

MINUTES OF THE JOINT MEETING OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE AND SENATE COMMERCE COMMITTEE.

The joint meeting was called to order by Senator Karin Brownlee at 8:30 a.m. on January 16, 2002 in Room 123-S of the Capitol.

All House members were present except: Rep. Rick Rehorn - excused

House Committee staff present: Jerry Donaldson, Legislative Research
Bob Nugent, Revisor of Statutes
Renaë Jeffries, Revisor of Statutes
Bev Adams, Secretary

Conferees appearing before the committee: Roger Aeschliman, Deputy Secretary of KDHR
William Sanders, KDHR
Phil Harness, KDHR
Martha Gabehart, KDHR

Others attending: See attached list

The Business, Commerce and Labor Committee started the year of 2002 with a joint meeting with the Senate Commerce Committee in Room 123-S at 8:30 a.m. The meeting was called to order by the Chair of the Senate Commerce Committee, Senator Karin Brownlee. Rep. Lane welcomed every one to the meeting and made a few comments.

Roger Aeschliman, Deputy Secretary of KDHR, reported that the unemployment figures for January would not be available until the end of February. The last unemployment figures were lower because of the Christmas shopping season and they do not show the Wichita and Sprint lay-offs. The January report, to be published in February, will show a more realistic figure for unemployment in Kansas. He introduced William Sanders, Chief Information Officer and Director of Employment Security, KDHR.

William Sanders reported on unemployment claim numbers. He explained how the filing of claims has evolved in the last few years from paper claims to Call Centers to a combination of Call Centers, internet, interactive voice response, and employers filing of claims on behalf of employees. The department has been able to increase their effectiveness of processing claims, using the same amount of employees, from 47 minutes per unit to 12 minutes per unit. Even with the increase in effectiveness, the major problem is people getting into the system to file their claims. This could be the 2nd worst year for unemployment filings. They are seeing a dramatic increase in numbers. They are working to replace the system with a more stable system that will not crash as often. (Attachment 1) Mr. Sanders answered questions from the committees.

Mr. Aeschliman introduced Phil Harness, Director of the Division of Workers Compensation.

Mr. Harness gave a quick overview of the many changes in his division. He updated the committee on its fraud and abuse monitoring and prosecution activities during the past year. The annual report will be available soon. A new database went on line on November 5, 2001, which will facilitate the gathering of data as required by statute. They will also be forwarding their third year results in their Annual Statistical Report soon. He also talked about the State Plan for safety and health programs. He will have proposed legislation to recommend to the legislature from the Advisory Council. (Attachment 2) He ended his testimony by answering several questions from the committees.

Martha Gabehart, Executive Director, made a short presentation about the Kansas Commission on Disability Concerns. At this time she does not know of any initiatives coming before the committees that have to do with the Americans with Disabilities Act. She included in her written testimony two recent Supreme Court cases that have had some impact on the ADA. (Attachment 3)

The meeting adjourned at approximately 9:30 a.m.

**SENATE COMMERCE COMMITTEE
GUEST LIST**

DATE: January 16, 2002

NAME	REPRESENTING
Peg Spencer	SRS
Martha Gehring	KDHR
Marc Lowe	KDHR
William Sanders	KDHR
Ken Bone	Hein / Weir Ch. tel
Phil Harners	KDHR - Workforce Comp.
Roger Beschlimm	KDHR
Wayne Maubius	K. AFL - CIO
John C. Sollenberg	Wostar Energy
Barb Reavis	Workforce Network of Kansas board
George Barber	Ks Self Insured Assn.
Mike Huttles	Ks. Gov't. Consulting

Timeframe	Claims	Variance	Budget	Variance	FTE	Method	MPU
10/99 - 9/00	107,000	N/A	\$15.8 million	N/A	90	Paper	47
10/00 - 9/01	150,000	+40.2%	\$16.3 million	+3.2%	90	Call Centers	23
10/01 - 9/02	200,000+	+33.3%	N/A (\$17.2 million) (projected)	N/A (+5.5%) (projected)	90	Call Centers Internet IVR Employer Filing	12

