

Florida Public Task Force on Workplace Safety

Minutes of Meeting of November 14, 2008

Sheraton Fort Lauderdale Airport Hotel

Dania, Florida

10:00 A.M.—3:00 P.M.

Participants

Governor's appointees:

Linda South, Chair
Marianne Capozziello
Mark Friend
Paul Imbrone
Mike Marinan

Project staff:

Charlene Vespi, Coordinator
Greg Bachman
Charlie Cramer
Stephanie Makar

Senate appointees:

James Baiardi
John Henshaw
John Kozey
Karen Phillips
James Robertson

Court reporter:

Diana C. Garcia

Audience members

House appointees:

Scott Blaser
Albert Huston
Danny Shaw
Hastings Williams

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Secretary South opened the meeting and asked for approval of, or corrections to, the minutes of the meeting of October 17. Karen Phillips moved approval, and the minutes were accepted.

To clarify the question of legislative intent for the task force, Secretary South had contacted the bill sponsors. She reported that they had no intention to require OSHA standards for all Florida public employees; the task force was to explore possibilities. Ms. South had sent this message to members and was now entering it into the record.

Report and Discussion: Data Sets

Ms. South explained that the meeting would be largely data-driven, given the legislation and its sponsors' directives: The task force is to focus on identifying problems in Florida's public work force safety, which requires empirical data.

After the last meeting, Ms. South convened a work group comprising state Workers' Compensation employees and others who represent the members' interest areas. The group determined that the most appropriate existing data set is the incident of workers' comp claims by public employees.

Andrew Sabolic, Assistant Director, Florida Division of Workers' Compensation: Mr. Sabolic explained the role of his division in state data collection. All private-company insurers and self-insurers must report to the division (1) proof of coverage, (2) medical bill information related to workers' compensation injuries, and (3) claim cost data. (Government entities are designated self-insurers unless they obtain insurance in the marketplace.) Mr. Sabolic believes the division is the repository of all critical information the task force needs to help determine a course of action.

Mr. Sabolic provided a written report and PowerPoint slides. The data's baseline year is 2000, continuing through 2007. Main presentation points included:

- "Lost time cases" are those in which an injured worker loses more than seven days of work, at some point receiving wage-replacement benefits or indemnity benefits.
- Two key data sources for the report are the first report of injury (after seven lost days of work) and the insurers' report of claim costs (reported one year after the injury report and yearly thereafter until the case is closed).
- Lost time cases in Florida—including state, municipalities, counties, and school districts—have dropped since 2000, as have those in the private sector.
- Florida's decline in rate of claim frequency, and claim costs, is greater than the nationwide decline.

- Claim frequency in the private sector dropped 35 percent and in the public sector nearly 20 percent.
- Lost time cases per 1,000 workers dropped for all Florida employees (private and public), state employees, and local employees.
- Overall, Florida employment (all sectors) has grown since 2000. State government employment remained almost flat, with a slight decline; local government increased by about 50,000 jobs.
- Median claim cost per lost time case dropped for both private and public workers. The median cost for public workers in every year was less than for private workers.
- Permanent total disabilities and deaths have dropped for both private and public sectors. The difference between them is “statistically insignificant.”
- Both the private and public sectors showed reduced total costs for lost time cases. This trend mirrors the 50–60% reduction in premiums for coverage in the marketplace.

Discussion: The members’ discussions produced clarifications and questions about the content and relevancy of the data.

General Clarifications:

- Required data reporting did not change during the 2000–2007 period. Electronic reporting replaced paper reporting in 2002. Mr. Sabolic is more confident in data since that change.
- State-to-state comparisons of workers’ comp data are difficult. Each state has different definitions of compensable claims, points of time when benefits begin, and benefit levels.
- The 2000 baseline year was the year of the abolition of the state’s safety division and the institution of voluntary OSHA compliance for public entities.
- The downward trend in lost time cases and in claim costs holds true for the past 20 or 30 years, not only for the past seven.
- Cost of claims includes legal, medical, and wage loss expenses.
- Occupational illnesses are included in the data for injury incidents and deaths.
- The charts did not show growth of employment in the private sector, but Mr. Sabolic approximated figures from the data. In 2007, all Florida workers (public and private) numbered almost 9,000,000; public workers numbered 400,000. Private sector workers would equal 8,600,000.

