

Board of Directors Meeting

Friday, August 7, 2020

7:30–9:55 am

Zoom Meeting

Please note: This meeting will be recorded.

Call to Order				
7:30 am		Call to Order / Pledge of Allegiance		Russ Batzer
		Antitrust Policy		Russ Batzer
		New Business		Russ Batzer
		Roll Call		Mike Salsgiver
Consent Agenda				
7:32 am	1.	Approve Board Minutes: June 5, 2020	Action	Russ Batzer
	2.	Motion to approve CARES Act amendment to Northwest AGC Chapters Retirement Plan	Action	Russ Batzer
	3.	Approve the June 2020 Financials	Action	Russ Batzer
Regular Agenda				
7:35 am (30 min)	4.	Oregon OSHA Proposed Infectious Disease Rule	Information	Michael Wood, Oregon OSHA Administrator
8:05 am (10 min)	5.	MANAGE a) 2020 Dynamic Budget Changes	Action	Joe McDonnell
8:15 am (15 min)	6.	GROW – Grow and develop the construction workforce and leadership of the future a) Veteran Outreach: Camp Alma Work Day Update b) Educator Externship 2020 Update c) Communications Strategy Update d) Careers in Construction Month e) Workforce Development Grants	Information Information Information Information Information	Yohn Baldwin/Aaron Bouchane/ Frosti Adams Frosti Adams Aaron Bouchane Aaron Bouchane Aaron Bouchane
8:30 am (10 min)	7.	ENGAGE – Provide relevant products, services, and events to connect and engage our membership a) Northwest AGC Chapters Retirement Plan Administrative Fee Reduction b) Board Recruitment Initiative Update c) July Membership Stats d) 2020 Membership Renewal Update e) Event Update	Written Information Information Information Information	Scott Williams/Ali Gadbaugh Jennifer Brown Russ Batzer/Ali Gadbaugh Ali Gadbaugh Ali Gadbaugh Viktoria Schulz
8:40 am (20 min)	8.	SAFETY – Deliver industry-leading health and safety services to our members a) Safety & Health Council Update b) AGC/SAIF Group Update c) AGC Safety Services d) Oregon Building Trades COVID-19 Task Force e) Oregon OSHA Rule Making: Temporary COVID-19 Rule	Information Information Information Information Information	Steve Malany/Dennis Barlow Michelle Brunetto Dennis Barlow Dennis Barlow Dennis Barlow Dennis Barlow
9:00 am (45 min)	9.	ADVOCATE – Protect the construction industry and strengthen AGC’s impact on public policy a) OR OSHA Infectious Disease Permanent Rule b) COVID-19/Workers’ Compensation Response: Presumption vs. MLAC’s Management Proposal	Information Action	Russ Batzer/Dee Burch/ Tom Gerding/John Rakowitz Dee Burch/Tom Gerding/John Rakowitz Dee Burch/Tom Gerding/John Rakowitz/Kimberly Wood
9:45 am	10.	New Business	Information	Russ Batzer
9:55 am	11.	Next Meeting: Thursday, October 8, 7:30–9:30 am Zoom Call	Information	Russ Batzer



CONSENT AGENDA



Board of Directors Meeting Minutes

June 5, 2020
7:30-9:30 am | Zoom Meeting

Board Members:

Ted Aadland – Absent	Terry Mackey – Absent
Dave Alexander – Excused	Steve Malany
David Andersen	Sam Manley
John Anderson	Ryan McDonald
Yohn Baldwin	Joe McDonnell
Russ Batzer	John McKenzie – Absent
Andrew Beyer	Jim McKune
Dylan Bochsler – Absent	Rick McMurry
Matt Bogatay	Ric Miller – Absent
Michelle Brunetto	David Mingo – Absent
Dee Burch	Greg Morrill
Joe Correy – Absent	Gary North
Todd Duwe	Kieran O’Brien
Andy Dykeman	Daniel O’Brien – Absent
Brian Erickson	Jeff Perala
Jeff Firth	JR Rutan
Brandon Flint – Absent	Brent Schafer
Joel Frasier	Bill Schmeck – Absent
Walt Gamble	Bob Schommer – Absent
Tom Gerding	Brian Shoemaker
Larry Gescher	Tim Sissel
Bryna Gibson	Josh Smith
Brian Gray	Travis Snyder – Absent
Brent Hackwell	Paige Spratt
Larry Hannan – Absent	Jeanne Staton – Absent
Tim Hendrix	Darin Stegemoller – Absent
Todd Hess – Absent	Erik Timmons
Eric Hill – Excused	Sandy Trainer
Kyle Izatt	David Trejo
David Kronsteiner – Absent	Brad Wagner
Kerry Kuenzi	John Weisner – Absent
Stacy Lewallen - Excused	Jason Weiss

Randy Williams	
Scott Williams	
Kimberly Wood	
Johnathan Woolworth	

STAFF:

Mike Salsgiver	Coral Genocchio
Karla Holland	Dennis Barlow
Kari Schoonover	Frosti Adams
Ali Gadbaugh	Heidi Peterson
Aaron Bouchane	Jennifer Brown
John Rakowitz	Lisa Wisler
Viktoria Schulz	Lauren Kuenzi
Tamara Barnes	

Russ Batzer called the meeting to order at 7:31 am and led the Board of Directors in the Pledge of Allegiance.

He acknowledged the Chapter's anti-trust policy.

Roll call

Mike Salsgiver performed the roll call.

New Business

No new business

CONSENT AGENDA

A motion was made to accept the following items in the consent agenda:

- March 20, 2020 Board of Director Meeting Minutes
- Resignation of Cameron Foroud of James E John Construction Co as Board Member and a motion to add Kris Simensen of James E John Construction Co to the Board of Directors.

A motion was made to accept the consent agenda, seconded, and approved.

MANAGE

a) *COVID-19 Update: Chapter Response*

Mike Salsgiver provided a quick update hitting a some of the key-highlights of the Chapter’s response on maneuvering through the pandemic of COVID-19. He first noted how proud and grateful for the support the AGC staff has received from the leadership and their availability to our team when needed. He reminded the board that several years ago he put together a business continuity plan for staff to be able to continue working in the event of a major natural disaster or other disruptive event. The processes that were put into place have allowed the team to transition smoothly to a remote work posture in response to COVID-19 constraints. While the office has remained physically closed and most in-person meetings and events have been canceled, the rest of the work of the chapter has continued almost without interruption.

The next focus was developing measures to keep the construction industry operating in Oregon. Those efforts were successful, and most construction projects in Oregon have continued without interruption. This effort required the help of all departments. He then

reviewed how each department took part in keeping construction moving forward in Oregon and what was accomplished.

Safety and Health

- The Oregon-Columbia Chapter was the first to draft job site safety and health guidelines and move them into the field in about a week's time. Dennis Barlow and Paige Spratt were key players in this effort.
- The Chapter maintained full consultation and coordination with Oregon OSHA
- The Chapter's materials were adopted by state and local agencies, as well as nationally and by other associations.
- Mike, Dennis, and SMC Nathan Taylor have participated in a joint Labor-Management Safety Task Force which is providing consultative services to contractors around the state to assist them in understanding and complying with COVID-19 job site safety and health guidelines.
- Feedback from government officials has consistently highlighted construction as a prime example of how an industry sector should respond and operate during the current situation

Communications

- Retooled the chapter's website to make posting and finding relevant information easier for members
- Proactive leadership and member communication
- Worked with several councils (CLC, Specialty Contractors Council, and Associations Councils) to develop webinars with timely and useful information for the membership
- Proactive media outreach, immediate response; showing AGC is the go-to organization for industry specific COVID-19 information
- Increased coordination with other construction business associations

Advocacy

- The government was unable to meet with anyone which made work more difficult
- Relationships that have been built over many years showed their value
- Focused on keeping construction open for business, minimizing economic damages. Generally accomplished these goals, although many leaders in government slow to recognize that the world had changed
- Actively worked to prepare for special Oregon legislative session, which will likely occur sometime in June

Events

- All face-to-face meetings and events were cancelled or altered to meet the governor's executive order; this impacted:
 - Southern Oregon Golf Tournament
 - Top Shot
 - Chapter Golf Tournament
 - Wide Open Golf Tournament
 - 2020 Summer Convention
 - TopGolf
 - All council and committee meetings moved to virtual meetings and have continued their work

Engage

- A silver lining during this pandemic, has been that an increasing number of companies are seeing value in AGC

- In April and May, we added six (6) new members
- Members have taken the time to call or write and let us know of their appreciation of the hard work that has been done on the industry's behalf
- As phases re-openings continue, we will be moving back into the field to visit with members through the chapter's area councils

Grow

- Our efforts to grow workforce of the future has not stopped
- Work on understanding how to realign with industry training system continues
- Work on phase one of communication strategy has launched
- Educator Externship has been modified to include both virtual and some face to face pieces as the re-opening varies around the state and in SW Washington
- Army Corps Quality Management classes have been cancelled pending approval for the USACE trainers to facilitate those classes
- CECSCL erosion classes have gone ahead on a reduced capacity per meeting restrictions of 10 people

Finance

- The Chapter remains in good financial shape, and has withstood a severe financial market adjustment as well as a government-imposed economic depression due to COVID-19.
- 2019 volumes continued to show some growth. Staff are having discussions internally about whether dues adjustments should be limited due to Q1 2020 turbulence
- Circumstances required some unplanned spending; there will be a budget variance. Once things settle, we will better understand what has changed and bring that information to chapter leadership

b) *Chapter Financials*

Joe McDonnell reviewed the Chapter's financials for March highlighting a few areas:

- Operating Income for the month of March was \$100k. Year to date, the chapter has operating income of \$103k. January and February has significantly higher operating expenses as result of the Annual Business Meeting and ODOT conferences.
- Net Assets decreased by \$515k through first quarter. \$643k of which is due to investment loss related to COVID-19 market volatility occurring in March.
- As of yesterday, June 4, 2020 we have recovered almost all the \$515k except \$80k
- A couple of changes have been made to the Balance Sheet; at the November 2019 board meeting, the board approve to allocate 50% of total increase of net assets from 2019, \$375k in restricted cash to go to the Centennial Fund.

c) *Increase National Travel Reimbursement Amount*

Joe McDonnell reported that at the last Finance Committee meeting (May 20, 2020) the Committee discussed increasing the national travel reimbursement amount per member company from \$2,500 to \$3,000. This will allow for offsetting increasing costs associated with AGC of America national committee travel expenses. The last time there was an increase to the reimbursement was in 2010. The other recommendation is to have national committee members notify the controller or executive director in July for the upcoming year of any anticipated travel. This will help with the accuracy of budget forecasting.

The motion presented reads:

It is moved that the board approve the increase of the annual member company travel expense reimbursement limit of \$2,500 to \$3,000.

The motion was made, seconded and approved.

d) *2019 Chapter Audit*

Ian Gelfeld, Audit Manager of Hoffman, Stewart, & Schmidt, PC gave the 2019 Chapter Audit report.

Mr. Gelfeld reported to the board that the Hoffman, Stewart, & Schmidt team conducted an audit of the consolidated financial statements for the Chapter, Foundation, Union Contractors Group (UCG) and Building Better Oregon (BBO). They rendered an unmodified opinion, also referred to as a “clean opinion” which is the highest and best possible outcome an organization can receive. He stated there were some changes to mostly the format of the financial statements due to a new remedy recommendation guideline that came out. The chapter adopted those as of 1/1/2019 which resulted in an acceleration of revenue recognized in 2018, which was then recognized as an adjustment to beginning net assets of \$164,135. In the full financial statement, there were also some changes in note disclosures and formatting in some of the notes. With all of that said, Hoffman, Stewart, & Schmidt, PC opinion was not modified as a result of the adoption.

Mr. Gelfeld provided a summary of the financial statements, offering highlight in a few areas:

- Investments had a 16.4% change from 2018.
2018 of \$5,033,493 | 2019 of \$5,860,771
- Contract Liabilities had a -27.1% change from 2018.
2018 of 2,161,947 | 2019 of \$1,577,077
- Net Investment Returns (losses) had a 518.3% change from 2018.
2018 (\$198,240) | 2019 of \$829,245

Other Items he reported on were:

- No new accounting policies or estimates other than revenue recognition
- No difficulties encountered during the course of the audi
- No difficulties audit adjustments to the balances provided by management
- Examined Internal controls in place over financial reporting
 - No opinion provided
 - No significant control issues noted

A motion was made to accept the 2019 Chapter Audit. The motion was seconded and approved.

ADVOCATE

a) *Challenging Governor’s “Carbon Emissions Reduction” Executive Order*

John Rakowitz highlighted a few areas of the executive order that Governor Brown put into place on March 10, 2020. He referred to the full written order in the packet to read later.

The area he highlighted was:

paragraph 2, page 5: “calls for the State of Oregon to reduce its GHG emissions (1) at least 45 percent below 1990 emissions levels by 2035; and (2) at least 80 percent below 1990 emissions levels by 2050.

On April 10, 2020 the Coalition wrote a letter to Governor Brown requesting suspension of Executive Order 20-04 of reducing and regulating GHG emissions stating:

- Burden on the state agencies needed for COVID-19 response efforts
- State's need to focus taxpayer dollars on COVID-19 response and recovery
- Not a time for expensive programs

Her response to the coalition letter was that she will not use the excuse of one global crisis, COVID-19 to further delay or slow the response to climate change.

John then reviewed the outline of arguments that would support a legal challenge to the Governor's executive order.

The purpose is to challenge the precedent as an overreach of her constitutional authority by the Governor. The lawsuit filing is estimated to occur in mid-June. There is a three-member legal team with Stoel Rives, LLP. The total estimated cost of this phase of legal action is \$250,000-\$300,000. The entities that are involved are manufacturing, transportation, and energy sectors. Any judicial determinations in the case, if it is filed, are anticipated to occur near the end of the 2021 legislative session.

Dee Burch presented a motion that was presented at the May 20, 2020 Executive Committee meeting which they approved to bring to the board for a vote. The motion reads:

It is hereby moved the Board of Directors support and authorize an amount not to exceed \$25,000 from the current public affairs budget for litigation costs associated with legally challenging the governor's Carbon Emissions Reduction Executive Order 20-04.

Dee clarified what is being considered here is if the board agrees to support the motion, we will financially support this issue. It is possible to put the Chapter's name on the lawsuit, however, the executive committee decided not to recommend that.

The motion was read as stated above, seconded, and discussion ensued.

Andrew Beyer stated if the board approves the motion, the Chapter should be forthcoming and be public that we are a financial supporter of this lawsuit. The board discussed political downside of financially supporting this lawsuit and ramifications that could happen from the Governor's office.

After discussion, the motion was made to accept as written. The motion was seconded, and the motion was approved with one voting in opposition.

b) Off-Road Diesel Inventory Results

Larry Gescher delivered an update on the results of the Off-Road Diesel Inventory. He reminded the board that this study was authorized in 2017 and was started September 2018 and ended in April 2020. The key findings are:

- Agriculture has the highest fuel consumption at the state level, followed by logging and construction
- Other sectors (Public fleets, Surface Mining, Commercial/Industrial, and other) consumed less than 10% each
- The average agricultural tractor's age (22 years) results in a relative increase in criteria pollutant emissions
- The relative contributions to activity and emissions can vary substantially across counties

- Examples demonstrate prevalence of different industries: Multnomah (construction), Lane (Logging), Klamath (agriculture)

He stated one thing to be aware of is every bill that has come forth for off-road diesel control, even in the state of California, has been targeted logging and agriculture are both exempt. And what has come out in this study, is that construction is third in line as far as fuel consumption. This puts a target back on us when this issue comes back even though we have passed current legislation putting restrictions in place. This data gives us a quiver so to speak in our bag of findings.

c) *Advocacy Updates*

- *May Primary Election Results*

John Rakowitz gave an update on the results of the May primary election. He called out one major state-wide race, the race for secretary of state. The Oregonian called this race too early and declared the wrong candidate as the winner. The Oregonian stated that *Oregon state Senator Mark Haas wins Democratic primary for secretary of state*. In fact, Oregon state senator Shemia Fagan won the election. This seat is important for business because under Oregon's constitutional system, the secretary of state can become the Governor. That occurred in 2015 when former Governor John Kitzhaber resigned and then-Oregon Secretary of State Kate Brown became governor.

2021 will be a redistricting year, which occurs every 10 years. The Oregon legislature is supposed to redraw district boundaries based upon the 2020 census. Redistricting affects all legislative positions at the federal and state level. The position of secretary of state is supposed to be non-partisan; however, democratic nominee Shemia Fagan is almost guaranteed to win the general election in November. She is known to be one of the most partisan democrats in the state of Oregon. If the legislature is unable to come to an agreement on redistricting (which is often the case), that job then goes to the secretary of state.

Longtime friend to AGC, state senator Cliff Bentz (R-Ontario) won the Republican nomination for the 2nd District congressional seat that Greg Walden is vacating. He will not have Walden's clout, but he will be somebody who will work hard, and AGC will have good access to him.

GROW

a) *Communications Strategy Development*

Aaron Bouchane gave an update on the Communications Strategy for construction careers. The last six weeks AGC staff have been working with public relations and communications consulting firm Quinn Thomas on Phase 1 of a communications plan. The objective is to create a comprehensive measurable marketing campaign that highlights industry in its careers. This will ultimately help contractors recruit and retain their workforce of future skilled workers. He then covered the actions of the results of the Phase 1 discovery process:

- Local and regional research, including current and past AGC efforts on marketing efforts
- In-depth interviews with AGC members and partners
- Distributed online surveys to AGC members and workforce training and education partners

- Mapping session with Workforce Development Committee
- New-hire and apprentice focus groups
- Data will be used to develop market research reports

Aaron anticipates this work being completed by end of next week. A report will be drafted and submitted to AGC that will detail the findings and then move into development of the campaign.

b) *Construction Workforce Coalition*

Aaron Bouchane provided a quick update on the Construction Workforce Coalition. The May meeting was rescheduled to June 10 and the topic is *Understanding and Managing Workforce Challenges amid COVID-19*. The speakers will be from contractor members, workforce investment boards and training which includes high schools and apprenticeships. These meetings are having great participation with a large number of people calling in.

c) *Educator Externship Update*

Frosti Adams reported that the 2020 educator externship program is fluid every day based on county, business, and state responses to COVID-19. At this time, southern Oregon has the largest region of teachers signed up to participate at 20. Frosti stated there will be fewer face to face events and more virtual meetings for the educator externship.

ENGAGE

a) *2020 Recruitment Initiative Update*

Ali Gadbaugh gave a report on the 2020 Recruitment Initiative, noting that she has been busy mailing out letters from contractors and thanked the members who have helped with this endeavor. The following are the members who have participated:

Yohn Baldwin
 Tim Sissel
 Bill & Cindy Schmeck
 Dave Alexander
 Dee Burch
 Brian Erickson
 Tom Gerding
 Bryna Gibson
 Todd Hess
 Steve Malany
 Gary North
 Brian Shoemaker
 Sandy Trainer
 Brandon Flint

There are 40 board members who have yet to participate. Russ Batzer reiterated that he is looking for 100% participation on this effort from the board. He encouraged those who have not participated to reach out to Ali and talk to her, send her their company letterhead and envelopes, and get the letter sent out to prospective members in their areas. He will also be reaching out within the next couple of weeks to find out why those contractors have not participated.

Ali gave a shout out to Dave Alexander for helping recruit new member, Cochran, Inc. She has been working on them joining for 6 years and they finally joined this month.

b) *April Membership Report*

Ali Gadbaugh reported on the April membership numbers stating we wrapped up the month with 831 members. We had four (4) new members, three (3) specialty contractors and one (1) industry associate. So far, we are higher in our numbers from last year.

c) *Specialty Contractors Council*

Bryna Gibson gave a quick report stating their next meeting will be held on June 24, from 7-9 am; the topic: *Tomato, Tomahto. Potato, Potahto, Did I Get my Wires Crossed? On the Job Conflict Resolution*. The presenters will be David Andersen and Bill Gibson.

The last speaker event was held in April and the topic was on COVID-19. There was a great turnout, had about 49 participating. The speakers were Gary Christensen and Jeremy Vermilyea who talked about how to address the impacts of COVID-19 and get paid for them.

The last meeting that was held had 49 people participating via Zoom. It was very successful.

d) *Professional and Industry Associates Council*

Paige Spratt gave an update on the webinar series the council has held. There was a 5-week seminar series that just ended last week and was very successful. Paige thanked Ali Gadbaugh, who supported each segment. The Associates Council is looking to put together another webinar series starting in July. Paige noted there will be more information on PPE Forgiveness, and thanked Joe McDonnell for helping put that together. Ali Gadbaugh mentioned if anyone was interested in listening the past webinar series to let her know. Zoom recordings of each segment are available.

e) *Construction Leadership Council*

Josh Smith reported that, due to COVID-19, all planned CLC events through the end of the year were cancelled:

- July 20 ENGAGE Leadership Series event
- August 26 Topgolf Joint Networking Event
- December 7 ENGAGE Leadership Series event

All venue contracts will be honored, and events will be rescheduled for 2021.

The 2021 AGC of America CLC Leadership Development Conference was to be held and hosted by this Chapter, however the Chicago meeting this year got postponed to 2021 and was asked if we could move our hosting of the conference to 2022. However, since that is the year of the Centennial, we asked to host in 2023.

f) *Centennial Committee*

Walt Gamble gave an update on the work of the Centennial Committee and announced the creation of the new Centennial logo. The committee is working on creating a chapter book as well as hosting an exhibit at the Oregon Historical Society. There will be a traveling exhibit for area council and council events and looking at having a float in the Starlight parade.

The Centennial Celebration and SIR Awards will be April 22, 2022.

g) *Events Update*

Viktoria gave an update on the upcoming chapter events that *have not yet* been cancelled.

- August: 2020 Summer Convention goes VIRTUAL with speaker events. This will be free to members; however, still need to register.
- August 17: AGC Golf Tournament at Langdon Farms. Registration opens on July 1
- October 9: Southern Oregon Golf Tournament at the Running Y Ranch. Registration opens August 10.

The events that were cancelled this year however will come back next year are:

- Top Shot
- AGC Wide Open Golf Tournament

SAFETY

a) *COVID-19 Safety Response*

Dennis Barlow gave an update on the Chapter's response during the COVID-19 on the topic of safety.

- Started working on job site practices
- Created banners and posters for members to put on their jobsites
- Created social distancing officer responsibilities – these have been picked up nationwide and by our general contractor members as well as non-members. Lots of notoriety on efforts on what we have been doing.
- Created three (3) COVID-19 Stand Up Video Message series by our officers; Russ Batzer, Scott Williams and Steve Malany.
- Purchased an online training platform by Comevo, for individuals to be COVID-19 trained. So far there has been over 300 people who have signed up and went through the training. We will be moving toward putting all our other trainings together onto this platform as well.

b) *COVID-19 Joint Construction Safety Task Force*

Dennis Barlow reported that the chapter was asked to participate with the Oregon State Building Trades Council on their COVID-19 Joint Safety Task Force. As of yesterday, task force members have been to 22 jobsites. Not all of these are AGC member sites. This task force convened about three-weeks after our response to COVID-19 however they have been able to do a lot for the industry. This task force will be sunsetting soon, probably within the next week or so. There was a poster that was developed out of the Oregon State Building Trades Council task force which used similar information that the Chapter used on its posters.

Safety & Health Council

The Safety & Health Council have been very active in getting the message out. They have held a couple of Town Hall virtual meetings.

- April 9: COVID-19 Job Site Safety & Health Best Practices. There were 100 people who attended
- May 19: Discussion on Return to Work Best Practices for Office Staff. There were 85 people who attended

There were also Town Hall meetings with the covering similar subjects at area council meetings.

- May 6: North Coast
- May 20: Central Oregon

The next Safety & Health Council speaker event will be July 23, 2020 from 7-9 am held virtually. Jana Wolfgang from Northwest Drug-Safe will be discussing The Changing Landscape of Workplace Drug Testing.

c) *AGC/SAIF Group Update*

- *SAIF COVID-19 Worker Safety Fund*
SAIF Corporation created a COVID-19 Worker Safety Fund for their policy holders. This fund will help reimburse for COVID-19 expenses. There were 365 applicants that came from the AGC/SAIF group members. The requests ranged between \$120 up to \$300,000. As of May 15, 2020, SAIF has approved \$1,370,562 reimbursements to the AGC/SAIF group.
- *Incident Review*
We took a snapshot of incidents from last year to this year.

