

# Senate Bill 503

Sponsored by COMMITTEE ON BUSINESS, TRANSPORTATION AND WORKFORCE DEVELOPMENT (at the request of Self-Insurers Association)

## 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**.

Defines "regular work" for purposes of workers' compensation statutes.

## A BILL FOR AN ACT

1  
2 Relating to definitions for workers' compensation statutes; amending ORS 656.005, 656.027, 656.278  
3 and 656.506.

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

5 **SECTION 1.** ORS 656.005 is amended to read:

6 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered em-  
7 ployment, as determined by the Employment Department, for the last quarter of the calendar year  
8 preceding the fiscal year in which the injury occurred.

9 (2) "Beneficiary" means an injured worker, and the husband, wife, child or dependent of a  
10 worker, who is entitled to receive payments under this chapter. "Beneficiary" does not include:

11 (a) A spouse of an injured worker living in a state of abandonment for more than one year at  
12 the time of the injury or subsequently. A spouse who has lived separate and apart from the worker  
13 for a period of two years and who has not during that time received or attempted by process of law  
14 to collect funds for support or maintenance is considered living in a state of abandonment.

15 (b) A person who intentionally causes the compensable injury to or death of an injured worker.

16 (3) "Board" means the Workers' Compensation Board.

17 (4) "Carrier-insured employer" means an employer who provides workers' compensation cover-  
18 age with a guaranty contract insurer.

19 (5) "Child" includes a posthumous child, a child legally adopted prior to the injury, a child to-  
20 ward whom the worker stands in loco parentis, an illegitimate child and a stepchild, if such  
21 stepchild was, at the time of the injury, a member of the worker's family and substantially dependent  
22 upon the worker for support. An invalid dependent child is a child, for purposes of benefits, re-  
23 gardless of age, so long as the child was an invalid at the time of the accident and thereafter re-  
24 mains an invalid substantially dependent on the worker for support. For purposes of this chapter,  
25 an invalid dependent child is considered to be a child under 18 years of age.

26 (6) "Claim" means a written request for compensation from a subject worker or someone on the  
27 worker's behalf, or any compensable injury of which a subject employer has notice or knowledge.

28 (7)(a) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appli-  
29 ances, arising out of and in the course of employment requiring medical services or resulting in  
30 disability or death; an injury is accidental if the result is an accident, whether or not due to acci-  
31 dental means, if it is established by medical evidence supported by objective findings, subject to 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 following limitations:

2 (A) No injury or disease is compensable as a consequence of a compensable injury unless the  
3 compensable injury is the major contributing cause of the consequential condition.

4 (B) If an otherwise compensable injury combines at any time with a preexisting condition to  
5 cause or prolong disability or a need for treatment, the combined condition is compensable only if,  
6 so long as and to the extent that the otherwise compensable injury is the major contributing cause  
7 of the disability of the combined condition or the major contributing cause of the need for treatment  
8 of the combined condition.

9 (b) "Compensable injury" does not include:

10 (A) Injury to any active participant in assaults or combats which are not connected to the job  
11 assignment and which amount to a deviation from customary duties;

12 (B) Injury incurred while engaging in or performing, or as the result of engaging in or per-  
13 forming, any recreational or social activities primarily for the worker's personal pleasure; or

14 (C) Injury the major contributing cause of which is demonstrated to be by a preponderance of  
15 the evidence the injured worker's consumption of alcoholic beverages or the unlawful consumption  
16 of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of  
17 such consumption.

18 (c) A "disabling compensable injury" is an injury which entitles the worker to compensation for  
19 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless  
20 there is a reasonable expectation that permanent disability will result from the injury.

21 (d) A "nondisabling compensable injury" is any injury which requires medical services only.

22 (8) "Compensation" includes all benefits, including medical services, provided for a compensable  
23 injury to a subject worker or the worker's beneficiaries by an insurer or self-insured employer pur-  
24 suant to this chapter.

25 (9) "Department" means the Department of Consumer and Business Services.

26 (10) "Dependent" means any of the following-named relatives of a worker whose death results  
27 from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson,  
28 granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the  
29 accident, are dependent in whole or in part for their support upon the earnings of the worker.  
30 Unless otherwise provided by treaty, aliens not residing within the United States at the time of the  
31 accident other than father, mother, husband, wife or children are not included within the term "de-  
32 pendent."

33 (11) "Director" means the Director of the Department of Consumer and Business Services.

34 (12)(a) "Doctor" or "physician" means a person duly licensed to practice one or more of the  
35 healing arts in any country or in any state, territory or possession of the United States within the  
36 limits of the license of the licentiate.

