



A STRONG VOICE FOR OREGON'S WORKERS

TO: Chair Prozanski
Vice-Chair Thatcher
Members of the House Senate on Judiciary

FR: Jess Giannettino Villatoro, Political Director, Oregon AFL-CIO

RE: Worker Centered COVID-19 Policy Response

June 3, 2020

Thank you for the opportunity to submit testimony. Oregon AFL-CIO represents over 300,000 workers across the state and is a voice for all workers in the legislative process. As of mid-May, Oregon saw over 2.5 times the number of unemployment claims as it did during the height of the Great Recession. It is no surprise that Oregon's economy and workers are suffering great economic hardship. And for workers that have either continued working or are just starting to be allowed to return to work, still much uncertainty looms.

Without coordinated policy responses from state and local governments, we can expect the impact on working families to continue to be more challenging than most working families can weather on their own. In this testimony, you'll find policy recommendations that center workers and their families for the short and long-term. Many of these policy recommendations cannot wait much longer to be acted on, especially those that center on workplace safety and economic support. Workers will be too far behind economically, medically, or both if the below short-term policy recommendations are not acted on swiftly, and prior to the 2021 long session. Additionally, it's important to keep in mind how critical it is to provide MORE protections for workers and not take away existing protections or undermine them through our actions during this crisis. From a worker perspective, sweeping employer immunity is in direct contradiction to protecting workers in this dangerous, potentially deadly time. There must be great care and caution brought to that conversation to avoid putting even more of a burden on the very workers we deem as essential and our everyday heroes. It is also troubling to see proposals to pause the 2020 minimum wage increase at a time when low-wage workers are bearing the brunt of this economic collapse and potentially facing further financial ruin. From a worker perspective, sweeping employer immunity is in direct contradiction to protecting workers in this dangerous, potentially deadly time. There must be great care and caution brought to that conversation in order to avoid putting even more of a burden on the very workers we deem as essential and our everyday heroes.

The recovery plan must center the safety of workers and the communities they serve, if reopening the economy is to happen effectively. Since the pandemic hit Oregon, workers have been asked to either work without adequate personal protective equipment (PPE) or to reuse it in a way that the equipment was never designed to do. For example, grocery workers that are UFCW members went 6-8 weeks without adequate masks, sometimes being told they weren't allowed to wear them. A Whole Foods worker in Portland died.

As workers return to work, there will need to be additional precautions taken to ensure workers continue coming to work and are safe to do so. We've seen higher contraction rates for BIPOC communities, especially with the most recent outbreak at Townsend Farms. If workers aren't guaranteed enforceable protections, they will be apprehensive to return, and Oregon's economy will suffer.

Workers Compensation Presumption

Consistent with this [letter sent to the legislature on April 16th](#), Oregon must statutorily create a presumption for Coronavirus exposure at the earliest possible opportunity. As previously addressed, there are no safe levels of exposure. Healthcare workers, grocery workers, first responders, transit workers and many more have been exposed throughout the quarantine, and as Oregon embarks on re-opening more types of workers will be exposed while at work and will contract COVID-19. [Governor Brown's, Stay Home Stay Safe Executive Order 20-12](#) gave clear guidance on certain types of employers closing but did not designate *essential employees* as other states did. Oregon's workers compensation presumption must be reflective of that policy choice and ensure that all workers who could continue working on-site after March 24th are presumed to have contracted COVID at work.

Workplace Safety, OSHA Standards and Personal Protective Equipment (PPE)

Current efforts that attempt to set parameters for employment protections regarding COVID-19 are time limited as they are largely tied to executive orders and will not continue to be effective as the Executive Orders expire and the reopening phases continue. The guidance isn't clearly enforceable for all types of employment situations, which allows each employer the discretion to implement, ignore, or selectively follow the guidelines issued by the agencies. Workers have the right to consistent levels of protection that will be implemented in all workplaces where occupational exposure to the coronavirus can be anticipated. There is no existing Oregon OSHA standard or basic regulatory framework that comprehensively and enforceably addresses an employer's responsibility to protect workers from infectious diseases. In the absence of a set of mandatory infection control requirements, there is no assurance that all workers will be protected from infectious diseases like COVID-19. Workers who are not protected from occupational exposures of COVID-19 or if they have a false sense of protection, may infect the clients they serve or not come to work, which will jeopardize public health and the control of exposure to the pathogen. Oregon is one of 21 states that operates a state plan under the Federal OSHA framework, because of this designation we can enact such a standard and must do so expeditiously.

