



**Oregon**

Tina Kotek, Governor



Department of Consumer  
and Business Services

January 6, 2025

To: Co-chair Strickland, Co-chair Priest, and members of MLAC

From: Matt West, WCD Interim Administrator

RE: Follow-up question from the Governor's recommended 2025 budget, WBF/BOLI transfer

Thank you for the questions.

You asked about the WBF uses and limitations; MLAC's role related to the Workers' Benefit Fund (WBF); the statutory duties of MLAC; and the history of the funds being swept from the WBF.

### **Workers' Benefit Fund**

As part of its administration of the Oregon workers' compensation system, the Department of Consumer and Business Services (DCBS) manages the Workers' Benefit Fund (WBF), which pays for a variety of programs that help injured workers and employers.

### **Fund Management**

The Workers' Benefit Fund's primary revenue source is an assessment on the payroll earned by all workers subject to Oregon workers' compensation law, or non-subject workers the employer chooses to cover with workers' compensation insurance. The assessment is calculated on the basis of hours worked in the quarter they are paid by employers. Employers and employees each pay half of the assessment, currently set at 2.0 cents per hour or partial hour worked.

DCBS annually reviews and may adjust the assessment rate as needed to meet fund-balance requirements. The hourly rate is determined based on cash balances and projected levels of need of the programs funded by the assessment.

The department provides public notice to employers and payroll service providers before any change to the rate. Every October, employers and payroll service providers are mailed the rate notice for the upcoming calendar year.

Oregon law requires DCBS to maintain a cash balance of approximately 12 months of projected expenditures in the Workers' Benefit Fund. If the fund balance is projected to fall

below the required balance, DCBS must develop a plan to increase the balance and report the plan to the Workers' Compensation Management-Labor Advisory Committee (MLAC).

## Fund Expenditures

**Re-employment Assistance Program (ORS 656.622)** - The Re-employment Assistance Program provides employers incentives to rehire or hire injured workers. There are two components to this program: the Employer-at-Injury Program, which encourages the early return to work of injured workers; and the Preferred Worker Program, which helps qualified Oregon workers who have permanent restrictions from on-the-job injuries and who are not able to return to their regular employment because of those injuries. Employment is encouraged through (depending on the program) premium exemption and providing funds for wage subsidies, worksite modifications, certain purchases, and claim cost reimbursement for eligible employers and workers. The program also offers reimbursement to insurers and self-insured employers for certain related administrative costs.

**Retroactive Program (ORS 656.506)** - The Retroactive Program provides increased benefits to workers or their beneficiaries for benefit levels that are lower than what is currently being paid for like injuries. The increased benefits are received mainly by beneficiaries of workers who suffered fatal injuries and by workers who have been determined to have a permanent total disability.

**Noncomplying Employer Payments (ORS 656.054 and ORS 656.735)** - Noncomplying employer payments are for claims costs of injured workers who were employed by an employer that did not have workers' compensation insurance coverage at the time of the worker's injury. Sedgwick Claims Management Services Inc. processes these claims as the department's claim processing agent and is reimbursed by the department.

The department is responsible for collecting all claims costs from the noncomplying employer. Recovered claim costs and civil penalties to the noncomplying employer are deposited into the Fund. The Department of Revenue, Department of Justice, and contracted private vendors help the Department of Consumer and Business Services in the recovery of claims costs not readily recoverable.

**Reopened Claims Program (ORS 656.625)** - The Reopened Claims Program provides reimbursement to insurers, self-insured employers, and self-insured employer groups for costs arising from specific claims costs associated with Workers' Compensation Board motion orders or voluntary reopening by insurers. These orders are done under the authority of ORS 656.278.

**Expenses of the Oregon Institute of Occupational Health Sciences of the Oregon Health & Science University (ORS 656.630)** - The Oregon Institute of Occupational Health Sciences is dedicated to health and safety in the workforce and is the home of the Oregon Healthy Workforce Center, a National Institute for Occupational Safety and Health (NIOSH) Center of Excellence for Total Worker Health, and the NIOSH- supported Oregon Fatality Assessment and Control Evaluation program. The Institute is base funded through the Fund, in an amount equal to one-sixteenth of one cent of the workers' portion of the assessment.

**Activities related to investigating an alleged injured worker discrimination (ORS 656.605)** - The Bureau of Labor and Industries (BOLI) is responsible for enforcing a number of statutes in ORS Chapter 659A related to workers' rights related to a workers' compensation

claim and reinstatement and reemployment. Expenses are paid by the Fund, subject to an agreement between the DCBS Director and BOLI Commissioner. [BOLI and DCBS IAA](#)

**Payments due to workers who have not received payment from an insurer in default (ORS 656.445)** - If a workers' compensation insurer defaults in paying compensation due to an injured worker, DCBS can advance funds to injured workers who have not received payment from the insurer in default.

**Supplemental Disability Benefit (ORS 656.210)** - The Supplemental Disability Benefit was established to provide a more accurate replacement of lost wages for workers with multiple jobs for injuries occurring on or after Jan. 1, 2002.

