

Workers' Compensation Advisory Committee (WCAC) Meeting

Labor and Industries, Tumwater, WA

Meeting Notes

June 15, 2022

Videoconference

Business Representatives:

Bob Battles, Association of Washington Business
Sheri Call, Washington Trucking Association (via phone)
Jon DeVaney, Washington State Tree Fruit Association
Sheri Sundstrom, Washington Self-Insurers Associations

Labor Representatives:

Joe Kendo, Washington State Labor Council
Sean Embly, UFCW Local 21 (*not in attendance*)
Mark Riker, Washington State Labor Council
Brenda Wiest, Teamsters Local 117

Labor and Industries:

Joel Sacks, Director
Mike Ratko, Assistant Director for Insurance Services

Board of Industrial Insurance Appeals (BIIA):

Holly Kessler, Chair
Mark Jaffe, Acting Chief Judge

Court Reporter:

Connie Church, Capitol Pacific Reporting

Recorder:

Ashley Oberst (*present*)

Guests: Alex Woodward, Ali Ishaq, Angelique Guppy, Anna Minor, Autumn Music-Schmitz, Beth Vandehey, Bill Vasek, Brenda Heilman, Bret Jensen, Carolyn Logue, Celeste Monahan, Celia Nightingale, Cherell Fisher, Cheri Ward, Cherie Wagaman, Debra Hatzialexiou, Herbert Atienza, I. Hernandez, Ian Payne, J. Bowman, Jerry Bonagofsky, Jessica Gallardo, Jessica Nau, John Meier, Josh Ligosky, Julie White, Karen Jost, Kathy Petruzelli, Keith Bingham, Ken Nielsen, Kirsta Glenn, Knowrasa Patrick, Leigh Haley, Lisann Rolle, Marty Cohen, Matt Doumit, Michael Harris, Michelle O'Brien, Nichole Runnels, Rick Clyne, Rob Cotton, Rose Gundersen, Ryan Guppy, Sally Elliott, Sarah Battin, Sharon Perkins, Sheryl Divina, Tammy Fellin, Tiffany Loescher, Tom Kwieciak, Tyler Langford, Uriel Iniguez, Veronica Shakoto

Welcome and Safety Message: Mike Ratko, Joel Sacks, Sharon Perkins

The meeting began with a brief introduction of the agenda. The committee members introduced themselves and Mr. Ratko introduced Holly Kessler, the new Chair for the Board of Industrial Insurance Appeals (BIIA).

Mr. Kendo moved to approve the minutes from the September 2019, December 2019, June 2020, and September 2020 meetings. Mr. Battles seconded the motion and there was no opposition. The minutes were approved and will be posted.

Mr. Ratko introduced Sharon Perkins, the Digital Education Manager for the Department of Safety and Health (DOSH), who presented the safety message.

General Updates: Joel Sacks and Mike Ratko

Mr. Ratko gave an update on the current rulemaking activities. Based on advice from the Attorney General's office, the agency will be filing a CR-101 in July relating to the presumptive bills that passed in the 2021 legislative session, Engrossed Substitute Senate Bill (ESSB) 5115 and ESSB 5190. The new laws require the workers must provide "verification as required by Department rule," so the agency is working on rules in regards to the verification of the contraction of the infections or contagious disease associated with a public health emergency and the definition of "verification." LNI hopes to have the new rules in effect by early 2023.

Mr. Kendo asked what the initial steps of this process are and what the timeline is. **Mr. Ratko** responded that the CR-101 will be filed and after the filing, it will go through the public hearing process and working with stakeholders to determine what the rule language should be.

Mr. Ratko gave an update on implementing the legislation from the 2022 session. House Bill (HB) 2076 passed, which gives workers' compensation coverage to people who drive for transportation network companies (TNC), like Uber and Lyft. Starting January 1, 2023, TNCs will be charged the rate associated with taxi drivers. The bulk of the implementation for this bill is being done by Fraud Prevention and Labor Standards, which is a separate division from Insurance Services, and they are working on procuring a non-profit vendor to serve as a driver resource center, as well as conducting rulemaking activities regarding enforcement and recruiting a supervisor for the unit that will handle driver complaints. They are also working with the agency's technology team to ensure they are able to electronically accept complaints.

Mr. Battles expressed concerns about adhering to the Administrative Procedures Act (APA) and the rulemaking requirements for the CR-101, CR-102, and CR-103 and avoiding emergency rules unless absolutely necessary. Mr. Battles included that this applies to all legislation, not just HB 2076.

Mr. Ratko also let the group know that the agency is working on implementing Senate Bill (SB) 5890, which expanded the presumptive coverage to all exposed workers at radiological hazardous waste facilities, HB 1669, which offsets disability payments where workers compensation and Social Security benefits combined exceed 100 percent of the payment they should be receiving based on their average wage, HB 1902 which extends the effective date of reopening a claim to 120 days for situations in which the worker returns all required information and reopening application but the provider does not send their portion in a timely manner, SB 5701, which changes the way that inmate wages are calculated, and finally SB 5875, which includes certain frontline Department of Licensing (DOL) employees in the Health Emergency Labor Standards Act (HELISA).

