

Agenda

Rulemaking Advisory Committee

Workers' Compensation Division Rules
Subject: multi-language help page

Type of meeting:	Rulemaking advisory committee
Date, time, & place:	May 30, 2018, 2 p.m. Portland State Office Building, Room 1C (first floor) 800 NE Oregon St, Portland, OR 97232 Teleconference: 1-213-787-0529 Access code: 9221262#
Facilitator:	Fred Bruyns, Workers' Compensation Division
2:00 to 2:10	Welcome and introductions; meeting objectives
2:10 to 3:30	Discussion of issues
3:30 to 3:45	Break
3:45 to 4:45	Discussion of issues continued.
4:45 to 4:55	Summing up – next steps – thank you!

Attached: [Issues document](#)

OAR chapter 436 (affected rule divisions to be determined)

Issues document

Rulemaking advisory committee meeting

May 30, 2018, 2 p.m.

Portland State Office Building, Room 1C (first floor) 800 NE Oregon St, Portland, OR 97232

ISSUE #1

Rule: To be determined

Issue: Most claim-related documents sent to workers are prepared in English. Should important notices be accompanied by a separate notice in multiple languages?

Statement of problem: The Access to Justice Committee of the Workers' Compensation Section of the Oregon State Bar, in a document sent to the Workers' Compensation Division on 6/5/17, described the problem:

“All documents sent by insurers, WCB and WCD to injured workers are in English. Those who do not read English are not being made aware of the importance of these documents and not being advised as to where to turn for assistance. According to the Ombudsman for injured workers, she receives 700 inquiries from injured workers per month, and 23-26% calls are from non English speaking workers.”*

*Jennifer Flood, Ombudsman for Injured Workers, confirms that these figures were accurate for the time period described, though recently the numbers are slightly less.

*Nearly all of these callers speak Spanish.

The workers' compensation rules include at least 135 circumstances when insurers or vocational rehabilitation organizations must send written notices to workers. Several additional notices are issued by managed care organizations, as well as the Workers' Compensation Division.

Proposed solution: The Access to Justice Committee asked the Workers' Compensation Division to adopt a rule that:

“* * * would require certain documents sent to injured workers, which are in English, be accompanied by a separate notice in multiple languages (Spanish, Russian, Vietnamese, and Chinese), advising workers of the importance of the document and where to turn for assistance. Our vision is that this notice would be included with any document that contains a deadline and affects a substantial legal right, including but not necessarily limited to, claim denials, acceptances, closure notices; and orders from the WCB and WCD.”

Justification for change: From Access to Justice Committee:

“It is our belief that the proposed rule concept will provide greater access to justice to injured workers in the state of Oregon, and facilitate speedy, fair, and impartial resolution of disputes.”

Options:

- Require by rule that all notices that include a deadline or affect a right to a benefit, include a multi-language help page (content TBD).
- Require by rule that a multi-language help page be provided to workers at certain key points in the life of the claim, e.g., acceptance, denial, closure, reopening.
- Require by rule that a multi-language help page be provided to workers once, at or before acceptance or denial of the claim.
- Other

Fiscal Impacts, including cost of compliance for small business:

The division projects that the multi-language help page would increase some costs for claims processing, proportional to the number of notices for which the help page was required. Costs for increased handling, manual envelope stuffing, or reprogramming a machine for envelope stuffing cannot be accurately estimated, but would be substantial. Increased postage costs would reflect how often mail pieces would require larger envelopes or are pushed above one ounce – again, substantial, but not quantifiable. Printing the help page should cost just a few cents per claim, though the system-wide cost would be more than \$1,000 per year, and possibly more than \$10,000 per year, depending upon how often the help page must be provided.

Managed care organizations might be affected, depending on what types of notices would be accompanied by multi-language help page. If so, the impacts would be similar to those for claims processors.

The division projects that to the extent affected workers can preserve their rights to benefits by taking certain actions within required time frames, those workers would benefit financially. The help page might therefore reduce some costs associated with warning letters, suspensions of benefits, and possibly litigation.

