

House Bill 3330

Sponsored by Representative SCHAUFLEER

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**.

Limits retroactivity of release of injured worker to regular employment or declaration of medically stationary status for termination of payment of temporary disability benefits and creation of overpayment of benefits. Prohibits insurer or self-insured employer from recovering overpayment during period in which insurer or self-insured employer did not unilaterally suspend payment of compensation when authorized to do so.

Modifies circumstances under which insurer or self-insured employer may cease paying temporary total disability benefits and commence payment of temporary partial disability benefits. Limits termination of payment of benefits for misconduct to period of claim opening in which termination occurs. Requires written notification to worker of reasons for termination of payment of benefits and of appeal rights.

A BILL FOR AN ACT

1
2 Relating to temporary disability benefits in workers' compensation claims; creating new provisions;
3 and amending ORS 656.268 and 656.325.

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

5 **SECTION 1.** ORS 656.268 is amended to read:

6 656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and
7 as near as possible to a condition of self support and maintenance as an able-bodied worker. The
8 insurer or self-insured employer shall close the worker's claim, as prescribed by the Director of the
9 Department of Consumer and Business Services, and determine the extent of the worker's permanent
10 disability, provided the worker is not enrolled and actively engaged in training according to rules
11 adopted by the director pursuant to ORS 656.340 and 656.726, when:

12 (a) The worker has become medically stationary and there is sufficient information to determine
13 permanent disability;

14 (b) The accepted injury is no longer the major contributing cause of the worker's combined or
15 consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because
16 the accepted injury is no longer the major contributing cause of the worker's combined or conse-
17 quential condition or conditions, and there is sufficient information to determine permanent disabili-
18 ty, the likely permanent disability that would have been due to the current accepted condition shall
19 be estimated;

20 (c) Without the approval of the attending physician or nurse practitioner authorized to provide
21 compensable medical services under ORS 656.245, the worker fails to seek medical treatment for a
22 period of 30 days or the worker fails to attend a closing examination, unless the worker
23 affirmatively establishes that such failure is attributable to reasons beyond the worker's control; or

24 (d) An insurer or self-insured employer finds that a worker who has been receiving permanent
25 total disability benefits has materially improved and is capable of regularly performing work at a
26 gainful and suitable occupation.

27 (2) If the worker is enrolled and actively engaged in training according to rules adopted pursu-

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 ant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately re-
 2 duced by any sums earned during the training.

3 (3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors
 4 shall be furnished to the worker, if requested by the worker.

5 (4) Temporary total disability benefits shall continue until whichever of the following events
 6 first occurs:

7 (a) The worker returns to regular or modified employment;

8 (b) The attending physician or nurse practitioner who has authorized temporary disability ben-
 9 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker
 10 is released to return to regular employment. **A release to regular employment is effective to**
 11 **retroactively terminate, or to create an overpayment of, temporary total disability benefits**
 12 **for no more than 14 days prior to the date of issuance of the release;**

13 (c) The attending physician or nurse practitioner who has authorized temporary disability ben-
 14 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker
 15 is released to return to modified employment, such employment is offered in writing to the worker
 16 and the worker fails to begin such employment. However, an offer of modified employment may be
 17 refused by the worker without the termination of temporary total disability benefits if the offer:

18 (A) Requires a commute that is beyond the physical capacity of the worker according to the
 19 worker's attending physician or the nurse practitioner who may authorize temporary disability un-
 20 der ORS 656.245;

21 (B) Is at a work site more than 50 miles one way from where the worker was injured unless the
 22 site is less than 50 miles from the worker's residence or the intent of the parties at the time of hire
 23 or as established by the pattern of employment prior to the injury was that the employer had mul-
 24 tiple or mobile work sites and the worker could be assigned to any such site;

25 (C) Is not with the employer at injury;

26 (D) Is not at a work site of the employer at injury;

27 (E) Is not consistent with the existing written shift change policy or is not consistent with
 28 common practice of the employer at injury or aggravation; or

29 (F) Is not consistent with an existing shift change provision of an applicable collective bar-
 30 gaining agreement;

31 (d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld
 32 or terminated under ORS 656.262 (4) or other provisions of this chapter; or

33 (e) Notwithstanding paragraph (c)(C), (D), (E) and (F) of this subsection, the attending physician
 34 or nurse practitioner who has authorized temporary disability benefits under ORS 656.245 for a home
 35 care worker who has been made a subject worker pursuant to ORS 656.039 advises the home care
 36 worker and documents in writing that the home care worker is released to return to modified em-
 37 ployment, appropriate modified employment is offered in writing by the Home Care Commission or
 38 a designee of the commission to the home care worker for any client of the Department of Human
 39 Services who employs a home care worker and the home care worker fails to begin the employment.

