

A-Engrossed
House Bill 3188

Ordered by the House April 15
Including House Amendments dated April 15

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Representative Paul Holvey)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Changes definitions of "employer" and "worker" for purposes of workers' compensation law. **Changes total labor cost at which employment is casual from \$500 to \$1,000.**

A BILL FOR AN ACT

1
2 Relating to employment status; amending ORS 656.005, 656.027, 656.278 and 656.506.

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

4 **SECTION 1.** ORS 656.005 is amended to read:

5 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered em-
6 ployment, as determined by the Employment Department, for the last quarter of the calendar year
7 preceding the fiscal year in which the injury occurred.

8 (2)(a) "Beneficiary" means an injured worker, and the spouse in a marriage, child or dependent
9 of a worker, who is entitled to receive payments under this chapter.

10 (b) "Beneficiary" does not include:

11 (A) A spouse of an injured worker living in a state of abandonment for more than one year at
12 the time of the injury or subsequently. A spouse who has lived separate and apart from the worker
13 for a period of two years and who has not during that time received or attempted by process of law
14 to collect funds for support or maintenance is considered living in a state of abandonment.

15 (B) A person who intentionally causes the compensable injury to or death of an injured worker.

16 (3) "Board" means the Workers' Compensation Board.

17 (4) "Carrier-insured employer" means an employer who provides workers' compensation cover-
18 age with the State Accident Insurance Fund Corporation or an insurer authorized under ORS
19 chapter 731 to transact workers' compensation insurance in this state.

20 (5) "Child" means a child of an injured worker, including:

21 (a) A posthumous child;

22 (b) A child legally adopted before the injury;

23 (c) A child toward whom the worker stands in loco parentis;

24 (d) A child born out of wedlock;

25 (e) A stepchild, if the stepchild was, at the time of the injury, a member of the worker's family
26 and substantially dependent upon the worker for support; and

27 (f) A child of any age who was an invalid at the time of the accident and thereafter remains an
28 invalid substantially dependent on the worker for support.

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 (6) "Claim" means a written request for compensation from a subject worker or someone on the
2 worker's behalf, or any compensable injury of which a subject employer has notice or knowledge.

3 (7)(a) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appli-
4 ances, arising out of and in the course of employment requiring medical services or resulting in
5 disability or death. An injury is accidental if the result is an accident, whether or not due to acci-
6 dental means, if it is established by medical evidence supported by objective findings, subject to the
7 following limitations:

8 (A) An injury or disease is not compensable as a consequence of a compensable injury unless
9 the compensable injury is the major contributing cause of the consequential condition.

10 (B) If an otherwise compensable injury combines at any time with a preexisting condition to
11 cause or prolong disability or a need for treatment, the combined condition is compensable only if,
12 so long as and to the extent that the otherwise compensable injury is the major contributing cause
13 of the disability of the combined condition or the major contributing cause of the need for treatment
14 of the combined condition.

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

16 (A) Injury to any active participant in assaults or combats that are not connected to the job
17 assignment and that amount to a deviation from customary duties;

18 (B) Injury incurred while engaging in or performing, or as the result of engaging in or per-
19 forming, any recreational or social activities primarily for the worker's personal pleasure; or

20 (C) Injury the major contributing cause of which is demonstrated to be by a preponderance of
21 the evidence the injured worker's consumption of alcoholic beverages or cannabis or the unlawful
22 consumption of any controlled substance, unless the employer permitted, encouraged or had actual
23 knowledge of such consumption.

24 (c) A "disabling compensable injury" is an injury that entitles the worker to compensation for
25 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless
26 there is a reasonable expectation that permanent disability will result from the injury.

27 (d) A "nondisabling compensable injury" is any injury that requires medical services only.

28 (8) "Compensation" includes all benefits, including medical services, provided for a compensable
29 injury to a subject worker or the worker's beneficiaries by an insurer or self-insured employer pur-
30 suant to this chapter.

