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Testimony in Support of SB 801-2, April 8, 2021
Kate Suisman, Coordinator of Campaigns and Alliances

Chair Riley, Vice-Chair Hansell and Members of the Senate Committee on Labor and Business,

Northwest Workers' Justice Project (NWJP) strongly supports SB 801-2 as a way to understand systemic underreporting of workplace injuries and disparities in workers' compensation outcomes. NWJP provides legal representation to low-wage workers throughout the economy but our work is particularly concentrated on the employment rights of immigrant workers in low-wage and physically demanding industries throughout the state.

As to the idea that the Management Labor Advisory Committee (MLAC) can handle the type of review that will be set up by the task force, I strongly disagree. MLAC is not set up to study and analyze systemic issues and outcomes. Its statutory charge is to monitor specific policy issues such as partial permanent disability benefits and medical and legal costs in the system. These granular issues are what MLAC is charged with analyzing, but what we need is a comprehensive evaluation of how the system is working- the view from 1000 feet up. That view is very different from the view on the ground and the view from 1000 feet up is not good for low-wage and immigrant worker. This bill will bring a fresh set of eyes to the significant problems in the workers' compensation system as to outcomes, access and other structural issues.

I'd like to tell you the story of one of my current clients. Marcos worked for a large property management company outside of Portland. One day while he was driving a golf cart on one of the properties to do repairs, someone rammed into him with a car, injuring his back.

Marcos went through the workers' compensation process, reluctantly. I say reluctantly because almost always, when our clients make a workers' compensation claim, they run into problems when they try to go back to work. When a doctor gives them a medical release to return to work, they are often told there is "no more work" for them. These same words have been used in dozens of cases our office has seen in the past few years, and likely hundreds over the 15 years since our founding.

But Marcos found a workers' compensation attorney and filed a claim. I need to point out that navigating the cumbersome system without an attorney is near-impossible. The first thing we tell a worker who calls us regarding a workplace injury, and we receive many of these calls, is to contact an attorney. NWJP has a very short referral list of attorneys that have the resources, cultural competency and language skills to serve our clients. This is more broadly true for workers' compensation attorneys in general, since the field requires a lot of technical expertise and does not offer the same compensation for attorneys as many other fields.

Marcos' claim was accepted and he received benefits through the system. However, when it came time to settle his case, the employer insisted that Marcos resign his job as a condition of settlement. He did not want to do this. And he was correct to reject this demand. There is no reason an injured worker should have to give up their job to settle their workers' compensation case. When Marcos

refused to sign the agreement that required him to resign, he was summarily fired on the spot and given his last check. He even had to return the company t-shirt he was wearing.

Luckily, Marcos found our office and we are currently litigating his case. Marcos had worked at this company for a number of years, had good relations with his regional manager and was referred to as a “great” employee. There are no allegations Marcos was fired for any job performance issues. Marcos was fired because he made a workers’ compensation claim.

I tell you this story because it is indicative of the decision many workers have to make when they are injured at work. There is widespread knowledge in the immigrant and low-wage worker community we represent that filing a claim will result in losing your job. Further, some workers are directly told not to file by their employers. Others are told to seek medical care but report that the injury was not work-related. These are common occurrences.

SB 801-2 would provide a necessary mechanism for investigating these troubling trends. In 2017, we approached the Workers’ Compensation Division about the lack of data regarding outcomes for workers with Hispanic surnames, undocumented workers and workers who do not speak English. Based on our experience, we firmly believe these workers are disadvantaged by the workers’ compensation system. But, to our knowledge, WCD has not substantially changed the data it collects to understand if and how these workers are harmed.

Sections 3(b) and (c) of the -2 Amendment are especially important to low-wage workers. Workers need a formal way to bring attention to the legitimate reasons why many choose to forego the workers’ compensation system. They need a forum for the many stories we hear of workers who are not only discouraged from filing by their employers but are sometimes told they will lose their job if they do in fact file a claim. The Workers’ Compensation Division was genuinely interested in hearing these stories when we brought them forward but as far as we know, nothing has changed and the practice continues, especially in low-wage, non-unionized settings.

Over the last year, the pandemic has exposed what our clients have been reporting to us for years: Oregon’s workers’ compensation benefits are not equally accessible to all injured workers. A number of barriers prevent immigrants and low-wage workers from making lawful claims. These barriers include dissuasion from employers to file claims, well-grounded fear of retaliation, and a cumbersome system that is near-impossible to navigate without an attorney. In fact, workers’ compensation retaliation is by far the most common discrimination claim that we handle at NWJP. I would like to stress that these barriers exist for documented and undocumented workers alike.

In addition, our clients often report to us that they did not make a claim because they believed they would not get help from the system. They have seen coworkers and family members report injuries and have meritorious claims that are denied, or they have experienced this themselves. They understand there are limited resources to help fight a wrongful denial, and, indeed, NWJP has a very short referral list of attorneys that have the resources, cultural competency and language skills to serve our clients. Even fluent English speakers are harried by the complex procedure and have a difficult time finding an attorney. A substantial number drop their claims if not initially accepted.

Many of the largest Covid workplace outbreaks occurred in the low-wage industries where our clients work such as warehouses and food processing. Yet workers’ compensation claims in these and other low-wage industries were few. We know that fear of retaliation, a complex claims system and hopelessness about a positive resolution contributed to this lack of claims. Studying this deficiency is crucial to fixing it. I urge your YES vote on the -2 Amendment of SB 801. Thank you.