

The background of the title page features a large, faint, circular seal of the State of Oregon. The seal contains an eagle with spread wings at the top, a ship on the water, a plow in the foreground, and a tree on the right. The words "THE UNION" are inscribed on a banner across the middle. The year "1859" is at the bottom, and the words "STATE OF OREGON" are around the perimeter, separated by stars.

# **Senate Bill 835 (2007)**

# **Death Benefit Study Report**

*January 2009*

**MLAC**

Workers' Compensation  
**Management-Labor Advisory Committee**

The Workers' Compensation Management-Labor Advisory Committee (MLAC) is an advisory committee created by the Oregon Legislature as part of the reform of the workers' compensation system in 1990. MLAC has five representatives each from business and labor, appointed by the Governor and confirmed by the Senate. Members of MLAC are committed to a common set of values for a workers' compensation system:

- Balance and fairness
- Adequacy of benefits (benefits are appropriate for the severity of the injury)
- Affordability (system contributes to a healthy Oregon business climate)
- Efficiency (system is streamlined and easy to use)
- Stability and flexibility (predictable system that encourages consistency and is flexible enough to change when necessary)

## **Management-Labor Advisory Committee members**

- **Linda Barno**, ESIS, Inc.
- **Tracy Brill**, Portland Fire Fighters Association
- **Lon Holston**, Laborers' International, Local 483
- **John Kirkpatrick**, Painting and Allied Trades Union
- **Greg Miller**, Gunderson LLC
- **Kathy Nishimoto**, Duckwall-Pooley Fruit Company
- **Mike O'Rourke**, Plumbing & Steamfitters UA 290
- **Jeri Ray**, Timber Products Company
- **Bob Shiprack**, Oregon Building Trades Council
- **Sheri Sundstrom**, Hoffman Construction Company of Oregon
- **Cory Streisinger**, Director, Department of Consumer & Business Services, *Ex-officio*

## **Acknowledgements**

MLAC would like to express sincere gratitude to the families of Tara Lynne Hall and Brooke Wilberger for their participation in the committee's study.

MLAC would also like to thank Sen. Vicki Walker, Rep. Ben Cannon, and Sen. Frank Morse for their leadership on this important issue.

# Executive Summary

The workers' compensation system provides benefits when a worker dies as a result of a job-related injury or illness. In Senate Bill 835, the 2007 Legislative Assembly asked the Workers' Compensation Management-Labor Advisory Committee (MLAC) to study the adequacy of death benefits in the workers' compensation system. MLAC conducted the study in 2008 and has made recommendations to improve and enhance death benefits. Senate Bill 110 (2009) contains the recommendations that require a statutory change.

**Burial benefits.** One component of the death benefit is an amount paid for burial expenses, including transportation of the body. Current law sets a maximum burial benefit at 10 times the state average weekly wage (\$7,903.80 in 2008). Insurers pay actual expenses for burial and transportation of the body up to the statutory limit. MLAC reviewed typical funeral expenses and considered public input. The committee concluded that the current burial benefit does not adequately address the costs and needs of families faced with the death of a loved one.

**Recommendation:** Change "burial" to "final disposition of the body and funeral expenses." Establish the funeral and burial benefit amount at 20 times the state average weekly wage. *SB 110 includes this recommendation.*

**Recommendation:** Allow the family, employer, or other parties to submit burial and funeral bills to the insurer for 60 days after the claim is accepted. After 60 days, the insurer would send the unused amount of the benefit to the worker's estate to address any remaining expenses. *SB 110 includes this recommendation.*

**Formulas for determining benefits.** MLAC reviewed and discussed the formulas and amounts of benefits for the current list of statutory beneficiaries that include spouse, children, and other dependents. Oregon's benefits are in the middle range nationally. MLAC considers Oregon's current formulas for calculating beneficiary benefits generally adequate and does not recommend changes in this area.

**Categories of beneficiaries.** The committee reviewed and discussed the current categories of beneficiaries, including surviving spouse and children but also other people dependent on the worker for support. MLAC heard public testimony about creating new categories of beneficiaries, in particular for workers that die without dependents and also situations where some parties, such as parents, would have become dependent on the worker's income for support in the future. After considering this input, MLAC believes its recommendation for the enhanced funeral and burial benefit addresses many of the concerns raised by stakeholders.

While reviewing the categories of beneficiaries and the benefit formulas for children, MLAC identified an issue concerning children attending college aged 18 to 23 but that have no surviving parents. This group of children is particularly vulnerable because they do not qualify for typical social service support, such as Social Security or foster care. MLAC members felt that a child who has committed to college attendance without parental support, in part because of an on-the-job fatality, should receive a higher benefit.

**Recommendation:** Create a category of benefits for children aged 18 to 23, who are attending school, but have no surviving parents. Set the benefit amount at 4.35 x 66 2/3 percent of the state average weekly wage. *SB 110 includes this recommendation.*

**Feasibility of lump-sum benefit payments.** Parties in the workers' compensation system can negotiate lump-sum settlement payments for most benefits, including fatality benefits. When a surviving spouse remarries, monthly fatality benefits stop and the spouse gets a final lump-sum payment (36 times the deceased's monthly benefit). MLAC considered whether lump-sum payments should be allowed in other areas. Because the law already allows parties to negotiate a lump-sum payment for fatality benefits, MLAC does not recommend any changes in this area.

**Other recommendations.** While conducting the study, MLAC discovered that there is confusion, particularly in the funeral industry, about what workers' compensation benefits are available for a work-related death. MLAC recommended three improvements to the education and outreach process:

**Recommendation:** The Ombudsman for Injured Workers should distribute a flyer to Oregon funeral homes through the Oregon Funeral Directors Association. The flyer provides contact information for a family who may not know there are benefits for a work-related death.  
*The department implemented this recommendation in 2008.*

**Recommendation:** The department should implement a new internal process to route information about fatal accidents reported to Oregon OSHA to the Ombudsman for Injured Workers so the ombudsman can offer timely assistance to workers' families, insurers, and funeral homes.  
*The department implemented this recommendation in 2008.*

**Recommendation:** When implementing any statutory recommendations passed by the Legislature, the department should review and update the claims processing rules and develop educational materials for insurers to improve communications with families of workers.  
*The department will implement this recommendation upon passage of SB 110.*

ORS 656.218 states that if a worker dies before his or her permanent partial disability award is paid in full and the worker has a spouse or dependent children, the insurer pays the full remainder of the award to them. However, the law also states that if the worker does not have a spouse or dependent children, the insurer only pays the statutory burial amount or the remaining permanent partial disability award, whichever is less. MLAC concluded that the insurer should be obligated to pay the full remaining award, whether or not the worker has a spouse or children.

