

**MINUTES**

**MONTANA HOUSE OF REPRESENTATIVES  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LABOR & EMPLOYMENT RELATIONS**

**Call to Order:** By Chairman Tom Nelson, on January 7, 1993, at  
3:00 p.m.

**ROLL CALL**

**Members Present:**

Rep. Tom Nelson, Chairman (R)  
Rep. Gary Feland, Vice Chairman (R)  
Rep. Vicki Cocchiarella (D)  
Rep. Jerry Driscoll (D)  
Rep. Alvin Ellis (R)  
Rep. Pat Galvin (D)  
Rep. Norm Mills (R)  
Rep. Bruce Simon (R)  
Rep. Bill Tash (R)  
Rep. Rolph Tunby (R)  
Rep. Carley Tuss (D)  
Rep. Tim Whalen (D)

**Members Excused:** Representative Carolyn Squires, Representative  
Bob Pavlovich, Representative Sonny Hanson, Representative  
Steve Benedict

**Members Absent:** none

**Staff Present:** Susan Fox, Legislative Council  
Cherri Schmaus, Committee Secretary

**Please Note:** These are summary minutes. This meeting was an  
informational briefing given by the Department of Labor  
employees to the members of the Labor Committee.

**Committee Business Summary:**

Hearing: none  
Executive Action: none

**Announcements/Discussion:**

**Laurie Ekanger, Commissioner of Labor,** introduced the staff from  
the Department of Labor. Each division had a representative  
present. **Ms. Ekanger** stated that the department had a total of  
640 employees which included the local job service employees, and  
had a budget of \$41 million. She announced that the Department  
employees would give the committee an overview of the department,  
which would include certain issues that have come up in the past

and also background information. Ms. Ekanger stated that a walk-through about Workers' Compensation would be discussed, along with insurance bills. The committee was strongly encouraged to ask questions, and could contact any of the departments by calling 444-3555.

David Scott, Legal Services Division, was introduced and briefly reviewed employee relations.

Chuck Hunter, Employment Relations Division, commenced his briefing on employee relations, Workers' Compensation, prevailing wage, and collective bargaining. He stated that Workers' Compensation only has two main responsibilities; compliance for insurers, and dispute resolutions between claimants and insurers. The three types of compliances are state fund, private insurance companies and self-insured. Mr. Hunter explained that compliance is a daily review of reports, payments and agreements. He also stated that the main objective was to get both sides what they want. All employers in the State of Montana are required to have Workers' Compensation; however, not all of them carry that coverage. Mr. Hunter said these uninsured employers would be assessed a fine if they were caught cheating the system.

Mediation regulations section are responsible for assessing a mediation fee schedule. Dispute resolution is cause for a mandatory mediation. This mediation should resolve the case before court. Today 75 percent of all cases are resolved before court.

Mr. Hunter stated that his division was the only one that was neutral toward the parties involved, and that they help policy makers system-wide. He briefly mentioned that those employees who can't return to their old jobs must be trained with new skills at the expense of the Department.

Prevailing wage is the wage per hour which is enforced by the state. The three main acts that deal with prevailing wage are the Wage Payment Act, Minimum Wage and Overtime Act, and the Prevailing Wage Act. Mr. Hunter said that the Prevailing Wage Act deals with those public works contracts of at least \$25 thousand per year.

Mr. Hunter closed by asking for questions.

CHAIRMAN NELSON asked if there was a minimum number of employees in order for an employer to be allowed to self-insure for Workers' Compensation coverage. Mr. Hunter answered that the minimum number of employees was 100 and that they were each reviewed on a yearly basis.

REP. VICKI COCCHIARELLA asked if there a compliance rule to make those who don't have insurance get it. Mr. Hunter answered that the organization has field representatives (what we would call spies) who investigate tips that they receive. They threaten the

business owners that the department will close them down if they fail to comply with the rules. When the business owners pay after being caught cheating the system, they are assessed with a double payment.

REP. COCCHIARELLA asked how many tips these field reps usually receive and how they receive them. Mr. Hunter answered that the department gets tips in a number of ways; one is by phone conversations, another way is by checking all the new business licenses issued.

REP. BILL TASH asked if these field representatives or spies were not a misuse of the department employees. Mr. Hunter answered that they were not spies "per se" because they have no legal or statutory right to do anything about a tip unless it is routed to the insurer. Out of the 500 calls received last year only two percent were fraudulent.

REP. PAT GALVIN asked if the prevailing wage applies to only Montana Jobs. Mr. Hunter replied that it applies to all public works jobs in Montana.

REP. CARLEY TUSS asked if Montana was responsible for out of state contracts. Mr. Hunter replied there are a couple of options, any worker in Montana must be covered in Montana. Only 8 states have the ability to be covered by another state for a short time while employed in Montana.

REP. TUSS then questioned if out-of-state employers had to have Montana coverage when hiring Montana workers. Mr. Hunter answered that all out-of-state employers who hire workers from Montana must be covered in Montana.

