

WORKERS' COMPENSATION (C) TASK FORCE

Workers' Compensation (C) Task Force Aug. 2, 2022, Minutes

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Draft: 8/3/2022

Workers' Compensation (C) Task Force
Virtual Meeting (*in lieu of meeting at the 2022 Summer National Meeting*)
August 2, 2022

The Workers' Compensation (C) Task Force met Aug. 2, 2022. The following Task Force members participated: Alan McClain, Chair, and Jimmy Harris (AR); John F. King, Vice Chair, Steve Manders, Paula Shamburger, and Martin Sullivan (GA); Lori K. Wing-Heier represented by Anna Latham and Alex Reno (AK); Mark Fowler represented by Yada Horace and Erick Wright (AL); Ricardo Lara represented by Yvonne Hauscarriague, Giovanni Muzzarelli, Mitra Sanandajifar, and Sarah Ye (CA); Andrew N. Mais, George Bradner, and Wanchin Chou (CT); Karima M. Woods represented by David Christhilf and Angela King (DC); Trinidad Navarro represented by Christina Miller (DE); David Altmaier represented by Greg Jaynes and Sandra Starnes (FL); Colin M. Hayashida represented by Kathleen Nakasone (HI); Doug Ommen represented by Travis Grassel, Jared Kirby, and Jolene Schurman (IA); Dean L. Cameron represented by Katie Deaver and Randy Pipal (ID); Vicki Schmidt represented by Julie Holmes, Sara Hurtado, and Craig VanAalst (KS); James J. Donelon represented by Warren Byrd and Tom Travis (LA); Gary D. Anderson represented by Matthew Mancini (MA); Timothy N. Schott represented by Brock Bubar and Sandra Darby (ME); Grace Arnold represented by Sandra Anderson, Tammy Lohmann, and Phil Vigliaturo (MN); Chlora Lindley-Myers represented by Jo LeDuc, Patrick Lennon, and Debbie Goeller; (MO); Mike Causey, Tracy Biehn, and Fred Fuller (NC); Marlene Caride represented by Mark McGill and Carl Sornson (NJ); Barbara D. Richardson represented by Gennady Stolyarov (NV); Andrew R. Stolfi represented by David Dahl (OR); Michael Humphreys represented by Shannen Logue and Eric Zhou (PA); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Larry D. Deiter represented by Tony Dorschner (SD); Jon Pike represented by Tracy Klausmeier and Reed Stringham (UT); Kevin Gaffney represented by Mary Block, Isabelle Turpin Keiser, Nick Marineau, Pat Murray, and Rosemary Raszka (VT); and Allan L. McVey, Tonya Gillespie, and Juanita Wimmer (WV). Also participating were: Kaylee Baumstark (AZ); Anthony Bredel, Keith Fanning, and Reid McClintock (IL); Thomas Faust (IN); Tina Nacy (MI); Connie Van Slyke (NE); Ruju Dave (NH); Bogdanka Kurahovic and Jennifer Catechis (NM); Benna Nye (OK); Marianne Baker and Nicole Elliott (TX); Rebecca Nichols (VA); and David Haushalter and Shasta Hoffhein (WI).

1. Discussed Presumptions and Their Erosion of a Balanced Workers' Compensation Industry

Commissioner McClain said several states enacted presumption legislation in response to the COVID-19 pandemic. While the presumptions have expired in many states, there are a few states that extended their presumptions into late 2022 and 2023.

Heather Lore (International Association of Industrial Accident Boards and Commissions—IAIABC) said the IAIABC is a trade association of regulatory bodies, which now also includes private sector organizations. These organizations all met and shared ideas regarding workers' compensation policy, regulation, and administration. The IAIABC includes members from 65 jurisdictions from the U.S. and around the world, including Australia, Canada, Germany, Malaysia, South Korea, and Taiwan. There are additionally 171 private sector members that have an interest in workers' compensation. Ms. Lore said that state insurance regulators do have a membership with the IAIABC. She said if state insurance regulators have interest in a particular workers' compensation topic, the IAIABC can help by providing access to resources.

