

Council on Worker's Compensation
Meeting Minutes
125 S. Webster Street
GEF-3 Building, Room 227
Madison, Wisconsin
April 30, 2019

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

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

Excused: Mr. Redman and Mr. Schwanda

Staff Present: Ms. Brown, Mr. Dipko, Ms. Esser, Ms. Lake, Ms. McCormick, Ms. McGillivray, Mr. Moreth, Mr. O'Malley, Ms. Richard and Ms. Wakerhauser

- 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 March 12, 2019 meeting. Mr. Reader seconded the motion. The minutes were unanimously approved without correction.
- 3. Correspondence:** Mr. O'Malley stated that no correspondence had been received since the meeting on March 12, 2019.
- 4. Governor Evers' Executive Order #20:** Mr. Peters outlined Governor Evers' Executive Order #20 which requires the creation of a joint taskforce on payroll fraud and worker misclassification. This taskforce is comprised of representatives from the Department of Revenue, Department of Workforce Development, Department of Justice, Office of the Commissioner of Insurance and other agencies. The taskforce will be a vehicle for increasing fairness for Wisconsin's employees and employers relating to employee misclassification. Mr. Reader stated that the creation of this taskforce may also be an opportunity to align the independent contractor standards set forth in the Worker's Compensation Act and the Unemployment Insurance Act. Ms. Bloomingdale praised the establishment of the taskforce as it will put an end to abusive behaviors by employers and assist working people.
- 5. PTSD Legislation:** Senator Andre Jacques presented a preliminary draft of his proposed bill to amend the Worker's Compensation Act, Chapter 102, to change the conditions of liability for worker's compensation benefits for law enforcement officers and firefighters who are diagnosed with post-traumatic stress disorder (PTSD) without an accompanying physical injury. Senator Jacques discussed the greater dimensions test as set forth in the *School District No. 1 v. DIHLR* case and how that standard of proof is causing issues for public safety-first responders in obtaining the assistance needed when diagnosed with PTSD.

Mr. James Palmer, Executive Director of the Wisconsin Professional Police Association, spoke in support of the proposed bill. He noted that the Wisconsin Supreme Court decision in *School District No. 1 v. DILHR* was issued in 1974, some six years before PTSD was a recognized diagnosis by the American Psychiatric Association. He also spoke about the national and state-wide statistics pertaining to suicide rates of law enforcement officers. In 2017, there were 140 suicides of officers nationwide and in 2018, the number rose to 159. In Wisconsin, six officers committed suicide in 2017. Five officers committed suicide in 2018 and, in 2019, we have already experienced the loss of six officers to suicide in Wisconsin. Mr. Palmer briefly mentioned that from 2013-18, Minnesota had a law very similar to the one being proposed by Senator Jacque. He reiterated that police officers need an opportunity to obtain treatment for PTSD so that they may return to their chosen profession.

Mr. Mahlon Mitchell, President of the Professional Firefighters of Wisconsin, spoke about ensuring that firefighters are physically and mentally fit to withstand the rigors of the job. Firefighters must be at their best when responding to calls within the community. He noted that when he began his career 22 years ago, no one talked about PTSD because one would be considered unfit to be on the job. He discussed the increase in suicide rates amongst firefighters. In 2017, some 103 firefighters committed suicide nationwide. Mr. Mitchell recounted some of the most horrific calls that he has responded to in his 22 years as a firefighter. He has assisted with the removal of dead bodies from fires. In other instances, mangled, burnt and dismembered bodies must be removed from accident scenes. He noted that exposure to horrific events has a cumulative effect on firefighters and when people don't know where to turn for help, they sometimes believe suicide is the only option. He expressed his organization's support for the proposed bill.

Mr. Bernie Coughlin, President of the Wisconsin Chiefs of Police Association, stated that his organization is working to ensure that mental injuries without an accompanying physical trauma be covered under the Worker's Compensation Act. The greater dimensions standard is too high of a hurdle for police officers to overcome. Mr. Coughlin recounted several incidents that one police officer was exposed to over the course of a 10-year career and how those incidents impacted the officer. The officer responded to a car crash in which four teenagers were pinned inside of a car. The car became engulfed in flames and the teenagers could not be extricated from the car. The teenagers' shrieks continue to haunt the officer. Three years later, the same officer responded to a call where a 10-month-old infant was unresponsive. The officer provided care to the infant, but the infant's head grew to the size of a basketball. The officer later learned the infant's head had been repeatedly beaten against a coffee table. The officer had a child who was about the same age as the infant. A few years later, this same officer responded to the suicide of a 13-year-old girl. He sees images of her fixed eyes. The girl's suicide note was painful for him to report on. This officer also responded to a dog bite incident. A dog had mauled the face of a 7-year-old girl to the point she required 150 stitches. Due to these experiences, the officer came to the point where he was unable to sleep and had not slept in about a month. The officer was reluctant to report his situation but, he wanted assistance, so he could continue to work. Mr. Coughlin stated that everyone benefits from getting officers the help that they need, and he expressed his organization's support for the proposed bill.

Mr. Reader requested that the department work with the Wisconsin Compensation Rating Bureau (WCRB) for a financial analysis of the potential impact of this proposal on rates.

Mr. Kent inquired about how the proposed legislation would affect EMT staff. Mr. Mitchell indicated that many firefighters are also EMTs but stated that stand alone EMS providers were not included in the current draft.

6. **Department Proposals from DWD Office of Policy and Budget:** A handout was provided listing proposals recommended by the Department of Workforce Development (DWD) Office of Policy and Budget. Mr. O'Malley explained the additional proposals. The first proposal is to change the assessment assignment from subprogram 70 to subprogram 40 which is the current business practice. This change will not affect the amount of money needed by DWD for its operations.

The second proposal allows the Worker's Compensation Division to create a two-tenths position that can be combined with an existing eight-tenths position to create one full time position in the Bureau of Claims Management. This change will not affect the amount of money needed by DWD for its operations.

The third proposal would create a \$275,000 budget authority for appropriation 169 to restore the supplies and services budget line following the 2017 WI Act 59 creation of 5.0 SEG FTE positions without new budget authority. This change will not affect the amount of money needed by DWD for its operations.

Two additional proposals are dependent on the outcome of the 2019-21 Budget Bill introduced by Governor Evers. Mr. O'Malley explained that should 36.5 FTE positions be transferred from the Division of Hearings and Appeals to DWD, not all of the positions will be fully funded. It is estimated that \$46,300.00 would need to be added to the salary budget authority.

The second potential proposal requires that an adjustment be made from the supplies and services line to the salary and fringe benefit line. The purpose for this proposal is that funding for the Division of Hearings and Appeals to conduct workers compensation adjudicatory functions is made from the supplies and services line. No further assessments would be necessary to accomplish this accounting change.

7. **AB-116 Related to Abusive Work Environments:** Mr. O'Malley explained that AB-116 was recently introduced. This bill prohibits abusive work environments and creates a civil cause of action for individuals who are subjected to abusive work environments. It is similar to previously introduced bills. This bill provides a specific exception to the exclusive remedy provision under Chapter 102. The damages under this bill would be separate and distinct from the benefits in Chapter 102. The bill provides for a one-year time limit on filing this cause of action in the Circuit Court.

8. **Other Business:** None

Adjournment: A motion was made by Ms. Bloomingdale to adjourn to caucus and to adjourn directly after caucus. The motion was seconded by Mr. Reader. The motion passed unanimously. The meeting was adjourned at approximately 11:18 a.m.

The Worker's Compensation Advisory Council's next meeting is scheduled for Tuesday, May 14, 2019.