

To: Management-Labor Advisory Committee on Workers Compensation (MLAC)

From: Oregon Farm Bureau Federation

Oregon Wheat Growers Association

Oregon Dairy Farmers Association

Far West Agribusiness Association

Columbia Gorge Fruit Growers

Associated Oregon Loggers

Food Northwest

Oregon Association of Nurseries

Oregon Seed Council

Date: July 15, 2020

RE: COVID-19 and Workers' Compensation

Thank you for your service on the Management-Labor Advisory Committee (MLAC) and your work to solicit feedback on the issue of Workers Compensation and COVID-19 as directed by the Governor.

On behalf of the diverse groups representing Oregon's natural resources employers, we appreciate the opportunity to provide feedback on the issue of whether Oregon should consider COVID-19 a workplace injury or disease and labor's desire to adopt an automatic presumption of COVID-19 in the workplace for the purposes of workers' compensation.

We continue to learn more about COVID-19 daily. Today, we know COVID-19 is highly communicable – making it incredibly challenging to prove or disprove that it was contracted at work. The common cold and flu also are highly communicable and that is why neither is covered under workers' compensation. We cannot expect employers to pay workers' compensation benefits for COVID-19 even where there is no evidence it was related to work.

Workplace safety is paramount to Oregon growers. Since the COVID-19 emergency was declared on March 8, 2020, Oregon's farmers and ranchers have faced unprecedented challenges to keep their workplaces safe from the spread of COVID-19. In May, Oregon OSHA adopted temporary rules for housing, field sanitation, and transportation to help prevent agricultural workplace exposure to COVID-19. By the end of October, these new rules are estimated to cost tens of millions of dollars to comply, even as our understanding of the virus changes.

Another challenge has been the rapidly changing recommendations from a multitude of state agencies, each with a role to play in containing the virus. OHA guidelines don't supersede OR-OSHA rules or the Governor's Executive Orders, but farmers and loggers are tasked with compliance with all of these guidelines and rules. We are asking a lot of small employers during these uncertain times!

Although the media has attributed workplace outbreaks to agriculture, existing data doesn't reveal a significant risk of COVID-19 exposure in an agricultural setting. The last couple of months have highlighted the difficulties with tracking and reporting community and workplace COVID-19 outbreaks. For instance, the Oregon Health Authority (OHA) reports a workplace outbreak as five or more positive COVID-19 cases associated with a workplace. However, that designation does not indicate whether that exposure occurred at work or through community spread, and OHA does not update its outbreak data to reflect contact tracing. An automatic presumption for agriculture would mean that any COVID-19 illnesses would automatically be deemed work-related and covered under workers' compensation policies. While we understand the intent of such a policy, we also have to be concerned about the impact this proposal will have on businesses and insurance rates. California estimated the financial impact to their system in the billions, and Oregon could face a similarly significant cost burden if we were to adopt a blanket presumption of COVID-19.

Presumption isn't the solution to "filling the benefit gaps" for employees. MLAC's study of this issue over the last two weeks shows the workers' compensation system is working as it should. Many of our members utilize SAIF to provide workers' compensation insurance. We were heartened to see data shared by SAIF two weeks ago that clearly illustrates that Oregon's workers' compensation system is working for those exposed to COVID-19 at work. Claims are being filed, investigated, and issued either an acceptance in the vast majority of claims or denial. An employee who receives a denial of COVID-19 claim has the same right to appeal as with any other denied claim.

The data is clear; an automatic presumption is not warranted at this time. A presumption that assumes that Oregonians who have COVID-19 could only have been exposed at work risks the stability and balance of our workers' compensation system.

Part of the success of MLAC has been making decisions based on evidence. The data that has been shared through this process shows that Oregon's workers' compensation system is working as intended. A presumption of compensability for COVID-19 is not needed.

Thank you for time and attention to this important issue.



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