Although insurers and self-insured employers are generally not small businesses as defined by ORS 183.310, some members of self-insured employer groups are small businesses. However, the division does not find that the impact of a required help page would be *significantly adverse*, the threshold for creating a different standard for small businesses or exempting small businesses from the requirements of a rule requiring a help page.

The division requests the committee’s advice on fiscal impacts, including the accuracy of the information above.

Recommendation:

ISSUE #2

Rule: To be determined

Issue: What languages should a multi-language help page include?

Background: <https://www.census.gov/data/tables/2008/demo/2006-2008-lang-tables.html>

The following estimates are based on data from the U.S. Census Bureau, [Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2009-2013](#):

<i>Data for Oregon</i>	Number of speakers	Percentages	Speak English less than "Very Well"	Percentages
Population 5 years and over	3,635,006	100.00%		
Speak only English at home	3,096,638	85.19%		
Speak a language other than English at home	538,368	14.81%	225,703	6.21%
Spanish	319,160	8.78%	143,040	3.94%
Chinese (incl. Cantonese, Mandarin, other)	26,410	0.73%	13,563	0.37%
Vietnamese	25,813	0.71%	16,415	0.45%
Russian	21,884	0.60%	9,177	0.25%
German	15,170	0.42%	1,740	0.05%
French	11,275	0.31%	1,485	0.04%
Korean	10,382	0.29%	4,868	0.13%
Japanese	9,313	0.26%	3,226	0.09%
Tagalog	8,452	0.23%	2,388	0.07%
Arabic	7,938	0.22%	3,106	0.09%
Ukrainian	5,955	0.16%	3,065	0.08%
Romanian	5,665	0.16%	2,350	0.06%
Hindi	4,783	0.13%	701	0.02%

The Oregon Employment Department has published an article "[Ability of Oregon Workers to Speak English Varies by Type of Job](#)," which includes data from the University of Michigan showing that a disproportionate number of workers who speak English less than "very well" are employed in occupations such as "Natural resources and mining," which includes agriculture, forestry, fishing, hunting, and mining. A number of occupations with large numbers of limited English proficiency (LEP) workers have relatively high injury rates.

**Workers' Ability to Speak English by Industry
Oregon, 2011-2015 American Community Survey**

Industry	Speak English less than "very well"		Speak English "very well"		Speak only English		Total
	Estimate	Share of Total Number of Workers	Estimate	Share of Total Number of Workers	Estimate	Share of Total Number of Workers	
Natural resources and mining	15,888	28%	5,935	10%	35,711	62%	57,534
Leisure and hospitality	21,148	12%	18,602	10%	139,877	78%	179,627
Manufacturing	21,750	10%	22,610	11%	163,522	79%	207,882
Construction	8,520	8%	7,054	7%	85,912	85%	101,486
Wholesale trade	4,253	8%	4,316	8%	46,248	84%	54,817
Other services	6,452	7%	6,178	7%	74,626	86%	87,256
Professional and business services	12,554	7%	15,305	8%	161,386	85%	189,245
Transportation, warehousing, and utilities	4,308	5%	5,962	7%	71,150	87%	81,420
Retail trade	9,676	4%	17,486	8%	189,715	87%	216,877
Education and health services	13,181	3%	38,303	10%	350,870	87%	402,354
Information	919	3%	1,963	6%	29,726	91%	32,608
Financial activities	2,889	3%	8,434	8%	91,693	89%	103,016
Government	1,665	2%	5,195	6%	74,906	92%	81,766
Total	123,203	7%	157,343	9%	1,515,342	84%	1,795,888

Source: IPUMS-USA, University of Minnesota, www.ipums.org

The U.S. Department of Labor provides a sample notice in “10 common languages spoken nationally. These are: Spanish, Chinese, French, German, Tagalog, Italian, Vietnamese, Korean, Polish, and Russian.”