**Recommendation:** Clarify ORS 656.218 to state when a worker without statutory dependents dies before his or her permanent partial disability award is paid in full, the insurer must pay the full amount of the remaining award to the worker's estate.  
*SB 110 includes this recommendation.*

## Background

On average, 16 workers die from work-related injuries in the United States every day. In Oregon, workplace fatalities have declined over the past two decades. But, tragically, some Oregonians do not safely come home to their family at the end of their shift.

An on-the-job fatality has immense impact. In addition to emotional impact of loss on the family, employers, and co-workers, there is a financial burden created by the loss of a worker's income. In Oregon, if the death is work related, the workers' compensation system provides some benefits to the surviving spouse and dependents to make up a part of this loss of income.

The 2007 Legislative Assembly asked the Workers' Compensation Management-Labor Advisory Committee (MLAC) to study the adequacy of death benefits in the workers' compensation system. A copy of Senate Bill 835 is in Appendix A.

The bill required the study to review the following:

- The current method of calculating burial benefits in relation to the actual cost of burial
- Current formulas for determining benefits
- The categories of beneficiaries who are entitled to benefits
- The feasibility of providing lump-sum benefit payments

MLAC appointed a subcommittee to conduct the study. The subcommittee met seven times in 2007 and 2008. Nearly all subcommittee meetings included opportunity for public testimony. The full MLAC approved the recommendations in this report on Jan. 16, 2009. The Governor and MLAC requested LC 790 (Senate Bill 110), included in Appendix B, to include the statutory recommendations contained in this report.

## Fatalities in the workers' compensation system

The workers' compensation system provides fatality benefits when a work-related injury or illness causes a worker's death. The fatality rate has dropped by about two-thirds in the past 20 years, although the rate varies by year. Much of this reduction is because of improved workplace safety efforts. The department received notification of 35 compensable fatalities in 2007, the third-lowest number reported since the state began tracking the statistic in 1943.

Table 1 shows the number of recent compensable on-the-job fatalities. Not all employment in Oregon is subject to workers' compensation coverage, so the table also shows the rate of fatal claims compared to the total amount of Oregon employment covered by workers' compensation.

**Table 1 – Oregon Workers’ Compensation Fatality Data**

<b>Year</b>	<b>Workers’ compensation covered employment</b>	<b>Fatal claims<sup>1</sup></b>	<b>Fatality rate<sup>2</sup></b>
1998	1,576,100	52	3.30
1999	1,602,700	47	2.93
2000	1,627,600	45	2.76
2001	1,616,400	34	2.10
2002	1,596,100	52	3.26
2003	1,585,800	41	2.59
2004	1,683,100	45	2.75
2005	1,677,500	31	1.84
2006	1,734,400	37	2.13
2007	1,763,800	35	1.93

In recent years, the most common cause for on-the-job death has been motor vehicle accidents. In 2007, falls were the leading cause. Fatal injuries happen mostly to men and about half occur in the worker’s first year with his or her employer.

## Fatality benefits

When a fatality occurs, the family or employer files a claim on behalf of the deceased worker. The insurer<sup>3</sup> processes the claim similar to a non-fatal workers’ compensation claim and determines whether to accept or deny the claim as work related. If the insurer accepts the claim, it pays a burial benefit. The insurer also pays monthly benefits to statutory beneficiaries, including spouse, children, and other dependents. About three-fourths of workers killed on the job have beneficiaries eligible for monthly benefits. Appendix C shows the current benefit structure. Fatality benefits make up about 2.1 percent of annual workers’ compensation benefit costs.

In addition to workers whose work injury or illness directly causes death, the law also provides fatality benefits for a worker who dies while in permanent total disability (PTD) status. The benefit is available no matter the cause of death. The worker’s family is eligible for the burial benefit and the worker’s spouse or dependents are eligible for monthly benefits, just as any other fatality claim. The amount of the benefit is determined by the law in effect on the date the worker was injured. The Workers’ Benefit Fund pays for supplemental cost-of-living adjustments to the fatality benefits.

<sup>1</sup> Data for fatal claims does not include deaths of workers not subject to the Oregon workers’ compensation law, such as self-employed workers, workers employed by out-of-state employers, City of Portland police and fire employees, and federal employees.

<sup>2</sup> Fatality rate is the rate of compensable fatal claims per 100,000 workers’ compensation covered employees

<sup>3</sup> For purposes of this report, the term “insurer” includes a self-insured employer.



## ***Study area: Burial benefits***

One component of fatality benefits is an amount paid for burial expenses, including transportation of the body. The benefit is available whether or not a worker has surviving beneficiaries. The law sets a maximum burial benefit at 10 times the state average weekly wage (\$7,903.80 in 2008). Insurers pay actual expenses for burial and transportation of the body up to the statutory limit.

Senate Bill 835 asked that MLAC review the burial benefit in relation to actual funeral costs. MLAC reviewed funeral cost information from industry sources and a sample of recent funeral bills paid by SAIF Corporation. The committee also had input from the Oregon Funeral Directors Association, the Oregon Mortuary and Cemetery Board, and information gathered from some local funeral service providers about specific costs in Oregon.

Each funeral arrangement is unique as families choose from a wide variety of options. There are full funerals with a traditional burial in a cemetery. Some families choose to have these services coordinated by a traditional funeral home while others make arrangements individually. In Oregon, there is a relatively high rate of cremation, some sources citing up to 63 percent of deaths annually. With direct cremation, there may be an interment and a memorial or funeral service. Even if a worker had arranged for a pre-paid funeral, there are often additional costs not typically covered by the pre-payment, including a funeral service.

There are also many other related funeral expenses. For example, a traditional burial can include expenses for a casket, cemetery plot, charges for opening and closing the site, and grave marker preparation and setting. Transportation and storage of the body are also typical expenses. Other costs include things like obituaries, death certificates, flowers, honorarium for clergy, and church or facility charges.

Through her contact with worker families and industry representatives, Jennifer Flood, the Ombudsman for Injured Workers, learned that most expenses for a funeral are typically due at the time of service. Even if the insurer has indicated there is likely to be an accepted workers' compensation claim, families may be required to pay bills at the time they make arrangements or a short time after.

No single data source provides a full picture of funeral expenses in Oregon. Oregon funeral service providers said the "typical" cost of a funeral depends on the option selected by the family and the location in the state. Providers estimated that costs in Oregon vary from \$1,800 up to \$20,000, with a traditional funeral falling in the \$6,000 range. The SAIF billing data showed a median funeral cost of about \$4,800; however, the data only showed bills submitted for reimbursement and did not appear to be total funeral expenses.

