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**BY FIRST-CLASS MAIL AND
ELECTRONIC MAIL**

fred.h.bruyns@oregon.gov

Mr. Fred H. Bruyns
Rules Coordinator
Workers' Compensation Division
Post Office Box 14480
Salem, Oregon 97309-0405

Subject: Proposed Changes to Workers' Compensation Rules—Worker Leasing
Licensing, Workers' Compensation Coverage of Clients, Recordkeeping,
and Reporting

Dear Mr. Bruyns:

Thank you for your time on the phone earlier this week to discuss the proposed rule changes to OAR 436-050 and OAR 436-180 contemplated by your March 29, 2018, notice (the "Proposed Amendments"). As you know, this firm represents Barrett Business Services, Inc. ("BBSI"), the only self-insured worker leasing company in Oregon. Please enter this letter into the official record for the referenced rulemaking.

BBSI generally supports the Proposed Amendments, but requests a few modifications to the Proposed Amendments as outlined in this letter. BBSI's hope in requesting these modifications is to help facilitate a rule amendment that affords predictability for worker leasing businesses in Oregon, while wholly preserving the worker safety benefits promoted by the State of Oregon Workers' Compensation Division.

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Requested Modifications to Proposed Amendments

1. **Equal Reporting to National Council on Compensation Insurance**

The Proposed Amendments at OAR 436-180-0155 would continue and add to a rule that requires self-insured worker leasing companies to maintain certain statistical data for each client and report that data to the National Council on Compensation Insurance ("NCCI"). BBSI requests that the Proposed Amendments be modified to continue to require self-insured worker leasing companies to maintain this information, but not require distinct ongoing reporting to NCCI. Specifically, BBSI requests the following modification:

"436-180-0155 Reporting Requirements of a Self-Insured Worker Leasing Company

"(1) Reporting of client statistical data.

"A self-insured worker leasing company must maintain ~~and report to the National Council on Compensation Insurance (NCCI)~~ separate statistical data for each client for which the self-insured worker leasing company provides coverage under OAR 436-180-0100(2). Reporting must be according to the uniform statistical plan prescribed by the director under ORS 737.225(4) and OAR 836-042-0045.

"(2) Records relating to client statistical data.

"Records relating to the client statistical data for self-insured worker leasing companies must be made available to NCCI, upon request."

The purpose of this request is twofold. First, most, if not all, other self-insured employers in the state are generally not required to provide ongoing reporting of this variety to NCCI. This data could be used by competitors for anticompetitive purposes, and its dissemination to public agencies, while legitimate, is more appropriate on an as-requested basis. Second, it is financially and administratively burdensome to require ongoing reporting to NCCI.

2. **Predictability in License Suspension/Termination Decisions**

The Proposed Amendments at OAR 436-180-0160(g) would materially expand the reasons for suspension or revocation of a worker leasing license to include

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any reason for denial of a license under OAR 436-180-0140(9). If approved, this would allow a license to be revoked because of subjective and minor infractions, including an alleged failure to establish minimum experience, training, or education, or an alleged nonpayment of any other moneys owed to jurisdictions outside the state of Oregon and unrelated to worker leasing.

BBSI requests that the Proposed Amendments be modified to remove subjectivity in license-termination decisions and prevent terminations unrelated to worker leasing activities and activities in the state of Oregon. Specifically, BBSI requests the following modification:

"436-180-0160 Suspension or Revocation of License

"(1) General.

"The director may suspend or revoke a worker leasing license for reasons including, but not limited to:

"(a) Insolvency or default, if the worker leasing company's liabilities exceed its assets or the worker leasing company cannot meet its financial obligations;

"(b) Judgments against or convictions, within the last ten years, of any worker leasing company or controlling person for the reasons identified in OAR 436-180-0140 (9)(i);

"(c) Administrative actions involving worker leasing activities resulting from failure to comply with the requirements of any state;

"(d) Nonpayment of taxes, fees, assessments, civil penalties, or any other moneys due the State of Oregon or another jurisdiction;

"(e) The worker leasing company or controlling person's failure to comply with any provisions of ORS Chapters 654, 656, 659, 659A, 731, or 737; or any provisions of these rules; or

"(f) The worker leasing company or controlling person is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the worker leasing business.;

or

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~~(g) Any of the reasons for denial of an application for initial license or renewal listed in OAR 436-180-0140(9).~~"

The purpose of this requested revision is to avoid potential license terminations for subjective reasons and for reasons that are unrelated to worker leasing compliance and unrelated to the State of Oregon. Several other licensing agencies in the state of Oregon provide guidance for the number of and which minor violations may result in termination of a license. Because the Workers' Compensation Division provides no such guidance, it would be better to avoid these types of issues in the license-termination rule.

Please feel free to contact me if you would like to discuss the content of this letter or any of the Proposed Amendments.

Very truly yours,



William L. Rasmussen, P.C.

cc: Mr. Gary St. John, BBSI