

# D R A F T

## SUMMARY

Digest: The Act would set the time by which benefits would have to be paid to a worker when the employer is being investigated for not complying with workers' comp law. (Flesch Readability Score: 60.7).

Provides the timeline for payment of temporary disability compensation during an investigation of the compliance of the worker's employer with workers' compensation law.

Declares an emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to benefit payments during employer compliance investigations;  
3 amending ORS 656.054 and 656.605; and declaring an emergency.

### 4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 656.054 is amended to read:

6 656.054. (1) A compensable injury to a subject worker while in the employ  
7 of a noncomplying employer is compensable to the same extent as if the  
8 employer had complied with this chapter.

9 **(2)(a)** The Director of the Department of Consumer and Business Services  
10 shall refer the claim for such an injury to an assigned claims agent within  
11 60 days of the date the director has notice of the claim.

12 **(b)** At the time of referral of the claim, the director shall notify the em-  
13 ployer in writing regarding the referral of the claim and the employer's right  
14 to object to the claim. [*A claim for compensation made by such a worker shall*  
15 *be processed by the assigned claims agent in the same manner as a claim made*  
16 *by a worker employed by a carrier-insured employer, except that the time*  
17 *within which the first installment of compensation is to be paid, pursuant to*  
18 *ORS 656.262 (4), shall not begin to run until the director has referred the*

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *claim to the assigned claims agent.]*

2 **(3)(a) The first installment of temporary disability compensation**  
3 **under this section shall be paid no later than the 14th day after the**  
4 **director has notice or knowledge of a request for investigation of the**  
5 **employer's compliance, and of the worker's disability, if the attending**  
6 **physician or nurse practitioner authorized to provide compensable**  
7 **medical services under ORS 656.245 authorizes the payment of tempo-**  
8 **rary disability compensation.**

9 **(b) Thereafter, temporary disability compensation shall be paid at**  
10 **least once each two weeks, subject to the other requirements of this**  
11 **section, except where the director determines that payment in in-**  
12 **stallments should be made at some other interval.**

13 **(c) Payments under this subsection shall be paid by the assigned**  
14 **claims agent and may be reimbursed from the Workers' Benefit Fund.**

15 **(4)** At any time within which the claim may be accepted or denied as  
16 provided in ORS 656.262, the employer may request a hearing to object to the  
17 claim.

18 **(5)** If an order becomes final holding the claim to be compensable, the  
19 employer is liable for all costs imposed by this chapter, including reasonable  
20 attorney fees to be paid to the worker's attorney for services rendered in  
21 connection with the employer's objection to the claim.

22 ~~[(2)]~~ **(6)(a)** In addition to, and not in lieu of, any civil penalties assessed  
23 pursuant to ORS 656.735, all costs to the Workers' Benefit Fund incurred  
24 under *[subsection (1)]* **subsections (1) to (5)** of this section shall be a li-  
25 ability of the noncomplying employer. Such costs include compensation, dis-  
26 puted claim settlements pursuant to ORS 656.289 and claim disposition  
27 agreements pursuant to ORS 656.236, whether or not the noncomplying em-  
28 ployer agrees and executes such documents, reasonable administrative costs  
29 and claims processing costs provided by contract, attorney fees related to  
30 compensability issues and any attorney fees awarded to the claimant, but do  
31 not include assessments for reserves in the Workers' Benefit Fund.

1       **(b)** The director shall recover such costs from the employer.

2       **(c)** The director periodically shall pay the assigned claims agent from the  
3 Workers' Benefit Fund for any costs the assigned claims agent incurs under  
4 this section in accordance with the terms of the contract.

5       **(d)** When the director prevails in any action brought pursuant to this  
6 subsection, the director is entitled to recover from the noncomplying em-  
7 ployer court costs and attorney fees incurred by the director.

8       [(3)] **(7)(a)** Periodically, or upon the request of a noncomplying employer  
9 in a particular claim, the director shall audit the files of the State Accident  
10 Insurance Fund Corporation and any assigned claims agents to validate the  
11 amount reimbursed pursuant to subsection [(2)] **(6)** of this section.

12       **(b)** The conditions for granting or denying of reimbursement shall be  
13 specified in the contract with the assigned claims agent.

14       **(c)** The contract at least shall provide for denial of reimbursement if,  
15 upon such audit, any of the following are found to apply:

16       [(a)] **(A)** Compensation has been paid as a result of untimely, inaccurate,  
17 or improper claims processing;

18       [(b)] **(B)** Compensation has been paid negligently for treatment of any  
19 condition unrelated to the compensable condition;

20       [(c)] **(C)** The compensability of an accepted claim is questionable and the  
21 rationale for acceptance has not been reasonably documented in accordance  
22 with generally accepted claims management procedures;

23       [(d)] **(D)** The separate payments of compensation have not been docu-  
24 mented in accordance with generally accepted accounting procedures; or

25       [(e)] **(E)** The payments were made pursuant to a disposition agreement as  
26 provided by ORS 656.236 without the prior approval of the director.

27       [(4)] **(8)** The State Accident Insurance Fund Corporation and any assigned  
28 claims agent may request review under ORS 656.704 of any disapproval of  
29 reimbursement made by the director under this section.