A national survey<sup>4</sup> of providers showed a wide variation in funeral prices, ranging from \$1,994 for a direct cremation to \$5,063 for a traditional funeral. The variation in prices reflects the differences between large multi-state operators or local privately owned funeral service providers. The survey focused only on the cost of funeral home services and did not ask about other kinds of expenses, such as caskets, transportation costs, cemetery fees, or burial plots.

<sup>4</sup>Source: Everest PriceFinder 2007 Funeral Industry Price Comparison Report, June 2007.

MLAC also reviewed what and how other states pay for funeral and burial expenses. Oregon's current burial benefit (about \$8,000) is 16th highest nationwide<sup>5</sup>. Other states' funeral and burial benefits ranged from \$63,000 in Kentucky to a low of \$2,000 in Mississippi. Five states offer a separate benefit for transportation of the body, ranging from costs up to a specific dollar limit (typically \$1,000) to the actual expenses to transport the body from the place of employment. Five states also provide a specific lump-sum payment, as opposed to establishing a benefit maximum.

MLAC received public testimony from several families of workers killed on the job. At least one family pointed out that burial and a funeral service are not the only expenses associated with tying up loose ends of the worker's estate. As with any unexpected death, there are many details that the family or estate must take care of aside from the immediate funeral expenses, such as final payment of a worker's outstanding bills. In the case of a worker who has no statutory beneficiaries eligible for monthly benefits, this burden can be difficult for remaining family members who do not qualify for the benefits that compensate for income lost due to the worker's death.

After reviewing the typical funeral expenses and considering the public input, MLAC concluded that the current statutory term "burial" does not accurately reflect the costs incurred by families when faced with the death of a loved one. The funeral directors and the Mortuary and Cemetery Board also pointed out the current statutory term "burial" could be considered too narrow and a broader term would cover a more comprehensive range of services.

To that end, MLAC recommends broadening the statutory term "burial" to the more encompassing phrase "final disposition of body and funeral services." This ensures that the benefit covers the wide range of options available to the worker's family.

MLAC recommends doubling the amount of the benefit, from 10 times to 20 times the state average weekly wage. Table 2 shows the current and proposed benefit amounts for current and future years. MLAC recommends this change based on the wide range of potential funeral costs and the spectrum of funeral and burial options.

**Table 2 – Proposed Benefit Amounts**

		Multiple of State Average Weekly Wage (SAWW)	
FY <sup>6</sup>	SAWW	Current (10x)	Proposed (20x)
2008	\$756.80	\$7,568.00	\$15,136.00
2009	\$790.38	\$7,903.80	\$15,807.60
2010 est. <sup>7</sup>	\$814.09	\$8,140.90	\$16,281.80
2011 est. <sup>7</sup>	\$838.51	\$8,385.10	\$16,770.20

<sup>5</sup> Source: International Association of Accident Insurance Boards and Workers' Compensation Research Institute 2007

<sup>6</sup> FY is the fiscal year in which the SAWW is used for benefit computations.

<sup>7</sup> Estimates for 2010 and 2011 assume 3 percent growth in the SAWW.



MLAC also recommends a change in management of the benefit to allow the family, employer, or other parties to submit bills for final disposition and funeral services to the insurer for up to 60 days after the insurer accepts the claim. At that point, the insurer would send the unused amount of the benefit to the worker's estate to address any remaining expenses. MLAC bases this recommendation on public input about the number of issues that a family must take care of right after the worker's death, as well as other expenses that arise long after the burial and funeral.

MLAC recommends expanding this particular benefit based on public input about the situation of the single worker without statutory beneficiaries eligible for ongoing benefits. The benefit is a set amount and allows for flexibility in paying immediate expenses and other financial obligations. In cases where the worker's death is clearly work related, families would be able to consider the benefits when planning a funeral. In cases where insurers need to use their full statutory time frame to determine if the death was work related, the worker's estate ultimately receives the benefit to offset the costs already incurred.

**Recommendation:** Change "burial" to "final disposition of the body and funeral expenses." Establish the funeral and burial benefit amount at 20 times the state average weekly wage.

**Recommendation:** Allow the family, employer, or other parties to submit burial and funeral bills to the insurer for 60 days after the claim is accepted. At that point, the insurer would send the unused amount of the benefit to the worker's estate to address any remaining expenses.

This recommendation will increase employer claim costs when there is an on-the-job fatality. However, due to the small number of deaths, including workers in permanent total disability status, the department estimates the benefit change will not materially affect employers' workers' compensation rates.

This recommendation also applies to workers who die while in permanent and total disability status. The law in effect at the worker's date of injury determines the amount of the benefit. Additionally, the benefits are adjusted to bring them up to current-day levels. The Workers' Benefit Fund pays for the cost-of-living portion of the fatality benefit. Based on the recent and expected declines in the number of workers in permanent total disability status, the department estimates the proposed increased benefit would add \$624,360 in initial annual costs reimbursed from the WBF. This number would decline over time as the population of PTDs declines. The department does not expect this incremental cost to have a material effect on the WBF assessment rates.

## Study area: Formulas for determining benefits

MLAC reviewed and discussed the formulas and amounts of benefits for the list of statutory beneficiaries. Appendix C shows the current formulas and 2008 benefit amounts.

The committee reviewed the current benefit amounts in comparison to other states. Oregon's fatality benefits fall in the middle range when compared to other states. Nearly every state bases fatality benefits on the deceased worker's wages. In Oregon, the state average weekly wage is the basis for calculating most fatality benefits. The exception is that dependents other than the surviving spouse or children have their benefits based on the average monthly support actually received by the dependent. Even with these benefits, however, Oregon uses the state average weekly wage to set the maximum benefit.

There was no public testimony requesting changes to the benefit formulas or benefit amounts. Benefit levels change each year based on changes in the state average weekly wage. Monthly benefits adjust for inflation on an annual basis. MLAC considers Oregon's current formulas for calculating beneficiary benefits generally adequate.

**Recommendation:** Do not change formulas for determining benefits.

## Study area: Categories of Beneficiaries

The committee reviewed and discussed the current categories of beneficiaries. Appendix C shows the current categories of beneficiaries, which include surviving spouse and children but also other people dependent on the worker for support.

The committee heard from the public about two situations relating to a worker who died without any statutory dependents. First, the committee heard that workers without dependents may still have remaining financial obligations when they die unexpectedly. Second, there were concerns that the law does not adequately consider that some parties, such as parents, would in the future have become dependent on the worker's income for support.

The committee looked at whether other states offer a benefit when a worker dies without dependents. Twenty-one states address this situation by paying some or all of the death benefits to a non-dependent, the worker's estate, or to a state fund. Seven states specifically allowed payment of the benefit to parents. No state offered a benefit based on future dependency.

MLAC's recommendation for the enhanced funeral and burial benefit addresses some of the concerns raised by stakeholders. The recommendation addresses the concern about the outstanding financial obligations of a worker without statutory beneficiaries by having any remaining benefit sent to the worker's estate to address those outstanding issues.