40 (5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's dis-
 41 ability in closure of the claim shall be pursuant to the standards prescribed by the director. The
 42 insurer or self-insured employer shall issue a notice of closure of such a claim to the worker, to the
 43 worker's attorney if the worker is represented, and to the director. The notice must inform:

44 (A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissat-
 45 isfied with the terms of the notice;

1 (B) The worker of the amount of any further compensation, including permanent disability
 2 compensation to be awarded; of the duration of temporary total or temporary partial disability
 3 compensation; of the right of the worker to request reconsideration by the director under this sec-
 4 tion within 60 days of the date of the notice of claim closure; of the right of the insurer or self-
 5 insured employer to request reconsideration by the director under this section within seven days
 6 of the date of the notice of claim closure; of the aggravation rights; and of such other information
 7 as the director may require; and

8 (C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204
 9 and 656.208.

10 (b) If the insurer or self-insured employer has not issued a notice of closure, the worker may
 11 request closure. Within 10 days of receipt of a written request from the worker, the insurer or
 12 self-insured employer shall issue a notice of closure if the requirements of this section have been
 13 met or a notice of refusal to close if the requirements of this section have not been met. A notice
 14 of refusal to close shall advise the worker of the decision not to close; of the right of the worker
 15 to request a hearing pursuant to ORS 656.283 within 60 days of the date of the notice of refusal to
 16 close the claim; of the right to be represented by an attorney; and of such other information as the
 17 director may require.

18 (c) If a worker, insurer or self-insured employer objects to the notice of closure, the objecting
 19 party first must request reconsideration by the director under this section. A worker's request for
 20 reconsideration must be made within 60 days of the date of the notice of closure. A request for re-
 21 consideration by an insurer or self-insured employer may be based only on disagreement with the
 22 findings used to rate impairment and must be made within seven days of the date of the notice of
 23 closure.

24 (d) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant
 25 to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing
 26 on the claim and if a finding is made at the hearing that the notice of closure or refusal to close
 27 was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid
 28 to the worker in an amount equal to 25 percent of all compensation determined to be then due the
 29 claimant.

30 (e) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director
 31 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker
 32 for permanent disability and the worker is found upon reconsideration to be at least 20 percent
 33 permanently disabled, a penalty shall be assessed against the insurer or self-insured employer and
 34 paid to the worker in an amount equal to 25 percent of all compensation determined to be then due
 35 the claimant. If the increase in compensation results from information that the insurer or self-
 36 insured employer demonstrates the insurer or self-insured employer could not reasonably have
 37 known at the time of claim closure, from new information obtained through a medical arbiter ex-
 38 amination or from a determination order issued by the director that addresses the extent of the
 39 worker's permanent disability that is not based on the standards adopted pursuant to ORS 656.726
 40 (4)(f), the penalty shall not be assessed.

41 (6)(a) Notwithstanding any other provision of law, only one reconsideration proceeding may be
 42 held on each notice of closure. At the reconsideration proceeding:

43 (A) A deposition arranged by the worker, limited to the testimony and cross-examination of the
 44 worker about the worker's condition at the time of claim closure, shall become part of the recon-
 45 sideration record. The deposition must be conducted subject to the opportunity for cross-examination

1 by the insurer or self-insured employer and in accordance with rules adopted by the director. The
 2 cost of the court reporter and one original of the transcript of the deposition for the Department
 3 of Consumer and Business Services and one copy of the transcript of the deposition for each party
 4 shall be paid by the insurer or self-insured employer. The reconsideration proceeding may not be
 5 postponed to receive a deposition taken under this subparagraph. A deposition taken in accordance
 6 with this subparagraph may be received as evidence at a hearing even if the deposition is not pre-
 7 pared in time for use in the reconsideration proceeding.

