

1 **RULEMAKING ADVISORY COMMITTEE MEETING**

2 **February 1, 2018, 9:00 a.m.**

3 **Room 260, 350 Winter Street NE, Salem, Oregon**

4 **WORKERS' COMPENSATION DIVISION RULES**

5 **OAR Chapter 436, Division 060, Rule 0025**

6 **Rate of Temporary Disability Compensation**

7
8 **Committee members attending:**

9

10 Aaron McCurrie	Thomas, Coon, Newton & Frost
11 Betsy Earls	Oregon Business Association
12 Bill Cross	Oregon Self-Insurers Association
13 Brian Noble	SMART LOCAL16
14 Chris Carpenter	LiUNA
15 Chris Frost	Thomas Coon Newton Frost
16 Christine Jensen	Moore & Jensen
17 Cindy Gallagher	Coventry Healthcare
18 Dan Schmelling	SAIF Corporation
19 Dave Barenberg	SAIF Corporation
20 Debra Maryanov	Oregon State Legislature
21 Diana Winther	MLAC IBEW Local 48
22 Guy Boileau	MLAC Louisiana-Pacific Corp.
23 Jaye Fraser	SAIF Corporation
24 Jeff Anderson	United Food and Commercial Workers
25 Jennifer Flood	Ombudsman for Injured Workers
Jessica Giannettino Villatoro	AFL-CIO
John Rakowitz	Associated General Contractors
Keith Semple	Johnson Johnson Lucas & Middleton PC
Kevin Anderson	Sather Byerly Holloway LLP
Kevin Billman	MLAC United Food and Commercial Workers MLAC
Kimberly Wood	Perlo Construction
Kirsten Adams	Associated General Contractors

1	Sheri Sundstrom	Hoffman Construction
2	Soren Metzger	Oregon School Employees Association
3	Sue Quinones	City of Portland
4	Tammy Bowers	MLAC May Trucking
5	Tim Frew	Oregon State Building Trades Council
6	Todd Johnson	NCCI
7	Zachary Brunot	Randy M. Elmer, AAL, PC

Department of Consumer and Business Services staff members attending:

8	Julia Hier
9	Lou Savage
10	Troy Painter
11	Theresa Van Winkle
12	Fred Bruyns

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22 The proceedings in the above-entitled matter were held in Salem,
23 Oregon, on the 1st day of February, 2018, before Fred Bruyns, Administrative Rules
24 Coordinator for the Workers' Compensation Division.
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INDEX OF WITNESSES

PAGE

DISCUSSION AMONG PARTIES

1 - 80

1 TRANSCRIPT OF PROCEEDINGS

2 0:00: We're on the record, so-- Okay. Thank you very much for
3 coming. I think most of you have been with us before, but if you're here for the first
4 time, you're very welcome. And we have some pretty specific objectives for today's
5 meeting that Julia will go over more with you in just a moment.

6 I just wanted to give you a little bit of background information or
7 actually preliminary information. Yesterday afternoon and also first thing this
8 morning, I've posted some additional advice that we received, basically sample
9 wage calculations with payroll records in some cases, and we've posted those to our
10 website for--it's under Laws and Rules for Meetings and Hearings for 2018. So if
11 you're on the telephone with us today, I would encourage you to take a look at
12 those. We may well refer to those during our meeting today.

13 And we also, for the people here present, we have copies in the back.
14 We made quite a few, so hopefully we had enough for everyone. I know some of
15 you may have had a chance to print the ones we posted late yesterday or perhaps
16 not, because it was so late in the day. And the ones first thing this morning, it would
17 be a long shot if you already had those, so-- So there are additional handouts as
18 well. There's an agenda at the back of the room.

19 So I think you've all been involved in Advisory Committee meetings
20 before, but it is an informal process, it's a conversation. And the Division staff, we
21 have a very limited number of Division staff here today, but we're here to answer
22 questions, if you have them, that we can answer. We're here to, of course, listen to
23 you and take away your advice so that we can make hopefully a good--some good
24 public policy decisions based upon that. And include in that advice, if you will, any
25 fiscal impacts that may come about. And of course, there are fiscal impacts to what

1 we're discussing, costs and benefits. So keep that in mind because we have to
2 estimate those when we file proposed rules with the Secretary of State, and we rely
3 on advice from folks like you.

4 If you're on the telephone with us today, keep in mind we'll pick up
5 background noises in your office, and so just please selectively use your mute
6 button. Do not put us on hold, however, because we'll pick up any background
7 messages or music you may have, and there's really no way for us to turn that off.

8 My name is Fred Bruyns. I coordinate the rulemaking process. But
9 with that, I'd like to start with the folks on the telephone and have you introduce
10 yourselves to the Committee. Go ahead.

11 2:49: Good morning. This is Kevin Billman and I am on the MLAC.

12 2:54: Okay. Welcome, Kevin.

13 2:55: Keith Semple, Oregon Trial Lawyers.

14 2:56: Cindy Gallagher.

15 2:58: Okay. Good morning, Keith.

16 3:01: Cindy Gallagher, Coventry.

17 3:03: Welcome.

18 3:07: Sue Quinones, City of Portland.

19 3:09: Welcome, Sue. Anyone else?

20 3:19: Lou Savage, Workers' Comp physician.

21 3:21: Soren Metzger, OSEA.

22 3:23: Jeff Anderson, UFCW.

23 3:25: Tim Frew, Oregon State Building Trades.

24 3:28: Jessica Giannettino Villatoro, Oregon AFL-CIO.

25 3:30: Todd Johnson, NCCI.

1 3:32: Kimberly Wood, Perlo Construction and MLAC.
2 3:36: Tammy Bowers, May Trucking Company and MLAC.
3 3:39: Kevin Anderson, defense attorney for Sather, Byerly, and
4 Holloway.
5 3:42: Jennifer Flood, Ombudsman for Injured Workers, DCBS.
6 3:45: Brian Noble, Sheet Metal Workers Local 16.
7 3:48: Dave Barenberg from SAIF.
8 3:50: Jaye Fraser, SAIF.
9 3:51: Theresa Van Winkle, DCBS Director's Office and MLAC.
10 3:54: Guy Boileau, Louisiana Pacific Corp.
11 3:57: Chris Carpenter, Oregon and Southern Idaho District Council of
12 Laborers.
13 4:03: Chris Jensen, claimants' attorney.
14 4:05: Chris Frost with Trial Lawyers and Thomas, Coon, Newton &
15 Frost.
16 4:10: Aaron McCurrie. I'm a paralegal with Thomas, Coon, Newton &
17 Frost.
18 4:13: Diana Winther, General Counsel, IBEW Local 48 and MLAC
19 member.
20 4:17: And Betsy Earls, she asked me--she had to step out and she'll
21 be right back, with Oregon Business Industry Association. And I'm John Rakowitz,
22 Associated General Contractors.
23 4:29: Kirsten Adams, Associated General Contractors.
24 4:31: Sheri Sundstrom, Hoffman Construction.
25 4:33: Julia Hier, Workers' Compensation Division.

1 4:35: And there's a couple folks in the back, if you'd like to introduce
2 yourselves to the Committee.

3 4:39: Dan Schmelling, SAIF Corporation.

4 4:41: Debra Maryanov, State Legislature.

5 4:44: Okay. Again, welcome to you all. Do you have any questions
6 kind of about process before we begin? Okay. With that, I'm going to turn things
7 over to--the conduct of the meeting over to Julia Hier and...

8 5:01: Okay. Can everybody hear me okay? All right. Well, I
9 appreciate you guys coming out today, and I appreciate many of you were also at
10 the January 18th meeting. But I want to give a recap for those people who might not
11 have been able to attend about the issues that we're talking about and some options
12 that are being discussed.

13 So at that meeting, we had discussed concerns related to some of the
14 changes that were made to our Rule 436-60-0025, which had taken effect on
15 January 1 of 2017. As a recap, before January 1 of 2017, insurers had sometimes
16 averaged workers' weekly hours in the 52 weeks preceding the injury, and then they
17 would multiply the average weekly hours by the wage at injury to get the worker's
18 weekly wage. And this had occurred when there were irregular wages and change
19 in wage earning agreement only due to a pay increase or decrease during the 52
20 weeks prior to the date of injury.

21 Now under that same scenario, under the new rule, insurers are to
22 average workers' total earnings for a period of up to 52 weeks before the date of
23 injury or verification of disability caused by the occupational disease.

24 After discussing the concerns related to the rule change, stakeholders
25 at the meeting had put forth several options for changing the calculation method for

1 the workers' weekly wage for those workers. The Division had also set forth some
2 options to be discussed. And all of the options were summarized in the agenda for
3 today's meeting and will be discussed in more detail as we move along.

4 Jennifer Flood, Ombudsman for Injured Workers, had also provided us
5 with some draft rule changes related to one of the options, which we may be
6 referring today as Option 1, and that information has also been distributed to the
7 public. And as Fred had mentioned, we've had some additional information
8 distributed since yesterday afternoon and this morning. And that material, if you
9 need a copy, is at the back, for anybody who wants to grab one. And so--and in
10 addition to the proposed change, there's a recommended clarification to indicate that
11 the calculation can be based off either regular wages, irregular wages, or both when
12 making--when reviewing the rule.

13 So in addition to Jennifer's proposal that was online and our outline of
14 ideas, we had offered an example to us as stakeholders in understanding the
15 calculation options. And that was on the Excel spreadsheet that was posted a
16 couple weeks back. And we want to reiterate that when looking at examples, it is
17 just one example of what could be an infinite number of examples. So changes in
18 different scenarios can cause the numbers, some to be higher, some to be lower.
19 So it's not really--it's not fair to look at it and think, well, one answer gives us a
20 higher number all the time because that wouldn't be accurate if the facts change as
21 we go along. So just something to keep in mind when we look at numbers.

22 So moving forward in today's discussion, I wanted to write a more
23 detailed outline of where we're going with the talk and our goals, and what we hope
24 to accomplish. So I'm going to run through a summary of each of the rules as a
25 recap and then hope to discuss everybody's impressions of the options, along with

1 the pros and cons of each.

2 I want to attempt to identify if there's any consensus amongst the
3 groups about options that are liked or not liked that should be placed--for the ones
4 that we like to be placed into draft rule. And our hope is to be able to leave today
5 and prepare some draft rule language that can then be discussed amongst
6 stakeholders at a later meeting.

7 So working through the agenda and plan, looking at the options, those
8 are outlined in the agenda. Just as a recap, Option 1, and I'm talking kind of big
9 picture concept, is to average the workers' hours under each pay category over the
10 52-week period or a lesser period if there's a new wage earning agreement and
11 applying the average hours to the wage the worker was earning on the date of injury.
12 So that's very similar to the method before January 1 of 2017. There are some
13 things that are now included in the calculation that may not have been included prior
14 to January, January 1, like bonuses and incentives. But Option 1 is very similar to
15 the old method.

16 Option 2 is establishing that a change in rate of pay is--pay only is a
17 change in the wage earning agreement. And so that would average wages only
18 since that change of pay occurred.

19 Option 3 is to calculate the worker's weekly wage under the current
20 rule, and also calculate the worker's average total earnings since the pay increase,
21 so kind of a combination of the current rule and Option 2. And then that would--you
22 would take the higher number that is between those two options to identify the
23 worker's weekly wage.

24 Option 4 is talking about creating one or more carve-outs in the current
25 rule to address specific concerns that have been articulated, only averaging the

1 wages during that new period of time. So once concern being probationary status
2 changes, and so if a worker had their rate of pay changed due to a change in
3 probationary status, that would be considered a new wage earning agreement, and
4 averaging wages only during that period. Similarly, if there was an increase in pay
5 because of a change in the minimum wage, averaging wages only since that change
6 took effect.

7 Option 5 is creating other types of carve-outs as certain things occur
8 then apply an average hours method instead of an average wage method. So that
9 would be things like changes in the minimum wage or changes in rate beyond a
10 certain percentage point, changes that occur within a number--certain number of
11 weeks or months of the injury, or certain percentage of payroll history.

12 Option 6 lays out--we proposed one formula. That could always
13 change. But essentially creating a formula to give an adjustment factor to the
14 worker's weekly wage. And so applying that formula using the wage information as
15 opposed to the hour information to obtain what the weekly wage would be.

16 And it's possible that after providing the options that we gave, other
17 people may have had other thoughts come to mind. So I want to just open the floor
18 now and see if anybody has any other things that they thought of that they think
19 should be discussed that are variations or changes to these kind of big concept
20 options that have been outlined so far. Anybody? Anybody on the phone? Okay.

21 So I want to, I guess, move towards talking about what these options
22 are and how people's--what people's impressions are. I know some people were
23 able to take these options back to some payroll examples and work with the--work
24 with them and see what might be working, what might not be working. And so I want
25 to hear about what those experiences were for those of you that were able to go

1 back and any concerns that might have come up with any of these choices or things
2 that maybe can be addressed. Okay.

