

RULEMAKING ADVISORY COMMITTEE MEETING
WORKERS' COMPENSATION DIVISION RULES
OAR Chapter 436, Division 060

Weekly wage calculation; rate of temporary disability compensation

April 30, 2018, 9:00 a.m.
 First floor training room
 16760 SW Upper Boones Ferry Rd, Tigard, Oregon 97224

Committee members attending:

Kirsten Adams	Associated General Contractors
Paul Alstadt	Matrix Absence Management
Kevin Anderson	Sather Byerly Holloway LLP
Liz Bacon	AIG
Dave Barenberg	SAIF Corporation
Larry Bishop	Sedgwick CMS
Nickie Blasdell	Portland Community College
Elizabeth Brandenburg	City of Portland
Dennis Cal	Strategic Comp
Chris Carpenter	LiUNA
Bin Chen AAL	Reinisch, Wilson, Weier
Joe Couey	K.P.D. Insurance
Betsy Earls	Oregon Business Association
Bob Estabrook	OSEA
Jennifer Flood	Ombudsman for Injured Workers
Jaye Fraser	SAIF Corporation
Jessica Giannettino Villatoro	AFL-CIO
Lynn Hamers	Intermountain Claims
Lon Holston	Medical Advisory Committee
Todd Johnson	NCCI
Jeanette Kaufman	City of Portland
Thais Lomax	ESIS
Veronica Olson	City of Salem
Marcus Pitts	City of Salem
Sonya Powers	Argo Group
Sue Quinones	City of Portland
John Rakowitz	Associated General Contractors
Barb Reich	Asante
Julie Riddle	The Hartford
Dan Schmelling	SAIF Corporation
Elaine Schooler	SAIF Corporation

Dawn Sells	Grayback Forestry, Inc.
Keith Semple	Johnson Johnson Lucas & Middleton PC
Dean Spradley	Farmers Insurance
Sheri Sundstrom	Hoffman Construction
Gina Wescott	S D A O
Diana Winther	IBEW Local 48
Kimberly Wood	MLAC Perlo Construction

Department of Consumer and Business Services staff attending:

Julia Hier
Troy Painter
Louis Savage
Sally Coen
Theresa Van Winkle
Fred Bruyns

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BEFORE THE WORKERS' COMPENSATION BOARD OF

THE STATE OF OREGON

RULEMAKING ADVISORY COMMITTEE

WORKERS' COMPENSATION DIVISION RULES

The proceedings in the above-entitled matter were held in Portland area, Oregon, on the 30th day of April 2018, before Fred Bruyns, Administrative Rules Coordinator for the Workers' Compensation Division.

TRANSCRIPT OF PROCEEDINGS

1
2
3 00:00: We create a record of the meeting that way and go back and
4 refresh our memories as we need to. So good morning to you all and welcome.
5 Can you hear me okay?

6 00:13: I can.

7 00:15: Okay.

8 00:16: Thank you so much.

9 00:45: Does that--does that help at all? Can you--it does help?

10 00:48: Yeah.

11 00:49: I can't tell from here, okay, but I'm going to take your word for it.
12 Does it still help even when it's that far away because it--

13 00:55: I think so.

14 00:56: Okay. Okay. Good morning to you all and thank you very
15 much for coming. My name's Fred Bruyns and I've been in touch with all of you, I
16 think, and we really appreciate the turnout and for you to--for your attendance today
17 and that we can discuss these important issues.

18 In just a moment I'm going to turn things over to Julia to conduct the
19 meeting, but I'll just go through a little bit of the information about Advisory
20 Committee meetings, and this one in particular we have handouts by the side by the
21 door there and extra copies of the agenda and the temporary rules, which we're
22 looking to replace with permanent ones, so this informal, it's not like a public hearing;
23 we're just here to have a conversation with you and to get as much information as
24 we can so that we can make final decisions about what we would propose in rules,
25 and so I would encourage you to speak your mind and give us your advice, too,

1 about fiscal impacts as we go--as we go along.

2 If you're on the telephone with us today, I encourage you not to put
3 your phones on hold at anytime because we'll get your background music, but
4 otherwise if you're on the phone, encourage you to speak up and you don't have the
5 advantage to see who have--might have their hand up here, so please do that.

6 With that, if we could go around the table and introduce ourselves.

7 Julia?

8 02:25: Sure. I'm Julia Hier, I'm a policy analyst with the Division and,
9 like Fred said, I'll be helping to go through the issues today.

10 02:35: Bin Chen, defense attorney with Reinisch Wilson Weier, I'm
11 also here on behalf of Access to Justice Committee of the Oregon State Bar.

12 02:41: Larry Bishop, I'm a compliance advisor for Sedgwick.

13 02:45: Lon Holston, MAC.

14 02:47: Jaye Fraser, SAIF Corporation.

15 02:49: Dan Schmelling, SAIF Corporation.

16 02:51: Elaine Schooler, SAIF Corporation.

17 02:52: Dave Barenberg, SAIF.

18 02:54: Nickie Blasdell, Portland Community College.

19 02:57: Sue Quinones, City of Portland.

20 02:59: Troy Painter, an auditor for WCD.

21 03:01: Elizabeth Brandenburg, City of Portland.

22 03:03: Jeanette Kaufman, City of Portland.

23 03:06: Dean Spradley at Farmers Insurance.

24 03:09: Todd Johnson, NCCI.

25 03:11: Sally Coen, Workers' Compensation Division.

1 03:13: Kimberly Wood, Perlo Construction and MLAC.
2 03:16: Sheri Sundstrom, Hoffman Construction.
3 03:19: Kirsten Adams, Associated General Contractors.
4 03:21: Dawn Sells, Grayback Forestry.
5 03:23: Lou Savage, Workers' Comp Division.
6 03:25: Diana Winther, IBEW Local 48 and MLAC.
7 03:29: Jessica Giannettino Villatoro, Oregon AFL-CIO.
8 03:31: Thais Lomax, ESIS.
9 03:33: Jennifer Flood, ombudsman for injured workers, DCBS.
10 03:36: Gina Wescott, Special Districts Association.
11 03:38: Okay. And if you're on the telephone with us today, could you
12 introduce yourselves to the committee?
13 03:45: Betsy Earls, OBA.
14 03:47: Welcome, Betsy.
15 03:49: Bob Estabrook--
16 03:50: Julie Riddle, Hartford.
17 03:50: --(unintelligible) Association.
18 03:51: Okay, I think that was Bob Estabrook. Is that you, Bob?
19 03:55: Yes.
20 03:56: Okay, welcome. And someone else who was coming in at the
21 same--
22 04:01: Julie Riddle, Hartford.
23 04:02: Okay. Welcome, Julie.
24 04:05: Sonya Powers, Argo Insurance.
25 04:07: Welcome, Tonya.

1 04:11: Keith Semple, Oregon Trial Lawyers.
2 04:13: Welcome, Keith. Anyone else?
3 04:16: Barb Reich--
4 04:18: Okay, welcome, Barb--
5 04:18: --Asante.
6 04:22: We're getting some background noise from one of you, so I
7 just--I'm not sure who, but there's some kind of a beeping sound, so... Anyone
8 else?
9 04:32: Dennis Cal--yes, Dennis Cal from Strategic Comp.
10 04:34: Okay. Welcome, Dennis. Okay. Again welcome to you all.
11 04:44: Somebody in the back.
12 04:45: Oh, I'm sorry.
13 04:46: Lynn Hamers, Intermountain Claims.
14 04:48: Okay. Welcome, Lynn.
15 04:49: Paul Alstadt, Matrix.
16 04:50: Okay. You're welcome to stay there if you'd like, but there's
17 also room at the table there's a few empty chairs--
18 04:54: (unintelligible)
19 04:55: Oh, I'm sorry, oh, I'm sorry. Okay. Well, again all of you,
20 you're welcome to come to the table or not, it's entirely up to you, wherever you're
21 comfortable. I'd like to spend just a moment on the kind of our timeline, it's the
22 second page of her act--yeah, the second page of our agenda this morning. And
23 some of these are things that have already happened, events that have already
24 happened, and there the other dates are projected and they're somewhat flexible,
25 but the temporary rules that we're looking to replace were effective on February 21

1 and permanent rulemaking began almost immediately, so around the same time.
2 We requested Advisory Committee members and agenda items on the 5th day of
3 March and this meeting is April 30, of course. We're hoping to file proposed rules by
4 the middle of May and then have a public rulemaking hearing toward the middle or
5 end of June and have a closing date for written testimony a few days after that, a
6 few days to a week after that is our--kind of our standard, so people have a little time
7 to listen to what was said at the hearing and maybe respond in their public testimony
8 or at least a little more time to prepare their written testimony.

9 And then we would file final rules with the Secretary of State around
10 the time of mid-July would be our hope, and the latest date that permanent rules can
11 be effective is August 20. I say that, actually it could be anytime, but if we don't want
12 the temporary rule to expire and have the rules revert to their previous wording, then
13 we have to replace them no later than August 20, so we might do it quite a bit
14 sooner than that, we can file permanent rules at anytime after the public hearing and
15 the time to consider testimony, but that's just kind of an outside date, so do you have
16 any questions about our projected timeline? Just maybe to help to put it into context
17 what we're talking about today, but with that, I'll just turn things over to Julie and I'll
18 go up to actually move us through the agenda so that if you want to look at the
19 agenda on the screens or if you're on the phone with us today, maybe I can ask the
20 people who are using GoToMeeting. Are you actually able to see the agenda at this
21 point? If you're on the phone with us?

22 07:26: Yes.

23 07:27: Excellent.

24 07:27: Yes, we can see the agenda.

25 07:29: Good. Okay. Julie.

1 07:31: Excellent. All right. I'll move the mike over, let me know if
2 anybody has a hard time hearing me. We're going to start off with issue one in the
3 issues document and it relates to Rules 436-060-0005 as well as, which is
4 definitions, as well as 436-60-25, and these are the rules that were affected by our
5 recent temporary rules, and I'm--the changes have the altered the definition of
6 wages and it changed the method for determining a worker's average weekly wage if
7 the worker has irregular wages and has an increase or decrease in their rate of pay
8 during the 52 weeks before their date of injury. So there's been a couple issues
9 have--that have been brought up and that have been asked for discussion today
10 related to seasonal workers as well as related to some of the wording in the email,
11 which I'll talk about here in a moment with Bin Chen's email, but want to open up in
12 general as to the temporary rule that was adopted and see affected seasonal
13 workers question in Bin's email, which I'll let him explain in a moment. If anyone has
14 any other concerns as to what the permanent--what the temporary rule said, if they
15 think that that temporary rule should otherwise be adopted as permanent or be
16 modified in some way. Anybody have any comments? Everybody likes the
17 temporary rule?

18 09:17: I think reading it, it's confusing. I think it needs to be more
19 succinct as to what exactly and maybe with an example (unintelligible) an example
20 (unintelligible) did that or the Department did that when they were going with the
21 choices for that. But speaking from my position, we're self-insured, self-
22 administered, and we actually have access to our payroll records, and even though
23 that's the case, there are a lot of questions that we have for folks as to what the
24 meaning of certain rates are, we have I think how many (unintelligible)? Nineteen?

25 10:05: Quite a few.

1 10:07: Quite a few unions, I think there's 14 unions, so the wage
2 variations are I think there's 308 different wage types, so it can get quite complex, so
3 were--for instance, when you say wage earning agreement, if you can just explain
4 what that means in particular. I know that I got confirmation from the auditors that it
5 didn't mean a COLA and it didn't mean the step increase, that it just meant a change
6 in duties, so either a promotion or a demotion. The average weekly hours worked at
7 each page rate--at each pay rate, we have an example, we actually emailed it to
8 you, Fred, today that we were going to share with the group if that's possible to take
9 a look at it. We have, I think, six different regular rates of pay in one two-week pay
10 period or in what 52-week pay period--

11 11:21: 52 (unintelligible).

12 11:25: We have different overtime rates and there's only two buckets
13 for overtime, there's a time-and-a-half bucket and a two-times bucket on our payroll
14 system, but it's not--it doesn't add up to time and a half, I mean, it's just it gets very
15 complex because there's blended rates, the payroll system is what it is. We can't
16 change it without some kind of financial impact, and so we have what we have and--

17 11:58: Many of our workers also work, they receive shift differentials,
18 so their rate in pay will change depending on the shift (unintelligible) swing shift
19 (unintelligible) dayshift for that can also change within a two-week pay period, so
20 we're not just (unintelligible) overtime for everybody.

21 12:18: Yeah. And, you know, underground work and all kinds of
22 things, so if you look at the person's base rate, and this was the--come up at the
23 most recent audit that we had, the base rate is usually the lowest amount, so if you
24 have six different regular pay amounts, the actual base rate is the lowest one and
25 we can't use that now, so...

1 12:51: (unintelligible) complicated.

2 12:53: Yeah, it's--it gets very complicated, and I'm not saying that, you
3 know, that it can't be done, I'm just saying that we really need some really good
4 direction, I'm glad to see that Troy's here from the auditors office to--because, you
5 know, he--him and his team get to see what is actually out in the field when you're--
6 when you're doing these 52-week wage histories, and it's not--it's not clear to us that
7 we're doing it correctly, so if it's not clear to us, how is it working for the TPAs, how is
8 it working for everyone else when they don't have access to their payroll, they just
9 receive information from an employer?

10 13:49: You're looking at me, are you asking me?

