

A-Engrossed
Senate Bill 1519

Ordered by the Senate February 12
Including Senate Amendments dated February 12

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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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act would change how total disability comp is set. (Flesch Readability Score: 69.7).

[Digest: The Act would pay a temp total disability comp claim based on the part of weekly pay that is at or below, or more than, 75% of the average weekly wage for the state. (Flesch Readability Score: 60.3).]

[Provides that the percentage of a worker's wage paid as compensation during a period of temporary total disability shall be determined by the portion of the worker's wage that is less than or equal to, or greater than, 75 percent of the state average weekly wage.]

Changes the formula for determining permanent and temporary total disability compensation.

A BILL FOR AN ACT

1
2 Relating to total disability; creating new provisions; and amending ORS 656.206, 656.210 and 656.211.

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

4 **SECTION 1.** ORS 656.210 is amended to read:

5 656.210. *[(1) When the total disability is only temporary, the worker shall receive during the period*
6 *of that total disability compensation equal to 66-2/3 percent of wages, but not more than 133 percent*
7 *of the average weekly wage nor less than the amount of 90 percent of wages a week or the amount of*
8 *\$50 a week, whichever amount is less.]*

9 **(1)(a) During a period of total disability that is temporary, the worker shall receive**
10 **compensation equal to:**

11 **(A) Seventy-five percent of the worker's wage that is equal to or less than 75 percent of**
12 **the average weekly wage in effect on the date of injury, but not less than the amount of 90**
13 **percent of the worker's wage a week or the amount of \$50 a week, whichever amount is less;**
14 **and**

15 **(B) Sixty-five percent of the worker's wage that is greater than 75 percent of the average**
16 **weekly wage, but not more than 133 percent of the average weekly wage, in effect on the date**
17 **of injury.**

18 **(b)** Notwithstanding the limitation imposed by this subsection, an injured worker who is not
19 otherwise eligible to receive an increase in benefits for the fiscal year in which compensation is paid
20 shall have the benefits increased each fiscal year by the percentage which the applicable average
21 weekly wage has increased since the previous fiscal year.

22 **(2)(a)** For the purpose of this section, the weekly wage of workers shall be *[ascertained]* **calcu-**

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 **lated:**

2 (A) For workers employed in one job at the time of injury, by multiplying the daily wage the
3 worker was receiving by the number of days per week that the worker was regularly employed; or

4 (B) For workers employed in more than one job at the time of injury, by adding all earnings the
5 worker was receiving from all subject employment.

6 (b) Notwithstanding paragraph (a)(B) of this subsection, the weekly wage calculated under par-
7 agraph (a)(A) of this subsection shall be used for workers employed in more than one job at the time
8 of injury unless the insurer, self-insured employer or assigned claims agent for a noncomplying em-
9 ployer receives:

10 (A) Within 30 days of receipt of the initial claim, notice that the worker was employed in more
11 than one job with a subject employer at the time of injury; and

12 (B) Within 60 days of the date of mailing a request for verification, verifiable documentation of
13 wages from such additional employment.

14 (c) Notwithstanding ORS 656.005 (7)(c), an injury to a worker employed in more than one job
15 at the time of injury is not disabling if no temporary disability benefits are payable for time lost
16 from the job at injury. Claim costs incurred as a result of supplemental temporary disability benefits
17 paid as provided in subsection (5) of this section may not be included in any data used for
18 ratemaking or individual employer rating or dividend calculations by an insurer, a rating organiza-
19 tion licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the
20 Department of Consumer and Business Services if the injured worker is not eligible for permanent
21 disability benefits or temporary disability benefits for time lost from the job at injury.

22 (d) For the purpose of this section:

23 (A) The benefits of a worker who incurs an injury shall be based on the wage of the worker at
24 the time of injury.

25 (B) The benefits of a worker who incurs an occupational disease shall be based on the wage of
26 the worker at the time there is medical verification that the worker is unable to work because of
27 the disability caused by the occupational disease. If the worker is not working at the time that there
28 is medical verification that the worker is unable to work because of the disability caused by the
29 occupational disease, the benefits shall be based on the wage of the worker at the worker's last
30 regular employment.