3 12:23: So no one did any homework?

4 12:27: We ran calculations through all the options. We think that
5 Option 3, Option 2, and the ombudsman's rule are probably in the best interest of
6 injured workers, but actually, Option 3, not so much for seasonal variations. And it's
7 my feeling that the ombudsman rule is probably what best is in the best interest of
8 injured workers.

9 12:58: Can we call it just Option 1?

10 13:00: Yeah.

11 13:03: Thank you. And sorry, Chris.

12 13:09: So we did a great deal of homework.

13 13:16: So anybody else have any thoughts based on the homework
14 that you might have done going back, as to feelings?

15 13:24: Well, I think-- Sheri Sundstrom with Hoffman Construction. So
16 I actually--we outsource our calculations to CompPro because they are--they're very,
17 very difficult to manage. So I had CompPro go through. Unfortunately--I did that, I
18 guess. They didn't have any thing that--in my--that I sent them over the last year
19 that would really be conducive to the exercise. So they took a claim that they had
20 and they redacted all the information and ran it through all four options. And they
21 came up with the same comments that Chris did specific to Option 1 being very fair,
22 with the caveat that it would be really constructive to have some very clear direction
23 going forward, specific to how those calculations are done, and the payroll that's
24 required from the employer so that, you know, perhaps we can get better information
25 from the employer up front to--in order to do a more accurate calculation because--

1 depending on how that payroll comes in.

2 Another thing. I just want to stress that I have two types of workers on
3 my construction site. My direct through my union subsidiaries are union call board
4 rule workers subject to the union call board, and everybody in this room and
5 everybody in the state of Oregon knows I love the union call board rule because it's
6 very easy. And it's just easy, and my workers know what they're going to be getting
7 out the chute.

8 However, we do these large contractor-controlled insurance programs
9 where we insure about 3000 contractors on job sites throughout the nation. And so I
10 am subject to this--I would be subject to one of these other options for those
11 workers. So it was important for me to understand. And I have to tell you, you
12 know, I sat on MLAC for almost 12 years. I've been in--doing Workers' Comp for 20
13 --almost 26 years. I had no idea how crazy these calculations are. And probably,
14 I'm glad I didn't know, or I probably would have stayed out in the construction field
15 as opposed to coming in to do this, so--because this is very, very complicated.

16 And however, I think it's--you know, out of everything that I've looked
17 at with this new set of eyes, Option 1 is a great opportunity. Also, I want to stress
18 that there's been a lot of dialogue, and we really appreciate labor helping us to
19 understand, I really appreciate it from all of you that represent labor in helping me to
20 understand where the issues were. Because again, I was in my rosy-colored call
21 board glasses, and--so it's been very helpful. And again, I think Option 1 is very--
22 with the caveat that we need to make sure it's clear direction to employers on the
23 calculations. And also, if there are any issues with specific adjusters, carriers, that
24 those things are addressed as quickly as possible as a learning curve as they come
25 up. So there you have it.

1 16:42: Sheri, on the records issue, did you drill down at all in terms of
2 what the--with the employer records or what was the...

3 16:50: Well, what I have as far as--because we get--you know, all of
4 our subcontractors submit payroll in different ways. And I really didn't know that.
5 And what CompPro has had to do is to reach out to those subcontractors to get
6 something that makes sense to them. You know, we use a system called J.D.
7 Edwards, and we use that system because a client years ago told us to use it, and
8 we can write certain reports. But we have the advantage to be able to write reports.
9 If we have a subcontractor that's using Quicken or something, and they don't clearly
10 understand what they're supposed to submit, and you know, I--most of my
11 subcontractors don't even--you know, my sophisticated ones do. But my non-
12 sophisticated subcontractors don't always even know how to report an injury, let
13 alone--you know, it may be the same person doing HR that's doing payroll, that's
14 doing multiple other tasks within their organization.

15 And I think having something very clear that you can give to the
16 employer as to how to--you know, at the--help guide them to submit accurate payroll
17 information would be very helpful because if it's confusing to me, I can only imagine.
18 You know, I spoke a couple weeks ago at--for the Port of Portland to a variety of--
19 contractors. And they were so hungry for information, and I really appreciated it.
20 And I understand how complicated all of this can be. And I think it's something we
21 have to all realize. Everybody does something different. And if we can help them do
22 what's right--and they want to do what's right, I truly believe employers want to do
23 what's right, you know. And I think the adjusters get tired, maybe, of asking the
24 questions, and so they're doing the very best they can. But I really want to impress
25 upon this group how important it is to make sure that as muddy as payroll can be,

1 that we are very clear about what we're asking employers in the state of Oregon to
2 provide at the time of an injury. And just to...

3 18:54: I agree with you, Sheri. Sheri, this is Sue with City of Portland.
4 You and I chatted for a little while yesterday, and I also talked via email with Jennifer
5 and Troy from Audit. I agree with you that we need clear guidelines. Just as an
6 example, the city is probably three quarters or more covered by union contracts,
7 several different union contracts. And therefore, we have 307 wage types. So it--
8 speaking of complicated, it can get extremely complicated. We did well in the prior
9 audit. Troy has been great for us to work with to bounce things off of. But it's each--
10 you know, a case-by-case situation. And of course we're trying to do the best for our
11 injured workers, you know, their fellow employees as well.

12 And I just wanted to point out that we must really have some clear
13 standards. Because if someone can be looking at the same wage history that--you
14 know, five people can be looking at it and it can--the results can be different. And
15 that goes for the auditors of the state as well. So clear direction with that, you know,
16 perhaps a temporary rule until that can be ironed out would be in everyone's best
17 interest. And you know, we'd support Option 1 in that case.

18 20:38: Oh, I was going to add onto that, sorry, with--that's the one
19 thing that I've heard a lot from the members we worked with is the idea of not only
20 clear direction but several clear examples for each, you know, scenario that you
21 have in that packet. So I mean, I think we need that to be maybe an ongoing
22 project, a bulletin. Because as detailed as that has to be, I think that it will help
23 employers with their--what they have to produce in terms of wage calculations.

24 21:08: Yeah. And the smaller the employer, the more of a lift it is for
25 them.

1 21:12: Yeah. Yeah. Absolutely.

2 21:13: And it's normalizing. It's--we're writing things down in words.
3 It's a math exercise. You have to have guidelines around math exercises so that
4 people can figure out--almost like IRS. I mean, you have to be able to give such
5 specific direction. That's what we're hearing across the board. I'm--this is John
6 Rakowitz with--

7 21:36: Yeah.

8 21:36: --the construction industry. So my members are broad. There
9 are a whole lot of those smaller shops, some larger shops. It's a total mix of people.
10 And most of them have one person running their back office.

11 21:51: Yeah. Yeah.

12 21:51: Everything. So I think the temporary rule notion of Option 1,
13 allowing time for people to understand, for there to be this kind of dialogue, this
14 happened at the last meeting and this meeting, so there was back and forth from all
15 the stakeholders. And nobody's surprised. And over time, you can come up with
16 something that employers can figure out how to comply, because we want the ability
17 to comply. That's the hard part. So that's what is so hard...

18 22:24: Can I ask for clarification? Jennifer Flood had said that her--
19 what she had proposed was--should be called Option 1. But when we ran the
20 calculations, the Option 1 that was listed as Option 1 was not the same as the
21 ombudsman's rule. So I just...

22 22:50: Can you clarify?

23 22:50: First you said the ombudsman's rule is kind of a hybrid of
24 Option 1 and Option 2. I want to make sure...

25 22:57: Oh, are you talking about if there's no change?

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22:59: Yeah.

22:59: Right.

23:00: You could just average the wages?

23:01: Yeah.

23:03: That...

23:03: Right.

23:04: Right. That was...

23:05: That's not an...

23:06: My input is that if there's no rate increase or decrease, there's no disadvantage to a worker to have the actual wage averaged by the number of weeks. And--but if there has been an increase or decrease, then you do the hours. Because then not everybody has to--you don't have to get--drill down into the hours. Even though--and I just want to share this regarding--I had concerns regarding putting more requirements on employers than they already have. So I did a little bit of research with wage an hour, as well as talking with paychecks and ADT regarding the requirements that employers have. It doesn't mean everybody complies with those requirements, but the basics that are needed for most of our calculations regarding wage rates, hours worked, so on and so forth, are already required of them. So I think it's just that commun--in my opinion, just that communication to them as to these are the things that we need when you have an injured worker. And we didn't get that.

24:11: Well, Jennifer, I think you could--if there's no change, they can do the simple...

24:16: Yeah.

24:16: Right.

1 24:17: We all deal with this--IRS. Okay. Here's the simple form; if
2 there is a change, boom, you have a different form. I mean, break it down--

3 24:23: Right.

4 24:25: --so that people can do it. That's the issue. So and I just--what
5 I like about this, and I've never engaged in this--in this whatsoever, but what I like
6 about this is this is this goes right back to the MLAC rule and the whole system is
7 based upon labor and management and all parties being at the table. So that's what
8 I like about this process. And if we can keep that going, we're going to come out
9 with the best result possible.

10 And I think we're all sensing that, Lou and everybody at the
11 Department, that you're trying to be as accurate as possible. That's your job.
12 You're the overseer. You're the regulator. So we're trying to give you ways that this
13 can make sure you're doing the best job possible from your position as well. So I
14 think it's kind of moving in one direction.

15 25:13: Can I ask kind of a long-winded question? This is basically of
16 Julie and Troy. I remember a meeting or two ago, Lou testified, and I think Julie
17 testified with Lou that the goal of this was to kind of streamline the calculations so it's
18 a clear, easier process. There was too high margin of error. So I think you guys
19 wanted the rules, if I'm correct, to make it easier to calculate so there's less errors.

20 25:43: So let me say again, this is not about calculations. This is
21 about workers getting the accurate benefits.

22 25:52: Correct.

23 25:53: So the calculations are only the evidence of whether you've
24 done it right or not.

25 25:58: Right.

1 26:00: Not the goal itself. Just so we're--
2 26:02: Yes, but it's...
3 26:02: --all clear about that.
4 26:03: It is the tool.
5 26:03: Okay.
6 26:05: It is the tool. It's not--the end result is workers getting the
7 benefits that they're supposed to get.
8 26:09: Right.
9 26:10: That's the end result.
10 26:11: Okay. So with that in mind, in reviewing all of the options, I
11 was kind of going over those in detail. And just kind of in reverse order, it seems
12 like, you know, it says right here that in Option 6, there's a high chance of error. You
13 know, Option 5, there's many variables with high chance of error. Option 4, it
14 doesn't reflect the seasonal change which could really be poor for an injured worker.
15 So...
16 26:38: Can you clarify what you're reading from?
17 26:41: There's one page that has all of the options, 1 through 6 listed--
18 26:44: Okay.
19 26:45: --out with the pros and cons.
20 26:46: Yeah. So the pros and cons of the--and we can discuss them
21 more. It's just the testimony that was provided, yeah, some information. So--
22 26:54: Okay.
23 26:55: --if we want to, we can go through those in more detail as well.
24 26:58: Well, I still want to ask my one--
25 26:59: Yeah.

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26:58: --question.

27:00: Yeah. Sure. Absolutely.

27:00: This is a long-winded question.

27:02: Uh-huh.

27:02: So with all of that in mind,--

27:04: Sure.

27:04: --just looking at Option 1, 2, and 3, do--you know, Troy and Julie, what is your guys' opinion of those options as far as which one is the fairest to the amount to the injured worker, the most accurate, you know, streamlining that, what is your guys' opinion? Is it going to accomplish your goal?

27:27: On advice of counsel, I'd suggest you not answer that question.

27:33: I mean, I think we're here today to hear--I think there's a large number of stakeholders in the room from different perspectives, and I think it's important that we hear all the different perspectives. And our goal is to try to hear all those different perspectives and understand, you know, where the employers are coming from, where the insurers and the TPAs are coming from, where the workers are coming from, and to get all of that information to determine.

27:58: Okay. Sure...

28:01: And you know, not to make light of it, but it's really--I mean, what's fair is in the eye of the beholder. And it's, you know, the reason that we're bringing everybody together is because we want to see if we can achieve a consensus as to what is--what really is working, what...

28:19: So I think the original question is around who did calculations and what do we think.

28:22: Right.

1 28:23: We don't have ready access to payroll like the business
2 community do, like they do, but we do have this ready access to wage scale so you'll
3 see one of them in the materials provided. And we feel like Option 1, you're right,
4 Chris, when the WCB came out--sent out the first, it was all WCB's calculations and
5 then the Ombudsman and then over time, Jennifer's has become Option 1, so and
6 we refer to Option 1. We also think that that is the best calculation for workers,
7 mainly because it addresses the issues that we've raised over the past five months.
8 So I think mostly in relation to minimum wage workers, having a wage that is no
9 longer legal to pay. A lot of our affiliates have contractual raises, sometimes every
10 three months, sometimes every six months, sometimes every year. And it's unfair to
11 them to have their wages calculated based upon a lower wage. And the averages of
12 the hours over a seasonal change, which I think--I won't speak for the employers,
13 but could land either side of us in a sticky situation. If a worker gets hurt in a low
14 time, then their averages under the current calculation are lower. They get hurt in a
15 higher time, then the employer's side is stuck with a higher amount. So those were
16 the concerns that we raised. And we feel like Jennifer's or Option 1 best addresses
17 those.