8 (B) Pursuant to rules adopted by the director, the worker or the insurer or self-insured employer
 9 may correct information in the record that is erroneous and may submit any medical evidence that
 10 should have been but was not submitted by the attending physician or nurse practitioner authorized
 11 to provide compensable medical services under ORS 656.245 at the time of claim closure.

12 (C) If the director determines that a claim was not closed in accordance with subsection (1) of
 13 this section, the director may rescind the closure.

14 (b) If necessary, the director may require additional medical or other information with respect
 15 to the claims and may postpone the reconsideration for not more than 60 additional calendar days.

16 (c) In any reconsideration proceeding under this section in which the worker was represented
 17 by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney,
 18 out of the additional compensation awarded, an amount equal to 10 percent of any additional com-
 19 pensation awarded to the worker.

20 (d) The reconsideration proceeding shall be completed within 18 working days from the date the
 21 reconsideration proceeding begins, and shall be performed by a special evaluation appellate unit
 22 within the department. The deadline of 18 working days may be postponed by an additional 60 cal-
 23 endar days if within the 18 working days the department mails notice of review by a medical arbiter.
 24 If an order on reconsideration has not been mailed on or before 18 working days from the date the
 25 reconsideration proceeding begins, or within 18 working days plus the additional 60 calendar days
 26 where a notice for medical arbiter review was timely mailed or the director postponed the recon-
 27 sideration pursuant to paragraph (b) of this subsection, or within such additional time as provided
 28 in subsection (7) of this section when reconsideration is postponed further because the worker has
 29 failed to cooperate in the medical arbiter examination, reconsideration shall be deemed denied and
 30 any further proceedings shall occur as though an order on reconsideration affirming the notice of
 31 closure was mailed on the date the order was due to issue.

32 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this
 33 subsection begins upon receipt by the director of a worker's request for reconsideration pursuant
 34 to subsection (5)(c) of this section. If the insurer or self-insured employer requests reconsideration,
 35 the period for reconsideration begins upon the earlier of the date of the request for reconsideration
 36 by the worker, the date of receipt of a waiver from the worker of the right to request reconsider-
 37 ation or the date of expiration of the right of the worker to request reconsideration. If a party elects
 38 not to file a separate request for reconsideration, the party does not waive the right to fully par-
 39 ticipate in the reconsideration proceeding, including the right to proceed with the reconsideration
 40 if the initiating party withdraws the request for reconsideration.

41 (f) Any medical arbiter report may be received as evidence at a hearing even if the report is
 42 not prepared in time for use in the reconsideration proceeding.

43 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS
 44 656.283 within 30 days from the date of the reconsideration order.

45 (7)(a) If the basis for objection to a notice of closure issued under this section is disagreement

1 with the impairment used in rating of the worker's disability, the director shall refer the claim to
2 a medical arbiter appointed by the director.

3 (b) If neither party requests a medical arbiter and the director determines that insufficient
4 medical information is available to determine disability, the director may refer the claim to a med-
5 ical arbiter appointed by the director.

6 (c) At the request of either of the parties, a panel of three medical arbiters shall be appointed.

7 (d) The arbiter, or panel of medical arbiters, shall be chosen from among a list of physicians
8 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) who were selected by the
9 director in consultation with the Oregon Medical Board and the committee referred to in ORS
10 656.790.

11 (e)(A) The medical arbiter or panel of medical arbiters may examine the worker and perform
12 such tests as may be reasonable and necessary to establish the worker's impairment.

13 (B) If the director determines that the worker failed to attend the examination without good
14 cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall
15 postpone the reconsideration proceedings for up to 60 days from the date of the determination that
16 the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this
17 or any prior opening of the claim until such time as the worker attends and cooperates with the
18 examination or the request for reconsideration is withdrawn. Any additional evidence regarding
19 good cause must be submitted prior to the conclusion of the 60-day postponement period.

20 (C) At the conclusion of the 60-day postponement period, if the worker has not attended and
21 cooperated with a medical arbiter examination or established good cause, there shall be no further
22 opportunity for the worker to attend a medical arbiter examination for this claim closure. The re-
23 consideration record shall be closed, and the director shall issue an order on reconsideration based
24 upon the existing record.

25 (D) All disability benefits suspended pursuant to this subsection, including all disability benefits
26 awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Com-
27 pensation Board or upon court review, shall not be due and payable to the worker.

