

WORKERS' COMPENSATION REVIEW COMMITTEE - BACKGROUND MEMORANDUM

INTRODUCTION

North Dakota Century Code (NDCC) Section 54-35-22 (attached as an appendix) provides for the creation of the Workers' Compensation Review Committee. This committee differs from the typical Legislative Council interim committee in its membership, statutory creation, and study charge. However, Section 54-35-22 provides the committee shall operate according to the laws and procedures governing the operation of other Legislative Council interim committees.

Under NDCC Section 54-35-22, the membership of the six-member committee is determined as follows: two members of the Senate who are appointed by the majority leader of the Senate, one member of the Senate who is appointed by the minority leader of the Senate, two members of the House of Representatives who are appointed by the majority leader of the House of Representatives, and one member of the House of Representatives who is appointed by the minority leader of the House of Representatives. The chairman of the Legislative Council designates the chairman of the committee.

House Bill No. 1523 (2005) created NDCC Section 54-35-22. Section 54-35-22 became effective August 1, 2005, and remains in effect through July 31, 2007, resulting in a statutory interim committee that is limited in duration to the 2005-06 interim. Additionally, the committee is required to meet once each calendar quarter unless the committee chairman determines a meeting that quarter is not necessary because there is no claim to review.

The committee is charged with reviewing workers' compensation claims brought to the committee for the purpose of determining whether changes should be made to the workers' compensation laws. The committee has not been charged with any additional studies. As part of the review, NDCC Section 54-35-22 provides that the committee shall accept testimony of an injured worker and of a representative designated by the injured worker and shall then request that Workforce Safety and Insurance provide testimony.

RELATED STUDIES AND REPORTS

2005-06 Interim

Although the Workers' Compensation Review Committee is the only interim committee specifically charged with studying a workers' compensation-related issue, the following committees will receive audits and reports from Workforce Safety and Insurance during the 2005-06 interim:

Legislative Audit and Fiscal Review Committee

- Receives annual reports from the director of Workforce Safety and Insurance and the chairman of the Workforce Safety and Insurance Board of Directors, according to NDCC Section 65-02-03.3; and
- Receives a report from the director of Workforce Safety and Insurance, chairman of the Workforce Safety and Insurance Board of Directors; and auditor regarding the biennial performance audit of Workforce Safety and Insurance, under Section 65-02-30.

Budget Section

- Receives biennial report from Workforce Safety and Insurance on all revenues deposited in and expenditures from the building maintenance account of the Workforce Safety and Insurance fund, under Section 65-02-05.1; and
- Receives periodic reports from Workforce Safety and Insurance and the Risk Management Division of the Office of Management and Budget on the success of a single workers' compensation account for state entities covered by Chapter 32-12.2, under Section 65-04-03.1.

Industry, Business, and Labor Committee

- Receives safety audit of the Roughrider Industries work program and performance audit of the program of modified workers' compensation coverage, under Section 65-06.2-09.

2003-04 Interim

The Legislative Council chairman directed the Commerce Committee to receive a report from Workforce Safety and Insurance regarding the 2004 rate increase proposed by Workforce Safety and Insurance and projections for future rate assignments. The committee did not recommend any bill in response to the report.

House Concurrent Resolution No. 3050 (2003) would have provided for a study of the equity of the current system for awarding workers' compensation death benefits and the feasibility and desirability of creating a death benefit investment system. This study was not given priority.

2001-02 Interim

House Concurrent Resolution No. 3064 (2001) would have provided for a study of workers'

compensation fraud by employers, employees, attorneys, health care providers, and rehabilitation service providers in order to identify the financial impact of such fraud on the North Dakota workers' compensation fund, the most appropriate method of addressing such fraud, and the cost of addressing such fraud. This study was not given priority.

1999-2000 Interim

Section 3 of House Bill No. 1422 (1999) provided for the Legislative Council to receive a report from the Workers Compensation Bureau regarding recommendations from the bureau's study of the awards provided to injured employees with permanent impairments caused by compensable work injuries. The interim Commerce and Labor Committee received this report and did not recommend any bill in response to the information received.

Section 5 of Senate Bill No. 2214 (1999) provided for the Legislative Council to receive a report from the Workers Compensation Bureau regarding the recommendations from the bureau's study of the benefits available to persons receiving long-term disability or death benefits from the bureau. The Commerce and Labor Committee received this report and did not recommend any bill in response to the information received.

