic would fit in.

(00:23:37) Tammy Bowers stated that over the years, injured workers have expressed fears of discrimination if they file a claim, leading to various bills aimed at resolving

such issues. She explained the importance of an educational component in the workplan to address such concerns. Sara Duckwall commented that she believes the items on the workplan are proactive.

(00:24:35) Margaret Weddell stated that she found the two-thirds rule interesting, as she has heard it discussed by stakeholders, and it focuses on substantive benefits that affect workers. She noted that the work plan is only concentrated on processes, and members should be open to the substantive benefits that affect workers. Margaret Weddell observed that the committee would prefer examining workers' benefits through stakeholders rather than internally, and she respects that preference.

(00:25:27) Tammy Bowers sought clarification stating that she has never seen MLAC create a bill or create bill language on its own. Usually, MLAC would review and provide advice on presented bills. Cara Filsinger responded that on some occasions, MLAC takes the lead on certain topics at the request of the legislature. Andrew Stolfi also added that MLAC can request WCD to introduce legislation, with the governor's approval.

(00:27:23) Scott Strickland clarified that it was not his intent to draft a MLAC bill, but he had heard many stakeholders' express interest in this issue, and he was drawing from his experience as an injured worker. He wanted to examine the topic through the MLAC lens of fairness, its ability to encourage people to utilize workers' compensation as an exclusive remedy, and its equitability in providing benefits. Scott Strickland expressed his curiosity about obtaining data that could address the topic and its connection to access to care, retaliation, and other factors affecting the closure of premature claims due to inadequate benefits. Patrick Priest suggested saving the discussion on the current topic to investigate if there is any information available.

WCD concepts (SB 213 and SB 214)

(00:29:42) During the discussion, it was agreed that SB 213 and SB 214 should be removed from the MLAC workplan as both bills were brought forward without enough time for research.

Creating questions for proposed legislation/bill

(00:31:55) Sara Duckwall suggested that before a stakeholder brings a bill to MLAC, MLAC should provide them with requested information, so they are prepared during the discussion.

(00:33:00) Patrick Priest asked Cara Filsinger if there was a history of having a checklist or questions for proposed legislation. Cara Filsinger responded that MLAC usually asks questions on the spot. She continued that every bill and MLAC group is different, so if the current group wants to have a list of questions or checklist that they would like to know about legislation brought forward, the stakeholders would appreciate it. Cara Filsinger explained that the agency does

not know in advance when bills are presented to MLAC. In the past, a notice has been sent out to the MLAC stakeholders' list, asking for them to bring in concepts in advance. However, their participation in this process cannot be enforced.

(00:34:12) Tammy Bowers stated that she does not feel that it should be MLAC's responsibility to fix their bills and that MLAC should provide feedback for further revision of proposed bills. Patrick Priest agreed and expressed that the management side is interested in providing a checklist on what a bill should have before it is brought to MLAC. Scott Strickland responded that he would phrase it in broader outreach because in the past, stakeholders showed up without understanding the MLAC process. He suggested that during inactive legislative session, MLAC could do outreach to stakeholders to better explain the process. He highlighted that some stakeholders are prepared, so providing basic questions before a bill is brought forth will be helpful to stakeholders.

(00:36:33) Patrick Priest commented that in the past, some of the bills that MLAC have reviewed included a DCBS analysis. This would be a good starting point to determine some of the questions that could be asked. Matt Calzia commented that conceptualizing what the checklist would be is difficult, but having background for stakeholders could be a great start. Scott Strickland suggested recognizing examples of stakeholders who are prepared with information on their bills for MLAC and were able to have a thorough discussion versus stakeholders who were not prepared, would be a great start.

(00:38:45) Kristen Adams, Associated General Contractors, commented that it would be helpful to include questions about the proposal and the background. This will help streamline the process by avoiding unnecessary details that would not contribute to MLAC's assessment.

(00:39:35) Andrew Stolfi asked for clarification on Patrick Priest's earlier comment about the agency's bill review. Patrick Priest responded while the bill reviews are helpful, he does not always receive them. Andrew Stolfi explained that there is a template with questions to answer for each bill, which can serve as a helpful tool for stakeholders who bring their bill to MLAC. Patrick Priest suggested that MLAC look at those questions on the DCBS bill analysis to determine if it can be used as a template and require stakeholders to fill it out before presenting their bills to MLAC. Tammy Bowers also added that bills impact injured workers and businesses in Oregon differently, so information on the impact on Oregon injured workers and businesses should be added to the checklist. The MLAC committee members agreed to add creating guidelines/criteria for stakeholders before a bill is brought forth, unless it is emergent, to the workplan.

