

MINUTES OF THE NC DEPARTMENT OF LABOR
ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH
NOVEMBER 12, 2022

The NC Department of Labor Advisory Council on Occupational Safety and Health met in person in Asheboro, NC at Randolph Community College on Thursday, November 3, 2022.

The following Council Members were in attendance: Jessica Foster, David Leonardi, Debbie Rogers-Lowery, Russell McCue, Brian Polk and Roger Richards. The following Council Members were absent from the meeting: Linda Andrews, Robert Carruth, Gloria Bone-Gunther, Cory Hill and Ron Ingerick.

NCDOL/OSH staff in attendance were: Commissioner Josh Dobson, Chief of Staff Scott Mabry, OSH Director/Deputy Commissioner Jennifer Haigwood, Assistant OSH Director Paul Sullivan, West Compliance Bureau Chief Lee Peacock, East Compliance Bureau Chief, Nicole Brown, ETTA Bureau Chief Wanda Lagoe, Consultative Services Bureau Chief Kevin O'Barr, State Plan Coordinator Judyth Forte, Director of Communication Erin Wilson, NCDOL Legislative Liaison Edgar Starnes, OSH Executive Assistant Betty Morgan.

The meeting began at 10:00 a.m., and Chair Debbie Rogers-Lowery welcomed everyone and noted there was a large agenda with a lot of information to cover. She then turned the meeting over to OSH Director, Jennifer Haigwood.

Jennifer thanked everyone for coming to the meeting and stated that it was the first Advisory meeting in which she was sitting in Kevin's seat. She said she was excited to be in attendance and hoped everyone would feel free to speak their minds to enable lots of good discussion. She then addressed housekeeping items including restroom location, availability of refreshments, and the 11:30 lunch break with special thanks to Debbie for providing the meal. Jennifer then introduced the newest member to the council, David Leonardi, and asked if he would like to share a bit about himself. David stated that he is a business agent for Local 421 Plumbers and Pipefitters, of which he is a 15-year member. He has been in NC for 22 years and was originally from New Jersey. He is looking forward to being a part of the Council, listening, learning, and ultimately taking a part in the advisory aspect. Jennifer then asked for everyone-council and staff- to introduce themselves including who they represent and their background.

The meeting was turned over to Commissioner Dobson, who thanked the Council for their willingness to serve. He stated that he wanted to be candid about some concerns he has and where he sees the next few years going with the DOL. He knows that his thoughts may be slightly different than what is typically heard from a Commissioner of Labor, but they address some important challenges facing the department and the entire state of NC. He supports the work that has been done on the heat stress standard and feels like it makes sense for NC and the DOL to move in that direction. It will make us the first state in the southeast to develop a

heat stress standard, but more importantly it will keep workers safe in the heat. He also shared his appreciation for Debbie, who has attended various Safety Award banquets and SHARP ceremonies, introducing him to people along the way over the past two years. He stated he can't thank her enough for her leadership and willingness to lead the Council for another term. Lastly, the Commissioner wanted to briefly speak two-fold about an issue relative to the DOL—workforce development. He stated that the department is facing an internal crisis with recruitment and retention of compliance officers and elevator inspectors. He thinks that as a former appropriator and legislator the DOL needs to be fair but targeted about how they approach the workforce shortage. Right now, most of the OSH vacancies are in compliance. The Commissioner stated that NCDOL is planning to ask for an overall raise for employees at the department targeting the areas where there are the most staffing deficiencies. He stated that over the past year a \$2,500 bonus was given to all DOL employees, and with other monies most OSH staff received an average increase of 5% across the board. During his term as the Commissioner of Labor, he will keep pushing for salary increases for those positions that have shortages. Since all state agencies are facing similar shortages, it is most likely that one theme of the General Assembly will be to focus on the vacancies within state government and will be his focus for the next two years. He stated that the NCDOL can't keep people safe in the workplace if they don't have the investigators to do the job that they are charged with doing. He also said that rarely a week goes by that someone doesn't ask him about what the DOL is going to do about the workforce shortage in North Carolina.

