

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: AMENDMENTS TO ORS 656.268(5) AND 656.218

Submitted by: Workers' Compensation Section Executive Committee

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1. Does this amend current law or program?

- a. Yes** This provides notice to potential beneficiaries and increases the time to seek reconsideration of the closure. *See, SAIF v. Wild, 237 Or App 454 (2010).*
- b. No**

2. PROBLEM PRESENTED (including level of severity):

The above cited case brought to the section's attention a significant deficiency in the notice/procedural requirements for claim closures, including permanent disability determinations. Because ORS 656.268(5)(a) does not require insurers or self-insured employers to mail copies of the closure notice to any statutory beneficiaries of the deceased worker, beneficiaries generally do not become aware of their right to appeal the closure notice unless they are informed of that right through either the representative of the deceased worker's estate or the worker's former attorney. In any case, regardless of whether they become aware of their right to appeal the closure notice, any appeal of the notice must still be filed within 60 days of the date of the closure notice. The appeal period does not allow sufficient time for beneficiaries who did not receive copies of the closure notice to become aware of their rights and to act on them. While this circumstance does not occur often, this deficiency can be severely prejudicial to the rights of those affected.

3. SOLUTION:

The section's Access to Justice subcommittee has drafted language to amend the current statutes. Those amendments are as stated under Part II Legislative Language. In sum, the amendments to ORS 656.268(5) provide that, if the worker is deceased at the time of the closure notice, the insurer or self-insured employer may mail copies of the closure notice to any known/potential beneficiaries. The amendments also establish two tiers of appeal rights: (1) those beneficiaries who were mailed copies of the closure notice have 60 days in which to appeal the notice; and (2) those beneficiaries who were not mailed copies of the closure notice have one year in which to appeal the notice. The amendments to ORS 656.218 provide that statutory beneficiaries have the right to request reconsideration of closure notices or to pursue reconsideration that was requested by the worker prior to his/her death.

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Part II – Legislative Language

Please provide your legislative language below:

The section's Access to Justice subcommittee has drafted language to amend the current statutes. Those amendments are as follows:

ORS 656.268

(5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's disability in closure of the claim shall be pursuant to the standards prescribed by the director. The insurer or self-insured employer shall issue a notice of closure of such a claim to the worker, to the worker's attorney if the worker is represented, and to the director. If the worker is deceased at the time of the notice of closure, then the employer or self-insured employer shall mail the worker's copy of the notice of closure, addressed to the estate of the worker, to the worker's last known address, and shall mail a copy to the worker's attorney, if the worker was represented at the time of the worker's death. The insurer or self-insured employer also may mail copies of the notice of closure to any known or potential beneficiaries of the deceased worker. The notice must inform:

(A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissatisfied with the terms of the notice;

(B) The worker of the amount of any further compensation, including permanent disability compensation to be awarded; of the duration of temporary total or temporary partial disability compensation; of the right of the worker or those beneficiaries of the worker who were mailed copies of the notice of closure under paragraph (a) of this subsection to request reconsideration by the director under this section within 60 days of the date of the notice of claim closure; of the right of those beneficiaries who were not mailed copies of the notice of closure under paragraph (a) of this subsection to request reconsideration by the director under this section within one year of the date the insurer or self-insured employer mails a copy of the notice of closure, addressed to the estate of the worker, to the worker's last known address; of the right of the insurer or self-insured employer to request reconsideration by the director under this section within seven days of the date of the notice of claim closure; of the aggravation rights; and of such other information as the director may require; and

(C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204 and 656.208.

(b) If the insurer or self-insured employer has not issued a notice of closure, the worker may request closure. Within 10 days of receipt of a written request from the worker, the insurer or self-insured employer shall issue a notice of closure if the requirements of this section have been met or a notice of refusal to close if the requirements of this section have not been met. A notice of refusal to close shall advise the worker of the decision not to close; of the right of the worker to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to close the claim; of the right to be represented by an attorney; and of such other information as the director may require.