Workplan Topic: More discussion on time loss concepts

- (00:42:35) Sara Duckwall suggested deleting the bracketed language, “[on hold pending receipt of data from stakeholders and possible best practices document from Medical Advisory Committee], from the workplan. She also suggested replacing subcommittee examination and “sub-committee” to MLAC.
- (00:45:37) Patrick Priest mentioned open-ended time loss, in stating that MLAC could look at it again. Tammy Bowers mentioned that MLAC should wait until the bill’s wording is improved, allowing effective vetting.
- (00:47:58) Patrick Priest asked about the bill relating to DCBS housekeeping that was introduced and never came forward due to difficulties. Cara Filsinger responded that the issues are being resolved outside of MLAC, and that this does not require further attention.
- (00:48:55) Patrick Priest shifted the discussion to the prioritization of MLAC’s workplan. Scott Strickland mentioned workers’ access to, and understandability of information and intimidation/retaliation are intertwined and should be the highest priority for him, whereas the *66 and two-third rule is not a priority*. Tammy Bowers commented that intimidation/retaliation and workers’ access to and understandability of information are intertwined.

Workplan Topic: 801 form – QR code – easier access through smartphones

- (00:50:48) Tammy Bowers asked for more information on the QR code for the 801 form and brochure that workers receive. Sally Coen, WCD administrator, reported that stakeholders’ responses to issues had been received when WCD received other feedback on improving the understanding of the required notice language in the administrative rules. She said that WCD needs directions about where MLAC wants the QR code to point to. Sara Duckwall asked about the progress WCD has made in updating required notice language. Sally Coen commented that WCD’s project team is working with policy analysts and program areas on actual notice language. There will be an evaluation at the end of the legislative session on administrative rules that need to be updated and MLAC will receive the update. Tammy Bowers asked Sally Coen whether the required notice information encompasses the worker-friendly website and the QR code. Sally Coen answered that those are separate issues and that they chose items that they knew would need to go through administrative rulemaking for those notices. Sally Coen also explained that the worker-friendly website would not require rulemaking notices.
- (00:56:40) Tammy Bowers added that she would like to see the agency move quickly on the QR code. She then asked if there could be a QR code for different languages. The group asked if the QR code could have a landing page that leads to different languages. Sally Coen added that that is where the department will need direction from stakeholders to figure out what the landing page for the QR code should be. Further clarification will be needed for the QR codes.
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Tammy Bowers reiterated that the goal is for the webpage to be worker friendly and not intimidating to injured workers as well as accessible in several languages.

(00:58:40) Matt Calzia asked if the agency has done analysis from an equity standpoint such as readability and providing information in different languages. Sally Coen answered that it was built into the process for creating DCBS webpages.

Prioritization of the MLAC workplan

(00:59:21) Cara Filsinger clarified the prioritization of MLAC workplan stating that the required notice form, the 801 form, and the QR code are prioritized within the worker access category. Scott Strickland commented that the workplan sub-issues under the headings are intertwined. He is not opposed to prioritizing the ones that were discussed with the work that WCD has completed. Sara Duckwall pointed out that prioritizing the MLAC requested information document because stakeholders will bring forward information, legislative concepts or bills this fall.

(01:04:50) Scott Strickland suggested that it would be beneficial to include a five-minute video on the MLAC webpage, that includes interviews some lobby representatives, MLAC members, and staff, to give their perspectives on the process and help people understand how MLAC works. Tammy Bowers agreed, adding that when an email is sent out to stakeholders, it should include that link to the video and the MLAC legislative form checklist. Patrick Priest explained that everything doesn't need to be completed by September and that these tasks line up with the MLAC workplan.

(01:07:18) Elaine Schooler, SAIF Corporation, reported that SAIF's next step with open-ended time loss is to come to MLAC with proposed language to resume those discussions and see where they could come to an agreement between stakeholders and members. Patrick Priest thanked Elaine and asked what MLAC needs to act upon it. Tammy Bowers responded that MLAC needs the bill language and Matt Calzia responded that MLAC needs data regarding the issue. Scott Strickland added that it depends on the bill language, so once MLAC reviews the bill language, WCD's analysis, and data regarding the issue, then a larger conversation can take place with stakeholder engagement.

(01:11:15) Patrick Priest noted that there many requests for data and language, so is it possible to prepare some of these materials before a bill is brought forth. Cara Filsinger responded that WCD cannot analyze a bill without the bill language. She explained that they can do their best with concepts, but without the actual bill language the effort would be a hypothetical analysis at best. Tammy Bowers asked for clarification and Patrick Priest clarified that SAIF could provide the language early, WCD would provide their analysis, and then MLAC would review it before the bill is brought forward. Sara Duckwall commented that there is no need for bill language, MLAC is asking for a

standard template for stakeholders to prepare for MLAC to review information ahead of time. She commented that she would like to work on the template, and she loves the video idea from Scott Strickland.

