

RULEMAKING ADVISORY COMMITTEE MEETING

Workers' Compensation Division Rules

OAR 436-060, Claims Administration

Rule 0025, Rate of Temporary Disability Compensation

Oct. 27, 2017, 8:30 a.m., Room F, 350 Winter Street NE, Salem, Oregon

Stakeholders attending were:

Kevin Billman	United Food and Commercial Workers MLAC
Zachary Brunot	Randy M. Elmer, AAL, PC
Chris Carpenter	LiUNA
Jennifer Flood	Ombudsman for Injured Workers
Jaye Fraser	SAIF Corporation
Tim Frew	Oregon State Building Trades Council
Chris Frost	Thomas Coon Newton Frost
Jessica Giannettino Villatoro	AFL-CIO
Christine Jensen	Moore & Jensen
Karl Koenig	Oregon State Fire Fighters Council
Katy McDowell	Tonkon Torp LLP
Brian Noble	SMART LOCAL16
Brian Ramsey	SAIF Corporation
Dan Schmelling	SAIF Corporation
Keith Semple	Johnson Johnson Lucas & Middleton PC
Diana Winther	IBEW Local 48
Carrie Wipplinger	Law Offices of Kathryn Reynolds Morton
Kimberly Wood	Perlo Construction

Department of Consumer and Business Services staff attending:

Adam Breitenstein
Barbara Belcher
Cara Filsinger
Chris Clark
Fred Bruyns
Karen Howard
Troy Painter

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BEFORE THE WORKERS' COMPENSATION [BOARD] *Division* OF

THE STATE OF OREGON

RULEMAKING ADVISORY COMMITTEE

WORKERS' COMPENSATION DIVISION RULES

The proceedings in the above-entitled matter were held in Salem, Oregon, on the 27th day of October 2017, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

1 TRANSCRIPT OF PROCEEDINGS

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3 00:00: Good morning and thank you very much for coming to join us
4 on a Friday. I apologize for picking a Friday, but it just happened to work out for
5 calendars and in general. I'm glad the weather is nice at least and we'll stay as long
6 as we need to this morning until our scheduled time is over, which is 11:30
7 approximately, but if we don't need the entire time, of course we value your time,
8 and so we'll only keep the meeting going as long as the committee still has input for
9 us.

10 So my name's Fred Bruyns and I coordinate rulemaking for the
11 Workers' Compensation Division. And the purpose of this meeting, like all advisory
12 committee meetings, is to give us a chance to find out what your thoughts are on
13 any of the--in this case we have draft rules for you, to see what your thoughts are on
14 any of those changes or changes that you don't see there as well, so this is a
15 chance to talk about Rule 25 as much as it needs to be talk--discussed. It's specific
16 to this particular rule, we're not opening all the claims administration rules; we're
17 really focused on how the weekly wage is calculated for the purposes of calculation
18 of temporary disability time loss compensation.

19 So this is informal, it's not a public hearing, it's just an advisory
20 committee, so it's a conversation, and so feel free to--we need to hear from you. If
21 you see anything in the rules or potential rule changes that entail fiscal, you know,
22 cost to you or the people you represent, please let us know about those so that we
23 can write those into our fiscal impact estimate when we file these with the Secretary
24 of State, and we rely on information from folks like you.

25 If you're on the telephone with us this morning, please keep in mind

1 we'll pick up background noises in your office, so if you're keyboarding even close to
2 the phone, we will--we will hear that, so you can selectively use the mute button.
3 Please don't put us on hold because we'll get your background music if you happen
4 to have that, so--but we do want you to participate fully in the meeting if you're on
5 the telephone to the extent that you want to, so please speak up anytime you have
6 thoughts, unless someone is, you know, absolutely talking at the time, but otherwise
7 you won't have the advantage of seeing who has their hand up here or who might be
8 wanting to speak next, so we want you to be active participants in the meeting.

9 Since I've introduced myself, I'd like to go around the--actually, before
10 we go around the table, let's hear from the folks on the telephone. Please let us
11 know if you're joining us this morning.

12 02:44: Hi. This is Carrie Wipplinger, I'm a Workers' Compensation
13 attorney with Liberty Mutual in Portland.

14 02:50: Welcome, Carrie.

15 02:53: Good morning, this is Kevin Billman, I'm with United Food and
16 Commercial Workers and on the MLAC board.

17 03:00: Welcome, Kevin. Anyone else on the telephone?

18 03:04: This is--this is Keith Semple with the Oregon Trial Lawyers
19 Association.

20 03:09: Welcome, Keith. Anyone else?

21 03:17: Hi, everyone, my name is Chris Clark, I'm an analyst with the
22 Division.

23 03:22: I'm Chris Frost, a claimants attorney at Thomas Coon
24 Newton & Frost.

25 03:28: I'm Diana Winther, I'm general counsel for IBEW Local 48, the

1 electrical workers union in the Portland area, and MLAC member.

2 03:36: Jessica Giannettino Villatoro with the Oregon AFL-CIO.

3 03:39: Brian Noble with sheet metal workers, Local 16.

4 03:42: Chris Carpenter with the District Council of Laborers.

5 03:45: Tim Frew, executive secretary of Oregon State Building

6 Trades.

7 03:49: Troy Painter, Workers' Compensation Division.

8 03:51: Karen Howard, research section.

9 03:53: Adam Breitenstein, Workers' Compensation Division.

10 03:55: Katy McDowell with Tonkon Torp on behalf of AGC, Associated

11 General Contractors.

12 04:01: Chris Jensen, I'm a claimants attorney with Moore & Jensen in

13 Eugene.

14 04:05: Cara Filsinger, Workers' Compensation Division.

15 04:07: Dan Schmelling, SAIF Corporation.

16 04:09: Jaye Fraser, SAIF Corporation.

17 04:11: Brian Ramsey, SAIF Corporation.

18 04:12: Jennifer Flood, ombudsman for injured worker, DCBS.

19 04:15: Okay. Welcome to you all. We have additional copies of the
20 agenda in the back of the room and also I want to let you know that Chris Frost sent
21 in just yesterday afternoon some information from a worker and so I would
22 encourage you to pick that up. It's something that I didn't have a chance to post to
23 our website. If you're on the telephone with us, you won't have the advantage of that
24 and I apologize, I just saw it first thing this morning and didn't have a chance to post
25 it to our website before the meeting, but it does focus on someone whose wages

1 changed during the year before the injury and how those wage changes were
2 averaged over the course, the actual wage was averaged over the full year as
3 opposed to reflecting the most recent wage, so... With that, I'd like to turn things
4 over to Chris to take us through the draft rules.

5 05:11: Well, thank you, everyone, again for coming, we really
6 appreciated everybody's feedback during this entire process and are looking forward
7 to a good conversation again today. As you can see, we have a pretty short agenda
8 and then we've attached the proposed rules, as Fred mentioned, including both the
9 language reflected in the temporary rule on union hall--hiring hall workers, wage
10 calculation, and then some housekeeping issues that were previously proposed in
11 an earlier Division 60 rulemaking process. So I'm just going to go through these
12 three items on the first page here and then we'll--should have time for other people
13 to bring any issues they would like to discuss as well.

14 So the first issue is replacement of the temporary rule that's now in
15 effect for workers employed through a union hiring hall. The temporary rule went
16 into effect on October 1st and was issued after stakeholders reported that workers
17 have been harmed by removal of their hiring hall provision in rules effective
18 January 1, 2017. You can find the proposed language on Page 4 under section (5)
19 of the rule, subsection (d). We--yeah, at this point we just really appreciate any
20 feedback on the language itself or any other issues with this subsection.

21 06:45: And this is exactly the same as the temporary rule language,
22 isn't it?

23 06:48: I believe so, yeah.

24 06:51: And the only change to the previous rule was swapping out call
25 board for union hiring hall?

1 06:54: Right, and then the second sentence, which kind of describes
2 the applicability issues.

3 07:01: Excuse me, Chris, do you have any more copies of the
4 agenda?

5 07:09: I do not, but I can--

6 07:10: Well, yeah--

7 07:10: --we can share one--

8 07:11: --no, no, you keep yours, Chris, because you're going to be
9 going through the stuff, so here.

10 07:19: I gave mine to Tim.

11 07:20: Do we need any additional copies around the table?

12 07:21: (unintelligible)

13 07:21: We do.

14 07:22: Exactly, (unintelligible). I'll make some copies.

15 07:28: We should have copies in just a few minutes.

16 08:03: All right. So I know we've talked about this issue quite a bit
17 already, so I understand if there's not a lot of new input, but...

18 08:12: And if there is any (unintelligible) we just thank the Division and
19 other stakeholders for looking to get this resolved.

20 08:19: Great. All right. Well, that is perfect, so...

21 08:39: You did such a good job earlier we have--

22 08:41: Right, yeah.

23 08:41: --nothing to talk about.

24 08:45: So moving on, so in a series of advisory committees in 2015
25 and 2016 the Division discussed OAR 436, Division 60, Rule 25 with stakeholders

1 and issued a substantially revised rule effective January 1, 2017. The goal was to
2 have a rule that would simplify calculation of wages and increase accuracy and
3 consistency in determining time loss rates. We requested that committee members
4 describe their experiences with the revised rules. We know there has been a couple
5 concerns raised, so any--yeah, any issues people would like to bring forward are
6 welcome.

7 09:31: Chris?

8 09:32: I came specifically to talk about the calculation that is reflected
9 in the--in the Mr. Pollard's (phonetic) statement here and this says it for these people
10 that are making more money, but let's look at the little guys are the one, we've got a
11 state law that's going to take us every year for the next few years and give an
12 increase in minimum wage, and everybody that's going to get that increase in
13 minimum wage that gets an injury is not going to get that increase in minimum wage,
14 so I think that this rule allows for conflict with the statute that says that they're to get
15 an increase, and that's an issue that I've raised already in four cases that I had and
16 got two decisions from a judge, both by the same judge, I've got two cases up on
17 appeal to challenge this rule just for that reason.