11 13:52: Larry.

12 13:52: Yeah, no, that's fine. Yeah, she's right. So we get payroll from
13 all sorts of different employers in different formats and so what I see as being difficult
14 and problematic because it's not consistent, so we don't know if it's always accurate,
15 is when we're using various types of wage types and we have to columnize all of
16 those different types and we have to apply rates to each of those types that are
17 consistent with the current rate of, you know, of the date of injury, that we--you
18 know, we don't get in all cases Excel spreadsheets, so everything that comes in, you
19 know, is an imaged document and then it has to be entered into a spreadsheet, so if
20 I've got four types of wages for a year and I have to enter 26 times 4 into a
21 spreadsheet to come up with a number, I don't know if that's accurate, and what I
22 found in the audits is that even though the same methodologies is being used that,
23 because of those errors that occur, differences, if you will. I'm rambling a bit.

24 So I wasn't here for the last meeting in January, I wasn't able to come,
25 but one of the things that I recognize, we recognize is that there's fairness involved

1 in this conversation, it has to do with people who have wage increases during the
2 course of the year, and to just use gross earnings for a worker who has an increase
3 toward the end of that year doesn't necessarily represent what they're going to earn
4 going forward, so one of the things that I've discussed with the Division and others
5 is, is to go back to that point in time, so wage rate at the time of injury is established
6 to go back in the history of the wages and find the point where that occurred, and if
7 that occurs, let's say, 20 weeks in, you use the payroll from that point forward and
8 you use gross earnings because that brings into the calculation the increase and it
9 takes away this processing problem of having to input different rates of pay to come
10 up with the total number of earnings to divide by the numbers of weeks. The
11 problem with that is if there's less than four weeks of earnings, I suppose, you know,
12 for that wage increase occurs, but there's another way that (unintelligible) takes care
13 of that if an employee has less than four weeks of earnings, the time of hire is used
14 for the calculation, so I kind of just throw that out as maybe another option?

15 16:34: (unintelligible) Oregon employees, Oregon School Employee
16 Association we also have seasonal workers for parks and rec where they're
17 teenagers working during the summer months and off for school term, and so that's
18 an anticipated absence, so how is that fair to them by calculating 52 weeks?

19 17:04: Could folks speak up a little bit for the benefit of those of us on
20 the phone? I can barely make out what everybody's saying.

21 17:10: Everybody hear that? We can--

22 17:12: Can you turn that up at all?

23 17:14: Yeah, and speak up, the people on the phone are having a
24 hard time hearing, and I will--

25 17:19: (unintelligible) people at the other end could just speak a little

1 bit louder so we can--

2 17:22: Yep. Okay. Any reactions to Larry's proposal, thoughts,
3 responses?

4 17:41: Can we go back to City of Portland and what kind of clarity
5 (unintelligible) would be helpful for the Division?

6 17:53: I guess if we provide examples to the Division of what it is that
7 we have, tell us how you would generate the average weekly wage from that, so
8 that's kind of, you know, instead of waiting for an audit to say you didn't do it right, let
9 me give you what we have, what questions do we need answered by people other
10 than ourselves, payroll, timekeepers, unions, you know, what questions do we need
11 and let us know how you are calculating that or how you would audit that, that's
12 really the key there because each one can be so complex.

13 18:39: January meeting (unintelligible) John and person (unintelligible)
14 didn't we talk about doing this--

15 18:48: Yep.

16 18:48: --all (unintelligible)--

17 18:49: Yeah--

18 18:49: Yep--

19 18:49: Bulletins--

20 18:50: (unintelligible) with the Division--

21 18:50: Bulletins, yeah--

22 18:51: --do that--

23 18:52: (unintelligible) I apologize for walking in late, I couldn't, I was on
24 the phone but I couldn't hear you. We did talk about doing those bulletins before the
25 rule became final by I guess that would be August, and I don't know if there's time to

1 get them all the way to final by the time the rule becomes final, but we I think
2 certainly were intending that we would see, you know, pretty firm drafts by then or at
3 least substantial progress toward those.

4 19:16: Okay. I'm in--

5 19:19: There haven't been any--

6 19:20: Okay (unintelligible) okay--

7 19:21: I think Sue brings up a really good point, though, that providing
8 the Department with examples--

9 19:28: Yeah.

10 19:28: --and getting feedback as part of the bulletin as to how those
11 would be calculated, I think that's a great idea.

12 19:34: I do, too--

13 19:35: That would be so helpful and that kind of plays into what Larry
14 said as well with, you know, exactly what it is that you're looking at as far as when
15 that wage change occurs and not going back all the way to the beginning, but how
16 that would look, how you would calculate that out, very good information that should
17 go into a bulletin.

18 19:56: So we have an issue that addresses that, I think it's issue
19 number four (unintelligible)--

20 20:03: Correct, yeah.

21 20:04: And we're certainly getting ahead of ourselves a little bit, but I
22 need to jump in right now. There's a limit as to what the Department can do and it's
23 unrealistic to expect the Department to respond to every question in advance of a
24 audit to make sure that employers get their calculations right, that's just unrealistic to
25 expect that, there are too many employers and we have too few staff to serve as a

1 consulting service for folks who should be able to do the calculation. We are--we
2 are hel--we want to be helpful, we're going to put together something that addresses
3 people's needs, but it won't be sitting down with folks who actually do the work,
4 people who actually calculate the numbers, so just, you know, and we can--we can
5 address this later on, but I just, people need to understand that the notion that we as
6 a department are going to respond to every calculation question that comes up is
7 just it's just not realistic.

8 21:22: Lou, did you think that we thought you were going to respond to
9 every--

10 21:24: Yeah.

11 21:24: --single thing (unintelligible)--

12 21:25: Well, well, I just--

13 (Crosstalk, not transcribed.)

14 21:27: I just, I just heard--I just heard that before the audit, please
15 check our numbers.

16 21:35: Oh, I--oh, Sue, is that what you were trying to--

17 (Crosstalk, not transcribed.)

18 21:38: That's not what I was trying to say.

19 21:40: Then what are you proposing?

20 21:42: I was proposing we have an example now--

21 21:45: Yeah.

22 21:46: --so just one example of what we're dealing with to give us
23 feedback as to whether the way we're calculating it is correct, not every single one.
24 We have approximately 75 disabling claims a year, we're not talking a huge number,
25 I'm asking for one, for direction from one because we one have available right now--

1 22:10: Well, again we're jump--
2 22:11: --to look at--
3 22:11: --jumping ahead, but my only caution is that, as you know,
4 every situation is different, so getting a response to one calculation may not solve
5 the problem.
6 22:28: Can--
7 22:29: True--
8 22:29: --can you not use the audit to identify where the biggest issues
9 are so you can cover that material in bulletins that hits at least the types of
10 calculations mistakes? That the purposes of an audit is to use it going forward, it
11 seems to me. I'm confused.
12 22:53: Yeah, and I--
13 22:54: The problem we've had is that by the time we get those audit
14 results--
15 22:57: Yeah.
16 22:57: --on our end--
17 22:58: Yeah.
18 22:59: --the rules have shifted again.
19 23:00: Yeah
20 23:00: Right.
21 23:02: So then we're retraining--
22 23:04: Sure.
23 23:04: --redoing how we do it--
24 23:05: Sure.
25 23:05: --and then it's wrong on the next audit.

1 23:07: Right.

2 23:07: Yes.

3 23:08: But--

4 23:08: And we've been fined, so there's a multi-layered problem with
5 that.

6 23:12: And in our position here at the City of Portland is that we were
7 at an advantage where we were being audited when the rule was being changed, so
8 we felt like this is a great opportunity because we're being audited on what it was the
9 old way, now it's the new way, right, so we got in this very big headspace about this,
10 but we felt it an advantage because we could address if there's anything wrong in
11 the old way moving forward with this new rule, but that's where the questions come
12 in and I'm the person, Jeanette and I are the ones doing the calculations, so we
13 need asking questions moving forward is going to help all of us in this room making
14 this rule and addressing an issue we have moving forward so we can be as fair as
15 we can to the worker, I want to be as fair as possible and I wanted to get a wonderful
16 audit, I want--so that's why we're here is to ask these questions moving forward.

17 24:21: Absolutely, and the reason that we did not put out a bulletin yet
18 was because we wanted to wait to see how our rules looked like.

19 24:30: Yeah.

20 24:30: And we also, we don't--we don't want to presume anything in
21 terms of what questions folks might have, so, and we'll talk about this later, but the
22 next step is really to sit down with the folks like you who actually do the calculation
23 and figure out what questions you have.

24 24:52: Well, I've always found the audit (unintelligible) auditing for
25 Sedgwick right now, so if I have a question I go to Barb Belcher and, you know, walk

1 through a payment history with her and that helps to some degree, although again
2 what I find is some inconsistencies when I look at an audit and I see that this auditor
3 found that this was a change in wage earning agreement because hours changed
4 maybe in terms of the number of overtime hours is always there as opposed to
5 (unintelligible), so those are the sort of, yeah, minutiae pieces that--

6 25:23: Absolutely.

7 25:24: --I think we're talking about.

8 25:25: Right.

9 25:26: Absolutely.

10 25:28: And those (unintelligible) address that globally--

11 25:31: Yeah.

12 25:31: --I mean, really I don't (unintelligible).

13 25:35: Well, I've always thought during (unintelligible)--

14 25:37: Simplify your calculation.

15 25:38: Well--

16 25:39: It's still (unintelligible) I'm sorry--

17 25:41: I know that--

18 25:41: --simplifying the calculation and making it still fair.

19 25:42: Yes, I agree, I agree, and I'm always annoying Troy Painter
20 and his wonderful (unintelligible) by, you know, the real person I'm annoying all day
21 with my email questions and if I had his home address I would send him flowers and
22 candy, but the thing is, the thing is it's like I don't want to annoy people. I want to--I
23 want to make the best and most accurate moving forward, I don't want to spend all
24 that money on flowers and candy, but I (unintelligible).

25 26:12: Isn't the average weekly wage calculation subject to litigation

1 (unintelligible)--

2 26:17: Yeah.

3 26:17: --if the claimant disagrees with it, so, you know, that would--
4 how would that work with--who has the final say there?

5 26:25: Well, I've seen a--

6 26:26: You know?

7 26:26: --claim where we had an audit before and then it went through
8 litigation and that was determined not to be correct, ours was wrong, the audit said
9 we were wrong, and then later that was litigated (unintelligible) calculated it a
10 different way.

11 26:39: Yeah, so--

12 26:40: (unintelligible) right (unintelligible) referee once.

13 26:50: So currently our rule is with an average hours method, change
14 in wage earning agreement is accounted for for new wage earning agreement. Do
15 people have a feeling on a way to--is there--is there a desire to change that kind of
16 general framework from what we have now? Or is it that you are just looking for
17 help to manage the current general framework?

18 27:23: If you're asking me, I've already said--

19 27:26: (unintelligible) answer.

20 27:28: I think that should be, I really think there should be examples
21 set (unintelligible) population--

22 27:32: Yeah.

23 27:32: --to look at in that framework to see what (unintelligible)--

24 27:35: Well, Larry, you had mentioned about going back to when there
25 was a change in the wage earning agreement and only looking at wages forward--

1 27:41: No, no, I'm talking about when there's only a change in the
2 hourly rate--

3 27:45: Or, sorry, yeah, sorry, change in hourly rate, so instead of
4 looking at 52 weeks, you'd look at when the change of hourly rate occurred and look
5 forward and, I assume, averaging money instead of hours--

6 27:56: Right.

7 27:56: --wages instead of hours, so that's a different framework than
8 the current framework we have--

9 28:00: Yeah, I will say--

10 28:01: --so--

11 28:01: --that we discussed this at length in January and what we
12 determined is that if it's drastic for both workers and employers if a work is hurt in a
13 low time, then their earnings are going to be significantly decreased. If they're hurt
14 in a high time, then those employers are on the hook for more than they would be in
15 this way, the current method. So I would say we discussed that at length in January
16 and I think both from the employer and the workers standpoint in that room we felt
17 like this was the most fair way for both parties.

18 28:36: That's (unintelligible) to, yeah--

19 28:39: Bill.

20 28:40: From SAIF's perspective that we think that keeping the rule as
21 opposed to the temporary rule is a good thing, that changing it so many times in
22 such a short period of time just adds to confusion and that we figure, sort of figured
23 out how to work with the existing temporary rule and extending that forward as a
24 permanent rule is a way that we know to implement it and can work with our
25 employers.

1 29:14: And that's not to say that, you know, the issues that City of
2 Portland has brought up about complexity aren't there and I think Lou's already said
3 we're going to talk about sort of addressing some of that later in the agenda, and I
4 think and agree with Jess that we talked about this at length and I think we all
5 concluded that the complexity shouldn't be something that then ultimately results in
6 workers not getting--

7 29:41: Yeah.

8 29:42: --enough benefit, so, it's just how we do work through the
9 complexity--

10 29:46: Right, exactly.

11 29:53: Any other--like I said, Bin has an email and then we're going to
12 get to the seasonal worker concerns that have been brought up, but any other areas
13 that you guys want to talk about on the current temporary rule before we move into
14 those areas, just kind of the general framework, any feelings on that?

15 30:10: I'd--

16 30:10: Yeah.

