

LC 419
2023 Regular Session
44000-002
7/7/22 (ASD/ps)

D R A F T

SUMMARY

Conforms definition of “average weekly wage” as used in death benefits section to definition used generally in ORS chapter 656. Authorizes payment from Workers’ Benefit Fund of compensation due beneficiaries from defaulting insurer.

A BILL FOR AN ACT

1
2 Relating to workers’ compensation benefits; amending ORS 656.204 and
3 656.445.

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

5 **SECTION 1.** ORS 656.204, as amended by section 1, chapter 6, Oregon
6 Laws 2022, is amended to read:

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

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

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

18 (2)(a) If a worker is survived by a spouse, monthly benefits must be paid
19 in an amount equal to 4.35 times 66-2/3 percent of the average weekly wage

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 to the surviving spouse until remarriage. Only one person may qualify as
2 a spouse for the purposes of this paragraph. The payment shall cease at the
3 end of the month in which the remarriage occurs.

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

7 (c) If, after the date of the subject worker's death, the surviving spouse
8 cohabits with another person, such that the relationship would be subject to
9 the provisions of ORS 107.105 to 107.136 and 107.700 to 107.735, the surviving
10 spouse must be paid 36 times the monthly benefit in a lump sum as final
11 payment of the surviving spousal benefit.

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

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

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

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

31 (5) If a child is incapacitated at the time the child otherwise becomes

1 ineligible for benefits under this section, the payment to the child must
 2 continue while the child remains an incapacitated child. If an individual is
 3 entitled to payment because the individual is an incapacitated child, payment
 4 must terminate when the individual ceases to be an 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 **given** that term [*provided*] in ORS [656.211] **656.005**.

26 **SECTION 2.** ORS 656.445 is amended to read:

27 656.445. (1) If an insurer defaults in payment of compensation due [*an*]
 28 *injured worker*] **injured workers or the workers’ beneficiaries**, the Di-
 29 rector of the Department of Consumer and Business Services may advance
 30 funds from the Workers’ Benefit Fund to **the injured workers or their**
 31 **beneficiaries** [*who have not received payment of compensation due from the*

1 *insurer in default*].

2 (2) The maximum expenditures that may be made under this section may
3 not exceed the amount of securities on deposit for the insurer pursuant to
4 ORS 731.628.

5 (3) The director shall adopt rules to regulate, manage and disburse mon-
6 eys in the Workers' Benefit Fund for the purposes of subsection (1) of this
7 section. The rules shall include but not be limited to eligibility criteria,
8 procedures for distributing funds, accounting procedures and a maximum
9 expenditure limitation on payments made under subsection (1) of this section
10 from the fund.

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