

MINUTES
HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE

- DATE:** Thursday, February 27, 2014
- TIME:** 1:30 pm or Upon Adjournment of the House
- PLACE:** Room EW05
- MEMBERS:** Chairman Hartgen, Vice Chairman Anderson(31), Representative(s) Loertscher, Anderst, Hancey, Harris, Holtzclaw, Mendive, Romrell, VanOrden, King, Woodings
- ABSENT/
EXCUSED:** Representatives Anderst and VanOrden
- GUESTS:** Tom Limbaugh, Mindy Montgomery and Jane McClaran, Industrial Commission;
Don Drum and Joanna Guilfof, PERSI
- Chairman Hartgen** called the meeting to order at 1:31 p.m.
- MOTION:** **Rep. Woodings** made a motion to approve the minutes of February 25, 2014.
Motion carried by voice vote.
- S 1244:** **Senator Goedde** was unable to present **S 1244**. The bill will be rescheduled for a later meeting date.
- S 1312:** **Don Drum**, Public Employee Retirement System of Idaho (PERSI), presented **S 1312**. He said in 2012, PERSI received a determination letter from the IRS for the PERSI Base Plan. A determination letter is the IRS's statement that the terms of PERSI's statutes and rules are in accordance with applicable federal statutes to qualify the plan as a qualified governmental pension plan under Section 401(a) of the Internal Revenue Code. The determination letter was issued subject to PERSI making certain statutory changes and rule changes. **S 1312** addresses only the statutory changes, which adds references to Subsections (36) and (37) of Section 401(a) of the Internal Revenue Code. Subsection (36) provides that a plan is not disqualified if it allows for the distribution to a person age 62 or older who is not separated from employment. Subsection (37) requires that the qualified plan treat a participant who dies while performing qualified military service as if he had resumed work and then died. The PERSI plan does that in Idaho Code 59-1302(23), in the definition of military service. **S 1312** would also add a statement that the plan shall be administered in accordance with the pre-ERISA (Employee Retirement Income Security Act) vesting requirements of Section 411(e)(2) of the Internal Revenue Code, which requires 100% vesting upon a plan termination or upon complete termination of all employer contributions. These sections already apply to PERSI, the bill simply clarifies that by adding references to them.
- In response to questions, **Mr. Drum** said the PERSI plan contains triggers and parameters related to collection of retirement benefits.
- Joanna Guilfof**, PERSI, responded to additional questions. She said age 55 is the age for early retirement, and age 65 is the standard retirement age. Currently the plan does not allow someone to retire in place at age 62, however action by the legislature could allow that option.
- MOTION:** **Rep. Anderson(31)** made a motion to send **S 1312** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Anderson(31)** will sponsor the bill on the floor.

Tom Limbaugh, Industrial Commission, provided an annual update to the committee. He gave a brief historical overview of workers' compensation (work comp), saying that prior to the introduction of work comp, a worker was required to demonstrate that his injuries were the result of the employer's negligence. The historic quid pro quo of work comp is that the worker gave his right to pursue a negligence claim in exchange for benefits, regardless of fault. Employers, in turn, were protected from civil judgements. Some important dates in Idaho's work comp program include 1917, when the Idaho Legislature passed Idaho's work comp law; 1927, when the Industrial Special Indemnity Fund was created; 1937, when the Unemployment Compensation Law was enacted; 1939, when the Occupational Disease Compensation Law was enacted; 1971, when Idaho recodified the work comp law; 1974, when the Division of Industrial Commission was established, and 1997, when the Agricultural Pursuit Exemption was repealed.

Mr. Limbaugh said the Commissioners who head the Industrial Commission are appointed by the Governor and confirmed by the Senate. Their backgrounds are in the fields of labor, law, and employment, and they serve in judicial, administrative and regulatory roles. Currently the Chairman is **Thomas P. Baskin**, the attorney representative; **R.D. Maynard** is the labor representative, and **Thomas E. Limbaugh** is the employer representative. Commissioners serve six-year staggered terms, and no more than two may serve at the same time from the same political party. Departments within the Industrial Commission are Adjudication, Employer Compliance, Claims and Benefits, Fiscal, Internet Technology, Human Resources, Rehabilitation, and the Crime Victims' Compensation Program. The Commission administers work comp law under Title 72, Idaho Code. With the exception of the Crime Victims' Compensation Program, premium tax is the Commission's primary funding source for ongoing operations. Premium tax is collected semi-annually in March and July. The Commission does not pay work comp benefits. They are not the State Insurance Fund, or an insurance company. The Commission does not set work comp rates. Work comp rates are set by the National Council on Compensation Insurance (NCCI) and approved by the Department of Insurance. For FY2013, there were a reported 33,044 accidents with 23 fatalities. For calendar year 2012, sureties reported were \$223.2 million in total benefits paid, with a total of \$144.4 million in medical and \$78.8 million in lost wages.