17 30:10: --like to bring up a point for those third-party administrators that
18 have done Oregon and Washington, Washington went through an audit reform and
19 they have very complex wages. One thing that they did that was really helpful is
20 they went through an audit that was non-punitive and created a roadmap for the
21 examiners to look at how they audit, and the audit and the examiners now use
22 those, that roadmap, to assist them in calculation of wages. The other thing that
23 they did is they recognized that because of the complexity that not any two people
24 will necessarily get an audit that for the same, so they put in a five-percent variation
25 on the results, so if it was non-punitive if the average wage was within a five-percent

1 variation the auditors wages. I would like to see us do something like that so that it
2 really creates a learning process for us down the road and also makes it less
3 punitive when somebody is really trying to make an accurate wage and then getting
4 penalized when it's a very minor difference.

5 31:37: So actually, and I sat at the Workers' Comp Advisory
6 Committee for the State of Washington, what it also does is it helps the auditors, just
7 like the employers, and this was for the self-insured employers in the State of
8 Washington, it didn't apply to anybody insured through the fund, it was just self-
9 insured employers, and it helped the auditors also to come to the realization that
10 they can internally come up with three different answers as well to the same
11 complex wage, and I think I've told everybody that the calculations in Washington,
12 they have been looking at them and trying to figure out how to make it easier for the
13 last eight years, eight years since I--six years since I left MLAC, that has been the
14 discussion in Washington since I joined that group up there, so I don't think we want
15 to get into a situation like up there where we're always having to come back to the
16 table to have a discussion, so I think it really makes sense to do this right the first
17 time and make it as less--at the least complex as we possibly can and make sure
18 that we get it right the first time as opposed to having to keep coming back to the
19 table, so I'm glad you brought that up because that is one of my pet peeves about
20 Washington, so, but that is a good thing that they did, and then so they did tier one
21 and then they would not come back and audit that employer if they cleared tier one
22 and they would move into tier two, which was more complex of a scenario as to what
23 they were looking at, so, but...

24 33:24: Okay. Any other comments before we--I can turn it over to Bin,
25 if you'd like to (unintelligible)--

1 33:32: Yeah, sure, no problem, yeah. So I emailed Fred last week
2 about potential concern I had with respect to calculation of irregular wages when you
3 have a worker who had a new wage earning agreement but subsequently he
4 received a wage increase, so that the ruling question is obviously we're dealing with
5 -0025, but subsection (4)(b)(B) and (C), so those two subsections, (B) and (C), if you
6 look at the triggering event of the rule and I give an example, which is let's say you
7 have a fast food restaurant crew member that started working on January 1, 2018
8 making 10.50 an hour, claimant's then promoted to manager--management position
9 with additional responsibilities that came with a pay increase to \$15 an hour on
10 May 1, 2018, then a worker gets a wage increase on July 1, 2018 to 17.50 an hour,
11 then the worker is injured on September 1, 2018.

12 So if you look at the rule, (4)(b)(B) says if the worker began work under
13 a new wage earning agreement in the 52 weeks before the injury, and the carrier
14 should average wages only for the weeks worked under the most recent earning
15 agreement, right? So seemingly that you would average wages from the new wage
16 earn--wage earning agreement as of May 1, 2018, that's when the worker was
17 promoted to manager. But under subsection (C) it says, you know, in event the
18 worker gets a pay increase or decrease, the insurer must calculate the worker's
19 average weekly hours work that pay raise since the new wage earning agreement
20 went into place, but not to exceed 52 weeks, blah blah blah, so not even, you know,
21 seemed like the carrier's now required to average the hours worked since May 1,
22 2018 and multiply by the wage at the time of injury, so, I mean, those are two
23 different methods that could apply, you know, either rule could apply to this worker in
24 that situation.

25 Another concern is under the--under subsection (C), we're going back,

1 we're averaging wages since a new wage earning agreement, but not necessarily
2 when the pay increase happened, right? In this case the pay increase happened in
3 July, which was additional 2.50 an hour, but the wage earning agreement was back
4 in May, so, you know, I think Larry made a point earlier, we really should go back,
5 you know, to the point in time where the wage increase happened, not necessarily,
6 you know, the first event, the new wage earning agreement happening in this
7 scenario, so I think in that case here, you know, the worker's not getting the benefit
8 of two month of, you know, increased wages, so, in that scenario. Does that make
9 sense kind of? Because I'll use it if we have like a whiteboard I can write out, you
10 know, what it means, but essentially there's kind of internal inconsistency between
11 when subsection (B) and subsection (C) should apply when you have an employee
12 who got a new wage earning agreement with a job title, you know, difference into a
13 management position, then it's, you know, it's followed by a wage increase several
14 months later, so I think of, you know, from the carrier's standpoint, it'd be nicer to
15 have more a bright-line rule that says which rule should apply in that situation so
16 there's no litigation and there's no, you know, compliance audit concerns, so... So
17 got any questions about that?

18 37:27: So is it your suggestion that we add the language that's in red
19 to clarify--

20 37:31: Yeah, I think that would make--okay, see, (unintelligible) when I
21 was up there, so, yes, that would make sense. And with respect to sub (C)--

22 37:40: What--

23 37:40: Go ahead.

24 37:43: Oh.

25 37:44: Yeah. So I think, you know, you know, if you look at the

1 language in the rule already, it's the Department says, you know, you must average
2 hours worked on each pay rate since the new wage earning agreement went into
3 place. It seems to me that it's the Department's intent that this rule should apply,
4 right, when you already had a new wage earning agreement in the picture, but it's
5 not very clear, so I think, you know, I think claimants attorney, you know, if you want
6 to litigate time loss, you could argue that either of those should apply and claimants
7 should get a benefit of whichever method would result in the higher rates, so if you
8 put that language in there, there's no question then that's subsection (C) should
9 apply, so there's no argument, right, so, which method should apply to resolving
10 different rate, but with respect to this subsection, though, you know, we're going
11 back, so we're only averaging hours, we're averaging hours at each period since a
12 new wage earning agreement, in my scenario go back to May 2018 when there was
13 a later wage increase in July of 2018, right, so why aren't we going back to July 1,
14 2018 and instead we're going back to new wage earning agreement back in May
15 2018? So before talking about, you know, the worker should get a benefit of the
16 wage increase, it makes sense to go back to when the wage increase actually
17 happened versus when the new wage earning agreement, you know, happened
18 back in May when he was promoted to manager. Does that make sense?

19 39:05: Yes.

20 39:06: Yeah--

21 39:06: Absolutely.

22 39:07: Okay.

23 39:09: Can we have a discussion real briefly based on what you just
24 said, the wage earning agreement. So does that include just a change in wages? I
25 mean--

1 (Crosstalk, not transcribed.)
2 39:20: It's if the worker has new--
3 39:22: New additional.
4 39:22: --additional job duties--
5 39:23: Yeah, so--
6 39:23: --usually it's a promotion or if there's a shift change in hours--
7 39:25: Exactly.
8 39:26: --so--
9 39:27: That's what I thought--
10 39:28: Correct.
11 (Crosstalk, not transcribed.)
12 39:29: Maybe that phrasing is the thing that needs to change--
13 39:33: Yeah.
14 39:33: --first for clarification--
15 39:33: Yeah.
16 39:33: --because a wage earning agreement can mean different things
17 between different--
18 39:40: Yeah.
19 39:41: --employers or types of employment.
20 39:42: Yeah.
21 39:43: Absolutely.
22 39:44: I think--
23 39:45: So--
24 39:45: --the new wage earning agreement is defined (unintelligible).
25 39:52: Yeah.

1 39:53: It means that it's--this is not a new wage earning agreement--

2 39:56: Correct.

3 39:56: --(unintelligible) middle of you have to go back to the
4 (unintelligible)--

5 39:59: Yeah.

6 40:00: --so it's just that (unintelligible)--

7 40:01: It's a little confusing (unintelligible)--

8 40:02: (unintelligible) to have (unintelligible).

9 40:11: Yeah (unintelligible) and with the example I brought today of
10 the City of Portland, such as a worker that's working for [four] regular wages, that's a
11 worker working out of class, that's a worker subbing for a manager and in our last
12 audit that was an issue brought up by the lovely auditors, and so we need--we need
13 to have some clarity on the wage earning agreement because in that subsection,
14 absolutely.

15 40:48: Well, and I'll clarify that, I made a mistake, and Julie actually
16 pointed this out because, you know, this is not, you know, my email wasn't a
17 hundred percent correct, because I thought, you know, if you apply subsection (C),
18 that's the way I was thinking you're going back to time of date, you know, the
19 increase increased, but really Julie pointed out under the existing rule, really you're
20 going back to the new wage earning agreement, so, I mean, even for me, you know,
21 because I've been doing this a long time, and that to me was confusing because my
22 first instinct was why are you going back to time of increase/decrease, right? You
23 wouldn't, why would you go back to when he was promoted? That doesn't make
24 sense. So, so, you know, Julie had pointed out and so, you know, it is a little bit
25 confusing in that scenario, so...

1 41:29: So wage--so the wage earning agreement is not just a
2 promotion or demotion, is that what you're saying?

3 41:35: No, it is, but--

4 41:36: Okay--

5 (Crosstalk, not transcribed.)

6 41:40: Well, under the current, the temporary rule, you go back to May
7 and average out the hours the worker's worked since May, but the interesting part is
8 the worker, you know, in the scenario I give received a subsequent increase in July,
9 so, but we're still going back to May to average the hours and multiply by the--by the
10 hourly rate at time of injury--

11 41:59: By 17 (unintelligible)--

12 42:00: But why aren't we going back to, you know, the time of
13 increase, which was July, so I think the worker will get the greater, you know, greater
14 rate in that scenario, so--

15 42:11: Yeah, that's where it's confusing for us, too, because a wage
16 earning agreement when we had our training by the auditors said it's a change in
17 duties, so could it--couldn't--I guess the definition of wage earning agreement, 17.50
18 could be the wage earning agreement in someone's definition, well, that's
19 (unintelligible)--

20 42:31: Well, no, the rule's pretty clear that a pay increase or decrease
21 alone is not a change--

22 42:35: Okay.

23 42:36: --it's not a new wage earning agreement, it's a change in the
24 wage earning agreement. So I don't think that part is confusing.

25 42:43: Okay.

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42:43: So--

42:44: The question is how far you go back (unintelligible)--

42:45: Correct, correct, correct, right.

42:47: Okay.

42:47: Correct.

42:49: A group of us did submit comments to the Division regarding this earlier on--

42:57: Yeah.

42:58: --and I think what we said is clarification (unintelligible) including but not limited to various pay categories such as overtime pay, shift differential, (unintelligible) and between (B) and (C) in section (4) does not require simultaneous application of each subsection when determining the average weekly wage, rather, allows one or more subsections to be used when appropriate to calculate the average weekly wage for workers irregular earning, and we did submit that to the Division early on when we got a draft.

43:27: And SAIF submitted some language just prior to the temporary rules being drafted--

43:32: Oh, okay.

43:32: --sort of, you know, what we thought was maybe a simpler way, and I'm not going to read it because it was--but it was in an email to Fred on February 5th, the proposed (unintelligible) copies of it (unintelligible)--

43:47: And if I could get into my network, but I'm not sure I can get into the network from here to get my email--

43:51: But I thought, I thought (unintelligible)--

(Crosstalk, not transcribed.)

1 43:56: I have a question on wage earning agreement. What about
2 contracts? For example, teachers. So there's not a change in their responsibilities,
3 but they do have a contract every school year and they're not guaranteed
4 necessarily to be rehired, so is that considered a new wage earning agreement?
5 Because we have litigation on this, that's why I'm asking, so--

6 44:22: There is some litigation--

7 44:23: I'll just throw it out there from a practical standpoint is how we
8 apply it, we view teachers as regularly employed, and so when they have a new
9 contract, have a new regular rate, and so we give them the benefit of that regular
10 rate if their injury is post that, they may also have irregular earnings, and if the reg or
11 irregular earnings hasn't changed or has changed, then we would average them out
12 to the irregular earnings plus the new base rate for the regular earnings and we use
13 a combination of both--

14 44:57: But you're not going back contract years?

15 45:01: It's a change in the wage earning agreement, but with a regular
16 rate you use the regular rate at the time of injury, and so if they're injured in
17 September and you had a new monthly rate increase, that's their regular rate at that
18 point. They might also have irregular earnings if they have other activities that are
19 paid on an hourly basis, and so if that's the case, then we'd go back and average out
20 all these hours of all of those various irregular earnings at the rate at the time of
21 injury to bring it to current.

22 45:38: Well, and I would just throw it out there, I don't know that ALJs
23 are proficient in calculating time loss necessarily, so if you're litigating this, and it's
24 very complicated, you've got your attorney and claimant's attorney arguing over the
25 calculation method, how much training have they had when we even can't come to

1 an agreement with the auditors, you know, so how much training there, and so, you
2 know, like we had--ended up paying a \$6000 attorney fee on that or maybe it was
3 3000, something like that, but it's an issue.

4 46:10: It sounds like we could really use some, the employer
5 community could really use some clarification around this and I know we did send
6 that memo at one point, but what does the Division think about revisiting that?

7 46:24: So that is an issue on the issues document that we're going to
8 get to as far as--

9 46:28: We're going to get to it? Sorry--

10 46:30: Skip ahead, but there's a couple things I want to address that
11 were brought up--

12 46:33: Sorry.

13 46:33: --in this discussion.

14 46:34: Sorry, sorry.