18 10:29: I'll let others chime in here, but most of our, I believe, contracts
19 get raises every year and still tend to the contract, so if a worker gets hurt, then
20 that's not going to be reflected in their time loss and that's a problem for
21 (unintelligible). And I would just (unintelligible) what Chris said about minimum
22 wage. We kind of take our role as the voice for both our affiliates and also for
23 workers who don't have an advocate all the time and that's a big--that's a big
24 concern for us as well. Those workers are already being left behind and they sure
25 don't need to be left behind after they get hurt.

1 10:58: Okay. So to clarify, this is really about--

2 11:01: (unintelligible)

3 11:03: --removal of the previous exception in the rule that, when there
4 has been a change in the words--wage earning agreement due to only a pay
5 increase or decrease during the 52 weeks prior to the date of injuries, insurers must
6 use the worker's average weekly wage hours worked for the 52-week period or
7 lesser period as required by this rule multiplied by the wage at injury to determine
8 the worker's current average weekly earnings. That's correct, that's what this issue
9 is. Okay.

10 11:32: We have--we have several contracts that workers that aren't
11 hired through a hiring hall as well, so we have production workers in the sheet metal
12 industry and they get wages increases every single year, and depending on which
13 company it's a different time of the year, so it's not standard. Each one of those
14 shops has their own individual contract and they start and stop at different times, so
15 it--I don't see a worker that would not be affected by that rule change in a negative
16 way. And I have, I do have a couple of our contracts wage sheets where guys can
17 go from--after 180 days, they go from 13.50 to 18.50, you know, and that's a
18 significant change there in a short amount of time because they've proven that they
19 can do the job and so they're moved up and they can move up even more
20 (unintelligible) skills.

21 12:35: Yeah, it's not an uncommon factor, you know, I'm guessing for
22 you as a probationary period, just--

23 12:39: Yeah.

24 12:39: --like it is a lot for our maintenance workers, you know, our
25 standalone contracts outside of the construction world to having, you know,

1 sometimes dramatically, sometimes, you know, less so period of time, whether it's,
2 you know, six months or three months where they're making less money through no
3 fault of their own, because of the fact that they have these great protections and just-
4 cause, there's that probationary period in which they can be let go without having to
5 go through the whole grievance process, sort of a compromise that we have with the
6 employers, and this rule doesn't reflect that, again that increase that they should,
7 you know, and do deserve.

8 13:14: Okay. And so when things like that happens, there's no other
9 change in the wage earning agreement, like a change in hours worked or job duties
10 or other reasons; it's--

11 13:23: It--

12 13:24: --it's simply bay--

13 13:24: Basically it gives almost the employer like a trial period to test
14 out the employee that otherwise based on the contract they're going to have a much
15 harder time getting rid of once they pass their probationary period, essentially.

16 13:35: This is Chris Frost. I am here to address this issue specifically.
17 I testified against the rule change when you all were considering it. I was very
18 disappointed when the rule changed. I think part of the consideration for changing
19 the rule was that you were thinking it would not affect that many workers, but I am
20 here to tell you, and I'm sure Ms. Jensen can tell you because we represent injured
21 workers, that this affects a large number of workers. Most of injured workers are
22 paid on an hourly basis.

23 I am the person that has to listen to injured workers' problems, I'm here
24 because of Brian Hoskins (phonetic) and the many people like him. Brian was hired
25 on a probationary salar--or hourly rate of \$11. He then got his regular rate of 15.80,

1 but then shortly after that had the misfortune of being injured in Oregon Workers'
2 Compensation system at work. So instead of having a time loss rate of \$429 a
3 week, he got a time loss rate, weekly time loss rate of \$365 a week. I don't know if
4 any of us in this room could live on that. It was a reduction because of this rule of
5 \$278 a month.

6 Brian quickly became housing-insecure and he became food-security-
7 insecure. He could no longer pay his child support. He eventually had to move out
8 of the State of Oregon so that he could live with family members while he was
9 recovering from his injury. This rule effectively saved insurers money, it effectively
10 impacted negatively Mr. Hoskins' children, Mr. Hoskins, and I am beside myself
11 because he is just one of the workers that I have dealt with since this rule has
12 changed.

13 I told you this would happen, I appreciate that you all are so polite, I
14 wish I could feel more polite, but I'm the person that has to try to help these people.
15 This rule needs to change back, this is not about math, this is not about a difficult
16 math calculation. The math on these things is actually pretty simple, I've been doing
17 it for two decades, my paralegal does it quite quickly, he is available to teach
18 adjusters how to do this math. This is not a question of a difficult math calculation,
19 and if the Division continues to suggest that this is a problem with a difficult math
20 calculation so that injured workers become housing-insecure and food-insecure, I
21 need them to write Mr. Richard Pollard and I need them to write Brian Hoskins and
22 explain to them why this rule changed.

23 17:38: Thanks, Chris.

24 17:43: Another thing to consider with this, it's not just the time loss rate
25 that you're dealing with, because the permanent partial disability awards are tied

1 directly to the average weekly wage. It makes a substantial difference, and we may
2 be talking about, you know, a hundred bucks a month or something if we're talking
3 about the change for the time loss rate and that's a lot of money for somebody that's
4 making a little money in the first place, but it is really compounded then when you do
5 some calculations and say what would your permanent disability award be here with
6 your average weekly wage A versus your average weekly wage B, and some of
7 those figures are pretty--very easily get up into the thousands of dollars of difference
8 that you're treating a worker, and in some cases, and it doesn't happen very often,
9 but in some cases you're looking at somebody who either is entitled to or is not
10 entitled to vocational assistance because of that little itty-bitty change, and so it
11 really matters more than just these two-week time loss checks that they're getting,
12 it's a huge thing.

13 19:13: Are there other, any other comments?

14 19:17: I will just note, this is Chris Frost again, Workers' Comp
15 premiums have continued going down. The Workers' Comp system is not a
16 particularly--its insurers are not facing a great deal of difficulty, the law generally is
17 not anti-insurer, I think the system has done a great job recognizing insurers as
18 stakeholders and listening to their issues. Workers' Comp premiums again are not
19 going up; they're going down. So again this is not a math problem; this is a money
20 issue. This rule saves insurance companies money by taking it out of injured
21 workers' pockets at a time when that simply is not appropriate. This should not be
22 looked--this should not be looked at as a math issue.

23 20:40: Zachary Brunot, claimants attorney here in town. I think that
24 maybe we should just zoom out for a second and remember what the system was
25 created for. It was meant for the party that was better able to bear the risk of an

1 injury at work to be the one that bears the risk. The legislature picked two-thirds of
2 an average weekly wage probably because it shouldn't have provided incentive for
3 people to stay home from work, right, and so we're dealing with this balance
4 between not incentivizing staying home from work and getting back to work with
5 being housing- and food-insecure, right? We're shifting a little bit too far towards the
6 housing- and food-insecure at the risk of incentivizing injured workers from staying
7 home, and my comments are simply let's evaluate that balance.

8 21:32: Jaye Fraser for SAIF Corporation. I don't think we were in love
9 with the prior rule because it is difficult and, with all due respect, Chris, the
10 calculation can be kind of challenging. SAIF at audit seems to do much better than
11 a lot of insurers, so we figured out how to do it. It's never our goal to take money
12 that a deserving worker should get out of their pocket, so if the Department decides
13 to--you know, to change it, we certainly won't object. We'd love to see the
14 Department kind of come up with a way that is simpler so that it's easier for us to do
15 it quicker because that we can--you know, we get money into the pockets of the
16 injured worker faster, and I think during the last rulemaking process we had some
17 ideas, I will confess I didn't go back and look at those again, but we certainly--I
18 mean, this is not, I think, the intent, I'm sure it wasn't the Department's intent when
19 it--when it did these rules, so...

20 22:35: I'm just adding on to what you said is I don't want to say I take
21 offense to say it's saving the insurer money. I think the original discussion was is
22 there a way to ease the computation that's needed that I won't say benefits
23 everyone, but is advantageous to everyone? One of the difficulties with the
24 computation now is when it was if there was a rate change, you averaged the hours
25 at the rate at the time of injury is we would have to go back to the employer and say,

1 "It's just not good enough for you to give us the wages earned for a specific payroll
2 period, whether it's a biweekly period, a monthly, a weekly, or an annual total, is we
3 need the actual hours for each week worked," and in some cases that took the
4 employer quite a bit of time to gather all that information, which might be only for a
5 day or two of time loss or it might be that case where time loss is going to be paid
6 out over months because the worker has surgery and is going to be off, so trying to
7 find a balance in that burden on the employer of providing all the payroll records, I'll
8 say that the calculation now is, you know, I won't say easier; it's more streamlined
9 because we can get the gross wages in and say here's the gross wages over the
10 past 52 weeks without needing to look into that and saying was there a rate increase
11 or decrease during that time period that was only because of a pay rate increase?
12 Oh, there was; now I need to get the hours and, employer, please provide more
13 payroll records, so I think missing from this conversation is the employer's
14 perspective and again I'm not going to say burden, but the need for them to provide
15 more information to the insurer, depending upon the complexity of the rules, to make
16 sure you're evaluating now was this a rate increase, was this a job duty change, was
17 this a position change, did they go from part-time to full-time, full-time to part-time,
18 and the more complex the rules get, the more complex and detailed payroll
19 information the insurer needs, the service company needs in order to apply the rules
20 correctly, so I think, you know, trying to find that balance of how do we streamline
21 the administrative rules to make sure we get a fair and accurate average weekly
22 wage, but still, you know, kind of streamlining it so we're not spending, say a lot of
23 time, but a lot of time getting the payroll records in and going back to the employer
24 and saying, "Can you please clarify this, can you please clarify that?" because in
25 many cases it's not just an employer contact we have; we're talking with a payroll

1 firm or an HR firm that's not even in the State of Oregon because the supervisor that
2 works with the worker on a daily basis has no clue even what the rate of pay is, so
3 we're contacting two, three, four people to obtain payroll information to calculate an
4 average weekly wage, so to the extent that we can find some streamline in the
5 system and still get an accurate and fair wage for the worker, we're all for it.