37 (b) Except as otherwise provided for workers subject to a managed care contract, "attending  
38 physician" means a doctor or physician who is primarily responsible for the treatment of a worker's  
39 compensable injury and who is:

40 (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the  
41 Board of Medical Examiners for the State of Oregon or an oral and maxillofacial surgeon licensed  
42 by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state,  
43 territory or possession of the United States; or

44 (B) For a period of 30 days from the date of first visit on the initial claim or for 12 visits,  
45 whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners

1 for the State of Oregon or a similarly licensed doctor or physician in any country or in any state,  
2 territory or possession of the United States.

3 (c) "Consulting physician" means a doctor or physician who examines a worker or the worker's  
4 medical record to advise the attending physician or nurse practitioner authorized to provide  
5 compensable medical services under ORS 656.245 regarding treatment of a worker's compensable  
6 injury.

7 (13)(a) "Employer" means any person, including receiver, administrator, executor or trustee, and  
8 the state, state agencies, counties, municipal corporations, school districts and other public corpo-  
9 rations or political subdivisions, who contracts to pay a remuneration for and secures the right to  
10 direct and control the services of any person.

11 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of  
12 a temporary service provider is not the employer of temporary workers provided by the temporary  
13 service provider.

14 (c) As used in paragraph (b) of this subsection, "temporary service provider" has the meaning  
15 for that term provided in ORS 656.850.

16 (14) "Guaranty contract insurer" and "insurer" mean the State Accident Insurance Fund Cor-  
17 poration or an insurer authorized under ORS chapter 731 to transact workers' compensation insur-  
18 ance in this state or an assigned claims agent selected by the director under ORS 656.054.

19 (15) "Consumer and Business Services Fund" means the fund created by ORS 705.145.

20 (16) "Invalid" means one who is physically or mentally incapacitated from earning a livelihood.

21 (17) "Medically stationary" means that no further material improvement would reasonably be  
22 expected from medical treatment, or the passage of time.

23 (18) "Noncomplying employer" means a subject employer who has failed to comply with ORS  
24 656.017.

25 (19) "Objective findings" in support of medical evidence are verifiable indications of injury or  
26 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and  
27 palpable muscle spasm. "Objective findings" does not include physical findings or subjective re-  
28 sponses to physical examinations that are not reproducible, measurable or observable.

29 (20) "Palliative care" means medical service rendered to reduce or moderate temporarily the  
30 intensity of an otherwise stable medical condition, but does not include those medical services ren-  
31 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

32 (21) "Party" means a claimant for compensation, the employer of the injured worker at the time  
33 of injury and the insurer, if any, of such employer.

34 (22) "Payroll" means a record of wages payable to workers for their services and includes  
35 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or  
36 similar advantage received from the employer. However, "payroll" does not include overtime pay,  
37 vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments  
38 to reward workers for safe working practices. Bonus pay is limited to payments which are not an-  
39 ticipated under the contract of employment and which are paid at the sole discretion of the em-  
40 ployer. The exclusion from payroll of bonus payments to reward workers for safe working practices  
41 is only for the purpose of calculations based on payroll to determine premium for workers' com-  
42 pensation insurance, and does not affect any other calculation or determination based on payroll for  
43 the purposes of this chapter.

44 (23) "Person" includes partnership, joint venture, association, limited liability company and  
45 corporation.

1 (24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, con-  
 2 genital abnormality, personality disorder or similar condition that contributes to disability or need  
 3 for treatment, provided that:

4 (A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the  
 5 worker has been diagnosed with such condition, or has obtained medical services for the symptoms  
 6 of the condition regardless of diagnosis; and

7 (B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes  
 8 the initial injury;

9 (ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the  
 10 new medical condition; or

11 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment  
 12 precedes the onset of the worsened condition.

13 (b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, con-  
 14 genital abnormality, personality disorder or similar condition that contributes to disability or need  
 15 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim  
 16 for worsening in such claims pursuant to ORS 656.273 or 656.278.

17 (c) For the purposes of industrial injury claims, a condition does not contribute to disability or  
 18 need for treatment if the condition merely renders the worker more susceptible to the injury.

19 **(25) "Regular work" means the job the worker held at the time of injury or employment**  
 20 **substantially similar in nature, duties, responsibilities, knowledge, skills and abilities to the**  
 21 **job the worker held at the time of injury.**

22 [(25)] **(26)** "Self-insured employer" means an employer or group of employers certified under ORS  
 23 656.430 as meeting the qualifications set out by ORS 656.407.

24 [(26)] **(27)** "State Accident Insurance Fund Corporation" and "corporation" mean the State Ac-  
 25 cident Insurance Fund Corporation created under ORS 656.752.

26 [(27)] **(28)** "Subject employer" means an employer who is subject to this chapter as provided by  
 27 ORS 656.023.

