

SB 291

SUBJECT: Modifies circumstances that provide a right to reinstatement or reemployment to an injured worker employed by a legislative, judicial, executive, or administrative department of the State of Oregon.

SPONSOR: Department of Administrative Services

Existing Law:

- Provides an injured worker who is employed by a legislative, judicial, executive, or administrative department of the State of Oregon the right to demand reinstatement or reemployment at any time after a work injury.
- If an injured worker exercises a right to reinstatement, requires the department to return the worker to the position held at the time of injury if the position is available and suitable.
- If the position held at the time of injury is not available or suitable, and the worker has exercised a right to reinstatement or reemployment, requires the department to employ the worker in another position, in any agency in the department, provided that the position is available and suitable.

This bill:

- Creates an additional condition for provision of a right to reinstatement or reemployment: a worker must be determined to be medically stationary before the worker may demand reinstatement or reemployment.
- Declares an emergency, effective on passage.

Analysis:

1. Under Bureau of Labor and Industries law, an injured worker employed by most State of Oregon agencies has the right to demand reinstatement or reemployment at any time after the work injury.
2. The bill states that a worker has no right to demand reinstatement or reemployment until the worker is determined to be medically stationary. "Medically stationary" under the Oregon workers' compensation law means that no further material improvement would reasonably be expected from medical treatment or the passage of time.
3. For subject departments, one impact is that a department cannot be required to examine opportunities for placement of the worker until the worker is medically stationary. Delaying placement until the worker is medically stationary may assist some agencies because the worker's permanent work restrictions may not be fully understood until the worker is medically stationary. However, agencies may still place the worker in a modified job that is not permanent.
4. Workers would have no right to demand reinstatement or reemployment until the worker is declared to be medically stationary. As a result, unless a department voluntarily places the worker in modified or full employment, the worker won't return to work until the worker is

declared to be medically stationary, even if the worker is capable of returning to modified or full employment. Injured workers may, consequently, lose wages that could have been earned if reinstated or reemployed at an earlier time. This is because wage replacement benefits under workers' compensation law are limited to 66-2/3 percent of wages (subject to an upper limit of 133 percent of the average weekly wage).

5. Based on conversations with the Department of Administrative Services, it is the department's understanding that there will be amendments to the bill.

Questions and/or suggested amendments:

1. Does the term "injured worker" include workers injured *outside* of the course and scope of employment? ORS 659A.043 and 659A.046, by contrast, limit reinstatement and reemployment rights to a "worker who has sustained a compensable injury". "Compensable injury" is not defined in Chapter 659A, but appears to implicitly reference the use of that term in Chapter 656. In Chapter 656, a "compensable injury" is an accidental injury that occurs *within* the course and scope of employment.
2. Does the term "was employed" include workers terminated after the occurrence of the injury and for reasons unrelated to the injury? For example, can a worker demand reinstatement even if the worker was terminated after the injury for disciplinary reasons?
3. Who determines whether the worker is medically stationary? The bill states the provision applies to an injured worker who "has been determined to be medically stationary", but neither the bill nor the definition of "medically stationary" in ORS 656.005 specifies who makes that determination. The Department of Administrative Services may wish to clarify this by administrative rule. For example, the workers' compensation administrative rules (OAR 436-030-0035) state that the determination must be provided by the attending physician, authorized nurse practitioner, or a preponderance of medical opinion.

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

Other Economic Impact: Resources of subject departments may be conserved because a department will not be required to examine opportunities for placement of the injured worker until the worker is medically stationary. Conversely, some agencies may have increased temporary disability (wage replacement) benefit costs if fewer injured workers are returned to modified or full employment. Injured workers may lose wages that could have been earned if reinstated or reemployed because of wage replacement limits under the workers' compensation law.

Support: Department of Administrative Services

Opposition: Unknown.