

WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
Full Committee Meeting
Feb. 8, 2024
10:00 a.m.-11:00 a.m.

Committee members present via Zoom:

Patrick Priest, Citycounty Insurance Services
Scott Strickland, Sheet Metal Workers Local #16
Margaret Weddell, Labor Representative
Ryan Hearn, Roseburg Forest Products
Stacy Lewallen, Fortis Construction, Inc.
Sara Duckwall, Duckwall Fruit
Sarah Merrick, City of Salem Fire Department

Excused:

Matt Calzia, Oregon Nurses Association
Andrew Stolfi, DCBS Director, *ex officio*

Staff:

Teri Watson, MLAC Committee Administrator
Baaba Ampah, MLAC Assistant

Agenda Item	Discussion
(00:00:00)	Opening Scott Strickland called the meeting to order, and Teri Watson called the roll of members. A quorum was present.
(00:01:35)	Public comment There was no public comment.
(00:02:16)	Review and approve minutes from Jan. 4, and Feb. 1, 2024 The minutes from Jan. 4 and Feb. 1 were presented. Sara Duckwall moved to approve both sets of minutes, and Stacy Lewallen seconded the motion. The motion passed.
(00:03:24)	Bill presentation: SB 1580 Ivo Trummer, SAIF, announced that there is a -6 amendment to Senate Bill (SB) 1580 and he is asking for MLAC's support for the bill. The amendment states that an employer commits a Class A misdemeanor if the employer knowingly falsifies payroll reports with the intent to decrease its workers' compensation premium.
(00:05:40)	Derek Sangston, Oregon Business Industry (OBI), indicated that OBI supports SB 1580 with the -6 amendment.

(00:06:20) It was clarified that MLAC is only considering the -6 amendment of the bill.

(00:07:20) A caucus was called to discuss SB 1580.

(00:08:58) Margaret Weddell made a motion that MLAC support SB1580 with the -6 amendment, and Patrick Priest seconded the motion. The motion passed, unanimously.

HB 4005

(00:10:08) Theresa Van Winkle, DCBS Legislative Director, clarified that she is covering for the bill sponsor, Representative Holvey. She continued that the amendment focuses on worker leasing companies and professional employer organizations (PEOs). Currently, statutory language does not fit the corresponding administrative rule. The -2 amendment of HB 4005 modernizes the definition of worker leasing company and the current insurance rating in the insurance code. The bill will impact the licensure and supplemental statutes in ORS Chapter 656, and amendments in ORS Chapter 737. DCBS does not have a position on the bill.

(00:15:07) Torben Madson, Esq, Principal, The PEO Law Firm, mentioned that he was asked to review HB 4005 by the National Association of PEOs in Oregon; he declared that he is in opposition to HB 4005. Oregon has a great PEO program. He explained that the bill removes key component of “co-employment” of the PEO relationship, which takes away the ability of a PEO to provide workers’ compensation coverage through its carrier to leased co-employees through the clients’ companies. Torben Madson noted that it will also remove options for small businesses to find workers’ compensation on the open voluntary market. Another concern is it makes the PEO an agent, and that is not the role of a PEO. Instead, PEOs provide administrative services to help small businesses. Torben Madson continued that removing the co-employment relationship will also remove exclusive remedy and will discourage insurance carriers. Torben Madson asked MLAC to reject the bill.

(00:17:52) Sara Duckwall sought clarification as to why Theresa Van Winkle and Torben Madson provided conflicting information about the bill. Aaron Fellman, WCD policy analyst, answered that although WCD provided some of the language to the bill, it was not their intent to remove the abilities of PEOs. He offered to have a conversation with Torben Madson about his concerns. Theresa Van Winkle added that the base bill removes the co-employment provisions for the unemployment insurance tax payments, and Paid Leave Oregon assessments.

(00:20:20) Torben Madson, pointed out that page 9 of [HB 4005-2 amendment](#), line 28 through 30, specifically removes co-employment relationships by stating there can only be one employer. By removing co-employment, it eliminates exclusive remedy, the PEO relationship, and their ability to be an insurable interest for its onsite client and co-employees.

