

A-Engrossed
House Bill 2337

Ordered by the House March 10
Including House Amendments dated March 10

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Consumer and Business Services)

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.

Increases workers' compensation benefits for permanent total disability [*and permanent partial disability*].

A BILL FOR AN ACT

1
2 Relating to workers' compensation benefit amounts for permanent disability; creating new pro-
3 visions; and amending ORS 656.206.

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

5 **SECTION 1.** ORS 656.206 is amended to read:

6 656.206. (1) As used in this section:

7 (a) "Essential functions" means the primary tasks associated with the job.

8 (b) "Materially improved medically" means an actual change for the better in the worker's
9 medical condition that is supported by objective findings.

10 (c) "Materially improved vocationally" means an actual change for the better in the:

11 (A) Worker's vocational capability; or

12 (B) Likelihood that the worker can return to work in a gainful and suitable occupation.

13 (d) "Permanent total disability" means, notwithstanding ORS 656.225, the loss, including preex-
14 isting disability, of use or function of any portion of the body which permanently incapacitates the
15 worker from regularly performing work at a gainful and suitable occupation.

16 (e) "Regularly performing work" means the ability of the worker to discharge the essential
17 functions of the job.

18 (f) "Suitable occupation" means one that the worker has the ability and the training or experi-
19 ence to perform, or an occupation that the worker is able to perform after rehabilitation.

20 (g) "Wages" means wages as determined under ORS 656.210.

21 (2) [*When*] **If** permanent total disability results from [*the*] **a worker's** injury, the worker shall
22 receive during the period of that disability compensation benefits equal to 66-2/3 percent of wages
23 [*not to exceed 100*], **no more than 133** percent of the average weekly wage [*nor*] **or no** less than
24 [*the amount of 90 percent of wages a week or the amount of \$50, whichever amount is lesser*] **33 per-**
25 **cent of the average weekly wage.**

26 (3) [*The*] **A** worker has the burden of proving permanent total disability status and must estab-
27 lish that the worker is willing to seek regular gainful employment and that the worker has made
28 reasonable efforts to obtain such employment.

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 (4) When requested by the Director of the Department of Consumer and Business Services, a
2 worker who receives permanent total disability benefits shall file on a form provided by the director,
3 a sworn statement of the worker's gross annual income for the preceding year along with such other
4 information as the director considers necessary to determine whether the worker regularly performs
5 work at a gainful and suitable occupation.

6 (5) Each insurer shall reexamine periodically each permanent total disability claim for which the
7 insurer has current payment responsibility to determine whether the worker has materially im-
8 proved, either medically or vocationally, and is no longer permanently incapacitated from regularly
9 performing work at a gainful and suitable occupation. Reexamination [*shall*] **must** be conducted
10 every two years or at such other more frequent interval as the director may prescribe. Reexamina-
11 tion [*shall*] **must** include such medical examinations, vocational evaluations, reports and other re-
12 cords as the insurer considers necessary or the director may require.

13 (6)(a) If a worker receiving permanent total disability benefits is found to be materially improved
14 and capable of regularly performing work at a gainful and suitable occupation, the insurer or self-
15 insured employer shall issue a notice of closure pursuant to ORS 656.268. Permanent total disability
16 benefits shall be paid through the date of the notice of closure. Notwithstanding ORS 656.268 (5),
17 if a worker objects to a notice of closure issued under this subsection, the worker [*must*] **shall** re-
18 quest a hearing. If the worker requests a hearing on the notice of closure before the Hearings Di-
19 vision of the Workers' Compensation Board within 30 days of the date of the notice of closure, the
20 insurer or self-insured employer shall continue payment of permanent total disability benefits until
21 an order of the Hearings Division or a subsequent order affirms the notice of closure or until an-
22 other order that terminates the worker's benefits becomes final. If the worker requests a hearing
23 on the notice of closure more than 30 days from the date of the notice of closure but before the
24 60-day period for requesting a hearing expires, the insurer or self-insured employer shall resume
25 paying permanent total disability benefits from the date the hearing is requested and shall continue
26 payment of benefits until an order of the Hearings Division or a subsequent order affirms the notice
27 of closure or until another order that terminates the worker's benefits becomes final. If the notice
28 of closure is upheld by the Hearings Division, the insurer or self-insured employer [*shall*] **must** be
29 reimbursed from the Workers' Benefit Fund for the amount of permanent total disability benefits
30 paid after the date of the notice of closure issued under this subsection.

31 (b) An insurer or self-insured employer must establish that the condition of a worker who is
32 receiving permanent total disability benefits has materially improved by a preponderance of the ev-
33 idence presented at hearing.

34 (c) Medical examinations or vocational evaluations used to support the issuance of a notice of
35 closure under this subsection must include at least one report in which the author personally ob-
36 served the worker.

37 (d) Notwithstanding section 54 (3), chapter 2, Oregon Laws 1990, the Hearings Division of the
38 Workers' Compensation Board may request the director to order a medical arbiter examination of
39 an injured worker who has requested a hearing under this subsection.