Additionally, Oregon OSHA's fine structure is too low to deter bad actors from violating employer guidance. As mentioned, Oregon OSHA operates one of 21 state plans. Even when workers are killed on the job, penalties are incredibly weak. During fiscal year 2018, the median initial penalty in fatality cases investigated by federal OSHA was \$10,348, reduced to \$7,761 after settlement. For the state OSHA plans, like Oregon's, the initial median penalty in fatality cases was \$3,500, reduced to \$2,700 after settlement. Oregon has among the lowest fine structures of the state plans, even while maintaining above average inspection rates. While we applaud Oregon OSHA's citing of the Albany food processing plant that had multiple workers test positive and proceeded to allow workers on the processing line 2 and 4 feet apart, the initial fine was only \$2,000 and can be appealed and lowered.

Oregon OSHA also has what's called a feasibility defense. For example, I heard from a worker whose job was to move 12" heavy materials. This material is so heavy that it requires two people on both sides. This worker had a partner that was coughing on him all day. He attempted to discuss the issue with the employer and was told there was nothing to be done. Under OSHA's feasibility defense, they could be informed of the situation which clearly violates social distancing guidelines, and if there was no "feasible way" for the employer to comply, then the worker would have no recourse.

To ensure workplace safety, Oregon OSHA should adopt an infectious disease standard via and Emergency Temporary standard no later than August 1, 2020 with subsequent rulemaking for a permanent infectious disease standard. The standard should accomplish at least the following benchmarks:

- Acknowledge a range of workers who are at an elevated risk of exposure to infectious diseases, including health care, first responders, grocery workers, laboratory workers, transit operators, waste and wastewater management, occupations that require travel and many others.
- Incorporate the hierarchy of controls, utilizing engineering controls, like the plexi-glass barriers you see in the grocery stores as the first line of defense.
- Require employer-provided NIOSH-certified N95 respirators and other PPE for health care and other workers at an elevated risk, requiring all customers/clients/patients who can wear a mask to do so

- Comprehensive requirements under an Oregon OSHA infectious disease standard would help alleviate the equipment stockpile issues that Oregon and other states are currently facing, as employers would understand the number of PPE requirements and could project and communicate needs.
- Ensure social distancing can be followed in retail establishments by limiting the number of customers that can enter at any given time, calculated by using half of the respective establishment's square footage
- Outline a risk-based model for many workers who require different levels of protection depending on the tasks they are performing and their potential exposures and industry.

In addition, the majority of this committee is versed in the manufacturing overtime statute, that has been discussed throughout several legislative sessions. As you may remember a piece of that historic statute that allows for the temporary suspension of provisions of the statute where "life or property" face imminent danger. Workers in food processing are experiencing some of the worst workplace outbreaks of COVID-19, while simultaneously lacking the increased overtime protections passed by this committee during the 2017 legislative session. In addition, the cap on hours that is currently suspended, workers are taking home less overtime pay in this industry because of the statute suspension. We'd respectfully ask this committee to consider limiting the amount of time a rule suspension can take place, ensure that workers aren't paid less as a result of the suspension, and ensure that workers are still consenting in writing to increased hours.

Access to protected and paid leave must be provided to all workers before returning to onsite work.

