NO on SB 802 -1: Avoid Unworkable Burdens on the Workers' Compensation System

Allowing workers to file claims for secondary effects of COVID-19 without having to prove that they contracted COVID-19 at work creates an unworkable requirement for the workers' compensation system. This change could affect hundred of thousands workers, who would be able to file a workers' compensation claim for secondary effects of COVID-19 for **thirty years** following the end of the declared emergency for COVID-19, without having to have filed a workers' compensation claim when they actually contracted COVID-19. This also creates a problem for insurance companies, as it retroactively creates responsibility for insurance companies who do not know what kind of risk to budget or manage for. 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.

Secondary effects are already covered: This bill is a solution in search of a problem. If a worker has filed a workers' compensation claim for COVID-19 and had their claim accepted, any subsequent medical complications that result from the illness are covered under the workers' compensation claim they filed when they had COVID-19. That's how Oregon's system works: once the claim is accepted, you are entitled to treatment of symptoms that result from that initial injury or disease for the rest of your life. So if a secondary impact happens 25 years from now, you are still covered. No change to the current law is required to ensure that those who have had an accepted claim for COVID-19 can have their secondary effects covered. We don't disagree that there may be secondary effects that workers are forced to deal with down the road. However, these secondary effects are already covered by the workers' compensation system for workers who file their claims when they are ill with COVID-19.

The presumption is effectively unrebuttable for employers: The adoption of a presumption related to COVID-19 would mean there is no requirement that it be contracted in the workplace and is effectively "unrebuttable" by the employer. Even if a worker had zero workplace exposure, the presumption requires the employer to identify the exposure, and may have to do so as late as the year 2051. They must specify the known and confirmed source from off-work hours and confirm a positive test for that unrelated individual - which would be a near impossibility. This becomes even more difficult when the presumption can be utilized 30 years in the future. By then, it will be even more difficult to attain information to rebut the presumption. It takes an effectively unrebuttable presumption and goes one step further by adding thirty years of time between the alleged illness and the claim, making it impossible for an employer to show that the claim was not work-related. As a result, COVID-19 cases that are not actually a result of workplace exposure will come into the workers' compensation system.

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Such a presumption would shift costs to the workers' compensation system that aren't related to workplace injuries, and would unduly burden the system. It's also likely these claims would include some amount of time loss payments. These dynamics make it extremely difficult for insurers to price and reserve adequately for future costs from these claims. Uncertainty in predicting costs may lead insurers to raise rates, increase reserves, and/or increase capital to ensure promises to policyholders and injured workers are kept. The balance of the workers' compensation system is critical for workers and employers alike and must be protected. Passing SB 802 with the -1 amendment threatens to destroy that all-important balance.

The system is already working for those filing claims when they are ill: Data shows that workers who file workers compensation claims for COVID are getting the coverage they need. In 2020, Oregon's Management Labor Advisory Committee (MLAC) met six times for more than 14 hours examining the impact to workers filing workers' compensation claims related to COVID-19. Data was presented from the Workers' Compensation Division illustrating a workers' compensation system that is working and functioning as it should. Oregon's top ranked system is continuing to work for both employers and employees during this unprecedented time. The lack of agreement at MLAC shows that there is no pressing need to alter the system.

To further ensure that workers were receiving the coverage they needed, the business community supported a new administrative rule at the Workers' Compensation Division, to ensure that the system was providing appropriate coverage and processing of COVID-19 related workers' compensation claims. The rule requires insurers to conduct a "reasonable investigation" before denying any claim and requires an audit of insurers if an insurer has reported five or more claims for COVID-19 or exposure, regardless of whether those claims have been accepted or denied. This rule is making the system even more effective for workers with COVID-19: the denied claims went from 18% before the rule to 5% following the rule's implementation. Workers who have contracted COVID-19 in their workplaces are able to get the care they need now, and in the future, by filing a workers' compensation claim at the point of illness.

This concept has not been reviewed by MLAC: Oregon's Management Labor Advisory Committee at the Workers' Compensation Division has not had the opportunity to review this amendment. MLAC provides technical analysis and review of legislation to determine the potential impacts, and determine whether it will address the problem presented. This amendment needs to be reviewed by MLAC before progressing any further in the legislative process.

Vote NO on -1 Amendments to SB 802 to avoid inappropriate claims and protect Oregon's strong workers' compensation system.

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