He further believes workforce development will be another focus for the upcoming General Assembly, and he expects they will ask the DOL to play a role in that. He stated that he will agree, providing the department receives the resources to do so. He shared an example of an initiative that the department is currently involved in called "Be Pro Be Proud". The idea is to generate an interest in high need trades in NC by outfitting 2, 18-wheeler trucks with trades that are essential to NC such as logging, construction, manufacturing, and healthcare. These trade trucks will be sent to middle, high school, and community colleges to familiarize young people with job options that are available with proper training. He emphasized that a 4-year college is not for everyone, and a community college degree in a hands-on trade will result in finding a job that pays well without the burden of accruing student debt. Debbie agreed that in private industry trades there will soon be a shortage of skilled workers to take the place of those retiring after lifelong careers. She thinks it's important to reach out to young people and let them hear about the trades to pique their interest at a young age.

Wanda Lagoe presented the OSH update for the 4th quarter which ended on September 30 (see attachment).

Edgar Starnes, filled in for Julie Ryan with a legislative update. Edgar stated that he served for 20 years in the NC House and served with Representative Dobson when he was the Appropriations Chair and Edgar was the Majority Leader. He was glad to accept Commissioner Dobson's offer of serving as DOL's Legislative Liaison. He then gave a brief overview of the legislative agenda, stating that the department is operating on a budget that was signed in November 2021. He explained that the General Assembly passes a 2-year large budget in the

long session which happens in the odd years and a short session in the even years to adjust the large budget. The labor legislative team was very successful in getting the department's legislative agendas passed. The budget that was passed in 2021 included 2 new ASH positions, the OSH review commission received an additional \$60,000 for operating expenses, OSH legal services received restored funding for 2 of the 4 attorney positions that were lost in 2017. The General Assembly eliminated 3 vacant OSH positions. As a general policy, if a position is vacant over 2 years, they will eliminate that position and repurpose that money for other needs. Edgar stated that it will be interesting to see if that policy is sustained in the next session because there are so many vacancies due to the inability to fill them. Employees received a 2 ½ percent pay raise and a onetime \$1,000 bonus as well as \$500 extra if their salary was less than \$75,000. The short session addressed a \$4-billion surplus which was used to meet some unmet needs. Consultative Services received a \$200,000 appropriation. This allowed them to re-fund 2 positions using state appropriations. Legal services received the funding for the 2 lost attorney positions requested in the long session, plus an additional attorney position. There was also another 3 ½ percent pay raise funded for state government employees.

Edgar also said there were 2 special provisions that the department requested: the was a penalty increase; he explained that in 2016 the Federal Government (OSHA) raised their penalties and told states they had to raise theirs as well since state OSH plans need to be as effective as the federal OSHA. NCDOL resisted raising their penalties until last year when they received the final word from federal OSHA that they had to be raised. The General Assembly approved this increase, to enable the state plan to fall in line with the federal penalties, indexed for inflation. The second provision asked for was the change of language in the issuance of citations-within 6 months of opening an inspection as opposed to 6 months from the day of violation. Looking ahead in 2023, he said the General Assembly will convene and write a new 2-year budget, and the DOL legislative priority will be to continue to ask for money to bump the salaries of those in the OSH department to recruit and retain employees.

Debbie commented that she was very glad that there was a letter included with the penalty increase notice that explained the decision making behind the increase. Otherwise, it may have looked like there was a new sheriff in town with new rules. The letter made a big difference.

Paul Sullivan led the Penalty Increase and Statute of Limitations Changes presentation (see attachment).

Jennifer asked for thoughts concerning the penalty increase and statute of limitations change. Debbie stated that particularly after the silica rule change, she had people approach her asking about possible silica exposure from 10 - 30 years ago and wondered what OSHA could do about those cases. She knows that it would be very difficult to build a case around exposure from that many years ago. She stated she had not heard feedback regarding the penalties yet, probably because it is brand new. In addition, the letter that was included probably helped with questions and complaints. Edgar mentioned that he and Julie met with all the stakeholders prior to the statute of limitations change being taken to the General Assembly, and they had

