

MINUTES FROM CHSWC PUBLIC MEETING

Date: Thursday, March 4, 2021

Time: 10:00 am

Place: Video/Audio Conference - online only

NOTE: In accordance with [Executive Order N-29-20](#), and [Executive Order N-33-20](#), the physical meeting location was cancelled for March, 2021.

In Attendance

Chair: Martin Brady

Commissioners: Doug Bloch, Christy Bouma, Martin Brady, Mona Garfias, and Shelley Kessler
Sean McNally, Mitch Steiger

Absent: None

I. Approval of Minutes from the December 3, 2020 CHSWC Meeting

Chairperson Brady asked for a motion to approve the December 3, 2020 CHSWC meeting minutes. Commissioner McNally moved the motion and Commissioner Bloch seconded the motion; the minutes were approved unanimously.

II. Department Of Industrial Relations – Update

Director Katie Hagen

- Director Hagen provided an update on key issues for the Department of Industrial Relations (DIR). It had been a year since the pandemic and her tenure at DIR started a year ago. She stated that during the past year, DIR had made tremendous gains in meeting its obligations to the state of California and workers in California.
- She discussed four main categories of attention for DIR: COVID-19 Response; Business Focus; Internal Infrastructure Focus; People Focus.
 - DIR Covid-19 Response: Director Hagen stated her first step was to insure that her team members were safe but also given resources and direction as they engaged in accomplishing DIR's mission. Since 75 percent of the DIR work force worked remotely, there were many challenges in making staff safe, and DIR implemented Covid-19 policies that insured appropriate training, and appropriate work processes. For example:
 - The Division of Workers' Compensation (DWC), immediately went to teleconference. Instead of in-person court appearances, it moved to webinars and was outstanding in continuing to provide its services with few interruptions last year.
 - Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA, employees had been in the office everyday (with the exception of periodic shutdowns) because of Covid-19 positive cases in the workplace; it continued its work conducting inspections throughout the state of California.
 - The majority of DIR's workforce (besides the two divisions mentioned above) had been working remotely. Last year backlogs increased as a result of staff

working from home. For example, many of the documents received by DIR from injured workers and from those responding to inspections and citations were hard copies.

- DIR's phone systems were unable to forward phone calls, so DIR had to find alternative solutions. Many operational issues were addressed on an ongoing basis, and particularly, initially when workers stayed at home.
- Due to the backlog, tremendous effort went into hiring. The State Personnel Board (SPB) was hearing her petition to have DIR's hiring authority returned. While DIR had been working on getting its hiring authority returned, they had been conducting aggressive recruitment, testing and hiring efforts throughout the enterprise.
- There were a number of impediments to hiring, including examinations that had expired. Requirements from DIR's control agency included retraining managers throughout DIR on how to write a duty statement; making sure positions were appropriately allocated; asking appropriate interview questions, and scoring the interview. Last year DIR focused on its hiring processes but continued to hire. DIR can continue to improve and it had vacancies to fill across the enterprise, but it was making steady progress. Last month at Director Hagen's confirmation hearing as Director of DIR she stated they had hired 280 staff over a three or four month period. She was very pleased with the progress that DIR was making across the enterprise in hiring.
- A year ago DIR had a very high vacancy rate along with routine turnover. Then positions were added to DIR through the budget change proposal process. There were a significant number of positions to fill; many were professional and technical positions that were challenging to recruit and fill. Great effort went into recruitment and hiring.
- DIR's Covid-19 Response:
 - In addition to hiring, DIR addressed its operational needs including staff training and safety. DIR had focused on best use of its resources because of where it was hiring. Director Hagen said even if every position had been filled, DIR would have been in the same position in a pandemic: determining how to best use current resources when faced with such incredible needs for the workforce. Cal/OSHA, DLSE, DWC, and all of DIR's large divisions excelled at adopting a triage process and prioritized incoming Covid-19 complaints. Whether it was a wage claim or Cal/OSHA complaint they had dedicated teams that were triaging Covid-19 complaints that were coming in daily. DIR spent quite a bit of time early in the pandemic working on guidance for employers, and continued to revise and refine that guidance. DIR's guidance was on its website.
 - The Cal/OSHA consultation unit provided ongoing education opportunities and customized training for various occupations and employer groups. It did an outstanding job over the last year responding to employers' needs.
- Business Focus:
 - DIR did outreach for developing guidance, education and enforcement about the standards, so employers that had every intention of implementing those health and safety standards could do so.

- DIR's investigation citation appealed legal actions. DIR had been very active defending all of its citations and making sure that it conducted its administrative processes effectively. The temporary emergency standard went into effect on February 1st. DIR was continuing to implement and enforce its new emergency standards.
- People Focus:
 - DIR had a responsibility to ensure worker health and safety and rights were safeguarded across the board and the pandemic did not stop other complaints.
 - Injured worker claims that were not Covid-19 related continued to come in and be focused on, so business focus was part of the DIR strategic plan.
 - DIR strategic plan focused on DIR's high level strategies to continue enforcing laws, provide education and resources to workers; and ensure timely and appropriate medical care.
- Internal infrastructure focus:
 - Improve access and efficiencies of its service: DIR was focused on expanding its online services for employers and workers to minimize administrative burdens, streamline online tools, and increase compliance. Its offices were closed and there was a need to fill gaps with automation. The third goal in the strategic plan discussed improving access for our stakeholders, and also, how do to deliver more efficiently on our services.
- Employee focus:
 - Director Hagen saw investing in DIR teams to meet its mission and vision by providing professional training opportunities for staff recruitment, selection and hiring. She wanted to improve the onboarding experience. DIR had launched a diversity and inclusion effort for employees across the enterprise and wanted to promote and sustain an ethical workplace culture.
- Director Hagen said the DIR strategic plan was a brief document that included its core principles and values. The core values were added after the strategic plan was shared with all employees at DIR. Director Hagen then conducted a town hall meeting and solicited feedback. Some feedback was about goals and people agreed that DIR had the right goals. Instead the focus was on values. The majority of feedback was about behaviors and that DIR employees demonstrate certain values. But Director Hagen also wanted to encourage these values with stakeholders: employees wanted to be treated with respect by employers and other stakeholders. DIR employees wanted compassion in everything they did. Diversity was a value that was relayed by many employees. She added diversity to her strategic plan and was working on identifying initiatives within DIR's strategic plan by adding a business plan focused on diversity. She was also tackling cultural issues that she was made aware of over the last year in parts of the organization; the need to focus on promoting and sustaining an ethical workplace culture, and continue to provide excellent customer service.
- All organizations could use a refresher on customer service, but certainly there was a lot of interest within DIR and among DIR's stakeholders to really focus on improving culture.
- Next Steps: Development of Business Plan
 - Director Hagen shared DIR's Strategic Plan and its link to DIR was:

- <http://web.dir.ca.gov/Informational/Intranet/DirOfc/DIR%20Strategic%20Plan.pdf>. The DIR Strategic Plan can also be Googled.
- Development of the DIR Business Plan: for the DIR Strategic Plan they were developing a more detailed business plan on-line. Each strategic goal had various initiatives that will be tackled within divisions. Some might be tackled with employee groups across the enterprise, some may be done within Human Resources or other support programs.
- DIR will roll out a detailed business plan with timelines for accomplishing these goals and a Strategic Plan. There was a three year plan but they can make changes as they move forward and identify new needs.
- Director Hagen stated that she can return at another time for an update.

Questions from the Commissioners

Commissioner Bouma congratulated Director Hagen on her confirmation and looked forward to working with her. Commissioner Bouma stated she also represented firefighters. Being a Commissioner had led to better decision making about how to improve the system for workers. She did not think the job was done, far from it, so she looked forward to engagement with DIR.

Commissioner Bloch also congratulated Director Hagen on her appointment. As a teamster he wanted to thank her for the time she took to meet with his union's leadership to discuss how to advance the work of DIR on behalf of California's workers. As a Commissioner and teamster he was happy to hear more about current hiring. He asked if she could elaborate on the future hiring and what it would mean for the state's ability to enforce the labor laws.

Director Hagen stated she just received a text from her Chief Deputy that said the DIR petition to return its hiring authority returned was approved. She replied to Commissioner Bloch that each division had different targeted internal hiring goals. Each division had different challenges in terms of recruitment. For example, Cal/OSHA was reintroducing the industrial hygienist classification. DIR utilized that class in the past, but it was unable to retain the industrial hygienist class because of pay issues. There were industrial hygienists that work for Cal/OSHA, but they had to be moved into other classifications that had a higher salary ceiling, and so far they have attracted great industrial hygienists. Director Hagen had heard interviews were going well in most locations. There were a couple of geographic areas where their candidate pool was much smaller, but she had been able to begin hiring all the industrial hygienists that they had planned to. She did worry about retention and did not want history to repeat itself. DIR was working on collecting data about where it had trouble recruiting and anticipated challenges in retaining employees. DIR will be reaching out to the California Department of Human Resources (CalHR) and the State Personnel Board (SPB) to discuss conducting a salary survey or reviewing classifications and proposed changes for collective bargaining. Although it would take time, Director Hagen did not want retention challenges as they had in the past.

There were a number of other challenges at DIR, depending on the classification. However, DIR had removed many barriers that existed for expeditious hiring: expiring exams needed to be automated; the exams used to be paper and pencil so it was hard to bring people in during a pandemic to take a test and it was not convenient; the rest of the world had moved to automation

for exams. DIR did well over the past year in automating most of its exams. They had trained their managers on how to hire. DIR removed barriers that were preventing it from hiring. She conducted weekly project meetings with the large divisions, and even a couple of the smaller ones to prioritize hiring. It needed to be one of DIR's highest priorities; so there were different target goals. They were not going to meet their goals, probably for the next six, eight or ten months because of the large number of vacancies that were going into a funnel in HR. Each package had to be reviewed by her HR office and time was needed to make sure that they were following all of the rules they put in place. Once DIR had opened up the pipeline again for recruits, it looked good. In areas with a high cost of living, they had trouble recruiting, which was not unusual for state service. She had worked with Doug Parker at Cal/OSHA and if they could not fill a Cal/OSHA position in Foster City they could move that position to Oakland to fill it. Therefore, DIR was finding ways to try to move positions, and recruit at different levels and in some areas and not others.

Commissioner Bloch added that yesterday the state of California released the Future of Work Commission report and he was proud to say he went on the record talking about the state's role in creating quality jobs. This was a win-win because creating more jobs in the public sector was the state investing in quality jobs for state employees. It was important work that they do to protect worker health and safety in creating and adding to the job quality of everybody.

Commissioner Kessler asked about hiring for the apprenticeship programs, how to work with the workforce development team to help people matriculate and move from having an interest in these positions into apprenticeship or internship programs. They would be able to come into the program and receive guidance from people already skilled. They can work and also receive the training, courses, and education they need. Other hiring issues have to be in the Human Resources Department so that DIR can get people more quickly into the needed positions. She stated that the Foster City DIR office was in her area, and she did not want people taken out of Foster City. They had been helpful especially when she went to San Francisco International Airport (SFO). She will talk to Mr. Parker about moving the Cal/OSHA office, but she was glad to see the outline, the strategic plan and the overall optimism about moving this work forward in a positive manner for both employers and employees.

Director Hagen replied that her intention was not removing anyone from Foster City, only adding positions, but she did have to be savvy in hiring as many inspectors as she could and may have to move positions between offices in order to do that. She was not changing the location of any of DIR's offices; so they will continue to staff them.

There were no questions from the public for Director Hagen.

III. Briefing on Janitorial Time-Motion Study

Andrew Gross Gaitan, Vice President for Service Employees International Union-United Service Workers West (SEIU-USWW), stated that he represented about 50,000 contracted service property service workers and the largest group was janitors, followed by security officers, and airport passenger service workers. Almost all workers that airline passengers encountered at airports were outsourced including the Transportation Security Administration (TSA) screeners as well as a significant number of janitors and cleaners.