MLAC believes that creating a category of "future dependent" would complicate the fatality benefit process and does not address the more immediate issues of funeral costs, dependent benefits, and other expenses. It would be very difficult to predict who might have later become dependent on the worker. Adding this benefit would also expand benefits to a much larger population and could create a large system cost increase.

While reviewing the categories of beneficiaries and the benefit formulas for children, several MLAC members raised concerns about children attending college aged 18 to 23 but that have no surviving parents. This group of children is particularly vulnerable because they do not qualify for typical social service support, such as Social Security or foster care.

MLAC members felt that a child who has committed to college attendance without parental support, in part because of an on-the-job fatality, should receive a higher benefit. MLAC recommends increasing the benefit for this group to the equivalent of the spousal benefit.

**Recommendation:** Create a category of benefits for children aged 18 to 23, who are attending school, but have no surviving parents. Set the benefit amount at  $4.35 \times 66 \frac{2}{3}$  percent of the state average weekly wage.

The impact from this recommendation will be minimal, as a small number of children would be eligible for this benefit in a given year.

## **Study area: Feasibility of lump-sum benefit payments**

Parties in the workers' compensation system can negotiate lump-sum settlement payments for most benefits, including fatality benefits. When a surviving spouse remarries, monthly fatality benefits stop and the spouse receives a final lump-sum payment (36 times the deceased's monthly benefit).

The committee reviewed whether there should be changes to lump-sum payments. The subcommittee also looked at how other states pay benefits, including the use of lump-sum payments. Only a handful of states pay burial benefits in a lump sum, and where lump sums are paid, it is generally for funeral or burial expenses only.

There was no public input requesting change in this area. Because the law already allows parties to negotiate a lump-sum payment for fatality benefits, MLAC does not recommend any changes in this area.

**Recommendation:** Do not change current laws about lump-sum payments.

## Education and outreach

While conducting the study, MLAC discovered that there is confusion, particularly in the funeral industry, about what workers' compensation benefits are available for a work-related death. MLAC also believes that sensitive and respectful interaction is essential for communicating with families in the tragic situation of an on-the-job death.

Through an effort coordinated by the Ombudsman for Injured Workers, a group of stakeholders met to discuss the communication process when an on-the-job fatality occurs. The group included insurance industry representatives, Oregon Occupational Safety and Health Administration (OSHA), the Department of Consumer and Business Services, and the Oregon Funeral Directors Association. The conversations highlighted areas where improved communication would be beneficial. For example, insurers' first knowledge of an on-the-job fatality often comes from news reports. Funeral home directors and the family know that the death occurred on the job, but may not be aware that workers' compensation benefits may be available.

Because of the discussions with industry, two improvements to the education and outreach process were implemented in 2008:

- The Ombudsman for Injured Workers distributed a flyer to Oregon funeral homes through the Oregon Funeral Directors Association. The flyer provides contact information for a family who may not know there are benefits for a work-related death.
- The department implemented a new internal process to route information about fatal accidents reported to Oregon OSHA to the Ombudsman for Injured Workers so the ombudsman can offer timely assistance to workers' families, insurers, and funeral homes.

In addition, the discussion revealed a number of areas where the department could improve rulemaking and industry communications. This includes things such as reviewing the claims processing requirements in relation to fatality benefits. For example, there are requirements for insurers to notify workers of eligibility for future benefits after a claim is accepted, such as eligibility for preferred worker benefits. These notices can be particularly insensitive when sent to families or the estate of a deceased worker.

The department will need to initiate rulemaking to implement any legislative changes enacted in this area. MLAC recommends that as part of that process, the department update the claims processing rules and develop educational materials for insurers.

**Recommendation:** When implementing any statutory recommendations passed by the Legislature, the department should review and update the claims processing rules and develop educational materials for insurers to improve communications with families of workers.

## Other recommendations

During the review process, MLAC looked at all of the laws related to workers who die while in the workers' compensation system. Because of that review, MLAC determined that one other statute needs clarification to make the intent clear and consistent with the other recommendations contained in this report.

ORS 656.218 states what happens if a worker dies before his or her permanent partial disability award is paid in full. If a worker has a spouse or dependent children, the insurer pays the full remainder of the award to them. However, the law also states that if the worker does not have a spouse or dependent children, the insurer only pays the statutory burial amount or the remaining permanent partial disability award, whichever is less.

MLAC thinks the insurer should be obligated to pay the full remaining award, whether or not the worker has a spouse or children.

***Recommendation:*** Clarify ORS 656.218 to state when a worker without statutory dependents dies before his or her permanent partial disability award is paid in full, the insurer must pay the full amount of the remaining award to the worker's estate.

## Conclusion

MLAC believes the current fatality benefit structure is generally working well. The recommendations in this report enhance some benefits and bring funeral benefits in line with current funeral costs and the expenses that arise when a worker dies. MLAC will closely monitor implementation of these recommendations to ensure the intended outcomes are met and are also proportionate to the additional cost to employers.

# Appendix A

74th OREGON LEGISLATIVE ASSEMBLY--2007 Regular Session

## Enrolled Senate Bill 835

Sponsored by Senator WALKER

CHAPTER .....

AN ACT

Relating to workers' compensation death benefits.

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

**SECTION 1.** (1) As authorized by ORS 656.790 (3)(b), the Workers' Compensation Management-Labor Advisory Committee shall study the adequacy of workers' compensation death benefits provided under ORS 656.204 and 656.208.

(2) The study shall include, but is not limited to, consideration of:

(a) The current method of calculating burial benefits in relation to the actual cost of burial;

(b) Current formulas for determining benefits;

(c) The categories of beneficiaries who are entitled to benefits; and

(d) The feasibility of providing lump sum benefit payments.

(3) The committee shall report the results of the study to the Legislative Assembly in the manner specified in ORS 192.245 by January 31, 2009.

Passed by Senate April 19, 2007

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Secretary of Senate

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President of Senate

Passed by House May 31, 2007

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Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

.....  
Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State



## Appendix B – LC 790 (Senate Bill 110)

LC 790  
44000-009  
11/20/08 (CJC/ps)

# D R A F T

### SUMMARY

Modifies scope of benefits paid in workers' compensation death claims.

### A BILL FOR AN ACT

1  
2 Relating to death benefits paid in workers' compensation claims; amending  
3 ORS 656.204, 656.218 and 656.262.

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 the accidental injury, payments shall be  
7 made as follows:

8 (1)(a) The cost of [*burial*] **final disposition of the body and funeral**  
9 **expenses**, including **but not limited to** transportation of the body, shall be  
10 paid, not to exceed [*10*] **20** times the average weekly wage in any case.

