

Subcommittee on Peace Officer and Detention Officer Temporary Disability Fund

January 12, 2026

1:30 p.m.

Members: Mike Miraglia (ID FOP), Alan Pace Jr., Steve Thompson (City of Boise), Rachel Misnick, Patti Vaughn, George Gutierrez, Kamerron Slay, Commissioner Aaron White, Chris Wagener (Chair), Jamie Arnold, Mark Peterson, and Angie Howe

1. Recap of Discussions to Date.

Mr. Wagener opened the meeting and summarized the last Subcommittee on Peace Officer and Detention Officer Temporary Disability Fund (PODO) held on November 6th and July 14th. Mr. Wagener stated that Mr. Peterson and Mr. Arnold formed a smaller subcommittee of the subcommittee tasked with drafting the language.

2. Presentation of Proposed Statutory Language Update.

Mr. Peterson and Mr. Arnold recently met to discuss the proposed language. Mr. Peterson attempted to draft a summary of the discussion, including a mechanism in which the employer advises the carrier that the employer is paying full benefits under the act and, upon notice, allows the carrier to submit straight to the employer for the wage loss. Mr. Peterson prepared a preliminary draft of the proposed legislation and brought six copies.

Mr. Peterson indicated the language began as a new subsection under Idaho Code 72-1104.

(2) (3) Notwithstanding the foregoing, if the employer pays the employee's full rate of base salary as contemplated by subsection (1), it may notify the carrier and request ongoing wage loss benefits be paid directly to the employer. The carrier, upon notice from the employer and submission of notice under 72-806, shall submit to the employer any wage loss benefits owed, and by doing so satisfies its obligations for the payment of wage loss. This section does not relieve employees from remitting payment to the employer under subsection (2) if applicable.

Mr. Peterson explained that his draft aims to acknowledge that an insurance carrier is obligated to pay for time loss, even if it is unaware whether the employer has accepted or is making such payments. The carrier, however, must adhere to the statute. The proposed section would clarify notice requirements under Idaho Code 72-806 and then authorize the carrier to send wage loss payments directly to the employer. Mr. Peterson mentioned that this process is similar to what occurred in *Watkins v. Ponderay*, and he believes this proposal would allow that process under the statute. Mr. Miraglia asked for an explanation of the *Watkins* case. Mr. Wagener indicated that, in this case, the injured worker received TTDs as part of his workers' compensation claim. The Claimant argued that the worker was eligible for PODO, and it was confirmed that he was. To

ensure fairness, the Commission initially decided to deduct part of the employer's payments to recoup the overpaid amounts. However, the Idaho Supreme Court ruled that this approach was incorrect on appeal. The employer was required to pay the full base salary, and any TTDs paid had to be recouped separately. According to the statute, the payment was to be paid directly to the municipality by the injured worker, rather than offset against his ongoing benefits.

3. Discussion of proposed statutory language update & Decision to edit or present to Advisory Committee for Introduction as a 2027 Legislative Item.

Mr. Peterson indicated there was potential for wordsmithing and an additional need to cross-reference with other statutes, as the Legislative Services Office (LSO) would do. Mr. Peterson suggested that, in cases where time loss is directly paid to the worker, even though they are receiving their full salary, this should not occur, and if it does, it would be for only a very short period. Mr. Arnold mentioned a case involving about \$27,000 in overpayment, where the worker-possibly a firefighter or detention officer- received a large sum. To prevent such situations, the employer should notify the carrier that full wages are being paid. The carrier should not decide if the statute applies; instead, the employer will determine whether the statute is relevant and pay the full wages accordingly. This way, the carrier isn't put in the position of having to make that judgment. The employer's decision to pay full wages and apply the statute is final, and any disputes about this would be between the employer, the commission, and the carrier.

Mr. Wagener indicated the worker should be receiving a full salary from the municipality. As a result, SIF would not pay wages, as the employer handles the payments. Once it's clear that the employer is paying the full salary, the carrier or self-insured entity would then cover the claim. If the carrier is paying, it would initially pay the employer, who would then pay the full salary to the employee. This process helps avoid the problem that the worker is supposed to be paid by the employer, as outlined in the current statute.