28 [(28)] **(29)** "Subject worker" means a worker who is subject to this chapter as provided by ORS  
 29 656.027.

30 [(29)] **(30)** "Wages" means the money rate at which the service rendered is recompensed under  
 31 the contract of hiring in force at the time of the accident, including reasonable value of board, rent,  
 32 housing, lodging or similar advantage received from the employer, and includes the amount of tips  
 33 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of  
 34 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips  
 35 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-  
 36 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at  
 37 which any worker shall be carried upon the payroll of the employer for the purpose of determining  
 38 the premium of the employer.

39 [(30)] **(31)** "Worker" means any person, including a minor whether lawfully or unlawfully em-  
 40 ployed, who engages to furnish services for a remuneration, subject to the direction and control of  
 41 an employer and includes salaried, elected and appointed officials of the state, state agencies,  
 42 counties, cities, school districts and other public corporations, but does not include any person  
 43 whose services are performed as an inmate or ward of a state institution or as part of the eligibility  
 44 requirements for a general or public assistance grant. For the purpose of determining entitlement  
 45 to temporary disability benefits or permanent total disability benefits under this chapter, "worker"

1 does not include a person who has withdrawn from the workforce during the period for which such  
 2 benefits are sought.

3 [(31)] (32) “Independent contractor” has the meaning for that term provided in ORS 670.600.

4 **SECTION 2.** ORS 656.005, as amended by section 2, chapter 811, Oregon Laws 2003, is amended  
 5 to read:

6 656.005. (1) “Average weekly wage” means the Oregon average weekly wage in covered em-  
 7 ployment, as determined by the Employment Department, for the last quarter of the calendar year  
 8 preceding the fiscal year in which the injury occurred.

9 (2) “Beneficiary” means an injured worker, and the husband, wife, child or dependent of a  
 10 worker, who is entitled to receive payments under this chapter. “Beneficiary” does not include:

11 (a) A spouse of an injured worker living in a state of abandonment for more than one year at  
 12 the time of the injury or subsequently. A spouse who has lived separate and apart from the worker  
 13 for a period of two years and who has not during that time received or attempted by process of law  
 14 to collect funds for support or maintenance is considered living in a state of abandonment.

15 (b) A person who intentionally causes the compensable injury to or death of an injured worker.

16 (3) “Board” means the Workers’ Compensation Board.

17 (4) “Carrier-insured employer” means an employer who provides workers’ compensation cover-  
 18 age with a guaranty contract insurer.

19 (5) “Child” includes a posthumous child, a child legally adopted prior to the injury, a child to-  
 20 ward whom the worker stands in loco parentis, an illegitimate child and a stepchild, if such  
 21 stepchild was, at the time of the injury, a member of the worker’s family and substantially dependent  
 22 upon the worker for support. An invalid dependent child is a child, for purposes of benefits, re-  
 23 gardless of age, so long as the child was an invalid at the time of the accident and thereafter re-  
 24 mains an invalid substantially dependent on the worker for support. For purposes of this chapter,  
 25 an invalid dependent child is considered to be a child under 18 years of age.

26 (6) “Claim” means a written request for compensation from a subject worker or someone on the  
 27 worker’s behalf, or any compensable injury of which a subject employer has notice or knowledge.

28 (7)(a) A “compensable injury” is an accidental injury, or accidental injury to prosthetic appli-  
 29 ances, arising out of and in the course of employment requiring medical services or resulting in  
 30 disability or death; an injury is accidental if the result is an accident, whether or not due to acci-  
 31 dental means, if it is established by medical evidence supported by objective findings, subject to the  
 32 following limitations:

33 (A) No injury or disease is compensable as a consequence of a compensable injury unless the  
 34 compensable injury is the major contributing cause of the consequential condition.

35 (B) If an otherwise compensable injury combines at any time with a preexisting condition to  
 36 cause or prolong disability or a need for treatment, the combined condition is compensable only if,  
 37 so long as and to the extent that the otherwise compensable injury is the major contributing cause  
 38 of the disability of the combined condition or the major contributing cause of the need for treatment  
 39 of the combined condition.

40 (b) “Compensable injury” does not include:

41 (A) Injury to any active participant in assaults or combats which are not connected to the job  
 42 assignment and which amount to a deviation from customary duties;

43 (B) Injury incurred while engaging in or performing, or as the result of engaging in or per-  
 44 forming, any recreational or social activities primarily for the worker’s personal pleasure; or

45 (C) Injury the major contributing cause of which is demonstrated to be by a preponderance of

1 the evidence the injured worker's consumption of alcoholic beverages or the unlawful consumption  
2 of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of  
3 such consumption.