March 13-May13, 2019	March 13-May13, 2020
285 claims	191 claims
Cost Incurred: \$2,779,712	Cost Incurrent: \$368,452
Paid: \$1,616,412	Paid: \$111,432

SAIF claims for all policy holders have decreased 50% from same timeframe last year. The AGC/SAIF claims have decreased 33% yet manhours have only slightly decrease.

The safety management team have been released as of June 1 to return to the field and get back to working onsite with members. Prior to that, they have been working from home assisting members as much as possible virtually.

New Business:

Sandy Trainor recognized Larry Gescher for his efforts, work and commitment of the Off-Road Diesel issue. It has been a long-term commitment and he has put in a lot of time and dedication to this effort.

A motion was made to adjourn the board meeting. The motion was seconded, and the board adjourned at 9:42 am.



Motion

August 7, 2020

The AGC Oregon-Columbia Chapter, as Plan Sponsor of the Northwest Chapters AGC Retirement Trust, approves amendments to the Trust, pursuant to the Trust Agreement.

It is moved that the Board of Directors accept the April 6, 2020 recommendation from the Northwest Chapters AGC Retirement Plan Board of Trustees to amend the Plan Document according to the attached Coronavirus Aid, Relief, and Economic Security (CARES) Act Impact on the Northwest AGC Chapters Retirement Plan Summary and Amendment 2020-2.



Coronavirus Aid, Relief, and Economic Security (CARES) Act Impact on the Northwest AGC Chapters Retirement Plan

April 2020

The CARES Act was signed into law on March 27, 2020 in response to the coronavirus (also known as “COVID-19”) pandemic. It includes special distribution and loan features that affect benefits available to “Impacted Individuals” under 401(k) retirement plans, such as the Northwest AGC Chapters Retirement Plan.

These features only affect **Impacted Individuals**, which include anyone who falls in one of the categories listed below:

- An individual who is diagnosed with COVID-19
- An individual whose spouse or dependent (as defined in section 152 of the Internal Revenue Code of 1986) is diagnosed with COVID-19
- An individual who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to COVID-19 or being unable to work due to lack of child care due to such virus or disease, or closing or reducing hours of a business owned or operated by the individual due to such virus or disease or other factors as determined by the Secretary of the Treasury.

Individuals may self-certify that they meet one of these conditions.

Below are the key provisions for **Impacted Individuals** participating in the Northwest AGC Chapters Retirement Plan.

COVID-19 Related Withdrawals

Impacted Individuals may take one or more withdrawals from the Northwest AGC Chapters Retirement Plan, of up to \$100,000 in total. Special taxation and payback provisions apply.

- If you are in multiple plans sponsored by the same employer, withdrawals from all plans combined cannot exceed this limit.
- The withdrawal must be completed prior to December 31, 2020.
- The withdrawal is NOT subject to the 10% early withdrawal penalty tax that would typically apply to withdrawals taken prior to age 59 ½.
- Mandatory withholding for state income tax, if applicable, will apply.
- The withdrawal is NOT eligible to be rolled to another retirement plan or IRA.
- Individuals who take a COVID-19 related withdrawal have the right to repay some or all of the amount taken by making contributions back to any eligible plan that accepts rollover contributions. These repayments can be made any time over the three-year period beginning on the date of the withdrawal. Any amount that is not repaid will be required to be included in gross income, generally spread over three taxable years beginning with the tax year of the withdrawal.

To request a COVID-19 related withdrawal, print, complete, and submit for processing a copy of the Plan’s **COVID-19 Related Withdrawal Request Form**.

- You can obtain a copy of this *Form* by accessing your retirement account online at www.nwps401k.com, and selecting the “Resources” menu item, then “Forms & Documents.”
- You can return your completed *Form* by mail, fax or email (see *Form* for return instructions).
- Contact the AGC Benefits Center at **(877) 690-5410** with questions.

COVID-19 Related Loans

Increased Limit for New Loan Requests

Normally, the maximum amount you can borrow from available contribution sources is the lesser of 50% of your vested account balance, or \$50,000 minus your largest outstanding loan balance in the last 12 months. If you are an **Impacted Individual**, you can take a COVID-19 related loan, for which the maximum amount you can borrow from available contribution sources is the lesser of 100% of your vested account balance, or \$100,000 minus your largest outstanding loan balance in the last 12 months.

- The increased limit applies to new loans taken through September 23, 2020.
- If you request a new COVID-19 related loan, your loan repayments will not start until January 2021, unless you request that payment be started earlier by contacting the AGC Benefits Center at **(877) 690-5410**.
- Existing plan loan rules apply: your employer must have a loan provision, you must be actively employed, you can only have one loan outstanding at a time, and there is no change to the contribution sources in your account that are available for a new loan.

To request a COVID-19 related loan, access your retirement account at online at **www.nwps401k.com** and select the “Transactions” menu item, then “Loans,” then “Request a New Loan.” You can also call the AGC Benefits Center at **(877) 690-5410** for assistance or if you have questions.

Option to Suspend Loan Payments

If you are an **Impacted Individual** and you have an outstanding loan that has repayments due between now and December 31, 2020, you have the option to suspend your loan repayments until the first pay period in January.

- Your outstanding loan will be reamortized when payments are restarted over the remaining loan term, which will be extended by the suspension period.
- You will be notified ahead of the payments restarting and will be provided with the new payment amount at that time.

To request that your loan repayments be suspended because you are an Impacted Individual, contact the AGC Benefits Center at **(877) 690-5410**.

Reminders

You must meet the definition of an “Impacted Individual” as defined above to utilize any of the provisions in this memo.

The information in this memo may change based on subsequent guidance issued by the IRS or Department of Labor.

If you have questions, please contact the AGC Benefits Center at **(877) 690-5410** to speak to a representative, or email **AGCBenefitsCenter@nwp401k.com**.

NORTHWEST CHAPTERS AGC RETIREMENT PLAN

AMENDMENT 2020-2

Effective April 6, 2020.

This Amendment has been adopted via a meeting of the Northwest AGC Chapters Board of Trustees and is subject to the requirements contained in the Northwest AGC Chapters Retirement Plan Trust Agreement for adoption. The Plan is hereby amended as follows:

- Section 11.8.5(e) shall be revised and the following enumeration added:

(4) Exception for Required Beginning Date. No Participant shall be deemed to satisfy the definition of Required Beginning Date in 2020. Any Participant who would otherwise have satisfied the conditions of the definition for Required Beginning Date under Section 11.8.5(e)(1), (2), or (3) in 2020, will instead be deemed to satisfy these conditions upon the corresponding dates in 2021.

- Section 19.1.1 shall be deleted in its entirety and replaced with:

19.1.1 Loan Limit. Except as specified in Section 19.1.2, Exception to Loan Limit, the Participant's or beneficiary's loans shall not exceed the lesser of (a) an amount equal to \$50,000 minus the highest outstanding loan balance during the one-year period ending on the day before the loan is made; or (b) 50 percent of the present value of the Participant's vested account balance.

- Section 19.1.2 and Section 19.1.3 shall be renumbered as Section 19.1.3 and Section 19.1.4. The following enumeration shall be added:

19.1.2 Exception to Loan Limit. There is an exception to the Loan Limit in Section 19.1.1 for any Participant who satisfies the eligibility criteria for a Coronavirus-Related Distribution under Section 20.5.1. For the 180-day period starting March 27, 2020, any Participant who is eligible for a Coronavirus-Related Distribution may request a loan that shall not exceed the lesser of (a) an amount equal to \$100,000 minus the highest outstanding loan balance during the one-year period ending on the day before the loan is made; or (b) 100 percent of the present value of the Participant's vested account balance.

- Section 19.3 shall be deleted and replaced with the following:

19.3 Suspension of Loan Payments.

19.3.1 Suspension of Loan Payments During Uniformed Service. Loan repayments will be suspended under the Plan from an Employee who is performing service in any of the uniformed services (as defined in chapter 43 of title 38 of the United States Code, commonly known as USERRA).

19.3.2 Suspension of Loan Payments for Participants eligible for Coronavirus-Related Distribution. Any Participant who is eligible for a Coronavirus-Related Distribution under Section 20.5, who has an outstanding plan loan that would otherwise be due between March 27, 2020 and December 31, 2020 may suspend their repayment obligations for one year. The one-year

suspension under this Section will not be included when calculating the loan repayment term under Section 19.2.1.

- Section 20.5 shall be renumbered Section 20.6 and the following enumeration shall be added:

20.5 Withdrawal for Coronavirus-Related Distribution.

20.5.1 Eligibility. A Participant to whom any of the following criteria applies, on or after January 1, 2020 and before December 31, 2020, is eligible to request a withdrawal of a Coronavirus-Related Distribution:

- (a) Is diagnosed with coronavirus disease 2019 by a test approved by the Centers for Disease Control and Prevention;
- (b) Whose spouse or dependent (as defined in IRC § 152) is diagnosed with coronavirus 2019 by such a test; or
- (c) Who experiences adverse financial consequences because of being quarantined, furloughed or laid off or having working hours reduced, being unable to work due to lack of childcare, or closing a business or reducing business hours.

20.5.2 Distribution. A Participant who certifies that they meet any of the eligibility criteria for a Coronavirus Related Distribution may request a withdrawal from their vested account balance in the amount of the lesser of, their vested account balance or \$100,000.

20.5.3 Repayment of Coronavirus-Related Distribution. A Participant eligible for a Coronavirus-Related Distribution may choose between the following options regarding whether the Coronavirus-Related Distribution will be repaid to the Plan:

- (a) The Participant may repay part or all of the Coronavirus-Related Distribution to the Plan at any time during the three years following the distribution. The Plan will treat the repayment as an eligible rollover distribution from a qualified plan under Section 18.2.2, Participant Rollovers.
- (b) The Participant may choose not to repay all or part of the Coronavirus-Related Distribution to the Plan.

Approved by
The Northwest Chapters AGC Retirement Plan

Approved by
The Principal Plan Sponsor

Chair

Authorized Representative

Date

Date

JUNE 2020 DRAFT FINANCIAL STATEMENTS

Date: July 21, 2020

To: Joe McDonnell

Income Statement Highlights

Revenue

- A. The membership count at the end of June was 836 which was exactly the same as in June of 2019. Membership is currently in the process of renewal and while Ali has more members to add in July, historically the Chapter has experienced double-digit losses during the renewal period.
 - o YTD, dues revenues exceeded budget by \$20.5K. Please note, the dynamic budget includes a \$28K increase in dues revenue, which we believe is conservative. Barring substantial losses in members during the renewal period, revenues could exceed budget up to \$80K.
- B. Core Services revenues were approximately \$25K for the month of June and \$150K YTD. The \$17k reduction in revenue reflected in the dynamic budget is related to the UCG. Reductions in their expenses results in lower reimbursements to the Chapter.
- C. Products and Services revenues were approximately \$10K for the month of June. YTD Products and Services revenue was approximately \$134K or less than 1% below budget. The \$134K reduction of revenue reflected in the dynamic budget comes from loss of revenue from the registrations of Summer Convention (\$112K), the SIR Awards (\$12K), and lost safety training revenue of (\$10K). The lost registration revenue is offset by a reduction in expenses.
- D. Workers Comp Contract is \$9K ahead of budget for the year, with revenues of \$936K. The additional \$9K is the result of gain recognized on the sale of a vehicle.
- E. Overall, operating revenues were approximately \$6K below budget YTD, based on the adjusted dynamic budget. The \$123K reduction in the dynamic operating revenue budget compared to the board approved budget is a combination of \$28K increased dues revenue and \$151k in reduced revenue from the items mentioned above. This represents an overall 2.25% decrease in revenue primarily caused by disruption resulting from COVID-19.

Expenses

- F. For the month of June, general and administrative expenses were approximately \$62K. YTD G&A was \$521K and \$96K below the COVID adjusted dynamic budget. Decline in expenses is consistent with the cancellation of chapter activities associated with shutdown. Please note, the G&A budget was reduced by \$175K or a 13% reduction from the board approved budget.

YTD G&A is \$96K or 15% underspent for the first half of the year. If closures and event cancellations continue, G&A will likely remain under budget for the remainder of the year.

- G. Salaries expense was ~\$245K for the month of June and \$1.58 million YTD. Salaries expense was approximately \$68K or 4.5% over the adjusted budget. The salaries amount in the dynamic budget was increased \$54K to cover the executive committee approved salary and benefit increases. The variance is primarily attributed to the \$54K of vacation accrual attributed to accruing the minimum of 160 hours per employee for the vacation payable. Salaries are still expected to finish the year over budget due to other approved increases.
- H. Travel and entertainment expenses were approximately \$1.5K in the month of June and YTD \$93K. The dynamic budget has been decreased \$34K from the board approved budget based on expected reductions in travel.
- I. Contract labor was \$61K for the month of June and \$240K YTD. The \$14K reduction in the dynamic budget comes from the reduced expense for trainers of AGC safety classes. Many classes were canceled and in the second half of the year many classes are moving to an online platform where contract fees will be a percentage of revenue.
- J. YTD, operating expenses are \$2.55M which is \$69K or 2.5% under budget. Please note, the dynamic budget shows a \$170K or 3% reduction in total operating expenses attributable to the cancellations of the Summer Convention, SIR awards, UCG, and training classes.
- K. Operating income for the month of June was \$81K. YTD the chapter has operating income of \$290K, which is approximately \$62K ahead of budget.
- L. For the month June investments incurred unrealized gains of approximately \$61K. YTD, the Chapter Reserve has recognized unrealized losses on investments of approximately \$62K, including management fees.
- M. During the month of June, the facility fund investments incurred unrealized gains of approximately \$51K. YTD, the facilities fund has recognized unrealized losses on investments of approximately \$48.5K including management fees.
- N. Overall, net assets increased by \$233K YTD.

Balance Sheet

Accounts Receivable - As of June 30, 2020, Accounts Receivable is reflecting a liability position of \$1.7M. During the year, the membership accounting database was updated, whereby the system does not record a receivable until the beginning of the membership period (July 1), despite invoices having already been sent and in some cases paid. The negative receivable balance is a result of payments received that do not have an offset in the accounts receivable as of June 30th. While this is technically incorrect (AR should be recorded when invoiced), the new system has greatly improved the tracking of receivables and application of payments. The accounting error was fully resolved on July 1st when the membership period began and accounts receivable were recognized.

**OREGON-COLUMBIA CHAPTER
ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.**

***DRAFT* Income Statement**

For the month of June and the sixth month ending June 30, 2020

	Month to Date Actual	Year to Date Actual	Year to Date Budget	Year to Date Variance	Dynamic Budget	Board Approved 2019 Annual Budget	
Operating Revenue							
Dues Revenue							
General Contractor	140,234	845,522	840,774	4,748	1,671,831	1,655,688	
Specialty Contractor	150,621	873,746	861,174	12,572	1,732,548	1,720,548	
Associates	19,978	119,313	116,115	3,198	224,580	224,580	
Subtotal Dues Revenue	310,833	1,838,581	1,818,063	20,518	3,628,959	3,600,816	A
AGCA Charter Fee	(36,292)	(217,750)	(217,750)	-	(437,750)	(437,750)	
PAC Funds Included	-	-	-	-	(299,000)	(299,000)	
Discounts Taken - Dues	-	-	-	-	-	-	
Net Dues Revenue	274,541	1,620,831	1,600,313	20,518	2,892,209	2,864,066	A
Non-Dues Revenue							
Core Services	24,591	150,048	186,795	(36,747)	369,607	386,806	B
Product and Services	9,864	133,924	133,410	514	393,620	528,070	C
Ore. Workers' Comp Contract	163,392	935,790	926,450	9,340	1,852,900	1,852,900	D
Net Non-Dues Revenue	197,848	1,219,762	1,246,655	(26,893)	2,616,127	2,767,776	
Total Operating Revenue	472,388	2,840,593	2,846,968	(6,375)	5,508,336	5,631,842	E
Operating Expenses							
General & Administrative	62,286	521,297	617,442	(96,144)	1,316,075	1,490,903	F
Salaries	245,567	1,579,342	1,510,726	68,616	3,131,011	3,077,511	G
Travel & Entertainment	1,410	93,023	119,907	(26,884)	198,605	232,606	H
Contract Labor	61,561	239,703	250,320	(10,617)	445,790	460,720	I
Programs	-	-	-	-	128,000	128,000	
Rent	19,771	116,492	120,720	(4,228)	240,077	240,077	
Total Operating Expenses	390,595	2,549,857	2,619,115	(69,258)	5,459,559	5,629,818	J
Total Operating Income / (Loss)	81,793	290,736	227,853	62,883	48,777	2,024	K
Non Operating Revenue							
Unrealized Investment Gains/(Loss)	62,759	(54,116)	-	(54,116)	-	-	
Fund Managers Fee	(1,366)	(8,170)	(8,750)	580	(17,500)	(17,500)	L
Total Non Operating Income	61,394	(62,286)	(8,750)	(53,536)	(17,500)	(17,500)	
Increase/(Decrease) in Net Assets (excluding Facilities Fund)	143,187	228,450	219,103	9,347	31,277	(15,476)	
Facilities Fund							
AGC Center Gain/(Loss)	6,190	37,137	37,137	-	74,274	74,274	
Interest and Dividend Income	3,297	15,889	8,600	7,289	17,200	17,200	
Unrealized Investment Gains/(Loss)	51,133	(39,695)	-	(39,695)	-	-	
Fund Managers Fee	(1,461)	(8,806)	(8,600)	(206)	(17,200)	(17,200)	M
Total Facilities Fund Income/(Loss)	59,159	4,525	37,137	(32,612)	74,274	74,274	
Total Increase/(Decrease) in Net Assets (including Facilities Fund)	202,346	232,975	256,239	(23,265)	105,551	58,798	N

**OREGON-COLUMBIA CHAPTER
ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.**

Balance Sheet

June 30, 2020

Assets

	JUN 2020	MAY 2020	JUN 2019	Dec 2019	Δ From Prior Month \$ Value	% Change
Current Assets						
Cash	\$1,835,901	\$276,808	\$1,130,197	\$241,472	\$1,559,093	563.2%
Restricted Centennial Cash	374,811	374,931	\$0	\$0	(\$120)	0.0%
Accounts Receivable	(\$1,733,436)	\$170,723	\$1,855,112	\$116,670	(\$1,904,158)	-1115.4%
Prepaid Expenses	\$373,652	\$395,881	\$312,922	\$163,567	(\$22,229)	-5.6%
Short Term Investments	754,741.22	254,579.06	\$1,723,402	\$1,778,789	\$500,162	196.5%
Total Current Assets	\$1,605,669	\$1,472,922	\$5,021,632	\$2,300,497	\$132,748	9.0%
Long Term Investments						
Securities Portfolio	\$2,006,714	\$1,942,494	\$1,941,009	\$2,058,413	\$64,220	3.3%
Facilities Fund	\$2,130,203	\$2,077,234	\$2,064,729	\$2,162,815	\$52,969	2.5%
Total Long Term Investments	\$4,136,917	\$4,019,728	\$4,005,738	\$4,221,228	\$117,189	2.9%
Depreciable Assets	\$502,919	\$518,116	\$497,416	\$444,740	(\$15,197)	-2.9%
Total Assets	\$6,245,505	\$6,010,765	\$9,524,786	\$6,966,465	\$234,740	3.9%

Liabilities and Net Asset Balance

	JUN 2020	MAY 2020	JUN 2019	DEC 2019		
Current Liabilities						
Accounts Payable	\$66,105	\$54,831	\$289,868	\$125,949	\$11,274	20.6%
PAC Contributions Payable	\$16,398	\$798	\$36,948	\$798	\$15,600	1956.1%
Taxes & Pension Payable	\$28	\$28	\$230	\$230	\$0	0.0%
Accrued Vacation Payable	\$164,565	\$172,811	\$131,161	\$115,495	(\$8,247)	-4.8%
Contract Liabilities - Deferred Dues	\$0	\$309,213	\$3,243,936	\$1,566,724	(\$309,213)	-100.0%
Contract Liabilities - Unearned Income	\$597,487	\$265,386	\$821,401	\$19,635	\$332,101	125.1%
Total Current Liabilities	\$844,582	\$803,067	\$4,523,543	\$1,828,831	\$41,515	5.2%
Long Term Liabilities						
Deferred Income - AGC Center	\$37,143	\$43,332	\$163,404	\$74,280	(\$6,190)	-14.3%
Notes Payable (Vehicles)	\$152,531	\$155,462	\$97,181	\$78,635	(\$2,931)	-1.9%
Total Long Term Liabilities	\$189,673	\$198,794	\$260,585	\$152,914	(\$9,121)	-4.6%
Net Assets						
Other Net Assets	\$1,480,985	\$1,331,488	\$1,450,678	\$1,596,654	\$149,496	11.2%
Centennial Fund	\$374,811	\$374,931	-	-	-	-
Restricted Facilities Fund	\$2,130,203	\$2,077,234	\$2,064,729	\$2,162,815	\$52,969	2.5%
Designated Financial Reserve	\$1,225,251	\$1,225,251	\$1,225,251	\$1,225,251	\$0	0.0%
Total Net Assets	\$5,211,250	\$5,008,904	\$4,740,658	\$4,984,720	\$202,346	4.0%
Total Liabilities and Net Asset Balance	\$6,245,505	\$6,010,766	\$9,524,786	\$6,966,465	\$234,740	3.9%

**Oregon-Columbia Chapter
Associated General Contractors of America, Inc.
June 2020 vs 2019
Income Statement Comparison**

	2020 Draft Year to Date Actual	2019 Final Year to Date Actual	\$ Value	% Change
Operating Revenue				
Dues Revenue				
General Contractor	845,522	807,611	37,911	4.69%
Specialty Contractor	873,746	849,545	24,201	2.85%
Associates	119,313	116,030	3,283	2.83%
Subtotal Dues Revenue	1,838,581	1,773,186	65,395	3.69%
AGCA Charter Fee	(217,750)	(225,767)	8,017	-3.55%
PAC Funds Included	-	-	-	
Discounts Taken - Dues	-	(2,171)	2,171	-100.00%
Net Dues Revenue	1,620,831	1,545,247	75,583	4.89%
Non-Dues Revenue			-	
Core Services	150,048	179,371	(29,323)	-16.35%
Product and Services	133,924	176,292	(42,368)	-24.03%
Ore. Workers' Comp Contract	935,790	867,185	68,605	7.91%
Net Non-Dues Revenue	1,219,762	1,222,849	(3,086)	-0.25%
			-	
Total Operating Revenue	2,840,593	2,768,096	72,497	2.62%
			-	
Operating Expenses				
General & Administrative	521,297	637,861	(116,563)	-18.27%
Salaries	1,579,342	1,440,945	138,396	9.60%
Travel & Entertainment	93,023	110,648	(17,625)	-15.93%
Contract Labor	239,703	222,029	17,674	7.96%
Programs	0	1,250	(1,250)	
Rent	116,492	114,966	1,526	1.33%
Total Operating Expenses	2,549,857	2,527,699	22,158	0.88%
			-	
Total Operating Income / (Loss)	290,736	240,397	50,339	20.94%
			-	
Non Operating Revenue				
Unrealized Investment Gains/(Loss)	(54,116)	201,782	(255,899)	-126.82%
Fund Managers Fee	(8,170)	(7,765)	(405)	
Total Non Operating Income	(62,286)	194,017	(256,303)	-132.10%
			-	
Increase/(Decrease) in Net Assets (excluding Facilities Fund)	228,450	434,415	(205,965)	-47.41%
			-	
			-	
Facilities Fund				
AGC Center Gain/(Loss)	37,137	89,124	(51,987)	-58.33%
Interest and Dividend Income	15,889	20,074	(4,185)	-20.85%
Unrealized Investment Gains/(Loss)	(39,695)	149,139	(133,250)	-89.35%
Fund Managers Fee	(8,806)	(8,394)	(31,300)	
Total Facilities Fund Income/(Loss)	4,525	249,942	(258,748)	-103.52%
			4,525	
Total Increase/(Decrease) in Net Assets (including Facilities Fund)	232,975	684,357	(684,357)	-100.00%



GROW

Strategic Objective #3: Grow and develop the construction workforce of the future.

