



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Workers' Compensation Division

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September 24, 2018

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WCB SALEM

Kayleen Atkins  
WCB Executive Secretary  
2601 25<sup>th</sup> Street SE, Suite 150  
Salem, OR 97302-1280

Re: Review of OAR 438-011-0055 (Third Party Election Letter)

Dear Ms. Atkins:

Thank you for requesting the Workers' Compensation Division's comments in the Board's "five-year" review of the "Third Party Election Letter" rule. The division offers the following responses to the questions posted in Chair Wold's August 29, 2018, letter:

**1. Did the rule achieve its intended effect?**

The division has no reason to believe the rule has not had its intended effect.

**2. Was the anticipated fiscal impact of the rule underestimated or overestimated?**

The division has no reason to believe the estimated fiscal impact as stated in the June 28, 2013, Statement of Need and Fiscal Impact was under- or overestimated.

**3. Have any subsequent changes in the law required that the rule be repealed or amended?**

The division is aware of no law changes that require the rule to be repealed or amended.

**4. Is there continued need for the rule?**

Yes, the division believes there is a continued need to provide information to workers and beneficiaries explaining the third party election/assignment process. As you know, one of the Third Party Rule Concept Advisory Committee's recommendations was for the division to provide additional information on third party claims and rights to workers in the pamphlet "What happens if I'm hurt on the job?" The current version of the pamphlet contains the following language:

**Third-party claim**

If your workplace injury or illness was caused by a third party (other than your employer), you may take legal action against the third party or assign the right to take action to the workers' compensation insurer.



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Some examples of third parties are:

- The driver of the car that hit you.
- A manufacturer of the defective product that injured you.
- A property owner who failed to properly maintain the building where you were working when you were hurt.
- The owner of an animal that bit you.

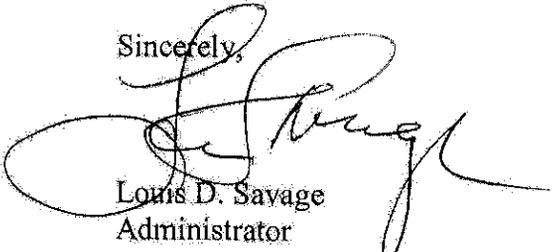
A third-party claim can be a complex process, and we encourage legal representation.

**5. What impacts has the rule had on small business?**

The division is aware of no impacts the rule has had on small business.

Please let me know if there is any other information I can provide.

Sincerely,



Louis D. Savage  
Administrator