- (01:14:05) The discussion pivoted back to the workplan. Tammy Bowers asked if MLAC members wanted to remove the last item from the workplan referring to MCOs. Sara Duckwall responded that it was taken off the list as a standalone item, and it was more of a communication piece. Scott Strickland expressed his concerns as once being an injured worker, that his care was interrupted, and he wants to make sure there are no communication issues with MCOs, and workers need to know their rights. Scott Strickland explained that he had issues with the process despite his extensive background. He concluded that he wants this point to be retained in the context of increasing workers' understanding.
- (01:16:35) Tammy Bowers suggested that MCOs could come in to share their standard communication language, so MLAC could resolve the issue quickly. Scott Strickland clarified that in his experience it was not the MCO itself that posed a problem; rather, the insurer who opted to enroll him in an MCO and disrupted his care. This disruption led to him engage in a dispute with the insurer for him to change to a different MCO to receive care. Scott Strickland reached the conclusion that the interruption, poor communication, and lack of training were the issues in this matter. Additionally, he emphasized that it is important that injured workers know their rights and information is easily accessible. Scott Strickland suggested measures such as checking the readability or providing QR codes to easily access important information. Scott Strickland also noted that if he hadn't been persistent and known his rights, he wouldn't have been able to continue his care. He hoped that this topic will be continued to be viewed and prioritized under MLAC's lens. Sara Duckwall commented that the language on the workplan could be adjusted to better suit the issue. Scott Strickland confirmed that MCO enrollment is a unique situation and there are different rights allowed to workers. Patrick Priest stated that receiving medical care is universal to every injured worker.
- (01:22:22) Tammy Bowers thanked Scott Strickland for sharing his experience. She then recognized Jeanette Decker, WCCA, and Dan Schmelling, SAIF Corporation, who educate claims adjusters and further explained that this could be a topic for continuing education credits for claims adjusters. Tammy Bowers then asked if the original letter from the MCO needed to be examined to be more user friendly. Scott Strickland responded that it is part of the solution but approaching it in a contextual way where workers' rights are provided at different checkpoints of the injured worker process and breaking it down in a user-friendly format. It would make it more accessible and easier to understand for workers going through the process. Sara Duckwall added that the worker-friendly website suggested flowcharts for better understanding. Tammy Bowers suggested continuing education credit seminars for claims adjusters.
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- (01:25:48) Jeanette Decker, WCCA, thanked Tammy Bowers for recognizing her. She then stated that she will bring the suggestions to the WCCA Board for educational seminars of claims adjusters to address the issue of injured workers' rights. Jeanette Decker suggested that in regard to training to everyone, it would be great to add it to the WCD/insurer website for injured workers because it takes more than a letter to take educate them.
- (01:26:57) Scott Strickland requested that the issue stay on the workplan for further discussion on the topic. Cara Filsinger asked for clarification that it is not the MCO communicating with the worker but rather what communications are sent to the worker about MCO enrollments. The group agreed.
- (01:27:26) Kate Suisman, Northwest Workers Justice Project, asked about training more broadly for claims adjusters. Her perspective was that there is training from the employer perspective, but she is unsure how much opportunity there is or representation for injured workers to share their perspective. Tammy Bowers shared that she has been getting continuation education credits for many years, and she has heard many injured workers speak at different events. She noted the different types of people invited to speak on a wide range of topics. Scott Strickland asked if there are diversity, equity, and inclusion (DEI) requirements and Tammy Bowers responded that she is not aware of a DEI requirement for claims adjuster continuing education. Kate Suisman thanked MLAC for the response and then offered to provide training to claim adjusters. Tammy Bowers advised Kate Suisman to reach out to Jeanette Decker from WCCA.
- (01:30:56) Tammy Bowers asked for more information about the "Ombuds Office – Retaliation of Safety and WC – Work has started" line item on the workplan. Cara Filsinger explained that the focus of the Ombuds office has become more expansive to include OSHA safety issues. At the time it was about the Ombuds office providing an update to MLAC. Tammy Bowers suggested that the Ombuds office provide a report to MLAC at some point in the future.
- (01:31:51) Cara Filsinger then restated the prioritization of MLAC's workplan. It was decided that the language about MCO agreement was adjusted. The topic of 66 and two-third was reframed as a need for data for continued discussion but as a lower priority. The group reached a consensus that instead of focusing solely on the 66th and two-thirds aspects of benefits, a comprehensive review of all worker benefits would be beneficial to ensure their adequacy concerning Labor and Management. Cara Filsinger confirmed moving priorities regarding the 801 form, worker-friendly website, and QR code higher on the workplan. Cara Filsinger will send out a revised version of the plan.
- (01:36:29) Patrick Priest asked if MLAC members would like in-person or virtual meetings. Sara Duckwall suggested designated in-person meetings. Scott Strickland commented that it is a good start to occasionally have in person meetings, however, he is unsure how feasible it is based on everyone's
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schedules. He continued that in-person meetings have provided better engagement, but he would want to preserve meetings online. Matt Calzia commented about finding the balance of in-person and virtual meetings. He mentioned that virtual meetings have made it easier for many people to engage in MLAC. Margaret Weddell suggested in-person meetings to be planned out in advance. Sara Duckwall suggested quarterly in-person meetings and Margret Weddell agreed. Tammy Bowers commented that they could pick the date for quarterly in-person meetings.