Firefighters and Other High-Risk Jobs/Occupational Codes: Mr. Sabolic confirmed that the data covered firefighters. Secretary South clarified that the act creating the task force (Chapter 2008-128) did not exclude analysis of data for these workers.

Members discussed whether high-risk occupations—firefighters, police, first responders—skewed the data, especially in comparisons of private and public workers. Some participants noted that private industry also has hazardous fields, such as construction and manufacturing. The members agreed to use the data as is.

Some members emphasized, however, the need for breakdowns by occupational codes in certain instances. In the data for severe injuries and deaths, for example, relative risk must be known to assess the safety record.

Seven-Day Rule for Lost Time Cases: Mr. Sabolic explained that in Florida both private and public employers file injury reports after seven days of lost work. Most states use seven or five days. Queried about management directives to keep injuries under seven days, he said there is no such stipulation in the statute. In terms of risk management, employers probably do try to shorten injury periods. Medical advancements have dramatically changed injury incidents. Today, medical expense is 70% of a workers' compensation claim; 20 to 30 years ago, medical expense was 30–40%, with wage replacement the main component. Light duty, as members noted, is another way to bring workers back faster.

Mr. Sabolic and Secretary South noted that getting workers back on the job more quickly is a good scenario for all. The dynamic is the same whether private or public.

Task Force Deliberation

Interpretations of Data: In both public and private sectors, the data showed decreases from 2000 to 2007 for lost time cases (totals, frequency/percentages, and costs), permanent total disability cases, and deaths. Members, however, did not agree on the significance of the findings. Some argued that the declines, indicating improvement as well as total incidents, show that public workplace safety is not a major problem in Florida. Others argued that the private sector's improvements were greater. They focused on the "better job" done by private companies. Another point was that the private sector had improved even as its job force swelled.

In general, the larger size of the private work force may affect interpretation. Mr. Sabolic provided charts for incidents per 1,000 workers (which even out comparisons); however, the charts displayed "total Florida employees" and public employees, without isolating private employees.

Another issue concerned the use of the data on death and permanent injuries, expressed as percentages of total lost time cases. For both private and public employers, the percentages were very small. By 2007 they almost converged. Some members noted that, even so, it was inappropriate to say the differences

were statistically insignificant because that is a technical description needing verification. Also, the public sector data remained higher—substantially so in some years, a major concern for employees. Mr. Sabolic clarified that the differences are statistically insignificant between private and public employers because of the small amount of data. He emphasized that for both major disabilities and deaths, the numbers are extremely small.

Cause-Effect: Members noted the data do not reveal causes for trends but offered these thoughts about determining cause-effect:

- In Mr. Henshaw's 30 years in the private sector, claim costs were reduced by managing cases, not by improving workplace safety. Risk did not change. Asking *why* numbers drop is imperative.
- He also noted that because the number of deaths has remained the same, the total "pyramid" of injuries is essentially the same; therefore the reduction in accidents is a result of other factors.
- Mr. Robertson believes the 2003 reform of Florida's workers' compensation law produced the 50–60% reduction in premiums. Mr. Sabolic supported this influence but noted that the whole nation has trended down, though Florida more so.
- Mr. Friend said that after institution of OSHA in 1970, work fatalities dropped the first year from 14,000 to 6,000 without any other workplace change. The downward trend continues in the private sector. The task force must consider the possibility that OSHA standards contribute significantly.

Additional Data Requested from Workers' Compensation:

- Actual numbers of injuries and deaths (slides 12 and 13)
- Occupation class codes for fatalities (slide 13)
- Data for the private sector for lost time cases per 1,000 employees (slide 7)

Statement of Problem: Secretary South enjoined members to think of the end product they must present to the Legislature. Mr. Henshaw asked for clarification that the end product is how to get the public sector to move voluntarily toward using standards. Ms. South explained that her discussions with legislators point toward determining whether in fact there is a problem. After the 2000 order ending Florida's public safety oversight, are public employees less safe? Or has voluntary compliance with standards sufficiently protected public employees? For that reason, data is the empirical window into assessing differences in private and public employers' safety needs.

