



November 26, 2019

Fred Bruyns, Rule Coordinator
Workers' Compensation Division
350 Winer Street NE
PO Box 14480
Salem, OR 97309-0405

RE: SAIF Corporation testimony for proposed changes to workers' compensation rules: OAR 436-105, Employer-at-Injury Program (EAIP)

Dear Fred:

As always, SAIF appreciates the opportunity to participate in the advisory committee rulemaking process. SAIF has reviewed the proposed rules and specifically supports the following changes.

OAR 436-105-0500 (6) (C) The proposed rule explains to insurers how to calculate the amount of wage subsidy reimbursement when payroll records and supplemental documentation show the amount of wages earned by the worker for reimbursable partial payroll periods.

OAR 436-105-0512 (6) Clarifies that the Employer-at-Injury Program and Preferred Worker Program may not overlap for the same claim and the same claim opening.

OAR 436-105-0520 (2) Increase the wage subsidy reimbursement rate from 45 to 50 percent of the workers' gross wages.

OAR 436-105-0540 (5) Requires that the insurer receive from the employer all required documentation for reimbursement within one year from the end of the Employer-at-Injury Program.

As SAIF expressed during the advisory committee meeting, SAIF is concerned about the changes proposed in **OAR 436-105-0540 (5) (b)**. SAIF understands and supports WCD's desire to eliminate inappropriate expenditures from the Workers' Benefit Fund. We understand that WCD hopes these rule changes will result in fewer questionable expenditures.

SAIF is concerned the proposed changes will add to the administrative burden for system users and potentially discourage program usage. From a high in 2013, employer access of EAIP has steadily declined each year from 2,140 employers to 1,780 employers in 2018, a 17% decline in employers using the program. Fewer employers

accessing an employer activated program results in fewer Oregon workers benefiting from this early return to work program. 9,100 placements were made in 2013 compared to the only 7,217 in 2018, a 20% usage decrease. SAIF is concerned that further administrative burdens will further discourage system participation.

SAIF submits roughly 1,000 purchase requests per year. Currently SAIF's reimbursement requests are automated. Staff electronically request reimbursement; request for reimbursement is automatically printed, sent to SAIF's mailroom where it is mailed with no additional administrative work for SAIF's EAIP staff.

The proposed rules require that additional documents be provided with each reimbursement request. SAIF conservatively estimates an additional 5,000 pieces of paper documentation will be printed and mailed to WCD. WCD's audit staff has reviewed these documents in SAIF's systems during its audits of SAIF's reimbursement requests. SAIF estimates that this additional administrative handling of documentation will require an additional 166 staff-hours to process these 5,000 pieces of paper each year. This is 166 hours to print, organize, and mail papers that are not currently printed or handled. This is 166 staff-hours of handling paper rather than working with employers to get workers back to work.

In turn, WCD's staff will handle and review each individual document to verify it has received all required documentation for reimbursement requests. Missing documentation will result in WCD returning the reimbursement request to the administrating insurer to resubmit or appeal the declined reimbursement. There is more work related to this task than simply reviewing documents. WCD would need to respond to, track, and re-process multiple additional requests.

The proposed rules also require insurers to obtain new information prior to submitting a reimbursement request for a purchase, including start date, wages, and hours to be worked. Currently, these data elements are obtained through payroll records after the worker has returned to work because start dates, wages, and the hours a returning worker will work, can change between the time a piece of equipment is purchased, and the time the worker actually returns to work. SAIF is uncertain why WCD needs this information to process an equipment purchase reimbursement requests. Insurers will need to request this information from the employer a second time once the worker has returned to light duty, creating an administrative burden for both insurer and employer.

Finally, the most recent audit by WCD of EAIP dollars spent (over \$8.6 million audited) verified an accuracy of 98% across the industry. This outstanding result shows that most insurers and employers are correctly using the program and responsibly accessing the program to benefit their workers.

SAIF suggests WCD utilize several alternative options to clarify eligible purchases and encourage program utilization:


- 1) Regularly provide robust industry information updates that provide guidance and direction on the meaning and intent of "Reasonable, Practical, or Feasible, or Considers an Abuse of the Program" through bulletins, industry notices, FAQ's, and round table meetings.
- 2) Spot check purchases in real time. Visit employers WCD suspects may not be using the program appropriately and proactively explain and define WCD's standards for "Reasonable, Practical, or Feasible, or Considered an Abuse of the

program to individual employers or insurers." Oregon Administrative rules authorize the director to visit worksites to determine compliance. OAR 436-105-0550 (4)

- 3) Finally, rather than require all purchases to be reviewed, SAIF suggests WCD describe, by rule, its authority to require compliance with the proposed rule only for insurers or self-insured employers determined by WCD to have questionable practices or after audit an insurer or self-insured employer fails its audit. SAIF suggests that failure be determined based on the need to reimburse WCD a percentage of purchases. SAIF concurs with WCD that it must protect the worker benefit fund and believes that this approach will focus on those who have failed to adequately review purchase. This approach would protect the worker benefit fund without overly burdening parties appropriately complying while freeing WCD staff to pursue more proactive interactions with insurer, self-insureds, and employers. Of the 91 insurers participating in the Employer-at-Injury Program, only 19 of these made purchase reimbursement requests in 2018. Of those 19, only 7 made purchase reimbursement requests over \$5,000.

SAIF is an active user and vocal supporter of Oregon's Employer-at-Injury Program. We support WCD's efforts to eliminate misuse of the program, but we urge WCD to consider the whether the added burden imposed on insurers and employers by the proposed reimbursement process will eliminate misuse, or whether the change will be a disincentive for employers who would otherwise use the program.

Sincerely,



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