

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WORKERS' COMPENSATION REVIEW COMMITTEE

Thursday, September 5, 2019
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Dan Ruby, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Dan Ruby, Mary Adams, George Keiser; Senators JoNell A. Bakke, Dave Oehlke

Member absent: Senator Randy Burckhard

Others present: See [Appendix A](#)

Chairman Ruby called on the Legislative Council staff, to review the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#) and the memorandum entitled [Workers' Compensation Review Committee Background Memorandum](#).

REPORTS

At the request of Chairman Ruby, the Legislative Council staff reviewed the reports the committee is charged with receiving:

- A biennial report from Workforce Safety and Insurance (WSI) regarding compiled data relating to safety grants issued under North Dakota Century Code Chapter 65-03;
- A report on WSI's current rehabilitation services pilot programs;
- A report from WSI on the status, including a summary of findings and recommendations, of any current pilot programs and pilot programs completed within the previous 12 months; and
- Quarterly reports from the Office of Administrative Hearings (OAH) and WSI on statistical information regarding results under the case processing standards and policies.

The Legislative Council staff said the reports related to safety grants and rehabilitation services pilot programs typically have been received in the spring of the even-numbered year. He said the report related to a summary of findings and recommendations of any current pilot programs and pilot programs completed within the previous 12 months is a new report required by House Bill No. 1240 (2019). He said the Legislative Council staff will coordinate with WSI on when WSI will have the report ready for submission to the committee.

CLAIM REVIEW PROCESS

Chairman Ruby called on the Legislative Council staff to review the procedure and application forms used by the Workers' Compensation Review Committee during the 2017-18 interim. The Legislative Council staff distributed a copy of the application packet ([Appendix B](#)) used during the 2017-18 interim and a copy of the letter ([Appendix C](#)) sent to injured workers who had received a final determination regarding a North Dakota workers' compensation claim within the allotted time. He said the proposed application packet includes a cover letter explaining the application process and eligibility requirements, a copy of Section 54-35-22, a "Release of Information and Authorization" form, and a "Review Issue Summary" form.

It was moved by Representative Keiser, seconded by Senator Bakke, and carried on a voice vote that the application packet and accompanying letter be revised to:

- **Include the contact information of a WSI representative for questions relating to claim review eligibility and form completion;**
- **State no claim or work-related injury eligible for review is too small or insignificant;**
- **Be more user-friendly;**

- Replace "this issue or" with "the" in question two of Part 3 of the application; and
- Replace question three of Part 3 of the application with "What would you change about the process?".

It was moved by Representative Keiser, seconded by Senator Bakke, and carried on a roll call vote that the committee send the application packet to claimants who have received a final determination regarding a North Dakota workers' compensation claim and have either exhausted the administrative and judicial appeal process or the period for appeal has expired. Representatives Ruby, Adams, and Keiser and Senators Bakke and Oehlke voted "aye." No negative votes were cast.

WORKFORCE SAFETY AND INSURANCE OVERVIEW AND PERFORMANCE EVALUATION

Chairman Ruby called on Mr. Bryan Klipfel, Executive Director, Workforce Safety and Insurance, for a presentation ([Appendix D](#)) regarding the status of implementation of the 2018 *Workforce Safety and Insurance Performance Evaluation* and to provide an overview of WSI and WSI trends and initiatives.

In response to a question from Representative Keiser, Mr. Klipfel said the \$250 copay for early intervention has been in place since 2005 or 2007. He said when the waiving of the assessment was enacted, WSI experienced a tremendous increase in the number of claims reported on time, or within 24 hours of the injury occurring.

Representative Keiser said the \$250 copay is no longer the incentive it once was for employers. He said it is important for an injured worker to seek medical treatment for a work injury as early as possible. He said he recommends leaving the penalties as is, but increasing the copay to \$500 would get the attention of employers and employers would report and seek medical treatment in a timely fashion.