Communications Strategy Development

- Quinn Thomas has completed Phase 1 – research and data collection. The result is a communications research report which is attached. The report was developed with over 100 different data points, this included online survey completed by AGC members and workforce partners, in-depth interviews with key stakeholders, focus group of new hires and apprentices, and regional and national market research. Through the research Quinn Thomas has identified 6 key findings and recommendations which will be used to inform the development of the communications strategy. Quinn Thomas has now moved into Phase 2 – communications strategy development. Anticipate the strategy to be completed by October.
 - Communications Research Report attached

Careers in Construction Month

- October marks careers in construction month and we are currently looking at using the month as a platform to disseminate and execute the communications strategy. Initial conversation with partners across the state have been positive, but they are taking a cautious approach due to uncertainty caused by COVID. We will continue to plan and connect with partners around this opportunity.

AGC Workforce Development Grants

- The Workforce and Professional Development Committee met to review and award the 2020 Workforce Development grant applications. This year 21 grant application were received, this included two internal requests to support Educator Externship, and three requests from AGC Chapters at OSU and OIT. The committee awarded at least partial funding to 20 applications, the last was referred to the AGC Foundation. In total, \$138,000 was distributed to a variety of projects within the training continuum across the state.
 - Summary report attached

Construction Workforce Coalition Update

- The Coalition met in June to discuss the impact of COVID on workforce development activities and how stakeholders are coping and moving forward. Speakers included industry, workforce investment boards, k-12 education, and registered apprenticeship. The conversation also covered racism and diversity in the construction sector because of protests and events taking place across the country. Time was spent discussing what the construction industry can do. The meeting included approximately 80 attendees from around the state. The next meeting is scheduled for September, topic has not been determined.

ODOT/BOLI Heavy Highway Workforce Development Program

- AGC is facilitating a meeting between heavy highway contractors and ODOT to provide contractor feedback on an ODOT funding workforce development program. The goal is to identify program deficiencies and possible solutions. The info will be used to inform the next RFP.

Educator Externship

- Educator Externship continued, while working through the COVID restrictions. There were 70 participants in Oregon and SW Washington.
- Program-wide virtual tours were conducted by: **Lease Crutcher Lewis, Knife River, PNCI, and NW College of Construction. SolidForm Fabricating** also combined their annual “UnConference” with the Externship this year for an additional opportunity for educators to debrief and share the experience.
- We had a five day schedule for SW Washington teachers that included some virtual tours (**R&H** and **Bremik**) and some physical tours. New companies participated in the program this year for the SW Washington group, including **Advanced American Construction, Nutter Corp., Tapani, and JR Merit**. AGC member Bill Smith, **Parker Smith & Feek**, does the surety bonds for these companies, and was very helpful in pulling in new member participants. Next year we anticipate more member companies who couldn't be involved this year will participate.
- The Willamette Valley participants had a greater percentage of virtual visit, including training programs, apprenticeship programs, back office (**Lease Crutcher Lewis**), safety (**Rick McMurry**), and higher education facilities. The only physical tour day was General Contractor Day, which included **Baldwin General Contracting, O'Brien Construction, Todd Construction, and non-member Rich Duncan Construction**.
- Southern Oregon educators had a combination of virtual and physical tours, including two days with **JB Steel, Bogatay Construction, Rocky Mountain Construction, and Crater Lake Electrical Training Center**.

Professional Development

- COVID wreaked havoc on many of our face to face classes. We have had to cancel seven Army Corps Quality Management classes that we historically sponsor and are the only training opportunity who regularly offers a monthly ACQM. This will cause a significant reduction in training revenues. Trainers are reluctant to go virtual, especially if there is a hands-on activity included in the certification, so it has been difficult to meet AGC member needs to provide certifications.

Veterans Outreach

- **Chambers Construction** continues to be a significant supporter of Veterans Legacy Oregon: Camp Alma. On July 18 and 19 we worked with Chambers to organize a workday at the camp, which brought in over 30 volunteers from the Eugene chapter of **NAWIC, Travelers Insurance, Pacific Lumber, Parker Smith & Feek, HP Civil**, and a monetary donation from the **AGC CLC**. Over 80 gallons of paint were donated by various organizations which covered about 2/3 of the buildings. The women from NAWIC did electrical work, plumbing, and roofing. The non-skilled volunteers painted, pulled weeds, and fixed lunch. Frosti arranged for a first aid trainer to offer free First Aid/CPR to the residents. The camp manager, board of directors, and residents were overwhelmed by the generosity of the volunteers. Much more needs to be done.

AGC: WORKFORCE DEVELOPMENT FINDINGS



UNDERSTANDING THE
OPPORTUNITIES IN CONSTRUCTION
JUNE 2020

AGC Oregon
Columbia
Chapter
ASSOCIATED GENERAL CONTRACTORS

QUINN
THOMAS

SUMMARY

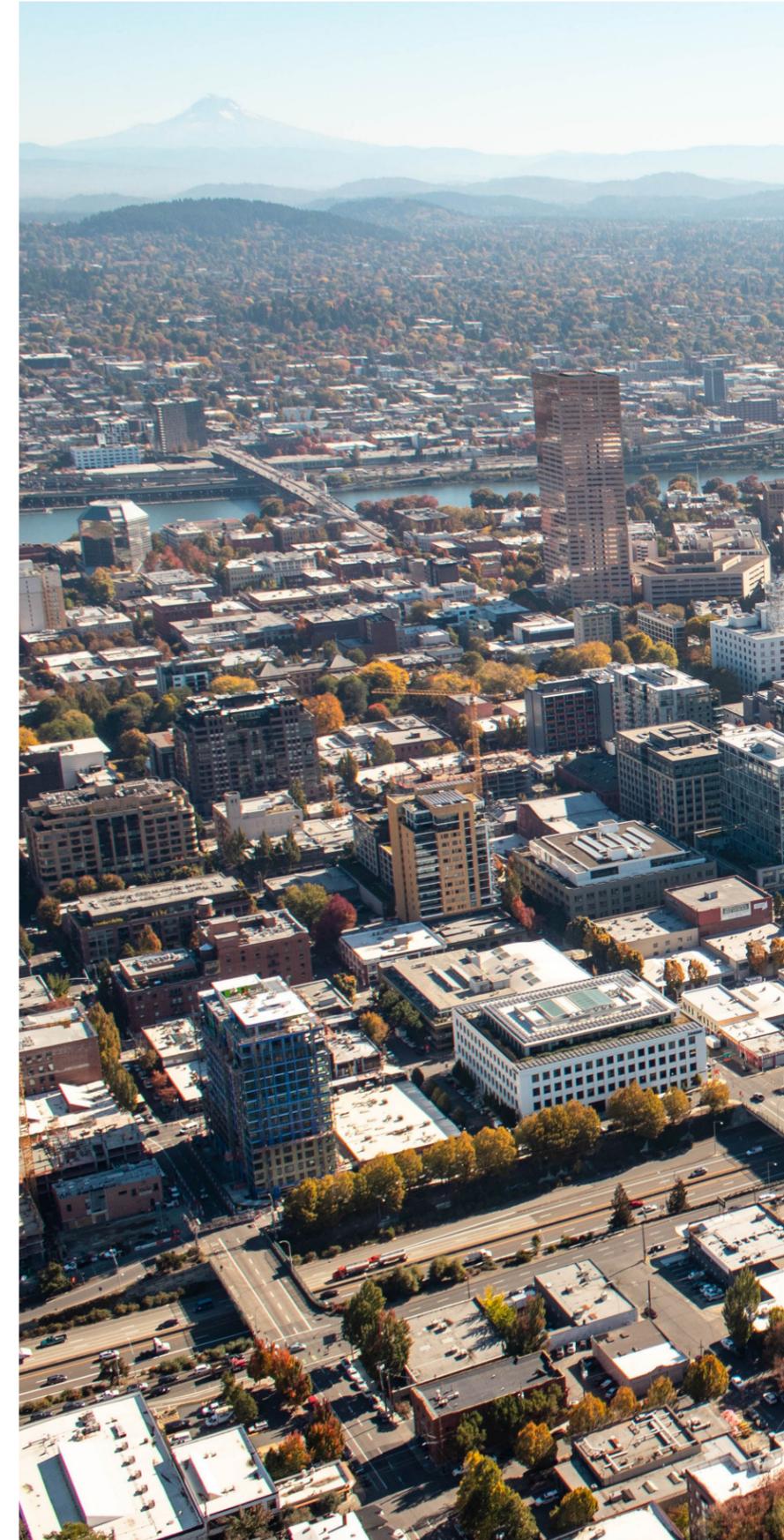
The AGC Oregon-Columbia Chapter membership is finding it increasingly difficult to recruit and retain skilled workers to meet current demand. In a 2019 survey, 87 percent of contractors reported having a difficult time filling some or all of their skilled worker positions, and 67 percent expect it to remain difficult to hire skilled workers for at least the next 12 months. In the same survey, 83 percent of AGC members rated the skill level of skilled workers in the current pipeline as “fair” or “poor.”

To advance the industry’s efforts to recruit and retain talent while overcoming marketplace challenges, the AGC enlisted Quinn Thomas’s expertise in integrated marketing communications to bring forward a comprehensive communications program. To inform the campaign, Quinn Thomas worked with AGC’s member organizations and industry partners to establish a deep understanding of its audiences, communications channels, and existing programs, along with reviewing recent industry research.

This report summarizes findings from more than 125 local construction companies and industry partners and serves as the foundation for the communications program.

TOPLINE FINDINGS INCLUDE:

- Skilled workers remain in high demand.
- Misconceptions about careers in construction plague the industry.
- Inclusion is essential to long-term success
- For Gen Z culture—not pay—is king.
- High school students are more likely to consider a career in construction
- It’s difficult to access skilled trades career paths.





TAKEAWAY #1: SKILLED WORKERS REMAIN IN DEMAND

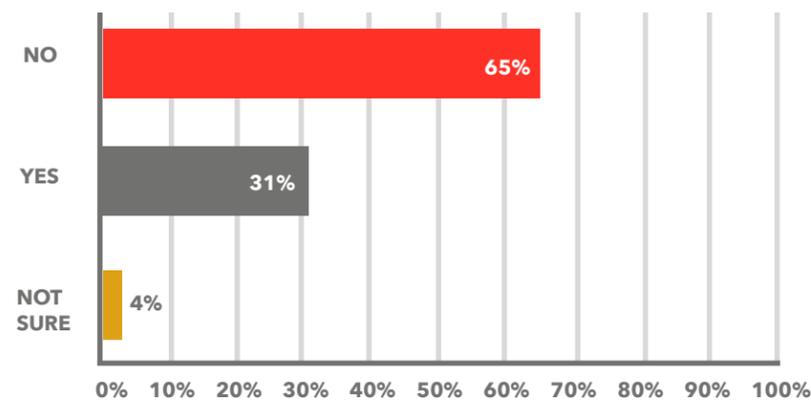
ONE OF OREGON'S FASTEST-GROWING EMPLOYERS

The construction industry is expected to grow its workforce by 17.5 percent from 2017 to 2027, according to a forecast by the Oregon Employment Department. This equates to more than 17,000 jobs, mainly skilled craft positions. While it remains to be seen how the pandemic will impact these forecasts, many economists are predicting a quick rebound in overall economic growth. At the same time nonresidential construction activity tends to lag the broader economy by 12-18 months, which suggests a possible slowdown in 2021.

A MAJORITY HAVE RETAINED THEIR SKILLED WORKFORCE

While there's no doubt COVID-19 has had and will continue to have a significant impact on our local and global economy, the majority of contractors kept their skilled workers employed and job sites running. This is primarily due to the construction community's quick work to create and implement social distancing protocols to keep field workers safe.

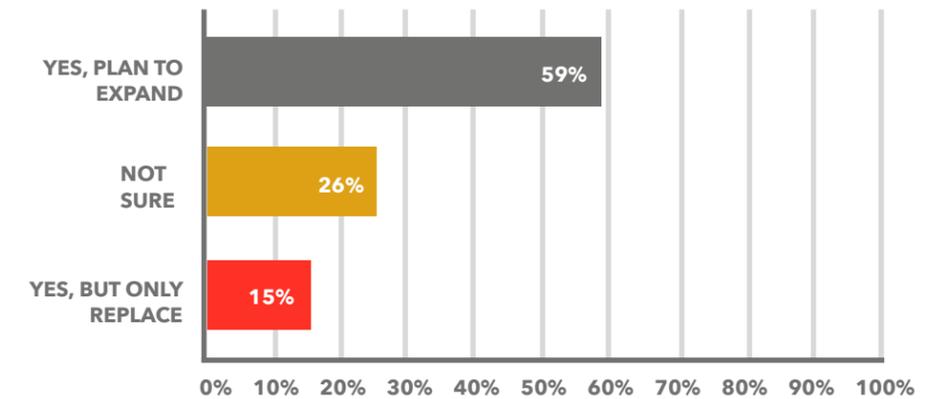
PANDEMIC SKILLED WORKER REDUCTION:



MOST PLAN TO EXPAND THEIR SKILLED WORKFORCE

During the last recession, contractors mostly pulled back on hiring and recruiting efforts and have not fully recovered. This resulted in a loss of apprentices who never returned to the industry and created a skills gap that is still evident in today's workforce. Large scale retirement of individuals in the current workforce is also top of mind for most contractors. The future growth of the industry over the next decade, even with a short-term slowdown, requires active recruitment in the construction market. Now contractors are committed to not making the same mistakes and staying focused on recruiting, training, and succession planning.

SKILLED WORKER HIRING, NEXT 12 MONTHS:



FINDING QUALIFIED SKILLED WORKERS IS A CHALLENGE

"In the next ten years half of my crew plans to retire." **—vice president, general contractor, Portland-metro area**

Put simply, it's not just about quantity; it's about quality. The quality of the candidate pool is the number one barrier to finding qualified skilled workers. Contractors need better candidates coming through the door who are dependable, eager to learn, work hard, and have a positive attitude. Several owners and managers noted that their best new hires come from adjacent sectors such as construction supply or residential building. These skilled workers are

successful because they have some foundational construction knowledge and customer service skills to build upon. Industry misconceptions and meeting pay and benefit expectations round out the top three barriers to finding qualified skilled workers.



TAKEAWAY #2: MISCONCEPTIONS PLAGUE THE INDUSTRY

MISCONCEPTIONS IMPACT THE ABILITY TO RECRUIT

Contractors, trainers, and educators alike emphasized throughout all of the research phases that industry misconceptions hinder recruiting and hiring efforts. The greater community often sees skilled work as “a dead-end job” or “something that only uneducated people do.” Contractors want to see more people seeking careers in the industry rather than considering these jobs as “the last resort.”

“The industry has tremendous competition, yet we are not competing. To do this we must use every tool available to educate the public and change the prevailing perception that construction is a “dead-end job.”

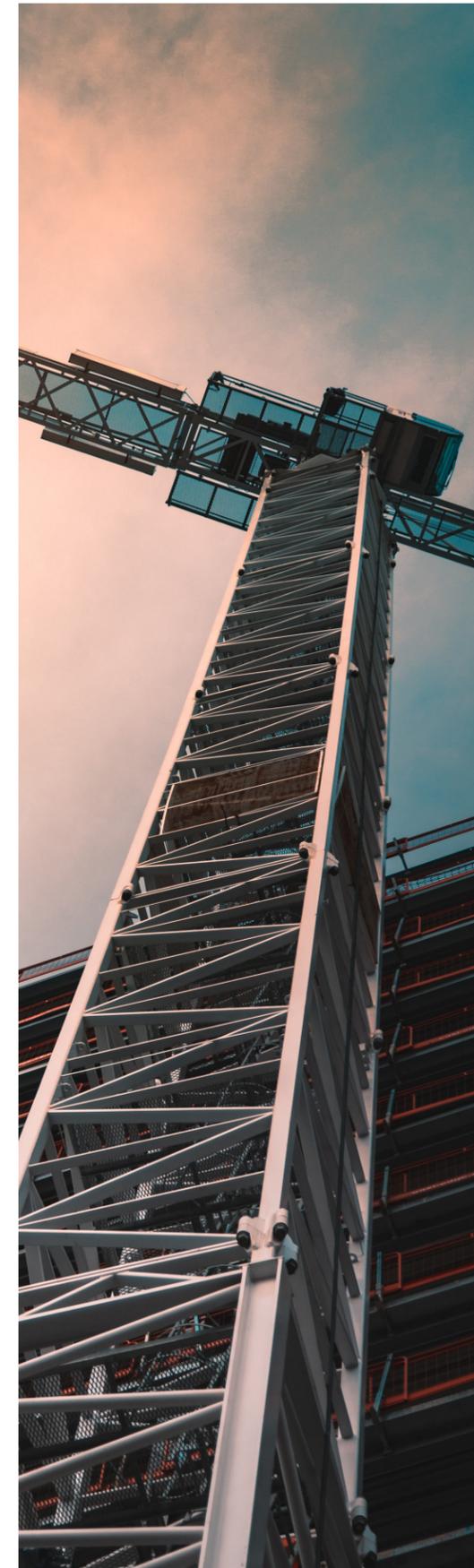
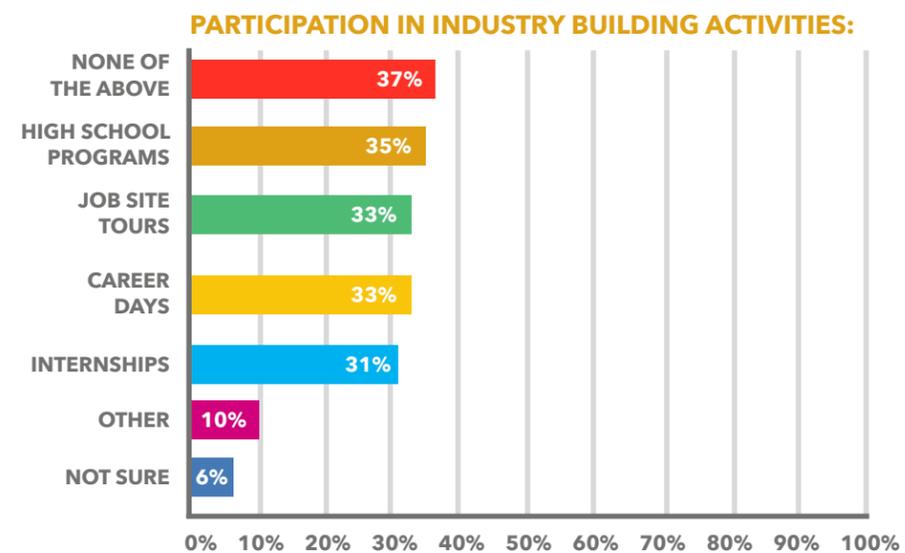
—owner/senior manager,
Willamette Valley

SHOWCASING CONSTRUCTION AS A REWARDING CAREER

To change perceptions, members are calling for an industry-wide campaign focused on demonstrating the many benefits of working in the skilled trades, including great pay/benefits without college debt, growth and entrepreneurial opportunities, and comradery. Another essential component of the campaign is to dispel common misconceptions that the industry is unsafe, unsophisticated, or low-tech.

A “BOOTS ON THE GROUND” APPROACH

Most contractors surveyed agree that industry-building efforts such as high school programs, internships, job site tours, and career days increase interest in the construction industry. Individuals who have a connection to the construction industry, such as a family member or mentor, are more likely to pursue it as a career. There is a significant opportunity to expand the industry’s reach within local communities by activating the 37 percent of contractors who don’t currently participate in industry building efforts, along with creating more opportunities for contractors who expressed the willingness to do more.





TAKEAWAY #3: INCLUSION IS ESSENTIAL TO LONG-TERM SUCCESS

INEQUITY AND EXCLUSION THREATEN GROWTH

The U.S. workforce is becoming increasingly racially, ethnically and gender-diverse. Women already comprise nearly half of the workforce and according to the Economic Policy Institute, the working class will become majority-minority by 2032. When asked about diversification efforts, most local contractors mention being an equal opportunity employer, but aren't taking any deliberate measures to appeal to a more diverse demographic. In order to be competitive and attract the best talent the construction industry should take a proactive approach and become a place where people of color and women see themselves having successful careers.

OPPORTUNITY FOR DIVERSITY, EQUITY AND INCLUSION

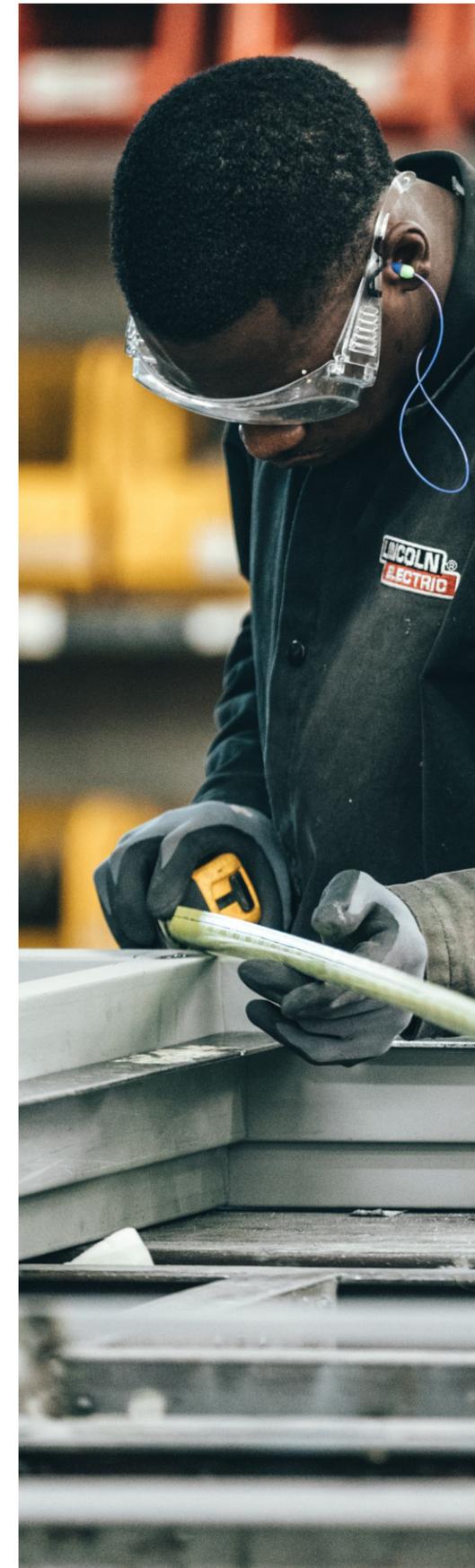
The recent *Portland Metro Region Construction Workforce Study* shows that of the 23,000 people working in nonresidential construction in the greater Portland metro area, 20 percent are minorities, and four percent are women. The same study revealed that apprentices who are women or men of color are far more likely to witness or experience harassment or discrimination. Additionally, an *AGC Oregon-Columbia Chapter Construction Training Sector Analysis* report reveals that contractors widely viewed gender and racial discrimination as a thing of the past. In contrast, training providers are concerned about opportunities and experiences for women and underrepresented minorities in the skilled trades.

INCLUSIVITY LEADS TO GREATER SUCCESS

Insights from *The Business Case for Diversity & Inclusion in the Construction Industry*, a recent report from the AGC of America Diversity & Inclusion Council, show that the arguments presented for a company adopting diversity and inclusion as a key business strategy go beyond the moral imperative of "doing the right thing." An intentional and practical culture shift towards diversity and inclusion can positively impact company profitability by improving employee productivity, recruiting and retaining top talent, increasing innovation, and creating a safer workplace.

COMMIT TO BUILDING A CULTURE OF CARE

The senseless murders of Ahmaud Arbery, Breonna Taylor, George Floyd, and so many others along with the protests that followed have pushed the United States to confront racial inequality. The AGC believes that the construction industry has a responsibility to respond by demonstrating that it provides opportunities for everyone to advance, prosper, and succeed. Now more than ever it is important that construction sites and offices across the country be welcoming and inclusive places to work. One immediate action that every contractor or individual can do is to take the AGC Culture of CARE pledge and work to continue building an industry that is diverse, safe, welcoming, and inclusive for all. This program offers industry-recognized resources and best practices for creating diverse and inclusive workplaces.