Ms. Lore said the IAIABC develops informational resources and data reporting standards on workers' compensation. The IAIABC additionally hosts virtual educational programs on hot topics, trends, and continuing challenges in the regulation and administration of workers' compensation. The IAIABC provides opportunities for members to connect and share information and insights with their peers.

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Ms. Lore said the IAIABC stays current on issues that are affecting the workers' compensation system, including the issue of presumptions and the future of work.

Ms. Lore said presumptions have existed in workers' compensation for years. Presumptions are created where injuries or illnesses occurring to an employee would not be covered by workers' compensation or could be easily challenged by a jurisdiction's workers' compensation act. These injuries are presumed to have occurred in the workplace due to the nature of the work. Commonly, these presumptions include first responders, such as emergency medical technicians (EMTs), firefighters, and police officers. Presumptions affecting the employee cover cancers, such as colon or kidney cancer, heart disease, or infectious disease.

Ms. Lore said presumptions typically have employment requirements, as well as requiring a minimum number of years of service. Presumptions are usually rebuttable, allowing the presumption of a workplace injury to be rebutted through evidence. She said other presumptions include miners who contract black lung disease, or for hazardous waste workers.

Ms. Lore said there has been a lot of activity related to presumptions in the last two years. The COVID-19 pandemic had a dramatic impact on presumptions and started a heated discussion regarding what is promised by workers' compensation as the exclusive remedy. Many states enacted COVID-19 presumptive coverage for essential workers, namely health care workers, including doctors, nurses, and first responders.

Ms. Lore said in California, there is a measure that would extend the current COVID-19 presumption for another two years. She said this measure will be addressed by the California Senate Appropriations Committee next week.

Ms. Lore said Florida is adding post-traumatic stress disorder (PTSD) for corrections officers and 911 operators, and Michigan is extending presumptions to part-time employees and volunteer firefighters. She said Washington now has a presumption for personnel working at a radiological hazardous waste facility.

Ms. Lore said the National Council on Compensation Insurance (NCCI) has been tracking the COVID-19 presumption activity, which confirms that some states have extended their presumptions, while many others have allowed their presumptions to expire.

Ms. Lore said workers' compensation was meant to be the exclusive remedy for any workplace injury but asked if presumptions create inequities in the workers' compensation system based on an employee's type of work. In 2020, when the COVID-19 presumptions began rolling out, alarms were raised in the workers' compensation industry. The workers' compensation industry raised the concern that these presumptions went beyond the original intent of workers' compensation of just providing medical care and wage loss benefits for workplace injuries.

Ms. Lore said COVID-19 is a highly communicable disease, and suddenly workers were receiving workers' compensation for medical and indemnity benefits for something they may have caught outside of work. It was determined that the likelihood of contracting COVID-19 was much higher for the doctors, nurses, firefighters, and police officers compared to the rest of the general population of workers, so presumptions allowed these workers to receive workers' compensation coverage should they get ill or need to miss work.

Ms. Lore said workers' compensation is supposed to be the exclusive remedy for workplace injuries and illnesses, so she posed the question, "Why did the presumption stop with these few types of workers?" Washington did extend its presumption to any worker; however, all other states had qualifiers regarding the types of employment.

Ms. Lore said that beyond COVID-19 presumptions, first responders are usually the only ones typically covered for PTSD. She said mental health was typically becoming less stigmatized, and workers' compensation is more aware

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of it now that it has been in the past. Ms. Lore asked if PTSD care must be a part of presumptive activity, or should states confer coverage to all workers to ensure equity in the system.

Ms. Lore said these are complex questions that will likely require a great deal of discussion, and the IAIABC held a conversation regarding this topic.

Commissioner King said Georgia passed a mental health parity bill last year. He said the concerns regarding this bill mainly deal with the cost and the impacts of these costs to the business community. Commissioner King said it is important to discuss the impact, as well as the cost. He said the topic of 911 operators has been seriously discussed because people do not realize the pressures exerted on these employees and how critical they are to law enforcement functions.

Mr. Manders said one thing Georgia did several years ago was to take cancer out of the workers' compensation system and create a private separate benefit that private insurers are writing. He said the benefit has prescribed benefits like workers' compensation, but it is not covered by the workers' compensation system. He said the benefit provides medical and indemnity benefits for a limited period. Mr. Manders said there is discussion in the legislature to do something of a similar nature regarding PTSD.

