

House Bill 2337

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 **as introduced**.

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 and 656.214.

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.

29 (4) When requested by the Director of the Department of Consumer and Business Services, a
30 worker who receives permanent total disability benefits shall file on a form provided by the director,
31 a sworn statement of the worker's gross annual income for the preceding year along with such other

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 information as the director considers necessary to determine whether the worker regularly performs
2 work at a gainful and suitable occupation.

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

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

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

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

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

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

43 (8) A worker receiving permanent total disability benefits is required, if requested by the di-
44 rector, the insurer or the self-insured employer, to submit to a vocational evaluation at a time rea-
45 sonably convenient to the worker as may be provided by the rules of the director. No more than

1 three evaluations may be requested except after notification to and authorization by the director.
 2 If the worker refuses to submit to or obstructs a vocational evaluation, the rights of the worker to
 3 compensation [*shall*] **must** be suspended with the consent of the director until the evaluation has
 4 taken place, and no compensation [*shall be*] **is** payable for the period during which the worker re-
 5 fused to submit to or obstructed the evaluation. The insurer or self-insured employer shall pay the
 6 costs of the evaluation and related services that are reasonably necessary to allow the worker to
 7 attend the evaluation requested under this subsection. As used in this subsection, “related
 8 services” includes, but is not limited to, wages, child care, travel, meals and lodging.

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

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

18 (11) For purposes of this section:

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

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

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

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

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

39 (A) Employed continuously for 52 weeks prior to the injury, is an occupation that provides
 40 weekly wages that are the lesser of the most recent federal poverty guidelines for a family of three
 41 that are applicable to Oregon residents and that are published annually in the Federal Register by
 42 the United States Department of Health and Human Services or 66-2/3 percent of the worker’s av-
 43 erage weekly wages from all employment for the 52 weeks prior to the date of injury adjusted by
 44 the percentage of change in the applicable federal poverty guidelines for a family of three from the
 45 date of injury to the date of evaluation of the extent of the worker’s disability.

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

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

18 **SECTION 2.** ORS 656.214 is amended to read:

19 656.214. (1) As used in this section:

20 (a) "Impairment" means the loss of use or function of a body part or system due to *[the]* a
 21 compensable industrial injury or occupational disease determined in accordance with the standards
 22 provided under ORS 656.726, expressed as a percentage of the whole person.

23 (b) "Loss" includes permanent and complete or partial loss of use.

24 (c) "Permanent partial disability" means:

25 (A) Permanent impairment resulting from *[the]* a compensable industrial injury or occupational
 26 disease; or

27 (B) Permanent impairment and work disability resulting from *[the]* a compensable industrial in-
 28 jury or occupational disease.

29 (d) "Regular work" means the job the worker held at injury.

30 (e) "Work disability" means impairment modified by age, education and adaptability to perform
 31 a given job.

32 (2) *[When permanent partial disability results from a compensable injury or occupational disease,]*
 33 Benefits *[shall]* **for permanent partial disability must** be awarded as follows:

34 (a) If the worker has been released to regular work by the attending physician or nurse practi-
 35 tioner authorized to provide compensable medical services under ORS 656.245 or has returned to
 36 regular work *[at the job held at the time of injury]*, the award *[shall]* **must** be for impairment only.
 37 Impairment *[shall]* **must** be determined in accordance with the standards provided by the Director
 38 of the Department of Consumer and Business Services pursuant to ORS 656.726 (4). Impairment
 39 benefits are determined by multiplying the impairment value times *[100]* **133** times the average
 40 weekly wage *[as defined by ORS 656.005]*.

41 (b) If the worker has not been released to regular work by the attending physician or nurse
 42 practitioner authorized to provide compensable medical services under ORS 656.245 or has not re-
 43 turned to regular work *[at the job held at the time of injury]*, the award *[shall]* **must** be for impair-
 44 ment and work disability. Work disability *[shall]* **must** be determined in accordance with the
 45 standards provided by the director pursuant to ORS 656.726 (4). Impairment *[shall]* **must** be deter-

1 mined as provided in paragraph (a) of this subsection. Work disability benefits *[shall]* **must** be de-
 2 termined by multiplying the impairment value, as modified by the factors of age, education and
 3 adaptability to perform a given job, times 150 times the worker's weekly wage for the job at injury
 4 as calculated under ORS 656.210 (2). The factor for the worker's weekly wage used for the deter-
 5 mination of the work disability may be no more than 133 percent or no less than 50 percent of the
 6 average weekly wage *[as defined in ORS 656.005]*.

