

# RULEMAKING ADVISORY COMMITTEE MEETING

Jan. 18, 2018, 8:30 a.m.

Room F, 350 Winter Street NE, Salem, Oregon

## WORKERS' COMPENSATION DIVISION RULES

OAR chapter 436, division 060, rule 0025

### Rate of Temporary Disability Compensation

#### Stakeholders attending:

Kirsten Adams	Associated General Contractors
Jeff Anderson	United Food and Commercial Workers
Aida Aranda	Oregon and Southern Idaho Labor-Employers Trust   MLAC
Joe Baessler	AFSCME
Dave Barenberg	SAIF Corporation
Kevin Billman	MLAC   United Food and Commercial Workers   MLAC
Guy Boileau	MLAC   Louisiana-Pacific Corp.
Chris Carpenter	LiUNA
Melanie Clark	Moore & Jensen
Betsy Earls	Oregon Business Association
Jennifer Flood	Ombudsman for Injured Workers
Tim Foster	IBEW Local 48
Jaye Fraser	SAIF Corporation
Chris Frost	Thomas Coon Newton Frost
Cindy Gallagher	Coventry Healthcare
Jessica Giannettino Villatoro	AFL-CIO
Mel Gregg	City of Woodburn
Laura Grossenbacher	Broadspire
Mark Jamison	CIS
Karl Koenig	Oregon State Fire Fighters Council
Debra Maryanov	Oregon State Legislature
Soren Metzger	Oregon School Employees Association
Brian Noble	SMART LOCAL16

Sue Quinones	City of Portland
John Rakowitz	Associated General Contractors
Dan Schmelling	SAIF Corporation
Elaine Schooler	SAIF Corporation
Sheri Sundstrom	Hoffman Construction
Sommer Tolleson	Maher & Tolleson
Becky West	Occupational Orthopedics

**Department of Consumer and Business Services (DCBS) staff members attending:**

Julia Hier	Workers' Compensation Division
Theresa Van Winkle	DCBS Director's Office
Lou Savage	Workers' Compensation Division
Troy Painter	Workers' Compensation Division
Fred Bruyns	Workers' Compensation Division

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE WORKERS' COMPENSATION BOARD 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 18<sup>th</sup> day of January 2018, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

1 TRANSCRIPT OF PROCEEDINGS

2  
3 00:00: We have two recorders just because we're a little worried about  
4 that, want to make sure that we don't miss it.

5 There's a couple of additional spaces up here at the front and anyone's  
6 welcome to come up to the table. We can also pull out a couple more chairs if we  
7 need to.

8 So again good morning and welcome, my name's Fred Bruyns, I've  
9 been in touch with, I think, most or all of you, some of you may have learned about  
10 this meeting from an associate, which is fine; all are welcome and we're glad you  
11 came this morning. It looks like we have a full room, but I was a little afraid that we  
12 might actually have a, you know, line out the door, so it looks like we just--it's just  
13 right. And appreciate you taking the time to come down.

14 I think most of you have been involved in our rulemaking meetings in  
15 the past, and if you--if you have been, you know it's an informal process. This is not  
16 like a public hearing, we don't testify; it's a conversation really. And we're here, the  
17 Department staff is really just a few of us today, but we're here to listen to you and  
18 we'll ask questions if we have them, certainly, but--and if we can provide any  
19 information, we're glad to do that, but we're mostly here to listen and take away what  
20 you have for us so that we can know what all the options, you know, all the options  
21 are, so as we go along, if you think of fiscal impacts to anything that we discuss,  
22 please let us know about that. We have to estimate those when we file notice with  
23 Secretary of State about any proposed rule changes that may come out of this  
24 process, so please keep that in mind as we do.

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

1 pick up background noises in your office, so selectively use the mute button as you  
2 need to, but we do want you to be full participants, so don't hesitate to speak up if  
3 you're on the telephone, you don't have the advantage of seeing who might have  
4 their hand up here, so we'll extend that courtesy to you, it's certainly we want you to  
5 be full participants. Don't put us on hold if you can help it--well, actually please don't  
6 put us on hold at all because we'll pick up any background music or messages you  
7 might have on your phone system, and there's really no way for us to turn those off.  
8 You may leave and rejoin the conference as often as you'd like.

9           There are hopefully enough handouts on the back table, I put extra  
10 copies of the agenda back there if you don't have one. If you're joining us by  
11 telephone, we posted the agenda to our website, and if you need any help getting in  
12 there, just say something and we can walk you into it, so with that, again I don't  
13 know if--I think I said I'm Fred Bruyns, I coordinate the rulemaking process, and with  
14 that I'd like to actually begin with our telephone participants and have you introduce  
15 yourselves to the committee. So if you're on the phone with us, say hello if you can.

16           03:15: Good morning, this is Kevin Billman with the OCW.

17           03:17: Welcome, Kevin.

18           03:18: Cindy Gallagher with Coventry Healthcare.

19           03:22: Welcome, Cindy.

20           03:24: Laura Grossenbacher--

21           03:25: Melanie--

22           03:25: --at Broadspire.

23           03:26: Good morning, Laura.

24           03:29: Melanie Clark with Moore & Jensen.

25           03:33: Welcome, Melanie.

1 03:37: Rebecca West with Occupational Orthopedics.

2 03:39: Thanks for joining us, Rebecca. Anyone else?

3 03:42: Sue Quinones, City of Portland.

4 03:45: Welcome, Sue. Anyone else? Well, hearing no one, we'll go

5 around the table and I'll turn it over.

6 03:57: Julia Hier, I'm a policy analyst with the Division.

7 04:00: Jeff Anderson with the United Food and Commercial

8 Workers 555.

9 04:04: Joe Baessler with AFSCME.

10 04:06: Jessica Giannettino Villatoro with the Oregon AFL-CIO.

11 04:09: Brian Noble with SMART Local 16, (unintelligible) worker.

12 04:12: Jennifer Flood, ombudsman for injured workers, DCBS.

13 04:16: Tim Foster, International Brotherhood of Electrical Workers

14 Local 48.

15 04:20: Troy Painter, auditor, WCD.

16 04:22: Soren Metzger, Oregon School Employees Association.

17 04:26: Debra Maryanov, Legislative Policy and Research Office.

18 04:29: Dave Barenberg, SAIF.

19 04:30: Jaye Fraser, SAIF Corporation.

20 04:31: Sheri Sundstrom, Hoffman Construction.

21 04:33: Mark Jamison, CIS.

22 04:36: (unintelligible) Construction (unintelligible) sorry. *[Kimberly Wood*  
*Perlo Const. &*

23 04:43: (unintelligible) Corporation and (unintelligible) *MLAC]*

24 04:48: (unintelligible) *[Mel Gregg, City of Woodburn]* *[Guy Boileau,*  
*Louisiana Pac.*

25 04:54: Lou Savage, administrator for Workers' Comp Division. *Corp. & MLAC]*

1 04:57: Theresa Van Winkle, legislative director and administrator for  
2 MLAC DCBS Director's Office.

3 05:02: John Rakowitz, Associated General Contractors.

4 05:05: Aida Aranda, Oregon and Southern Idaho Laborers MLAC.

5 05:10: Okay. And anyone in the back who would like to introduce  
6 yourselves to the committee?

7 05:15: Elaine Schooler, SAIF Corporation.

8 05:19: Dan Schmelling with SAIF Corporation.

9 05:22: Sommer Tolleson with Maher & Tolleson.

10 05:24: Okay.

11 05:25: And Betsy--

12 05:26: Oh.

13 05:26: --Earls, Oregon (unintelligible)-- [*Oregon Business Association*]

14 05:27: Sorry, Betsy.

15 05:28: It's all right.

16 05:29: Okay. And welcome to everyone, and with that I'm--do you  
17 have any questions about, I guess, process before we begin? And then I'm going to  
18 turn things over to Julia to actually take us through the agenda. Okay. Julia.

19 05:43: All right. Thank you again, everybody, for coming today. As  
20 many of you know, stakeholders have expressed a concern, several concerns  
21 related to some changes that were made to our rule relating to the rule of temporary  
22 disability, which had taken effect on January 1 of 2017. The rule in effect prior to  
23 January 1 of 2017 had sometimes required an insurer to average the worker's  
24 weekly hours in the 52 weeks preceding the injury and then to multiply the average  
25 weekly hours by the wage at injury to obtain the worker's weekly wage and that

1 calculation method is used with what we now refer to as the worker's irregular  
2 wages, and so if a worker had those irregular wages and there was also a change in  
3 the wage earning agreement that was due only to a pay increase or decrease during  
4 the 52 weeks prior to the date of injury, then that average hour method would be  
5 used under the old rule.

6 Under the same situation in the current rule, the rule now requires the  
7 insurer to average the worker's total earnings for a period of up to 52 weeks before  
8 the date of injury or a verification of disability caused by an occupational disease.

9 During an advisory committee meeting on October 27<sup>th</sup> of 2017,  
10 stakeholders had raised concerns about the effect that the rule change had on the  
11 following types of workers; workers who earn minimum wage, workers who complete  
12 their probationary period and obtain a pay raise for that reason, and workers who  
13 received raises during the year but had wages earned at the lower rate of pay  
14 included in the averaging.

15 And then also at that meeting stakeholders had highlighted some  
16 concerns related to the calculation of the worker's weekly wage. More specifically,  
17 they talked about evaluating the balance between incentivizing workers to return to  
18 the workforce while also ensuring that they receive adequate pay while they're off  
19 work for their injury.

20 Having a rule which considers the varying types of pay records and  
21 wage differentials, they also discussed considering whether to look at the worker's  
22 wages on the exact day of injury and also discussed having a rule where the  
23 employer can independently understand and verify the calculation of a worker's  
24 weekly wage.

25 So we'd heard those concerns and have been thinking about ways that

1 they can be best addressed. We've developed some preliminary ideas to consider,  
2 but we want to ensure that we thoroughly understand the concerns that are at hand  
3 and we want to learn about your thoughts and ideas as well, so we hope this  
4 meeting will accomplish those goals and at the end of the meeting we'll share with  
5 you some of the possible options for a change, but those options of course can  
6 change based on our discussion today and as we learn information from you and  
7 hear more ideas from you. So with that, I'll open it up for discussion.

8 08:31: (unintelligible) that we kind of reiterate and go over the  
9 concerns that you just listed off (unintelligible) more helpful?

10 08:38: Well, so the concerns were discussed in the October meeting,  
11 but I want to make sure we understand everything thoroughly, so--

12 08:44: Okay.

13 08:45: --I think that would be helpful (unintelligible)--

14 08:47: Okay, sure. So I think I'll kind of give an overview of all the  
15 buckets and then I'll turn it over to these guys who actually represent numbers and  
16 they can talk about how it impacts their industry, so when we look at the current  
17 calculation, like Julia shared, it often will result in a lower calc--wage calculation for  
18 workers when they're out on Workers' Comp and that impacts us in (unintelligible)  
19 we look at workers in a few ways. One, most of our affiliates members get a  
20 contractual raise every 52 weeks. I'll let Joe go into this in a little bit later, but it's not  
21 as if they sit down at the bargaining table with their employer and they say, "We  
22 would like \$3 raise," and then everything is gung-ho from there, so there is a definite  
23 need for them to be made whole, not only in the way that they take home their pay in  
24 a weekly basis, but also if they get hurt, that rate should be reflected.

25 Obviously if they work at a lower wage rate and their contract

1 increases their wage, they're going to take home a lower pay when they're hurt as a  
2 result of the new calculation. The other way that this impacts a lot of our affiliates is  
3 they have probationary--they have probationary wages that are lower than what their  
4 wages are once they make it through that period, whether it's 30, 60, or 90 days, and  
5 that wage can be substantively lower than what they will make, so when that is  
6 factored in, again they end up with a lower calculation when they are hurt.

7           The third one that we look at this through is though most of our affiliate  
8 members do not make minimum wage, some of them do, but we take our role in this  
9 process to look out for all workers, and one of our other concerns as highlighted by  
10 Julia is that impact on minimum wage workers, so a lot of workers across the state  
11 saw a significant increase in the minimum wage and to factor in a wage that is no  
12 longer legal to pay and in some scenarios like was raised to MLAC last week, last  
13 week, you could end up calculating a wage that is actually no longer legal to pay and  
14 that is concerning to us as well.

15           Obviously we prefer the calculation that paid the worker what they  
16 would have made the next day if they were able to go to work and I think that there  
17 is some agreement around the table about that is what this system is set up to do, it  
18 should not pay you a wage that you made 48 weeks ago or factor it into a lower  
19 wage that you made 48 weeks ago, and I'll turn it over to (unintelligible) around the  
20 table to get into a little bit more (unintelligible) probationary periods and exactly how  
21 much money we're talking about here because it is substantive, especially when a  
22 worker's only taking home 66 and two-thirds of their pay to begin with.

