

House Bill 3357

Sponsored by COMMITTEE ON BUSINESS AND LABOR

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies conditions under which injured state worker may lose reinstatement and reemployment rights. Requires state employer to establish return-to-work program for injured worker under certain circumstances. Requires amount of temporary disability benefits to be adjusted based on state worker's wage at time of aggravation or new injury.

A BILL FOR AN ACT

1
2 Relating to injured state workers; creating new provisions; and amending ORS 656.210, 659A.043,
3 659A.046 and 659A.052.

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

5 **SECTION 1.** ORS 659A.043 is amended to read:

6 659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the
7 worker's employer to the worker's former position of employment upon demand for such rein-
8 statement, if the position exists and is available and the worker is not disabled from performing the
9 duties of such position. A worker's former position is available even if that position has been filled
10 by a replacement while the injured worker was absent. If the former position is not available, the
11 worker shall be reinstated in any other existing position that is vacant and suitable. A certificate
12 by the attending physician or a nurse practitioner authorized to provide compensable medical ser-
13 vices under ORS 656.245 that the physician or nurse practitioner approves the worker's return to
14 the worker's regular employment or other suitable employment shall be prima facie evidence that
15 the worker is able to perform such duties.

16 (2) Such right of reemployment shall be subject to the provisions for seniority rights and other
17 employment restrictions contained in a valid collective bargaining agreement between the employer
18 and a representative of the employer's employees.

19 (3) Notwithstanding subsection (1) of this section:

20 (a) The right to reinstatement to the worker's former position under this section terminates
21 when whichever of the following events first occurs:

22 (A) A medical determination by the attending physician or, after an appeal of such determi-
23 nation to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made
24 that the worker cannot return to the former position of employment.

25 (B) The worker is eligible and participates in vocational assistance under ORS 656.340.

26 (C) The worker accepts suitable employment with another employer after becoming medically
27 stationary.

28 (D) The worker refuses a bona fide offer from the employer of light duty or modified employment
29 that is suitable prior to becoming medically stationary.

30 (E) Seven days elapse from the date that the worker is notified by the insurer or self-insured

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 employer by certified mail that the worker’s attending physician or a nurse practitioner authorized
 2 to provide compensable medical services under ORS 656.245 has released the worker for employment
 3 unless the worker requests reinstatement within that time period.

4 (F)(i) Three years elapse from the date of injury; or

5 **(ii) If the worker is employed by state government, as defined in ORS 174.111, three years**
 6 **elapse from the date of injury or, in the case of a compensable worsening under ORS 656.273,**
 7 **from the date of the claim for aggravation.**

8 (b) The right to reinstatement under this section does not apply to:

9 (A) A worker hired on a temporary basis as a replacement for an injured worker.

10 (B) A seasonal worker employed to perform less than six months’ work in a calendar year.

11 (C) A worker whose employment at the time of injury resulted from referral from a hiring hall
 12 operating pursuant to a collective bargaining agreement.

13 (D) A worker whose employer employs 20 or fewer workers at the time of the worker’s injury
 14 and at the time of the worker’s demand for reinstatement.

15 (4) Any violation of this section is an unlawful employment practice.

16 **(5) As used in this section, “available” and “suitable” have the meanings given those**
 17 **terms in rules adopted by the Commissioner of the Bureau of Labor and Industries.**

18 **SECTION 2.** ORS 659A.043, as amended by section 22, chapter 811, Oregon Laws 2003, and
 19 section 470, chapter 22, Oregon Laws 2005, is amended to read:

20 659A.043. (1) A worker who has sustained a compensable injury shall be reinstated by the
 21 worker’s employer to the worker’s former position of employment upon demand for such rein-
 22 statement, if the position exists and is available and the worker is not disabled from performing the
 23 duties of such position. A worker’s former position is available even if that position has been filled
 24 by a replacement while the injured worker was absent. If the former position is not available, the
 25 worker shall be reinstated in any other existing position that is vacant and suitable. A certificate
 26 by the attending physician that the physician approves the worker’s return to the worker’s regular
 27 employment or other suitable employment shall be prima facie evidence that the worker is able to
 28 perform such duties.

29 (2) Such right of reemployment shall be subject to the provisions for seniority rights and other
 30 employment restrictions contained in a valid collective bargaining agreement between the employer
 31 and a representative of the employer’s employees.

32 (3) Notwithstanding subsection (1) of this section:

33 (a) The right to reinstatement to the worker’s former position under this section terminates
 34 when whichever of the following events first occurs:

35 (A) A medical determination by the attending physician or, after an appeal of such determi-
 36 nation to a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, has been made
 37 that the worker cannot return to the former position of employment.

