

July 21, 2023

Management-Labor Advisory Committee
Workers' Compensation Division
DCBS
State of Oregon

Re: Last Injurious Exposure Rule and Older Workers

Dear Management-Labor Advisory Committee,

As concerned citizens, we are writing to you about Oregon's Occupational Disease Law, the Last Injurious Exposure Rule (LIER) and its impact on older workers. As Oregon's workforce ages and workers incur more and more ailments because of age and working, this law and rule have become an obstruction to the continued employment of older workers. An obstruction we think we should make obsolete.

After decades of hard work, many workers are tossed-aside by employers because of the Occupational Disease Law and LIER rule liabilities incurred by hiring them. When an employer hires someone 45 or 50 plus years old, they assume all the wear and tear life has brought to these experienced workers. When the worker's shoulder, back, knee or other body part simply wears-out, under the LIER rule, the last employer and workers' compensation carrier are held liable to make that worker whole again through workers' compensation benefits, even though the ailment was maybe 20 or 30 years in the making. Many of these ailments are beyond the protection of even the best safety and health programs. What is most frustrating about this scenario is these same workers have valuable experience, training, and skills that younger workers have yet to acquire. It seems there ought to be a better way.

If we rethink our laws and rules of workers' compensation, perhaps we can find a better way to get care for these older workers and get them back on the payroll.

Let's start with the original intent of workers' compensation. It was an exchange of a worker's right to file a lawsuit against an employer for negligence for a no-fault system of exclusive remedy to provide the injured worker with immediate medical care and compensation for lost wages while they were healing. In many ways, it was one of our first social programs. It was designed in an era over one hundred years ago when political values, work practices, and medical knowledge were very different. Yet, its present structure still reflects many of those now outdated assumptions including life expectancy and retirement age. The Occupational Disease Law and Last Injurious Exposure Rule came along later when workers began suffering from asbestos exposure and the ailments related to that. The Occupational Disease Law and LIER rule were then expanded by the legislature and courts to include other ailments.

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With these things said, we think it is time we modernize this social program by reforming Oregon's Occupational Disease Law and discarding the LIER rule. We propose the existing law be replaced with a workers' benefit fund dedicated to paying the workers' compensation claims currently covered by this law and rule. This fund could be created from a workers' compensation premium assessment. The fund could operate in much the same way as the long existing Preferred Worker Program. Self-insured employers could participate by paying the premium assessment equivalent. Without this liability on their workers' compensation coverage, the assessment for the fund would be offset by a lower premium on employers' regular workers' compensation coverage for occupational injuries. This fund will provide an equitable way for all participating employers and insurers to address the needs of these workers. Employers would no longer have to watch their experience modification rate (EMR) put them in the assigned risk pool or other negative consequences due to their hiring of older, more experienced workers. It will also provide older workers with a less contentious environment when they need care due to ailments they have incurred over decades of hard work. It can be tough for that last employer who must pay for a workers' compensation claim in the hundreds of thousands of dollars for what can be a very short period or even just hours of work for an ailment that was 30 years in the making. It is time all employers share and pool this risk and strengthen our workers' compensation system for better benefits and less litigation.

As Oregon's workforce ages, assigning fault to employers and their insurers through the LIER rule is counterproductive to keeping older people working. Society benefits from their skills and experience. If employers are allowed to share and pool this risk in a style described above, the outcome will be a benefit for all.

Very truly yours,



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