Secretary South asked the task force for a statement of problem supported by the data—a baseline for the report. Mr. Henshaw offered, in paraphrase:

The lost time case rate is declining at a slower rate in the public sector than in the private sector. It is positive that both rates are descending, but the private decline is steeper.

Report and Discussion: Workplace Safety for State of Florida Agencies

Focusing on the second issue before the task force—the relationship between federal and state activities related to workplace safety—Secretary South asked David Wiggins to explain the current program for Florida agencies at the state level. The program does not include other public entities.

Ms. South also noted that each member had received the book of federal OSHA standards.

David Wiggins, Chair, Interagency Advisory Council on Loss Prevention, State of Florida: Mr. Wiggins provided information packets and PowerPoint slides. The program operates under Florida Statute 284.50, requiring each state agency to:

- appoint a safety coordinator and an alternate
- develop a loss prevention and safety program, including a statement of safety policy, and promote safety awareness among employees
- conduct regular equipment and safety inspections
- investigate job-related accidents

The Interagency Advisory Council (IAC) is a guiding body composed of the safety coordinators and representatives from the divisions of the State Fire Marshal and Risk Management. The IAC meets quarterly. Its duties are to discuss problems, find solutions, assist agencies when possible, and provide recognition for exceptional safety efforts. Its objectives are to prevent workplace injuries, lower the cost of workers' compensation claims, and lower federal civil rights cases through awareness and training. The IAC and each agency submit an annual report to the Governor by January 15 covering all activities as well as suggestions for improvement. Also, they complete a comprehensive annual survey for Risk Management.

Salient facts and observations about the IAC and agencies' efforts included:

- A safety recognition program, which awards trophies and plaques, has become high-profile and successful. Agency heads and university presidents attend the annual ceremony.
- Frequency of workers' compensation claims has fallen 25% since FY 1997–98.
- Five large agencies, the universities, and the National Guard operate full-time, comprehensive safety programs. These programs have district representatives and make their programs available to other agencies.

- These programs are the exception. Some 95% of state agencies do not have a safety budget. The safety coordinators may be able to devote only 5% of their time to workplace safety. Many have no safety experience. Coordinators within agencies change frequently. In addition, some agencies with primarily office functions do not see the need for workplace safety programs.
- Nevertheless, peer support is effective. Seasoned safety coordinators help those newly appointed. Programs are shared. At the 2008 IAC meeting, 48 people from 25 agencies and two universities attended; in 1996, the attendance was 25 people from 17 agencies (no universities).
- The Division of Risk Management has recently expanded from four to 25 or more employees.

Mr. Wiggins' recommendations for improvement include:

- more full-time safety coordinator positions, possibly with dual risk management duties
- all safety coordinators to be assigned at least 25% time
- professional training for coordinators
- more regional or district oversight (for geographically extended agencies)
- mandated emphasis on safety program for smaller agencies
- strong enforcement by agency heads
- training materials for managers and employees: DVDs, computer-based, paper
- purchase of safety equipment
- technology links to IAC meetings
- standardized reporting forms for all public agencies; integration of risk management and workers' comp data systems (OSHA compatible)

Discussion

OSHA Standards: Mr. Wiggins explained that, with the 2000 demise of the state safety division, the governor's office surveyed state agencies about safety oversight. Most reported that, with no state standards in place, they would follow OSHA guidelines for general industry and instruction. The IAC would like to change the adherence to the current OSHA standards, not the 1993 standards referenced in Executive Order 2000-292.

Statute 284.50 is an underlying template for agencies' programs, but each one is allowed to create enhanced programs that serve their needs.

Budget and Compliance: Asked whether infusion of funds would improve the state's safety efforts, Mr. Wiggins said that a larger budget would, of course, assist, as it could be spent on education, equipment, and other needs. However, adding money without the support of agency heads is not as effective. Their enforcement of safety guidelines is imperative.

The state has no mandatory compliance, fines, or disciplinary actions. Notices of severe accidents are sent to agency heads, an effective negative reinforcement.

Business Case for Safety: Mr. Wiggins did not have data to show whether the agencies with comprehensive plans have lower loss costs (i.e., save taxpayers money) than agencies with small or negligible plans. He has data on the five agencies with the highest costs, which he will provide to members.

