

Attorneys question the need for budget's changes to workers' comp

Attorney David Weir compares Wisconsin's current workers' compensation system to a mid-sized, mid-priced Chevy sedan.

"Nobody complains about it," said the workers' comp lawyer with Stafford, Neal & Soule SC. "It gets the job done."

Weir compares Gov. Scott Walker's budget proposal to reorganize the DWD's Division of Worker's Compensation to getting an alarming call from the mechanic working on that sedan. It's like the mechanic, Weir said, is proposing moving the engine to the trunk and splitting the radiator so three-quarters are in the back and a quarter is in the front.

"Why are we doing this?" he said. "Please give me a rational explanation of how this is an improvement."

Walker's administration calls it an efficiency move.

Walker's proposal would shift the workers' comp division from DWD to the Office of the Commissioner of Insurance and the DOA's Division of Hearings and Appeals. OCI would assume administrative oversight of workers' comp, while most of the system's administrative law judges would move to DOA.

As of now, many of the workers' comp employees would stay in the same workplace and simply fall under the governance of a different agency.

The transfer will streamline government operations, improve efficiency and give DWD the flexibility to more completely focus on workforce training and talent development, agency Secretary Reggie Newson said. And it would more appropriately slot government operations where they belong, he said.

OCI, for instance, regulates insurance as well as the workers' comp brokers who sell that insurance, Newson said. DOA's Hearings and Appeals Division already has administrative law judges who hear cases from other state agencies.

"My initial response," he said, "is I'm not sure what some of the opponents of the proposal, the common-sense reform, would oppose."

Newson and state Insurance Commissioner Ted Nickel backed the idea in an op-ed this week: <http://wisopinion.com/index.html?mdl=article.mdl&article=60822>

Stakeholders agree there are no policy changes proposed in the budget for the system. They also agree Wisconsin's workers' comp system is a well-regarded national model that sports low litigation rates, low costs for employers and fast return times for injured workers.

But the sides disagree primarily over whether the transfer should be in the budget.

Two of the people working on the budget right now, Republican Reps. John Nygren and Mary Czaja, say they have no problem with the proposal or where it is. Nygren, of Marinette, is the co-chairman of the Joint Finance Committee, and Czaja, of Irma, is a member.

"Our goal, from a budget standpoint, is to not make our budget more controversial than it already is," Nygren said, adding later, "In my view, positional movement is not controversial."

Czaja, noting she's an insurance agent who has worked with the workers' comp division for 30 years, argued it's not the system that has made Wisconsin's workers' comp a national model; it's the employers. And while the change might prompt some initial confusion, she said, it will not affect those employers.

"What is it going to change?" she said. "We're not destroying the system; we're moving government functions."

There really is no clear answer to what will change, the newly formed Preserving Worker's Compensation Coalition has argued. The group, which represents workers' comp attorneys such as Weir, is pushing for JFC to yank the proposal from the budget and take it to the Worker's Compensation Advisory Council, a longstanding group of labor and employer representatives who advise the state on workers' comp policy.

"I've been doing this for 32 years," Weir said. "I'm not all that far from retiring from this business, and I'd like to continue the tradition of passing on a good workers' comp division."

The coalition, according to its talking points, is worried the proposed shift could introduce system inefficiencies and a level of market uncertainty that boosts workers' comp rates. The group also cited the potential for hidden costs associated with the transfer and estimated at around \$10 million the price of getting OCI to have compatible technology for the system.

According to state statute, costs such as that can be assessed to insurance carriers and self-insured employers.

Weir said that, in turn, could translate into higher costs for ratepayers.

But Newson disputed that cost, saying DWD would handle back-office duties for OCI until it is up and running, and expenses would not trickle down to insurers.

"It will not cost anybody additional money," he said.

The coalition wants the advisory council to decide. But the council, while cautious about the transfer, is neutral.

In February, it unanimously adopted a resolution simply seeking assurances the proposal would not harm the system or its dispute-resolution process. Jeff Beiriger, a council member and president of Menasha-based Association Management Services Inc, said the council just wants to

make sure those in charge of the transfer give it the necessary consideration.

"In a lot of respects, the only thing we can pay attention to is outcome," he said. "There is no particular fiscal benefit to the state. It truly is a structural move."

As such, Beiriger said, the council has no interest in entering a debate about whether the proposal should be in the budget.

Wisconsin Manufacturers & Commerce, which represents nearly 3,800 businesses and other members throughout the state, has taken a similar stance. Scott Manley, vice president of government relations, said placing the proposal in the budget is appropriate because there are no policy changes.

And, he said, he does not see how the change would affect businesses in the state.

"I think there is enough time," Manley said, "to get the word out to the business community that they'll now see OCI letterhead instead of DWD letterhead."

Still, Weir said, it is unsettling not knowing if there will be consequences. About 10 days after the budget bill came out, he said, he attended a Wisconsin Association of Worker's Compensation Attorneys meeting.

There were about 100 attorneys in the room, Weir said.

"We went over the budget proposal," he said, "and then asked if anyone in the room thought it was a good idea."

No one raised a hand.