

RECEIVED

JUL 15 2024

LABOR & REGULATION
OFFICE OF SECRETARY

July 12, 2024

Dear Workers' Compensation Advisory Council Members:

I am writing in support of Senator Nesiba's proposal to increase the number of days allowed workers to file a workers' compensation claim in South Dakota to ten business days.

My input is based on managing hundreds of workers' compensation claims during 30 years' work experience as an occupational health nurse, employed by six Fortune 500 companies, both union and non-union, in different types of manufacturing, at sites ranging from 200 to 3000 employees, across three states.

I first remind the council that the State's priority should be to ensure that employees whose injuries or illnesses are caused by work receive the benefits they are entitled to under the state's workers' compensation statutes, not to deny them benefits due by means of an unfairly short reporting period. Expanding the reporting period to 10 business days, if not longer, would help protect workers' from being unfairly denied their benefits. The current three-day time limit on injury reporting can serve to unjustly disenfranchise employees who would otherwise be entitled to workers' compensation benefits.

South Dakota has the shortest reporting period in the nation at three business days. Nine states designate ASAP. Colorado's period is four days (but allows some flexibility – I know, I worked there eight years for Hewlett-Packard and Agilent Technologies). Alabama's is five. Other states range from seven days (Nevada and ND) to two years (New Hampshire). Sixteen states and the District of Columbia have set the period at 30 days (Alaska, California, DC, Florida, Georgia, Indiana, Louisiana, Maine, Mississippi, Montana, New York, North Carolina, Oklahoma, Rhode Island, Texas, Virginia, and Wisconsin). Iowa and Oregon (I was employed in both states) have reporting periods of 90 days, and Iowa has a WC claim filing period of two years. Minnesota allows up to 180 days.

I assure you that I'm not naive about employees filing fraudulent workers' compensation claims and the common belief that a longer reporting time period allows employees to more easily file false claims for injuries that occur outside of work. Employers are responsible to have accident reporting policies and investigation procedures in place to address these issues as they arise.

Following are some valid reasons for employees to delay reporting beyond the current three-day limit:

- Non-existent or inadequate training of employees by their employer regarding occupational injury/illness reporting. This is especially true in work places where many employees don't speak English as a first language and where employee turnover is high. Employees simply don't know who they are supposed to tell when they are injured at work and what the reporting deadline is.
- Employees may not recognize the work-relatedness of a disorder.

- Some injuries and illnesses do not become evident right away; onset of illness may not occur until days, months or even years after exposure.
- Some injuries and illnesses are not accurately diagnosed right away.
- The medical condition is recognized and diagnosed, but the causal relationship to the employee's occupation is not realized or acknowledged by the health care provider or the employee or, more commonly, the employer.
- Particularly in the case of occupational illnesses, the medical work-up may take a number of weeks to be completed to establish a diagnosis and to determine causation.
- The organizational culture of the workplace discourages reporting incidents and/or filing claims. This is especially common in companies that have safety record contests between departments or different company plants. Some companies assign blame and take punitive action against employees who report injuries and file claims.

Here are some examples relevant to South Dakota:

- Where language barriers exist, employees may not understand training on injury reporting, or they may fail to inform the correct person in time when they experience an injury. Forty languages are spoken at the Smithfield plant in Sioux Falls.
- Employees who are immigrants (whether working illegally or legally with work visas and green cards) fail to report due to fears of being terminated and deported. SD has a high number of immigrants working in construction, landscaping, roofing, meat packing and agriculture industries, among others.
- Repetitive strain/repetitive motion injuries (common in meat processing, warehouse and packaging operations, both types of companies located in Sioux Falls) typically occur over time and their cause may not immediately be clear.
- Occupational respiratory conditions likewise develop over periods of years. Chronic respiratory diseases including rhinitis, asthma, chronic bronchitis, hypersensitivity pneumonitis, COPD, and organic dust toxic syndrome are increasingly common and often unrecognized among workers in confined animal feeding operations and dairies that are expanding in South Dakota. Accurate diagnoses and determining causation are unlikely to occur within three days.
- Occupational skin conditions are the most prevalent work-related illness. There is no occupation or industry without potential exposure to the diverse agents that cause allergic and irritant dermatitis, yet determining cause and effect often requires an allergist or dermatologist knowledgeable in occupational medicine or environmental toxicology and willing to get to the root cause, and an employer willing to provide worksite Material Data Sheets or samples, or allow workplace environmental testing.
- As avian influenza runs rampant through poultry and dairy operations, SD should expect more cases of work-caused avian influenza, which likely will not be diagnosed within the current three-day reporting period.

Extending the reporting period to 30 days would bring South Dakota into alignment with the most common reporting time limit among the U.S. states; but given that you have previously

rejected 30 days, I think increasing the period to 10 business days is a reasonable first step toward a statute that is fairer to employees.

Employees should be protected from having valid workers' compensation claims denied due to extremely short time constraints for reporting, and they should not be forced to hire attorneys to defend their valid claims. Such are evidence of failures of the workers' compensation system.

I urge you to support increasing the time for an employee to report an injury to their employer for which they intend to file a workers' compensation claim from three business days to at least 10 business days. Changing the statute would not impact employers' policies requiring prompt injury reporting, but it would serve to protect employees from having their rights to workers' compensation benefits unfairly denied. Thank you for allowing my input.

Regards,

A handwritten signature in cursive script that reads "Julia Natvig". The signature is written in black ink and is positioned above the typed name and address.

Julia Natvig, former RN (retired), former COHN-S, MS community health education
4909 S Graystone Ave, Unit 4, Sioux Falls, SD 57108