The Oregon Employment Department’s notice has statements in Spanish, Russian, Romanian, Chinese, Hmong, Vietnamese, Laotian, and Cambodian.

The Access to Justice Committee has asked that the following languages be included on a help page: Spanish, Russian, Vietnamese, and Chinese.

Options:

- Provide information in ____ of the languages commonly used in Oregon.
- Other

Fiscal Impacts, including cost of compliance for small business:

The number of languages translated should not significantly affect costs, other than initial expenditures by the division for translation. However, if a notice would not fit on a single page (front and back), the costs estimated under issue #1 would be increased substantially.

The division requests the committee’s advice on fiscal impacts, including the accuracy of the information above.

Recommendation:

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ISSUE #3

Rule: To be determined

Issue: What information should the multi-language help page include?

Background: Limited English proficiency may currently be a barrier to understanding and obtaining workers' compensation benefits. A multi-language help page may serve to reduce that barrier by providing a source of help, and the Ombudsman for Injured Workers has offered to be the source of help listed. In the [appendix](#) we have included some draft notices, as well as some samples from other government agencies. Additional important elements of a notice include statements about the importance of the enclosed document and that it may include a deadline.

Options:

- See [appendix](#).
- Other

Fiscal Impacts, including cost of compliance for small business:

The verbiage of a standard help page would have little affect on its costs unless the content would not fit on one page (front and back). Anything over one page would have substantial cost impacts in addition to those described under issue #1.

The division requests the committee's advice on fiscal impacts, including the accuracy of the information above.

Recommendation:

ISSUE #4

Rule: To be determined

Issue: Should a multi-language help page be provided in a specific format to make it stand out? May it be provided electronically?

Background: Workers receive many documents related to their claims, and an additional page may be overlooked. Multi-language help pages are often printed on colored paper. Other options, such as colored fonts, could make the information more noticeable, though any option that cannot be generated on white paper from a one-color (B&W) printer could be incompatible with notice-generating equipment and processes.

The Workers' Compensation Division is committed to removing barriers, whenever feasible, to electronic forms of communication. The division requests the committee's advice on how a help page could be provided electronically, and how to describe a help page requirement that does not inappropriately limit how the document is delivered.

Alternatives:

- Require the language help page to be printed in a specific color.
- Require the use of certain font sizes and colored paper in generating the help page.
- Specify by rule that the help page may be provided electronically, or ensure the wording of any rule or rules does not preclude electronic delivery of the document.
- Other

Fiscal Impacts, including cost of compliance for small business:

Requiring an accompanying, colored help page or colored fonts might require separate handling and manual stuffing of mail pieces. See the estimated impacts under issue #1.

The division requests the committee's advice on fiscal impacts, including the accuracy of the information above.

Recommendation:

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ISSUE #5

Rule: To be determined

Issue: Other than electronic forms of notice, who should be responsible to print a multi-language help page?

Background: Senders would need to pre-print supplies to include with certain notices to workers, especially if the help page must be printed on colored paper or otherwise in a way to make it stand out. Producing these in house could require significant staff time, and professional printing could be costly on a per-unit basis unless large quantities were ordered.

The Workers' Compensation Division currently prints and provides publications such as "What happens if I'm hurt on the job?" and Form 827, "Worker's and Health Care Provider's Report for Workers' Compensation Claims" to insurers and health care providers respectively. The division could print the help pages in large quantities at a relatively low unit cost and provide to insurers upon request. This would be optional, because some senders may have the capacity to produce help pages in the required format at the same time they produce the related notices.

Alternatives:

- Party issuing the notice to produce the language help page.
- Party issuing the notice to have the option to produce the language help page or to obtain supplies from the Workers' Compensation Division.
- Other

Fiscal Impacts, including cost of compliance for small business:

See the estimated impacts under issue #1. If the Workers' Compensation Division prints a substantial portion of the language help pages, it could likely do so at a lower unit cost than if each sender is required to print its own supply. The division would also assume the costs of shipping and handling of stock.

