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WCDToday

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Matt West

Administrator's Notebook:

Legislative changes

By Matt West, acting WCD administrator.

Welcome to the second half of 2024! The Workers' Compensation Division (WCD) has been busy the last few months and there are no signs of slowing down.

2024 featured a shorter legislative session. Regular sessions in even-numbered years are short, usually lasting about five weeks. This year, the Oregon Legislature passed two bills affecting workers' compensation.

[Senate Bill 1580](#) amends Oregon Revised Statute (ORS) 656.990 and makes knowingly submitting a false payroll report to a private insurer, in addition to the SAIF Corporation, the director of the Department of Consumer and Business Services (DCBS), or the Workers' Compensation Board (WCB) a Class A misdemeanor.

WCD does not anticipate any rule or process changes to implement this bill. Insurers that pursue fraud charges will take cases to the local county jurisdiction.

The bill became effective March 27, 2024.

[House Bill 4010](#) makes changes to laws about prescription drugs, health insurance, and some health care providers. This bill changes the term "physician

assistant" to "physician associate" and became effective June 6, 2024.

Oregon Administrative Rules (OAR) chapter 436, divisions 009, 010, and 015, as well as multiple WCD publications and forms, refer to "physician assistant(s)." This term has been updated in the affected rule divisions and publications.

With the 2024 legislative session behind us, WCD has started looking ahead to 2025. The division is proposing two legislative concepts with the potential to become bills.

The first concept is related to worker leasing companies. The division is recommending amendments to ORS 656.850. A potential bill would include:

- Updates to the terminology used in the statute. The division is proposing that the term "worker leasing company" be changed to "professional employer organization (PEO)" consistent with modern business models and model language used by the National Association of Insurance Commissioners. The division is also proposing changes to how the definition characterizes the relationship between PEOs and client workers.



- Provisions to allow insurers to report coverage changes through electronic data interchange. This would allow PEOs to report coverage data electronically to their insurer instead of by paper form to the division.
- Provisions to allow insurers to cover PEOs using a multiple coordinated policy model. This would make tracking and reporting coverage more efficient as well as reducing possible litigation.

The second legislative concept concerns the payment of lump sum awards of permanent partial disability (PPD). ORS 656.230 currently states that a worker can request their PPD award in a lump sum as long as certain conditions are met. The related OAR 436-060-0060 provides that the insurer can deny a request if any of the conditions named in the rule are met. One condition is that the worker must waive their right to appeal the adequacy of the award. Another condition is that the award must be final by operation of law.

In *Giltner v. SAIF*, the Oregon Court of Appeals concluded that insurers can deny a worker's request for a lump sum payment if their appeal

rights have not expired, even if they have waived that right. This would result in workers waiting the requisite 60 days for a PPD award to become final before requesting a lump sum payment.

The division proposes an amendment to ORS 656.230 that would require insurers to make a lump sum payment if the worker has waived their right to request reconsideration of a notice of closure or the award has become final by operation of law, that is, their right to appeal has expired.

If you would like to share your thoughts or concerns about either of these legislative concepts, contact Teri Watson, the division's legislative coordinator, by email at teri.a.watson@dcbs.oregon.gov or by phone at 971-332-0260.

If you would like to propose your own legislative concept, read this helpful [guide](#) about how to recommend one to the Management-Labor Advisory Committee.

The rate setting process for 2025 has begun. Each year, workers' compensation premium assessment rates for insurers, self-insured

employers, and self-insured employer groups are set through a joint effort with other DCBS divisions. DCBS offices, including WCD, the Division of Financial Regulation, the Office of the Small Business Ombudsman, the Workers' Compensation Board, Oregon OSHA, and the research unit, along with the National Council on Compensation Insurance work together to set multiple workers' compensation premium rates.

Through the work these offices are doing now, the premium assessment, the self-insured employer adjustment reserve assessment, the self-insured employer group adjustment reserves, and the Workers' Benefit Fund assessment rates, and the Annual Retroactive Program benefit change will be determined in the fall. You will be able to comment on the rate change, if any, through public rulemaking. To receive a notice when rulemaking hearings are scheduled, sign up for notices on WCD's [website](#).