- Mr. Gaitan described how the janitorial industry operated. Janitorial contracting was essentially straight labor contracting without many other capital expenses. Cleaning contracts were bid based on a price per square foot; “X” pennies per square foot was bid by employers. He said it was a race to the bottom. Some technology contracts’ bidding prices were posted in the same way as eBay and were given an hour or two hours to run. Sometimes the bidding went down to zero. The contractors were buying a loss leader to be able to say they cleaned for Google or another well-known company. Mr. Gaitan said it went from exploitative to absurd in the recession where cleaning went from nightly dusting, vacuuming and cleaning everything to skip cleaning, vacuuming and picking up trash two or three times a week to what is now called performance based cleaning. The cleaning amounted to looking inside the suite and if there was nothing that generated a complaint from the person working in that suite then move on. That was how pricing worked.
- Mr. Gaitan stated that the cost of wages and healthcare had skyrocketed while they were organizing this industry. When he started working in this industry about 30 years ago, state of California janitors in the Oakland office building were capped at 1,900 square feet per hour, for an in-house state employee, not a contracted janitor. He added that most of us live in a dwelling between 1,000 to 3,000 square feet depending on the city we lived in. It would be difficult to clean your house in an hour.
- Production rates before the pandemic at the best Class A office building in downtown Los Angeles were about 4,800 square feet per hour. The further away from downtown in large metro districts to suburbs like Contra Costa County or Sacramento, the production rates were as high as 7,000 to 8,000 square feet per hour.
 - At the start of the pandemic, overnight the work became disinfection, and there had been a lot of controversy about surface transmission as a means of transmission with Covid-19. Regardless, the expectation through the pandemic was of the janitor disinfecting high touchpoints throughout the building every night and has remained steady. The information in the news had not changed. Property managers and building owners made sure that all the high touchpoints were cleaned and disinfected.
 - It was important to understand in terms of frequency, the way a regular office building was staffed. Bathroom cleaners were their own group and a bathroom cleaner may have 8 or 10 floors, maybe 15 floors of bathrooms depending on the number of cubicles in each bathroom to clean at night.
 - Janitors worked at incredible speeds, they were making sure the mirror did not have splashes on it, and the toilet paper was stocked. To disinfect and to kill the Covid-19 virus the surface was cleaned first. You were not only disinfecting the dust, you had to apply the disinfectant, and according to its instructions kill the virus; the faster the “kill time” the more likely that the chemical would damage the surface. You had to wait for the “kill time” or the “dwell time” and then you have to remove the disinfectant. That slowed workers down quite a bit. His employers had time motion studies. The fastest people can accomplish high touch point disinfection was about 4,000 square feet per hour. And that was racing. For a bathroom, it came down to about 600 square feet per hour. For bathroom cleaning before the pandemic they would clean one floor and it would be deep cleaned and that amounted to disinfection. The other floors had standard cleaning such as cleaning the mirror,

restocking the toilet on a rotating basis and anything that amounted to disinfection. The last time the office bathroom on your floor was disinfected was two weeks ago. That was how the building was staffed before the Covid-19 pandemic.

- Mr. Gaitan said the public advice was still to wash your hands. So if there was no threat of transmission through surfaces, why wash hands. He asked about being comfortable when the office building was back to full staffing if it would only be disinfected once every two or three weeks. Again, that was what the science said.
 - People still wanted the surfaces cleaned and disinfected daily. That was fine when buildings were five to ten percent occupied, and some buildings were 15 percent occupied. For the most part, they did not lay off janitors but worked to increase the level of disinfection. As the vaccine program was successful and the buildings became reoccupied, these workers were expected to go back to the old production rate but with the Covid-19 cleaning and disinfection added in.
 - Mr. Gaitan commented that California's real estate community was not going to double or triple its cleaning costs to maintain the level of production for this disinfection when the buildings were full as opposed to 10 or 15 percent occupied. When buildings reopen, they were going to see an incredible crisis in terms of workload and this was an industry where soft tissue injury disabled these workers permanently.
 - The most common injuries were: back, knees, elbows and shoulders. After vaccinations, janitors would dramatically increase the amount of work they were doing, so that was the reason for this study.
- Previous studies on workload and injury, including one that CHSWC funded a number of years ago, were based on worker interviews. The studies were based on anecdotal and survey evidence and subjective evidence. This will be the first scientific study in the industry, and in the United States for commercial cleaning.
 - The study will be based on science and the risks of injury and cleaning at the current pace under Covid-19. An Infectious Disease Control Certification cleaning program has been developed for members.
 - The workers who participate in this study have been through infectious disease control training and will be performing the cleaning according to those methods. He believed this was the first time there was an opportunity for this industry to understand how health risks present themselves in terms of including body stress and joints. It will be able to set somewhat of a benchmark based on what people were doing in terms of production rates before the buildings were fully reoccupied. There are lots of different settings where his members clean. So with the study they will be looking at different venues.
 - All these buildings were cleaned by contractors, and there were a number of contractors and building owners that saw the problems and were interested in trying to understand the safety aspects. They will be able to work with the property managers. Sometimes they represented security officers in the buildings and the janitorial companies to insure the University of California team had access to the buildings, could observe workers and record in a live and real work setting.

Melissa Afterman stated she was a board certified professional ergonomist with a background

in human factors engineering. She worked as a consultant with the University of California's Ergonomics Research and Graduate Training program. She was also a principal at Learn Ergo, a consulting company and an instructor in the Center for Occupational and Environmental Health (COEH) Online Ergonomics program. The third presenter was Meg Honan and she was also a certified professional ergonomist. She received her master's degree from the Berkeley School of Public Health in Environmental Health Sciences. She was a corporate ergonomist at Genentech until 2018 and since then had been with the University of California, Berkeley and consulting for the program; she also gave instructions for the online Ergonomics program.