23           11:21: So Brian Noble, sheet metal workers. I have a couple different  
24 wage sheets out of a couple different contracts we have we represent, I think we  
25 have seven production shops in the state where we represent workers, and one of

1 our contracts has a 90-day probationary period for a new worker that doesn't have  
2 any sheet metal experience, and after that 90 days he's going to get a \$5-an-hour  
3 raise, so when you factor in that lower wage, which somebody might take the job  
4 knowing that they're taking a pay cut for a certain amount of time to get that higher  
5 wage, when you factor that into a calculation to--for a time loss injury, I think it really  
6 hurts workers when, you know, every dollar an hour less they're getting is \$26 a  
7 week in benefits, so that's one example I have, and I'm more than happy to give you  
8 guys copies of this that show that. Plus, they also get a yearly contractual raise and  
9 at this company it's about 70 cents an hour every year, every 52 weeks in this  
10 particular contract.

11 I have another contract where a journeyman trainee is going to get in  
12 36 months he's going to go from 16.60 an hour to 24.60 an hour and that goes up  
13 every six months in increments, so they're getting, see, the first six months they're  
14 going to get a \$1.44 an hour raise plus their contractual raise when that comes up as  
15 well, so that can be a couple dollars an hour difference when you calculate it the way  
16 the new rule states.

17 13:05: And (unintelligible) our new wage earning agreements, they're  
18 the--they're the same job.

19 13:11: Yeah, yeah, the job duties don't change in either of these  
20 situations.

21 13:19: So Sheri Sundstrom--

22 13:20: Yeah.

23 13:20: --Hoffman Construction. So let me understand, Kim was just  
24 trying to explain to me because I'm, you know, Hoffman union contractors on our job  
25 site, so are you telling me that the sheet metal workers, the union call board rule

1 does not apply to the sheet metal workers--

2 13:36: So we represent all the construction side of sheet metal  
3 workers, we also have production jobs--

4 13:41: Oh, okay.

5 13:41: --which is not--

6 13:42: Okay--

7 13:42: --construction and they don't have a--

8 13:43: --so when you're speaking to, and I think it's really important as  
9 we go around the room for the union members that are going to be discussing, you  
10 know, how does the--because you--if you do have two, two sides of the coin so that--  
11 because I go to the union call board rule--

12 13:59: Right.

13 13:59: --which I absolutely love, our (unintelligible) Washington if  
14 anybody wants to help me, but I--you know, so I think it would be helpful for us to  
15 understand that there's two different, two different (unintelligible)--

16 14:09: Sure, we represent all the sheet metal construction workers out  
17 there in the State of Oregon that are union and then also we have several production  
18 shops that do different types of sheet metal work in the state--

19 14:22: That aren't hired out of a call board--

20 14:23: And they are not hired out of hiring hall.

21 14:26: Okay.

22 14:26: They are directly hired by the employer.

23 14:33: Jeff Anderson with UFCW 555. We have 25,000 members that  
24 are local, primarily 95 percent, 98 percent private sector, and we probably have  
25 there's a high turnover in the grocery industry that allows for about 30 percent under

1 a year, so we have a lot of people coming in and going through the system that are  
2 at minimum wage or just, just right slightly above. We have apprenticeship brackets  
3 that take you up on routinely at 1040-hour brackets as a six-month, if you're working  
4 full-time, that's six months timeframe, so we're concerned that this look-back change  
5 is actually taking us below minimum wage potentially because the Oregon minimum  
6 wage goes up and you do a look-back, you could actually be grading your two-thirds  
7 based on a floor that's south what is the law today, and that's a problem for us.

8           You know, I appreciate the work of MLAC, I think everybody working  
9 on MLAC and working in Workers' Comp, my frustration goes back into the '80s with  
10 the whole subject matter that it's supposed to be an exclusive remedy that we find  
11 that the parties agree not to do certain things or have certain rights as they would be  
12 taken care of if they're injured, and I find it weird that we would find a rule that would  
13 pay less than what you get today. That's--and it's based on a two-thirds model and  
14 I'm assuming that the model is based on the fact they wouldn't pay in theory taxes,  
15 but there's a look-back provision that can take you less than what you are, you're no  
16 longer made whole if you have a look-back provision that makes you less than what  
17 it is today, and that's kind of troubling to me because it seems like the spirit of the  
18 system is to be made whole and in the agreement there's exclusive remedies. My  
19 two cents.

20           16:49: So, Jeff, if I can ask you a question, I totally get the minimum  
21 wage issue, are you in a position to speak to the work--your workers who have  
22 varying hours and schedules and how that stacks up, the current rule stacks up to  
23 what was in effect before January?

24           17:15: I don't know, I don't know about the pay, but I know in our  
25 industry, even in our contracts when we look at vacation accrual, it's based on a

1 look-back average hours, but it's paid at today, so if you're making X today and you  
2 were making Y yesterday, X is the base going forward the hours, because we have  
3 a lot of part-time, are biggest on the average hours worked over a 52-week period.  
4 That is different than, in my view, than what you were paid because you're paid at  
5 today's rate. I don't know if that's helpful, but that's our experience.

6 18:01: I have a question (unintelligible) maybe you guys can help me  
7 with this. In my view, and I don't want to oversimplify this, if we're using a wage on  
8 the date of injury and let's say an individual gets hurts--no, let's say he gets a raise  
9 on Monday and then gets hurt on Wednesday, premium collected was based on the  
10 wages in the prior 52 weeks, is that correct? So as a matter of fact you would not  
11 (unintelligible) the premium then (unintelligible)--

12 18:32: They don't always (unintelligible).

13 18:34: I'm just pointing that out for a second, I think that's in  
14 consideration, and (unintelligible) look at the efficacy of how this system works and  
15 how insurers or how employers are trying to fund these benefits.

16 18:52: Somebody back there.

17 18:53: Karl Koenig, firefighters. I think intuitively when we think about  
18 members getting hurt, they're not really worried about SAIF compensation as far as  
19 how they--how the back side of the shop works, industry term, how insurance works.  
20 Right? No worker goes "You know, I'm going go get a raise Monday; therefore, the  
21 best time for me to get hurt is Wednesday." We don't build the system around the  
22 one percent or the tenth of a percent that may have troubles navigating the  
23 Workmen's Compensation system in Oregon.

24 I think really when we talk about averaging 52 weeks, you have to think  
25 about intuitively looking back and getting the number of hours, not the rate. If we

1 just did that, I would listen to testimony from the employers making it very hard to  
2 average wages, they know how much they work, which is I think intuitively we should  
3 just pay at the rate that they're hurt at and then look back for the hours, that seems  
4 to work the best. It's the easiest, it's the most transparent. The employee who's  
5 hurt, remember what Workmen's Compensation is for, it's to bridge a gap until they  
6 get back to work. If we think about rule promulgation and all the things is if we do  
7 just that, we'll make it decidedly fair, we have--we have dispute resolution things all  
8 the time. It's very simple and straightforward, I got hurt, I was making \$23 an hour;  
9 therefore, it's going to be 66 and two-thirds of \$23 in (unintelligible), end of  
10 discussion. Look back, get my 52-week average of hours worked, apply the  
11 number, just like that.

12 20:52: My name's Chris Frost, I'm from Thomas Coon Newton & Frost,  
13 and here on behalf of the Oregon Trial Attorneys. To follow up on Mr. Boileau's  
14 question to SAIF, Jaye, could you let--tell us was--under the old rule, was it a  
15 significant impediment for SAIF premium collecting?

16 21:29: Chris, the two sides of the house don't necessarily  
17 independent.

18 21:34: Yes.

19 21:35: So as my comments to that, it's we look at what people are  
20 paid, so it's all about payroll--

21 21:44: Yeah.

22 21:44: --that creates premium, and it all balances out in the end, so--

23 21:49: Okay. So--

24 21:50: --and, I mean, I don't think it acts as an impediment; I--the  
25 collection of premiums is entirely separate from the--

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

21:56: Okay.

21:56: --the benefits group. They match ultimately in the loss  
(unintelligible) created, but--

22:04: Right.

22:04: --there's not--it's not an impediment.

22:06: Okay. And it wasn't--that didn't play a role for how any--that  
wasn't any reasoning to correct this sort of situation in creation of this sort of rule,  
right?

22:25: The collection of premiums?

22:26: Uh-huh.

22:26: No.

22:27: Okay.

22:28: No, I think that, you know, the question for us is, is the balance  
between, I think we all agree here, so what we're really trying to do is make sure the  
workers get their fair compensation according to the law, and we like it to be  
something that we can administer properly so that benefits are paid, you know, as  
expected and the Department doesn't tell us that we made a mistake on us.

22:55: Well, wasn't that precisely why the rule was changed, so that  
you wouldn't be making those mistakes (unintelligible)--

23:03: Yeah.

23:03: --a lot of mistakes being made--

23:04: We didn't--yeah, and I just, yeah, I--

23:10: Right, I mean, I think what we would see is that the rule, the  
intentions of the rule--

23:13: Right.

1 23:13: --or (unintelligible) was--

2 23:15: Right.

3 23:15: --really to try to treat workers fairly and make it easier to  
4 administer, but in practice we're finding some of the problem--the problems that  
5 labor folks are articulating where workers are getting disadvantaged under the new  
6 system, and so it's great that we're together to try to figure out how to fix it.

7 23:37: And well, (unintelligible) on that, oh, really, sorry, sorry, we--so  
8 going forward, I really want to stress how important it is when you do get a  
9 rulemaking and advisory request from Fred to attend those meetings, I've religiously  
10 tried to attend them throughout the years, and it's just for what happened here. The  
11 Department did everything they could to put this out in front of us and, you know, I  
12 had my call board rule that I really liked and I testified on behalf of that, but, you  
13 know, and I just want to stress this is like the most incredible opportunity that we  
14 have in this state, in doing business in so many different states as we do, as  
15 Hoffman does, I wish every other state was so transparent and puts out there these  
16 opportunities, so please going forward could we all just collectively agree that when  
17 something like this comes out, when you get one of those advisory discussions, talk  
18 to your constituent base and make a concerted effort to attend because the  
19 Department was really trying to put something out there that was going to be good, I  
20 totally got it. Did I agree with what they were doing? I was verbal about it but I  
21 attended this meeting to say that, and--but there was a lot of people that were  
22 absent from the table, and so we collectively, I think we all are agreeing; it's just how  
23 do we get to that fine point today or if it's in another meeting? So I had to say that, I  
24 just really had to say it because it's a great opportunity.

25 25:15: Chris Frost, Thomas Coon Newton & Frost. I agree that WCD,

1 the people that work at WCD, I think they honestly really try to make the system fair  
2 for all sides, I do. I know many of them and I respect them. That's what makes what  
3 happened here with this rule so troubling and ultimately disappointing to me because  
4 I was there at those meetings, I knew this was a problem, I voiced my strong  
5 objection to the rule and the reasons for the rule, and I was told that was just too bad  
6 for some workers, which was not acceptable.

7 I worry about the process that happened before this new rule came to  
8 us where I understand the WCD worked with some of the stakeholders.  
9 Development of that rule ended up in a benefits cut to some injured workers. That is  
10 contrary to the policy of the statute and to the rule regarding estimating time loss at  
11 its core, so I do appreciate your comments, Sheri.

12 I do also want you and WCD to understand there are many  
13 stakeholders who find it easier and who have more opportunity to participate in  
14 rulemaking activities than others and I hope that WCD recognizes that. They--I think  
15 they do an outstanding job at outreach, but frankly I kind of wish they'd stop  
16 rulemaking so much, because I can't keep up with it, I (unintelligible), but I was like I  
17 can't do it, and frankly the folks who are most disadvantaged in participating tend to  
18 fall on the worker side, so they're not paid to attend these things. I consider myself  
19 as someone who represents workers and feels their stories and has to listen to their  
20 stories here representing a worker's perspective, not an attorney's perspective. I  
21 have a unique ability to understand the problems for the system on behalf of  
22 workers, but when I come here and I do participate and I state the problems that are  
23 going to impact injured workers, and still have a rule come out like this. And then for  
24 the next year have to sit across the table from injured workers who are impacted,  
25 injured workers who had to abandon their claims because they couldn't get enough

1 in pay--in time loss under this rule, it's just more than I can bear about the  
2 participation comment, so, because I feel like I have participated, you know, I feel  
3 like we do the best we can, and I do appreciate that we are able to reopen this  
4 conference and I'll be quiet from here on out as much as I can.

5 28:54: Oh, yeah.

6 28:58: So--oh, go ahead.

7 29:01: No, it's me.

8 29:02: Go ahead, carry on.

