

LC 677

SUBJECT: Terminates an injured worker's right to reemployment or reinstatement if the worker has accepted compensation for vocational assistance benefits in a settlement agreement.

SPONSOR: Department of Administrative Services

Existing Law:

- Terminates an injured worker's right to reinstatement or reemployment (the right to return to an available and suitable position with the worker's employer) if the worker is eligible for and participates in a vocational assistance program.

This bill:

- Creates an additional basis to terminate an injured worker's right to reinstatement or reemployment: if the worker has accepted compensation for vocational assistance benefits in a settlement agreement in lieu of participating in vocational assistance.

Analysis:

1. Current employment law allows a "worker who has sustained a compensable injury" to demand reinstatement or reemployment with their employer and provides that the worker's right to reinstatement or reemployment terminates upon the occurrence of certain events. One such event occurs when the worker is eligible for and participates in a vocational assistance program.
2. The bill creates another event that terminates an injured worker's right to reinstatement or reemployment: when the worker has accepted compensation for vocational assistance benefits in a settlement agreement in lieu of participating in vocational assistance. Settlements in workers' compensation claims often include provisions relating to vocational assistance.
3. For employers or insurers acting on behalf of the employer, the primary impact is that an employer will not be required to reinstate or reemploy an injured worker if the worker receives compensation for vocational benefits in a settlement agreement. Consequently, an employer may save on various administrative costs associated with reinstatement and reemployment placement.
4. Workers will have no right to reinstatement or reemployment if the worker accepts compensation for vocational assistance benefits in a settlement agreement. Injured workers may, as a result, lose wages that could have been earned if reinstated or reemployed.
5. There may be increased litigation related to the terms and scope of settlement agreements, to determine whether the worker has "accepted compensation for vocational assistance benefits" and, consequently, whether the worker's right to reinstatement or reemployment has been terminated.

Questions and/or suggested amendments:

1. We understand the intent of the bill is to apply only to state employees. However, as drafted the bill applies to all employers. The bill requestor may need an amendment to clarify applicability.
2. What constitutes “compensation”? “Compensation” is not defined in ORS Chapter 659A.
3. What constitutes a “vocational assistance benefit”? “Vocational assistance” is not defined in ORS Chapter 659A.
4. There does not appear to be any requirement to notify a worker that they will lose reinstatement and reemployment rights if they settle their vocational assistance benefits. This type of notice is not currently contemplated in the workers’ compensation law.

Fiscal Impact to DCBS: There is no impact on the regulatory activities at DCBS. The agency is impacted in the same manner as other employers. (*See Other Economic Impact*).

Other Economic Impact: Employers may save on various administrative costs associated with reinstatement and reemployment placement. Furthermore, because the worker would have no right to demand reemployment, the employer may save on potential costs associated with reemployment retraining programs. Injured workers may lose wages that could have been earned if reinstated or reemployed or may lose the benefit of reemployment retraining programs. Both employers and workers may experience increased litigation costs to resolve disputes related to the terms and scope of settlement agreements, to determine whether the worker has “accepted compensation for vocational assistance benefits” and, therefore, whether the worker’s right to reinstatement or reemployment has been terminated.

Support: Department of Administrative Services

Opposition: Unknown.

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