

D R A F T

SUMMARY

Amends provisions of workers' compensation law related to beneficiaries.
Expands scope of retaliation provision for workers' compensation benefits.
Amends definitions of "beneficiary," "child" and "dependent" and replaces term "invalid" with "incapacitated."

A BILL FOR AN ACT

1
2 Relating to workers' compensation benefits; amending ORS 656.005, 656.204,
3 656.226, 656.232 and 659A.040.

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

5 **SECTION 1.** ORS 656.204 is amended to read:

6 656.204. If death results from an accidental injury, payments must be made
7 as follows:

8 (1)(a) The cost of final disposition of the body and funeral expenses, in-
9 cluding but not limited to transportation of the body, must be paid, not to
10 exceed 20 times the average weekly wage in any case.

11 (b) The insurer or self-insured employer shall pay bills submitted for dis-
12 position and funeral expenses up to the benefit limit established in paragraph
13 (a) of this subsection. If any part of the benefit remains unpaid 60 days after
14 the date of death or the date of claim acceptance, whichever is later, the
15 insurer or self-insured employer shall pay the unpaid amount to the estate
16 of the worker.

17 (2)(a) If a worker is survived by a spouse, monthly benefits must be paid
18 in an amount equal to 4.35 times 66-2/3 percent of the average weekly wage
19 to the surviving spouse until remarriage. **Only one person may qualify**
20 **as a spouse for the purposes of this paragraph.** The payment shall cease

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 at the end of the month in which the remarriage occurs.

2 (b) Upon remarriage, a surviving spouse must be paid 36 times the
3 monthly benefit in a lump sum as final payment of the surviving spousal
4 benefit.

5 (c) If, after the date of the subject worker's death, the surviving spouse
6 cohabits with another person, [*for an aggregate period of more than one year*
7 *and a child has resulted from the relationship*] **such that the relationship**
8 **would be subject to the provisions of ORS 107.105 to 107.136 and 107.700**
9 **to 107.735**, the surviving spouse must be paid 36 times the monthly benefit
10 in a lump sum as final payment of the surviving spousal benefit.

11 (3)(a) If a worker leaves a child under 19 years of age, a monthly benefit
12 equal to 4.35 times 25 percent of the average weekly wage must be paid to
13 each such child until the child becomes 19 years of age.

14 (b) The total benefits provided for in this subsection may not exceed 4.35
15 times 133-1/3 percent of the average weekly wage. If the sum of the indi-
16 vidual benefits exceeds this maximum, the benefit for each child must be
17 reduced proportionally.

18 (4)(a) If a worker leaves a dependent, a monthly payment must be made
19 to each dependent that is equal to 50 percent of the average monthly support
20 the dependent actually received from the worker during the 12 months pre-
21 ceding the occurrence of the accidental injury. If a dependent is under the
22 age of 19 years at the time of the accidental injury, the payment to the de-
23 pendent must cease when the dependent becomes 19 years of age. The pay-
24 ment to any dependent must cease under the same circumstances that would
25 have terminated the dependency had the injury not happened.

26 (b) The total benefits provided for in this subsection may not exceed 4.35
27 times 10 percent of the average weekly wage. If the sum of the individual
28 benefits exceeds this maximum, the benefit for each dependent must be re-
29 duced proportionally.

30 (5) If a child is [*an invalid*] **incapacitated** at the time the child otherwise
31 becomes ineligible for benefits under this section, the payment to the child

1 must continue while the child remains an *[invalid]* **incapacitated child**. If
 2 *[a person]* **an individual** is entitled to payment because the *[person is an*
 3 *invalid]* **individual is an incapacitated child**, payment must terminate
 4 when the *[person]* **individual** ceases to be an *[invalid]* **incapacitated child**.

5 (6)(a) If a child or dependent is between 19 and 26 years of age at the time
 6 of a worker’s death, or becomes 19 years of age after the worker’s death,
 7 monthly benefits must be paid for not more than 48 months until the age of
 8 26 during a period in which the child or dependent is completing secondary
 9 education, is obtaining a general educational development certificate or is
 10 attending a program of higher education. The child or dependent must pro-
 11 vide an insurer or self-insured employer with documentation that enables the
 12 insurer or self-insured employer to determine the child’s or dependent’s el-
 13 igibility for monthly benefits.

