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971-286-0308

SB 991 – 1 amendment

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.

Under the -1 amendment, the bill would also impose requirements for modified employment performed not at a work site of the employer at injury. Those requirements include:

- The worker remains an employee of the employer pursuant to a written agreement.
- The employer provides coverage for the worker while working at the work site.
- Benefits, including but not limited to sick leave, vacation leave, retirement benefits and health insurance accrue as they would if the modified work was at a work site of the employer.
- The worker remains subject to the employer's human resource and attendance policies.

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

- 1) 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.

The amendment clarifies that the worker would remain an employee of the employer. However, it does not clarify whether the non-profit would be considered an employer. Exclusive remedy applies to employers, so if the non-profit does not fit the definition of employer under ORS 656.005, they could be exposed to lawsuits or third party recovery claims for an injury that occurred during the modified work at the non-profit.

A non-profit's status as an employer of the injured worker would depend on the circumstances of the arrangement between the employer at injury and the non-profit. For example, if the non-profit was paying the worker's wages, that may be sufficient to consider them an employer and covered by exclusive remedy.

- 2) The amendment indicates that the worker's benefits (such as sick leave, vacation, and health insurance) would accrue normally if the worker performs modified work at a work site that is not at a work site of the employer at injury. However, in regards to the wages from this modified work, it is unclear what entity would be paying the worker (the employer at injury or the non-profit organization).
- 3) The amendment specifies new requirements for employers offering modified employment not at a work site of the employer at injury "for the purposes of this section." This wording would mean these new requirements would apply to all instances of the term "modified employment" within ORS 656.268. It appears that these requirements are intended to apply when an employer at injury is offering a modified job that would be performed at a worksite not at the employer at injury. However, the term "modified employment" is used for different scenarios within ORS 656.268 that do not necessarily involve a modified job offer from the employer at injury. These new requirements may not be appropriate for the other uses of "modified employment" within ORS 656.268. For example:
 - ORS 656.268(4)(a) generally provides TTD may end until the worker returns to regular or modified employment. However, in some cases, the worker might return to modified employment at a new job they obtained on their own, rather

than going back to modified work through a job offered by their employer at injury. The new language in the amendment would imply the worker's new job could not be considered modified employment.

- ORS 656.268(10) requires claim closure after vocational assistance has ended, if the worker's attending physician has released the worker to return to regular or modified employment. The new language in the amendment would impose requirements on this modified employment the worker is released to. However, this part of ORS 656.268 is regarding release to modified employment, not necessarily a scenario where modified employment is being offered to the worker.

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

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) 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 |