18 I think that there are certain situations, and others can speak to them if
19 they want, that maybe aren't captured here. But those were the three ones that we
20 have raised most consistently over the past few months, and we feel like that--this
21 addresses that.

22 29:53: This is Kimberly Wood with Perlo Construction. So I had sent
23 out some generic wage information to multiple people to see if we could get
24 calculations and see if we could get some consensus of options and get consistency
25 in numbers, which I think is a separate issue. And it appears that from what I have

1 gathered back, that Option 1 seemed to be the favorite.

2 My thought process is this. I understand that labor has some specific
3 instances where they have concerns about a worker's wage being lower than what
4 maybe it should be. And I don't disagree with that and don't have any issues with
5 that. My concern is we made this rule change--or you made this rule change, I
6 guess. We didn't. We don't get to. And that we've only had a year to see how that
7 plays out. And we really have no empirical data that shows that we're having more
8 problems than we had in '16 than we have '17. And I know that there's some--we
9 have some...

10 31:09: Clarify--when say problems do you mean...

11 31:10: With the calculations--

12 31:12: Calculations.

13 31:12: --in terms of people feeling like the calculations now are putting
14 people worse off than they are--or better off. We don't have a lot of information from
15 the department doing calculations, doing their audit. We don't have that. So to
16 some degree...

17 31:27: I have that.

18 31:29: I have the--or if I can finish. To some degree, we're guessing,
19 and we think, we think that there's an issue and we're trying to address an issue that
20 we think exists, but we really don't have--in my mind, I don't believe that we have
21 really strong evidence that there is an issue. So my recommendation would be that
22 whatever we move forward for, it be in a temporary position so that we can really do
23 some longer-term evaluations to figure out, do we have--are we creating another--
24 are we creating a different kind of problem? I just want to make sure that we have
25 some ability for us to look, and not go to a permanent rule. I would prefer to be

1 looking at another temporary rule so that we have some more time to look and to try
2 this Option 1 on and see is this a good fit. Certainly, we've all done some
3 calculations, and it appears that we all think that that's the right way to go. I just
4 would like to encourage, one, that we go forward as a temporary rule.

5 And I'd like to second what Sheri said about what I call technical
6 sheets that offer guidance to those of us who have to do the calculations so that we
7 know that we're all thinking about it in the same way. That certainly gives us the
8 least error--possibility for making errors there. And I really like the idea of helping
9 employers know what kind of payroll. I can tell you, I've been doing this for 13
10 years, and I don't know that I've ever been told what I should provide. I just tell
11 somebody, hey, gather their payroll and send it in. But I've never looked at--you
12 know, I don't--I look and I go yeah, that's payroll, so send it over to them. Well, I
13 have no idea really whether what I gave them is what they need. And so I ask a lot
14 of questions.

15 So I--if I don't even--I just figure, gosh, the poor person who's a one-
16 man office, they're at such a disadvantage. So I think if we can provide them some
17 guidance and some examples, we just reduce the risk of us being back here, which
18 would be, you know, what I don't-- We spent a lot of time on this. So hoping that we
19 can get to a good resolution is what my hope is, so...

20 33:44: Go ahead, Brian.

21 33:45: Well, I just want to speak to the fact that--I represent 300
22 workers, that if they got hurt at any time in the past year, they're getting less than
23 they would have the year before under the new calculations. Because every single
24 one of them is going to get a yearly increase at some point in that year when that
25 contract year is up, you've got a yearly increase. So under the current calculations,

1 that's going to hurt workers, so...

2 34:11: I second Brian--of labor speaking to--because we were all
3 experiencing concrete examples. And I--although I understand your desire for data
4 to assess the problem so we're not creating a new problem, and the concern is in--
5 you know, when we--the previous presentation about this issue, the idea of studying
6 this for--to get really good data for two, three, years, that's a long time for those
7 people.

8 34:34: And I'm not...

9 34:33: Yeah.

10 34:35: And I'm not recommending that, by the way. I don't think that
11 that's necessary at all. I think that's out of the realm of what I'm thinking, but just...

12 34:44: I think the hope is just to put a temporary rule in place to give
13 us a chance for a shakedown a little bit and come back if there are problems either
14 that you're experiencing or that we're experiencing with calculations which, as Lou
15 points out, hopefully end up in worker benefits that make sense.

16 35:02: I have a practical question. I mean, it sounds like--and I
17 appreciate the desire from the employers to be able to have the ability to do these
18 calculations correctly with guidance from the Division. How long, in terms of the
19 temporary rule period that we've got to sort of shake this out, and how long would it
20 take the Department to perhaps create that information for employers so we can
21 really realistically get it tested how effective this is or is not. I know it's kind of a big
22 ask to put you on the spot about, so...

23 35:32: Well, before you answer that, we had some thoughts about
24 perhaps a subgroup to work with you. And I don't remember what was said about
25 that, but it wasn't intended to be you guys all by yourselves.

1 35:45: I mean, I guess the first question is the temporary rule, and you
2 know, there's a shelf life on a temporary rule.

3 35:51: 180 days.

4 35:52: Yeah.

5 35:52: Right?

6 35:53: Yeah.

7 35:53: Yeah.

8 35:54: Yeah. Yeah.

9 35:55: Can you re-up temporary rules? Is that a thing?

10 35:57: What's that?

11 35:58: Can you re-up a temporary rule?

12 36:00: No. No.

13 36:00: I don't think we were intending. And I wouldn't want to either,
14 but you know, no, I don't...

15 36:05: And I think our main concern is getting this fixed for workers.
16 Right? I mean, if you look at the wage scale from--that Brian has handed out here,
17 you have workers that can see upwards of a \$13 increase, probably more in some
18 instances, and we're also going to attach a timeline here, so we just want it fixed for
19 workers and...

20 36:28: Six months is kind of--every--I thought everybody knew
21 temporary rule is six months. So we're not talking two or three years.

22 36:35: Yeah. That's...

23 36:36: That just creates more uncertainty for everybody and nobody
24 can make sense out of it. So the six-month time window was what anybody was
25 thinking about as far as I know.

1 36:48: So there's a couple issues being discussed, I think right now.
2 One issue being what's the best option, one issue being getting it implemented. And
3 so I'm thinking there's--the focus of the discussion has been primarily on Option 1.
4 There's been some talk about Option 2 and 3. Maybe we want to just go through 4,
5 5, and 6 and see if anybody's interested in them, or if we should just cross them off
6 the list and focus in.

7 37:18: Yes.

8 37:18: Okay.

9 37:19: I think we would rather cross those off the list--

10 37:21: Yeah.

11 37:21: --and spend our time on what we all think is going to work.

12 37:23: So yeah, just to be clear, 4 and 5 talks about different carve-
13 outs, and 6 does an adjustment factor formula dealing with the wages, not the hours.
14 Does anybody have--based on what you've looked at and your experiences,
15 anybody like any of those options, or are people focused on the first three?

16 37:44: Including you folks on the--

17 37:43: I'm focused on the original...

18 37:45: --telephone, if you have any thoughts on that.

19 37:48: You have pretty broad--

20 37:49: I don't think it's the first...

21 37:51: --so far

22 37:53: Okay.

23 37:53: I think it's Option 1 with the understanding that it's, as Jennifer
24 described it, Option 1 as written on--

25 38:00: Yes.

1 38:00: --Page 3 of the--
2 38:01: Yes.
3 38:01: --document for today.
4 38:03: Plus the idea of if there is no change, that they wouldn't do the
5 easy math because the easy math is...
6 38:09: So--and Option 1 is similar to what the rule was before. And it
7 might be helpful for us to go through pros and cons of the three--first three choices
8 and then to have that discussion of what those different things would look like, so...
9 38:25: I think that both labor and management agree on seasonality,
10 getting--we want to address seasonality. We don't want--
11 38:34: Uh-huh.
12 38:34: --options that are going to leave a worker at some points really
13 low and at other points--
14 38:39: Really high.
15 38:39: --really high. We want to get rid of those two--unless
16 somebody thinks otherwise, Option 2 and Option 3 leave us in that scenario. And so
17 I think that's why you're hearing those that have done the calculations say 1 is the
18 option. Because our concerns with 2 and 3, while they might be good options, the
19 biggest problem with those is the seasonality piece of it. And nobody--I don't believe
20 any of the employers--I don't want to speak for anybody, but I think the employer
21 side and the labor side agree that that is not a good option for anybody.
22 39:11: Correct.
23 39:14: So we're back to just 1.
24 39:15: Yes.
25 39:15: Just 1.

1 39:17: I want to--yeah, I don't want to discourage anyone from talking,
2 but I think we're--I think the best use is to just talk about Option 1 and how to move
3 forward.

4 39:25: And I'd also like to add something. As we're talking about
5 seasonality, just reminding folks, we represent school employees, and they have
6 one week of unpaid leave during spring break, often two unpaid weeks of leave for
7 winter break, and then up to 12 weeks of unpaid leave during the summer. And so
8 most people would think that that would be some type of seasonal work. But based
9 on the definition, it's my understanding with this Division that, in fact, those folks are
10 not necessarily seasonal workers. And so when we take an average of 52 weeks,
11 these folks are getting significantly less in terms of their hours, their average hours
12 worked.

13 Because if you look at 37 weeks, and if it's an average of 25 hours a
14 week, and then you average that over 52 weeks, that number, excuse me, drops all
15 the way down to 18 hours a week. So I hope that in the future, we can have a
16 conversation about that. I don't think that this is the appropriate time to kind of
17 address that. But I do want to put on the record that that is a concern for us.

18 40:22: Is that a rule fix?

19 40:23: Well, it's--the question I would have is my understanding is
20 teachers have similar time frames. I have a lot of teachers in my family, but that
21 they're paid over a year.

22 40:35: Yeah, that's what I...

23 40:36: But we need to factor in...

24 40:38: So...

25 40:38: So...

1 40:40: So is it factoring in those hours or...

2 40:43 : So teachers and classified are very different in terms of pay

3 structure.

4 40:47: Okay.

5 40:48: And also the options that they have to receive their paychecks.

6 We have classified school employees--

7 40:54: Okay.

8 40:54: --and their median income is \$21,000. And they don't always

9 have the option to receive that over a 12-month period.

10 40:59: Okay.

11 40:59: And even in some cases where they do have that option, when

12 you have \$21,000 and you stretch it over 12 months, you can hardly--that's--it's even

13 harder to make it versus just going and getting a second job in the summer.

14 41:12: But are they salaried or hourly?

15 41:13: Hourly.

16 41:13: Okay.

17 41:17: And frankly, this is the time and place to raise that.

18 41:24: Well, consider it raised.

19 41:26: So...

20 41:26: Can I ask a question? If they're going and getting a job in the

21 summer, isn't that able then also--

22 41:30: Yeah.

23 41:30: --to be calculated in that?

24 41:32: No, because of the new wages.

25 41:33: It's a second job.

1 41:34: And a new employer.
2 41:35: And a new employer.
3 41:36: And a different employer.
4 41:38: It would start over again.
5 41:40: A second job is usually...
6 41:42: Yeah.
7 41:42: No. Only if it's concurrent.
8 41:45: It only is included if it's concurrent?
9 41:47: Yeah.
10 41:47: Okay. Thank you. I just was wondering.
11 41:49: Yeah.
12 41:55: So the concern with the--I just want to make sure I understand
13 it right. So if they're taking the time off because of summer, because of breaks, then
14 the hourly average trying to--if we could somehow exclude those gaps--
15 42:08: Right.
16 42:09: --within the calculation.
17 42:10: Right. And so my understanding in reading the rule was it is an
18 anticipated gap because--
19 42:16: Uh-huh.
20 42:16: --they know that they're not going to be paid for winter break,
21 summer break, and spring break.
22 42:21: Uh-huh.
23 42:21: And so it doesn't qualify for the gap rule.
24 42:23: Uh-huh.
25 42:26: Sorry.

1 42:27: That's okay. You can call it the gap rule.

2 42:30: Right, so--yeah.

3 42:33: And that's the same for seasonal agricultural workers. It's--

4 42:37: Uh-huh.

5 42:37: --anticipated gaps, the way the current rule is, the way the rules

6 were in 2016, the way the rules were in 2005.

7 42:53: Any other situations that are unique to maybe employment

8 areas that you guys work in with the--if we're doing an average hour method,

9 problems or concerns that have arose in the past that maybe we can try to think of--

10 have a discussion about ways that those could be remedied or addressed, or at

11 least acknowledged?

