MLAC Legislative Guidance Questions for Workers' Compensation Division LC 394

The problem and proposed change

Problem: The structure of current law creates a delay in payment of lump sum PPD awards.

Background: When PPD is awarded to a worker, the award may be paid in installments, or if requested by the worker, in a lump sum. Under ORS 656.230, if the worker requests a lump sum payment, the insurer is required to pay in a lump sum unless a listed exception applies. One exception is that the worker has not waived the right to appeal the adequacy of the award. Another exception is that the award has not become final by operation of law.

If a worker waives their right to appeal the adequacy of the award, the insurer may still decline to pay PPD in a lump sum, because the award is not final by operation of law. This means that even if the worker doesn't want to appeal the award, they may need to wait until the award becomes final (60 days after the notice of claim closure) to successfully request a lump sum. This interpretation of the law originates from a 2023 Court of Appeals decision, *Giltner v. SAIF*.

Proposed change – Original LC:
LC 394 would shift the law from listing reasons to deny a lump sum payment, to stating the circumstances where a lump sum payment is required. LC 394 would require the insurer to issue a lump sum payment in two circumstances:
- The worker has waived the right to request reconsideration of the Notice of Closure.
- The award has become final by operation of law.

LC 394 also states three circumstances where a lump sum payment is not required:
- The insurer or self-insured employer timely requests reconsideration of the Notice of Closure under ORS 656.268(5)(e).
- Payment of compensation has been stayed pending a request for hearing or review under ORS 656.313.
- The worker is enrolled and actively engaged in vocational training.

We believe this proposal ensures that the system is efficient and balanced. The proposal improves efficiency by eliminating a potential delay caused by the 2023 Court of Appeals decision, ***Giltner v. SAIF.*** It also ensures the system is balanced for workers and insurers. Workers who do not want to contest their award can get the full amount of their award quickly, and insurers will not be required to prematurely pay the award if the award could still be appealed.

Additional proposed changes (from WCD):
- Increasing the threshold for an automatic lump sum payment. Under current law, if a PPD award is 6,000 or less, the insurer must pay the award in a lump sum. This threshold has not changed since 1995, so it applies to fewer workers today than it did 29 years ago.

- Clarifying that one of the circumstances where a lump sum is not required only applies if the reconsideration proceeding has not yet been completed.
  This is (2)(b)(A) in the revised WCD LC "The insurer or self-insured employer timely requests reconsideration of the notice of closure under ORS 656.268 (5)(e), and the reconsideration proceeding has not yet been completed;"

Available data and how many workers are affected
WCD does not have data available regarding when workers request lump sum payments, so we cannot estimate how often workers are denied a lump sum payment. However, we do have data available on how many workers LC 394 would apply to.

Original LC

- LC 394 would apply to workers with PPD awards that are over $6,000, since awards $6,000 and under are automatically paid in a lump sum.
- In 2023, there were 1,500 claims with PPD awards that were over $6,000, which was 53% of all PPD claims that year.
- Between 2012 – 2023, annually, the average number of claims with PPD awards over $6,000 is 1,580.
- In 1995, about 61.4% of claims were $6,000 or less. In 2023, the 61.4th percentile was about $8,700.

The division would welcome any data stakeholders have regarding the issue, but even in the absence of data, we believe it is worthwhile to make a change. Given that the problem is due to the structure and wording of the law, we believe that the best way to address the issue is to update the language.

Stakeholder and system impact

Original LC
Workers and insurers are affected by LC 394: workers who choose to waive their rights will not experience delay in payment, and insurers will need to adjust their processes to align with the law.

LC 394 makes a minor change to the workers' compensation system to address a narrow circumstance where payment of benefits could be delayed. It does not change when the worker is entitled to compensation, or how much they are entitled to. The scope of change is limited to adjusting the circumstances where lump sum payment is required, and should not affect other laws.

We do not expect LC 394 will increase costs for insurers. Minimal process adjustments and training may be needed, but those should not create any significant cost for insurers.

A few rule revisions will be needed if LC 394 passes, but the scope of the changes and number of changes needed would be limited. There would be a minimal fiscal impact to WCD for the rulemaking, and we expect that any rulemaking resulting from LC 394 can be absorbed with existing staff and resources.

LC if amended

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If the threshold for an automatic lump sum payment is increased, it's possible that there will be more frequent overpayments. This could occur if an automatic lump sum is required, but the amount of the award is litigated and later reduced.

Stakeholder feedback

WCD has met with stakeholders, who have had some questions and suggestions. But in general, they have been in support of the concept.

Comments and proposed changes – from stakeholders

- The Ombuds for Oregon Workers supports the LC and increasing the automatic lump sum amount.

- OTLA: Has recommended increasing the amount for automatic lump sum payments.

- Property and Casualty: Is consulting with their members regarding increasing the amount for automatic lump sum payments.

- SAIF has recommended:
  - Moving existing language on automatic lump sums from subsection (3) to subsection (1).
  - Adding "In all other cases and subject to subsection (2)(b)" at the beginning of (2)(a), which is the circumstances where a lump sum is a required.

  SAIF has also raised a concern regarding the obligation to pay a lump sum if the insurer's appeal period has not expired yet.

Previous discussion of the issue & Mahonia Hall reforms

This issue has not been addressed previously. ORS 656.230 was established prior to Mahonia Hall, but was not changed by those reforms. Later revisions to ORS 656.230 occurred in 1995 and 2007, and this issue stems from the revisions made in 2007.

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