“Gen Z is demanding better workplace culture, but all generations appreciate more visibility, involvement in the decisions, and a bigger purpose beyond the paycheck.”

—owner/senior manager,
Willamette Valley

TAKEAWAY #4: FOR GEN Z, CULTURE—NOT PAY—IS KING

ADAPT TO THE NEXT GENERATION OF WORKERS

Generation Z—also known as “post-Millennials”—comprises the current generation of the population (age 17-25) entering the workforce. They are the most diverse population in our country’s history (just 52% white), highly tech-savvy, entrepreneurial, and progressive. This means they have new attitudes and expectations of employers that will be important to adapt to the hiring and retention strategy among the AGC membership.

MOTIVATED BY TRUST AND TRANSPARENCY

Contractors surveyed are noticing several shifts, including work-life balance and flexibility, becoming increasingly important. New skilled workers are also interested in the purpose and meaning of their work. They don’t want to show up and just be told what to do. This generation likes to understand the “why” behind their training, along with overall company decisions. When asked what is most important to the next generation of skilled workers, training sector providers ranked work culture, mentorship, and the opportunity for career advancement above pay.

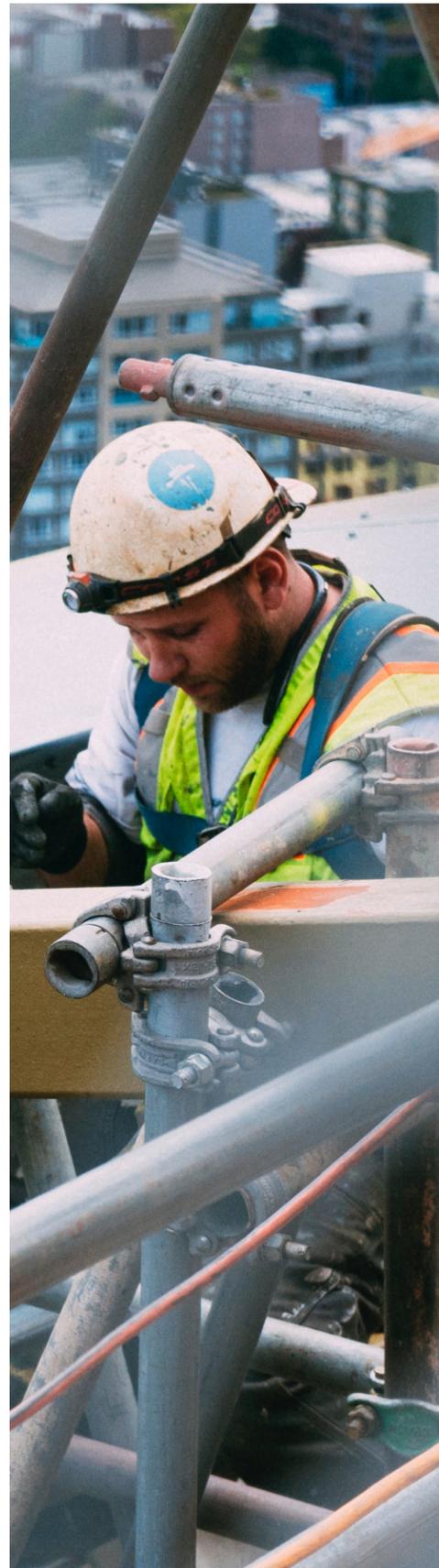
WORKPLACE CULTURE IS CRITICAL

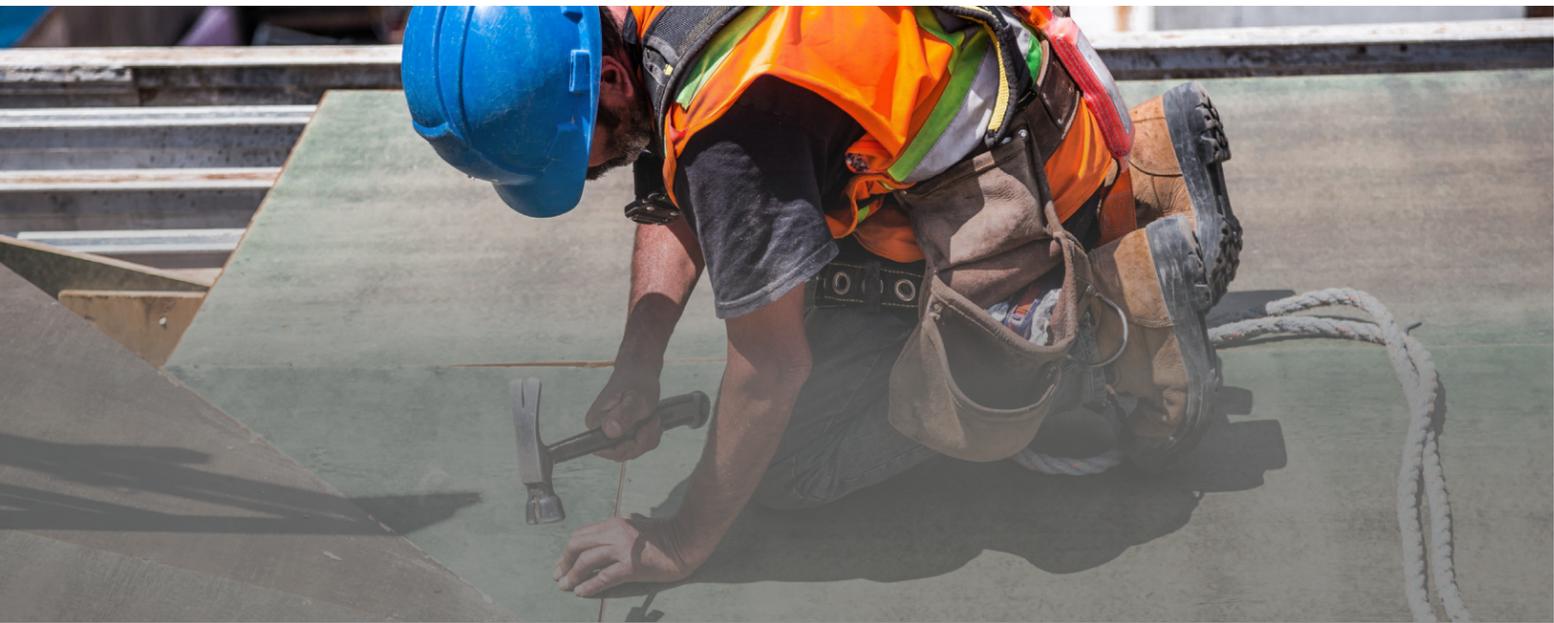
In a recent focus group, new skilled workers emphasized the importance of workplace culture. Gen Z seeks out managers who are invested in their long-term career success. In turn, they will be more loyal to a company that invests in training, a culture of inclusivity, technology, and resources that will facilitate long term growth. Similarly, contractors interviewed who have promoted a positive and transparent work culture reported fewer challenges in hiring and retaining quality skilled workers.

TECHNOLOGY IS CRITICAL TO CONNECTING WITH GEN Z

Gen Z are “digital natives” and have never known a life without technology at their fingertips. Most are savvy online researchers who want to understand the benefits of working for a company before considering applying. A robust online representation of your company offerings is a critical component to the recruiting strategy. A majority of contractors surveyed rate their pay, benefits, work culture, training programs, advancement opportunities, and philanthropic efforts as above average or excellent. Yet, an audit of the AGC member company websites and social channels show that most contractors only scratch the surface of promoting the benefits of working at their company online.

Additionally, showcasing technology innovations in construction jobs will be an important component of connecting with Gen Z. This includes the opportunity to manage job site equipment through the touch of a button, learning construction software on tablets in the field, and other advancements to make the job more attractive.

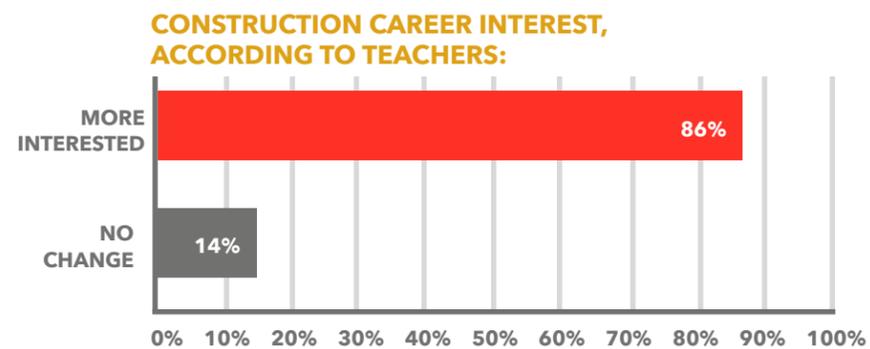




TAKEAWAY #5: STUDENTS MORE LIKELY TO CONSIDER CONSTRUCTION

INTEREST IN CONSTRUCTION IS ON THE RISE

A vast majority of teachers surveyed say students are more interested in a career in construction compared to a few years ago. Most equate this to an increase in exposure to the trades and high school CTE opportunities. For example, a Portland metro-based teacher reported that membership in their construction trades classes has quadrupled in the last four years. Contractors overwhelmingly praised the educator externship as having a positive impact regarding teachers' perceptions of the industry and recommend expanding the program.



THE NEXT GENERATION IS MORE CAREER MINDED

Several teachers report seeing a shift in perceptions relative to post-secondary options that do not include a four-year college. While some high school counselors and teachers hold tight to old notions of four-year college for all, more are realizing that the cost and return of a four-year degree are diminishing and may not be what they once were. Gen Z is becoming more averse to college debt, and the opportunity to earn while you learn is rising in popularity.

“I can’t stress enough how much we need advocates and partners in middle schools and high schools”

—owner/senior manager, SW Washington

OVERCOMING THE STIGMA OF FORGOING COLLEGE

Most contractors noted the overall impact that the “college for all” mentality has had on the trades. High schools have largely pushed students towards college as the only option for higher education. The current educational system offers minimal alternatives for higher education that leaves many students believing college is their only option for the future. Similarly, many parents view anything short of a four-year degree as a failure for their children.



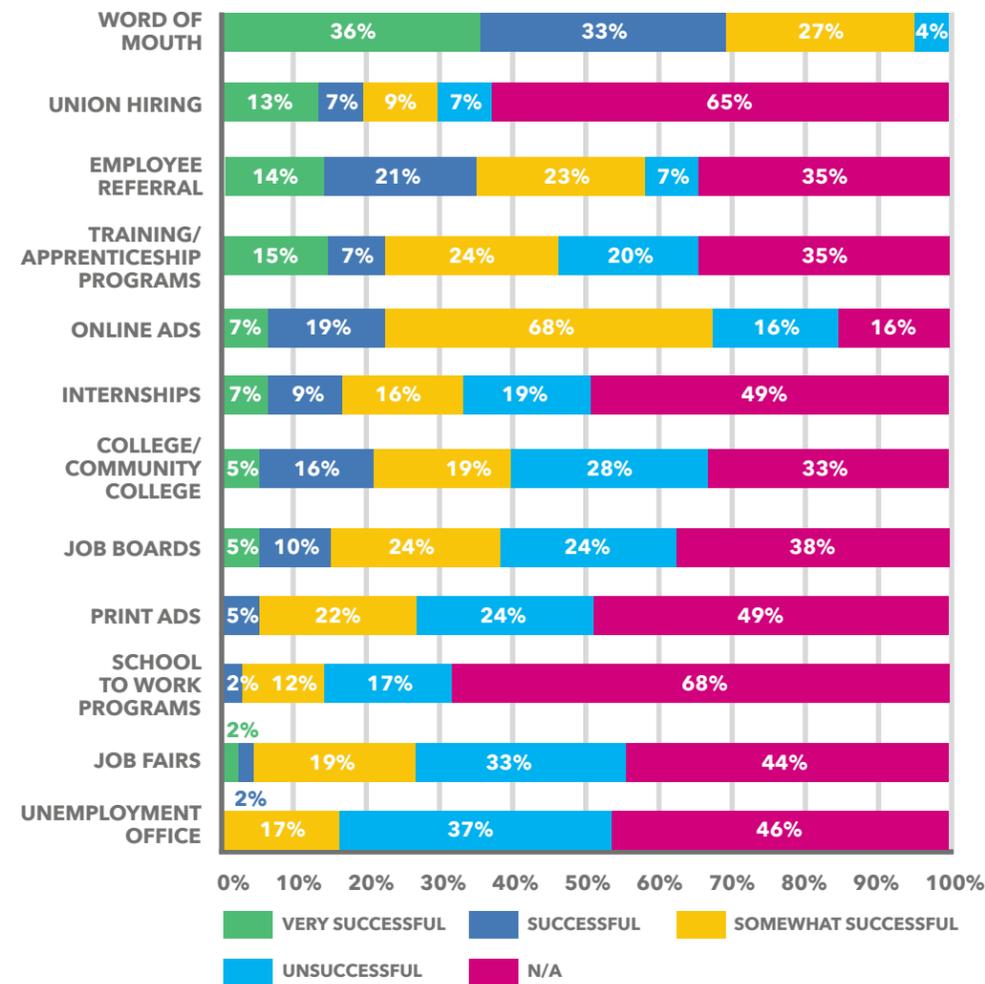


TAKEAWAY #6: IT'S DIFFICULT TO ACCESS SKILLED TRADES

RELIANCE ON WORD-OF-MOUTH RECRUITING

Contractors overwhelmingly cited word of mouth marketing as their best recruiting method. Career opportunities in construction are not easily accessible to everyone in the job market. Most connections into apprenticeship still occur through personal referrals, which limit the number of candidates who are exposed to the industry, especially people of color and women. Similarly, several contractors noted having summer internship programs, but the opportunity was often exclusive to friends and family.

EFFECTIVENESS OF RECRUITING METHODS:



A CALL FOR MORE ENTRY-LEVEL OPPORTUNITIES

Contractors, trainers, and teachers alike noted that the gap between high school and acceptance in apprenticeship is too significant. Many call for a more easily accessible bridge program that affords them opportunities to recruit, diversify, and retain young workers, so when ready to transition into an apprenticeship, they have the necessary experiences to make that transition successful. Ideas to accomplish this include expanding high school CTE programs, increasing summer internship opportunities, and creating a database of companies that offer entry-level positions.



CONCLUSION

Based on the findings of this comprehensive research effort, it is clear that there are opportunities to educate and inform the public about satisfying, well-paying jobs in construction. The AGC Oregon-Columbia Chapter and its members should employ a consistent, long-term approach to be effective in increasing the quantity and quality of skilled workers in the employment pipeline.

TOPLINE RECOMMENDATIONS INCLUDE:

- Generate interest with an industry-building marketing campaign
- Change misconceptions about the construction industry
- Commit to measurable progress with diversity, equity, and inclusion
- Prioritize and promote culture-based construction leadership
- Double down on high school CTE efforts
- Simplify the pathway to a career in construction

ABOUT AGC OREGON-COLUMBIA CHAPTER:

Since 1922, the AGC Oregon-Columbia Chapter has served as the voice of the commercial construction industry. We provide our members products and services designed to improve business and enhance the professionalism of the construction industry, including innovative workers' compensation program, legislative influence, safety and human resources consulting, training and education, health insurance and retirement/401(k) program, and labor relations. With nearly 830 member companies, AGC is the only trade association representing the full range of commercial construction companies, from industrial to building, heavy highway to multi-family residential.

METHODOLOGY

From May 18 through June 12, 2020, Quinn Thomas worked with the AGC to conduct an in-depth research project that identified opportunities to improve recruitment and retention of workers in the construction industry across Oregon and Southwest Washington. Perspectives from more than 125 contractors, training providers, educators, workforce development advisors, and new skilled workers are represented in this report.

THE RESEARCH IS BOTH QUALITATIVE AND QUANTITATIVE AND CONSISTED OF FOUR DISTINCT PHASES:

PHASE	OVERVIEW	AUDIENCE	TIMING	PARTICIPATION
IN-DEPTH INTERVIEWS	Conducted a series of 12 in-depth interviews to garner a deeper understanding of workforce challenges and opportunities. The interviews consisted of one-to-one phone calls that lasted 30-60 minutes.	Contractors, training providers, educators, and workforce partners	MAY 18-JUNE 8, 2020	12 PARTICIPANTS
SURVEYS	AGC's entire membership, along with key industry partners, provided workforce development insights via an online questionnaire.	Contractors, training providers, educators, and workforce partners	MAY 22 - JUNE 12, 2020	100 RESPONSES
MESSAGE MAPPING SESSION	The Workforce Development Committee participated in a brainstorming session to identify key messages to inform the marketing campaign.	Contractors, training providers, educators, and workforce partners	JUNE 3, 2020	10 PARTICIPANTS
FOCUS GROUP	A group of new skilled workers took part in a focus group to better understand what motivates the next generation of workers.	New skilled workers	JUNE 4, 2020	7 PARTICIPANTS

ABOUT QUINN THOMAS:

Quinn Thomas is a marketing communications and brand strategy agency that specializes in building and executing integrated marketing communications strategies to advance business objectives and change perceptions. We think companies and brands, like people, should be themselves. Their best selves. They should be amazing. Engaging. Smart. Leaders. And yeah, they should be a little different. Because no one ever made their mark following the pack. For a decade, Quinn Thomas has partnered with companies and organizations to create compelling public relations and communication strategies. Because everyone has a story that deserves to be told.



AGC Oregon
Columbia
Chapter
ASSOCIATED GENERAL CONTRACTORS

QUINN
THOMAS



2020 AGC Workforce Development Summary

Overview

- Awarded a total of \$137,847
- \$30,000 went to internal request to support Educator Externship
- \$99,100 supporting construction workforce development efforts across the state
- \$8,747 supported AGC student chapters at OSU & OIT

Individual Award Summary

Educator Externship (Internal) - \$30,000

Funding supports teacher stipends and regional teacher leaders to facilitate programming.

Clark College, Vancouver, WA - \$5,000

Development of online training for the College's welding program.

Constructing Hope, Portland, OR - \$8,000

General support for their pre-apprenticeship program, which serves formerly incarcerated & people of color.

Girls Build, Rogue Valley, OR - \$10,000

Expansion of Southern Oregon initiatives with the goal of offering year-round programs.

Glencoe High School, Hillsboro, OR - \$5,000

Supports the hiring of a teacher assistant in the construction class.

Gresham Barlow School District, Gresham, OR - \$5,000

Development of a mobile classroom that can teach hands-on construction classes at middle schools.

High Desert ESD, Redmond, OR - \$2,000

Purchase career ladder books to supplement CTE classes.

In 4 All, Beaverton, OR - \$5,000

Middle school program, STEM Connect, which connects industry to 7 & 8 grade classrooms.

Lane ESD, Eugene, OR - \$10,000

Supports the newly created high school pre-apprenticeship program.

Lane Workforce Partnership, Eugene, OR - \$5,000

Supports the organization's Construction-Aggregate group which connects youth to the construction industry.

NW College of Construction, Portland, OR - \$5,000

Provide hands-on experiences for students visiting the college.

Oregon Building Congress, Wilsonville, OR - \$15,000

Variety of workforce development program occurring across the state.

Oregon Tradeswomen, Portland, OR - \$10,000

Development of a virtual classroom to expand the reach of their programs.



Portland Youth Builders, Portland, OR - \$6,000

Supports operation of pre-apprenticeship program which serves under-served youth.

Portland Workforce Alliance, Portland, OR - \$4,000

Supports their Bridge to Construction Careers programs which focuses on high school students.

Winter Lakes High School, Coquille, OR - \$4,100

Purchase of curriculum for the construction class, allows program to expand offerings.

Oregon State University, AGC Chapter - \$4,500

Chapter will purchase computers and monitors to outfit 5 workstations.

Oregon Institute of Technology, AGC Chapter – \$4,247

General chapter support and the purchase of an accelerometer.



ENGAGE

Administrative Fee Reduction

The Trustees of the Northwest AGC Chapters Retirement Plan are continuously reviewing the Plan for opportunities to benefit plan participants. Strong participation, carefully considered investment options, and frugal budget management have contributed to the continued health of the Plan and allowed the Trustees to further reduce administrative plan fees for all participants.

Effective July 1, 2020, asset-based fees were reduced by one basis point for everyone, with additional reductions for participants accumulating substantial account balances. Administrative fees, which are used to pay all plan expenses other than investment management fees, are now being assessed under the following reduced fee structure:

The monthly plan fee charged to participants is composed of two components, a per capita fee of \$5 a month and a tiered asset-based fee.

The asset-based fee percent is determined based on the amount of total assets that participants associated with your employer have in the Plan, or your personal account balance. Your asset-based fee percent will always be the lesser of the percent associated with your employer’s asset range or with your personal account balance.

The following grid of employer and personal asset levels will be used to determine your asset-based fee percent:

Employer Asset Range		Participant Asset Range	Annual Asset Based Fee	Monthly Per Capita Fee
Less than \$250K		Use employer range	0.56%	\$5.00
\$250K - \$1MM		Use employer range	0.41%	\$5.00
\$1MM - \$2.5MM	OR	\$100K-\$250K	0.31%	\$5.00
\$2.5MM - \$5MM	OR	\$250K-\$500K	0.18%	\$5.00
Greater than \$5MM	OR	Greater than \$500K	0.12%	\$5.00

For example, a monthly plan fee for a participant who works for an employer in the \$250K-\$1MM asset tier and has a balance of \$20,000 is calculated using the employer’s asset range as follows:

$$\text{Monthly fee amount} = \$5 + (\$20,000 \text{ balance}) * (0.41\%/12) = \$11.83$$

For example, a monthly plan fee for a participant who works for an employer in the \$250K-\$1MM asset tier and has a balance of \$260,000 is calculated using the participant’s asset range as follows:

$$\text{Monthly fee amount} = \$5 + (\$260,000 \text{ balance}) * (0.18\%/12) = \$44.00$$

DATE

Attn :

X Mailing List Merge

x x

RE: AGC Recruitment

I know you might think it is unusual that you are getting a letter from me regarding AGC membership recruitment, so let me get right to it. As a small business, your time—along with mine—is valuable, and it is my hope that by the time you finish reading this letter it will give you and your company pause to think...and maybe—just maybe—I can help your company improve its bottom line.

Why is *(insert board member name)* trying to sell me on AGC? Simply put, what if I told you that it will help your company be better suited to take on the challenges of the construction industry (and your membership could actually make you money)?

It goes without saying that 2020 has unfolded in ways none of us could have predicted. Except for the great work done by AGC in March and April of this year, the construction industry would have been closed in Oregon. AGC successfully worked around the clock to keep construction open for business. The chapter drafted job site safety and health guidelines that helped companies meet the requirements of the governor's executive order, and the industry has been cited as a positive example of how to meet the requirements of the executive order and keep working. Those guidelines have now been adopted by other industry sectors throughout Oregon and by chapters around the country. We have rapidly shifted many of our events to virtual meetings that have, in many cases, shown record attendance.

In short, AGC hasn't missed a beat. The industry is still working and so is AGC.

Please afford me some time to read the reasons why you should join, based on the products and services offered by AGC. And it should be noted that although our name is “Associated General Contractors,” we really have almost twice as many specialty contractors, suppliers, and associates as generals.

1. **Workers' Compensation Insurance** – Clearly our best program, and if you are enrolled in our retro program with SAIF, your return on investment and rebates range *from one to four times* your annual dues. Clearly put, my dues, because of my volume, were +\- ***(insert annual membership dues amount)***, and I got return and dividend checks back for 2.5 times that. That should be enough for you to say “***(insert board member name)***, I'm in!” But the truth is, your workers in the field have to perform work safely in order to qualify for the program. Safety in this case does pay. So...what's next?
2. **Safety** – *Available to ALL AGC members at no additional charge:*
 - General safety advice and consultation via phone and email
 - Safety management consultant visit for site audit or training (per request to director of safety services)
 - Safety Meeting App – one-year free subscription (*limited to one free single user account*)

- 1,100+ safety meeting topics
- Easily document meetings, incidents, and safety checklists
- Printable PDF and CSV reports
- Safety awards and recognition programs
- AGC Safety and Health Council – meets six times a year for education and discussion

Even if your company is too small to afford a safety director or inspector, here is where you can start reinforcing a positive safety culture. So, here's a redundant question: What is the cost of not promoting, teaching, or reinforcing a safe company culture? You know the answer...a heck of a lot more \$\$\$ than your dues! If your company is not too small to afford a full-time equivalent safety professional, then AGC can help your safety person(s) reinforce what's needed in the field.