1995-96 Interim

Section 3 of Senate Bill No. 2403 (1995) provided for a Legislative Council study of the feasibility and desirability of the Workers Compensation Bureau establishing a system through which injured workers whose disability benefits cease upon reaching retirement age under 1995 House Bill No. 1228 would receive a pension or an annuity in lieu of further disability benefits and review the different methods through which the pension or annuity would be established and paid, who would be responsible for administering the pension or annuity, and to which injured workers the pension or annuity would be paid. The Commerce Committee performed this study and did not recommend any bill regarding this study.

1993-94 Interim

Section 12 of Senate Bill No. 2200 (1993) provided for a Legislative Council study of the feasibility and desirability of replacing the workers' compensation permanent partial impairment benefit system with a permanent partial disability system and of requiring that the medical basis for certifying disability be established by medical evidence supported by objective medical findings and study the impact of consortium awards on third-party subrogation settlements and cases. The Workers' Compensation Committee performed this study and did not recommend any bill regarding this study.

Senate Concurrent Resolution No. 4038 (1993) provided for a Legislative Council study of the

workers' compensation system, including the cost and delivery of medical care, the cost of rehabilitation, legal fees, previous legislation, premium structure, alternate insurance concepts and the impact on the fund of those concepts, administration and staffing of the bureau, the number of injured workers receiving social services benefits, and employer and employee fraud. The Workers' Compensation Committee performed this study and did not recommend any bill regarding this study.

LEGISLATIVE BACKGROUND

There is typically a significant number of legislative measures addressing the topic of workers' compensation introduced each legislative session. The following table indicates the number of all bills and the number of workers' compensation-related bills introduced in recent legislative sessions and the outcome of those bills. The table is based upon the data included under the Workforce Safety and Insurance, Workers Compensation Bureau, and workers' compensation subject index portions of the *Final Bill Status Report* and the data included under the *North Dakota Legislative Assembly Summary of Bills and Resolutions Introduced and Passed* for each of the last seven legislative sessions:

Legislative Session	Workers' Compensation		All Subjects	
	Bills Introduced/ Bills Passed by Both Houses	Percentage of Bills Passed by Both Houses	Bills Introduced/ Bills Passed by Both Houses	Percentage of Bills Passed by Both Houses
2005	30/16	53.33%	944/615	65.15%
2003	17/9	52.94%	933/576	61.74%
2001	26/13	50.00%	936/587	62.71%
1999	24/15	62.50%	937/562	59.98%
1997	30/23	76.67%	881/554	62.88%
1995	40/30	75.00%	1,041/632	60.71%
1993	46/23	50.00%	1,063/649	61.05%

*These figures do not include resolutions and do not take into account whether a bill was signed by the Governor.

WORKERS' COMPENSATION SYSTEM BACKGROUND

Each state has its own laws addressing workers' compensation. The United States Department of Labor reports that every state except New Jersey and Texas provide for a compulsory workers' compensation system. Although each state's workers' compensation system appears to be unique to that state's needs, there are similarities between systems and areas of frequent comparison. Common comparisons of state workers' compensation systems include how the state's workers' compensation system is organized or delivered, the types and amounts of benefits provided under the state's system, who is covered under the state's system, and the method for appealing determinations.

The state laws addressing workers' compensation in North Dakota are primarily found in NDCC Title 65. The administrative rules adopted by Workforce Safety and Insurance are found in Title 92 of the North Dakota Administrative Code. Additionally, Article X, Section 12, of the Constitution of North Dakota specifically addresses the state's workers' compensation agency, essentially providing for a constitutional continuing appropriation to the workmen's compensation fund for the purpose of paying workers' compensation benefits.

