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# A STRONG VOICE FOR OREGON'S WORKERS

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TO: Co-Chairs Winther and Wood  
Members of the Management and Labor Advisory Committee (MLAC)

FR: Jessica Giannettino Villatoro, Political Director, Oregon AFL-CIO

RE: Support for COVID-19 Presumption and Stronger Discrimination and Retaliation Provisions in Workers Compensation

July 2, 2020

Co-Chairs and members of the committee, thank you for the opportunity to testify today. The Oregon AFL-CIO Represents 300,000 workers across the state and is a voice for all workers in the administrative and legislative process. Oregon's frontline workers have been asked to continue to provide critical services across the state during this unprecedented public health and economic crisis. That service looks like the workers who we typically think of when discussing frontline workers in the midst of a pandemic, like nurses, firefighters, and educators, it is also the grocery workers, food service workers, agricultural workers and state employees. These workers have been exposed regularly to the Coronavirus at work and deserve the same protections 17 other states have granted with a presumption of eligibility for workers compensation coverage. To highlight why a presumption is needed a cursory review of the DCBS data submitted to the record today shows Providence had only accepted 3 COVID-19 related claims and denied 38. That's an acceptance rate of .07% for healthcare workers.

As members discussed during the June 30<sup>th</sup> MLAC meeting, it will be critical to both analyze the presumptions 17 other states have enacted by executive order or legislatively, but also to analyze each of those state's shut down orders. Governor Brown chose to not designate essential workers, unlike other states and instead close select businesses like bowling alleys and give general guidance to other employers that chose to remain open This means that Oregon had more workplace exposures at the initial onset of the virus than other states. Presumption must be reflective of that policy choice. To enact a narrow presumption that doesn't reflect the vast number of workers exposed would be inconsistent policy and unfairly disadvantage Oregon's frontline workers.

Additionally, there are several issues with the 801 form that needs to be addressed to ensure equal access and data transparency to Oregon's Workers Compensation system. We would ask this committee to review the necessity of providing a social security number on the 801 form. Undocumented immigrants are allowed to draw workers compensation in Oregon, to require the SSN on the initial form that is completed to access this benefit is contradictory to the values statement of the access to begin with and can provide a chilling effect to filing. Additionally, we are seeing incredible disparities regarding what BIPOC workers contracting the virus especially in industries that are disproportionately made up of communities of color, in food processing and agriculture. Yet there 2 claims from food processors that have been made, both of which denied and none in agriculture. Additionally, according to a recent report published by the National Employment Law Project, we know that Black workers are twice as likely to have concerns about workplace exposure to COVID-19 compared to white workers with 39 percent reporting they were not satisfied with the employer's response or did not raise concerns for fear of retaliation.<sup>1</sup>

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<sup>1</sup> <https://www.nelp.org/news-releases/black-workers-see-higher-rates-employer-retaliation-raising-covid-workplace-safety-concerns/>

MLAC has been tasked to review both presumption and worker education related to COVID-19. We would encourage you to think about the education bucket in a holistic way. We recognize that some workers may not know they can file a worker's compensation claim related to COVID-19 or maybe at all. We also know that the protections in Oregon's workers compensation statutes regarding retaliation and coercion aren't sufficient. For example, the discrimination language in ORS 659A.040 is narrowly applicable to only hiring, tenure or conditions of employment. This language should be updated to reflect that of ORS 659A.030 that ensures any type of discrimination is unlawful. In addition, the discrimination language that exists only applies to employers with 6 or more employees. There is no place for employer thresholds in Oregon's discrimination statutes. In addition to comprehensive discrimination protections, MLAC should also ensure that employers have clear enforceable guidance on what coercion is and protections with penalties associated. There are written suggestions on the record.

Thank you for all of the work you do to ensure Oregon's Workers Compensation system meets the needs of employers and workers and we look forward to future conversations on all of the matters listed above.

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