15 46:36: And so I think it's helpful to note that, as we've mentioned, new
16 wage earning agreement is a defined term in the rule, and I'd like to just touch base
17 on what people think the intent should be in looking back at calculating somebody
18 who falls under (C) of this rule, so in the example that Bin had given, if somebody
19 gets promoted and then they have a boost in their pay, let's say they have a COLA
20 increase or something like that, the average of hours, the way that the rule's
21 currently written and the intent would be to go back to when the new wage earning
22 agreement went into place, that's a defined term, so that would be when they were
23 promoted to manager, for averaging the hours, and so are people--do people agree
24 with that general framework to average the hours back to when the new wage
25 earning agreement started?

1 47:35: Well, I think it should go back to when the pay increase was,
2 like I had mentioned earlier.

3 47:39: Or, you know, just use that rate in the hours and be consistent
4 with the way they do it with people that...

5 47:48: So at the time of injury, you know, you must (unintelligible) the
6 guy will be making 17.50 an hour from the benefit of the July 1st increase, right?

7 47:55: Yeah.

8 47:56: So let's say he's hurt September 1st, you know, why wouldn't--
9 why wouldn't we average out the hours he worked under the highest rate, why do we
10 go back to (unintelligible)--

11 48:05: We use the hours all the way back to when his job changed
12 (unintelligible)--

13 48:08: Sure, yeah, yeah, right. Right--
14 (Crosstalk, not transcribed.)

15 48:15: Right, but let's say, let's take the new wage earning agreement
16 out of this, you know, let's say, you know, the worker only had a pay
17 increase/decrease, but you're going back to when--like, okay, I see what you're
18 saying--

19 48:26: Going back 52 weeks--

20 48:27: You're still going back--

21 48:27: And the difference between the hours--

22 48:28: Okay.

23 48:28: --and the rate apply to the hours.

24 48:30: Yeah. Hey, Keith, are you still there?

25 (Crosstalk, not transcribed.)

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48:41: What do you think about that, Keith?

48:45: This stuff is making my head spin, you guys.

48:50: Right. Well, to me consistency--

48:55: So I'm not sure I really have form--

48:56: Right.

48:57: --I'm not sure I've really formed an opinion on this--on this whether it's confusing or not. It seems like it's all confusing, so...

49:06: Well, I think consistency dictates that, you know, we go with the period of hou--period of time that he worked at a certain rate, right, so if he worked 17.50 an hour--

49:16: I agree.

49:16: --two months before injury, so why don't we average out the two months versus going back to the time he worked lower rate? So to me it's more convoluted. You know, you're like mixing hours, mixing time when he was working, making 15 and 17.50 an hour when you could just focus on, you know, the time he worked 17.50 an hour.

49:36: The issue with that, though, is that the--if the worker is hurt in the low time, as Jess had mentioned, then--

49:42: Yeah.

49:42: --the worker's receiving less, or if he's hired after working, you know, six weeks at 80 hours a week, 70 hours a week, then the employer is paying way more than what they would if you averaged the hours out times the rate in--

49:57: Yeah, so assuming--so assuming that we're going to use average hours for the 52 weeks that the person didn't have a job change, wouldn't it be consistent to do that for the person that had the job change use the hourly rate--

1 50:09: From the change job day--

2 50:10: From the job change period, right? That's (unintelligible)--

3 50:13: So why do we--why do we go back to the time the new wage

4 earning, why wouldn't we just do the 52 weeks?

5 50:18: (unintelligible) change because, you know... That's all

6 (unintelligible)--

7 50:25: You could consider it more like the job change would almost

8 just assume or think of it in the way of changing employers, so you go from being a

9 cook at employer A to being a manager at employer B, we're only going to use

10 employer B hours.

11 50:41: Okay.

12 50:42: So even though it's (unintelligible)--

13 50:44: Yeah, that's how I understood it--

14 50:44: Yeah--

15 50:44: --it's the same concept.

16 50:46: Yeah.

17 50:47: I mean, at the city we have a program called retired rehired and

18 so, I mean, whoo, let me just say that and we have this huge, especially with pay-

19 outs with moneys they earned, vacation accruals, all those things, which I think I

20 emailed Troy about the other day, but anyhow, but that, if we went back, that's huge

21 amounts of money hourly, and they deserve that, they work hard, but they started a

22 new contract at the city with a new rate and we just go back to the new job retired,

23 they take a week off literally, and go back to being a police officer, and that's where

24 we go back.

25 51:34: And so they haven't had a real change in wage earning--

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51:37: No.

51:37: --agreement, but yet the amount of money, so you can just imagine, you know, a thousand hours of, you know, or 500 hours of vacation paid out--

(Crosstalk, not transcribed.)

51:50: --new wage earning agreement they come back--

(Crosstalk, not transcribed.)

52:00: Now, they're still police officers--

52:01: Tell the auditors (unintelligible)--

52:02: Yeah.

52:03: Unless they're retired and rehired and break them one--

52:04: Yeah, yeah--

(Crosstalk, not transcribed.)

52:07: No, I'm sorry, I was trying, I was--that was what I was (unintelligible) yeah.

52:22: Are not under the--

52:23: Yeah, they're not--

52:24: --Workers' Compensation Act.

52:25: Some of them are, for some of them--

52:26: Thirty-six months of the employment, there are police and fire and then retired retirees and their hours (unintelligible)--

52:35: (unintelligible)

52:36: Yep (unintelligible) complicated.

52:39: Well, and I think one of the things that occurs to me as I'm listening to all of this is that we always have to keep in mind that as employers, we

1 talk about all of these various (unintelligible) that each individual employer brings to
2 the table, and the Workers' Comp system is kind of superimposed on all of that, and
3 so what we're trying to do is find a way that we can best administer the system and
4 have it be fair for injured workers, and there's going to be and it's messy, it's just
5 messy and--

6 53:13: Fred.

7 53:14: --yeah, I think that--I think that this is a really, the temporary
8 rules are a great process, I mean, great way to get there, I think (unintelligible) I'm
9 going to back to what I said once before and Lou alluded to, the idea of having some
10 technical group get together and give people, I don't know, I think John Rockowitz
11 (phonetic) commented as saying kind of like an IRS instruction, you know--

12 (Crosstalk, not transcribed.)

13 53:47: But I think that I'm not sure that this change actually is for
14 (unintelligible) section actually going to make it any better, but I do think we need to
15 make sure that we're not using wage earning agreement that doesn't--isn't actually
16 defined by the definitions, you've got to define, you can't use it with another--as
17 another meaning.

18 54:12: Yeah.

19 54:12: Yeah.

20 54:13: Yeah.

21 54:15: (unintelligible)

22 54:17: Pardon?

23 54:17: Does that mean it should be a capitalized term so that
24 everybody knows it's a defined term?

25 (Telephone noise.)

1 54:41: Any other comments before we move on to seasonal worker,
2 issue, questions, concern? Okay. So I'm going to move on to issue two, which is
3 two different stakeholder concerns that were presented, both in relation to seasonal
4 workers, so under the current rules there's no special calculation method for a
5 seasonal worker. If it's irregular wages and they're employed four weeks or more,
6 then the wage is determined by averaging irregular hours since entering into that
7 new wage earning agreement, not to exceed 52 weeks, unless the worker had a
8 change in their wage earning agreement due only to a pay increase or decrease
9 during that period. If that happens, then you're going to average hours since the
10 new wage earning agreement went into place, but not to exceed 52 weeks.

11 There is an extended gap rule, extended gaps of more than 14 days
12 are excluded from the calculation if the gap was not anticipated in the wage earning
13 agreement, so the examples that came in from stakeholders related to school
14 employees and wildland firefighters, so for school employees there's numerous
15 anticipated gaps throughout the school year, they have different breaks that are
16 planned out ahead of time, so if the worker is an irregularly paid worker, so if they're
17 in regular wages, that's not part of this picture, but irregularly paid worker, maybe
18 they're getting an hourly rate and they don't get paid during those gaps, the gaps are
19 included in the calculation because they are anticipated.

20 The other issue that or the concern that came in was with regards to
21 wildland firefighters. They may experience unanticipated gaps in employment
22 throughout that fire season that would be excluded from the calculation, so if they,
23 you know, have a month off not working a fire because there's no fires, then, and if
24 it's not anticipated when they formed their agreement, then it's an unanticipated gap,
25 and so by excluding that unanticipated gap in the calculation, their rate of temporary

1 disability is higher and there's a concern that was--or presented to us about the
2 current method allowing the worker to be compensated as if they were continuing on
3 the fire incident for an undetermined amount of time.

4 So we provided copies of the concerns that were submitted to us to all
5 of you as well, and the issues document also outlines some relevant statutory
6 language which should be considered when analyzing the issue. Specifically there's
7 only one rate of temporary disability that is used in the calculation, and once that
8 worker's weekly wage is identified, the worker's going to get up to two-thirds of that
9 amount year-round when their claim is open and time off work is authorized unless
10 there's other criteria in statute that would cease that payment, which is discussed in
11 the issues document. So with all that said, I wanted to open it up to everyone to
12 discuss your reaction to the seasonal worker concern and get your feelings on
13 whether the rule should have some type of special carve-out for seasonal workers
14 and, if so, what would the goal be in creating that?

15 57:52: Bob Estabrook, Oregon School Employees Association, so we
16 were the ones who brought up the issue about school employees and the concern
17 for us is the situation where, for example, you have somebody who gets injured on
18 the job in January and their rate that they're eligible to receive is going to be brought
19 down potentially by as much as 30 percent if that's a worker who during spring
20 break, Christmas break, summer break is not able to work, and that decrease in
21 what they're eligible for then is our point of concern. Understand, you know, yes, if
22 they were injured in June, they would be eligible for what is maybe an artificially high
23 rate in the summer when normally they wouldn't be able to work, but our concern is
24 for those folks who would be planning on working, you know, fall through spring
25 through the summer, that their rate shouldn't be artificially held down by these

1 anticipated breaks that they have when they would work if they could, but the issue
2 is the employer is not in operation, so they don't have an opportunity to work those
3 hours.

4 59:05: So are they being comp--they're getting compensated for a
5 temporary disability outside that 37 weeks if the injury occurs before one of those
6 breaks, is that right?

7 59:15: So what Julia was saying, they've got a rate that they would be
8 eligible for and that is, so during, you know, say, summer break when normally they
9 wouldn't be working, they still get that rate--

10 59:27: Right.

11 59:28: --good for that employee, for the employee who's injured in
12 January and then spends six months, they're actually at a rate that is below what it
13 would be if we didn't factor in those breaks.

14 59:41: So I think this might be a district-by-district thing, but are people
15 being paid for 52 weeks or 37 weeks in the situations you're talking about?

16 59:51: So generally, generally we've got folks who are at 37 or
17 (unintelligible) two--

18 (Beginning of second audio file.)

19 00:00: --weeks, there are some districts that do have a 52-week year
20 that they pay, so you get essentially the same effect for somebody's regular pay as
21 what we're talking about here for Workers' Comp, but that's not the standard, most
22 districts do not do a 52-week pay scheme for the classified employees.

23 00:22: And so your concern is for people that are not able to work at
24 some other job during that break? Because my understanding, and I am far from an
25 expert here, but my understanding was that those people typically will look for and

1 take another job during the summer unless they have some kind of temporary
2 disability because of the job they were in for which they are being compensated.

3 00:43: Right, I think the--I think there's a little bit of a disconnect
4 between the summer when they may plan for a separate job versus your spring
5 break, your Christmas break when you're not going to take a job for a week to offset
6 your income, so you're just going to have that time count against you for the
7 Workers' Comp calculation--

8 01:03: So what--you're not so concerned about that summer break;
9 what you're concerned about is diminishing the time that's calc--the weeks that are
10 calculated by spring break and Christmas break?

11 01:12: We're con--

12 01:12: Three weeks or whatever?

13 01:13: --we're concerned about all of the breaks bringing down what
14 that rate would be. I think it is more understandable looking at something like the
15 summer, but what I'm saying is the issue that you get is at the 1st of the year you've
16 got a 37-week work year versus a 52-week, that is a significant decrease once you
17 average (unintelligible) pay during that time. Now, they've got additional pay during
18 the summer break, but not everyone is going to and we don't want to have that time
19 counting against you because (unintelligible) don't.

20 01:48: So what would be the basis for, what do you folks suggest for
21 the base (unintelligible)?

22 01:54: So I think we're really comfortable going in a couple of different
23 directions, one of the maybe easiest things is if you average the wages over the
24 weeks that are actually worked rather than just saying it's going to be over 52 weeks,
25 because if somebody is not able to work because their employer is not in operation

1 and not because they chose not to work, then having that time count against them
2 wouldn't make sense, but it may be simpler to just say, hey, folks in a particular
3 category of however narrow you need to make that word to make it not, you know,
4 step on other people's toes to essentially create a special calculation that would
5 discount some of those anticipated breaks--

6 02:48: Are most school employees on a contract?

7 02:52: So most of our employees, they do have a contract, I think it's
8 similar to (unintelligible)--

9 02:58: Right, so would it be equitable then if we only pay the contract
10 dates? Because that, I mean, to me that seems the most fair, and I don't know if
11 everybody agrees with that, but it takes all of the confusion out of whether you're
12 paying for a Christmas break, spring break, summer break, and the--at least for us
13 the majority of the people missing time are not on summer; they're during school,
14 and so they are at a lower rate than they probably should be compensated at.

15 03:29: I'm guessing your proposal is just narrowed to the school
16 employee situation, you're not talking about all (unintelligible).

