

SB 802 -1 STAFF MEASURE SUMMARY

Senate Committee On Labor and Business

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Meeting Dates: 3/23, 3/30

WHAT THE MEASURE DOES:

Directs Director of Department of Consumer and Business Services to study issues relating to workers' compensation for secondary effects of infection by SARS-CoV-2 or diagnosis with COVID-19 and report to appropriate committee or interim committee of Legislative Assembly before September 15, 2022. Sunsets January 2, 2023.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Replaces the measure. Establishes that subject worker's development or presentation of a debilitating medical condition that likely resulted from previous COVID-19 infection is presumed compensable as an occupational disease within 30 years after expiration or termination of the Governor's state of emergency related to COVID-19. Limits presumption to essential workers during the emergency period who has not previously filed a claim for occupational disease or injury directly related to exposure to SARS-CoV-2 or development of COVID-19 condition and who was exposed to, quarantined for, tested positive for, or diagnosed with COVID-19. Allows insurer or self-insured employer to rebut presumption or deny a claim only with clear and convincing evidence. Establishes that lack of express confirmation of previous exposure to or development of COVID-19 condition is not sufficient to rebut presumption. Defines "essential worker" as a public safety personnel, peace worker, medical services provider, retail or restaurant employee, school employee, child care facility employee, agricultural worker, janitorial or sanitation worker, or employee of a public body who provided housing, shelter, or health and wellness services while direct contact with the public, who, at an employer's discretion, must or may have worked at an assigned work site other than the subject worker's residence during the emergency period. Adds exposure to or infection by COVID 19 to definition of "occupational disease" for purposes of workers' compensation claims. Applies presumption to claims for occupational disease or injury submitted on or after effective date of measure and to claims submitted and were pending but for which compensation was not yet determined before effective date of measure. Declares emergency, effective on passage.

BACKGROUND:

Workers' compensation insurance provides medical treatment and lost wages to employees or their dependents in the case of employment-related accidents or illnesses. Oregon employers are required to carry workers' compensation insurance or be self-insured. Established in 1990 as part of major reforms to the state workers' compensation system, the Management-Labor Advisory Committee (MLAC) provides a forum for business and labor to meet, explore, and resolve issues involving Oregon's workers' compensation system. In a letter dated June 22, 2020, Governor Brown asked MLAC to identify problems or gaps in the workers' compensation system related to COVID-19, including analysis of and recommendation for a presumption in favor of compensability for claims related to COVID-19. In response to that request, MLAC recommended several administrative fixes but was unable to achieve consensus on the question of a presumption.

In testimony before the House Committee on Business and Labor this February, the co-chair of MLAC representing labor recommended adoption of a presumption in favor of coverage of COVID-19 claims, but noted this was a policy decision that must be made by the legislature. The co-chair representing management testified at the same

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meeting that the administrative fixes have resulted in a 95 percent acceptance rate for COVID-19 claims and that the management members of MLAC are unclear what issues require a presumption in favor of COVID-19 claims.

Senate Bill 802 with the -1 amendments establishes a revocable presumption in favor of compensability for claims that likely resulted from previous COVID-19 infection within 30 years after the expiration of the Governor's state of emergency related to COVID-19. The presumption is limited to essential workers who worked at assigned locations during the state of emergency and were exposed to, quarantined for, tested positive for, or were diagnosed with COVID-19. If enacted, the measure would apply to all claims filed after the effective date and all claims for which compensation was not determined before the effective date.