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Testimony on 4/30/14
H.645 - An Act Relating to Workers' Compensation
Senate Committee on Finance

The Vermont League of Cities & Towns (VLCT) is a Vermont non-profit association owned and governed by its member municipalities. 100% of Vermont cities and towns are members of VLCT. VLCT manages three self-insurance trusts for its members including the VLCT Property And Casualty Intermunicipal Fund (PACIF), the VLCT Health Trust and the VLCT Unemployment Insurance Trust. The PACIF program provides, among other coverages, Workers' Compensation to participating members. In addition to broad coverage, PACIF also provides comprehensive risk management programs to assist members in reducing their exposure to loss. Over ninety percent of Vermont's cities and towns participate in the VLCT PACIF program.

Regarding V.S.A. § 624 Dual Liability: Claims, Settlement Procedure.

Workers compensation pays for work related injury or disease on a first dollar basis right out of the gate without regard to negligence. The employee does not have to hire an attorney to sue the employer and wait out a lengthy trial for a monetary recovery; their medical bills and wages are paid immediately. Additional funds are also paid for permanent impairment and future medical expenses if applicable. The purpose of the lien is that if there is a recovery from the responsible third-party, the workers' compensation carrier should be reimbursed for any costs incurred in caring for the injured employee.

This amendment creates an unfair situation for the employer. For example regarding the other parties:

The attorney fees are taken off the top.

The employee would not be fully responsible by their own comparative negligence.

The responsible third party is not responsible for inadequate limits of insurance.

Currently PACIF frequently assists the injured employee to negotiate an out of court settlement prior to initiating litigation. For a number of reasons, PACIF often settles for less than the full lien amount. Factors include whether the workers compensation claim is open or closed, does the injured employee still work for the municipality, comparative negligence of the injured employee, is a Medicare Set Aside (MSA) required, etc... This generally leads to better outcomes than a protracted legal engagement. We are afraid that this amendment would result in less favorable outcomes and increased costs to both employees and employers.

We have concerns regarding the determination of the full value of the personal injuries or death by the Commissioner or an arbitrator. Personal injury tort cases involve elements beyond the scope of workers compensation and we have concerns regarding the DOL being able to adequately evaluate these issues. The process of requesting an administrative determination and then a possible appeal to superior court would add unnecessary cost and time to resolve the case.

Regarding 21 V.S.A. § 655 Travel to Independent Medical Examination (IME).

We do not support the amendment to limit the radius of an IME examination to within a 50-mile radius of the injured employee's residence. This is not practical considering the desire to match the best suited physician with a particular injury. To our knowledge there are approximately only 20 physicians in Vermont that conduct IME's and they are not geographically distributed around the state. Regarding the need for a psychological IME we are aware of only two doctors, one in Essex Vermont and the other in New Hampshire. We would reimburse or arrange for transportation to and from an IME appointment.

The workers compensation statute requires an IME to be conducted within 45 days of a determination of being at a medical end. We are concerned with the logistics of being required to apply to the Commissioner for an examination to be conducted outside the 50 mile radius, waiting for approval, and then hoping for the physician to be available in whatever amount of time is left.

Regarding 21 V.S.A. § 643a Discontinuance of Benefits.

An extension of benefits for any length of time beyond the current seven days will add to the cost of workers compensation for Vermont municipal employers. We oppose this amendment.

Thank you for your time and for considering my testimony.