

**Written testimony of  
Kathy Gehring, vice president of claims,  
And Holly O'Dell, vice president of legal and strategic services at SAIF  
To the Senate Labor and Business Committee  
September 22, 2020**

Chair Taylor and members of the committee, my name is Kathy Gehring and with me is Holly O'Dell. Thank you for inviting us to testify today. I am the vice president of claims for SAIF. Holly is the vice president of legal and strategic services.

SAIF is Oregon's not-for-profit workers' compensation insurance company insuring approximately 53% of Oregon's businesses. 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.

My focus today is to provide you with information specific to the COVID-related workers' compensation claims SAIF has received and details into how we are managing those claims for Oregon workers and employers.

Overall, SAIF has had approximately 75% of the state's workers' compensation claims for COVID-19. As of September 15, we have received 956 COVID-related workers' compensation claims. 76% are from healthcare and residential care workers, while just over 6% are from first responders. The remaining claims, approximately 18%, have come from all other industries combined. 61% are exposure-only claims made by workers who are still healthy. "Exposure-only" means the worker has been in contact with an infected person but they do not have symptoms and have not tested positive for COVID-19. For workers with symptoms, we're finding that now, as testing availability has improved, most workers can be tested. About 72% of the workers who filed claims have been tested, and about 40% of those tests were positive.

In processing these claims, SAIF seeks to determine if the exposure occurred at work, applying information from public health authorities about transmission. For workers who come into contact with an infected customer or patient at work, SAIF generally accepts the claim without significant investigation. 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 sometimes requests a medical opinion, to learn the likely cause of the condition. After the investigation, if it appears the transmission occurred at work, SAIF generally accepts the claim and pays benefits. Workers' compensation benefits in Oregon are quite robust, and payments can include time loss for quarantine or illness, diagnostic and treatment-related medical services, permanent disability, and, in the event of a fatality, payments to beneficiaries.

Of the claims that have been processed, SAIF has accepted just over 86%, with 723 accepted and 97 denied. The denied claims are primarily for workers that had no known exposure at work. For 79 of the denied claims, the worker did not test positive for COVID-19. Eighteen denied claims, or 2% of our claims total, were for workers who tested positive for COVID-19 but had off-work exposure as the cause of the condition. For example, one worker was exposed in the home to a known-positive individual and became symptomatic two days prior to the first claimed work-related exposure. In another example, a worker was informed by public health officials that he was exposed at home. Workers have the

right to appeal claim decisions and retain an attorney at no expense. Of the 820 claims decisions we've issued, three appeals have been filed.

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

Chair Taylor and members of the Committee, I am Holly O'Dell, the vice president of legal and strategic services. I've been asked to provide some background on MLAC and on presumptions.

In the 1980s, Oregon's workers' compensation system was in crisis. We had the sixth highest workers' compensation insurance premiums in the country, and the costs to businesses had almost doubled in ten years. In addition, we had among the nation's highest claims rates and medical costs, and a poor rate of returning injured workers back to the workforce.

In 1990, the governor convened seven representatives from management and seven from labor at the governor's residence, Mahonia Hall, to fix the workers' compensation system so that it worked for both workers and businesses. Their reforms, focused on safety, return to work, and managing medical costs, were adopted in a one-day special session called to address the crisis. They also established the Management-Labor Advisory Committee (MLAC). Made up of five representatives from management and five from labor, the group continued the partnership started at Mahonia Hall. MLAC's statutory mandate is to advise the legislature on the workers' compensation system. Policymakers have relied on MLAC to maintain the balance brought to the system by the 1990 reforms.

Every measure of the workers' compensation system has improved dramatically since the 1990 reforms. Today, Oregon's workers compensation system is considered a model for other states of a system that balances the needs of workers and employers. Since the reforms, Oregon has maintained strong benefits for workers and seen high return-to-work rates. Unlike many other states, Oregon has increased benefits to workers, including linking benefits to average weekly wage, raising the maximum benefit level, and increasing benefits for permanently and totally disabled workers.

Throughout this summer, MLAC has been and continues to review issues pertaining to COVID-19 and workers' compensation. Last week, they recommended the adoption of an administrative rule that standardizes investigation requirements to strengthen decision-making on COVID claims across the workers' compensation system. The rule would mandate some best practices identified in part by SAIF's processes and experiences with these claims, including obtaining medical opinions to help determine whether workers were exposed to coronavirus at work. Discussions are continuing on whether to recommend additional measures, including a presumption.

So, what is a presumption in legal terms? Generally speaking, a presumption is when the law requires an inference as to the existence of a fact that is otherwise unknown or uncertain and for which evidence would usually be required. This is sometimes called a legal fiction, because the fact is assumed without evidence, or contrary to evidence. This is contrasted with the general legal principle that the facts of each case are determined individually, and that the weight of the evidence in the specific case determines the

outcome. Presumptions are sometimes used to achieve policy goals by facilitating what are identified as equitable outcomes in legal issues.

Oregon's workers' compensation system is generally designed to compensate workers for work-related injuries or illnesses. In Oregon, a worker can be compensated for coronavirus illness, or solely for coronavirus exposure, when the exposure occurs on the job. Like with other injuries and illnesses, we determine whether the condition is work-related based on the specific facts of the case.

A presumption would replace the worker and case-specific inquiry with an assumption that each covered worker filing a claim was exposed at work, rather than off-the-job. This fact would be assumed if there was not yet any evidence one way or the other, or even if the only evidence indicated the worker was not exposed at work. Some presumptions can then be rebutted with additional facts, and there are various potential schema related to who holds the burden of proof, and the standard of proof required to meet that burden. Other presumptions serve as conclusions. The key is that, at first, rather than coming into the case looking for an open-ended answer to the question as to where the worker was exposed, we would be coming into the case presuming that all exposures and illnesses for covered workers occurred at work.

So what is the problem in the workers' compensation system that a presumption would solve? And is a presumption the right answer to that problem, or are there other approaches? It will be useful for MLAC to carefully define any and all gaps for workers in the current system.

It may be helpful to ask: Do we have a higher risk that a worker exposed to coronavirus at work will be unable to be compensated through the current process, which relies on case-specific medical evidence about exposure? Or is there a higher risk that workers exposed to coronavirus off-the-job would be covered in error with a blanket presumption, potentially threatening the "grand bargain" around which the system is designed?

As the crisis evolves, perhaps insights from public health can assist in this determination. Are such a high percentage of coronavirus cases in the working population work-related that an ill person is so likely to have been exposed at work that the system should presume all cases work-related? Or are the majority of cases currently transmitted in the community, such that a case-by-case analysis remains appropriate?

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. We are committed to ongoing conversations around these targeted gaps and opportunities, and we would be pleased to provide any additional information you may find helpful. Thank you for your time, and we are happy to answer any questions.



# **SAIF COVID-19 claims**

**(through September 15, 2020)**

- 956 COVID-19 claims. 76% healthcare and residential care workers
- 72% were tested; 40% of those were positive
- 723 accepted, 97 denied, 63 void, 73 still being determined