12 43:16: I think that this just raises maybe the additional need for a

13 temporary rule for the employer maybe to figure it out, for us to apply this to the vast

14 majority of workers, and for us to also have a conversation because I--have been

15 about school worker scenario. And we don't have to decide today.

16 43:43: That works.

17 43:43: That works for me.

18 43:46: Okay.

19 43:51: So with the--there was some language that had gone around

20 that Jennifer had proposed, the draft rule language. Does anybody have comments

21 or feedback from the information that's in that?

22 44:29: I think in general, we felt good about that as labor and certainly

23 thank you guys for doing this. Sometimes having an idea and putting the idea onto

24 words that make sense to other people are two totally different things. I got it and I

25 don't do this for a living, so...

1 44:48: One situation, and I want to--maybe people in the group might
2 have some ideas as well, that arose that we had discussed at the MLAC meeting
3 was a situation with hourly workers that are sometimes paid commission. And so in
4 those situations, the hourly rule wasn't working because they'd either get their hourly
5 paycheck because they didn't make enough in commissions, or they'd get their
6 commission paycheck because they made more in commissions than they would
7 have if they worked hourly. So the paycheck is not going to reflect hours.

8 Does anybody have any ideas on a remedy for those types of workers
9 to try to cover-- If we move back to the hourly rule, one of the concerns was that it
10 wasn't covering all situations. So in those types of situations, anybody have any
11 ideas on ways that that could be addressed?

12 45:39: Julia, I attempted in the suggestion that I gave,--

13 45:42: Uh-huh.

14 45:43: --at the end of little D, it says plus the average of all your
15 regular wages because it's paid on something other than an hourly basis. So that
16 worker's--in my concept, that worker's hourly would be done the way that we're
17 talking about with an increase and decrease, and then all the wages that were
18 reflected as commission, that would just be averaged by the wages.

19 46:03: So the hours would--the hour average would only be averaged
20 on the times that the paycheck was received, though, for hourly?

21 46:10: The hourly average would be based on the wages that were
22 paid on an hourly basis.

23 46:14: Okay. Yeah.

24 46:15: So wages that are not paid on an hourly basis--

25 46:17: Uh-huh.

1 46:17: --would be done by...

2 46:21: An average of the...

3 46:23: By averaging the wages.

4 46:23: Yeah.

5 46:23: There you go. By averaging those. That's why it's--

6 46:26: Sure.

7 46:26: --important--to me, it's important for adjusters to understand

8 that you can have different types of calculations that need to be combined. You

9 might have regular and irregular. You might have your regular--

10 46:39: Yeah. Yeah.

11 46:39: --hourly, and you might have irregular other, and those need to

12 be...

13 46:44: Uh-huh.

14 46:44: Some of the examples that I provided this morning, one of the

15 examples has that in there.

16 46:50: So what do you do with a truck driver who's paid cents per mile

17 and zero cents per mile when they're sitting, but they're still on the clock at cents per

18 mile?

19 46:59: I think that that's probably one of those--in my opinion, probably

20 one of those situations that we can weed out through a permanent rulemaking

21 process because you have the different types of pay rates, and if there's a way of

22 tracking increase or decrease, maybe there's a way of doing that. But the bulk of

23 the issue is around hourly wage workers that are increased or decreased. And so

24 doing that temp rule to get that under the belt and then going forward to have those

25 discussions as to hey, can we fix it for these guys? The cents per--the guys that are

1 paid by cents, the ones that are paid on commission or other types of pay that isn't
2 hourly, they have in 2016 and 2005, and 2017 and right now, it's all based on
3 averaging of wages.

4 47:51: And I think that's a good discussion to have now with the group
5 is--and maybe those of you who...

6 47:55: And I think--bring in the people who are paid like that to have
7 an accurate--like we can talk to the hourly workers, but I can't think, when I look--
8 maybe Chris could, but...

9 48:10: Well, you know, one of the things that struck me when all of this
10 went down is the fact that workers are paid in all sorts of ways, and you know, it's
11 going to be nearly impossible to have one rule that fits all those ways that works for
12 all employers and workers. So this obviously--the current rule obviously has obvious
13 disadvantages for a large segment of workers. I agree with Jennifer that--and the
14 rest of you, too, that we need to address that ASAP, and then it--we do--as much as
15 simplicity is welcome, it cannot be at the expense of workers and employers who
16 just fall out of the--well, typical, wage earning...

17 49:14: I'm just going to chime in for a second on the-- Oh, Dan
18 Schmelling, SAIF Corporation. On the various rates or units or hours of pay a
19 worker receives. And maybe there's been pockets of misunderstanding out there,
20 and I can only speak to SAIF, but we've always looked at the unit of pay, whether it
21 be an hourly unit, a commission, a piece rate, a bin rate, and determine the average
22 of all of those units over the period of time that we're looking at and add each hour
23 together.

24 So if we have a driver who has cents per mile and a pay rate that's
25 different for downtime, we take the average of all of those various rates and add

1 them together. So over a week, we're able to say your average cents per mile
2 earnings are this. Your average downtime earnings are this. Your average wait
3 time is this. And together, this is the average of the earnings over a time period. If
4 there was no rate increase, it is the average of all the gross earnings for that time. If
5 there was a rate increase, we apply the rate increase to each unit, whether it's hours
6 or bins, or if the commissions went from 10 percent of sales to 15 percent of sales,
7 we look at that, and so that's factored in.

8 So I think the comments about in the past and currently, you can only
9 use one rule, you use one rule for the type of earnings, whether it be commission or
10 irregular or regular. But each worker, like Jennifer said, has multiple earning types.
11 And you have to take the average of those multiple earning types. Or if it's regular,
12 the regular rate on the time of injury converted to a weekly amount and add all of
13 that together.

14 51:18: So Dan, is the way SAIF does it fairly typical, do you think, of
15 how the industry approaches it?

16 51:25: I think--I can't speak to that. I think some of the comments
17 about--the calculation is only as good as the payroll information that you receive.

18 51:33: Yeah. Yeah.

19 51:33: Uh-huh.

20 51:34: And the more narrowly focused the payroll information is, if it
21 only provides gross wages, well, how do you get to the hours and the commissions
22 and the bin rates and the piece rates? If you have robust payroll that has all of that
23 broken down, it's not that the calculation is easier, but you can see the full story and
24 you can see the various rates that a worker earns throughout the year and say oh,
25 that's where the rate increase was, now I can average these amounts, and I know

1 the rate at the time of injury. So it's really a combination of the two. The better the
2 information, the better the calculation.

3 52:12: It sounds like maybe that's a relevant discussion for the
4 technical focus--

5 52:18: Implementation.

6 52:18: --working out the implementation piece.

7 52:20: Yeah, the technical.

8 52:22: But I guess what I just wanted to drill down on is whether what
9 you're describing is something that the industry as a whole--

10 52:31: Right.

11 52:32: --does because frankly, if it doesn't, there's a problem.

12 52:36: Oh, I see what you're saying.

13 52:37: Yeah.

14 52:39: Well, and...

15 52:38: SAIF and at large, that's what you're asking.

16 52:41: And I think to--you know, to--talked about earlier the concept of
17 having a technical bulletin that describes this kind of--you know, gives this instruction
18 to the industry. And if you have something different than what SAIF is doing, then
19 we need to know it. But I think that idea is--that creates that level playing field and
20 we'll never get to all of this technical stuff in the rule. It doesn't belong in the rule.

21 53:09: Oh, no, no. No, that's right.

22 53:12: So and of course SAIF would be happy to help work with the
23 Department on something like that, but...

24 53:17: Back to Jennifer's point earlier. I agree that, you know, it would
25 be a concern of--you know, maybe SAIF's doing it that way, but other folks are not.

1 But to the extent that they're--SAIF's doing it that way because they know what to
2 ask for and they have the capacity to go ask the employers. I don't think it would be
3 the employers who are not providing that information to the other insurance
4 companies that are not SAIF. They still have an obligation to have all of that
5 information. And so I don't think we're asking for anything beyond what they should
6 be doing already. They just need to be better educated.

7 53:45: Uh-huh.

8 53:48: Yeah. That's why I love forms because you know, you just go
9 through it--if you've got a different form, okay, there it is. Because a lot of this is the
10 ease, is the instructions. It's literally--I want you to think about some job where
11 there's one individual, everybody else is working the job, one individual trying to
12 balance all the back end of the business, this included.

13 54:09: Right.

14 54:09: Comes out of nowhere. They have no expertise whatsoever.

15 54:16: So yeah.

16 54:16: So yeah.

17 54:17: Yeah.

18 54:18: And my local tries to grow our own contractors. And so we
19 have members become contractors that are--themselves and then maybe we'll call
20 someone out of our hall and--that rule applies. But I imagine that in a lot of
21 situations, you have some whose technical skill--prowess is, you know, running
22 electrical conduit, not...

23 54:33: They know how to do the work.

24 54:34: Yeah.

25 54:35: That's great.

1 54:36: What kills contractors is the back end. Right. How do you do
2 all the bulk of that?

3 54:40: There's--you know, if you can run a business, you can probably
4 fill out some sort of form or at least, you know,--

5 54:44: But yeah.

6 54:44: --follow the instructions.

7 54:46: Just follow the instructions.

8 54:46: Okay. And the real truth is the vast majority of employers
9 never have a claim. So when Dan is talking to the employer about providing payroll
10 to--you know, so that we can get time loss out to the worker, they're going what?
11 What?

12 55:03: Yeah.

13 55:05: So I mean there's a whole education process that we have to
14 go through. And it doesn't mean that we shouldn't, or it's not the obligation of the
15 insurer--

16 55:12: Yeah.

17 55:12: --to have that conversation with the employer. It's just, you
18 know, sort of so we all know that...

19 55:20: That's a great question because it is bigger than SAIF, right?
20 We have SAIF at the table, it is bigger, right, there's a bunch of people out there
21 doing what you oversee.

22 55:37: So and on that note, too, because there are--I don't know,
23 there--not everybody here--is here at the table, but in terms of implementation, if
24 we're switching and shifting gears on the calculation change, what do those insurers
25 that are here--what is a reasonable time to be training and implementing those types

1 of changes?

2 56:03: You mean the type of change of going to Rule 1 or doing other
3 changes moving--

4 56:08: Yeah.

5 56:10: --forward? Or just in terms of methodology, if there's a--who
6 comes up with best practices?

7 56:16: If we're changing the calculation method, right now it's a
8 52-week average. So if we switch to an average hour method, something like that...

9 56:23: It's pretty easy for us since we've been doing it prior, so--

10 56:27: Uh-huh.

11 56:27: --you know, that's something that our folks, you know, know
12 how to do. So there's, you know, minimal startup time to do that.

13 56:35: To the extent that the next rule--because our--we look at-- I
14 can see Jennifer. I keep looking at Jennifer. Option 1 is very, very close to the rule
15 prior to the 1/1/17.

16 56:49: Uh-huh.

17 56:50: So the closer it is to the calculation, not the whole rule, but the
18 calculation part of the rule is the same as the--what it was prior to 1/1/17 is--
19 shouldn't be hard for any insurer to pick that up.

20 57:05: Does anyone know if anyone has like computer programs that--
21 I know that there are--they can do it the way they used to do it. Some people maybe
22 actually throw away the old programs or whatever they do. I just want to make sure
23 that there isn't a lot of time needed to do that kind of data programming.

24 57:25: For the city, Fred, this is Sue. We get new wage types all the
25 time, so it's going to be some programming that's going to have to be involved that

1 we can't do ourselves here that we'd have to get with the programmers.

2 57:40: Any sense of how...

3 57:42: I don't know the timeline at this point. I have to research that.

4 57:50: The plea from our attorneys is that any language changes that
5 we make, try to say as close to the--

6 57:56 Prior rule.

7 57:57 --prior rule as possible just because that language has been
8 litigated. So just not wanting to create new language that then gets litigated to the
9 degree that it can do the same thing and be consistent.

10 58:08: And again, just the calculation piece of the whole rule, we don't
11 have any desire to go back to...

12 58:17: Had your counsel, just out of curiosity, looked at the language
13 that Jennifer provided along with Option 1?

14 58:22: Which is why they said the old language would be better. And
15 you know, it was actually sort of--from my perspective, it was good because our folks
16 are anxious to go back. I didn't think that they would. Maybe some of our adjusters
17 are. But we've had situations where we've seen this disparity created by the rule
18 that was implemented on 1/17. And some of our adjusters are saying, well, can't we
19 just calculate it the old way? And so you know, we'll do what we need to do as soon
20 as the Department's ready.

21 59:03: And just another piece that you all need to think about is, what
22 do we do with the-- I have represented injured workers who, under this current rule,
23 one had to abandon their claim because they couldn't live on it. And another is she
24 has a wage rate that she can't live on even though she could live on-- What do--
25 what we do with the workers who have got stuck here in this unfortunate bubble?