14 (b) If a child or dependent who is eligible for benefits under this sub-
 15 section does not have a surviving parent, the child or dependent must receive
 16 4.35 times 66-2/3 percent of the average weekly wage.

17 (c) As used in this subsection, “attending a program of higher
 18 education” means regularly attending community college, college or univer-
 19 sity, or regularly attending a course of vocational or technical training de-
 20 signed to prepare the participant for gainful employment. A child or
 21 dependent enrolled in an educational course load of less than one-half of that
 22 determined by the educational facility to constitute “full-time” enrollment is
 23 not “attending a program of higher education.”

24 (7) As used in this section, “average weekly wage” has the meaning for
 25 that term provided in ORS 656.211.

26 **SECTION 2.** ORS 656.226 is amended to read:

27 656.226. *[In case]* **If, prior to and including the date of an accidental**
 28 **injury received by one or the other as a subject worker**, two unmarried
 29 individuals have cohabited *[in this state as spouses who are married to each*
 30 *other for over one year prior to the date of an accidental injury received by one*
 31 *or the other as a subject worker, and children are living as a result of that*

1 *relation,]* **together such that the relationship would be subject to the**
2 **provisions of ORS 107.105 to 107.136 and 107.700 to 107.735,** the surviving
3 cohabitant [*and the children are*] **is** entitled to compensation under this
4 chapter the same as if the individuals had been legally married.

5 **SECTION 3.** ORS 656.232 is amended to read:

6 656.232. (1) If a beneficiary is an alien residing outside of the United
7 States or its dependencies, payment of the sums due such beneficiary may,
8 in the discretion of the Director of the Department of Consumer and Busi-
9 ness Services, be made to the consul general of the country in which such
10 beneficiary resides on behalf of the beneficiary. The receipt of the consul
11 general to the director for the amounts thus paid shall be a full and suffi-
12 cient receipt for the payment of the funds thus due the beneficiary.

13 [*(2) If a beneficiary is an alien residing outside of the United States or its*
14 *dependencies, the director may, in lieu of awarding such beneficiary compen-*
15 *sation in the amount provided by this chapter, award such beneficiary such*
16 *lesser sum by way of compensation which, according to the conditions and*
17 *costs of living in the place of residence of such beneficiary will, in the opinion*
18 *of the director, maintain the beneficiary in a like degree of comfort as a bene-*
19 *ficiary of the same class residing in this state and receiving the full compen-*
20 *sation authorized by this chapter. The director shall determine the amount of*
21 *compensation benefits upon the basis of the rate of exchange between the*
22 *United States and any foreign country as determined by the Federal Reserve*
23 *Bank as of January 1 and July 1 of the year when paid.]*

24 [(3)] **(2)** All benefit rights shall be canceled upon the commencement of
25 a state of war between the United States and the country of a beneficiary's
26 domicile.

27 **SECTION 4.** ORS 659A.040 is amended to read:

28 659A.040. [(1)] It is an unlawful employment practice for **any person**
29 **acting on behalf of** an employer to discriminate against a worker with re-
30 spect to hire or tenure or any term or condition of employment because the
31 worker has:

1 (1) Applied for **or inquired about** benefits **under ORS chapter 656;**
2 *[or]*

3 (2) Invoked or utilized the procedures provided for in ORS chapter 656;
4 or

5 (3) *[Has]* Given testimony under the provisions of *[those laws]* **ORS**
6 **chapter 656.**

7 *[(2) This section applies only to employers who employ six or more*
8 *persons.]*

9 **SECTION 5.** ORS 656.005 is amended to read:

10 656.005. (1) “Average weekly wage” means the Oregon average weekly
11 wage in covered employment, as determined by the Employment Department,
12 for the last quarter of the calendar year preceding the fiscal year in which
13 the injury occurred.

14 (2)(a) “Beneficiary” means an injured worker, and the spouse in a mar-
15 riage, child or dependent of a worker, who is entitled to receive payments
16 under this chapter.

17 (b) “Beneficiary” does not include[:]

18 *[(A) A spouse of an injured worker living in a state of abandonment for*
19 *more than one year at the time of the injury or subsequently. A spouse who*
20 *has lived separate and apart from the worker for a period of two years and*
21 *who has not during that time received or attempted by process of law to collect*
22 *funds for support or maintenance is considered living in a state of abandon-*
23 *ment.]*

24 *[(B)]* a person who intentionally causes the compensable injury to or
25 death of an injured worker.

