



To: Chair Riley and Members of the Senate Committee on Labor and Business
From: Jenny Dresler, Oregon Farm Bureau Federation
Date: March 23, 2021
Re: Oregon Farm Bureau Opposition to -1 Amendment to SB 802

Thank you for the opportunity to offer testimony in opposition to the -1 amendment to SB 802. As a reference, the Oregon Farm Bureau Federation (OFB) is the state's largest general agricultural association, representing nearly 7,000 family farms and ranches in every corner of Oregon.

OFB participated in Management Labor Advisory Committee (MLAC) meetings throughout the second half of 2020 to determine whether presumption of COVID-19 is warranted, as suggested by the -1 amendment to SB 802. MLAC decided not to move forward with presumption after that process. OFB opposes this proposed worker's compensation presumption today for the same reasons that our organization opposed LC 9 last year--data does not support a presumption of COVID-19 for the agricultural sector.

For your records, we attached communications to the Management Labor Advisory Committee throughout 2020, showing that a presumption of COVID-19 in the workplace is unwarranted.

The -1 amendment to SB 802 allows workers to file claims for the secondary effects of COVID-19 for 30 years without having to prove that they contracted COVID-19 at work. The presumption also is not truly rebuttable, as provisions in the -1 amendment prevent an employer from relying key facts in a rebuttal, such as the lack of an employee's previous exposure to COVID-19 or the fact that an employee never developed a COVID-19 condition.

This proposal places an enormous burden on our worker's compensation system and is not warranted. Workers who believe they have contracted COVID-19 at work can file these claims now and are then protected for whatever secondary effects they experience later.

For these reasons we oppose the -1 amendment to SB 802. Thank you for the opportunity to comment today.



To: Management-Labor Advisory Committee, Subcommittee on COVID-19

Submitted via email to cara.l.filsinger@oregon.gov

From: Jenny Dresler, Oregon Farm Bureau Federation

Date: October 28, 2020

Re: Designation of Workplace Outbreaks

Thank you for your service on the Management-Labor Advisory Committee (MLAC) Subcommittee on COVID-19 and the opportunity to continue to provide feedback on whether presumption for COVID-19 as described in Legislative Concept 9 (LC 9) is warranted.

As a reference, the Oregon Farm Bureau Federation (OFB) is the state's largest general agricultural association, representing nearly 7,000 family farms and ranches in every corner of Oregon. The Subcommittee received written and verbal testimony from OFB at its October 9, 2020 meeting in opposition to the presumption for COVID-19 proposed in LC 9. We don't believe the data supports a presumption of COVID-19 for the agricultural sector.

Last Friday the Oregon Trial Lawyers Association proposed amendments to LC 9 that again apply presumption of COVID-19 in the workplace to the agricultural sector. We oppose these amendments, because they aren't supported by available data. Existing data shows that nearly all of the workers' compensation claims filed by agricultural employees for COVID-19 exposure are being accepted. LC 9 inappropriately applies presumption to all agriculture and reforestation workers, who are already receiving coverage when they file a claim. LC 9 is a solution in search of a problem.

Today, we appreciate the opportunity to provide the Subcommittee with information related to workplace outbreaks. It is a misnomer that "workplace outbreaks," as reported by the Oregon Health Authority (OHA), are initiated at a place of work. An OHA-reported workplace outbreak is simply five or more positive COVID-19 cases associated with a workplace. 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. Although the media has attributed workplace outbreaks to agriculture and businesses generally, existing data doesn't reveal a significant risk of

COVID-19 exposure in an agricultural workplace. Social gatherings outside of work hours continue to play a role in fueling COVID-19 spread. See experts below:

*“Nearly 60 incoming seasonal contract strawberry harvest workers for Planasa Oregon Operations LLC on Short Road in Klamath Falls tested positive for COVID-19 before they started work about two weeks ago. The outbreak is linked to workers who were tested **before going to work** at the Short Road facility in Klamath Falls, The Herald and News reported.”* (Associated Press. October 12, 2020. *Virus outbreak affects dozens of strawberry harvest workers.*
<https://apnews.com/article/virus-outbreak-public-health-health-klamath-falls-oregon-3ad0d7ce8f21a45163ea7334925f3a51>)

*“Again, [COVID-19] is a community acquired infection. Household transmission plays a huge role in the transmission of disease...**the initial cluster that we identified was related to a Labor Day gathering not associated with Pacific Seafoods.**”* (Dr. Emilio DeBess. Oregon Health Authority. *Pacific Seafoods Town Hall.* October 2, 2020: <https://www.youtube.com/watch?v=5NaVayyA-o> at 8:15:00)