(c) If a worker, insurer, or self-insured employer objects to the notice of closure, the objecting party first must request reconsideration by the director under this section. A worker's request for reconsideration must be made within 60 days of the date of the notice of closure. If the worker is deceased at the time of the notice of closure, a request for reconsideration by the worker's beneficiary who was mailed a copy of the notice of closure under paragraph (a) of this subsection must be made within 60 days of the date of the notice of closure. A request for reconsideration by or on behalf of a deceased worker's beneficiary who was not mailed a copy of the notice of closure under paragraph (a) of this subsection must be made within one year of the date the insurer or self-insured employer mails a copy of the notice of closure, addressed to the estate of the worker, to the worker's last known address. A request for reconsideration by an insurer or self-insured employer may be based only on disagreement with the findings used to rate impairment and must be made within seven days of the date of the notice of closure.

ORS 656.218

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

(2) If the worker's death occurs prior to issuance of a notice of closure under ORS 656.268, the insurer or self-insured employer shall determine compensation for permanent partial disability, if any.

(3) If the worker has filed a request for hearing pursuant to ORS 656.283 or a request for reconsideration pursuant to ORS 656.268 and death occurs prior to the final disposition of the request, the persons described in subsection (5) of this section shall be entitled to pursue the matter to final determination of all issues presented by the request for hearing or request for reconsideration.

(4) If the worker dies before filing a request for hearing or a request for reconsideration, the persons described in subsection (5) of this section shall be entitled to file a request for hearing or a request for reconsideration and pursue the matter to final determination as to all issues presented by the request for hearing or request for reconsideration.

(5) The payments provided in this section shall be made to the persons who would have been entitled to receive death benefits if the injury causing the disability had been fatal. In the absence of persons so entitled, the unpaid balance of the award shall be paid to the worker's estate.

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

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RE: PROPOSED CHANGE TO ORS 656.268(6)(a)(A) TO REQUIRE PAYMENT OF INTERPRETER SERVICES BY INSURER OR SELF-INSURED EMPLOYER DURING RECONSIDERATION PROCEEDINGS

Submitted by: Workers' Compensation Section Executive Committee

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1. Does this amend current law or program?

- a. Yes** We are proposing an amendment to ORS 656.268(6)(a)(A)
b. No

2. PROBLEM PRESENTED (including level of severity):

Currently ORS 656.268(6)(a)(A) allows an injured worker to submit a deposition to the reconsideration record to provide information related to the worker's condition at the time of claim closure. The statute expressly requires the insurer or self-insured employer to pay the fee of the court reporters and costs for the original transcript and its copies.

The use of an interpreter is necessary during a deposition under ORS 656.268(6)(a)(A) when the case involves a non-English speaking claimant. However, some insurers and self-insured employers have refused payment of interpreter services since the current language of the statute does not expressly impose payment obligation of interpreter services on the employer.

3. SOLUTION:

The section's Access to Justice subcommittee has proposed the language of ORS 656.268(6)(a)(A) be amended to expressly require payment of deposition interpreter services by the insurer or self-insured employer. The committee agrees with its proposal.

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Part II – Legislative Language

Please provide your legislative language below:

It is our propose that ORS 656.268(6)(a)(A) be amended as follows:

A deposition arranged by the worker, limited to the testimony and cross-examination of the worker about the worker's condition at the time of claim closure, shall become part of the reconsideration record. The deposition must be conducted subject to the opportunity for cross-examination by the insurer or self-insured employer and in accordance with rules adopted by the director. The cost of the court reporter, **interpreter services, if necessary**, and one original of the transcript of the deposition for the Department of Consumer and Business Services and one copy of the transcript of the deposition for each party shall be paid by the insurer or self-insured employer. The reconsideration proceeding may not be postponed to receive a deposition taken under this subparagraph. A deposition taken in accordance with this subparagraph may be received as evidence at a hearing even if the deposition is not prepared in time for use in the reconsideration proceeding.