REP. TIM WHALEN asked what the department had done to investigate all of the out-of-state employers during the hail storms in Billings. He also asked if these out-of-staters could be punished after the fact or if they had to be punished while in Montana. Mr. Hunter stated that situation in Billings presented the department with several problems. The department did not have enough employees to investigate these "hail stormers". Also Hunter stated that these out-of-state employers could be punished after the fact; however, they are usually hard to find and it is hard to prove that they had cheated the department.

REP. NORM MILLS asked Mr. Hunter what the department did during the famous trucking case, possibly named Americana. Mr. Hunter stated that he was not sure of the specific case; however, trucking cases usually present many problems for the department.

REP. ROLPH TUNBY asked if employers should have a self-insured security deposit or a fund set aside for the future. Mr. Hunter stated that even though the fund is not mandatory, every employer should have reserves set aside.

**CHAIRMAN NELSON** asked if a self employed person needed insurance. **Mr. Hunter** stated that they don't need insurance; however, they must go through a formal procedure to elect not to be part of this coverage.

**REP. BRUCE SIMON** asked about fraud between the employee and the employer. **Mr. Hunter** stated that it was the insurer's responsibility to file a complaint .

**REP. SIMON** asked how many self-insured employers there are currently in Montana. **Mr. Hunter** answered that there are approximately 55 self-insured employers today.

**REP. SIMON** also asked how timely the claims process was. **Mr. Hunter** answered that private insurance takes very little time, furthermore, 25-30 percent goes to the payroll of employees and state fund has the rest.

**REP. MILLS** asked if a self employed business decided to hire an employee, what amount of a deposit should they estimate. **Mr. Hunter** stated that he was not aware of a deposit that was required.

**REP. CARLEY TUSS** asked **Mr. Hunter** if it was true that the results from mediation are not available to Workers' Compensation judges. **Mr. Hunter** stated that he believes they are available; however, they are only used for informal discussion and can't be used for the record.

**REP. SIMON** asked about the subsequent injury on page 20 of the department book. Also he questioned why there has been a 20 percent rise in the subsequent injury fund since 1989. **Mr. Hunter** responded that when workers are hurt and go to a new job that the new job is not expected to pay for the injury. Workers' Compensation is responsible for the injury.

**REP. WHALEN** asked if self-insurers pay also **Mr. Hunter** replied yes.

**Ms. Ekanger** introduced **Tim Reardon**, Workers' Compensation Court Judge. **Mr. Reardon** briefly mentioned the history on page 30 of the Department book. He stated that he would not read it; however, everyone should read it on their own time. **Mr. Reardon** began his briefing by answering some of the questions previously asked by representatives. He began with Representative Simon's question about the fraud statutes in 1987. **Mr. Reardon** stated that the theft of benefits is a felony and there are several cases around the state currently. **Mr. Reardon** also responded to **REP. TUSS'** question about the results from the mediation being made available to the Workers' Compensation judges, by stating these results were not available. He then stated that prior to 1987, insurance companies paid the fees; however, now they don't pay unless the department finds they have acted unreasonably.

Mr. Reardon stated that cases are not retried. He also stated that sometimes these cases are "a long tail on a big dog".

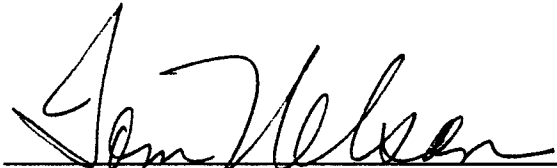
REP. GALVIN asked Mr. Reardon who determines if one has a stressful job? Mr. Reardon stated a written report from a doctor will do unless it goes to court, then the doctor must testify.

REP. GARY FELAND asked who determines how long to train an individual for rehabilitation, and if there were several cases of abuse of this. Mr. Reardon stated that there is currently a law in effect that states that the law that was in effect on the date of the injury is the one that determines how long to rehabilitate an individual. Also he stated that the laws have changed drastically since 1987. Before 1987 everyone was unsure who was entitled to benefits and for how long. REP. FELAND then asked how they determine when someone is able to return to work. Mr. Reardon explained that they have an ABCD scale that the department uses to rate the type of work an individual can return to. Prior to 1987, the judge made the decision; however, after 1987 the Department began using the ABCD scale. REP. JERRY DRISCOLL added that everyone gets at least a C rating on the scale. He also added that 104 weeks is the maximum time a unemployed individual can draw unemployment.

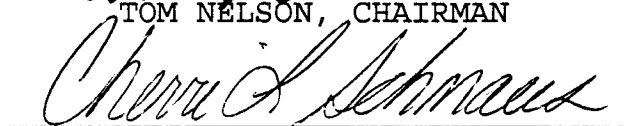
REP. ALVIN ELLIS stated that he had a trucker friend who had a serious accident when a fifth wheel trailer driven by a Canadian couple pulled out in front of him. He was permanently paralyzed. Representative Ellis asked why that case was referred to workers compensation rather than the Canadian couples insurance company. Mr. Reardon stated that he was not sure of the specific case; however, Workers' Compensation can file a law suit in one year to the insurance company.

ADJOURNMENT

Adjournment: CHAIRMAN NELSON adjourned the meeting at 4:15 p.m. and set up another briefing by the Department of Labor on Tuesday the 12th of January.



TOM NELSON, CHAIRMAN



CHERRI SCHMAUS, SECRETARY

TN/CS