

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
November 13, 2019**

Members Present

Dave Anderson, Chairman
James Arnold
Richard Burleigh
Brad Cederblom
Dr. Paul Collins
Dane Higdem
Joe Maloney
Shellie Martin
Mike McPeek
Darin Monroe
Mike Shuey
Brad Stoddard
Ex-Officio: Senator Jim Patrick
Ex-Officio: Representative Scott Syme

Members Absent

Ray Anchustegui
Craig Mello
Brian Whitlock

Industrial Commission

Thomas P. Baskin, Chairman
Aaron White, Commissioner
Thomas E. Limbaugh, Commissioner
Mindy Montgomery, Director
Kamerron Monroe, Secretary

Opening Remarks and Introductions:

Chairman David Anderson opened the meeting at 9:01 a.m. and led with introductions. Mr. Anderson reminded attendees to sign in. Mr. Anderson next requested introductions of Committee members and public attendees.

Minutes of August 14, 2019:

The minutes of August 14, 2019 were presented for review and approval. Upon motion of Mike McPeek, seconded by Jamie Arnold, the minutes of August 14, 2019 were approved. The minutes were adopted by unanimous vote.

Introduction of New Members:

Mr. Anderson asked the new Advisory Committee members to introduce themselves. Mike Shuey summarized his background and professional experience. Brad Stoddard summarized his background and professional experience. Darin Monroe summarized his background and professional experience.

Subcommittee Reports:

➤ Definitions Subcommittee Update. Blair Jaynes summarized the history of the subcommittee with respect to clarifying some definitions in the statute. Mr. Jaynes stated the subcommittee has not meet in over a year, but some recent developments may be of interest. Mr. Jaynes explained the handout and stated the Commission had drafted proposed legislation to address Idaho Code 72-102 & 72-1316 regarding independent contractor and outworker. Mr.

Jaynes explained that workers' compensation coverage for independent contractors and telecommuters are a reoccurring issue in the Employer Compliance department. Mr. Jaynes wanted to see if there was interest in looking at the issue. Mr. Jaynes stated that SIF will no longer write these policies. Mr. Jaynes referred to the statistics provided by NCCI showing a 40% increase in the assigned risk pool. Mr. Jaynes stated that from April of this year, there have been over new 446 employers, who have a single employee, now working in Idaho. Many of these folks make up the assigned risk pool.

Shellie Martin inquired that if the definitions were changed, would SIF write these policies. Mr. Jaynes stated that under these proposed changes the employees/employer would be exempt. Dr. Collins asked about the location of the employee. Mr. Jaynes stated that the employee would have to be living and working in Idaho, the definition change would exempt these employees and employers. Ms. Martin expressed concern that by doing so it would be a lot of employees/employers without coverage, like Citi. Mr. McPeek asked Chairman Baskin if the simplest thing to do would be for the employer who has an employee in Idaho show his Illinois policy that has an "all-state policy" endorsement to cover the Idaho employee. Chairman Baskin agreed, stating the Commission is not in agreement about how to handle this issue. Chairman Baskin foresees a problem with a big employer like Amazon taking advantage of the exemption.

Mr. Jaynes stated that an all-state policy endorsement would have to have to show Idaho workers' compensation law as having authority. Ms. Martin stated it is possible to get all-state coverage and to check the "3A" clause, which she explained the possible coverage it could apply. Mr. McPeek opined that if an employer can show they have coverage the problem is solved, if you want the policy to show it covers Idaho make the employer show coverage in Idaho as Ms. Martin indicted. Mr. Jaynes explained that employers think that if they have an all-state policy endorsement it covers Idaho, but that is not true.

Public Comment: Kent Day asked to clarify the proposed definitions and how it would make the system clearer or better. Mr. Jaynes explained that it was an attempt to align more with the right to control test, similar to what IDOL does. Chairman Baskin opined that the language that was referenced may already be in statute and this would bring consistency between employment and workers' compensation law. Chairman Baskin stated the Idaho Supreme Court has previously ruled on who qualifies as an independent contractor and thinks there is an argument to keep it as is.

Mr. Burleigh stated SIF struggles with the issue of independent contractors. SIF will conduct "right to control" tests of its policy holders. Mr. Burleigh explained there is currently a lawsuit against SIF in District Court on premiums that were calculated on employees who the employer stated were independent contractors. Mr. Burleigh believes the Commission would be the more appropriate avenue for these kinds of disputes, through declaratory ruling. Mr. Burleigh stated that in the future SIF would be interested if the Commission would issue guidance on the matter.

