



April 16, 2024

Attn: Rules Coordinator  
Workers' Compensation Division  
WCD.Policy@dcbs.oregon.gov

Re: Proposed Changes to Rules Regarding Vocational Assistance to Injured Workers

Dear WCD,

We write to express our strong support for the proposed amendments to the rules relating to eligibility for workers without authorization to work in the United States.

The Oregon Law Center (OLC) is a non-profit, legal services organization that provides a full range of legal services to low-income people in Oregon. OLC and its predecessor organization have provided legal services to Oregon's migrant and seasonal farmworkers for over forty years, devoting a substantial portion of its resources to workplace health and safety. Occupational safety is a priority for the program because our client community consistently identifies it as one of their top concerns.

The purpose of workers' compensation is to "restore the injured worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable." ORS 656.012(2)(c). In other words, the system is designed to ensure that the costs and consequences of workplace injuries are not born solely by the workers, because it is usually the employer who is in the best position to prevent accidents.

To achieve that goal, workers whose injuries are severe enough to permanently prevent them from performing their previous responsibilities are entitled to assistance entering new careers. This ensures that they are able to contribute to the economy and support their families after devastating injuries. For too long, however, workers without work authorization have been unfairly excluded from this benefit. All workers injured on the job deserve and are entitled to workers' compensation benefits, regardless of their immigration status. ORS 656.005(28)(a).

Our economy relies on workers without work authorization to perform some of the most dangerous and physically demanding jobs, including in agriculture, seafood processing, construction, forestry, and firefighting. 18% of Oregon’s total economic output can be attributed to undocumented farmworkers.<sup>1</sup> The construction industry has the highest rate of fatal work injuries nationwide,<sup>2</sup> and according to 2020 census data, approximately 23% of construction laborers are undocumented.<sup>3</sup>

Under the current system, injured workers without work authorization qualify for medical coverage, and with successful treatment may return to the same job they had before. If, however, the injury results in permanent disability that prevents them from returning to the job held when injured, they do not qualify for the vocational rehabilitation services designed to help such workers return to the work force. One scholar has observed that this system creates a “disposable work force,” where undocumented workers receive help returning to work only so long as they are able-bodied and are abandoned after catastrophic injury.<sup>4</sup>

Workers without work authorization particularly struggle to find jobs that do not require hard labor due to a lack of language skills and education. This forces those with disabilities to make an impossible choice. If they follow their physician’s instructions, they are left with no earning capacity, a result that harms not only the workers, but also their dependents, many of whom are U.S. citizens. Often, they instead return to the same or similar work--despite constant pain or risk of exacerbating their injury--in order to provide for their families. Excluding workers without work authorization from vocational assistance also hurts those who work alongside them because it partially relieves employers from responsibility for providing unsafe workplaces.

Although federal immigration law prevents states from providing job placement services to workers without work authorization, nothing prevents them from providing the limited training services proposed here.<sup>5</sup> Indeed, the current system undermines federal immigration policy by making the injuries of undocumented workers cheaper, thereby encouraging employers to hire them.<sup>6</sup> Unlike Oregon, neither Washington nor California categorically excludes undocumented workers from their analogous programs.<sup>7</sup>

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<sup>1</sup> *OHDC Farmworker Needs Assessment*, 12 (2022).

<sup>2</sup> *Id.*

<sup>3</sup> Nicole Prchal Svajlenka, *Protecting Undocumented Workers on the Pandemic’s Front Lines*, 7 (2020).

<sup>4</sup> Robert Corrales, *Workers’ Compensation and Vocational Rehabilitation Benefits for Undocumented Workers: Reconciling the Purported Conflicts between State Law, Federal Immigration Law, and Equal Protection to Prevent the Creation of a Disposable Workforce*, 81 *Denv. U. L. Rev.* 347 (2003).

<sup>5</sup> *Tarango v. State Indus. Ins. Sys.*, 117 Nev 444, 450, 25 P3d 175, 179 (2001); *Gayton v. Gage Carolina Metals Inc.*, 249 N.C. App. 346, 350, 560 SE2d 870, 873 (2002); *Ruiz v. Belk Masonry Co.*, 148 N.C. App. 675, 678-79, 559 SE2d 249, 251 (2001); and *Foodmaker, Inc. v. Workers’ Comp. Appeals Bd.*, 67 Cal App 4<sup>th</sup> 74, 91 (1998).

<sup>6</sup> Corrales at 377.

<sup>7</sup> RCW 51.32.096, WAC 296-19A-020; Cal Lab Code § 4658.7, 8 CCR 10133.31; *see also, Garcia v. Dep’t of Labor & Indus.*, 939 P2d 704, 704-06 (Wash. Ct. App. 1997) (noting implicitly that vocational

For all of the above reasons, we applaud WCD for proposing the amendments to OAR 436-120-0145, 0175, 0177, and 0511, and urge you to adopt them.

Sincerely,

*/s/Nargess Shadbeh*

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Lawyer and Director,  
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rehabilitation benefits are payable to undocumented “aliens,” but suspending benefits for other reasons); *Foodmaker, Inc. v. Workers’ Comp. Appeals Bd.*, 78 Cal Rptr 2d 767, 775 (Cal Ct App 1998) (nonprecedential) (“we do not decide or suggest that illegal immigrants are never entitled to vocational rehabilitation benefits”).