4 (c) A "disabling compensable injury" is an injury which entitles the worker to compensation for  
5 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless  
6 there is a reasonable expectation that permanent disability will result from the injury.

7 (d) A "nondisabling compensable injury" is any injury which requires medical services only.

8 (8) "Compensation" includes all benefits, including medical services, provided for a compensable  
9 injury to a subject worker or the worker's beneficiaries by an insurer or self-insured employer pur-  
10 suant to this chapter.

11 (9) "Department" means the Department of Consumer and Business Services.

12 (10) "Dependent" means any of the following-named relatives of a worker whose death results  
13 from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson,  
14 granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the  
15 accident, are dependent in whole or in part for their support upon the earnings of the worker.  
16 Unless otherwise provided by treaty, aliens not residing within the United States at the time of the  
17 accident other than father, mother, husband, wife or children are not included within the term "de-  
18 pendent."

19 (11) "Director" means the Director of the Department of Consumer and Business Services.

20 (12)(a) "Doctor" or "physician" means a person duly licensed to practice one or more of the  
21 healing arts in any country or in any state, territory or possession of the United States within the  
22 limits of the license of the licentiate.

23 (b) Except as otherwise provided for workers subject to a managed care contract, "attending  
24 physician" means a doctor or physician who is primarily responsible for the treatment of a worker's  
25 compensable injury and who is:

26 (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the  
27 Board of Medical Examiners for the State of Oregon or an oral and maxillofacial surgeon licensed  
28 by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state,  
29 territory or possession of the United States; or

30 (B) For a period of 30 days from the date of first visit on the initial claim or for 12 visits,  
31 whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners  
32 for the State of Oregon or a similarly licensed doctor or physician in any country or in any state,  
33 territory or possession of the United States.

34 (c) "Consulting physician" means a doctor or physician who examines a worker or the worker's  
35 medical record to advise the attending physician regarding treatment of a worker's compensable  
36 injury.

37 (13)(a) "Employer" means any person, including receiver, administrator, executor or trustee, and  
38 the state, state agencies, counties, municipal corporations, school districts and other public corpo-  
39 rations or political subdivisions, who contracts to pay a remuneration for and secures the right to  
40 direct and control the services of any person.

41 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of  
42 a temporary service provider is not the employer of temporary workers provided by the temporary  
43 service provider.

44 (c) As used in paragraph (b) of this subsection, "temporary service provider" has the meaning  
45 for that term provided in ORS 656.850.

1 (14) "Guaranty contract insurer" and "insurer" mean the State Accident Insurance Fund Cor-  
2 poration or an insurer authorized under ORS chapter 731 to transact workers' compensation insur-  
3 ance in this state or an assigned claims agent selected by the director under ORS 656.054.

4 (15) "Consumer and Business Services Fund" means the fund created by ORS 705.145.

5 (16) "Invalid" means one who is physically or mentally incapacitated from earning a livelihood.

6 (17) "Medically stationary" means that no further material improvement would reasonably be  
7 expected from medical treatment, or the passage of time.

8 (18) "Noncomplying employer" means a subject employer who has failed to comply with ORS  
9 656.017.

10 (19) "Objective findings" in support of medical evidence are verifiable indications of injury or  
11 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and  
12 palpable muscle spasm. "Objective findings" does not include physical findings or subjective re-  
13 sponses to physical examinations that are not reproducible, measurable or observable.

14 (20) "Palliative care" means medical service rendered to reduce or moderate temporarily the  
15 intensity of an otherwise stable medical condition, but does not include those medical services ren-  
16 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

17 (21) "Party" means a claimant for compensation, the employer of the injured worker at the time  
18 of injury and the insurer, if any, of such employer.

19 (22) "Payroll" means a record of wages payable to workers for their services and includes  
20 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or  
21 similar advantage received from the employer. However, "payroll" does not include overtime pay,  
22 vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments  
23 to reward workers for safe working practices. Bonus pay is limited to payments which are not an-  
24 ticipated under the contract of employment and which are paid at the sole discretion of the em-  
25 ployer. The exclusion from payroll of bonus payments to reward workers for safe working practices  
26 is only for the purpose of calculations based on payroll to determine premium for workers' com-  
27 pensation insurance, and does not affect any other calculation or determination based on payroll for  
28 the purposes of this chapter.

29 (23) "Person" includes partnership, joint venture, association, limited liability company and  
30 corporation.

31 (24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, con-  
32 genital abnormality, personality disorder or similar condition that contributes to disability or need  
33 for treatment, provided that:

34 (A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the  
35 worker has been diagnosed with such condition, or has obtained medical services for the symptoms  
36 of the condition regardless of diagnosis; and

37 (B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes  
38 the initial injury;

39 (ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the  
40 new medical condition; or

41 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment  
42 precedes the onset of the worsened condition.