Ms. Lore said many of the workers' compensation presumptions are for workers that work for self-insured employers, such as municipalities. She said this means the municipalities are bearing the costs. Ms. Lore said the IAIABC has discussed how this can be managed and balanced to ensure that the benefit is there for the people in need but are not causing an undue burden on the municipalities that are paying out benefits on the presumptions.

2. Discussed the Future of Work and How the Hybrid Work Force is Affecting Claims Frequency

Ms. Lore said the IAIABC and the NAIC collaborated last year on a paper regarding the future of work. The name of the paper is *Workers' Compensation Policy and the Changing Workforce*, and it can be found on either the IAIABC website or on the NAIC website. The paper discusses the changes in work and the evolving landscape of workplaces, as well as the shifting responsibility of workers' compensation coverage and benefits.

Ms. Lore said while the future of work was changing prior to 2020, the pandemic accelerated these changes and shifted the workplace and work arrangements drastically. There has been a lot of job shifting over the last couple of years. Ms. Lore said there has been an increase in workers who have been at their jobs for less than a year. She said according to a McKinsey Global Institute report from 2021, the COVID-19 pandemic will cause an estimated 25% of workers to not only change jobs, but to change their occupations by 2030. Ms. Lore said the report indicated younger workers have faced higher levels of unemployment, as well as reduced access to training.

Ms. Lore said there was a huge change in the number of remote workers between 2015 and 2021. She said remote work is continuing in many industries and jobs. She said the IAIABC's entire staff is now full-time remote. Ms. Lore said the McKinsey Global Institute report estimated that 25% of workers in high-income countries will continue full- or part-time remote work.

Ms. Lore said the number of workers in non-standard work arrangements has been growing since 2008. These workers are largely without job protections, such as workers' compensation. Ms. Lore said the Pew Research Center estimated that gig work was the main job for 31% of gig workers in 2021.

Ms. Lore said regarding automation, artificial intelligence (AI), and robotics, workplaces are changing in response to the pandemic and lack of workers. More than half of global businesses have increased automation. Businesses are finding increases and efficiency using innovative technologies, and some of these technologies are taking on more risky, unsafe jobs, allowing workers to retrain in other areas.

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Ms. Lore said during the NCCI's Annual Insights Symposium (AIS), there was a discussion regarding the great reshuffle in the labor markets. She said part of what was discussed was the impact of the reshuffling on claim frequency. They also discussed short-tenured workers, remote workers, and industry mix. Ms. Lore said the NCCI did not discuss gig workers or automation, but certainly what they discussed has an impact on claims frequency.

Ms. Lore said short-tenured workers are more likely to suffer injuries, and claims frequency has been affected due to the increase in the number of short-tenured workers over the last couple of years. She said frequency is low for remote workers, although there is not much data to compare since the share of remote workers was much lower pre-pandemic.

Ms. Lore said the Pew Research Center estimated that 9% of U.S. adults are current or recent gig workers. The continued increase in gig work, coupled with the increase in automation, may make up for some of the shifts in the workforce. Since gig workers are typically not covered by workers' compensation, their workplace injuries are not affecting claims frequency, as they are being moved into general health care and Social Security disability income.

Ms. Lore said the future of work is having an impact on claims frequency and is going to continue to have an impact. She said for non-COVID-19 claims, the California Workers' Compensation Insurance Rating Bureau (WCIRB) reported that non-COVID-19 claims decreased by 22.2% in California in 2020 due to layoffs, businesses closing or cutting back on hours, and the large number of employees moving to remote work. However, the frequency increased by 12.6% in 2021, which was the first increase in frequency in a decade. In the past 20 years, frequency has been decreasing.

Ms. Lore said increases in automation and safety are helping to drive that frequency down, as well as more workers moving to gig work and more employees moving to remote work. While the increases in short-tenured workers are driving the frequency up, the downward trend in frequency is likely to continue due to all the shifts in the future of work.

