

House Bill 2069

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Oregon Association of Rehabilitation Professionals)

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**.

Authorizes Director of Department of Consumer and Business Services to order payment of temporary disability compensation for up to 21 months for certain injured workers actively engaged in vocational assistance training.

A BILL FOR AN ACT

1
2 Relating to payment of temporary disability compensation paid to injured workers engaged in voca-
3 tional training; creating new provisions; and amending ORS 656.340.

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

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

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

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

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

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

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

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

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

29 (4) As soon as possible, and not more than 30 days after the contact required by subsection (1)
30 of this section, the insurer or self-insured employer shall cause an individual certified by the direc-

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 tor to provide vocational assistance to determine whether the worker is eligible for vocational as-
2 sistance. The insurer or self-insured employer shall notify the worker of the decision regarding the
3 worker's eligibility for vocational assistance. If the insurer or self-insured employer decides that the
4 worker is not eligible, the worker may apply to the director for review of the decision as provided
5 in subsection (16) of this section. A worker determined ineligible upon evaluation under subsection
6 (1)(b)(B) of this section, or because the worker's eligibility has fully and finally expired under stan-
7 dards prescribed by the director, may not be found eligible thereafter unless that eligibility deter-
8 mination is rejected by the director under subsection (16) of this section or the worker's condition
9 worsens so as to constitute an aggravation claim under ORS 656.273. A worker is not entitled to
10 vocational assistance benefits when possible eligibility for such benefits arises from a worsening of
11 the worker's condition that occurs after the expiration of the worker's aggravation rights under ORS
12 656.273.

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

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

25 (b) As used in this subsection:

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

29 (B) "Suitable employment" means:

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

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

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

43 (7) Vocational evaluation, help in directly obtaining employment and training shall be available
44 under conditions prescribed by the director. The director may establish other conditions for pro-
45 viding vocational assistance, including those relating to the worker's availability for assistance,

1 participation in previous assistance programs connected with the same claim and the nature and
 2 extent of assistance that may be provided. Such conditions shall give preference to direct employ-
 3 ment assistance over training.

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

7 (9) The director shall adopt rules providing:

8 (a) Standards for and methods of certifying individuals qualified by education, training and ex-
 9 perience to provide vocational assistance to injured workers;

10 (b) Standards for registration of vocational assistance providers;

11 (c) Conditions and procedures under which the certification of an individual to provide voca-
 12 tional assistance services or the registration of a vocational assistance provider may be suspended
 13 or revoked for failure to maintain compliance with the certification or registration standards;

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

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

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

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

36 (12) Notwithstanding ORS 656.268, a worker actively engaged in training may receive temporary
 37 disability compensation for a maximum of 16 months. The insurer or self-insured employer may vol-
 38 untarily extend the payment of temporary disability compensation to a maximum of 21 months. **The**
 39 **director may order the payment of temporary disability compensation for up to 21 months**
 40 **upon good cause shown by the injured worker.** The costs related to vocational assistance train-
 41 ing programs may be paid for periods longer than 21 months, but in no event may temporary disa-
 42 bility benefits be paid for a period longer than 21 months.

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

45 (14)(a) Determination of eligibility for vocational assistance does not entitle all workers to the

1 same type or extent of assistance.

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

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

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

15 (16)(a) The Legislative Assembly finds that vocational rehabilitation of injured workers requires
 16 a high degree of cooperation between all of the participants in the vocational assistance process.
 17 Based on this finding, the Legislative Assembly concludes that disputes regarding eligibility for and
 18 extent of vocational assistance services should be resolved through nonadversarial procedures to the
 19 greatest extent possible consistent with constitutional principles. The director shall adopt by rule
 20 a procedure for resolving vocational assistance disputes in the manner provided in this subsection.

21 (b) If a worker is dissatisfied with an action of the insurer or self-insured employer regarding
 22 vocational assistance, the worker must apply to the director for administrative review of the matter.
 23 Application for review must be made not later than the 60th day after the date the worker was
 24 notified of the action. The director shall complete the review within a reasonable time.

25 (c) If the worker’s dissatisfaction is resolved by agreement of the parties, the agreement shall
 26 be reduced to writing, and the director and the parties shall review the agreement and either ap-
 27 prove or disapprove it. The agreement is subject to reconsideration by the director under limitations
 28 prescribed by the director, but is not subject to review by any other forum.

29 (d) If the worker’s dissatisfaction is not resolved by agreement of the parties, the director shall
 30 resolve the matter in a written order based on a record sufficient to permit review. The order is
 31 subject to review under ORS 656.704. The request for a hearing must be filed within 60 days of the
 32 date the order was issued. At the hearing, the order of the director shall be modified only if it:

- 33 (A) Violates a statute or rule;
- 34 (B) Exceeds the statutory authority of the agency;
- 35 (C) Was made upon unlawful procedure; or
- 36 (D) Was characterized by abuse of discretion or clearly unwarranted exercise of discretion.

37 (e) For purposes of this subsection, the term “parties” does not include a noncomplying em-
 38 ployer.

39 **SECTION 2. The amendments to ORS 656.340 by section 1 of this 2013 Act apply to all**
 40 **claims by workers who are eligible for or actively engaged in vocational training on or after**
 41 **the effective date of this 2013 Act.**