Benefit Delivery System

There are several different systems or structures through which the states provide for workers' compensation coverage. Workers' compensation delivery systems include the:

- Monopolistic, state, or exclusive system through which workers' compensation is only available through a state-run fund. North Dakota, Ohio, Washington, West Virginia, and Wyoming appear to have monopolistic delivery systems for workers' compensation; however, Ohio is in the process of phasing to a mutual insurance company, which will eventually allow for competition from private carriers.
- Voluntary or private market system through which workers' compensation is available through private insurers.
- Competitive or mixed market system through which government-run funds compete with private insurers. Arizona, California, Colorado, Idaho, Maryland, Michigan, Minnesota, Montana, Nevada, New York, Oklahoma, Oregon, Pennsylvania, and Ohio appear to have this mixed market delivery system.
- Self-insurance system through which an employer is allowed to pay workers' compensation costs directly if the employer meets specified requirements. Generally, this option is only available to large employers.
- Assigned risk pool or insurer of last resort. States typically have a mechanism for providing workers' compensation coverage for employers that cannot get coverage elsewhere. In most areas, this coverage comes in the form of an assigned risk pool that acts as the workers' compensation insurer of last resort.

Benefits

North Dakota's workers' compensation coverage of injured workers can be broken down into seven different classes of benefits (see www.workforcesafety.com/workers/typesofbenefits.asp).

1. Medical benefits;
2. Wage replacement benefits, of which there are three types:
 - a. Temporary total disability (TTD);

- b. Temporary partial disability (TPD); and
- c. Permanent total disability (PTD);
3. Permanent partial impairment (PPI) benefits;
4. Return-to-work services, which may include:
 - a. Services provided by an onsite return-to-work case manager;
 - b. Services provided by a medical case manager;
 - c. Vocational rehabilitation services; and
 - d. The preferred worker program;
5. Reimbursement for personal expenses;
6. Reimbursement for home health care; and
7. Death benefits.

Related to the different classes of benefits the states may provide for, is the amount of benefit paid, method of payment, and maximum period of payment. The United States Department of Labor annually compiles data regarding the states' workers' compensation systems and benefits (see www.dol.gov/esa/regs/statutes/owcp/stwclaw/stwclaw.htm). Although this data may be helpful to compare and contrast benefits, because each state's system is unique, it is important to ensure comparisons being made are between like items.

Coverage and Appeals

Each state's workers' compensation law provides for the scope of coverage under the state's workers' compensation system. Some states provide a coverage exemption based upon the employer's status, such as an employer that employs fewer than a statutorily specified number of employees, and some states provide a coverage exemption based upon the employee's status, such as exempting agricultural workers or domestic service workers. Typically, failure of an employer to participate in a required workers' compensation system results in issuance of a penalty against the employer and failure of an employee to meet the requirements for coverage results in a determination denying coverage. Although most states provide an administrative system to contest or appeal a penalty or unfavorable determination, the system to contest varies from state to state.

STUDY APPROACH

The Workers' Compensation Review Committee is required to meet once each calendar quarter unless the committee chairman determines a meeting for that quarter is not necessary because there has not been any claim brought to the committee to review. Assuming there is a qualified claim brought to the committee each quarter, the committee will be required to hold five meetings, with a meeting in both the third and fourth quarters of 2005 and in the first, second, and third quarters of 2006.

In order to determine whether to schedule a meeting, the committee may need to establish an application procedure through which an injured worker can

submit a request to have a workers' compensation claim reviewed by the committee. In the case of a deceased injured worker, the committee may wish to consider whether to allow the injured worker's beneficiary to submit a request for committee review. As part of the application, it may be helpful to have the injured worker specify the specific issue the injured worker wishes to have the committee review. At a minimum, in order to have a case reviewed:

1. The individual bringing the claim to the committee must be an injured worker;
2. The Workforce Safety and Insurance determination on the claim must be final;
3. The injured worker must have either exhausted the administrative and judicial appeals process or the period for appeal must have expired; and
4. The injured worker needs to sign a release of information for constituent authorization to allow the committee and Legislative Council staff to review the injured worker's Workforce Safety and Insurance records and to allow the committee members and Workforce

Safety and Insurance representatives to discuss the records in an interim committee hearing.

The committee may wish to set deadlines for each quarter by which time an injured worker must submit to the committee the necessary information in order to be considered to have a claim reviewed during that quarter. Upon receipt of a qualified request, the committee may wish to review relevant information before the committee hearing at which the claim is reviewed.

In reviewing claims, the committee may find it helpful to distinguish between claims for which the injured worker and Workforce Safety and Insurance disputed the facts and claims for which the facts were not disputed but existing law or policy resulted in an undesirable outcome. It is possible that for certain claims, only a small portion of that injured worker's Workforce Safety and Insurance record would be relevant to the issue brought before the committee for review.

ATTACH:1