17 03:35: No, I'm just talking about schools.

18 03:39: So at the school board, has the school board association been
19 involved in this conversation?

20 03:46: I haven't seen one--

21 03:47: They know that it's going on, I mean, it's--

22 03:49: Yeah--

23 03:50: --probably don't know what's going on.

24 03:51: I mean, they're the employer here, I'm--

25 03:53: I think Lori's actually trying to get on the phone right now, so

1 (unintelligible) the--

2 03:57: Okay.

3 03:57: --(unintelligible) so--

4 03:58: (unintelligible) Bill.

5 03:59: Yeah, I guess one of my concerns would be what if somebody
6 goes to disability, becomes disabled in July, if we're talking about summer break, I
7 mean, what then?

8 04:10: Yeah, and I think, like I said, I understand it from that
9 perspective and you may need to do something more complicated than just say, oh,
10 it's going to be a 37-week year as opposed to a 52-week year. I get that the summer
11 is potentially a different situation, you do have a little bit of benefit there, but I think
12 our point of concern is the majority of the year when folks are in school, they should
13 be working and their rate is being artificially deflated by having the summer and
14 those other breaks count against them--

15 04:42: So I don't really think it's an artificial deflation because, as far
16 as I understand, those people understand how many weeks they're going to be
17 working, how many weeks they're contracted for or whatever when they take the job.

18 04:52: But their time loss rate is lower, it's not based on the number of
19 days they're working; it's based on a 52-week.

20 05:00: I understand that, but they understand, they understand when
21 they take the job this is not necessarily going to be working all 52 weeks and they
22 could be able, they are able to go out and get another job for that big portion of the
23 summer weeks.

24 05:12: I don't think that's quite true, though, because when they take
25 the job they're anticipating that they're not going to be injured, that they're actually

1 going to be working, and then if they are injured, the rate that they can get, instead
2 of being just two-thirds of whatever their expected salary is, it's actually even lower
3 than that because it's decreased because these breaks count against them.

4 05:35: I think the intent is, if you look at it, paying the two-thirds rate, if
5 someone is injured for a year, that their take-home pay is similar to what they would
6 have earned in that year--

7 05:48: Yes.

8 05:48: --as far as take-home. Unfortunately some people do have
9 those I need to get a summer job or a second job, but that's really a small minority in
10 the overall concept.

11 06:02: I think what bothers me (unintelligible) is these workers are not
12 going to get a second job for two weeks in spring break and--or one week in spring
13 break and two weeks at Christmas, I think (unintelligible) summer break is a different
14 situation, but is there a way to not count those three week, three weeks
15 (unintelligible) against them, because they can't seek alternative employment in that
16 situation.

17 06:29: So we are talking about a three-week period, basically.

18 06:33: Option (unintelligible)--

19 06:35: Because if we're talking about all summer, that's a lot different
20 than three weeks.

21 06:39: Right, well, what we're talking about is that at any point during
22 the year, the rate that these school employees are going to get for Workers' Comp is
23 not necessarily what they're actually being paid--

24 06:51: I understand that.

25 06:52: --it's skewed by--

1 06:53: I understand, but are we talking three weeks or are we talking
2 all summer, too?

3 07:00: Isn't summer your big concern? It's the long break, right?

4 07:05: I have a hard time believing that you're concerned about three
5 weeks.

6 07:07: Well, we're--what we're concerned about is the cumulative
7 effect of those breaks because it does get you down to like a 37-week year versus a
8 52-week year, so that really brings down the average--

9 07:17: Got it.

10 07:17: --I'm sorry, I'm not trying--I'm not sure I'm entirely tracking.

11 07:20: That's okay, I think I get what you're saying, thank you.

12 07:37: Any other thoughts on seasonal workers? Like I said, one of
13 the other issues brought up was the flip side of the firefighters who have their time
14 excluded, so there's our--their rates were higher in the calculation unanticipated gap,
15 but any thoughts on any fixes to the rule that people think could help with these
16 situations, what that would look like?

17 08:03: So before we got into any fixes, I really hate to continue that
18 conversation without the School Board Association, because this is sort of their
19 bailiwick and I could sit here and express my concerns, but I'm not a stakeholder.

20 08:18: Okay.

21 08:22: Well, and so, full disclosure, this is not my primary issue; I'm
22 sitting in for one of our other staff today--

23 08:26: We know, you're doing really good. I think we both are.

24 08:33: My understanding is that OSBA and (unintelligible) as well are
25 well aware of the issue and we've communicated with them, and whether they're

1 able to participate today, I don't know about that.

2 08:47: This issue also impacts (unintelligible).

3 08:50: Right.

4 08:51: I'm sorry, what did you say, Jess?

5 08:53: OEA also can't be here today, but they've been in touch
6 (unintelligible).

7 08:58: I--you know, we all talked about how complicated the system is
8 and I guess I think SAIF would, all due respect, urge us not to make it more
9 complicated than it already is, yeah, without really careful consideration. The
10 seasonal worker rules were made with the--with the understanding that there is
11 again some workers who were going to make more than, it was intended to give a
12 balance.

13 09:39: So, I'm sorry, I came in late, but I got here in time for this issue.
14 I'm Joe Kooley (phonetic) with KPD Insurance and I work with the NWSA, the
15 National Wildfire Suppression Association, where this issue on average weekly
16 wage comes up with the whole association every year with a worker returning to
17 light-duty making more than maybe the owner of the company, so are there no
18 recommendations to, once the work is done and they're still on light-duty, but once
19 the work is completed and that work is no longer available, that overtime is no longer
20 available, there's no easy answer to scale that wage back because the work is no
21 longer available? So that--we really do have situations where employees are
22 making more than the owner of the company for an extended period of time on a
23 serious injury, and so I know it's very convoluted and I totally get that, and
24 sometimes there's no easy answer, but is there a path forward for this discussion or
25 is there--if there were recommendations, you know, if not here, where do we take

1 that? Because this happens every year and I know that it happens other
2 associations and other districts, but it's just intrinsically wrong.

3 11:03: Well, I--you know, I guess--I guess the question sometimes
4 becomes if someone gets hurt during a short season and they can't go work
5 someplace else, so, you know, that's--I think that's--so that's part of the problem, and
6 then when do you start scaling back the work--

7 11:26: When the work is done. So, for instance, this person could
8 work two months, work a lot of hours in that two months, might be their first two
9 months ever working in this industry, two or three months of a lot of hours, they
10 become injured, they have their average weekly wage calculated, it's this big number
11 because that's what they were making, and then the fire season ends, and
12 everybody in that industry stops working those hours, everybody but this--these
13 injured people, and it's an issue and it's an issue on a couple levels, not just
14 because we don't have the work available any longer, but there's no incentive for
15 that employee to get back to work, they're disincentivized by the human nature of
16 getting paid a lot of money, the minute they take work somewhere else or take light-
17 duty somewhere else, then that wage stops, there's just no incentive for them to get
18 back to work, and we all know that that is not a good system, so I guess if anything
19 we could take from here, what--where do we go with that? I can't just ignore that
20 rule forever--

21 12:32: I have an odd idea. Some areas for especially just with the
22 idea of temporary and seasonal workers, because it's an issue with temporary
23 agencies also, looking at not just this job, but what did you earn last year? Provide
24 us your W-2s, your information for what you reported to the IRS, what did you earn
25 in the last 52 weeks or in the last year from all of those seasonal and temporary

1 jobs? And using that as a base rate.

2 13:10: Yeah, I mean, there's a lot of teachers, for instance, will u--will
3 do this in the summertime, substitute--

4 13:17: That could certainly be summer work--

5 13:21: Yeah. But in cases where there was no (unintelligible) there's a
6 lot of these people who work and then they'll go and when the winter comes, they'll
7 go be a ski lodge instructor or something, so there is income, but it's nowhere near
8 that. I mean, I don't know what would be wrong with that, I don't, but--

9 13:41: Giving the wages?

10 13:44: Well, they--

11 13:44: And--

12 13:45: --you know, I've got to file my taxes, I've got be able to find
13 them from somewhere, let me get you my W-2s.

14 13:51: And calculating a rate that's based on work with multiple
15 employers, because we charge--SAIF charges employers based on the payroll, so if
16 somebody worked, you know, we have a policy with somebody and it's over that
17 worker's working there for three months and then they go to work for somebody else,
18 somebody else is paying for the premium at that point if it's insured with another
19 insurer or even if it's another one of our insured, the employers are being charged
20 differently, and so if you're going to take the wages like (unintelligible)--

21 14:33: I'm just thinking it may--

22 (Crosstalk, not transcribed.)

23 14:40 -- years that are going to down, but maybe others that are going
24 to go up, depending on the type of jobs.

25 14:44: Just out of curiosity, are you suggesting that that average

1 weekly wage (unintelligible) entire time? Because, I mean, if they get hurt in the
2 very beginning of the fire season--

3 14:52: No, no.

4 14:52: Okay.

5 14:53: No, they--when the work is no longer available, when they're no
6 longer losing money because of their injury, because the work's no longer available,
7 that needs to be scaled back at that point in time. I mean, that work's not available
8 anywhere, they've never made it anywhere else, they won't go make anywhere,
9 they're not missing an opportunity to make it anywhere else because the fire season
10 is over and nobody's working those hours any longer. They should make something
11 and it should be fair and equitable, but to be paid this gross amount because of
12 those hours in that short period of time for an extended period of time on a serious
13 injury is disincentivizing and it's not fair.

14 15:34: How often do you--does this actually come up for you?

15 15:37: Well, we have an employer here--

16 15:37: I mean, you said one, like one worker a year, is it--

17 15:39: Well, it would be--well, because it's--there's a lot of claims in
18 that industry, it happens every year multiple times--

19 15:48: I would imagine because it's a dangerous industry, right, that
20 you--

21 15:52: Well, it's not really, I mean, it--because every claim, every big
22 incident gets put in the paper, it's not as dangerous as logging and the rate's much
23 less than logging--

24 16:01: Logging.

25 16:02: --I mean, there's a lot of industries that are more dangerous,

1 trucking--

2 (Crosstalk, not transcribed.)

3 16:05: But there are several instances each year where in the fire
4 season it happens and then they may be on light-duty for six, eight, ten, twelve
5 months after that, making more than their supervisor every instance, and in some
6 instances more than the income that the owner of the business is taking, and we've
7 had this year and Dawn Sells can attest to that at the end of the table there. And
8 this is--I don't have a dog in this fight because I'm a commission-based sales guy,
9 you know, and I work for SAIF and I--and it's more of an issue of what's equitable,
10 what's fair, and I'm not talking about doing anything to an injured employee ever that
11 would be unfair. They are cutting a fat hog in this instance and they're
12 disincentivized to get off of light-duty and get back to work.

13 16:52: I guess I feel like, you know, with your doctors and everybody
14 else--

15 16:55: Oh, then--

16 16:55: --then your system would help with incentivizing appropriate
17 (unintelligible)--

18 16:59: Well, and that's--it's that's a little bit of a rosy-tinted outlook
19 because I work--I live in this world and a disincentivized employee with a doctor can
20 go on for very great lengths of time versus, and I see it all the time, a motivated
21 employee gets back to work much quicker than an un, and they're unmotivated by
22 the dollar--

23 17:19: Okay--

24 17:19: --which is a real (unintelligible) problem--

25 17:21: --I'm just going to jump in here, I think a lot of us come to this

1 table with very (unintelligible) perspectives and throughout this whole process we
2 have maintained some decorum and not impugning other people's motives and I find
3 it particularly troubling that now two or three times you've said that workers are
4 incentivized from coming back to work, that may be your experience, but let me tell
5 you from my experience that when workers are hurt they most likely want to go back
6 and have some integrity in their lives and make a paycheck--

7 17:45: Absolutely, that's a fact--

8 17:46: --so--

9 17:46: --I'm not impugning anybody, I live in--

10 17:47: You have three times now--

11 17:47: --a world that's different from yours--

12 17:48: --said that workers are incentivized by making more money--

13 17:51: --I'm saying the--

14 17:51: --than (unintelligible)--

15 17:51: --human nature is human nature, this is not impugning anybody
16 at all, it's about trying to do what's right, I don't know why you're taking that position,
17 that's foolish, that's (unintelligible). Sorry for that. That's not my point. My point is
18 strictly that the rules as they are are not fair and equitable. I don't know why you
19 don't agree with that--

20 18:19: Well (unintelligible)--

21 18:19: --because I don't have, I don't make a dollar on this--

22 18:21: (unintelligible) come back.

23 18:25: I guess I--there's a system in which we're really sort of trying to
24 work together by not making things more complicated, I understand your concern,
25 though could be wrong, and if you have (unintelligible) one employee who's telling

1 you that, then the assertion is because I--I represent construction workers, they're a
2 seasonal system, too. We have a different rule for a lot of the workers that I work
3 under that actually, you know, doesn't give as involved in this, but the idea, again I
4 talk to injured workers every day, you know, and so it's like sometimes where they're
5 having issues with the system and I'm referring them to people that can help and
6 telling them to call the ombudsman and things like that and I have never run into
7 anybody who is not anxiously trying to get back to their regular life, and I understand
8 that maybe your system is different, but it's frustrating for people whose job it is
9 representing workers to hear that.