9 29:04: So I think everybody in this room has done some sort of policy  
10 union contract negotiation, I think it's quite normal that we cannot imagine what's  
11 going to come out when you write some language, some rulemaking, something  
12 happened, and I think it's just normally a year that everybody's seen looking at it on  
13 anticipated outcomes and all of that, so that's why we're here, so I'd rather focus, I'm  
14 sorry, on how to make it better going forward. I see employers now agreeing with  
15 (unintelligible) I do (unintelligible) myself (unintelligible), clearly we all (unintelligible)  
16 should be making the employees, and I'm an employee, too, (unintelligible) injured, if  
17 more now (unintelligible) and this is the 52-week deal is creating a practical  
18 compensation calculation nightmare for me on my end, we have contracts where  
19 employees are making themselves whole by utilizing their sick time, vacation time,  
20 we have police, we don't have fire but I worked in Salem before where we had fire,  
21 we had multiple certs paid, and some of them are temporary certs that are very  
22 limited and I think it's that that's one of my concerns. If you get injured by luck on  
23 the day you were making a working out of class just for that day, I think deciding that  
24 the day you get injured is your income is kind of wrong, too, because going forward  
25 there was an expectation this is going to be your income the next day, so I do

1 understand it, today I'm making \$12, I expect to make \$12, not what I was making  
2 10 months ago, I totally understand that, but tomorrow I'm not expected to make  
3 \$20. It was only for today I was working at the (unintelligible), it's only today I was in  
4 a SWAT, only today I worked for a week, that I don't think is fair to--we somehow  
5 need to get out of the temporary assignment incomes from that going forward,  
6 especially if it's less than--I mean, if it's going to be a year worth because sometimes  
7 it is (unintelligible) it for the next two year, that's one thing, but if it was especially for  
8 that date, it does happen, yeah, I see (unintelligible) and knows every pay period it's  
9 a nightmare for me to calculate what they were making, overtime included, but at the  
10 time rate, not time and a half, but the employee was making last year with overtime  
11 and all certs and all of that is something else, and there's unfortunately sometimes  
12 distrust in the employer that you're not calculating it right because, God, I can't even  
13 tell what I'm making every week anyway and police and fire especially changes, now  
14 they're paying me this much, which has nothing to do with my income, especially if  
15 they've been gone for a few years, that in COLA they're getting in the contract  
16 versus what COLAs they got from the State system, so they're looking at today I  
17 would have been making \$30 an hour, here what they're paying, and now paying me  
18 this, it's very, very frustrating and its very open to mistakes. I think we have to  
19 simplify it, that averaging makes it even harder, from my concern.

20 32:11: Sommer Tolleson with Maher & Tolleson. I think segueing from  
21 what you just said that one of the things that has not yet been addressed that's part  
22 of my understanding and from talking to people is that part of the reason this  
23 something needed to change is when you have five WCD auditors and five  
24 experienced claims examiners sit down and look at the same file and come up with  
25 10 different average weekly wages because different rules can apply and it is--it is

1 so complicated that it's like a Venn--it's like a Venn diagram of, well, if it's this, well,  
2 you could go here or you could go here, and so people are wrong or they're right, as  
3 the employers and insurers have an obligation and should be doing everything they  
4 can to get it right, but it's a gotcha trap and the situation as seen by--I respect  
5 everything the WCD does, but, you know, when an examiner employer, you have all  
6 the information and you--and you've done your due diligence and you get it wrong  
7 because the rules are so complicated, that's untenable. I mean, if you apply that  
8 generally, here's a law on the books, and as an example, there's a law on the books,  
9 nobody knows what it means, nobody knows how to enforce it, so how does that  
10 help everyone generally? So--and that to me is a different issue of workers, you  
11 know, whether they're getting more or less benefits, but fundamentally there's  
12 something wrong with a system like that, and speaking at Chris Frost's, I appreciate  
13 your comments and, you know, who representing Oregon Trial Lawyers, Chris, you  
14 and I have worked together for a number of years, I have the utmost respect for  
15 Chris and how she operates and working collaboratively, but that is not how the  
16 entire Bar works either on the defense side or claimants side, and in an environment  
17 where there have been significant changes to penalty-related attorney's fees and  
18 penalties, and the system that's set up is that I have had claimants attorneys say,  
19 "Oh, yeah, I'm retaining clients that I never would have retained, there's no litigation,  
20 there's nothing that I can see that's wrong with their claims, but it's so easy to get a  
21 penalty-related fee for filing a Request for Hearing and maybe I'm right, maybe I'm  
22 wrong, but if I'm wrong, no skin off my nose because I just checked a box and  
23 submitted a Request for Hearing, but, hey, if I'm right that they're \$2 off, I'm going to  
24 get a \$1500 attorney fee for checking a box." I'm not--I'm not disparaging anyone  
25 particularly, but I can say I--claimants attorneys who have said, "I am keep--people

1 who walk into my office, I'm having them sign a retainer agreement even if there's  
2 nothing that I can identify wrong, because now I'm going to have an opportunity to  
3 get fees," I've had more than one claimants attorney say that, and so, you know,  
4 there's that component that if you're in a system where nobody knows what the right  
5 answer is and even the Department doesn't because different auditors get different  
6 things, there's something fundamentally wrong and should be addressed.

7 35:45: I think--

8 35:46: I--

9 35:46: --can I just jump in there really quick--

10 35:47: Okay, well--real quick. My counterargument to that is I've been  
11 in labor relations professionally 30-plus years, I was around during the Mahonia Hall  
12 discussions and the law. I've seen the Oregon Supreme Court decision that came  
13 out of, I think it was Cascade Steel, but I also remember Senate Bill 369 from  
14 Mannix, and in my time I've seen the ability of my injured workers to find attorneys  
15 willing to take their case vastly, not greatly, vastly diminished. And I'm concerned  
16 that I don't want to have to be--because I don't find all these attorneys wanting to  
17 work in Workers' Comp, because the compensation's so low, so there might be one-  
18 offs, but I would look at such as cases versus claims filed, I'd go back to 1985, I  
19 would go back to 1990, if we bar-charted that, I think you would see a representation  
20 cases vastly diminished, so I don't see that, that might be your personal experience,  
21 but from my members seeking legal advice, it's become less attorneys working in  
22 this area because there's less compensation, so I don't think there's a lot of people  
23 making bank on it. I'm frustrated that my members that get injured don't have that  
24 access. That's just my reflection and I think I could get a whole lot of cases filed,  
25 whether it's SAIF or whoever, I mean, if there's a Workers' Comp claim and an

1 801 form filed, if there's an attorney at some point that received compensation and  
2 we looked at that percent from 1980, 1985, 1990, and just keep going, I think you'll  
3 see a line that just goes straight down.

4 37:55: So let me--

5 37:56: And--

6 37:57: Can I--

7 37:57: --clarify and just a moment is that this isn't an issue about  
8 access to justice. I think that's been addressed by--

9 38:02: I agree.

10 38:02: --by the change, but what I'm saying fundamentally, if you have  
11 a system that no one knows how to administer, so it's set up to fail, you are  
12 inherently generating more litigation that's unnecessary, and more litigation in a  
13 system I don't think benefits insurers and employers or injured workers, so--

14 28:22: So I'll just say that I think if the rules are so complicated that the  
15 adjusters do have such a significant problem calculating wages and it's either too  
16 much for a worker that on the back end they can have up to 25 percent reduced,  
17 that's a lot for a worker to deal with when they're only getting two-thirds of their wage  
18 as well, and if it's too less that's also a problem for workers, so I think we come to  
19 the table recognizing that we're not advocating that we send all the rules back to  
20 pre-2017 change. We're saying that if the rules need to change, that that change  
21 shouldn't fall on the back of an injured worker and result in a lower calculation, so it  
22 feels like now is probably a good time to go to the proposed rules that you  
23 mentioned when you went over the agenda and maybe we can talk through them.

24 39:03: There were a couple--

25 39:03: I have a question because I don't--I think--I absolutely agree, I

1 mean, if a worker, there's a difference in terms of the average weekly wage for  
2 somebody making minimum wage where you would end up coming to a number  
3 that's less than, I mean, to me that's--it's illegal, you can't pay somebody less than  
4 that. The question I have, though, and perhaps somebody, is that something that  
5 can be addressed in the rules? Or is that something--because I don't--I don't know  
6 that there's anyone--I--and I'm not speaking on behalf of anyone, but it seems to me  
7 that just generally speaking if the--if the floor is I'm just \$10 an hour and then an  
8 average weekly wage because of a look-back is going to be based on wages that  
9 are no longer legal, that there--if not ev--most people could agree that that's an issue  
10 because now people even at their time loss rate are making less than minimum  
11 wage, so--but is that--is that something that can be addressed in a rule--

12 40:08: Well, I mean, I don't want to preempt Julia, but (unintelligible)  
13 that's one of the options on the table, yeah, absolutely, absolutely--

14 40:14: Okay, so that's something--

15 40:15: --but I guess, and again I don't want to preempt Julia, but we're  
16 really interested in people who have looked at this, have some initial suggestions to,  
17 you know, both addr--well, address both issues, both the simplicity issue so that  
18 there's not errors and Jess's end up in others, you know, concerns about, you know,  
19 the look-back issue, so, I mean.

20 40:48: I would just say that our concerns (unintelligible) beyond  
21 (unintelligible).

22 40:52: Yeah, yeah, yeah--

23 40:53: Right, that's I'm just starting with that, that's--

24 40:55: Yeah, yeah, no, I wasn't suggesting that was the  
25 (unintelligible)--

1                   40:58: I think that's pretty low (unintelligible) in terms of what we can  
2 all agree on and begin at that level.

3                   41:04: I think both Karl and Chris had their hands up at various times.

4                   41:06: We haven't heard from Chris yet.

5                   41:08: Oh (unintelligible)

6                   41:09: Oh, I thought you meant that Chris, I'm sorry, no. You told me  
7 you weren't going to talk. If I've got the floor, then I just go back to--thank you for  
8 your comments. From the fire, maybe LE, I don't, certainly don't speak for the  
9 police, but I know--I know the firefighters who we talked about acting in capacity, the  
10 reason there's a differential because of the responsibility change. I--fundamentally,  
11 to not go into any job preparing to get hurt, there's inherent risks of every job. That's  
12 why we have risk management, right? So for me, if the simplest way to look at is, if  
13 we have to have 52 hours because of overtime or anything else, right, fair is fair,  
14 nobody, minus the trial lawyers, right, including, are making money being hurt. I  
15 think we have to fundamentally agree this is not a money-making thing. It's two-  
16 thirds of their current wage, looking back 52 hours, that's--

17                   42:20: Fifty-two weeks.

18                   42:21: Oh, I'm sorry, 52 weeks, sorry, I have a 52-hour workweek, so--

19                   42:24: Oh, okay.

20                   42:25: --it's a different conversate--well, I believe I can't even believe I  
21 made a mistake right there. So if we look--if we have a simple math problem that  
22 says, "What are you doing today?" and you fell over, you got hurt, I get two-thirds  
23 52-week look-back of what I was doing right when I feel, there's very little room for  
24 missing a checked box. I tend to oversimplify, but I really think, given the margins  
25 what we're talking about, whether it is a minimum wage employee who just got a

1 wage adjustment based on federal law or state law changing or they bargained on  
2 behalf of a group of employees or they walked in and asked the boss for a raise, all  
3 those things tend to make sense to an injured worker. I think the back side of the  
4 shop, as I spoke before, needs to be accountable, transparent, and simple for  
5 someone to come in from the outside, whether you're a lawyer, a Workmen's  
6 Compensation attorney, on either side to represent the employee or actually the  
7 employee himself, walk in and go "How did you guys get this number? My last  
8 paycheck said this and I was doing this; therefore, for me, it seems really simple to  
9 get to X." And then we're--you know, then we bring out the abacus and we start  
10 getting on computers and stuff and we can't get the number. Intuitively it seems like  
11 this shouldn't be a heavy lift for this room to get to the point that you're making this  
12 much money, we look back this amount of time, and we can't--we can't make people  
13 less than Oregon state law as far as earnings go, right, on an hourly rate, that's  
14 against the rules, so I'm just--I'm just wondering--and to add, I'm sure we could--we  
15 could bring Nic Cederberg or Peter Saint John and tell you that right now over a year  
16 later from their injuries that Workmen's Compensation is barely allowing me to hold  
17 on. One is still in a wheelchair and unable to walk, the other one and still has bullets  
18 inside of him and the neck is still recuperating and not back on the job as it relates--  
19 as it relates to getting blown up, so while we were very fortunate they didn't perish in  
20 those accidents, those were work, clearly workplace things that happened and they  
21 both had incentives and working out of class and doing things that were for the  
22 public good, and everybody is working for an hourly wage and trading their time for  
23 money. It should never ever be a losing proposition for them ever. How the back  
24 side works, maybe the one sole thing we're here to discuss, but if we drive with the  
25 principle that the employee's going to be two-thirds whole at the end of the day, we

1 should probably make that as best as we possibly could, given the fact that work--  
2 nobody's here telling us Workmen's Comp's about ready to go out of business, right,  
3 nobody's here screaming foul, there's not a--there's a procedural matter that we  
4 should be able to handle relatively quickly and move on, and I certainly appreciate  
5 the discussion I--and I think that the process works, we've had stakeholders at  
6 meetings, we always know the least represented are not going to be here because  
7 they're working, and I--right? So thank you for the time, I appreciate it.

8 45:49: So can I ask, Jess, do you have language that you guys are  
9 ready to talk about?

10 45:54: I think Jennifer has language that she's ready to talk about.