**Workers with Disabilities Program (ORS 656.628)** - The Workers with Disabilities Program encouraged the employment of disabled workers whether their impairment was due to congenital causes, injury, or disease. It allowed for reimbursement for subsequent injuries for the percent of claim costs that could be attributed to the disability. The Oregon Legislature's special session in 1990 ended the identification of new claims for eligibility under the Workers with Disabilities Program, when incentives under the Re-employment Assistance Program were increased. Although no new claims against the reserve have been accepted since May 1, 1990, reimbursement for claim costs continues for those claims previously found eligible.

**Rehabilitation Payments for pre-1986 Vocational Assistance Costs (Oregon Laws 1985, Chapter 600, Section 15)** - Enacted legislation shifted funding of injured workers' vocational assistance for injuries sustained after 1985 to employers' insurance premiums.

#### **656.605 Workers' Benefit Fund; uses and limitations.**

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

- (a) Moneys received pursuant to ORS 656.506.*
- (b) Moneys recovered under ORS 656.054.*
- (c) Penalties recovered under ORS 656.735.*
- (d) All moneys received by the Director of the Department of Consumer and Business Services pursuant to law or from any other source for purposes for which the fund may be expended.*

*(2) Moneys in the Workers' Benefit Fund may be expended for the following purposes:*

- (a) Expenses of programs under ORS 656.445, 656.506, 656.622, 656.625, 656.628 and 656.630.*
- (b) Proceedings against noncomplying employers pursuant to ORS 656.054 and 656.735.*
- (c) Expenses of vocational assistance on claims, the cost of which was imposed pursuant to section 15, chapter 600, Oregon Laws 1985.*
- (d) Payment of supplemental temporary disability benefits for workers employed in more than one job at the time of injury and reimbursement of the costs of administering payments resulting from elections by insurers and self-insured employers as provided by ORS 656.210 (5).*
- (e) Payments made to injured workers pursuant to section 6a, chapter 865, Oregon Laws 2001.*

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

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

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

(3) Subject to the following provisions, all moneys in the fund are appropriated continuously to the Director of the Department of Consumer and Business Services to carry out the activities for which the fund may be expended:

(a) Moneys received pursuant to ORS 656.054 and 656.735 and transfers made pursuant to ORS 705.148 may be expended only to carry out the provisions of ORS 656.054 and 656.735 and section 15, chapter 600, Oregon Laws 1985.

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

(4) Notwithstanding any other provision of this chapter, if the director determines at any time that there are insufficient moneys in the Workers' Benefit Fund to pay the expenses of programs for which expenditure of the fund is authorized, the director may reduce the level of benefits payable accordingly. [1995 c.641 §15; 1999 c.273 §3; 2001 c.865 §5; 2001 c.974 §8; 2002 s.s.2 c.4 §4; 2005 c.461 §5; 2005 c.588 §5; 2011 c.597 §267]

## **MLAC's role in the Workers' Benefit Fund**

MLAC's role in the Workers' Benefit Fund are stated in:

ORS 656.790(2)(e) *The committee shall advise the director regarding any proposed changes in the operation of programs funded by the Workers' Benefit Fund and shall review any plan the Department of Consumer and Business Services devises to increase the balance of the fund to meet the requirement set forth in ORS 656.506 (5), and ORS 656.790*

(3) *The committee shall report to the Legislative Assembly such findings and recommendations as the committee considers appropriate, including a report on the following matters:*

(a) *Decisions of the Supreme Court and Court of Appeals that have significant impact on the workers' compensation system.*

(b) *Adequacy of workers' compensation benefits.*

(c) *Medical and legal system costs.*

(d) *Adequacy of assessments for reserve programs and administrative costs.*

(e) *The operation of programs funded by the Workers' Benefit Fund.*

MLAC's role is also identified in:

*ORS.506 (5) The Legislative Assembly intends that the department set rates for the collection of assessments pursuant to subsections (2) and (3) of this section in a manner so that at the end of the period for which the rates are effective, the balance of the Workers' Benefit Fund is an amount of not less than 12 months of projected expenditures from the fund in regard to the department's functions and duties under subsection (7) of this section and ORS 656.445, 656.622, 656.625, 656.628 and 656.630, in a manner that minimizes the volatility of the rates assessed. If the department determines that the balance of the fund will fall below the balance required under this subsection, the department shall devise and report to the Workers' Compensation Management-Labor Advisory Committee a plan to increase the balance to the required amount. The department may set the assessment rate at a higher level if the department determines that a higher rate is necessary to avoid unintentional program or benefit reductions in the time period immediately following the period for which the rate is being set.*

**DCBS- Workers' Benefit Fund Website - [WBF website](#)  
Workers' Benefit Annual Report  
[Annual 2023 WBF Report](#) and [WBF 2023 Status Update](#)**

### **Historical information on Workers' Benefit Fund Sweep**

The Workers' Benefit Fund was swept for other than ORS 656.605 purposes in 2003, HB 5007, for the reduction in employer PERS contribution rates in the amount of \$251,152.

Please let me know if you have any further questions.