38 (B) The worker is eligible and participates in vocational assistance under ORS 656.340.

39 (C) The worker accepts suitable employment with another employer after becoming medically
 40 stationary.

41 (D) The worker refuses a bona fide offer from the employer of light duty or modified employment
 42 that is suitable prior to becoming medically stationary.

43 (E) Seven days elapse from the date that the worker is notified by the insurer or self-insured
 44 employer by certified mail that the worker’s attending physician has released the worker for em-
 45 ployment unless the worker requests reinstatement within that time period.

1 (F)(i) Three years elapse from the date of injury; or

2 (ii) **If the worker is employed by state government, as defined in ORS 174.111, three years**
3 **elapse from the date of injury or, in the case of a compensable worsening under ORS 656.273,**
4 **from the date of the claim for aggravation.**

5 (b) The right to reinstatement under this section does not apply to:

6 (A) A worker hired on a temporary basis as a replacement for an injured worker.

7 (B) A seasonal worker employed to perform less than six months' work in a calendar year.

8 (C) A worker whose employment at the time of injury resulted from referral from a hiring hall
9 operating pursuant to a collective bargaining agreement.

10 (D) A worker whose employer employs 20 or fewer workers at the time of the worker's injury
11 and at the time of the worker's demand for reinstatement.

12 (4) Any violation of this section is an unlawful employment practice.

13 (5) **As used in this section, "available" and "suitable" have the meanings given those**
14 **terms in rules adopted by the Commissioner of the Bureau of Labor and Industries.**

15 **SECTION 3.** ORS 659A.046 is amended to read:

16 659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing
17 the duties of the worker's former regular employment shall, upon demand, be reemployed by the
18 worker's employer at employment [which] **that** is available and suitable.

19 (2) A certificate of the worker's attending physician or a nurse practitioner authorized to pro-
20 vide compensable medical services under ORS 656.245 that the worker is able to perform described
21 types of work shall be prima facie evidence of such ability.

22 (3) Notwithstanding subsection (1) of this section, the right to reemployment under this section
23 terminates when whichever of the following events first occurs:

24 (a) The worker cannot return to reemployment at any position with the employer either by de-
25 termination of the attending physician or a nurse practitioner authorized to provide compensable
26 medical services under ORS 656.245 or upon appeal of that determination, by determination of a
27 medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

28 (b) The worker is eligible and participates in vocational assistance under ORS 656.340.

29 (c) The worker accepts suitable employment with another employer after becoming medically
30 stationary.

31 (d) The worker refuses a bona fide offer from the employer of light duty or modified employment
32 that is suitable prior to becoming medically stationary.

33 (e) Seven days elapse from the date that the worker is notified by the insurer or self-insured
34 employer by certified mail that the worker's attending physician or a nurse practitioner authorized
35 to provide compensable medical services under ORS 656.245 has released the worker for reemploy-
36 ment unless the worker requests reemployment within that time period.

37 (f)(A) Three years elapse from the date of injury; or

38 (B) **If the worker is employed by state government, as defined in ORS 174.111, three years**
39 **elapse from the date of injury or, in the case of a compensable worsening under ORS 656.273,**
40 **from the date of the claim for aggravation.**

41 (4) [Such] **The** right of reemployment [shall be] **is** subject to the provisions for seniority rights
42 and other employment restrictions contained in a valid collective bargaining agreement between the
43 employer and a representative of the employer's employees.

44 (5) Any violation of this section is an unlawful employment practice.

45 (6) This section applies only to employers who employ six or more persons.

1 (7) As used in this section, “available” and “suitable” have the meanings given those
 2 terms in rules adopted by the Commissioner of the Bureau of Labor and Industries.

3 **SECTION 4.** ORS 659A.046, as amended by section 24, chapter 811, Oregon Laws 2003, is
 4 amended to read:

5 659A.046. (1) A worker who has sustained a compensable injury and is disabled from performing
 6 the duties of the worker’s former regular employment shall, upon demand, be reemployed by the
 7 worker’s employer at employment [which] **that** is available and suitable.

8 (2) A certificate of the worker’s attending physician that the worker is able to perform described
 9 types of work shall be prima facie evidence of such ability.

10 (3) Notwithstanding subsection (1) of this section, the right to reemployment under this section
 11 terminates when whichever of the following events first occurs:

12 (a) The worker cannot return to reemployment at any position with the employer either by de-
 13 termination of the attending physician or upon appeal of that determination, by determination of a
 14 medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.

15 (b) The worker is eligible and participates in vocational assistance under ORS 656.340.

