

**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: 436-120, Vocational Assistance to Injured Workers))))	TRANSCRIPT OF TESTIMONY
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The proposed amendment to the rules was announced in the Secretary of State’s Oregon Bulletin dated April 1, 2024. On April 25, 2024, a public rulemaking hearing was held as announced at 9 a.m. via teleconference from the Labor & Industries Building, 350 Winter Street NE, Salem, Oregon. Daneka Karma, from the Workers’ Compensation Division, was the hearing officer. The record will be held open for written comment through May 2, 2024.

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TRANSCRIPT OF PROCEEDINGS

Daneka Karma:

Good morning and welcome. This is a public rulemaking hearing.

My name is Daneka Karma, and I’ll be the presiding officer for the hearing.

The time is now 9:00 a.m. on Thursday, April 25, 2024. We are conducting this hearing from Conference Room F in the Labor & Industries Building in Salem, Oregon. However, we are also doing so virtually, by video and telephone conferencing. We are making an audio recording of the hearing.

The Workers’ Compensation Division of the Department of Consumer and Business Services proposes to amend chapter 436 of the Oregon Administrative Rules, specifically:

- OAR 436-120, Vocational Assistance to Injured Workers

The department has:

- Summarized the proposed rule changes and prepared estimates of fiscal and economic impacts in the notice of proposed rulemaking filed with the Oregon Secretary of State;

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- Published rulemaking 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 April 1, 2024.

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 May 2, 2024, and will make no decisions until all of the testimony is considered.

We are ready to receive public testimony. And, I'll begin with those who are present in conference room F. The first person that I have that has signed up to provide public hearing testimony today is Jovana Patrick from the Oregon Trial Lawyers Association. Hopefully I got that right.

Jovanna Patrick:

I don't know... I'll go after Lauren actually.

Daneka Karma:

That is fine. So first up, we will have Lauren Grace from the Oregon Law Center, and then we'll come back to Jovanna. And, then I will see if there's anybody who's participating remotely that would like to provide public testimony.

Lauren Grace, Oregon Law Center:

Thank you. Good morning.

My name is Lauren Grace. I'm a staff attorney at the Oregon Law Center in the farm worker program.

I'm speaking today to express our strong support for the proposed amendments to the rules regarding eligibility for workers without work authorization. The purpose of workers' compensation is to restore the injured worker to a self-sufficient status as best as possible. In other words, the system is designed to ensure that the costs and consequences of workplace injuries are not born solely by the injured workers, because it is usually the employer who is in the best position to prevent accidents.

For too long, however, workers without work authorization have been unfairly excluded from vocational assistance benefits.

Our economy relies on undocumented workers to perform some of the most dangerous and physically demanding jobs, including in agriculture, seafood processing, construction, forestry, and firefighting.

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 same job, they do not qualify for the vocational rehabilitation services designed to help them return to the workforce.

Workers report that this makes them feel like they are disposable because they give their healthiest years to a job and are abandoned after catastrophic injury.

Undocumented workers 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. Or, they are forced to return to their countries of origin, where they face dire circumstances despite being available to help fill our nation's labor shortages. Excluding the documented workers from vocational assistance benefits 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 authorization, nothing prevents them from providing the limited training services proposed here. Indeed, the current system undermines federal immigration policy by making the injuries of undocumented workers cheaper, thereby encouraging employers to hire them. Unlike Oregon, neither Washington nor California categorically excludes undocumented workers from their analogous programs.

For those reasons, we thank WCD for making the proposed amendments, and we urge you to adopt them.

Thank you.

Daneka Karma:

Thank you. Jovanna Patrick.

Jovanna Patrick, Oregon Trial Lawyers Association:

Yes. Hi, thank you.

I'm Jovanna Patrick here with, representing OTLA, Oregon Trial Lawyers Association.

I represent injured workers. I'm also bilingual in English, Spanish. So, I represent a lot of workers who are Spanish speaking, some of whom are undocumented at the time that they're eligible for vocational benefits. I would just want to echo everything that Ms. Grace said. That OTLA is in agreement that and urging the passage of these changes, that's gonna make some really good changes in people's lives.

