

**South Dakota Department of Labor and Regulation
Workers' Compensation Advisory Council
2015 Annual Report**

This document serves as the report of meetings, discussions, and recommendations of the Workers' Compensation Advisory Council, pursuant to SDCL 62-2-10. Council members include Lt. Governor Matt Michels (chair), Guy Bender, Jeff Haase, Connie Halverson, Carol Hinderaker, Tom Huegel, Randy Stainbrook, Kory Rawstern, and nonvoting member Department of Labor and Regulation (DLR) Secretary Marcia Hultman. The report is available to any interested person or groups and can be found on the DLR website at dlr.sd.gov.

South Dakota's base premium rates for workers' compensation insurance for July 1, 2015 – June 30, 2016 decreased an average of 8.9 percent in the voluntary market, with a 15-point "swing" up and down (a maximum increase of 6.1 percent or decrease of 23.9 percent). The involuntary or "assigned-risk" rates decreased by 8.4 percent (the swing would be a 6.6 percent increase to a 23.4 percent decrease). These base rates do not factor in "experience-modification" adjustments, which change some individual employers' premium rates based on injury claims.

Council action for 2015 began at the July 28, 2015, meeting. The Council received the DLR Division of Labor and Management's report about the state of the system. The Supreme Court decision in the case of *Wheeler v. Cinna Bakers* was discussed. The Court held the average weekly wage statutes will allow for aggregating an employee's wages from all concurrent employments in which the injured employee was engaged at the time of injury. This also included when the injury at one employment renders the worker incapable of performing that employee's other concurrently held employments.

The Council held its second meeting on October 29, 2015. Director James Marsh gave a presentation on workers' compensation basics and the implications of the *Wheeler* decision. The Council discussed possible legislation for addressing the *Wheeler* decision, agreeing any legislation should address these key points: 1) earnings aggregation should not be allowed for any claims preceding May 6, 2015, the date the *Wheeler* case was decided; 2) if aggregation is allowed prospectively, the degree to which earnings from teachers and seasonal employees should be excluded if those employees are not actively working on the date of injury; 3) the process by which records from concurrent employers will be produced, with the Council favoring making employers responsible for producing such records; 4) preventing insurers from including concurrent earnings in an employer's payroll calculations when premiums are being calculated; 5) excluding earnings associated with federal employment laws from being aggregated; and 6) the Council reporting on the cost impact of aggregation after three years with a recommendation for continuing, revising, or repealing the legislation.

The Council held its third meeting via conference call on December 10, 2015. Director Marsh shared the National Council on Compensation Insurance (NCCI) 2015 Medical

Data Report and the South Dakota State University's Engineering Extension office report on its Occupational Safety and Health Act inspections.

Submitted documents and Council minutes will be available on DLR's website at <http://dlr.sd.gov/workerscomp/advisorycouncil.aspx>.

Respectfully submitted on December 31, 2015, by the Workers' Compensation Advisory Council.