

Date prepared: January 24, 2022

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## LC 56

### Brief summary

Proposes changes to temporary disability compensation, permanent disability compensation, and litigation timeframe by:

- Extending the timeframe for retroactively authorizing temporary disability compensation
- Requiring the insurer or self-insured employer to notify the worker in writing before suspending temporary disability
- Limiting the timeframe for retroactively declaring a worker medically stationary
- Limiting overpayment recovery from permanent disability benefits
- Removing the two year limitation for filing a dispute on failure to process a claim or allegations that the claim was processed incorrectly.

### Analysis

#### What the law currently does

##### Retroactive temporary disability authorization

When a worker files a workers' compensation claim they may be entitled to partial wage replacement benefits if an authorized provider finds the worker is unable to perform their regular job duties. Wage replacement benefits are also called temporary disability or "time loss."

Under current law, an attending physician or nurse practitioner cannot retroactively authorize temporary disability for more than 14 days before the date the authorization is issued.

##### Suspending temporary disability

There are numerous ways temporary disability compensation may be suspended by an insurer<sup>1</sup>. In some circumstances, the insurer is required to provide a notification regarding suspension (or a notification prior to suspension), but there are times no notification is required.

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<sup>1</sup> For purposes of this analysis, "insurer" includes a self-insured employer.

### Medically stationary status

Current law lists the events that can trigger claim closure. One situation is when the attending physician determines that the worker has become medically stationary. The attending physician may determine the worker medically stationary on a current date or at a date in the past. There is no limit on how far back the medically stationary date can be set.

### Overpayment recovery

An insurer may offset any compensation payable to the worker to recover an overpayment from a claim with the same insurer. When overpayments are recovered from temporary disability or permanent total disability benefits, the amount recovered from each payment cannot exceed 25 percent of the payment, without prior authorization from the worker. The insurer can also recover overpayments from permanent partial disability awards, but there is no limit on how much can be recovered from that type of compensation.

### Litigation timeframe

A worker can request a hearing regarding failure to process a claim or incorrect processing if the request is filed within two years of the alleged action or inaction.

## **What will change if the bill is enacted**

### Retroactive temporary disability authorization

The concept extends the timeframe for retroactive authorization and ties it to a new requirement that the insurer provide written notice to the worker before suspending benefits. The insurer must provide this notice within five business days of receipt of information that temporary disability will end.

The concept also allows the worker's attending physician or nurse practitioner to retroactively authorize temporary disability no more than 60 days prior to the required suspension notice. The concept does not provide a timeframe for retroactive authorization when a suspension notice has not been sent.

### Medically stationary status

Physicians would still be able to backdate the medically stationary date, but would be limited to no more than 60 days before the worker or the worker's attorney is notified that the worker has become medically stationary.

### Overpayment recovery

The concept sets a limit on reductions of the worker's permanent disability compensation when recovering an overpayment, making an offset, or crediting wage loss. The concept sets a maximum recovery from the permanent disability compensation of 50 percent of the worker's total award. This limitation would not apply when a credit/offset is sought for a fraudulent claim. The insurer could still recover from temporary disability and permanent total disability. The 25 percent limit for recovery from those benefits is not changed.

### Litigation timeframe

The bill removes the law that states how long a worker has to request a hearing on failure to process and incorrect processing issues. A worker would still be able to request a hearing on these issues (under ORS 656.283) but there would be no time limit for requesting that hearing.

The concept would take effect on January 1, 2023, and the proposed changes will only apply to claims with dates of injury on or after the effective date under ORS 656.202. None of the changes would apply to any claim that is already in progress.

## **Likely impacts, results, or consequences if the bill is enacted**

- Workers may receive increased temporary disability benefits due to the extended retroactive temporary disability authorization period.
- Workers will receive written notice when their benefits are going to be suspended in all situations.
- Temporary disability paid after the medically stationary date is considered an overpayment, so the 60 day limit for backdating the medically stationary date could reduce the amount of those overpayments.
- The recovery limit on permanent partial disability could result in higher claim costs if the insurer is unable to recover an overpayment fully from other benefits.
- There could be a potential increase in litigation due to the removal of the time limit for failure to process disputes.
- The bill could require increased administrative management of the claim for insurers and potentially subject insurers to additional penalties and penalty related attorney fees.