In response to a question from Senator Oehlke, Mr. Klipfel said 5 to 10 percent of farmers provide workers' compensation coverage for their employees. He said WSI had a big outreach to the rural community several years ago in an attempt to have more ranchers and farmers opt-in for workers' compensation coverage, but the outreach attempt did not result in a significant increase in ranchers and farmers signing up for the coverage. He said a majority of states, including North Dakota, do not require ranchers and farmers to have workers' compensation coverage for their employees.

In response to a question from Senator Oehlke, Mr. Nick Jolliffe, Director of Loss Control, Workforce Safety and Insurance, said WSI had a robust agricultural initiative about 3 years ago led by the Loss Control Department and coordinated with many of the agricultural associations within the state. He said part of the initiative was to make a concerted effort to ensure WSI was at every trade show that took place in North Dakota and WSI mailed pamphlets to agricultural trade magazines. He said WSI has continued with the agricultural initiative and WSI still attends all major agricultural trade shows within the state with the objective of better educating ranchers and farmers on the benefits of workers' compensation coverage.

In response to a question from Representative Adams, Mr. Timothy Wahlin, Chief of Injury Services, Workforce Safety and Insurance, said Section 65-01-02 lists the professions statutorily allowed to opt-out from workers' compensation coverage. He said the list includes realtors, ministers, and individuals delivering newspapers. He said the exempted professions automatically are out but may opt-in for workers' compensation coverage.

In response to a question from Senator Bakke, Mr. Klipfel said the amount of the premium paid by an employer correlates with the employer's field of work. He said the more hazardous the work, the higher the premium.

2019 LEGISLATIVE REVIEW

Chairman Ruby called on Ms. Jodi Bjornson, General Counsel, Workforce Safety and Insurance, and Ms. Anne Green, Staff Counsel, Workforce Safety and Insurance, for testimony ([Appendix E](#)) regarding 2019 legislation relating to the state's workers' compensation system.

In response to a question from Representative Keiser, Ms. Green said an uninsured subcontractor is precluded from conducting business in North Dakota. She said WSI has a system for notifying contractors who may be doing business with an uninsured subcontractor regarding the subcontractor's lack of insurance and notifies the contractor that the contractor may be liable for a civil penalty if the contractor does business with the uninsured subcontractor.

In response to a question from Senator Oehlke, Ms. Green said all WSI correspondence is mailed via the United States Postal Service.

In response to a question from Representative Keiser, Mr. Wahlin said House Bill No. 1063 (2019), relating to prescription opioid regulation, failed to pass. He said the bill would have enacted statutory controls on opioid medications and benzodiazepine medications. He said the bill would have set maximum morphine equivalents and set a cap of 90 morphine milligram equivalents of opioid medication per day. He said the bill also would have set a cap on the length of time benzodiazepine may be prescribed.

REPORTS

Chairman Ruby called on Mr. Timothy J. Dawson, Director, Office of Administrative Hearings, for testimony ([Appendix F](#)) regarding the results under the case processing standards and policies.

In response to a question from Representative Adams, Mr. Dawson said the number of cases OAH hears is lower than the number of cases filed with OAH because not all cases go to hearing. He said some cases settle, while other cases are withdrawn by one of the parties before the case is heard by an administrative law judge.

In response to a question from Chairman Ruby, Mr. Dawson said OAH does not hear cases from Job Service North Dakota. He said Job Service North Dakota statutorily can conduct its own hearings as does the Department of Transportation.

Chairman Ruby called on Ms. Bjornson for testimony ([Appendix G](#)) regarding the report submitted by OAH.

In response to a question from Chairman Ruby, Ms. Bjornson said the statistics presented by WSI of decisions and hearings held by OAH exclusively reflect employee cases. She said the statistics reported to the committee do not include employer cases.