- The agenda for this time and motion study proposal included:
 - Describe the team conducting the study.
 - Define a time and motion study.
 - Define the research questions needed to be answered.
 - Discuss study design and outcomes. The study will review methods, how to collect data, and how to measure exposure to get objective information. The study will look at sample results from similar studies and discuss timeline and costs.
- The UC ergonomics program team included: Ms. Afterman, Ms. Honan and Carissa Harris-Adamson. Ms. Harris-Adamson would be intimately involved in the study design, data collection, analysis, and interpretation. Ms. Honan and Ms. Afterman would be the primary contacts for this project. Allen Barr, a senior lab engineer, would assist with instrumentation and data processing. Post-doctoral fellows and graduate students would assist with the data collection and processing and their use was cost effective. Fadi Fathalluh will be an adviser for this study.
- The team was part of the Center for Occupational Environmental Health (COEH) and the COEH faculty on this project was Carissa Harris-Adamson, Laura Stock, Director of the Labor Occupational Health Program (LOHP), and Mr. Fathalluh, Director of the Agriculture Safety and Health Program at the University of California (UC) Davis program.
- Ms. Honan defined a time and motion study. It looked at human performance and health and safety and how to optimize productivity keeping those two factors in mind. Time and motion was:
 - The time was the time to complete those tasks. The questions were how time to complete tasks varied with worker experience and height. Motion involved the tasks that people did. This included cleaning bathrooms and all other cleaning as well as time spent sitting versus standing versus walking. All of these were important to understand what it took to do these jobs. Objectivity was key, because a study is objectively data driven. She said that there was accuracy and reliability to the data, and it was not just observational. There were many rules for observation in qualitative studies and work, but the data driven components of this study were very helpful to give an industry baseline or clear information.
- Study Questions -All studies need to have very specific questions, and in this case the questions are as follows:
 - What were the tasks per square foot? What was the density of work done and what can be done while cleaning and disinfecting five typical work areas or work venues?
 - What was the test duration including the rate of cleaning and disinfecting these workspaces?

- What were the durations of the frequencies and the magnitude of the particular physical exposures that were associated with injuries while working in these five typical work venues?
- Finally, what was the physiological workload and the risk of lumbar spine disorder while cleaning and disinfecting the five workspaces? What was the body position and effect on the heart to be able to get the work done?
- Study design
 - There were five workspaces and there were two parts to the study:
 - One was a complete analysis with all the objective equipment and the other was a partial analysis so they can get a broader understanding by looking at more people.
 - Full analysis will include three subjects by their heights: someone who was small, then medium and then tall. They will look at two shifts and five workspaces, so the total number of subjects would be six subjects per workspace. They would look at five workspaces.
 - For partial analysis the study would gather critical data and would include five additional subjects over two shifts, and add a fifth. The number of subjects equaled 50. The combination of the total number of subjects who will be able to help us to get some very reliable and statistically significant information. A certain number of people had to be involved in a study to be able to determine statistical significance.
 - A few tools used to gather and collect the data, and analyze exposure:
 - The Lumbar Motion Monitor (LMM) was a device worn on the outside of clothing and it gathered data about the risk of low back injury.
 - The Xsens suit was a set of Inertial Measurement Unit (IMU) sensors that are attached via little Velcro straps to different parts of the body and it can gauge posture, or joint angles of the shoulder, back and wrist.
 - The Heart Rate Monitor (HRM) measures the physiological workload and will be worn for more than just the task observation period for 24 to 48 hours.
 - ActivPal was a small device that was attached to the skin of the upper leg worn under the clothing and can be worn in and out of the shower. It would also be worn for 24 to 48 hours and it gave information about the number of steps. It gives the time spent in different postures, including sitting, standing and walking.
 - The Multimedia Video Task Analysis (MVTA) was a tool that was used in conjunction with the Xsens sensors to integrate together and tell how much time was spent on different tasks. Tasks for this study were cleaning the toilet, emptying the trash, and spending time in awkward postures.
 - Utilizing these objective tools they can answer study questions:
 - The video data will help give a baseline of the time required to do the cleaning tasks.
 - The lumbar motion monitor (LMM) will provide an analysis of whether these tasks result in an unacceptable and or excessive risk of injury to the lower back.
 - The heart rate data will help to understand the level of acceptability of the physiological workload during these tasks.
 - And ActivPAL data gives us a sense of the balance of activity, intensity and

- variety during that shift.
 - Xsens data works with the video data to analyze the joint angles. The magnitude and the frequency of those motions, and the durations of those motions.
- Examples of how data had been used:
 - A prior hotel housekeeper study that they did gave a sense of what the data could look like, or how this study could be presented or summarized. Data from this hotel housekeeper work showed the different tasks conducted were: supply handling, bed making, dusting, vacuuming, and the different hotel room scenarios. It had a new room in a checkout scenario versus a new room in a stay over scenario. And in the current proposal, those sections might be related to the different work venues or different areas within a venue. What they were seeing with the presentation of the data is the percentage of time spent performing these different tasks.
- They gathered these data with multi-media and the Xsens suits and video task analysis. Tasks can be broken down by how much time is spent for different tasks and in different venues or different work areas. Data were valuable because they could be totaled to find out how long it took to complete the full set of tasks in a different or in a particular venue or work area.
 - In the previous study, we were looking at a room design of a new room versus the design of an existing room. So we were doing some comparisons in that regard. Overall this summary helps to see what they could do with this data.
- The estimated time and cost for this Janitor Time and Motion study were determined by:
 - Study design and preparation elements needed to start the study, procure all needed equipment, and then they added how much time was spent per work venue. These elements were the pieces per venue needed to get the work done. When they discussed the subtotal per venue, this was all contingent on coming to the Bay Area where they were close to the laboratory and they do not have to buy a second set of equipment.
- For five venues, the total cost of the Time and Motion study is \$311,000. If the study used four venues instead of the five it would be \$260,000 to cover the cost of the study.
- There were three elements to the study. The proposal included a statewide survey that would be sent out; that was quantitative information on how people respond to the survey questions. The authors of the Janitor Time and Motion study shared the grocery worker survey outline because the janitorial study survey would be somewhat similar. The questions were:
 - What was the impact of the Covid-19 workload or understanding of preventive measures that were happening and their influence on work culture? How does Covid-19 affect person to person interactions and organizational policies? Through the course of this work, they were trying to understand how these elements were affecting worker's mental and physical health. The quantitative online survey was included in the price of the Time and Motion study they presented.
- Laura Stock's group from COEH would look at some of the important qualitative methods, focus groups and interviews, and that work would be in addition and they

needed to get some details on that.