January 6 - 12, 2002

Day	Internet	Mass Layoff	Quick	CSR	Total
Monday	362	0	0	845	1,207
Tuesday	272	0	0	877	1,149
Wednesday	225	0	0	737	962
Thursday	173	2,055	1	861	3,090
Friday	176	0	10	810	996
Weekly Totals	1,208 16.3%	2,055 27.8%	11 0.1%	4,130 55.8%	7,404
12/3 - Present	4,922 13.8%	10,538 29.4%	38 0.1%	20,291 56.7%	35,789

**TESTIMONY BEFORE JOINT MEETING OF
HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE AND
SENATE COMMERCE COMMITTEE**

By Philip S. Harness, Director of Workers Compensation

Wednesday, January 16, 2002

1. Workers Compensation Fraud and Abuse Update

The Division has stepped up its fraud and abuse monitoring and prosecution activities during the past year. I have had the pleasure of working with a new Assistant Attorney General, Ezra Ginzburg, and, due to his work and the work of the investigative staff, fines, penalties, and restitution in the amount of \$202,465.09 have been ordered and assessed; to date, \$77,768.56 of that amount has actually been collected. We will once again be forwarding to you as soon as it is printed by the State Printer a special Workers Compensation Fraud and Abuse Annual Report covering the calendar year 2001. However, I have attached one page of that report to this testimony today which shows the array of victims of workers compensation fraud in a broken pie-chart fashion. Of the 199 referrals received for the year, claimants were indicated in 72, employers in 77, insurance entities in one, and the state of Kansas (whether the Workers Compensation Fund or the Division's Compliance Section) in 49. Compliance refers to an action brought against an employer who has failed to maintain workers compensation insurance coverage.

2. Information Technology

After some difficulty in getting the new database developed and built, November 5, 2001, was the "go live" date for most of the Division of Workers Compensation (some sections actually went "live" earlier). Since it is a web-based system, there is a greater need for maintenance than with the former mainframe system. The Division required this system to be built in order to facilitate the gathering of data. The Division desires to collect that data in an electronic format. In order to comply with the statute, during the time that the database was being developed, the Division created its own software which was shipped to a representative sample of insurance carriers, self-insured employers, and group pools requesting certain claim characteristics for a statistically significant sample of claims. We will be reporting our third year results in our Annual Statistical Report, which is presently at the State Printer and will be forwarded to you. Plans are to migrate from that specially designed software and to begin collecting claim information pursuant to standards drafted by a national consensus group. That group has presently drafted its third release of those standards, and I have offered Kansas as a beta test site. In addition, the Division is desirous of electronically collecting proof of coverage data, that is which employer is covered by which insurance carrier, any policy changes, renewals, cancellations, and the like. Proposed drafts of regulations on electronic data interchange (EDI) of both the first reports of injury (for claims data purposes) and proof of coverage have been presented to the Workers Compensation Advisory Council and reviewed, but there has not yet

been a recommendation thereon. As part of the database build, the Division took proposals on how to best map this information, once it is received, into our database. We are currently in contract negotiations for that purpose.

In this fashion, by automation, we should be able to determine by accident history per industry or perhaps even as fine as per employer, where our safety efforts should be targeted, as well as being watchful for any trends in workers compensation and reporting those to the Legislature. It may also allow the Legislature to make other important public policy decisions for other state regulators. Thus, it may allow the Legislature to focus important state resources in an appropriate manner, which leads to the next topic.

3. **State Plan**

I have attached to this testimony a one-page, very cursory discussion of where Secretary Richard Beyer and I believe our safety efforts should come into fruition. Presently in the area of safety, KDHR has jurisdiction over public sector employers, maintains an accident prevention program as specified by the Workers Compensation Act, and offers safety consultation services to private sector employers. Those consultation services are funded, in large part, by federal funds, are offered free to employers if the employer so requests, and no fines or penalties are rendered by the state; we only request abatement of the safety hazards. Currently all private sector employers are subject to compliance and enforcement action by the federal Occupational Safety and Health Administration (OSHA); however, about half of the states in the United States have departed from this scheme and adopted their own State Plan, which supplants OSHA and puts the state in its place. Statistics show that this action is more effective in that more inspections are completed, more hazards found and abated, the fines per violation are lessened, and Bureau of Labor Statistics studies indicate that those states with State Plans have an improved injury rate over those states which do not. In those states with an approved State Plan, OSHA will continue to fund the consultation program up to its current 90 percent level, will fund 50 percent of the enforcement program, and this pertains to both the private sector and public sector. Any fines collected from private sector employers would accrue to the State General Fund.

