



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873  
Email: [fiscal.bureau@legis.wisconsin.gov](mailto:fiscal.bureau@legis.wisconsin.gov) • Website: <http://legis.wisconsin.gov/lfb>

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May 31, 2017

Joint Committee on Finance

Paper #696

### **Increase Worker's Compensation Positions (Workforce Development -- Other Programs)**

[LFB 2017-19 Budget Summary: Page 496, #2]

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#### **CURRENT LAW**

The Department of Workforce Development's Worker's Compensation Division (DWD-WC) performs administrative responsibilities relating to worker's compensation. DWD-WC receives administrative funding from an assessment on worker's compensation insurers (Wis. Stat. 102.75). Base funding for the Department's worker's compensation operations administration appropriation is \$12,823,500 SEG and 61.30 SEG positions.

#### **GOVERNOR**

Provide 5.0 SEG positions annually under DWD's worker's compensation operations administration appropriation. There is no increase in spending authority related to this item.

#### **DISCUSSION POINTS**

##### **Background**

1. The Governor's 2015-17 budget recommended the transfer of administrative responsibilities of DWD-WC to the Office of the Commissioner of Insurance (OCI) and the transfer of adjudication responsibilities of DWD-WC to DOA's Division of Hearings and Appeals (DHA). Under the provision, there would have been a net reduction of 5.0 vacant worker's compensation positions related to the transfer of administrative responsibilities from DWD-WC to OCI. OCI had stated that these positions would not be needed as part of the transfer of worker's compensation from DWD-WC to OCI.

2. The Joint Committee on Finance modified this provision and retained the administration of worker's compensation in DWD. As enacted, the 2015-17 biennial budget (2015 Act 55) only transferred worker's compensation hearings functions from DWD-WC to DHA. The bill did not restore the 5.0 vacant positions to DWD-WC and instead deleted 5.0 vacant positions at DWD-WC and \$144,500 SEG and \$36,000 PR annually associated with the position deletions.

3. Subsequent to the enactment of Act 55, DWD and DHA executed a Memorandum of Understanding (MOU), signed on December 10, 2015. The MOU defined the respective responsibilities of each agency related to the transfer of adjudication functions from DWD-WC to DHA. The MOU was executed, in part, because at the time the motion to transfer hearing responsibilities from DWD-WC to DHA was adopted by the Joint Committee on Finance, it was not known what precise level of staffing and spending authority would be needed at each agency to implement the provisions of the bill.

4. The MOU specified that staffing levels would be reviewed quarterly to assess caseload levels at both DWD-WC and DHA. Based upon these evaluations, the MOU stated that DWD and DHA would make staffing and budgetary recommendations for the 2017-19 biennial budget with DWD likely to pursue a 2017-19 budget request to increase position authority for 3.0 FTEs at DWD-WC to meet the Department's program needs.

### **Position Description**

5. The Executive Budget Book states that the Governor recommends creating 5.0 FTE positions to address an increase in workload and to maintain customer service levels within DWD-WC. According to DWD, three of the five added positions would restore the position deletions that occurred under Act 55 and were previously identified in an MOU signed in 2015 between DWD and DHA. The remaining two additional positions are for DWD-WC's health cost dispute unit to address the increase in the number of health cost dispute cases submitted to the Department.

6. The following is a description of each requested position.

7. Health Cost Dispute Unit (2.0 FTE) - DWD-WC's health cost dispute unit is responsible for drafting orders to be signed by supervisory administrative law judges (ALJ) at DWD-WC that resolve disputes involving necessity of medical treatment, reasonableness of fees charged by health care providers, and various other dispute resolution activities. DWD administrative code specifies that the Department has 90 days to issue an order to decide reasonableness of certain fee disputes. DWD estimates that, in 2016, the length of the average case, from the actual date an application was received to the date it closed, was about 80 to 85 days. While DWD is currently meeting the 90 day standard, the Department indicates that more insurance carriers are disputing medical charges by providers. The number of cases submitted to DWD-WC for dispute resolution has increased 72% from 2012 to 2016. In 2012, 3,092 cases were submitted, with a monthly average of 258 disputes. In 2016, 5,323 cases were submitted, with a monthly average of 444. In addition to volume, the Department also states that the complexity of cases filed with the DWD-WC for dispute resolution has significantly increased in recent years.

8. Claims Monitoring Unit (1.0 FTE) - DWD computation technicians handle benefit

calculations for complex claims and work closely with ALJs at DHA on values for litigated claims. Currently, the claims monitoring unit has 3.0 FTE computation technicians to accomplish these duties. One computation technician position would be created at DWD-WC under the proposal and one computation technician position would be transferred from DWD-WC to DHA under a separate budget proposal (See LFB Paper #695, "Transfer Worker's Compensation Positions to DOA"). Therefore, there would be no net FTE increase in computation technician positions at DWD-WC. DWD indicates that this request is to ensure that the Division could maintain its current services level for processing benefit calculations.

9. Dispute Resolution Unit (1.0 FTE) - Dispute resolution staff members are the primary members of DWD-WC to be contacted by internal staff and external parties who have questions regarding worker's compensation claims. This includes substantive and procedural questions regarding worker's compensation statutes, codes, and claims processes. The Department states that DWD-WC will increase staffing to begin paying Work Injury Supplemental Benefit Fund (WISBF) reimbursements, requiring additional staff to process all reimbursement requests that have been on hold since 2013 (over \$13 million in reimbursement requests) as well as processing new and ongoing requests. The WISBF is a state fund that pays benefits to individuals or dependents under various benefit programs. The WISBF is funded through assessments against insurance carriers and employers for certain injuries (dismemberments) and death claims. WISBF reimbursements to insurance carriers have been on hold since May 14, 2013, due to solvency issues. Act 55 created funding to pay this liability and allow for new WISBF claims.

