

Workers' Compensation *Focus*

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Focus is going paperless

by Ana Contreras



The Workers' Compensation Division is looking for ways to reduce its operating costs and to minimize its environmental impact. Because of this, the Workers' Compensation *Focus* will no longer be provided in a paper format. Instead, it will be available electronically.

This new format will make the communication of information faster and easier and open the door to nonsubscribers. Also, if you still want something you can read away from your desk, you have the option to print the online newsletter.

We will be sending out an electronic notification when each issue of *Focus* is available online. We encourage you to take advantage of this free electronic notification service. To subscribe, go to www.wcd.oregon.gov, go to "Business Tools" and click on "E-mail Notification."

If you have questions or if you would like us to create your e-mail account for you, please contact WCD Web Coordinator Ramona Barnwell at 503-947-7637 or e-mail ramona.e.barnwell@state.or.us. ■

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Department of Consumer and Business Services

E-mail Updates

To sign up for updates or to access your subscriber preferences, please enter your e-mail address.

E-mail Address

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Oregon fee schedule and sanctions process

by Brian Light

Oregon law holds insurers and self-insured employers responsible for claims decisions, whether or not they employ third-party claims administrators and whether or not the third-party administrators contract with vendors to help make these decisions. For example, many Oregon third-party administrators employ out-of-state nationwide vendors to perform bill reviews, but in more than 30 recent cases, medical providers appealed to the Workers' Compensation Division's Medical Resolution Team because third-party administrators were taking bill reductions based on improper adjustments made by a vendor.

To resolve this issue, the division sent notices to the insurers and self-insured employers informing them that if their third-party administrators continued to take bill reductions in a manner not consistent with Oregon administrative rules, the Department of Consumer and Business Services might sanction the insurers and self-insured employers with civil penalties.

This action had the desired effect, because the responsible parties immediately arranged for their claims processors to make bill payment decisions consistent with Oregon law. No insurers or self-insured employers needed to be sanctioned for this issue, and a favorable system outcome was achieved.

If you have any questions about the Oregon fee schedule, call the Medical Resolution Team at 503-934-6049 or if you have questions about the sanctions process, contact the Sanctions Unit at 503-947-7590. ■

Brian Light is the assistant manager of the Compliance Section.

E-mail: brian.light@state.or.us

Phone: 503-947-7796

Key phone numbers and Web addresses

Workers' Compensation Division
503-947-7810, 800-452-0288
E-mail: workcomp.questions@state.or.us
www.wcd.oregon.gov

Ombudsman for Injured Workers
503-378-3351, 800-927-1271
E-mail: oiw.questions@state.or.us
www.oregon.go/DCBS/OIW

Editor

Ana Contreras
WCD Operations Section
Phone: 503-947-7523
E-mail: ana.contreras@state.or.us

Editing

Mark Peterson
DCBS Communications

Design

Stacey Thias
DCBS Communications

WCD Administrator

John Shilts

WCD Operations manager

Dan McNally

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Administrator's notebook

community
Workers' Compensation

More WCD reductions

by John L. Shilts



Despite our best efforts, the economic downturn continues to have a significant effect on Oregon's Workers' Compensation Division (WCD) and other divisions of the Department of Consumer and Business Services. As most of you already know, state government is closing most

agencies on 10 Fridays during the current two-year budget period. These mandatory unpaid furlough days will result in a statewide saving of \$2 million a day. For more information and a list of the closure dates, go to <http://www.cbs.state.or.us/wcd/closures.html>.

The current economic recession and high unemployment is causing a steep decline in workers' compensation premium assessment revenue, which funds many of our department's programs. Areas of the Oregon economy that have been hit very hard by this recession, such as construction, manufacturing, and wood products, typically pay higher amounts of workers' compensation premium. As a result, the amount of premium assessment paid to the department has dropped more than 30 percent. In 2009, to help offset the revenue shortfall, the department cut spending, used funds from our reserves, increased collections revenue, withdrew budget proposals, left vacant positions open, and laid off employees, including 14 WCD staff members.