7 (3) Impairment benefits awarded under subsection (2)(a) of this section *[shall]* **must** be expressed
 8 as a percentage of the whole person. Impairment benefits for the following body parts may not ex-
 9 ceed:

10 (a) For the loss of one arm at or above the elbow joint, 60 percent.

11 (b) For the loss of one forearm at or above the wrist joint, or the loss of one hand, 47 percent.

12 (c) For the loss of one leg, at or above the knee joint, 47 percent.

13 (d) For the loss of one foot, 42 percent.

14 (e) For the loss of a great toe, six percent; for loss of any other toe, one percent.

15 (f) For partial or complete loss of hearing in one ear, that proportion of 19 percent which the
 16 loss bears to normal monaural hearing.

17 (g) For partial or complete loss of hearing in both ears, that proportion of 60 percent which the
 18 combined binaural hearing loss bears to normal combined binaural hearing. For the purpose of this
 19 paragraph, combined binaural hearing loss *[shall]* **must** be calculated by taking seven times the
 20 hearing loss in the less damaged ear plus the hearing loss in the more damaged ear and dividing that
 21 amount by eight. In the case of individuals with compensable hearing loss involving both ears, either
 22 the method of calculation for monaural hearing loss or that for combined binaural hearing loss
 23 *[shall]* **must** be used, depending upon which allows the greater award of impairment.

24 (h) For partial or complete loss of vision of one eye, that proportion of 31 percent which the loss
 25 of monocular vision bears to normal monocular vision. For the purposes of this paragraph, the term
 26 "normal monocular vision" *[shall be considered as]* **is** Snellen 20/20 for distance and Snellen 14/14
 27 for near vision with full sensory field.

28 (i) For partial loss of vision in both eyes, that proportion of 94 percent which the combined
 29 binocular visual loss bears to normal combined binocular vision. In all cases of partial loss of sight,
 30 the percentage of said loss *[shall]* **must** be measured with maximum correction. For the purpose of
 31 this paragraph, combined binocular visual loss *[shall]* **must** be calculated by taking three times the
 32 visual loss in the less damaged eye plus the visual loss in the more damaged eye and dividing that
 33 amount by four. In the case of individuals with compensable visual loss involving both eyes, either
 34 the method of calculation for monocular visual loss or that for combined binocular visual loss
 35 *[shall]* **must** be used, depending upon which allows the greater award of impairment.

36 (j) For the loss of a thumb, 15 percent.

37 (k) For the loss of a first finger, eight percent; of a second finger, seven percent; of a third fin-
 38 ger, three percent; of a fourth finger, two percent.

39 (4) The loss of one phalange of a thumb, including the adjacent epiphyseal region of the proximal
 40 phalange, is *[considered]* equal to the loss of one-half of a thumb. The loss of one phalange of a fin-
 41 ger, including the adjacent epiphyseal region of the middle phalange, is *[considered]* equal to the loss
 42 of one-half of a finger. The loss of two phalanges of a finger, including the adjacent epiphyseal re-
 43 gion of the proximal phalange of a finger, is *[considered]* equal to the loss of 75 percent of a finger.
 44 The loss of more than one phalange of a thumb, excluding the epiphyseal region of the proximal
 45 phalange, is *[considered]* equal to the loss of an entire thumb. The loss of more than two phalanges

1 of a finger, excluding the epiphyseal region of the proximal phalange of a finger, is [*considered*]
2 equal to the loss of an entire finger. A proportionate loss of use may be allowed for an uninjured
3 finger or thumb where there has been a loss of effective opposition.

4 (5) A proportionate loss of the hand may be allowed where impairment extends to more than one
5 digit, in lieu of ratings on the individual digits.

6 (6) All permanent disability contemplates future waxing and waning of symptoms of the condi-
7 tion. The results of waxing and waning of symptoms may include, but are not limited to, loss of
8 earning capacity, periods of temporary total or temporary partial disability, or inpatient
9 hospitalization.

10 **SECTION 3. The amendments to ORS 656.206 and 656.214 by sections 1 and 2 of this 2017**
11 **Act apply to injuries occurring on or after the effective date of this 2017 Act.**

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