

Senate Bill 1525

Sponsored by Senator BAERTSCHIGER JR; Senator BEYER, Representatives BARRETO, ESQUIVEL, GILLIAM, KRIEGER, MCLANE, NEARMAN, OLSON, STARK, WILSON (Pre-session filed.)

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**.

Excludes sick leave pay from definition of "payroll" for purpose of workers' compensation calculations.

A BILL FOR AN ACT

1
2 Relating to definition of "payroll" under Workers' Compensation Law; amending ORS 656.005.

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

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

5 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered em-
6 ployment, as determined by the Employment Department, for the last quarter of the calendar year
7 preceding the fiscal year in which the injury occurred.

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

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

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

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

16 (4) "Carrier-insured employer" means an employer who provides workers' compensation cover-
17 age with the State Accident Insurance Fund Corporation or an insurer authorized under ORS
18 chapter 731 to transact workers' compensation insurance in this state.

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, a child born out of wedlock 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. A dependent child who is an invalid is a child, for purposes of benefits,
23 regardless 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 a dependent child who is an invalid 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: Parent, grandparent, stepparent, grandson, granddaughter, brother, sister, half sis-
28 ter, half brother, niece or nephew, who at the time of the accident, are dependent in whole or in
29 part for their support upon the earnings of the worker. Unless otherwise provided by treaty, aliens
30 not residing within the United States at the time of the accident other than parent, spouse in a
31 marriage or children are not included within the term "dependent."

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

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

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

39 (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the
40 Oregon Medical Board, or a podiatric physician and surgeon licensed under ORS 677.805 to 677.840
41 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of
42 Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the
43 United States; or

44 (B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative
45 total of 18 visits, whichever occurs first, to any of the medical service providers listed in this sub-

1 paragraph, a:

2 (i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of
3 Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any
4 state, territory or possession of the United States;

5 (ii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505
6 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or
7 possession of the United States; or

8 (iii) Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of
9 Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any
10 country or in any state, territory or possession of the United States.

11 (c) Except as otherwise provided for workers subject to a managed care contract, “attending
12 physician” does not include a physician who provides care in a hospital emergency room and refers
13 the injured worker to a primary care physician for follow-up care and treatment.

14 (d) “Consulting physician” means a doctor or physician who examines a worker or the worker’s
15 medical record to advise the attending physician or nurse practitioner authorized to provide
16 compensable medical services under ORS 656.245 regarding treatment of a worker’s compensable
17 injury.

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

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

25 (c) As used in paragraph (b) of this subsection, “temporary service provider” has the meaning
26 for that term provided in ORS 656.850.

27 (14) “Insurer” means the State Accident Insurance Fund Corporation or an insurer authorized
28 under ORS chapter 731 to transact workers’ compensation insurance in this state or an assigned
29 claims agent selected by the director under ORS 656.054.

30 (15) “Consumer and Business Services Fund” means the fund created by ORS 705.145.

31 (16) “Invalid” means one who is physically or mentally incapacitated from earning a livelihood.

32 (17) “Medically stationary” means that no further material improvement would reasonably be
33 expected from medical treatment, or the passage of time.

34 (18) “Noncomplying employer” means a subject employer who has failed to comply with ORS
35 656.017.

36 (19) “Objective findings” in support of medical evidence are verifiable indications of injury or
37 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and
38 palpable muscle spasm. “Objective findings” does not include physical findings or subjective re-
39 sponses to physical examinations that are not reproducible, measurable or observable.

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

43 (21) “Party” means a claimant for compensation, the employer of the injured worker at the time
44 of injury and the insurer, if any, of such employer.

45 (22) “Payroll” means a record of wages payable to workers for their services and includes

1 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or
2 similar advantage received from the employer. However, "payroll" does not include overtime pay,
3 vacation pay, **sick leave pay**, bonus pay, tips, amounts payable under profit-sharing agreements or
4 bonus payments to reward workers for safe working practices. Bonus pay is limited to payments
5 which are not anticipated under the contract of employment and which are paid at the sole dis-
6 cretion of the employer. The exclusion from payroll of bonus payments to reward workers for safe
7 working practices is only for the purpose of calculations based on payroll to determine premium for
8 workers' compensation insurance, and does not affect any other calculation or determination based
9 on payroll for the purposes of this chapter.

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

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

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

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

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

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

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

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

30 (25) "Self-insured employer" means an employer or group of employers certified under ORS
31 656.430 as meeting the qualifications set out by ORS 656.407.

32 (26) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident
33 Insurance Fund Corporation created under ORS 656.752.

34 (27) "Subject employer" means an employer who is subject to this chapter as provided by ORS
35 656.023.

36 (28) "Subject worker" means a worker who is subject to this chapter as provided by ORS
37 656.027.

38 (29) "Wages" means the money rate at which the service rendered is recompensed under the
39 contract of hiring in force at the time of the accident, including reasonable value of board, rent,
40 housing, lodging or similar advantage received from the employer, and includes the amount of tips
41 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of
42 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips
43 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-
44 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at
45 which any worker shall be carried upon the payroll of the employer for the purpose of determining

1 the premium of the employer.

2 (30) "Worker" means any person, including a minor whether lawfully or unlawfully employed,
3 who engages to furnish services for a remuneration, subject to the direction and control of an em-
4 ployer and includes salaried, elected and appointed officials of the state, state agencies, counties,
5 cities, school districts and other public corporations, but does not include any person whose services
6 are performed as an inmate or ward of a state institution or as part of the eligibility requirements
7 for a general or public assistance grant. For the purpose of determining entitlement to temporary
8 disability benefits or permanent total disability benefits under this chapter, "worker" does not in-
9 clude a person who has withdrawn from the workforce during the period for which such benefits are
10 sought.

11 (31) "Independent contractor" has the meaning for that term provided in ORS 670.600.

12
