



# JUDICIAL COUNCIL OF CALIFORNIA

JUDICIAL BRANCH WORKERS'  
COMPENSATION PROGRAM  
ADVISORY COMMITTEE

[www.courts.ca.gov/jbwcp.htm](http://www.courts.ca.gov/jbwcp.htm)  
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## JUDICIAL BRANCH WORKERS' COMPENSATION PROGRAM ADVISORY COMMITTEE OPEN MEETING MINUTES

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))

THIS MEETING WAS CONDUCTED BY ELECTRONIC MEANS

THIS MEETING HAD BEEN RECORDED

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**Date:** August 24, 2020  
**Time:** 10:30 a.m. – 12:00 p.m.  
**Website:** BlueJeans: <https://bluejeans.com/s/bDHXS/>

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**Advisory Body Members Present:**

Ms. Tania Ugrin-Capobianco, Hon. Matthew Brower, Ms. Colette M. Bruggman, Ms. Heather Capps, Mr. Joseph Carruesco, Ms. Stephanie Cvitkovich, Ms. Krista LeVier, Ms. Michelle Martinez, Mr. James Owen, Ms. Bryna Smith, Mr. Hugh Swift, Mr. Brian Taylor, Ms. Kimberlie Turner, Ms. Shelby Wineinger, Mr. T. Michael Yuen

**Advisory Body Members Absent:**

Ms. Kimberly Bartleson

**Others Present:**

Mr. Patrick Farrales, Ms. Maria Kato, Mr. Edward Metro, Ms. Jade Vu, Ms. Miki Katsuyama Novitski, Mr. Zlatko Theodorovic, Ms. Brandy Olivera, Ms. Fran Mueller, Ms. Beth Harville, Ms. Jacquelyn Miller

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### I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

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**Call to Order and Roll Call**

Ms. Tania Ugrin-Capobianco, Chair, called the meeting to order at 10:30 A.M. and Mr. Patrick Farrales was asked to take roll call.

**Approval of Minutes**

The advisory body reviewed and was asked to approve the Judicial Branch Workers' Compensation Program Advisory Committee minutes of the April 22, 2020 Advisory Committee meeting.

Motion: Ms. Michelle Martinez motioned to approve, and Mr. T. Michael Yuen seconded.

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**II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))**

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Mr. Farrales reported that there were no written comments received.

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**III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-2)**

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**Item 1**

**Legislative Updates (No Action Required)**

Ms. Jacquelyn Miller of Sedgwick presented a legislative update regarding three COVID-19-related workers' compensation bills currently under review by the state legislature. The hearing for each bill took place on Monday, August 24, 2020, at various times.

- **Assembly Bill 196** – Essential Occupations/Industries (Gonzalez)
- **Assembly Bill 664** – Communicable Disease (Cooper, Bonta, Gonzalez)
- **Senate Bill 1159** – COVID-19 Presumptive Injury (Hill, Daly)

The bills are to be placed onto the Governor's office by Friday, August 28, 2020.

**Question Asked:** Clarification regarding differences between Assembly Bill 196 and Assembly Bill 664, the risk of exposure, and the lobbyists' expectations of these bills passing.

**Response:** Assembly Bill 196 is specific to front-line and essential occupations and safety officers. Assembly Bill 664 is specific to non-essential employees and do have exposure to the members since there are safety officers working for the judicial branch. In the workers' compensation industry, we know that the police and fire are going to get their presumptive injury coverage, but the front-line medical care and essential workers are new for this state.

The feeling is that the Senate Bill 1159 has the greatest likelihood that it will be passed by the Governor. Due to constant changes to the bill, we do not know what version will be presented on Friday.

**Item 2**

**Deficit Reduction Alternatives Working Group Updates (No Action Required)**

Ms. Beth Harville from AIMS had presented the progress on the Legacy Claims Project, which include claims that have never settled, are more than five years old, and do not contain companion claims. The goal is to bring the files to resolution if possible. The time frame of this project is from May 1, 2020, to December 31, 2020. Results have been reported to the JBWCP staff every other month.

Regarding COVID-19 claims, it was reported that only six claims were filed from the trial courts and no judiciary claims. One claim was withdrawn, and the five remaining claims fell within the presumption period with no basis for rebuttal. The one claim outside the presumption period had contact with a co-worker with a confirmed diagnosis. The total payments to date are \$27,787.08 and remaining reserved is \$60,421.57.

