

Senate Bill 405

Sponsored by COMMITTEE ON RULES

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 circumstances requiring evaluation of injured worker for vocational assistance. Extends period of eligibility for vocational benefits. Modifies definition of "suitable employment."

A BILL FOR AN ACT

1
2 Relating to vocational assistance benefits provided in workers' compensation claims; amending ORS
3 656.340.

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

5 **SECTION 1.** ORS 656.340 is amended to read:

6 656.340. (1)(a) The insurer or self-insured employer shall cause vocational assistance to be pro-
7 vided to an injured worker who is eligible for assistance in returning to work.

8 (b) For this purpose the insurer or self-insured employer shall contact a worker with a claim for
9 a disabling compensable injury or claim for aggravation for evaluation of the worker's eligibility for
10 vocational assistance within five days of:

11 (A) Having knowledge of the worker's likely eligibility for vocational assistance, from a medical
12 or investigation report, notification from the worker, or otherwise; [*or*]

13 **(B) The worker having received temporary total disability benefits for 60 days; or**

14 [*(B)*] **(C)** The time the worker is medically stationary, if the worker has not returned to the
15 worker's regular employment or other suitable employment with the employer at the time of injury
16 or aggravation and the worker is not receiving vocational assistance.

17 (c) Eligibility may be redetermined by the insurer or self-insured employer upon receipt of new
18 information that would change the eligibility determination.

19 **(d) The worker shall receive temporary total disability benefits from the date the evalu-**
20 **ation commences until an order determining that the worker is not eligible for vocational**
21 **assistance becomes final or until the worker's vocational assistance is completed.**

22 (2) Contact under subsection (1) of this section shall include informing the worker about reem-
23 ployment rights, the responsibility of the worker to request reemployment, and wage subsidy and job
24 site modification assistance and the provisions of the preferred worker program pursuant to rules
25 adopted by the Director of the Department of Consumer and Business Services.

26 (3) Within five days after notification that the attending physician or nurse practitioner au-
27 thorized to provide compensable medical services under ORS 656.245 has released a worker to re-
28 turn to work, the insurer or self-insured employer shall inform the worker about the opportunity to
29 seek reemployment or reinstatement under ORS 659A.043 and 659A.046. The insurer shall inform the
30 employer of the worker's reemployment rights, wage subsidy and the job site modification assistance
31 and the provisions of the preferred worker program.

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 (4) As soon as possible, and not more than 30 days after the contact required by subsection (1)
 2 of this section, the insurer or self-insured employer shall cause an individual certified by the direc-
 3 tor to provide vocational assistance to determine whether the worker is eligible for vocational as-
 4 sistance. The insurer or self-insured employer shall notify the worker of the decision regarding the
 5 worker's eligibility for vocational assistance. If the insurer or self-insured employer decides that the
 6 worker is not eligible, the worker may apply to the director for review of the decision as provided
 7 in ORS 656.283 (2). A worker determined ineligible upon evaluation under subsection [(1)(b)(B)]
 8 (1)(b)(C) of this section, or because the worker's eligibility has fully and finally expired under
 9 standards prescribed by the director, may not be found eligible thereafter unless that eligibility de-
 10 termination is rejected by the director under ORS 656.283 (2) or the worker's condition worsens so
 11 as to constitute an aggravation claim under ORS 656.273. A worker is not entitled to vocational
 12 assistance benefits when possible eligibility for such benefits arises from a worsening of the worker's
 13 condition that occurs after the expiration of the worker's aggravation rights under ORS 656.273.

14 (5) The objectives of vocational assistance are to return the worker to employment which is as
 15 close as possible to the worker's regular employment at a wage as close as possible to the weekly
 16 wage currently being paid for employment which was the worker's regular employment [*even though*
 17 *the wage available following employment may be less than the wage prescribed by subsection (6) of this*
 18 *section*]. As used in this subsection [*and subsection (6) of this section*], "regular employment" means
 19 the employment the worker held at the time of the injury or the claim for aggravation under ORS
 20 656.273, whichever gave rise to the potential eligibility for vocational assistance; or, for a worker
 21 not employed at the time of the aggravation, the employment the worker held on the last day of
 22 work prior to the aggravation.