16 (c) The worker accepts suitable employment with another employer after becoming medically
 17 stationary.

18 (d) The worker refuses a bona fide offer from the employer of light duty or modified employment
 19 that is suitable prior to becoming medically stationary.

20 (e) Seven days elapse from the date that the worker is notified by the insurer or self-insured
 21 employer by certified mail that the worker’s attending physician has released the worker for reem-
 22 ployment unless the worker requests reemployment within that time period.

23 (f)(A) Three years elapse from the date of injury; or

24 **(B) If the worker is employed by state government, as defined in ORS 174.111, three years**
 25 **elapse from the date of injury or, in the case of a compensable worsening under ORS 656.273,**
 26 **from the date of the claim for aggravation.**

27 (4) [Such] **The** right of reemployment [shall be] **is** subject to the provisions for seniority rights
 28 and other employment restrictions contained in a valid collective bargaining agreement between the
 29 employer and a representative of the employer’s employees.

30 (5) Any violation of this section is an unlawful employment practice.

31 (6) This section applies only to employers who employ six or more persons.

32 **(7) As used in this section, “available” and “suitable” have the meanings given those**
 33 **terms in rules adopted by the Commissioner of the Bureau of Labor and Industries.**

34 **SECTION 5.** ORS 659A.052 is amended to read:

35 659A.052. (1) For the purpose of administration of ORS 659A.043 and 659A.046:

36 (a) An injured worker employed at the time of injury by any agency in the legislative depart-
 37 ment of the government of this state shall have the right to reinstatement or reemployment at any
 38 available and suitable position in any agency in the legislative department.

39 (b) An injured worker employed at the time of injury by any agency in the judicial department
 40 of the government of this state shall have the right to reinstatement or reemployment at any avail-
 41 able and suitable position in any agency in the judicial department.

42 (c) An injured worker employed at the time of injury by any agency of the executive or admin-
 43 istrative department of the government of this state shall have the right to reinstatement or reem-
 44 ployment at any available and suitable position in any agency of the executive or administrative
 45 department.

1 (2) Notwithstanding ORS 659A.043 and 659A.046, an injured worker referred to in subsection (1)
 2 of this section has preference for *[entry level and]* light duty assignments with agencies described in
 3 subsection (1) of this section.

4 (3) In accordance with the provisions of ORS chapter 183, any agency referred to in subsection
 5 (1) of this section *[may]* **shall** adopt rules to define *[entry level and]* light duty assignments. How-
 6 ever, the rulemaking power for all agencies referred to in subsection (1)(c) of this section shall be
 7 exercised by the Administrator of the Personnel Division.

8 (4) **If the employer of an injured worker referred to in subsection (1) of this section does**
 9 **not have an available and suitable position for the worker at the time the worker demands**
 10 **reemployment under ORS 659A.046, the employer shall meet with the worker and a voca-**
 11 **tional assistance provider, as defined in ORS 656.340, for an evaluation of the job require-**
 12 **ments of any vacant position with the employer. If a vacant position would be suitable for**
 13 **the worker with up to six months' training, the employer shall establish a return-to-work**
 14 **program for the worker that allows up to six months to train and qualify for the position**
 15 **and reenter the employer's workforce. As long as the worker actively and satisfactorily**
 16 **participates in the return-to-work program, the worker may receive temporary disability**
 17 **benefits for a maximum of six months while the worker participates in the program.**

18 *[(3)]* (5) In accordance with any applicable provision of ORS chapter 240, the Administrator of
 19 the Personnel Division *[may]* **shall** compel compliance with this section and ORS 659A.043 and
 20 659A.046 by any agency referred to in subsection (1)(c) of this section.

21 (6) **Any violation of subsection (1), (2) or (4) of this section is an unlawful employment**
 22 **practice.**

23 **SECTION 6.** ORS 656.210 is amended to read:

24 656.210. (1) When the total disability is only temporary, the worker shall receive during the pe-
 25 riod of that total disability compensation equal to 66-2/3 percent of wages, but not more than 133
 26 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the
 27 amount of \$50 a week, whichever amount is less. Notwithstanding the limitation imposed by this
 28 subsection, an injured worker who is not otherwise eligible to receive an increase in benefits for the
 29 fiscal year in which compensation is paid shall have the benefits increased each fiscal year by the
 30 percentage *[which]* **that** the applicable average weekly wage has increased since the previous fiscal
 31 year.

32 (2)(a) For the purpose of this section, the weekly wage of workers shall be ascertained:

33 (A) For workers employed in one job at the time of injury, by multiplying the daily wage the
 34 worker was receiving by the number of days per week that the worker was regularly employed; or

35 (B) For workers employed in more than one job at the time of injury, by adding all earnings the
 36 worker was receiving from all subject employment.