Mr. Stolyarov said he appreciates the focus on the various trends that are driving frequency down versus the trends that are driving frequency up. He said he believes the future trajectory will depend on what happens with both remote work, as well as the great reshuffle. Mr. Stolyarov said he agrees that remote work has a favorable impact on frequency. He said there is uncertainty whether the increase in short-tenured employees is going to be commonplace or a temporary phenomenon because of one-time structural changes to the economy.

Commissioner McClain said he recalls that the NCCI presentation indicated a lot of the shuffle occurred in the service industry. He said the service industry typically sees reshuffling.

Mr. Byrd said employees in the Louisiana Department of Insurance (DOI) are asking if they can do their job remotely, which is currently not an option. He said an overall concern is how much of the labor force is required to be at a physical location—such as plumbers, carpenters, and electricians—versus those who can work from home.

Commissioner McVey said during the pandemic, many of the DOIs' employees worked remotely, which did decrease the claims frequency. He said operations like construction and maintenance, or industries of this type, are going to see a shifting from the older employees to younger employees, who are going to be in training. Commissioner McVey said frequency will be dictated by the type of industry.

Mr. Byrd asked if a person was working remotely and was walking to get a cup of coffee and fell, would that be covered under workers' compensation. Ms. Lore said this would generally be covered, as this is something you

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would do in the office. She said if you were walking up the stairs to change your laundry during the day, this would generally not be covered. Ms. Lore said some organizations come to a remote worker's office and do a safety check or have employees send a picture of their workspace.

Mr. Byrd asked if this would raise the level of potential fraud. Ms. Lore said this is being discussed because it is a valid concern.

3. Discussed How States are Recruiting and Training With the DOI

Commissioner McClain said he thinks remote work is a good strategy for recruitment and retention of employees.

Mr. Bradner asked Ms. Lore if the IAIABC indicated in the job posting if the job was remote and the applicant did not have to live in the state where the business is located. He said Connecticut is allowing employees to work from home, but, remote workers must be within two hours of the office so they are able to come into the office. He said, however, that they are trying to waive this restriction.

Ms. Lore said the IAIABC's job posting said the position would be remote for the right candidate. Currently, all the IAIABC employees are remote.

Commissioner McClain said if the Arkansas DOI were able to have more flexibility with remote work, it would help with recruitment and retention. He said they lost several employees throughout the DOI to employers that offer a more flexible work environment.

Mr. Grassel said the Iowa DOI recently started a pilot internship program that it is in the middle of structuring to recruit talent. Currently, this is being done with high school students, but the Iowa DOI is hoping it will be able to begin bringing in college students. Mr. Grassel said the Iowa DOI is in the office three days a week and remote two days a week. He said it is a challenge for retention if full remote work is not offered.

Ms. Murray said the Vermont DOI has a successful internship program and has retained one college graduate on a full-time basis. She said this is the fifth year of its internship program, and it has three summer interns. Ms. Murray said the Vermont DOI looks for local students. She said, however, it takes students from all over the country.

Ms. Murray said the Vermont DOI has worked hybrid the past two years, and it has worked out well. Commissioner Gaffney said DOIs cannot always make up the compensation gap. He said, however, that learning that working in a remote fashion can be productive for many jobs has helped fill that gap. He said embracing remote work will help balance the compensation difference.

Mr. Byrd said the Louisiana DOI has performance standards in place. He said if these standards are being met, it will provide some guidance on when working from home is working for a particular work situation. Mr. Byrd said performance standards would play a role in the future.

Ms. Lore posted a link to a webinar and discussion session held in May regarding recruitment and retention. This webinar discusses strategies to improve recruitment and retention. The link to the webinar is as follows: <https://educationhq.iaiaabc.org/learn/course/86/play/455/dive-in-discussion-on-recruitment-and-retention-2022>

Mr. Manders said there are two large risk management schools in Georgia. He said it is helpful to reach out to the local colleges and develop a relationship with the deans. Mr. Manders said Georgia has two deans that sit on its residual market boards as public members.

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Ms. Klausmeier said Utah is offering remote work, and it has been key to attracting and retaining employees.

Having no further business, the Workers' Compensation (C) Task Force adjourned.

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