43 (b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, con-  
44 genital abnormality, personality disorder or similar condition that contributes to disability or need  
45 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim

1 for worsening in such claims pursuant to ORS 656.273 or 656.278.

2 (c) For the purposes of industrial injury claims, a condition does not contribute to disability or  
 3 need for treatment if the condition merely renders the worker more susceptible to the injury.

4 **(25) “Regular work” means the job the worker held at the time of injury or employment**  
 5 **substantially similar in nature, duties, responsibilities, knowledge, skills and abilities to the**  
 6 **job the worker held at the time of injury.**

7 [(25)] **(26)** “Self-insured employer” means an employer or group of employers certified under ORS  
 8 656.430 as meeting the qualifications set out by ORS 656.407.

9 [(26)] **(27)** “State Accident Insurance Fund Corporation” and “corporation” mean the State Ac-  
 10 cident Insurance Fund Corporation created under ORS 656.752.

11 [(27)] **(28)** “Subject employer” means an employer who is subject to this chapter as provided by  
 12 ORS 656.023.

13 [(28)] **(29)** “Subject worker” means a worker who is subject to this chapter as provided by ORS  
 14 656.027.

15 [(29)] **(30)** “Wages” means the money rate at which the service rendered is recompensed under  
 16 the contract of hiring in force at the time of the accident, including reasonable value of board, rent,  
 17 housing, lodging or similar advantage received from the employer, and includes the amount of tips  
 18 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of  
 19 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips  
 20 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-  
 21 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at  
 22 which any worker shall be carried upon the payroll of the employer for the purpose of determining  
 23 the premium of the employer.

24 [(30)] **(31)** “Worker” means any person, including a minor whether lawfully or unlawfully em-  
 25 ployed, who engages to furnish services for a remuneration, subject to the direction and control of  
 26 an employer and includes salaried, elected and appointed officials of the state, state agencies,  
 27 counties, cities, school districts and other public corporations, but does not include any person  
 28 whose services are performed as an inmate or ward of a state institution or as part of the eligibility  
 29 requirements for a general or public assistance grant. For the purpose of determining entitlement  
 30 to temporary disability benefits or permanent total disability benefits under this chapter, “worker”  
 31 does not include a person who has withdrawn from the workforce during the period for which such  
 32 benefits are sought.

33 [(31)] **(32)** “Independent contractor” has the meaning for that term provided in ORS 670.600.

34 **SECTION 3.** ORS 656.027 is amended to read:

35 656.027. All workers are subject to this chapter except those nonsubject workers described in  
 36 the following subsections:

37 (1) A worker employed as a domestic servant in or about a private home. For the purposes of  
 38 this subsection “domestic servant” means any worker engaged in household domestic service by  
 39 private employment contract, including, but not limited to, home health workers.

40 (2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or  
 41 about the private home of the person employing the worker.

42 (3)(a) A worker whose employment is casual and either:

43 (A) The employment is not in the course of the trade, business or profession of the employer;

44 or

45 (B) The employment is in the course of the trade, business or profession of a nonsubject em-



1 ployer.

2 (b) For the purpose of this subsection, “casual” refers only to employments where the work in  
3 any 30-day period, without regard to the number of workers employed, involves a total labor cost  
4 of less than \$500.

5 (4) A person for whom a rule of liability for injury or death arising out of and in the course of  
6 employment is provided by the laws of the United States.

7 (5) A worker engaged in the transportation in interstate commerce of goods, persons or property  
8 for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business  
9 in this state.

10 (6) Firefighter and police employees of any city having a population of more than 200,000 that  
11 provides a disability and retirement system by ordinance or charter.

12 (7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor  
13 or services are performed under contract, the sole proprietor must qualify as an independent con-  
14 tractor.

15 (b) Sole proprietors actively registered under ORS 671.525 or licensed under ORS 701.035. When  
16 labor or services are performed under contract for remuneration, notwithstanding ORS 656.005  
17 [(30)] **(31)**, the sole proprietor must qualify as an independent contractor. Any sole proprietor reg-  
18 istered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto  
19 is conclusively presumed to be an independent contractor.

20 (8) Except as provided in subsection (23) of this section, partners who are not engaged in work  
21 performed in direct connection with the construction, alteration, repair, improvement, moving or  
22 demolition of an improvement on real property or appurtenances thereto. When labor or services  
23 are performed under contract, the partnership must qualify as an independent contractor.

24 (9) Except as provided in subsection (25) of this section, members, including members who are  
25 managers, of limited liability companies, regardless of the nature of the work performed. However,  
26 members, including members who are managers, of limited liability companies with more than one  
27 member, while engaged in work performed in direct connection with the construction, alteration,  
28 repair, improvement, moving or demolition of an improvement on real property or appurtenances  
29 thereto, are subject workers. When labor or services are performed under contract, the limited li-  
30 ability company must qualify as an independent contractor.