1 I'm not exactly sure. But I would recommend that if anyone--if any injured worker is
2 still receiving time loss benefits at the time that the temporary rule is put into place,
3 that any time loss from that temporary rule forward would have their time loss rate
4 adjusted as of that time forward. And that's my suggestion.

5 60:14: Yeah. I hear you. But for purposes of getting this thing in
6 place as fast as possible, that's a conversation we probably have to have outside
7 this rule conversation that we're having today. Because I don't know that I can go
8 back to my people with that separate task and say oh, we did this while we were in
9 that meeting today.

10 0:31: And we don't--we can have that conversation outside this, but I
11 did want to raise that as an issue, simply because I have workers who can't live on
12 their 2017 AWW.

13 0:45: Fred, I have a question. Because again, you know, while we do
14 have insurer representatives here, we don't have everybody here in the room.

15 0:51: That's true.

16 0:51: And so how quickly can the Department reach out to the people
17 that are not here at the table to check on the same thing, how quickly they can shift
18 their programs, go back to the...

19 1:01: Well, if we know the right questions to ask, we can reach out the
20 same day. But we just need to ask the right questions. We have a LISTSERV that
21 is about 3500 or more people. It's not necessarily representative of all interests, but
22 it's a safe bet that virtually every group of stakeholders is represented there in some
23 way. So if we know the right questions to ask, we can do it very quickly.

24 1:26: Can I clarify what that question is? Or are you asking, we don't
25 go forward with the temporary rule until we have the questions that we need to ask

1 the people...

2 1:33: No. I think for me, I think the conversation part of it is to be able
3 to figure out what the effective date would be for the rule. Because my
4 understanding of how a temporary rule works is that you have the filing date, but we
5 can't--but the Department can't establish an effective date of when this would be--
6 the temporary rule will be in effect. So this would allow some availability for the--for
7 those who have to change their calculations to be able to have the time to do that as
8 quickly as possible. But it would probably be helpful for the Department to figure out
9 what that sweet spot is, so that way we don't--there's unintended consequences ...

10 2:10: Right. And it's important to recognize as well that even though
11 this is a pretty widely representative group, there's a lot of stakeholders out there
12 that have no idea this process is going on and will be surprised if we just issue a
13 temporary rule without any kind of advance notice. And because there wouldn't be
14 any advisory process or public testimony process until later on, we go through
15 permanent rulemaking. That's just worth keeping in mind that, you know, we try our
16 best not to actually surprise stakeholders, insurance companies, workers, but
17 sometimes it's necessary to issue a temporary rule. And it usually comes with, of
18 course, a lot less notice than a proposed rule, but...

19 3:00: So are we talking like maybe two weeks? I'm not kidding. Like,
20 let's be clear. We're here because we have a significant concern for workers.

21 3:10: Yeah. It would kind of depend on what we heard from
22 stakeholders. If they say, you know, it's going to be very difficult for us to reprogram
23 our computer system, we at least have to hear that concern. If we don't even hear
24 that concern and we go ahead as though it doesn't exist, then we haven't done our
25 due diligence. But you know, in terms of how long that--they're going to say they

1 need, if they say it's going to be six months, well, obviously we can't do that. If they
2 say it's going to be a couple of weeks, that seems to be more reasonable. But it's all
3 advisory, whatever we get.

4 3:42: Can we talk the timeline? I mean, that's kind of what we're
5 talking about now. So this group has been pretty good at, you know, filtering
6 through all of this. So what would--whoever wants to speak to it from the
7 Department, because the feeling is is that this is a--this will solve a lot of problems.
8 We have all the implementation. I had imagined that this rule would come pretty
9 quickly. I don't know if it's a week or two, but pretty quickly. So what timeline, if you
10 didn't get any big blowback, because that's what it comes down to. And I do think a
11 lot of programs, if it's just a program issue, it's like the city of Portland. People are
12 having to adjust, so they do have a program that that's what they're operating from,
13 that existed before, right? It's not like it didn't exist. It would still have to be
14 tweaked, because this is not the exact same rule, correct?

15 But what timeline, or could anybody who can speak to it from the
16 Department, are you imagining? Because I think most people, you're imaging pretty
17 quickly. I don't know if it's a week or two, Jessica, but pretty quickly. So what would
18 be--can we talk about that right now? Because that's kind of the stage we're at. So
19 we'll get some clarity. So if you don't get blowback, you do a week and you don't get
20 the blowback, then it goes in effect in two, three weeks, whatever. I'm imagining
21 numbers. I just want to get clarity on what we're talking about, if that's where this is
22 going. We...

23 5:23: And this is Sue. I'm thinking two to three weeks for it to be done,
24 because obviously, other projects are piled on in the interim, so...

25 5:33: Can I make...

1 5:35: But I'll--you know, I'll do the best I can to get it done as quickly
2 as possible.

3 5:42: It's possible since a lot of folks are indicating that this should not
4 be a lengthy process, can we talk about a situation in which we have sort of
5 understanding of what that timeline is? You know, one week,--

6 5:50: Yeah.

7 5:51: --two weeks, and then with a carve-out for those folks who made
8 a little bit more time up to a definitive period?

9 5:59 I don't think we can.

10 5:59 No way.

11 6:00: No. We have to have it working...

12 6:03: Once it's set it's set.

13 6:05: Yeah.

14 6:05: That's kind of why I want to figure this out.

15 6:08: Steve?

16 6:08: I'm definitely not a computer person, but I thought when we
17 started this discussion, that someone said that the information that we need, which
18 is the basic hours that the person works and their wage, is information that is
19 available already because it is information that is necessary for the purposes. And
20 so I don't understand why there should be any difficulty whatsoever in having the
21 information available. And I think, as the gentleman down here has spoken to, that
22 the issue is getting the employer simply to understand what it is they're supposed to
23 be giving it to them. Because when I ask for payroll records, the variety of
24 information that I receive is just tremendous. And I think it's just a question of
25 people not understanding exactly what it is somebody's asking for when they say I

1 want your payroll records. And then they think oh, is that the bottom line? Do I just
2 give them the gross amount?

3 7:06: Right.

4 7:06: Do I give them this? Do I give them that? And if we have
5 clarification of that, I don't see why there should be some long implementation period
6 that goes on here because it's information everybody has to have to pay their folks.

7 7:19: But I think--

8 7:20: What about the carriers?

9 7:22: --the forms.

10 7:22: Yeah. What about the carriers having to reprogram for the new
11 calculations? It sounds like SAIF it'll be easy, but to go backwards, I think that
12 maybe is the question is what it's...

13 7:32: It is essentially, you know, something familiar to them.

14 7:38: Well, I can tell you that as a trucking company, our payroll
15 department does not track hours. Our truck drivers have to report hours--the federal
16 DOT regulations, and our compliance department will confirm that those hours are
17 correct, because they're reporting 11 hours and they drove from L.A. to Portland and
18 you know that's not correct. But our payroll department does not track that. Our
19 payroll department tracks cents per mile, we do cents per mile. So every single day,
20 it shows cents per mile. We do not track hours in the payroll department. So while
21 they're driving, they're getting paid. But when they stop to fuel and they're stopping
22 to fuel, and maybe they stop a whole half an hour to fuel up or something, they don't
23 get paid at all while they're stopping. But they're still on the clock. So--and if we had
24 to change everything, that would be a huge thing to implement.

25 8:31: But your calculation...

1 8:32: Different classification.

2 8:33: Right.

3 8:34: It still involves--everything they make...

4 8:38: But Tammy, are those independent contractors?

5 8:39: No, not at all. They're truck drivers.

6 8:42: Well, and...

7 8:43: Truck drivers are paid cents per mile.

8 8:45: Okay.

9 8:47: And Tammy, with the suggestion that's out there, they would still
10 be based on their--

11 8:52: Wages.

12 8:53: --wages divided by the number of weeks. Okay. It wouldn't be
13 an hourly, at this point, with the option that they're talking about with the temporary
14 rule.

15 9:01: We could do a meeting...

16 9:02: There you go.

17 9:04: And it's been a while since I've been out in the industry, but
18 because payroll varies so much, I'm not sure how many insurers have a program
19 that they can can every single payroll documentation into.

20 9:19: Uh-huh.

21 9:19: I think adjusters mainly have to manually do this process, which
22 is why there may be, you know--

23 9:23: Errors

24 9:24: --an increase in errors.

25 9:25: Yeah.

1 9:27: And with all due respect to SAIF's legal counsel, I appreciate the
2 fact that not wanting to change some of the words because of litigation in the past,
3 but if the old language caused confusion, I'd like the opportunity to get it cleaned up
4 so...

5 9:41: Yes.

6 9:41 Oh, we have to do that...

7 9:44: Don't misunderstand-- It's just not straying too far. That would
8 be our hope.

9 9:52: So would it be fair to say then, to establish a two-week time
10 frame, does that work?

11 10:00: I really think we have an obligation to reach out to folks who are
12 not here. There are a significant number of people who rely on service companies,
13 and there are no service companies in the room. And the self-insured employers,
14 other...

15 10:17: My carrier uses...

16 10:18: What's that?

17 10:20: At the very least, can we make a commitment that we have
18 some level of conversation with all of those that are not in the room within the two-
19 week time frame. Is that a reasonable--a reasonable request--

20 10:29: Yeah. Yeah.

21 10:29: --just to have that conversation within the two week...

22 10:32: And can it be done...

23 10:33: And then start the conversation at the same time of looking at
24 what is, you know...

25 10:37: Right. Yeah. I'm not suggesting that we stop what we're

1 doing. I just think we need to touch base with those folks.

2 10:43: I think we all--I think--I don't see everyone nodding their heads
3 in disagreement. I just think there are some in the room that feel that there's--they
4 would like some assurances that we are working quickly for the rules...

5 10:50: Well, yeah. Yeah. Absolutely.

6 10:50: And I think it's really important what gets sent out. Hopefully, it
7 will be--there has been--you may not have been directly involved, we want to make
8 sure, but there has been a very broad cross section of stakeholders who have come
9 together around this. Now we want to know--it's an implementation issue. We're
10 not--there's a way to do this that they understand this is the direction, we're talking
11 implementation now, and what time would you need? That's different than trying to
12 get a whole bunch of other stakeholders all the way into the whole rule. So I think
13 there needs to be a distinction made there.

14 11:30: Oh, yeah. No. I mean--

15 11:32: Okay.

16 11:31: --people have had their opportunity to weigh in, I think,--

17 11:30: Yeah.

18 11:33: --on this--on the policy--

19 11:34: It's not like you need...

20 11:35: --issue. Yeah. No. Absolutely.

21 11:37: I mean, you know, when was the last time I saw Tim? We're--
22 you know, we're seeing each other regularly now. We're dealing with the budget,
23 so...

24 11:45: Yeah.

25 11:45: So for you guys to reach out and then to write the new rules,

1 and then to issue new rules, are you thinking like March 1st?

2 11:56: I don't know. I'm going to defer to you in terms of time.

3 11:59: Well, it's certainly doable. In fact, even a permanent rule could
4 be made almost as swiftly as April 1. Based upon the most rapid process possible,
5 but that would be extremely hurried for us. In other words, we'd have to file in the
6 next week or so, proposed rule for public comment, et cetera. Temp rule, we can do
7 sooner than that. In fact, you know, we could do a temp rule the same day,
8 basically. But we typically don't if we need to get some feedback from stakeholders
9 so that we don't just, you know, shock everybody and that where did this come from
10 kind of thing. So yeah, the time frame you just mentioned seems very feasible. And
11 Lou mentioned, you know, or somebody mentioned a couple weeks. I think it
12 probably would be impolite to give people less than a week to get back to us. We
13 would want to give them a fair time to send it around their organization and talk to
14 the people they need to talk to. And we need to get--I agree with you, John. It's
15 going to be important what we say when we send it out. I don't think we want to just
16 say, oh, we're putting things back the way they were before. What do you think?
17 Because we'll get all the same arguments that we did here before, because this was
18 a thorough process. I mean, it's been run well. And everyone had an opportunity to
19 come here and talk to us. And now it's just a matter of letting them know what this
20 group came up with and you know, asking them, you know, for general feedback,
21 but I think it is important.

22 13:30: Can we say--I understand there are formalities and there's
23 manners, not being impolite, but can we say the goal-- I think that you, Tammy, you
24 said okay, our goal is March 1, we are going to get something out that--by a certain
25 date, we would allow one week for comment and unless there's massive blowback,

1 the temporary rule will go into place. And can we set some goals?

2 13:59: I mean, I think that we should just first like step back and do an
3 analysis. I can't remember the last time that any rules advisory under DCBS had
4 this many labor employment trial lawyer and the largest insurer around the table. So
5 when we say...

6 14:12: Yes.

7 14:13: Just let me finish. So when we say--and like this is--this
8 meeting is probably, I think Betsy--I really like Betsy. I'm really tired of working on
9 this with Betsy. Like this has been--the amount of conversations that we have had
10 on this issue if we just look at this two-hour period to get to this point.

11 14:32: Yes.