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

16 (2)(a) If the worker is survived by a spouse, monthly benefits shall be paid  
17 in an amount equal to 4.35 times 66-2/3 percent of the average weekly wage  
18 to the surviving spouse until remarriage. The payment shall cease at the end  
19 of the month in which the remarriage occurs.

20 (b) If the worker is survived by a spouse, monthly benefits also shall be  
21 paid in an amount equal to 4.35 times 10 percent of the average weekly wage  
22 for each child of the deceased who is substantially dependent on the spouse

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.

LC 790 11/20/08

1 for support, until such child becomes 18 years of age.

2 (c) If the worker is survived by a spouse, monthly benefits also shall be  
3 paid in an amount equal to 4.35 times 25 percent of the average weekly wage  
4 for each child of the deceased who is not substantially dependent on the  
5 spouse for support, until such child becomes 18 years of age.

6 (d) If a surviving spouse receiving monthly payments dies, leaving a child  
7 who is entitled to compensation on account of the death of the worker, a  
8 monthly benefit equal to 4.35 times 25 percent of the average weekly wage  
9 shall be paid to each such child until the child becomes 18 years of age or  
10 the child's entitlement to benefits under subsection (8) of this section ceases,  
11 whichever is later.

12 (e) If a child who has become 18 years of age is a full-time high school  
13 student, benefits shall be paid as provided in subsection (8) of this section.

14 (f) In no event shall the total monthly benefits provided for in this sub-  
15 section exceed 4.35 times 133-1/3 percent of the average weekly wage. If the  
16 sum of the individual benefits exceeds this maximum, the benefit for each  
17 child will be reduced proportionally.

18 (3)(a) Upon remarriage, a surviving spouse shall be paid 36 times the  
19 monthly benefit in a lump sum as final payment of the claim, but the  
20 monthly payments for each child shall continue as before.

21 (b) If, after the date of the subject worker's death, the surviving spouse  
22 cohabits with another person for an aggregate period of more than one year  
23 and a child has resulted from the relationship, the surviving spouse shall be  
24 paid 36 times the monthly benefit in a lump sum as final payment of the  
25 claim, but the monthly payment for any child who is entitled to compen-  
26 sation on account of the death of the worker shall continue as before.

27 (4)(a) If the worker leaves neither wife nor husband, but a child under  
28 18 years of age, a monthly benefit equal to 4.35 times 25 percent of the av-  
29 erage weekly wage shall be paid to each such child until the child becomes  
30 18 years of age.

31 (b) If a child who has become 18 years of age is a full-time high school

LC 790 11/20/08

1 student, benefits shall be paid as provided in subsection (8) of this section.

2 (c) In no event shall the total benefits provided for in this subsection  
3 exceed 4.35 times 133-1/3 percent of the average weekly wage. If the sum of  
4 the individual benefits exceeds this maximum, the benefit for each child will  
5 be reduced proportionally.

6 (5)(a) If the worker leaves a dependent other than a surviving spouse or  
7 a child, a monthly payment shall be made to each dependent equal to 50  
8 percent of the average monthly support actually received by such dependent  
9 from the worker during the 12 months next preceding the occurrence of the  
10 accidental injury. If a dependent is under the age of 18 years at the time of  
11 the accidental injury, the payment to the dependent shall cease when such  
12 dependent becomes 18 years of age. The payment to any dependent shall  
13 cease under the same circumstances that would have terminated the de-  
14 pendency had the injury not happened.

15 (b) If the dependent who has become 18 years of age is a full-time high  
16 school student, benefits shall be paid as provided in subsection (8) of this  
17 section.

18 (c) In no event shall the total benefits provided for in this subsection  
19 exceed 4.35 times 10 percent of the average weekly wage. If the sum of the  
20 individual benefits exceeds this maximum, the benefit for each dependent will  
21 be reduced proportionally.

22 (6) If a child is an invalid at the time the child otherwise becomes ineli-  
23 gible for benefits under this section, the payment to the child shall continue  
24 while the child remains an invalid. If a person is entitled to payment because  
25 the person is an invalid, payment shall terminate when the person ceases to  
26 be an invalid.

27 (7) If, at the time of the death of a worker, the child of the worker or  
28 dependent has become 17 years of age but is under 18 years of age, the child  
29 or dependent shall receive the payment provided in this section for a period  
30 of one year from the date of the death. However, if after such period the  
31 child is a full-time high school student, benefits shall be paid as provided in

LC 790 11/20/08

1 subsection (8) of this section.

2 (8)(a) Benefits under this section which are to be paid as provided in this  
3 subsection shall be paid for the child or dependent until the child or de-  
4 pendent becomes 19 years of age. If, however, the child or dependent is at-  
5 tending higher education or begins attending higher education within six  
6 months of the date the child or dependent leaves high school, benefits shall  
7 be paid until the child or dependent becomes 23 years of age, ceases attend-  
8 ing higher education or graduates from an approved institute or program,  
9 whichever is earlier.

10 **(b) If a child or dependent who is eligible for benefits under this**  
11 **subsection has no surviving parent, the child or dependent shall re-**  
12 **ceive 4.35 times 66-2/3 percent of the average weekly wage until the**  
13 **child or dependent becomes 23 years of age, ceases attending higher**  
14 **education or graduates from an approved institute or program,**  
15 **whichever is earlier.**

16 ~~[(b)]~~ (c) As used in this subsection, "attending higher education" means  
17 regularly attending community college, college or university, or regularly  
18 attending a course of vocational or technical training designed to prepare  
19 the participant for gainful employment. A child or dependent enrolled in an  
20 educational course load of less than one-half of that determined by the edu-  
21 cational facility to constitute "full-time" enrollment is not "attending higher  
22 education."

23 (9) As used in this section, "average weekly wage" has the meaning for  
24 that term provided in ORS 656.211.

25 **SECTION 2.** ORS 656.218 is amended to read:

26 656.218. (1) In case of the death of a worker entitled to compensation,  
27 whether eligibility therefor or the amount thereof have been determined,  
28 payments shall be made for the period during which the worker, if surviving,  
29 would have been entitled thereto.

30 (2) If the worker's death occurs prior to issuance of a notice of closure  
31 under ORS 656.268, the insurer or the self-insured employer shall determine



LC 790 11/20/08

1 compensation for permanent partial disability, if any.

2 (3) If the worker has filed a request for a hearing pursuant to ORS 656.283  
3 and death occurs prior to the final disposition of the request, the persons  
4 described in subsection (5) of this section shall be entitled to pursue the  
5 matter to final determination of all issues presented by the request for  
6 hearing.

7 (4) If the worker dies before filing a request for hearing, the persons de-  
8 scribed in subsection (5) of this section shall be entitled to file a request for  
9 hearing and to pursue the matter to final determination as to all issues  
10 presented by the request for hearing.