31 (9) "Department" means the Department of Consumer and Business Services.

32 (10)(a) "Dependent" means any of the following relatives of the worker who, at the time of an
33 accident, depended in whole or in part for the relative's support on the earnings of a worker who
34 dies as a result of an injury:

35 (A) A parent, grandparent or stepparent;

36 (B) A grandson or granddaughter;

37 (C) A brother or sister or half-brother or half-sister; and

38 (D) A niece or nephew.

39 (b) "Dependent" does not include an alien who does not reside within the United States at the
40 time of the accident, other than a parent, a spouse or children, unless a treaty provides otherwise.

41 (11) "Director" means the Director of the Department of Consumer and Business Services.

42 (12)(a) "Doctor" or "physician" means a person duly licensed to practice one or more of the
43 healing arts in any country or in any state, territory or possession of the United States within the
44 limits of the license of the licensee.

45 (b) Except as otherwise provided for workers subject to a managed care contract, "attending

1 physician” means a doctor, physician or physician assistant who is primarily responsible for the
2 treatment of a worker’s compensable injury and who is:

3 (A) A physician licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a
4 podiatric physician and surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical
5 Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly
6 licensed doctor in any country or in any state, territory or possession of the United States; or

7 (B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative
8 total of 18 visits, whichever occurs first, to any of the medical service providers listed in this sub-
9 paragraph, a:

10 (i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of
11 Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any
12 state, territory or possession of the United States;

13 (ii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505
14 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or
15 possession of the United States; or

16 (iii) Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of
17 Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any
18 country or in any state, territory or possession of the United States.

19 (c) Except as otherwise provided for workers subject to a managed care contract, “attending
20 physician” does not include a physician who provides care in a hospital emergency room and refers
21 the injured worker to a primary care physician for follow-up care and treatment.

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

26 (13)(a) “Employer” means any person, including receiver, administrator, executor or trustee, and
27 the state, state agencies, counties, municipal corporations, school districts and other public corpo-
28 rations or political subdivisions, that contracts to pay a remuneration for [*and secures the right to*
29 *direct and control*] the services of any [*person*] **worker**.

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

33 (c) As used in paragraph (b) of this subsection, “temporary service provider” has the meaning
34 for that term provided in ORS 656.850.

35 **(d) For the purposes of this chapter, “subject employer” means an employer that is**
36 **subject to this chapter as provided in ORS 656.023.**

37 (14) “Insurer” means the State Accident Insurance Fund Corporation or an insurer authorized
38 under ORS chapter 731 to transact workers’ compensation insurance in this state or an assigned
39 claims agent selected by the director under ORS 656.054.

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

41 (16) “Invalid” means one who is physically or mentally incapacitated from earning a livelihood.

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

44 (18) “Noncomplying employer” means a subject employer that has failed to comply with ORS
45 656.017.

1 (19) "Objective findings" in support of medical evidence are verifiable indications of injury or
2 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and
3 palpable muscle spasm. "Objective findings" does not include physical findings or subjective re-
4 sponses to physical examinations that are not reproducible, measurable or observable.

5 (20) "Palliative care" means medical service rendered to reduce or moderate temporarily the
6 intensity of an otherwise stable medical condition, but does not include those medical services ren-
7 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

8 (21) "Party" means a claimant for compensation, the employer of the injured worker at the time
9 of injury and the insurer, if any, of the employer.

10 (22) "Payroll" means a record of wages payable to workers for their services and includes
11 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or
12 similar advantage received from the employer. However, "payroll" does not include overtime pay,
13 vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments
14 to reward workers for safe working practices. Bonus pay is limited to payments that are not antic-
15 ipated under the contract of employment and that are paid at the sole discretion of the employer.
16 The exclusion from payroll of bonus payments to reward workers for safe working practices is only
17 for the purpose of calculations based on payroll to determine premium for workers' compensation
18 insurance, and does not affect any other calculation or determination based on payroll for the pur-
19 poses of this chapter.