40 (7) A worker who has had permanent total disability benefits terminated under this section by
41 an order that has become final is eligible for vocational assistance pursuant to ORS 656.340.
42 Notwithstanding ORS 656.268 (10), if a worker has enrolled in and is actively engaged in a training
43 program, when vocational assistance provided under this section ends or the worker ceases to be
44 enrolled and actively engaged in the training program, the insurer or the self-insured employer shall
45 determine the extent of disability pursuant to ORS 656.214.

1 (8) A worker receiving permanent total disability benefits is required, if requested by the di-
2 rector, the insurer or the self-insured employer, to submit to a vocational evaluation at a time rea-
3 sonably convenient to the worker as may be provided by the rules of the director. No more than
4 three evaluations may be requested except after notification to and authorization by the director.
5 If the worker refuses to submit to or obstructs a vocational evaluation, the rights of the worker to
6 compensation [*shall*] **must** be suspended with the consent of the director until the evaluation has
7 taken place, and no compensation [*shall be*] **is** payable for the period during which the worker re-
8 fused to submit to or obstructed the evaluation. The insurer or self-insured employer shall pay the
9 costs of the evaluation and related services that are reasonably necessary to allow the worker to
10 attend the evaluation requested under this subsection. As used in this subsection, "related
11 services" includes, but is not limited to, wages, child care, travel, meals and lodging.

12 (9) Notwithstanding any other provisions of this chapter, if a worker receiving permanent total
13 disability incurs a new compensable injury, the worker's entitlement to compensation for the new
14 injury shall be limited to medical benefits pursuant to ORS 656.245 and permanent partial disability
15 benefits for impairment, as determined in the manner set forth in ORS 656.214 (2).

16 (10) When a worker eligible for benefits under this section returns to work, if the combined total
17 of the worker's post-injury wages plus permanent total disability benefit exceeds the worker's wage
18 at the time of injury, the worker's permanent total disability benefit [*shall*] **must** be reduced by the
19 amount the worker's wages plus statutory permanent total disability benefit exceeds the worker's
20 wage at injury.

21 (11) For purposes of this section:

22 (a) A gainful occupation for workers with a date of injury prior to January 1, 2006, who were:

23 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides
24 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three
25 that are applicable to Oregon residents and that are published annually in the Federal Register by
26 the United States Department of Health and Human Services or 66-2/3 percent of the worker's av-
27 erage weekly wages from all employment for the 52 weeks prior to the date of injury.

28 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-
29 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly
30 wages that are the lesser of the most recent federal poverty guidelines for a family of three that
31 are applicable to Oregon residents and that are published annually in the Federal Register by the
32 United States Department of Health and Human Services or 66-2/3 percent of the worker's average
33 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of
34 actual employment, excluding any extended periods of unemployment.

35 (C) Employed for less than four weeks prior to the date of injury with no other employment
36 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that
37 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable
38 to Oregon residents and that are published annually in the Federal Register by the United States
39 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended
40 by the parties at the time of initial hire.

41 (b) A gainful occupation for workers with a date of injury on or after January 1, 2006, who were:

42 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides
43 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three
44 that are applicable to Oregon residents and that are published annually in the Federal Register by
45 the United States Department of Health and Human Services or 66-2/3 percent of the worker's av-

1 erage weekly wages from all employment for the 52 weeks prior to the date of injury adjusted by
2 the percentage of change in the applicable federal poverty guidelines for a family of three from the
3 date of injury to the date of evaluation of the extent of the worker's disability.

4 (B) Not employed continuously for the 52 weeks prior to the date of injury, but who were em-
5 ployed for at least four weeks prior to the date of injury, is an occupation that provides weekly
6 wages that are the lesser of the most recent federal poverty guidelines for a family of three that
7 are applicable to Oregon residents and that are published annually in the Federal Register by the
8 United States Department of Health and Human Services or 66-2/3 percent of the worker's average
9 weekly wage from all employment for the 52 weeks prior to the date of injury based on weeks of
10 actual employment, excluding any extended periods of unemployment and as adjusted by the per-
11 centage of change in the applicable federal poverty guidelines for a family of three from the date
12 of injury to the date of evaluation of the extent of the worker's disability.

13 (C) Employed for less than four weeks prior to the date of injury with no other employment
14 during the 52 weeks prior to the date of injury, is an occupation that provides weekly wages that
15 are the lesser of the most recent federal poverty guidelines for a family of three that are applicable
16 to Oregon residents and that are published annually in the Federal Register by the United States
17 Department of Health and Human Services or 66-2/3 percent of the average weekly wages intended
18 by the parties at the time of initial hire adjusted by the percentage of change in the applicable
19 federal poverty guidelines for a family of three from the date of injury to the date of evaluation of
20 the extent of the worker's disability.

21 **SECTION 2. The amendments to ORS 656.206 by section 1 of this 2017 Act apply to inju-**
22 **ries occurring on or after the effective date of this 2017 Act.**

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