I would ask for your consideration of a committee hearing on this important subject, along with proposed legislation which has been recommended favorably to the Legislature by the Advisory Council. Those proposals include:

1. An amendment to K.S.A. 44-550b which would exclude social security numbers on records research requests;
2. An amendment to K.S.A. 44-508 (b) and 44-542a, which would designate members of limited liability companies the same as partners, and not covered by the Workers compensation Act;
3. An amendment to K.S.A. 44-510b (i) which would strike the necessity of filing an annual surviving spouse report with the Division, but retaining the requirement that the

statement would be required to be filed with the employer/insurance carrier, and clarifying the definition of "wholly dependent child";

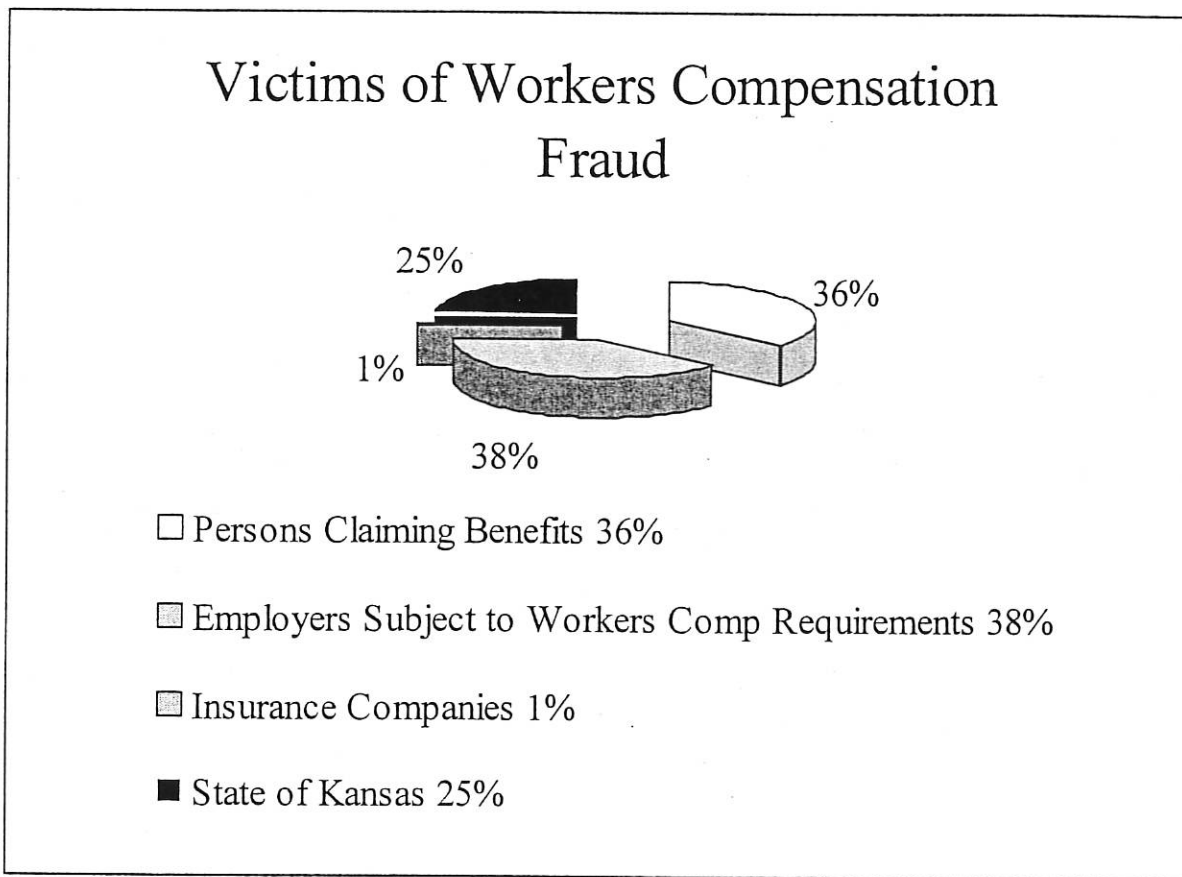
4. An amendment to K.S.A. 44-557a allowing the Secretary of Revenue and the Director of Workers Compensation to exchange certain information to be used solely for the verification of workers compensation data files.

