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Brief summary

Broadens eligibility for death benefits and worker protections from employer retaliation.

Analysis

What the law currently does

Death benefits

Under workers' compensation law, when a worker dies from an on-the-job injury, occupational disease, or while permanently and totally disabled, their beneficiaries may file a claim for death benefits. If the claim is accepted, those benefits include burial and funeral expenses as well as ongoing monthly benefit payments to their beneficiaries. Under the law:

- Beneficiaries include a spouse, child, or dependent.
- Various persons can qualify as a dependent (such as a parent, grandchild, or sibling).
- If the worker was unmarried, but cohabited with another individual for over one year prior to the injury and children are living as a result of that relation, the cohabitant is eligible for benefits.
- The death benefits for a surviving spouse can end if the spouse remarries. Benefits can also end if the surviving spouse cohabits with another person for an aggregate period of more than one year, and a child has resulted from the relationship.

Ongoing death benefits paid to beneficiaries are adjusted to reflect cost of living expenses. The adjustments are paid by the insurer and reimbursed out of the Workers' Benefit Fund through the Retroactive Program.

Payments to alien beneficiaries

Current law provides that the director may reduce benefits for a worker or beneficiary who is an alien residing outside of the United States. Beneficiaries in this case only include the spouse, child, or dependent parent. The director has not reduced benefits under this provision since before 1992.

Discrimination protections

Employers of six or more employees are prohibited from discriminating against a worker who has applied for workers' compensation benefits with respect to hire, tenure, or any term or condition of employment. The Bureau of Labor and Industries (BOLI) enforces this law and the Workers' Compensation Division has an agreement with BOLI that pays a flat fee for each investigation.

What will change if the bill is enacted

Eligibility for death benefits

- For a surviving spouse who cohabits with another person after the worker's injury, the criteria for ending death benefits is changed. Benefits will end if the spouse cohabits with another person such that the relationship would be subject to the provisions of ORS 107.105 to 107.136 (dissolution of marriage and child support laws) and 107.700 to 107.735 (Family Abuse Prevention Act).
- For an individual who cohabits with the worker before the worker's death, the eligibility standard for benefits is changed. The individual would be eligible if they have cohabited with the worker such that the relationship would be subject to the provisions of ORS 107.105 to 107.136 and 107.700 to 107.735.
- The bill specifies that only one person may qualify as a spouse for the purpose of monthly benefits.
- The bill changes which individuals qualify to be a dependent or beneficiary.

Dependents

The bill adds:

- Parent's spouse or domestic partner
- Grandparent's spouse or domestic partner
- Grandchild's spouse or domestic partner
- Stepsiblings
- Sibling or stepsibling's spouse or domestic partner
- Any individual related by blood or affinity whose close association with a worker is the equivalent of a family relationship.

The bill removes:

- Niece or nephew
- Half-siblings
- An exclusion related to alien status

Beneficiaries

- The bill removes the exclusion for spouses "living in a state of abandonment."

Payments to alien beneficiaries

- The bill removes the provision allowing the director to reduce benefits.

Discrimination protections

- The bill specifies that “any person acting on behalf of an employer” cannot discriminate against a worker. The law is expanded to include workers who have inquired about workers’ compensation benefits. The bill would apply to all employers, rather than only employers with six or more employees.

Terminology

- ORS 656.005 and 656.204 contain the term “invalid”, which is defined as “one who is physically or mentally incapacitated from earning a livelihood.” The bill replaces “invalid” with “incapacitated” in both statutes, and defines as “an individual is physically or mentally unable to earn a livelihood.”

The bill takes effect on January 1, 2023, and the proposed changes will only apply to claims with dates of injury on or after the effective date under ORS 656.202.

Likely impacts, results, or consequences if the bill is enacted

- More individuals could be eligible for death benefits.
- More workers would be protected from discrimination related to workers’ compensation.
- More employers would be subject to the non-discrimination requirements and subject to BOLI regulations.

