



STATE OF MAINE
WORKERS' COMPENSATION BOARD
Board of Directors' Business Meeting

April 11, 2023

A business meeting of the Maine Workers' Compensation Board of Directors was conducted remotely on Tuesday, April 11, 2023 via Zoom and in person at the Board's Central Office at 442 Civic Center Drive, Augusta.

PRESENT: John Rohde (*Executive Director/Chair*), Glenn Burroughs, Lynne Gaudette, Richelle Wallace (*Directors*), Richard Hewes (*General Counsel*)

PRESENT VIA ZOOM: Serina DeWolfe (*Director*)

ABSENT: Ron Green, Penny Picard (*Directors*)

I. CALL TO ORDER

Executive Director Rohde called the meeting to order at 10:00 a.m. with over 25 people participating. Executive Director Rohde reviewed the hybrid meeting format and remote participation procedures. Board members and staff introduced themselves for the recording.

II. APPROVAL OF MINUTES

1. Draft Minutes of 3/14/2022 Board of Director's Business Meeting

Director Burroughs MOVED TO ACCEPT THE MINUTES OF THE 3/14/2023 BOARD MEETING AS WRITTEN; Director Gaudette SECONDED.
MOTION PASSED 5-0.

III. SUBCOMMITTEE REPORTS

1. Budget Subcommittee

Director Wallace reported that lease negotiations for the new Portland office will begin soon. Work on the Annual Assessment has begun, and the assessment will be set in the next few weeks. The Budget Subcommittee will reconvene in a couple of weeks and provide an update for the next directors' meeting.

Executive Director Rohde added that the majority budget that was approved by the Legislature. This included most of the Board's spending requests and the assessment cap language. Two small items were left for the Part II budget.

2. Personnel Subcommittee

Director DeWolfe reported that newly hired Administrative Law Judge, Christine Smith, started in the Caribou office on April 10th. Attorney Advocate Margaret Bratten has been selected to be the new Deputy Senior Staff Attorney. Margaret will move from the Portland Advocate office to the Augusta Advocate office to begin her new duties.

3. IME Subcommittee

Director Gaudette reported that the IME Subcommittee met on April 3rd to begin the annual review of independent medical examiners. Questionnaires will be sent out to all doctors as part of the process. The subcommittee will review issues, rejected/accept in part decrees, and have conversations with some of the doctors. Directors Gaudette and Burroughs will be a part of this process.

Executive Director Rohde and General Counsel Hewes will meet to prepare draft questionnaires.

IV. EXECUTIVE DIRECTOR REPORT

1. Rulemaking

A public hearing on the Chapter 5 draft rule will be scheduled soon. The process for changing Chapter 4 is under way. The rule will be sent to the Attorney General’s office for legal pre-review. The change is minor, with one sentence being added.

2. IAIABC

Deputy Director Lindsay Lizzotte will be attending the annual IAIABC convention on behalf of the Board from April 24th to April 28th.

V. GENERAL COUNSEL REPORT

1. Personnel

As mentioned, Chris Cotnoir retired, Margaret Bratten will be taking his place. Her Advocate position in Portland will be posted soon. The Advocate position in Caribou is still open. Senior Staff Attorney Shawn Walsh is following up on leads for that position as it is a difficult position to fill.

The Abuse Attorney Advocate position, previously held by Katie Trost, will also be posted. In the Advocate Division, Kim Serber has been hired for the Secretary Legal position in the Augusta Advocate office. A paralegal position is still open in Augusta and a secretary position is open in Portland.

VI. OLD BUSINESS

1. Legislation

Previously discussed bills:

LD 53

Representative Lee sent out two amendments regarding LD 53. The intent of the amended bill is to hold the employee committing the acts responsible- not the employer. A divided report on the bill came out of the Labor and Housing Committee (LBHS). The language is still being finalized to remove employer from liability and ensure only the wrongdoer is liable. A language review will happen as this goes through the legislative process.

LD 727 and 1112 were voted “ought not to pass” the request of the sponsors. The provisions in those bills are already covered by the Act.

LD 1123

Last week, a public hearing was held on LD 1123, the cardiovascular-pulmonary disease presumption for law enforcement personnel. Part One of bill would grant a presumption of disability for law enforcement officers under the Maine Public Employees Retirement System law and does not apply to Title 39-A. Part Two is modeled after the firefighter presumption in §328 of the Act.