I just wanted to also note that a lot of our workers here have changing status. They come on a visa and when they're eligible and authorized to work and then they get injured and sometimes they can't get better in the time it takes for that visa to expire. So then, by the time that they're that's to be found eligible, they're found ineligible even though they were here working following all the rules. And those are the sort of workers that we want to be able to get back to regular status because then they can come back and be, you know, properly visaed workers again and help Oregon employers.

And I also wanted to just point out that these rules are gonna be really great versus the current rules, which do live, leave just a little window for undocumented workers. The current rules allow an undocumented worker to apply for documentation and then wait to be authorized to then come back and be found re-eligible.

I recently had someone go through that process and he was found eligible and he's starting his vocational program now. And, he suffered a serious injury at work. He required back surgery, had permanent impairment. He waited 13 years to become authorized. So, he followed all the rules, but he waited 13 years to get his training program. And, I just think about all the productive stuff he could have done in his life for Oregonians, for Oregon businesses in the last 13 years that he was made to wait. So, I sincerely hope that future workers who are also following all the rules don't have to wait like he did, and urge passage of this change to help workers like him and all the ones who are in his position.

Thank you.

Daneka Karma:

Thank you.

And that is public testimony from those who've signed up to provide public testimony in person today at the Labor & Industries Building in conference room F. Is there anyone who is participating remotely who would like to testify at this time?

Kate Suisman:

And, I raise my hand. I'm not sure if you can see it.

Daneka Karma:

I do see it. So this Kate. Is it Suisman?

Kate Suisman:

That's right.

Daneka Karma:

OK, so if you could just state your name and the organization that you're with and then please provide public testimony.

Kate Suisman:

Thank you.

My name is Kate Suisman, and I'm with the Northwest Workers' Justice Project, and we represent workers in low wage jobs, including many, many injured workers. And, about half of the workers who call us are calling specifically around workplace injuries. And we don't handle workers comp like Jovanna does, but we handle the retaliation that comes up, and we're often going on that journey with the worker through the comp system.

So, we're strongly strongly in support of these proposed amendments and the new rule, and I think that it's basically doing two things, these proposed changes. You'd be leveling the playing fields, and making sure that the insurance system works the same for workers regardless of their status. And, also acknowledging this reality. That is something we see every day and it's a really sad and tough reality.

But immigrant workers in low wage jobs are just more likely to be hurt, and that's a there's a whole set of reasons I think that's true, but the end result is that those workers are hurt. They suffer more fatalities and the ones who are able to go back to work often need some kind of assistance and retraining.

So just again from our point of view, anecdotally, we see immigrant workers in low wage jobs in a few industries primarily. And, those are probably pretty apparent to you all with experience here. But, construction, forestry and farming, food processing, food manufacturing, those are kind of the heaviest industries for us. And, we know that those industries also, you know by BLS data, labor statistic data, we know that those are the jobs that have a lot of immigrant workers and especially folks who identify as Hispanic or Latine, Latinx. And, I won't, you know, give you all that data here. I will submit some reference to it, because I think it's helpful to kind of ground us, and those dangerous jobs and who's doing them.

And then the last thing I just want to mention is we also know that there are more injuries and more fatalities in those jobs. And, of course fatalities is a little off, to the side because we're talking about folks who can go back to work. But, it's an indicator of just how risky

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those jobs can be. So, we're in strong support of what the division is considering and I just really want to thank you for the time you've put into this.

Thank you.

Daneka Karma:

Great. Thank you Kate.

Umm is there anyone else who would like to testify at this time?

Hearing no one, in a moment I will recess the hearing. But, we will resume for additional testimony if anyone wishes to testify before 10:00 a.m. Again, the record remains open for written testimony through and including May 2nd. You may submit testimony in any written form. I encourage you to submit your testimony by email or as attachments to email: wcd.policy@dcbs.oregon.gov . I also included that email in the chat at the very beginning of this meeting. However, you may also use U.S. mail. We will acknowledge all testimony received.

This hearing is recessed at 9:12 AM.

Daneka Karma:

The hearing is resumed at 9:58 a.m.

Is there anyone else who would like to testify today?

Hearing no one, the time is 10:00 a.m.

Thank you for coming.

This hearing is adjourned.

Transcribed from a digital audio recording by Daneka Karma, April 25, 2024.