26 (3) “Board” means the Workers’ Compensation Board.

27 (4) “Carrier-insured employer” means an employer who provides workers’
28 compensation coverage with the State Accident Insurance Fund Corporation
29 or an insurer authorized under ORS chapter 731 to transact workers’ com-
30 pensation insurance in this state.

31 (5) “Child” means a child of an injured worker, including:

- 1 (a) A posthumous child;
- 2 (b) A child legally adopted before the injury;
- 3 (c) A child toward whom the worker stands in loco parentis;
- 4 (d) A child born out of wedlock;
- 5 (e) A stepchild, if the stepchild was, at the time of the injury, a member
- 6 of the worker's family and substantially dependent upon the worker for
- 7 support; and

8 (f) A child of any age who was [*an invalid*] **incapacitated** at the time of

9 the accident and thereafter remains [*an invalid*] **incapacitated and** sub-

10 stantially dependent on the worker for support.

11 (6) "Claim" means a written request for compensation from a subject

12 worker or someone on the worker's behalf, or any compensable injury of

13 which a subject employer has notice or knowledge.

14 (7)(a) A "compensable injury" is an accidental injury, or accidental injury

15 to prosthetic appliances, arising out of and in the course of employment re-

16 quiring medical services or resulting in disability or death. An injury is ac-

17 cidental if the result is an accident, whether or not due to accidental means,

18 if it is established by medical evidence supported by objective findings, sub-

19 ject to the following limitations:

20 (A) An injury or disease is not compensable as a consequence of a

21 compensable injury unless the compensable injury is the major contributing

22 cause of the consequential condition.

23 (B) If an otherwise compensable injury combines at any time with a pre-

24 existing condition to cause or prolong disability or a need for treatment, the

25 combined condition is compensable only if, so long as and to the extent that

26 the otherwise compensable injury is the major contributing cause of the

27 disability of the combined condition or the major contributing cause of the

28 need for treatment of the combined condition.

29 (b) "Compensable injury" does not include:

30 (A) Injury to any active participant in assaults or combats that are not

31 connected to the job assignment and that amount to a deviation from cus-

1 tomary duties;

2 (B) Injury incurred while engaging in or performing, or as the result of
3 engaging in or performing, any recreational or social activities primarily for
4 the worker's personal pleasure; or

5 (C) Injury the major contributing cause of which is demonstrated to be
6 by a preponderance of the evidence the injured worker's consumption of al-
7 coholic beverages or cannabis or the unlawful consumption of any controlled
8 substance, unless the employer permitted, encouraged or had actual knowl-
9 edge of such consumption.

10 (c) A "disabling compensable injury" is an injury that entitles the worker
11 to compensation for disability or death. An injury is not disabling if no
12 temporary benefits are due and payable, unless there is a reasonable expect-
13 tation that permanent disability will result from the injury.

14 (d) A "nondisabling compensable injury" is any injury that requires med-
15 ical services only.

16 (8) "Compensation" includes all benefits, including medical services, pro-
17 vided for a compensable injury to a subject worker or the worker's benefi-
18 ciaries by an insurer or self-insured employer pursuant to this chapter.

19 (9) "Department" means the Department of Consumer and Business Ser-
20 vices.

21 (10)[(a)] "Dependent" means any of the following [*relatives of the worker*]
22 **individuals** who, at the time of an accident, depended in whole or in part
23 for the [*relative's*] **individual's** support on the earnings of a worker who dies
24 as a result of an injury:

25 [(A)] (a) A parent[, *grandparent or stepparent*] **of a worker or the**
26 **parent's spouse or domestic partner;**

27 (b) **A grandparent of a worker or the grandparent's spouse or do-**
28 **mestic partner;**

29 [(B)] (c) [*A grandson or granddaughter*] **A grandchild of a worker or**
30 **the grandchild's spouse or domestic partner;**

31 [(C)] (d) [*A brother or sister or half-brother or half-sister*] **A sibling or**

1 **stepsibling of a worker or the sibling’s or stepsibling’s spouse or do-**
2 **mestic partner; and**

3 [(D)] (e) [A niece or nephew] **Any individual related by blood or af-**
4 **finity whose close association with a worker is the equivalent of a**
5 **family relationship.**

6 [(b) “Dependent” does not include an alien who does not reside within the
7 United States at the time of the accident, other than a parent, a spouse or
8 children, unless a treaty provides otherwise.]