6 25:56: One of the things that I believe, correct me if I'm wrong, the
7 adjusters also need to be looking at before they determine the wage is not just the
8 payroll, even currently; they need to be able to look at it and say whether or not
9 there's an extended gap, they need to be able to look at it and say has there been a
10 change? So if they're looking for an extended gap period, I know that it takes some
11 time, but it shouldn't be too hard to figure out what those hours are. Folks should
12 have been doing it for many, many years and they weren't in compliance with the
13 rule. To me it's--I know that I always deal with it on a small basis, but--and I know
14 workload is an issue sometimes, but it shouldn't come at the expense of the injured
15 worker.

16 26:44: Well, and, Jennifer, I think we agree with that. I think all we're
17 saying is, frankly, after hearing this testimony, I'd rather go back to the rule the way it
18 was than be taking the money out of the pocket, because we can figure we can work
19 our way around it and we have, but what I guess we're asking is, is there another
20 way to make sure that workers get a fair--you know, that their time loss is a fair
21 representation of their wage without as much detail? Because some of our
22 employers are small, too, some of them are, you know, we have--we have our
23 challenges with some of our employers, so--and that's no excuse, I'm not trying to
24 make any excuse, so we're just asking the Department to, please, as you are really
25 looking at this again, to see if there's a way to--

1 27:37: Zachary Brunot. Jake, I thank you for that what SAIF's trying to
2 go after a fair wage for the employee, I really do appreciate that. The--I run into
3 cases all the time trying to set a rate, and the problem is that the employer has the
4 payroll records. They're not paying extra money to these employees if they don't
5 have to, they know how much they have to pay these guys, right? And so when I
6 think the rate's wrong and I have to challenge the rate and the employee says, "Well,
7 I don't have a checking account, I get paid in cash," it's like, you know, (unintelligible)
8 do with your money, but the problem is, is the system has to work for those people
9 that maybe conduct their finances (unintelligible), too--

10 28:12: Yeah, I think--

11 28:13: --and so when we have to prove the extent of disability, which I
12 understand is the claimant's burden under the system, we don't have the information
13 necessary in order to actually do that because the other party is holding the cards,
14 and I realize the insurance company's dealing with the same bad actors on the--on
15 the policyholder side, but I think that we need to address that, too, I mean, there has
16 to be something that put--that addresses the employer's need, I mean, honestly to
17 the extent that I would suggest, this may be a little bit obvious, there is a
18 presumption of what the rate is based on the employee's statements and then the
19 employer needs to come forward and say, "No, that is way too high," and until then
20 because that would incentivize the bad-actor employers to provide better records,
21 and it doesn't happen all the time, granted, none of us in this room are going to have
22 that problem, I have a checking account, I keep my pay stubs in a nice little folder on
23 a desk, but people aren't like us, you know, these are blue-collar guys that get
24 mangled at work, they might not speak English, they might not even speak Spanish
25 as a second language, you know, they're not as sophisticated as we are, and the

1 system is built upon the presumption of sophistication of the parties in order to be
2 able to present these pieces of information, so the rule has to take into consideration
3 (unintelligible).

4 29:25: I will--this is Chris Frost again. I've dealt with insurers, a wide
5 range of insurers over the years, and by and large I will say that SAIF knows how to
6 calculate a wage, I don't have the problems. Under the old rule where you had to
7 take the average hours times the rate at injury, I didn't have a problem with SAIF
8 doing that, they seemed to be able to do it without much problem. Other insurance
9 companies or third-party administrators? I--it was such a problem that it almost
10 became apparent to me that they simply didn't bother with the rule; they just
11 averaged the hours and--

12 30:26: Averaged the wages.

13 30:26: Averaged the wages, paid the time loss, and the repercussions
14 for the few workers that actually were able to get an attorney to look at the wage
15 rate, the penalties for getting it fixed were so low that it was still worth the price of
16 disregarding the rule.

17 I remember one year, my first year as an attorney for injured workers, I
18 had the--I had three workers in a span of about six months who each had the same
19 adjuster; time loss wrong the first time, we--I challenged it, time loss wrong on the
20 second, I challenged it. The third one, once she got my retain--once the adjuster got
21 my retainer, by the time the guy got to my office, she'd already sent him a check for
22 what she owed him. She knows, she knew how to calculate under the rule, she--and
23 I'm-- She chose not to.

24 This rule change coming at the time when after our Access to Justice
25 bill that made it easier for injured workers to find representation to help them with

1 their wage loss, this rule change comes uncomfortably close to that Access to
2 Justice bill. In other words, it may be that it is not merely as financially beneficial
3 now for injured--for adjusters to ignore the old rule. Now if they--if they--if we still
4 have this rule in effect and they were still ignoring it, there was more financial
5 penalty for disregarding that, so--

6 32:45: Or on the flip side of it, more incentive to do it right.

7 32:47: More incentive to do it right, there you go, so--

8 32:52: I think Zach was kind of on the right track there, I think that you
9 have--companies are the professionals with their payroll and all of that, right? A
10 worker that gets hurt doesn't know anything about the system, doesn't know
11 anything about Workers' Comp, so if you give that worker the benefit of the doubt on
12 the wages and give the employer a time limit to prove that it's different than that,
13 then that's going to incentivize them to get it figured out and prove it, right, and get
14 you guys information to figure the wages out if they had wage changes throughout
15 that time because, you know, they're the professionals dealing with that type of
16 paperwork. The worker really doesn't know, they're taking everybody's word for it.

17 33:37: You're right, but I think, Brian, that unfortunately the real truth is
18 that most employers provide us with what they need and so I hate to set it up with
19 the potential of conflict from the very beginning so we're having to constantly say,
20 "Oh, no, yes," because I have to ask, I couldn't tell you what my hourly rate is, I don't
21 know, I only know what comes in my paycheck--

22 34:05: You're not an hourly worker, Jenn.

23 34:07: But I have an hourly rate, I have an hourly rate--

24 34:09: Yeah, we all do--

25 34:10: And--

1 34:10: --(unintelligible) hourly wage--

2 34:11: I mean, you're right, you're right, but I think that it's not
3 uncommon for people to not know that down there, so--

4 34:17: And I'll say just I appreciate the simplicity of it, but to throw out
5 an example. You have a construction worker that works both, yes, a regular
6 standard rate job and then a prevailing rate. If they're injured on the prevailing rate,
7 they're going to tell you, "I'm making 35 bucks an hour working 40 hours a week,"
8 but they only worked prevailing rate two or three weeks out of the year, they
9 normally were making 15, 20 dollars an hour and working 30, 40 hours a week
10 because there are seasonal fluctuations in that, so based on that presumption, are
11 we at 35 and 40 or we're at 15 and 30 hours? There's a big disparity there.

12 And I know that you're probably representing workers or seeing
13 workers where they're working union jobs with prevailing all the time. A lot of the
14 smaller construction companies that we're insuring, the worker's working prevailing
15 rate two or three weeks out of the year and the current rule takes into consideration
16 that and takes that high and takes the low and finds an average, even under the old
17 administrative rule we would still do that, we would average out the hours at the
18 various rates. If they were irregular and not necessarily a rate increase, but it was a
19 rate increase, we would take the highest rate for all of those different throughout, so
20 for every solution we come up with, there's things we need to consider that--

21 35:51: Absolutely, and I would say that if you're wrong, if I make
22 150 bucks an hour at rate, sure, and they started getting paid for the first couple
23 weeks based on that (unintelligible) because obviously for maybe, you know, for a
24 plumber, not that unreasonable. But then after two weeks you get the audit
25 information, you do it, SAIF, every insurance company has a way to recoup those

1 losses through overpayments from future compensation. The point again back to
2 my original point is who's best able to bear that risk of the unknown? And on the
3 front end it is going to be the insurance company because what if that worker's right,
4 right? They--just because I'm making 150 bucks an hour doesn't mean I'm not living
5 paycheck to paycheck. Everyone (unintelligible) economy is a (unintelligible), and
6 so that's where that benefit has to come back into, the tools are available to the
7 insurance company to recoup any overpayments made, so--

8 36:39: And I would--I mean, we blew up the system. I would love to
9 be able to say, "Look, the insurer gets 30 days, 45 days, whatever from the filing of
10 the claim to calculate an average weekly wage and no hearing requests during that
11 time," but in the current environment we're in, I see hearing requests within a week
12 of the claim being filed saying your average weekly wage is wrong. We haven't even
13 paid a first payment yet. We make the first payment on the 14th day based on what
14 we're being told by the worker and the employer, "This is what we think this person's
15 making," we get the payroll in, calculate an average weekly wage for \$50 off to the
16 employer's benefit, the insurer's benefit if you want to look at it that way, so we make
17 up the difference with the underpayment to the worker. We already have a hearing
18 request in the file. We paid a \$3500 attorney fee on that to make it go away. We
19 didn't even have the opportunity to calculate the average weekly wage based on
20 payroll because we had not received it before the first pay was due within 14 days
21 and we were already penalized \$3500 in attorney fees because the hearing request
22 came in that quick.

23 37:59: Who was that and does that happen all the time?

24 38:03: It happens with some--

25 38:05: And did a judge order that?

1 38:05: --large metropolitan areas--

2 38:06: Did a judge order that?

3 38:07: Yes.

4 38:09: I would like to see that.