12 14:34: So the fact that the smaller insurers are not at the table to tell
13 us how they can deal with implementation on a rule that is really similar to the way
14 that they calculated wages previously, and that we're thinking about like going out on
15 a limb to give them a bunch of time to figure out how they're going to get the
16 systems in place, it seems like that would not happen in any other scenario. If RAC
17 just didn't have to be here or if Betsy just--I mean, maybe Betsy. Right? But--

18 14:59: No.

19 15:01: --this is--like you have the largest federation of unions and the
20 largest federation of business. You have a significant stakeholders meeting around
21 the table. So two weeks, to me, seems like a significant amount of time to send
22 them out an email and say, look, we've come to this rule. How are you going to--
23 we're going to give you two weeks to figure out how you're going to implement it.
24 And that does not allow the opportunity for someone who hasn't bothered to show
25 up since we've been talking about this since October, to derail the situation.

1 And I'll just be frank with you guys. Like I'm not willing just to let
2 session go by and wait another almost year to fix this for workers who, to Chris's
3 point, like can't pay their mortgage. So I will agree, and I think others on our team,
4 should you disagree, we're on the other side that giving the other insurers two weeks
5 to figure out how to calculate it is fine. But I'm not going to--I don't think that we're in
6 a place where we should agree to allow them to come in. I get what you're saying,
7 Fred. We could say just come in and tell us how you're going to implement, but for
8 them to derail it after we've all gone through a significant amount of work...

9 16:05: Fred, can I have a clarification? Is the question really more of
10 how versus when? Like a set date for...

11 16:13: Well, it may be.

12 16:13: As a basis for setting the rule effective...

13 16:16: Yeah.

14 16:17: Am I off base?

15 16:17: Well...

16 16:18: Am I reading this differently than everybody else here or...

17 16:22: Well, it sounded like you thought we were going to invite people
18 to come in and talk to us again before we did the temp rule...

19 16:26: No.

20 16:28: Okay. Because we weren't planning to do that.

21 16:29: I didn't think that.

22 16:29: Okay.

23 16:31: I don't think we can do that, Fred, in this situation. And part of
24 my reason is that we have that legislative session. And I know that these guys...

25 16:37: Yeah.

1 16:38: Well, first of all, that's got to be over there working. And
2 second of all, these guys have a bill and we need to get rid of that thing, so...

3 16:46: Yes. Yes.

4 16:52: I mean, I'm sorry to put it out there like that, but I've got to go,
5 and that bill's got to go. So...

6 16:57: So let me just--you know, whatever people's comfort level is on
7 the time is fine. I just want to say that there are a significant number of self-insured
8 folks who are not in the room, and at least one person's mother died two days ago
9 and he represents Sedgwick, which services a ton of people. So I just--you know, I
10 don't have any problem with the timing. I just want to make it clear that there's a
11 bunch of people who are not here who we at least need to touch base with on the
12 timeline. I mean, we're not...

13 17:35: You can make that call.

14 17:35: Yeah.

15 17:36: You know what I mean?

16 17:37: Yeah.

17 17:38: That's a--you know, you can send stuff out and make the call,
18 and how it's presented. So what is your proposal, Jessica, since you...

19 17:45: My proposal-- Do you want to say something before I go?

20 17:47: I was just going to say that I do agree with Jess on this one. To
21 me, we've had two notices go out to that entire--to the group. Those self-insured
22 employers and other carriers, it's not like the--there wasn't--they didn't know we
23 were talking about this very issue, which if it's changed, it will affect how they do
24 their work because not one of these is 2017. So they have had their notice that
25 something is coming. And if implementation is an issue for me, than I better be at

1 this table to talk. I'm--I guess in this instance, I kind of agree with Jess that they--
2 And I'm sorry that somebody's--

3 18:28: Mother died.

4 18:29: --family member passed away and I know that things like that
5 happen, but I've missed meetings that I thought were super important because I had
6 something else. And unfortunately, that's the way that life goes. I didn't get to weigh
7 in on that one. And even if I wanted to, I mean, I may have sent somebody in my
8 stead if I could. But I guess I--I'm of the opinion that nobody was excluded from
9 coming here. They all had their opportunity just like those of us who took the time
10 out of our day, like just if I--way too much time. And I would like to put it to rest as
11 well. I would like to see it. I know that we do have a legislative session, there's a lot
12 of other energy going, and this is one that we want to see go away. I'm of the
13 opinion that boy, everybody has their notice, and if you didn't come, kind of--

14 19:17: And there's a meeting two...

15 19:20: --kind of stuck. There was a second meeting. Yeah. You're
16 right.

17 19:21: If you didn't make the first one, you could, you know...

18 19:24: Yeah. So as much as I hate feeling that way, but I do feel that
19 way, so...

20 19:29: Kevin Anderson. The Self-Insured Association and Workers'
21 Comp Association did briefly talk about this yesterday. Most of the discussion was
22 about which one of the six options was kind of moving forward, and it sounded like
23 there was a consensus on Option 1. We didn't quite realize that there was an issue
24 on whether it's a temporary rule versus a permanent rule, things like that. But I also
25 don't see why two weeks isn't enough time for Sedgwick...

1 19:54: You should have spoken up earlier.

2 19:55: Yeah. Yeah.

3 19:58: And if you do sent a notice out giving them a short time frame

4 to respond, are you-- I'm not clear as to any commitment regarding what the

5 management side has asked for regarding direction and some technical assistance--

6 20:15: That's...

7 20:15: --and all of that.

8 20:17: That--and I'll just speak to it since I've been pounding on this

9 for weeks, is we believe that's why the temporary rule, six months...

10 20:25: Yeah. So why do we need...

11 20:27: You're going to have to do that and say just--I think you're

12 going to have some general stuff to begin with as it--what comes with the rule. And

13 then I think you need to make a promise that there's going to be work done to do

14 forms depending--at the top, okay, this is a simple filing. I have this type of worker

15 only. There's been no changes in wages. Good. I can go there. And I think you

16 literally have to do it that way, but that takes time.

17 20:54: Right.

18 20:55: And I believe that time and the--is the six-month period--

19 20:58: And that's...

20 20:58: --to have the whole package ready.

21 21:01: That's why I was asking how it was presented to the industry.

22 21:04: Yeah.

23 21:04: Because an adjuster, if they just got, oh, we're going back to

24 the old way, they immediately think about--

25 21:08: Yeah.

1 21:10: --deviations that they got in the audit and this and that.
2 21:12: Yeah.
3 21:12: But if it's communicated in a way that we--
4 21:13: Yeah.
5 21:13: --want to do this temporary rule and then work on these things
6 to help you--
7 21:16: Yes.
8 21:17: --help us help--
9 21:17: Yes.
10 21:18: --workers, help--
11 21:18: Yeah.
12 21:19: --employers, I think that it's a better sell. And it doesn't send
13 them into the tizzy as to oh my god, you know, the sky's falling.
14 21:26: And I really think on this one, you're going--there's going to be
15 some work to be done. I hope it's not until after March 11th when we're done with
16 the session, there's going to be employers and there's going to be others from the
17 other parts of--non-SAIF insurers that--and third--all the players so that you can get
18 down to the particulars that people need their questions answered, create something
19 that people can understand. That's a work group that's got time invested not only by
20 the Department but a lot of stakeholders, right, so that we can make sense out of it.
21 21:58: So it sounds like we definitely need like a temporary rule first--
22 22:03: Yep.
23 22:03: --before you get to the permanent rule?
24 22:04: Yep.
25 22:05: So what about a compromise, DCBS, and you know, send a

1 notice out saying, we're going to create, you know, a temporary rule, February 15th,
2 if you guys can't implement this, speak now or forever hold your peace.

3 22:19: No. I'll piggyback on that. We will create a temporary rule. I
4 think the question at hand here is how long we delay implementation, i.e.--

5 22:27: Yes.

6 22:27: --how long--

7 22:28: Yes.

8 22:28: --the insurer has--

9 22:29: Before...

10 22:30: --time to figure that out.

11 22:31: Create the temporary rule.

12 22:32: And workers are in a place where they're going to get a lower
13 wage calculation.

14 22:35: So it's the effect...

15 22:37: And that's what...

16 22:39: I said implementing the new rule,--

17 22:42: The effective...

18 22:42: --if you can't implement it by February 1st, let us know.

19 22:45: You mean March 1st, I hope.

20 22:48: No. It is February.

21 22:48: February 15th.

22 22:51: So we're arguing about now is what you brought up, Theresa.

23 22:56: I was going to say, I...

24 22:56: February 15th, that there's a chance...

25 22:57: So not to pick on Bill in the back, but I did ask, since Bill

1 represents a lot--you know, a lot of the members are stopping short, talking about
2 the level of issue with this. So as a compromise, instead of saying speak up or
3 forever hold your peace, because a lot them are aware that this--these
4 conversations are happening.

5 23:12: They are or not...

6 23:13: They know about this--it's just providing advanced notice about
7 the--

8 23:16: Yeah.

9 23:17: --temp--about the rule happening without saying--without
10 having that option because again, with the forthcoming rule, they can--there will be
11 an opportunity for them to speak about any unique issues that they have.

12 23:28: With this temporary rule, it doesn't mean that everything is
13 going to stay just that way...

14 23:33: But...

15 23:33: Implementation deadline.

16 23:34 Yeah. Yes.

17 23:34: What we were talking about was how soon can we put a
18 temporary rule in place, when is the effective date? I think the temporary rule,
19 there's something allowed in there for effective date. Is that what we're talking
20 about?

21 23:47: I'm okay with that.

22 23:48: Yeah, so...

23 23:50: Are we okay with...

24 23:50: So what is that...

25 23:51: So those are the two...

1 23:52: I mean, I think to be clear, two weeks was the longest period of
2 time that I offered. Other folks have...

3 24:03: To have the rule in place?

4 24:06: Yeah.

5 24:06: Okay. And then we can...

6 24:08: So Fred sends out a notice that says rulemakings have
7 happened. We're going to put a temporary rule in place starting two weeks from
8 today. They have two weeks to figure out their systems. Those workers, between
9 now and two weeks, to be clear, will get a lower calculation because the temporary
10 rule becomes in place, right, after the two weeks? That's what we're talking about.

11 24:24: Uh-huh. Yes.

12 24:28: Okay. So I was--

13 24:28: And that...

14 24:28: --thinking something different. So let me just tease it out.

15 24:30: I think that's what they're saying.

16 24:32: Is that what you're saying?

17 24:34: I'm not saying anything until I hear what...

18 24:36: Well, so...

19 24:37: I said too much already.

20 24:38: The question is, I know that you need, in two weeks, a rule in
21 place, a temporary rule that lasts for six months. The question, I think, different
22 people have been asking is, what is the effective date of that rule? Can that rule be
23 effective one week or two weeks later so that people have time to adjust--

24 24:58: No.

25 24:59: --for implementation purposes?

1 25:00: No.

2 25:00: No.

3 25:00: I mean, two weeks is...

4 25:01: Well, I think it's probably unreasonable to just put out a rule and
5 say it's effective immediately.

6 25:06: Yeah.

7 25:06: People need to see that it's a rule and you can have a week to
8 make a change, you know.

9 25:12: Yeah.

10 25:12: You know, you can't just--I think for some of them, it might not
11 be...

12 25:15: That's what I'm trying to get at.

13 25:16: We put out a...

14 25:16: So they might be...

15 25:17: Put out an announcement today saying on February 15th,--

16 25:20: Yes. Yes.

17 25:22: --we've got a temporary rule becoming effective.

18 25:24: Well, we also have to write the rule.

19 25:26: Well, then let's just say the language...

20 25:26: What's that? We actually--we don't yet have a final draft of the
21 rule.

22 25:33: Right.

23 25:33: Just so we're clear.

24 25:34: Yeah.

25 25:35: So how long will it take to get a final draft of the rule?

1 25:41: Well, I mean, what do--I mean, what more do we need to
2 tweak?

3 25:43: There's just some maybe--I could probably...

4 25:48: Two days, two or three days?

5 25:48: Two days, yeah.

6 25:49: A couple days, two or three days?

7 25:50: So two weeks should be plenty of time to implement that rule.
8 That's enough notice from today if...

9 25:57: You should not be asking me this question.

10 25:59: Well...

11 26:00 That was more of a statement.

12 26:02: I mean, that was...

13 26:03: The language...

14 26:03: Yeah.

15 26:04: I mean, it's just that people need to know...

16 26:06: I guess that's my other question. Not to put a kibosh on it, but
17 do you all in the room want to see the draft language that's going to be sent out--

18 26:12: Right.

19 26:15: --in advance of the filing?

20 26:16: We have an idea how different it's going to look--

21 26:16: Yes.

22 26:17: --given the language than what Jennifer has presented.

23 26:22: I think we need to take into account the concerns about--I
24 mean, I'd like to see what the--try to identify the concerns that were identified by
25 SAIF's attorneys about the prior language and this language. And so depending on

1 that, would affect how close or, you know, if it's the same or different.