10. Uninsured Employers Fund Section (1.0 FTE) - The Uninsured Employers Fund section is responsible for educating employers on their legal responsibility to have worker's compensation coverage. DWD-WC is currently using contracted temporary staffing services to fill the position. According to the Department, hiring the position full-time with the DWD-WC would reduce the likelihood of the staff member leaving and reduce the potential for future turnover associated with the position.

### **5.0 Position Increase and Funding**

11. The bill would provide 5.0 SEG positions annually under DWD's worker's compensation operations administration appropriation. There is no increase in spending authority related to this item. The Department indicates that there is adequate expenditure authority in this appropriation to temporarily fund the positions during 2017-19.

12. The estimated ongoing total costs for the additional 5.0 FTE would be \$275,000 annually. DWD indicates that funding would likely be transferred from supplies and services to pay for these positions in the 2017-19 biennium. In the 2019-21 biennium these positions would receive full funding of salary and fringe benefits as part of the calculation of standard budget adjustments, and the overall funding level of the appropriation would increase by an estimated \$275,000 annually beginning in 2019-20.

13. The Committee could choose to approve the Governor's recommendation to provide 5.0 additional positions to DWD-WC. Under this alternative, DWD would temporarily reallocate funding from other activities, such as supplies, to pay for the 5.0 positions, and the overall funding

level of the appropriation would increase by an estimated \$275,000 in 2019-21 biennium to fully fund the positions [Alternative 1].

14. The Committee could choose to approve the Governor's recommendation to provide 5.0 additional positions to DWD-WC and, in addition could move existing funding in this biennium from supplies and services to salaries and fringe. This would provide an ongoing reallocation from supplies to pay for the salary and fringe of the new positions and would avoid an estimated increase of \$275,000 in this appropriation at the start of the 2019-21 biennium [Alternative 2].

15. Alternatively, the Committee could choose to provide 3.0 positions to DWD's Division of Worker's Compensation. According to DWD, three of the five requested positions are related to position deletions that occurred under Act 55. This alternative would restore those deleted positions. In addition, DWD stated in a 2015 MOU that it was likely to pursue a 2017-19 budget request to increase position authority for 3.0 FTEs at DWD-WC to meet the Department's program need. Provision of 3.0 positions would address the position needs identified in the 2015 MOU. This could be provided through temporarily reallocating supplies and services funding to salaries [Alternative 3] or permanently reallocating supplies to fund the positions [Alternative 4].

16. The Workers Compensation Advisory Council (WCAC) is statutorily required to advise DWD in carrying out the purpose of the Workers Compensation Act. WCAC membership is comprised of five voting representatives from organized labor; five voting management representatives; three non-voting representatives from the insurance industry; and one representative from DWD. The Council can submit its recommendations for changes in worker's compensation law to the Legislature in an "agreed bill" and report its views on any other pending legislation which relates to worker's compensation. According to the Department, the "agreed bill" concept is a long-standing tradition of the Council. As the name implies, Council members come to a consensual agreement to support the Council's proposed changes in the Legislature and not to individually seek any changes to those proposals.

17. The proposal to add positions at DWD did not go through the WCAC agreed upon bill process. The WCAC was provided with a summary of the changes in the budget at the March 14, 2017, meeting. The WCAC, if they choose, can report its views on any pending bill to the proper legislative committee. To date, the Council has not taken action to support or oppose any provisions found in the bill. The Committee could choose to maintain current law and allow the WCAC to consider whether to make staffing recommendations when it develops the 2017 agreed upon bill [Alternative 5].

## **ALTERNATIVES**

1. Approve the Governor's recommendation to provide 5.0 positions to DWD's Division of Worker's Compensation and temporarily pay for the positions with \$275,000 from supplies and services during the 2017-19 biennium. [The positions would receive full funding in 2019-21 standard budget adjustments.]

<b>ALT 1</b>	<b>Position Change to Base Bill</b>	
SEG	5.00	0.00

2. Approve the Governor's recommendation to add 5.0 positions to DWD's Division of Worker's Compensation. In addition, transfer \$275,000 from supplies and services to salaries and fringe to permanently fund the positions.

<b>ALT 2</b>	<b>Position Change to Base Bill</b>	
SEG	5.00	0.00

3. Provide 3.0 positions to DWD's Division of Worker's Compensation and temporarily pay for the positions with \$165,000 from supplies and services during the 2017-19 biennium. [The positions would receive full funding in 2019-21 standard budget adjustments.]

<b>ALT 3</b>	<b>Position Change to Base Bill</b>	
SEG	3.00	- 2.00

4. Provide 3.0 positions to DWD's Division of Worker's Compensation and transfer \$165,000 from supplies and services to salaries and fringe to permanently fund the positions.

<b>ALT 4</b>	<b>Position Change to Base Bill</b>	
SEG	3.00	- 2.00

5. Maintain current law. [The WCAC could consider recommending the provision as part of the 2017 worker's compensation agreed upon bill.]

<b>ALT 5</b>	<b>Position Change to Base Bill</b>	
SEG	0.00	- 5.00

Prepared by: Ryan Horton