

Public Hearing on Proposed Workers' Compensation Rule Changes-20240724_100318-Meeting Recording

July 24, 2024, 2:03PM

1h 58m 45s



0:06

Hey, good morning, everybody.

I'm letting you all know that I've started the recording and the transcription for the hearing.

This is the public hearing on the 2024 proposed changes to the Vermont Workers Compensation & Occupational disease rules.

We are conducting the hearing live in person at the Central Office in Montpelier and also with a virtual component, the link for which was published on the Secretary of State's website.

This hearing is being recorded.

Today is Wednesday, July 24, and it is 10:03 AM.

I am Beth Debernardi, staff attorney at the Vermont Department of Labor and also present at Central Office in this hearing is staff attorney Stephen Brown.

We're here to accept public comments on the rules.

Interested persons may also submit rules comments in writing to director Dirk Anderson; the deadline for comments is close of business on Wednesday, August 21st, 2024.

So with that said, I'm going to start with Jen Meagher. You're the first person that I saw arrive today. Please feel free to do your comments.

Thank you.



JM Jen Meagher 1:21

Good morning.

Is my mic.

Can you hear me OK?



1:26

That's.



JM Jen Meagher 1:27

I can't see that my box is so small I can't tell if my microphones on or not from this distance.

Thank you, judge.

I really wanted to listen in.

I umm do you have?

I guess some questions in terms of.

The.

Umm.

The application of the COLA application to PPD and PTD in certain circumstances.

But I'm nothing that I.

I'll reserve until later if that's OK, and I may submit those in writing if if, if I don't hear further clarification today, I guess.

2:17

And just to be clear we are holding this hearing to accept public comments, but we're not providing explanations or responses in this format.

JM Jen Meagher 2:26

OK, alright.

2:32

If you're done, I see Jodi Williams was the next person I saw to jin the meeting, Miss Williams.

If you'd like to present your comments.

JW Jodi Williams 2:43

Good morning.

Yeah, I don't.

I don't have specific comments to share at this time.

I was thinking this would be more informational and just listen only so I'm I'm happy to hear others comments and and take that information back.

Thank you.

3:01

Thanks, the next person I see here is Wesley Lawrence. Attorney Lawrence, Would you like to present any comments?

WL Wesley Lawrence 3:11

Well, thank you, knowing that this is not informational, I don't have any specific comments, although I will say that I like that the rules do clarify the difference between permanency and temporary total disability benefits and that permanency attaches to the claim at the outset of the injury and is based on the wages at the time of the injury.

Whereas TTD can change over time with various periods of disability, increases in wages over time, or even taking on a concurrent job, but that the right to permanency and the calculation for permanency is effectively fixed at the time of the injury, plus any cola is that applied and I'm glad for that clarification and the rule.

3:54

Thank you.

The next person I see on our list is Susan Giacalone. Ms. Giacalone, do you have comments you'd like to offer?

GS Giacalone, Susan 4:06

No, I'm actually with Jodi as well.

I'm just listening in.

We've had some changes, so I'm just kind of listening in training back to our workers comp team.

4:18

The next person I'm seeing on the list is attorney Kelly Massicotte. Kelly, Do you have comments you would like to give?

KM Kelly Massicotte 4:24

I actually had a question about the proposed changes for Rule 8.1200.

Well, 8.1210 and 18.1220. I was curious about the need for the clarification.

When I read the proposed changes, I can only think of a negative effect to injured workers and maybe I haven't thought through all the scenarios, but my concern about the proposed rule is that injured workers who often work overtime and

extensive overtime under the current rule, if they have a week of vacation that is in that 26 week period and they're only paid for 40 hours, that's a low earning week. They didn't work the entire week.

It would be bumped out.

It would be excluded and in under the proposed change it would include that week, which would reduce the average weekly wage, of course, is somebody representing injured workers.

I believe that it should be more reflective of what their wages actually are and the way that we've always done it, which is excluding that week because the overtime is more representative of what they've been doing.

But I guess I would question what other scenarios or situations was the proposed rule meant to address that?

Maybe I haven't thought through.

5:42

Thank you.

We'll take that as a comment and as we work through the rules that something we can address in the responsiveness summary, but I don't think it's for us to be debating or providing information about them beyond receiving comments for today.

KM Kelly Massicotte 5:58

OK, I'm sorry, I miss I thought the reason for the change would be something that might be discussed.

Sorry if I didn't understand that OK.

6:09

Did you have any other comments on other rules?

KM Kelly Massicotte 6:13

I don't agree with the change that I know Wesley Lawrence just mentioned.

He appreciates that the permanency is fixed at the time of the injury.

I do think that it's certainly been the practice that I've seen in cases and practicing almost 18 years or 19 years that the permanency benefits and the compensation rate I've always seen as the higher rate, if there is a subsequent period of disability for

temporary benefits.

And I believe that for permanency, the person should get the benefit of that higher rate and it shouldn't be fixed at the time of injury.

6:51

Thank you.

You have any additional comments?

KM Kelly Massicotte 6:55

No, thank you.

7:00

I see somebody here named Melissa, who I don't see a last name.