3. **Health Insurance** – We understand that contractors need a benefit program that can retain and attract employees while controlling costs. Health insurance through the AGC Health Benefit Trust is tailored for companies in construction and related industries. Underwritten as a single large employer benefit plan, we allow flexibility and choice in plan designs and innovative programs for eligible AGC members of all sizes. AGC is proud to offer benefit options from Regence BlueCross BlueShield of Oregon and The Standard, who are respected carriers committed to helping your employees live healthier lives.
4. **HR Advice** – Ever had an HR issue? Ever fire someone or say something and then think... Hmmm boy, I wish I could do that over again? AGC can provide HR advice before you say the thing you will regret and hopefully not have to pay for the mistake.
5. **Government Affairs** – OK, politics...how many times during a political election do you get asked to donate? If you feel strongly about some industry position, do you donate \$100 to maybe \$5,000? So here's the truth: those kinds of donations are nice, but when it comes to having a voice at the table of your state and federal regulators, it takes a lot more than that to be heard. By participating in the AGC Political Action Committee (PAC), you can be a part of something larger and have an impact. Impact, you say...what has AGC done for your company lately?

As we reflect upon the 2019 Oregon Legislative Session, one thing is clear: the issues we worked to defeat will certainly return. AGC's public affairs team had six priorities this session: defending against a raid on SAIF's reserves, limiting diesel equipment regulation, limiting the expansion of public works/prevaling wage laws, maintaining the workers' compensation system, preventing workplace marijuana accommodation, and defending the highway trust fund under attack through cap and trade.

AGC led the coalition to defend against a raid of SAIF funds, a proposal that would have had crippling impacts to the historically low rates being paid by employers and the incredible services offered to employees. It is important to note: SAIF's reserves are funded by employer-paid premiums, not through any state resources. Alongside other allies, AGC assisted in limiting diesel engine regulations. In particular, AGC fought against statewide off-road diesel equipment requirements for public contracts, ultimately limiting it to only large projects in the metro region of Clackamas, Washington, and Multnomah counties. Re-shaping this legislation was the only defense against a statewide mandate. Additionally, AGC faced an unprecedented number of

prevailing wage bills in the 2019 session. After much negotiation a compromise was reached on the only bill that moved forward—that bill ultimately did not pass. Another threat was a proposal to undo the Mahonia Hall reforms of the 1990s, which would have led to significant cost increases to workers' compensation. Given the importance of the decades-long success of Oregon's workers' compensation system, AGC worked to significantly narrow the scope of the proposed changes, before the proponents ultimately pulled the bill. Given the safety-sensitive nature of our industry, AGC led a coalition to defeat the passage of marijuana accommodation in the workplace and was successful. Cap and trade was the dominant issue for the 2019 legislative session. AGC engaged in the cap and trade policy discussion with a strict focus on defending the highway trust fund.

Along with the six priorities described above, there are many other threats that AGC is actively engaged in—most notably the gross receipts tax effective January 1, 2020.

AGC's political engagement through its PAC is issue-driven and supports candidates and incumbents who understand our industry and the importance of its continued success in Oregon.

6. Last, but not least, is **Products, Services, and Training** – If everything listed above wasn't enough to sell you already, there are discounts received through membership on vehicles, equipment, phones, and plenty of others. For example, *(insert company name)* just purchased some new pickups and received an additional \$500–\$1,000 savings per vehicle depending on the brand. The services and training are, simply put, the best in the industry when it comes to:

Professional Development

These courses provide industry qualification and relevant best business practices that are critical to the success of commercial contractors and for construction professionals.

- US Army Corps of Engineers/Construction Quality Management
- Certified Erosion & Sediment Control Lead (CESCL)
- Lean construction education
- Supervisory training
- Online training options

Safety Training and Certification

AGC is a premier education resource for the construction industry, providing a wealth of education opportunities. Well-trained and knowledgeable employees have significant impact on your company's bottom line and sustain the industry by cultivating our future workforce. AGC supports life-long learning through a broad array of offerings through multiple learning venues. Courses are designed for all levels of experience. No matter the size of your firm or the type of work you do, AGC has education and training programs designed for you. AGC offers numerous safety training and certification programs designed to help contractors improve safety and reduce accidents, meet OSHA requirements, and meet the education needs of the construction industry. For the convenience of the contractors and employees, we plan ahead and schedule much of our training for the entire year. If the scheduled training dates do not work for you, we can put together a custom class that will meet your needs:

- Confined Space Entry
- Scaffold Training
- Fall Protection
- First Aid, CPR training
- OSHA 10 and 30 training
- Many additional topics

Ladies and gentlemen...need I say more? I know contractors are the hardest people to sell to, so I hope that you find the above points valid, and you will consider joining our organization. We, as an industry organization, are stronger by the number of members we represent. We need you! And I can safely say you probably need us as well!

If you have any questions please feel free to call me at my office, *(insert company or direct phone)*.
Have a good day!

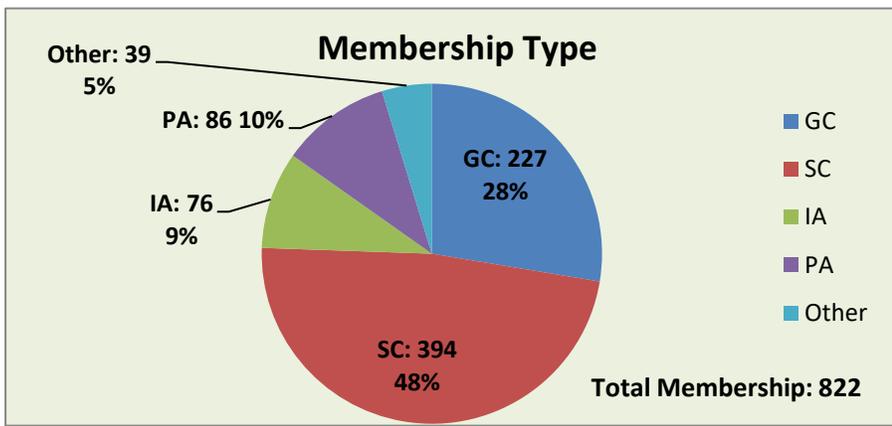
Sincerely,

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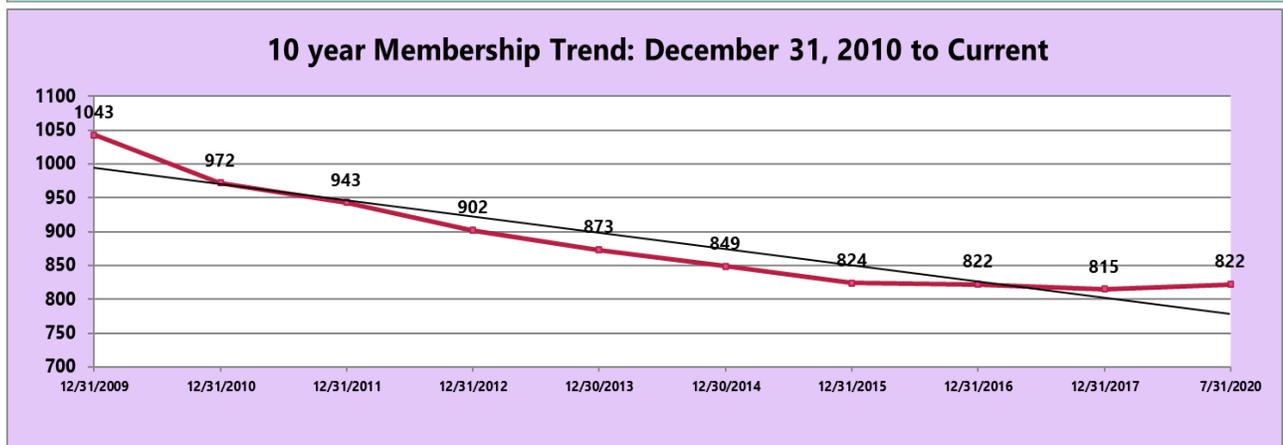
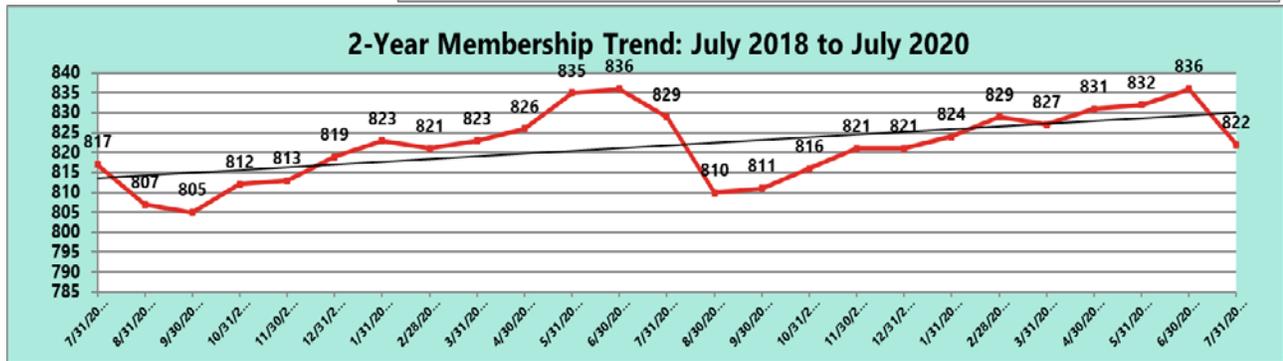
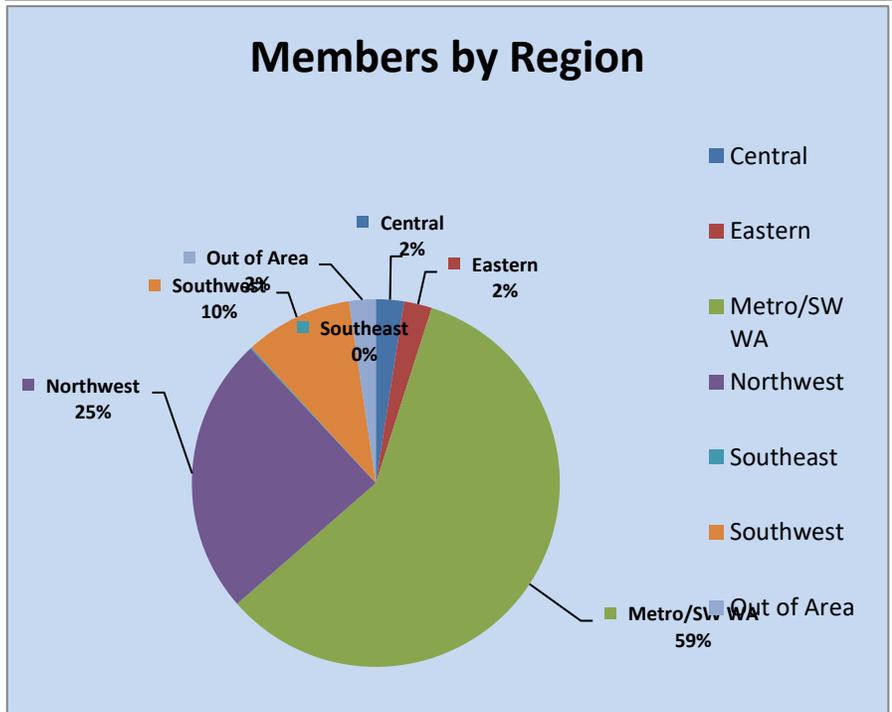
Company Name and Title

AGC Oregon-Columbia Chapter Board of Directors

Category	Number
GC	227
SC	394
IA	76
PA	86
Other	39
Total	822



Region	Number
Central	20
Eastern	20
Metro/SW WA	477
Northwest	199
Southeast	1
Southwest	77
Out of Area	19



Membership Marketing Activities

For the Month of July 2020

7/31/2020

General Cont. Classification	Central	Eastern	Metro/	North	Out	South	South	Total
			SW WA	West	of Area	East	West	
\$0 - \$1 Million	0	3	10	6	1	0	8	28
\$1 - \$2 Million	1	0	7	6	1	1	3	19
\$2 - \$5 Million	4	3	18	14	0	0	7	46
\$5 - \$10 Million	3	1	12	13	0	0	5	34
\$10 - \$15 Million	2	0	16	8	0	0	2	28
\$15 - \$20 Million	0	1	5	10	0	0	3	19
\$20 - \$45 Million	2	1	17	6	0	0	1	27
Over \$45 Million	0	0	18	7	0	0	1	26
TOTAL FOR GC	12	9	103	70	2	1	30	227

Specialty Cont. Classification	Central	Eastern	Metro/	North	Out	South	South	Total
			SW WA	West	of Area	East	West	
\$0 - \$1 Million	3	2	25	17	0	0	11	58
\$1 - \$2 Million	0	1	36	24	0	0	6	67
\$2 - \$5 Million	2	2	67	22	1	0	7	101
\$5 - \$10 Million	5	1	44	22	3	0	4	79
\$10 - \$15 Million	0	0	21	8	0	0	3	32
\$15 - \$20 Million	1	0	11	3	0	0	0	15
\$20 - \$45 Million	1	0	25	3	1	0	1	31
Over \$45 Million	0	0	10	1	0	0	0	11
TOTAL FOR SC	12	6	239	100	5	0	32	394

Industry Assoc. Classification	Central	Eastern	Metro/	North	Out	South	South	Total
			SW WA	West	of Area	East	West	
0-20 Employees	2	2	15	4	1	0	0	24
21-50 Employees	0	2	19	4	0	0	4	29
Over 50 Employees	0	0	19	4	0	0	0	23
TOTAL FOR EMPLOYEES	2	4	53	12	1	0	4	76

Classification	Central	Eastern	Metro/	North	Out	South	South	Total
			SW WA	West	of Area	East	West	
Professional Associate	1	0	61	9	9	0	6	86
Affiliate	0	0	0	0	0	0	0	0
Emerging Small Business	0	0	1	0	0	0	0	1
Honorary Member	2	1	12	6	2	0	5	28
Mentor Protege	0	0	8	2	0	0	0	10
TOTAL	3	1	82	17	11	0	11	125

GRAND TOTAL	Central	Eastern	Metro/	North	Out	South	South	Total
			SW WA	West	of Area	East	West	
	29	20	477	199	19	1	77	822

AGC Membership Status Report

July 2020

New Members

Classification	Company	Work Type	Location
GC	Conway Construction Company	General Requirements Existing Conditions Concrete Utilities Transportation Waterways and Marine Construction	Vancouver, WA
PA	Kelly McNutt Consulting, LLC	Construction Consultants	Camas, WA

Resignations/Terminations

Classification	Company	Resignation Code
PA	B2W Software	G, L
PA	Davis Rothwell Earle & Xochihua, PC	I
SC	Heritage Glass, Inc.	J, F
PA	IMAGINiT Technologies	G, L
GC	Janssen Well Drilling Company	C
GC	Jarvis Road	K
IA	Motion and Flow Control Products, Inc.	I, K
IA	Munnell & Sherrill, Inc.	I
SC	Oregon Roofing Company	B
IA	Pendleton Ready-Mix	I
GC	Pioneer Construction, Inc.	I
MP-SC	Power Plus Electric, LLC	F
IA	Puget Sound Steel	G
GC	S M Andersen Company	C
PA	TS & S Ford	I
MP-SC	Veteran Electric, LLC	F

Reinstatements

Classification	Company	

Classification Change

Legend for Termination Codes:

- | | |
|--|--|
| A – Non-payment of dues | G – Lack of time to participate |
| B – Dues too high | H – Dissatisfied with AGC |
| C – Out of business | I – Other (Retire, Death, Merger, Etc.) |
| D – Economic conditions/no work in area | J – Healthcare benefit costs |
| E – Joined similar association | K – Workers Comp issues |
| F – Does not utilize products & services | L – Did not meet networking expectations |

EVENT UPDATE

Date: July 21, 2020

To: AGC Board of Directors

From: Viktoria Schulz, Events Manager

Event	Date	Location
Summer Convention Speaker Series	Every Tuesday–Thursday in August 2020	ONLINE
OSU Tailgate	Fall	TBD
Annual Business Meeting	January 29, 2021	Portland Marriot Downtown

Top Shot: Canceled (*originally scheduled for June 15, 2020*)

Southern Oregon Golf Tournament: Canceled (*originally scheduled for June 5, 2020 and then rescheduled for October 9, 2020*)

AGC Golf Tournament: Canceled (*originally scheduled for July 15, 2020 and then rescheduled for August 17, 2020*)

AGC Wide Open Golf Tournament: Canceled (*originally scheduled for August 6, 2020*)

SIR Awards Gala: Canceled (*originally scheduled for August 8, 2020*)

Fall Rogue Valley Poker Tournament: Canceled (*originally scheduled for fall 2020*)

Klamath Area Christmas Party: Canceled (*originally scheduled for December 2020*)



TUESDAY	WEDNESDAY	THURSDAY
<p>August 4 (8–9:30 am):</p> <p><i>AGC of America: Empowering the Construction Workforce</i></p>	<p>August 5 (8–9:30 am):</p> <p><i>The Changing Landscape of Workplace Drug Testing</i></p>	<p>August 6 (8–9:30 am):</p> <p><i>Millennials Making Their Mark - A Conversation About Millennials in the Construction Industry</i></p> <p>(4–5 pm) Happy Hour Reception</p>
<p>August 11 (8–9:30 am):</p> <p><i>Tips and Techniques for Detecting and Preventing Fraud in Your Construction Company</i></p>	<p>August 12 (8–9:30 am):</p> <p><i>Preparing for Tomorrow: The Post COVID-19 Recovery Outlook</i></p>	<p>August 13 (8–9:30 am):</p> <p><i>Five Cybersecurity Fundamentals for Construction Companies</i></p>
<p>August 18 (8–9:30 am):</p> <p><i>Gaining the Competitive Edge Through Diversity and Inclusion</i></p>	<p>August 19 (8–9:30 am):</p> <p><i>Terminations, Suspensions, and De-Scoping: What Are the Important Practical and Legal Implications?</i></p>	<p>August 20 (8–9:30 am):</p> <p><i>Cyber Risk for Contractors: How to Proactively Protect Your Business From Cyber Risk</i></p> <p>(4–5 pm) Happy Hour Reception</p>
<p>August 25 (8–9:30 am):</p> <p><i>Battling the College-for-All Mentality: AGC’s Plan to Communicate Construction Careers to Students, Parents, and Other Influencers</i></p>	<p>August 26 (8–9:30 am):</p> <p><i>Advocacy Update: What’s Next for Oregon?</i></p>	<p>August 27 (8–9:30 am):</p> <p><i>The MOD Squad: The Secret Weapon to Effective Claims Management</i></p>

ENGAGE STRATEGIC OBJECTIVE UPDATE

Date: July 31, 2020

To: AGC Board of Directors

From: Ali Gadbaugh, Member Engagement Manager
Viktoria Schulz, Event Manager

Membership:

- At the close of June, the chapter had 833 members overall, welcoming four new companies to the chapter.
- We are in the midst of our annual membership renewals. Invoices were due on July 1; despite the circumstances surrounding COVID-19, we are not seeing an abnormal number of companies that are still delinquent or that are dropping membership due to financial hardship.
- Collections will continue through the middle of August to allow those companies in the workers' comp program to receive their retro checks to possibly assist with dues payments.
- Russ' 2020 new member recruitment initiative is still active but has had limited additional participation since Russ e-mailed members of the board directly who have yet to submit their recruitment letters to Ali. To date, we've had 18 board members complete the initial request to revise Russ' recruitment letter template and provide AGC with their company letterhead and logo envelopes (26.8% participation).

CLC:

- Unfortunately, the CLC steering committee has reluctantly decided to cancel all events for the remainder of 2020. The committee felt that the value from the ENGAGE Leadership Series speaker events was found in the networking and in-person interaction the attendees and speakers when deciding whether to move the events to an online platform.
- The steering committee decided to tentatively try and host a significantly reduced attendance in-person speaker event at the end of September, but has yet to confirm a venue or determine whether this is still the best course of action in light of the recent developments surrounding COVID-19.
- The CLC donated \$1,000 to the Camp Alma work weekend project in an effort to help the community in some way during the year. The funds were used to help build a fire pit at the camp.
- The steering committee will continue to meet virtually on our regularly scheduled dates throughout the rest of the year to stay connected and prepare for 2021.

Specialty Contractors Council:

- All Specialty Contractors Council meetings have been moved to an online platform for the remainder of 2020. The May session was livestreamed from AGC on Wednesday, May 20 (flyer attached). Due to the Governor's new mandates surrounding masks, etc., the June livestream was postponed until September.

Associates Council:

- The Associates Council is continuing to look for ways to stay engaged with members. The council will be hosting a virtual happy hour session during the August speaker series in lieu of the previously planned welcome reception at the Summer Convention.
- The steering committee will continue to meet virtually every other month throughout the rest of the year to stay connected and prepare for 2021.

Central Oregon Area Council:

- Central Oregon Area Council activity is currently on hold due to the pandemic. Ideally, we will be able to host a legislative update Zoom webinar at some point before the end of 2020.

North Coast Area Council:

- North Coast Area Council activity is currently on hold due to the pandemic. Ideally, we will be able to host a legislative update Zoom webinar at some point before the end of 2020.

Klamath Area Council:

- Due to multiple factors: Running Y request to reschedule, COVID tournament guidelines, and concerns regarding participation the Southern Oregon Golf Tournament has been canceled for 2020.
- Due to COVID-19, the Klamath 2020 Christmas Party has been canceled.
- The area council will host a COVID-19 Safety and HR Townhall on Thursday, August 27 at Winema Electric. (Event flyer in packet)

Rogue Valley Area Council:

- Due to multiple factors: Running Y request to reschedule, COVID tournament guidelines, and concerns regarding participation the Southern Oregon Golf Tournament has been canceled for 2020.
- Due to COVID-19, a fall Poker Tournament has been canceled. (We hosted one on January 31, 2020)

Centennial Committee:

- Reports by sub-committee on following page.



Centennial Committee Report

As of August, 2020

Celebration/SIR Awards Sub-Committee

- Centennial Celebration/SIR Awards: April 22, 2022 at Hyatt Regency
- Additional party details coming soon

Storytelling Sub-Committee

- Centennial book organized by decade
- Looking for a digital format of book and/or video format
- Looking for venue/exhibit space (Oregon Historical Society booked)

Marketing and Promotion Sub-Committee

- Logo selected
- Online store to order Centennial logo (and individual company logo) swag under development

Other Celebration Events Sub-Committee

- Each council/committee has budget to decide what type of event they want to host that makes the most sense for their region
- Starlight parade float – will work with CLC, theme will be 1920's/looking back

SAFETY & HR TOWN HALL

**KLAMATH FALLS
AREA COUNCIL**

what

A Human Resource and Labor Manager Approach to Jobsite Requirements in the New COVID-19 Era

- What's really important? Can they really make me wear all of this PPE?
- Employer and employee responsibilities during this time
- Oregon Building Trades and Construction Industry COVID-19 Taskforce
- What sort of liability is really at stake with all these new "rules?"

Making Sense of Oregon Requirements and Understanding Jobsite Physical Distancing and Face Coverings

- All contractors should incorporate COVID-19 transmission prevention into all job hazard analyses (JHAs) and pre-task safety planning for all aspects of the work

who

Bob Timmons, AGC

Dennis Barlow, AGC

John Jean, AGC

where

Winema Electric
735 Commercial St.
Klamath Falls, OR

when

Thursday,
August 27

11 am - 1 pm

contact

Viktoria Schulz, viktorias@agc-oregon.org



SAFETY

COVID-19 FAQ

1. Are face coverings required full time on construction projects?

- a. As of 7/14/2020 face coverings are not required on all construction projects. Construction projects are not considered to be “public places” where the public is allowed to freely come and go so when the Governor’s order references “all public places” it does not include construction sites. However, when social distancing is not practicable on a construction project, and administrative and/or engineering controls are not possible or feasible, face coverings are required when workers are within 6’ of each other.