11 (5) The payments provided in this section shall be made to the persons  
12 who would have been entitled to receive death benefits if the injury causing  
13 the disability had been fatal. In the absence of persons so entitled, [*a burial*  
14 *allowance may be paid not to exceed the lesser of either the unpaid award or*  
15 *the amount payable by ORS 656.204]* **the unpaid balance of the award shall**  
16 **be paid to the worker's estate.**

17 (6) This section does not entitle any person to double payments on ac-  
18 count of the death of a worker and a continuation of payments for permanent  
19 partial disability, or to a greater sum in the aggregate than if the injury had  
20 been fatal.

21 **SECTION 3.** ORS 656.262 is amended to read:

22 656.262. (1) Processing of claims and providing compensation for a worker  
23 shall be the responsibility of the insurer or self-insured employer. All em-  
24 ployers shall assist their insurers in processing claims as required in this  
25 chapter.

26 (2) The compensation due under this chapter shall be paid periodically,  
27 promptly and directly to the person entitled thereto upon the employer's re-  
28 ceiving notice or knowledge of a claim, except where the right to compen-  
29 sation is denied by the insurer or self-insured employer.

30 (3)(a) Employers shall, immediately and not later than five days after  
31 notice or knowledge of any claims or accidents which may result in a

LC 790 11/20/08

1 compensable injury claim, report the same to their insurer. The report shall  
2 include:

3 (A) The date, time, cause and nature of the accident and injuries.

4 (B) Whether the accident arose out of and in the course of employment.

5 (C) Whether the employer recommends or opposes acceptance of the claim,  
6 and the reasons therefor.

7 (D) The name and address of any health insurance provider for the in-  
8 jured worker.

9 (E) Any other details the insurer may require.

10 (b) Failure to so report subjects the offending employer to a charge for  
11 reimbursing the insurer for any penalty the insurer is required to pay under  
12 subsection (11) of this section because of such failure. As used in this sub-  
13 section, "health insurance" has the meaning for that term provided in ORS  
14 731.162.

15 (4)(a) The first installment of temporary disability compensation shall be  
16 paid no later than the 14th day after the subject employer has notice or  
17 knowledge of the claim, if the attending physician or nurse practitioner au-  
18 thorized to provide compensable medical services under ORS 656.245 author-  
19 izes the payment of temporary disability compensation. Thereafter, temporary  
20 disability compensation shall be paid at least once each two weeks, except  
21 where the Director of the Department of Consumer and Business Services  
22 determines that payment in installments should be made at some other in-  
23 terval. The director may by rule convert monthly benefit schedules to weekly  
24 or other periodic schedules.

25 (b) Notwithstanding any other provision of this chapter, if a self-insured  
26 employer pays to an injured worker who becomes disabled the same wage at  
27 the same pay interval that the worker received at the time of injury, such  
28 payment shall be deemed timely payment of temporary disability payments  
29 pursuant to ORS 656.210 and 656.212 during the time the wage payments are  
30 made.

31 (c) Notwithstanding any other provision of this chapter, when the holder



LC 790 11/20/08

1 of a public office is injured in the course and scope of that public office, full  
2 official salary paid to the holder of that public office shall be deemed timely  
3 payment of temporary disability payments pursuant to ORS 656.210 and  
4 656.212 during the time the wage payments are made. As used in this sub-  
5 section, "public office" has the meaning for that term provided in ORS  
6 260.005.

7 (d) Temporary disability compensation is not due and payable for any  
8 period of time for which the insurer or self-insured employer has requested  
9 from the worker's attending physician or nurse practitioner authorized to  
10 provide compensable medical services under ORS 656.245 verification of the  
11 worker's inability to work resulting from the claimed injury or disease and  
12 the physician or nurse practitioner cannot verify the worker's inability to  
13 work, unless the worker has been unable to receive treatment for reasons  
14 beyond the worker's control.

15 (e) If a worker fails to appear at an appointment with the worker's at-  
16 tending physician or nurse practitioner authorized to provide compensable  
17 medical services under ORS 656.245, the insurer or self-insured employer  
18 shall notify the worker by certified mail that temporary disability benefits  
19 may be suspended after the worker fails to appear at a rescheduled appoint-  
20 ment. If the worker fails to appear at a rescheduled appointment, the insurer  
21 or self-insured employer may suspend payment of temporary disability bene-  
22 fits to the worker until the worker appears at a subsequent rescheduled ap-  
23 pointment.

24 (f) If the insurer or self-insured employer has requested and failed to re-  
25 ceive from the worker's attending physician or nurse practitioner authorized  
26 to provide compensable medical services under ORS 656.245 verification of  
27 the worker's inability to work resulting from the claimed injury or disease,  
28 medical services provided by the attending physician or nurse practitioner  
29 are not compensable until the attending physician or nurse practitioner  
30 submits such verification.

31 (g) Temporary disability compensation is not due and payable pursuant

LC 790 11/20/08

to ORS 656.268 after the worker's attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 ceases to authorize temporary disability or for any period of time not authorized by the attending physician or nurse practitioner. No authorization of temporary disability compensation by the attending physician or nurse practitioner under ORS 656.268 shall be effective to retroactively authorize the payment of temporary disability more than 14 days prior to its issuance.

(h) The worker's disability may be authorized only by a person described in ORS 656.005 (12)(b)(B) or 656.245 for the period of time permitted by those sections. The insurer or self-insured employer may unilaterally suspend payment of temporary disability benefits to the worker at the expiration of the period until temporary disability is reauthorized by an attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245.

(i) The insurer or self-insured employer may unilaterally suspend payment of all compensation to a worker enrolled in a managed care organization if the worker continues to seek care from an attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 that is not authorized by the managed care organization more than seven days after the mailing of notice by the insurer or self-insured employer.

(5)(a) Payment of compensation under subsection (4) of this section or payment, in amounts per claim not to exceed the maximum amount established annually by the Director of the Department of Consumer and Business Services, for medical services for nondisabling claims, may be made by the subject employer if the employer so chooses. The making of such payments does not constitute a waiver or transfer of the insurer's duty to determine entitlement to benefits. If the employer chooses to make such payment, the employer shall report the injury to the insurer in the same manner that other injuries are reported. However, an insurer shall not modify an employer's experience rating or otherwise make charges against the employer for any medical expenses paid by the employer pursuant to this subsection.

LC 790 11/20/08

1 (b) To establish the maximum amount an employer may pay for medical  
2 services for nondisabling claims under paragraph (a) of this subsection, the  
3 director shall use \$1,500 as the base compensation amount and shall adjust  
4 the base compensation amount annually to reflect changes in the United  
5 States City Average Consumer Price Index for All Urban Consumers for  
6 Medical Care for July of each year as published by the Bureau of Labor  
7 Statistics of the United States Department of Labor. The adjustment shall  
8 be rounded to the nearest multiple of \$100.

