



## ANALYSIS OF OREGON LEGISLATIVE CONCEPT 2638

*As Pre-Filed on October 18, 2018*

**Oregon Legislative Concept (LC) 2638, if enacted in its current form, may result in an unquantifiable increase in overall workers compensation (WC) system costs in Oregon. The resulting impact, if any, would be realized in future experience and reflected in subsequent NCCI loss cost filings in Oregon.**

NCCI's analysis of this bill is prospective only (i.e., for accidents occurring on or after the effective date). The proposed changes would extend to accidents occurring prior to the effective date, so there may be retroactive cost impacts arising from some provisions in the bill if enacted. Such a retroactive application could result in an unfunded liability to the extent that these additional costs were not contemplated in the premiums charged for policies written prior to the effective date of the bill.

### **Summary of LC 2638**

Currently, a worker is eligible for vocational assistance if the worker is not able to return to their previous job or any other available and "suitable employment" with the worker's employer at the time of the injury, and if the worker has a "substantial handicap to employment." "Suitable employment" is defined as:

1. Employment for which the worker has the necessary physical capacity, knowledge, skills, and abilities
2. Employment location is where the worker customarily worked or is within a reasonable commuting distance
3. Employment that pays a weekly wage within 20% of the previous employment's weekly wage, paid at the time of injury

Once a worker is actively engaged in training, the worker may receive temporary disability compensation for a maximum of 16 months. The insurer, self-insured employer, or Director of Consumer and Business Services may voluntarily extend temporary disability compensation up to a maximum of 21 months.

LC 2638 proposes to extend the eligibility of vocational assistance to include workers whose current employment pays a weekly wage that is between **0% to 95%** of the previous employment's weekly wage, paid at the time of injury. In addition, when calculating the weekly wage, earned income should include employer-paid health benefits only when the worker's regular employment was seasonal or temporary.



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LC 2638 also proposes that a worker who is actively engaged in training shall be paid temporary disability compensation, up to a maximum of 21 months, provided the worker remains actively engaged in training.

### **Actuarial Analysis**

Under LC 2638, benefit costs would increase due to both the expanded eligibility for vocational assistance and the increased temporary disability compensation maximum of 21 months (as compared to the current maximum of 16 months, which can be voluntarily extended up to a maximum of 21 months).

Sufficiently robust data on the number of workers whose post-injury weekly wage is between 80% and 95% of the worker's pre-injury weekly wage, which represents the cohort of claimants who would now be eligible for such benefits that were not eligible previously, is not available to NCCI. Furthermore, the expected increase in the number of additional workers that utilize vocational assistance, and the associated costs of the services provided, could be tempered downwards because the possible 5% to 20% gain in the worker's post-injury weekly wage may not influence the worker to seek additional training. The expected increase may also be tempered because the workers in this cohort may require less vocational assistance.

On the other hand, if the worker is actively engaged in a vocational assistance training program, temporary disability compensation, under LC 2638, could be paid for a maximum of 21 months (without being voluntarily offered by the insurer/employer). This provision may influence eligible workers to take advantage of the vocational assistance benefit.

Currently, vocational assistance represents 4.1%<sup>1</sup> of total permanent partial disability (PPD) benefits in Oregon. To provide some context as to the potential magnitude of such a change, NCCI has included two hypothetical examples below. The first example (#1) assumes workers eligible for and utilizing vocational assistance increases by 100% under the proposal, while the second hypothetical example (#2) assumes workers eligible for and utilizing vocational assistance increases by 50%.

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<sup>1</sup> Based on Detailed Claim Information (DCI) data for Oregon, for Accident Years 2011 through 2013.



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	<b>Hypothetical Examples</b>	
	<b>(1)</b>	<b>(2)</b>
(1) Vocational assistance as a percentage of PPD benefit costs	4.1%	4.1%
(2) Possible percentage change in eligible workers	+100%	+50%
(3) Estimated PPD impact due to increased eligibility = (1) x (2)	+4.1%	+2.1%
(4) % of PPD benefits to indemnity benefits		68.8% <sup>2</sup>
(5) Estimated indemnity impact = (3) x (4)	+2.8%	+1.4%
(6) % of indemnity benefits to overall benefit costs		45% <sup>3</sup>
<b>(7) Hypothetical estimated overall cost impact = (5) x (6)</b>	<b>+1.3%</b>	<b>+0.6%</b>

If enacted, workers actively engaged in vocational assistance training will be paid temporary disability compensation until either the maximum of 21 months or until the worker reaches maximum medical improvement (MMI). The hypothetical examples above do not consider the additional temporary total disability (TTD) benefits paid to the worker. If considered, the hypothetical estimated overall impacts would be expected to increase. However, the above analysis assumes that the cost of vocational assistance for newly eligible recipients is similar to the current average cost for these services. Given the amount of vocational assistance may be less for workers returning to employment closer to their pre-injury wage, this could serve to offset such an increase.

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<sup>2</sup> Based on NCCI Workers Compensation Statistical Plan data for Oregon for policies becoming effective during the 24-month period ending 12/31/2014 on the 01/01/2018 law level and developed to an ultimate basis by type of injury.

<sup>3</sup> Based on NCCI Financial Call Data for Oregon for Policy Years 2015 and 2016 projected to 01/01/2020, an assumed effective date of LC 2638.



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**Other Considerations**

If enacted, LC 2638 could potentially result in increased litigation or increased settlement leverage due to the increased eligibility for vocational assistance.

Section 2 of LC 2638 states that the proposed change would apply to open claims “for compensation that arise *before, on, or after* the effective date of this 2019 Act” (emphasis added). Hence, the proposed changes, if enacted, would extend to some accidents/events occurring prior to the proposed effective date, and there may be retroactive cost impacts arising from the provisions of LC 2638. If enacted, such a retroactive application could result in an unfunded liability, as any potential cost impacts from pending claims due to LC 2638 would not have been contemplated in the approved NCCI loss costs applicable to policies written prior to enactment of LC 2638.

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