10 19:13: This is not at all about injured employees at all and I'm sorry if I
11 made it sound like that, and if I use disincentivizing and that rubs somebody the
12 wrong way, that is not the reason we're here, but we're here because the rule is
13 written where this person will make an inflated wage when that work is no longer
14 available, anywhere for that matter, and the idea of going 52 weeks back and
15 looking at other employees is a great idea and it's not about impugning people or
16 saying that it--but when employers come to me and say, "Joe, please go to the
17 rulemaking committee, please have this looked at, we're paying these people this
18 inflated average weekly wage when the work has no longer been available for
19 extended periods of time," let's take the impugning thing off, let's just look at that
20 issue, and there should be an answer to that. Is there not an answer to that? You
21 keep shaking your head like there's just no way we should ever address this. I don't
22 understand that.

23 20:07: Says he didn't have a dog in the fight, lawyers should ask him
24 (unintelligible) that.

25 20:12: Whoever is on the phone, we couldn't quite hear you. Can you

1 say that again? You there?

2 20:22: That's okay.

3 20:22: That's okay? All right.

4 20:24: So is it possible that this particular issue really belongs maybe
5 in the return-to-work as far as, you know, as far as they don't have light-duty with
6 you and maybe we--this would be better put within the return-to-work rules on having
7 different types of programs related to seasonal workers to help them get to work
8 somehow and I go back to my experience now at length in Washington where they
9 actually are looking at ways to get workers back to work and are incentivizing
10 vocational counselors and others to look at injured workers like what you're talking
11 about to find other work for them light-duty, so with--outside of the industry perhaps
12 that they were injured in, and maybe as opposed to looking at wage calculations,
13 that would be something as to, not today obviously, but to look at how we look at
14 return-to-work for the seasonal employees where we could, you know, make more
15 opportunities available to them because it's they're having a lot of success in
16 Washington doing that, which for years and years I may have impugned Washington
17 and some of the crazy things they do, but I will tell you I actually am very impressed
18 with what they've been able to do with return-to-work, I get it because I have to say I
19 worked in, nobody probably would believe this, but I did in summers during college
20 work on fire crews, so I totally get it, you know, you want it, I think they do want to
21 get back to work, I wanted to get back to school, I can't imagine if I wouldn't have
22 been able to, however, I don't think that that's the discussion in here, I think it's a
23 different discussion because I think the worker does deserve the wage calculation
24 based on what they were making at the time they were injured, that's a philosophical
25 shift in how we calculate wages, and I totally get it, I totally--

1 22:35: No, I (unintelligible)--

2 22:35: --that would have been nice to make that kind of money all the
3 way going back to school because (unintelligible)--

4 22:39: So that's a good thought, but there is light-duty available for
5 these people and they're--and they're putting them on light-duty--

6 22:46: No, I understand it's when--

7 22:47: --and if you've got a third party--

8 22:47: --the forest, when the forest--

9 22:48: --if you've got a--

10 22:48: --when the forestry season ends--

11 22:48: (unintelligible) they still keep them on in the shop and they find
12 work for them, but if you find a third party and they go there like in Oregon you used
13 to be able to send them to Goodwill and help with sorting, but that really no longer
14 exists in Oregon, in California they do that, they'll find a third party and put them
15 there, so we employ them, they've got good work, but you're still going to have offset
16 what they pay them up to their average weekly wage and we're still back to that
17 issue of an inflated wage, and I only bring it because I have a dozen employers that
18 ask me to--

19 23:20: Well, and I think, you know, the goal at the end of the day, and
20 this is I speak to this issue nationwide at conferences, is to get people back to their
21 regular work, so this is a work issue, not a wage issue, it really is a work issue and
22 trying to get that person as you said incentivized to move forward and to get them so
23 they are not on time loss or temporary partial disability to make up for the overtime
24 hours, at the end of the day the goal by everybody in the industry is to get people
25 back to work and at medically stationary and so they can move on with their life, and

1 I do think with all due respect that is a different discussion than this, I can
2 understand, though, how it feels to be in that situation, as Diana said, I'm in the
3 construction industry so we do see some of that where it's very difficult, but then at
4 the same time the end--the end goal that you're speaking to, you want them to get
5 back to full-duty status--

6 24:24: Every time--

7 24:24: Yeah.

8 24:24: --and we do a very good job of that, it's just if it's elongated--

9 24:28: Yeah.

10 24:28: --it's a year, year and a half--

11 24:29: Yeah.

12 24:29: --period of time--

13 24:29: You can't afford that and that makes sense, so possibly looking
14 at more creative ways to return people to work maybe not within that--

15 24:39: Right.

16 24:39: --particular industry--

17 24:40: That's a good idea--

18 24:41: Okay?

19 24:41: --that's a good idea.

20 24:43: Well, in this scenario we did offer return-to-work and he
21 refused.

22 24:47: Well, if they refuse return-to-work then they don't get time loss--

23 24:52: Actually he does.

24 24:54: They would at the point in time that the--

25 (Crosstalk, not transcribed.)

1 24:55: Right, that the work is no longer available, that's when you want
2 to be creative about return-to-work somehow someplace else--

3 25:01: Well, that's why we're (unintelligible) she brought the W-2 and
4 they're only working like 20 weeks out of the year so we go back 52 weeks, couldn't
5 we use a seasonal rate they were hired for two years for the rest of the year to
6 average it out to have something in there.

7 25:21: The problem we run into a lot with temporary agencies is you
8 were hired on at temporary agency X in January, you were hurt in March, that job
9 isn't even going to be happening again by mid-March and you're getting paid based
10 on what you worked for those two months even though you've been at other temp
11 jobs the whole year whole, so it does affect other industries also--

12 25:48: No, and that's--

13 25:48: --a lot.

14 25:49: --that is a really good point, that's why I really think the
15 discussion has to be about return-to-work because multiple industries could be
16 affected by this discussion and it is--it's a much broader discussion than forest
17 wildlife wildland fires so, no, I hear you.

18 26:15: It's 10:00--almost 10:30, we've got a couple more issues to
19 discuss, so I'm thinking if we could talk a little bit of a break and then we can
20 reconvene, if anyone has any other thoughts on the seasonal issue when we get
21 back we can finish that discussion up and then we'll finish up the last couple of
22 issues, okay, so I think we plan for a 15-minute break, so people can be back by
23 10:45, we'll start back up. Okay.

24 (Off the record.)

25 27:37: So when we took our break there, we were just seemed to be

1 wrapping up the discussion on seasonal workers, but before I moved on, I just
2 wanted to make sure there was nothing that I didn't cut anybody off or nobody had
3 anything additional before we moved on to issue number three. All right.

4 So issue number three, during prior rulemaking back in 2016 a
5 stakeholder had suggested that the rule be amended to add a standard of
6 reasonableness when assessing if the gap extending more than 14 days was
7 anticipated, so specifically they asked for the rules to be amended to add the
8 following bolded language or bolded word. Currently the rule reads the insurer may
9 not include any gap in earnings of more than 14 days that was not anticipated in the
10 wage earning agreement and they wanted it to be changed to say that is not
11 reasonably anticipated in the wage earning agreement and then when calculating
12 average wages. Stakeholder reported that for employers and workers who have
13 been in the same industry for several years, there are typically anticipated gaps in
14 employment that were not specifically discussed as part of the wage earning
15 agreement because those gaps were already anticipated by both parties and based
16 on their experience in that particular field and at the time of hiring, and so we wanted
17 to bring it to this group to get your thoughts on the proposal to add the term
18 reasonably to that rule language.

19 29:06: (unintelligible) would have define reasonably (unintelligible)
20 particularly challenging.

21 29:12: Yep.

22 29:13: Yeah, I--reasonably? Words like reasonably, clearly, I just
23 think those are opportunities for litigation and misunderstanding and disagreement.

24 29:32: Okay.

25 29:32: Can I ask a question? So this happened during the last go-

1 round.

2 29:38: I believe it was during the last permanent rulemaking--

3 29:41: Okay.

4 29:41: --so the last go-around not being the temporary rule, but the
5 last permanent rulemaking--

6 29:45: And so it wasn't something new brought up it, it was this
7 bringing something forward from the past, and there's not a lot of them, so I'm
8 curious why this one.

9 29:55: So this was addressed in the testimony and responses back in
10 that permanent rulemaking, I believe I wasn't here at the time, I believe it had come
11 up later in the process was the way I read into it, but I'm not certain, but in the
12 testimony in response in acknowledging the desire to somebody asking for us to add
13 the word reasonably, we had indicated we would bring this forward in a future
14 meeting, so that's how it ended up--

15 30:21: Got it.

16 30:21: --here at--

17 30:21: Okay.

18 30:22: --this time. Okay? Any other comments on that before we
19 move on, thoughts (unintelligible)?

20 30:35: So what's the incentive then? Did we talk about that? I would
21 recommend not making any changes to this rule. Anybody else?

22 30:46: In the interests of clarity and accuracy, I don't know how you do
23 that, so, and I just don't know how you do it because of reasonableness, all that, I
24 just don't know how you do it. It just creates another soft pocket to have lack of
25 clarity.

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31:09: Right

31:10: Kimberly?

31:11: Are there a lot of people that have difficulty that were (unintelligible) getting challenged whether it's reasonable, whether (unintelligible) reasonable in there, is this an area that we, that is getting challenged a lot that we need to add the language in there--

31:24: Yeah.

31:24: --from SAIF's point of view are you guys--

31:27: That's a good a question.

31:27: --seeing a lot--

31:28: We still have to determine whether it was anticipated or not, so whether or not you say--

31:32: Yeah.

31:32: --reasonably--

31:33: Right.

31:33: --anticipated--

31:36: Yeah.

(Crosstalk, not transcribed.)

31:54: Okay.

31:54: I just leave the word out completely.

32:00: Our--so our last issue and then we've got a couple housekeeping items as well, but, and we always like to highlight the housekeeping items just in case someone doesn't think they're housekeeping, so for the last issue with the request for us to just touch base on the progress for a request for informational bulletins explaining in detail how to accurately calculate the average

1 weekly wages under the new rules, so we wanted to touch base and address that
2 request, and so currently we just have a temporary rule in place, we are waiting for
3 what the permanent rule will be so that the--we wanted to make sure to address the
4 concerns and outline what the current tools are that are available for people both
5 dealing with the temporary rule and when the permanent rule issues dealing with the
6 permanent rule and then I'm going to go through what our plan is to work with the
7 permanent rule, so current tools that we have available, we get telephone calls into
8 the audit department as was alluded to earlier to help employers with questions that
9 might arise, the auditors will get asked or called directly to have questions asked to
10 them on calculation questions, when they're onsite they give business cards to the
11 employers so employers have auditors information on hand as well, he have on our
12 website an ask an auditor email address so emails can come in through that ask an
13 auditor site and/or email address and then we're able to provide training directly to
14 insurers for specific issues that they are encountering for calculation method
15 calculation issues, but with that said, so, so far the questions that have been
16 submitted to us related to the temporary rule have been relatively low, just over a
17 handful have been submitted and we've responded to those, and to adequately
18 respond to the request for the bulletins we, like Lou mentioned earlier, think it's
19 critical that we speak to those individuals who are doing the calculation, actually
20 doing the calculations themselves so we can identify what tools are going to be most
21 helpful to them to help with the performance of the calculations, so we're planning to
22 schedule a meeting for that discussion second week of September, as Fred had
23 mentioned earlier we've got the timeline with the permanent rules becoming in effect
24 by August 20th and that's could--the end of summer and we've got Labor Day, so
25 second week of September we want to sit down and touch base with those people

1 who are calculating the average weekly wages, and in preparation for that meeting
2 we'll offer a list of issues that we've seen in the past or anticipate seeing with the
3 new permanent rule and the purpose will be to ask those individuals who perform
4 the calculations what other tools are going to be helpful to them to assist them in
5 their wage calculation, we plan further meetings to be open to the public and will
6 provide an opportunity for those who are not at the table, those who are not doing
7 the calculation, those that are actually performing the calculations to give questions
8 and comments at the end of the meeting, and then after the meeting we'll assess
9 what it is that we can do to be of further help to the community based on the
10 feedback that we've received from those people. Any questions on that?

11 35:22: So this is after the permanent rule goes into effect?

12 35:27: Correct.

13 35:29: So, gosh. I was thinking that the bulletin would come out just
14 the same time as the rule, so why after the rule comes out would we be doing the
15 bulletin, I think it would be very beneficial to even now with the temporary rule to see
16 what the issues are that people may have because a lot of people don't really even
17 know what the issues are until they go through an audit, is that correct--well, Larry's
18 gone.

19 36:01: So I guess the question is when you say people don't know
20 what the issues are, again we're talking about the folks who actually do--

21 36:10: Correct.

22 36:10: --the numbers--

23 36:11: Yeah.

24 36:12: --so until the rule is final, how is it useful to have a conversation
25 with folks?

1 36:24: Well, because we're using the rule right now, I mean, we're
2 using this temporary rule right now while we're doing the calculation so we're in it
3 right now, we have issues now that we find because we're working through it right
4 now. I think it, I agree I think it would be helpful to bring up the issues and talk about
5 it before the rule is set in stone.

6 36:49: The rule may change based on testimony, however.