31 (e) As used in this subsection, "regularly employed" means actual employment or availability for
32 such employment. For workers not regularly employed and for workers with no remuneration or
33 whose remuneration is not based solely upon daily or weekly wages, the Director of the Department
34 of Consumer and Business Services, by rule, may prescribe methods for establishing the worker's
35 weekly wage.

36 (3) No disability payment is recoverable for temporary total or partial disability suffered during
37 the first three calendar days after the worker leaves work or loses wages as a result of the
38 compensable injury unless the worker is totally disabled after the injury and the total disability
39 continues for a period of 14 consecutive days or unless the worker is admitted as an inpatient to a
40 hospital within 14 days of the first onset of total disability. If the worker leaves work or loses wages
41 on the day of the injury due to the injury, that day shall be considered the first day of the three-day
42 period.

43 (4) When an injured worker with an accepted disabling compensable injury is required to leave
44 work to receive compensable medical services for the compensable injury, the worker shall receive
45 temporary disability benefits calculated pursuant to ORS 656.212 for the period during which the

1 worker is absent, until such time as the worker is determined to be medically stationary. However,
2 benefits under this subsection are not payable if wages are paid for the period of absence by the
3 employer. An insurer may require a worker to confirm the period during which the worker is absent
4 from work to receive compensable medical services under this subsection. The notice requirement
5 under ORS 656.262 (4)(j) does not apply to temporary disability benefits paid pursuant to this sub-
6 section.

7 (5)(a) The insurer of the employer at injury or the self-insured employer at injury, may elect to
8 be responsible for payment of supplemental temporary disability benefits to a worker employed in
9 more than one job at the time of injury. In accordance with rules adopted by the director, if the
10 worker's weekly wage is determined under subsection (2)(a)(B) of this section, the insurer or self-
11 insured employer shall be reimbursed from the Workers' Benefit Fund for the amount of temporary
12 disability benefits paid that exceeds the amount payable pursuant to subsection (2)(a)(A) of this
13 section had the worker been employed in only one job at the time of injury. Such reimbursement
14 shall include an administrative fee payable to the insurer or self-insured employer pursuant to rules
15 adopted by the director.

16 (b) If the insurer or self-insured employer elects not to pay the supplemental temporary disabili-
17 ty benefits for a worker employed in more than one job at the time of injury, the director shall ei-
18 ther administer and pay the supplemental benefits directly or shall assign responsibility to
19 administer and process the payment to a paying agent selected by the director.

20 (6) The director shall adopt rules for the payment and reimbursement of supplemental temporary
21 disability benefits under this section.

22 **SECTION 2.** ORS 656.211 is amended to read:

23 656.211. As used in ORS 656.210 (1)(b), "average weekly wage" means the average weekly wage
24 of workers in covered employment in Oregon, as determined by the Employment Department, for the
25 last quarter of the calendar year preceding the fiscal year in which compensation is paid and as
26 computed by the Employment Department as of May 15 of each year.

27 **SECTION 3. The amendments to ORS 656.210 and 656.211 by sections 1 and 2 of this 2026**
28 **Act apply to claims with a date of injury on or after January 1, 2027.**

29 **SECTION 4.** ORS 656.206 is amended to read:

30 656.206. (1) As used in this section:

31 (a) "Essential functions" means the primary tasks associated with the job.

32 (b) "Materially improved medically" means an actual change for the better in the worker's
33 medical condition that is supported by objective findings.

34 (c) "Materially improved vocationally" means an actual change for the better in the:

35 (A) Worker's vocational capability; or

36 (B) Likelihood that the worker can return to work in a gainful and suitable occupation.

37 (d) "Permanent total disability" means, notwithstanding ORS 656.225, the loss, including preex-
38 isting disability, of use or function of any portion of the body which permanently incapacitates the
39 worker from regularly performing work at a gainful and suitable occupation.

40 (e) "Regularly performing work" means the ability of the worker to discharge the essential
41 functions of the job.

42 (f) "Suitable occupation" means one that the worker has the ability and the training or experi-
43 ence to perform, or an occupation that the worker is able to perform after rehabilitation.

44 (g) "Wages" means wages as determined under ORS 656.210.

