



Department of Consumer and Business Services

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Workers' Compensation Self-Insurance Regulatory Streamlining

HB 2336-A

Background: Oregon employers may cover their workers' compensation obligations by purchasing private insurance or self-insuring their risks individually or as a group. Senate Bill 1558, enacted by the 2014 Legislature at the request of the Department of Consumer and Business Services (DCBS), focused on a specific urgent situation relating to the default of several self-insured employer groups to ensuring impacted workers were getting benefits in a timely manner. In the process of implementing the legislation, the department has identified three areas where the bill inadvertently created inconsistencies:

- *Claims processing:* The DCBS Director can immediately assign a claims processor for self-insured employer groups that are in default or are decertified. However, in order for DCBS to assign or change a processing agent for individual self-insured employers or groups that have defaulted or have been decertified prior to the passage of Senate Bill 1558, and for individual self-insured employers that default or are decertified after the passage of Senate Bill 1558, the state's procurement process must be used. This is a time consuming process which could hinder the division's ability to ensure worker benefits are paid in a timely fashion.
- *Recovering damages from third parties:* Current law allows a worker with a compensable claim or an insurer on the worker's behalf to recover damages from third parties in certain situations. Distribution of proceeds includes payment to a "paying agency," which is the self-insured employer or insurer paying a worker's benefits. DCBS is considered a "paying agency" only when the worker elected to bring the action and DCBS expended costs for vocational assistance benefits or claim costs in non-complying employer cases. However, DCBS also pays benefits for employees covered by an insolvent, defaulted, or decertified self insured employer or group. If there is a third-party recovery in this case, the department is not considered a "paying agency" and recovered funds from third parties would go to the defunct self-insured employer or group. Also, if the insurer takes on the third-party claim on behalf of the worker, the law does not require any repayment of any expended department funds.¹ In either case, the department should be reimbursed for costs expended from its funds.
- *Legal representation for processing agents.* When a self-insured employer or group defaults on their payment obligations or declares bankruptcy, DCBS contracts with a processing agent to process the claims. That agent is responsible for any disputes or litigation that arise out of that process and typically retain their own private counsel, if needed. DCBS is not directly involved with the claim processing or any resulting litigation, but the agency may reimburse the processing agent for some of the claim costs from department funds. Under ORS 180.220, the Department of Justice (DOJ) has general control and supervision of all civil actions and legal proceedings in which the State of Oregon may be a party or may have an interest. Because processing agents may be reimbursed with state funds, it could be interpreted that DOJ is required to supervise, or even direct and control, the administrative, and legal functions of a private entity.

¹ Funding resources: Worker Benefit Fund (WBF), Self-insured Employer Adjustment Reserve (SIEAR), or Self-insured Employer Group Adjustment Reserve (SIEGAR).

This bill: HB 2336-A allows DCBS to immediately assign a claims processor if a self-insured employer or group defaults on payment or if its certification ends for any reason. This will establish a consistent process for assignment of a claim processing agent and will help to ensure the timely payment of worker benefits. The bill also specifies that DCBS is a "paying agency" with respect to all of its expenditures from all department funds, not just those limited to vocational assistance and the costs of claims of noncomplying employers, and clarifies that reimbursement to the department is required no matter which party (worker or insurer) undertakes the third party recovery action. Lastly, the bill clarifies that the claims processing agent that contracts with DCBS to process the claims of defaulted or decertified self-insured employers and groups may employ the legal counsel of their choice, if litigation arises.

Other information: The Management-Labor Advisory Committee voted to support this bill.