11 45:58: Let's go, Jennifer.

12 45:49: Okay. Well, as many of you in conversations that we've had,  
13 the concept of the 2017 rules have many good things in them, and to address the  
14 hourly issue with the increase or decrease at the time of injury, if we were to  
15 implement a numeral into Division--the current Division--or the current version of  
16 -0025 indicating that if there's been a change, increase or decrease, in the wage and  
17 that's the only change that the insurer's to calculate that irregular wage, would go  
18 back to averaging the hours multiplied by the rates in effect at the time of injury, that  
19 being the regular rate, their overtime rate in whatever pay category that worker is  
20 paid.

21 I know that some employers say, well, that's really difficult. I get that,  
22 but, however, that's how folks are paid, and usually those pay categories are  
23 showing on the paychecks, so, yes, it would take more time than just taking the  
24 dollar amount and dividing it by 52 because you would go back the 52 weeks or less  
25 than if the new wage--(unintelligible) different, get the hours for each pay category,

1 and multiply that by the rate that is in effect at the time of injury. I believe that that  
2 would bring us back to how those wages were calculated previously, but a little  
3 nuance to that is for simplicity in the rules, we talk about regular wages and irregular  
4 wages and the rules aren't real clear that a worker may have both, so really writing  
5 the rule so it's clear to an adjuster picking up, you know, payroll that, okay, this  
6 person gets an hourly--or excuse me, a monthly rate, but they also get, you know,  
7 four quarterly incentive bonuses, so you can do the salary, the monthly rate under  
8 the regular wage, which is take that rate multiply 4.35, and then pick up those  
9 irregular wages on the incentive bonuses and just average them. Okay?

10 So basically for irregular wages, when there's been an increase or  
11 decrease, do a 52-week average of the hours for the rates times the correct rate  
12 plus add in wages that were paid other than on an hourly basis, so you pick up the  
13 tips, you pick up the incentives, you pick up the bonuses.

14 48:33: So could the nerds around the room react to that?

15 48:39: We're not nerds, come on.

16 48:41: (unintelligible) report--

17 48:42: Take out (unintelligible)--

18 48:45: Yeah, I prefer the term wonk--

19 48:46: That wasn't a pejorative comment--

20 48:50: (unintelligible) so actually I have a question because that's  
21 essentially if that's--I was thinking about the presentation DCBS provided and  
22 defined wage earning agreement, that--if the--if the definition of new wage earning  
23 agreement was changed.

24 49:10: Well--

25 49:10: No?

1 49:10: No--

2 49:11: --I'll comment on that. The--

3 49:13: I'm just throwing that out there--

4 49:14: The current definition of wage earning agreement in the current  
5 rule says means a verbal or written contract requiring or terms of employment made  
6 between the worker and the employer. What we're talking about when there's been  
7 just an increase or decrease in wage rate, what the rules say would say is that that's  
8 not considered a new wage earning agreement, which is why you need to go back  
9 for however long that agreement was in place, okay, so the current rules actually  
10 even define a new wage earning agreement means the worker's wage earning  
11 agreement changed for reasons other than only a change in rate of pay, including  
12 but not limited to blah blah blah. I mean, it could be--

13 50:03: Reword.

14 50:03: --streamlined so it was more clear, but I didn't find the--I  
15 personally didn't find the conflicts in there that an adjuster may have, I mean, it's still  
16 probably take (unintelligible)--

17 50:14: Jennifer, this is Sue Quinones with City of Portland. I like your  
18 idea; however, in the spirit of compromise because of the difficulty in averaging the  
19 hours, what if we used the rule that you're talking about new wage earning  
20 agreement means the worker's wage earning agreement changed for reasons  
21 including a change in rate of pay, and instead of going back and averaging the  
22 number of hours, you just use that as a new wage earning agreement--

23 50:51: Sue--

24 50:51: --so for those people that get \$5 more an hour and they're  
25 working, you know, 45 hours a week, you use that as the new wage earning

1 agreement going forward rather than going back.

2 51:05: Sue, I--Jennifer again. I totally understand where you're  
3 coming from. However, that could harm workers as well as employers because  
4 going back, you know, let's say a person is injured at the peak of a season, since  
5 they got, you know, the hourly increase, their Comp rate would be based on all of  
6 those hours at the peak of the season, not taking into account the lesser hours that  
7 they worked the rest of the years, and same vice-versa. If we were to just do that  
8 and it was at the downtime of the season, that worker's wage would be much less  
9 not taking into account the seasonality of that position.

10 51:47: Right, but if we're only going with the wage at the time of the  
11 injury if it's more than what it was. Right?

12 51:58: Well, no (unintelligible) averaging the hours--

13 51:58: So you don't (unintelligible) 52 weeks--

14 52:00: --Sue, at like right now, if the worker's injured today but they  
15 were putting in 60-hour workweeks, right, but that's because it's at the peak of the  
16 season, doing the hourly check-back helps even that out for both sides because, you  
17 know, three months ago they were only working 30 hours a week, so doing the  
18 hours breaks--brings in the differences throughout that 52 weeks, and not to digress,  
19 but we used to do a 26-week average. We changed that and, yes, I was here, we  
20 changed that because (unintelligible)--

21 52:34: But I think--I think--

22 52:34: --the seasonality of a position.

23 52:38: All right, but I think what you're going to run into is we'll be back  
24 to doing the average number of hours for everyone because I would say the majority  
25 of people have a change in wage earning agreement at least once a year for an

1 increase.

2 52:53: But you won't have to do it for people who are paid monthly  
3 salaries; you'll only have to do it on the irregular wages.

4 53:01: Yeah, which is the majority of the, just an FYI--

5 53:05: And then, yeah, I--

6 53:05: --the majority of the (unintelligible)--

7 53:06: --do understand that it is a lot, but again--

8 53:08: Which is also our point, too--

9 53:09: Yeah, that is (unintelligible), yeah. And I don't know that many  
10 employers would want those averages based on a worker who was injured at the  
11 peak of the season and--

12 53:23: Chris, you had--you had your hand up for awhile then.

13 53:26: Yes. Jennifer, do you know? Well, one situation I've seen  
14 happen under this new rule not only had to deal with the rate of pay, but it also had  
15 to do with hours changed, a woman gets a low-wage job on a probationary basis  
16 working 27 and a half hours a week for \$12 an hour, then after three months moves  
17 up to a 40-hour--the job duties stay the same, but the hours increase to a steady  
18 40-hour-a-week job with a \$15 rate. The only--she gets injured in a month into that.  
19 Under this, are you saying that--you're saying that, since she had a rate change, you  
20 still average the hours, even the hours where she was on probation and working  
21 fewer hours? Because it seems to me that if there is a change--is if there is a  
22 designated change where the employer says, "Hey, we were hiring you to do this job  
23 at 27 hou--27 hours a week and now we're going to have you work a 40-hour-a-  
24 week job," whether you have a rate change or not, it seems like the time loss rate  
25 needs to be based on the--that's a new wage earning agreement to me, I don't know

1 if it is under the current rule--

2 55:01: I believe under the current rule, under the old rule, and under  
3 this proposal, and (unintelligible) folks help me if I'm wrong, but that would be a new  
4 wage earning agreement--

5 55:12: Okay.

6 55:12: I'm working part-time or three-quarters-time and then I go  
7 working full-time, that--

8 55:16: Okay.

9 55:16: --it's a new wage earning agreement, the same for the flip way,  
10 if I was working full-time and then I decide I only want to work six hours a day  
11 instead of eight hours a day, that's a new wage earning agreement.

12 55:28: Okay. Thank you.

13 55:29: Uh-huh.

14 55:30: Jennifer, just to clarify something for me, so I deal with  
15 apprentices--

16 55:37: Yes.

17 55:37: --coming into the trade, most of them are changing careers,  
18 coming from wherever they come from to construction trade, and so the wages that  
19 they're begin earning on day one, if they're injured, our program is a 24-month  
20 program for apprenticeships, so how does that affect as far as what they were doing  
21 prior? Because that it's a new--

22 56:00: It's only going to be based on--

23 56:02: The current?

24 56:02: --the employer at injury.

25 56:03: (unintelligible) union call board rule (unintelligible)--

1 56:06: Well, are they hired out of the call board?  
2 56:08: Yeah.  
3 56:09: Then it's a 40 hours a week (unintelligible)--  
4 56:10: Yeah, 40, yep--  
5 56:12: Anybody that is hired off of the call board or the (unintelligible)--  
6 56:15: And there's widespread agreement--  
7 56:16: --list would fall under the current hiring hall rule, which is  
8 doesn't matter how many hours you work; you get 40 hours a week times the rate  
9 that you're paid at the time of injury.  
10 56:29: Thank you.  
11 56:30: And so, you know, unfortunately there, you know, and I can see  
12 I was thinking that now what you were talking about just for our apprentices, if they  
13 were just on the cusp of getting enough hours to move to that next level, but this is  
14 that snapshot--  
15 56:45: Right.  
16 56:45: --in time that--  
17 56:46: Yeah.  
18 56:46: --union call board (unintelligible)--  
19 56:46: Date of earn--  
20 56:47: Yep--  
21 56:47: And it's just like the folks that are in their trial service or their--  
22 56:49: Yeah, hiring hall (unintelligible)--  
23 56:49: --probationary period--  
24 56:51: --their hiring--  
25 56:51: Yep--

1                   56:51: --if they're injured during that period, it's not what they would  
2 have been making--

3                   56:55: Correct.

4                   56:55: --it's what they were making (unintelligible)--

5                   56:57: Perfect, thank you.

6                   56:57: You're welcome.

7                   56:59: Yeah, and there's no disagreement on that, I don't believe. Not  
8 that one. We got an agreement.

9                   57:14: I would be very interested (unintelligible) suggestions, Fred,  
10 you guys have come up with.

11                  57:18: Julia has some bullet points.

12                  57:20: Yeah.

13                  57:25: Okay. So some other ideas beyond what was discussed. One  
14 option would be to calculate the worker's rate of temporary disability under the  
15 current rule and then also calculate their average total earnings since they received  
16 a pay increase and then use the higher number between those two. Another--

17                  57:49: Say that again.

18                  57:50: Sure. So were--

19                  57:54: I see a lot of looks of--

20                  57:55: Yeah.

21                  57:55: --that look the dog gives (unintelligible)--

22                  57:57: Right, what was that?

23                  57:58: And we're going to--we're going to get this out to people  
24 (unintelligible)--

25                  58:00: Yeah, so, yeah, and we're going to get this out. There's

1 another meeting, and I don't recall if I said this (unintelligible)--

2 58:04: February 1<sup>st</sup>--

3 58:04: 1<sup>st</sup>--

4 58:04: --the agenda, there's another meeting on February 1<sup>st</sup> and so I  
5 know I'm going to say a lot of words and there might be a lot of head bob, and so the  
6 idea is I'll send out--we'll send out information about these options for the  
7 February 1<sup>st</sup> meeting and they can be discussed in more detail, I'm thinking I'll kind  
8 of read them off slowly, make sure everybody und--is understanding them. If people  
9 have comments, if people have more suggestions, we want to hear those, and then  
10 at the February 1<sup>st</sup> meeting as well we can continue the discussion, I'm sure people  
11 might have more thoughts as they go home and think about it and--so--so to say it  
12 again, basically be taking the higher number of two options. Option one is  
13 calculating the worker's rate of temporary disability under the current rule, so the  
14 52-week average, and then they--you would also calculate the average total  
15 earnings since they had a pay increase, so only looking at whatever period of time it  
16 was since that pay increase and then taking the higher of the two for the--for the  
17 wage.

18 59:06: So are you saying the higher of the pre and post increase,  
19 decrease in wage?

20 59:10: Uh-huh.

21 59:10: Yes, you'd take the 52-week average and then you'd take the  
22 average since the pay increase and take the higher between the two.

23 59:16: So when you guys send these--

24 59:17: I like it, I like it.

25 59:20: When you send these out--

1 59:21: Thank you--  
2 59:21: Yep--  
3 59:21: --you're also going to give us some examples of how that would  
4 work out so (unintelligible)--  
5 59:25: We can do that (unintelligible)--  
6 59:28: --and I think--  
7 59:29: Yeah--  
8 59:29: --multiple examples would be helpful, not just for showing you  
9 this one, but--  
10 59:33: Yeah, yeah--  
11 59:33: --also here's an employee at 12 bucks an hour, here's an  
12 employee that has this differential in there, so we can see how the different  
13 scenarios work, I think that's really important (unintelligible)--  
14 59:42: Yeah--  
15 59:43: I really want--this is John Rakowitz of AGC, I want to  
16 underscore that we need to do that so that we don't end up back here again because  
17 the unintended consequences, so that's really important to road test this stuff so  
18 everybody can go back and sort through it and have time to digest it.  
19 1:00:00: Well, to tag on what John just said, we'll give you examples,  
20 but it would be actually be helpful for you to do your own run-through for your  
21 employees or--  
22 1:00:10: Yeah (unintelligible)--  
23 1:00:10: Yeah.  
24 1:00:11: I want to see, though, how the Department is actually  
25 calculating those because we go back to--

1 1:00:15: That's right.

