

September 24, 2009

Secretary of Labor Pamela S. Roberts
700 Governors Drive
Pierre, SD 57501

Dear Ms. Roberts,

I am writing to offer a continuation of comments on issues we began to address with the Workers' Compensation Advisory Council following the death of our son, Brian, who died as a result of a construction accident in 2007. My wife, Carol, and I had planned to attend the September 29th meeting via the DDN site in Rapid City. However, my mother has become critically ill and our participating in the meeting will be dictated by her outcome. Therefore, in the event we are unable to attend the meeting, we wish to offer this letter as our testimony before the Council.

First, let me offer our thanks to the Council for the work done last year, which resulted in the amount to be reimbursed to families for funeral expenses being raised from \$5000 to \$7500. The fact that it passed the legislature with such overwhelming support is, we believe, indicative of the fact that the change was timely, reasonable and necessary.

As you know, when we first came to the Council, we had several matters of concern – among which being the reimbursement for funeral expenses. While our issues are most directly related to instances in which the worker is killed or critically injured as a result of work-related activity (and cannot speak or make decisions for him or herself), some of these points may obviously apply to workers themselves. The remaining matters are:

- To mandate licensing and training for Workers' Compensation Representatives doing business in the State of South Dakota to assure they are knowledgeable of the laws and benefits legally available AND NOT available in South Dakota to workers, and dependent and non-dependent family members of the worker ,
- To develop a State Department of Labor approved information brochure or document **to be provided to family members of deceased or critically injured workers at the time of first contact by the Workers' Compensation Representative.** This document should be written in layman's terms and should clearly outline what should and should not be expected for payments and reimbursements to the worker and/or family for expenses incurred by the family while they had to be with the injured worker upon being hospitalized, while recovering or, in the case of a death, to deal with the burial and settling of the estate. **It should also include** the fact that, unless the death or injury of the worker was caused by a **willful act** on the part of the employer, the family should not expect any other recourse for payments other than what is legally mandated of workers' comp by state statutes. Further, it should be clearly written that in those instances neither the employer nor Workers' Comp can be subjected to any lawsuit filed by the worker or surviving family members with the intent of receiving compensatory and punitive damages from the employer.

- To have the Advisory Council, or some appropriate entity, initiate future discussions to research what possible, suitable source may be developed to provide reasonable compensation to families who must deal with the matters addressed above.

As we have mentioned in the past, proposing changes and developing recommendations to facilitate those changes is more clear-cut for some issues (such as the funeral expense reimbursement) than others. Therefore, we would hope that, while all three of our remaining concerns continue to be open to active discussion, the licensing/training for workers' compensation representatives and the development of the information document be given serious consideration for 2010.

The last point will obviously require more ground work to first identify whether it is even reasonable to offer some form of reimbursements and, if so, what revenue sources are most appropriate for consideration. This may be one of those topics in which the proverbial "thinking outside the box" may apply and it is doubtful that anything can be developed in time for the 2010 legislative session. I have thought long and hard on this matter and, frankly, I end up with more questions than answers. Obviously, being aware of only a small portion of the inner workings of workers' comp, the answer may be more apparent to the professionals. We would like to suggest that this matter be a goal for 2011.

Therefore, to reiterate, at this point, my family feels that getting a law passed to requiring workers' comp representatives to be trained and licensed is key toward assuring accountability within the system. In concert with the training/licensing, also mandating that a worker's family members are provided with written material when they first meet or talk to a workers' comp representative will hopefully reduce the instances of inaccurate or misconceived information being given to them. There will then be documentation and state-approved information available for reference by families as they deal with their loved one's situation. Some of the information may be difficult to present to the families (such as the absence of reimbursement for expenses - especially to non-dependent family members) but at least the family will know where they stand and they can make decisions based upon true, valid information rather than to learn later that what they were told was not accurate.

As a quick note, it has been noted in the past that the Department of Labor's website has information similar to that which we have suggested being put in the proposed written document. It has also been mentioned that the website could be considered the source of information for the family at the time they are dealing with a work-related injury or death of a family member. However, our concern is that when someone is dealing with a crisis - especially during those first several hours at the hospital when the family wants and needs many questions answered - the website likely isn't a place they are going to go for information. Trust us, when we were there, that was the farthest thing from our mind.

Frankly, we weren't even aware of the website. And we submit that many other people are not either since the common person probably hasn't had a need to deal with this type of matter in the past. Therefore, to have something presented to them in writing could be more valuable and useable initially. The website should certainly be mentioned in the brochure for later reference when the family is beginning to sort through matters after the crisis has either subsided or they are dealing with the personal affairs of their loved one. However, something for the family to actually look at when they are being talked to would be helpful for the family and representatives alike.

Again, thank you for your time. Should you have any questions please do not hesitate to contact us.

Sincerely,

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