Questions/relevant information for the bill sponsor or primary proponent

1. The bill states that a cohabitant is eligible for death benefits if their relationship with the worker would be subject to specific domestic relations laws. However, ORS 107.105 to 107.136 relates to topics such as dissolution of marriage, orders related to custody, and child support. ORS 107.700 to 107.735 relates to the Family Abuse Prevention Act. These statutes do not make it clear what criteria must be met to be eligible.
2. In the definition of dependents, the bill adds “Any individual related by blood or affinity whose close association with a worker is the equivalent of a family relationship.” It is unclear who would determine who these individuals are or what standards should apply to the definition.
3. Regarding monthly death benefits, the bill states “Only one person may qualify as a spouse for the purposes of this paragraph.” However, later paragraphs in the same subsection relate to benefits upon remarriage or cohabitation with another person. It is unclear if the “one person” provision is intended to apply in regards to remarriage or cohabitation as well.

4. The changes apply to dates of injury that occur on or after January 1, 2023, meaning the expanded beneficiary list would not apply to any fatal claim with a date of injury before that date. Beneficiaries of a person that dies while permanently and totally disabled (PTD) are also eligible for death benefits. This concept would only apply the expanded definitions to permanent and total disability claims with dates of injury after January 1, 2023. It is unclear if this is the intended impact.

Legislative history

Has this bill been introduced in a prior session?

No Yes Years Bill numbers

Does this bill amend current state or federal law or programs?

No Yes Specify ORS 656.004, 656.232, 656.204, 659A.040.

Is this bill related to a legal decision?

No Yes Case citation, AG opinion, date, etc.

Should another DCBS division review this measure?

No Yes Divisions Workers' Compensation Board

Other impacts

Does this bill have a fiscal impact to DCBS?

No Yes Unknown Explain

Death benefits are eligible for cost of living adjustments reimbursed by the division's Retroactive Program funded by the Workers' Benefit Fund. Currently, there are approximately 1,300 spouses and beneficiaries that receive annual adjustments. In fiscal year 2021, these reimbursements totaled \$38.7 million.

Broadening who could be eligible for death benefits may result in increased use of the program, but it is unknown how many more beneficiaries would be eligible under the bill.

Broadening discrimination protections could increase the number of investigations the Bureau of Labor and Industries (BOLI) conducts. The division has an agreement with BOLI that pays a flat fee for each investigation. This is paid from the Workers' Benefit Fund. The costs vary by year and number of investigations conducted, and have recently ranged from \$238,000 to \$460,000.

Does this bill have an economic impact to stakeholders?

No Yes Unknown Explain

Claims for death benefits and permanent total disability are a small proportion of claims overall. However, increasing the number of individuals eligible for benefits will increase costs for insurers and self-insured employers when these claims occur.

More employers would be subject to the prohibition against discrimination, which could increase the number of complaints raised to the Bureau of Labor and Industries.

Sponsors

Possible interested stakeholders

Workers, insurers, self-insured employers, service companies, Bureau of Labor and Industries

Public policy topics

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| <input type="checkbox"/> Agency operations | <input type="checkbox"/> Other lines of insurance |
| <input type="checkbox"/> Building codes | <input type="checkbox"/> Prescription drugs |
| <input type="checkbox"/> Financial institutions and lending | <input type="checkbox"/> Property and casualty insurance |
| <input type="checkbox"/> Health insurance | <input type="checkbox"/> Public records/public meetings law |
| <input checked="" type="checkbox"/> Involvement with other agencies | <input type="checkbox"/> Rulemaking |
| <input type="checkbox"/> Licensure | <input type="checkbox"/> Securities |
| <input type="checkbox"/> Manufactured structures | <input type="checkbox"/> Task force/reports |
| <input checked="" type="checkbox"/> MLAC legislative review | <input type="checkbox"/> Worker safety |
| <input type="checkbox"/> New program | <input checked="" type="checkbox"/> Workers' compensation system |
| <input type="checkbox"/> Nondepository programs | <input type="checkbox"/> Other |