

Council on Worker's Compensation
Meeting Minutes
201 E. Washington Avenue, Madison, WI
GEF-1 Building, Room F305
Madison, Wisconsin
March 12, 2019

The Department of Workforce Development (DWD) provided public notice of the meeting under Wis. Stat. § 19.84.

Members present: Ms. Bloomingdale, Mr. Buchen, Mr. Fugina, Mr. Kent, Mr. Gunderson, Mr. Nettum, Mr. Peters (Chair), Mr. Reader, Ms. Thomas and Mr. Tindall

Excused: Ms. Frank, Ms. Johnson, Mr. Redman and Mr. Schwanda

Staff Present: Mr. Aiello, Ms. Brown, Mr. Dipko, Ms. Lake, Ms. McCormick, Mr. Moreth, Mr. O'Malley and Ms. Williams

1. **Call to Order/Introductions:** Mr. Peters convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 10:00 a.m. in accordance with Wisconsin's open meetings law. Members of the WCAC, the audience, and Worker's Compensation Division (WCD) staff introduced themselves.
2. **Approval of the Minutes:** A motion was made by Ms. Bloomingdale to approve the minutes of the December 11, 2018 meeting. Mr. Reader seconded the motion. The minutes were unanimously approved without correction.
3. **Presentations:** Mr. Justin T. Worrell, Senior Regulatory Policy Manager at TriNet discussed potential amendments to Chapter 102 which would allow small and mid-sized businesses the option of maintaining their own worker's compensation policy when partnering with a professional employer organization (PEO). Mr. Worrell explained that TriNet is a publically traded PEO that partners with small and mid-sized business in a number of states including Wisconsin to provide human resources services, such as payroll, employee benefits and risk and compliance services. Mr. Worrell requested the WCAC to consider an amendment to s. 102.315 (2), Wis. Stats., to allow small businesses that partner with a PEO to maintain worker's compensation insurance either through the PEO or on their own after entering into a PEO services agreement. Mr. Worrell presented some proposed language for the WCAC to consider. Mr. Worrell stated that Wisconsin's position on client-sponsored worker's compensation insurance inside of a PEO arrangement is an outlier when compared to the national landscape.
4. **Future Meetings & Cancellation Policy:** The WCAC members discussed whether a cancellation policy was necessary. Ms. Bloomingdale stated that the circumstances relating to cancellation of the February meeting were unusual due to the amount of snow in such a short period of time. She suggested that cancellations should be dealt with in a common sense manner. Mr. Reader concurred with Ms. Bloomingdale's assessment of the situation. Mr. Peters inquired as to whether scheduling WCAC meetings on the second Tuesday of every month was acceptable to everyone. Labor and Management representatives agreed with reserving the second Tuesday of each month but noted that some flexibility was needed. The tentative meeting date for April 2019 will need to be rescheduled.

- 5. Correspondence:** Mr. O'Malley reviewed the correspondence received since the last meeting.

A letter dated March 7, 2019 was received from Mr. Andrew Franken, President of the Wisconsin Insurance Alliance. Mr. Franken offered suggestions for statutory changes. He requested clarification of s. 102.49 (5) (b), Wis. Stats., as to whether or not the state treasury is entitled to death benefits when benefits are denied to an employee because of a violation of the employer's drug and alcohol use policy pursuant to s. 102.58, Wis. Stats. Mr. Franken's second proposal relates to payments due to the state treasury where there was a compensable death, but the deceased left no dependents. Mr. Franken expressed concern over the prepayment of benefits when there is no consideration given for present value. He proposed that a discount factor (interest credit) be used and applied to the annual payment of death benefits for the time period in which such benefits are paid. He also suggested that the insurance carrier be allowed the option of making one lump sum payment using the proper discount rate for present value considerations.

In his letter Mr. Franken also raised concerns over law firms experiencing difficulty obtaining billing statements from medical providers. Some medical providers are refusing to provide billing records to law firms stating that they are only required to provide the records to the insurance carrier. Mr. Franken requests amending the statute to include language referring to insurance carrier's representatives, such as nurse case managers and law firms and barring any medical provider from collection of fees if it refuses to release such billing statements.

- 6. Department Proposals:** Mr. O'Malley explained that the handout regarding these proposals contained both previously agreed on and new proposals. The previously approved proposals were highlighted in yellow. The first new proposal is Department Proposal 1, Option 1. Option 1 is the only one included in the executive budget proposal. Department Proposal 1 proposes the transfer of worker's compensation adjudicatory functions and staff from the Department of Administration, Division of Hearings and Appeals (DHA) back to the Department of Workforce Development, Division of Worker's Compensation (WCD). This proposal will resolve the confusion amongst stakeholders and staff regarding which agency is responsible for specific duties. The proposal is viewed as cost neutral as it advances lean government by reducing future costs, improving efficiencies and eliminating confusion for stakeholders and staff. If Option 1 does not advance, the Department will advance the other proposals listed to establish a further line of demarcation and establish statutory authority for the WCD and DHA to act.

Department Proposal 8 is new. Following the transfer of adjudicatory function, there remains considerable ambiguity and confusion about the division of regulatory duties between WCD and DHA. The purpose of this amendment is to establish the authority of the WCD to handle administrative matters in litigated cases up to the point the DHA issues a notice of hearing.

Department Proposal 9 provides a defined point at which adjudicatory functions cease. The current law does not address this issue, so the WCD needs statutory authority to define at what point litigation is ended and the DHA no longer has authority to take action in cases. The proposal would require the DHA to promptly return cases to the WCD after issuing an order on the merits of the case or an order approving a compromise agreement. WCD would be given the sole authority to close a case.

Department Proposal 12 requires the DHA to simultaneously provide WCD by electronic format any information, document or notice it provides to a party to a litigated case. This proposal is necessary in light of the electronic records project that is now underway at the WCD to ensure that there is a complete electronic file of documents that are submitted in a case.

Department Proposal 14 involves s. 102.17(4), Wis. Stats. This proposal would add language to the statute to clarify that the statute of limitations applies to all parties to a worker's compensation claim including employers, insurance companies, Uninsured Employers Fund (UEF) and Work Injury Supplemental Benefit Fund (WISBF). A couple of cases are now in litigation where employers filed hearing applications more than 15 years after the injuries occurred.

One additional proposal may be forthcoming relating to the UEF and its retention of private legal counsel to defend its claims.

7. Other Business: None

Adjournment: A motion was made by Ms. Bloomingdale to adjourn the meeting and for the Labor and Management members to go into closed caucus. The motion was seconded by Mr. Reader. The motion passed unanimously. The meeting was adjourned at approximately 11:12 a.m.

The Worker's Compensation Advisory Council's next meeting is scheduled for Tuesday, April 30, 2019.