## **Questions/relevant information for the bill sponsor or primary proponent**

### Suspension notices

1. What scenarios is the suspension notification intended to apply to? In some circumstances, current law already requires a notification to the worker. Is the new notification intended to override or be in addition to the existing requirements?
2. What does “suspending” temporary disability include? For example, if the worker is released to regular work, which currently ends their eligibility for temporary disability payments, would that trigger a suspension notice?

### Retroactive temporary disability authorization

3. The 60 day limit for retroactive temporary disability authorization is tied to the date a suspension notice is issued. Is there no limit on retroactive authorization of temporary disability if the insurer has *not* sent a suspension notice? If a suspension notice is issued, does the 60 days start from the mailing date, or 60 days from the worker’s receipt of the suspension notice?

4. The concept states that ORS 656.262(4)(g) will not apply during periods in which compensability is in dispute. If the proposed change is enacted, during a compensability dispute there would be no timeframe for retroactive authorization of temporary disability and there would be no provision for ending temporary disability when authorization from a physician has ceased.

It is also unclear what constitutes a “compensability” dispute. The term could imply a wide variety of disputes, such as whether the injury was work related, to what extent a preexisting condition is causing disability, or whether a medical service is inappropriate. Some of these disputes may not relate directly to temporary disability authorization.

#### Medically stationary date

5. What happens if an attending physician, medical arbiter, or independent medical examiner *does* back date the medically stationary date more than 60 days? For example, more than 60 days can elapse between an independent medical exam and when the workers’ attending physician concurs with the contents of the exam (including the medically stationary date). Would this prevent closing the claim?
6. Currently, 656.268 (1) lists the situations that prompt an insurer to close a claim. The insurer does not need to meet all of the criteria listed, just meeting one of the situations can trigger closure of the claim. The concept removes the “or” from the current list of triggers, and this may unintentionally imply that all of the criteria must be met to close the claim. It is unclear if this is the outcome intended.

#### Overpayments

7. Using the term “permanent disability” is confusing because permanent disability can include both permanent total disability and permanent partial disability. Permanent total disability is an ongoing monthly benefit payment and overpayment recovery is limited to 25 percent of each payment under ORS 656.268 (14)(a). Using the term “permanent disability” could result in PTD being subject to two statutes with different offset limits (50 percent under this concept, 25 percent under existing law).
8. Is the 50 percent recovery limit intended to be based on the amount of permanent partial disability after any litigation is final? The current bill language does not specify.

## **Legislative history**

### **Has this bill been introduced in a prior session?**

No     Yes    Years 2021    Bill numbers SB 489 contained similar provisions

### **Does this bill amend current state or federal law or programs?**

No     Yes    Specify ORS 656.262, 656.268, 656.319

## Is this bill related to a legal decision?

No    Yes   Case citation, AG opinion, date, etc.

## Should another DCBS division review this measure?

No    Yes   Divisions Workers' Compensation Board

## Other impacts

### Does this bill have a fiscal impact to DCBS?

No    Yes    Unknown   Explain

There could be an increase in the number of penalties and disputes related to claims processing that come before the director and the Workers' Compensation Board. For example, if an insurer didn't send a notice before suspending temporary disability, the worker could initiate a dispute regarding their entitlement to temporary disability. Additionally, the insurer could potentially be subject to a penalty for unreasonable delay or refusal to pay compensation.

The Workers' Compensation Division will also likely need to do rulemaking to implement provisions of the bill.

### Does this bill have an economic impact to stakeholders?

No    Yes    Unknown   Explain

The bill could increase the amount insurers pay for temporary disability benefits, and reduce the amount they are able to recover on overpaid claims. Insurers could also be subject to more penalties and attorney fees for disputes related to failure to process or incorrect processing, since there would no longer be a two year time limit to file those disputes. Additionally, since some of the proposed requirements relate to temporary disability, insurers could potentially be subject to a penalty for unreasonable delay or refusal to pay compensation.

## Sponsors

Rep. Grayber

## Possible interested stakeholders

Workers, insurers, self-insured employers, attorneys, labor organizations

## Public policy topics

Agency operations    Other lines of insurance

- Building codes
- Financial institutions and lending
- Health insurance
- Involvement with other agencies
- Licensure
- Manufactured structures
- MLAC legislative review
- New program
- Nondepository programs

- Prescription drugs
- Property and casualty insurance
- Public records/public meetings law
- Rulemaking
- Securities
- Task force/reports
- Worker safety
- Workers' compensation system
- Other