2 1:00:15: --five different, ten different--

3 1:00:17: Right--

4 1:00:17: Yeah.

5 1:00:17: --right, right, yeah, so (unintelligible)--

6 1:00:18: --it's really important that we know (unintelligible)--

7 1:00:20: --or you do both--

8 1:00:20: --we know where you guys are going because--

9 1:00:22: Because it's not only--

10 1:00:23: Yeah--

11 1:00:24: --the fairness, it's the consistency--

12 1:00:25: Yeah (unintelligible)--

13 1:00:26: --and the ability to comply--

14 1:00:29: Yeah, yeah.

15 1:00:29: 75 percent of my membership are little bitty shops and we

16 have to make it doable for people to comply, that hap--I just want to put that out

17 there, and that's why the road testing helps us figure that out before you change the

18 rule again and gives everybody that opportunity to do that.

19 1:00:49: And may I add also looking at it from the perspective of what

20 an employer has to provide to the insurer--

21 1:00:55: Yes.

22 1:00:56: --and then what the insurer needs to do--

23 1:00:58: Yes.

24 1:00:58: --to calculate it--

25 1:01:00: Please--

1 1:01:00: --the impact on the worker and then--  
2 1:01:01: Yes--  
3 1:01:01: --how it would be audited.  
4 1:01:03: You have to do it through all the parts of the system,  
5 everybody he's--here's sitting here so that we can see how every piece is affected; if  
6 you don't, you're going to have unintended consequences again, so that to me is the  
7 key to the whole ability for this group to come to an agreement and I will say  
8 personally I have a whole lot more interest in this group coming to something that  
9 everybody can work and live with and implement than over in the capitol building, so  
10 just put that out there for the sake of it.  
11 1:01:34: Okay. John, let's get there.  
12 1:01:35: Okay. That's the unspoken elephant in the room.  
13 1:01:40: And, Julia, I know you're going to provide us the nuances of  
14 the suggestion.  
15 1:01:45: Uh-huh.  
16 1:01:45: When you were talking pre increase, decrease and post, was  
17 the pre just prior to that change average? Or including the whole thing?  
18 1:01:57: It was the whole thing, right, yeah--  
19 1:01:58: Including the whole thing.  
20 1:01:59: So you do 52 of wages and the 14 weeks of the new wage  
21 (unintelligible) okay--  
22 1:02:04: Yeah, so let's say somebody's got a pay increase six months  
23 before their injury--  
24 1:02:08: Yeah.  
25 1:02:08: --so you'd average their 52 weeks of wages, which is the

1 current method, you'd get that number, then you'd average six months of wages  
2 because just since the pay increase and you'd get that number, and whichever one's  
3 higher is the one that would be used.

4 1:02:22: Because (unintelligible)--

5 1:02:23: What's the circumstance that the one averaging overall would  
6 be higher? Because there would be other things figured into it?

7 1:02:30: Because it's a higher wage, so in six months, if somebody is--

8 1:02:34: No, I mean in the 12 months because you're going to be  
9 averaging the lower wage, too--

10 1:02:37: Oh, seasonal effects, so if somebody got hurt in the off-  
11 season--

12 1:02:43: Yeah.

13 1:02:44: --then it would be--

14 1:02:45: Yeah.

15 1:02:46: --accounting for that--

16 1:02:47: Okay--

17 1:02:47: Well, and, see, the (unintelligible) wages to (unintelligible)--

18 1:02:49: Uh-huh.

19 1:02:50: Whether they're on prevailing wage job or not.

20 1:02:53: Right.

21 1:02:53: Uh-huh.

22 1:02:54: Yeah.

23 1:02:55: So, Julia, do I understand correctly that each of those you're  
24 talking wages, not hours.

25 1:03:01: Correct, that would be a method that would be wage based

1 only.

2 1:03:05: And you're talking two calculations that would need to be  
3 made and then the comparison.

4 1:03:08: Correct, and this is only for the, I mean, what I'm hearing  
5 everybody say is the concern lies with those irregular wage workers and the workers  
6 who are just getting that pay increase or decrease, so all the examples I'm providing  
7 are under that scenario.

8 1:03:24: And with the intent that we want to make this as easy as  
9 possible so we don't have multiple opportunities to make errors and have--

10 1:03:31: Yeah.

11 1:03:0031: --multiple people put eyes on it and come up with multiple  
12 conclusions.

13 1:03:36: Amen.

14 1:03:36: So can WCD also include, because not all workers are solely  
15 irregular wages or solely regular wages, can you also include in your suggestion  
16 how that would work for how it would be calculated if they have regular wages and  
17 they have irregular wages?

18 1:03:53: Yes, I think the idea would be for the regular wages always to  
19 be calculated under the regular wage method so whether (unintelligible)--

20 1:04:02: And that's where--

21 1:04:02: --if it's monthly that would divide by 4.35--

22 1:04:04: Yeah, and that's where you'd have--

23 1:04:04: --or they get a weekly wage--

24 1:04:05: --to exclude those wages from the payroll--

25 1:04:09: Yeah, you'd have your regular wage calculation and your

1 irregular wage calculation, which is what the rule currently has, it's to have both of  
2 those categories. Okay--

3 1:04:19: Jennifer, do you have a use--do you think the way the rule's  
4 currently--

5 1:04:23: I don't know how that would work for an adjuster.

6 1:04:25: Yeah, that's what I, that's where I was going with that--

7 1:04:26: Yeah--

8 1:04:26: Yeah--

9 1:04:27: --and the error that could take place because if I get a regular  
10 wage and then I have commissions or whatever on top of it, my paycheck wages is  
11 going to include all of that, so they'd have to bifurcate out--

12 1:04:46: Yeah.

13 1:04:46: --what is regular wage and what is irregular wage and I think  
14 that might be a lot for an employee to understand who do I do that or an adjuster to  
15 go look up payroll and be able to do that, that's my only concern.

16 1:04:59: So I want to piggyback on you, Jennifer. I think as what we  
17 say actually play it out and do test these things is send it to two adjusters and see  
18 what they do because if you don't, you haven't tested all the parts of the system and  
19 that's what key I think is, is these scenarios are played out far enough with all parties  
20 including adjusters so we can see will it provide the clarity and consistency or is it  
21 just another set of issues that have been determined--

22 1:05:32: And I (unintelligible)--

23 1:05:32: --so I would make that request--

24 1:05:32: --an adjuster, so, Stan, I don't know if that would that be--

25 1:05:36: It's just due diligence--

1 1:05:36: --a payroll issue on (unintelligible)?  
2 1:05:40: Simply (unintelligible)--  
3 1:05:40: Test it.  
4 1:05:40: --amount of work that someone would do because they would  
5 have to look at the case using this set of payroll and this scenario and look at the  
6 same thing (unintelligible)--  
7 1:05:52: Right, right--  
8 1:05:52: --that's payroll--  
9 1:05:54: Right--  
10 1:05:54: --given different scenarios and compare the two and you're  
11 doubling the opportunity to make mistakes--  
12 1:06:01: Yeah.  
13 1:06:01: --and create issues, and depending upon when the pay rate  
14 increase happened, it happened during the low season, you're right back to the  
15 situation of you have to gross wages which we're trying to address is less than--  
16 1:06:20: Yes, yes--  
17 1:06:20: --the average of the rate increase during the low season--  
18 1:06:23: Yeah.  
19 1:06:23: --when they're making less hours, so are we having the same  
20 conversation that some people, some worker benefit and some workers are  
21 (unintelligible)?  
22 1:06:34: Can I--can I make a suggestion that if we're going to send out  
23 these examples that I think John's on the right track, to me before we send out these  
24 examples, can we pick some people in the industry, so let's pick some adjusters,  
25 let's pick--

1 1:06:46: Yeah.

2 1:06:46: --some insurance companies, maybe not necessarily SAIF,  
3 although they can be included in it, but let's pick some of the other (unintelligible)--

4 1:06:53: We'd like to be included--

5 1:06:53: --I think they're probably the cream of the crop to some  
6 degree and so they're likely to get it, they're more likely to get it right, but maybe  
7 some insurance companies that struggle with getting it right because I think you  
8 know who those guys are, too, and then maybe some employers like CIS or--

9 1:07:09: Yeah.

10 1:07:09: --or Cities of Woodburn--

11 1:07:11: Yeah.

12 1:07:11: --that you send it to them and say here's the real wages--

13 1:07:13: Do it--

14 1:07:13: --you tell us--

15 1:07:14: --calculate it--

16 1:07:14: --how would, here's the rule that we're proposing for the if we  
17 did it this way and see what they send you back, not just see if they have to ask you  
18 questions, see if they can act, and did you get the same answer from everybody  
19 because then instead of this theoretical, we've actually tried it to say this works or it  
20 doesn't and we can actually see did this result in lower wages, did everybody come  
21 up with the same answer, are we having difficulty or are we basically back where we  
22 were at in 2016 with there's 20 different answers, just throw a dart in the wall,  
23 because, I mean, what I--my biggest concern here, I do think we do need to make  
24 some adjustments, I don't want to rush to do that and find ourselves just back here  
25 again in a year or whatever because it didn't have the effect that we wanted, I would

1 like us to go slow enough, not two, three years slow, but slow enough for us to  
2 actually vetted this before we make the change so that we know we get it, we all  
3 agree that this is the right way, not I guess I shouldn't say that correctly, that the  
4 Department has enough information to decide if this is the route they want to go as  
5 opposed to, you know, throwing the, you know, being back here again because we  
6 didn't vet it well enough, we thought we were okay, but we just really didn't even try it  
7 out very well, so I'd like to recommend that we actually test drive whatever, you're  
8 going to throw out six different options that you think you want to try, throw them out  
9 there, so I think that's fine, but I think people should come back with answers by  
10 February 1<sup>st</sup>, let's be clear that (unintelligible)--

11 1:08:46: Yeah--

12 1:08:46: --something that's (unintelligible)--

13 1:08:47: Absolutely--

14 1:08:47: Yeah--

15 1:08:47: --(unintelligible) worker--

16 1:08:49: And this is--and--

17 1:08:50: (unintelligible) out of (unintelligible)--

18 1:08:52: Yeah, the idea is, is to do it smart enough and deep enough  
19 that we know what the hell it means to all parties, right--

20 1:09:01: Yeah.

21 1:09:01: --but you have to have all hands on that before you know  
22 that, and that's the only thing that we're trying to figure out because we've had, some  
23 of us had three meetings and now this one and then the MLAC thing and so now we  
24 begin to get a handle on it, we're just trying to do our due diligence at this point, but  
25 due diligence means all the parties have to do it, not one or two or three.

1 1:09:24: And it doesn't do us a darn bit of good to hurry to answer if  
2 we get to a wrong answer, so I (unintelligible)--  
3 1:09:29: Create different confusion--  
4 1:09:29: --what we want is to solve the problem, not be on, not be in a  
5 hurry to get there, I do understand that there is--  
6 1:09:37: But this is not the way--  
7 1:09:38: --some concerns with getting us as quickly as possible--  
8 1:09:40: Yep.  
9 1:09:40: --but it's to me a poor choice for us to hurry without vetting it  
10 properly (unintelligible)--  
11 1:09:49: Yeah, I think there's (unintelligible)--  
12 1:09:49: --a lot of incentive not to delay--  
13 1:09:51: Well, we're not trying to delay it but we really don't want to  
14 have the same set of issues--  
15 1:09:56: Exactly--  
16 1:09:57: --because you've not tested it beforehand, right--  
17 1:09:59: I--  
18 1:09:59: --because this is complicated as it gets.  
19 1:10:02: I think we ought to be able to work on it by February 1<sup>st</sup>,  
20 though--  
21 1:10:06: Yes, yeah--  
22 1:10:06: Yes, yeah (unintelligible)--  
23 1:10:06: --if we get the information.  
24 1:10:08: Yeah, okay, so I stepped out for a minute and I apologize but  
25 are we talking about only sending out the recommendations of the Division or what

1 about the recommendations that Jennifer made also?

2 1:10:19: Yeah--

3 1:10:19: So--

4 1:10:19: --try them all--

5 1:10:20: --the, yeah, and actually the two recommendations--

6 1:10:21: Yeah, yeah, (unintelligible)--

7 1:10:21: --that were discussed by Jennifer and Sue were on my list, I  
8 just didn't say them because they've already been said, and so--

9 1:10:27: Okay.

10 1:10:27: --I'm going to--the idea is for the February 1<sup>st</sup> meeting I want  
11 to include every recommendation that is received, so people have more  
12 recommendations, please don't hesitate to let me know either at this meeting or, you  
13 know, as time goes on so that we can try to think through all our options because  
14 like you said it is very complicated and there are a lot of consequences, no matter  
15 what option's chosen there's going to be a lot of consequences and we want to  
16 make sure we're thinking through those.

17 1:10:55: So how soon are you thinking those suggestions can get out  
18 to folks?

