

**Revised written testimony of
Kathy Gehring, vice president of claims,
And Holly O'Dell, vice president of legal and strategic services at SAIF
To the House Business and Labor Committee
May 27, 2020**

Kathy Gehring, vice president of claims

Good morning Chair Holvey and members of the committee, thank you for inviting me to testify today. My name is Kathy Gehring and I am the Vice President of Claims for SAIF Corporation.

SAIF is Oregon's not-for-profit workers' compensation insurance company and the largest workers' compensation carrier in the state. For more than 100 years, we've been taking care of injured workers, helping people get back to work, and keeping rates low by focusing on workplace safety.

Beginning prior to the governor's emergency declaration, SAIF created specialty teams to serve workers and policyholders impacted by coronavirus exposure and COVID-19 illness. We also established a \$25 million coronavirus worker safety fund and have provided awards to more than 3,400 businesses to purchase personal-protective equipment (PPE), cleaning supplies, and worksite modifications to protect workers from the virus.

To date we have received around 350 COVID-related workers' comp claims. More than 90% are from healthcare and residential care workers, while 3% are from first responders. 14 claims came from all other industries combined. Some are exposure-only claims made by workers who are still healthy. For symptomatic workers, we're finding that most are able to be tested now, with improvements in testing availability. About two-thirds of the workers who filed claims were tested, and about half of those tests were positive.

In processing these claims, SAIF seeks to determine if the exposure occurred at work, applying learnings from public health authorities about transmission. For workers who come into contact with an infected customer or patient at work, SAIF generally accepts the claims and pays benefits. Workers' compensation benefits in Oregon are quite robust, and payments can include time loss for quarantine or time off sick, diagnostic and treatment-related medical services, permanent disability, and, in the event of a fatality, payments to beneficiaries.

For workers with no known work exposure to someone sick, or with a primary off-work exposure, SAIF seeks additional information from the employer and the worker and will sometimes request a medical opinion to learn the likely cause of the condition. If it appears the transmission occurred at work, SAIF generally accepts the claim and pays benefits. Overall, where the laws and rules are silent or permissive, SAIF is making decisions that favor the worker. It has been interesting to note that our standard practice goes beyond even some of the presumptions in other states.

Of the claims that have been processed, SAIF has accepted 247 and denied 44. The denied claims are primarily for workers that had no known exposure at work and that did not have a positive test. SAIF has denied only two claims for workers who tested positive. One was exposed in the home to a known-positive individual and became symptomatic two days prior to the first claimed work-related exposure. The second also lived with individuals who were ill for some time before he became symptomatic, an exposure pointed to by public

health authorities who followed up. So far, workers and policyholders have understood SAIF's claims decisions, and there are no pending appeals or disputes.

As a safety and health company, SAIF takes its mandate to serve workers and policyholders during this time very seriously. I look forward to sharing any information about our experiences that may help this committee in its efforts.

Holly O'Dell, vice president of legal and strategic services

Good morning Chair Holvey and members of the committee. My name is Holly O'Dell. I serve as SAIF's Vice President of Legal and Strategic Services. Prior to coming to SAIF, and while obtaining my legal degree, I worked in public health as a registered nurse.

Oregon's workers' compensation system is stable, strong, and has stood the test of time, serving its core purpose of providing benefits to workers for workplace injuries and protecting employers from liability—an arrangement often referred to as "the grand bargain." The system is currently functioning very effectively in meeting today's challenge, by compensating workers for work-related COVID-19 conditions.

In response to the concept of a presumption, SAIF has three primary concerns.

First, it is unclear to SAIF what problem proponents seek to solve with a presumption. As Oregon prides itself on a scientific and data-driven response to this public health crisis, it is key that the legislature carefully define any gap for workers it is trying to address, and then seek to articulate a targeted solution to that particular gap. Today, when an on-the-job transmission of the virus occurs, workers are already covered by workers' compensation. Presumption bills in different states are not even close to being the same. The proposal brought forward today represents an extraordinary overreach, in that it is one of the most broad and comprehensive bills nationwide. Between health insurance and mandatory and voluntary sick leaves, we have better ways to ensure a strong safety net for workers who contract the virus off-the-job. Federal sick leave provides a higher payment for missed time than workers' comp. Proposing solutions to any gap should be undertaken with caution and only after a clear understanding of the problem.

Second, a presumption that COVID-19 is by definition work-related would alter the basic premise of workers' compensation and threaten the grand bargain, by removing the key consideration that illnesses must occur on the job to be covered. What is being referred to as a presumption in the proposal is essentially a claims guarantee. While limited and focused presumptions exist today, the proposed changes to the core compensability standards are fundamental and far-reaching, threatening a successful system currently based on the core principle of providing benefits for illnesses caused by work.

Third, any claims guarantee would not be sufficiently responsive to the rapidly changing environment. A broad guarantee is inconsistent with emerging OSHA guidance for workplaces, which explains that some workers outside the home experience "very high" risk, some "medium" risk and some a "low" risk of workplace transmission. We understand that in California, the executive order there would have caused workers' compensation to cover an individual who became sick after traveling out of state to visit her father dying from COVID-19, individuals with no known work exposure going to work while caring for sick family members at home, and individuals who never had

contact with the public at work. These varied scenarios match SAIF's claims experience. The fact that someone is working doesn't mean they're doing something which creates an extraordinary risk of on-the-job transmission of the virus. The proposal discussed today would create a claims guarantee for many low risk workers, such as landscape workers mowing lawns, administrative staff opening mail in an otherwise closed office building, information services technicians working on network cables, or professors on campus delivering remote learning. Workers' compensation, when done right, is worker and case specific.

A claims guarantee is also inconsistent with the shifts caused by the gradual reopening of the economy. As more workers return to work, many more people are increasing their engagement in non-work public activities at the same time, which create countless opportunities for non-work-related infection. Public health authorities have established that the majority of cases are now "community" transmitted, rather than "point source" transmitted.

Further, a guarantee is inconsistent with the growing requirement of contact tracing, under which we seek to understand how an individual was infected, to identify and prevent subsequent infections. An assumption of a work-related cause, especially when directly contrary to the medical information in a given case, thwarts these public health efforts.

As Ms. Gehring mentioned, as Oregon's not-for-profit insurance company, SAIF is dedicated to the long-term health of Oregon's workers' compensation system. It is critical that as we address immediate needs, we ensure our approach does not undermine a system that is working extremely well.

Thank you for your time and I am happy to answer any questions.