9 (c) The adjusted amount established under paragraph (b) of this sub-  
10 section shall be effective on January 1 following the establishment of the  
11 amount and shall apply to claims with a date of injury on or after the ef-  
12 fective date of the adjusted amount.

13 (6)(a) Written notice of acceptance or denial of the claim shall be fur-  
14 nished to the claimant by the insurer or self-insured employer within 60 days  
15 after the employer has notice or knowledge of the claim. Once the claim is  
16 accepted, the insurer or self-insured employer shall not revoke acceptance  
17 except as provided in this section. The insurer or self-insured employer may  
18 revoke acceptance and issue a denial at any time when the denial is for  
19 fraud, misrepresentation or other illegal activity by the worker. If the  
20 worker requests a hearing on any revocation of acceptance and denial al-  
21 leging fraud, misrepresentation or other illegal activity, the insurer or self-  
22 insured employer has the burden of proving, by a preponderance of the  
23 evidence, such fraud, misrepresentation or other illegal activity. Upon such  
24 proof, the worker then has the burden of proving, by a preponderance of the  
25 evidence, the compensability of the claim. If the insurer or self-insured em-  
26 ployer accepts a claim in good faith, in a case not involving fraud, misrep-  
27 resentation or other illegal activity by the worker, and later obtains evidence  
28 that the claim is not compensable or evidence that the insurer or self-insured  
29 employer is not responsible for the claim, the insurer or self-insured em-  
30 ployer may revoke the claim acceptance and issue a formal notice of claim  
31 denial, if such revocation of acceptance and denial is issued no later than

LC 790 11/20/08

1 two years after the date of the initial acceptance. If the worker requests a  
2 hearing on such revocation of acceptance and denial, the insurer or self-  
3 insured employer must prove, by a preponderance of the evidence, that the  
4 claim is not compensable or that the insurer or self-insured employer is not  
5 responsible for the claim. Notwithstanding any other provision of this chap-  
6 ter, if a denial of a previously accepted claim is set aside by an Adminis-  
7 trative Law Judge, the Workers' Compensation Board or the court,  
8 temporary total disability benefits are payable from the date any such bene-  
9 fits were terminated under the denial. Except as provided in ORS 656.247,  
10 pending acceptance or denial of a claim, compensation payable to a claimant  
11 does not include the costs of medical benefits or [burial] **funeral** expenses.  
12 The insurer shall also furnish the employer a copy of the notice of accept-  
13 ance.

14 (b) The notice of acceptance shall:

15 (A) Specify what conditions are compensable.

16 (B) Advise the claimant whether the claim is considered disabling or  
17 nondisabling.

18 (C) Inform the claimant of the Expedited Claim Service and of the hearing  
19 and aggravation rights concerning nondisabling injuries, including the right  
20 to object to a decision that the injury of the claimant is nondisabling by  
21 requesting reclassification pursuant to ORS 656.277.

22 (D) Inform the claimant of employment reinstatement rights and respon-  
23 sibilities under ORS chapter 659A.

24 (E) Inform the claimant of assistance available to employers and workers  
25 from the Reemployment Assistance Program under ORS 656.622.

26 (F) Be modified by the insurer or self-insured employer from time to time  
27 as medical or other information changes a previously issued notice of ac-  
28 ceptance.

29 (c) An insurer's or self-insured employer's acceptance of a combined or  
30 consequential condition under ORS 656.005 (7), whether voluntary or as a  
31 result of a judgment or order, shall not preclude the insurer or self-insured



LC 790 11/20/08

1 employer from later denying the combined or consequential condition if the  
2 otherwise compensable injury ceases to be the major contributing cause of  
3 the combined or consequential condition.

4 (d) An injured worker who believes that a condition has been incorrectly  
5 omitted from a notice of acceptance, or that the notice is otherwise deficient,  
6 first must communicate in writing to the insurer or self-insured employer the  
7 worker's objections to the notice pursuant to ORS 656.267. The insurer or  
8 self-insured employer has 60 days from receipt of the communication from the  
9 worker to revise the notice or to make other written clarification in re-  
10 sponse. A worker who fails to comply with the communication requirements  
11 of this paragraph or ORS 656.267 may not allege at any hearing or other  
12 proceeding on the claim a de facto denial of a condition based on information  
13 in the notice of acceptance from the insurer or self-insured employer. Not-  
14 withstanding any other provision of this chapter, the worker may initiate  
15 objection to the notice of acceptance at any time.

16 (7)(a) After claim acceptance, written notice of acceptance or denial of  
17 claims for aggravation or new medical or omitted condition claims properly  
18 initiated pursuant to ORS 656.267 shall be furnished to the claimant by the  
19 insurer or self-insured employer within 60 days after the insurer or self-  
20 insured employer receives written notice of such claims. A worker who fails  
21 to comply with the communication requirements of subsection (6) of this  
22 section or ORS 656.267 may not allege at any hearing or other proceeding  
23 on the claim a de facto denial of a condition based on information in the  
24 notice of acceptance from the insurer or self-insured employer.

25 (b) Once a worker's claim has been accepted, the insurer or self-insured  
26 employer must issue a written denial to the worker when the accepted injury  
27 is no longer the major contributing cause of the worker's combined condition  
28 before the claim may be closed.

29 (c) When an insurer or self-insured employer determines that the claim  
30 qualifies for claim closure, the insurer or self-insured employer shall issue  
31 at claim closure an updated notice of acceptance that specifies which condi-

LC 790 11/20/08

1 tions are compensable. The procedures specified in subsection (6)(d) of this  
2 section apply to this notice. Any objection to the updated notice or appeal  
3 of denied conditions shall not delay claim closure pursuant to ORS 656.268.  
4 If a condition is found compensable after claim closure, the insurer or self-  
5 insured employer shall reopen the claim for processing regarding that con-  
6 dition.

7 (8) The assigned claims agent in processing claims under ORS 656.054  
8 shall send notice of acceptance or denial to the noncomplying employer.

9 (9) If an insurer or any other duly authorized agent of the employer for  
10 such purpose, on record with the Director of the Department of Consumer  
11 and Business Services denies a claim for compensation, written notice of  
12 such denial, stating the reason for the denial, and informing the worker of  
13 the Expedited Claim Service and of hearing rights under ORS 656.283, shall  
14 be given to the claimant. A copy of the notice of denial shall be mailed to  
15 the director and to the employer by the insurer. The worker may request a  
16 hearing pursuant to ORS 656.319.