Unfortunately, these steps were not enough. In April, we made additional expenditure reductions that we hope will affect the least amount of customers possible. These reductions included laying off another 13 Workers' Compensation

Division employees, along with 18 other employees department-wide. The positions selected for layoff were based on a number of criteria, including areas where revenue sources are affected more than others, areas where workload has declined, areas where programs have been reduced in scope and no longer need the current staffing level, and areas where functions can be consolidated.

At this time, the division is also evaluating the feasibility of more reductions, some of which include the following:

- Outsourcing the scheduling of compelled medical examinations, such as medical arbiter examinations for injured workers.
- Eliminating the department's facilitation of 90-day conferences when a worker is not yet in a vocational assistance plan.

We are planning to have thorough discussions with our stakeholders before making any final decisions on these possible actions.

None of these decisions was easy to make. However, I believe they were necessary in order for us to maintain the critical programs that Oregon's workers and employers depend on. Please be assured that we will continue to do everything possible to minimize the disruption and hardship to everyone that relies on our services. ■

John Shilts is the administrator of the Workers' Compensation Division.

E-mail: john.l.shilts@state.or.us

Phone: 503-947-7500

Focus on: 20th anniversary of historic workers' compensation reforms

by Ana Contreras

Gov. Ted Kulongoski gathered with representatives from Oregon businesses and labor organizations at the State Capitol's Galleria on May 3 to mark the 20th anniversary of successful reforms to the state's workers' compensation system.

In the 1980s, Oregon was in a deep economic downturn, much like we face today. However, unlike today, Oregon businesses back then also had to contend with some of the highest workers' compensation costs in the nation. Furthermore, benefits for workers were among the lowest in the country while the occupational injury and illness rate was one of the nation's highest.

In December 1989, the legislature and Gov. Neil Goldschmidt charged a group of Oregon labor and business leaders with developing a strategy to make workers' compensation costs affordable for employers while providing fair and improved benefits to workers. The group met in the basement of Mahonia Hall, the governor's residence, where it created a package of reform proposals that covered many issues important to labor and employers. On May 7, 1990, the "Mahonia Hall" recommendations were adopted by the legislature in a special session.

Now 20 years later, other states are looking at Oregon's workers' compensation system as a successful model. Much of this success is due to the reforms, which included a wide variety of issues important to labor and employers. The reforms also formalized the Management-Labor Advisory Committee, which remains the forum in Oregon to discuss and resolve workers' compensation issues.

These days, Oregon employees and businesses are still reaping the benefits of the reforms. Premium rates have not increased over the past 20 years, a statistic no other state can match and amounts to \$17.4 billion in savings for Oregon businesses. Litigation is down, hearing requests to the Workers' Compensation Board have decreased 66 percent since a peak in 1989, and Oregon's return-to-work programs for employees are nationally known and assist more than 8,000 workers each year.



Cory Streisinger, director of the Department of Consumer and Business Services, which administers the workers' compensation system, said, "One of the key points of the Mahonia Hall reforms was focusing the workers' compensation system on those it affects the most: workers and employers. As we face new challenges today, workers and employers continue to collaborate on solving problems and making improvements to the system."

To learn more about the anniversary event, the reforms, and the historic Mahonia Hall meetings, go to www.workerscomp anniversary.oregon.gov. ■

Interagency Compliance Steering Committee charged with educating public on employee vs. independent contractor

by Dan McNally

Properly classifying workers is important. When employers misclassify their employees as independent contractors those workers may not be eligible for benefits such as minimum wage and overtime, unemployment insurance, and workers' compensation. In 2005, the Oregon Legislature clarified the statutory definition of "independent contractor," which affects workers' compensation as well as other areas such as income taxes and business licenses. In support of those changes, an Interagency Compliance Steering Committee was created to identify ways state agencies could work together to improve compliance with laws relating to the misclassification of employees as "independent contractors." The passage of House Bill 2815 in 2009 was another step to help establish processes with dedicated resources to enable agencies to work together to focus on these goals and see what results can be achieved.