The Workers Compensation Advisory Council has another meeting set for February 1, 2002, and other recommendations may be forwarded to the Legislature for your review following that meeting.

Fraud Victims

Figure 4-5 below indicates who is the potential victim of the fraud being perpetrated. Of the 199 referrals for the year, claimants were indicated in 72, employers 77, insurance entities 1, renderers of medical care 0 and the State of Kansas (Workers Compensation Fund or compliance) 49. The chart indicates the percentages for each.

Figure 4-4



Investigations

The Fraud Unit has three full time investigators. These investigators are not law enforcement officers, however, they perform almost identical investigative duties as sworn law enforcement. The investigation process includes activities such as interviewing witnesses, collecting evidence, forming liaisons with law enforcement groups as well as special fraud investigation units within the insurance industry and testifying in administrative and criminal actions.

- Of the 199 referrals received by the Unit, 188 were fully investigated.

Kansas State Plan: The Time Has Come

What is a State Plan?

The Occupational Safety & Health Act of 1970 encourages states to develop and operate their own occupational safety and health programs including enforcement. States and territories which elect to develop and operate their own safety and health programs are known as State Plans in contrast with Federal States which submit to the Occupational Safety & Health Administration (OSHA) under the United States Department of Labor (USDOL).

What are the advantages of being a State Plan?

1. Kansas can better focus resources in areas which will improve the safety and health of Kansans.
2. Fines and penalties will remain in the state.
3. More inspections will result in more hazards being identified and abated but less assessed in penalties for businesses in Kansas.
4. Kansas can assume a leadership role in safety and health nationally.

What are the disadvantages of a State Plan?

1. Adoption of regulations to govern compliance activities and associated problems.
2. Fines and penalty assessment.

How is a State Plan to be funded?

The Department of Human Resources is proposing that an assessment not to exceed 1% be paid by insurance carriers, group funded pools, and self-insureds on annual paid losses to fund the Kansas occupational safety and health program. This program will include an enforcement program, a consultation program, the accident prevention program, and the annual safety and health conference. OSHA will fund 50% of the enforcement program and up to 90% of the consultation program. Fines collected (about \$1 million per year) would accrue to the State General fund.

What is required to become a State Plan?

Once enabling legislation is approved, the state must

1. adopt standards "at least as effective as" comparable federal standards (common practice is to adopt OSHA standards),
2. conduct enforcement inspections,
3. include public sector employees, and
4. implement an occupational safety and health training and education program.

Currently, KDHR does 3 of these 4 tasks.

A 3-year "developmental plan" allows the structural element to be put in place and culminates in "certification" by OSHA. An operational status agreement is then formed where OSHA suspends discretionary enforcement activity. Final approval is gained one year later when the program is demonstrated to be "at least as effective as" OSHA.

Presentation by
Martha K. Gabehart
Executive Director
Kansas Commission on Disability Concerns
to Senate Commerce Committee and
House Business, Commerce and Labor Committee
January 16, 2002
Statehouse Room 123-S

Thank you for asking me to speak with you today about the Kansas Commission on Disability Concerns (KCDC) and disability related issues that may come before you this session. KCDC is an advocacy entity within the Kansas Department of Human Resources (KDHR). We advocate for changes to state laws, programs and regulations to help Kansans with disabilities live in their communities. The commission is made up of 15 people appointed by Secretary Beyer and 15 ex officio members representing state agencies and programs. At least half of our appointed members must be people with disabilities. The commissioners decide policy and initiatives with regard to Kansans with disabilities. The staff implements these initiatives and communicates with the governor, legislature and agency heads about changes needed to help Kansans with disabilities live more active lives in their own communities.

