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971-286-0308

SB 991

Brief summary

Removes two circumstances where a worker may refuse a modified job offer without ending temporary total disability benefits.

Analysis

What the law currently does

When a worker files a workers' compensation claim they may be entitled to wage replacement benefits (called temporary disability) if an authorized medical provider finds the worker is unable to perform their regular job duties. Workers are paid temporary total disability (TTD) if they are unable to work due to their injury. If the employer offers the worker temporary modified work (e.g., "light duty"), and the worker is able to perform those duties, the worker may be paid a partial benefit, temporary partial disability (TPD).

ORS 656.268(4) states that TTD continues until certain events occur. Under (4)(c), one of these events is when the worker's medical provider notifies the worker that they are released to modified work, modified work is offered in writing, and the worker fails to begin the modified work. If this event occurs, the insurer may stop paying TTD and instead pay TPD. However, the law lists circumstances where the worker can refuse the offer of modified work without ending TTD. If any of the following circumstances apply, the worker may refuse the modified work without ending TTD.

The modified work offer:

- Requires a commute that is beyond the physical capacity of the worker according to the worker's attending physician or the nurse practitioner who may authorize temporary disability under ORS 656.245;
- Is at a work site more than 50 miles one way from where the worker was injured unless:

- The site is less than 50 miles from the worker's residence, or
- The intent of the parties at the time of hire or as established by the pattern of employment prior to the injury was that the employer had multiple or mobile work sites and the worker could be assigned to any such site;
- Is not with the employer at injury;
- Is not at a work site of the employer at injury;
- Is not consistent with the existing written shift change policy or is not consistent with common practice of the employer at injury or aggravation; or
- Is not consistent with an existing shift change provision of an applicable collective bargaining agreement.

What will change if the bill is enacted

The bill removes two circumstances where a worker can refuse modified work without ending TTD. The bill amends ORS 656.268(4)(c) to remove the following circumstances:

- The modified work offer is not with the employer at injury.
- The modified work offer is not at a work site of the employer at injury.

A worker may still refuse an offer if it is not with the employer at injury, or not at a work site of the employer at injury. However, the insurer will be able to stop paying the worker TTD and instead pay TPD.

The bill would take effect on January 1, 2026.

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

- Claims costs for insurers, self-insured employers and service companies may decrease since there will be fewer circumstances where the law will require paying TTD.
- Workers will have fewer circumstances where they can refuse modified work without ending TTD.

Questions/relevant information for the bill sponsor or primary proponent

If a worker is injured while performing a modified job with a non-profit organization that is not with the employer at injury, or not at the work site of the employer at injury, the non-profit may not be covered by the exclusive remedy provisions of workers' compensation law. However, the non-profit's liability will likely depend on the circumstances. For example, the non-profit could be paying the worker wages, or the employer at injury could be paying the worker to volunteer.

If there isn't an employment relationship between the worker and the non-profit, the worker may be able to bring a civil suit against the non-profit for the new injury they incurred. As a result, the employer at injury and any non-profit entities may need to consider how any joint modified work arrangement fits within workers' compensation exclusive remedy provisions before proceeding with the modified work.

Legislative history

Has this bill been introduced in a prior session?

☐ No ☒ Yes Year: 2024 Bill number: SB 1584

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

☐ No ☒ Yes Specify

ORS 656.268(4)(c) and (e)

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

Workers' Compensation Board.

Other impacts

Does this bill have a fiscal impact to DCBS?

☐ No ☒ Yes ☐ Unknown

If Yes or Maybe, which section(s) of the bill trigger the fiscal impact?

The amendments in section 1 to ORS 656.268(4)(c)(C) and (D) trigger a fiscal impact. The division would need to complete rulemaking to update a related administrative rule, OAR 436-060-0030. Additionally, a division publication would need to be updated. However, these activities would have minimal fiscal impact, as they could be completed with existing staff resources.

Does this bill have an economic impact to stakeholders?

☐ No ☒ Yes ☐ Unknown Explain

Insurers, self-insured employers and service companies may have reduced claims costs, since there will be fewer circumstances where the insurer will be required to continue TTD.

Workers may receive less temporary disability compensation if they refuse modified employment when the offer is not with the employer at injury, or not at the work site of the employer at injury.

Sponsors

Senator Linthicum, Senator Anderson, Senator Nash, Senator Robinson, Senator Thatcher, Senator Weber, Representative Wright

Possible interested stakeholders

Workers, insurers, self-insured employers, service companies, employers, attorneys

Public policy topics

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| <input type="checkbox"/> Agency operations | <input type="checkbox"/> Other lines of insurance |
| <input type="checkbox"/> Building codes | <input type="checkbox"/> Prescription drugs |
| <input type="checkbox"/> Financial institutions and lending | <input type="checkbox"/> Property and casualty insurance |
| <input type="checkbox"/> Health insurance | <input type="checkbox"/> Public records/public meetings law |
| <input type="checkbox"/> Involvement with other agencies | <input type="checkbox"/> Rulemaking |
| <input type="checkbox"/> Licensure | <input type="checkbox"/> Securities |
| <input type="checkbox"/> Manufactured structures | <input type="checkbox"/> Task force/reports |
| <input checked="" type="checkbox"/> MLAC legislative review | <input type="checkbox"/> Worker safety |
| <input type="checkbox"/> New program | <input checked="" type="checkbox"/> Workers' compensation system |
| <input type="checkbox"/> Nondepository programs | <input type="checkbox"/> Other |