

SAIF workers' compensation insurance fraud bill

Background:

Oregon's workers' comp system is predicated on a balanced and fair system, where both employers and workers follow the rules. However, while fraud is a very rare occurrence, there is an imbalance in the workers' compensation system where workers can be criminally prosecuted for knowingly and intentionally committing workers' compensation fraud, but employers who knowingly and intentionally misrepresent the amount of payroll or worker hours, or fraudulently misclassify employees' job descriptions, cannot be criminally prosecuted for insurance fraud because of a lack of statute. Employers who intentionally and knowingly misrepresent their payroll or the type of work carried out by their workers gain lower premiums and commit workers' compensation fraud. The payment of lower premiums gives an employer a competitive advantage as compared to other businesses that accurately report payroll and the type of work performed. When this occurs, there is no mechanism to hold an employer accountable.

ORS 656.990 makes it a crime to knowingly make a false statement or representation to the workers' compensation board, its employees, board chairperson, director of department of consumer and business services, director's employees, insurer, or self-insured employer, in order to obtain a benefit or payment via the workers' compensation system. This statute has been interpreted to apply to obtaining direct benefits, such as those received by a claimant, rather than a misrepresentation made by an employer to obtain or maintain coverage, or to fraudulently avoid paying insurance premium.

In addition, Oregon's criminal statutes do not specifically have fraud provisions pertaining to workers' compensation insurance fraud. Oregon's theft statutes are insufficient to bring criminal charges where only a benefit is obtained as Oregon's theft statutes require theft of property for a criminal conviction to be sustained. As a result, SAIF is working to bring a bill to the 2024 legislative session to make this type of workers' compensation insurance fraud a criminal offense.

- 1. How does the proposal support the values of MLAC?** This would balance the fact that, under current statute, claimants who knowingly and intentionally commit fraud can be criminally prosecuted while employers cannot. This bill would also address fairness to policyholders throughout the system by providing a deterrence to companies who cheat the system in order to achieve a competitive advantage over other businesses.
- 2. What specific problem are you trying to solve? What caused the problem? Why is it a problem? What does the proposed change do?** Under current statute, claimants who knowingly and intentionally commit fraud can be criminally prosecuted while employers cannot. However, rather than looking for a way to prosecute fraud we are mostly aiming to create a system that deters potential fraud in the first place.
- 3. Has the issue been addressed previously? Does the proposed change reinstitute a practice/benefit that was available pre-Mahonia Hall reform? If yes, do we know the reason for the change as part of the reforms?** We are unaware if a statutory change has been pursued before. However, financing of workers' comp is predicated on employers paying their fair share based on an accurate report of the type of work performed and the amount of payroll.

- 4. What data supports or illustrates the impact of the proposal? What data is or is not available?** There is no data available. Cases that rise to the level of fraud are very rare, but occasionally we see cases that reach \$100,000s in damages.
 - **What limitations exist in obtaining the data?**
 - **If there are limitations, in what instances do we support a change even without compelling data?**
- 5. How many workers does the problem affect? For example, does the problem affect 2% of all workers or 100% of all workers?** Employers who intentionally cheat on workers' compensation costs by hiding legitimate payroll rarely report this income to other entities who collect taxes, including social security. Employers who operate this way are also much more likely to suppress legitimate injury claims by refusing the opportunity to file with an insurance carrier or by alleging the injured worker is lying about being employed if they do file. This leaves injured workers without the same protections provided by employers who play by the rules.
- 6. Do we know the potential costs for insurers if the proposal went into effect?** There are no costs to insurers. However, there are potential long-term savings to the system overall.
- 7. Do we have any feedback or position from the Ombuds Office for Oregon workers' or the Small Business Ombudsman?** We have shared on a high level our plans about this fraud bill with the Ombuds Office for Workers, and we will be reaching out to the Small Business Ombudsman.
- 8. What stakeholders are affected (workers, employers, insurers, medical providers, etc.). Do they support the proposal?** This bill would only directly affect employers who knowingly and intentionally commit workers' comp fraud. However, the bill would also indirectly impact the vast majority of employers who play by the rules by ensuring that they can stay competitive (vs. employers fraudulently lowering their workers' comp premiums).
- 9. Has the party bringing this proposal forward researched the fiscal impact on affected parties? Has Oregon Workers' Compensation Division (WCD) provided a potential system cost for the proposed change? If not, please work with WCD to fulfill this request before presenting to MLAC.** There is no direct fiscal impact on affected parties but may lead to savings to the system overall.
- 10. While working with WCD, please also consider an analysis of the scope of your proposed change to the system. How will the potential legislation globally impact current rules, laws and/or practices?** We don't think that this would impact current rules or practices related to workers' compensation but will subject employers who knowingly and intentionally commit fraud to a new criminal statute.

About SAIF:

SAIF is Oregon's not-for-profit workers' compensation insurance company. For more than 100 years, we've been taking care of injured workers, helping people get back to work, and striving to make Oregon the safest and healthiest place to work. For more information, visit the [About SAIF](#) page on saif.com.

Contact:

David Barenberg, Government Relations Director: davbar@saif.com

Ivo Trummer, Government Relations Manager: ivotru@saif.com