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- (00:23:05) Scott Strickland asked for clarification and Torben Madson answered that Oregon is a multiple coordinated policy (MCP) state that has access to the direct client employer coverage data. This bill creates a client-based policy, where there is no policy through the PEO, but only through the client. It creates a disservice as there must be a co-employment relationship to get the MCP for the PEO and the client company. This eliminates the ability of the insurance carrier to insure the co-employee; they will only insure the direct PEO or the client company workers. This will also apply to health insurance.
- (00:25:21) Ryan Hearn pointed out that in [amendment 3](#), page 17, line 3 also shows the language pointed out by Torben Madson.
- (00:26:22) Paul Hughes, Principal, Libertate Insurance Services, mentioned that if the ability of the PEO is taken away, it takes the ability of insurance agents to procure insurance for the PEO on behalf of clients. He offered to work with stakeholders to correct the bill, but he, too, is against the bill.
- (00:28:05) Paul Hughes answered Patrick Priest's question, stating that the PEOs allow small businesses to function while they handle administrative tasks such as workers' compensation, health insurance, 401(k) plans, and many more. Taking away PEOs' ability to be an employer takes away their ability to sponsor such programs.
- (00:29:42) Theresa Van Winkle mentioned that the bill sponsor is trying to allow PEOs to provide worker' compensation coverage, but in a different fashion. She will be clarifying questions with the Division of Financial Regulation, and MLAC should expect another set of amendments.
- (00:31:12) Jenny Dressler, representing the National Association of Professional Employer Organizations (NAPEO), provided context to how the bill came about, explaining that the issue was brought forward in 2023, as an industry, to solve a tax paying issue with Paid Leave Oregon. SB 881 was drafted and progressed to the House Business and Labor Committee. The chair of the committee committed to a conversation on their concept trying to level the playing field for small business clients. As the conversation progressed, it became less about fixing the issue around Paid Leave Oregon, and more about the structure of PEOs and a misunderstanding about the industry. She noted the bill is a threat to the industry as they have no say on the bill. She asked MLAC to oppose the bill.
- (00:34:17) Arin Carmack, Cardinal Services, noted the PEO model has not been changed since 1993, and HB 4005 will end the co-employment relationship, leading to no insurable interest as they would not be the employer. Most of the businesses Cardinal works with are small businesses that want to outsource their administrative services. He asked MLAC to thoroughly review the bill and ultimately asked MLAC to oppose HB 4005.
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- (00:37:55) Teresa McCormick, TNT Management, mentioned that her organization has always been called to conversations pertaining to employers, however, they were not consulted on this. The co-employment relationship is more than the ability to provide workers' compensation coverage, but also about co-employment to provide administrative services to small businesses to run successfully. She believes that the bill will stop the co-employment model because it states that a PEO is not a worker leasing company, which is not true. She concludes that PEOs provide value to their clientele.
- (00:44:33) Based on Patrick Priest's question, Theresa Van Winkle answered that the bill is not ready for MLAC's vote. There's a public hearing for the bill on Monday and a possible work session on Wednesday. She referenced the -3 amendment, noting the language about group insurance was not intended. Theresa Van Winkle will be working with the bill sponsor to update the amendment.
- (00:45:43) Sara Duckwall suggested a bill analysis from WCD on future amendments, as the testimonies and the analysis are not in alignment.
- (00:46:51) Scott Strickland asked for clarification on co-employment relationships as opposed to a consulting relationship. Arin Carmack, replied that small businesses are the common law employer because they have direction and control over the business, while PEOs are the administrative employer. They have split duties, is why it is called co-employment. Teresa McCormick added that the reason it is co-employment is that there are two employers with different duties, which allows businesses to focus on the functions of their business, and PEOs to ensure administrative work is completed accurately and efficiently.
- (00:52:13) Scott Strickland mentioned that he is having difficulty differentiating between different entities providing services and PEOs, as service providers are not typically listed as co-employers and PEOs do not seem to meet the traditional definition or satisfy the tests of what makes an entity a co-employer. Scott Strickland suggested additional written testimonies and additional amendments. He asked that the committee save further discussion for later.
- Upcoming meetings – Feb. 15 (hybrid) and Mar. 7 (hybrid)**
- (00:54:34) Scott Strickland thanked everyone for participating, making the discussion helpful.

Meeting Adjourned Scott Strickland adjourned the meeting at 11:08 a.m.

*These minutes include time stamps from the meeting video found here: [DCBS Management-Labor Advisory Committee \(MLAC\) Feb. 8, 2024 Meeting \(youtube.com\)](https://www.youtube.com/watch?v=...)

**Referenced documents can be found on the MLAC Meeting Information page here: <https://www.oregon.gov/DCBS/mlac/Pages/2024-meetings.aspx>