Past barriers to the enforcement of these laws included the inability of enforcement agencies to share information and limited funding for targeted compliance and enforcement activities. The Emergency Board appropriated funds in May 2010 to begin program implementation and to support the increased enforcement efforts. Several positions represent the relevant enforcement agencies: Department of Consumer and Business Services, Department of Revenue, Employment Department, Bureau of Labor and Industries, Department of Justice, Construction Contractors' Board, and the Landscape Contractors' Board. The following are examples of how the agencies plan to use the new resources provided by the E-Board:

Compliance Team: This is a team of Revenue, Employment, Department of Consumer and Business Services, and Bureau of Labor and Industries investigators that will be cross-trained in laws that affect each of the agencies' programs. The Compliance Team will focus on Oregon tax,

employment, workers' compensation insurance, and licensing laws. Also on the team is a criminal financial investigator with the Department of Justice who will help investigate and prepare cases for prosecution. The team will receive referrals from and refer cases to the Construction Contractors' Board, the Landscape Contractors' Board, and other agencies when appropriate.

Since the investigators will be representing multiple agencies in their work, they will go through an extensive cross-training plan to learn laws on state tax withholding, unemployment insurance tax, workers' compensation, applicable transit taxes, licensing, and wage and hour laws. They will also receive comprehensive training on employment law; training from the Department of Consumer and Business Services, Bureau of Labor and Industries, and the other partnering agencies; and training in auditing and investigation processes and procedures.

Data Analysis: A position is being created in the Department of Revenue that will assist with database construction and the collection and analysis of business data from a variety of sources (private, local, state, and federal) to identify potential misclassification issues for referral to the Compliance Team.

Technical Assistance Program: The Bureau of Labor and Industries' Technical Assistance for Employers Unit will coordinate the interagency efforts to educate and advise employers about the appropriate classification of individuals as independent contractors or employees, provide training and materials for distribution, and be responsible for enhancing the current state website relating to independent contractors, providing information, and the ability to report suspected violations to the participating agencies.

Continued on page 6

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The committee will collect data supporting performance measures to determine the success of the strategies and model. Washington and New York have had success with similar programs that have shown participating agencies can be more efficient in their enforcement efforts, while being less intrusive to employers since there won't be multiple agencies separately contacting an employer.

The Compliance Team will gather and share information, conduct joint audits and compliance examinations, and create a coordinated enforcement and referral process. The limited duration positions will start July 2010 and continue

for the remainder of the 2009-2011 biennium. The strategies developed by the Interagency Compliance Steering Committee will be developed, deployed, and evaluated by the participating agencies enabling them to evaluate the strategies for long-term use and report back to the 2011 Legislature. ■

*Dan McNally is the manager of the Operations Section.
E-mail: daniel.j.mcnelly@state.or.us
Phone: 503-947-7502*

2010 Special Session produces legislation affecting home care workers

By Fred Bruyns

The Home Care Commission is a public commission charged with ensuring the quality of home care services provided to the elderly and people with disabilities. House Bill 3618 modifies and expands the definition of "home care worker" for purposes of providing workers' compensation coverage to certain individuals who provide services to the elderly or people with disabilities.

Currently, only those workers providing in-home care services to elderly or people with disabilities whose compensation is paid by the Department of Human Services are defined as "home care workers." These individuals are included on the Home Care Commission's registry and entitled to collectively bargain for workers' compensation benefits.

House Bill 3618 expanded the definition of home care workers to include all individuals hired by an elderly person; a person with a physical disability, developmental disability, or mental illness; or by the parent or guardian of an elderly person or

person with a disability, and who receives money from the Department of Human Services (either funded by the department or another agency). The new definition affects workers' compensation coverage starting Jan. 1, 2011.