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

22 (24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, con-
23 genital abnormality, personality disorder or similar condition that contributes to disability or need
24 for treatment, provided that:

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

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

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

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

34 (b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, con-
35 genital abnormality, personality disorder or similar condition that contributes to disability or need
36 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim
37 for worsening in such claims pursuant to ORS 656.273 or 656.278.

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

40 (25) "Self-insured employer" means an employer or group of employers certified under ORS
41 656.430 as meeting the qualifications set out by ORS 656.407.

42 (26) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident
43 Insurance Fund Corporation created under ORS 656.752.

44 [(27) "Subject employer" means an employer that is subject to this chapter as provided by ORS
45 656.023.]

1 [(28) “Subject worker” means a worker who is subject to this chapter as provided by ORS
2 656.027.]

3 [(29)] (27) “Wages” means the money rate at which the service rendered is recompensed under
4 the contract of hiring in force at the time of the accident, including reasonable value of board, rent,
5 housing, lodging or similar advantage received from the employer, and includes the amount of tips
6 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of
7 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips
8 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-
9 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at
10 which any worker shall be carried upon the payroll of the employer for the purpose of determining
11 the premium of the employer.

12 [(30)] (28)(a) “Worker” means any person, **other than an independent contractor, who en-**
13 **gages to furnish services for a remuneration**, including a minor whether lawfully or unlawfully
14 employed[, *who engages to furnish services for a remuneration, subject to the direction and control of*
15 *an employer and includes*] **and** salaried, elected and appointed officials of the state, state agencies,
16 counties, cities, school districts and other public corporations, but does not include any person
17 whose services are performed as an adult in custody or ward of a state institution or as part of the
18 eligibility requirements for a general or public assistance grant.

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

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

24 [(31)] (29) “Independent contractor” has the meaning for that term provided in ORS 670.600.

25 **SECTION 2.** ORS 656.027 is amended to read:

26 656.027. All workers are subject to this chapter except those nonsubject workers described in
27 the following subsections:

28 (1) A worker employed as a domestic servant in or about a private home. For the purposes of
29 this subsection “domestic servant” means any worker engaged in household domestic service by
30 private employment contract, including, but not limited to, home health workers.

31 (2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or
32 about the private home of the person employing the worker.

33 (3)(a) A worker whose employment is casual and either:

34 (A) The employment is not in the course of the trade, business or profession of the employer;
35 or

36 (B) The employment is in the course of the trade, business or profession of a nonsubject em-
37 ployer.

38 (b) For the purpose of this subsection, “casual” refers only to employments where the work in
39 any 30-day period, without regard to the number of workers employed, involves a total labor cost
40 of less than [500] **\$1,000. The total labor cost below which employment is casual under this**
41 **paragraph must be adjusted annually on July 1 by the same percentage increase, if any, as**
42 **is made to the average weekly wage, as defined in ORS 656.211.**

43 (4) A person for whom a rule of liability for injury or death arising out of and in the course of
44 employment is provided by the laws of the United States.

45 (5) A worker engaged in the transportation in interstate commerce of goods, persons or property

1 for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business
2 in this state.

3 (6) Firefighter and police employees of any city having a population of more than 200,000 that
4 provides a disability and retirement system by ordinance or charter.

5 (7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor
6 or services are performed under contract, the sole proprietor must qualify as an independent con-
7 tractor.

8 (b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When labor or services are
9 performed under contract for remuneration, notwithstanding ORS 656.005 [(30)] **(28)**, the sole pro-
10 prietor must qualify as an independent contractor. Any sole proprietor licensed under ORS 671.525
11 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent
12 contractor.

13 (8) Except as provided in subsection (23) of this section, partners who are not engaged in work
14 performed in direct connection with the construction, alteration, repair, improvement, moving or
15 demolition of an improvement on real property or appurtenances thereto. When labor or services
16 are performed under contract, the partnership must qualify as an independent contractor.

