

WORKSHEET: OCCUPATIONAL DISEASE OPTIONS

1. Legislature's Declaration of Public Policy For WC and OD:

39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) *It is an objective of the Montana workers' compensation system to provide*, without regard to fault, *wage supplement and medical benefits to a worker suffering from a work-related injury or disease*. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the *wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease*.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, *it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease*.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, *the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities*.

(4)

(5) (emphasis added)

2. Montana Supreme Court: "A classification that is patently arbitrary and bears no rational relationship to a legitimate government interest offends equal protection of the law."

Henry: "...elimination of workers suffering occupational diseases from access to rehabilitation benefits bore no rational relationship to the government objective of returning workers to work as soon as possible."

Stavenjord: "...disparate treatment of disabled workers based simply on the length of time over which their injury or disease is sustained is not rationally related to that legitimate government interest [citing Legislature's declaration to provide wage loss benefit which bears reasonable relationship to actual wage lost]"

Schmill: "...apportioning Schmill's permanent impairment award for her occupational disease...while providing full benefits for injured workers pursuant to the WCA is not rationally related to a legitimate government interest [citing Legislature's declaration to of limiting benefits to job related disability]"

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3. Possible Committee Options Identified by SJR 17 Working Group:

Options	Advantages	Disadvantages	* Costs
#1 Merge ODA into WCA (LC 2222)	-No more EP arguments -More Definitive Guidelines -Leg. (not Ct.) Setting Policy	-Possible unintended consequences. -Insufficient Time to Consider Merger	- OD Cases Figured In Premiums: <u>Henry</u> , 0%; <u>Stavenjord</u> , 1.1%; <u>Schmill</u> , 0.3% -Associated Litigation Costs from Litigation to interpret new language and potential costs of unintended consequences -Possible increase in OD filings
#2 Codify Cases Decided by Mt. Sup. Ct. (LC 6666)	MCA correct for Users Longer History to see if Cases main “settled” law Additional Time to Carefully Consider Merger Concept	Other potential EP challenges (notice; burden of proof; claim filing; lump sum; definitions)	- OD Cases Figured In Premiums: <u>Henry</u> , 0%; <u>Stavenjord</u> , 1.1%; <u>Schmill</u> , 0.3% - Possible increase in OD filings
#3 Make No MCA Changes At This Time (No bill)	No Unintended Consequences Mt. Sup. Ct. could change Fewer “unknown” costs Additional Time to Carefully Consider Merger Concept	MCA incorrect for “Users” Other potential EP challenges Exist (notice; burden of proof; claim filing; lump sum; definitions)	- OD Cases Figured In Premiums: <u>Henry</u> , 0%; <u>Stavenjord</u> , 1.1%; <u>Schmill</u> , 0.3% - Possible increase in OD filings

*Costs do not include possible retroactive application of Court decisions

4. Based on the Chart above, proponents of each option will discuss with the Committee the following:

1. The basics of the proposed option (including discussion of costs);
2. Why any advantages of the option outweigh the perceived disadvantages of the option?;
3. Why the option being proposed is preferable to the other options identified?

5. Questions by Committee and Directions to Staff for Drafting Legislation (if any) for June meeting