5 38:11: So I would (unintelligible) our goal is, if the worker questions
6 the average weekly wage, the employer--if anyone questions it is, okay, let's have a
7 meeting of the minds. I appreciate it when worker's representative calls up and
8 says, "Hey, I think you got it wrong here," because chances are we did miss
9 something, you know, whether or not there was a gap in the payroll that we weren't
10 aware of because the payroll that we received from the employer is just broken out
11 monthly, and so we don't see that two- to three-week gap within because it's not
12 reflected in the irregular earnings, so those types of things when we're all working
13 together, we get that wage calculated for the worker quicker than--and I'll say we get
14 the hearing request, average weekly wage dispute, what's your issue? "We'll tell
15 you at hearing." We would like to fix this now if we knew what the issue was; what's
16 the issue? "We'll tell you at hearing. Give us the payroll records first." I--we're
17 wanting to work with all parties to get an accurate average weekly wage, but
18 sometimes the system's not set up for it.

19 39:22: And every system has (unintelligible) and there's going to be
20 unscrupulous parties on both sides, and I'm not talking about SAIF. SAIF does a
21 pretty good job, you know, but there are--not all the insurance companies and not all
22 the (unintelligible), and so we can't build a system based off of a few bad actors--

23 39:42: Outliers.

24 39:44: And, no, my frustration, I supervise the folks that do the
25 average weekly wage calculations and they're in my office saying, "I have this one

1 piece of paper from the employer with a date range and a gross amount on it." I'm
2 like, hm, what story does it tell? And I have them tell me the story. And a lot of
3 times the story is about two seconds long and this is the average weekly wage, and
4 over time the story gets longer and longer and longer and the average weekly wage
5 gets more and more accurate, and how quickly can we get the story together so we
6 can look at the administrative rules and say this is a calc--or an accurate average
7 weekly wage?

8 40:27: I want to know who these attorneys are that are getting clients
9 a week after an injury.

10 40:31: Yeah--

11 40:31: And is walking in at the time (unintelligible).

12 40:38: I just have a more formal question, I guess, is in looking at
13 656.210, it talks about actually the wage is supposed to be calculated based on the
14 time of injury. I'm a little confused and I've kind of asked this and maybe I haven't
15 asked the right way before as to how we got to a point where we're having
16 (unintelligible) compensating calculation when--you know, I'm a lawyer, I'm a lawyer
17 because I don't do math, but, you know, in my mind it's the statute says time of
18 injury, I look at my most recent pay stub, so for the week in which I got hurt, because
19 legally all employers are supposed to be providing those in some fashion or another,
20 you know, and look and say this is my hourly rate, that should be the amount. And I
21 understand sort of the complication with irregular pay and stuff like that with the
22 prevailing wage and that sort of thing, but, you know, hey, my union prevails, so
23 that's not an issue for my workers, but I kind of have to view it as the employer's
24 burden, they're choosing to bid that work, they're choosing to put themselves in that
25 position knowing that at the time of injury when that person gets hurt that this is the

1 wage I may be facing when I'm doing Workers' Compensation because I'm choosing
2 to do this--to do prevailing wage work.

3 41:52: I'm not an attorney, but statute .210's about this long.

4 41:57: Uh-huh.

5 41:57: And at the end it says that the Director will promulgate rules
6 (unintelligible)--

7 42:03: It's (unintelligible) how we got that far.

8 42:05: Yeah.

9 42:06: You know?

10 42:06: And we have four pages, five pages, however many pages of
11 rules that if this, then do this, but for this, then do that, then you layer case law on
12 top of that and--

13 42:17: I'm sure I guess it's (unintelligible)--

14 42:21: That's a very good question, and when we talked about this
15 with advisory committees in the past, we talked about that very thing, what does at
16 the time of injury--

17 42:27: Right.

18 42:27: --mean? And it was the downside would be if someone really
19 had a few kind of slow weeks and they were working very limited hours for a couple
20 of weeks before they were injured, they would be stuck with that very low rate if we
21 stuck to it exactly the time of injury, so it may be a matter of what they call the
22 Director's discretion in rulemaking to define what, you know, at the time of injury
23 means. There's only been, I think someone forwarded a Hearings Division, a
24 Workers' Comp Board Hearings Division case, an Opinion and Order, where I think
25 an ALJ found that that was the case, they thought that the Director had that

1 discretion, but I don't know if it's been challenged or how it would come out if it went
2 up to the Court of Appeals or Supreme Court in terms of someone arguing that it
3 should have been at the time of injury and that our rule would therefore be invalid,
4 but--

5 43:19: And I guess also to go in that, I think part of the reason why the
6 Director is granted the discretion to promulgate rules is because there's more
7 variables than just kind of a set wage and then variable hours, so some workers may
8 have multiple jobs, so they may have multiple different wages even like
9 simultaneously, some workers may receive different kinds of pay that needs to be
10 incorporated, some of that may be temporarily based, so they may get a holiday
11 bonus that should be included, but if they're hurt in July, you know, do you--do you
12 include that as their wage at injury because it's July, it's not December? So there's
13 just a lot of other factors that require this kind of averaging method. And, yeah,
14 we're obviously here to discuss what's the best averaging method, but that is, I think,
15 why just saying your wage rate at the time you're injured so is not a reasonable
16 approximation of what your annual earnings might be.

17 44:20: I guess maybe then my thought is, you know, maybe I can
18 understand the need to average if you're trying to calculate all these different things,
19 but I don't think it should be less than the hourly dollar amount that you got when you
20 got hurt, so, you know, even if there is no less-than language in there, you know, I
21 don't think workers should have to take a step backwards, whether it's the people
22 who have been desperately waiting for increases in minimum wage or, in my case,
23 we're looking at a substantial increase hopefully for our next contract because my
24 union brothers and sisters (unintelligible) and we're working really hard to get that
25 fixed and it's not fair if they get hurt on January 2nd to not get that benefit.

1 44:55: Sure. No, and no--no, we appreciate that. I think one of the
2 things that the rule is intended to address, and I'm just going to ask probably the
3 committee, is we're seeing more and more people with wage differentials and things
4 like that, and so part of what we were trying to get at is, is addressing making better
5 outcomes for them so when you, you know, maybe work one day at--not good at
6 coming up with reasonable hypothetical numbers, but say you work one day at \$20
7 an hour, the next day you get some differential pay for \$25 an hour and then you go
8 back to 20 and you're hurt on that day, you know, what should you get paid? \$20 or
9 \$25 an hour? So in that case you were--you would be getting a reduction because
10 of the time that you got hurt and it's not a fair representation of what your actual
11 earnings are with that employer. And so I think that's kind of what we're--that was
12 part of the intent of what we got to, going back into the rule record, that was the
13 primary driver of our internal decision-making.

14 46:00: How common is that situation? Because I have not run across
15 that.

16 46:05: I can't say how common it is, I know we're seeing it more and
17 more, but maybe if somebody--

18 46:10: I would say it's very (unintelligible) Workers' Compensation
19 Division, the audit manager, I personally have looked at a lot of wage records, and
20 differentials in pays is many in one single day for lots of people, it's actually fairly
21 common way people get paid these days.

22 46:27: I did a wage differential for the day or the situation which we're
23 talking about where someone was getting paid one dollar amount one day, a
24 different dollar amount the next day, and then back to the original dollar amount and
25 was getting hurt on that day--

1 46:41: It's all of that.

2 46:42: Okay.

3 46:43: I can understand like our--a lot of workers will have a shift
4 differential if they're working a swing shift or a graveyard shift to help incentivize
5 people to do that and I can easily see taking the wage rate of that day and averaging
6 it together, but--

7 46:56: We've seen wage rates change up to eight times in a single
8 day.

9 47:00: There should be limitations under the law how many times
10 (unintelligible)--

11 47:04: Well, in prevailing wage, depending on who's actually doing it,
12 you could get paid several different wages during the day, so--

13 47:08: And we've seen 28 pages of wage records that were hard to
14 read and calculate, we've had situations where we've had auditors looking at the
15 same 28 pages of wage records with different rates of pay throughout the day and
16 changing back and forth high-low and it's nearly impos--it was nearly impossible to--
17 well, we have to select one rule, and by doing that the way the rule was before,
18 you'd be in violation of another rule.

19 47:40: The State healthcare industry--

20 47:42: Exactly.

21 47:42: --is a nightmare--

22 47:43: Yeah.

23 47:43: Truckers--

24 47:44: Public entities quite often will have different rates of pay
25 depending upon what job they're doing, school districts will have folks that are hired

1 for two or three distinct jobs but only be employed once, you know, they go from
2 being on the playground to doing a crossing guard to being a teacher aide
3 throughout the day, and it's one employment but it's three rates of pays, yeah, we
4 see workers with 30 different differentials in healthcare.

5 I'll throw the State of Oregon under the bus. Their payroll is an
6 absolute nightmare to try to calculate because they'll pay a monthly amount and then
7 they do a mid-month adjustment to adjust the prior months if there's leave without
8 pay or overtime that wasn't reported in the last few days of a payroll period because
9 you're on an annual reporting process and so we're adding and taking away just to
10 come up with an average weekly wage, and is it the norm? No. Actually a lot of the
11 service company accounts that we have because their folks make about 12 bucks
12 an hour and they never work overtime and here's the wages. It's usually the more
13 sophisticated employers that have more sophisticated methods to pay their
14 employees and more sophisticated payroll records that you ask for payroll and you
15 get 52 pages of payroll and you're like "What is going on?"

16 49:17: It does seem that just as WCD has rules about odd like
17 commission, salaries, and other things, that that seems like it could be addressed
18 with a rule that requires averaging, but to lump Mr. Hoskins, Mr. Poland (phonetic),
19 and other hourly-rate workers who, and particularly like Ms. Jensen said, low-wage
20 workers in with those folks, those differential-shift folks, is--

21 49:57: Those are the hourlies.

22 49:58: Yeah.