In 2004, through collective bargaining, home care workers gained the rights to certain benefits, including health insurance benefits. Home care workers are not typically required to be covered under workers' compensation law. However, the Home Care Commission is required to obtain workers' compensation coverage on behalf of Department of Human Services clients who employ home care workers. ■

*Fred Bruyns is a policy analyst and rules coordinator in the Operations Section.
E-mail: fred.h.bruyns@state.or.us
Phone: 503-947-7717*

Return to Work

“Sorting out” EAIP purchases — worksite modification vs. tools and equipment

by Jake Forrey

The Employer-At-Injury Program (EAIP) can help cover costs linked to returning workers to a light-duty job. Two benefits of the program are “worksite modification” and “tools and equipment.” From time to time, it is hard to sort out which category is right for any given purchase simply because each case is “one of a kind.”

For example, a warehouse worker injures his lower back while on the job and his doctor tells him not to lift more than 15 pounds. However, a major part of the worker’s job is lifting 50-pound bags of animal feed and putting them on pallets to be loaded into trucks for shipping. In this case, the worker would not be able to do one of the main parts of the job. The employer might buy a conveyor belt to lift the bags of feed and place them on the pallets. This would be considered a modification of the worker’s job, so EAIP worksite modification funds could be used to pay for the conveyor belt. With this type of modification, the worker could do the necessary tasks of his regular job, in spite of physical restrictions that resulted from the injury.

A primary factor in worksite modification is whether the item is necessary to overcome injury-caused restrictions or prevent a worsening. EAIP worksite modification is intended to change the worker’s transitional work — whether it is regular work (with a change in duties) or another job — so that worker can overcome specific physical restrictions resulting from the injury and get back to work. EAIP can repay up to \$2,500 for changing, buying, renting, or adding to equipment that helps workers do transitional work within their restrictions. If a worksite modification requires purchase of separate pieces critical to making the modification function, they are seen as part of the modification and cannot be listed as tools and equipment. This is especially true when pieces are bundled and sold together. For example, if a table

saw is being installed as the modification, saw blades would be part of the modification and not fall under tools and equipment.

The program also has funds to purchase tools and equipment. When the job at injury cannot be modified to fit the worker’s current restrictions, but the employer can assign new duties or bring the worker back to a different light-duty job as transitional work, this category can provide tools and equipment so the worker can carry out the tasks. If some parts of a worksite modification are not required to make the modification work, they may qualify as tools and equipment. For example, the goal of a modification may be to create an ergonomic workstation with work surfaces, a chair, and a cordless headset — all required to modify the job. But if the employer has already used all funds in the worksite modification category, then separate items such as the chair or headset might qualify as tools and equipment.

Using the warehouse worker example, there may be times when the employer has the worker perform transitional work in the office instead of in the warehouse. However, there may not be a desk or computer for the worker to use. In this case, a desk and a computer could be purchased under tools and equipment because they are not modifications. They are tools to help the worker perform the transitional work.

Some purchases may not clearly be either worksite modification or tools and equipment. In fact, sometimes purchases qualify under both worksite modification and tools and equipment, creating an overlap in categories of funds that can be used for these purchases. When in doubt, it’s a good idea to call your insurer or WCD, talk with a program specialist about the situation, and get advice before making final plans. ■

EAIP reimbursements and insurer “wrap-up” (OCIP) policies

by Jake Forrey

Studies show that early return to work helps both workers and employers. Workers continue to be active and productive, go through less disruption of their personal and professional lives, and remain more positive as a result of contact and support from co-workers. Employers get to keep valuable employees; save expenses for hiring, training, and replacing injured workers; and reduce workers’ compensation costs when injured employees safely return to work. The Employer-at-Injury Program (EAIP) encourages early return to work by helping employers use transitional work for injured workers while they recover from their injuries. Employers that control the services of workers — and distribute payroll directly to them — can use the program.

Sometimes there is confusion about who the “employer at injury” is. In most cases, employers are insured for the work they do. In some cases, though, employers may also be covered under an Owner Controlled Insurance Program (OCIP), or “wrap-up” policy. The OCIP policy owner purchases OCIP insurance on behalf of others who may be employed for a specific project. The OCIP insurance covers contractors, subcontractors, construction management, and state employees working on the worksite who are approved by the owner to participate in the program. The contractors are still required to carry their own insurance on their subject workers doing work off the OCIP site and, when there is an injury on the wrap-up project, may also pay a deductible when claims occur.

