



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Workers' Compensation Division

350 Winter Street NE

PO Box 14480

Salem, OR 97309-0405

1-800-452-0288

503-947-7810

[www.wcd.oregon.gov](http://www.wcd.oregon.gov)

January 29, 2021

Representative Paul Holvey  
Chair, House Committee on Business and Labor  
*Via email*

RE: Follow up information for HB 2039

Dear Rep. Holvey:

On Jan. 27, 2021, the House Committee on Business and Labor held a hearing on HB 2039. This memo provides follow up information to several questions from committee members.

#### *Records storage and claim processing locations*

Rep. Witt asked if an injured worker's access to claims records could be impaired if the records were kept out of state. We agree that this is an important consideration. Current administrative rules (OAR 436-060-0017) require insurers and self-insured employers to make claims records available to a worker or worker's attorney, upon request and free of charge. The rules require the insurer to respond to a request for records within 14 days of receipt or in 30 days for records that have been archived. Insurers who do not respond timely may be subject to civil penalties. These rules would continue to apply under HB 2039.

Rep. Evans also stated some concerns about cloud storage of records. We agree that safety and security of a worker's personal and medical information is essential. Section 3 of the bill amends ORS 731.475 which is part of the Insurance Code. Oregon insurers are currently subject to data safety and security standards under both the Insurance Code and federal laws. We intend to ensure that our rulemaking sets standards for electronic record storage that are consistent with the requirements insurers already must follow. If you would like more information about details of those requirements, please let us know.

#### *Licensed landscape contracting businesses coverage alignment*

Rep. Evans commented that the changes regarding landscape contractor businesses could be a transfer of responsibility. The purpose of the change under HB 2039 is not to absolve any party of the responsibility to provide required workers' compensation coverage. Licensed landscape contractors are already required to have coverage under both workers' compensation law and state licensing requirements. The change is intended to ensure that if a licensed landscape contractor's worker is injured, the contractor rather than the prime employer is responsible for

the claim. The change increases the possibility that the coverage responsibility rests where it belongs – with the direct employer. It also treats landscape contractors the same way as similarly licensed construction contractors are treated under current law.

Rep. Holvey asked if a homeowner could be liable for a workers' compensation claim involving a landscape contractor who is also an independent contractor. Under both current law and HB 2039, a homeowner who engaged a licensed landscape contracting business would not be considered a "prime employer." This is because for a person to be responsible for providing coverage to a contractor's employees, the work being contracted must be an ordinary part of the person's trade or business. Homeownership is not a trade or business, and thus this particular statute about prime employers would not apply. In the event that the landscape contractor failed to provide workers' compensation insurance as required by their licensure, and a worker was injured, the worker would be entitled to benefits and the contractor would be found to be a noncomplying employer. A homeowner could potentially have non-workers' compensation liability, such as liability under a homeowner's insurance policy. HB 2039 is not intended to address that separate situation.

We appreciate your consideration of the bill. Please let us know if you have any further questions.

Sincerely,

A handwritten signature in blue ink that reads "Sally Coen".

Sally Coen  
Administrator

Cc: Jan Nordlund, Committee Administrator