9 (11) “Director” means the Director of the Department of Consumer and
10 Business Services.

11 (12)(a) “Doctor” or “physician” means a person duly licensed to practice
12 one or more of the healing arts in any country or in any state, territory or
13 possession of the United States within the limits of the license of the
14 licensee.

15 (b) Except as otherwise provided for workers subject to a managed care
16 contract, “attending physician” means a doctor, physician or physician as-
17 sistant who is primarily responsible for the treatment of a worker’s
18 compensable injury and who is:

19 (A) A physician licensed under ORS 677.100 to 677.228 by the Oregon
20 Medical Board, or a podiatric physician and surgeon licensed under ORS
21 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial
22 surgeon licensed by the Oregon Board of Dentistry or a similarly licensed
23 doctor in any country or in any state, territory or possession of the United
24 States; or

25 (B) For a cumulative total of 60 days from the first visit on the initial
26 claim or for a cumulative total of 18 visits, whichever occurs first, to any
27 of the medical service providers listed in this subparagraph, a:

28 (i) Doctor or physician licensed by the State Board of Chiropractic Ex-
29 aminers for the State of Oregon under ORS chapter 684 or a similarly li-
30 censed doctor or physician in any country or in any state, territory or
31 possession of the United States;

1 (ii) Physician assistant licensed by the Oregon Medical Board in accord-
2 ance with ORS 677.505 to 677.525 or a similarly licensed physician assistant
3 in any country or in any state, territory or possession of the United States;
4 or

5 (iii) Doctor of naturopathy or naturopathic physician licensed by the
6 Oregon Board of Naturopathic Medicine under ORS chapter 685 or a simi-
7 larly licensed doctor or physician in any country or in any state, territory
8 or possession of the United States.

9 (c) Except as otherwise provided for workers subject to a managed care
10 contract, “attending physician” does not include a physician who provides
11 care in a hospital emergency room and refers the injured worker to a pri-
12 mary care physician for follow-up care and treatment.

13 (d) “Consulting physician” means a doctor or physician who examines a
14 worker or the worker’s medical record to advise the attending physician or
15 nurse practitioner authorized to provide compensable medical services under
16 ORS 656.245 regarding treatment of a worker’s compensable injury.

17 (13)(a) “Employer” means any person, including receiver, administrator,
18 executor or trustee, and the state, state agencies, counties, municipal corpo-
19 rations, school districts and other public corporations or political subdi-
20 visions, that contracts to pay a remuneration for the services of any worker.

21 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this
22 chapter, the client of a temporary service provider is not the employer of
23 temporary workers provided by the temporary service provider.

24 (c) As used in paragraph (b) of this subsection, “temporary service pro-
25 vider” has the meaning for that term provided in ORS 656.850.

26 (d) For the purposes of this chapter, “subject employer” means an em-
27 ployer that is subject to this chapter as provided in ORS 656.023.

28 (14) “Insurer” means the State Accident Insurance Fund Corporation or
29 an insurer authorized under ORS chapter 731 to transact workers’ compen-
30 sation insurance in this state or an assigned claims agent selected by the
31 director under ORS 656.054.

1 (15) “Consumer and Business Services Fund” means the fund created by
2 ORS 705.145.

3 (16) [*Invalid*] “**Incapacitated**” means [*one who*] **an individual** is phys-
4 ically or mentally [*incapacitated from earning*] **unable to earn** a livelihood.

5 (17) “Medically stationary” means that no further material improvement
6 would reasonably be expected from medical treatment or the passage of time.

7 (18) “Noncomplying employer” means a subject employer that has failed
8 to comply with ORS 656.017.

9 (19) “Objective findings” in support of medical evidence are verifiable
10 indications of injury or disease that may include, but are not limited to,
11 range of motion, atrophy, muscle strength and palpable muscle spasm. “Ob-
12 jective findings” does not include physical findings or subjective responses
13 to physical examinations that are not reproducible, measurable or observa-
14 ble.