17 (9) Except as provided in subsection (25) of this section, members, including members who are
18 managers, of limited liability companies, regardless of the nature of the work performed. However,
19 members, including members who are managers, of limited liability companies with more than one
20 member, while engaged in work performed in direct connection with the construction, alteration,
21 repair, improvement, moving or demolition of an improvement on real property or appurtenances
22 thereto, are subject workers. When labor or services are performed under contract, the limited li-
23 ability company must qualify as an independent contractor.

24 (10) Except as provided in subsection (24) of this section, corporate officers who are directors
25 of the corporation and who have a substantial ownership interest in the corporation, regardless of
26 the nature of the work performed by such officers, subject to the following limitations:

27 (a) If the activities of the corporation are conducted on land that receives farm use tax assess-
28 ment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors
29 in the corporate bylaws, regardless of ownership interest, and who are members of the same family,
30 whether related by blood, marriage or adoption.

31 (b) If the activities of the corporation involve the commercial harvest of timber and all officers
32 of the corporation are members of the same family and are parents, daughters or sons, daughters-
33 in-law or sons-in-law or grandchildren, then all such officers may elect to be nonsubject workers.
34 For all other corporations involving the commercial harvest of timber, the maximum number of ex-
35 empt corporate officers for the corporation shall be whichever is the greater of the following:

36 (A) Two corporate officers; or

37 (B) One corporate officer for each 10 corporate employees.

38 (c) When labor or services are performed under contract, the corporation must qualify as an
39 independent contractor.

40 (11) A person performing services primarily for board and lodging received from any religious,
41 charitable or relief organization.

42 (12) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and 656.075.

43 (13) A person who has been declared an amateur athlete under the rules of the United States
44 Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for
45 performance of services as an athlete other than board, room, rent, housing, lodging or other rea-

1 sonable incidental subsistence allowance, or any amateur sports official who is certified by a re-
2 cognized Oregon or national certifying authority, which requires or provides liability and accident
3 insurance for such officials. A roster of recognized Oregon and national certifying authorities will
4 be maintained by the Department of Consumer and Business Services, from lists of certifying or-
5 ganizations submitted by the Oregon School Activities Association and the Oregon Park and Re-
6 creation Society.

7 (14) Volunteer personnel participating in the ACTION programs, organized under the Domestic
8 Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the
9 Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimburse-
10 ment for time and travel expenses.

11 (15) A person who has an ownership or leasehold interest in equipment and who furnishes,
12 maintains and operates the equipment. As used in this subsection "equipment" means:

13 (a) A motor vehicle used in the transportation of logs, poles or piling.

14 (b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.

15 (c) A motor vehicle used in the transportation of property by a for-hire motor carrier that is
16 required under ORS 825.100 or 825.104 to possess a certificate or permit or to be registered.

17 (16) A person engaged in the transportation of the public for recreational down-river boating
18 activities on the waters of this state pursuant to a federal permit when the person furnishes the
19 equipment necessary for the activity. As used in this subsection, "recreational down-river boating
20 activities" means those boating activities for the purpose of recreational fishing, swimming or
21 sightseeing utilizing a float craft with oars or paddles as the primary source of power.

22 (17) A person who receives no wage other than ski passes or other noncash remuneration for
23 performing volunteer:

24 (a) Ski patrol activities; or

25 (b) Ski area program activities sponsored by a ski area operator, as defined in ORS 30.970, or
26 by a nonprofit corporation or organization.

27 (18) A person 19 years of age or older who contracts with a newspaper publishing company or
28 independent newspaper dealer or contractor to distribute newspapers to the general public and
29 perform or undertake any necessary or attendant functions related thereto.

30 (19) A person performing foster parent or adult foster care duties pursuant to ORS 412.001 to
31 412.161 and 412.991 or ORS chapter 411, 418, 430 or 443.