**Comments:** Ms. Tania Ugrin-Capobianco stated that she was surprised that there were only six COVID-19 claims filed, given the number of known positive cases throughout the state.

**Question Asked:** As the bills are written to date, will the order start on July 5, 2020, or will it be prospective? Do we have an indication of the intent?

**Answer:** Ms. Miller stated that there is an intent they will go back to January for presumptive injuries and the presumptions will overall stay in place until 2024. There is retroactive application of the presumptions that are already in Senate Bill 1159 or is in discussion. It seems reasonable to go back to at least July 6, 2020, as the Executive Order ended on July 5, 2020.

**Question Asked:** If an employee was known to have contracted COVID-19 from a family member, can this claim still fall under the workers' compensation program?

**Answer:** The employee can file a claim and, as long as all the conclusive presumptions are in order, there would be no defense. With rebuttable claims, it would have to be proven that the family members were ill first and the defense would be evident.

### Item 3

#### Confidence Levels (Action Required)

Ms. Tania Ugrin-Capobianco introduced Mr. Patrick Farrales to present the fund balance details.

Mr. Patrick Farrales began by reviewing the confidence levels, which were discussed in February 2020. The confidence levels were created to ensure that the workers' compensation fund can absorb the rising cost of claims. Currently, the Program is funded at 50% and can fund claims 50% of the time.

In February, the Committee had voted to raise the level to 70% in order to create security for all members. Shortly after the meeting, the COVID-19 pandemic had necessitated a reevaluation of the February decision. The Committee met in April 2020 and decided to delay the implementation at the time until the members were better able to assess the full impact of the pandemic. It was requested that the Committee reconvene in August 2020 to discuss the issue, and get a sense of where the Committee members stand regarding implementation.

The numbers have not changed since February and April, and information is based on fiscal year 2019-2020 premiums. We will have to wait for the actuary to provide the 2020-2021 loss data in January 2021.

The fiscal condition of the fund shows positive growth with interest and expenses decreasing. On the contrary, the program has shown a declining trend in claims, which were made possible due to the stay-at-home orders throughout the state. Many factors for general claims are not shown such as delay in treatment, legislation, unknown factors of COVID-19, and employment changes at the member level. All these factors have had an impact on exposure, payroll and general losses. It is early in the fiscal year to determine true impact, but based on data on the last five months, effects of COVID-19 and non-COVID-19 claims were muted by sheltering in place, employer practices, and promoting preventative behavior.

The Committee reviewed four options:

1. Approve an increase to confidence levels form 50% to 70% for FY21-22.
2. Approve an increase to confidence levels to 60% or 65% for FY21-22.
3. Keep confidence levels at 50% (current).
4. Adjust confidence levels estimates based on FY21-22 premiums and vote in February 2021.

**Comment:** Ms. Ugrin-Capobianco took a moment to thank Mr. Zlatko Theodorovic and his financial team for their support of the program and interest growth. Ms. Ugrin-Capobianco then opened the floor for questions regarding the confidence level options.

**Comment:** Although he supports the February decision, Mr. Hugh Swift felt that it was premature to make any decision at this time prior to the Governor's decision regarding the proposed bills.

**Comment:** Mr. T. Michael Yuen agreed with Mr. Swift's statement, given the reality that the Supreme Court, appellate courts and trial courts throughout the state are already reducing budgets, furloughing staff, and issuing lay-off notices. This is going to be an ongoing problem for multiple years. The main question is whether we place resources toward the fund or to keep operations functioning. It is most important to keep operations running and we will need to get a better sense of what is in store for the judicial branch and agree to wait until February.

**Motion:** Mr. Brian Taylor had moved to approve the 3<sup>rd</sup> proposal. Ms. Stephanie Cvitkovich seconded. Ms. Tania Ugrin-Capobianco opened the floor up for any questions or further discussion.

**Comment:** Mr. Swift would like to revisit the confidence level issue in February 2021. Ms. Heather Capps was curious to see how the numbers will be at the beginning of year, and would like to make the decision February.

