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ALASKA STATE LEGISLATURE
Representative Matt Claman

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Serving District 21: Sand Lake, Spenard, and Turnagain

MEMORANDUM

TO: Senator Natasha von Imhof
Chair, Legislative Budget and Audit Committee

FROM: Representative Matt Claman

DATE: February 28, 2022

RE: Revised Division of Workers' Compensation Audit Request

Dear Senator von Imhof and Members of the Committee,

I respectfully request an audit of the Alaska Department of Labor and Workforce Development, Division of Workers' Compensation (DWC) as described below.

BACKGROUND

The Alaska Workers' Compensation Act governs employee and employer rights and duties and obligations related to a work-related injury. The intent of the act is to ensure quick, efficient, fair, and predictable delivery of benefits to injured workers at a reasonable cost to employers.

The Division of Legislative Audit last reviewed the workers' compensation program 22 years ago in 1999. The 90-page audit identified problems in the DWC. While the 1999 audit found that some policy goals to reduce workers' compensation costs had been achieved by the program, other areas of the program were determined to need further improvement. Specifically, the audit found that circumstances have developed that limited the protection provided to the injured workers. For example, provisions put into statute in 1988 as part of the legislative desire to control—if not lower—workers' compensation rates have over time become increasingly contrary to the interests of injured workers. It is not certain what effect those 1988 changes had on workers' compensation rates.

The 1999 audit made 12 recommendations. The underlying theme to the recommendations was to rebalance the interests of injured workers and employers, increase the operational efficiencies, and improve effectiveness. In Recommendation No. 2, the 1999 audit stated that the "balance between injured workers and employers" had shifted "to the disadvantage of the injured workers." At the present time, it is unknown whether balance has changed since 1999. At least one result of the audit was passage of Senate Bill 130 in 2005, which established the Workers'

Compensation Special Investigations Unit. In 2018, the legislature passed House Bill 79, a bill aimed at modernizing workers' compensation. HB 79 provided a detailed definition of an independent contractor, allowed the continued use of pre-employment health questionnaires, created a legislative working group to analyze the Alaska workers' compensation system, and refined who is considered an employee in an LLC. Finally, in 2018, the legislature convened the Legislative Workers' Compensation Working Group that identified the following topics for consideration by the legislature: dispute resolution, Permanent Partial Impairment (PPI), and Death Benefits.

PURPOSE OF AUDIT REQUEST

The purpose of this audit request is to evaluate the workers' compensation program and to assess the agency's administration, enforcement, and functional application of the Alaska Workers' Compensation Act. The goal is for a reasonable audit that will improve the operations of the DWC and increase public and legislative understanding of the DWC.

With that goal in mind, I respectfully request an audit of the DWC to accomplish the following:

1. Dispute resolution process

Review the timeliness of the dispute-resolution process including decisions, orders, compromises, and releases. Identify ways in which the process can be changed to more fully meet legislative intent to ensure the "quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers."

2. Benefits

Assess the adequacy of current substantive benefits (including PPI and Death Benefits), taking into consideration inflation and the cost of living. The assessment should address concerns identified in the 1999 audit regarding overtime, premium pay, benefits, and interim compensation.

Determine the number of injured Alaska workers that lose basic health insurance. Report how other states address the issue of injured workers losing basic health insurance (usually employer-sponsored plans) for their families while not able to work.

3. Reemployment, training, and outreach

Assess the effectiveness and use of the reemployment and training program. Additionally:

- a. Identify the completion rates for reemployment plans. Determine whether the reemployment training benefits are sufficient to provide an effective means for injured workers to move from one career path to another.
- b. Determine the number or percent of injured workers receiving reemployment benefits that are managing their own case.

4. Enforcement and special investigations of uninsured employers and misclassification of employers

Review enforcement with respect to uninsured employers and misclassification of employees, including misclassification as independent contractors. The Division of Legislative Audit identified the need for improving enforcement in multiple recommendations in 1999, including Recommendation No. 4. Answer the following:

- a. How effective is the Workers' Compensation Special Investigations Unit (created by SB 130 in 2005) in investigating allegations of fraud and holding employers accountable for lapses in coverage?
- b. How did adoption of a new independent contractor definition in HB 79 (2018) (AS 23.30.230(a)(12)) impact enforcement efforts?
- c. Identify potential statutory or regulatory changes that would strengthen enforcement—particularly with respect to uninsured employers.
- d. How many cases and what types of cases (uninsured or misclassification) has the Workers' Compensation Special Investigations Unit brought against employers since its creation?
- e. Determine the number or percent of Alaska employers who are believed to be out-of-compliance with the mandatory workers' compensation law?

5. Pattern of controversion

Evaluate the process and frequency of when an employer/insurance company controverts a claim, including determining:

- a. In what percentage of controverted claims do insurance companies request employer independent medical examinations?
- b. In what percentage of controverted claims does the board order second independent medical examinations?
- c. What percentage of employees with controverted claims have legal counsel, either before or after the time of controversion?

6. Division of Insurance Oversight

Review the relationship between the Workers' Compensation Board, the Division of Workers' Compensation, and the Division of Insurance with regard to areas of concern identified in the 1999 audit. Determine whether the Workers' Compensation Board makes referrals to the Division of Insurance regarding frivolous controversion notices and the degree to which the Division of Insurance investigates those referrals.

7. **Injured workers with mental illness, traumatic brain injury, post-traumatic stress disorder, or other significant disabilities**

- a. Evaluate standards for an injured worker to report mental illness or disability.
- b. Determine whether procedures are in place to support injured workers with cognitive disabilities.
- c. Evaluate whether injured workers with cognitive disabilities sign releases without ~~X~~ legal counsel.

8. **Areas of related concern**

The Division of Legislative Audit should follow-up on areas of related concerns identified during the audit. Please let my office know if you have any questions or need any further information regarding this audit request.

Sincerely,



Representative Matt Claman
House District 21, Anchorage