Questions from the Commissioners

Commissioner Steiger stated it was an interesting as well as an alarming presentation; it contained important information. He said people thought about cleaning based on their experience. One cleaned for five minutes, 10 minutes or up to an hour at a time and they make conclusions based on that, not realizing how dramatically different it was to do something for 40 hours a week and when there was someone shouting at you to do it faster. He used to clean rental cars and in some ways janitorial work was similar, and in others different. When you first started, you were given a quota of about three cars an hour, after about a week it was four cars an hour, and it was all day bent over in weird angles, inhaling cleaning fluids, and exhaust fumes. There was no safety training. It was amazing how hard it was on your body with the constant pressure of someone looking at you, trying to make you work faster. It was a recipe for all sorts of different injuries and illnesses, but there was pressure not to report injuries because you did not want to be the one who needed to take the time off and ask about the workers' compensation system. Therefore studies like this help workers take the action that they need to stay safe on the job in addition to providing data to look at the whole system to see what to do and the best way to keep workers safe. Also it helps to put a structure in place that did not rely on them to have an uncomfortable conversation or do something that might jeopardize their job or create a risk of retaliation in some cases. He could not be more supportive of this study. His question was given the time sensitive nature of Covid-19, it seemed that this study was more time sensitive than most, since it seemed to focus on new pressures related to Covid-19. He asked if there was a way to make this study happen faster and were there more details on the time expected. He said that they were not experts on how long it would take, but it did seem like we always wanted to keep things happening quickly, but in this case it did seem urgent to get this data back soon to take the necessary steps, and come up with whatever we need.

Ms. Honan said that they started on this study about a year ago, at the beginning of Covid-19, and they had been preparing. This study will be a top priority and as soon as they had funding, it will get started. The timing of getting all this done would be a total of about five to six months. They could start as early as tomorrow with the equipment and the realities of setting this up, five or six months was a rather short period of time, but there were no excessive delays built in at all.

Mr. Gaitan said the current disinfection and concern about infectious Disease Control is going to evaporate once the buildings were reoccupied. The expectation that janitors have a role in disease control and surface contamination was probably going to go well beyond getting these buildings reoccupied.

Questions from the Public

Bob Blink, Occupational Medicine physician, stated that he had taken care of hundreds, maybe even thousands of janitorial workers. The housekeeping study and other CHSWC studies provide data used by occupational medicine physicians to understand the tremendous stresses on some workers, ways to better protect them, and work with employers to improve safety. It also helped workers understand how to better protect themselves.

Valerie, a member of the public, asked about Covid-19 and Senate Bill (SB) 1159 and whether her clients had to report within three days; were there any ramifications if they reported after those three days. Ms. Hone said she did not have the information but she can get back to her about her question.

Commissioner Kessler forwarded a question from Chris Bailey, Research Program Specialist, about using an exoskeletal support system. Commissioner Kessler then commented that this was an incredible study and it would be scientific and not anecdotal, even though anecdotal was acceptable and can be verified; if there was a rejection of the findings then it can be documented why people were getting injured and prevent that from happening. Mr. Gaitan replied it will be an incredible tool to be able to finally have a science based conversation with property owners and managers about how far you can push people. So it will be very useful.

Ms. Afterman answered Mr. Bailey's question about an exoskeletal support system. The exoskeletal support system had not been considered for this study because it would require a separate study. Studies in the construction industry looked at how they benefit workers. Exoskeletons being used, were both machine assisted and mechanical but the impact to the worker varied depending on the brand and fit, the added weight and additional strain, therefore it was not going to be used in this study. Ms. Hone added that in the University of California laboratory, one area of focus was exoskeletons, so more will be known about them a year from now than they know today. More information was being gathered about when, how and for who exoskeletons were helpful.

Action Item: Motion to approve this Janitor Time and Motion study.

- Commissioner Kessler moved the study to be approved. Commissioner Garfias seconded the motion. All were in favor. None opposed, and there were no abstentions. The motion passed.

IV. Briefing on SIBTF Study Proposal

Kim Card, Assistant Chief Counsel in the Office of the Director, Legal Unit (OD-Legal)

Ms. Card said that she was there to present on the Subsequent Injuries Benefits Trust Fund (SIBTF). She explained that the attorneys in the OD Legal Unit represent the Director of DIR as administrator of the SIBTF fund.

She explained that this is a study that DIR will be conducting itself, likely through a qualified outside qualified organization, and that DIR will be funding it so this is an informational presentation and not an action item. She said that the study may impact future decisions and recommendations, so they wanted to provide an informational presentation to the Commission at this time (before the study was started).