2. Are employees allowed to carpool?

- a. There is no specific requirement that is enforceable when employees are off the clock and in their personal vehicles. However, if employees are on the clock and/or using work vehicles, precautions must be taken in order to be in compliance. Oregon OSHA has implemented a “Temporary Administrative Rule Addressing the COVID-19 Public Health Emergency in Labor Housing and Agricultural Employment”. Oregon OSHA has formally stated in the Construction Advisory Committee (CAC) meeting that they will not hold the construction industry to a different standard than the agriculture industry. The current rule that addresses workers commuting can be found on page 28 which states:

“(13) Section 3: Disease prevention in employer-provided transportation

(a) During the current emergency and for activities covered by Section 1 of this rule, employers must ensure that the following disease prevention measures are implemented, at a minimum, when transportation is provided to and from the workplace or used to move individuals between workplaces:

(A) The vehicle operator and any passengers must be separated by at least 3 feet during the operation of the vehicle. Seats that do not allow for such separation cannot be used, regardless of the vehicle’s normal capacity.

(B) The vehicle operator and any passengers must wear cloth facial coverings that cover their nose and mouth.

(C) All high-contact surfaces (door handles, seatbelt buckles, armrests, steering wheel, etc.) must be sanitized before each trip, or at least twice each day when in continuous use.”

The entire section of the rule should be read and understood (not just what is copied and pasted here) before moving forward with allowing employees to commute together. The rule can be reviewed at <https://osha.oregon.gov/OSHArules/div1/437-001-0749.pdf>

3. Can OSHA write citations for COVID-19 related issues?

- a. Yes, OSHA has the authority to enforce the Governor’s order as it pertains to work places. They can write citations under the general duty clause which states that an employer is required to furnish to its employees a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees. COVID-19 is most certainly a recognized hazard and OSHA can write citations for companies that are failing to protect their employees from exposure to the disease.

4. What should I do if I have a suspected or confirmed COVID-19 case in my workplace?

- a. Please refer to our AGC document on [Responding and Returning to Work After a COVID-19 Exposure or Illness](#)

5. If an employee is diagnosed with COVID-19 could it be considered a workers’ compensation claim and do I have to log it on my 300?

- a. Just as you would investigate a workplace injury (i.e., slip and fall), you must do the same for suspected or confirmed COVID-19 cases and document your investigation. Investigating will also assist with the determination of work-relatedness of the confirmed case or exposure. Include tracking in the investigation. Under [OSHA’s Recording Cases of Coronavirus Disease recordkeeping requirements](#), COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19, if **ALL** of the following are met:
 - The case is a confirmed case of COVID-19, as defined by the CDC
 - The case is work-related as defined by 29 CFR § 1904.5
 - The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7

If it is determined that the illness was contracted at the workplace the illness would need to be added to the 300 log.

6. When can a sick person return to work?

- a. According to [CDC Return to Work Guidance](#), individuals may return to work in the following situations:
 - Individuals who think or know they had COVID-19 and had symptoms may return to work if:
 - a. Three days with no fever, and
 - b. Respiratory symptoms have improved (e.g. cough, shortness of breath), and
 - c. Ten days since symptoms first appeared.

Depending on your healthcare provider's advice and availability of testing, you might get tested to see if you still have COVID-19. If you have been tested, you can be around others when you have no fever, respiratory symptoms have improved, and you receive two negative test results in a row, at least 24 hours apart.

- Individual who tested positive for COVID-19 but had no symptoms may return to work if:
 - a. Ten days have passed since test

Depending on your healthcare provider's advice and availability of testing, you might get tested to see if you still have COVID-19. If you have been tested, you can be around others after you receive two negative test results in a row, at least 24 hours apart.

If you develop symptoms after testing positive, follow the guidance above for "Individuals who think or know they had COVID-19 and had symptoms."

7. What should I do if I have an employee that is known to have been exposed, whether in the workplace or in their personal lives, to another person with COVID-19?

- a. Anyone who has close contact with someone with COVID-19 should stay home for 14 days after exposure, the time it takes to develop the illness.

8. Am I required to train my employees on the hazards of COVID-19 prior to working?

- a. Yes. Employers are required to train all workers with reasonably anticipated occupational exposure to injuries or illnesses. According to [OSHA's COVID-19 Control and Prevention Page](#) the training should include "the sources of exposure to the virus, the hazards associated with that exposure, and appropriate workplace protocols in place to prevent or reduce the likelihood of exposure. Training should

include information about how to isolate individuals with suspected or confirmed COVID-19 or other infectious diseases, and how to report possible cases. Training must be offered during scheduled work times and at no cost to the employee.”

The following FAQ might be helpful with labor law issues surrounding COVID-19. They were retrieved from an article from Fisher Phillips, a Labor & Employment Attorney who partners with AGC on a national level. The article can be reviewed in its entirety at:

<https://www.fisherphillips.com/faqs>

9. Can we ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 coronavirus or the flu?

- a. Yes, you are permitted to ask them to seek medical attention and get tested for COVID-19. The CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace. The Equal Employment Opportunity Commission (EEOC) [confirmed that advising workers to go home](#) is permissible and not considered disability-related if the symptoms present are similar to the COVID-19 coronavirus or the flu.

10. Can I take an employee’s temperature at work to determine whether they might be infected?

- a. Yes. The EEOC confirmed that measuring employees’ body temperatures is permissible given the current circumstances. While the Americans with Disabilities Act (ADA) places restrictions on the inquiries that an employer can make into an employee’s medical status, and the EEOC considers taking an employee’s temperature to be a “medical examination” under the ADA, the federal agency recognizes the need for this action now because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions.

However, as a practical matter, an employee may be infected with the COVID-19 coronavirus without exhibiting recognized symptoms such as a fever, so temperature checks may not be the most effective method for protecting your workforce.

Note: If your company does business in the State of California (e.g., if you have one or more locations, employees, customers, suppliers, etc. in the state), and your business is subject to the California Consumer Privacy Act (CCPA), then you must provide employees a CCPA-compliant notice prior to or at the same time as your collection of this information.

11. What precautions are needed for individuals who are taking the temperatures of employees, applicants or customers?

- a. To protect the individual who is taking the temperature, you must first conduct an evaluation of reasonably anticipated hazards and assess the risk to which the individual may be exposed. The safest thing to do would be to assume the testers are going to potentially be exposed to someone who is infected who may cough or sneeze during their interaction. Based on that anticipated exposure, you must then determine what mitigation efforts can be taken to protect the employee by eliminating or minimizing the hazard, including personal protective equipment (PPE). Different types of devices can take temperature without exposure to bodily fluids. Further, the tester could have a face shield in case someone sneezes or coughs. Further information can be found at OSHA's website, examining the guidance it provides for healthcare employees (which includes recommendations on gowns, gloves, approved N95 respirators, and eye/face protection).

12. One of our employees has a suspected but unconfirmed case of COVID-19. What should we do?

- a. Take the same precautions as noted above. Treat the situation as if the suspected case is a confirmed case for purposes of sending home potentially infected employees. Communicate with your affected workers to let them know that the employee has not tested positive for the virus but has been exhibiting symptoms that lead you to believe a positive diagnosis is possible.
As discussed above, critical infrastructure workers who have been potentially exposed may continue to work if they are asymptomatic and the additional precautions are implemented.

13. Can we require an employee to notify the company if they have been exposed, have symptoms, and/or have tested positive for the COVID-19 coronavirus?

- a. Yes, you should require any employee who becomes ill at work with COVID-19 coronavirus symptoms to notify their supervisor. Employees who are suffering from symptoms should be directed to remain at home until they are symptom-free for at least 24 hours.
While outside of work, if an employee begins experiencing symptoms, has been exposed to someone that is exhibiting symptoms, or has tested positive, the employee should contact your company by telephone or email and should not report to work.

14. We are hiring employees during the outbreak; what steps can we take to protect our workforce?

- a. The EEOC has confirmed that you may screen applicants for symptoms of the COVID-19 coronavirus after you make a conditional job offer, as long as you do so for all entering employees in the same type of job. You can also take an applicant's temperature as part of a post-offer, pre-employment medical exam after you have made a conditional offer of employment.

The EEOC has also said you may delay the start date of an applicant who has COVID-19 or symptoms associated with it. According to current CDC guidance, an individual who has the COVID-19 coronavirus or symptoms associated with it should not be in the workplace. In fact, the EEOC has also said you may withdraw a job offer when you need the applicant to start immediately but the individual has COVID-19 or symptoms of it.

15. Can an employee refuse to come to work because of fear of infection?

- a. Employees are only entitled to refuse to work if they believe they are in imminent danger. Section 13(a) of the Occupational Safety and Health Act (OSH Act) defines "imminent danger" to include "any conditions or practices in any place of employment which are such that a danger exists which can reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act." OSHA discusses imminent danger as where there is "threat of death or serious physical harm," or "a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency." The threat must be immediate or imminent, which means that an employee must believe that death or serious physical harm could occur within a short time, for example, before OSHA could investigate the problem. Requiring travel to China or to work with patients in a medical setting without personal protective equipment at this time may rise to this threshold. Most work conditions in the United States, however, do not meet the elements required for an employee to refuse to work. Once again, this guidance is general, and employers must determine when this unusual state exists in your workplace before determining whether it is permissible for employees to refuse to work.

In addition, Section 7 of the National Labor Relations Act (NLRA) extends broad-based statutory protection to those employees (in union and non-union settings alike) to engage in "protected concerted activity for mutual aid or protection." Such activity has been defined to include circumstances in which two or more employees act together to improve their employment terms and conditions, although it has been extended to individual action expressly undertaken on behalf of co-workers.

On its own website, the National Labor Relations Board (NLRB) offers a number of examples, including, "talking with one or more employees about working

conditions,” “participating in a concerted refusal to work in unsafe conditions,” and “joining with co-workers to talk to the media about problems in your workplace.” Employees are generally protected against discipline or discharge for engaging in such activity.

16. What actions can we take if an employee is exhibiting flu-like symptoms but refuses to leave the workplace?

- a. You should first take a collaborate approach. Remind the employee that you are asking them to leave. Try to make them understand the reasons why their departure is necessary to maintain the health and safety of the entire workplace. If there are benefits available such as paid sick leave, use of accrued vacation, or something else that may appease them, you should explain these benefits and how the employee can utilize them.

If the employee still refuses to leave the workplace, you can consider (a) explaining that the employee is now trespassing on private property and if they do not leave you will be forced to call local law enforcement to escort them off the premises; or (b) terminating the employee for insubordination. Termination of the employee, however, should be considered a last resort. Given the current climate, you will need to also consider public perception related to taking overly strong adverse action against an employee expressing concerns or apprehension related to the coronavirus.

17. Can an employee refuse to work without a mask?

- a. OSHA has addressed the common question of whether an employee can simply refuse to work in unsafe conditions. The safety agency provides the following guidance, which wouldn't require the use of a mask or respirator in most situations. An employee's right to refuse to do a task is protected if all of the following conditions are met:
 - Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so;
 - You refused to work in "good faith." This means that you must genuinely believe that an imminent danger exists;
 - A reasonable person would agree that there is a real danger of death or serious injury; and
 - There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

Given the consensus that face masks are only necessary when treating someone who is infected with the COVID-19 coronavirus or influenza, masks are likely not necessary to protect the health of most employees. Therefore, most employers do

not have to provide, or allow employees to wear, a surgical mask or respirator to protect against the spread of the COVID-19 coronavirus or influenza. The use of the word “may” in OSHA’s respiratory protection standard makes it clear that when a respirator is not necessary to protect the health of an employee, it is within the discretion of the employer to allow employees to use a respirator.

Accordingly, you are well within the applicable OSHA standard to deny an employee’s request to wear a surgical mask or a respirator in almost all situations. However, in light of the CDC’s recent guidance recommending that people wear cloth face coverings in public settings, it’s not recommended that you refuse an employee’s request to wear a mask at work. However, you should recommend that the employee wear a cloth face covering instead of a surgical mask. As the CDC notes, the cloth face coverings recommended are not surgical masks or N-95 respirators. The cloth face coverings are not subject to OSHA’s respiratory protection standard.

18. Is COVID-19 a recordable illness for purposes of OSHA Logs?

- a. OSHA has published guidance on this issue. OSHA recordkeeping requirements mandate covered employers record certain work-related injuries and illnesses on their OSHA 300 log. You must record instances of workers contracting COVID-19 if the worker contracts the virus while on the job. The illness is not recordable if worker was exposed to the virus while off the clock. You are responsible for recording cases of COVID-19 if:

- The case is a confirmed case of COVID-19;
- The case is work-related, as defined by 29 CFR 1904.5; and

The case involves one or more of the general recording criteria set forth in 29 CFR 1904.7 (e.g. medical treatment beyond first-aid, days away from work). OSHA recently published guidance for enforcing their recordkeeping requirements for cases of COVID-19. Recognizing the difficulty in determining whether COVID-19 was contracted while on the job, OSHA will not enforce its recordkeeping requirements that would require employers in areas where there is ongoing community transmission to make work-relatedness determinations for COVID-19 cases, except where:

- There is objective evidence that a COVID-19 case may be work-related; and
- The evidence was reasonably available to the employers.

This waiver of enforcement does not apply to employers in the healthcare industry, emergency response organizations (e.g., emergency medical, firefighting and law enforcement services), and correctional institutions in areas where there is ongoing community transmission. These employers must continue to make work-relatedness determinations.

19. My employee alleges that they contracted the coronavirus while at work. Will this result in a compensable workers’ compensation claim?

- a. It depends. If the employee is a health care worker or first responder, the answer is likely yes (subject to variations in state law). For other categories of employees, a compensable workers' compensation claim is possible, but the analysis would be very fact-specific.

It is important to note that the workers' compensation system is a no-fault system, meaning that an employee claiming a work-related injury does not need to prove negligence on the part of the employer. Instead, the employee need only prove that the injury occurred at work and was proximately caused by their employment. Additionally, the virus is not an "injury" but is instead analyzed under state law to determine if it is an "occupational disease." To be an occupational disease (again subject to state law variations), an employee must generally show two things:

- the illness or disease must be "occupational," meaning that it arose out of and was in the course of employment; and
- the illness or disease must arise out of or be caused by conditions peculiar to the work and creates a risk of contracting the disease in a greater degree and in a different manner than in the public generally.

The general test in determining whether an injury "arises out of and in the course of employment" is whether the employee was involved in some activity where they were benefitting the employer and was exposed to the virus. Importantly, special consideration will be given to health care workers and first responders, as these employees will likely enjoy a presumption that any communicable disease was contracted as the result of employment. This would also include plant nurses and physicians who are exposed to the virus while at the worksite.

As for other categories of employees, compensability for a workers' compensation claim will be determined on a case-by-case basis. The key point will be whether the employee contracted the virus at work and whether the contraction of the disease was "peculiar" to their employment. Even if the employer takes all of the right steps to protect the employees from exposure, a compensable claim may be determined where the employee can show that they contracted the virus after an exposure, the exposure was peculiar to the work, and there are no alternative means of exposure demonstrated.

Absent state legislation on this topic, an employee seeking workers' compensation benefits for a coronavirus infection will still have to provide medical evidence to support the claim. Employers who seek to contest such a claim may be able to challenge the allowance if there is another alternative exposure or if the employee's medical evidence is merely speculative.

Finally, employers should be aware that states are acting on this issue. For instance, Washington Governor Jay Inslee recently directed his Department of Labor and Industries to "ensure" workers' compensation protections for health care workers and first responders. The directive instructs the Department to

change its policies regarding coverage for these two groups and to “provide benefits to these workers during the time they’re quarantined after being exposed to COVID-129 on the job.” We expect other states to follow Washington’s lead.

Making Sense of Oregon Requirements

Understanding Physical Distancing and Face Coverings

All contractors should incorporate COVID-19 transmission prevention into all job hazard analyses (JHAs) and pre-task safety planning for all aspects of the work. This tool is provided solely as a guideline for contractors and is not to be relied upon to prevent the spread or transmission of COVID-19, or to prevent a safety violation from being issued by a jurisdictional authority. **This is not legal advice.** Contractors should continually evaluate the specific hazards at their job sites along with the [Centers for Disease Control and Prevention \(CDC\) recommendations](#) to determine the most appropriate job hazard analysis for the project/task as it relates to the spread and/or transmission of COVID-19.

The requirements listed below are only minimum requirements. You are strongly encouraged to go above and beyond these minimums and develop your own company policies and procedures.

A construction jobsite is not a public space and should not be treated as such. The only people allowed on a jobsite should be workers, vendors, and those necessary to the construction process. If the public is allowed on the jobsite without being invited or having a work-related reason, then your site could fall under the definition of a public space.

Face coverings include face masks, face coverings, and face shields that cover the nose and mouth. These are “Source Control” measures that control the emissions being projected from the wearer’s nose and mouth and worn to prevent transmission to others. Face coverings are NOT personal protective equipment (PPE). N95 masks and other respirators are PPE and are meant to protect the wearer from respiratory hazards such as silica and asbestos. N95 masks should NOT be used as “Source Control,” as they have an exhalation valve that allows emissions to leave the mask and no longer prevents transmission from the source.

Jobsite Physical Distancing Requirements

- Workers need to maintain at least six feet of physical distance between themselves and their co-workers. This applies to both indoor and outdoor jobsites. This also applies to common areas outside of the jobsite such as parking lots, food vendor areas, and access points.
- If a task requires workers to be closer than six feet, refer to site management for a task-specific job hazard analysis (JHA). Use the hierarchy of controls to determine the plan, which may include re-engineering the task, using an impermeable barrier between workers, or source control measures that may include face coverings or face shields.
- When riding in company vehicles, workers must maintain at least three feet of physical distance and wear a face covering for source control.

Jobsite Face Covering Requirements

- Face coverings are required on construction jobsites when six feet of physical distancing cannot be maintained. This applies to both indoor and outdoor construction sites.
- You do NOT have to wear a face covering full time when working on an indoor construction jobsite. Only if you cannot maintain six feet of physical distancing.

- Save the N-95 respirators (face mask) for jobsite respiratory hazards and use as PPE. They are not an accepted form of source control as they have an exhalation valve.

Outdoor Jobsite Examples

- A worker in a boom lift alone and not within six feet of another worker: face covering is NOT required.
- Two workers tying rebar and working ten feet apart: face covering NOT required.
- Two workers tying rebar and get within six feet apart: face covering IS required. Must complete JHA and use the hierarchy of controls.
- A lone worker saw cutting with walk behind concrete saw: N95 respirator required as PPE for the silica hazard. Worker now needs N95 respirator for PPE and not a face covering for source control.

Indoor Jobsite Examples

- Two workers installing cabinets and working four feet apart face covering IS required. Must complete JHA and use the hierarchy of controls.
- A worker installing water supply lines under a sink and working fifteen feet away from another worker: face covering NOT required.
- Four workers in same room hanging drywall and working eight feet apart: face covering NOT required.
- A lone worker using a tile saw to cut concrete tile then walk into room to place the tile with another worker: N95 respirator required as PPE for the silica hazard while cutting, then change to face covering when entering room to place the tile with another worker within six feet for source control.

Responding and Returning to Work After a COVID-19 Exposure or Illness

COVID-19 Exposure Procedures

If you have had a suspected or confirmed case of COVID-19, you are encouraged to take the following steps:

1. **Remove the infected, or potentially infected, employee from the workplace/jobsite:** Prior to employee departure, obtain a full list of exposed workers (i.e., individuals who worked in close proximity (three to six feet without face covering/mask for longer than 15 minutes, per the [Oregon Health Authority \(OHA\) Physical Distancing](#) guidelines) with the individual in the previous 14 days).
2. **Determine which employees may have been exposed to the virus and may need to take additional precautions:** Inform employees of their possible exposure to COVID-19 in the workplace, but maintain confidentiality as required by the Americans with Disabilities Act. Instruct potentially exposed employees to stay home for 14 days; employees may telework if possible, and self-monitor for symptoms as outlined by the [Centers for Disease Control \(CDC\)](#).
 - COVID-19 symptoms have been reported from asymptomatic to severe illness. Symptoms may appear **2–14 days after exposure to the virus**. People with these symptoms may have COVID-19: fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea.
3. **Investigate:** Just as you would investigate a workplace injury (i.e., slip and fall), you must do the same for suspected or confirmed COVID-19 cases and document your investigation. Investigating will also assist with the determination of work-relatedness of the confirmed case or exposure. Include tracking in the investigation.

Under [OSHA's Recording Cases of Coronavirus Disease](#) recordkeeping requirements, COVID-19 is a recordable illness, and employers are responsible for recording cases of COVID-19, if all of the following are met:

- The case is a confirmed case of COVID-19, as defined by the CDC;
 - The case is work-related as defined by 29 CFR § 1904.5; and
 - The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.
4. **Cleaning and sanitizing the work area:** Rarely will you need to shut down your facility. If it has been less than seven days since the sick employee has been in the facility, barricade areas used by the sick person for prolonged periods of time:
 - Wait 24 hours or as long as possible before cleaning and disinfecting to minimize potential for other employees being exposed to respiratory droplets.
 - During this waiting period, open outside doors and windows to increase air circulation in these areas.

If it has been seven days or more since the sick employee used the facility, additional cleaning and disinfection is not necessary. Continue routinely cleaning and disinfecting all high-touch surfaces in the facility. Follow the [CDC Guidance for Businesses Responding to COVID-19](#).

5. **Coming back to work:** According to [CDC Return to Work Guidance](#), individuals may return to work in the following situations:

- **Individuals who think or know they had COVID-19 and had symptoms** may return to work if:

- a. At least 24 hours with no fever without fever reducing medications, **and**
- b. Respiratory symptoms have improved (e.g. cough, shortness of breath), **and**
- c. Ten days since symptoms first appeared.

Depending on your healthcare provider's advice and availability of testing, you might get tested to see if you still have COVID-19. If you have been tested, you can be around others when you have no fever, respiratory symptoms have improved, and you receive two negative test results in a row, at least 24 hours apart.

- **Tested positive for COVID-19 but had no symptoms** may return to work if:

- a. Ten days have passed since test

Depending on your healthcare provider's advice and availability of testing, you might get tested to see if you still have COVID-19. If you have been tested, you can be around others after you receive two negative test results in a row, at least 24 hours apart.

If you develop symptoms after testing positive, follow the guidance above for "Individuals who think or know they had COVID-19 and had symptoms."

- **Anyone who has been around a person with COVID-19** may return to work if:

- a. Anyone who has close contact with someone with COVID-19 should stay home for 14 days **after exposure**, the time it takes to develop the illness.



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Initial Issue Paper on Oregon OSHA Infectious Disease Rulemaking for the General Workplace

Background

The COVID-19 emergency has highlighted the risks that any infectious disease, particularly one that is airborne, can create for a wide variety of workplaces. As a result of both the immediate and long-term risks highlighted by the current public and occupational health crisis, Oregon OSHA is responding to the request that the state adopt an enforceable workplace health rule on an emergency basis this summer, to be replaced by a permanent rule. Oregon OSHA is pursuing both a rule that would apply to health care and closely related activities and to the general workplace. This paper addresses the general workplace rule.

Oregon OSHA plans to rely upon as much collaboration and consultation with experts and with stakeholders as the timeframes involved and other circumstances allow. In the case of the temporary rule, this will primarily be through targeted virtual forums and then the circulation of a draft prior to a decision on adoption. In the case of the permanent rule, Oregon OSHA is empaneling a rulemaking advisory committees in addition to employing targeted virtual forums and circulation of preproposal drafts.

Oregon OSHA believes that such rulemaking, even on an emergency basis, will allow many Oregon workplaces to move beyond the necessary but inevitably unstable measures adopted through Executive Orders and public health guidance issued by the Oregon Health Authority. It is clear that the COVID-19 emergency will not come to an end soon – Oregon OSHA believes that during this next phase the temporary rule will provide both clearer and more stable guidance than has been possible during the height of the emergency. The temporary rule will necessarily focus on the measures necessary to address COVID-19 – the permanent rule will likely continue some of those measures but also will provide a structure to address future disease outbreaks as well.

Addressing Concerns about Rulemaking

Oregon OSHA realizes that some groups, particularly those representing employers, have concerns not just about the details of such a rulemaking but about the fact of the rulemaking itself. Several of those concerns are listed in below, along with Oregon OSHA's discussion of the issues raised.