Mr. Jaynes stated that there does not appear to be an interest in a change right now and thanked everyone for their feedback.

Industrial Commission Report:

➤ 2020 Legislative Session Adopted Rule. Ms. Monroe presented the Commission's adopted administrative rules. Ms. Monroe reported that after careful consideration and taking into account all comments received, the Commission adopted their administrative rules with slight changes from the temporary rules. Ms. Monroe explained the changes were to clarify the Commission's expectations on electronic payment cards and some grammatical errors. Ms. Monroe asked if there were any questions, there were none.

➤ JRPs Update. Ms. Monroe explained the Commission recently adopted changes to the JRPs to allow for electronic hearing requests. Ms. Monroe summarized and showed the new changes. Ms. Monroe explained these changes were a step towards the modernization. The JRPs can be found on the Commission's website. Ms. Monroe asked if there were any questions, there were none.

➤ IRIS Modernization and Budget Request Update. Shana Barrowclough updated the Advisory Committee on the IRIS (Industrial Commission Redesigned Information System) Modernization, Ms. Barrowclough stated the Commission has submitted their budget request for FY 2021, which includes funding for IRIS. The Commission will not know if the request was approved until after the Governor makes his recommendation. While the Commission awaits approval of the budget, progress has been made to upgrade the Commission to Windows 10, Microsoft Office 365 and move off terminal server. The Commission is hopeful to have completed this migration by January. The Commission has also worked on electronic hearing request and is currently identifying software currently used by IDOL to make the unemployment appeals process paperless. The Commission will also look at the record retention policy and other business processes before the budget is set.

➤ EDI Update. Ms. Patti Vaughn stated, building on IRIS, the Commission began to consider the need to migrate from EDI 3.0 to 3.1. IAIABC informed stakeholders in January 2017, that there would be no further updates to EDI 3.0. The Commission has decided to move forward with EDI 3.1. as part of the modernization, if the budget is approved. The Benefits Department anticipates rolling out 3.1 by Summer 2022. Ms. Vaughn highlighted some of the differences between EDI 3.0 v. 3.1.

Public Comment: Jeanne James asked if the Commission anticipates having the information updated by Summer 2020. Ms. Vaughn indicated that is the plan, the Commission will prepare for EDI 3.1. similarly to how EDI 3.0 was launched.

Public Comment: Jeanne James asked how much time will trading partners have to implement EDI 3.1. Ms. Vaughn indicated that IAIABC recommends allowing no more than 6 months after launch. Ms. Vaughn asked if there were any more questions, there were none.

➤ NCCI Update. Ms. Vaughn presented this year's NCCI Data Report, which is available on the Commission's website. Primarily what the report shows is payment by provider type and where the dollars are being spent. NCCI has created a comparative report on Opioids

which show a slightly downward trend in Idaho. Ms. Vaughn asked if there were any questions, there were none.

Other Issues and Announcements:

➤ Commission's Premium Tax Audit Methodology for Self-Insured Employer Contracts with Independent Contractors. Mr. McPeek explained the Commission issued a notice earlier this year to all self-insured employers that premiums taxes collected on independent contractors would be linked to the premium tax methodology that SIF uses. Mr. McPeek stated this was brought to his attention by a self-insured client. Statute states that self-insured premium tax is linked to SIF premium tax methodology; SIF made a change to their methodology and the Commission must follow suit. SIF has changed the methodology to be based on the right to control test. Mr. McPeek summarized the SIF methodology process and the concern of the self-insured employers have with the Commission's new standard. Mr. McPeek used the example of technology or IT contractors.

Chairman Baskin stated that thinking of this example, that if in an audit the Commission found that self-insured was directing their activities it seems under the right to control test they would be classified as employees and not contractors. Chairman Baskin stated there were challenges to drill down in contractors versus employees. Mr. McPeek opined that the nature of technology has changed things between employee and employer relationships.

Preparation for Future Meetings:

Chairman Anderson asked if there were topics for discussion at the next meeting. There were none. Chairman Anderson thanked everyone for their work and stated he enjoyed the opportunity to server workers and employers.

Next Meeting Date: February 12, 2020

There being no further discussion and no further business, Mr. Arnold moved to adjourn the meeting; seconded Mr. Maloney. The motion carried by unanimous vote. The meeting adjourned at 10:45 a.m.