23 49:59: Those are the hourlies that are getting shift differentials and
24 have--

25 50:03: But--

1 50:03: --various rates of pay that go from \$12 to--

2 50:06: You can have a rule for people who have shift differentials or,
3 you know, rather than--

4 50:15: Well, let's remember that the statute .210 only says the benefit
5 to the worker who incurs an injury shall be based on the wage of the worker at the
6 time of the injury, that's all you guys have to work with. Average weekly wage is
7 defined in statute, but that actually refers to a state average weekly wage, which
8 doesn't--it's not even relevant to this other than setting maxes and minimums. So
9 what--how do we figure out the wage of the worker at the time of injury? I mean,
10 average weekly wage came up at some point, which was used, and it's clearly a sort
11 of equitable measure, but where does 52 weeks come from, where does 104 weeks
12 come from? I mean, I know this is the old rules, but we have discretion to get to fair
13 without violating a statute. And the wage of the worker at the time of injury could be
14 the wage of the worker on that day of the injury multiplied by the number of days
15 they work in a week, you know.

16 51:09: This is Chris Jensen. I think that that serendipitous assignment
17 of av--of wage to somebody depending upon whether they get hurt on a day when
18 they work--when they're working 12 hours, so they're getting four hours of overtime
19 that day, versus somebody who got sent home early for some reason because
20 they're working out in the woods and they got a shutdown for a fire or whatever is
21 that would be a crazy way to go because, yes, there'd be some who would benefit
22 extremely by that, but there would be others who would be just excessively hurt by it,
23 and to do that, when you think of the families that are involved in this, I think that
24 would be crazy.

25 51:51: Where we were before the rule change was if a worker had a

1 rate increase in the prior 52 weeks or a rate decrease, we would take the rate on the
2 time of injury, and there could be multiple rates and multiple shift differentials, and
3 we would average out all the hours worked in those various categories for the prior
4 52--well, up to the prior 52 weeks, depending upon if there was other wage-earning
5 agreement changes within that, and take those averages of the hours, so it'd be the
6 average regular hours, the average overtime hours, the averages of all the shift
7 differentials and premiums at the rate at the time of injury and then divide by the
8 weeks worked up to the prior 52 weeks.

9 This rule simply took that away and said don't average the hours; just
10 take those gross amounts for each category in the prior 52 and divide by 52, so a
11 worker that's injured on the first day of their rate increase under the old rules would
12 benefit because their average hours was brought up to the new rate. In the current
13 methodology, that worker would still benefit because they would have one day at the
14 higher rate, but the other 364 days of the past 52-week calendar period was at the
15 lower rates, so depending upon when the worker's injured in relation to their pay rate
16 increase, if they were injured 51 weeks after their pay rate increase, $51/52^{\text{nds}}$ of their
17 average weekly wage would be based on the higher rate. If they were injured six
18 months after their rate increase, half their wages would be at the higher rate, half
19 their wages would be at the lower rate because it really depends upon where you're
20 injured in relation to the rate increase.

21 So I guess the question is from a simplicity standpoint was let's take
22 out the averaging of the hours and say to the worker, "Look, if you're injured two
23 weeks after your date of injury, not that you weren't making \$36 an hour there and
24 30 hours--dollars an hour there, but you'd only been making \$36 an hour for two
25 weeks." Now I'm not going to argue the merits of that whether it's right, wrong, or

1 indifferent, but I think the purpose of the rule change was to say not that it comes out
2 in the wash, but that worker had been only working under that wage-earning
3 agreement for a short period of time or a longer period of time, so it would balance
4 out. Now, I have no problem with going back to the prior methodology where we
5 averaged the hours at the rate, I mean, that's the way we'd been doing it for years,
6 but to the extent that we can make it, say easier, but more consistent to get an
7 accurate payment out to the worker, and I've thrown this out before and I don't know
8 if it's really -0025 or -0035, but we're required to pay time loss every 14 days. But
9 who gets paid every 14 days?

10 55:08: I get paid every seven.

11 55:09: Okay. So I'm calling up your employer when you get injured
12 every 14 days and say, "Hey, give me Brian's payroll for the last two weeks." Well,
13 what if you get paid Monday through Sunday, but I'm paying my time loss payment
14 on Wednesday, and I say, "No, no, I need half of Brian's payroll from last week and
15 the other half for this week," and they say, "Well, we haven't even reported it yet, it's
16 not with our payroll," my suggestion, and I don't know if it's in -0025 or -0035 or
17 where it is or -0020, is give insurers the option to pay temporary disability payments
18 after the initial payment's made on the 14th day consecutive or along with the
19 employer's payroll, and I think that would help out the accuracy of payments,
20 especially on temporary partial disability payments, because we could call up the
21 employer and say, "We need to pay this period of time," whether it's a week, whether
22 it's two weeks, whether it's semi-monthly, but it coincides with the payroll that they
23 paid the worker when they're on modified work, so when we're paying those TPD
24 payments. Now, it doesn't get to the rate of time loss for the average weekly wage,
25 but it helps that TPD payment, we're saying, hey, worker, you're back to modified

1 work, not doing your full hours and wages, here's your check from the insurer for the
2 time that you missed and here's the check from the employer for the time that you
3 worked, and they're synched up. So no one's having to explain, well, your payroll
4 period for your employer and your temporary disability from the insurer don't match
5 and we're not quite sure, but it'll come out in the wash at the end.

6 56:59: Yeah, Dan, while I can appreciate your view as far as saying
7 that a worker isn't getting hurt by averaging those before because maybe they didn't
8 deserve it, but my view on Workers' Compensation is that when you get injured, if
9 you would have been working, you would have been making this amount of money,
10 and that's what that insurance should be covering, in my opinion, is what you would
11 have been making because you're not working now, not what you would have been
12 making six months ago.

13 57:31: I'm not saying they're not harmed. What I'm saying is when
14 you take a step back and look at it from an objective outside view, I think that was
15 some of the reason for the change was, hey, the system's not perfect. If we try to
16 have a rule for each worker and each situation, which the rules cut down on the
17 amount of exceptions that we had and I think tried to classify wages as regular
18 wages or irregular wages, if you're being--receiving regular wages and regular
19 monthly salary or regular weekly salary that's predictable, let's use that amount for
20 your average weekly wage. If you have irregular earnings due to fluctuations in rate
21 or hours worked, let's average those out over 52 weeks. So--and if you have a
22 combination of both, you take a combination, you'd average this and you average
23 that, you don't average the regular, but you take the regular, convert it to a weekly,
24 so I'm just saying I think that was the purpose in, say streamlining, but trying to make
25 it easier and more predictable that if you had five people look at the same payroll, all

1 five would come up with the same answer, instead of some situations where,
2 depending upon how you looked at it, you could come up with different amounts,
3 and then you would have this (unintelligible) is wrong because you should have
4 applied this administrative rule.

5 59:02: I would like to add something to what Dan was saying. Those
6 of you that weren't involved in the conversations that we had with the advisory
7 committee when we made this rule change, those discussions started with "Hey, we
8 did this audit and the performance in the industry is really bad, workers are only
9 getting accurate benefits 65 percent of the time and that is not okay," so we
10 recognized the rules were complicated and hard to apply, and what one of our
11 original conversations was what can we do so that workers receive fair, predictable,
12 and regular wages, more timely and more accurately? Because the way that they
13 were being paid before was not accurate and complicated to calculate.

14 59:48: So (unintelligible) since you brought up the last rules advisory.
15 Bob Livingston (phonetic), who represents firefighters, and Chris Frost both spoke
16 out against the rules as not on our radar; had we known, we would have. Yet there's
17 a lot in what you said. I guess what I will respond to is that the nature of
18 employment is that your last wage is your highest wage, regardless of if you--if
19 you've been with your employer for six years or if you started a new job, the new
20 employer will look back at your previous wage and try to incentivize you to leave that
21 job to get a new one. And back to what Brian said, like we're not--we're not talking
22 about thinking back about what a worker could have made average; when they got
23 hurt, they were most likely making the highest wage. And it is fair and accurate to
24 pay them that wage. And it's unfair to make them get two-thirds of their wage, which
25 is in statute, it is what it is for (unintelligible), but--

1 1:00:45: It's not taxed.

2 1:00:46: It's not taxed, right? But it's not fair to say that you should get
3 less than you would have if you were working at the time of injury, and I think that we
4 could have really long discussions about the rules that could be and the rules that
5 should be, but right now workers are getting less than they would have prior to this
6 rule change and that's concerning for us.

7 1:01:05: Question. Chris Jensen. For Dan, and a couple of different
8 times you say we're having to pick up the phone and call the employer and get this
9 information. Does SAIF have anything in place that says you have a disabling injury,
10 employer, you must send us your payroll records and you must have, and in case so
11 is there--I mean, you guys have all the cards, let's face it, you know, so--

12 1:01:27: We're making a three-point contact with the employer, the
13 worker, the medical provider, we've identified this disabling claim, our first
14 conversation with the employer at the adjuster level is, "Hey, the guy's off of work.
15 What are his wages?" And when we hear that, "Oh, well, I don't know because his
16 hours vary," a payroll request goes out saying, "Please provide us payroll for the
17 prior 52 weeks. What is it right now? You know, is there variability, you know, is it in
18 the summer season when, you know, you're a roofer, you're working a lot, is it in the
19 winter where you're not working as much?" and we try to get as much of the story
20 upfront so that we can establish an average weekly wage for the worker for that
21 initial payment 14 days that is relatively accurate because we don't want his next
22 check to be an overpayment where we're collecting or an underpayment where
23 we're paying, but then we're following up with the employer "Where's the payroll,
24 where's the payroll? Here's a second request. Where's the payroll? We've paid
25 four weeks of time loss, we really need the payroll," because we know that any

1 problem is being compounded positive or negative, we're having a conversation with
2 the worker, you know, "What do you work on average? Are you working 30 hours a
3 week, are you working 40 hours a week, do you have overtime?" If we're seeing a
4 big difference between what the employer says and what the worker says, we're
5 weighing who's probably more accurate and hedging our bet one way or the other. If
6 we have concerns that what the employer's telling us is accurate, we're going to
7 hedge towards the worker because our goal is to get an accurate payment out to the
8 worker that we don't have to adjust.

