



Oregon

Tina Kotek, Governor



Department of Consumer
and Business Services

MLAC Legislative Guidance Questions for Workers' Compensation Division LC 390

1. How does the proposal support the values of MLAC?

The proposal supports several of MLAC's values.

- **Efficiency:** The proposal would replace a paper-based coverage reporting process that is inefficient for employers and WCD with an automated EDI reporting process.
- **Stability and Flexibility:** The proposal would make it easier for employers and WCD to adapt to future changes in technology and industry practice.

2. What specific problem are you trying to solve? What caused the problem? Why is it a problem? What does the proposed change do?

The proposal addresses two main problems.

- Current law defines a worker leasing company a person who 'provides workers' to a client. However, this definition doesn't reflect the business practices of modern professional employer organizations, or PEOs.

The problem was caused by changes in industry practice over time. For a more in-depth discussion of how the industry's practices have changed since ORS 656.850 was enacted, please see the attached bill analysis.

The outdated definition is a problem because it increases the risk of disputes over the scope of a PEO's coverage and licensing obligations. The division and its PEO stakeholders generally agree that PEOs qualify as worker leasing companies despite changes in industry practice. However, if a legal challenge was presented, it could expose PEOs and clients to significant liability, because currently the law does not allow an employer to transfer its workers' compensation coverage obligations to a third party outside the context of a worker leasing arrangement.

The proposal addresses this problem by deleting the term 'worker leasing company' from statute and replacing it with the term 'professional employer organization', defined as a person that assumes specified employment responsibilities for a client's workers under a contract. This definition is

consistent with model language used in many other states, and we believe the vast majority of current licensees would fall under it.

- Current law requires a worker leasing company to provide notice to the division whenever it provides coverage to a client. Companies meet these requirements using forms called worker leasing notices and termination notices, which are manually entered into an employer data system by division staff.

Worker leasing clients are the only carrier-insured employers whose coverage data is reported using a form-based process. Coverage for most other Oregon employers is reported electronically by their insurers using electronic data interchange (EDI).

The problem arose over time. When ORS 656.850 was first enacted, EDI reporting was not yet available, so worker leasing company reporting requirements were not written with this type of reporting in mind.

The proposal addresses this problem by requiring a worker leasing company to provide notice to its insurer, rather than the division, when it provides coverage to a client. The division could then accept client data from insurers via EDI, which would greatly reduce the administrative burden on worker leasing companies and the division.

3. Has the issue been addressed previously? Does the proposed change reinstitute a practice/benefit that was available pre-Mahonia Hall reform? If yes, do we know the reason for the change as part of the reforms?

ORS 656.850 was first enacted in 1993, after the Mahonia Hall reform, and has not been substantively amended since.

The division brought forward an earlier version of this bill in 2023 as LC 418 (SB 213). Some stakeholders raised concerns with the preliminary language, and at the division's request, the bill was tabled to allow time for further discussions.

In 2024, Rep. Holvey brought forward HB 4005, which addressed some of the same issues as the division's bill but took a different approach to defining a PEO's relationship with client workers. It remained in committee at adjournment.

4. What data supports or illustrates the effect of the proposal? What data is or is not available? What limitations exist in obtaining the data? If there are limitations, in what instances do we support a change even without compelling data?

Over the past year, WCD's worker leasing program received and processed approximately 5,000 paper notices for worker leasing clients. A sample is attached to give the committee a sense of the administrative burden these notices entail for PEOs and the division.

WCD's coverage records reflect that approximately 8,000 Oregon employers obtained their workers' compensation coverage through a worker leasing company as of the fourth quarter of 2024, a 13% increase since the fourth quarter of 2022. Based on this trend, we expect the work involved in processing worker leasing notices to increase.

One limitation to this data is that transactional paper reporting tends to be less reliable than automated electronic reporting. As a result, WCD's coverage records for worker leasing company clients may be incomplete.

The risk posed by the outdated definition is more difficult to quantify, since it is most likely to arise out of litigation. That said, updating the definition would eliminate that risk while having almost no impact on stakeholders.

5. How many workers does the problem affect? For example, does the problem affect 2 percent of all workers or 100 percent of all workers?

WCD has no data on how many workers are employed by worker leasing company clients, but based on the number of current clients, a conservative estimate would be tens of thousands.

An employer's decision to obtain coverage from a worker leasing company clients versus an insurer has no effect on its workers' rights under ORS chapter 656. However, the problem could affect workers to the extent that it increases the risk of coverage disputes, which can delay claim acceptance.

6. Do we know the potential costs for insurers if the proposal went into effect?

WCD doesn't anticipate any immediate costs to insurers. Worker leasing companies are already required by rule to provide notice to their insurers when they provide coverage to a client, and insurers are already required to electronically report proof of coverage data on employers they insure, including clients¹.

However, if the proposal goes into effect, WCD does intend to adopt rules either allowing or requiring insurers to provide coverage to worker leasing company clients using an MCP model. Making this change could create costs for insurers.

¹ Under the current reporting scheme, insurers report proof of coverage data to NCCI, which routes the data to WCD. NCCI does not route data on worker leasing company clients to WCD, at WCD's request.

The division will ask insurers about potential costs as part of its rulemaking process and take that feedback into account when drafting final rules.

7. Do we have any feedback or position from the Ombuds Office for Oregon Workers' or the Small Business Ombudsman?

Ombuds Office for Oregon Workers' and the Small Business Ombudsman are in support of LC 390.

8. What stakeholders are affected (workers, employers, insurers, medical providers, etc.). Do they support the proposal?

The proposal primarily affects worker leasing companies and insurers. Workers and employers are affected only to the extent that the current state creates some risk of coverage disputes and/or delays in claims processing.

Our understanding is that NAPEO, the National Association of Profession Employer Organizations, generally supports the proposal. NAPEO has requested minor amendments, attached.

We also engaged with SAIF Corporation and the American Property and Casualty Insurance Association, APCIA and OTLA. SAIF brought up some potential issues with the concept, which we are working with them to address.

9. Has the party bringing this proposal forward researched the fiscal impact on affected parties? Has the Oregon Workers' Compensation Division (WCD) provided a potential system cost for the proposed change? If not, please work with WCD to fulfill this request before presenting to MLAC.

WCD believes the proposal will have minimal fiscal impact on stakeholders, except as discussed in question 6.

To fully implement the proposal, WCD will need to conduct rulemaking and make various system changes. We anticipate absorbing these costs using existing resources.

10. While working with WCD, please also consider an analysis of the scope of your proposed change to the system. How will the potential legislation globally affect current rules, laws and/or practices?

Oregon rules and laws, including rules and laws in areas other than workers' compensation, contain numerous references to worker leasing companies. These references will need to be updated to use the new PEO terminology.

As discussed above, some reporting practices for PEOs and insurers will change under this proposal. The coverage and licensing requirements that apply to PEOs will not be affected. Client employers and workers will also not be affected