Speakers and Discussion

Mark Friend, Chair, Department of Applied Aviation Sciences, Embry-Riddle Aeronautical University: Mr. Friend distributed a proposal for adoption by the task force. "An Idea for Florida" was developed with Ed Grandberry, Jr., and James Smith. As preamble, Mr. Friend emphasized the human face of workplace safety reform but also noted the business case. A Liberty Mutual survey of executives reported a \$3 benefit for every \$1 spent for safety. In Florida in 2007, there were 60,000 workers' compensation claims, a half-billion dollars paid in benefits, and over \$350 million in medical costs.

Under Mr. Friend's proposal, the Florida Division of Workers' Compensation must ensure by June 1, 2009, that all providers of workers' comp benefits to employees of Florida agencies mandate that the public agencies provide a written safety and health program with these components:

1. management commitment and employee involvement
2. worksite analysis to identify existing and potential hazards
3. hazard prevention and control
4. health and safety training for all employees
5. compliance with federal OSHA standards, where applicable, as set forth in 29 CFR 1910 or 1926

In addition:

- The public employer must maintain records to be supplied to the Division of Workers' Compensation no later than March 1, beginning in 2010.
- Workers' compensation providers would guarantee discounts of 5% to participating employers.

Mr. Friend recommends that the proposal become legislation for adoption in the 2010 Legislature.

Discussion: Secretary South, noting the prominent role of the American Society of Safety Engineers (ASSE) in the proposal, sought and received assurance that the ASSE is solely a professional organization with no ties to legislative bodies.

Task force members belonging to ASSE are Mark Friend, John Henshaw, Hastings Williams, Mike Marinan, and Scott Blaser.

OSHA Standards: Mr. Friend was willing to open item 5 to other, or best-of-practice, standards that accomplish the same ends as OSHA.

Program Development and Compliance: Mr. Friend envisions program development as a cooperative effort among the public agencies, insurers, and private sector. The proposal does not specify compliance. The workers' comp providers would have to help agencies create compliant programs.

Other members saw that as unworkable. It would overwhelm the providers; also, historically, they do not have a cooperative working relationship with the state.

Mr. Friend noted that ASSE offers voluntary program assistance, as do the University of South Florida consultation program and his university.

Discussion of enforcement generated these points:

- The Division of Workers' Compensation does not make site visits to state agencies. The Florida Municipal Insurance Trust visits municipalities, but only as needed.
- To some members, fines are the strongest incentive.
- To others, public citations have a more powerful impact.
- OSHA levies citations but not fines. For the public sector, a fine would penalize the taxpayer. Also, it is counterintuitive to take away scarce public funds and then ask the agency to fix a problem.
- A higher insurance premium is an enforcement motivator for the employer. On the other hand, higher premiums also hit the taxpayer.
- A performance or administrative citation through the Governor's Office would alert taxpayers to bad practice; taxpayers would demand compliance.
- While the public can currently request information on safety infractions and injuries, regular public reports would be more potent.
- Secretary South does not believe that regulatory legislation can pass.

Funding/Business Case: Members discussed the plan's need for operational funding for personnel (administrators, coordinators), training, inspection, recordkeeping, reporting, etc. The proposal is not revenue neutral. Legislative funding is unlikely; local governments do not have financial resources.

As potential funding, the proposed 5% safety credit on insurance premiums is 3 percentage points higher than the current credit. Besides lowering premiums, safety measures reduce claim costs. However, some members pointed out that these reductions require upfront expenditures. Even with business-case evidence (an analogy is wellness programs, which return their cost many times over), the Legislature rarely funds programs based on an argument of future returns.

Business members countered that some returns are fast, not delayed, for example, monthly insurance premiums.

Mr. Friend will find out whether the Liberty Mutual survey included hard data beyond the questionnaire.

The Proposal vs. Existing Executive Order: Secretary South focused on whether and how the proposal differs from the conditions of the 2000 executive order. Mr. Friend will delineate differences, with anticipated costs, and email them to the committee. Ms. South will meet with Workers' Compensation staff about the proposal.

Brian Berke, Manager, Employees Safety-Loss Control, Risk Management Department, Palm Beach County Board of County Commissioners: Mr. Berke distributed notes of his presentation and invited members to visit his county's web site for a written safety policy, ideas for leadership, and examples of a comprehensive safety program.