While we stay busy here, I always welcome your feedback and input about how the division's work is impacting you. Reach out to me anytime at matt.d.west@dcbs.oregon.gov. ■

Modernization Program update

By Heather Williamson, Modernization Program manager.

The Modernization Program has been making significant progress behind the scenes on several of its projects.



Heather Williamson

The Streamline Communications Project had a goal of reducing the complexity of language used in required notices to injured workers. Oregon Administrative Rule (OAR) chapter 436 has several rule divisions that mandate workers be informed of their rights and responsibilities by those who communicate with them, such as insurers, self-insured employers, and service companies.

When workers do not comply with these rights and responsibilities, they can lose access to certain benefits and rights. It's imperative that workers understand what they're required to do.

The average adult reads at a seventh to eighth grade level. When the project team measured the reading level of the required notice language in OAR chapter 436, it ranged from the seventh to as high as the 17th grade level. Looking at these scores, it is clear that many Oregonians would

have a difficult time understanding what they are being asked to do, which risks a loss of rights.

The project team worked with policy analysts to revise the required notice language and reduced the average grade level from the 12th to sixth grade. WCD is adopting the new language as rule divisions open. Please be sure to participate in the rulemaking hearings to add your feedback about the new language.

Since January 2024, the division has been working with Deloitte to map out the current systems used by each division program area. We are looking at how the division currently accesses and uses information, opportunities to streamline, where we can share data across the division, what are our requirements, and what we need to keep.

This process is a high-level look at what a future state could look like based on our current processes. It is the big picture that identifies which data needs to be captured. The WCD Modernization-Deloitte team used this process to create a high-level view of the requirements for a request for information. This request is a preliminary step in the procurement process that acts as an informal information gathering from vendors who build the kind of systems WCD will need.

The request for information was posted in June. It lets vendors know the kind of system requirements we are looking for as well as the kind of system we are hoping to get. In turn, vendors will let the division know what they can

do for us or if WCD needs to modify its expectations.

This information will help us write a thorough request for proposal, the formal solicitation, to find the best vendor(s) for the Core System Implementation Project. The Modernization Program team is also doing outreach to show potential vendors that WCD is serious about this project. We plan to issue the request for proposal in the first quarter of 2025.

In the meantime, the Modernization team is performing validation of the information we've gathered so far. We want to know if what we captured through previous work sessions includes the major parts of a program area's process and if anything is missing. What we create through the validation process will become the requirements used in creating the new system.

You can see that, while being this exhaustive takes time, it is absolutely critical to have this information. WCD is working to ensure that we provide the necessary information for vendors so that they, in turn, can create a reliable and responsive system.

The Modernization Program approaches these changes by asking, "How can we do this better?" We want to know if the process is confusing or burdensome. We recognize that you are the experts in your work, and we are here to make the information you need to do your work more accessible.

I am always available to hear about your experience and receive feedback about how Modernization can help you do your work better. You can email me at Heather.H.Williamson@dcb.oregon.gov or contact me by phone at 503-509-6597. ■

Preferred Worker Program success story: Neil Banta

Neil Banta worked as a plywood press operator for Pacific Wood Laminate Inc. for 5 1/2 years when he was injured on the job. After his injury, he had many worries: Would he be able to return to his position? If not, would his employer be able to find a new position for him? How would he support his family? How would his co-workers react to his seeing his injured hand?

These worries were in addition to wondering what would happen with his injury. Neil's job involved feeding wood veneer into a plywood press that would then apply 5,000 pounds of pressure to create plywood. While operating the press, Neil's right hand was caught and crushed in the machine. The accident resulted in the amputation of Neil's middle and ring fingers, and he lost the tip of his pointer finger.

Neil took 3 1/2 months off work to recover from his injuries. After that, he returned to transitional work for seven months. During this time, Neil's



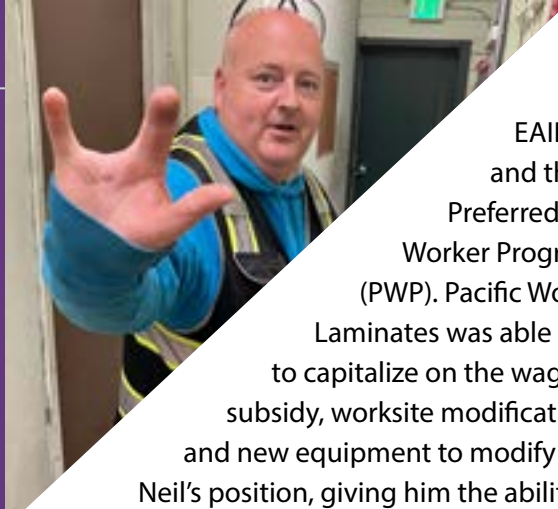
Neil Banta, preferred worker, is shown using a scissor lift, which replaced the ladder he used before his on-the-job injury.