30       [(5)] **(9)** Claims of injured workers of noncomplying employers may be  
31 assigned and reassigned by the director for claims processing regardless of

1 the date of the worker's injury.

2 [(6)] (10) In selecting an assigned claims agent, the director must consider  
3 the assigned claims agent's ability to deliver timely and appropriate benefits  
4 to injured workers, the ability to control both claims cost and administrative  
5 cost and such other factors as the director considers appropriate.

6 [(7)] (11) If no qualified entity agrees to be an assigned claims agent, the  
7 director may require one or more of the three highest premium producing  
8 insurers to be assigned claims agents. Notwithstanding any other provision  
9 of law, the director's selection of assigned claims agents shall be made at the  
10 sole discretion of the director. Such selections shall not be subject to review  
11 by any court or other administrative body.

12 [(8)] (12) Any assigned claims agent, except the State Accident Insurance  
13 Fund Corporation, may employ legal counsel of its choice for representation  
14 under this section.

15 [(9)] (13) As used in this section, "assigned claims agent" means an  
16 insurer, casualty adjuster or a third party administrator with whom the di-  
17 rector contracts to manage claims of injured workers of noncomplying em-  
18 ployers.

19 **SECTION 2.** ORS 656.605 is amended to read:

20 656.605. (1) The Workers' Benefit Fund is created in the State Treasury,  
21 separate and distinct from the General Fund. Moneys in the fund shall be  
22 invested in the same manner as other state moneys and investment earnings  
23 shall be credited to the fund. The fund shall consist of the following:

24 (a) Moneys received pursuant to ORS 656.506.

25 (b) Moneys recovered under ORS 656.054.

26 (c) Penalties recovered under ORS 656.735.

27 (d) All moneys received by the Director of the Department of Consumer  
28 and Business Services pursuant to law or from any other source for purposes  
29 for which the fund may be expended.

30 (2) Moneys in the Workers' Benefit Fund may be expended for the fol-  
31 lowing purposes:

1 (a) Expenses of programs under ORS 656.445, 656.506, 656.622, 656.625,  
2 656.628 and 656.630.

3 (b) Proceedings against noncomplying employers pursuant to ORS 656.054  
4 and 656.735.

5 (c) Expenses of vocational assistance on claims, the cost of which was  
6 imposed pursuant to section 15, chapter 600, Oregon Laws 1985.

7 (d) Payment of supplemental temporary disability benefits for workers  
8 employed in more than one job at the time of injury and reimbursement of  
9 the costs of administering payments resulting from elections by insurers and  
10 self-insured employers as provided by ORS 656.210 (5).

11 (e) Payments made to injured workers pursuant to section 6a, chapter 865,  
12 Oregon Laws 2001.

13 (f) Expenses of the Bureau of Labor and Industries for enforcing ORS  
14 659A.040, 659A.043, 659A.046, 659A.049 and 659A.052, subject to an agreement  
15 between the Director of the Department of Consumer and Business Services  
16 and the Commissioner of the Bureau of Labor and Industries. The agreement  
17 must include, but is not limited to, the amount of funds to be transferred to  
18 the bureau for enforcing ORS 659A.040, 659A.043, 659A.046, 659A.049 and  
19 659A.052 and the information relating to the enforcement of ORS 659A.040,  
20 659A.043, 659A.046, 659A.049 and 659A.052 that the bureau must report to the  
21 director.

22 (g) Reimbursement to the insurer or self-insured employer for the amount  
23 of permanent total disability benefits paid after the date of the notice of  
24 closure that was upheld pursuant to ORS 656.206.

25 (h) Reimbursement of vocational benefit expenses as provided in ORS  
26 656.313.

27 **(i) Payment of temporary disability benefits pursuant to ORS 656.054**  
28 **while employer compliance with this chapter is investigated by the**  
29 **Director of the Department of Business and Consumer Services under**  
30 **ORS 656.054.**

31 (3) Subject to the following provisions, all moneys in the fund are appro-

1 priated continuously to the Director of the Department of Consumer and  
2 Business Services to carry out the activities for which the fund may be ex-  
3 pended:

4 (a) Moneys received pursuant to ORS 656.054 and 656.735 and transfers  
5 made pursuant to ORS 705.148 may be expended only to carry out the pro-  
6 visions of ORS 656.054 and 656.735 and section 15, chapter 600, Oregon Laws  
7 1985.

8 (b) Moneys received pursuant to ORS 656.506 and the transfers of unex-  
9 pended and unobligated moneys in the Retroactive Reserve, Reemployment  
10 Assistance Reserve, Reopened Claims Reserve and Handicapped Workers  
11 Reserve referred to in ORS 656.506, 656.622, 656.625 and 656.628 (All 1993  
12 Edition) may be expended only to carry out the programs referred to in ORS  
13 656.506, 656.622, 656.625, 656.628 and 656.630.

14 (4) Notwithstanding any other provision of this chapter, if the director  
15 determines at any time that there are insufficient moneys in the Workers'  
16 Benefit Fund to pay the expenses of programs for which expenditure of the  
17 fund is authorized, the director may reduce the level of benefits payable ac-  
18 cordingly.

19 **SECTION 3. This 2025 Act being necessary for the immediate pres-**  
20 **ervation of the public peace, health and safety, an emergency is de-**  
21 **clared to exist, and this 2025 Act takes effect on its passage.**

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