Description of the SIBTF Program

- The Subsequent Injuries Benefits Trust Fund is a special trust fund and associated claims administration program first created by legislation in about 1945. The applicable Labor Code sections that establish and describe the program are 4751 through 4756; this is a very small number of sections with limited statutory law about the program.
- The basic concept of the program, and it is related to its creation around the end of World War II, is this:
 - When a worker has prior, pre-existing, permanent partial disability, that is actually labor disabling, at the time the worker suffers a subsequent work injury, and if the overall resulting permanent disability for that worker that results from the combination of the prior partial disability and the subsequent work injury is greater (than just the subsequent injury), the employer is liable only for the disability that results from the (subsequent) work injury. The SIBTF pays special additional compensation for that incremental difference -- the gap -- between overall combined disability and the amount caused by the work injury for which the employer is liable.
 - A classic example would be a returning veteran, from WWII at the time, who suffered a combat injury resulting in the loss of one leg. That person has a prior permanent partial disability that is actually labor disabling -- the loss of that limb would certainly have an impact on that individual's ability to do certain work, and/or would require accommodations. If that worker is hired by an employer and subsequently suffers an injury in the course and scope of employment that causes an injury to the ankle on the remaining leg, and if that injury ends up causing permanent disability, that worker would have a much higher degree of overall permanent disability, resulting from the combination of earlier amputation and the subsequent injury, than would have resulted solely from the subsequent ankle. So, in that circumstance, under the basic parameters in the statutory framework, the employer would be liable for the PD that resulted from the ankle injury itself, and the worker could apply for and receive special additional compensation from the SIBTF.
 - The original intent of the program was to encourage employers to employ individuals - particularly war veterans - but individuals in general who had prior existing disabilities so the employer would not be responsible for higher levels of compensation if that employee later had an injury.
- There are four requirements for an applicant to establish a claim for SIBTF benefits:
 - 1.) The applicant must have had a prior permanent partial disability (PPD) that was actually labor disabling;
 - 2.) The applicant suffers a subsequent compensable industrial injury that results in at least 35 percent permanent disability, in other words a fairly significant injury, **or** that causes at least five percent permanent disability to an "opposite and corresponding" body part for which there was prior disability;
 - 3.) The permanent disability resulting from the prior disability and the subsequent industrial injury is **greater** than that from the subsequent injury alone; and

- 4.) The combined total permanent disability from the pre-existing disability and the subsequent industrial injury is **70 percent or more**.
- The Fund is not supposed to apply in all cases, but only in cases involving substantial disability resulting from fairly severe injuries and significant degrees of combined permanent disability.
- The program and statutes were originally created in 1945 and were last amended in the late 1950s, so the statutory provisions are about 60 years old.
- In their original formulation (which remains unchanged at this point) the statutory provisions about exactly who is eligible for the program, and how the benefits are to be calculated are very sparse and vague. There is very little published case law interpreting these statutes, so the law around these issues is both outdated and sparse.
- While the SIBTF statutes have remained unchanged for about 60 years, the rest of the workers' compensation system has undergone several rounds of significant reform. This has resulted in areas where there may be misalignment between SIBTF cases and the rest of the system and/or where the law regarding SIBTF does not mesh well with the law applicable to regular cases.

Reasons for Concerns about the SIBTF Program

- There has been a very sharp increase in the numbers of new claims filed and total liabilities (amounts paid out) for the program in recent years.
- For many years, the SIBTF program was relatively small. There were not many annual filings and funds paid out were a small fraction of the overall liabilities in the system. There were a relatively small number of applicants' attorneys who practiced in this area, and it was considered a kind of niche (or obscure) and specialized practice within workers' compensation. The program was relatively stable with limited exposure.
- Starting a few years after the apportionment reforms of SB 899 in 2004, the utilization of the SIBTF program began to increase in terms of applications for benefits and case filings. This makes sense when one considers how those reforms worked. When some portion of an injured workers' overall permanent disability was apportioned to pre-existing disability, resulting in a lower award of permanent disability from the employer, it would make sense in some cases – depending on the circumstances – for that worker to be eligible to apply for the special additional compensation from the SIBTF.
- For example, if 15% of disability is apportioned to a preexisting disability, depending on the other thresholds, that worker could be able to apply to the SIBTF to recover the gap for the total combined disability and the amount not paid for by the employer.
- In 2007, 2008, and 2009, SIBTF claims started to rise. However, in about the past 10 years, the numbers of new claims to the SIBTF and the dollar values of benefits awarded and paid out have skyrocketed.
- For example: the total costs to the SIBTF Fund in 2010 were about \$21 million; in 2020, they were about \$90 million. Both the numbers of claims and the payouts are going up.

- This increase in SIBTF numbers has raised some concerns, both in terms of the overall liabilities of the Fund and its ultimate impact on the system and the employer assessments, and in terms of the programmatic administration costs to DIR, and staffing levels required on a going forward basis.
- Legislation has been considered in the past, and a Budget Change Proposal (BCP) was approved in 2019 that gave some additional positions to the SIBTF claims unit as well as OD Legal to hire attorneys to handle the increasing caseloads. This was only an interim step.

Plans to Conduct a DIR Study

DIR is planning to conduct an in-depth study of the SIBTF program, working with a qualified outside organization, to take a deep dive into the numbers and trends and practices within the past 10 years. DIR will be funding the study.

DIR will be looking at five areas:

- 1. Background, history and purposes of the program; how it has evolved (or not) over the years.** Also, how other states have handled similar programs in recent years (some have discontinued these programs, or amended them for better administration)
- 2. Aggregate and numeric data for the past ten years**
 - Total numbers of new claims filed per year
 - Total benefits paid out per year
 - Administrative costs per year
 - Total liability of the Fund per year
- 3. Qualitative Information and Data** about the Types of Claims Filed and Manner of Resolution
 - Of the new claims filed, what were types of preexisting partial disabilities alleged?
 - Of the new claims filed, are there certain occupational groups more heavily represented?
 - Average age of the original claim when the SIBTF claim is filed.
 - How are the claims resolved? Lump sum or stipulations?
 - How long does it take to resolve the claim?
 - Of the claims resolved, what percentage were ultimately resolved for 100% permanent disability?
 - Of the claims filed, what was the time frame between the subsequent industrial injury and the filing of the claim?
 - How does the final resolution of the claim compare or contrast to the final PD findings and resolution of the subsequent industrial injury case?
 - On a projected basis, is it possible to determine total potential outstanding liabilities of the program for the currently pending and unresolved cases, and for projected number of cases?
- 4. Trends Analysis**
 - What trends can be seen from the aggregate and qualitative data?

5. Recommendations

- Are there recommendations to be made about the program, based on the data and trends analysis? This could include new regulations, legislation, changes in administrative procedures, and additional staffing.

The goal will be for the study to make a detailed examination of the system and robust investigation with available data and generate a report that can be used to inform future decision-making about this program.

Ms. Card concluded the presentation.