17 (10) Merely paying or providing compensation shall not be considered  
18 acceptance of a claim or an admission of liability, nor shall mere acceptance  
19 of such compensation be considered a waiver of the right to question the  
20 amount thereof. Payment of permanent disability benefits pursuant to a no-  
21 tice of closure, reconsideration order or litigation order, or the failure to  
22 appeal or seek review of such an order or notice of closure, shall not pre-  
23 clude an insurer or self-insured employer from subsequently contesting the  
24 compensability of the condition rated therein, unless the condition has been  
25 formally accepted.

26 (11)(a) If the insurer or self-insured employer unreasonably delays or un-  
27 reasonably refuses to pay compensation, or unreasonably delays acceptance  
28 or denial of a claim, the insurer or self-insured employer shall be liable for  
29 an additional amount up to 25 percent of the amounts then due plus any  
30 attorney fees assessed under this section. The fees assessed by the director,  
31 an Administrative Law Judge, the board or the court under this section shall



LC 790 11/20/08

1 be proportionate to the benefit to the injured worker. The board shall adopt  
2 rules for establishing the amount of the attorney fee, giving primary con-  
3 sideration to the results achieved and to the time devoted to the case. An  
4 attorney fee awarded pursuant to this subsection may not exceed \$2,000 ab-  
5 sent a showing of extraordinary circumstances. Notwithstanding any other  
6 provision of this chapter, the director shall have exclusive jurisdiction over  
7 proceedings regarding solely the assessment and payment of the additional  
8 amount and attorney fees described in this subsection. The action of the di-  
9 rector and the review of the action taken by the director shall be subject to  
10 review under ORS 656.704.

11 (b) When the director does not have exclusive jurisdiction over pro-  
12 ceedings regarding the assessment and payment of the additional amount and  
13 attorney fees described in this subsection, the provisions of this subsection  
14 shall apply in the other proceeding.

15 (12) The insurer may authorize an employer to pay compensation to in-  
16 jured workers and shall reimburse employers for compensation so paid.

17 (13) Injured workers have the duty to cooperate and assist the insurer or  
18 self-insured employer in the investigation of claims for compensation. Injured  
19 workers shall submit to and shall fully cooperate with personal and tele-  
20 phonic interviews and other formal or informal information gathering tech-  
21 niques. Injured workers who are represented by an attorney shall have the  
22 right to have the attorney present during any personal or telephonic inter-  
23 view or deposition. However, if the attorney is not willing or available to  
24 participate in an interview at a time reasonably chosen by the insurer or  
25 self-insured employer within 14 days of the request for interview and the  
26 insurer or self-insured employer has cause to believe that the attorney's un-  
27 willingness or unavailability is unreasonable and is preventing the worker  
28 from complying within 14 days of the request for interview, the insurer or  
29 self-insured employer shall notify the director. If the director determines that  
30 the attorney's unwillingness or unavailability is unreasonable, the director  
31 shall assess a civil penalty against the attorney of not more than \$1,000.

LC 790 11/20/08

(14) If the director finds that a worker fails to reasonably cooperate with an investigation involving an initial claim to establish a compensable injury or an aggravation claim to reopen the claim for a worsened condition, the director shall suspend all or part of the payment of compensation after notice to the worker. If the worker does not cooperate for an additional 30 days after the notice, the insurer or self-insured employer may deny the claim because of the worker's failure to cooperate. The obligation of the insurer or self-insured employer to accept or deny the claim within 60 days is suspended during the time of the worker's noncooperation. After such a denial, the worker shall not be granted a hearing or other proceeding under this chapter on the merits of the claim unless the worker first requests and establishes at an expedited hearing under ORS 656.291 that the worker fully and completely cooperated with the investigation, that the worker failed to cooperate for reasons beyond the worker's control or that the investigative demands were unreasonable. If the Administrative Law Judge finds that the worker has not fully cooperated, the Administrative Law Judge shall affirm the denial, and the worker's claim for injury shall remain denied. If the Administrative Law Judge finds that the worker has cooperated, or that the investigative demands were unreasonable, the Administrative Law Judge shall set aside the denial, order the reinstatement of interim compensation if appropriate and remand the claim to the insurer or self-insured employer to accept or deny the claim.

(15) In accordance with ORS 656.283 (4), the Administrative Law Judge assigned a request for hearing for a claim for compensation involving more than one potentially responsible employer or insurer may specify what is required of an injured worker to reasonably cooperate with the investigation of the claim as required by subsection (13) of this section.

## Appendix C – Current Formulas and 2008 Benefit Amounts

Spouse and Children		
	<i>Formula for Monthly Benefit</i>	<i>2008 benefit amount</i>
<b>Burial</b>	Up to 10 x AWW <sup>8</sup>	\$7,903.80
<b>Spouse</b>		
Surviving spouse until remarriage	$4.35 \times 66 \frac{2}{3} \% \text{ AWW}$	\$2,292.22
Remarriage allowance	36 x monthly benefit (lump sum)	Depends on benefit amount
<b>Children and surviving spouse</b>		
Each child up to age 18 (or 23 if in school) when child is substantially dependent on spouse for support	$4.35 \times 10\% \text{ AWW}$	\$343.82
Each child up to age 18 (or 23 if in school) when child is not dependent on surviving spouse	$4.35 \times 25\% \text{ AWW}$	\$859.54
If surviving spouse dies, payment changes for each child up to 18 (or 23 if in school)	$4.35 \times 25\% \text{ AWW}$	\$859.54
Maximum total benefit for <b>spouse and child</b> benefit (unless no surviving spouse)	$4.35 \times 133 \frac{1}{3}\% \text{ AWW}$	\$4,584.09
<b>Children and no surviving spouse</b>		
Each child up to age 18 (or 23 if in school)	$4.35 \times 25\% \text{ AWW}$ (Maximum $4.35 \times 133 \frac{1}{3}\% \text{ AWW}$ )	\$859.54 (\$4,584.09 max)

Other Dependents		
	<i>Formula for Monthly Benefit</i>	<i>2008 benefit amount</i>
Other dependents <sup>9</sup> up to age 18 (or 23 if in school)	50 percent of the average monthly support actually received by the dependent from the worker in the 12 months before the death	Amount varies based on monthly support amount
Cohabitants and children (over one year prior to injury, with children living as a result of relationship)	Same benefits as if legally married	See limits listed above under “Spouse and Children”
Maximum total benefit for other dependents	$4.35 \times 10\% \text{ AWW}$	\$343.82

<sup>8</sup> AWW = 2008 state average weekly wage, \$790.38

<sup>9</sup> 656.005(10) “Dependent” means any of the following-named relatives of a worker whose death results from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the accident, are dependent in whole or in part for their support upon the earnings of the worker. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than father, mother, husband, wife or children are not included within the term “dependent.”

# Workers' Compensation Management-Labor Advisory Committee

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