*“The Douglas County COVID-19 Response Team said the increase has been linked to an outbreak at the Norris Farms, which has to date reported 22 cases with positive tests. That figure **may also include household members and other close contacts of those workers...** the increase in positive tests at Norris Farms is not totally unexpected because many workers come from other states, some of which are hot spots for COVID-19 cases. Paul Norris, owner of Norris Farms in Umpqua, said he’s been **doing preemptive testing throughout the season.**”* (Carisa Cegavske and Dan Bain. The News-Review. July 24, 2020. *Norris Farms outbreak linked to 20 new COVID-19 cases in Douglas County.*
http://www.nrtoday.com/news/health/coronavirus/norris-farms-outbreak-linked-to-20-new-covid-19-cases-in-douglas-county/article_42ccac00-17c3-5e53-ad0e-2c8f12551275.html)

*“Public health investigators with Oregon Health Authority and Multnomah and Washington counties say the outbreak currently affects a total of 48 of about 350 people who arrived in the Portland metro area May 23 and 24 to harvest fruit from Townsend-owned sites in Fairview and Cornelius. **The individuals are believed to have been exposed to the virus prior to coming to Oregon.**”* (Oregon Health Authority. May 28, 2020. OHA partnering with multiple agencies to investigate COVID-19 outbreak at two Townsend Farms sites <https://www.oregon.gov/oha/ERD/Pages/OHA-partnering-with-multiple-agencies-to-investigate-COVID-19-outbreak-at-two-Townsend-Farms-sites.aspx>)

Employee health and safety are very important to our members. As shown by the data collected by Oregon OSHA (OR-OSHA), Oregon’s farmers and ranchers have overcome unprecedented challenges in keeping their workplaces safe from the spread of COVID-19. Oregon’s farms are pre-screening workers for COVID-19; that is what is

[recommended](#) by our public health experts. And as you can see from the excerpts above, employers that voluntarily pre-screen employees for the presence of COVID-19 are considered “workplace outbreaks” if five or more employees, or associated household members, test positive for COVID-19, regardless of where the exposure originated.

Given this information, we don’t believe that the number of “workplace outbreaks” associated with an industry sector is an appropriate metric for considering whether presumption of COVID-19 in the workplace should apply.

Thank you for the opportunity to comment today. For more information, please contact Jenny Dresler at jenny@pacounsel.org.



Submitted via email to Cara.L.Filsinger@oregon.gov

To: Management-Labor Advisory Committee on Workers Compensation (MLAC),
Subcommittee on COVID-19

From: Oregon Farm Bureau Federation

Date: October 8, 2020

RE: Presumption for COVID-19

Thank you for your service on the Management-Labor Advisory Committee (MLAC) and your willingness to accept feedback on presumption for COVID-19 as described in Legislative Concept 9 (LC 9).

As a reference, the Oregon Farm Bureau Federation (OFB) is the state's largest general agricultural association, representing nearly 7,000 family farms and ranches in every corner of the state. We appreciate the opportunity to provide feedback to MLAC on the issue of whether Oregon should adopt a presumption of COVID-19 for the purposes of workers' compensation.

OFB commends MLAC on its work to research potential gaps in workers' compensation coverage and provide an administrative solution to close any gaps in coverage when an employee contracts COVID-19 at work. Last week, that rule went into effect, and we look forward to learning from the Department of Consumer and Business Services in the months ahead about how effective that rule is in ensuring workplace COVID-19 claims are covered and processed. Perhaps most significant, this new rule, when combined with the legislatively authorized Quarantine Time Loss program (\$30M), Worker Relief Fund (\$20M), Quarantine Fund (\$10M), and federal Paid Sick Time (2 wks/100% pay), closes the identified pay and benefit gaps when an employee contracts COVID-19 due to workplace exposure. Presumption for COVID-19, as proposed in LC 9, is not warranted at this time, particularly if this newly adopted rule is working as intended.

Employee health and safety are very important to our members. As shown by the data collected by Oregon OSHA (OR-OSHA), Oregon's farmers and ranchers have overcome unprecedented challenges in keeping their workplaces safe from the spread of COVID-19. In May 2020, OR-OSHA adopted temporary rules for housing, field sanitation, and transportation to help prevent agricultural workplace exposure to COVID-19. The agency also created an enforcement emphasis program targeted at agriculture and food processing. This program acts as a regulatory hammer to ensure adherence to OR-OSHA's workplace safety requirements. In addition to these

regulatory actions, OR-OSHA joined the Oregon Health Authority (OHA) and the Oregon Department of Agriculture (ODA) to create industry playbooks and toolkits to help mitigate the spread of COVID-19 on Oregon's farms, ranches, and food processing facilities. Each of these regulatory actions, while costly, has worked to prevent the spread of COVID-19 at agricultural worksites.