23 (6)(a) A worker is eligible for vocational assistance if the worker will not be able to return to
 24 the previous employment or to any other available and suitable employment with the employer at
 25 the time of injury or aggravation, and the worker has a substantial handicap to employment.

26 (b) As used in this subsection:

27 (A) A "substantial handicap to employment" exists when the worker, because of the injury or
 28 aggravation, lacks the necessary physical capacities, knowledge, skills and abilities to be employed
 29 in suitable employment.

30 (B) "Suitable employment" means:

31 (i) Employment of the kind for which the worker has the necessary physical capacity, knowl-
 32 edge, skills and abilities; **and**

33 (ii) Employment that is located where the worker customarily worked or is within reasonable
 34 commuting distance of the worker's residence.]; *and*]

35 [(iii) *Employment that produces a weekly wage within 20 percent of that currently being paid for*
 36 *employment that was the worker's regular employment as defined in subsection (5) of this section. The*
 37 *director shall adopt rules providing methods of calculating the weekly wage currently being paid for*
 38 *the worker's regular employment for use in determining eligibility and for providing assistance to eli-*
 39 *gible workers. If the worker's regular employment was seasonal or temporary, the worker's wage shall*
 40 *be averaged based on a combination of the worker's earned income and any unemployment insurance*
 41 *payments. Only earned income evidenced by verifiable documentation such as federal or state tax re-*
 42 *turns shall be used in the calculation. Earned income does not include fringe benefits or reimbursement*
 43 *of the worker's employment expenses.*]

44 (7) Vocational evaluation[, *help in directly obtaining employment*] and training shall be available
 45 under conditions prescribed by the director. The director may establish other conditions for pro-

1 viding vocational assistance, including those relating to the worker's availability for assistance,
2 participation in previous assistance programs connected with the same claim and the nature and
3 extent of assistance that may be provided. [*Such conditions shall give preference to direct employment*
4 *assistance over training.*]

5 (8) An insurer or self-insured employer may utilize its own staff or may engage any other indi-
6 vidual certified by the director to perform the vocational evaluation required by subsection (4) of
7 this section.

8 (9) The director shall adopt rules providing:

9 (a) Standards for and methods of certifying individuals and authorizing vocational assistance
10 providers qualified by education, training, experience and plan of operation to provide vocational
11 assistance to injured workers;

12 (b) Conditions and procedures under which the certification of an individual or the authorization
13 of a vocational assistance provider to provide vocational assistance services may be suspended or
14 revoked for failure to maintain compliance with the certification or authorization standards;

15 (c) Standards for the nature and extent of services a worker may receive, for plans for return
16 to work and for determining when the worker has returned to work; and

17 (d) Procedures, schedules and conditions relating to the payment for services performed by a
18 vocational assistance provider, which shall be based on payment for specific services performed and
19 not fees for services performed on an hourly basis. Fee schedules shall reflect a reasonable rate for
20 direct worker purchases and for all vocational assistance providers and shall be the same within
21 suitable geographic areas.

22 (10) Insurers and self-insured employers shall maintain records and make reports to the director
23 of vocational assistance actions at such times and in such manner as the director may prescribe.
24 Such requirements shall be for the purpose of assisting the Department of Consumer and Business
25 Services in monitoring compliance with this section to insure that workers receive timely and ap-
26 propriate vocational assistance. The director shall minimize to the greatest extent possible the
27 number, extent and kinds of reports required. The director shall compile a list of the organizations
28 or agencies authorized to provide vocational assistance. A current list shall be distributed by the
29 director to all insurers and self-insured employers. The insurer shall send the list to each worker
30 with the notice of eligibility.