31 (10) Except as provided in subsection (24) of this section, corporate officers who are directors  
32 of the corporation and who have a substantial ownership interest in the corporation, regardless of  
33 the nature of the work performed by such officers, subject to the following limitations:

34 (a) If the activities of the corporation are conducted on land that receives farm use tax assess-  
35 ment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors  
36 in the corporate bylaws, regardless of ownership interest, and who are members of the same family,  
37 whether related by blood, marriage or adoption.

38 (b) If the activities of the corporation involve the commercial harvest of timber and all officers  
39 of the corporation are members of the same family and are parents, daughters or sons, daughters-  
40 in-law or sons-in-law or grandchildren, then all such officers may elect to be nonsubject workers.  
41 For all other corporations involving the commercial harvest of timber, the maximum number of ex-  
42 empt corporate officers for the corporation shall be whichever is the greater of the following:

43 (A) Two corporate officers; or

44 (B) One corporate officer for each 10 corporate employees.

45 (c) When labor or services are performed under contract, the corporation must qualify as an

1 independent contractor.

2 (11) A person performing services primarily for board and lodging received from any religious,  
3 charitable or relief organization.

4 (12) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and 656.075.

5 (13) A person who has been declared an amateur athlete under the rules of the United States  
6 Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for  
7 performance of services as an athlete other than board, room, rent, housing, lodging or other rea-  
8 sonable incidental subsistence allowance, or any amateur sports official who is certified by a re-  
9 cognized Oregon or national certifying authority, which requires or provides liability and accident  
10 insurance for such officials. A roster of recognized Oregon and national certifying authorities will  
11 be maintained by the Department of Consumer and Business Services, from lists of certifying or-  
12 ganizations submitted by the Oregon School Activities Association and the Oregon Park and Re-  
13 creation Society.

14 (14) Volunteer personnel participating in the ACTION programs, organized under the Domestic  
15 Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the  
16 Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimburse-  
17 ment for time and travel expenses.

18 (15) A person who has an ownership or leasehold interest in equipment and who furnishes,  
19 maintains and operates the equipment. As used in this subsection "equipment" means:

20 (a) A motor vehicle used in the transportation of logs, poles or piling.

21 (b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.

22 (c) A motor vehicle operated as a taxicab as defined in ORS 825.017.

23 (d) A motor vehicle used in the transportation of property by a for-hire motor carrier that is  
24 required under ORS 825.100 or 825.104 to possess a certificate or permit.

25 (16) A person engaged in the transportation of the public for recreational down-river boating  
26 activities on the waters of this state pursuant to a federal permit when the person furnishes the  
27 equipment necessary for the activity. As used in this subsection, "recreational down-river boating  
28 activities" means those boating activities for the purpose of recreational fishing, swimming or  
29 sightseeing utilizing a float craft with oars or paddles as the primary source of power.

30 (17) A person who performs volunteer ski patrol activities who receives no wage other than  
31 noncash remuneration.

32 (18) A person 19 years of age or older who contracts with a newspaper publishing company or  
33 independent newspaper dealer or contractor to distribute newspapers to the general public and  
34 perform or undertake any necessary or attendant functions related thereto.

35 (19) A person performing foster parent or adult foster care duties pursuant to ORS chapter 411,  
36 418, 430 or 443.

37 (20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or  
38 relief organization, whether or not such person receives meals or lodging or nominal reimbursements  
39 or vouchers for meals, lodging or expenses.

40 (21) A person performing services under a property tax work-off program established under ORS  
41 310.800.

42 (22) A person who performs service as a caddy at a golf course in an established program for  
43 the training and supervision of caddies under the direction of a person who is an employee of the  
44 golf course.

45 (23)(a) Partners who are actively registered under ORS 671.525 or licensed under ORS 701.035

1 and who have a substantial ownership interest in a partnership. If all partners are members of the  
 2 same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-  
 3 in-law or grandchildren, all such partners may elect to be nonsubject workers. For all other part-  
 4 nerships registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum  
 5 number of exempt partners shall be whichever is the greater of the following:

6 (A) Two partners; or

7 (B) One partner for each 10 partnership employees.

8 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS  
 9 656.005 [(30)] (31), the partnership qualifies as an independent contractor. Any partnership regis-  
 10 tered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto  
 11 is conclusively presumed to be an independent contractor.

