

New Workers' Compensation Administrative Rule: *A solution to COVID-19 concerns*

Background: MLAC's discussion of COVID-19

Oregon's Management Labor Advisory Committee met six times for more than 14 hours examining the impact to workers filing workers' compensation claims related to COVID-19. The committee determined that there were several areas where the process for workers' compensation claims could be improved. Those areas have been addressed in the new administrative rule.

What does the new rule do?

The new administrative rule works to ensure appropriate coverage and processing of COVID-19 related workers' compensation claims in two ways:

- (1) Requires insurers to conduct a "reasonable investigation" before denying any claim
- (2) Requires an audit of insurers if an insurer has reported five or more claims for COVID-19 or exposure, regardless of whether those claims have been accepted or denied. The Workers' Compensation Division will audit the insurer's files for all claims denied by the insurer for COVID-19 or exposure for which the denial has become final.

These two additions to the current workers' compensation process will ensure that claims are not being unreasonably denied, and will ensure that workers are receiving appropriate workers' compensation benefits.

A Wise Alternative to a Workers' Comp Presumption

Calls for a workers' compensation presumption related to COVID-19 are not supported by the data presented. Oregon's workers are filing claims. Those claims are investigated and either accepted or, in a limited number of cases, denied. If a worker's claim is denied, they may appeal that denied claim as with any other denied workers' compensation claim. Labor and OTLA pointed to one health care provider/self-insurer as the "poster child" illustrating the need for a COVID-19 presumption because of that provider's high percentage of denied claims. That fact alone does not tell the entire story: data illustrated most of the claims were denied because the individuals tested *negative* for COVID-19. The denials were not because of the claim being related to COVID-19, but rather because the employee was not ill with COVID-19.

What do we do now?

The new administrative rule went into effect on October 1, 2020. There should not be any new actions taken by MLAC or the Workers' Compensation Division until we see how this rule impacts the workers' compensation cases related to COVID-19. The WCD will be conducting audits as necessary, and this will inform what, if anything, needs to be done from here.



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