32 (20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or
33 relief organization, whether or not such person receives meals or lodging or nominal reimbursements
34 or vouchers for meals, lodging or expenses.

35 (21) A person performing services under a property tax work-off program established under ORS
36 310.800.

37 (22) A person who performs service as a caddy at a golf course in an established program for
38 the training and supervision of caddies under the direction of a person who is an employee of the
39 golf course.

40 (23)(a) Partners who are actively licensed under ORS 671.525 or 701.021 and who have a sub-
41 stantial ownership interest in a partnership. If all partners are members of the same family and are
42 parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchil-
43 dren, all such partners may elect to be nonsubject workers. For all other partnerships licensed un-
44 der ORS 671.510 to 671.760 or 701.021, the maximum number of exempt partners shall be whichever
45 is the greater of the following:

1 (A) Two partners; or

2 (B) One partner for each 10 partnership employees.

3 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
4 656.005 [(30)] (28), the partnership qualifies as an independent contractor. Any partnership licensed
5 under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to
6 be an independent contractor.

7 (24)(a) Corporate officers who are directors of a corporation actively licensed under ORS 671.525
8 or 701.021 and who have a substantial ownership interest in the corporation, regardless of the na-
9 ture of the work performed. If all officers of the corporation are members of the same family and
10 are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grand-
11 children, all such officers may elect to be nonsubject workers. For all other corporations licensed
12 under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt corporate officers shall
13 be whichever is the greater of the following:

14 (A) Two corporate officers; or

15 (B) One corporate officer for each 10 corporate employees.

16 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
17 656.005 [(30)] (28), the corporation qualifies as an independent contractor. Any corporation licensed
18 under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to
19 be an independent contractor.

20 (25)(a) Limited liability company members who are members of a company actively licensed un-
21 der ORS 671.525 or 701.021 and who have a substantial ownership interest in the company, regard-
22 less of the nature of the work performed. If all members of the company are members of the same
23 family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law
24 or grandchildren, all such members may elect to be nonsubject workers. For all other companies
25 licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt company members
26 shall be whichever is the greater of the following:

27 (A) Two company members; or

28 (B) One company member for each 10 company employees.

29 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
30 656.005 [(30)] (28), the company qualifies as an independent contractor. Any company licensed under
31 ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an
32 independent contractor.

33 (26) A person serving as a referee or assistant referee in a youth or adult recreational soccer
34 match whose services are retained on a match-by-match basis.

35 (27) A person performing language translator or interpreter services that are provided for others
36 through an agent or broker.

37 (28) A person who operates, and who has an ownership or leasehold interest in, a passenger
38 motor vehicle that is operated as a taxicab or for nonemergency medical transportation. As used in
39 this subsection:

40 (a) "Lease" means a contract under which the lessor provides a vehicle to a lessee for consid-
41 eration.

42 (b) "Leasehold" includes, but is not limited to, a lease for a shift or a longer period.

43 (c) "Passenger motor vehicle that is operated as a taxicab" means a vehicle that:

44 (A) Has a passenger seating capacity that does not exceed seven persons;

45 (B) Is transporting persons, property or both on a route that begins or ends in Oregon; and

1 (C)(i) Carries passengers for hire when the destination and route traveled may be controlled by
2 a passenger and the fare is calculated on the basis of any combination of an initial fee, distance
3 traveled or waiting time; or

4 (ii) Is in use under a contract to provide specific service to a third party to transport designated
5 passengers or to provide errand services to locations selected by the third party.

6 (d) "Passenger motor vehicle that is operated for nonemergency medical transportation" means
7 a vehicle that:

8 (A) Has a passenger seating capacity that does not exceed seven persons;

9 (B) Is transporting persons, property or both on a route that begins or ends in Oregon; and

10 (C) Provides medical transportation services under contract with or on behalf of a mass transit
11 or transportation district.