12 (24)(a) Corporate officers who are directors of a corporation actively registered under ORS  
 13 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in the corpo-  
 14 ration, regardless of the nature of the work performed. If all officers of the corporation are members  
 15 of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law  
 16 or sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other  
 17 corporations registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maxi-  
 18 mum number of exempt corporate officers shall be whichever is the greater of the following:

19 (A) Two corporate officers; or

20 (B) One corporate officer for each 10 corporate employees.

21 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS  
 22 656.005 [(30)] (31), the corporation qualifies as an independent contractor. Any corporation regis-  
 23 tered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto  
 24 is conclusively presumed to be an independent contractor.

25 (25)(a) Limited liability company members who are members of a company actively registered  
 26 under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in  
 27 the company, regardless of the nature of the work performed. If all members of the company are  
 28 members of the same family and are parents, spouses, sisters, brothers, daughters or sons,  
 29 daughters-in-law or sons-in-law or grandchildren, all such members may elect to be nonsubject  
 30 workers. For all other companies registered under ORS 671.510 to 671.710 or licensed under ORS  
 31 chapter 701, the maximum number of exempt company members shall be whichever is the greater  
 32 of the following:

33 (A) Two company members; or

34 (B) One company member for each 10 company employees.

35 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS  
 36 656.005 [(30)] (31), the company qualifies as an independent contractor. Any company registered  
 37 under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is con-  
 38 conclusively presumed to be an independent contractor.

39 (26) A person serving as a referee or assistant referee in a youth or adult recreational soccer  
 40 match whose services are retained on a match-by-match basis.

41 (27) A person performing language translator or interpreter services that are provided for others  
 42 through an agent or broker.

43 **SECTION 4.** ORS 656.278 is amended to read:

44 656.278. (1) Except as provided in subsection (7) of this section, the power and jurisdiction of the  
 45 Workers' Compensation Board shall be continuing, and it may, upon its own motion, from time to

1 time modify, change or terminate former findings, orders or awards if in its opinion such action is  
2 justified in those cases in which:

3 (a) There is a worsening of a compensable injury that results in the inability of the worker to  
4 work and requires hospitalization or inpatient or outpatient surgery, or other curative treatment  
5 prescribed in lieu of hospitalization that is necessary to enable the injured worker to return to work.  
6 In such cases, the payment of temporary disability compensation in accordance with ORS 656.210,  
7 656.212 (2) and 656.262 (4) may be provided from the time the attending physician authorizes tem-  
8 porary disability compensation for the hospitalization, surgery or other curative treatment until the  
9 worker's condition becomes medically stationary;

10 (b) The worker submits and obtains acceptance of a claim for a compensable new medical con-  
11 dition or an omitted medical condition pursuant to ORS 656.267 and the claim is initiated after the  
12 rights under ORS 656.273 have expired. In such cases, the payment of temporary disability compen-  
13 sation in accordance with the provisions of ORS 656.210, 656.212 (2) and 656.262 (4) may be provided  
14 from the time the attending physician authorizes temporary disability compensation for the  
15 hospitalization, surgery or other curative treatment until the worker's condition becomes medically  
16 stationary, and the payment of permanent disability benefits may be provided after application of the  
17 standards for the evaluation and determination of disability as may be adopted by the Director of  
18 the Department of Consumer and Business Services pursuant to ORS 656.726; or

19 (c) The date of injury is earlier than January 1, 1966. In such cases, in addition to the payment  
20 of temporary disability compensation, the payment of medical benefits may be provided.

21 (2) Benefits provided under subsection (1) of this section:

22 (a) Do not include vocational assistance benefits under ORS 656.340;

23 (b) Do not include temporary disability compensation for periods of time during which the  
24 claimant did not qualify as a "worker" pursuant to ORS 656.005 [(30)] (31);

25 (c) Do not include medical services provided pursuant to ORS 656.245 except as provided under  
26 subsection (1)(c) of this section; and

27 (d) May include permanent disability benefits for additional impairment to an injured body part  
28 that has previously been the basis of a permanent partial disability award, but only to the extent  
29 that the permanent partial disability rating exceeds the permanent partial disability rated by the  
30 prior award or awards.

31 (3) An order or award made by the board during the time within which the claimant has the  
32 right to request a hearing on aggravation under ORS 656.273 is not an order or award, as the case  
33 may be, made by the board on its own motion.

34 (4) Pursuant to ORS 656.298, any party may appeal an order or award made by the board on its  
35 own motion.

36 (5) The insurer or self-insured employer may voluntarily reopen any claim to provide benefits  
37 allowable under this section or to grant additional medical or hospital care to the claimant. The  
38 board shall establish procedures for the resolution of disputes arising out of a voluntary reopening  
39 of a claim under this section.