The division requests the committee's advice on fiscal impacts, including the accuracy of the information above.

Recommendation:

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ISSUE #6

Rule: To be determined

Issue: Should a language help page requirement be created by adopting one rule of general applicability for OAR chapter 436 or by amending each rule that has an affected notice?

Background: OAR 436-001, *Procedural Rules, Rulemaking, Hearings, and Attorney Fees*, includes rules applicable throughout OAR chapter 436, e.g., attorney fees, processing of refunds. However, division 001 is probably referenced infrequently by claims examiners. Depending on the number of notices that must be accompanied by a multi-language help page, adding the help page requirement to each relevant rule could involve much duplication.

The division could issue a bulletin listing the occasions to send the multi-language help page and providing the translated statements. The requirement would still have to be established by rule, but the bulletin might be a more convenient vehicle for claims examiners.

Alternatives:

- Adopt one rule applicable to OAR chapter 436, specifying:
 - The types of notices that must be accompanied by a multi-language help page;
 - The English text that must appear on the help page; and
 - That a full translated language help page is available on the division's website, either as a stand-alone document or as part of a bulletin.
- Amend existing rules for each type of notice that must be accompanied by the help page.
- (In addition to rulemaking) Publish a bulletin listing the types of notices that must be accompanied by the help page, plus a fully translated notice showing the preferred format – fonts, color, etc.
- Other

Fiscal Impacts, including cost of compliance for small business:

The agency would invest slightly more time in amending multiple rules than a single rule, and rulemaking might require some additional time on the part of stakeholders. In the longer term, if multiple rules are revised, any change to the required text of the notice would require reopening all of the affected rules, again requiring some additional time on the part of the agency and stakeholders. Overall, the cost difference should be minor.

The division requests the committee's advice on fiscal impacts, including the accuracy of the information above.

Recommendation:

	Drafts for workers' compensation multi-language insert
A	<p style="text-align: center;">Important Notice</p> <p>The enclosed document is an important legal document which may have a deadline. You should have a reliable translator translate it for you immediately. If you need assistance with your claim after reading this document, you should promptly seek legal advice from an attorney. If you have any questions, you can contact the Ombudsman for Injured Workers at 1-800-927-1271. This document should be kept in a safe place for future reference.</p>
B	<p style="text-align: center;">IMPORTANT!</p> <p>The enclosed document has important information about your workers' compensation claim or benefits. The document may require you to take action. If the document has a deadline, and you miss the deadline, you may lose your right to benefits, or you may lose your right to appeal decisions made about your benefits. If you do not understand the document, please contact the Ombudsman for Injured Workers at 1-800-927-1271 <i>immediately</i>.</p>
	Sample of frequently used health insurer notice
C	<p>ATTENTION: If you do not speak English, language assistance services, free of charge, are available to you. Call {phone number}.</p>
	Samples used by state and federal agencies
D	<p>Oregon Health Plan:</p> <p style="text-align: center;">IMPORTANT NOTICE</p> <p>This is an important letter that may affect your health care benefits. If you do not understand this letter, please call the Oregon Health Plan right away at 1-800-699-9075 or 711 (TTY). You can get this letter in another language, larger print, audio tape, braille or another format. You can also request free interpreter services.</p>
E	<p style="text-align: center;">U.S. Department of Labor's direction to states for notices related to unemployment insurance:</p> <p>The Department strongly recommends that states include a tag line * * * such as the sample notice below in important documents such as "call-in" notices, determination notices, appeals hearing notices, and appeal decisions. Suggested language to include with such notices is provided below:</p> <p><i>Sample Tag Line * * *</i></p> <p><i>IMPORTANT! This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.</i></p> <p><i>DEADLINE FOR APPEAL: If you disagree with this determination or decision, you must file an appeal before the deadline noted in this document.</i></p> <p><i>IMMEDIATELY: If needed, call xxx-xxx-xxx for assistance in the translation and understanding of the information in the document(s) you have received.</i></p>