

House Bill 3592

Relating to discriminatory acts committed against injured workers
Chief Sponsor Representative Schaufler (at the request of IWA)

Workers' Benefit Funds are provided through a premium assessment paid by employers and employees alike. The Fund is separate and distinct from the General Fund. As of February 6, 2003, the cash balance in the Workers' Benefit Fund (WBF) was \$52,431,063.00 and its investment fund par value as of January 31, 2003 was approximately \$101,835,000.00.

House Bill 3592 proposes that \$985,000.00 each biennium be transferred from the Workers' Benefit Fund to the Civil Rights Division of the Bureau of Labor and Industries (BOLI) and be used for investigation, worker education, research, collection and organization of data, and for other related activities involving discriminatory acts adverse to injured workers. House Bill 3592 provides two liaisons to assist BOLI and the Department of Consumer and Businesses Services in carrying out the legislation's provisions. This Act takes effect upon its passage.

An average of 2,500 complaints are filed annually with BOLI's Civil Rights Division and in a recent year, 21 percent involved injured worker discrimination. Numerous injured workers have approached our organization and described experiences that appear to blatantly violate law. As few know their legal rights in this area, along with their options, and we're not aware of any sharing of information between DCBS and BOLI in this regard, in all likelihood discrimination is a serious problem.

Injured workers have faced discriminatory practices when they were seeking reemployment after an injury claim, this at a time when many are financially destitute and emotionally drained. Workers have also endured harassment and intimidation by employers and even by fellow workers who believe they were negatively impacted in wages, safety bonuses, and other benefits because a workers' compensation claim was filed.

The Civil Rights Division of the Bureau of Labor and Industries is responsible for protecting injured workers from unlawful practices including those involving employment. Areas include:

- Discrimination as a result of a disability. Such workers have civil rights "protected class" status and protection under the Americans with Disabilities Act;
- Employment reinstatement and other related rights under Oregon statutes;
- Anti-retaliation protection;
- Protection from the use of workers' compensation claim record information, including names, in the process of screening job applicants. Since November 1993, discriminatory use has violated Oregon's civil rights code;
- Discrimination against job applicants who have filed workers' compensation claims.

¹ www.injuredworker.org

BOLI is very limited in what it can do to protect workers from violations of law. It's facing a decrease in size from 159 employees nine years ago to as few as 89. Its budget has decreased substantially in recent years. Existing monies it receives from the Fund are sorely inadequate. BOLI cannot properly protect injured workers' civil rights under these conditions.

In addition, if Senate Bill 414 is enacted employers would no longer have to defend elimination of injured workers as they're relieved of showing it was the result of "work rules or for other disciplinary reasons." The burden of proof would shift to workers to show they were terminated because of their compensable injury, a difficult legal task. Backers of SB 414 stated in a Management-Labor Advisory Committee on March 7 that BOLI could assist workers in this regard yet SB 414 provides no funding for this task.

House Bill 3592 provides for additional funds from the Workers' Benefit Fund to assist the Bureau of Labor and Industries and the Department of Consumer and Businesses Services (DCBS) in carrying out the provisions of this bill. DCBS would be required to continuously provide to BOLI all materials and information it comes to possess relating to discrimination and related illegal activities. As an example, the Ombudsman for Injured Workers received 49,970 inquiries in 2000 yet there's no sharing of information relating to discrimination. The effectiveness of the Ombudsman may also be greatly diminished should Senate Bill 857 be enacted in this legislative session.

House Bill 3592 is desperately needed to protect injured workers under current law from civil rights violations, including those involving discrimination.