Upcoming meeting schedule check in – July 6 and August 3

- (01:39:54) The committee discussed the future meetings for July 6 and August 3. Cara Filsinger announced that she will send out a poll to determine the August meeting date. She continued that during the next meeting, Teri Watson will have a suggested schedule for 2024.
- (01:41:48) Tammy Bowers suggested that the first meeting on each quarter be in-person until the committee can make another determination. Cara Filsinger added she has heard that Thursdays works better, and others agreed.

Committee workplan – member discussion and prioritization

- (01:42:44) Tammy Bowers brought the workplan back into discussion. She stated that small employers are the ones that do not know as much about workers' compensation requirements. She called on SAIF and the Office of the Small Business Ombudsman to describe their educational efforts for small employers. Dan Schmelling, SAIF, responded that they do provide online resources to employers on how to file a claim and what the expectations are. They also offer quarterly policy holder training throughout the state, where they show the process of filing the claim and what the employers' expectation is. He continued that all that can be found on their website, SAIF.COM, where any policy holder in Oregon can sign up for those training courses. He added that because they are doing these trainings regularly, even if an employer does not have a policy through SAIF Corporation, all employers would be welcome.
- (01:44:57) Scott Strickland asked if employers must search out the information or is there outreach to new employers. Dan Schmelling responded that he would check with their policy holder services.
- (01:47:47) Barb Anderson, Ombuds for Oregon Workers, referring to the question for additional training for the claim's adjusters, stated that the Ombuds team is willing to provide in-person and virtual meetings on workers' rights and responsibilities, and the claims process to employers, workers, and claims adjusters. She continued that they have been to several different facilities and their office also employs bilingual workers.

(01:48:39) David Waki, Small Business Ombudsman, responded to Tammy Bowers' questions on training small employers about workers' compensation responsibilities and claims. He stated that there is no specific program since workers' compensation is a very complex subject and small businesses usually have other concerns about workers' compensation. He clarified that does not mean that the office shouldn't expand their outreach. David Waki continued that there are brochures that are shared with constituents, and partners within the Workers' Compensation Division that the office can refer employers to for training. Tammy Bowers asked if small businesses tend to be insured by SAIF or are self-insured. David Waki responded that the Small Business Ombudsman office does not work with self-insured employers and works with many businesses where SAIF is the policy holder. Tammy Bowers asked if the Ombudsman office would consider an informational flyer for small businesses referring them to SAIF's educational tools informing them to what to do in the case of an injury. David Waki responded that, although he has great respect for SAIF, he is not comfortable referring constituents to one insurer, but would prefer a generic sheet that refers to all insurers. He continued that the Workers' Compensation Division has good resources on their website.

(01:51:37) Scott Strickland added that the Small Business Ombudsman could add information for different check points in a business that could be helpful to employers and employees. Caitlin Breitbach, Small Business Ombudsman, echoed David Waki, stating currently there is not a lot of emphasis on that part of outreach; however, putting together a "do and don't" list for claims could be helpful. Currently, they do not get a lot of questions about claims, but rather about money and safety concerns. She continued that they would want to provide vague information, not centering on one insurer. Caitlin Breitbach stated that there is conversation during Oregon Workers' Compensation Review and Advisory Committee (ORAC) meetings making sure that insurers are processing things the same. David Waki commented that they receive complex questions about workers' compensation law. Sara Duckwall commented that being a small business is difficult when there are extra costs involved after a worker is injured, however, overall training would allow a small business to be successful. Caitlin Breitbach commented that they refer employers to the Employer-at-Injury Program to help them with the cost of those claims. There is sometimes animosity with small businesses feeling like a claim was not legitimate, so offering a buffer to help save them money with the Employer-at-Injury Program and the Preferred Worker Program is helpful.

(01:55:07) Tammy Bowers commented that it sounds like the animosity small employers are expressing could be retaliation and that is what the committee is trying to prevent. Caitlin Breitbach expressed that they do get questions on different aspects of the claims process and what the employer's rights are in certain situations. Tammy Bowers commented that employers are put in difficult situations during those scenarios.

(01:58:22) Patrick Priest thanked everyone for the great discussion and asked for any further discussion. There was no comment.

Meeting Patrick Priest adjourned the meeting at 11:59 a.m.
Adjourned

*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>