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.

Prescribes method for calculating weekly wage for workers in order to determine benefits payable for temporary total disability under workers' compensation law.

 Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to methods for calculating a worker's weekly wage for the purpose of paying benefits for temporary total disability; creating new provisions; amending ORS 656.210; and declaring an emergency.

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

SECTION 1. ORS 656.210 is amended to read:

656.210. (1) When a total disability is only temporary, a worker must receive during the period of that total disability compensation equal to 66-2/3 percent of wages, but not more than 133 percent of the average weekly wage nor less than the amount of 90 percent of wages a week or the amount of $50 a week, whichever amount is less. Notwithstanding the limitation imposed by this subsection, an injured worker who is not otherwise eligible to receive an increase in benefits for the fiscal year in which compensation is paid must have the benefits increased each fiscal year by the percentage which the applicable average weekly wage has increased since the previous fiscal year.

(2)(a) For the purpose of this section, the weekly wage of workers who are regularly employed in one job at the time of injury must be ascertained by:

(A) For workers employed in one job at the time of injury, by multiplying the daily wage the worker was receiving by the number of days per week that the worker was regularly employed; or

(B) Averaging the worker's weekly earnings for the 52 weeks before the time of injury if the worker is paid on other than a daily or weekly basis, is employed with no earnings or with unscheduled or irregular earnings, is employed seasonally, is on call, is paid hourly, is paid by piece work or is employed with varying hours, shifts or wages.

(B) Using the actual weeks of the worker's employment with the employer up to 52 weeks before the time of injury, excluding any extended gaps, if the worker was employed fewer than 52 weeks or if the worker has extended gaps in employment with the employer. The Director of the Department of Consumer and Business Services by rule may define what constitutes an extended gap in employment.

(C) Determining the intent of the wage earning agreement, as determined between the employer and the worker, if the worker was employed for fewer than four weeks. For purposes of this subparagraph, a wage earning agreement may be oral or in writing.
(D) Using the worker's average weekly hours during the 52 weeks before the time of the
injury, or during a shorter period as provided in subparagraph (B) of this paragraph, multi-
plied by the worker's wage at the time of the injury, if the wage earning agreement changed
during the 52 weeks before the time of injury solely because of an increase or decrease in
the wage.

(E) Averaging the worker's weekly earnings for the weeks worked under the most recent
wage earning agreement, calculated by multiplying the worker's average weekly hours by the
worker's wage at the time of the injury, if the wage earning agreement changed during the
52 weeks before the time of the injury because of a change in the number of the worker's
hours, because of a change in job duties or for other reasons, with or without an increase
or decrease in the wage.

(F) Determining the intent of the most recent wage earning agreement, if the worker
was employed for fewer than four weeks under a wage earning agreement that changed as
described in subparagraph (D) or (E) of this paragraph.

[(B)] (b) For workers employed in more than one job at the time of injury, the weekly wage
of workers must be ascertained by adding all earnings the worker was receiving from all subject
employment.

[(b)] (c) Notwithstanding paragraph [(a)(B)] (b) of this subsection, the weekly wage, as calcu-
lated under paragraph [(a)(A)] (a) of this subsection in accordance with the employment condi-
tions that apply to the worker, [shall] must be used for workers employed in more than one job
at the time of injury unless the insurer, self-insured employer or assigned claims agent for a non-
complying employer receives:

(A) Within 30 days [of receipt of] after receiving the initial claim, notice that the worker was
employed in more than one job with a subject employer at the time of injury; and

(B) Within 60 days [of the date of mailing] after the mailing date of a request for verification,
verifiable documentation of wages from [such] the additional employment.

[(c)] (d) Notwithstanding ORS 656.005 (7)(c), an injury to a worker employed in more than one
job at the time of injury is not disabling if [no] temporary disability benefits are not payable for time
lost from the job at injury. Claim costs incurred as a result of supplemental temporary disability
benefits paid as provided in subsection (5) of this section may not be included in any data used for
ratemaking or individual employer rating or dividend calculations by an insurer, a rating organiza-
tion licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the
Department of Consumer and Business Services if the injured worker is not eligible for permanent
disability benefits or temporary disability benefits for time lost from the job at injury.

[(d)] (e) For the purpose of this section:

(A) The benefits of a worker who incurs an injury [shall] must be based on the wage of the
worker at the time of injury.

(B) The benefits of a worker who incurs an occupational disease [shall] must be based on the
wage of the worker at the time there is medical verification that the worker is unable to work be-
cause of the disability caused by the occupational disease. If the worker is not working at the time
that there is medical verification that the worker is unable to work because of the disability caused
by the occupational disease, the benefits [shall] must be based on the wage of the worker at the
worker's last regular employment.

[(e)] (f) As used in this subsection, “regularly employed” means actual employment or avail-
ability for such employment. For workers not regularly employed and for workers with no
remuneration, who are hired out of a union hall or who are paid in ways not otherwise described in this section, or whose remuneration is not based solely upon daily or weekly wages, the director of the Department of Consumer and Business Services by rule may prescribe methods for establishing the worker’s weekly wage.

(3) A disability payment is not recoverable for temporary total or partial disability suffered during the first three calendar days after the worker leaves work or loses wages as a result of the compensable injury unless the worker is totally disabled after the injury and the total disability continues for a period of 14 consecutive days or unless the worker is admitted as an inpatient to a hospital within 14 days of the first onset of total disability. If the worker leaves work or loses wages on the day of the injury due to the injury, that day shall be considered is the first day of the three-day period.

(4) If an injured worker with an accepted disabling compensable injury is required to leave work for a period of four hours or more to receive medical consultation, examination or treatment with regard to the compensable injury, the worker shall receive temporary disability benefits calculated pursuant to ORS 656.212 for the period during which the worker is absent, until such time as the worker is determined to be medically stationary. However, benefits under this subsection are not payable if wages are paid for the period of absence by the employer.

(5) The insurer of the employer at injury, or the self-insured employer at injury, may elect to be responsible for payment of supplemental temporary disability benefits to a worker employed in more than one job at the time of injury. In accordance with rules adopted by the director, if the worker’s weekly wage is determined under subsection (a)(B) of this section, the insurer or self-insured employer shall be reimbursed from the Workers’ Benefit Fund for the amount of temporary disability benefits paid that exceeds the amount payable pursuant to subsection [(2)(a)] of this section had the worker been employed in only one job at the time of injury. Such reimbursement shall include an administrative fee payable to the insurer or self-insured employer pursuant to rules adopted by the director.

(b) If the insurer or self-insured employer elects not to pay the supplemental temporary disability benefits for a worker employed in more than one job at the time of injury, the director shall administer and pay the supplemental benefits directly or shall assign responsibility to administer and process the payment to a paying agent selected by the director.

(6) The director shall adopt rules for the payment and reimbursement of supplemental temporary disability benefits under this section.

SECTION 2. (1) The amendments to ORS 656.210 by section 1 of this 2018 Act apply to all claims existing or arising on or after the effective date of this 2018 Act.

(2) Notwithstanding the application specified in subsection (1) of this section, the amendments to ORS 656.210 by section 1 of this 2018 Act do not apply to a matter for which an order has become final before the effective date of this 2018 Act.

SECTION 3. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.