28 (f) The costs of examination and review by the medical arbiter or panel of medical arbiters shall
29 be paid by the insurer or self-insured employer.

30 (g) The findings of the medical arbiter or panel of medical arbiters shall be submitted to the
31 director for reconsideration of the notice of closure.

32 (h) After reconsideration, no subsequent medical evidence of the worker's impairment is admis-
33 sible before the director, the Workers' Compensation Board or the courts for purposes of making
34 findings of impairment on the claim closure.

35 (i)(A) When the basis for objection to a notice of closure issued under this section is a disa-
36 greement with the impairment used in rating the worker's disability, and the director determines
37 that the worker is not medically stationary at the time of the reconsideration or that the closure
38 was not made pursuant to this section, the director is not required to appoint a medical arbiter prior
39 to the completion of the reconsideration proceeding.

40 (B) If the worker's condition has substantially changed since the notice of closure, upon the
41 consent of all the parties to the claim, the director shall postpone the proceeding until the worker's
42 condition is appropriate for claim closure under subsection (1) of this section.

43 (8) No hearing shall be held on any issue that was not raised and preserved before the director
44 at reconsideration. However, issues arising out of the reconsideration order may be addressed and
45 resolved at hearing.

1 (9) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled
2 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,
3 any permanent disability payments due for work disability under the closure shall be suspended, and
4 the worker shall receive temporary disability compensation and any permanent disability payments
5 due for impairment while the worker is enrolled and actively engaged in the training. When the
6 worker ceases to be enrolled and actively engaged in the training, the insurer or self-insured em-
7 ployer shall again close the claim pursuant to this section if the worker is medically stationary or
8 if the worker's accepted injury is no longer the major contributing cause of the worker's combined
9 or consequential condition or conditions pursuant to ORS 656.005 (7). The closure shall include the
10 duration of temporary total or temporary partial disability compensation. Permanent disability
11 compensation shall be redetermined for work disability only. If the worker has returned to work or
12 the worker's attending physician has released the worker to return to regular or modified employ-
13 ment, the insurer or self-insured employer shall again close the claim. This notice of closure may
14 be appealed only in the same manner as are other notices of closure under this section.

15 (10) If the attending physician or nurse practitioner authorized to provide compensable medical
16 services under ORS 656.245 has approved the worker's return to work and there is a labor dispute
17 in progress at the place of employment, the worker may refuse to return to that employment without
18 loss of reemployment rights or any vocational assistance provided by this chapter.

19 (11) Any notice of closure made under this section may include necessary adjustments in com-
20 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-
21 bility payments prematurely made, crediting temporary disability payments against current or future
22 permanent or temporary disability awards or payments and requiring the payment of temporary
23 disability payments which were payable but not paid.

24 (12) An insurer or self-insured employer may take a credit or offset of previously paid workers'
25 compensation benefits or payments against any further workers' compensation benefits or payments
26 due a worker from that insurer or self-insured employer when the worker admits to having obtained
27 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction
28 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-
29 fits or payments obtained through fraud by a worker shall not be included in any data used for
30 ratemaking or individual employer rating or dividend calculations by an insurer, a rating organiza-
31 tion licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the
32 director.

33 (13)(a) An insurer or self-insured employer may offset any compensation payable to the worker
34 to recover an overpayment from a claim with the same insurer or self-insured employer. When
35 overpayments are recovered from temporary disability or permanent total disability benefits, the
36 amount recovered from each payment shall not exceed 25 percent of the payment, without prior
37 authorization from the worker.

38 (b) An insurer or self-insured employer may suspend and offset any compensation payable to the
39 beneficiary of the worker, and recover an overpayment of permanent total disability benefits caused
40 by the failure of the worker's beneficiaries to notify the insurer or self-insured employer about the
41 death of the worker.

42 **(c) An insurer or self-insured employer may not recover an overpayment of compensation**
43 **paid during any period for which the insurer or self-insured employer is authorized to**
44 **unilaterally suspend the payment of compensation but does not do so.**

45 **(d) A determination by an attending physician or a nurse practitioner authorized to pro-**

1 **vide compensable medical services under ORS 656.245 that a worker is medically stationary**
 2 **is effective to terminate the payment of temporary disability compensation or to establish**
 3 **an overpayment of compensation for no more than 14 days prior to the date of the determi-**
 4 **nation.**

5 (14) Conditions that are direct medical sequelae to the original accepted condition shall be in-
 6 cluded in rating permanent disability of the claim unless they have been specifically denied.

