



Department of Consumer and Business Services

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Workers' Compensation Self-Insurance Regulatory Streamlining

HB 2336

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 groups to ensuring impacted workers were getting benefits in a timely manner.

In the process of implementing the legislation, the department has identified two 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 workers with compensable claims or an insurer on their 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 worker's compensation benefits. DCBS is considered a "paying agency" only if the worker elected to bring the action and DCBS has expended costs for vocational assistance benefits or claim costs in non-complying employer cases. However, DCBS pays workers' 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 self-insured employer 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 funds¹. In either case, the department should be reimbursed for costs expended from its funds.

This bill: HB 2336 allows DCBS to immediately assign a claims processor for any defaulted or decertified self-insured employer or self-insured employer group, establishing consistent processes for claim processing assignment and help to ensure the timely payment of worker benefits after a self-insured employer or self-insured employer group default or decertification. 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.

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

Proposed amendment: The department has requested the HB 2336-1 amendment to this bill. When a self-insured employer or self-insured employer 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 resulting litigation. However, under the law, the department may reimburse the processing agent for some of the claims cost from department funds.

ORS 180.220 requires that the Department of Justice (DOJ) have 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. In the situation described above, because state funding may be impacted by litigation of a claim, it could be interpreted that DOJ is required to supervise, or even direct and control, the administrative, and legal functions of a private entity. Because some litigation may arise from matters adjudicated by the department, DOJ could also be faced with representing the interest of both the self-insured entity and DCBS on the same matter. Also, any disagreement between the claims processor and DCBS could result in a potential conflict for DOJ. The amendment will allow the claims processing agents that contract with DCBS to process the claims of decertified or bankrupt self-insured employers and employer groups to employ the legal counsel of their choice when litigation arises.