At this time we do not know of any initiatives coming before your committees that have to do with the Americans with Disabilities Act (ADA) or any other disability civil rights laws. Ms. Donaldson asked that I give you some information about two recent Supreme Court cases that have had some impact on the ADA. I have not found a synopsis that truly gives basic information about the effects of the two decisions, but I will forward those to you when I do.

Thank you again for this opportunity.

From: [REDACTED]
Sent: Tuesday, January 15, 2002 10:31 AM
To: ADA@KCDCINFO.ORG
Subject: FW: Article: EEOC Can Ignore Arbitration Deals

Tuesday January 15 10:32 AM ET
EEOC Can Ignore Arbitration Deals
By ANNE GEARAN, Associated Press Writer

EEOC v Waffle House, Inc

WASHINGTON (AP) - A federal anti-discrimination agency may step in to win back pay or other help for workers who have signed away the right to sue their employers, a divided Supreme Court ruled Tuesday.

The 6-3 ruling clarifies the reach of the federal Equal Employment Opportunity Commission, and curbs the ability of employers to keep workplace disputes out of the courts.

The high court held that the EEOC may sue for money in federal court on behalf of a short-order cook who was fired after he had a seizure at work. The cook had agreed when he was hired that any on-the-job dispute would be resolved by arbitration, but the EEOC can ignore that agreement, Justice John Paul Stevens wrote in the majority opinion.

The court's decision means that in some cases the EEOC can circumvent an arbitration agreement to do for an individual wronged worker what the worker is unable or perhaps unwilling to do for himself.

The EEOC is "the master of its own case," and free to decide for itself whether it is in the public's interest to pursue a given lawsuit, Stevens wrote on behalf of himself and Justices Sandra Day O'Connor, Anthony M. Kennedy, David H. Souter, Ruth Bader Ginsburg and Stephen Breyer.

"It is the public agency's province, not that of the court, to determine whether public resources should be committed to the recovery of victim-specific relief," Stevens wrote.

Justice Clarence Thomas, who once headed the EEOC, dissented. The EEOC must "take a victim of discrimination as it finds him," Thomas wrote on behalf of himself, Chief Justice William H. Rehnquist and Justice Antonin Scalia.

"I cannot agree that the EEOC may do on behalf of an employee that which an employee has agreed not to do for himself," Thomas wrote.

From: [REDACTED]
Sent: Tuesday, January 08, 2002 12:33 PM
To: GREATLAKES@LISTSERV.UIC.EDU
Subject: Supreme Court rules in Toyota v Williams case....Associated Press article

Follow Up Flag: Follow up
Flag Status: Flagged

The following article is forwarded to you by the Great Lakes ADA Center for your information:

High court limits disability law in carpal tunnel case
By Anne Gearan
Associated Press Writer

January 8, 2002

WASHINGTON -- The Supreme Court narrowed the reach of a landmark disability rights law today, ruling that an assembly line worker with carpal tunnel syndrome was not entitled to special treatment on the job.

A unanimous court ruled that Ella Williams' partial disability did not obligate her employer, car manufacturer Toyota, to tailor a job to suit her wrist, arm and shoulder problems.

The 1990 Americans With Disabilities Act guarantees equal treatment on the job and elsewhere for people whose disabilities "substantially limit" their ability to perform what the law calls "major life activities," such as caring for oneself.

Williams' disability did not prevent her from doing many tasks at home and at work. But a federal appeals court found that she was disabled under the ADA because her physical problems substantially limited her ability to perform manual tasks at work.

"This was error," the Supreme Court noted in an opinion written by Justice Sandra Day O'Connor.

In cases like Williams', "the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her specific job," the court wrote.

Disability cannot be assessed by looking only at someone's fitness to work, the court said.

The court reversed the opinion of the Cincinnati-based 6th U.S. Circuit Court of Appeals and sent the Williams case back with instructions to reconsider it.

The ruling does not mean that anyone with carpal tunnel syndrome or similar partial disabilities is automatically excluded from protection by the ADA. But it probably will make such claims harder to prove, since the court makes clear that disability must affect a range of manual tasks or duties.

Williams and advocates for the disabled had argued that her case was emblematic of just the kind of discrimination the ADA was supposed to prevent.

A partially disabled person who wants to work should be able to do so, with modest accommodation by an employer,

r than being forced to sit home, her lawyers have argued.

