

Senate Bill 565

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**.

Modifies method for determining average weekly wage of injured worker with more than one job at time of injury. Limits maximum temporary total disability benefit to 66-2/3 percent of wages actually received from all employment.

A BILL FOR AN ACT

1
2 Relating to temporary total disability benefits paid in workers' compensation claims; amending ORS
3 656.210.

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

5 **SECTION 1.** ORS 656.210 is amended to read:

6 656.210. (1) When the total disability is only temporary, the worker shall receive during the pe-
7 riod of that total disability compensation equal to 66-2/3 percent of wages, but not more than 133
8 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the
9 amount of \$50 a week, whichever amount is less. Notwithstanding the limitation imposed by this
10 subsection, an injured worker who is not otherwise eligible to receive an increase in benefits for the
11 fiscal year in which compensation is paid shall have the benefits increased each fiscal year by the
12 percentage which the applicable average weekly wage has increased since the previous fiscal year.

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

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

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

18 (b) Notwithstanding paragraph (a)(B) of this subsection, the weekly wage calculated under par-
19 agraph (a)(A) of this subsection shall be used for workers employed in more than one job at the time
20 of injury unless, within 30 days of receipt of the initial claim, the insurer, self-insured employer or
21 assigned claims agent for a noncomplying employer receives notice that the worker was employed
22 in more than one job with a subject employer at the time of injury and receives verifiable doc-
23 umentation of wages **the worker was actually receiving** from such additional employment. **Wages**
24 **used to calculate the temporary total disability benefit payable under this subsection shall**
25 **be limited to the wages the worker was actually receiving from all employment with a sub-**
26 **ject employer at the time the temporary total disability benefit payable under this section is**
27 **instituted or reinstated. Temporary total disability benefits paid to a worker with more**
28 **than one job at the time of injury shall not exceed 66-2/3 percent of wages actually received**
29 **by the worker from all subject employment.**

30 (c) Notwithstanding ORS 656.005 (7)(c), an injury to a worker employed in more than one job

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 at the time of injury is not disabling if no temporary disability benefits are payable for time lost
2 from the job at injury. Claim costs incurred as a result of supplemental temporary disability benefits
3 paid as provided in subsection (5) of this section may not be included in any data used for
4 ratemaking or individual employer rating or dividend calculations by a guaranty contract insurer,
5 a rating organization licensed pursuant to ORS chapter 737, the State Accident Insurance Fund
6 Corporation or the Department of Consumer and Business Services if the injured worker is not eli-
7 gible for permanent disability benefits or temporary disability benefits for time lost from the job at
8 injury.

9 (d) For the purpose of this section:

10 (A) **Except as provided in subsection (2)(b) of this section**, the benefits of a worker who in-
11 curs an injury shall be based on the wage of the worker at the time of injury.

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

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

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

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

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

45 (b) If the insurer or self-insured employer elects not to pay the supplemental temporary disabil-

1 ity benefits for a worker employed in more than one job at the time of injury, the director shall ei-
2 ther administer and pay the supplemental benefits directly or shall assign responsibility to
3 administer and process the payment to a paying agent selected by the director.

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