



# OTLA

# Legislative

# Concepts

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- LC 2160: Providing interim disability benefits to workers during noncomplying employer investigation.
- LC 2375: Providing all workers equal access to their impairment compensation during their vocational training program.
- LC 2272: Providing parity in dispute expenses.

# LC 2160 – Parity in Wage Replacement

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- ORS 656.054:

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

***But vulnerable workers like we heard last month are suffering serious injuries with NCEs, and they are not being treated the same under the law.***

# LC 2160 – Parity in Wage Replacement

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## WORKS FOR COMPLYING EMPLOYER

- Employer provides 801 form and sends it to their insurer.
- Insurer contacts worker within 5 days.
- Worker receives interim temporary disability benefits within 14 days, which continue until the claim is accepted/denied (up to 60 days).

## WORKS FOR NCE

- NCE does not help worker file their claim.
- Worker struggles to figure out how to file their claim, causing delays.
- Once the request for an investigation is filed with WCD, the worker waits up to 60 days for a determination, with no benefits. Then waits for the claim to be referred, then waits 14 days.

# LC 2160 - The Solution

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- Workers are paid interim disability benefits during the employer compliance investigation.
- These benefits are reimbursed from Worker Benefit Fund (WBF) and recovered from the NCE, if possible, in the same manner as other costs associated with other NCE claims.
- Workers still must have a disability note to receive disability benefits.

# LC 2375 – Parity at Closure

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**ISSUE 1:** When a worker has an accepted claim and is permanently disabled from returning to the job at injury, they may be entitled two very important benefits to help them move on from the injury:

1. Compensation for impairment (permanent partial disability/PPD); and
2. Vocational training to restore them to their full wages at injury.

Even if workers receive wage replacement during their training program, they may need access to their full impairment compensation in order to complete their program.

***Currently, some workers have access to their impairment compensation, and others must wait and rely on the same fixed benefits they have received throughout their claim.***

# LC 2375 – Parity at Closure

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## CURRENT LAW

- **WORKER #1 - Enrolled in training before impairment compensation is fully paid:**
  - Insurer can withhold most of the impairment compensation until the worker is no longer enrolled in training.
  - Insurer can withhold impairment compensation if the worker improves their abilities through training.
- **WORKER #2 – Not enrolled in training when impairment compensation is fully paid:**
  - Insurer cannot withhold the payment of the impairment compensation.
  - Insurer cannot withhold impairment compensation based on the worker's hard work in the training program.



# LC 2375 - The Solution

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- Allow workers to obtain payment of the full impairment compensation, and/or complete an appeal of the impairment compensation while enrolled in training.
- Allow workers to postpone the selection of a training goal and enrollment in the training until after the impairment compensation becomes final.



# LC 2375 – Parity at Closure

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ISSUE 2: When a worker has an accepted claim, they may be Permanently Totally Disabled (PTD), meaning the worker is not employable at a sufficient income even if training were provided.

*The worker must also establish that:*

1. They want to continue working;
2. They would be working if not for their impairment; and
3. They are seeking work within their restrictions, or that it would be futile to do so.

But the worker must establish that they are totally disabled before closure and before even attempting training. A worker is currently prohibited from establishing PTD after a claim closure, and an unsuccessful attempt at training.

*This punishes workers who try their best to be retrained, but are not successful.*

# LC 2375 - The Solution

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When the claim is reclosed after an unsuccessful attempt at training , allow the worker an opportunity to establish the criteria for Permanent Total Disability.

# LC 2272 – Parity in Disputes

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- The worker has the burden of proof in almost all disputes over benefits.
- In nearly all disputes, the worker must provide statements from their doctors, and pay the doctors for their time.
- When the worker is successful in some disputes, the insurer is required to reimburse up to \$1,500 toward these costs, absent extraordinary circumstances. In other disputes, the worker is not reimbursed at all.

***This prevents some workers from asserting their rights or contesting denials of their benefits.***

# LC 2272– Parity in Disputes

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## *CURRENT LAW*

- 656.386(2)(D): Payments for witness fees, expenses and costs ordered under this subsection may not exceed \$1,500 unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount.
- Only applies to WCB hearings on compensability.

## *LC 2272*

- Allows the decisionmaker to decide and award costs that were reasonably incurred.
- Removes unwieldy “extraordinary circumstances” to prevent unnecessary litigation over costs.
- Expands payments to all disputes over entitlement to or amount of any benefits.

QUESTIONS?