And I don't know if that's Melissa who works at the department.

You're up if you have comments you'd like to add.

OK, not hearing from Melissa .

I see Stephanie Fleury, do you have comments you'd like to add?

ok, I see Erin Russell.

Miss Russell, do you have comments?

Welcome to Erin Russell, Miss Russell, do you have comments you'd like to add on the proposed rules?

At this point, I believe I've asked for comments from everybody who I see on my screen.

So I'm just going to throw comments open if anybody would like to jump in, please identify yourself and do so.

PG Peggy Gates 9:00

Umm.

Good morning.

I'm Peggy Gates with the Vermont League of Cities and Towns.

9:15

Morning.

PG Peggy Gates 9:16

I just had a couple of questions or areas that would be nice for clarification purposes. Umm, one of them is the uh, the good faith work search area. And I know that there's question if somebody has been referred to or scheduled to undergo a surgical procedure and it makes total sense if somebody is going to have surgery next month that you shouldn't be forcing them to look for work. Umm, but in the event someone has declined surgery or is not planning on having the surgery until next year for one reason or another, the way that it is currently worded is referred for or is scheduled. So by virtue of someone being a surgical candidate, even if they decline that surgery an adjuster would not be able to enforce a good faith work search. So it's just a point to ponder on that. And I think there was one other thing, one second. I think that's the majority of the area that I had wished for some clarification or for consideration being made.

10:36

Thank you.

Does anybody else have any comments to offer at this time?

It seems that at present that no one has comments they would like to offer, but this hearing is noticed to be from 10:00 AM till noon.

So we will continue to stay here.

You're welcome to stay on the meeting if you'd like to see who may show up and offer comments.

Good morning.

I see that Paul Langevin has been admitted to the meeting.

Mr. Langevin, welcome.

And would you like to offer any comments on the proposed workers comp rule changes?

JM Jen Meagher 13:30

Judge Debernardi I did have what?

13:32
Yes.

JM Jen Meagher 13:33
Jen meagher.

I did have one additional question regarding the motion practice rule and the page limits.

Umm and.

Just one point of clarification or request for clarification.

Understanding you can't offer that today, but discovery motions are limited to 4 pages.

Other non dispositive motions to six, and dispositive motions to 15, not including statement of facts and exhibits. in a matter for those 4 and 6 page limits, is that inclusive - it's not clear to me whether or not that's inclusive of exhibits.

Or not.

14:25

Yeah, I can say that that was not intended to include exhibits, but that's a clarification we can add to the rule.

JM Jen Meagher 14:28
OK.

Thank you.

15:01

Looking through the list of participants again, and I'm going to call out people that we haven't heard from.

If you'd like to share any comments, Erin Russell.

ER Erin Russell 15:12
o comments.

15:27

We can barely hear you, Miss Russell.

ER **Erin Russell** 15:30

I'm sorry, no comment.

15:32

OK.

Thank you.

Paul Langevin, I see you're here.

Do you have any comments you wanted to offer?

KM **Kelly Massicotte** 23:52

Beth, it's Kelly again.

If I could make it further comment.

23:55

Yes, please.

KM **Kelly Massicotte** 23:57

Sorry, this is still about 8.1200.

24:02

I'm sorry, could you say that again?

KM **Kelly Massicotte** 24:03

Sure.

It's again about a rule 8.1210.

24:10

Yes.

KM **Kelly Massicotte** 24:11

Umm, I can think of other scenarios which this does seem very unfair and I just wanted to raise those.

A person who is going to be out for an operation, for example, and they only have 10 hours of PTO time, which they're or three hours of PTO time, which they're going to

get paid in that paycheck.

But they're not getting paid for the other 37 hours and they have protected leave time under family medical leave.

For example, I believe the way I'm reading this rule, if that person is getting paid anything for that week, even though they haven't worked the whole week, that three hours of wages would be calculated into the average weekly wage, which I don't think is fair.

I don't think that's a fair change.

I also think that there are employers. I can't remember the specific employers, but I do think that there are employers that when people are on short term disability or have the entitlement to short term disability.

Again, this is unrelated to a comp injury.

This is an unrelated medical issue that comes up in the 26 weeks before a date of injury.

I believe there are some employers who pay directly wage replacement benefits instead of through a short term disability company.

And again, that would be a reduced amount where a person maybe didn't work the entire week, but there was some payment towards that towards the person's wages and under the proposed change, those wages would be included in the average weekly wage and would be reducing the average weekly wage, which I think is unreasonable.

I just really caution I about this change for the, umm, the rule 8.1210 and rule 8.1220. I don't know that it can be addressed in these rules, but I I also am concerned about taking out that phrase about and or was paid for less and relying on the normally scheduled hours that really becomes the crux under the proposed rule.

What is the person's normally scheduled hours to determine that 1/2?

This is a concern I have overall is that employers and and insurance carriers are the ones who fill out the Form 25 that list what the regular schedule or normally scheduled hours are.

And that is just submitted to the DOL and kind of deemed as fact unless a person raises it or an unrepresented person knows to raise it.

