

MINUTES OF THE NC DEPT OF LABOR ADVISORY COUNCIL

ON OCCUPATIONAL SAFETY AND HEALTH

May 5, 2021

The NC Department of Labor Advisory Council on Occupational Safety and Health met virtually on May 5, 2021, due to the COVID-19 pandemic.

The following Council Members attended using the Lifesize video platform: Linda Andrews, Robert Carruth, Lindsay Cook, Gloria Bone-Gunther, Corey Hill, Brian Polk, Debbie Rogers-Lowery, and Bill Walker. The following Council Members were absent from the meeting: Ron Ingerick, Terry Brewington, and Jessica Foster.

NCDOL/OSH attendees were: Commissioner Josh Dobson, Deputy Commissioner/OSH Director Kevin Beauregard, Assistant Deputy Commissioner Scott Mabry, Chief of Staff – Art Britt, Executive Assistant to Commissioner Dobson – Susan Mullins, Eastern Compliance Bureau Chief – Nicole Brown, Director of Administration and Gov’t Affairs – Julie Ryan, Director of Communications – Jennifer Haigwood, State Plan Coordinator – Judyth Forte, Consultative Services Bureau Chief – Kevin O’Barr, ETTA Bureau Chief – Wanda Lagoe, ASH Bureau Chief – Beth Rodman, Western Compliance Bureau Chief – Paul Sullivan, PSIM Bureau Chief – Anne Weaver, and OSH Executive Assistant – Angela Hamilton.

The meeting started at 9:00 a.m. Kevin Beauregard welcomed everyone to the meeting and gave a brief overview of the Lifesize video conferencing system. He announced that Commissioner Dobson reappointed several Council members to another four-year term. Kevin introduced Commissioner Dobson.

Commissioner Dobson welcomed everyone and thanked the council members for their willingness to serve and introduced his executive assistant Susan Mullins. He gave an overview of his first four months in office including the accomplishment of offering paid leave for parents on the birth or adoption of a child. Commissioner Dobson explained that he wants to approach everything by listening to all points of view and then decide after everyone has been heard. He also explained that some temporary COVID-19 standards may be in the works from Federal OSHA.

Chair Debbie Rogers-Lowery opened the meeting by welcoming everyone and asked council members to look over the roster and send any changes to Angela Hamilton. Debbie shared results of the drive by Toys for Tots campaign. There was a total of 1,040 toys and monetary donations totaling \$3,450.00. 16,300 toys have been collected over the years that NCDOL has held an organized drive for Toys for Tots. Commissioner Dobson assured everyone that he intended to continue and build upon the current Toys for Tots campaign currently in place, as well as continue the annual safety awards program.

Julie Ryan, Director of Governmental Affairs, gave a legislative update. Julie started with the Labor Department on January 1, 2021 after working with Commissioner Dobson as his Legislative Assistant in his previous role as State Representative in the North Carolina House. Julie provided an update on the Labor Department's agency bill, Senate bill 208, which was filed in the Senate on March 9, 2021. The bill has passed the Senate Judiciary Committee and is scheduled to go to the Senate floor for a vote on Thursday. There is still more work to do on this bill, but we are happy things are moving forward with it. There are three sections in the bill. One has to do with removing the statute regarding the Mine and Quarry Advisory Council, the second section deals with the Elevator and Amusement Device Bureau and clarifies that full size locomotives and trains are not classified as an amusement device and therefore are not subject to inspection and regulation by the Department of Labor. Section 3 defines the authority of the agency in relation to medical records needed to complete an OSH investigation that involves a severe injury or a fatality. Julie also gave an update on the budget priorities presented to the General Assembly Appropriations Chairs. The budget for The Labor Department is relatively small compared to other agencies. The Labor Department's budget is approximately 4% of the total Agriculture and Natural and Economic Resources budget and approximately 50% of the Labor Department's budget is receipt supported. With a net appropriation of approximately \$19.5 million, we are providing vital and important services to keep the workers and citizens of North Carolina safe. We have 5 specific budget requests relating to OSH. The first request of \$583,123 is for additional funds to cover salaries for four Labor Section attorneys. The second request of \$60,018 is for funds to provide additional resources for operating expenses for the OSH Review Commission. Third, a request for \$201,940 is to provide funds for 2 additional ASH positions to address the increasing number of pre-occupancy inspection requests. Fourth, under Consultative Services, state funds are requested in the amount of \$204,515 to offset the 21D federal share of 1.92 positions due to stagnant federal grant funding levels. Lastly, the fifth request is for \$1,360,437 to fund salary adjustments to address high turnover and vacancies in OSH Safety and Health positions.

Wanda Lagoe gave an OSH Update presentation (PowerPoint presentation attached). The DART rate has remained historically low and continues to be below the national average. Most fatalities that occurred so far in FY21 have been "struck-by" and "falls" but there were also several fatalities related to COVID-19. All OSH Bureaus are working toward meeting strategic goals. It is the OSH Division's hope that once more COVID restrictions are lifted we can start doing more on-site inspections. The Complaint Desk has already surpassed the total number of complaints received last year, even though we are only through the second quarter. Nicole Brown confirmed that many of these complaints have been COVID-19 related. Nicole explained that many of these complaints remain unprocessed due to not being within OSH jurisdiction. Special emphasis programs are developed in industries where there are more injuries or fatalities. Construction rates for OSHNC remain lower than the national average. Construction training and outreach are currently being done virtually. In some areas the activity is lower due to not being able to complete in-person activities. Other SEP injury and illness rates are also