Ms. Howe asked about when the employer submits eligibility for the PODO Fund reimbursement. Mr. Pace noted that it's usually easier to collect all needed documents once the employee has returned to work. Ms. Misnick added that Fiscal sometimes receives applications while the worker is still off, and sometimes later. Ms. Howe explained her reasoning: she considers that if an employer thinks they can pay a certain amount, they might do so by paying the full base rate and then applying, only to be told they are ineligible. Unless everyone agrees, which is unlikely since they have appeal rights, the employer should at least be aware of what they are required to pay upfront. She asked if the department provides full wages in such situations. Mr. Thompson indicated that his employer, the City of Boise, pays 100% of the salary or salary continuation for first responders. He noted that the carrier or TPA handles reports and wage loss management, as insurers typically do, but the city is informed of any wage loss. Mr. Thompson mentioned that the TPA shouldn't be responsible for reimbursement under this act or fund, but there are many questions from the employer's perspective. Ms. Howe suggested that it makes sense for the employer to seek reimbursement after the fact, which Mr. Pace confirmed the City of Boise already does. Mr. Pace mentioned that Fiscal has received questions related to PTSD injuries and the Fund.

Mr. Miraglia expressed concern about small departments lacking resources to cover shifts and appreciated this proposal, which points employers in the right direction. Mr. Miraglia added that some small departments, such as the one he recently visited, which had only four members, including the chief, are heavily impacted when someone is out. He supports the proposal as it shifts the decision-making away from the carrier. Ms. Misnick said they respond promptly to inquiries when possible. Mr. Miraglia suggested bringing this idea to his FOP committee for feedback, but he thinks it's a good approach.

Mr. Wagener explained that the commission discussed handling full-wage reimbursement in the *Watkins* decision, particularly in cases of overpaid Temporary Total Disability (TTD) and base salary. However, the Idaho Supreme Court ruled against offsetting in the appeal. He noted that items like PPI are typically recouped through offsets, and the surety will make a substantial final reduction to recover any overpayments.

Mr. Peterson asked whether they are still receiving and remitting paid time-loss benefits, given the ongoing obligation to pay wage loss. Mr. Wagener said they would not. Mr. Arnold pointed out two key issues: first, that paying the full base pay aims to avoid gaps, but the City of Boise's method may not comply with the statute, as the Idaho Supreme Court noted; therefore, this area needs clarification. Mr. Arnold indicated the second issue is that there must be a mechanism to provide notice, especially since injured workers typically don't know what to do. Mr. Arnold expressed the need for clear notices explaining how the process should work, as failure to do so will continue to cause problems for injured officers. Mr. Arnold suggested that to clarify procedures, the IDAPA might need to specify the notice requirements that inform the employer, insurance company, or TPA of their obligation to the injured officers. This would ensure they understand what to expect, how they will receive notifications, and their responsibilities. He also mentioned that this could include informing them that a remittance is necessary to qualify for a TTD benefit from the TPA, which the employer then reimburses. Ms. Vaughn suggested that this could fall under 72-806 Notice of Change of Status. Mr. Peterson concurred that this is what he put in his draft proposal.

Mr. Arnold stated that if there is notice, the injured worker will be aware of how the process will proceed. Ms. Vaughn suggested including a specific element in that notice, such as the sheet Mr. Peterson had with the SIF PODO fact sheet. Similarly, Mr. Arnold mentioned that the TPA or surety should also provide something like this. Mr. Wagener said the notice of claims language can be drafted to specify that the TPA, self-insured parties, or SIF are involved, and that employees should contact their adjuster if they continue to receive salary while on TTD. Mr. Wagener indicated that if an employee receives salary while on TTD, they should contact the surety immediately, and the surety would speak with the employer's workers' compensation personnel, or someone in finance or payroll, to ensure that only the correct payments are made, specifically, that if someone is receiving payment, it is appropriately documented. Mr. Peterson asked under what circumstances an employee might receive their full base salary while also receiving ongoing checks from the TPA. Mr. Wagener explained that, based on his understanding, it could be either because the surety continues wages or because a scenario similar to *Watkins* is involved.

Mr. Arnold mentioned that the school district also has a contract that guarantees the same full base salary in the event of an injury. I understand that, in these situations, SIF reimburses the school district directly, not the employee. Mr. Peterson is uncertain about this. Mr. Arnold also had an employee with the same question about part-time work, but didn't get a clear answer because they hadn't addressed the issue before. This concern is raised because there's no way to include this in the statute or IDAPA, which could serve as an amendment, perhaps paying the base salary directly to the employer and then reimbursing the insurer. This approach avoids the issue, but it raises questions about whether injured workers have access to this extra money and how they should proceed.