- Motion:** Mr. Taylor withdrew the previous motion and moved to select Option 4 – adjust confidence level estimates based on FY21-22 premiums and vote in February. Ms. Cvitkovich had moved to second the new motion.
- Question:** Mr. James Owen raised a question regarding employees working at home and what effect it has on potential workers' compensation claims for accidents at home.
- Answer:** Ms. Miller stated that if the accidents were related to their work, it will be covered the same as if they were working at the employer's locations. As more employees are working from home, the need to ensure they are working from home safely is essential. The exposure is still there since employees are not paying attention as they would be at the office. There may be an increased number of claims, but it must be directly related to their employment.

With no further discussion or comments, Ms. Ugrin-Capobianco passed the motion to adjust confidence level estimates based on FY21-22 premiums and vote in February.

#### **Item 4**

##### **Ergonomic Services RFP (Action Required)**

There are two RFPs proposed for an Ergonomic Services Master Agreement and an alternative to use staff for ergonomic assessments. The Ergonomic Services Master Agreement is an opt-in agreement by the Judicial Council of California. By covering the entire state, it will reduce costs for members who chose to participate. The Train-the-Trainer Master Agreement is to provide classes for employees to be able to perform in-house ergonomic assessments.

Mr. Edward Metro introduced the Ergonomic Services Master Agreement by explaining the estimated timeline of the RFP process with a Notice to Intent to Award by March 29, 2021, and a contract start date of July 1, 2021. The scope of services will include onsite assessments, remote assessments, and physical and online resources. After conducting a survey, results showed that 93% of respondents indicated interest in the Ergonomic Services Master Agreement, and 74% of respondents were open to remote assessments. Items that were most important were price, expertise and scheduling.

Ms. Maria Kato presented the Train-the-Trainer Master Agreement to train in-house staff to perform ergonomic evaluations and understand the principles of ergonomics. The responses of 42 courts indicated that 79% were interested in the Master Agreement, 91% would train 1 to 4 staff members, and 60% would prefer in-person or remote webinar options or had no preference. Furthermore, 100% of the respondents would attend if the training was free, and a substantially lower percentage would attend if costs were higher. By utilizing trained staff to conduct

assessments, there would be cost savings, time efficiencies, onsite flexible scheduling, increased morale, and decreased injuries and workers' compensation claims and costs.

A series of four options were presented:

1. Utilize the JBWCP Fund for RFP
2. Courts Pay for Training
3. Status Quo
4. Survey Market with RFI/RFQ

**Question Asked:** Ms. Heather Capps asked why the two RFPs were separated? Would it be fiscally beneficial to combine the two RFPs? Is the Train-the-Trainer Master Agreement based on a cost per employee?

**Response:** The Ergonomic Services Master Agreement is an opt-in service. Funding for the Train-the-Trainer Master Agreement has not yet been approved by the Committee. Until funding is determined, the Train-the-Trainer Master Agreement would be a pilot program and will need to be assessed throughout the initial year.

**Comment:** Although she felt that training is important, Ms. Kimberly Turner recommended to wait on the results of the RFI, and revisit in February 2021 when the budget is more transparent. Ms. Cvitkovich and Ms. Michelle Martinez also agreed.

Ms. Ugrin-Capobianco asked for a motion to decide on an option.

**Motion:** Ms. Shelby Wineinger had moved to approve to revisit in February. Ms. Kimberly Turner seconded.

With no further discussion or comments, the motion for Option 4 carried.

## Item 5

### **Workers' Compensation Metrics (No Action Required)**

Mr. Patrick Farrales gave a brief overview of the PowerBI spreadsheet that staff are developing. The data will be shared through SharePoint. The current obstacle is to ensure privacy of information and to balance information versus confidentiality. The projection is to be completed by February 2021.

**Question Asked:** Has this been passed through the Legal office?

- Response:** At this time, we are developing the program and will ask the Legal office when we are closer to completion.
- Comment:** Ms. Ugrin-Capobianco commented that, on the surface, this program is very good. She asked Ms. Capps and Ms. Cvitkovich to determine if the report met their needs.
- Response:** Ms. Capps stated that the details of the data are very good.
- Question:** Ms. Capps also asked what frequency will the information be updated.
- Response:** The information shown on the spreadsheet was used since the information was readily available. When this project is completed by the end of December, staff will create a running total. Once the information is completed, this data will be uploaded on SharePoint for viewing by the Committee.

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**IV. ADJOURNMENT**

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**Meeting was adjourned at 11:47 A.M.**