Executive Director Rohde testified neither for nor against this bill at the public hearing. When asked about information the Board might want, he indicated data supporting the need for the presumption and cost information. A memo from the Police Chiefs Association about why the presumption is needed was received this morning and was shared with the Board members.

Discussion continued about LD 1123 with Director Gaudette noting that other professions work irregular hours and have unhealthy sleep schedules and stress levels. While law enforcement personnel work under very challenging conditions, so do many other employees. What sets them so far apart from other professions? The employer group will have concerns about continuing to add presumptions. She would like to see the data on claims for cardiovascular claims in the past 5 years and, if claims are being brought right now, how are they being handled?

Executive Director Rohde added that LBHS asked for data from the Board. He is working with Deputy Director Lindsay Lizzotte and Candace Mullen on identifying the relevant job categories that will be affected by LD 1123. Representative Bradstreet also asked about decisions that have been issued.

Executive Director Rohde is working on relevant data for the work session. He noted that it can be challenging for the Board to be fully informed before a public hearing, as we can't always get data in time for the public hearing. He was asked by LBHS to present data at the work session. DAFS will likely prepare a fiscal note. Bills that impose costs on municipalities result in a mandate and require funding or a 2/3 majority in the Legislature to pass. All bills with a fiscal impact also go to the Special Appropriations table for review before being enacted as they will require funding.

Recently printed bills:

LD 1302 would create a PTSD presumption for electrical line workers. Board members reiterated their concerns about adding presumptions. Executive Director Rohde will testify neither for nor against this bill as we will need more data on this bill as well.

LD 1385 would create an exemption to immunity under §104 of the Act in much the same way LD 53 does. LD 1385 would allow the injured worker to sue the co-worker who caused the injury if he or she acted “intentionally or with gross negligence or while committing a criminal act.” In the event of a recovery, L.D. 1385 would require the injured employee to repay the insurer for the benefits it paid just as an injured employee must repay an insurer in third party actions under §107.

Executive Director Rohde spoke with Senator Libby, the sponsor. The origin of this bill was a case where an employee was killed due to the fault of another employee. Director Burroughs would like to know more about the legal and financial impact to employers this bill would create. Executive Director Rohde will testify neither for nor against this bill.

LD 1372 was sent to the Board, because it pertains to insurance for workers' compensation injuries, but this is a bill within the purview of the Bureau of Insurance (BOI). The bill would allow group self-insurers to create fronting companies. A public hearing is scheduled for next Tuesday before the Health Coverage, Insurance, and Financial Services Committee (HCIS). BOI will testify and work the bill.

LD 1057 would require that a request for a permit for a residential building be accompanied by either a certificate of insurance or other proof that the contractor (and any subcontractors performing the work) have workers' compensation insurance or a waiver that indicates the property owner accepts responsibility for the increased risk of engaging a contractor or subcontractor without proof of liability or workers' compensation insurance. Executive Director Rohde reported there was very little testimony at the public hearing and work session is not scheduled at this time. The general feedback is that this bill would create confusion and more work for the municipalities.

VII. NEW BUSINESS

1. 4th Quarter 2022 Compliance Report Draft

Executive Director Rohde introduced Matt Dunn from the MAE Unit to review the 4th Quarter Compliance Report. Compliance in several categories has improved. The late MOP (Memorandum of Payment) penalty process seems to be having a good effect. The late/missing wage statement penalty process has recently been started and numbers are improving already. While compliance is improved, only the benchmark for NOCs (Notice of Controversy) was met. The MAE unit is continuing its work with insurers to improve compliance.

A question was asked about the penalty process for late wage statements. If there are 25 or more missing or late reports, one petition to cover all the violations will be issued from

monitoring. MAE will start from the 4th quarter of 2022 for late wage statements penalties.

Director Gaudette asked about ESIS as they have the most penalties. Deputy General Counsel Seanna Crasnick reported that ESIS is being referred to BOI and for additional work from the Abuse Unit.

Mary-Kay Pitre was recently hired to work in the MAE Unit, and the MAE Unit is now back to a full staffing.

Director Gaudette MOVED TO ACCEPT THE 4th Quarter 2022 COMPLIANCE REPORT AS WRITTEN; Director Wallace SECONDED. **MOTION PASSED 5-0.**

VIII. ADJOURNMENT

Director Gaudette MOVED TO ADJOURN; Director Wallace SECONDED.

MOTION PASSED 4-1. (*Director Burroughs opposed.*)

The meeting formally adjourned at 10:45 a.m.