7 36:54: That's maybe a baseline conversation at least once the
8 decision is made on what that rule recommendation is going to look like would be
9 helpful--

10 37:04: Okay, so I said public rulemaking hearing is mid to end of June
11 2018 so why could you not have that meeting between end of June 2018 and
12 August 20th, '18 when it becomes permanent or even mid-July right after the final
13 rules with the Secretary of State, well, again you wanted to have it, I actually think
14 you could have them now, first of all, we've not had any discussions that drastically
15 change the rule, we've had some discussions about small changes, but we haven't
16 had any discussions that change the bulk of here's how you calculate it, we haven't,
17 that's not been the discussion today, it's about some little, not little, sorry, didn't
18 mean that, but, I mean, some tangential things are of concern but not that big base
19 here's how we're doing it, so I don't think there's any changes that should be coming
20 and if there's no reason why we can't start on that process now and be ready for
21 what it rolls out and if there is something that actually comes out, I think that those
22 bulletins then could be between the, hey, we finalized it and we have this little tweak
23 that came out that we need to address, you could do it at the time, it's not like but
24 you're not doing the bulk of the work trying to do it in a very short period of time, so
25 to me, I mean, that was part of the discussion, the part of the discussion was we're

1 okay with the rule going forward but the employers need clarity, they need that
2 clarity, and so I can--I can say that as an employer I'm not going to think that this is
3 an okay rule if we don't have the clarity to go with it because I think--I think the
4 gentleman back here who had a suggestion about Washington was a fantastic
5 suggestion on--

6 38:51: Yeah.

7 38:51: --the audits, some things that's the employer's concern is, look,
8 we're okay with doing it this way, but there isn't clarity, there needs to be clarity so
9 that we're not getting fined, we're not going to court when we don't need to be, and
10 so if everybody has clarity and we all agree, the clarity either comes through a
11 bulletin or we work on the rule now, right, we either fix the rule so it's clear for
12 everybody or we get the bulletins, but from what I remember that previous meeting,
13 clearly it was this is--this is the give-and-take that we need and there's not a for me
14 unless we're talking about revamping the whole rule in here, then, but we didn't, we
15 just had really there's no reason why we couldn't move forward on addressing that
16 bulletin now and I know that that's not where the Department wants to be, but that's
17 where we were at when we left the last meeting and I'm still there at that spot, I don't
18 know if other employers can chime in, but that's where I'm at.

19 39:48: Well--

20 39:48: I agree.

21 39:49: --here's the issue. With all due respect to most of the people in
22 the room, this is not the group that we need to have the discussion--

23 39:58: There's no, there's no, there's nobody here saying this is the
24 group that has to do the bulletin--

25 40:01: Okay, so, but, no, but what that means is that there needs to be

1 a commitment for those folks to actually be at the table--

2 40:08: Yep.

3 40:08: Yeah.

4 40:09: Yeah.

5 40:11: Commit somebody from SAIF.

6 40:12: And I could commit my TPA--

7 (Crosstalk, not transcribed.)

8 40:21: And some of this predates me, but I will tell you that in the past
9 we've had real difficulty getting the folks who actually do the work to the table--

10 40:29: And I understand that but I also offered to be the person, well, I
11 can't help you with the calculations because I'm not that person, but I do the legwork
12 to get people sitting at the table, I'm--

13 40:39: Yeah.

14 40:39: --I'm volunteering--

15 40:40: Yeah.

16 40:40: --to take on that task so long as I can get a list from the
17 Department, we went to the website, couldn't find anything, we spent quite a bit of
18 time, but I think there is a list that exists that's here's who all the TPAs and the
19 carriers are, their contact people, numbers, I will do the legwork for everybody, I
20 don't mind, just so long as we get the seats filled so that we can--we can have a
21 good representation of who needs to be there, I don't mind doing that so long as I
22 can get some help telling me who I need to call, so--

23 41:10: Well, we've got Larry, you know, Larry--

24 41:12: Yeah.

25 41:11: --Bishop, I'm sure will support it, Matrix, will you make that

1 commitment?

2 41:15: Oh, yeah.

3 41:16: Intermountain, you'll make that commitment to have somebody
4 that does the wage calculation, and ESIS, obviously I figured you would.

5 41:27: City of Portland, I'm sure, is going to say yes.

6 41:29: I--absolutely, I'm in the trenches all day every day
7 (unintelligible) and this impacts every aspect of what I do at my job and I'm here--

8 41:41: Yeah.

9 41:42: --(unintelligible) I want to be as fair as possible to the worker.

10 41:44: Yeah. I mean, it sounds like we've got a good group just even
11 sitting here without going beyond, so...

12 41:50: (unintelligible)

13 41:51: Yep.

14 41:52: That's eight people already (unintelligible).

15 42:00: Well, I guess (unintelligible) dates.

16 42:03: Yeah.

17 42:05: Dates when? Dates as in the timeline that Kimberly and Sheri
18 discussed just now?

19 42:11: We'll look at some dates.

20 42:12: Well, we did have a discussion, though--
21 (Crosstalk, not transcribed.)

22 42:15: We have our own logistical issues (unintelligible)--

23 42:16: Yeah.

24 42:16: Yeah.

25 42:17: Yeah.

1 42:18: And that's fine, but we're asking for a commitment, we've all
2 come and committed a lot of time and are prepared to do whatever is necessary to
3 get the folks involved that do this hands-on and the reason is, is because people
4 would like to avoid, they'd like this to work smoother, that's in the interest of the
5 Department, it's not against the interests of the Department the best I can tell, is it,
6 because there are other things I want to talk about before we end today like the
7 suggestion that came from Washington, we're trying to make a system that has the
8 smoothest everybody knows what's going on, that's all that is the purpose here, it is,
9 and you have to do it in a timely fashion or you set employers up early on to already
10 have the kind of problems that we're trying to avoid, that's the reason the time
11 matters on the employer end, am I missing something, I don't think, so, and it's not
12 private, it's not public, it's everybody, anybody trying to do this work, so that's why I
13 ask for the time.

14 43:22: We have--we have some people who are not in the room who
15 we want to make sure are in the room, so--

16 43:27: Good.

17 43:27: Yeah.

18 43:28: And nobody's saying it should be limited, the more the merrier,
19 to be honest, because the people I worry about are not in the room, it's the little bitty
20 company that has no clue how to read this stuff, that's what we're trying to get at,
21 because the majority of you all rely on that information so you have to get, you have
22 to know what you need to get, right, that's what it boils down to, and the little bitty
23 companies I represent, they got one person doing five different jobs and this comes
24 in, they don't know what to expect, so that's the purpose behind it.

25 44:05: Can I also ask on the bulletin? I would really like to see some

1 direction to the employer community on what a payroll report should look like
2 because with technology, I know 10 years ago this was really difficult and everybody
3 does something different, but I think most everybody is using technology for their
4 payroll reports, we're not using, you know, handwritten documents anymore, so I
5 think providing information to the employer community to make it easier on the folks
6 that are actually adjudicating those claims and doing that wage calculation would be
7 very, very helpful, so...

8 44:48: I would second that, I mean, that was, when I tried to step
9 through the calculations, it was like I--and to be honest, I just, I got asked for payroll,
10 I did the same thing, I just, that was like call up the payroll gal, hey, could you send
11 this over, I never looked at it, I had no idea if what I was providing was adequate,
12 I'm--they won't--they'll be quiet because they won't--they won't call me out and say
13 (unintelligible), but I'm pretty sure I probably didn't provide what was adequate, so I
14 think, yeah, I mean, I think that from the examples that we saw, a lot of it does have
15 to do with just asking the employer to provide the right things so maybe it turns out
16 that there's two bulletins, one for the employer, one for the adjusters or whoever's
17 calculating it, but--

18 45:27: Whatever's useful to you all--

19 45:28: --I would agree that I think that a lot of the administrators would
20 have a lot easier time if they had the right stuff in the first place, so I would--I would
21 second that.

22 45:43: So I apologize for walking in a second late, that was really
23 rude, but do we have a timeline, Lou, for when you guys might be able to do this?

24 45:50: We volunteered you to put that--

25 45:52: Well, I heard (unintelligible)--

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(Crosstalk, not transcribed.)

45:58: It sounds--it sounds like we can do it within the timeline that is suggested, but we need to go back (unintelligible) and get some dates, so (unintelligible)--

46:05: And that starts relatively soon--

46:07: Sure.

46:08: --and tries to get done in time for as the rule is, the rule becomes permanent--

46:16: For what is August 29th, right?

46:18: August 29th--

46:19: I think the 20th would be the (unintelligible)--

46:20: 20th --

46:20: 20th --

46:20: 20th --

46:21: --yeah--

46:21: 8/20.

46:23: (unintelligible) when you were gone, the suggestion was we had suggested to have the meeting start within that week or so after the rule became final, there's a suggestion that we do some of the meetings before--

46:36: Yeah, that would be great.

46:37: Yeah.

46:37: Thank you.

46:41: And we all committed to have people there.

46:44: And--

46:44: Not--

1 46:45: --she committed and called people out, she did--
2 46:47: Yeah, I called emails.
3 46:48: Perfect.
4 46:48: So--
5 46:48: Yeah, I'm not--I'm not afraid to ask people to help--
6 46:52: And so just--
7 46:52: And I think Elizabeth Brandenburg will show up at the front of
8 that line.
9 (Crosstalk, not transcribed.)
10 47:00: She'll be providing chauffeured service to (unintelligible)--
11 (Crosstalk, not transcribed.)
12 47:05: Absolutely.
13 (Crosstalk, not transcribed.)
14 47:06: I'll bake cookies for everyone.
15 47:08: Oh, God.
16 (Crosstalk, not transcribed.)
17 47:12: And so I know you were talking about wanting the people that
18 did the numbers, so do you feel like you want to add some more people then
19 besides what you guys managed to come up with in here, is that your intention?
20 47:21: Yeah, I think we'd have some people in mind--
21 47:22: Yeah, I mean, I mean, as many folks who, you know, service
22 companies or the insurers who actually do their own calculations--
23 47:31: Right.
24 47:31: Or self-insured employers--
25 47:32: Or self-insured--

1 47:33: Yeah--
2 47:33: --employers--
3 47:33: Yeah--
4 47:33: Yeah--
5 47:33: Right--
6 47:34: Because we have to remember to--
7 47:35: But again that--
8 47:35: --address that whole group--
9 47:37: --the way we had envisioned this is that the meeting's open to
10 everyone, but the people who are actually sitting around the table--
11 47:44: Yeah--
12 47:44: Number crunchers--
13 47:45: --the number crunchers--
14 47:46: Okay, so I think I get that message, which is no lobbyists at the
15 table.
16 47:49: Yeah.
17 47:50: All right, you get to say that, you know, people say that--
18 47:52: But we can--
19 47:52: --at us all the time--
20 47:53: (unintelligible) want Sheri Sundstrom at the table.
21 47:57: The lobbyists are lobbying (unintelligible)--
22 (Crosstalk, not transcribed.)
23 48:05: Okay, thank you--
24 48:06: I figured you got the message.
25 48:07: I pretty much did, yes, thank you.

1 48:08: But thanks for clarifying.

2 48:09: Yeah--

3 48:09: Yeah--

4 48:09: I have a question actually going back to the memo that was

5 talked about really when it was brought up earlier, so I want to make sure where I

6 can, for me I've seen differences of opinion about what type of guidance that people

7 want so are--is it for you all to expect like a big stack of like guidance on every

8 single--

9 48:28: No--

10 48:29: --wage calculation that's brought forth--

11 48:30: No--

12 48:31: Yeah, we want three binders--

13 48:32: --(unintelligible) is it because, hey.

14 48:36: The traditional, look at how a traditional bulletin comes out--

15 48:41: Yeah.

16 48:41: --provides guidance--

17 48:42: Yeah.

18 48:42: --as to how the rules should be applied and it's usually broad,

19 broad enough, the reason I brought up the employer piece, it would make it much

20 easier like for me on my construction sites where we insure everybody just to shoot

21 the bulletin to our subcontractors and say--

22 48:57: Yep.

23 48:57: --if you ever have to send wage calc information--

24 49:00: Yeah.

25 49:00: --into every (unintelligible) may be an RTPA this is what you

1 need to do or even for my clients on large construction sites to show them this is
2 what we can--we can send out to all of our subcontractors because I think that is a
3 huge just looking at wage calculations based on the variations of payroll that people
4 get, I think that's where one four biggest landmines is are the payroll reports, so
5 that's why I brought that up because then that, you know, typically employers aren't
6 looking at those bulletins unless they're self-insured, they're relying on their TPA to
7 do that, but we have to have employer engagement, I think going forward to ensure
8 success of the rule and so it's when auditors do come out, there's not confusion.
9 However, at a broad, you know, the 64,000-foot level there should be clarity so that
10 people get the basics as to what they're supposed to do with that information specific
11 to that worker in order to ensure that there--they've at least based on what all these
12 discussions are as to what that should look like, that actual calculation, how--and the
13 City of Portland, is that kind of your (unintelligible)--

14 50:14: Yeah, and I had actually drafted or considering drafting like a
15 questionnaire for the timekeepers for the payroll people like, you know, has there
16 been a change in wage earning agreement (unintelligible) five different rates
17 (unintelligible)--

18 50:32: Yeah.

19 50:32: --what is that rate equal to today, we can come up with a
20 number of hours, what is that rate today, what rate is overtime based on, were there
21 any unanticipated gaps in employment, you know, just--

22 (Crosstalk, not transcribed.)