Williams claimed that her work on a Toyota engine assembly line so damaged her hands and arms that she has trouble brushing her hair and buckling her shoes. Her doctor said she cannot lift more than 20 pounds, repeatedly flex her wrists and elbows or keep her arms extended at shoulder height for long periods.

Williams' problems began within months of taking a job at the Georgetown, Ky., manufacturing plant in 1990, she claimed.

At oral argument in November, the justices focused on how employers and courts should classify people who may be unable to do some tasks, but are perfectly capable of doing others.

"Don't you have to look at both what they can do and what they can't do?" O'Connor asked Williams' lawyer then.

Toyota did try to accommodate Williams for a time, with a job inspecting paint, but that truce broke down when the company required her to swab cars with an oil that highlighted paint flaws. The task, which involved keeping her arms extended, aggravated her symptoms, Williams said.

The U.S. Chamber of Commerce and other business groups backed Toyota. Several civil rights, legal and labor interests supported Williams.

The case is Toyota v. Williams, 00-1089.
Copyright © 2002, The Associated Press

The Commission promotes the integration of people with disabilities into society by providing the following services:

- **Training** on the legislative process, disability civil rights, legal requirements, disability awareness, accessibility and legal remedies.
- **Technical Assistance** with accessibility reviews, fundamentals of organizing disability groups, legislative commentary, policy consultation and research and analysis of disability issues.
- **Information and Referral** on complaint processing, employment incentives, available products for people with disabilities, supervision of disabled workers, legislative testimony, service delivery and disability organizations.

The Commission provides these services to employers, disability organizations, state and federal agencies, the governor's office, U.S. congressional representatives and senators, the state legislature, civic organizations, professional groups and people with disabilities.

KCDC believes that all people with disabilities are entitled to be equal citizens and equal partners in Kansas society. The purpose of KCDC is to involve all segments of the Kansas Community through legislative advocacy, education and resource networking to ensure full and equal citizenship for all Kansans with disabilities.



For more information about the Commission, please contact us at:

Kansas Commission on Disability Concerns
Kansas Department of Human Resources
1430 SW Topeka Boulevard
Topeka, Kansas 66612-1877

Toll Free (Outside Topeka)
1-800-295-5232

Voice 785-296-1722

TTY (Toll Free) 1-877-340-5874

TTY (Local) 785-296-5044

Fax 785-296-0466

The Kansas Commission on Disability Concerns



The Kansas Commission on Disability Concerns (KCDC) provides training on the Americans with Disabilities Act (ADA) and legislative advocacy.

ADA presentations, seminars, and workshops are available to any group and cover employment rights and the responsibilities of employers, businesses and state and local governments.

Legislative advocacy training includes an overview of the legislative process and discussion on verbal and written communication with legislators. For training sessions lasting at least four hours, a mock legislature session is included to give participants an opportunity to write and present testimony and to witness how the legislative committee process works.

<http://www.hr.state.ks.us/dc/>

Martha Gabehart

mkgabeha@hr.state.ks.us

Randy Fisher

refisher@hr.state.ks.us

Sharon Huffman

sdhuffma@hr.state.ks.us

THE GOALS OF THE COMMISSION ARE:

- ✓ Carry on a continuing program of public education to promote equal citizenship for all Kansans with disabilities;
- ✓ Inform individuals with disabilities of specific options for increasing their independence;
- ✓ Support the advocacy efforts of public and private organizations promoting independent living, rehabilitation, employment and quality of life for people with disabilities;
- ✓ Report annually to the Governor and Legislature on the concerns of people with disabilities, including recommendations for action.

RESOURCES

A library of resource information on civil rights laws and court cases, fund raising, grant writing, assistive technology independent living history, etiquette, architectural accessibility, and accessible meetings is available. Written materials available for distribution include publications from the national Council on Disability, President's Committee on Employment of People with Disabilities, the Job Accommodation Network, U.S. Department of Justice, the Equal Employment Opportunity Commission, and the Bazelon Center for Mental Health Law.

The KCDC home page has information on the ADA, the Rehabilitation Act, Social Security, related U.S. Codes, job listings, government resources, assistive technology, transportation, and disabilities in general.