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SUMMARY

Prescribes method for calculating weekly wage for workers in order to determine benefits payable for temporary total disability under workers' compensation law.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to methods for calculating a worker's weekly wage for the purpose
3 of paying benefits for temporary total disability; creating new provisions;
4 amending ORS 656.210; and declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 656.210 is amended to read:

7 656.210. (1) [*When the*] **If a** total disability is only temporary, [*the*] **a**
8 worker [*shall*] **must** receive during the period of that total disability com-
9 pensation equal to 66-2/3 percent of wages, but not more than 133 percent
10 of the average weekly wage nor less than the amount of 90 percent of wages
11 a week or the amount of \$50 a week, whichever amount is less. Notwith-
12 standing the limitation imposed by this subsection, an injured worker who
13 is not otherwise eligible to receive an increase in benefits for the fiscal year
14 in which compensation is paid [*shall*] **must** have the benefits increased each
15 fiscal year by the percentage [*which*] **that** the applicable average weekly
16 wage has increased since the previous fiscal year.

17 (2)(a) For the purpose of this section, the weekly wage of workers
18 [*shall*] **who are regularly employed in one job at the time of injury**
19 **must** be ascertained by:

20 [(A) *For workers employed in one job at the time of injury, by multiplying*

1 *the daily wage the worker was receiving by the number of days per week that*
2 *the worker was regularly employed; or]*

3 **(A) Averaging the worker's weekly earnings for the 52 weeks before**
4 **the time of the injury if the worker is paid on other than a daily or**
5 **weekly basis, is employed with no earnings or with unscheduled or ir-**
6 **regular earnings, is employed seasonally, is on call, is paid hourly, is**
7 **paid by piece work or is employed with varying hours, shifts or wages.**

8 **(B) Using the actual weeks of the worker's employment with the**
9 **employer up to 52 weeks before the time of injury, excluding any ex-**
10 **tended gaps, if the worker was employed fewer than 52 weeks or if the**
11 **worker has extended gaps in employment with the employer. The Di-**
12 **rector of the Department of Consumer and Business Services by rule**
13 **may define what constitutes an extended gap in employment.**

14 **(C) Determining the intent of the wage earning agreement, as de-**
15 **termined between the employer and the worker, if the worker was**
16 **employed for fewer than four weeks. For purposes of this subpara-**
17 **graph, a wage earning agreement may be oral or in writing.**

18 **(D) Using the worker's average weekly hours during the 52 weeks**
19 **before the time of the injury, or during a shorter period as provided**
20 **in subparagraph (B) of this paragraph, multiplied by the worker's wage**
21 **at the time of the injury, if the wage earning agreement changed**
22 **during the 52 weeks before the time of injury solely because of an in-**
23 **crease or decrease in the wage.**

24 **(E) Averaging the worker's weekly earnings for the weeks worked**
25 **under the most recent wage earning agreement, calculated by multi-**
26 **plying the worker's average weekly hours by the worker's wage at the**
27 **time of the injury, if the wage earning agreement changed during the**
28 **52 weeks before the time of the injury because of a change in the**
29 **number of the worker's hours, because of a change in job duties or for**
30 **other reasons, with or without an increase or decrease in the wage.**

31 **(F) Determining the intent of the most recent wage earning agree-**

1 **ment, if the worker was employed for fewer than four weeks under a**
2 **wage earning agreement that changed as described in subparagraph**
3 **(D) or (E) of this paragraph.**

4 [(B)] (b) For workers employed in more than one job at the time of injury,
5 **the weekly wage of workers must be ascertained** by adding all earnings
6 the worker was receiving from all subject employment.

7 [(b)] (c) Notwithstanding paragraph [(a)(B)] (b) of this subsection, the
8 weekly wage, **as** calculated under paragraph [(a)(A)] (a) of this subsection
9 **in accordance with the employment conditions that apply to the**
10 **worker, [shall] must** be used for workers employed in more than one job
11 at the time of injury unless the insurer, self-insured employer or assigned
12 claims agent for a noncomplying employer receives:

13 (A) Within 30 days [of receipt of] **after receiving** the initial claim, notice
14 that the worker was employed in more than one job with a subject employer
15 at the time of injury; and

16 (B) Within 60 days [of the date of mailing] **after the mailing date of a**
17 request for verification, verifiable documentation of wages from [such] **the**
18 additional employment.