Far too many workers are experiencing the downfall of clear holes in our paid and protected leave statutes. Unlike traditional colds or flus, we can expect that workers will be exposed to and potentially contract this devastating virus multiple times depending on their profession. Most workers have access to *protected leave* under Oregon and Portland's sick time protections. However, only workers who are at an employer whose size is 10 or more employees statewide have access to 40 hours of *paid sick time*, the same provisions apply to workers whose employer has 7 or more employees in Portland. The Families First Coronavirus Response Act provided 80 hours of paid sick leave, but only for workers whose employer's size is 500 workers or less and allows employers smaller than 50 to exempt themselves. Workers who have either exhausted their paid sick time, or who don't have access to paid sick time are being put in the impossible situation of maintaining their economic security and sometimes their healthcare or going to work with symptoms.

We must expand access to paid sick leave protections and time to care for workers to care for themselves or family members that reflects the Coronavirus' exposure risk. Oregon's paid sick time laws never intended to solve for this long of a quarantine period. We recognize the cost associated with additional paid sick time, and should look for potential strategic investments out of the Federal Relief dollars that could be made to offset additional costs to employers.

Under Oregon's COVID-19 Unemployment Rules many workers are provided $\frac{2}{3}$ of their wage replacement for numerous reasons. If these workers are on UI then they can be disciplined or even terminated for not returning to work, and lose all rights to continuity of benefits, including healthcare. This is also true for workers who are immunocompromised themselves or live with someone who is. They have no protections to both maintain their future economic security, or healthcare. Other states like Washington have taken executive action to prevent firings of immunocompromised or older workers, but Oregon doesn't have the executive authority to do so. Under some of the COVID-19 rules workers are remaining employer attached, to reduce confusion, we could expand a version of OFLA to ensure workers aren't accessing UI lawfully, and then losing their right to return and benefits.

These are a few examples of steps the legislature can take to ensure working families have the job protections and economic security they need to weather this unprecedented public health and economic crisis. We look forward to working with this committee, other worker advocates, and the business community to address some of these challenges. Thank you for the time

Additional Principles for Centering Workers and their Families during COVID-19

The economic recovery must fund the frontlines and be focused on investments in public infrastructure. Oregon's unemployed are bearing the brunt of chronic underinvestment in public infrastructure. Some unemployed workers are on week 8 of having not yet received their first unemployment check due to outdated technology at the Oregon Employment Department. It is time to reverse course and re-invest aggressively in public services – both to ensure the pandemic is under control, and to make sure we're properly equipped to respond to future challenges. This includes ensuring Oregon's schools are adequately staffed as reopening occurs. As the state grapples with budget challenges they must center working people in the decisions they make. We must also decide on a long-term infrastructure plan that puts building and construction trades members to work with strong labor standards, such as Community Benefit Agreements and Project Labor Agreements and continues to update Oregon's transportation and construction needs.

The economic recovery must be focused on ensuring that the economic gaps experienced by women and BIPOC and undocumented communities are not further exacerbated. Prior to the COVID-19 public health and economic crisis women in Oregon made 79 cents for every dollar men do and BIPOC women have further economic deficits with Black women in Oregon making 66 cents, Latina women making 51 cents per dollar compared to white men in Oregon([source](#)). Benefits and workplace flexibility policies and ability are also more readily available to higher income earners. The ability to telecommute varies greatly by income level. Only 7.9% of workers who make up to \$32,760 are able to telecommute compared to 34.9% of workers who make \$79,520 annually([source](#)).

Direct Employer Relief must be accompanied by High Road Labor Standards. The COVID-19 recovery should ensure the highest transparency of investment of dollars to employers and workers in the relief efforts. Employers will continue to need additional investments to ensure a stabilization of Oregon's workforce, and that funding should both incentivize high road labor standards and require employers receiving investments to create or maintain quality employment opportunities.

Oregon's goal should not be to return to a Pre COVID-19 Economy. This unprecedented public health and economic crisis has exposed for everyone the very real gaps in the National and State employment policies that worker advocates have been highlighting for decades. Misclassification of workers as independent contractors instead of employees leaves them entirely vulnerable lacking workplace safety protections and workers compensation and without an additional carve-in to unemployment they will be left without any wage replacement. Worker representatives from various sectors should be included in structures convened to discuss the economic recovery and job creating.