

STATE OF NEW MEXICO
ADVISORY COUNCIL ON WORKERS' COMPENSATION
AND OCCUPATIONAL DISEASE DISABLEMENT
MINUTES

MEETING DATE: May 2, 2024
WCA headquarters, 2410 Centre Ave. SE, 87106

Members Present: Darrell Deaguero, Courtenay Eichhorst, Marni Goodrich, Buffy Jackson, Sara Ranney, and Director Robert Doucette, as ex-officio.

1. Call to Order and Introductions: 2:36 p.m. Chair Goodrich asked all present at the meeting to introduce themselves.
2. Approval of agenda: Buffy Jackson made a motion to approve the agenda, seconded by Darrell Deaguero. Agenda approved.
3. Approval of minutes: Courtenay Eichhorst made a motion to approve the minutes from the January 25, 2024, meeting, seconded by Darrell Deaguero. Minutes approved.
4. Status of Agency report:
General Counsel Michael Holt presented the Advisory Council with the Final Report of the HM 83 Task Force Report, first acknowledging the task force members: Representing Insurers Randy Akin, Dan Giralmo; representing worker attorneys Ben Sherman and Kate Lueker-Eaton; representing employer attorneys Megan Kuhlman and Chris Elmore; representing labor Jeffrey Steal and Greg Montoya; representing employers Johnna Padilla and Matt Sanchez and injured workers Victoria Bratton and Marsha Schmidt. Holt also commended the work of WCA staff that assisted with data gathering and analysis. Holt gave the Council members a printed copy of the report and informed everyone that it was also available for download on the WCA's website. (Holt's comments are part of this meeting record.)

Director Robert Doucette reported to the Council that former Deputy Director Leigh Martinez retired April 30 with nearly 28 years of service at the WCA. Doucette reported that fiscal year 2025 is here, as of July 1, then warned that at the beginning of FY26, a little more than a year from now the WCA may be in the negative in the 200 (employee salaries) category, so in order to continue to operate, the Legislature will either have to allocate funds from the state's general fund or raise the assessment on workers and employers. Doucette informed the Council that the 2025 legislative session will be a long one and asked for help from the Council in advocating for ending the long-time practice of taking money from the WCA's fund for other purposes. He explained that a State Personnel Office study recommended raising salaries for state classified attorneys and IT staff but said the WCA right now cannot afford to raise salaries of its such classified employees. The WCA is currently sitting at a 9-percent vacancy rate and holding some of those vacancies because it can't afford to fill them. For the upcoming session, the Governor's office has asked all agencies to submit any proposed legislation by June 1; Doucette said the only proposed change it will likely

submit is the statutory language cleanup regarding farm/ranch laborers. The state Supreme Court ruled in 2016 that the previous law excluding them from workers compensation violated their equal protection rights, however, the exclusion is still written in statute, contradicting case law.

Member Courtenay Eichhorst asked about the WCA's relationship with the Legislative Finance Committee, to which Doucette replied that we've had good conversations and after years of WCA leadership explaining the need for field office operations, current members of the LFC seem to understand.

5. Legislative Subcommittee Update

Courtenay Eichhorst reported the need to include more stakeholders for the upcoming long session and that if they could get more legislators to understand workers' compensation and be willing to help sponsor proposals, the Advisory Council could be more effective in that regard. As a representative of the labor force, Eichhorst said construction in New Mexico continues to explode and there is a need for legislature to pay attention to those needs. He also thanked the HM83 Task Force members and particularly Rep. Pamela Herndon for her willingness to carry workers' compensation-related legislation.

6. Public Comment

Merilee Dannemann spoke about the need to make it easier for health care providers to participate in the system; asked what was happening with the WCA's enforcement efforts because no information has been shared on that front; informed the Council about the Workers' Comp Association conference and recommended they attend; and also mentioned that there are some parallels between family medical leave proposals and workers' compensation law.

Dan Giralmo of New Mexico Mutual addressed his participation on the HM83 Task Force saying that while he supports the final report, he also wrote an addendum in which he warns the Council and the Legislature to seriously consider the impacts of increasing attorney fees, as he's not sure the data totally supports the proposed increase.

Kate Lueker-Eaton said that through her participation in the HM83 Task Force, she learned that not all employers/insurers are filing E6-subsequent reports of injury, in which payments get reported, and that there is a real need to make sure employers are complying with that requirement.

George Weeth, worker attorney since 1986, thanked all those that worked on the task force. He spoke about some of the history regarding attorney fees in workers' compensation cases and said the original cap of \$12,500 wasn't based on anything, but was just a random number. He said there is a need to raise the fee cap, and supports the proposed increase with a focus on the biggest, longest cases. He spoke about some cases he's had for eight to 10 years, that may likely extend his representation, that there may be a need for him to find attorneys to take those on, as he approaches retirement, but that young attorneys aren't willing to take on workers' compensation because of the fee cap. Weeth also echoed Dannemann's statement regarding making it easier for HCPs to participate in the system.

Randy Akin of Builders' Trust also spoke about his participation on the task force. He said workers' compensation is a very complex issue which very few legislators

understand. He said he hopes the Advisory Council could be a voice to the Legislature as there is a need for a sound and balanced system.

Derek Thompson, worker attorney, questioned the wisdom of letting the Legislature, which many have said don't understand or care about the workers' comp system, make decisions regarding attorney fees in those cases, and suggested allowing WC judges decide. Thompson also echoed the sentiment of making it easier for HCPs to work in the system. To that end, he said he's spoken to Deana Mercer at UNM Medical School to guide medical students interested in workers' compensation. He also said there's a need to be more stringent regarding "bad faith" in the system, and recognized that much of the late payment issues goes back to insurance adjusters being overwhelmed with cases – there's a need for more of them, too.

Lynn Barnhill, worker attorney, asked members of the Council to keep in mind, as they read the HM83 Task Force Final Report that employer/insurer attorneys weren't present at the meeting telling how they get paid, but that worker attorneys have to ask for payment.

Members of the Council thanked all who came to the meeting and appreciated the interest and passion expressed, saying it was one of the best meeting discussions in their time on the Council.

7. Next Meeting

The next Advisory Council meeting will be at 2:30 p.m., Thursday, July 11, 2024, at the WCA in Albuquerque.

8. Adjourn

Eichhorst made a motion to adjourn the meeting, seconded by Deaguero. The meeting was adjourned at 4:02 p.m.