Ms. Call asked about HB 1706, which grants restroom access for truck drivers and if implementation is required. **Mr. Sacks** responded that either he or Ms. Fellin would circle back with her on this.

Mr. Sacks informed the committee that the agency is currently working on implementing the supplemental budget that the legislature passed. The legislature funded LNI's proposal to create a permanent quality assurance group in the Return to Work program. They also approved changes to the budget for the Workers' Compensation System Modernization (WCSM) Project for the current year.

Mr. Sacks gave a brief update on the WCSM Project. Over the last year, the agency has engaged in an independent review of the project plan and received feedback on certain aspects. We are working very closely with WaTech, the agency that oversees all technology statewide, and Mr. Ratko, along with others, will be moving forward on reassessing the plan and looking at how we can be more incremental in our approach. The agency is also doing another review of what is happening in the workers' compensation industry and a new project director has been brought in.

Board of Industrial Insurance Appeals Update: Holly Kessler and Mark Jaffe

Mr. Jaffe talked through slides 8-13.

Insurance Services Dashboard: Mike Ratko

Mr. Ratko talked through slides 15-29.

Mr. Meier asked (via Zoom chat) if the data on slide 18 includes or excludes COVID-19 claims. **Mr. Ratko** responded that the data includes all claims.

Mr. Sacks asked the committee if the data on slide 19 aligns with what they are seeing and hearing from the people they represent. **Ms. Sundstrom** responded that the long-term disability numbers at Hoffman Construction have gone down dramatically. **Mr. Battles** responded that he has heard from fewer employers about injuries and workers' compensation. Both Ms. Sundstrom and Mr. Battles indicated that this drop may be related to changes in the work environment that have happened since the beginning of the pandemic.

Mr. Kendo asked if there is any update on COVID-19 claims in general and if the agency is seeing any trends with respect to workers being treated for long-term COVID-19. **Mr. Ratko** responded that a COVID-19 update was not prepared for this meeting, but it can be added to next quarter's meeting. He also added that it is a bit early to have data on long-term COVID-19 claims. **Ms. Heilman** concurred that it is too early for trends and that no two long-term COVID-19 claims appear to be alike at this point. **Ms. Ward** added that Claims Administration is not seeing a high volume of claims that are remaining open for long-COVID conditions, but monitoring is still taking place. **Mr. Kendo** added that he is interested in the COVID-19 impact by industry.

Meetings with Members: Mike Ratko

Mr. Ratko gave an overview of his individual meetings with the WCAC members that have taken place over the last three months and the themes that came out of those meetings, which are listed on slide 32.

Mr. Kendo thanked Mr. Ratko for taking the time to meet with the committee members. **Mr. Sacks** added that the invitation remains open to the committee members to have discussions with himself or Mr. Ratko about what they want to see in these meetings or ways they can be improved.

Hybrid Work Update: Kirsta Glenn and Brenda Heilman

Ms. Glenn talked through slides 34-40.

Ms. Heilman talked through slides 41-42.

Mr. Kendo asked if there have been any particular challenges onboarding new staff. **Ms. Heilman** responded that from what she has heard, it is going quite well. When the shift to remote work initially happened, there was a scramble to figure out what the onboarding process would look like, but Human Resources (HR) and Information Technology (IT) pulled together quickly and put processes in place. **Mr. Sacks** added that conversations are happening, specifically around training for Claim Managers, about what can be done to make the training more accommodating to remote work. Across the agency, conversations are happening about how to replicate informal learning that used to take place naturally.

Mr. Ratko thanked Ms. Glenn and Ms. Heilman for putting the presentation together.

Mr. Kendo added that he is curious about qualitative measures and feedback that the agency is receiving from people that we interact with and represent. He would like to know if there are common themes coming up that should be put on the radar of the committee so that they may continue to think about them as we continue to refine the long-term approach to working in a remote world. **Mr. Battles** added that he agrees with Mr. Kendo and would like to see qualitative data, if it is available, but he also has concerns about gathering the qualitative data because it could turn into quantitative data and be just another number to work for.

Mr. Sacks mentioned that the agency is also doing work around preventing burnout of employees

Equal Access Initiative: Uriel Iniguez and Angelique Guppy

Mr. Iniguez talked through slides 46-49 and 54-56.

Ms. Guppy talked through slides 50-53.

Mr. Sacks commented that one of the things the agency is focusing on across the board is outreach, including the most effective way to share information with workers and employers.

Industrial Insurance State Fund Financial Overview: Rachel Swanner

Ms. Swanner talked through slides 58-70.

Mr. Kendo asked if Ms. Swanner could contextualize the relative importance of the delta between the state fund and the industry forecast on slide 69. **Ms. Swanner** replied that in the last few years, the state fund has been over 100%, but now we are getting closer to the industry forecast.

Closing Comments: Mike Ratko and Joel Sacks

Mr. Ratko thanked the presenters for preparing and providing the presentations and the committee members for joining.

Mr. Sacks asked that if the committee has any requests for future topics to let him or Mr. Ratko know.

Meeting adjourned.