40 (6) Any claim reopened under this section shall be closed by the insurer or self-insured employer  
41 in a manner prescribed by the board, including, when appropriate, an award of permanent disability  
42 benefits as determined under subsections (1)(b) and (2)(d) of this section. The board shall also pre-  
43 scribe a process to be followed if the worker objects to the claim closure.

44 (7) The provisions of this section do not authorize the board, on its own motion, to modify,  
45 change or terminate former findings or orders:

1 (a) That a claimant incurred no injury or incurred a noncompensable injury; or

2 (b) Approving disposition of a claim under ORS 656.236 or 656.289 (4).

3 **SECTION 5.** ORS 656.506 is amended to read:

4 656.506. (1) As used in this section:

5 (a) "Employee" means a subject worker as defined in ORS 656.005 [(28)] (29).

6 (b) "Employer" means a subject employer as defined in ORS 656.005 [(27)] (28).

7 (2) Every employer shall retain from the moneys earned by all employees an amount determined  
8 by the Director of the Department of Consumer and Business Services for each hour or part of an  
9 hour the employee is employed and pay the money retained in the manner and at such intervals as  
10 the Director of the Department of Consumer and Business Services shall direct.

11 (3) In addition to all moneys retained under subsection (2) of this section, the director shall as-  
12 sess each employer an amount equal to that assessed pursuant to subsection (2) of this section. The  
13 assessment shall be paid in such manner and at such intervals as the director may direct.

14 (4) Moneys collected pursuant to subsections (2) and (3) of this section, and any accrued cash  
15 balances, shall be deposited by the Department of Consumer and Business Services into the Workers'  
16 Benefit Fund. Subject to the limitations in subsections (2) and (3) of this section, the amount of the  
17 hourly assessments provided in subsections (2) and (3) of this section annually may be adjusted to  
18 meet the needs of the Workers' Benefit Fund for the expenditures of the department in carrying out  
19 its functions and duties pursuant to subsection (7) of this section and ORS 656.445, 656.622, 656.625,  
20 656.628 and 656.630. Factors to be considered in making such adjustment of the assessments shall  
21 include, but not be limited to, the cash balance as determined by the director and estimated expen-  
22 ditures and revenues of the Workers' Benefit Fund.

23 (5) It is the intent of the Legislative Assembly that the department set rates for the collection  
24 of assessments pursuant to subsections (2) and (3) of this section in a manner so that at the end of  
25 the period for which the rates shall be effective, the cash balance shall be an amount approximating  
26 12 months of projected expenditures from the Workers' Benefit Fund in regard to its functions and  
27 duties under subsection (7) of this section and ORS 656.445, 656.622, 656.625, 656.628 and 656.630, in  
28 a manner that minimizes the volatility of the rates assessed. The department may set the assessment  
29 rate at a higher level if the department determines that a higher rate is necessary to avoid unin-  
30 tentional program or benefit reductions in the time period immediately following the period for  
31 which the rate is being set.

32 (6) Every employer required to pay the assessments referred to in this section shall make and  
33 file a report of employee hours worked and amounts due under this section upon a combined report  
34 form prescribed by the Department of Revenue. The report shall be filed with the Department of  
35 Revenue:

36 (a) At the times and in the manner prescribed in ORS 316.168 and 316.171; or

37 (b) Annually as required or allowed pursuant to ORS 316.197 or 657.571.

38 (7) There is established a Retroactive Program for the purpose of providing increased benefits  
39 to claimants or beneficiaries eligible to receive compensation under the benefit schedules of ORS  
40 656.204, 656.206, 656.208 and 656.210 which are lower than currently being paid for like injuries.  
41 However, benefits payable under ORS 656.210 shall not be increased by the Retroactive Program for  
42 claimants whose injury occurred on or after April 1, 1974. Notwithstanding the formulas for com-  
43 puting benefits provided in ORS 656.204, 656.206, 656.208 and 656.210, the increased benefits payable  
44 under this subsection shall be in such amount as the director considers appropriate. The director  
45 annually shall compute the amount which may be available during the succeeding year for payment

1 of such increased benefits and determine the level of benefits to be paid during such year. If, during  
2 such year, it is determined by the director that there are insufficient funds to increase benefits to  
3 the level fixed by the director, the director may reduce the level of benefits payable under this  
4 subsection. The increase in benefits to workers shall be payable in the first instance by the insurer  
5 or self-insured employer subject to reimbursement from the Workers' Benefit Fund by the director.  
6 If the insurer is a member of the Oregon Insurance Guaranty Association and becomes insolvent and  
7 the Oregon Insurance Guaranty Association assumes the insurer's obligations to pay covered claims  
8 of subject workers, including Retroactive Program benefits, such benefits shall be payable in the  
9 first instance by the Oregon Insurance Guaranty Association, subject to reimbursement from the  
10 Workers' Benefit Fund by the director.

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