19 1:10:58: I can get them out pretty quick, I mean, I have them here,  
20 so--

21 1:11:03: Yeah but (unintelligible)--

22 1:11:03: Can we establish a deadline--

23 1:11:04: With that--

24 1:11:04: --for people to submit it to you so that way it gives ample time  
25 for everybody to do the test drive?

1 1:11:07: To give people time--  
2 1:11:08: Yeah--  
3 1:11:08: --tomorrow--  
4 1:11:08: --uh-huh--  
5 1:11:09: --(unintelligible) being Friday by 5:00 you can get everything  
6 in send it in Monday, then that gives us at least a week or two to play out--  
7 1:11:15: And are you--  
8 1:11:16: --the numbering (unintelligible)--  
9 1:11:19: Question I have is--  
10 1:11:19: (unintelligible) have them already--  
11 1:11:20: --will you--  
12 1:11:20: (unintelligible) getting stuff today--  
13 1:11:22: So then you're going to send those to four, five, six different  
14 parties, you're going to send them to who all is going--  
15 1:11:31: I think, I think people need to take responsibility for getting it  
16 to the folks who can do the calculations.  
17 1:11:37: I can (unintelligible)--  
18 1:11:38: I mean, you know--  
19 1:11:38: --as an employee (unintelligible)--  
20 1:11:38: --you are already--  
21 1:11:39: --see how I would calculate it--  
22 1:11:40: Right, right, you are, you either are an insurer and you can  
23 have your folks do it, you're a service company, you can have your folks do it, I  
24 mean, if we need to decide who to--  
25 1:11:52: No--

1 1:11:52: --send it to, then--  
2 1:11:53: Yeah--  
3 1:11:53: --then we're in a position of having to justify who we send it  
4 to--  
5 1:11:56: Yeah, yeah, I (unintelligible)--  
6 1:11:57: --I don't want, I don't--  
7 1:11:57: At the very least--  
8 1:11:58: --I don't want to have to do that--  
9 1:11:59: --at the very least can we give it to everybody in here and I  
10 want (unintelligible)--  
11 1:12:03: Oh, let (unintelligible)--  
12 1:12:03: --I think that's what--  
13 1:12:04: I have a little clarity I had to take a moment to go to the  
14 restroom, but (unintelligible) clarity, people, I need to step out of the room for a  
15 minute and so I want to comment on one thing. When, you know, I talk about the  
16 union call board a lot because that affects my direct employees that are union  
17 workers obviously, but Hoffman Construction does what's called contractor-  
18 controlled insurance programs on our very large jobs, 90 million or more, and so I  
19 get to touch not only Hoffman claims but I see every single claim that comes through  
20 the door for union and non-union workers, so I get both of sides of, you know, it's not  
21 just the union call board to me, it's every single construction worker on every single  
22 project that Hoffman has that can be touched by these rules and as I--as I was  
23 walking I was thinking, you know, Jennifer, correct me, you spent a lot of time  
24 probably talking with labor about your ideas and bouncing it off of them and so Jeff,  
25 like you know, I know you commented to Jennifer earlier, but I kind of want to get a

1 feel for how those, if you don't mind, those discussions did because I have to think  
2 that somebody that's getting these phone calls day-in and day-out and then probably  
3 talking to people like Chris and talking to people like Jess and Brian and Tim that,  
4 you know, with all of that feedback you probably have a better pulse point on what  
5 this is doing than anybody because you get it from all sides and I'm sure you hear a  
6 bit from employers like me, but you probably have a really good sense of that, and I  
7 don't know what kind of discussions you internally are having with the Department  
8 with what the, you know, some of the--some of the things that they're thinking, so  
9 can you--do you mind speaking to that, you know, what the breadth of your survey of  
10 this situation and maybe just--

11 1:14:05: Just regarding the rate issue, right--

12 1:14:06: Yeah, just the rate, how you came up with this, I just, I guess  
13 I just want to understand because I have to think out of everybody in this room you  
14 probably have a better grasp--

15 1:14:15: Oh, there's plenty of geeks in here--

16 1:14:17: Okay.

17 1:14:17: --besides me, but--

18 1:14:19: Sorry--

19 1:14:19: No, that's okay, that's oh--

20 1:14:19: --didn't mean to put you on the spot--

21 1:14:20: --oh, that's okay--

22 1:14:20: --(unintelligible), so--

23 1:14:24: (unintelligible) understanding the impacts that it has had on  
24 workers is what led me to going through, okay, how can we--I was pretty clear that  
25 going back to the 2016 rule was not a good idea, I think I was pretty clear with that,

1 right, because that's what--I mean, folks were, well, we need to go back to how it  
2 was. Well, there was a lot of good that was done--

3 1:14:51: Were you also in the audit manager at one time?

4 1:14:54: I was (unintelligible)--

5 1:14:54: I'm sorry, I'm sorry --

6 1:14:57: Yes, but that was over 12 years ago--

7 1:14:59: Okay.

8 1:14:59: --right, and actually to be honest, during that period of time as  
9 agency we didn't look at these (unintelligible)--

10 1:15:07: Okay. Got it (unintelligible)--

11 1:15:09: It was too cumbersome. Weekly wage calculation has been  
12 crazy for eons, so the 2017 was an attempt to streamline it with I believe no intention  
13 on--what's the appropriate word--

14 1:15:25: Adverse effect.

15 1:15:27: Adverse effect, cute, on anyone, but taking the scenarios and  
16 just those life scenarios regarding your folks that are working, you know, fast food  
17 frontline minimum wage and that calculation that goes on, it's true that the new rules  
18 say, well, we'll include overtime and bonuses without questioning that, my  
19 suggestion also includes that, but those folks that are frontline, you know, making  
20 maybe minimum wage, maybe \$12, \$13 an hour, most of them aren't likely to get  
21 overtime, employers like to keep them under the full-time thing because of other  
22 reasons, as well as they're not getting incentives or bonuses or anything like that, so  
23 it's really hard to explain to a worker why their average weekly wage--I mean, it's not  
24 hard to explain because you just say, well, it's your wages over the last 52 weeks.  
25 What's difficult to explain is why that's fair. And that's kind of the bottom line.

1 1:16:29: Okay, got it.

2 1:16:30: Yeah.

3 1:16:30: And if I can also add, so Soren Metzger, and I represent--I'm  
4 here today on behalf of the Oregon School Employees Association, and so our folks  
5 are working in schools, school bus drivers, aides, food service workers, and I talked  
6 to Lou about this a little bit last time, but you have folks who are working primarily in  
7 special education and they don't have the access to information or training and  
8 they're being injured on the job, we have members who are making about \$21,000 a  
9 year, that's the median annual income, and they're about 50 years old, primarily  
10 women, and they're getting, you know, punched in the face by a sixth-grader who's  
11 250 pounds multiple times and I've worked with OSHA on this and we have more  
12 Workers' Compensation claims coming from school employees than we do from  
13 non-residential construction industry, and so this is a major thing and these folks  
14 (unintelligible) of them out here just in terms of like how much they make, and  
15 districts are pretty clever, as people retire, they'll take a full-time position and turn it  
16 into two three-and-a-half-hour positions so they don't have to pay benefits, so when  
17 you look at their compensation of about \$21,000 a year, that comes to about \$403 a  
18 week, and when you break it down, the new rule and the old rule, it monthly comes  
19 to about a \$68 difference and for me I make more than 21,000, so I'm like, oh, \$68,  
20 that's what I spend on coffee every month, but when you're talking about low-wage  
21 workers, that \$68 a month is the gas to get to their physical therapy appointment or  
22 their prescription or the check that they have to write back to the district to have the  
23 insurance coverage or whatever it is, they're low-wage, and so it does make a huge  
24 difference. That being said, our folks are very low wage and they're not getting  
25 additional incentives. They would love that--

1 1:18:21: Yeah.

2 1:18:21: --by the way, but this is the wrong, this is the wrong meeting  
3 (unintelligible)--

4 1:18:25: (unintelligible) there so (unintelligible)--

5 1:18:27: --the wrong meeting for that, so (unintelligible), so I think with  
6 your first idea, Julia, that seems to address our folks' issues, just our folks who are  
7 very low-wage, making close to minimum wage or just over minimum wage, and in  
8 all fairness and I'm just wondering if it's possible to have different approaches for  
9 different types of compensation and like, say for example, if this work--if this seems  
10 to work for our folks who do not get, you know, those additional bonuses and they  
11 don't really have a peak seas--a peak season and, you know, that kind of thing, is  
12 there a possibility that maybe if we like multiple options that maybe we can use one  
13 option for one group of workers and maybe a different option for a different group of  
14 workers and I don't know if that would work with you all who are actually doing the  
15 calculation, but that way we're really addressing the issue for all workers and making  
16 sure that they get, you know, their compensation, and that's a question for the group,  
17 for you.

18 1:19:24: Well, one of the things that I'll get to is while it's doing carve-  
19 outs in the rule, and so that would be, I guess, one type of carve-out that could be  
20 made, and when you say, I want just to clarify, when you say different types of  
21 workers, are you talking about job class--

22 1:19:37: Yes.

23 1:19:37: --versus--okay--

24 1:19:39: Yes, so for example, our union brothers and sisters and who  
25 may be firefighters or in the trades or construction where they do have different

1 incentives and they have vacation payouts and they have different, you know,  
2 bonuses or quarterly bonuses, I just want to make sure that their wages are also  
3 being reflected, but then also accurately representing our folks' interests, so if this  
4 rule works or this approach works best for our low-wage workers who don't get that,  
5 maybe we can use this and then whatever other idea you have maybe if that works  
6 better for them, is it--is it possible to use both is my question.

7 1:20:17: Yeah, it is possible and just to clarify also the as far as  
8 bonuses, incentive, under the current rule and under the proposals that I'm kind of  
9 going through, those are included, so to the extent they are earned--

10 1:20:29: Right.

11 1:20:30: --then they do get averaged, so that is part of the calculation  
12 or part of the consideration at least under the current rule and whatever rule we  
13 come up with, all of my proposals I think are still including all those in the  
14 calculations.

15 1:20:42: Thank you.

16 1:20:43: Yeah.

17 1:20:46: Specifically addressing the rules and some of the  
18 conversations, I think there were folks that their understanding after the presentation  
19 and looking at the rules that it's not clear that you could have regular and irregular  
20 wages, and so I want to bring that to the rulemaking for everyone, and I did, I took  
21 notes during the MLAC meeting and the presentation and then I listened to it, and I  
22 think it wasn't entirely clear because I--part of it was the analysis is that the analysis  
23 that you do under the new rules is are the wages regular or irregular, and if they're  
24 irregular, the question then is when did the wage earning agreement start or  
25 change? And while there may be assumption in there that you can have regular and

1 irregular, I don't--I don't know that it was--I think the reason I thought that there could  
2 be regular and irregular is I think one of the examples that was given in terms of the  
3 calculation said, well, here these would be regular, these would be irregular, but I  
4 don't know that it's entirely clear and I say that because I think that may become an  
5 issue, I think didn't--

6 1:22:01: Yeah.

7 1:22:01: It sounded like when you were talking that you said, well, it's  
8 either a regular or irregular, but it could be both, but it wasn't clear--

9 1:22:07: And part of my suggestion is to talk about the wage  
10 calculation and a wage calculation could be regular, irregular, or both.

11 1:22:24: Awhile back there were a couple of hands up in the back and  
12 you might have even forgot what you were going to talk about by now, but the  
13 conversation just kind of flowed on to where if Karl or Chris have anything for the  
14 committee.

15 1:22:37: No, I think the irregular brings up Ms. Gregg's point maybe is  
16 I would--irregular wages, if it's well defined, you could certainly do that, but--so the  
17 collective bargaining agreements that we work under, I would not want--I would not  
18 want an administrative person to make the determination on what irregular wages  
19 are and then have--and then have the employee, who do they seek relief from? If  
20 you think about it procedurally, my regular wage is what I get paid and then  
21 overtime. In that--in that regular wage are irregular things. You're a paramedic,  
22 she's not, is that irregular or not, right, so the more we tend to parse it out the  
23 tougher we get and no one wants, no, I haven't heard anybody here say I want to  
24 arbitrage the wages so we keep our Workmen's Comp rates down. They're not  
25 saying that, so making it more or maybe procedurally instead of A divided by two-

1 thirds equals the pay-out, then it's problematic, right, so I--you know, hey, I'm not in  
2 the trades, so I don't--I don't make irregular wages, but I do have irregular things  
3 within my regular wage. Uh-oh, right? Do we want to--and I'm sure that's in case  
4 public or private regarding what if you--what if you're paying your pension as a  
5 matter of your--of your wage? But remember that service time doesn't count, I would  
6 hate to see an employer back out the six percent that I pay on my behalf into my  
7 IAP, oh, that's not earnings, that's an irregular, you know, pick your nomenclature, I  
8 would not want that to happen as a result of an interpretation. Well, that's just a  
9 benefit, it's not really money you can spend, and all of a sudden now somebody's  
10 taking six percent off my wage because I pay (unintelligible) IAP, for example, so I  
11 think easier better linear awesome side (unintelligible), but I'm (unintelligible), right?  
12 Do you see where I don't want--I don't--I don't want our employees who struggle with  
13 math--

14 1:25:05: I know, thank you.