lower for OSHNC than the national average. Paul Sullivan explained that most of the LTC fatalities have been COVID related. Programmed planned inspections will be starting back soon in these facilities. The Star recognition program has slowed due to businesses not allowing on-site inspections due to COVID, but OSH has been able to do some inspections virtually. As more pandemic related restrictions are lifted, OSH hopes on-site activity will pick up and Star goals should be met. There were a couple of withdrawals from the Star program this past year. This can happen due to management changes and the amount of work it takes to maintain Star status. OSH is well on our way to meeting the goal for SHARP sites. This year's safety awards will be a bit delayed, but OSH plans to do these all in-person. The OSH Division has been continuing outreach efforts, most of which have been virtual by webinar due to COVID-19. There is a new virtual education and training studio that OSH hopes to have up and running over the next few weeks. Wanda gave an overview of a couple of OSH standard revisions. OSH continues to struggle to fill and retain employees in CSHO positions, likely due to lower salaries where other employers can pay a much higher salary than NCDOL. OSH has been tracking COVID-19 related activities since the onset of the pandemic and has processed many phone calls, emails, disclosure requests, complaints and developed items for outreach such as webinars and fact sheets regarding the pandemic. Chair Debbie Rogers-Lowery asked about what type of pandemic complaints are being received. Nicole Brown answered that most deal with employees complaining that other workers aren't complying and wearing masks, there is no social distancing, or positive cases of COVID in the workplace aren't handled in line with CDC guidelines and protocols. Gloria Bone-Gunther asked about the total number of COVID-19 deaths. Wanda restated from her presentation that there were 16 pandemic work-related related deaths last year and 15, to date, this year. Kevin specified that these numbers were from the fatalities that OSH inspected, but there were many more non work-related deaths in the state due to COVID. Kevin and Nicole explained that fatalities would need to be work related to be inspected and tracked by OSH. Brian Polk asked about NCDOL information on positions and how the upward progression is handled and stated he'd appreciate anything we can share. Brian also asked about the drone program. Kevin explained that our drone program is still active and used when sites are hard to get to. Paul continued by explaining that the NCDOL drone team is well trained, and they use the drones, as needed. Most recently a drone was used by the Asheville office after a trench related workplace accident. Lindsay Cook asked about how COVID-19 related complaints are followed up with. Kevin explained that the complaints are responded to by investigations and/or the complainant is pointed to CDC guidelines and executive orders. There are many complaints made regarding the pandemic that are not OSH related. Once the determination is made that a complaint is a valid employee complaint under OSH jurisdiction, OSH Compliance will either conduct an inspection or investigation by sending correspondence to the employer with a series of questions to answer and go from there. Kevin explained that a citation was recently issued under the general duty clause and if OSH believes it is warranted, this is the route they will go.

There was a 15-minute break.

Paul Sullivan gave a presentation on a fatality at S-L Snacks NC LLC dba Snyder's-Lance, Inc. Paul used this presentation to give an overview of how an OSH investigation takes place from the time it is reported to the end of the investigation. This fatality occurred on August 27, 2020 at approximately 10:47 pm and was reported to the State Capitol Police (SCP) by the S-L Snacks safety manager at 3:55 am, on August 28, 2020. Employers are required to report fatalities within 8 hours. The SCP then contacted Bureau Chief Paul Sullivan at 3:58 am, on 8/28/20. Once Paul verified the scene was secure and closed, he had two compliance officers on site at 10:00 am the same day. There was a thorough investigation conducted and it was concluded that the decedent, a truck driver, was walking to his personal vehicle after his shift and was struck by a shuttle which was used to move trailers into and out of the area. Paul explained that struck-by accidents continue to be a leading cause of death and/or injury in workplaces. The investigation concluded that there was not adequate lighting and a citation was issued. The employer provided high-visibility vests to use in the lot when employees were not in a crosswalk. The employer also added additional lighting in the fatality area. The employer abated all cited hazards and paid the penalty. Gloria Bone Gunther commended Paul and his staff on the thorough job they did on this case. Lindsay Cook asked if the driver of the shuttle was ever considered or investigated as part of the OSH process. Paul explained that the driver issue would have been investigated by local law enforcement authorities and OSHNC doesn't handle this as part of their investigation. Bob Carruth asked what the risk management aspect played regarding how many employees are exposed to the hazard by having to walk this same path. Paul explained the issue of the lack of an established crosswalk or sidewalk in some of the area, however there wasn't enough information to pursue a citation for this. Brian Polk asked about calibrating the electronics used in these type investigations. Nicole Brown explained how the compliance lab works and explained the process for keeping electronics calibrated. The OSH lab has the capability to calibrate some equipment, but they do have to send some equipment to an outside vendor for calibrating. Gloria asked how many people had to walk through this area? She also stated the new lighting must have made an improvement. Paul stated this information is within the case file, but mostly the truck drivers that use this lot would be exposed at the beginning and end of their shift. Debbie Rogers-Lowery added that she had to report a fatality for her company recently and commended OSHNC for their assistance and for following the same protocol Paul explained in his presentation.

Debbie again thanked the Labor employees responsible to putting together the annual Toys-for Tots drive, and she looks forward to that program continuing.

Debbie announced the Fall OSH Advisory Council meeting will be held in-person in Asheboro, NC, at the Comer Conference Center (Randolph Community College) on November 10, 2021. Debbie stressed that we must remain diligent in stopping the spread of COVID-19 so that we can get back to in-person meetings.

Commissioner Dobson expressed thanks to NCDOL staff for the great job they continue to do.

Debbie closed the meeting stating that further instructions or any changes to the November meeting will be sent prior to the meeting date.

The meeting was adjourned at 11:20 a.m.