

**Meeting Minutes**  
**WORKERS' COMPENSATION ADVISORY COUNCIL**

Missouri River Plaza, Sharpe Conference Room  
123 W. Missouri Ave., Pierre  
and  
via Microsoft Teams Video Conference Call  
July 14, 2022, 10:00 a.m. CDT

The meeting was called to order at 10:02 a.m. CDT by Chairman Scott Stern. Darcy Sorenson took roll call. A quorum was met.

**Members Present:** Randy Stainbrook, Brooke Bohnenkamp, Jason Dodson, Marcia Hultman, Kate Lukkes, Kory Rawstern, and Chairman Scott Stern. Jesse Smith appeared via Teams Video Conference call.

**Members Absent:** Guy Bender and Russ Hohn

**Others Present:** Amber Mulder, Darcy Sorenson, Sarah Petrik, Doug Abraham, Tony Dorschner, Greg DeRynck and Dan Nelson. Also, present via Teams Video Conference call were Micki Slykhuis, Justin G. Smith, Shawn Stricker, Representative Linda Duba, Nancy Turbak, Jason Pieper, Charlie Larson, Lynn Job, Debra Owen, Deb Mortenson, Senator Reynold F. Nesiba, Eric Ollila, B.J. Motley, Laura Hensley, Isabel Hernandez, Mustafa Kalombo, Kristi Holm, Jennifer Andrisen Selezler

Chairman Stern asked for a motion to approve the minutes of the Nov, 17, 2021, meeting. Council member Rawstern moved to approve. Council member Bohnenkamp seconded. **MOTION CARRIED** by 6-0 roll call vote.

Chairman Stern explained the procedure for the Public Comment section of the agenda and then opened the floor to Public Comment, allowing Nancy Turbak to speak.

Ms. Turbak of Turbak Law spoke about her proposal to reform South Dakota law to prevent nurse case managers from communicating secretly with injured workers' medical providers. Ms. Turbak explained nurse case managers are to have a neutral relationship with the employee and believes that over the years it has shifted to become very closely aligned with the employer and insurer. Ms. Turbak emphasized the employee needs to be included in all communication, both written and oral with any medical provider regarding questions of compensability, causation, or entitlement to workers' compensation benefits.

Chairman Stern then opened the floor to those who wanted to speak as a proponent of Ms. Turbak's proposal. Mustafa Kalombo of UFCW Local 304A Union addressed the Council and explained he represents Smithfield Foods, Inc. workers. The company employs people who speak many different languages in the workplace. Ms. Turbak's proposed language is how they try to do this already. He agrees the proposed language by Ms. Turbak is what needs to be in effect.

Following proponent comments, Council member Dodson asked Ms. Turbak if she knew of other states that had this language. She did not know.

The floor was then opened to those who wanted to speak in opposition to the proposal.

Doug Abraham of May Adam Gerdes and Thompson, LLP Law spoke in opposition to the proposed language stating the proposal is unworkable, and the change would cause more problems. He went on to state that nurse case managers need to be able to contact medical

providers to verify the treatment an employee is getting is necessary for the specific injury and not another injury. This change would bog down the system if the employee had to be included in all phone calls. He concluded the organizations he represents would encourage the council not to approve this change.

Ms. Turbak was offered an opportunity to rebut and stated the employee just wants to be courtesy copied or conferenced in on a phone call.

Council member Rawstern asked Mr. Abraham how many cases we see in the state in a year and how many employees do not have representation. Mr. Abraham responded he did not know that answer.

Council member Rawstern then asked Ms. Turbak how many employees have attorneys and if this going to hamper things going forward. Ms. Turbak stated she did not have those statistics but opined that most do not have representation. Turbak also stressed that the proposed language does not say all communication at all times, but all communication, both written and oral with any medical provider regarding questions of compensability, causation, or entitlement to workers' compensation benefits.

Council member Jessie Smith asked Mr. Abraham about the overly broad language and what other unintended consequences would this bring. Mr. Abraham responded that it is hard to know at this point.

Chairman Sterns read the proposed language which states; A case management services provider operating pursuant to SDCL 58-20-24 or 62-5-21 shall include the employee in all communications, both written and oral, with any medical provider regarding questions of compensability, causation, or entitlement to workers' compensations benefits. Several members stated the board needed to take more time to research this proposal and Chairman Stern agreed.

During the Public Meeting section of the agenda, Senator Reynold Nesiba addressed the committee to present his proposal to change the required reporting time of a workers' compensation injury from three days to 30 days. Senator Nesiba shared that from 1939 through 1994 state law required that injured worker report their injury to their employer within 30 days.

Senator Nesiba also included a letter from Ms. Julie Natvig in support of his proposal.

The floor was then opened for proponents of Senator Nesiba's proposal to speak. BJ Motley with UFCW Local 304A Union spoke saying that not all employees can report within three days as they may be in the hospital.