I think that there should be some mechanism.

Again, this is slightly outside the rules, but I just want to mention because this does rely on normally scheduled hours.

Under the proposed rules, changes being a very significant factor, I'm concerned

about that just because the normally scheduled hours deal well tends to rely on the employer's description of what that is, and I would want injured workers to have the ability to respond or review what is being submitted as or contended to be their normally scheduled hours because again, a claimant doesn't sign off on a form 25, they often don't even see the form 25 be when a form 32 is submitted.

And so that's a concern I have, is that I've had cases where the employer states a certain schedule or a certain number of hours, the rate of hire so to speak and the claimant does not just does not agree with that.

And they don't believe that it's accurate how it's filled out on the form 25.



27:38

Thank you.

It's now 10:30 and I'm just reminding people that we're still here, if you have additional comments to offer. I will keep my eye on the screen to see if anybody new joins the hearing coming up in the next hour and a half. Thanks.

Hello. I see that Lynn Lugare has just joined the meeting. People have given their comments, but the meeting is still open, and if you would like to add any comments, we would be happy to hear from you.

Hello again.

I'm confirming that we are still conducting this hearing on the proposed workers compensation rule changes.

It's now 11:00 AM on July 24th.

We're scheduled to continue for one more hour and we will continue to be here.

If people have comments, if they would like to offer during the next hour, and this is a reminder of the notice for people who have joined since the last time I said this, this hearing is being recorded.

Thank you.

Hello again.

I'm checking in from the public hearing on the changes to the workers compensation rules. It's now 11:30 AM and we will continue to be here for another 30 minutes if anyone joins the hearing or anyone who's already present would like to offer any additional comments.

Thank you.

I am speaking to you again from the public hearing on the proposed workers compensation rule changes.


It is now 11:45 AM and the hearing will shut down at noon.


If anybody has any comments you'd like to offer, please feel free to do so.


Thank you.


Good morning.

I see that Heidi Groff has joined the public hearing; the public hearing runs through noon and I'm happy to take any comments that you may have.

 **Heidi Groff** 1:53:45
Good morning.

 1:53:46
Good morning.

 **Heidi Groff** 1:53:47
And so sorry, I had a conflict earlier, but I'm coming in on the tail end of this and I did have a comment.
I'm just trying to pull up the rules so I can speak articulately about it.
Just give me a second here.

 1:54:01
Sure, take your time.

HG Heidi Groff 1:54:05

I realized you guys have been at it a while this morning, but I just had a comment about this proposed change to rule 8.1820.

And this is about the compensation rate for permanent partial or permanent total disability benefits.

And I believe that the proposed change is being made in an attempt to be consistent with the statutory language, UMM, regarding giving folks colas on PPD comp rate.

Even if there was no cola given on TTD because it didn't pass a July 1 while the person was on TTD and my concern about the proposed language here is that while it does do that and that's great, I think the way that this is phrased may have the unintended consequence of.

Of.

Making it so we're only looking at date of injury for people for their copyrights for permanency instead of also looking at date of disability, which is something that we do now.

So my fear is that I have clients that do have periods of temporary total.

They go back to work, they work, they end up making more money.

Umm, because they go back to work and then maybe they have another period of disability and now they get the benefit of that later period of, umm, date of disability wages instead of going back from date of injury.

And if we if we do this and we adopt this language, I think, I think what this says is the compensation rates will be adjusted for each July 1 following the date of injury, regardless of whether indemnity benefits were paid.

I think that suggests that we're only looking at date of injury and not also looking at date of disability, which is something that I think we do now. this could hurt somebody that went back to work.

And I don't think that that's the consequence that we want to have.

I don't have a suggestion on how to phrase this any better to not have that unintended consequence, but it concerns me that it's limited to date of injury instead of date of injury or date of disability, which is what I think we look at now.

It didn't do that with the prior language because the language about following the date of injury was limited to folks that had no TTD at all.

1:56:56
Thank you.

HG Heidi Groff 1:57:07
The second part of the sentence that's being stricken.

1:57:15
OK.
Thank you for that comment.

HG Heidi Groff 1:57:18
Thank you.

1:57:21
Did you have any other comments on this rule or any other rules?

HG Heidi Groff 1:57:24
I don't.
That's that was what I wanted to just put my two cents in about.
Thank you.

Since it's now noon and we're wrapping up, I want to say for the people who are still here.
Thank you everybody for attending and either listening or sharing your thoughts and comments.
It's greatly appreciated.
Umm we have also a process to take written comments and the deadline for written comments is - let me make sure I get it right.
It's August 21.
Yes, August 21.
They can be emailed to director Dirk Anderson.
His information is on our website, so if someone has made the comment about a rule and you want to take a stab at different language to illustrate what your issue is,

please feel free to do that.

If you have other rules that you think of that you have comments or concerns about, please feel free to send those along as well.

And people obviously will look at everything once the comments close in August.

So thank you everyone very much and I'm going to turn off the recording and then the hearing will be closed.

So thank you for participating.

 **Heidi Groff** 1:58:31

Thank you.

 **DeBernardi, Beth A** stopped transcription