Questions from the Commissioners

Commissioner Brady thanked Ms. Card for the presentation and stated that it appeared that such a study was overdue.

Commissioner Steiger stated that the SIBTF seems like an important program and that the more one learns about it, the more clear it is that this is something that needs to continue and be protected as a benefit for workers. He said that the issue reminds him of cumulative trauma. He said that he is a representative on the WCIRB rating bureau, and like cumulative trauma, SIBTF claims are a type of claim that used to be relatively rare, but becomes more common and then the response is that “clearly there is some problem here,” and “we need to study it and find a solution.” He stated that the problem never seems to go the other way where, for example, (insurer) premium costs have declined 53% since 2015 and the reaction is never “clearly the workers are not getting the benefits they used to, and we need to study this.” He said that the responses seem to always be when workers start filing more of a specific type of claim and claim costs start going up that it is seen as a problem. He said that when costs go up, they (labor) are not saying that the phenomenon should not be studied or pretend that everything is fine, but they should examine the issue with a lens that perceives that maybe workers and attorneys are simply more aware of the program now. He said that DIR has a thorough system of weeding out fraudulent claims and provider fraud and all sorts of fraud in the system. He said it is not the case that one just fills in a form and you get benefits for cumulative trauma or subsequent injuries, and that there is still this very expensive, very thorough process of making sure that if there is some sort of fraud that DIR is trying to catch it. He concluded that he is speaking against the general sense that may be just his personal belief that whenever one of these types of claims becomes more common, that while not overtly stated, there is an implication that workers are faking it, the applicants attorneys are making it up, that everyone’s trying to bump up their awards, or that it is a bargaining tactic used against the employer. He said that they really do not know if that is the case, and that it could be something like that in certain types of industries, these injuries are getting more common. He said that there could be any number of things that could be driving these increases and that it does not necessarily mean that workers are trying to get benefits for which they are not entitled. Mr. Steiger stated that he wanted to emphasize the hope that this perspective is also part of the whole discussion.

Ms. Card replied that the purpose is to gather data about the program.

Commissioner Brady added that the analytics appear strong and that it would be helpful to review

the frequency and severity and the trends over time. He said that he was intrigued when mention was made of other states and examination of what they are doing. He said he wanted workers' compensation to remain teachable - to see how it is performing internally and then look externally for insights from other parties (states).

Commissioner Bloch stated that listening to the presentation makes him wonder what other obscure things are in the Labor Code that have not been looked at or touched in a long time. He said that he had been discussing this subject with the chairs of the Labor Committees of both the Assembly and the Senate. He said that he thought the study very worthwhile and that he hoped that more of these issues would come to the attention of the Commission as they pertain to health and safety.

Commissioner Brady said that the issues are complicated and intertwined in the Labor Code.

Director Hagen stated that she wanted to address Mr. Steiger's question. She said that this why she wanted to bring the issue to the Commission in order to get feedback from the Commission and other stakeholders as they launch the study. She said that she could have executed the study operationally within the organization but that she felt that it needed some stakeholder feedback before they truly identify the problem and develop a pathway to address it. She said that she asks for a little more time before they start peeling back the layers of the Labor Code. She expressed an interest in tackling one challenge at a time. She said that SIBTF is a big issue in terms of being a cost driver and a workload driver. She said that they will obviously continue to deliver on ensuring that workers receive the benefits for which they are entitled. She said that the issue fits under the theme of trying to become a more nimble and efficient organization. She said that they are working on another proposal that they hope to present to the Commission at the next meeting, related to how they set the fee schedule within DWC. She shared that she believed that the Commission has looked at fee schedules previously and she explained that DIR is interested in taking a broader look at best practices on that issue. She stated that she hoped that DIR would be a regular participant in Commission meetings going forward, but she wanted to acknowledge Mr. Steiger's comment.

Commissioner Bouma stated that the SIBTF issue came up as language in a trailer bill several years ago and that it did not feel like the process being described for a study. She said that she expressed gratitude for the process of conducting a study.

Commissioner Brady said that he seconded that comment and said that it was a teachable moment to focus on the issue in this way.

Commissioner Kessler said that she is pleased that the subject is being looked at and that she believes that the benefits are good (important). She did say that she was concerned about crafting an RFP that encourages good people to come and apply to conduct the study, as well as concerned that the study includes speaking to the workers who have been impacted by the program. She said it was important to get a feel from the workers directly about what worked and what did not work so that they have a better understanding of how the program functions in a real way. She also added that when they spoke a language of "alphabet soup," it would be nice if they could define what all the initials stand for so that everyone is clear on definitions. Ms. Kessler thanked Director Hagen

for taking on the study among the many duties.

Commissioner Brady thanked Ms. Card for the informational report and update on the study. He said it was not an Action Item for the Commission. He said that the Commission looked forward to hearing more about the study in the future.

There was no public comment on this item.

Commissioner Brady introduced Mr. Enz by saying that the Commission looked forward to hearing Mr. Enz's report, and he thanked him for his efforts at coordinating with the Commissioners. Mr. Brady said that the Commissioners appreciated the day-to-day work that goes into the effort, not just in a morning public meeting on a particular date but all the behind-the-scenes activities. Mr. Brady said that Mr. Enz was instrumental in keeping the Commissioners on track and they appreciated his work.

V. Executive Officer Report

Eduardo Enz, CHSWC

Mr. Enz thanked Commissioner Brady for the introduction and thanked the Commissioners for the opportunity to brief them on Commission staff activities. He also thanked the speakers for their excellent presentations, and said there were good points which made for good discussion.

CHSWC Studies Update

Mr. Enz stated that the report on the CHSWC study mandated by AB 1400, "Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer Among Mechanics and Cleaners of Firefighting Vehicles" and the presentation previously scheduled for the day's meeting will be postponed to allow more time for further consideration and review of qualitative as well as quantitative study results. He said that the previous March 15th deadline for submission of this report has been extended to facilitate additional time for project completion and review. He thanked the Commissioners in advance for their understanding. Once completed, the study will be submitted to the Legislature, OSHSB and the Los Angeles Board of Supervisors.