It is with this lens that we reviewed the proposal in LC 9. While we disagree with proponents that presumption for COVID-19 is warranted in Oregon, particularly after MLAC advanced the administrative rule, we were disheartened to see our industry included in LC 9 without any outreach from proponents. Section 2(a)(B)(vii) of the legislative concept includes "agricultural workers" as those employees that would be automatically covered by the proposed presumption. Existing public health and contact tracing data do not support the inclusion of agriculture in any proposed presumption for COVID-19. There is nothing to suggest that an agricultural worksite is inherently more dangerous than a construction worksite, restaurant, general office setting, or public works project, and the data collected by OR-OSHA actually indicates the opposite.¹ We question why proponents would advance a concept that includes all agricultural workers without first reaching out to discuss the actual risks of exposure presented on an agricultural establishment.

Although the media has attributed workplace outbreaks to agriculture and businesses in general, existing data doesn't reveal a significant risk of COVID-19 exposure in an agricultural setting. In fact, state public health experts have been clear that workplace spread isn't the primary way that COVID-19 is spreading among Oregonians, and social gatherings outside of work hours are fueling COVID-19 spread. See the below excerpts from public health officials below:

"We are all concerned about what happens when people move indoors," Allen said. "What I really want people to do as they move indoors is not do it in large groups in unventilated spaces without masks. And I'm as worried about people's homes as anything. These social gatherings we've seen are not typically in commercial spaces, they're typically in people's homes." (KGW8. COVID-19 cases up 25% in Oregon since the end of August. October 2, 2020.

<https://www.msn.com/en-us/news/us/new-tests-on-the-way-for-oregon-which-has-seen-a-25-increase-in-covid-19-tests-since-aug-31/ar-BB19L9SC>)

"Again, [COVID-19] is a community acquired infection. Household transmission plays a huge role in the transmission of disease...the initial cluster that we identified was related to a Labor Day gathering not associated with Pacific Seafoods." (Oregon Health Authority. Pacific Seafoods Town Hall. October 2, 2020: <https://www.youtube.com/watch?v=5NaVayyA-o> at 8:15:00)

"We're seeing cases across the Portland metro area and other counties. That's why we can't attribute it to one thing that we need to change," Sidelinger said.

¹ <https://olis.oregonlegislature.gov/liz/201911/Downloads/CommitteeMeetingDocument/226524> (page 4 chart)

One outbreak was even linked to a prayer and sewing circle. *“We continue to see cases where seemingly innocuous activities, that we would not have thought about twice in the past, are fueling outbreaks,”* Sidelinger said. *“That’s why we ask every Oregonian to take simple steps to protect themselves.”* (Erin Ross. OPB. *Record single-day number of new COVID-19 cases reported in Oregon.* September 25, 2020. <https://www.opb.org/article/2020/09/26/record-single-day-number-of-new-covid-19-cases-reported-in-oregon/>)

“The outbreak currently affects a total of 48 of about 350 people who arrived in the Portland metro area May 23 and 24 to harvest fruit from Townsend-owned sites in Fairview and Cornelius,” OHA said in a statement. *“The individuals are believed to have been exposed to the virus prior to coming to Oregon.”* (Nigel Jaquiss. Willamette Week. *Oregon Officials Say COVID-19 Outbreak at Townsend Farms Affects 48 of 350 Newly Arrived Seasonal Workers.* <https://www.wweek.com/news/2020/05/28/oregon-officials-say-townsend-farms-covid-19-outbreak-affects-48-of-350-newly-arrived-seasonal-workers/>)

As you can see from the statements made by Oregon’s public health experts, it is inappropriate to presume that workplaces are the main driver of COVID-19 transmission in Oregon. It is also incredibly difficult to track and report community and workplace COVID-19 outbreaks. The term “workplace outbreak” is a misnomer. An OHA-reported workplace outbreak is simply five or more positive COVID-19 cases associated with a workplace. 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. As we saw recently with the workplace outbreak at a processing facility in Warrenton, the outbreak was initiated at a Labor Day BBQ attended by employees. Fortunately, the employer’s screening protocols caught the disease before it was able to spread further, and the employer and community have stepped up to ensure that impacted employees receive wrap-around services.

We learn more about COVID-19 daily. 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 the workers’ compensation system to be responsible for COVID-19 cases even where there is no evidence it was related to work. The state has done significant work to ensure that employees receive benefits when they are exposed to COVID-19. With the new administrative rule, any gaps in workers’ compensation coverage should be filled. We just need time to implement the rules.

The data that has been shared over the past three months shows that Oregon’s workers’ compensation system is working as it should, and a presumption of compensability for COVID-19 is not warranted.

Thank you for time and attention to this important issue. For more information, please contact Jenny@pacounsel.org on behalf of the Oregon Farm Bureau.

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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