2 26:46: So we're all looking at the same...

3 26:48: So...

4 26:48: No. I mean, it's a valid concern. And so I think we need to look

5 at...

6 26:50: They can...

7 26:51: It will work with--yes.

8 26:53: No.

9 26:54: And I think what's important is that we don't rush this so

10 quickly, the implementation so quickly that then we have a temporary rule that

11 somehow there's some really ugly thing that if we just take and get a little more

12 measured,--

13 27:08: Right.

14 27:09: --that we didn't miss. So just a little bit of time, I guess, is what

15 I--to get the language into some-- And I don't know if you guys want to see it.

16 27:19: Yeah.

17 27:20: Yeah.

18 27:24: So what I'm hearing is that SAIF can work with Julia, I'm

19 assuming it's you, at WCD to figure out this language. That can be done in the next

20 two to three days. You can send it out to the advisory. Everybody should literally

21 have 24 hours to look it over. We will get back to WCD about language. And then

22 WCD will send out a notice that says effective--assuming that we get-- Worst case

23 scenario, it takes Julia three days. We get everybody back--we get feedback back

24 to WCD by the end of the day on the 7th.

25 27:58: So there is a process, too. I'm not the end-all, be-all. I mean, it

1 has to go through--

2 28:03: Yeah. That's not going to take long.

3 28:04: --people at the Division. Okay.

4 28:07: Yeah.

5 28:07: Okay. Assuming that there are small changes and/or that

6 we're all good, I feel like we are now, WCD will send out a notice to whoever is on

7 the 3500 email list saying effective-- Are we agreeing to two weeks? So that would

8 be the 21st. This temporary rule goes into effect. You have a--you have two weeks

9 to figure out how to implement it. And it is not a conversation about please bring

10 your feedback about how you think this calculation is wrong.

11 28:41: Right.

12 28:42: You have...

13 28:42; Oh, no, no, no.

14 28:43: We have given you two weeks--

15 28:44: Yes.

16 28:44: --to figure this out. Go for it.

17 28:46: Yeah.

18 28:47: And I think you need to add in there, during this temporary rule

19 at the time, we are going to be doing--

20 28:52: Yeah.

21 28:52: --this additional stuff. People need to know that. Give people

22 some...

23 28:54; Yeah. Okay. I'm good with that.

24 28:55: Some hang--something to hang on to.

25 28:57: Well, there could be some miscalculations, too, as we work out

1 the actual guidelines. So you know, I think we need to be aware that there could be
2 some issues with that as well, and that those things are rectified as quickly as
3 possible if there are any concerns or questions, or whatever the case may be.

4 29:19: So we're talking the 21st?

5 29:21: Fair enough.

6 29:25: And that's the effective date for injured workers with open
7 claims or with new claims? I just--I'm just--I'm sorry, I don't want to--but...

8 29:37: The applicability?

9 29:37: Yeah, the applicability because, you know, in the union call
10 board rule, as I recall, we went back and had to redo all of our calculations for 2017.

11 29:43: Open claims. Open claims and we will...

12 29:45: Okay.

13 29:45: It will be one of the issues that folks can take up at the next
14 payroll meeting.

15 29:48: Yeah. That's cool.

16 29:52: Open claims, is going to bring some issues...

17 29:55: Yeah, you have to...

18 29:56: Because you can have a claim that was five years old...

19 29:58: Oh, yeah. That is a good point.

20 30:01: Yeah.

21 30:01: So...

22 30:02: Sorry.

23 30:01: I think the date of injury effective on the effective date...

24 30:05: Is your intent to get anybody that had an injury--

25 30:07: In 2000...

1 30:08: --over the last year,--
2 30:09: Correct.
3 30:10: --in 2017, to have those adjusted?
4 30:14: Correct.
5 30:15: So can we just--if we're going to do that...
6 30:18: That...
7 30:18: I know that's a huge thing, but it's not the huge lift of...
8 30:23: No, I don't think...
9 30:23: Holding you back.
10 30:24: The open claims, that's a really good point. That could be...
11 30:26: It's a compromise.
12 30:27: But as I recall with the union call board, we went back and had
13 to recalculate our wages once we got that back into play for-- And I don't remember,
14 was it--was the union call board effective-- What date was it effective on what
15 claims? Do you guys remember?
16 30:42: October...
17 30:43: We made it effective back to January.
18 30:45: Yeah, back to January 1st.
19 30:47: Yeah, because it was an October to...
20 30:48: Yeah. So that was...
21 30:48: It was a January to...
22 30:49: Yeah.
23 30:49: Basically, January to October.
24 30:51: And so we went back and calculated that. And we did--we had
25 to do that, you know, all of our claims. But I don't...

1 30:58: This would be many more people that would...

2 31:01: No, I understand. I absolutely understand.

3 31:03: Could we do--could we maybe do a tiered approach where

4 it's effective for any new claims as of this date,--

5 31:07: January 1st.

6 31:07: --and then you have this period of time to go back to the

7 previous year and adjust those so that you...

8 31:13: I thought we were going to talk about that...

9 31:14: This is thousands and thousands of dollars...

10 31:15: No, I know. That's why I'm asking. That's why I said.

11 31:17 I know...

12 31:18: We just need to know, what is the applicable date. And

13 everybody's going to need to agree to that. I mean, that--we have to agree to that,

14 what...

15 31:25: Can the temp rule go in with the effective date, February--for

16 the applicability of--for dates of injury on or after, and then have this conversation

17 regarding--

18 31:32: Yes.

19 31:32: --the permanent rule?

20 31:34: Permanent rule.

21 31:34: Well, that's what we talked about earlier,--

22 31:36: That's what we talked about...

23 31:35: --about half an hour ago.

24 31:37: Sorry.

25 31:37: To bring that back around.

1 31:39: I just want to make sure I know what I'm doing.

2 31:40: Because we're going to shock systems. I don't know if city of

3 Portland is still on there.

4 31:42: No, I'm not--yeah, and I know that would be--I understand

5 why--

6 31:45: I mean, that would be cruel and usual.

7 31:46: --there may be mutiny on the bounty for all of us--

8 31:49: Yeah.

9 31:49: --in this room if we went halfway back a year.

10 31:53: To me...

11 31:56: Because I think--and all the other insurers were going holy

12 crap.

13 31:58: Exactly.

14 32:00: Holy crap.

15 32:01: Let's--can we just like break for five minutes? And let's go...

16 32:05: You want a caucus?

17 32:05: I want a caucus.

18 32:06: You want a caucus?

19 32:06: Are you serious?

20 32:09: Yeah.

21 32:09: Maybe we could take 15 minutes--

22 32:10: Yeah.

23 32:11: --because that's our scheduled break.

24 32:13: Fifteen?

25 32:13: Yeah.

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32:13: That's a long caucus.

(off the record)

32:20: The recorder is back on, and-- Thanks, Julia. And...

32:28: Okay. We took a brief break there. The--as far as the language, I think it might be helpful, I have a couple things that I did have in mind, and so it might be helpful just for me to share those with the group so that people don't see the proposed draft, assuming that the people at the Division agree with me, and wonder why those things were removed.

The proposed draft under 4(a) under total earnings had added in a word, "tips." Tips are actually part of the definition of wages under statute, which is-- so it's probably unnecessary to have that language in there because it is part of wages under statute.

33:10: And I understand what you're saying.

33:12: Uh-huh.

33:14: But to ensure that tips are included, that might make it more clear for an adjuster so they don't get nailed with not including them. And I think commission is actually mentioned in the statute as well and it's listed, but I'm not sure. I'm looking real quick here.

33:28: The clearer you can make it for the person calculating, I think the better off.

33:32: I was wrong, commission isn't...

33:35: But tips...

33:36: Tips is in the statute, and actually--

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33:38: Okay.

33:40: --the rules used to outline that tips have to be calculated in what the employer has to report--

33:44: Right.

33:44: --or what is reported, whichever is higher. All that detail has been taken out of the rules where adjusters then thought, oh, we don't include tips anymore, we just include these others. So we just want to make sure that they know because I'm sure that when audit would go in, they would look out and say hey,--

34:00: Yeah.

34:01: --this person got tips.

34:01: We missed all that.

34:03: Right.

34:03: So it's really a communication--

34:06: Yeah.

34:06: --more than anything else. It's not...

34:07: That was my purpose in adding it.

34:09: Sure. Sure. Well, anyway, just wanted to point it out. And these things are just kind of my preliminary thoughts, too, so I don't want everybody to think that this is--I'm--you know, everything else is remaining unchanged or exactly as is. But just some preliminary thoughts, the tips point. Under 4(d), which is the paragraph of language, there is--the first sentence, I do think it duplicates what was in 4(a)(b), and so it may just be excess. I don't think taking that out would change anything. And so it's just something that I'm thinking of. Also, in 8, that the employer and insurer calculation responsibilities, question mark, that part was obviously not part of the language of the rule. Again, just some preliminary

1 thoughts.

2 35:07: Before we leave that, Jennifer, was that there for a mark--as a
3 marker or what...

4 35:14: That--again, those were just my little note things that went out.
5 It was--the reason why I put that there was that--with an onus on the insurer and
6 employer having that responsibility of calculating benefits. I don't know what that
7 would necessarily look like, but instead of calling the adjuster about a calculation
8 and they said, well, I didn't get any payroll, I just did it off of the 801, the worker can
9 go and get the documentation, having it clear that the insurer/employer have a
10 responsibility of providing the documentation so the wages can be accurately
11 calculated and avoid litigation.

12 36:00: Are we better off putting that in somewhere other than the rule
13 itself?

14 36:06: I think that it can go there. But that, to me, would be one of
15 those discussions through the permanent rulemaking process.

16 36:10: Yeah. Yeah.

17 36:11: Okay. Yeah.

18 36:12: Yeah. I'm just thinking that there may be a better way to
19 communicate that, other than the rule itself. Yeah.

20 36:18: Yeah.

21 36:19: And Julia, I didn't catch--and I'm not married to--I am married,
22 but...

23 36:27: Luckily not to this. Right?

24 36:30: I'm not married to that. But like the first sentence there where
25 you're saying it's written somewhere else as well, again, it's--my attempt was to

1 make it clear for an adjuster, so they know that hey, if there's been an increase or
2 decrease, that is now a change, so I've got to go here to determine-- So I just think
3 the more information that we can have for the industry to calculate it correctly, the
4 better off we'll all be down the road.

5 37:00: Uh-huh.

6 37:02: So on that language, the only concern I have is if you are
7 saying the same thing a different way, you actually cause confusion as opposed to
8 clarification.

9 37:14: Okay.

10 37:14: Yeah. I mean, that's...

11 37:15: And where is it written before that?

12 37:18: In--it's at the top of the page, if you have the printout, under big
13 B. It's 4(a), big B. New wage earning agreement.

14 37:26: I'd actually be interested in SAIF's view on that.

15 37:32: Me, too.

16 37:31: What's that?

17 37:33: I said me too.

18 37:34: Oh.

19 37:36: Well, it doesn't say the same thing.

20 37:37: Yeah.

21 37:37: I think Lou's right. If you--

22 37:38: Well, it doesn't...

23 37:39: --say the same--especially in the same section, our rule. Yeah.
24 If you're saying it again, I don't know...

25 37:44: But make sure it's clear.

1 37:47: If you're saying something--well, the question is, are you...
2 37:48: Yeah. Is it clear the first time it's said?
3 37:50: Yeah. I mean, if it's--if your--if the message is different,--
4 37:54: Yeah.
5 37:56: --then it seems like it could stay in. But if it's saying the same
6 thing a different way, then I'd be concerned about it.
7 38:01: This is a draft. It confuses the issue.
8 38:03: And that's where with big B, there has been some confusion
9 just on an individual case. I'm not saying it's huge or anything, regarding where it
10 says including but not limited to a change of hours worked, because then they think
11 well, today they worked 8 hours and yesterday, they worked 10 hours. And that's
12 not what you're referring to in B.
13 38:24: Oh.
14 38:26: Right? Because you're referring to, oh, you were working full-
15 time, now you're working part-time.
16 38:29: Right. Okay.
17 38:30: And so there's some uncertainty there with the--
18 38:33: Yeah.
19 38:33: --language that's in--
20 38:34: Okay.
21 38:34: --big B.
22 38:35: Yeah. I can see that.
23 38:35: Yeah. And I think that language was in the old--yeah, it's very
24 old...
25 38:38: Oh, it's old.

1 38:39 Yeah, it's very old. I used to be confused, too, when I would
2 read it.

3 38:42: I really was attempting not to hit on absolutely everything, just
4 hit on the key issues.

5 38:48: Yeah.

6 38:49: And that could go to the issue of some of the concerns with
7 calculations. So as we're looking at that old language, I applaud that we're saying,
8 okay, what-- And Jennifer probably knows more than anybody because she gets the
9 calls, and Chris, as to what was creating the confusion and the inaccuracy with the
10 calculations. Some clarity.