Neil lost his middle and ring fingers, and the tip of his index finger, in a 2022 work accident.

employer used benefits from the Employer-at-Injury Program (EAIP) to train Neil to become a safety assistant with the company, training other employees in best practices and recording safety incidents.

As Neil treated and recovered from his injuries, he found he could still grip with the remaining fingers on his right hand, but he had lost strength and could no longer perform fine motor manipulation. When his claim closed, his doctors gave him permanent restrictions from repetitive use with his right hand and limited his lifting to less than 35 pounds.

Neil is able to safely work within his restrictions thanks to the benefits his employer received through



EAIP and the Preferred Worker Program (PWP). Pacific Wood Laminates was able to capitalize on the wage subsidy, worksite modification, and new equipment to modify Neil's position, giving him the ability to return to work within his restrictions.

The injury caused nerve damage to Neil's hand, which makes cold winter months in the warehouse painful as well as limits his ability to grip even more. Through PWP, Neil now has heated gloves to help him tolerate the cold. PWP benefits provided the employer with funds to buy a scissor lift, giving Neil and other workers peace of mind as they work at heights and removing the risk of climbing ladders.

In his new position as the safety assistant, Neil enjoys training his co-workers on how they can be safe on the job. He feels a sense of satisfaction knowing that he is helping keep others safe. His new training and safety inspection duties are varied and interesting, and Neil has been able to learn new skills that make him a value-added employee.

EAIP provided the employer a 50 percent wage subsidy for Neil's wages for 66 days. After Neil's claim was closed, the employer was then eligible for 183 days of wage subsidy through PWP benefits. Pacific Wood Laminates receives a workers' compensation premium exemption for



The program purchased computer equipment for Neil to use in his new duties as safety assistant.



This barrel dumper, which can be picked up and moved using a forklift, makes it easier for workers to rotate and empty barrels full of trash or other items.

Before the program, Neil needed to access the sprinkler system by using a ladder. Now he is able to use a scissor lift.



the cost to cover Neil for three years. If Neil gets hurt during that time, PWP benefits will pay for the cost of the injury for the life of the claim.

Through all the EAIP and PWP benefits it has received, Pacific Wood Laminates has been able to expand its safety and training programs with the funds saved through the wage subsidy and premium exemption. The company has created learning kiosks throughout its plant for training and reporting purposes. It also plans to continue using the wage subsidy reimbursement to invest in safety and staff development.

Neil's on-the-job injury changed the trajectory of his life and his career. Luckily, through the benefits he and his employer received through the Employer-at-Injury and Preferred Worker programs, Neil was able to stay employed with Pacific Wood Laminates and increase his value as an employee. As a result, his employer was able to create a safer work environment for all its employees. ■



With his lack of grip strength, using a ladder became hazardous for Neil. Now, he and other workers are able to use a scissor lift to work at heights.



Jennifer Hlad

2024 Workers' Compensation Educational Conference: Triumphant return



By Jennifer Hlad, conference and training coordinator.

The 21st annual Workers' Compensation Educational Conference was held May 9-10, 2024, in Portland, Oregon.

The conference was a collaboration between the Oregon Workers' Compensation Division (WCD) and the International Workers' Compensation Foundation (IWCF). IWCF is a nonprofit organization established in 1988 to promote workers' compensation education and outreach. The foundation partners with eight states, including Oregon, to host conferences dedicated to training, networking, and providing time-sensitive updates specific to the workers' compensation industry.

With the return of an in-person conference format, the goal of the 2024 conference was to enhance understanding of the Oregon workers' compensation system, with a focus on helping attendees gain knowledge of the system's many processes and services.