7 **SECTION 2.** ORS 656.325 is amended to read:

8 656.325. (1)(a) Any worker entitled to receive compensation under this chapter is required, if
 9 requested by the Director of the Department of Consumer and Business Services, the insurer or
 10 self-insured employer, to submit to a medical examination at a time reasonably convenient for the
 11 worker as may be provided by the rules of the director. No more than three independent medical
 12 examinations may be requested except after notification to and authorization by the director. If the
 13 worker refuses to submit to any such examination, or obstructs the same, the rights of the worker
 14 to compensation shall be suspended with the consent of the director until the examination has taken
 15 place, and no compensation shall be payable during or for account of such period. The provisions
 16 of this paragraph are subject to the limitations on medical examinations provided in ORS 656.268.

17 (b) When a worker is requested by the director, the insurer or self-insured employer to attend
 18 an independent medical examination, the examination must be conducted by a physician selected
 19 from a list of qualified physicians established by the director under ORS 656.328.

20 (c) The director shall adopt rules applicable to independent medical examinations conducted
 21 pursuant to paragraph (a) of this subsection that:

22 (A) Provide a worker the opportunity to request review by the director of the reasonableness
 23 of the location selected for an independent medical examination. Upon receipt of the request for
 24 review, the director shall conduct an expedited review of the location selected for the independent
 25 medical examination and issue an order on the reasonableness of the location of the examination.
 26 The director shall determine if there is substantial evidence for the objection to the location for the
 27 independent medical examination based on a conclusion that the required travel is medically
 28 contraindicated or other good cause establishing that the required travel is unreasonable. The de-
 29 terminations of the director about the location of independent medical examinations are not subject
 30 to review.

31 (B) Impose a monetary penalty against a worker who fails to attend an independent medical
 32 examination without prior notification or without justification for not attending the examination. A
 33 penalty imposed under this subparagraph may be imposed only on a worker who is not receiving
 34 temporary disability benefits under ORS 656.210 or 656.212. An insurer or self-insured employer may
 35 offset any future compensation payable to the worker to recover any penalty imposed under this
 36 subparagraph from a claim with the same insurer or self-insured employer. When a penalty is re-
 37 covered from temporary disability or permanent total disability benefits, the amount recovered from
 38 each payment may not exceed 25 percent of the benefit payment without prior authorization from
 39 the worker.

40 (C) Impose a sanction against a medical service provider that unreasonably fails to provide in
 41 a timely manner diagnostic records required for an independent medical examination.

42 (d) Notwithstanding ORS 656.262 (6), if the director determines that the location selected for an
 43 independent medical examination is unreasonable, the insurer or self-insured employer shall accept
 44 or deny the claim within 90 days after the employer has notice or knowledge of the claim.

45 (e) If the worker has made a timely request for a hearing on a denial of compensability as re-

1 quired by ORS 656.319 (1)(a) that is based on one or more reports of examinations conducted pur-
2 suant to paragraph (a) of this subsection and the worker's attending physician or nurse practitioner
3 authorized to provide compensable medical services under ORS 656.245 does not concur with the
4 report or reports, the worker may request an examination to be conducted by a physician selected
5 by the director from the list described in ORS 656.328. The cost of the examination and the exam-
6 ination report shall be paid by the insurer or self-insured employer.

7 (f) The insurer or self-insured employer shall pay the costs of the medical examination and re-
8 lated services which are reasonably necessary to allow the worker to submit to any examination
9 requested under this section. As used in this paragraph, "related services" includes, but is not lim-
10 ited to, child care, travel, meals, lodging and an amount equivalent to the worker's net lost wages
11 for the period during which the worker is absent if the worker does not receive benefits pursuant
12 to ORS 656.210 (4) during the period of absence. A claim for "related services" described in this
13 paragraph shall be made in the manner prescribed by the director.

14 (g) A worker who objects to the location of an independent medical examination must request
15 review by the director under paragraph (c)(A) of this subsection within six business days of the date
16 the notice of the independent medical examination was mailed.

