

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON

In the Matter of the Amendment of:
436-060, Claims Administration

) SUMMARY OF
) TESTIMONY AND
) AGENCY RESPONSES

This document summarizes the significant data, views, and arguments contained in the hearing record. The purpose of this summary is to create a record of the agency's conclusions about the major issues raised.

The proposed amendment to the rules was announced in the Secretary of State's Oregon Bulletin dated November, 2020. On Nov. 16, 2020, a public rulemaking hearing was held as announced at 1 p.m. via teleconference from the Labor & Industries Building, 350 Winter Street NE, Salem, Oregon. Fred Bruyns, from the Workers' Compensation Division, was the hearing officer. The record was held open for written comment through Nov. 23, 2020.

No one testified at the public rulemaking hearing. The hearing transcript is recorded below as Exhibit 1. The public submitted one written document as testimony.

Testimony list:

Exhibit	Testifying
<u>1</u>	Transcript of public rulemaking hearing of Nov. 16, 2020
<u>2</u>	Corinna Spencer-Scheurich, Director of Northwest Workers' Justice Project

Testimony: OAR 436-060-0010

Exhibit 2

“We applaud the Division’s plan to remove the SSN box on Form 801 ‘Report of Job Injury or Illness.’ By removing the box, the Division will be removing a barrier that prevents workers who are undocumented from making lawful claims. It is essential that all workers, regardless of immigration status, have access to workers’ compensation benefits in the event of a workplace injury. That principle prevents a race to the bottom by unscrupulous employers seeking to avoid responsibility for workplace health and safety by hiring undocumented workers instead of U.S. and work authorized immigrants. By removing the SSN, the Division clearly signals to all workers that having a SSN is not a requirement to make a claim. Removing the SSN box protects all workers. By removing the SSN box from a form that often is viewed and handled by more than an employer’s authorized ‘human resources’ staff, the Division also helps to protect workers from identity theft. I also encourage the Division to move forward to remove the SSN box from Form 827, ‘Worker’s and Health Care Provider’s Report for Workers’ Compensation Claims.’ the Division’s proposed amendments to OAR 436-060 and Form 801 remove a key barrier that has chilled workers from making claims.”

Response: Thank you for your testimony.

Dated this 9th day of December, 2020.

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON**

PUBLIC RULEMAKING HEARING

In the Matter of the Amendment of OAR: 436-060, Claims Administration))))	TRANSCRIPT OF TESTIMONY
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The proposed amendment to the rules was announced in the Secretary of State’s Oregon Bulletin dated November, 2020. On Nov. 16, 2020, a public rulemaking hearing was held as announced at 1 p.m. via teleconference from the Labor & Industries Building, 350 Winter Street NE, Salem, Oregon. Fred Bruyns, from the Workers’ Compensation Division, was the hearing officer. The record will be held open for written comment through Nov. 23, 2020.

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TRANSCRIPT OF PROCEEDINGS

Fred Bruyns:

Good afternoon and welcome. This is a public rulemaking hearing. My name is Fred Bruyns, and I’ll be the presiding officer for the hearing.

The time is 1 p.m. on Monday, Nov. 16, 2020. We are conducting this virtual hearing over the telephone from the Labor & Industries Building, 350 Winter St. NE, in Salem, Oregon. We are making an audio recording of today’s hearing.

The Department of Consumer and Business Services, Workers’ Compensation Division proposes to amend chapter 436 of the Oregon Administrative Rules, specifically division 60, Claims Administration.

The caption for the proposed rule changes is: Department review of modified forms; reporting of workers’ Social Security numbers.

The department has summarized the proposed rule changes and prepared an estimate of fiscal and economic impacts in the notice of proposed rulemaking. This notice and proposed rules with marked changes are posted to the Workers' Compensation Division's website.

The Workers’ Compensation Division:

Transcript of public rulemaking hearing
Nov. 16, 2020

- Filed the notice of proposed rulemaking with the Oregon Secretary of State on Oct. 29, 2020;
- Mailed the notice to its postal and electronic mailing lists;
- Notified Oregon legislators as required by ORS chapter 183; and
- Posted public notice and the proposed rules to its website.

