



STATE OF MAINE
WORKERS' COMPENSATION BOARD
Board of Directors' Business Meeting

January 10, 2023

A business meeting of the Maine Workers' Compensation Board of Directors was conducted on Tuesday, January 10, 2023 via Zoom and in person at the Board's Central Office at 442 Civic Center Drive, Augusta.

PRESENT: John Rohde (*Executive Director/Chair*), Ron Green, Glenn Burroughs, Richelle Wallace, Lynne Gaudette, Serina DeWolfe, and Penny Picard (*Directors*), Richard Hewes (*General Counsel*)

I. CALL TO ORDER

Executive Director Rohde called the meeting to order at 10:03 a.m. with 27 people participating both remotely and in person. Executive Director Rohde reviewed the hybrid meeting format and remote participation procedures. Board members and staff introduced themselves for the recording.

II. APPROVAL OF MINUTES

1. Draft Minutes of 12/13/2022 Board of Director's Business Meetings

Director Wallace MOVED TO ACCEPT THE MINUTES OF THE 12/13/2022 BOARD MEETING AS WRITTEN; Director Burroughs SECONDED. **MOTION PASSED 7-0.**

III. SUBCOMMITTEE REPORTS

1. Personnel Subcommittee

Director DeWolfe reported that 9 applicants responded to the Administrative Law Judge posting for Caribou. Of those, 6 will be interviewed in January. Three people have applied for the posting for deputy director of benefits administration so far. The posting closes on January 20th. The Board continues to explore options for new office space for the Portland Regional Office.

2. IME Subcommittee

Director Burroughs reported that the IME subcommittee met again with Elizabeth Brogan and Nathan Jury about how to improve the IME process and maintain the integrity of the IME program. A change to Chapter 4 of the Board's rules has been suggested. The subcommittee is discussing these changes and will bring the proposed new Chapter to the Board for consideration once a draft has been completed.

IV. EXECUTIVE DIRECTOR REPORT

1. Portland Regional Office

As Director DeWolfe noted, a search is still ongoing for new office space in Portland. General Counsel Richard Hewes and Deputy Director Jan Adams are coordinating with the Bureau of General Services.

3. Labor and Housing Committee

The Labor and Housing Committee (LBHS) assignments have been announced. The chairs are Senator Mike Tipping and Representative Amy Roeder. Five of the 13 members served on the LBHS committee last session. The Legislature has announced that it will resume meeting in person this session, but there will still be an option for online streaming. Additionally, Directors Penny Picard and Glenn Burroughs are up for reappointment.

4. Annual Report

The tri-agency annual report is in work and due by February 15th.

5. COVID

The COVID tracking reports are still run weekly and staff is watching for potential changes due to the newest variant. On a quarterly basis, the lost time first reports of injury (FROI) are down from about 1,100 in the 1st quarter of 2022 to 450 in the 4th quarter of 2022.

V. GENERAL COUNSEL REPORT

1. Personnel

General Counsel Richard Hewes reported on staffing changes. Dolores Toothaker has moved from MAE to the Abuse Unit. The Advocate Division's Augusta office recently welcomed Amanda Silverman as a new attorney advocate. Currently, all advocate positions are staffed while two paralegal positions are open.

VI. OLD BUSINESS

1. Chapter 5 Rulemaking

Executive Director Rohde proposed a timeline for the public comment schedule which would allow for public comments to be offered on the same day as the February Board meeting. The written comment period would close ten days later. The Board agreed with the proposed timeline.

VII. NEW BUSINESS

1. 3rd Quarter 2022 Compliance Report Draft

Executive Director Rohde introduced Carrie Pomeroy from the MAE Unit to review the 3rd Quarter Compliance Report. The compliance numbers are still too low across all benchmarks with the exception of notices of controversy (NOCs). Late wage and fringe

benefit reporting is the lowest it has been. Starting in the 4th quarter, the late wage and fringe benefit reports will begin receiving fines. Carrie noted that Dolores Toothaker will continue to assist as much as possible until her position has been filled.

Director Gaudette asked if late notice fines for Memorandums of Payment (MOPs) have been going out? The new MOP penalties have been in place for the past couple of quarters.

Director Wallace MOVED TO ACCEPT THE 3rd Quarter 2022 COMPLIANCE REPORT AS WRITTEN; Director Green SECONDED. **MOTION PASSED 7-0.**

2. Legislation

As the Legislature is now in session, Executive Director Rohde noted that Legislation will stay on the agenda. New bills will be sent to directors of the Board as the bills are released (as opposed to monthly for the Board meetings) along with a status sheet for tracking things like public hearings and work sessions.

LD 53 An Act to Ensure Accountability for Workplace Harassment and Assault by Removing Intentional Acts and Omissions from Workers' Compensation Exemptions is the only workers' compensation bill printed at this time. The bill would remove "intentional acts or omissions" from the Workers' Compensation Act's exclusivity and immunity protections and would allow such actions for damages to be brought against employers in Maine courts.

Discussion was held regarding the intent and potential consequences of the bill. Director Green asked for further clarification of the language and Director Gaudette noted that, as currently written, the bill might unravel the exclusivity of the workers' compensation system. Executive Director Rohde noted that the Board has the option to testify for, against, or neither for nor against when this bill is up before the LBHS committee. Director Burroughs felt the bill was too vague to support at this time, but the Board agreed to see what happens to the language of the bill once it is worked by LBHS. As such, Executive Director Rohde will testify neither for nor against under the current language of LD 53.

Director Green asked that links to the public hearings and work sessions be sent to the Board. He noted that having the meetings available on YouTube last session was very helpful and hopes the Legislature will do the same again this session.

LD 40 An Act to Amend the Cannabis Laws is a concept draft. However, the *Bourgoin v. Twin Rivers*, 2018 ME 77 Law Court decision is clear insurers do not have to pay for medical marijuana that is prescribed as treatment for workers' compensation injuries.

VIII. ADJOURNMENT

Director Gaudette MOVED TO ADJOURN; Director Green SECONDED.

MOTION PASSED 6-1. (*Director Burroughs opposed.*)

The meeting formally adjourned at 10:23 a.m.