Where there are two separate coverage policies for contracted employers, there can be confusion about which employer is the employer at injury. Oregon Workers’ Compensation Law [ORS 656.005(13)(a)] says the employer is any person “who contracts to pay a remuneration for and

secures the right to direct and control the services of any person.” For purposes of receiving EAIP benefits, Oregon Administrative Rules — specifically, OAR 436-105-0005(6) — define employer as “the organization that employed the worker when the worker sustained the injury or occupational disease....” Thus, the Workers’ Compensation Division (WCD) provides EAIP benefits to the employer that directs and controls the employee’s day-to-day work activities.

If a worker is injured while working under an OCIP policy, the owner of the OCIP policy is considered the employer for purposes of compensability. As the employer, the OCIP policy owner is responsible for filing and processing the injury report under the OCIP policy. However, the OCIP policy owner’s involvement with the claim is limited to filing and processing it. Even so, the OCIP policy owner can benefit from using the EAIP because returning the worker to transitional work limits or removes the need to make temporary disability payments.

In contrast, the contracted employer is considered the employer for purposes of Employer-at-Injury Program benefits. The contracted employer more closely fits the related EAIP definition of employer because the contracted employer directly controls the services of and distributes payroll directly to the worker. Therefore, the contracted employer is eligible to receive the EAIP benefits, including wage subsidy. Any EAIP reimbursement paid to the OCIP policy owner should be passed along to the contractor employer. ■

*Jake Forrey is the assistant manager of the Employment Services Team in the Benefits Services Section.
E-mail: jacob.p.forrey@state.or.us
Phone: 503-947-7575*

Dear Benefits and Certification Unit

Frequently asked questions for the Benefits and Certification Unit

by the Benefits and Certification Unit staff

Question: I recently issued a Notice of Closure awarding the injured worker permanent partial disability. The worker requested reconsideration because the worker feels the permanent partial disability award is not adequate. Am I required to pay the permanent partial disability award pending the order on reconsideration?

Answer: Yes. In most circumstances* the insurer must pay the permanent partial disability awarded on the Notice of Closure, pending the outcome of the reconsideration. ORS 656.313 allows for staying of compensation, including permanent partial disability, pending a request for hearing or review. However, requesting reconsideration of a Notice of Closure is not a request for hearing or review as provided in this statute. Therefore, the permanent partial disability award may not be stayed pending the outcome of the reconsideration.

** Special circumstance – If the insurer originally denied compensability of the claimed condition and the compensability decision remains on appeal, the insurer can stay payment of the permanent partial disability awarded, even if the insurer does not request reconsideration.*

Question: Can I stay payment of the permanent partial disability award if I (the insurer) request reconsideration of the Notice of Closure?

Answer: No. It does not matter who requested reconsideration. The permanent partial disability award must be paid pending the outcome of the reconsideration.

Question: Since the permanent partial disability must be paid pending the order on reconsideration, do I have to pay the entire award at once?

Answer: If the permanent partial disability award does not exceed \$6,000, the insurer must pay the entire award to the worker in a lump sum no later than the 30th day after the Notice of Closure was issued.

If the permanent partial disability award exceeds \$6,000, the insurer should pay the award monthly. If the award is paid monthly, the monthly payment must equal 4.35 times the worker's temporary disability rate at the time the Notice of Closure is issued, but not less than \$108.75 per month. The first monthly payment is due no later than the 30th day after the Notice of Closure is issued. Subsequent monthly permanent partial disability payments should be issued in a regular and predictable monthly sequence until the entire award is paid.

Question: If the Workers' Compensation Division issues the reconsideration order before the entire permanent partial disability award is paid and we appeal, may we stay the unpaid portion of the permanent partial disability award?