17 (2) For any period of time during which any worker commits insanitary or injurious practices
18 which tend to either imperil or retard recovery of the worker, or refuses to submit to such medical
19 or surgical treatment as is reasonably essential to promote recovery, or fails to participate in a
20 program of physical rehabilitation, the right of the worker to compensation shall be suspended with
21 the consent of the director and no payment shall be made for such period. The period during which
22 such worker would otherwise be entitled to compensation may be reduced with the consent of the
23 director to such an extent as the disability has been increased by such refusal.

24 (3) A worker who has received an award for permanent total or permanent partial disability
25 should be encouraged to make a reasonable effort to reduce the disability; and the award shall be
26 subject to periodic examination and adjustment in conformity with ORS 656.268.

27 (4) When the employer of an injured worker, or the employer's insurer determines that the in-
28 jured worker has failed to follow medical advice from the attending physician or nurse practitioner
29 authorized to provide compensable medical services under ORS 656.245 or has failed to participate
30 in or complete physical restoration or vocational rehabilitation programs prescribed for the worker
31 pursuant to this chapter, the employer or insurer may petition the director for reduction of any
32 benefits awarded the worker. Notwithstanding any other provision of this chapter, if the director
33 finds that the worker has failed to accept treatment as provided in this subsection, the director may
34 reduce any benefits awarded the worker by such amount as the director considers appropriate.

35 (5)(a) Except as provided by ORS 656.268 (4)(c) and (10), an insurer or self-insured employer shall
36 cease making payments pursuant to ORS 656.210 and shall commence making payment of such
37 amounts as are due pursuant to ORS 656.212 when an injured worker refuses wage earning em-
38 ployment prior to claim determination and the worker's attending physician or nurse practitioner
39 authorized to provide compensable medical services under ORS 656.245, after being notified by the
40 employer of the specific duties to be performed by the injured worker, agrees that the injured
41 worker is capable of performing the employment offered.

42 (b) If the worker has been terminated for **misconduct or** violation of **written** work rules [*or*
43 *other disciplinary reasons*] **and the employer has a written policy offering modified work to in-**
44 **jured workers and had such a policy in effect at the time the worker was employed,** the
45 insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and commence pay-

1 ments pursuant to ORS 656.212 when the attending physician or nurse practitioner authorized to
 2 provide compensable medical services under ORS 656.245 approves employment in a modified job
 3 that would have been offered to the worker if the worker had remained employed[, *provided that the*
 4 *employer has a written policy of offering modified work to injured workers*]. **A cessation of the**
 5 **payment of benefits under ORS 656.210 as provided by this subsection is valid only for the**
 6 **open claim period during which the cessation of the payment of benefits under ORS 656.210**
 7 **occurs.**

8 (c) **If the worker is terminated for any reason other than misconduct after having ac-**
 9 **cepted a modified job, the insurer or self-insured employer shall commence payments pur-**
 10 **suant to ORS 656.210.**

11 (d) **Fourteen days prior to the cessation of the payment of benefits under this subsection,**
 12 **the insurer or self-insured employer shall provide the worker with a written explanation of**
 13 **the reasons for the cessation of the payment of benefits and of the worker’s rights to appeal**
 14 **the cessation of the payment of benefits.**

15 (e) **As used in this subsection, “misconduct” means the willful or wantonly negligent vi-**
 16 **olation of the standards of behavior that an employer has the right to expect of an employee,**
 17 **or an act or a series of actions that amount to a willful or wantonly negligent disregard of**
 18 **an employer’s interests. “Misconduct” does not include an isolated instance of poor judg-**
 19 **ment.**

20 [(c)] (f) **If the worker is a person present in the United States in violation of federal immigration**
 21 **laws, the insurer or self-insured employer shall cease payments pursuant to ORS 656.210 and com-**
 22 **mence payments pursuant to ORS 656.212 when the attending physician or nurse practitioner au-**
 23 **thorized to provide compensable medical services under ORS 656.245 approves employment in a**
 24 **modified job whether or not such a job is available.**

25 (6) Any party may request a hearing on any dispute under this section pursuant to ORS 656.283.

26 **SECTION 3. The amendments to ORS 656.268 and 656.325 by sections 1 and 2 of this 2011**
 27 **Act apply to all claims in which temporary disability benefits are being paid on or after the**
 28 **effective date of this 2011 Act.**

29 _____