37 (b) Notwithstanding paragraph (a)(B) of this subsection, the weekly wage calculated under par-
 38 agraph (a)(A) of this subsection shall be used for workers employed in more than one job at the time
 39 of injury unless, within 30 days of receipt of the initial claim, the insurer, self-insured employer or
 40 assigned claims agent for a noncomplying employer receives notice that the worker was employed
 41 in more than one job with a subject employer at the time of injury and receives verifiable doc-
 42 umentation of wages from such additional employment.

43 (c) Notwithstanding ORS 656.005 (7)(c), an injury to a worker employed in more than one job
 44 at the time of injury is not disabling if no temporary disability benefits are payable for time lost
 45 from the job at injury. Claim costs incurred as a result of supplemental temporary disability benefits

1 paid as provided in subsection (5) of this section may not be included in any data used for
2 ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer,
3 a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund
4 Corporation or the Department of Consumer and Business Services if the injured worker is not eli-
5 gible for permanent disability benefits or temporary disability benefits for time lost from the job at
6 injury.

7 (d) For the purpose of this section:

8 (A) The benefits of a worker who incurs an injury shall be based on the wage of the worker at
9 the time of injury.

10 (B) The benefits of a worker who incurs an occupational disease shall be based on the wage of
11 the worker at the time there is medical verification that the worker is unable to work because of
12 the disability caused by the occupational disease. If the worker is not working at the time that there
13 is medical verification that the worker is unable to work because of the disability caused by the
14 occupational disease, the benefits shall be based on the wage of the worker at the worker's last
15 regular employment.

16 (e) As used in this subsection, "regularly employed" means actual employment or availability for
17 such employment. For workers not regularly employed and for workers with no remuneration or
18 whose remuneration is not based solely upon daily or weekly wages, the Director of the Department
19 of Consumer and Business Services, by rule, may prescribe methods for establishing the worker's
20 weekly wage.

21 (3) No disability payment is recoverable for temporary total or partial disability suffered during
22 the first three calendar days after the worker leaves work or loses wages as a result of the
23 compensable injury unless the worker is totally disabled after the injury and the total disability
24 continues for a period of 14 consecutive days or unless the worker is admitted as an inpatient to a
25 hospital within 14 days of the first onset of total disability. If the worker leaves work or loses wages
26 on the day of the injury due to the injury, that day shall be considered the first day of the three-day
27 period.

28 (4) When an injured worker with an accepted disabling compensable injury is required to leave
29 work for a period of four hours or more to receive medical consultation, examination or treatment
30 with regard to the compensable injury, the worker shall receive temporary disability benefits cal-
31 culated pursuant to ORS 656.212 for the period during which the worker is absent, until such time
32 as the worker is determined to be medically stationary. However, benefits under this subsection are
33 not payable if wages are paid for the period of absence by the employer.

34 (5)(a) The insurer of the employer at injury or the self-insured employer at injury, may elect to
35 be responsible for payment of supplemental temporary disability benefits to a worker employed in
36 more than one job at the time of injury. In accordance with rules adopted by the director, if the
37 worker's weekly wage is determined under subsection (2)(a)(B) of this section, the insurer or self-
38 insured employer shall be reimbursed from the Workers' Benefit Fund for the amount of temporary
39 disability benefits paid that exceeds the amount payable pursuant to subsection (2)(a)(A) of this
40 section had the worker been employed in only one job at the time of injury. Such reimbursement
41 shall include an administrative fee payable to the insurer or self-insured employer pursuant to rules
42 adopted by the director.

43 (b) If the insurer or self-insured employer elects not to pay the supplemental temporary disabil-
44 ity benefits for a worker employed in more than one job at the time of injury, the director shall ei-
45 ther administer and pay the supplemental benefits directly or shall assign responsibility to

1 administer and process the payment to a paying agent selected by the director.

2 **(6) Notwithstanding any other provision of this chapter, an injured worker who is em-**
3 **ployed by state government, as defined in ORS 174.111, and who has a compensable aggra-**
4 **vation of the condition that was the basis of the initial claim or has a new injury to the same**
5 **body part that was the basis of the initial claim shall receive temporary disability compen-**
6 **sation based on the worker's wage at the time of aggravation or new injury.**

7 **SECTION 7. The amendments to ORS 656.210, 659A.043, 659A.046 and 659A.052 by sections**
8 **1 to 6 of this 2007 Act apply to claims with a date of injury or aggravation on or after the**
9 **effective date of this 2007 Act.**

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