Chairman Ruby said he would like the OAH quarterly report regarding results under the case processing standards and policies be a coordinated effort between WSI and OAH. He said a coordinated effort from the two agencies would aid the committee in ensuring no discrepancies are reflected in the numbers and results reported.

It was moved by Representative Keiser, seconded by Representative Adams, and carried on a voice vote that OAH and WSI work cooperatively in establishing goals, objectives, and reporting mechanisms for the case processing tracking and quarterly reporting requirement.

Chairman Ruby said the committee would like a representative from OAH to attend the committee's next meeting to provide the quarterly report regarding results under the case processing standards and policies, but at any subsequent committee meetings either WSI or OAH may provide the report as the report will be done in coordination between the two agencies. He said he would like to hear about the case processing tracking and report from both agencies only if there is a discrepancy between the agencies in the statistics reported or if the case processing tracking statistics reported reflect an unfavorable case processing outlook.

DUAL FILING

Chairman Ruby called on Mr. Randy Christianson, President, Beverage Wholesalers, Inc., for testimony ([Appendix H](#)) regarding the dual filing of workers' compensation claims.

Chairman Ruby called on Ms. Green, and Mr. Steve Novak, Senior Vice President, Trean Corporation, for testimony regarding dual filing of workers' compensation claims.

Ms. Green, who provided a proposed amendment to North Dakota Administrative Code Section 92-01-02-50 ([Appendix I](#)), said the case presented by Mr. Christianson is very unusual. She said the case is a first with the place of injury in North Dakota, the employer of the injured worker located in North Dakota, but the injured worker's spouse elected to file the claim for benefits outside the state. She said WSI's response to Reliance Transportation's journey through the claims process could have been better and, in retrospect, WSI has learned some important lessons on how to handle North Dakota employers better. She said from WSI's perspective, the most important change that resulted from this situation is the proposed administrative rule amendment that will address Mr. Christianson's particular set of facts.

Mr. Novak said WSI covers claims within North Dakota; however, issues arise when employers or their employees leave North Dakota for business purposes, such as for trade shows, sales calls, or service calls. He said from WSI's perspective, there is not any workers' compensation coverage when an employer or their employee leaves North Dakota. He said if an out-of-state injury claim comes back to North Dakota and the injured worker wants North Dakota benefits, WSI gladly will adjudicate that claim. He said if an out-of-state injury claim is filed in Illinois, for example, WSI has no authority or jurisdiction in Illinois to handle that claim. He said WSI has entered an agreement with an insurance carrier called Accident Fund. He said under the agreement, WSI reinsures Accident

Fund 100 percent on out-of-state exposures. He said the challenge with the facts presented by Mr. Christianson was the accident occurred in North Dakota. He said because Accident Fund is barred by statute from conducting business in North Dakota, Accident Fund could not respond because it was a North Dakota claim.

In response to a question from Chairman Ruby, Mr. Novak said if an injury happens in another state and a claim is filed in that state, WSI pays that state's workers' compensation benefits and not North Dakota's benefits.

In response to a question from Senator Oehlke, Ms. Green said if a farmer without workers' compensation coverage makes a delivery of grain in Minnesota and sustains an injury while in Minnesota, Minnesota could make a determination the farmer should have had coverage because the farmer had significant contact with Minnesota, thereby potentially subjecting the farmer to penalties and claim costs. She said alternatively, the farmer's employer's liability coverage would provide coverage because there is no requirement for farmers to have workers' compensation coverage in North Dakota. She said it is likely the farmer's regular employer's liability coverage would cover the injury and workers' compensation would never be triggered.

In response to a question from Representative Adams, Mr. Novak said it is likely the facts provided by Mr. Christianson that the Minnesota attorney told the injured worker's widow to file the claim in Minnesota because the death benefit in Minnesota was greater than North Dakota's benefits.

No further business appearing, Chairman Ruby adjourned the meeting at 2:05 p.m.

Christopher S. Joseph
Counsel

ATTACH:9