15 (20) “Palliative care” means medical service rendered to reduce or mod-
16 erate temporarily the intensity of an otherwise stable medical condition, but
17 does not include those medical services rendered to diagnose, heal or per-
18 manently alleviate or eliminate a medical condition.

19 (21) “Party” means a claimant for compensation, the employer of the in-
20 jured worker at the time of injury and the insurer, if any, of the employer.

21 (22) “Payroll” means a record of wages payable to workers for their ser-
22 vices and includes commissions, value of exchange labor and the reasonable
23 value of board, rent, housing, lodging or similar advantage received from the
24 employer. However, “payroll” does not include overtime pay, vacation pay,
25 bonus pay, tips, amounts payable under profit-sharing agreements or bonus
26 payments to reward workers for safe working practices. Bonus pay is limited
27 to payments that are not anticipated under the contract of employment and
28 that are paid at the sole discretion of the employer. The exclusion from
29 payroll of bonus payments to reward workers for safe working practices is
30 only for the purpose of calculations based on payroll to determine premium
31 for workers’ compensation insurance, and does not affect any other calcu-

1 lation or determination based on payroll for the purposes of this chapter.

2 (23) "Person" includes a partnership, joint venture, association, limited
3 liability company and corporation.

4 (24)(a) "Preexisting condition" means, for all industrial injury claims, any
5 injury, disease, congenital abnormality, personality disorder or similar con-
6 dition that contributes to disability or need for treatment, provided that:

7 (A) Except for claims in which a preexisting condition is arthritis or an
8 arthritic condition, the worker has been diagnosed with the condition, or has
9 obtained medical services for the symptoms of the condition regardless of
10 diagnosis; and

11 (B)(i) In claims for an initial injury or omitted condition, the diagnosis
12 or treatment precedes the initial injury;

13 (ii) In claims for a new medical condition, the diagnosis or treatment
14 precedes the onset of the new medical condition; or

15 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the
16 diagnosis or treatment precedes the onset of the worsened condition.

17 (b) "Preexisting condition" means, for all occupational disease claims, any
18 injury, disease, congenital abnormality, personality disorder or similar con-
19 dition that contributes to disability or need for treatment and that precedes
20 the onset of the claimed occupational disease, or precedes a claim for wors-
21 ening in such claims pursuant to ORS 656.273 or 656.278.

22 (c) For the purposes of industrial injury claims, a condition does not
23 contribute to disability or need for treatment if the condition merely renders
24 the worker more susceptible to the injury.

25 (25) "Self-insured employer" means an employer or group of employers
26 certified under ORS 656.430 as meeting the qualifications set out by ORS
27 656.407.

28 (26) "State Accident Insurance Fund Corporation" and "corporation"
29 mean the State Accident Insurance Fund Corporation created under ORS
30 656.752.

31 (27) "Wages" means the money rate at which the service rendered is

1 recompensed under the contract of hiring in force at the time of the accident,
2 including reasonable value of board, rent, housing, lodging or similar ad-
3 vantage received from the employer, and includes the amount of tips required
4 to be reported by the employer pursuant to section 6053 of the Internal
5 Revenue Code of 1954, as amended, and the regulations promulgated pursuant
6 thereto, or the amount of actual tips reported, whichever amount is greater.
7 The State Accident Insurance Fund Corporation may establish assumed
8 minimum and maximum wages, in conformity with recognized insurance
9 principles, at which any worker shall be carried upon the payroll of the
10 employer for the purpose of determining the premium of the employer.

11 (28)(a) "Worker" means any person, other than an independent contractor,
12 who engages to furnish services for a remuneration, including a minor
13 whether lawfully or unlawfully employed and salaried, elected and appointed
14 officials of the state, state agencies, counties, cities, school districts and
15 other public corporations, but does not include any person whose services
16 are performed as an adult in custody or ward of a state institution or as part
17 of the eligibility requirements for a general or public assistance grant.

18 (b) For the purpose of determining entitlement to temporary disability
19 benefits or permanent total disability benefits under this chapter, "worker"
20 does not include a person who has withdrawn from the workforce during the
21 period for which such benefits are sought.

22 (c) For the purposes of this chapter, "subject worker" means a worker
23 who is subject to this chapter as provided in ORS 656.027.

24 (29) "Independent contractor" has the meaning for that term provided in
25 ORS 670.600.

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