

Meeting Minutes: Workers' Compensation Advisory Council

Emergency meeting by telephone

Friday, March 20, 2020, 9 to 10:30 a.m.

RE: Minnesota Statutes §§ 13D.04 and 13D.021

Date: March 20, 2020

Minutes prepared by: Executive secretary to the Workers' Compensation Advisory Council

Attendance

Members attended

Colin Beere
Dennis Galligan
Jeff Horner
Doug Loon
Bill McCarthy
Ed Reynoso
Robert Ryan
Gary Thaden
Kevin Yakes

Legislative liaisons attended

Sen. Paul Utke
Rep. Mike Sundin

DLI staff members attended

Kate Berger
Brad Morse
Jessica Stimac

Visitors attended

Lauryn Schothorst, Minnesota Chamber

Call to order and roll call

Commissioner Nancy Leppink called the meeting to order at 9:05 a.m. A verbal roll call was taken and a quorum was present.

Agenda item

The commissioner began the meeting saying there is one item on the agenda. The attached legislative proposal addresses the COVID-19 pandemic. The Department of Labor and Industry (DLI) engaged leaders of both business and labor in drafting the legislation. In addition, several legislative members have weighed in about this proposal. The proposal has two parts.

The first part of the legislation deals with Work Comp Campus (the Workers' Compensation Modernization Program or WCMP) and allows some flexibility in terms of deadlines and contracts with vendors. Because of the pandemic, the project's user-testing and user-training on site will have to be modified. DLI is seeking to deploy

other methods for the testing and training. The purpose of the legislation is to allow DLI some flexibility in that goal.

The second part of the legislation deals with workers' compensation insurance and a presumption allowance for certain workers who contract COVID-19 during the course of their employment. Workers engaged in certain employment would be presumed to have a work-related disease if they contract COVID-19.

The first discussion was the Work Comp Campus modification proposal. The commissioner asked the leaders of each caucus to weigh in with their thoughts and then ask for others' opinions and suggestions.

Doug Loon said he thought it was a sensible idea for allowing Work Comp Campus to be flexible during this time. Bill McCarthy indicated that while he has not spoken specifically to each labor member concerning this, he felt it important that the project be flexible and supported this measure. He felt the extension of time for meeting deadlines is also a good idea.

The commissioner added there is some flexibility in the contract that allows for meeting the timelines. The training and testing will continue, but on a different platform. DLI will continue to look at ways to meet those challenges. The go-live date will be extended from August 2020 to, possibly, mid- to late-fall, depending on staffing levels of the vendors and other circumstances. She asked for other questions and comments.

There were no other questions from business and labor.

The commissioner asked if the members wanted to vote on this matter as a separate issue from the workers' compensation presumption matter. Loon suggested the WCAC move forward with this part of the proposal and take a vote; McCarthy agreed.

Loon made a motion to approve the Work Comp Campus proposal as presented and McCarthy seconded the motion. A verbal vote was taken and the proposal was approved by a unanimous vote.

The second part of the proposal is dealing with workers who are exposed to COVID-19 as a result of their work and develop the virus. The language change to Minnesota Statutes § 176.011, subdivision 15, is that specific workers will be presumed to have contracted the virus through their employment (line 26 to 35 of the attached proposal).

The commissioner asked for comments and questions. McCarthy said the language is in agreement with labor members, although they would like the date of the sunset clause changed to Dec. 31, 2021 (line 35).

Ed Reynoso wanted the language to also include employment in a health care setting in a state correctional facility.

Rep. Mike Sundin added that employees who work at two treatment facilities for the sexual offenders program at Moose Lake and St. Peter are Department of Health and Human Services employees, not correctional employees. They would also need to be included in this language.

Loon said a fundamental issue he has heard from health care providers and the insurance industry is that workers in these professions already have insurance coverage. The question the industry has is why this level of

coverage is necessary and why there is a need for the presumption allowance. Loon asked that his colleague, Lauryn Schothorst, speak to the issue.

Schothorst explained there are concerns in the business industry because COVID-19 is also community contracted. There is no certain method to determine if the virus is spread through a work setting or community setting because testing is not conclusive.

Sen. Paul Utke said he has concerns with the presumption language. He indicated his talks with the insurance federation also included their disagreement with including presumption allowances in the statute. He said medical professionals indicate that 80% to 90% of those who contract the virus will recover completely. He does not believe adding a presumption in the statute is the correct way to handle the issue.

McCarthy disagreed with that assessment and said this is needed to protect the workers on the front line of the virus. He supports the new language.

Gary Thaden said he believes there would now be two different standards for health care workers. Lines 18 through 24 of the attached statute now includes communicable and infectious diseases. There will be one provision that covers the existing standard and then there will be the presumption standard. He said any presumption in the language should include the employer's ability to rebut that presumption.

Loon reiterated he disagrees with the conclusive presumption language proposed.

Reynoso said the reality is front-line workers are at a higher risk of contracting COVID 19. They are not given a choice of whether to be exposed or not.

The commissioner said now that there is community spread of the virus, there is no way to be certain a health care worker contracted the disease from employment and not from community spread exposure. But the fact remains that because of the work they are doing right now, there is an urgent need to make certain they are protected by the law. There is a sunset clause proposed so the coverage would be limited in time. These workers would be able to get the care they need and get back to work to respond to the pandemic. A conclusive presumption would exist so if they prove they were exposed to COVID-19 it would expedite the coverage of workers' compensation. The purpose was to eliminate the dispute over where the worker was exposed to the disease.

Loon suggested a rebuttal presumption is a first step. In addition, he asked if they can look at other states and determine what actions they have taken to include presumptions. Kate Berger, DLI Office of General Counsel, was asked to weigh in. She said she is not aware of what other states have done so far with this issue.

The commissioner said the WCAC is not prepared to vote on this proposal today. The takeaway today is the department will follow up with the health care industry, health care workers, labor leaders and business leaders. We need to discuss the issues that have been raised and look at some of the results of any reporting of the virus' spread so far. We will adjourn for the day and not put this provision forth for a vote. After engaging in further conversation with both caucuses and the industries affected, she will convene another emergency meeting, possibly next week. Loon and McCarthy agreed with this assessment.

The commissioner also said she will communicate to the governor and Legislature that the Work Comp Campus provision of the proposal will go forward to the Legislature. The presumption language of the proposal will not go forward at present. The labor caucus asked that the commissioner note that labor members are in favor of going forward with the presumption language. The current position of the business caucus for this provision is not to move forward. The business caucus would like more time to work with its members before supporting a new proposal.

Adjournment

The commissioner adjourned the meeting at 10:10 a.m.

Respectfully submitted,
Executive secretary