15 1:25:06: Right, I don't, I don't. You know why? Because they payme,  
16 it's pretty awesome, I (unintelligible), right, (unintelligible) is what I deal with, this is  
17 what I want, nobody's here to get rich, just give me my Comp so I can get back to  
18 work, that to me, right, and we have, we have our hiring hall rules, they're specific to  
19 (unintelligible), right, so, I mean, I'm not against breaking those things out, I just, I  
20 don't like having to do it when it comes to someone may potentially arbitraging,  
21 remember I'm going back on the worker's side, like I know what I make, give me  
22 two-thirds and I'm out the door, they don't care about the back shop, they don't care  
23 about behind the--behind the black green curtain, if you will--

24 1:25:49: And (unintelligible) that particular rule confused when you talk  
25 about irregular.

1 1:25:55: Yeah, I didn't know my work activities were irregular--

2 1:25:57: Well, it--I--it's necess--I think it's necessary for calculation  
3 purposes for the--for workers to understand all of that that's... They just get--they  
4 get a wage and that's what they understand.

5 1:26:12: So the next several options involve carve-outs, as I  
6 mentioned, so the first category of carve-out would be to create keep--have the  
7 current rule and then address specific concerns within the current rule, so some of  
8 the concerns, for example, were probationary status workers or workers who were  
9 on minimum wage, so a carve-out could be for the probationary example if a worker  
10 has a change of rate in pay due to a change in probationary, from probationary  
11 status, then that's a change in the work wage earning agreement in and of itself, and  
12 so that would eliminate those lower wages when they were on probation.

13 In the minimum wage example, to do a carve-out one option might be  
14 doing something where you're excluding the time paid from the prior rate from the  
15 calculation, another choice could be to use an average hours method to adjust the  
16 wages earned under the prior minimum wage rate to reflect the current minimum  
17 wage rate for the minimum wage workers, but of course then you get where do you  
18 draw the line and that can be an issue.

19 The next group of carve-outs, so trying to address specific concerns,  
20 there would also--carve-outs can also happen in thinking, okay, well, if XYZ is going  
21 to occur, then apply the average hours method rather than the average wage  
22 method, so, for example, if the change of rate of pay is beyond a certain percent or if  
23 the pay rate change occurred within so many weeks or months of the injury, then  
24 using an average hours method. Or if it's a certain--if the change represents a  
25 certain percentage of the payroll history, which is kind of similar to how many weeks

1 or months out it is. So those are the thoughts for carve-outs, I was trying to address  
2 specific situations with kind of the current rule structure.

3 And then the last idea that we have and obviously we're open to more  
4 ideas is trying to create a formula to apply an adjustment factor to the worker's  
5 weekly wage and so trying to think of what percentage of change was experienced  
6 throughout the year based on the wage earning or the pay records and figuring out  
7 what that percentage is and applying that to the fif--to the average over time, and so  
8 it would be not using an hour method, but it would be using a formula method with  
9 the wage information, and I can get you guys more information on some ideas of  
10 what that might look like.

11 1:28:57: So on that last one, are you saying like a worker got a \$5  
12 wage increase, you would look at what that \$5 means in relation to their total earning  
13 just on wages and then apply that to the hours (unintelligible)?

14 1:29:11: So it would be looking at, I mean, obviously the formula can  
15 take different methods, but it's essentially looking at let's look at what their wages  
16 were before they got their pay raise and let's look at what their wages were after  
17 they got the pay raise, how--what's the percentage change, so they make five  
18 percent more after the pay raise, so let's add five percent to the wage average, to  
19 the wage number, so--

20 1:29:38: (unintelligible) hours.

21 1:29:40: It would be all wages, so that would be a wage, it would--

22 1:29:42: (unintelligible) twice (unintelligible)--

23 1:29:44: Yeah.

24 1:29:44: --feels like you're applying the same percentage twice.

25 1:29:48: Yeah.

1 1:29:50: Seems like--

2 1:29:50: Because it's already there.

3 1:29:51: They could get more than--

4 1:29:53: Yeah.

5 1:29:53: --what their current rate of pay at--

6 1:29:54: Yeah.

7 1:29:54: --(unintelligible) regular hours--

8 1:29:56: Exactly--

9 1:29:56: Uh-huh--

10 1:29:57: --in that example--

11 1:29:57: --so maybe weighted, but even then it would be especially if

12 it's weekly change it would be a nightmare to (unintelligible) as opposed to maybe

13 you can weight the time (unintelligible)--

14 1:30:07: Right, and the formula would have to, it can get tricky trying

15 to think of how to create the formula when you have multiple changes throughout the

16 year and--

17 1:30:15: (unintelligible) right (unintelligible)--

18 1:30:15: --how that could apply and it's--

19 1:30:18: (unintelligible) yeah--

20 1:30:18: --yeah, and so it has some issues, difficulties, difficulties, but

21 it's something to for all the math-minded people in the room think about because if

22 there was a way to create a formula with an appropriate adjustment factor and I can

23 give you guys what kind of a rough draft of what that might look like--

24 1:30:37: And (unintelligible) that there comes a point and I'm trying to,

25 you know, they're injured, they're already not here, they're not here, what's

1 happening, and it may be already a contentious relationship with this employee and  
2 I'm going to sit down and explain this algebraic formula and how it was calculated,  
3 it's almost going to be patronizing, and I don't want to be that, I understand the math,  
4 you don't, and honestly it's not about--it's not what they do, whether it's a firefighter  
5 or police or a public works employee, this is not what they do. Gosh, I work in HR  
6 and I don't understand.

7 1:31:12: Yeah, I know how many hours a week I work and I know what  
8 my wage is.

9 1:31:15: (unintelligible) honestly--

10 1:31:17: It's how a worker's going to look at it, right, they know that  
11 for--

12 1:31:20: They're (unintelligible)--

13 1:31:20: --the past six, eight months I've worked 40 hours a week,  
14 maybe there was a week I had 32, but this is how much I'll make per hour and if--  
15 that's what I should get, you know, that's how they're going to look at it, right--

16 1:31:34: And I think that Brian (unintelligible) point, too, once they get  
17 their first check, it isn't possible for them to figure out whether or not it's accurate  
18 (unintelligible)--

19 1:31:42: And keeping in mind, I mean, you know, about workers  
20 getting their benefits, but for an adjuster, keeping in mind as we go through these  
21 examples--

22 1:31:49: Yep, yep--

23 1:31:49: --what that adjuster is going to have to go--

24 1:31:52: Yeah--

25 1:31:52: --through--

1 1:31:53: --yeah.  
2 1:31:53: --to calculate that--  
3 1:31:54: Yeah--  
4 1:31:54: --and what is the chance of making an error--  
5 1:31:56: Yeah.  
6 1:31:57: --because I know that that's concern on the management side  
7 of it is, too, you don't want to get nailed, well, one, I truly believe you don't want to  
8 underpay a worker, but, two, or (unintelligible) or, two, you don't want to run that risk  
9 of, boom, there's a hearing request and now I got an attorney fee because I didn't  
10 pass algebra--  
11 1:32:20: Yeah (unintelligible)--  
12 1:32:21: --and that's what (unintelligible)--  
13 1:32:22: --said earlier.  
14 1:32:23: I did, by the way, but--  
15 1:32:25: Oh, I did, too--  
16 1:32:26: (unintelligible) Jennifer, to your point, I think that, you know,  
17 we can laugh about, you know, boom, there's a hearing, you know, and that's not  
18 good for anybody (unintelligible)--  
19 1:32:37: No, it delays (unintelligible)--  
20 1:32:38: --so, you know, I just--  
21 1:32:38: --workers tremendously--  
22 1:32:39: --and I think that we've gotten to this place because the  
23 Department was working really hard to simplify a complicated system, we found out  
24 there were more problems with it than any of us would have liked, so now we're  
25 trying to simplify it and I do, I really appreciate the Department's--

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1:32:56: Yeah--

1:32:57: --effort to come up with some ideas and I think maybe a couple of them there's some maybe place we can play with, but I am worried that when we start talking about multiple calculations--

1:33:07: Yes.

1:33:07: --on the same worker when it's already difficult to do one calculation right, that that kind of concerns us, I mean, we want to make sure that people are getting taken care of, do it right, so--

1:33:23: Well, that speaks to Jeff's concern, you know, about his workers, you know, can't find attorneys, well, why do we even want them to have to look for an attorney in the first place? Let's--you know, let's try to not--

1:33:35: Right--

1:33:35: --even have to do that, let's get it right the first time--

1:33:37: No, that's (unintelligible)--

1:33:38: No, no, I meant (unintelligible)--

1:33:42: I, too, would love a system where they didn't need attorneys--

1:33:45: Yeah.

1:33:45: --but I'll tell you time loss issues--

1:33:48: Oh--

1:33:48: --they are a slight percentage of the problems that workers suffer with the system, so please do not think that simplifying is going to solve--

1:33:58: No--

1:33:59: All the (unintelligible)--

1:34:02: Yeah, just (unintelligible) control over this one piece will make it better or make it better, yeah.

1                   1:34:13: Is anybody thinking through, again those are options  
2 hopefully to create some good conversations and for people to think about how this  
3 could apply, some of them might get tossed out the window as it gets applied and  
4 realize that it's not a workable solution, but at least it seems that maybe these ideas  
5 might spur other ideas as well, and so if anybody has any other ideas as I went  
6 through those, if that did spur anybody's thoughts at this point, we'd love to hear  
7 those.

8                   1:34:42: It just makes me nervous having carve-outs, you know, in all  
9 the years I've been in this business, carve-outs scare me to try, I think the minimum  
10 wage thing is a no-brainer, let's fix that, but you start having these where does that  
11 go back to why we have the rulemaking advisory meeting two years ago in the first  
12 place was because this, that, and the other and there's just, you know, I don't know  
13 that we want to go back down that road, try to make it as simple and as fair as  
14 possible so workers know what they're going to get and the minimum wage issue  
15 gets resolved, just the easier we can make this for everybody the better off.

16                   1:35:24: So I have a suggestion just to address that minimum wage,  
17 so between subsection (5) and subsection (6), current subsection (6) is workers with  
18 no wages, between those making a subsection that is titled workers earning  
19 minimum wage, and then I don't have a suggested language except that it would be  
20 based on their average hours at minimum wage, whatever the current minimum  
21 wage is, that's what they're earning, it doesn't get averaged over 52 weeks. It's the  
22 averaged hours, so they're 30 hours or 25--and because then that essentially goes  
23 back to the way--

24                   1:36:09: It's a workweek--

25                   1:36:09: --for earning minimum wage--

1 1:36:11: It's a workweek--  
2 1:36:11: --prior--  
3 1:36:11: --not an average.  
4 1:36:12: It's a work--right, so it goes back to the pre-2017 way that it  
5 would have been calculated, they're earning minimum wage, but then it has its own  
6 subsection, so it's not a carve-out, you don't have to determine if it's irregular or  
7 regular, there's a subsection for workers with no wages, so then you have a  
8 subsection workers earning minimum wage, and then there's just those--it's very  
9 clear--  
10 1:36:39: Clear.  
11 1:36:39: Yeah, yeah. And then it's--  
12 1:36:41: It's pretty--  
13 1:36:41: But you wouldn't average their hours?  
14 1:36:43: No--  
15 1:36:44: You would, well, that's how else would you do it?  
16 1:36:46: Okay, no (unintelligible)--  
17 1:36:47: (unintelligible) yeah--  
18 1:36:48: --I thought you were saying you just take, oh, well, they work  
19 30 hours they work 30 hours (unintelligible)--  
20 1:36:52: No, no, no--  
21 1:36:52: --you would have to average the hours--  
22 1:36:52: --(unintelligible) average the hours--  
23 1:36:53: --okay--  
24 1:36:54: --you just, it wouldn't be based on the 52-week wages  
25 because that would include--

1 1:36:59: Oh, okay.