11 39:14: So it sounds like that's a conversation that we can have in a --
12 proceeding maybe--and it should give us time to caucus, by the way. So maybe,
13 what--what we thought we could offer and see what folks think. So I think obviously
14 we are under a timeline to move and get some assurances that this gets fixed for
15 workers. So from what I heard from Julia earlier, we could get language out to the
16 advisory group here by the 6th, I think that everyone could have 24 hours to look at
17 that and get me feedback, assuming that there were small changes or that there are
18 changes that could be made. WCD could send out this advisory or the note,
19 whatever term it is you use, to the 3500 folks that you feel like should know that it's
20 coming. I think that from both the employer's side and our side, we would really like
21 to see the language of that email before it goes out. And we promise to give you
22 really good feedback really quickly so that it can still go out on the 7th, just so that we
23 know what is being told to folks isn't like give us input on the calculation, but really
24 like this is happening and you have two weeks to figure out how to implement it. We
25 will get you ready feedback on that, and then you all can send the email on the 7th

1 stating that these conversations have been had, the rule will become effective on the
2 21st. The rule will apply to workers who are hurt on the 21st or after, with the
3 understanding that I think folks will come to the table in the permanent rulemaking
4 process about what retroactive means or how that could play out, et cetera. But we
5 want is some assurances that this is going to take effect soon and that workers
6 will...

7 40:55: Yep.

8 40:55: That works for us.

9 40:56: Yep.

10 40:56: Hi. This is Sue with city of Portland. I have a question. I have
11 an upcoming audit that is going to be auditing the accuracy of the average weekly
12 wage for not only 2016 dates of injury but also 2017 dates of injury. And that starts
13 on February 12th for two weeks. How's that going to work if we have to go back and
14 change any of the open claims, average weekly wage for the 2017 period?

15 41:28: Well, I think I--if I heard correctly, the proposal was related to
16 dates of injury on or after February 21st. Did I understand that...

17 41:36: Right.

18 41:36: Yeah.

19 41:36: Now, for this...

20 41:38: Or that for the reason you're bringing up, is it Sue--

21 41:41: Sue. Yes.

22 41:41: --on the phone? The reason you're bringing it up, there's so
23 many implications for retroactivity, you just brought up one. We can think of another
24 dozen. So that's why the compromise would be, have that conversation after so you
25 can figure out what that means or what that would look like or does that work. So

1 that conversation would happen as a part of the six-month--just like all the technical
2 assistance and everything else.

3 42:03: Okay.

4 42:05: Does that answer your question?

5 42:06: Yes.

6 42:08: Okay.

7 42:11: SAIF?

8 42:14: So any other language issues?

9 42:15: Jessica...

10 42:16: Not...

11 42:19: No?

12 42:19: Okay.

13 42:21: Bill, do you want to weigh in?

14 42:25: I think we're fine.

15 42:27: And that second sentence under the big paragraph B, that was
16 what I'd like to chat with SAIF on and look at. And maybe it would stay the same.
17 Maybe it would change. But just that's kind of what we're chewing on.

18 42:51: So we're going to pull the trigger pretty quickly on the actual
19 notice to folks about the implementation. So we will get it out to people. But if we
20 don't hear back from you, we're going to pull the trigger.

21 43:05: You'll hear back.

22 43:06: Oh, you'll hear back.

23 43:06: Yeah.

24 43:06: You'll hear back.

25 43:07: We'll be watching for that.

1 43:13: All right. Anyone else?

2 43:16: Fiscal impact, I think it would be good to revisit that point.

3 43:23: I'm kind of curious. Todd is in the room. Thank you. I'm so

4 glad you're here. You know, and I sent you an email a few weeks ago asking if you

5 were aware of this going on, these discussions. So is NCCI also--you know, are you

6 going to look to see if there is an impact?

7 43:40: We could...

8 43:40: Well, you can't because you don't have a real, true effective...

9 43:42: Right. So it's--we would need to look at the rules in order to

10 bring it to the pricing process. But I don't think--from what I'm hearing today, that

11 you're looking to implement this regardless of what may happen. But it would roll

12 into future pricing.

13 44:00: Uh-huh. Uh-huh.

14 44:04: Does that answer your question?

15 44:05: Yeah.

16 44:06: I mean, but we would--yes, we would look at the system at

17 some point.

18 44:09: During the period of the temporary rule.

19 44:12: And so for the folks that may not know what NCCI does, they

20 set our rates for experienced modifiers which go into our calculations for what we

21 pay for Workers' Comp in the states. So it's a significant--it's significant to have

22 Todd in the room, so he understands if there is going to be an impact and that we

23 are aware of it as soon as we can be, so thank you.

24 44:45: Any other comments about fiscal impact for this type of rule

25 change? Any other-- Oh, yes.

1 45:04: I was just going to say, some of the feedback that you're going
2 to get from me is I will bring up the issue that I talked about earlier just so that it's on
3 the record, and then I can work with whomever I need to to address that issue.

4 45:16: Uh-huh.

5 45:18: Yeah.

6 45:18: Yeah.

7 45:23: Yeah. I think with the permanent rulemaking process, too, it
8 will be--

9 45:25: Great.

10 45:25: --that information as well.

11 45:29: Are we setting another meeting or are we going to wait and see
12 how that goes?

13 45:34: I don't think we need to at this point.

14 45:34: I don't want to, but...

15 45:35: Right. I'm assuming...

16 45:37: That's...

17 45:39: Okay. If we do a temporary rule, which it sounds like we're
18 going to do, there will be a--we'll have to pretty much go into permanent--

19 45:47: Yeah.

20 45:47: --rulemaking right away because we have only 180 days, so--
21 and I'm guessing that this same group of people would like to be contacted. Let me
22 know if that's not the case. But otherwise, I'm just going to--we'll begin our usual
23 rulemaking process and inviting stakeholders to join us. It could include some
24 different folks as well.

25 46:08: We hope so.

1 46:09: We hope so, so that we have all--hear about all of their
2 concerns, so...

3 46:14: But I would respectfully urge you to do the real kickoff in March.
4 There are any number of people in this room who spend their life between now and
5 then at the capitol. And so I think mid-March would allow people to actually
6 engage...

7 46:31: We'll do our best, but there's one kibosh for us in the
8 Department is that we have to do our budget and--exact same time. We'll do the
9 best we can, but I wanted to make that--just bring that up.

10 46:39: Yeah.

11 46:41: Are you saying that because you think it would have to go
12 sooner?

13 46:42: This is stuff that--these timelines are based outside...

14 46:45: Oh, sure.

15 46:47: Yeah. This is not--if I could delay it until like--

16 46:48: Sure.

17 46:49: --May, June, I'd be happy, but--so...

18 46:52: I lived through--I know those rules.

19 46:55: Right. With the effective date of February 21st, with your--in
20 your rule process, at what point do we hit that-- Where's the deadline for--

21 47:08: Oh, yeah.

22 47:08: --making sure that a permanent rule is in effect before or at the
23 time that the temp rule expires?

24 47:17: Well, you know, I guess if we just count 180 days, March, April,
25 May, June, July, August...

1 47:22: Do you still have those requirements of filing when the hearings
2 are?

3 47:28: It's a little more flexible than it used to be.

4 47:29: Okay.

5 47:31: You used to have to file by the 15th of the month. Now we can
6 file up to the end of the month. But the Secretary of State has to accept our filing.
7 So it's risky to do it on the last day.

8 47:40: Yeah.

9 47:40: But it's not as hard as it used to be.

10 47:43: Okay.

11 47:43: The main thing for us is if we propose a rule that we're going to
12 adopt on a certain date, the date we notify legislators, which we're required to do,
13 cannot be more than--or less than 49 days before the effective date of the rule.
14 We'll definitely have enough time.

15 47:58: Okay.

16 48:00: So at that first meeting, it would be really helpful for everybody
17 to understand, start with that 49 days, back this up from there so we can understand
18 what you're up against?

19 48:09: Right.

20 48:10: Right? That would, I think, make everybody here able to
21 understand what we're going through, our process and all that.

22 48:19: Are folks in a position to start talking about the technical aspect
23 of it before...

24 48:26: I'm just afraid that before the mid-March--I'm afraid that you're
25 going to get too many people that are swamped at the capitol.

1 48:34: Okay.

2 48:35: Well, the two...

3 48:34: Yeah. The technical would be TPAs,--

4 48:36: Oh, no. It doesn't have to be...

5 48:37 --self insured employers...

6 48:41: I think the process would be better served without some...

7 48:43: I think there's some ability to...

8 48:45: What are you implying? Yeah.

9 48:48: I'm thinking to myself...

10 48:49: I think there's at least a couple people,--

11 48:51: Yeah.

12 48:53: --maybe Kimberly and Sheri, and there's another person who

13 couldn't be here today, daughter's in the hospital with the flu. So there's three or

14 four people working on this that can at least engage with that.

15 48:53: Engage with the TPAs.

16 49:05: Yes.

17 49:07: And carriers.

18 49:07: Yeah, that would be helpful.

19 49:09: Yeah.

20 49:09: Because you know...

21 49:10: I think that's a really good point.

22 49:10: I think the...

23 49:12: We can only do that after the language is actually established.

24 49:14: Exactly. But no, the key is, because this is going to be the last

25 time we're going to be together for a while, is how to make the best use of the time

1 and as quickly as possible because of the --

2 49:24: Yes. Yes.

3 49:24: Yeah.

4 49:24: --time frames were coming up on, so any philosophical or
5 anything like that is outside the technical--

6 49:34: Right.

7 49:34: --piece, just the practical application of the rules to the
8 calculations.

9 49:39: And that wouldn't complicate technical work. I do hope the
10 notion of, okay, I have a regular employee only. I don't have any irregular. Okay.
11 Simplify it. Here's a simple form. And if you trigger it off the rule in that way so that
12 people can find at the top what it is that applies to them in this rule, you start way
13 ahead of the game--right. Because that's what most business people understand
14 how to fill out. So I just think that's at least a platform to think about.

15 50:15: Is hazard pay by any chance calculated into wages? Because
16 I'm going to apply for it.

17 50:20: As a result of being at this meeting?

18 50:21: Yes.

19 50:23: You're a regular wage earner.

20 50:25: So John, to your point, the people that we meet at the table are
21 not necessarily the people...

22 50:32: The lobbyists.

23 50:33: Right.

24 50:33: Yeah.

25 50:35: Yes.

1 50:35: I can't believe you said that.

2 50:35: It's people--right, it's...

3 50:38: Well, it's true. I mean,--

4 50:38: Yeah.

5 50:40: --meeting people with real deep technical, who we've been

6 meeting with, Sheri, Kimberly, others who have the technical knowledge, who live in

7 this arena and live it every day.

8 50:48: Right. The people with the sharp pencils who are not going to

9 be over at the capitol who we can make use of their time...

10 50:53: Yes.

11 50:54: Yeah.

12 50:54: That would be great because I think we're going to go through--

13 we need to test that just like the rule. We need to test it with some people and see if

14 it works for them, makes sense to them.

15 51:02: Yeah.

16 51:02: You know, so that they go, oh yeah, I can make sense out of

17 this. Then you're going to have better compliance. That's what you're going to

18 have.

19 51:10: If you can explain it him, pretty much anybody could

20 understand it. That's why he volunteered.

21 51:15: Yeah.

22 51:17: You know, and she's--and we've got some resources here,

23 technical resources.

24 51:28: So do people--everybody's on the same page in terms of what

25 our schedule is?

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51:32: Yeah.

51:34: Yes.

51:34: Yeah.

51:36: Can I just recap to make sure that we are clear?

51:36: Sure.

51:37: So by February 6th, we will get out a draft language of the proposed temporary rule to this group. You guys will give us feedback within 24 hours from when we send that email. We will also prepare an email to the outside stakeholders that are not here in this room to let them know what's happening and to let them know of when this is all going to go into effect. We'll get that over to you guys.

52:09: So just I mean, get it to...

52:13: That's...

52:20: Jeff and I will talk about this...

52:23: Well, we'll prepare the email. It would go out-- The plan is to have a February 21st effective date, and it would be implemented for all dates of injury from February 21st, 2018 onward.

52:36: That's it.

52:38: That...

52:40: That's it.

52:42: Okay.

52:47: Okay.

52:49: Thank you.

52:49: That's that.

52:50: Thank you all very much.

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52:55: Thank you.

52:56: Yeah. Thanks everybody on the phone as well for joining us.

(WHEREUPON, the proceedings were adjourned.)

CERTIFICATION OF TRANSCRIPT

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I, Amanda Knapp, as the transcriber of the oral proceedings at the 2/1/2018 meeting, certify this transcript to be true, accurate, and complete.

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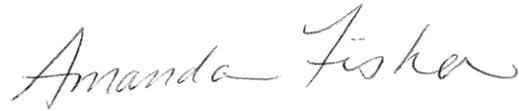
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