Answer: Yes, if you appeal the reconsideration order you may stay the unpaid portion of the permanent partial disability, if any, according to ORS 656.313.

ORS 656.216; ORS 656.230; ORS 656.313; OAR 436-060-0040(1); OAR 436-060-0060(1); OAR 436-060-0150(7) & (9). ■

The Benefits and Certification Unit responds to inquiries from workers, insurers, employers, medical providers, and attorneys.

E-mail: workcomp.questions@state.or.us

Phone: 800-452-0288

Who's Who in WCD

by Kim Morrell



Ada Waymire,
outreach analyst

If you've called the Workers' Compensation Division to get answers to questions about workers' compensation law, you've probably spoken with Ada Waymire. Ada has worked for the division since the 1980s and has earned a well-deserved reputation as a workers' compensation expert by many participants in the system.

Before working for the division, Ada participated in a brief work-experience program in the Building Codes Division's Commerce Department in the fall of 1980. Ada moved on to the Workers' Compensation Division, where she started as a files clerk. Six months later, she joined Claims Coding and was quickly promoted to Quality Control. In 1990, Ada joined the Benefit Consultation Unit and later became the team leader. In 2007, the Medical Section was formed, and Ada's position moved from the Benefit Consultation Unit to the Medical Section, where she currently works as an outreach analyst.

Ada still spends her time providing excellent customer service and resources to different stakeholders.

"I like helping the parties in the workers' compensation system know how to use the system to the best effect," Ada said. "Our job is to make the system work for everyone, and I like not having to take sides."

Ada's parents were both born in Oregon, but she was born in Longview, Wash. Ada's father was a first-generation Oregonian, and her mother's family came to Oregon in the early 1800s. Ada also lived in Washington and Nebraska before making her home permanently in Oregon in 1973.

When Ada is not answering questions and e-mails from customers and stakeholders, she likes to read and spend time in her small flower garden. Ada has three children, all boys. She has four grandchildren, two girls and two boys. Ada loves to talk to her children, who all live in Washington. "They are the light of my life," she said.

Ada also likes to travel.

"I'm looking forward to retirement at some point in the future," Ada said. "One of my sons drives 18-wheel, so I would like to go out with him for a week or two. One of my long-held dreams is to go to England by ship and ride the luxury train that tours Scotland. And, when I win the lottery, I'll do all of the above." ■

Kim Morrell is an outreach coordinator in the Medical Section.

E-mail: kimberely.r.morrell@state.or.us

Phone: 503-934-6015

What's up on the Web?

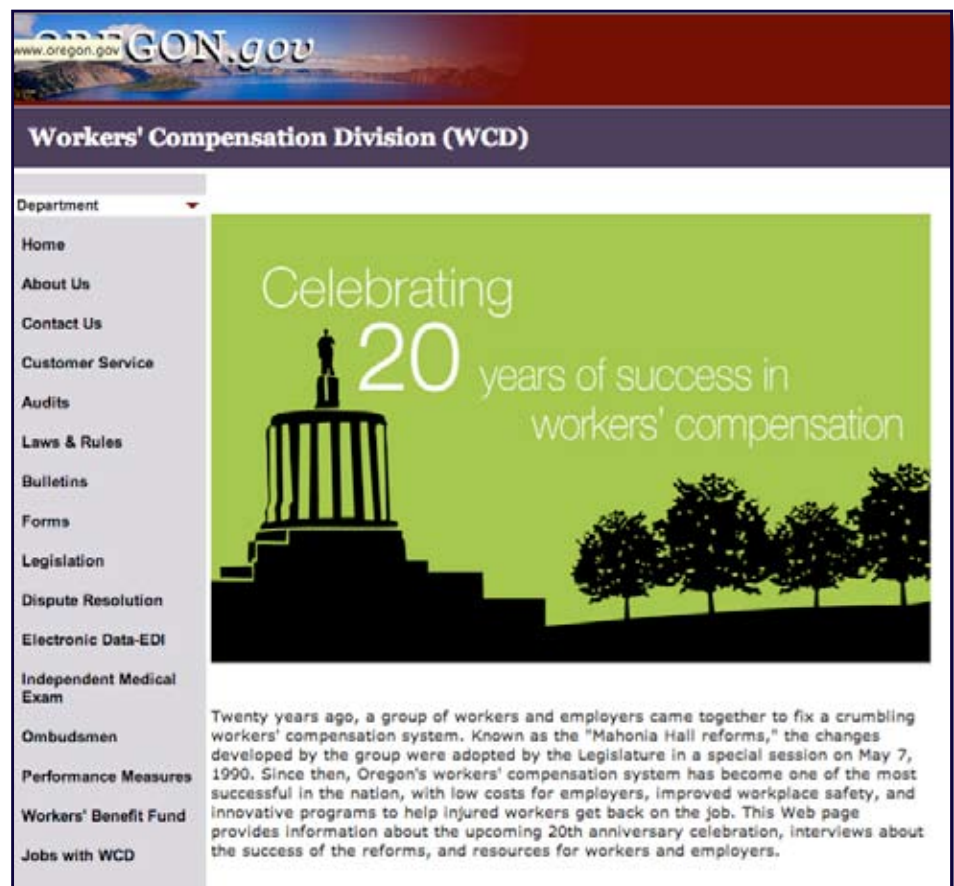
The Workers' Compensation Division has a new Web page that provides information about the 20th anniversary of historic workers' compensation reforms, interviews about the success of the reforms, and resources for workers and employers.