The Oregon Secretary of State:

- Published the hearing notice in its *Oregon Bulletin* dated Nov. 2020.

This hearing gives the public the opportunity to provide comment about the proposed rules. In addition, the division will accept written comment through and including Nov. 23, 2020, and will make no decisions until all of the testimony is considered.

We are ready to receive testimony. Would anyone like to testify at this time?

Hearing no one, I just want you to know that in a moment I will recess the hearing, but will resume for testimony if anyone arrives to testify before 2 p.m.

Again, the record remains open for written testimony through and including Nov. 23, 2020. You may submit testimony in any written form. I encourage you to submit your testimony by email or as attachments to email. However, you may also use fax or USPS mail. I will acknowledge all testimony received.

This hearing is recessed at: 1:02 p.m.

The hearing is resumed at: 1:59 p.m.

Is there anyone on the phone who would like to testify at this time?

Hearing no one, this hearing is adjourned. The time is now 1:59 p.m. Thank you for coming. Thank you for your patience if you stayed with us.

Transcribed from a digital audio recording by Fred Bruyns, Nov. 17, 2020.



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November 20, 2020

Fred Bruyns
Policy Analyst/Rules Coordinator
Workers' Compensation Division
fred.h.bruyns@oregon.gov

RE: Comment on amendments to OAR 436-060 – Reporting of Workers' Social Security Numbers.

Dear Mr. Bruyns,

I write on behalf of the Northwest Workers' Justice Project (NWJP), an advocacy and legal organization representing low wage, immigrant, and contingent workers in Oregon, to submit these comments to the Workers' Compensation Division (WCD) in response to the notice of proposed rulemaking relating to amendments to OAR 436-060, specifically changes to reporting of workers' Social Security numbers (SSNs) on forms.

We applaud the Division's plan to remove the SSN box on Form 801 "Report of Job Injury or Illness." As you know, this form is one way that employees may make a report of injury and start their claim for compensation. By removing the box, the Division will be removing a barrier that prevents workers who are undocumented from making lawful claims.

At NWJP, the vast majority of our clients are immigrants, particularly from Mexico and Central America, who work in low-wage and physically demanding industries in Oregon. Many of those immigrants work without immigration authorization. It is essential that all workers, regardless of immigration status, have access to workers' compensation benefits in the event of a workplace injury. That principle prevents a race to the bottom by unscrupulous employers seeking to avoid responsibility for workplace health and safety by hiring undocumented workers instead of U.S. and work authorized immigrants.

However, a number of barriers prevent immigrants, work authorized or not, from making lawful workers' compensation claims. This includes fear and experience of retaliation, making workers' compensation retaliation the most common discrimination claim that we handle at NWJP. Another is a simple concern about whether they are entitled to make a claim from the employer's insurance carrier and whether, by doing so, they will put their immigration status at issue. When the request for SSN is in a box on the form, it seemingly confirms the workers' fears right from the beginning, chilling valid workers' compensation claims.

By removing the SSN, the Division clearly signals to all workers that having a SSN is not a requirement to make a claim. I know that the Division has made an effort to communicate that principle in "A Guide for Workers Recently Hurt on the Job," but removing the box prevents any miscommunication about the Division's stance and the workers' right to make a claim.

Removing the SSN box protects all workers. In our experience handling workers' compensation retaliation cases, injured workers fill out Form 801 with supervisors, crew leaders and the help of other workers, who should not have access to the injured workers' SSN. By removing the SSN box from a form that often is viewed and handled by more than an employer's authorized "human resources" staff, the Division also helps to protect workers from identity theft.

I also encourage the Division to move forward to remove the SSN box from Form 827, "Worker's and Health Care Provider's Report for Workers' Compensation Claims." Based on feedback from participants in advisory meetings, I understood that many health care providers decline to enter the SSN into the form because of privacy concerns. Therefore, it is also an unnecessary barrier to reports of injury.

We have work to do as a community make sure that injured workers are protected from retaliation and are making lawful claims, regardless of immigration status. But, the Division's proposed amendments to OAR 436-060 and Form 801 remove a key barrier that has chilled workers from making claims.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. Spencer-Scheurich". The signature is written in a cursive, flowing style.

Corinna Spencer-Scheurich
Director of NWJP