The conference included 22 hours of classes, 20 informative exhibitor booths, and provided networking opportunities for those in attendance. Sponsors and exhibitors shared the latest in services, equipment, and materials. The conference also provided educational credit hours for insurance agents, vocational providers, attorneys, claims examiners, disability management professionals, and claims managers.

Matt West, WCD interim administrator, and Heather Williamson, WCD Modernization Program manager, delivered the keynote address providing vital information about what to expect from the division in the next year. Other conference speakers included Katia Costa-Black, Ph.D., senior manager for Education and Partnerships with the Oregon Institute of Occupational Health Sciences. Costa-Black oversees the Total Worker Health education and training portfolio for the institute. She provided two hours of training, which included guiding attendees on how to prioritize safety in the workplace and sharing safe and healthy work design and positive work experiences to achieve worker well-being.

The event's breakout sessions included:

- Both Sides of the Bar, a conversation with a claimants' attorney and defense attorney.
- Workers' Compensation 101, an overview of the workers' compensation system from claim filing to claim closure.
- The Perspective from the Injured Worker, a session where injured worker advocates shared their insight into the worker experience and navigating the workers' compensation system.
- Appellate Update, in which the Oregon Workers' Compensation Board provided updates on recent case law.
- Top 10 Reasons for Disputes and How to Avoid Them, an overview of common reasons for disputes and sanctions.
- Embracing Diversity, Equity, and Inclusion to Support Our Employees and Customers, a primer on how being culturally agile supports the workplace.
- Recordables and Reportables, a WCD and Oregon OSHA collaboration on employer reporting requirements.
- First Payment of Time Loss, an in-depth instruction on determining key dates and time-loss obligations.

"The conference felt like a celebration of workers' compensation education and prioritization of workplace safety" said Adam Breitenstein, WCD conference project sponsor.

"The success of the conference was a result of many talented speakers and the dedication of our project team," said Chris Sutter, WCD conference project manager.

The division is already beginning to plan the 22nd annual Workers' Compensation Educational Conference. If you have topic suggestions or speaker recommendations, contact Conference and Training Coordinator Jennifer Hlad at 971-719-6023 or at Jennifer.L.Hlad@dcbs.oregon.gov. ■





Caitlin Breitbach named small business ombudsman

Caitlin Breitbach was appointed the ombudsman for small business on March 1, 2024, by Department of Consumer and Business Services Director Andrew Stolfi. As

small business ombudsman, Caitlin serves as an independent advocate for small businesses, entrepreneurs, and the professional advisers who serve them. She helps businesses navigate the workers' compensation system, including explaining workers' compensation insurance coverage requirements, providing advice on how to shop for insurance, and helping businesses that are in dispute with their insurance company.

Before being appointed the small business ombudsman, Caitlin was both the assistant small business ombudsman and a reemployment specialist in the Workers' Compensation Division for five years. In these roles, she independently investigated

complaints and mediated between parties to come to a fair resolution. She also worked with internal and external partners to help mitigate costs associated with workers' compensation. In addition, she participated in outreach throughout the state to support small businesses and workers.

