

House Bill 2705

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 circumstances that require insurer or self-insured employer to contact injured worker for evaluation of eligibility for vocational assistance.

A BILL FOR AN ACT

1
2 Relating to vocational assistance for injured workers; amending ORS 656.340.

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

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

5 656.340. (1)(a) The insurer or self-insured employer shall cause vocational assistance to be pro-
6 vided to an injured worker who is eligible for assistance in returning to work.

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

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

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

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

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

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

28 (4) As soon as possible, and not more than 30 days after the contact required by subsection (1)
29 of this section, the insurer or self-insured employer shall cause an individual certified by the direc-
30 tor to provide vocational assistance to determine whether the worker is eligible for vocational as-
31 sistance. The insurer or self-insured employer shall notify the worker of the decision regarding 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 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) of this
4 section, or because the worker's eligibility has fully and finally expired under standards prescribed
5 by the director, may not be found eligible thereafter unless that eligibility determination is rejected
6 by the director under ORS 656.283 (2) or the worker's condition worsens so as to constitute an ag-
7 gravation claim under ORS 656.273. A worker is not entitled to vocational assistance benefits when
8 possible eligibility for such benefits arises from a worsening of the worker's condition that occurs
9 after the expiration of the worker's aggravation rights under ORS 656.273.

10 (5) The objectives of vocational assistance are to return the worker to employment which is as
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)
14 of this section. As used in this subsection and subsection (6) of this section, "regular employment"
15 means the employment the worker held at the time of the injury or the claim for aggravation under
16 ORS 656.273, whichever gave rise to the potential eligibility for vocational assistance; or, for a
17 worker not employed at the time of the aggravation, the employment the worker held on the last
18 day of 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
21 the time of injury or aggravation, and the worker has a substantial handicap to employment.

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:

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

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.
33 The director shall adopt rules providing methods of calculating the weekly wage currently being
34 paid for the worker's regular employment for use in determining eligibility and for providing as-
35 sistance to eligible workers. If the worker's regular employment was seasonal or temporary, the
36 worker's wage shall be averaged based on a combination of the worker's earned income and any
37 unemployment insurance payments. Only earned income evidenced by verifiable documentation such
38 as federal or state tax returns shall be used in the calculation. Earned income does not include
39 fringe benefits or reimbursement of the worker's employment expenses.

40 (7) Vocational evaluation, help in directly obtaining employment and training shall be available
41 under conditions prescribed by the director. The director may establish other conditions for pro-
42 viding vocational assistance, including those relating to the worker's availability for assistance,
43 participation in previous assistance programs connected with the same claim and the nature and
44 extent of assistance that may be provided. Such conditions shall give preference to direct employ-
45 ment assistance over training.

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

4 (9) The director shall adopt rules providing:

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

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

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

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

18 (10) Insurers and self-insured employers shall maintain records and make reports to the director
19 of vocational assistance actions at such times and in such manner as the director may prescribe.
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.

27 (11) When a worker is eligible to receive vocational assistance, the worker and the insurer or
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.

33 (12) Notwithstanding ORS 656.268, a worker actively engaged in training may receive temporary
34 disability compensation for a maximum of 16 months, subject to extension to 21 months by order of
35 the director for good cause shown. The costs related to vocational assistance training programs may
36 be paid for periods longer than 21 months, but in no event may temporary disability benefits be paid
37 for a period longer than 21 months.

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

40 (14)(a) Determination of eligibility for vocational assistance does not entitle all workers to the
41 same type or extent of assistance.

42 (b) Training shall not be provided to an eligible worker solely because the worker cannot obtain
43 employment, otherwise suitable, that will produce the wage prescribed in subsection (6) of this sec-
44 tion unless such training will enable the worker to find employment which will produce a wage
45 significantly closer to that prescribed in subsection (6) of this section.

1 (c) Nothing in this section shall be interpreted to expand the availability of training under this
2 section.

3 (15) A physical capacities evaluation shall be performed in conjunction with vocational assist-
4 ance or determination of eligibility for such assistance at the request of the insurer or self-insured
5 employer or worker. Such request shall be made to the attending physician or nurse practitioner
6 authorized to provide compensable medical services under ORS 656.245. The attending physician or
7 nurse practitioner, within 20 days of the request, shall perform a physical capacities evaluation or
8 refer the worker for such evaluation or advise the insurer or self-insured employer and the worker
9 in writing that the injured worker is incapable of participating in a physical capacities evaluation.
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