



August 7, 2020

The Honorable Jerry Hill
Chair, Senate Labor Committee
State Capitol
Sacramento, CA 95814

Subject: **AB 196 (Gonzalez)—SUPPORT WITH RESERVATIONS**

The Community Alliance with Family Farmers has represented small and mid-scale family farmers in California for over 40 years, seeking to preserve family-scale agriculture and promote environmental sustainability.

The Governor's Executive Order of May 6, 2020 (N-62-20) created a rebuttable presumption that workers who contracted COVID-19 illnesses did so at work, and so were eligible for Workers Compensation, starting on March 19 and running through July 6. Though the order is not limited to "essential" workers or industries, these are the workers and industries that were deemed necessary to continue operating, including agriculture, food processing, and food stores.

AB 196 would extend the presumption indefinitely and remove employers' ability to contest the Workers Compensation claims. CAFF can support this only if the ultimate costs are spread across all California taxpayers or businesses.

The Workers Compensation Insurance Rating Bureau (WCIRB) has erected special codes for COVID-19 cases, and their filed and approved regulations provide that COVID-19 cases are specifically excluded from *experience modification* calculations. The WCIRB based this exclusion on these considerations of COVID-19 claims:

- COVID-19 pandemic is a statewide crisis
- COVID-19 claims likely not predictive of employer's future claim costs
- Experience rating is pure premium neutral – excluding COVID-19 claims has no overall pure premium impact¹

The July 1, 2020 order approved by the Insurance Commissioner, however, does not exempt COVID-19 claims from *rate* calculations, so the ultimate impact is still unclear.

If some lettuce producers have a high number of COVID-19 claims, will Workers Compensation insurance rates be raised for the class of all lettuce growers in the future? As of now, the WCIRB is estimating that the COVID-19 presumption will add something

like \$1.2 billion to direct claim costs (that's the midline projection, the range of estimates was \$800 million to \$2 billion).

The same reasons that justify the exclusion of COVID-19 claims from the experience modification support finding an alternative way to ensure rates are not raised on essential industries. And since the Workers Compensation insurance claims related to COVID-19 are being tracked separately, and thus could be used to exclude those costs from insurance rates in future years, CAFF believes that the State of California can and should absorb these costs as part of its COVID-19 emergency response. The state public health officer deemed food sector workers “essential critical infrastructure workers,” and society needed these businesses to continue functioning, so the state should pay the costs associated with that order.

Alternatively, we would ask that this bill be amended to order the socialization of Workers Compensation claims related to COVID-19 by spreading future increases in Workers Compensation insurance rates associated with these COVID-19 claims across all employers in California. There can be no doubt that “essential” workers have risked their lives for the benefit of all Californians. It is no surprise that as a result many have fallen ill from the virus. But the “essential” industries that employ these workers should not be penalized for these outcomes by seeing their Workers Compensation insurance rates increased more than employers in non-essential industries who benefited from the essential work.

CAFF is supportive of providing COVID-19 Workers Compensation coverage to essential workers, especially since so many agricultural workers lack health insurance coverage. We would support AB 196 without reservations if it could be amended to spread the burden of any future insurance premium increases across all of California society, either by requiring the state to absorb the costs or by spreading the insurance premium increases across all California employers.

Sincerely,



David Runsten
Policy Director

cc: Assemblymember Lorena Gonzalez
Members of Senate Labor Committee

¹ WCIRB, “COVID-19 and the CA Workers' Comp Insurance Market”
(<https://vimeo.com/438334384>)