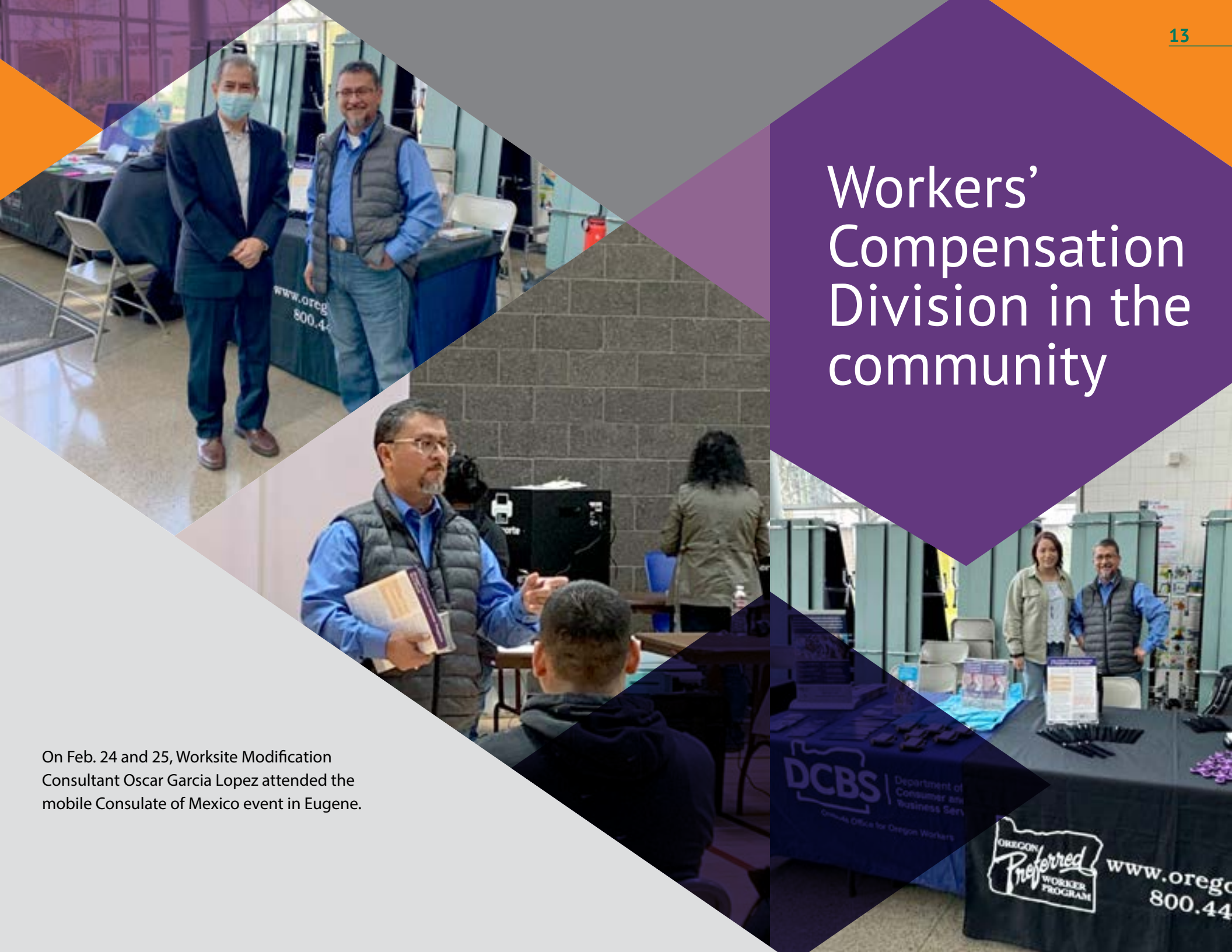
Caitlin has a bachelor's degree in business administration and a master's degree in organizational leadership.

"I am excited and humbled by the opportunity to continue being a support system for all of the small businesses in Oregon, as well as the professionals who serve them," Caitlin said. "I hope to take this opportunity to strengthen our outreach efforts to reach as many small businesses as possible, specifically in our underserved and underrepresented communities."

Caitlin succeeds Dave Waki, who retired after serving as the ombudsman for small business since 2004. ■

Workers' Compensation Division in the community

On Feb. 24 and 25, Worksite Modification Consultant Oscar Garcia Lopez attended the mobile Consulate of Mexico event in Eugene.



On April 27 and 28, Field Investigator Mikaela Polk was invited by the Consulate of Mexico to attend the central Oregon mobile consulate event in Redmond.



On May 2, Worksite Modification Consultants Oscar and Bob Williams participated in the 36th annual entrepreneurship trade show conducted by the Oregon Association of Minority Entrepreneurs.

On May 22, Oscar attended the 15th annual Latino Health Equity Conference in Portland.

On June 4, Field Investigators Mikaela and Yasmin Castaneda Benavides hosted a table at the 2024 Blue Mountain Occupational Safety & Health Conference in Pendleton while Reemployment Specialists Christy Johnson and Zoe Tacadena hosted a table on behalf of the Preferred Worker Program.



On June 5, Bob and Oscar (not pictured) attended the Governor's Marketplace Conference and Tradeshow.

On June 21, Reemployment Assistant Jeffrey Warburton and Dave Waki from the Office of the Small Business Ombudsman attended the Building Better Business Together Entrepreneur and Small Business Fair at Mt. Hood Community College.