

**DRAFT**  
Council on Worker's Compensation  
Meeting Minutes  
GEF-1 Building  
Madison, Wisconsin  
December 22, 2015

Members present by teleconference call: Mr. Beiriger, Ms. Bloomingdale, Mr. Buchen, , Mr. Ginsburg, Mr. Herzog, Ms. Johnson, Mr. Kent, Ms. Nugent, , Mr. Redman, Ms. Seiler, and Ms. Thomas; Mr. Dernbach (Chair) in person

Excused: Mr. Brand, and Mr. Schwanda

Staff present: Mr. Aiello, Ms. Endter, and Mr. Krueger

**1. Call to Order/Introductions:** Mr. Dernbach convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 1:00 p.m. in accordance with Wisconsin's open meetings law. Mr. Dernbach called the roll of the members who appeared by telephone. WCD staff and members of the audience introduced themselves.

**2. Approval of Minutes:** A motion was made by Mr. Beiriger to approve the minutes of the December 8, 2015, meeting. Ms. Bloomingdale seconded the motion. The minutes were unanimously approved without correction.

**3. Draft Agreed Upon Bill Approval.** A motion was made by Mr. Beiriger to approve the agreed upon bill and the accompanying transmittal letter. Ms. Bloomingdale seconded the motion. The agreed upon bill was unanimously approved. The Council will be notified of the date that the Secretary's office delivers the bill to Representative Vos and Senator Fitzgerald. The next floor session begins January 12, 2016.

**4. Correspondence:** Mr. Dernbach reviewed correspondence to the Council that was received since the last meeting.

A letter from Senator Chris Kapenga dated December 14, 2015, informing the Council of a legislative proposal in SB 422 to clarify that the owner of franchise is not the employee of the franchisor unless the franchisor agrees to it in writing or if the franchisor exercises a degree of control that has the department finding the franchisor to be the employer. Mr. Buchen asked if this was a problem or an attempt to get ahead of a problem. Mr. Dernbach said it was an attempt to get ahead of a problem, that this was in response to an NLRB decision and followed legislation passed in Texas. Mr. Beiriger asked if this would exclude anyone from coverage or only clarify who the employer is in a franchise agreement. Mr. Dernbach said that it would not exclude anyone from coverage. Mr. Kent explained that this bill was in response to a case in another jurisdiction where a franchisee was allowed to make a claim against the

franchisor. Mr. Beiriger wants to make sure that this does not create a situation where coverage is denied when it is required by Wisconsin law. Ms. Bloomingdale requested that the bill be put on the agenda for the next meeting so it can be discussed further.

Mr. Dernbach informed the Council that Senator Lasee has introduced SB 375. Mr. Dernbach will have a copy of the bill sent to the Council, as well as the assembly companion bill (AB 456). SB 375 provides that real estate brokers and salespersons may not be considered "employees" for various purposes. SB 375 sets out the criteria to determine when real estate brokers are exempt from worker's compensation coverage as employees: when there is a written agreement that the agent is not an employee for federal and state tax purposes and 75 percent or more of the agent's income is related to sales. That agent will not be covered under worker's compensation. Mr. Buchen asked if real estate brokers were not already exempt. Mr. Krueger said they were not. Mr. Krueger said that some real estate agents operate under their own broker licenses and are not covered as employees if they meet the test for independent contractor but that many agents operate under another brokerage firm's license and are covered. The only true exemptions from worker's compensation are certain corporate officers and domestic servants. Mr. Dernbach said that the assembly version of the bill had a public hearing and executive session on December 10 so that the bill is ready to be scheduled for the Assembly floor, and that the senate bill will be set in early 2016. Since the next Council meeting is in March and the next legislative session may be ending by then, Mr. Beiriger said that the Council will try to provide comments for the department to forward to Senator Lasee. In addition, the Council asked the department to provide them with information on the ramifications of this bill and SB 422. Mr. Dernbach said the department would provide that.

**7. Future Meeting dates:** The next meeting is set for March 8, 2016. The agenda will include three presentations: by the Minnesota agency on alternative worker's compensation coverage; by the department's economic staff, Dennis Winters, on the current state of employment in Wisconsin; and by the Labor and Industry Review Commission.

**8. Adjournment:** Motion by Mr. Beiriger, seconded by Ms. Bloomingdale to adjourn. The meeting was adjourned at approximately 1:30 p.m.