23 50:44: The key triggers--

24 50:45: Yeah--

25 50:45: --right--

1 50:46: --yeah--
2 50:47: --so that you know you're at least in the ballpark--
3 50:49: Right--
4 50:49: Right--
5 50:49: --yeah--
6 50:50: Yeah--
7 50:50: --right--
8 50:50: And what's considered regular wage, we were told use their
9 regular wage, I have six regular wages on this one piece of paper for 52 weeks.
10 Which is his regular wage? 54 hours at this amount, 137 hours at this amount, and
11 so on, and then you've got his overtime, what--which regular wage are we using to
12 calculate his overtime? Are they all included in one bucket, do we separate each
13 regular wage by how many hours and total it and then divide it by 52 weeks or do we
14 use the regular wage--
15 51:29: Well, see, I think that might be one that has to have some kind
16 of an example in a bulletin, but you first start with those trigger questions--
17 51:37: With the basics--
18 51:37: --that you were outlining--
19 51:38: Yeah--
20 51:38: --so you know the basic questions you're trying to answer--
21 51:41: (unintelligible) insurer questions, it's just for the employer to see
22 what kind of payroll records they should have on file in regards to in particular like for
23 example dealing with multiple wages, having all of those--
24 51:51: Yeah.
25 51:52: --together.

1 (Crosstalk, not transcribed.)
2 51:55: That's a good point.
3 51:56: Okay.
4 51:57: The employer provides the correct information and it makes,
5 correct me if I'm wrong, all the TPAS in the room, is that your, you know, that's the
6 biggest thorn you probably have on your side is--
7 52:08: Absolutely.
8 52:08: --what you're getting from employers and that's what I heard
9 SAIF say also everybody (unintelligible)--
10 52:13: Yeah, yeah.
11 52:14: Well, and because the truth is is that some employers, large
12 employers in particular have more sophisticated--
13 52:21: Well, yeah--
14 52:21: --programs in place--
15 52:22: --have people dedicated, do more claims--
16 52:24: We insure a lot of really small employers--
17 52:27: Yeah, that's--
18 52:28: --and their payroll is--
19 52:29: That's what I'm talking about.
20 52:30: --(unintelligible) so--
21 52:31: They could be using Quicken or something or--
22 52:33: Yeah.
23 52:33: --an accountant, you know, there's just--
24 52:35: Yeah.
25 (Crosstalk, not transcribed.)

1 52:43: Yeah.

2 52:44: But if they know what it is that you're looking for, they can help
3 you, yeah.

4 52:50: And there is some truth to having something around that from
5 the Department that even, you know, the large carriers we are to be able to provide
6 (unintelligible) say this is the kind of information we need could be helpful--

7 53:05: Yeah.

8 53:05: --(unintelligible) the Department says, exactly. I hate to rely on
9 the Department (unintelligible) sorry.

10 53:16: So, Julia, the--this work, once you guys go back and talk you
11 guys will sort it out the timing for that, but then is there another final, when the final
12 (unintelligible) happens, there's another group meeting of this group as the final
13 language comes together or are you imagining envisioning that?

14 53:39: This--well, this group--

15 53:42: Or is this group's work done? That's what I'm trying to sort out.

16 53:45: Oh. I think the goal is once we speak to the individuals who
17 are completing the calculations we'd formulate what it is and I guess it depends on
18 what comes out of that, right, I mean, how complicated it is or how simplistic it is and
19 if it seems like more meetings need to be held, and if the idea is to have the
20 meetings open to the public if people want to come in and listen, but as far as are
21 you talking about (unintelligible)--

22 54:08: (unintelligible) talking about this group--

23 54:09: --the input from this group--

24 54:10: --input from this group today, there was a lot of conversation
25 about a couple of two or three issues, I don't know if that's going to result in change

1 to the rule language or not, and if it does, does this group come back and look at this
2 or not, I just don't know, it's a wide-open question--

3 54:28: The change to the rule language?

4 54:30: Yeah.

5 54:30: So the rule, so what we're going to do next is we'll go back, we
6 will write our proposed permanent rule which would be working off the last
7 permanent rule and so you'll see all the changes as to what's proposed to be
8 permanent again and then that goes out to justice group or it does get--

9 54:48: Well, typically it just gets filed with the Secretary of State--

10 54:50: Okay.

11 54:50: --and it goes to this group at the same time--

12 54:52: Right.

13 54:53: --or within, you know, a few hours after that and then you all
14 can look at it and see if you want to provide testimony in addition to the advice that
15 you've already provided--

16 55:03: I see, okay.

17 55:04: Given our relatively--

18 55:04: Timeline.

19 55:05: --short timeline--

20 55:06: Yeah.

21 55:07: --we're limited in terms of how many meetings we could have
22 before we file proposed rules.

23 55:12: Which you got to file 45 days before, correct?

24 55:15: Right.

25 55:16: And there'll be a public rulemaking hearing--

1 55:18: Correct.

2 55:18: --once that (unintelligible)--

3 (Crosstalk, not transcribed.)

4 55:24: If you choose to come back and we want you all back to come

5 back then and that would be another time to--

6 55:29: Lobbyists get involved (unintelligible)--

7 55:30: --voice an opinion on, yeah, let's clarify that, with lobbyists

8 invited to the next one, everybody is invited.

9 55:39: (unintelligible) the rulemaking (unintelligible)--

10 55:41: Yeah.

11 55:42: Posted along the wall, okay.

12 55:46: Okay. I have a couple housekeeping items, any other things to

13 touch base on before I just announce those and get any feedback that anyone has

14 concerns over?

15 55:57: I would just like to thank the Department for having this meeting

16 here in the Portland area.

17 56:02: Yeah (unintelligible).

18 56:05: I think the turnout is much better.

19 56:08: We almost didn't make it, though, we got caught in traffic--

20 (Crosstalk, not transcribed.)

21 56:12: We all did, yeah.

22 56:15: Julie, so--

23 56:16: Yes.

24 56:17: --the gentleman that made the recommendations on the aud--

25 the Washington's audit rules were like is that something that falls within this, is that

1 something that--

2 56:27: Next question.

3 56:28: --we roll into this, I know that wasn't previously part of this rule,
4 but his recommendations, I guess I do want to--I want to explore those, I mean, I
5 think that I like the suggestion that the audit as it's rolled out is that there's a period
6 that you're not punitive, right, that there's you're not fining anybody during a certain
7 period of time while we refine and figure out how are we doing it correctly and then I
8 did like the, you know, the five-percent deviation requirement so that it's not like
9 you're off this little bit and you're getting a fine, so--

10 57:04: And you're talking about five percent off during an audit--

11 57:07: Yes--

12 57:07: --not--

13 57:08: --yes, correct--

14 57:08: --for an individual taking it forward.

15 57:10: Correct--

16 57:11: Yeah, just to further expand, I was the one who brought that--

17 57:13: Yes.

18 57:13 --up, in Washington they went to basically a new audit process
19 there they do tiers, but the first time around they were really focused on wage
20 calculation, it's very complicated in Washington, even more than Oregon, but they
21 did, they come in and audit everything, they audited all our employers and it's self-
22 insured employers in Washington, so it's (unintelligible), but they created a roadmap,
23 they did the audit, they looked at the deviations, they created a roadmap for the
24 adjusters, I can go back and refer to that now and get an (unintelligible) if needed so
25 that we're on the same track, they also educated the employers as far as what

1 payroll records--

2 58:00: Right.

3 58:00: --were most beneficial and it was a non-punitive audit; now, if
4 you had a lot of deviations then you went to a second (unintelligible)--

5 58:09: Ah, ah.

6 58:10: --after that, but they did have that five-percent variation just
7 simply because of, you know, rounding errors and those kind of things, we deal with
8 a lot of hospitals and so they might have seven or eight different wage rates for one
9 person and that can be really complicated.

10 58:29: Yeah.

11 58:30: Yeah. I feel it (unintelligible).

12 58:34: So that's, I mean, this meeting is for rulemaking on changing
13 the rule or, you know, not making alterations to the rule itself, so I think that's outside
14 the scope of what we're doing today and that falls into how audit performs their--how
15 they operate, which is not something I'm able to speak to, but that's an issue, I
16 mean, audit is Troy's part of audit and we'll--I'll let the audit manager know that it's
17 been talked about so she can be aware of what's been talked about, but that's not
18 something that we can--

19 59:10: Okay.

20 59:10: --that I'm (unintelligible)--

21 59:10: So what's the OAR on the--on the audit staff?

22 59:16: We don't have a specific--

23 59:17: Don't have one.

24 59:17: --administrative rule, no--

25 59:18: (unintelligible)--

1 59:21: It's a practice, it's a practice, we're talking about a practice, not
2 a change in rule--in rule or anything like that--
3 59:28: Yeah, there's not--
4 59:28: --is that correct?
5 59:30: Maybe a takeaway from this meeting being as we're having
6 those other discussions on bulletins and--
7 59:35: Yes.
8 59:36: --calculation examples, looping audit in on that and having
9 further discussions on that end--
10 59:42: Yes.
11 59:43: --about those upcoming audits based on the new rules that are
12 being proposed.
13 59:47: Because we can either wait for the problems to happen or we
14 can attempt to correct them--
15 59:53: Well, and why couldn't--
16 59:53: --I mean, that's just an extension of that--
17 59:54: Why couldn't somebody from audit be involved in those--
18 59:57: Sure (unintelligible)--
19 59:57: --discussions (unintelligible)--
20 (Crosstalk, not transcribed.)
21 1:00:00: Well, you never--you never know.
22 1:00:03: They should be--
23 1:00:04: That's not (unintelligible) either, so--
24 (Crosstalk, not transcribed.)
25 1:00:10: Staying out of the way.

1 1:00:13: Well, I think I--Lou's here, there are a number of different
2 Workers' Comp Division, I think what you're beginning to hear and a lot of nodding
3 around the table is that's another part of the rollout implementation that could make
4 this work better and ultimately avoid the kind of audit that happened I don't
5 remember when, but there were significant issues there, I don't know the technical
6 terms, it would be nice to do one that allows us all, all parties concerned, including
7 the Department to avoid that in the future, that's the notion I think, so, Lou, you're
8 here, you're hearing this, so--

9 1:00:53: Well, I mean--

10 1:00:54: Yeah--

11 1:00:54: --well, of course we're happy to talk about it--

12 1:00:56: Yeah, great. And it's not a part of the rulemaking, so, and it's
13 not a part of your rules, so it is a practice, it is a discussion--

14 1:01:04: Yeah.

15 1:01:04: --with the Department is what it boils down to. Okay.

16 1:01:08: You know, from a personal standpoint, I would love for
17 Oregon to get this figured out and it to be as clear as possible because I have no
18 qualms about going to Washington and touting what we do in Oregon, in fact that's
19 why I'm on that committee out there, but, you know, we always have done things,
20 you know, excelled and against all the other states (unintelligible), so I have every
21 faith that we're going to be able to do the same thing here specific to this going
22 forward.

23 1:01:41: So I just want to touch base on the housekeeping items
24 before we adjourn today. There was two housekeeping items on a rule relating to
25 gap of earnings, so currently the rule says the insurer may not include any gap in

1 earnings of more than 14 days that was not anticipated in the wage earning
2 agreement when calculating the average wages, so the plan is to change may not
3 include to must exclude and to add the word consecutive when talking about
4 14 days to say 14 consecutive days, just for clarity's sake. Any questions, concerns
5 on those?

6 1:02:20: I have a question on the--

7 1:02:21: Yeah.

8 1:02:22: --consecutive.

9 1:02:23: Uh-huh.

10 1:02:23: Would it be more accurate to either phrase it as 14--

11 1:02:27: Calendar.

12 1:02:27: --scheduled work days or 14 calendar days--

13 1:02:29: Calendar days, yeah.

14 1:02:31: Because going back to that wage calculation, clarity--

15 1:02:36: Okay.

16 1:02:36: --would be helpful.

17 1:02:38: Yeah, I would agree to calendar days (unintelligible) just
18 whispered over to Dan do they mean calendar days or business days or--

19 1:02:44: Yeah.

20 1:02:47: But they have to be contiguous, right, they have to be--

21 1:02:48: Yeah.

22 1:02:48: --together?

23 1:02:49: Yeah.

24 1:02:50: Yeah, so--

25 1:02:50: Consecutive.

1 1:02:50: --the question being would it be better to phrase it if the intent
2 is in the two weeks to say 14 calendar days or consecutive calendar days?

3 1:03:06: Because they need to be grouped together--

4 1:03:08: Yeah.

5 1:03:10: And so (unintelligible) could have 14 calendar days--

6 1:03:12: (unintelligible) calendar days, yeah--

7 1:03:13: --over six months--

8 1:03:14: --versus--

9 1:03:14: --versus consecutive.

10 1:03:15: Yeah.

11 (Crosstalk, not transcribed.)

12 1:03:22: Yeah. Okay. Anything else before we adjourn today?

13 1:03:26: I have one thing, Julia.

14 1:03:27: Uh-huh.

15 1:03:28: I think SAIF would look to thank all the people at the table
16 (unintelligible) you know, we tend to be the frequent flyers at Advisory, I think the
17 Department gets tired of hearing from us all, it's nice to have--nice to have so many
18 people here that don't always have the opportunity to hear and provide input, so
19 thank the Department for having the meeting here because--

20 1:03:53: Yeah.

21 1:03:53: --it wasn't a long trip for me, but, yeah, it was--it was a good
22 meeting and I appreciate all of the listening that's been happening today.

23 1:04:08: Well, thank you, everyone, for coming, I appreciate it.

24

25 (WHEREUPON, the proceedings were adjourned.)