He noted the need for Standard Industrial Classification (SIC) codes to make data sets useful. Palm Beach County expends most safety attention on 25% of its employees, the field employees. He also emphasized that data give a removed picture and do not negate the task force's investigation of proven practices in the trenches.

He recommended:

- establishing an office to administer state safety programs
- developing a clearinghouse to help inexperienced public employees find resources
- implementing section 440.1025 of the Workers' Compensation statute, which requires any employer to have a safety program in order to receive consideration for programs and the setting of rates
- expanding the 2000 executive order to all public agencies
- making recordkeeping consistent but voluntary
- having right of entry for fatalities and serious injuries by well-trained inspectors, whether state employees, volunteers, or contractors

Nancy Bolton, Director, Risk Management, Palm Beach County, and Vice-President, Palm Beach County Chapter of the Risk and Insurance Management Society (RIMS): RIMS, a nonprofit organization, advances risk management practice for 4,000 industrial, service, nonprofit, charitable, and governmental entities around the world. It serves more than 10,700 professionals. The society

monitors legislation and maintains contact with legislators and regulatory bodies concerning risk management and employee benefits.

The Palm Beach County chapter supports the Florida Legislature's efforts to improve public workplace safety and looks forward to working with the task force. It recommends:

- incorporating OSHA standards into the public sector work place
- establishing a statewide "organizational vehicle" to implement such a program, with the organization providing education, training, technical assistance, financial assistance
- funding the organization through state legislative appropriations and not through fines and fees against public entities
- offering financial grants to help local public entities meet OSHA standards
- phasing in the program over three to five years

Florida cities, counties, and public agencies that support this position paper are Jupiter, Palm Beach, Boynton Beach, Melbourne, Vero Beach, Sanford, Hernando County, Citrus County, Palm Beach County Board of County Commissioners, and Palm Beach County Sheriff's Office.

Edwin Grandberry, Jr., Member, American Society of Safety Engineers (ASSE): The ASSE has eight chapters throughout Florida whose members are experts in a wide range of fields such as transportation and safety engineering. Mr. Grandberry offered to set up an electronic network through the ASSE's headquarters in Des Plaines, Illinois, giving Florida's public entities access to a large databank of information. The ASSE cannot send consultants at no cost, but it has many types of free advice.

Task Force Deliberation

Lack of Consensus on Data Significance: Secretary South reopened the discussion on the sufficiency of the data to demonstrate a problem in public workplace safety and therefore to allow the committee to make recommendations. Mr. Henshaw formulated the statement: *The data show that the private sector is doing a better job of workplace safety than the public sector.* Eight members agreed; five disagreed.

Without a clear decision of the data's significance, a consequent option was to acquire more data, a process that would take at least a year. Most members did not support another year of data-gathering in order to develop recommendations.

Through further deliberation, the task force's position was that the recommendations need not be programmatic, i.e., the imposition of program

requirements on public entities. The members—witness the day's proceedings—did not believe the data sets supported this potentially burdensome move.

Framework for Final Recommendations: The committee agreed that the data sets do allow a recommendation for more and better data reporting by the agencies and municipalities themselves. Members proposed the following elements of this recommendation, along with others, as a framework for developing the report's outline at the next meeting:

- require all public entities to record and report workplace safety data with standardized content in a standardized format, including codes of occupations and injuries and the true costs of illnesses and injuries, direct and indirect, according to a single formula
- encourage agencies to implement better practices, including return-to-work before seven days, by emphasizing the half-billion dollars currently spent in direct workers' compensation costs
- publish an annual report of agencies' workplace injuries, illnesses, deaths, costs, and safety and health infractions
- set voluntary minimum standards, whether OSHA or other
- establish a web-based clearinghouse for best practices, technical assistance, and mentoring
- create a hotline for self-reporting of unresolved safety problems
- set a time certain for a committee to review the result of the recommendations and move forward

Charlene Vespi will gather and disseminate resources for the clearinghouse as well as standards other than OSHA. John Henshaw will present a formula for injury and illness costs. All members will communicate any helpful information they discover.

The meeting was adjourned.