31 (11) When a worker is eligible to receive vocational assistance, the worker and the insurer or
32 self-insured employer shall attempt to agree on the choice of a vocational assistance provider. If the
33 worker agrees, the insurer or self-insured employer may utilize its own staff to provide vocational
34 assistance. If they are unable to agree on a vocational assistance provider, the insurer or self-
35 insured employer shall notify the director and the director shall select a provider. Any change in
36 the choice of vocational assistance provider is subject to the approval of the director.

37 (12) Notwithstanding ORS 656.268, a worker actively engaged in training may receive temporary
38 disability compensation for a maximum of [16] **24** months, subject to extension to [21] **48** months by
39 order of the director for good cause shown. The costs related to vocational assistance training
40 programs may be paid for periods longer than [21] **48** months, but in no event may temporary disa-
41 bility benefits be paid for a period longer than [21] **48** months.

42 (13) As used in this section, "vocational assistance provider" means a public or private organ-
43 ization or agency which provides vocational assistance to injured workers.

44 [(14)(a) *Determination of eligibility for vocational assistance does not entitle all workers to the same*
45 *type or extent of assistance.*]

1 *[(b) Training shall not be provided to an eligible worker solely because the worker cannot obtain*
 2 *employment, otherwise suitable, that will produce the wage prescribed in subsection (6) of this section*
 3 *unless such training will enable the worker to find employment which will produce a wage significantly*
 4 *closer to that prescribed in subsection (6) of this section.]*

5 *[(c) Nothing in this section shall be interpreted to expand the availability of training under this*
 6 *section.]*

7 [(15)] (14) A physical capacities evaluation shall be performed in conjunction with vocational
 8 assistance or determination of eligibility for such assistance at the request of the insurer or self-
 9 insured employer or worker. Such request shall be made to the attending physician or nurse prac-
 10 titioner authorized to provide compensable medical services under ORS 656.245. The attending
 11 physician or nurse practitioner, within 20 days of the request, shall perform a physical capacities
 12 evaluation or refer the worker for such evaluation or advise the insurer or self-insured employer
 13 and the worker in writing that the injured worker is incapable of participating in a physical ca-
 14 pacities evaluation.

15 **SECTION 2.** ORS 656.340, as amended by section 16, chapter 811, Oregon Laws 2003, is
 16 amended to read:

17 656.340. (1)(a) The insurer or self-insured employer shall cause vocational assistance to be pro-
 18 vided to an injured worker who is eligible for assistance in returning to work.

19 (b) For this purpose the insurer or self-insured employer shall contact a worker with a claim for
 20 a disabling compensable injury or claim for aggravation for evaluation of the worker's eligibility for
 21 vocational assistance within five days of:

22 (A) Having knowledge of the worker's likely eligibility for vocational assistance, from a medical
 23 or investigation report, notification from the worker, or otherwise; *[or]*

24 **(B) The worker having received temporary total disability benefits for 60 days; or**

25 *[(B)]* (C) The time the worker is medically stationary, if the worker has not returned to the
 26 worker's regular employment or other suitable employment with the employer at the time of injury
 27 or aggravation and the worker is not receiving vocational assistance.

28 (c) Eligibility may be redetermined by the insurer or self-insured employer upon receipt of new
 29 information that would change the eligibility determination.

30 **(d) The worker shall receive temporary total disability benefits from the date the evalu-**
 31 **ation commences until an order determining that the worker is not eligible for vocational**
 32 **assistance becomes final or until the worker's vocational assistance is completed.**

33 (2) Contact under subsection (1) of this section shall include informing the worker about reem-
 34 ployment rights, the responsibility of the worker to request reemployment, and wage subsidy and job
 35 site modification assistance and the provisions of the preferred worker program pursuant to rules
 36 adopted by the Director of the Department of Consumer and Business Services.

37 (3) Within five days after notification that the attending physician has released a worker to re-
 38 turn to work, the insurer or self-insured employer shall inform the worker about the opportunity to
 39 seek reemployment or reinstatement under ORS 659A.043 and 659A.046. The insurer shall inform the
 40 employer of the worker's reemployment rights, wage subsidy and the job site modification assistance
 41 and the provisions of the preferred worker program.