12 **SECTION 3.** ORS 656.278 is amended to read:

13 656.278. (1) Except as provided in subsection (7) of this section, the power and jurisdiction of the
14 Workers' Compensation Board shall be continuing, and it may, upon its own motion, from time to
15 time modify, change or terminate former findings, orders or awards if in its opinion such action is
16 justified in those cases in which:

17 (a) There is a worsening of a compensable injury that results in the inability of the worker to
18 work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment
19 prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.
20 In such cases, the payment of temporary disability compensation in accordance with ORS 656.210,
21 656.212 (2) and 656.262 (4) may be provided from the time the attending physician authorizes tem-
22 porary disability compensation for the hospitalization, surgery or other curative treatment until the
23 worker's condition becomes medically stationary;

24 (b) The worker submits and obtains acceptance of a claim for a compensable new medical con-
25 dition or an omitted medical condition pursuant to ORS 656.267 and the claim is initiated after the
26 rights under ORS 656.273 have expired. In such cases, the payment of temporary disability compen-
27 sation in accordance with the provisions of ORS 656.210, 656.212 (2) and 656.262 (4) may be provided
28 from the time the attending physician authorizes temporary disability compensation for the
29 hospitalization, surgery or other curative treatment until the worker's condition becomes medically
30 stationary, and the payment of permanent disability benefits may be provided after application of the
31 standards for the evaluation and determination of disability as may be adopted by the Director of
32 the Department of Consumer and Business Services pursuant to ORS 656.726; or

33 (c) The date of injury is earlier than January 1, 1966. In such cases, in addition to the payment
34 of temporary disability compensation, the payment of medical benefits may be provided.

35 (2) Benefits provided under subsection (1) of this section:

36 (a) Do not include vocational assistance benefits under ORS 656.340;

37 (b) Do not include temporary disability compensation for periods of time during which the
38 claimant did not qualify as a "worker" pursuant to ORS 656.005 [(30)] (28);

39 (c) Do not include medical services provided pursuant to ORS 656.245 except as provided under
40 subsection (1)(c) of this section; and

41 (d) May include permanent disability benefits for additional impairment to an injured body part
42 that has previously been the basis of a permanent partial disability award, but only to the extent
43 that the permanent partial disability rating exceeds the permanent partial disability rated by the
44 prior award or awards.

45 (3) An order or award made by the board during the time within which the claimant has the

1 right to request a hearing on aggravation under ORS 656.273 is not an order or award, as the case
2 may be, made by the board on its own motion.

3 (4) Pursuant to ORS 656.298, any party may appeal an order or award made by the board on its
4 own motion.

5 (5) The insurer or self-insured employer may voluntarily reopen any claim to provide benefits
6 allowable under this section or to grant additional medical or hospital care to the claimant. The
7 board shall establish procedures for the resolution of disputes arising out of a voluntary reopening
8 of a claim under this section.

9 (6) Any claim reopened under this section shall be closed by the insurer or self-insured employer
10 in a manner prescribed by the board, including, when appropriate, an award of permanent disability
11 benefits as determined under subsections (1)(b) and (2)(d) of this section. The board shall also pre-
12 scribe a process to be followed if the worker objects to the claim closure.

13 (7) The provisions of this section do not authorize the board, on its own motion, to modify,
14 change or terminate former findings or orders:

15 (a) That a claimant incurred no injury or incurred a noncompensable injury; or

16 (b) Approving disposition of a claim under ORS 656.236 or 656.289 (4).

17 **SECTION 4.** ORS 656.506 is amended to read:

18 656.506. (1) As used in this section:

19 (a) "Employee" means a subject worker as defined in ORS 656.005 (28).

20 (b) "Employer" means a subject employer as defined in ORS 656.005 [(27)] (13).

21 (2) Every employer shall retain from the moneys earned by all employees an amount determined
22 by the Director of the Department of Consumer and Business Services for each hour or part of an
23 hour the employee is employed and pay the money retained in the manner and at such intervals as
24 the director shall specify.