Gov. Ted Kulongoski and the Department of Consumer and Business Services hosted the celebration on May 3 to mark the 20th anniversary of the successful reforms to the state's workers' compensation system. The event was held in the state Capitol Galleria and featured speeches from business, labor, and state leaders (see page 4).

In the 1980s, Oregon businesses had some of the highest workers' compensation costs in the country and Oregon workers faced injury and illness rates that were among the highest in the country.

In an effort to reform the system and increase workplace safety, a group of labor and business leaders, including Gov. Kulongoski, who then was serving as the state's Insurance Commissioner, came together to overhaul the state's workers' compensation system.

Because the group met in the basement of the governor's mansion, Mahonia Hall, the reforms became known as the "Mahonia Hall" reforms. The reforms became law in 1990. Twenty years later, on-the-job injury and illness rates in Oregon have decreased 50 percent and workers' compensation costs are down 60 percent, now among the lowest in the nation.



To learn more about the anniversary event, to see pictures of the celebration, or to read success stories and testimonials about the reforms and the historic Mahonia Hall meetings, go to www.workerscomp20anniversary.oregon.gov. ■

Ramona Barnwell is the Web coordinator for the Workers' Compensation Division.

E-mail: ramona.e.barnwell@state.or.us

Phone: 503-947-7637



DEPARTMENT OF
CONSUMER
& BUSINESS
SERVICES

Workers' Compensation Division
350 Winter St. NE
P.O. Box 14480
Salem OR 97309-0405

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Oregon Workers' Compensation Educational Conference: Nov. 3-4, 2010

by Kara Olsen

The International Workers' Compensation Foundation is, once again, generously sponsoring the Oregon Workers' Compensation Educational Conference.

This year's Oregon Workers' Compensation Educational Conference is scheduled for Nov. 3 and 4 and will be at the same place as before, the Salem Conference Center. Conference committee members are already hard at work collecting topic ideas to help educate and improve processes for participants in the system. We are open to any topic ideas; the more ideas we receive, the better.

There will be vendors, workshops, informative booths, exhibits, and lots of opportunities to network. Furthermore, educational credit hours are

available to insurance agents, attorneys, disability management professionals, vocational providers, claims examiners, and claims managers.

For more information, visit the conference page on the Workers' Compensation Division's website:
http://www.cbs.state.or.us/wcd/communications/ed_conference/conf09.html. ■

Kara Olsen is the conference and training coordinator in the Operations Section.

E-mail: kara.r.olsen@state.or.us

Phone: 503-947-7515