42 (4) As soon as possible, and not more than 30 days after the contact required by subsection (1)
 43 of this section, the insurer or self-insured employer shall cause an individual certified by the direc-
 44 tor to provide vocational assistance to determine whether the worker is eligible for vocational as-
 45 sistance. The insurer or self-insured employer shall notify the worker of the decision regarding the

1 worker's eligibility for vocational assistance. If the insurer or self-insured employer decides that the
 2 worker is not eligible, the worker may apply to the director for review of the decision as provided
 3 in ORS 656.283 (2). A worker determined ineligible upon evaluation under subsection [(1)(b)(B)]
 4 (1)(b)(C) of this section, or because the worker's eligibility has fully and finally expired under
 5 standards prescribed by the director, may not be found eligible thereafter unless that eligibility de-
 6 termination is rejected by the director under ORS 656.283 (2) or the worker's condition worsens so
 7 as to constitute an aggravation claim under ORS 656.273. A worker is not entitled to vocational
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 9 condition that occurs after the expiration of the worker's aggravation rights under ORS 656.273.

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 11 close as possible to the worker's regular employment at a wage as close as possible to the weekly
 12 wage currently being paid for employment which was the worker's regular employment [*even though*
 13 *the wage available following employment may be less than the wage prescribed by subsection (6) of this*
 14 *section*]. As used in this subsection and subsection (6) of this section, "regular employment" means
 15 the employment the worker held at the time of the injury or the claim for aggravation under ORS
 16 656.273, whichever gave rise to the potential eligibility for vocational assistance; or, for a worker
 17 not employed at the time of the aggravation, the employment the worker held on the last day of
 18 work prior to the aggravation.

19 (6)(a) A worker is eligible for vocational assistance if the worker will not be able to return to
 20 the previous employment or to any other available and suitable employment with the employer at
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22 (b) As used in this subsection:

23 (A) A "substantial handicap to employment" exists when the worker, because of the injury or
 24 aggravation, lacks the necessary physical capacities, knowledge, skills and abilities to be employed
 25 in suitable employment.

26 (B) "Suitable employment" means:

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29 (ii) Employment that is located where the worker customarily worked or is within reasonable
 30 commuting distance of the worker's residence.]; *and*]

31 [(iii) *Employment that produces a weekly wage within 20 percent of that currently being paid for*
 32 *employment that was the worker's regular employment as defined in subsection (5) of this section. The*
 33 *director shall adopt rules providing methods of calculating the weekly wage currently being paid for*
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 36 *be averaged based on a combination of the worker's earned income and any unemployment insurance*
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 38 *turns shall be used in the calculation. Earned income does not include fringe benefits or reimbursement*
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 44 extent of assistance that may be provided. [*Such conditions shall give preference to direct employment*
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20 Such requirements shall be for the purpose of assisting the Department of Consumer and Business
21 Services in monitoring compliance with this section to insure that workers receive timely and ap-
22 propriate vocational assistance. The director shall minimize to the greatest extent possible the
23 number, extent and kinds of reports required. The director shall compile a list of the organizations
24 or agencies authorized to provide vocational assistance. A current list shall be distributed by the
25 director to all insurers and self-insured employers. The insurer shall send the list to each worker
26 with the notice of eligibility.

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28 self-insured employer shall attempt to agree on the choice of a vocational assistance provider. If the
29 worker agrees, the insurer or self-insured employer may utilize its own staff to provide vocational
30 assistance. If they are unable to agree on a vocational assistance provider, the insurer or self-
31 insured employer shall notify the director and the director shall select a provider. Any change in
32 the choice of vocational assistance provider is subject to the approval of the director.

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36 programs may be paid for periods longer than [21] **48** months, but in no event may temporary disa-
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5 insured employer or worker. Such request shall be made to the attending physician. The attending
6 physician, within 20 days of the request, shall perform a physical capacities evaluation or refer the
7 worker for such evaluation or advise the insurer or self-insured employer and the worker in writing
8 that the injured worker is incapable of participating in a physical capacities evaluation.

9