25 (3) In addition to all moneys retained under subsection (2) of this section, the director shall as-
26 sess each employer an amount equal to that assessed pursuant to subsection (2) of this section. The
27 assessment must be paid in such manner and at such intervals as the director may specify.

28 (4) The Department of Consumer and Business Services shall deposit moneys collected pursuant
29 to subsections (2) and (3) of this section, and any accrued cash balances, into the Workers' Benefit
30 Fund. Subject to the limitations in subsections (2) and (3) of this section, the amount of the hourly
31 assessments provided in subsections (2) and (3) of this section annually may be adjusted to meet the
32 needs of the Workers' Benefit Fund for the expenditures of the department in carrying out the
33 department's functions and duties pursuant to subsection (7) of this section and ORS 656.445,
34 656.622, 656.625, 656.628 and 656.630. Factors to be considered in making such adjustment of the
35 assessments must include, but not be limited to, the cash balance as determined by the director and
36 estimated expenditures and revenues of the Workers' Benefit Fund.

37 (5) The Legislative Assembly intends that the department set rates for the collection of assess-
38 ments pursuant to subsections (2) and (3) of this section in a manner so that at the end of the period
39 for which the rates are effective, the balance of the Workers' Benefit Fund is an amount of not less
40 than 12 months of projected expenditures from the fund in regard to the department's functions and
41 duties under subsection (7) of this section and ORS 656.445, 656.622, 656.625, 656.628 and 656.630, in
42 a manner that minimizes the volatility of the rates assessed. If the department determines that the
43 balance of the fund will fall below the balance required under this subsection, the department shall
44 devise and report to the Workers' Compensation Management-Labor Advisory Committee a plan to
45 increase the balance to the required amount. The department may set the assessment rate at a

1 higher level if the department determines that a higher rate is necessary to avoid unintentional
2 program or benefit reductions in the time period immediately following the period for which the rate
3 is being set.

4 (6) Every employer required to pay the assessments referred to in this section shall make and
5 file a report of employee hours worked and amounts due under this section upon a combined report
6 form prescribed by the Department of Revenue. The report must be filed with the Department of
7 Revenue:

8 (a) At the times and in the manner prescribed in ORS 316.168 and 316.171; or

9 (b) Annually as required or allowed pursuant to ORS 316.197 or 657.571.

10 (7) There is established a Retroactive Program for the purpose of providing increased benefits
11 to claimants or beneficiaries eligible to receive compensation under the benefit schedules of ORS
12 656.204, 656.206, 656.208 and 656.210 that are lower than currently being paid for like injuries.
13 However, benefits payable under ORS 656.210 may not be increased by the Retroactive Program for
14 claimants whose injury occurred on or after April 1, 1974. Notwithstanding the formulas for com-
15 puting benefits provided in ORS 656.204, 656.206, 656.208 and 656.210, the increased benefits payable
16 under this subsection must be in such amount as the director considers appropriate. The director
17 annually shall compute the amount which may be available during the succeeding year for payment
18 of such increased benefits and determine the level of benefits to be paid during such year. If, during
19 such year, it is determined by the director that there are insufficient funds to increase benefits to
20 the level fixed by the director, the director may reduce the level of benefits payable under this
21 subsection. The increase in benefits to workers is payable in the first instance by the insurer or
22 self-insured employer subject to reimbursement from the Workers' Benefit Fund by the director. If
23 the insurer is a member of the Oregon Insurance Guaranty Association and becomes insolvent and
24 the Oregon Insurance Guaranty Association assumes the insurer's obligations to pay covered claims
25 of subject workers, including Retroactive Program benefits, the benefits are payable in the first in-
26 stance by the Oregon Insurance Guaranty Association, subject to reimbursement from the Workers'
27 Benefit Fund by the director.

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