Concern 1: The emergency continues to unfold and any rulemaking is therefore likely to be outpaced by future developments regarding appropriate protective measures.

Oregon OSHA agrees that the rulemaking will need to proceed cautiously so as not to forestall future protective measures that may be superior to those developed by the rule. However, we believe that the science – at least as it relates to the primary protective measures that can be employed in the workplace – has reached a level of relative stability. And the stability and predictability that even a temporary rule provides is one of the strengths of moving toward rulemaking rather than continuing to rely upon workplace applications of evolving public health guidance. Finally, the rule can – if truly necessary -- be revised if new developments truly merit such a revision.

Concern 2: The Legislature decided not to move forward with a concept to authorize and require such a rule during the recent special session.

When asked, Oregon OSHA has consistently indicated it has sufficient authority to engage in such rulemaking under our existing authority to adopt rules addressing workplace health and safety. Following conversations prior to the interim legislative committee hearings, and additional conversations immediately prior to the special session, Oregon OSHA agreed to move forward with rulemaking. Oregon OSHA and the Governor's Office advised advocates for such legislation that it was not necessary, that any legislative action should not restrict Oregon OSHA's existing authority, and that the August 1 effective date reflected by the legislative proposals would not allow for even accelerated stakeholder involvement. Some opponents of legislative action even based their opposition, at least in part, upon the fact that Oregon OSHA already has the necessary authority. In this context, Oregon OSHA does not believe the Legislature's decision not to move forward with infectious disease legislation reflects a legislative expectation that Oregon OSHA would not use its existing authority.

Concern 3: The rule would impose permanent control measures across every sector to reduce workplace exposures to any infectious disease: COVID-19, the seasonal flu, and potentially even the common cold.

First of all, any concern about "permanent" measures would relate only to the permanent rulemaking, not to the temporary rule that Oregon OSHA hopes to have in place this summer. It is true that the rule would set out to impose similar measures based on the nature of the hazards involved – it is not clear why such consistency, where practicable, would be a cause for concern. Finally, the concern about other diseases seems to be misplaced. While the control measures required by a rule would be targeted to COVID-19 in the temporary rule and to similar public health emergencies in the permanent rule, it is not clear to Oregon OSHA why a rule that might also result in decreased exposure to the season flu and the common cold would be undesirable.

Concern 4: It layers new costs and new mandates on employers, many of whom are struggling to survive.

To the degree that the rule requires things that are not currently required, the cost of such new requirements should indeed be considered in the temporary rule and explicitly must be addressed as part of a proposed permanent rule under the Administrative Procedures Act. But fear over such potential costs should not prevent a discussion, nor should limited costs cause a proposed worker protection to be dismissed out of hand. Oregon OSHA considers this issue to be an appropriate consideration as part of the rulemaking process, but does not consider it to be a persuasive reason not to engage in such a process at all.

Concern 5: By creating a new class of workplace hazard, it creates adds liability at a time when employers are seeking greater certainty.

The hazards, whether they represent a "new class" of such hazards or not, already exist. Oregon OSHA is already holding employers accountable for how they address such recognized hazards, relying both on OHA guidance and on the various "general obligation" requirements of existing Oregon OSHA rules. Further, Oregon OSHA believes that the adoption of rules will provide greater certainty, which employers and their workers certainly have legitimate reason to expect.

Concern 6: The rulemaking will create overlapping regulations in addition to the guidance already adopted by OHA, the Centers for Disease Control, federal OSHA, and industry groups.

None of the listed items represent regulations in any sense, other than the public health requirements found in OHA guidance. It is not unusual that other sources provide advisory guidance that supplements the minimum requirements found in Oregon OSHA rules. Oregon OSHA anticipates that its rules will replace the OHA workplace guidance to the degree that there would otherwise be "overlapping" requirements. Therefore, Oregon employers and their workers will be subject to only one set of requirements – those found in Oregon OSHA rules.

Concern 7: It gives Oregon OSHA unchecked authority to mandate new and permanent workplace controls.

This appears to be a concern about the legislative proposals. Oregon OSHA's rulemaking does not (and cannot) give Oregon OSHA any authority it does not already have. Even in relation to the legislative proposals, such a concern appears to be misplaced, because the legislation would not have expanded the authority already provided by the Oregon Safe Employment Act.

Questions for Stakeholder Discussion

Although each stakeholder discussion will explore issues of concern to the particular industries or activities reflected by the participants, the following general questions will help Oregon OSHA craft a draft temporary rule addressing the COVID-19 emergency for further review by the public and stakeholders.

Question 1: Are there requirements imposed by current OHA guidance that seem excessive or unnecessary?

Question 2: Are there issues in your industry or workplace that are not adequately addressed by existing requirements?

Question 3: Are there apparent contradictions or inconsistencies in requirements that do not make sense to you?

Question 4: If a rule is adopted, what are the two or three things that you think are most important for the rule to address?

Question 5: What are the two or three areas where you think employers most need help to keep their workers safe?



Oregon

Kate Brown, Governor

Department of Consumer and Business Services

MLAC | Management-Labor Advisory Committee

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July 20, 2020

Governor Kate Brown
254 State Capitol
Salem, Oregon 97301-4047

Dear Governor Brown:

On June 22, you asked the Management-Labor Advisory Committee to review the current workers' compensation system and the impact of the COVID-19 pandemic. The committee met six times to review current data and information about COVID-19 workers' compensation claims, get public testimony on issues, and discuss recommendations for specific workers' compensation system changes.

The committee heard about many issues that affect employers and workers trying to navigate the workers' compensation system and COVID-19 claims. Issues identified included how workers file claims, inconsistencies among insurers and self-insured employers when processing these claims following current statute, and how to evaluate claims based on existing law. A full list of issues grouped by category is in Appendix A.

We heard many issues about general workplace safety concerns leading to workplace exposures, such as adequate personal protective equipment and Oregon OSHA enforcement of social distancing and mask wearing requirements. There were concerns that workers may be retaliated against if they file a workers' compensation claims. We also heard about many challenges with the public health system, particularly contact tracing and the sharing of information gathered in that process.

Consensus Recommendations from MLAC

The committee agreed on the following six recommendations.

1. **The Department of Consumer and Business Services (DCBS) should convene a stakeholder group to discuss the use of the Social Security number on the Form 801 Report of Job Injury or Illness (issue 1).** The committee heard concerns that the use of a Social Security number on the

Members

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UFCW Local 555

Tammy Bowers
May Trucking Company

Alan Hartley
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Ex-Officio

Committee administration

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Committee Administrator

most common injury reporting form has a chilling effect on workers filing claims. Because the reporting form is used by many entities for a variety of purposes, the committee supports further discussion before the agency makes any change to this requirement. The agency should start meetings as soon as possible.

2. **DCBS should develop COVID-19 specific educational materials for employers and workers** (issues 2 – 4, 15). The public input suggested there is a lack of understanding about a worker’s ability to file a claim for COVID-19 and that employers may be discouraging claim filing. The committee recommends DCBS consider a separate posting notice for employers to alert workers to their rights. The committee also recommends working with the Bureau of Labor and Industries to inform workers and employers that there can be no retaliation for filing a COVID-19 worker’s compensation claim.
3. **Support the rulemaking discussions conducted by Oregon OSHA relating to communicable disease standards as well as ongoing enforcement of personal protective equipment and face covering requirements** (issues 5, 14, 22 – 27). Workplace safety efforts by Oregon OSHA and employers are key to protecting workers from getting COVID-19 while at work. The committee acknowledges their work will ultimately prevent transmission of COVID-19 in the workplace.
4. **Express concern about COVID-19 claim denials rates of some carriers** (issue 9). The committee was concerned about some insurers with apparent high denial rates for COVID-19 claims based on data reported to DCBS. However, the committee did not have enough information or time to make a specific recommendation on this topic. Both Management and Labor believe their solutions would address this issue, and have discussed it further in their summaries below.
5. **Convey support to the Division of Financial Regulation (DCBS) for the proposed rule to remove the impact of COVID-19 claims on employer experience ratings** (issue 21). The National Council on Compensation Insurance (NCCI) has proposed to not hold COVID-19 claims against an employer when determining future costs for workers’ compensation insurance premiums. This will impact about one third of Oregon employers.
6. **Forward issues raised regarding public health, paid leave, contact tracing, and enforcement of retaliation laws to the responsible enforcement entities** (issues 4, 28-31). Though many issues were raised outside the scope of MLAC review, they are nonetheless important concerns about workplace safety and the workers’ compensation process. We ask you to forward the relevant issues to the Oregon Health Authority and Bureau of Labor and Industries for their consideration.

Issues Without Consensus

The committee heard two distinct proposals for solutions for the issues raised about workers' compensation claim processing and benefits for COVID-19 claims (issues 6-13, 15-20). The committee was unable to reach a consensus agreement on recommending either proposal in whole. Each caucus has prepared a summary of their preferred proposal and the merits of each from the perspective of the supporting caucus. Management's proposal is in Appendix B and Labor's proposal in Appendix C.

We thank you for asking for our input. Though we could not achieve consensus on a larger recommendation in this short time frame, we stand ready to review any specific legislative proposals or continue discussions on this important topic.

Sincerely,



Diana Winther
Labor Co-Chair



Kimberly Wood
Management Co-Chair

Attachments

Appendix A - Issues List

		Addressed in recommendations
Workers' Compensation Claim Filing		
1	Request for SSN on 801 form may discourage undocumented workers from submitting a claim	X
2	Employers that don't let employees know that they can file a claim for COVID-19	X
3	Employers that try to coerce employees not to file a COVID-19 claim	X
4	Employers that retaliate against employees who file a COVID-19 claim	X
5	Lack of a consistent method/means for employees to record potential exposures	X
Workers' Compensation Claim Issues		
6	Lack of standard application as to whether COVID-19 is a workplace injury or occupational disease under the statutes	
7	Inconsistency in claims processing among carriers – how exposure is handled in terms of acceptance/denial/	
8	Time loss - level of investigation undertaken before acceptance/ denial	
9	Seemingly bad-faith denials from a couple of carriers whose denial rates far exceed other carriers'	(in part)
10	Carriers issuing denials at or before 14 days, potentially before exposed employee completes quarantine or has test results	
11	Issues with false negatives and false positives in COVID- 19 tests and their impact on claim acceptance/denials	
12	Question as to whether a presumptive case is considered COVID-19 positive status, even without a test	
13	Inability of a COVID-19 claimant to access co-workers' test results to prove more-likely-than-not causation	
14	Unclear requirements re: employer's burden to do contact tracing or inform other employees when one has tested positive	X
15	If employers are required to notify other employees of a positive test, lack of clarity about additional information (testing, quarantine, available benefits, ability to file a WC claim, etc.) that should be provided	(in part)
16	Handling of exposure with negative test not treated consistently.	
17	If quarantine time with a negative test is a covered claim, what are requirements for coverage? (i.e. Med provider must authorize, self quarantine ok, etc.)	

Leave Time/Pay/Employee Expenses		
18	Different requirements among different-sized employers to provide paid sick leave for quarantine periods	
19	Lack of a clear source of wages for someone without paid leave who is required to quarantine for 14 days, but never becomes ill or seeks medical attention	
20	Cost of a COVID-19 test for an employee exposed at work who tests negative and thus ineligible for an accepted workers' comp claim	
Workers' Compensation Rating Issues		
21	Impact of COVID-19 claims on employer experience mods obtained via NCCI	X
Personal Protection		
22	Not enough, or not enough of the right kind of PPE to meet the needs of the workforce	X
23	Question of what should happen in a workplace when despite employer's best efforts, appropriate PPE is unavailable	X
24	Not all businesses following face covering or social distancing requirements	X
25	Customers, co-workers refusing to comply with mandates for face coverings	X
26	Risk to employees when trying to enforce face-covering mandates among customers	X
27	OR-OSHA inundated with complaints, delays in response, changing mandates	X
28	Challenges associated with employers knowing that someone in their employment has tested positive, but can't identify potential exposures because OHA doesn't divulge who the employee is	X
29	Sufficiency of contract tracers to actually make an impact in tracking exposures	X
30	County health departments want information from employers, but don't share information about outside exposures that an infected employee may have	X
31	Unclear information about whether requirements for contract tracing are the same for all industries	X

Appendix B

Management Position on MLAC's COVID-19 Response

Over the past three weeks, MLAC heard testimony about challenges faced by individuals who believe they contracted COVID-19 at work and whose workers' comp claims were denied. Their testimony was emotional, and we empathize with those individuals. We also heard testimony from employers who described their efforts in responding to COVID-19, and their belief that Oregon's workers' compensation system is appropriately responding to the pandemic. And, we reviewed data from the Workers' Compensation Division (WCD) that reported on COVID-19 claims over the past several months.

In response to this testimony, we conclude that clear and consistent rules for processing COVID-19 claims should be adopted, to ensure workers are protected during a quarantine period and don't have to worry about the cost of a COVID-19 test, even if they don't ultimately have the condition.

We regret that MLAC was unable to reach a single recommendation, but we were unable to accept the sweeping "COVID presumption" that Labor advocates proposed. We oppose a presumption because the data tells us that the experience of those denied individuals is not the norm and because a COVID presumption would create its own set of disparities among Oregon workers.

According to the data provided to MLAC by WCD, 74 percent of the 557 COVID-19 claims filed have been accepted by the 25 separate insurers or self-insurers reporting COVID claims in Oregon. Of the 145 denied claims, an apparently disproportionate share of denials came from two specific insurers. The remaining 23 insurers approved 80 percent of filed claims. Denied claims for these latter insurers included a significant number of claims denied because the employee was determined not to have COVID. Even for denied claims, COVID testing costs were paid by most insurers, as was employee time loss due to quarantine.

We believe that DCBS should audit or otherwise review the procedures of insurers with apparent high COVID denial rates to determine whether their denials were reasonable and proper. We further believe that the enclosed "Draft COVID Rules" will create standards to right these apparent wrongs. But we do not think that claim processing decisions of two insurers should prompt the upending of the workers' compensation system's balance that a COVID presumption would represent.

Why we oppose the proposed presumption

The COVID presumption was offered as a solution before we heard testimony about the problems. It is simply a broad brush, not tailored to the issues we heard during testimony and not in keeping with Oregon's long-held standard that workers' compensation claims must be tied to injury and illness that occurs at work.

Beyond the fact that the need for a presumption isn't supported by data, here are the reasons for our opposition:

The presumption is remarkably broad

- The proposed presumption says that “death, disability, impairment of health, loss of work time or expenses of medical treatment or services, including diagnostic or preventative medical treatment or services, is presumed to be compensable as an occupational injury or disease” if the worker meets two criteria: (1) he/she works in a job subject to the presumption and (2) meets one of five COVID-related conditions, only two of which involve workplace exposure. *There is no requirement that COVID be contracted in the workplace to be compensable.*
- The lack of language which relates “death, disability, impairment of health” etc. to COVID-19 means that if a worker covered by the presumption is diagnosed with or tests positive for COVID, regardless of where the exposure occurred, all of that employee’s medical expenses and time loss would be compensable not only for COVID-19, but potentially for any illness or disability – diabetes, pregnancy, heart condition, cancer – the worker may suffer from.
- The workers to which it would apply are largely determined by their industry, and not by the actual exposure an employee has on the job to the public or co-workers.
 - A retail employee who works alone in a store providing only curbside, no-contact service, or an educational employee working from home, would receive the same presumption that their exposure/disease was job-related as a health care worker treating COVID-19 patients.
 - Someone who works in a covered industry but wasn’t on the job in the weeks before contracting COVID would receive the presumption.
- The presumption provides a catch-all to include any worker who dealt with the public in any capacity in a location covered by the Governor’s state of emergency, or any worker where 10 percent of employees have tested positive, regardless of when those tests occurred and what exposure the worker had.

The presumption threatens the “grand bargain” on which Oregon’s workers’ compensation system is based

- By removing the key consideration that injuries or illnesses must occur on the job to be covered, the presumption tips the system’s balance toward the worker to an unprecedented degree.
- The presumption is un rebuttable by the employer for all practical purposes:

- A suspected COVID source is sufficient to trigger the presumption but a known source is required to produce the “clear and convincing medical evidence” required to rebut it.
- Employers are not allowed to investigate the medical history of the worker’s off-work contacts to prove a confirmed source.

There are likely to be system-wide, unintended consequences of a presumption

The combination of the expansive list of workers covered, the tough rebuttal standard, and the benefits for non-work-related and non-COVID-related conditions appear to make Oregon’s presumption proposal the broadest in the country.

- Increased workers’ compensation costs will follow system-wide, to be borne by employers who are already struggling and who have already made significant and unexpected investments to protect their workers and the public
- Insurers and excess insurers may decide to leave Oregon’s workers’ compensation market, to not cover certain classes of workers, or to limit coverage available, as was the case following adoption of the firefighter cancer presumption.
- Presumption will likely lead to significant litigation over the meaning of currently undefined or unknown terms such as “known or suspected source,” “known and confirmed source,” “subject worker’s work site” (which seems to include the home), and “nevertheless working with the public.” Such litigation will put employees’ claims in limbo.

Why we support a rules-based solution

We support immediate rulemaking based on the “Draft COVID Rules” to protect workers who believe they have been exposed to or contracted COVID-19 in the workplace. Here’s why:

- The rules would apply to COVID claims processing for every employee in the state without a complex determination of whether the worker met the standard for a presumption. Accordingly, every employee would be assured that their claim is handled in a fair and consistent manner.
- The approach uses objective criteria and a verifiable framework by which approvals and denials can be measured.
- Its requirement that no claim can be denied for at least 14 days ensures that all workers will receive interim time-loss pay for a 14-day quarantine.

- It allows for quick implementation and subsequent ability to modify as needed, rather than the longer process of legislation and subsequent rulemaking. Changes that may be needed as the pandemic continues to unfold could be handled through the more flexible rule-making process, rather than waiting for the next legislative session.
- The rules are simple for workers, employers and insurers to understand, and will be a valuable asset in the education effort that MLAC members all agree is needed.
- It is tailored to address the specific issues that we heard during testimony.

We further support making the rules retroactive to the beginning of the outbreak to allow denied claimants access to the same process and a second review of their claims.

Testimony during our meetings indicated that there is nearly universal agreement that SAIF's approach to processing of COVID-19 claims is fair, reasonable, and gives the benefit of the doubt to the workers. WCD data shows that SAIF has accepted 87 percent of COVID claims thus far. The rules that we support were drafted by SAIF at MLAC's request to reflect its claims processing approach.

We believe that achieving a solution through rulemaking is a win-win for both workers and employers. We urge the Governor and Legislature to endorse this approach.

Members of MLAC Representing Management

Kimberly Wood, MLAC Co-Chair
Tammy Bowers
Alan Hartley
Lynn McNamara
Kathy Nishimoto

DRAFT COVID RULES

During all coronavirus state-wide emergency orders, the following will apply. Enforcement of the following will end at the expiration of state-wide emergency orders. Authority exists for the Director of the Consumer and Business Services to enact and enforce these rules under ORS 656.726(4) and ORS 654.003(3) through ORS 654.003(5).

- (1) For the purpose of this rule:
- (a) "Coronavirus" or "COVID-19" is the infectious respiratory syndrome caused by the virus SARS-CoV-2.
 - (b) "Coronavirus test" or "COVID-19 test" means a viral test that checks samples from the respiratory system, such as a swab from the inside of a nose, to determine if an individual has an infection of SARS-CoV2, the virus that causes COVID-19.
 - (c) "Quarantine" means to put or hold in isolation by order of a medical service provider to prevent the spread of coronavirus.
- (2) Under OAR 436-060-0140, insurers and self-insured employers must conduct a "reasonable investigation" before denying a claim. When a worker has filed a claim for coronavirus or coronavirus exposure, a reasonable investigation must include:
- (a) Determining whether the nature of the worker's employment resulted in an exposure to coronavirus;
 - (b) Determining whether the worker did not work for a period of quarantine or otherwise at the direction of a medical service provider or public health professional, or the employer;
 - (c) If a worker has taken a coronavirus test, waiting for the worker's test results;
 - (d) If the worker tests positive for coronavirus or is given a presumptive diagnosis of coronavirus, and the source of the coronavirus exposure is unknown, the insurer or self-insured employer must obtain a medical opinion prior to issuing a denial.
- (3) Compliance with section (2) of this rule requires at least 14 days from date of employer knowledge or notice before determining whether to deny a claim.
- (4) An insurer or self-insured employer with more than ___ coronavirus claims will be audited by the Director of the Department of Consumer and Business Services if its coronavirus claim denial rate is at least ___ % higher than the average denial rate for coronavirus claims Oregon-wide. Audits under OAR 436-060-0200 consider whether insurers and self-insured employers have complied with investigation requirements and temporary disability payment requirements. Failure to reasonably investigate coronavirus claims or appropriately pay temporary disability will result in civil penalties as identified in OAR 436-060-0200.

Workers' compensation COVID-19 related claims as of July 10, 2020 by insurer name

Insurer type	Insurer	Accepted				Denied				Total	
		Disabling		Nondisabling		Disabling		Nondisabling			
		Exposure	Disease	Exposure	Disease	Exposure	Disease	Exposure	Disease		
SAIF	SAIF CORPORATION	257	112	not reported			35	4	17	1	426
Private	ACE FIRE UNDERWRITERS INSURANCE COMPANY	0	0		0	2	0	0	2		
Private	AMERICAN ZURICH INSURANCE COMPANY	0	2		1	0	0	0	3		
Private	BERKLEY NATIONAL INSURANCE COMPANY	0	0		0	0	1	0	1		
Private	BERKSHIRE HATHAWAY HOMESTATE INSURANCE COMPANY	0	0		1	0	0	0	1		
Private	CHARTER OAK FIRE INSURANCE COMPANY	0	1		0	0	0	1	2		
Private	GUIDEONE MUTUAL INSURANCE COMPANY	0	0		15	0	6	0	21		
Private	INDEMNITY INSURANCE COMPANY OF NORTH AMERICA	0	0		0	0	1	0	1		
Private	LM INSURANCE CORPORATION	0	0		0	1	0	0	1		
Private	NEW HAMPSHIRE INSURANCE COMPANY	1	2		0	0	0	0	3		
Private	PACIFIC INDEMNITY COMPANY	1	0		0	0	0	0	1		
Private	SENTRY INSURANCE A MUTUAL COMPANY	0	0		1	0	0	0	1		
Private	TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA	0	0		0	0	1	0	1		
Private	XL INSURANCE AMERICA, INC.	0	0		1	0	0	1	2		
Self-insured	ADVENTIST HEALTH SYSTEM/WEST	4	9		1	0	0	0	14		
Self-insured	ASANTE	0	0		0	0	3	0	3		
Self-insured	CIS TRUST	0	0		0	0	2	0	2		
Self-insured	CITY OF ASHLAND	1	0		0	0	0	0	1		
Self-insured	CITY OF SALEM	0	0		0	1	0	0	1		
Self-insured	KAISER FOUNDATION HEALTH PLAN OF THE NORTHWEST	1	0		0	0	4	0	5		
Self-insured	MULTNOMAH COUNTY OREGON	0	0		0	1	0	0	1		
Self-insured	PROVIDENCE HEALTH & SERVICES-OREGON	0	3		0	0	41	0	44		
Self-insured	SPECIAL DISTRICTS INSURANCE SERVICES TRUST	13	4		0	0	0	0	17		
Self-insured	TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON	0	0		1	1	0	0	2		
Self-insured	WASHINGTON COUNTY	1	0		0	0	0	0	1		
	Total	279	133				56	10	76	3	557

All data on this page excludes four potential claims where insurers have not yet reported full details.

Source: Oregon Department of Consumer and Business Services, Central Services Division July 10, 2020

Who would get a presumption?

(8)(a) As used in this subsection, “essential worker” means a subject worker who, at an employer’s direction, must or may work at the subject worker’s work site as a:

Firefighter, a police or peace officer, a public safety personnel or officer as defined in ORS 181A.355,

Medical services provider including emergency medical technicians, physicians, nurses, physician and nursing assistants, hospital or medical clinic employees, pharmacy technicians, and home health and long term care employees,

Grocery or retail store employee,

Provider of janitorial or house-keeping services,

School employees,

Child care employees who remained on the job to care for essential worker’s dependents,

An agricultural worker as defined in ORS 315.163,

Employees at subject workers worksite where 10% or more of the employees have tested positive or presumed positive,

Employees whose job classification are not covered but who were nevertheless working with the public shall be covered under the presumption during a period in which a declaration of a state of emergency issued by the Governor is in effect for a location that includes the subject worker’s work site.