45 *[(2) If permanent total disability results from a worker's injury, the worker shall receive during the*

1 *period of that disability compensation benefits equal to 66-2/3 percent of wages, no more than 133 per-*
2 *cent of the average weekly wage or no less than 33 percent of the average weekly wage.]*

3 **(2) During the period of permanent total disability that results from a worker's injury,**
4 **the worker shall receive compensation equal to:**

5 **(a) Seventy-five percent of the worker's wage that is equal to or less than 75 percent of**
6 **the average weekly wage, but not less than 33 percent of the average weekly wage, in effect**
7 **on the date of injury; and**

8 **(b) Sixty-five percent of the worker's wage that is greater than 75 percent of the average**
9 **weekly wage, but not more than 133 percent of the average weekly wage, in effect on the date**
10 **of injury.**

11 (3) A worker has the burden of proving permanent total disability status and must establish that
12 the worker is willing to seek regular gainful employment and that the worker has made reasonable
13 efforts to obtain such employment.

14 (4) When requested by the Director of the Department of Consumer and Business Services, a
15 worker who receives permanent total disability benefits shall file on a form provided by the director,
16 a sworn statement of the worker's gross annual income for the preceding year along with such other
17 information as the director considers necessary to determine whether the worker regularly performs
18 work at a gainful and suitable occupation.

19 (5) Each insurer shall reexamine periodically each permanent total disability claim for which the
20 insurer has current payment responsibility to determine whether the worker has materially im-
21 proved, either medically or vocationally, and is no longer permanently incapacitated from regularly
22 performing work at a gainful and suitable occupation. Reexamination must be conducted every two
23 years or at such other more frequent interval as the director may prescribe. Reexamination must
24 include such medical examinations, vocational evaluations, reports and other records as the insurer
25 considers necessary or the director may require.

26 (6)(a) If a worker receiving permanent total disability benefits is found to be materially improved
27 and capable of regularly performing work at a gainful and suitable occupation, the insurer or self-
28 insured employer shall issue a notice of closure pursuant to ORS 656.268. Permanent total disability
29 benefits shall be paid through the date of the notice of closure. Notwithstanding ORS 656.268 (5),
30 if a worker objects to a notice of closure issued under this subsection, the worker shall request a
31 hearing. If the worker requests a hearing on the notice of closure before the Hearings Division of
32 the Workers' Compensation Board within 30 days of the date of the notice of closure, the insurer
33 or self-insured employer shall continue payment of permanent total disability benefits until an order
34 of the Hearings Division or a subsequent order affirms the notice of closure or until another order
35 that terminates the worker's benefits becomes final. If the worker requests a hearing on the notice
36 of closure more than 30 days from the date of the notice of closure but before the 60-day period for
37 requesting a hearing expires, the insurer or self-insured employer shall resume paying permanent
38 total disability benefits from the date the hearing is requested and shall continue payment of bene-
39 fits until an order of the Hearings Division or a subsequent order affirms the notice of closure or
40 until another order that terminates the worker's benefits becomes final. If the notice of closure is
41 upheld by the Hearings Division, the insurer or self-insured employer must be reimbursed from the
42 Workers' Benefit Fund for the amount of permanent total disability benefits paid after the date of
43 the notice of closure issued under this subsection.

44 (b) An insurer or self-insured employer must establish that the condition of a worker who is
45 receiving permanent total disability benefits has materially improved by a preponderance of the ev-

1 idence presented at hearing.

2 (c) Medical examinations or vocational evaluations used to support the issuance of a notice of
3 closure under this subsection must include at least one report in which the author personally ob-
4 served the worker.

5 (d) Notwithstanding section 54 (3), chapter 2, Oregon Laws 1990, the Hearings Division of the
6 Workers' Compensation Board may request the director to order a medical arbiter examination of
7 an injured worker who has requested a hearing under this subsection.

8 (7) A worker who has had permanent total disability benefits terminated under this section by
9 an order that has become final is eligible for vocational assistance pursuant to ORS 656.340.
10 Notwithstanding ORS 656.268 (10), if a worker has enrolled in and is actively engaged in a training
11 program, when vocational assistance provided under this section ends or the worker ceases to be
12 enrolled and actively engaged in the training program, the insurer or the self-insured employer shall
13 determine the extent of disability pursuant to ORS 656.214.