9 And instead of what I'm saying, I've worked for the regulator, I worked
10 in a position where I advocated for workers, I worked for insurers, I've worked for
11 service companies. I haven't worked for an--well, I guess I work for an employer
12 (unintelligible) so I don't have that, but I guess I'm trying to take these different
13 perspectives and not say, "This is the insurer's perspective" or "This is the
14 regulator's," but say from the overall system is can we make sense that it works for
15 everybody and that you don't have the client in there saying, "They're not paying me
16 right," and you're not having to make a phone call or send a letter saying, "What are
17 you doing here?" because we can all look at the administrative rules and say you
18 know what? It's not exactly how I would want it to be, but it's fair to the system, it's
19 fair to the worker, and it's predictable and we can all come up, whether it's you
20 calculating the average weekly wage or me calculating it, I don't know if the
21 employer can calculate it right, but the regulator's out, we all come out with the same
22 average weekly wage. I mean, my preference was that I wouldn't have anyone in
23 my office saying, "Hey, Dan, what do I do with this?"

24 1:04:40: And Chris, I just (unintelligible). Unfortunately, we only have
25 so much of a hammer with the employer because from statutorily we can't just say,

1 "You don't give us this stuff, then your policy's canceled," because we have
2 requirements about notice and all of those kinds of things, so do we have a process
3 in place to make demands of the employer as part of the insurance contract that
4 they cooperate? Most do, most do their very best to get us what we ask for.
5 Unfortunately, I think what we're really talking about when we're--and beyond the
6 original reason that we got here are the--are the problem people, and they're out
7 there. And we--they need insurance, in fact the system requires that they have
8 insurance, so sometimes we have to put up with employers who really take us a little
9 more time and energy to insure them and they pay us back.

10 1:05:42: So--Chris Frost. It does not make sense that injured workers
11 who had a rate change should suffer a reduction in their time loss benefits so that
12 we can deal with the problem of some bad employers not furnishing correct
13 information. It's not the kind of system, no.

14 1:06:13: And there's a mechanism in the statute that allows SAIF to
15 recoup from those employers. If those employers aren't sending you their
16 information and that's how come you get stuck with an attorney fee or a penalty to
17 the Claimant, you guys get to get the money directly from the employer, I think that's
18 a pretty big stick.

19 1:06:31: You're right about that, but they're not providing that
20 information, that if your--that if the insurance company incurs penalties or fees that
21 you can recoup it from me because insure obviously 70 percent of Oregon, so
22 there's a reason that people pick SAIF. You're not going to lose business because
23 you have to kind of pile it back to employee once in awhile--employer once in awhile.

24 1:06:52: Yeah, we educate people on their responsibilities, and I think
25 for the most part our employers get us the information timely, so...

1 1:07:01: And I would say for the most part insurers don't exercise that
2 authority to go after the employers on those penalties, for the most part, for whatever
3 business reason there is.

4 1:07:18: I will just say that the State of Oregon has made a
5 commitment to low-wage workers, they've made--that the State of Oregon has
6 decided they want to help low-wage workers, they want to increase the minimum
7 wage, they understand the plight of people who don't earn enough money. This rule
8 inadvertently runs counter to that principle. It needs to be changed.

9 1:07:58: Do we have any other examples of other states that have
10 figured out a better solution? I don't know if your research group has investigated
11 what other states do that--obviously we're not necessarily succeeding in this room
12 today figuring out a way to bridge the gap between what, you know, we're hearing
13 from the insurers and what those of us who represent workers are desperately
14 concerned about. I'm just wondering, rather than reinventing the wheel on our own,
15 if there's some other model out there that we can at least present to this group
16 before we make any changes and have a conversation about.

17 1:08:32: I can't--I can't really speak to that. All I can say is that the
18 method that we adopted is a common approach with other states. And that was part
19 of the calculus in our decision-making. I know specifically North Carolina has a
20 52-week averaging method--

21 1:08:49: Can we not pick (unintelligible)--

22 1:08:51: Sure, that's fair. Yeah.

23 1:08:53: (unintelligible) better than that.

24 1:08:54: Okay. Well, I guess (unintelligible) for awhile, I like it, but I do
25 understand not the model for (unintelligible) us, but--

1 1:08:59: (unintelligible) but I'm saying, yeah, not the best place for
2 workers.

3 1:09:04: But, yeah, so this 52-week averaging method, which is--was
4 kind of our standard method, too, is a common method for calculating an average
5 weekly wage. I cannot speak to other methods out there, we will certainly look more
6 into it.

7 1:09:23: Our research (unintelligible).

8 1:09:28: Yeah, and if you (unintelligible)--

9 1:09:29: This is Carl.

10 1:09:29: --appreciate it.

11 1:09:31: Go ahead.

12 1:09:33: Hi, this is Carl Koenig, Oregon State Firefighters. I think--I
13 think there's been some good comments regarding averaging and stuff and I hear
14 administrative ease. I would have to agree that we should--the worker should never
15 be--should not be, I'll use the term, compromised, victimized, you pick, but inherently
16 to make an administrative ease should not be a penalty phase for in this case
17 firefighters who have gone all over the West Coast out of their area. For example,
18 the Beaver Creek fire we--or, I'm sorry, Eagle Creek fire, we have 47,000 man hours
19 with no time loss, but we have workers from all over the country working in Oregon.
20 It's--I think our concern would be we can't make an administrative rule just to make it
21 easier to administer the problem and sacrifice the worker's ability, right, it's based on
22 a two-thirds wage, we shouldn't average the two-thirds, the look-back, it is agreed
23 we're not going to go backwards, that's not the intent I was working today for X
24 amount of money and working forward, I'm not going to--I'm not going to--I don't
25 want to suffer on an already-less amount of money, and intuitively we shouldn't

1 make rules to make it administratively easier at anyone's sacrifice and I think our
2 largest Workmen's Comp carrier is giving refunds of hundreds of thousands of
3 dollars to my specific employer is a great example of there's not a ton of financial
4 extremis in the Workers' Compensation section in Oregon right now that we're not
5 talking about huge refunds back to employers and then trying to devise a system
6 that allows for absolute clarity every time, that's an administrative burden of being an
7 employer and a regulator agency, so let's not--let's not inadvertently penalize or put
8 the burden on our employees. And remember, they're hurt, they're not at work, or
9 they're doing a diminished role in what they're doing and it just intuitively feels
10 wrong. Thanks for the opportunity to comment.

11 1:12:14: Thanks for your--for your comment.

12 1:12:26: Any last comments on this topic?

13 1:12:32: Can I just ask (unintelligible), since we have so many parties
14 in the room, if we were to just go back the way we did things before, obviously
15 you've managed to do it, it wasn't desirable, you know, and there--I mean, the
16 claimant--

17 1:12:45: (unintelligible) no objection to that.

18 1:12:47: --folks are okay with that, you know, in terms of--again it's not
19 a desirable way, maybe there's ways we can continue to work more towards fair, but
20 as again sort of temporary solution to the current obvious harm that's occurring to
21 workers, is that at least the immediate best option?

22 1:13:07: And Diana, are you--are you only speaking of the rule
23 regarding the averaging of the hours versus the hour--average of the wages?
24 Because there were a lot of changes in -0025.

25 1:13:18: Just the one we've been talking about, just the wage, just the

1 wage we've been talking about for like the last hour, I (unintelligible). We haven't
2 even gotten to anything else, I'm good with the union call board one, you know, I not
3 to speak about anything else--

4 1:13:29: (unintelligible)

5 1:13:30: But, yeah.

6 1:13:30: You mean hiring hall?

7 1:13:32: Yes.

8 1:13:35: But I had to retrain myself to say call board--

9 1:13:36: I know, me, too.

10 1:13:38: Oh, I have to do (unintelligible)--

11 1:13:41: Just because you have these people in here, you know, I get
12 the general sense is that's what we--they want, but, you know, I figure it's best to
13 ask.

14 1:13:50: Tim Frew, Oregon State Building Trades. As you know, the
15 Oregon State Building Trades are made up of approximately 30,000 construction
16 workers. The majority of those construction worker, they want to go home safe
17 every night. I appreciate everybody being here and I think everybody being here is
18 here for the intent for the good of the worker. I think this calculation, though, is
19 flawed, and what I'd like to know is where are we at? I mean, is our--is the Division,
20 will the Division consider going back to the old calculation? Granted, you know,
21 there are issues with it, but we can improve that, but--so where is the Division at?

22 1:14:28: I personally, I'm not the decision maker. I mean, we will
23 consider everything that is said here and we really do take it seriously, but I can't tell
24 you what the final outcome will be.

25 1:14:41: When will we know?

1 1:14:44: Soon. Part of the reason we do need these rules to be
2 effective January 1, I think we have a little wiggle room, but particularly to replace
3 the temporary rule, we do need to have this on somewhat of an expedited process,
4 so there will be proposed rules and then there'll be another opportunity for testimony
5 and, yeah, unfortunately in my role as a policy analyst, that's the best answer I can
6 give you, but--

7 1:15:12: We typically--we--

8 1:15:13: Yeah.

9 1:15:13: --we take everything back to our administrator--

10 1:15:13: But the union hall (unintelligible) is that, I think what Tim is
11 asking about is the other one--

12 1:15:18: Yeah.

13 1:15:18: --is it's your understanding that we're (unintelligible)--

14 1:15:20: But we're starting out as a temporary rule and we do need
15 permanent rules to replace it before the temporary rule expires--

16 1:15:25: Right.

17 1:15:25: --so we have to--

18 1:15:26: But we were already told that the temporary--that we would
19 move forward with the permanent rule on the call board rule.

20 1:15:32: Yeah, so that is definitely, that decision, I think, has been
21 made.

22 1:15:37: Okay.

23 1:15:37: As far as timing goes, we have to get out proposed rules that
24 include a permanent hiring hall call rule pretty soon to ensure that it goes effective
25 before--

1 1:15:47: Right.

2 1:15:47: --the temporary rule expires, it's an Administrative
3 Procedures Act compliance thing, but yeah--

4 1:15:52: I understand that, I think that--

5 1:15:53: --sorry, sorry if I said the wrong thing, I--

6 1:15:55: What's the deadline for filing to make the rule, the permanent
7 rule effective 1/1?