2 1:37:00: --wages that were now less than minimum wage, so--

3 1:37:02: So you just did a--

4 1:37:02: --it would be the hours--

5 1:37:04: Straight-up--

6 1:37:05: (unintelligible) there is a (unintelligible)--

7 1:37:08: It would be basically how it was done--

8 1:37:10: Yeah--

9 1:37:10: --pre-2017--

10 1:37:11: Just the wage rate would be set as current minimum--

11 1:37:12: (unintelligible) exactly addresses somebody who today is

12 injured and they are still injured if we're going up again in June, I don't know that

13 they are--

14 1:37:21: Yeah, right--

15 1:37:22: --but it (unintelligible), so unless (unintelligible)--

16 1:37:24: So it also would address (unintelligible)--

17 1:37:25: Yes, it--

18 1:37:25: --if they're still injured--

19 1:37:26: --going forward--

20 1:37:26: --in July or August--

21 1:37:27: --it addresses with--

22 1:37:27: --then it gets--

23 1:37:28: --yes, it does--

24 1:37:28: --adjusted so--

25 1:37:28: Oh--

1 1:37:28: --that they continue--  
2 1:37:30: Well, and they're different--  
3 1:37:30: --to get the benefit (unintelligible)--  
4 1:37:31: --adjustments in different parts of the state so you're going to  
5 need to deal with--  
6 1:37:36: But if we (unintelligible)--  
7 1:37:37: --yeah, but it would account for that--  
8 1:37:39: --(unintelligible) average (unintelligible)--  
9 1:37:40: It would account for it--  
10 1:37:41: --back and forth--  
11 1:37:41: But I actually that, that actually addresses--  
12 1:37:42: No problem--  
13 1:37:42: --it so that they aren't, you aren't currently paying minimum  
14 wage, but--  
15 1:37:48: Yes.  
16 1:37:48: --they run into a situation where--  
17 1:37:49: Yes.  
18 1:37:49: --you're no longer, so it would actually--  
19 1:37:50: Yeah--  
20 1:37:50: --that might--  
21 1:37:50: --you update it--  
22 1:37:51: --the best way to carving--  
23 1:37:52: Whatever the hell it is--  
24 1:37:53: --not to use the word carve-out, but--  
25 1:37:54: Not, yeah (unintelligible)--

1 1:37:54: --having a specific section dealing with minimum wage is  
2 really does seem to be the best way so that--

3 1:37:59: Yeah.

4 1:37:59: --you address not just today, but if they happen to--

5 1:38:04: Yeah.

6 1:38:04: --be injured still--

7 1:38:05: Yeah.

8 1:38:05: --when there's another (unintelligible)--

9 1:38:07: Change, yeah--

10 1:38:07: --that they are adjusted.

11 1:38:09: I just have to comment, Sommer, I understand that for the  
12 minimum wage, but for me in talking to workers, it's all about, it's not about the  
13 (unintelligible), but in talking to a worker and trying to explain, well, I know you make  
14 \$13 an hour and you got an hourly increase, you're not minimum wage, so you're not  
15 worthy of that--

16 1:38:30: Yeah.

17 1:38:30: --increase is a little problematic.

18 1:38:33: But legally--

19 1:38:34: And I'd like to--

20 1:38:34: (unintelligible) making--

21 1:38:34: --I'd like to chime in and say I don't like the average number  
22 of hours, I think that brings us back to the problem that brought the change in the  
23 first place, I mean, you know, and if you just take the earned, current earnings since  
24 the pay increase, wouldn't, you know, if we can do some examples on that, average  
25 weekly wage 52-week average weekly wage earnings only since pay increase and

1 do a comparison, I think that's the easiest way to do it and the easiest way to audit it.  
2 The average number of hours is very diffic--I mean, we have access to our payroll  
3 system and it's difficult for us to do it, I think about the SAIF employers that, you  
4 know, have a harder time getting the wages and the adjusters trying to figure out the  
5 average number of hours based on the pay rate on the current, it's a nightmare--

6 1:39:37: So I--just this is Sommer again. So you're thinking that if the  
7 minimum wage increase hap--so there's a minimum wage worker and three months  
8 before their injury minimum wage goes up, you would just look at those three  
9 months of wages versus--

10 1:39:57: Yes.

11 1:39:57: Oh.

12 1:39:58: Now--

13 1:39:58: I guess that's another way of doing it, but--

14 1:39:59: It takes out the seasonality--

15 1:40:00: It takes out the seasonality, if that worker gets hurt when  
16 you're in a downtime, it means (unintelligible)--

17 1:40:05: I mean, if they get hurt in an uptime, then you're paying more  
18 than they've actually made in previous 52 weeks, I get that it's easier, but it's also  
19 the reason why we're here and that workers aren't able (unintelligible) half of that  
20 (unintelligible)--

21 1:40:15: Well, and I guess that's part of why my recommendation  
22 would be that it be its own subsection versus a carve-out--

23 1:40:25: Yeah.

24 1:40:25: --I think it--when you're arguing in terms of trying to what do  
25 people mean when you're trying to interpret a rule--

1 1:40:33: Yeah, yeah, yeah--

2 1:40:33: --is it gets more complicated when you have to go when  
3 you're arguing, well, subsection (5) says this and then you have to look at the (a)  
4 and then the little (i) when I don't mean to get in the weeds, but just having to--I think  
5 it's cleaner that way and from the standpoint of some of the concerns that labor's  
6 brought here, which is these are the people that are the most vulnerable, that are  
7 most impacted--

8 1:41:01: Yeah.

9 1:41:01: --that if this is, if that exception has to be made for minimum  
10 wage workers, then those are the people that that time and energy should be spent  
11 on--

12 1:41:11: And so, Julia, what we've agreed is we're going to take those  
13 kind of ideas and just include them and everybody can go back and review them--

14 1:41:17: Yes--

15 1:41:17: --correct?

16 1:41:18: --I think that would--

17 1:41:19: Yeah.

18 1:41:19: --be helpful for people to think in practical terms how it'll all  
19 work--

20 1:41:22: In terms of process, yeah--

21 1:41:24: Yeah.

22 1:41:25: One of the--this is Brian from the sheet metal workers. One  
23 of the problems I have with something like that, a carve-out for minimum wage, is  
24 that you're classifying different workers different that are still getting paid the same  
25 as an irregular hourly wage worker, and just because they're a lower-wage worker

1 you're going to calculate their stuff different, somebody making, say, 50 cents over  
2 minimum wage. And I don't think that's a fair way to go because--

3 1:41:49: But (unintelligible) different ideas, that one of them is trying to  
4 make the minimum wage legality--

5 1:41:54: Yes.

6 1:41:54: --right--

7 1:41:54: Right--

8 1:41:55: --yes--

9 1:41:56: --that when you address that, that somebody's making--

10 1:41:57: Yes.

11 1:41:57: --13 is very close to, you know, minimum wage is another  
12 issue.

13 1:42:02: Yeah, I'm thinking, when I'm thinking of this, I'm thinking that  
14 it's just a matter of legal--I mean (unintelligible)--

15 1:42:06: You almost have to do this--

16 1:42:08: --legal--

17 1:42:08: Yeah--

18 1:42:08: --you almost have to, you have to be in compliance with the  
19 minimum wage law, how do you calculate for that when it comes to Workers...

20 1:42:18: I don't know that that's been--

21 1:42:18: --Comp--

22 1:42:18: --litigated--

23 1:42:19: But--

24 1:42:19: --but I suspect (unintelligible)--

25 1:42:19: --you could come into that (unintelligible)--

1 1:42:20: --litigated--  
2 1:42:20: It would be--  
3 1:42:20: --I mean, it would be and who--  
4 1:42:22: You could also come into that same scenario even somebody  
5 that's not, that's making above minimum wage and the hike goes up and so maybe  
6 they go just above the new minimum wage but it's a big enough hike where you take  
7 their 52-week average and it's less than minimum wage anyways.  
8 1:42:37: That doesn't (unintelligible)--  
9 1:42:38: Well, but their time loss rate is going to be less than minimum  
10 wage, it's going to be minimum wage 66 and two-thirds--  
11 1:42:44: I (unintelligible) saying--  
12 1:42:44: --but if their base rate--  
13 1:42:45: --less than (unintelligible)--  
14 1:42:45: Yes--  
15 1:42:45: --minimum wage--  
16 1:42:47: Right, they're (unintelligible)--  
17 1:42:47: --(unintelligible) work a minimum wage worker at the time.  
18 1:42:50: Yes.  
19 1:42:51: Right.  
20 1:42:52: Well--  
21 1:42:53: Does that make sense?  
22 1:42:54: Yeah, I understand your point, yeah, I'm thinking about the  
23 legality and the progression of it and it's different in different parts of the state, so  
24 how do you calculate if you are the insurer or the adj--whatever, how do you make  
25 that calculation? Well, you just go with the law, it's real simple, and so in three

1 months from now, if that's changed and then that's a part of the calculation, period,  
2 and then you at least you're in compliance with the minimum wage law, which is  
3 somewhat complicated because there are new rates in different parts of the state.

4 1:43:27: So maybe if we (unintelligible) if we all look at the  
5 suggestions and I'm hoping the Department gives an example so we can kind of  
6 follow where your mindset is on--

7 1:43:37: Yeah.

8 1:43:37: --how that--

9 1:43:37: Yeah.

10 1:43:37: --suggestion is--

11 1:43:38: Yeah.

12 1:43:38: --carried out--

13 1:43:39: I get your point--

14 1:43:40: --(unintelligible) proposing, but keeping in mind as you go  
15 through those suggestions is to how does this impact or not impact--

16 1:43:48: Yeah.

17 1:43:48: --a minimum wage worker as well as all the other workers?

18 1:43:51: Yeah.

19 1:43:52: I mean--

20 1:43:52: Sort of a minimum wage--

21 1:43:52: --someone who's not making who's--

22 1:43:53: --and close to minimum wage--

23 1:43:53: --over now but won't be in July so you may have to--

24 1:43:57: Yes.

25 1:43:57: --go back and recalculate those, too, just like if they were

1 minimum wage today.

2 1:44:03: So, well, you mean in the situation where there--

3 1:44:08: Somebody's making \$11 now, but down the road you were to

4 calculate it, you shouldn't forget those people are (unintelligible), you know, applied

5 the adjusters (unintelligible) rate without realizing--

6 1:44:19: Can I butt in just I think there might be a little bit of confusion

7 once the average weekly wage is set. Whether it's right, wrong, or whatever--

8 1:44:30: Yes.

9 1:44:30: --it's set at that point in time and it never changes unless

10 there's litigation after--

11 1:44:37: The rate increases are July 1--

12 1:44:37: The rate increases on July 1, so those call it a COLA.

13 1:44:43: Yeah.

14 1:44:44: The average weekly wage never changes, the 66 and two-

15 thirds becomes 70 percent becomes 72 percent over time, so you could have a point

16 in time where--

17 1:44:55: Sure.

18 1:44:55: --a time loss rate is higher than the average weekly wage

19 because of the July 1 increases that are applied for all claims across the board

20 (unintelligible)--

21 1:45:05: Just to clarify, we're talking about the state average weekly

22 wage--

23 1:45:07: State average weekly--

24 1:45:08: Okay, so (unintelligible)--

25 1:45:08: Yeah, the (unintelligible)--

1 1:45:11: Yeah--  
2 1:45:11: Well, can I (unintelligible)--  
3 1:45:12: Yeah, good point--  
4 1:45:12: --(unintelligible) when you mentioned COLA earlier--  
5 1:45:15: Yeah.  
6 1:45:15: --I thought, oh, you might be talking about in--  
7 1:45:17: Correct.  
8 1:45:18: --an aggravation claim when the injury was, you know, seven  
9 years ago--  
10 1:45:21: Correct.  
11 1:45:22: Oh.  
12 1:45:22: --that's not what...  
13 1:45:24: No--  
14 1:45:24: The wage calculation sticks...  
15 1:45:25: Correct--  
16 1:45:26: Sure--  
17 1:45:26: --as it goes forward--  
18 1:45:27: You have to, yeah.  
19 1:45:35: Thanks, Dan.  
20 1:45:36: Can we make sure that we get on the list for...  
21 1:45:41: I have business cards at the back--  
22 1:45:43: Yeah, because they probably (unintelligible)--  
23 1:45:43: --table and pick one of those up and please just call me or  
24 send me an email--  
25 1:45:48: Got it.

1 1:45:49: --make sure I do have you on my email list. If you haven't  
2 been hearing from me, I won't necessarily be able to make contact based upon your  
3 attendance here, it will record you as being here, but--

4 1:45:58: Yeah.

5 1:45:58: --if I don't have your email address, I may--

6 1:46:00: Yeah.

7 1:46:00: --I may miss you, so--

8 1:46:01: Yeah.

9 1:46:01: --please let me know.

10 1:46:04: So we've--so we will be able to get something to folks by  
11 Monday because we want to give people to at least tomorrow to submit any  
12 additional suggestions, is that kind of where we're at?

13 1:46:16: Yeah, I think--

14 1:46:16: Okay.

15 1:46:17: --that works.

16 1:46:18: And that's--

17 1:46:19: Will that give people enough time?

18 1:46:24: And then I think we're relying on folks to do some  
19 calculations, as you said, so test drive it so that when we come back we really have  
20 some good information to continue the discussion.

21 1:46:49: So I guess we're going to wrap it up today and again--

22 1:46:53: (unintelligible) ourselves out--

23 1:46:53: --please pick up a business card on the way out if you haven't  
24 been hearing from me and thank you very much for joining us this morning and for  
25 all of your input. We'll stay in touch with you and look forward to seeing you on the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1<sup>st</sup> of February, so thanks. Thanks on the--if you're on the phone with us, thanks as well.

1:47:16: Thank you, Fred. Thank you, everybody.

(WHEREUPON, the proceedings were adjourned.)

-----