He said that the CHSWC study requested by Assembly Member Tom Daly, "Evaluation of Incidence of Mental Health Conditions or Illnesses Among Firefighters and Peace Officers" is in process and will evaluate the cost impact of SB 542 and assess the occurrence of mental health conditions or illnesses that affect active firefighters and peace officers and whether claims of mental health conditions or illnesses filed by active firefighters and peace officers are accepted or denied. CHSWC contracted with RAND to conduct this study and they anticipate the draft report by May and the final report by July of 2021. He said that he expected a presentation at the next June CHSWC meeting.

Mr. Enz explained that SB 1159 requires CHSWC to conduct a study of the impacts of COVID-19 claims on the workers' compensation system, including an assessment of differences in the impacts across different occupational groups and of the presumption statutes. RAND has been awarded, in the last two days, the contract for the CHSWC study "Impacts of COVID-19 Claims

and SB 1159 Presumptions of Compensability on the California Workers' Compensation System" through a competitive bidding process and the study will be underway soon (by the end of March). A preliminary report from CHSWC is due to the Legislature and the Governor by December 31, 2021, with a final report due by April 30, 2022.

CHSWC Projects and Activities Update

CHSWC staff has worked hard to prepare the draft 2020 CHSWC and the WOSHTEP Annual Reports and both reports are action items today. They were posted for public review and comment for 30 days and no comments were received.

CHSWC staff and our partners at LOHP-UC Berkeley and LOSH-UCLA will be participating in the following activities in March and April. The annual Young Workers Leadership Academy (YWLA) will be held virtually for the first time from March 4-6. The Academy provides a leadership development opportunity for teams of high school students, with their adult sponsors, from different communities statewide to focus on young worker health and safety. Staff is also in the process of planning the WOSHTEP Advisory Board meeting scheduled on March 30th that will focus on an overview of program accomplishments in the past year as well as a discussion of future goals and objectives. He said that they actually had a WOSHTEP Advisory Board meeting planned last year right when COVID-19 hit, so this is an opportunity to have two meetings in one. This meeting will address issues such as the process of transitioning to online classes due to COVID-19, new content including introduction of COVID-19 protections, preliminary evaluation results for WOSH Specialist classes and a discussion on the impact of COVID-19 on work including an overview of the Labor Workforce Development Agency COVID-19 work being conducted by the three centers CHSWC works with at UC Berkeley, UCLA and UC Davis. In addition, staff will take part in the California Partnership for Young Worker Health and Safety that will be meeting on April 8th.

VI. Other Business/Action Items

Mr. Enz said that since Commissioner Brady took care of the time-motion study action item earlier, there are two more action items for consideration today.

- 1) Does the Commission wish to approve for final release and posting the DRAFT 2020 CHSWC Annual Report?

Commissioner Brady called for a motion, Commissioner Bouma moved, Commissioner Kessler seconded and the motion passed unanimously.

- 2) Does the Commission wish to approve for final release and posting the DRAFT 2020 WOSHTEP Annual Report?

Commissioner Brady called for a motion, Commissioner Kessler moved, Commissioner Bloch seconded and the motion passed unanimously.

Commissioner Brady thanked Mr. Enz. Mr. Brady then called for any questions for Mr. Enz by

the Commissioners. There were none. Mr. Brady said that there was a lot going on (on the Commission's agenda) and he thought that it was impressive to consider the extreme diversity of subject matter that the Commission reviews and that the staff engage in. He said it remains impressive in terms of the quality and the sheer volume and quantity of work that is being tackled. (It turns out that there were questions from the Commissioners, as follows.)

Questions from the Commissioners

Commissioner Steiger asked if Mr. Enz could give a quick update on the proposal for a study related to skin cancer among wildlife officers and park rangers.

Mr. Enz said that he would be happy to provide an update. He said that cancer is an important question and they are looking for the best method to answer the question to evaluate the cancer rates among wildlife officers and park rangers. He said that they are trying to develop the best data source and methodological format for developing the study. He said that they posed the pertinent research questions to both internal and external researchers, and will follow up with the Commissioners once staff confirm the best path forward. One of the issues is that the workers' compensation data is a small subset of all the cancer data that they have come up with. He said that he would certainly share that data that's been provided by DWC and the WCIS component. He said that one option that has been presented is, due to the fact that the population of wildlife officers and park rangers is so small that they could try to do a study that breaks down skin cancer rates by job, and to try to find jobs that have analogous amounts of sun exposure to wildlife officers and park rangers, something along those lines simply to shore up the fact that they do not have a great deal of data in the workers' compensation data on this set of workers. Mr. Enz concluded that was one possible way that they could approach the study, but they he could certainly fill the Commissioners in with more details as they move forward. Mr. Enz said that he had spoken to a number of external folks, including Mark Priven and Frank Neuhauser at UC-Berkeley, and they are doing everything they can to expedite once they have a data approach and design that is consistent with the desired objectives.

Questions from the Public

Patrick Foye stated that he was with the California Fish and Game Wardens, Supervisors and Managers Association and they are working with Assemblymember Mullen on AB 334, co-authored by Senator Stern, on the skin cancer presumption bill and that bill will rely upon the CHSWC study. He wanted to acknowledge the efforts that the Commission has made to make that happen, especially Eduardo Enz, and the other conversations that have happened to move the bill along the legislative process. He also wanted to acknowledge the work at the Commission working on Covid-19 related issues and the fact that it is a huge challenge. He thanked the Commission for their research efforts, and hoped it would be finished in time for the bill to progress to the end of the legislative session.

There were no further questions from the public.

Commissioner Brady asked for a motion to adjourn. Commissioner Kessler motioned, Commissioner Garfias seconded, and the motion passed unanimously.

Other Business

None

Adjournment

The meeting was adjourned at 12:16 p.m.

Approved:

Martin Brady, Chair

Date

Respectfully submitted:

Eduardo Enz, Executive Officer, CHSWC

Date