14 (8) A worker receiving permanent total disability benefits is required, if requested by the di-
15 rector, the insurer or the self-insured employer, to submit to a vocational evaluation at a time rea-
16 sonably convenient to the worker as may be provided by the rules of the director. No more than
17 three evaluations may be requested except after notification to and authorization by the director.
18 If the worker refuses to submit to or obstructs a vocational evaluation, the rights of the worker to
19 compensation must be suspended with the consent of the director until the evaluation has taken
20 place, and no compensation is payable for the period during which the worker refused to submit to
21 or obstructed the evaluation. The insurer or self-insured employer shall pay the costs of the evalu-
22 ation and related services that are reasonably necessary to allow the worker to attend the evalu-
23 ation requested under this subsection. As used in this subsection, "related services" includes, but
24 is not limited to, wages, child care, travel, meals and lodging.

25 (9) Notwithstanding any other provisions of this chapter, if a worker receiving permanent total
26 disability incurs a new compensable injury, the worker's entitlement to compensation for the new
27 injury shall be limited to medical benefits pursuant to ORS 656.245 and permanent partial disability
28 benefits for impairment, as determined in the manner set forth in ORS 656.214 (2).

29 (10) When a worker eligible for benefits under this section returns to work, if the combined total
30 of the worker's post-injury wages plus permanent total disability benefit exceeds the worker's wage
31 at the time of injury, the worker's permanent total disability benefit must be reduced by the amount
32 the worker's wages plus statutory permanent total disability benefit exceeds the worker's wage at
33 injury.

34 (11) For purposes of this section:

35 (a) A gainful occupation for workers with a date of injury prior to January 1, 2006, who were:

36 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides
37 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three
38 that are applicable to Oregon residents and that are published annually in the Federal Register by
39 the United States Department of Health and Human Services or 66-2/3 percent of the worker's av-
40 erage weekly wages from all employment for the 52 weeks prior to the date of injury.

41 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-
42 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly
43 wages that are the lesser of the most recent federal poverty guidelines for a family of three that
44 are applicable to Oregon residents and that are published annually in the Federal Register by the
45 United States Department of Health and Human Services or 66-2/3 percent of the worker's average

1 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of
2 actual employment, excluding any extended periods of unemployment.

3 (C) Employed for less than four weeks prior to the date of injury with no other employment
4 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that
5 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable
6 to Oregon residents and that are published annually in the Federal Register by the United States
7 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended
8 by the parties at the time of initial hire.

9 (b) A gainful occupation for workers with a date of injury on or after January 1, 2006, who were:

10 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides
11 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three
12 that are applicable to Oregon residents and that are published annually in the Federal Register by
13 the United States Department of Health and Human Services or 66-2/3 percent of the worker's av-
14 erage weekly wages from all employment for the 52 weeks prior to the date of injury adjusted by
15 the percentage of change in the applicable federal poverty guidelines for a family of three from the
16 date of injury to the date of evaluation of the extent of the worker's disability.

17 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-
18 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly
19 wages that are the lesser of the most recent federal poverty guidelines for a family of three that
20 are applicable to Oregon residents and that are published annually in the Federal Register by the
21 United States Department of Health and Human Services or 66-2/3 percent of the worker's average
22 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of
23 actual employment, excluding any extended periods of unemployment and as adjusted by the per-
24 centage of change in the applicable federal poverty guidelines for a family of three from the date
25 of injury to the date of evaluation of the extent of the worker's disability.

26 (C) Employed for less than four weeks prior to the date of injury with no other employment
27 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that
28 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable
29 to Oregon residents and that are published annually in the Federal Register by the United States
30 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended
31 by the parties at the time of initial hire adjusted by the percentage of change in the applicable
32 federal poverty guidelines for a family of three from the date of injury to the date of evaluation of
33 the extent of the worker's disability.

34 **SECTION 5. The amendments to ORS 656.206 by section 4 of this 2026 Act apply to claims**
35 **with a date of injury on or after January 1, 2027.**

36