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HB 2413-1

Brief summary

Changes the calculation method of the worker's weekly wage for purposes of determining if a worker is eligible for workers' compensation vocational assistance. The bill requires an insurer to pay temporary disability (wage replacement) benefits to a worker for the entire time the worker is in training, up to a maximum of 21 months.

Analysis

What the law currently does

- A worker may qualify for vocational assistance benefits when they have permanent limitations caused by their on-the-job injury and they cannot return to their regular work or other suitable employment. Vocational assistance includes training and job placement services. Over the past 10 years, an average of 385 workers are found eligible for vocational assistance each year.
- Workers' compensation law defines suitable employment for vocational assistance as employment that produces a weekly wage within 20 percent of the wage currently being paid for the worker's regular employment.
- The law provides that a worker actively engaged in training may receive temporary disability (wage replacement) benefits for a maximum of 16 months, which the insurer may voluntarily extend to 21 months if the training plan is longer.

What will change if the bill is enacted

- For purposes of vocational assistance, employment will not be considered suitable unless it produces a weekly wage no less than 95 percent (within 5 percent) of the worker's regular employment.
- An insurer will be required to pay temporary disability (wage replacement) benefits up to a maximum of 21 months to a worker actively engaged in training.
- The changes would take effect on January 1, 2020, and would apply to "claims for compensation that arise before, on or after that date, and have not been closed." This appears to allow workers

with an open claim who were previously determined ineligible for vocational assistance to have their eligibility re-determined as of January 1, 2020. It also would allow workers in the middle of a training plan longer than 16 months as of January 1, 2020 to have their time loss extended to 21 months.

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

This bill could increase the number of workers found eligible for vocational assistance because the change in the definition of “suitable employment” is more stringent. Workers would need to find new work that is 95 percent of the weekly wage they earned at their regular employment, instead of 80 percent of their weekly wage. The change to the mandatory wage replacement benefit (from 16 months to 21 months) while in training will increase costs for insurers who have workers with longer duration training plans.

The changes in the bill will likely increase vocational assistance costs for insurers, and these costs will be reflected in the premiums they charge employers. Additionally, the Workers’ Compensation Division (WCD) may see a decrease in vocational disputes because most disputes arise from an ineligibility determination. There could be an increase in requests for return-to-work conferences, which are required for eligible workers who do not have a vocational training plan in place 90 days after being determined eligible. The workload impact is absorbable by existing staff.

Questions/relevant information for the bill sponsor or primary proponent

It is not clear under the applicability clause if the bill would apply to claims that were closed before January 1, 2020, and then reopened.

Legislative history

Has this bill been introduced in a prior session?

No Yes Years Bill numbers

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

No Yes Specify Workers’ Compensation Vocational Assistance, ORS 656.340

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

Other impacts

Does this bill have a fiscal impact to DCBS?

No Yes Unknown Explain The bill could result in more workers being found eligible for vocational assistance, which could result in fewer disputes coming to the division for review. The bill could also result in an increase in return-to-work conferences, which are required if a worker does not have a training plan in place 90 days after being found eligible. It is anticipated that current staffing levels can absorb the potential shift in type of work since return-to-work conferences do not require as much work as disputes.

Does this bill have an economic impact to stakeholders?

No Yes Unknown Explain The bill could result in more workers becoming eligible for vocational assistance, which is paid for by employers through their insurance premiums. Insurers may have additional expenditures for paying time loss benefits for training over 16 months.

Sponsors

House Interim Committee on Business and Labor for Oregon Chapter of International Association of Rehabilitation Professionals

Possible interested stakeholders

- Workers' compensation insurers and self-insured employers
- Vocational providers
- Worker's attorneys
- Injured workers

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 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 |