19 [(c)] (d) Notwithstanding ORS 656.005 (7)(c), an injury to a worker em-
20 ployed in more than one job at the time of injury is not disabling if [no]
21 temporary disability benefits are **not** payable for time lost from the job at
22 injury. Claim costs incurred as a result of supplemental temporary disability
23 benefits paid as provided in subsection (5) of this section may not be included
24 in any data used for ratemaking or individual employer rating or dividend
25 calculations by an insurer, a rating organization licensed pursuant to ORS
26 chapter 737, the State Accident Insurance Fund Corporation or the Depart-
27 ment of Consumer and Business Services if the injured worker is not eligible
28 for permanent disability benefits or temporary disability benefits for time
29 lost from the job at injury.

30 [(d)] (e) For the purpose of this section:

31 (A) The benefits of a worker who incurs an injury [shall] **must** be based

1 on the wage of the worker at the time of injury.

2 (B) The benefits of a worker who incurs an occupational disease [*shall*]
3 **must** be based on the wage of the worker at the time there is medical ver-
4 ification that the worker is unable to work because of the disability caused
5 by the occupational disease. If the worker is not working at the time that
6 there is medical verification that the worker is unable to work because of
7 the disability caused by the occupational disease, the benefits [*shall*] **must**
8 be based on the wage of the worker at the worker's last regular employment.

9 [(e)] (f) As used in this subsection, "regularly employed" means actual
10 employment or availability for such employment. For workers not regularly
11 employed and for workers with no remuneration, **who are hired out of a**
12 **union hall or who are paid in ways not otherwise described in this**
13 **section,** [*or whose remuneration is not based solely upon daily or weekly*
14 *wages,*] the director [*of the Department of Consumer and Business Services,*]
15 by rule[,] may prescribe methods for establishing the worker's weekly wage.

16 (3) [*No*] **A** disability payment is **not** recoverable for temporary total or
17 partial disability suffered during the first three calendar days after the
18 worker leaves work or loses wages as a result of the compensable injury
19 unless the worker is totally disabled after the injury and the total disability
20 continues for a period of 14 consecutive days or unless the worker is admit-
21 ted as an inpatient to a hospital within 14 days of the first onset of total
22 disability. If the worker leaves work or loses wages on the day of the injury
23 due to the injury, that day [*shall be considered*] **is** the first day of the
24 three-day period.

25 (4) [*When*] **If** an injured worker with an accepted disabling compensable
26 injury is required to leave work for a period of four hours or more to receive
27 medical consultation, examination or treatment with regard to the
28 compensable injury, the worker [*shall*] **must** receive temporary disability
29 benefits calculated pursuant to ORS 656.212 for the period during which the
30 worker is absent, until such time as the worker is determined to be medically
31 stationary. However, benefits under this subsection are not payable if wages

1 are paid for the period of absence by the employer.

2 (5)(a) The insurer of the employer at injury, or the self-insured employer
3 at injury, may elect to be responsible for payment of supplemental temporary
4 disability benefits to a worker employed in more than one job at the time
5 of injury. In accordance with rules adopted by the director, if the worker's
6 weekly wage is determined under subsection [(2)(a)(B)] **(2)(b)** of this section,
7 the insurer or self-insured employer [*shall*] **must** be reimbursed from the
8 Workers' Benefit Fund for the amount of temporary disability benefits paid
9 that exceeds the amount payable pursuant to subsection [(2)(a)(A)] **(2)(a)** of
10 this section had the worker been employed in only one job at the time of
11 injury. Such reimbursement [*shall*] **must** include an administrative fee pay-
12 able to the insurer or self-insured employer [*pursuant to*] **under** rules
13 adopted by the director.

14 (b) If the insurer or self-insured employer elects not to pay the supple-
15 mental temporary disability benefits for a worker employed in more than one
16 job at the time of injury, the director [*shall*] either **shall** administer and pay
17 the supplemental benefits directly or shall assign responsibility to administer
18 and process the payment to a paying agent selected by the director.

19 (6) The director shall adopt rules for the payment and reimbursement of
20 supplemental temporary disability benefits under this section.

21 **SECTION 2. (1) The amendments to ORS 656.210 by section 1 of this**
22 **2018 Act apply to all claims existing or arising on or after the effective**
23 **date of this 2018 Act.**

24 **(2) Notwithstanding the application specified in subsection (1) of**
25 **this section, the amendments to ORS 656.210 by section 1 of this 2018**
26 **Act do not apply to a matter for which an order has become final be-**
27 **fore the effective date of this 2018 Act.**

28 **SECTION 3. This 2018 Act being necessary for the immediate pres-**
29 **ervation of the public peace, health and safety, an emergency is de-**
30 **clared to exist, and this 2018 Act takes effect on its passage.**

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