8 1:16:00: Fifteen--well, November.

9 1:16:03: It's November, which is next week.

10 1:16:06: Well, the middle--

11 1:16:07: The 15th, yeah--

12 1:16:07: Yeah--

13 1:16:08: --the middle, it used to be the 15th, they changed the
14 Secretary of State rules on that a little bit, so we have a little flexibility, but--

15 1:16:14: Oh, okay.

16 1:16:15: And I don't think our temporary rule expires--

17 1:16:18: Not on January 1--

18 1:16:18: --January 1.

19 1:16:19: We have a little--we have a lit--if worst comes to worst, we
20 can actually make the rules effective a little later than that, but because Rule 25
21 was--has been moved out of the current proposed rule process and we're moving
22 that into this process, so none of those changes that went to hearing on Rule 25 on
23 the 20th last a week ago will actually go forward, because they would have been two
24 Division Rule 25s would have been changing for different reasons at the same time,
25 it would have confused us and everyone, and so January 1 is what we're shooting.

1 1:17:00: So as an employer, (unintelligible) I don't know how many of
2 us are in the room, but from my perspective, Kimberly Wood for the record, I don't
3 care how it plays out, but it needs to be clear enough for the employer, the old rule
4 was not, I need to know the average weekly wage the day my guy gets injured
5 because I'm going to give him a letter asking him to come back to work and I need to
6 figure out how much I have to pay him because for a union it makes a difference, I
7 have to pay a particular wage, which means I have to adjust the hours to match up
8 to the wage that I actually have to pay, so it's not as simple as they decide that he's
9 making \$36 an hour and I'm actually paying for \$34 an hour and I'm paying 36, I still
10 have to pay 36, so I can adjust the hours if I--if I can to get the average weekly wage
11 so that we have some equalness there.

12 But I need to know that right away, and the old system was not--I can
13 tell you that probably eight times out of ten I had to have my gal go back to SAIF to
14 say, "Look, we think we did it this way; how did you get your number? Because we
15 tried to figure it out the best we can." We always have to go back, it's that places us
16 in a position of either we have underpaid somebody and now we've got an exposure
17 of time loss that we're trying to manage and trying to do the best we can so that
18 we're not exposed to that, so we want to get the worker the right amount of money
19 and the right number of hours.

20 It's very difficult for the employer's side of it to figure that out, and so all
21 I'm-- I'm not saying I agree with you, I'm not saying that I agree with you; I'm just
22 saying whatever we land on, the employer has to be able to figure it out because
23 right now it's not fair to the employers to say, "We can all figure it out, but they can't,
24 and so they get to, you know, roll the dice to see whether they hit the number right,"
25 that's not fair to us because I can tell you that unless we ask for the average weekly

1 wage, we have to go back and ask SAIF to confirm our average weekly wage, we
2 don't just get it given to us, so it could be we could wait three, six weeks and now
3 we're time loss because we didn't realize they calculated some extra hours in there
4 that we didn't think were there or there was some two weeks or three weeks of time
5 that somebody didn't work but they gave them credit for it, and it was just too difficult
6 the old way, so all I--I want everybody to be, I want them to be made whole, but I
7 also don't want the employers to be penalized because we can't figure it out. And I
8 think we're pretty savvy, so if we can't figure it out, I worry about the little bitty guys
9 who there's no way.

10 1:19:45: And I just want to make sure that I understand where you're
11 coming from, Jennifer Flood, ombudsman for injured workers, as well as to help
12 explain where that issue may--where I see that issue for the employer is that if an
13 employer--if a worker has been injured and they have restrictions, the employer can
14 bring the worker back. If they bring them back at their average wage, whatever that
15 wage is, then that claim stays a non-disabling claim--

16 1:20:08: Correct.

17 1:20:08: --they don't have to pay time loss. So I think what you're
18 saying, Kimberly, is I want to know because my guy just went to the doctor, he's
19 hurt, but I think I can have some modified work that I can bring him back to, but if I
20 pay him a dollar less than the average that the insurance company has come up
21 with, I end up with a disabling claim if that lasts more than three days, so is that
22 correct for--

23 1:20:33: It is correct, yes (unintelligible)--

24 1:20:34: It's about bringing that worker back and making sure they're
25 getting that highest wage.

1 1:20:37: Yes (unintelligible)--

2 1:20:38: My concern is still for the guy that's off because they get to
3 take--they pay him that and I assume they're doing--

4 1:20:43: Right.

5 1:20:43: --that correctly, but when I have to do it for a modified job
6 because I've got modified work, which is almost all the time--

7 1:20:51: Uh-huh.

8 1:20:52: --I want to make sure I'm getting it correct, so I think the
9 issue's a little bit bigger than just the guy who's off work, because for us that's a
10 rarity. We have much more--in fact I think it's a very rare thing for us, and I'm in the
11 construction industry, but we just don't have a lot of guys who are off or gals who are
12 off entirely. We always offer modified work and that's where the problem comes in
13 for us is we have a very real need to be able to manage our claims so that we are
14 making sure that our--you know, we're not inflating our insurance costs
15 unnecessarily all because we can't figure out how to--how to pay somebody
16 correctly.

17 1:21:31: I echo Ms. Wood's comments. When I have an injured
18 worker who's been considered a non-disabling worker, generally I found that the
19 insurer doesn't try to figure out what their average weekly wage is. That puts us
20 again at a disadvantage, much like the employer, but it's also what Mr. Brunot was
21 saying because we don't have access to those records, we don't know if they are
22 getting the right modified duty rate. That's in the purview of the insurer and it does--
23 it would be helpful if the insurer did calculate that.

24 1:22:16: Well, and, Kimberly, I don't mean to be blunt, but do you
25 know the amount of hours your employees work?

1 1:22:23: Yes. But it's not that easy because the number of hours, they
2 could be off for three or four weeks or five weeks or six weeks in the preceding
3 52 weeks and so--

4 1:22:34: And that's what--that's all part of that calculation--

5 1:22:35: That is (unintelligible)--

6 1:22:35: --because even currently you have to figure that out.

7 1:22:38: Well, we try our best, it's just--because I can tell you we've
8 been on the phone and it's like, well, sometimes that's under a certain amount, so it's
9 not as simple as--

10 1:22:46: right.

11 1:22:47: --just, gosh, just add up. I've--it would be great if you could
12 just add up the work--weeks that they worked and divide it by the number of hours
13 and, by gosh, that's a simple calculation for me and I'm not good at math. So, I
14 mean, that's certainly, but that's not--it's not that clear, it's not that clean, because I
15 can tell you that we rarely come up with the same number and then I can call and
16 say, "How'd you get to that number?" Well, there's this huge calculation and they
17 won't share the calculation with me, so I can't actually see it to even go "You got
18 your math wrong"; all I can do is say, "I don't see that, can you?" you know, and then
19 I have to adjust it, but I don't like being in that position; I'd like to have it right the first
20 time, so for me I'd like it to be clear enough that we--we're just all on the same page.

21 1:23:36: Uh-huh. So I just have a question. You said that you were
22 union, right? So you probably actually fall under the (unintelligible) hiring hall rule
23 and not these calculations.

24 1:23:44: I am a union, we are a union, we also have non-union, so I
25 represent multiple employers, so it isn't always just one thing.

1 1:23:55: I guess I just thought you were union, so...

2 1:23:58: Well, our construction workers are, but that isn't everybody

3 that we employ. Other people in construction work unfortunately get hurt, too, so...

4 1:24:11: (unintelligible) partial disability (unintelligible)

5 1:24:15: Just so you--you said you use SAIF as--that's your insurer?

6 1:24:21: SAIF is our insurer, yes--

7 1:24:22: I was just curious, is there a reason that you guys don't share

8 your calculations?

9 1:24:26: I just asked Dan that, I'll let him answer.

10 1:24:28: Okay.

11 1:24:29: (unintelligible) when we do an average weekly wage

12 calculation, our business practice is we send a letter out to the worker saying if we

13 change--we made an adjustment to the average weekly wage based on what the

14 initial calculation was on a phone conversation, we'll say, "We had calculated based

15 on \$300, we're increasing or decreasing it to this amount based on the payroll that

16 we received, attached is our calculation," and it's a summary sheet of all the wages

17 that we receive and either, you know, you've been overpaid by \$25 or you've been

18 underpaid by \$25, I don't believe the employer's copied on that, it would go directly

19 to the worker and the worker's representative if they're represented, and so

20 probably--

21 1:25:19: If it doesn't appear like it's going to be a time loss, like they

22 can do light-duty, do you guys calculate what it would be if it wasn't time loss?

23 1:25:25: It really depends upon the claim. If it's a cut finger and they

24 have a regular work release, we're not going to go to the employer and say, "We

25 want payroll," but if it's a back strain and they have modified work restrictions and it

1 looks like those are going to be extended and the employer is saying, "Well, we're
2 offering modified work at their regular wages," we're going to ask for payroll because
3 we don't want to put you the employer in that situation of "Oh, we thought he only
4 worked 40 hours a week and there's overtime and now we owe temporary partial
5 disability," so hopefully we're working with you to make sure you're offering full
6 wages, even above and beyond if there's overtime there, so that we're not putting
7 the employer in that situation.

8 1:26:13: And to be fair on--if I go into the claims on mine, at some
9 point the average weekly wage is populated on our--on our--in that claim note, in the
10 claim screen--

11 1:26:27: So you--

12 1:26:27: --but it takes a bit for that to happen--

13 1:26:28: So you have that, you don't, yeah.

14 1:26:30: I can't--I can just see what they think the amount is at some
15 point if I waited long enough. We don't wait, because we want to know, right away
16 we want to offer modified duty--

17 1:26:39: The modified--

18 1:26:39: --(unintelligible) amount--

19 1:26:40: Yeah.

20 1:26:41: Why isn't there uniformity among payroll software to enter the
21 data that you need at the time that it's generated?