complete buy-in from everyone they talked to. Scott mentioned that one of the ways that Federal OSHA measures our state plan is by response time for fatalities, and that once we are aware of a fatality we are bound to respond within a day. Roger Richards commented that if people realized that OSHA was there to help and not out to get them, that would be beneficial. If that message could spread that would make a big difference. Jessica suggested doing an initiative with the podcast. She is aware of OSHA still having that stigma attached with union employees. However, when she became involved with the MSHA side of things it was different; they viewed it more as a partnership. She feels strongly that if DEI (diversity, equity and inclusion) are addressed, it will help with workforce development. She stated that OSH historically is a white male dominated field; however, there are many other diverse groups of people that would like the opportunity to get into safety, they just don't know how to go about it. They may want to enter into an apprenticeship but also don't know how. She thinks the key is reaching a younger more diverse group of people. She suggested continuing these types of conversations by using the platforms that we already have and capitalizing on that. Russell McCue commented that in his days as an inspector he didn't see penalties as a huge deterrent or a culture change. Most of the positive change were the result of the STAR and SHARP programs, with management commitment. Brian wondered if instead of eliminating the statute of limitations altogether it would be feasible to have limitations for some things but not have any limitations for more severe cases—such as in criminal law. Jennifer said that is something that has been under consideration. She also said that if anyone had questions about anything discussed during the meeting to please call or email her or someone on the OSH staff; she welcomes all comments and suggestions. Debbie asked everyone to check the sign-in sheet to make sure Betty has the correct phone numbers and email addresses for members.

Break for lunch-back at 12:10.

Lee Peacock led the Davco Roofing Fatality Inspection presentation.

Jennifer wanted to speak briefly before the proposed heat stress standard presentation to lay the groundwork and provide the context about what Paul would present. She stated that Federal OSHA is working on a proposed heat stress standard, but it could take them years to complete, and the bottom line is that it's very hot in NC in the summer and the department sees many complaints, injuries and fatalities related to heat stress. As a result, the Commissioner was very interested in seeing heat stress addressed. She said that 3 months ago he tasked the group with coming together internally as a department to draft a standard that would be appropriate in North Carolina. A standard that would strike a reasonable balance between enforcement for the department and feasibility for employer compliance. She also stated that the department is very early in the drafting process. First it is being shared with all the stakeholder and advocacy groups to get feedback so that changes can be made based on what is heard. Then the rulemaking process is started, and it will be submitted to the Rules Review Commission. After that, another formal public comment period of around 60 days will take place, followed by a public hearing. Changes will likely be made at that point based on those results. The Rules Review Commission will decide one way or another about it, and finally

the legislature will get an opportunity for final review. She reiterated that it is the start of a lengthy process.

Paul led the Heat Stress Standard presentation (see attached).

Jennifer asked all council members to talk to the people in their organization and ask them to look at the draft and give the department any written feedback by November 30th. At that time Jennifer said they would regroup internally and figure out the next steps. Commissioner Dobson stated that the Council does not just play a symbolic role in this process. As the Advisory Council, he would like members to give their opinion on the draft of the new heat stress standard. He values and welcomes council members feedback by the November 30th deadline. Paul asked for any preferred recommended language, that council members think could work in lieu of the current language.

Debbie asked about how employers would need to document shade breaks. For instance, when an employee calls with a complaint about working in the heat and they are already being provided with shade breaks, how does an employer prove that? Paul said in that event the work crew would be interviewed for proof. Second question from Debbie was, if the forecast called for 100-degree weather for the entire week, would the employer hold a pre-job meeting every day or only on Monday for the whole week? Paul said this was a great question, and as a suggested language change in these circumstances once a week could possibly be sufficient and this would be discussed further.

Debbie asked if there were any other questions. Brian posed a question about radiant heat load. Paul said that to try to get radiant heat load to apply to all industries and employers is very difficult. It was discussed but wasn't included. Debbie added that it will be important to include a component during the heat stress training about what not to do during shade breaks- such as having a cigarette and drinking highly caffeinated drinks.

Debbie reminded everyone that the Toys for Tots open house will take place December 14, from noon-3:00 p.m. and will be located outside of the front of the labor building. Betty will send out a reminder of the open house as well. Next meeting will be in May with the date to be determined.

Chair Roger-Lowery adjourned the meeting at 1:40 p.m.