Mr. Limbaugh explained that the Commission is an administrative court with exclusive jurisdiction over work comp law. They decide disputed work comp cases through hearings, case settlements and mediation. The Commission provides final decisions on unemployment appeals from the Department of Labor. Work comp and unemployment decisions are appealable only to the Supreme Court. Unemployment appeals from the Department of Labor have dropped since FY2010, when there were 1,129 of such appeals. In FY2011, there were 1,011; in FY2012 there were 951, and in FY2013, there were 762. The Employer Compliance Division receives Idaho business registrations from the state's online business registration program and notices of insurance cancellations from NCCI. The staff reviews and processes Department of Labor employer wage records to ensure employers have necessary coverage. Employees totaling 13,948 have become covered by work comp insurance as a result of contact by the Employer Compliance Division. The Claims and Benefits Division collects and maintains status information on the 33,000+ claims filed each year to ensure work comp benefits are paid properly each year. It conducts audits to ensure compliance with Idaho claims adjusting rules and requirements. It also reviews and makes approval recommendations on lump sum settlement agreements proposed between employers and employees. Additionally, it provides a work comp certification program to industry professionals. Since 2002, 52 courses have been given to a total of 1,043 attendees.

Mr. Limbaugh outlined claims by industry as follows: health care and social assistance: 4,569 claims; retail trade: 3,409 claims; manufacturing: 3,876 claims; public administration: 2,721 claims; construction: 2,599 claims; educational services: 2,023 claims; agriculture, forestry, fishing and hunting: 2,114 claims; waste management and remediation: 1,947 claims; accommodation and food services: 1,711 claims, and other industries or nonclassified industries: 8,075 claims. The Commission has a Rehabilitation Division, which was created in 1974. They work closely with employers, medical providers and sureties to facilitate medical recovery and a return to work. The Commission has an advisory committee, a 16-member committee representing workers, employers, the insurance industry, attorneys, physicians and hospitals, and special members from the Senate and House Commerce and Human Resources Committees. They meet quarterly to discuss issues and generate recommendations regarding Idaho's work comp system. Projects they have dealt with as subcommittees relate to membership/attendance and nominations, attorney fees, the Professional Firefighters of Idaho, health care, security for compensation, the Industrial Special Indemnity Fund, the Uninsured Employers' Fund, workplace safety, electronic documents filing, electronic data exchange rules, and claims and benefits rules. Logging and industrial safety bureaus are funded by the Commission through work comp premiums. These programs provide safety training for loggers and inspect logging operations. They also perform workplace safety inspections pursuant to an agreement. They inspect state owned/maintained buildings to ensure safe working conditions, and inspect political subdivisions on request. The Crime Victims' Compensation Program provides financial assistance to victims of crime. They help pay for medical, psychological, sexual assault forensic examinations, wage loss, death benefits and funeral expenses. Eighty-eight percent of cases filed involve misconduct against women and children. There is a \$25,000 maximum benefit. Since the program's inception, approximately 37,400 victims have been assisted by the program, which receives no General Fund dollars. It is funded through fines imposed on offenders convicted of crimes in Idaho, and the Victims of Crime Act of 1984 (VOCA) Federal Grant Award. For FY2013, \$2,930,000 was paid to innocent victims of crime and service providers.

Mr. Limbaugh gave a workforce update, saying the Industrial Commission has 137.25 full time positions. They are experiencing high turnover, with classified employee turnover at 22.7% for FY2013, when the state classified average was 13.5%. The turnover seems to be related to employees moving to different state agencies for higher salaries.

In response to questions, **George Gutierrez**, Crime Victims' Compensation Fund, does pay lost wages for victims who are not able to return to work or to dependent children who lose a parent to violence. This benefit is a maximum of \$175 per week. Most of Idaho's crime victims who utilize this fund are children. Most benefits that are paid go directly to providers rather than to individuals for lost wages.

Tom Baskin, Industrial Commission, said if an employee is found to be intoxicated at the time of a work related accident, that employee may forfeit work comp benefits. This determination is made on a case-by-case basis.

Mr. Limbaugh responded to additional questions. He said a political subdivision is defined in Idaho Code 72-720 as a taxing district.

Mr. Gutierrez responded to a question regarding the meaning of the term "innocent victims". He said if a victim played a contributing factor in a crime, and subsequently becomes a victim of that crime, that person may or may not receive benefits. For example, if a person is in the process of robbing a bank when he is shot, he might not receive benefits from the Crime Victims' Compensation Fund.

Mr. Limbaugh responded to questions, saying the NCCI sets premium rates paid for work comp policies. The Industrial Commission does not have employee compensation rates as high as some other state agencies because their budget allotment does not allow them to pay their employees as much as other state agencies who have eliminated positions in order to further spread their dollars. CEC (Change in Employee Compensation) increases are helpful. The state is viewed as a single employer, so discrepancies between rates of pay for employees performing the same job for different agencies can create movement away from the agencies who are paying less. The State Insurance Fund has never been part of the Industrial Commission. They do over 50% of the business in the state, and are regulated by the Commission. Mr. Limbaugh believes they are doing a good job as-is.

Rep. Hancey responded to a question, saying historically the State Insurance Fund was cheaper than private insurance companies, was more competitive and provided better service.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:12 p.m.

Representative Hartgen
Chair

Mary Tipps
Secretary