Mr. Wagener suggested that it seems to be a clear continuation of the salary paid by the employer using its own funds. He also questioned how this arrangement affects bookkeeping and the payment of a benefit to the employer that might otherwise not be necessary. Mr. Peterson indicated that it seems to be a rare occurrence when base salary and TTDs are paid concurrently, resulting in overpayments. Mr. Wagener noted that it doesn't usually happen, but it has become significant now because we need to address the large outstanding TTD overpayments. He also mentioned that another challenge involves *Watkins*, where payments could have been remitted to the state, city, or county and deposited into their respective treasuries. However, the Idaho Supreme Court held in *Watkins* that sureties/employers may not deduct overpayments owed to the municipality.

Mr. Peterson asked whether this situation arises when a worker is off work for an extended period and doesn't receive full pay, only to later find they should have. Mr. Wagener indicated that since each municipality handles this differently, the surety will pay the TTD rate, and the employer will cover the difference by paying their full salary. Mr. Wagener indicated that sometimes, it can get complicated or unusual, but that's rare and uncertain. Mr. Miraglia asked about the number of reimbursements the Commission sees annually. Mr. Pace and Ms. Misnick estimated around 10-12 cases per year. Mr. Miraglia noted that while he believes it's a valid point, the likelihood of this happening is low, but when it does, it's pretty significant.

Mr. Wagener inquired whether municipalities applying for reimbursement use different TTD rates. Mr. Pace responded that it depends on the department's benefits and the hourly rate. Mr. Peterson mentioned that the language draft might not be very effective, as issues occur when the employer doesn't pay the full amount. Mr. Wagener noted that the employer remained saddled with the decision of whether to make full payment upfront and seek reimbursement later. Usually, overpayments are deducted at the end of a Permanent Partial Impairment (PPI) case, and payments are made in accordance with the law. Mr. Wagener added that this issue relates to the *Watkins* case.

Mr. Arnold asked whether it was too bold to include language that allows an offset. He noted that if the statute prohibits an offset, why not draft language to permit one? Mr. Wagener suggested they could revise the draft language to say 'offset' or 'payment difference,' but warned this might affect PERSI payments. Ms. Misnick stated it's difficult when the employer doesn't have funds, and Fiscal can't help recoup costs to support the department's viability. Mr. Wagener liked Mr. Arnold's suggestion to implement an offset that allows an injured officer to maintain their PERSI contributions. Mr. Wagener indicated that this way, PERSI contributions will continue to be paid regularly, and regardless of the mechanism, they will receive their full base salary without delay.

Mr. Arnold mentioned that another sub-subcommittee meeting would be necessary to develop new language. Mr. Peterson expressed support for offset language and for reviewing the PERSI language. Mr. Arnold also noted that PERSI would need to recalculate benefits under the PODO Act, including retirement contributions. He suggested that the subcommittee contact PERSI to create or find appropriate language. Mr. Arnold emphasized that although we're not dealing with hundreds of cases, only about a dozen, it remains important to resolve the issue. Ms. Howe stated that the goal is to encourage the use of the Fund, as more than a dozen people should be utilizing it.

Mr. Thompson mentioned he is here to provide education about the Fund. Previously, no one within the City was utilizing it, and he wants to ensure compliance with the statute. Mr. Thompson asked about the eligibility criteria, specifically whether it depends on injuries caused by a third party. He cited examples of restitution cases in which individuals are harmed by a third party, such as fleeing a suspect, which would qualify. Mr. Thompson also asked if a conviction was necessary. Mr. Peterson clarified that a crime isn't required; any injury caused by another party suffices. Mr. Thompson said he could identify and submit appropriate cases and understood that reimbursement for the TDDs would be returned to the police department, restoring their funds and potentially reducing the employer's claim costs. Ms. Misnick noted that Fiscal's eligibility interpretation is broader, requiring only that injuries occur at work and result from actions of the other party.

4. Next Steps:

The subcommittee will check with PERSI to determine if offset language is feasible. If PERSI agrees, they should draft language that includes offsets, revised wording, or a change in status. Mr. Wagener will reach out to PERSI, report back, and then convene a subcommittee to draft the new language. Mr. Miraglia expressed interest in joining the sub-subcommittee responsible for drafting the language.

The meeting ended at 2:36 p.m.