Mr. Kalombo also spoke in support of Senator Nesiba's proposal stating that employees do not always know the process and sometimes do not realize the extent of an injury within three days of its occurrence. Mr. Kalombo also spoke in support of Senator Nesiba's proposal stating that employees do not always know the process and sometimes do not realize the extent of an injury within three days of its occurrence. He further stated that supervisors often do not take the report seriously until the employee misses work due to the injury.

Eric Ollila of the South Dakota State Employees Organization stated that the bill was well researched and follows what other states are doing.

In opposition, Mr. Abraham stated concerns about employee safety and fraud. He further stated that pursuant to case law, it is three days from when the employee has reasonable knowledge there is an injury. He ended by saying if employers have employees who do not know the process, employers need to educate them.

Senator Nesiba rebutted by stating that workers want to report injuries, but many do not know how

to report them. He pointed out the language barrier is an issue since Smithfield Foods, Inc. employees speak more than 15 different languages, but workers' compensation laws are not translated into all of those languages. He further stated he believes the three-day rule is discouraging workers from coming forward.

Mr. Kalombo again expressed support for the change and agrees the language barrier is stopping employees from reporting within three days.

Mr. Motley responded that employers also need to educate employees and signs need to be in more languages besides English and Spanish.

The Council then discussed, with Chairman Stern asking whether state law required the Department to post the laws in different languages. Director Mulder responded that state law does not require the Department to post anything.

Mr. DeRynck with the South Dakota State University (SDSU) OSHA Consultation office said OSHA requires that employers communicate with employees in understandable language regarding workplace safety and health.

Council member Smith asked Senator Nesiba how the three-day reporting requirement discourages employees from reporting to which Senator Nesiba stated employees are told that the requirement is three days so if they notice the injury after that, they just don't report the injury.

Chairman Stern asked the council if they wished to act. Council member Stainbrook spoke saying he agreed three days is not enough time to report and made a motion to support Senator Nesiba's bill, seconded by Kory Rawstern. Council member Bohnenkamp asked for some clarification regarding the bill and what the council would be doing, to which Chairman Stern stated with Randy's motion we would be voting to endorse the bill.

Council member Dodson stated the bill is too broad, and that 30 days is too much time. Council member Stainbrook stated that he was on the committee when they changed it from 30 to three days for reporting and it was a shock to both employees and employers. Council member Dodson made a motion to amend the bill from 30 days to seven days to report. Council member Lukkes seconded the motion. **MOTION FAILED** 2-4 with a roll call vote and one abstaining.

The council then debated the 30-day reporting time.

A vote was taken on the Motion to support Senator Nesiba's bill. **MOTION FAILED** with a 2-4 roll call vote and one abstaining.

Mr. DeRynck of SDSU gave a presentation on the OSHA Consultation program from the Engineering Extension which is available to employers to improve workplace safety. Mr. DeRynck provided a recap of the activities they did in FY 21, which included 147 on-site visits, 110 personal exposure air samples, 157 personal exposure noise studies, and 36 direct readings for carbon monoxide.

Mr. DeRynck stated most of the work they currently do is on the I-29 corridor, and he would like to expand to other areas since their service is free and beneficial to employers. Along with expanding the area they serve; they want to raise awareness in the state so more people know they are here and what they do.

Department of Labor and Regulation (DLR) Labor and Management Director Amber Mulder provided the Director's update Mulder stated the Department brought no legislation impacting workers' compensation during the 2022 legislation session, however, SB 70, An Act to modify the

amount of time to report an injury for workers' compensation, would have impacted the program. This legislation would have changed the requirement for an employee to provide written notice of an injury from three business days to 30 days after its occurrence. This bill failed to make it out of the Senate Commerce and Energy Committee.

Although they would not have directly impacted this program, two other Senate Bills were introduced concerning workers' compensation and worker safety. These bills were SB 92, An Act to require that taxpayer-funded pool arrangements providing workers' compensation coverage demonstrate financial stability, reliable management, and fair pricing, and SB 145, An Act to provide protection and workplace safety for meat and poultry processing workers. Neither bill made it out of the Senate Commerce and Energy Committee. She also stated there was a moderate decrease in claim frequency for the latest year.

Since the last Council meeting, Mulder said there has been one workers' compensation case ruled on in the South Dakota Supreme Court. In *Dittman v. Rapid City School District and Dakota Truck Underwriters*, the Court affirmed the Department on two issues and reversed and remanded the grant of summary judgment on a third issue related to compensation for treatment from an out-of-network provider.

Chairman Stern suggested waiting to schedule the next meeting until the Department can perform some research on the item brought by Ms. Turbak. Council agreed to wait to set the next meeting date.

The meeting was adjourned at 12:18 p.m. CDT.