When would they get a presumption?

(b) A subject worker’s death, disability, impairment of health, loss of work time or expenses of medical treatment or services, including diagnostic or preventative medical treatment or services, is presumed to be compensable as an occupational injury or disease if:

(A) the subject worker is an essential worker; and

(B) the subject worker is exposed at work to a known or suspected source of COVID-19/SARS-CoV-2 and the employer, medical provider or federal, state or local public health authority required the subject worker to remain away from the subject worker’s work site ; or

(C) the subject worker is exposed at work to a known or suspected source of COVID-19/SARS-CoV-2 and becomes symptomatic with COVID-19/SARS-CoV-2; or

(D) the subject worker becomes symptomatic and receives a diagnosis of COVID-19/SARS-CoV-2 from a medical provider or a federal, state or local public health authority; or

(E) the subject worker receives a laboratory-confirmed diagnosis of COVID-19/SARS-CoV-2; or

(F) the subject worker receives a presumptive positive test result for COVID-19/SARS-CoV-2.

How would an employer rebut the presumption?

(c) An insurer or self-insured employer may rebut the presumption set forth in paragraph (b) of this subsection, or may deny a claim filed under this section for exposure to or infection by COVID-19/SARS-CoV-2, only:

(A) with clear and convincing evidence that the conditions identified in paragraph (b)(A), (B), (C), (D), (E), and/or (F) do not apply to the subject worker; **and** (should be OR)

(B) with clear and convincing medical evidence that the conditions identified in paragraph (b) (B), (C), (D), (E), and/or (F) were caused by a known and confirmed source of COVID-19/SARS-CoV-2 unrelated to work as an essential worker.

(d) Notwithstanding ORS 656.027 (6) [Portland also].

SECTION 2. This 2020 Act being necessary for the immediate preservation of the public peace, health and safety, and emergency is declared to exist, and this 2020 Act takes effect on its passage and shall apply to work on or after March 8, 2020 and until 180 days after the date a declaration of a state of emergency issued by the Governor is lifted.

Appendix C - Labor Proposal

July 20, 2020

Governor Kate Brown
254 State Capitol
Salem, Oregon 97301-4047

Dear Governor Brown:

Thank you for the opportunity to review Oregon's Workers' Compensation system as it relates to COVID-19. Although the Management-Labor Advisory Committee (MLAC) was able to find some areas of agreement when it came to shortcomings in the system and ways to address those gaps, we were unfortunately unable to come to a unanimous conclusion on your request regarding evaluation of and recommendation for a presumption.

It is Labor's belief that both Management and Labor Committee members recognized that the system is not working as well as it should, although some stakeholders have suggested that it is. We also believe that both sides of the Committee, the participating stakeholders, and the Workers' Compensation Division staff all gave this specific issue a great deal of thought and energy, and the disappointment around not reaching consensus is very real, especially since we as a Committee have been successful in the past.

The difficulty we collectively faced stemmed in part from the fact that COVID-19 is unlike anything we as a Committee, or we as Oregonians, have faced in over a century. The Labor Committee members understand our role in keeping the Workers' Compensation system balanced and beneficial to all, but these unprecedented times call for a solution to match the gravity of the crisis we face. The data from the Department of Consumer and Business Services, based on the claims reported as of July 16, 2020, shows a claim denial of 13% by SAIF, and a 67% denial rate by other insurers. This calculation does not include accepted non-disabling claims, however, from the preliminary data call we received from the Workers' Compensation Division dated July 16, 2020 – respondents, including SAIF, provided acceptance data on only 125 non-disabling claims. To be clear, non-disabling claims do not entitle a worker to time loss. This dramatic difference in claims was alarming and warrants a serious solution.

The conviction from Labor on the need for a presumption is intensified by the fact that we are again seeing a rise in COVID-19 cases. We do not know when this pandemic will end, but we do know we will keep asking Oregon's frontline workers to keep caring for us when we are ill, to respond when we call 911, to keep our refrigerators stocked and our families fed, and to keep what remains of our economy going. Labor believes that our frontline workers deserve more access to the workers compensation system than they currently have without a presumption.

Under the current system, workers bear the burden to prove where they contracted COVID-19. With a virus that does not have instantaneous symptoms and that can be transmitted by an individual who is asymptomatic, this becomes an impossible task for a frontline worker

providing essential services to the public. This is further complicated by citizens that do not take this pandemic seriously, and do not stay home when they have been exposed or are sick, nor follow social distancing guidelines and face covering requirements. Firefighters, police officers, health care providers, as well as workers in retail, grocery, agriculture, and other essential services, are literally putting their lives on the line to keep this state running. Giving them an impossible burden to meet when they file a workers' compensation claim feels like a punishment for their dedicated service. This disappointment was articulated to members of MLAC from a Salem police officer and Hood River nurse; they both categorized this feeling as a betrayal. We won't soon forget the despair in their voices as they told us about their dedication to their service only to be denied medical coverage and wage replacement when they needed it most.

We have included the most recent draft of the presumption that Labor is recommending with this letter because we feel that this is what is necessary to address what the data revealed – that there is a disparity in the way claims are processed. This appears in part due to a lack of clear requirements, but more importantly because of the heavy burden workers face as explained above. Both Labor and the coalition that drafted this language recognize that Management had some good questions on its applicability. With that said, there has been significant movement from the original LC-293 draft from May 28, 2020, and those changes are reflective of the coalition's attentiveness to stakeholder concerns.

It would have been Labor's preference for MLAC to unanimously agree to recommend that we as a Committee continue to explore the presumption language, but our Management counterparts prefer a different solution. We do want to thank SAIF for being so responsive to the Committee's request to generate the COVID Claims Process and Accountability Rule, and we understand Management finds it appealing because of its limited deviation from how the Workers' Compensation system operates now. We as workers and worker advocates are grateful to SAIF and how they are treating the COVID-19 claims process. And we want to express that we have great respect for those serving on the Management side of MLAC, and know that they care about Oregon workers. But Labor believes that the COVID Claims Process and Accountability Rule will not go as far as they hope, will likely face legal issues with making policy into requirements, may not be legally possible to accomplish in Rule, and will not ultimately address the true heart of the problem, which is the burden the worker faces in proving a claim.

The claims process as it stands now suffers from inconsistency regarding how COVID-19 exposure is treated, including whether or not time loss is paid, who can authorize quarantine and time loss, what benefits are available when the test results are negative, and vagueness around what a reasonable investigation is when it comes to determining whether or not the claim stemmed from a workplace injury. But what the data and testimony revealed to us as most important is what happens in the scenario when the investigation reveals both workplace and external exposures - or even more challenging – when the investigation does not identify exposure at work or outside of work. This last scenario is the most troubling for frontline workers because they are required to interact with the public, such as when responding to the scene of a car accident or in the checkout line at the grocery store, and there is no way of knowing if the individuals they serve carry COVID-19. Requiring a medical provider to make

that determination is in no way guaranteed to grant the worker the benefit of the doubt they deserve, not to mention the heavy burden on medical providers this will likely cause – medical providers that already have enough to do in this pandemic. We believe this problem can only be solved with a presumption.

To further add to our concerns is a lack of meaningful remedy when an insurer has failed to conduct a reasonable investigation. The Workers' Compensation Division can only make that finding when the claim is completely closed and no longer able to be appealed. This means that even if the insurer is found to have not done their due diligence in the investigation, the worker will never receive the benefit of that finding. There may be a fine involved, that but does nothing for the worker whose claim was denied, nor are we convinced the fine will be enough to incentivize insurers to do better on the next claim.

Management has pointed out that the rebuttable presumption in the draft presumption language is an impossible burden to meet. As Labor, we are sympathetic to that concern, but given a choice between having the employers and insurers have the burden of proof or the frontline worker, we believe the employers and insurers are better positioned to bear that weight. They have greater access to the time and resources it takes to make a case, not to mention a greater familiarity with the system itself. And although a worker can always get an attorney, not all do, and to say that getting representation is a solution just sets the system up for what we believe is unnecessary conflict and strife and it leaves the worker without workers' compensation benefits while the claim is appealed.

Labor would also like to point out that those workers who testified regarding their work experience with COVID-19 suffered more than just from the illness. They also suffered the stress of facing a battle with the insurer over their claim denial, loss of paid time off that should have been preserved for future needs, and the feeling of rejection when they were performing essential services for us all. Our workers deserve better.

Labor would also like to take this opportunity to address the fact that the Labor side of MLAC has been down one member for a significant amount of time now, despite there being a least one qualified applicant. We implore you to move forward with an appointment. Serving on MLAC is time-consuming and complex, and if you or the Legislature intend to continue assigning the Committee with such substantial tasks, it is only fair that Labor have the same membership count as Management. Otherwise we are not only down one vote, but are also forced to function with a reduction in availability, insight, and thoughtful recommendations. Neither Labor, MLAC, nor Oregonians benefit from this situation.

Sincerely,

On behalf of the Labor Members of MLAC
Diana Winther
Labor Co-Chair

D R A F T

SUMMARY

Adds exposure to or infection by severe acute respiratory syndrome coronavirus 2 to definition of occupational disease for purposes of workers' compensation. Specifies presumptions as to compensability that apply to subject worker's death, disability, impairment of health, loss of work time and expenses of medical treatment or services, including diagnostic or preventative medical treatment or services.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the compensability of COVID-19 as an occupational disease for
3 the purposes of workers' compensation; amending ORS 656.802; and de-
4 claring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 656.802 is amended to read:

7 656.802. (1)(a) As used in this chapter, "occupational disease" means any
8 disease or infection arising out of and in the course of employment caused
9 by substances or activities to which an employee is not ordinarily subjected
10 or exposed other than during a period of regular actual employment therein,
11 and which requires medical services or results in disability or death, in-
12 cluding:

13 (A) Any disease or infection caused by ingestion of, absorption of,
14 inhalation of or contact with dust, fumes, vapors, gases, radiation or other
15 substances.

16 (B) Any mental disorder, whether sudden or gradual in onset, which re-
17 quires medical services or results in physical or mental disability or death.

18 (C) Any series of traumatic events or occurrences which requires medical

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 services or results in physical disability or death.

2 **(D) Exposure to or infection by severe acute respiratory syndrome**
3 **coronavirus 2 (SARS-CoV-2).**

4 (b) As used in this chapter, “mental disorder” includes any physical dis-
5 order caused or worsened by mental stress.

6 (2)(a) The worker must prove that employment conditions were the major
7 contributing cause of the disease.

8 (b) If the occupational disease claim is based on the worsening of a pre-
9 existing disease or condition pursuant to ORS 656.005 (7), the worker must
10 prove that employment conditions were the major contributing cause of the
11 combined condition and pathological worsening of the disease.

12 (c) Occupational diseases shall be subject to all of the same limitations
13 and exclusions as accidental injuries under ORS 656.005 (7).

14 (d) Existence of an occupational disease or worsening of a preexisting
15 disease must be established by medical evidence supported by objective
16 findings.

17 (e) Preexisting conditions shall be deemed causes in determining major
18 contributing cause under this section.

19 (3) Notwithstanding any other provision of this chapter, a mental disorder
20 is not compensable under this chapter unless the worker establishes all of
21 the following:

22 (a) The employment conditions producing the mental disorder exist in a
23 real and objective sense.

24 (b) The employment conditions producing the mental disorder are condi-
25 tions other than conditions generally inherent in every working situation or
26 reasonable disciplinary, corrective or job performance evaluation actions by
27 the employer, or cessation of employment or employment decisions attendant
28 upon ordinary business or financial cycles.

29 (c) There is a diagnosis of a mental or emotional disorder which is gen-
30 erally recognized in the medical or psychological community.

31 (d) There is clear and convincing evidence that the mental disorder arose

1 out of and in the course of employment.

2 (4) Death, disability or impairment of health of firefighters of any poli-
3 tical division who have completed five or more years of employment as fire-
4 fighters, caused by any disease of the lungs or respiratory tract, hypertension
5 or cardiovascular-renal disease, and resulting from their employment as
6 firefighters is an “occupational disease.” Any condition or impairment of
7 health arising under this subsection shall be presumed to result from a
8 firefighter’s employment. However, any such firefighter must have taken a
9 physical examination upon becoming a firefighter, or subsequently thereto,
10 which failed to reveal any evidence of such condition or impairment of
11 health which preexisted employment. Denial of a claim for any condition
12 or impairment of health arising under this subsection must be on the basis
13 of clear and convincing medical evidence that the cause of the condition or
14 impairment is unrelated to the firefighter’s employment.

15 (5)(a) Death, disability or impairment of health of a nonvolunteer fire-
16 fighter employed by a political division or subdivision who has completed
17 five or more years of employment as a nonvolunteer firefighter is an occu-
18 pational disease if the death, disability or impairment of health:

19 (A) Is caused by brain cancer, colon cancer, stomach cancer, testicular
20 cancer, prostate cancer, multiple myeloma, non-Hodgkin’s lymphoma, cancer
21 of the throat or mouth, rectal cancer, breast cancer or leukemia;

22 (B) Results from the firefighter’s employment as a nonvolunteer fire-
23 fighter; and

24 (C) Is first diagnosed by a physician after July 1, 2009.

25 (b) Any condition or impairment of health arising under this subsection
26 is presumed to result from the firefighter’s employment. Denial of a claim for
27 any condition or impairment of health arising under this subsection must be
28 on the basis of clear and convincing medical evidence that the condition or
29 impairment was not caused or contributed to in material part by the
30 firefighter’s employment.

31 (c) Notwithstanding paragraph (b) of this subsection, the presumption es-

1 tablished under paragraph (b) of this subsection may be rebutted by clear and
2 convincing evidence that the use of tobacco by the nonvolunteer firefighter
3 is the major contributing cause of the cancer.

4 (d) The presumption established under paragraph (b) of this subsection
5 does not apply to prostate cancer if the cancer is first diagnosed by a phy-
6 sician after the firefighter has reached the age of 55. However, nothing in
7 this paragraph affects the right of a firefighter to establish the
8 compensability of prostate cancer without benefit of the presumption.

9 (e) The presumption established under paragraph (b) of this subsection
10 does not apply to claims filed more than 84 months following the termination
11 of the nonvolunteer firefighter's employment as a nonvolunteer firefighter.
12 However, nothing in this paragraph affects the right of a firefighter to es-
13 tablish the compensability of the cancer without benefit of the presumption.

14 (f) The presumption established under paragraph (b) of this subsection
15 does not apply to volunteer firefighters.

16 (g) Nothing in this subsection affects the provisions of subsection (4) of
17 this section.

18 (h) For purposes of this subsection, "nonvolunteer firefighter" means a
19 firefighter who performs firefighting services and receives salary, hourly
20 wages equal to or greater than the state minimum wage, or other compen-
21 sation except for room, board, lodging, housing, meals, stipends, reimburse-
22 ment for expenses or nominal payments for time and travel, regardless of
23 whether any such compensation is subject to federal, state or local taxation.
24 "Nominal payments for time and travel" includes, but is not limited to,
25 payments for on-call time or time spent responding to a call or similar non-
26 cash benefits.

27 (6) Notwithstanding ORS 656.027 (6), any city providing a disability and
28 retirement system by ordinance or charter for firefighters and police officers
29 not subject to this chapter shall apply the presumptions established under
30 subsection (5) of this section when processing claims for firefighters covered
31 by the system.

1 (7)(a) As used in this subsection:

2 (A) "Acute stress disorder" has the meaning given that term in the
3 DSM-5.

4 (B) "Covered employee" means an individual who, on the date a claim is
5 filed under this chapter:

6 (i) Was employed for at least five years by, or experienced a single trau-
7 matic event that satisfies the criteria set forth in the DSM-5 as Criterion A
8 for diagnosing post-traumatic stress disorder while employed by, the state,
9 a political subdivision of the state, a special government body, as defined in
10 ORS 174.117, or a public agency in any of these occupations:

11 (I) A full-time paid firefighter;

12 (II) A full-time paid emergency medical services provider;

13 (III) A full-time paid police officer;

14 (IV) A full-time paid corrections officer or youth correction officer;

15 (V) A full-time paid parole and probation officer; or

16 (VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator;

17 and

18 (ii) Remains employed in an occupation listed in sub-subparagraph (i) of
19 this subparagraph or separated from employment in the occupation not more
20 than seven years previously.

21 (C) "DSM-5" means the fifth edition of the Diagnostic and Statistical
22 Manual of Mental Disorders published by the American Psychiatric Associ-
23 ation.

24 (D) "Post-traumatic stress disorder" has the meaning given that term in
25 the DSM-5.

26 (E) "Psychiatrist" means a psychiatrist whom the Oregon Medical Board
27 has licensed and certified as eligible to diagnose the conditions described in
28 this subsection.

29 (F) "Psychologist" means a licensed psychologist, as defined in ORS
30 675.010, whom the Oregon Board of Psychology has certified as eligible to
31 diagnose the conditions described in this subsection.

1 (b) Notwithstanding subsections (2) and (3) of this section, if a covered
2 employee establishes through a preponderance of persuasive medical evidence
3 from a psychiatrist or psychologist that the covered employee has more
4 likely than not satisfied the diagnostic criteria in the DSM-5 for post-
5 traumatic stress disorder or acute stress disorder, any resulting death, disa-
6 bility or impairment of health of the covered employee shall be presumed to
7 be compensable as an occupational disease. An insurer or self-insured em-
8 ployer may rebut the presumption only by establishing through clear and
9 convincing medical evidence that duties as a covered employee were not of
10 real importance or great consequence in causing the diagnosed condition.

11 (c) An insurer's or self-insured employer's acceptance of a claim of post-
12 traumatic stress disorder or acute stress disorder under this subsection,
13 whether the acceptance was voluntary or was a result of a judgment or or-
14 der, does not preclude the insurer or the self-insured employer from later
15 denying the current compensability of the claim if exposure as a covered
16 employee to trauma that meets the diagnostic criteria set forth as Criterion
17 A in the DSM-5 for post-traumatic stress disorder or acute stress disorder
18 ceases being of real importance or great consequence in causing the disabil-
19 ity, impairment of health or a need for treatment.

20 (d) An insurer or self-insured employer may deny a claim under paragraph
21 (c) of this subsection only on the basis of clear and convincing medical evi-
22 dence.

23 (e) Notwithstanding ORS 656.027 (6), a city that provides a disability or
24 retirement system for firefighters and police officers by ordinance or charter
25 that is not subject to this chapter, when accepting and processing claims for
26 death, disability or impairment of health from firefighters and police officers
27 covered by the disability or retirement system, shall apply:

28 (A) The provisions of this subsection; and

29 (B) For claims filed under this subsection, the time limitations for filing
30 claims that are set forth in ORS 656.807 (1) and (2).

31 **(8)(a) As used in this subsection, "essential worker" means a sub-**

1 **ject worker who, at an employer’s direction, must or may work at the**
2 **subject worker’s work site during a period in which a declaration of**
3 **a state of emergency issued by the Governor is in effect for a location**
4 **that includes the subject worker’s work site.**

5 **(b) A subject worker’s death, disability, impairment of health, loss**
6 **of work time or expenses of medical treatment or services, including**
7 **diagnostic or preventative medical treatment or services, is presumed**
8 **to be compensable as an occupational disease if the subject worker is**
9 **an essential worker and:**

10 **(A) Received a diagnosis of coronavirus disease 2019 (COVID-19)**
11 **from a medical provider or a federal, state or local public health au-**
12 **thority;**

13 **(B) Received a laboratory-confirmed diagnosis of COVID-19;**

14 **(C) Received a presumptive positive test result for COVID-19; or**

15 **(D) An employer, medical provider or federal, state or local public**
16 **health authority required the subject worker to remain away from the**
17 **subject worker’s work site because of a suspected or confirmed expo-**
18 **sure to SARS-CoV-2.**

19 **(c) An insurer or self-insured employer may rebut the presumption**
20 **set forth in paragraph (b) of this subsection, or may deny a claim filed**
21 **under this section for exposure to or infection by SARS-CoV-2, only**
22 **with clear and convincing evidence that the conditions identified in**
23 **paragraph (b)(A), (B), (C) and (D) of this subsection do not apply to**
24 **the subject worker.**

25 **(d) Notwithstanding ORS 656.027 (6), a city that provides a disability**
26 **or retirement system for firefighters and police officers by ordinance**
27 **or charter that is not subject to this chapter, when accepting and**
28 **processing claims from firefighters and police officers covered by the**
29 **disability or retirement system, shall apply:**

30 **(A) The provisions of this subsection; and**

31 **(B) For claims filed under this section for exposure to or infection**

1 by SARS-CoV-2, the time limitations for filing claims that are set
2 forth in ORS 656.807 (1) and (2).

3 SECTION 2. This 2021 Act being necessary for the immediate pres-
4 ervation of the public peace, health and safety, an emergency is de-
5 clared to exist, and this 2021 Act takes effect on its passage.

6

Potential amendments to LC 293

Replace language on page 6, line 31 through page 8 lines 1-6 with the following:

(8)(a) As used in this subsection, “essential worker” means a subject worker who, at an employer’s direction, must or may work at the subject worker’s work site as a firefighter, a police or peace officer, a public safety personnel or officer as defined in ORS 181A.355, a medical services provider including emergency medical technicians, physicians, nurses, physician and nursing assistants, hospital or medical clinic employees, pharmacy technicians, and home health and long term care employees, a grocery or retail store employee, a provider of janitorial or house-keeping services, school employees, Child care employees who remained on the job to care for essential worker’s dependents, an agricultural worker as defined in ORS 315.163, employees at subject workers worksite where 10% or more of the employees have tested positive or presumed positive, employees whose job classification are not covered but who were nevertheless working with the public shall be covered under the presumption during a period in which a declaration of a state of emergency issued by the Governor is in effect for a location that includes the subject worker’s work site.

(b) A subject worker’s death, disability, impairment of health, loss of work time or expenses of medical treatment or services, including diagnostic or preventative medical treatment or services, is presumed to be compensable as an occupational injury or disease if:

(A) the subject worker is an essential worker; and

(B) the subject worker is exposed at work to a known or suspected source of COVID-19/SARS-CoV-2 and the employer, medical provider or federal, state or local public health authority required the subject worker to remain away from the subject worker’s work site ; or

(C) the subject worker is exposed at work to a known or suspected source of COVID-19/SARS-CoV-2 and becomes symptomatic with COVID-19/SARS-CoV-2; or

(D) the subject worker becomes symptomatic and receives a diagnosis of COVID-19/SARS-CoV-2 from a medical provider or a federal, state or local public health authority; or

(E) the subject worker receives a laboratory-confirmed diagnosis of COVID-19/SARS-CoV-2; or

(F) the subject worker receives a presumptive positive test result for COVID-19/SARS-CoV-2.

(c) An insurer or self-insured employer may rebut the presumption set forth in paragraph (b) of this subsection, or may deny a claim filed under this section for exposure to or infection by COVID-19/SARS-CoV-2, only:

(A) with clear and convincing evidence that the conditions identified in paragraph (b)(A), (B), (C), (D), (E), and/or (F) do not apply to the subject worker; and

(B) with clear and convincing medical evidence that the conditions identified in paragraph (b) (B), (C), (D), (E), and/or (F) were caused by a known and confirmed source of COVID-19/SARS-CoV-2 unrelated to work as an essential worker.

(d) Notwithstanding ORS 656.027 (6) [Portland also].

SECTION 2. This 2020 Act being necessary for the immediate preservation of the public peace, health and safety, and emergency is declared to exist, and this 2020 Act takes effect on its passage and shall apply to work on or after March 8, 2020 and until 180 days after the date a declaration of a state of emergency issued by the Governor is lifted.



Motion on Workers' Compensation and COVID-19

As recommended by the Executive Committee, it is moved that the AGC Board of Directors opposes the proposed Workers' Compensation presumption bill related to COVID-19, and supports the Management Labor Advisory Committee's management administrative solution that codifies SAIF's current practices.