22 1:26:50: You guys would like (unintelligible)--

23 1:26:51: Yeah, there we go--

24 1:26:51: --and say everybody has to use--

25 1:26:53: There's some, there's an idea--

1 1:26:53: --(unintelligible) this would--
2 1:26:55: (unintelligible) do it.
3 1:26:56: --not be a problem (unintelligible)--
4 1:26:57: Let's do it (unintelligible)--
5 1:26:58: Shoot myself in the foot, but let's do it (unintelligible)--
6 1:27:02: (unintelligible) a mission.
7 1:27:04: I don't think that--
8 1:27:05: And though it fell outside of the averaging the rate,
9 Mr. Schmelling did have a good suggestion about synching up TPD payments with
10 payroll. I don't see that that would simplify matters in our office as well, and--but it
11 does fall outside this, but if you can tuck it away?
12 1:27:31: You--the other thing that I'm wondering is one of the things
13 that Dan mentioned was that he's got 14 days and all of that, whoa, we have to pay,
14 but our cutoff date is this date and the check is issued on this date. There should be
15 something similar like that for you guys because having to pay the 14 days, you're
16 never going to be able to pay the 14 days because it's like you can't pay the same
17 day, so it seems like you would have a cutoff date--
18 1:27:57: Well, and so--
19 1:27:57: --where you would say can you give me your, okay, it's, you
20 know, it's Tuesday and I've got to issue a payment by Thursday, your cutoff date,
21 you know, can I have the payroll through this date from an employer's
22 (unintelligible)--
23 1:28:07: And that's--
24 1:28:07: --easier--
25 1:28:08: --kind of to the TTD/TPD after the initial payment is if we

1 could synch it up, I think the 14 days is statute, so--but then beyond that,
2 subsequent payments, again relying on my times working for a service company
3 with a self-insured is we synched all of our payments to go out every other Friday,
4 which was the employer's payroll payday, and we sent them a fax Thursday morning
5 saying, "Here's 40 workers that we need wages for," and it went to their payroll, and
6 they said, "Here's the gross amount for the payroll area," and so it made it very easy,
7 it made it very accurate also because we were getting the accurate gross wages that
8 were paid for the TPD period (unintelligible). But, yeah, we do that to you, we
9 probably call you up off payroll cycle to say--

10 1:29:03: We just--we just, we fudge a little bit both ways if we can to
11 just give you more than you need and let you figure it out.

12 1:29:09: Yeah, and to that (unintelligible).

13 1:29:23: I know that one of our employers that we dealt with, they
14 were all for making sure that that employee isn't going to get less than what they
15 make now with the current rule the way it is where they could get less because they
16 got (unintelligible) from last year because we--you know, we reached out to them
17 yesterday to get a little bit of info from them and one employer's like "Hold on, what's
18 this about?" and we explained, and they're like "No, that doesn't seem right, they
19 should be getting what they would have got going forward, not an average of what
20 they got the last year."

21 1:30:00: The non-hiring all employer (unintelligible)--

22 1:30:02: Yeah, the non-hiring (unintelligible) employers. But I
23 understand your concerns and I agree that maybe there's a way to make it simpler
24 or not, but we just want to make sure the workers aren't going to be harmed.

25 1:30:27: When's the next meeting?

1 1:30:30: I do not believe there is another (unintelligible)--

2 1:30:32: There's not one scheduled, there will be a public--

3 1:30:32: --for this issue, yeah--

4 1:30:33: There will be a public--there'll be a public hearing on these
5 rules of course and that would be probably in December, around the 20th of
6 December, unfortunately rather close to Christmas, but if we file in November, the
7 earliest we can hold a public rulemaking hearing is maybe around the 15th of
8 December we could have the hearing.

9 1:30:53: And so that hearing will be a presentation of sort of what
10 you've decided to do or people can comment on what (unintelligible)--

11 1:31:01: Formally propose, yes, the rules and then with marked
12 changes and then there'd be a public comment period, both folks could come to the
13 hearing and testify or send written testimony.

14 1:31:14: Were you all wanting a conversation before those proposed
15 rules?

16 1:31:20: We always like more conversation, but it probably is
17 dependent on what (unintelligible) say. We don't want to (unintelligible) enough
18 time.

19 1:31:29: That conversation would have to come within like the next
20 one to two weeks just based on our filing. If we're going in fact to file in November, it
21 would have to be very soon.

22 1:31:39: Well, who wants to have a follow-up conversation with us
23 (unintelligible) get ahold of (unintelligible) contingent of folks, but we want to exclude
24 anyone else out of the--

25 1:31:49: We'd be happy to keep talking.

1 1:31:51: I talk for a living.

2 1:31:56: Well, it looks like people are getting ready, so we do--we did
3 also include some housekeeping changes in here. They were discussed at a
4 previous advisory committee meeting, but now that they're actually in the rule, we--if
5 anybody has comments on those, I can point them out. Specifically it is a definition
6 of what a new wage earning agreement is under section (4) on Page 3, that was just
7 mainly to make it clear that when a new--a new wage earning agreement starting or
8 commencing applies to the whole section because before there was some confusion
9 that it did not apply to section (c) or subsection (c), and then the other changes was
10 just clarifying kind of a typographical error that the insurer may not include any gap
11 in earnings instead of gap in employment of more than 14 days that was not
12 anticipated in the wage earning agreement under section--this is (4)(b)(B)--(A) on
13 Page 4. So any comments on those changes? Pretty minor, we're hoping they're
14 not substantive.

15 1:33:20: Other than this is totally antithetical to your guys' approach.
16 A raise should be a new wage earning agreement, right? Moving forward as a
17 prospective on the date of injury, that's how--if I get paid on this date, I don't get
18 averaged in my (unintelligible)--

19 1:33:33: Yeah, I think this is now related to what we just spent so
20 much time discussing, so there is--there is a tie-in, so it's not housekeeping to that
21 extent, I think, but it is--

22 1:33:44: Oh. Yeah.

23 1:33:45: Because it does say other than a change in the rate--

24 1:33:50: Right, so including other than only a change in rate of pay,
25 which is--

1 1:33:54: So this is when we're discussing someone's shifted positions
2 with the same employer or something along those--

3 1:34:01: Right, yeah, a change of hours, a change of job duties, a
4 change of--yeah, those are the (unintelligible) I surmise--

5 1:34:09: So why--I guess--I guess why do the people who change jobs
6 get to get the benefit of their new job moving forward, but people who stay in their
7 same position not get that?

8 1:34:22: Oh, okay--

9 1:34:23: Thinking I'll tie off of what Zach said, but with the wage
10 earning agreement, in the prior administrative rules, I got it--if I recall correct, there
11 were three different situations. If you had a change in wage earning agreement
12 other than simply your rate change, so they specifically changed jobs, they went
13 from part-time to full-time, full-time to part-time, et cetera, you would use a shorter
14 time period, you'd only use the wage earning agreement in effect for that specific job
15 or change in hours. If it was a change in rate only, without some type of change in
16 the job, then I think it was little italics (1)(i) and it would be you would average out
17 the hours over the entire time period at the rate at the time of injury, so the worker's
18 actually getting the benefit of--

19 1:35:15: Higher.

20 1:35:15: --that entire time--

21 1:35:16: Oh, to the extent, yeah, but--

22 1:35:17: So, yeah, I would say--

23 1:35:18: Seasonal-type--

24 1:35:18: If you looked at the new capital (A), (B), and (C), if you
25 removed for reasons other than change in the rate of pay only and left capital (B) to

1 deal with wage earning agreements other than a rate change only, then you're
2 dealing with those situations where you might be looking at a shorter time period,
3 depending upon what you decide to do, I think we would suggest that if it's a rate
4 change only for doing the same job, no change in hours and that, but that needs to
5 be dealt with separately in its own little section so that again when we're looking at it
6 we know, oh, there was a rate change, we're going to be, if we changed, averaging
7 the hours out over their employment period up to 52 weeks, differentiating that
8 between a change in, hey, the guy was a laborer, now he's a supervisor, he went
9 from full-time to part-time or she went from this to that, which is in a different type of
10 wage earning agreement, which is essentially what we used to have under the (3)(i)
11 (unintelligible).

12 1:36:37: And if the rule was written to where just a rate change meant
13 a new wage earning agreement, we would be in that boat of let's say there was a
14 rate change eight weeks ago, but it's the slow time of year, they'd only be averaging
15 those eight weeks versus doing the 52 hours times the new rate--

16 1:36:59: Give them the benefit of that rate--

17 1:37:00: They went from the prevailing job to a non-prevailing job, oh,
18 that's a rate change, we're going to use this eight weeks.

19 1:37:08: And that's particularly important with seasonal work.

20 1:37:11: Yes.

21 1:37:21: Okay. Well...

22 1:37:29: I promise to keep you all completely informed for whatever
23 we're going to do as soon as we know more and then as soon as we--certainly when
24 we file proposed rules, you'll all be copied. If any of you are here and I don't have
25 your email address, if you could leave me a business card or just call me after the

1 meeting, 503-947-7717, or somehow get in touch with us so that we can get you on
2 our contact list and keep you informed, because I don't want anybody to be in the
3 dark from this point forward and say, "Whatever happened to that rule?" so with that,
4 unless there's anything else that folks have, we'll let you go. If you have thoughts
5 after the meeting on any of the subjects that we talked about today, please get them
6 to us, your thoughts to us as soon as possible, and enjoy the rest of your Friday and
7 have a nice weekend and drive safe.

8
9 (WHEREUPON, the proceedings were adjourned.)

10 - - - -

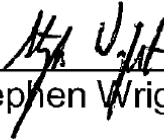
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CERTIFICATION OF TRANSCRIPT

I, Stephen Wright, as the transcriber of the oral proceedings at the October 27, 2017 hearing before Administrative Rules Coordinator Bruyns, certify this transcript to be true, accurate, and complete.

Dated this 9th day of November, 2017.


Stephen Wright, CET**D-643
Transcriber