

From: Reynold Nesiba <Reynold.Nesiba@sdlegislature.gov>
Sent: Thursday, July 14, 2022 9:20 AM
To: Mulder, Amber <Amber.Mulder@state.sd.us>
Cc: Nesiba, Reynold <Reynold.Nesiba@sdlegislature.gov>
Subject: [EXT] nesiba workers comp comments

Amber Mulder,

Please share this missive and the two related attachments with the council. These will be my opening comments. I do not want technical difficulties to hinder my testimony.

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Workers' Compensation Advisory Council:

I am here today to ask you to initiate a change in SDCL 62-7-10. I formally request that the legislature adopt the change I proposed in SB 70 (link here: <https://sdlegislature.gov/Session/Bill/22565>) from the 2022 legislative session. Sen. Schoenbeck a member of the Senate Commerce and Energy Committee which heard this bill suggested during our January 11, 2022 hearing that it should first go through your advisory council. This will modify the amount of time a worker has to report an injury for purposes of workers' compensation. This could change the requirement from the current "three business days" after its occurrence to "30 calendar days."

SDCL 62-7-10, which states, "An employee who claims compensation for an injury shall immediately, or as soon thereafter as practical, notify the employer of the occurrence of the injury. Written notice of the injury shall be provided to the employer no later than three business days after its occurrence," has been amended only once since its enactment in 1939.

From 1939 through 1994, the law stated, "Every injured employee or his representative shall immediately upon the occurrence of an injury or as soon thereafter as practicable give or cause to be given to the employer written notice of the injury . . . ; but no compensation shall be payable unless written notice is given within thirty days after the occurrence or the injury or death unless reasonable excuse is made to the satisfaction of the Commissioner for not giving such notice." So for about 55 years, SD allowed for thirty days to provide written notice.

During the 1994 session, 62-7-10 was completely replaced with the language that exists there now, including the three days' notice requirement. A review of news articles from the time—See attached Terry Wooster in the Argus Leader February 7, 1994—notes that the proposal from Governor Walter Dale Miller initially suggested "a reduction from 30 days to 10 days in the amount of time a worker has to report an injury." It must have been further amended in the process to end up at our current 3 business days rather than that proposed by Governor Miller.

According to my LRC staff who helped with research and drafting of SB 30, South Dakota is an outlier. It appears there are at least 32 states that allow for written notice of an accident to be provided to an employer within 30 days or more. For example, in New Hampshire, "Claims for benefits under this chapter shall be barred unless notice of injury is given to the employer within 2 years from the date of the injury[.]" N.H. Rev. Stat. § 281-A:19. Most of those states with the 30 day or longer reporting requirement (18 from my count) have chosen 30 days.

Only one other state, Wyoming, requires written notice within three days. Six states, Vermont, West Virginia, Nebraska, Massachusetts, Kentucky, and Hawaii, require notice “as soon as practicable,” which places the burden on the employee to prove notice could not have been provided sooner. Connecticut requires notice “immediately,” but still allows for claims to proceed with the threat of reduced compensation. Colorado recently amended its worker’s comp statute to allow for ten days’ notice after occurrence of an injury rather than four days’ notice. CO St. § 8–43–102.

There are other proponents who like to speak to this request to extend South Dakota’s injury notification standard from 3 business days to 30 calendar days. I will remain online to answer questions and to make a few closing comments.

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PS: I have also attached Ms. Nativig’s detailed, thoughtful, and persuasive comments. Please read those. I have attempted to avoid any duplication.

Reynold F. Nesiba
State Senator District 15
802 S. Willow Ave.
Sioux Falls, SD 57104
reynold.nesiba@sdlegislature.gov
(605) 371-6311