

# House Bill 2413

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Oregon Chapter of International Association of Rehabilitation Professionals)

## 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**.

Provides that injured worker is eligible for vocational assistance unless average weekly wage exceeds 95 percent of weekly wage paid for employment in which worker was engaged at time of injury. Includes value of employer-paid health insurance benefits in definition of earned income for purposes of determining whether worker is entitled to vocational rehabilitation because worker cannot engage in suitable employment. Provides that for purposes of determining suitable employment, worker's weekly wage must be at least 95 percent of the average weekly wage paid for employment that was worker's regular employment.

Provides that if insurer or self-insured employer approves training program for worker who actively engages in training, insurer or self-insured employer shall pay temporary disability compensation for entire time during which worker is engaged in training program, up to maximum of 21 months.

## A BILL FOR AN ACT

1  
2 Relating to vocational training benefits related to workers' compensation claim; creating new provisions; and amending ORS 656.340.

3  
4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 656.340 is amended to read:

6 656.340. (1)(a) [*The*] **An** insurer or self-insured employer shall cause vocational assistance **in**  
7 **returning to work** to be provided to an injured worker who is eligible for assistance [*in returning*  
8 *to work*].

9 (b) For [*this*] **the purpose described in paragraph (a) of this subsection**, the insurer or self-  
10 insured employer shall contact a worker with a claim for a disabling compensable injury or claim  
11 for aggravation for evaluation of the worker's eligibility for vocational assistance within five days  
12 of:

13 (A) Having knowledge of the worker's likely eligibility for vocational assistance, from a medical  
14 or investigation report, notification from the worker, or otherwise; or

15 (B) The time the worker is medically stationary, if the worker has not returned to or been re-  
16 leased for the worker's regular employment or has not returned to other suitable employment with  
17 the employer at the time of injury or aggravation and the worker is not receiving vocational as-  
18 sistance.

19 (c) [*Eligibility may be redetermined by*] The insurer or self-insured employer [*upon receipt of*]  
20 **may redetermine eligibility after receiving** new information that would change the eligibility de-  
21 termination.

22 (2) Contact under subsection (1) of this section [*shall include*] **includes** informing the worker  
23 about reemployment rights, the responsibility of the worker to request reemployment, and wage  
24 subsidy and job site modification assistance and the provisions of the preferred worker program  
25 [*pursuant to*] **under** rules adopted by the Director of the Department of Consumer and Business

**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 Services.

2 (3) Within five days after notification that the attending physician or nurse practitioner au-  
 3 thorized to provide compensable medical services under ORS 656.245 has released a worker to re-  
 4 turn to work, the insurer or self-insured employer shall inform the worker about the opportunity to  
 5 seek reemployment or reinstatement under ORS 659A.043 and 659A.046. The insurer shall inform the  
 6 employer of the worker's reemployment rights, wage subsidy and the job site modification assistance  
 7 and the provisions of the preferred worker program.

8 (4) As soon as possible, and not more than 30 days after the contact required by subsection (1)  
 9 of this section, the insurer or self-insured employer shall cause an individual certified by the direc-  
 10 tor to provide vocational assistance to determine whether the worker is eligible for vocational as-  
 11 sistance. The insurer or self-insured employer shall notify the worker of the decision regarding the  
 12 worker's eligibility for vocational assistance. If the insurer or self-insured employer decides that the  
 13 worker is not eligible, the worker may apply to the director for review of the decision as provided  
 14 in subsection (16) of this section. A worker determined ineligible upon evaluation under subsection  
 15 (1)(b)(B) of this section, or because the worker's eligibility has fully and finally expired under stan-  
 16 dards prescribed by the director, may not be found eligible thereafter unless *[that]* **the director**  
 17 **rejects the** eligibility determination *[is rejected by the director]* under subsection (16) of this section  
 18 or the worker's condition worsens so as to constitute an aggravation claim under ORS 656.273. A  
 19 worker is not entitled to vocational assistance benefits *[when]* **if** possible eligibility for such benefits  
 20 arises from a worsening of the worker's condition that occurs after the expiration of the worker's  
 21 aggravation rights under ORS 656.273.

22 (5)(a) The objectives of vocational assistance are to return the worker to employment which is  
 23 as close as possible to the worker's regular employment at a wage as close as possible to the weekly  
 24 wage currently being paid for employment which was the worker's regular employment even though  
 25 the wage available following employment may be less than the wage prescribed by subsection (6)  
 26 of this section.

27 (b) As used in this subsection and subsection (6) of this section, "regular employment" means:

28 (A) The employment the worker held at the time of the injury or the claim for aggravation un-  
 29 der ORS 656.273, whichever gave rise to the potential eligibility for vocational assistance; or[,]

30 (B) For a worker not employed at the time of the aggravation, the employment the worker held  
 31 on the last day of work prior to the aggravation.

32 (6)(a) A worker is eligible for vocational assistance if the worker will not be able to return to  
 33 the previous employment or to any other available and suitable employment with the employer **that**  
 34 **was the worker's employer** at the time of injury or aggravation, and the worker has a substantial  
 35 handicap to employment.

36 (b) As used in this subsection:

37 (A) A "substantial handicap to employment" *[exists when]* **means** the worker, because of the  
 38 injury or aggravation, lacks the necessary physical capacities, knowledge, skills and abilities to be  
 39 employed in suitable employment.

40 (B) "Suitable employment" means:

41 (i) Employment of the kind for which the worker has the necessary physical capacity, knowl-  
 42 edge, skills and abilities;

43 (ii) Employment that is located where the worker customarily worked or is within reasonable  
 44 commuting distance of the worker's residence; and

45 (iii) Employment that produces a weekly wage *[within 20]* **that is not less than 95** percent of

1 ~~[that]~~ **the weekly wage that is** currently being paid for employment that was the worker's regular  
 2 employment as defined in subsection (5) of this section. The director shall adopt rules providing  
 3 methods of calculating the weekly wage currently being paid for the worker's regular employment  
 4 for use in determining eligibility and for providing assistance to eligible workers. If the worker's  
 5 regular employment was seasonal or temporary, the worker's wage ~~[shall]~~ **must** be averaged based  
 6 on a combination of the worker's earned income and any unemployment insurance payments. Only  
 7 earned income evidenced by verifiable documentation, such as federal or state tax returns, ~~[shall]~~  
 8 **may** be used in the calculation. Earned income **includes employer-paid health benefits, but** does  
 9 not include fringe benefits or reimbursement of the worker's employment expenses.

10 (7) Vocational evaluation, help in directly obtaining employment and training ~~[shall]~~ **must** be  
 11 available under conditions prescribed by the director. The director may establish other conditions  
 12 for providing vocational assistance, including those relating to the worker's availability for assist-  
 13 ance, participation in previous assistance programs connected with the same claim and the nature  
 14 and extent of assistance that may be provided. Such conditions ~~[shall]~~ **must** give preference to di-  
 15 rect employment assistance over training.

16 (8) An insurer or self-insured employer may utilize ~~[its]~~ **the insurer's or self-insured**  
 17 **employer's** own staff or may engage any other individual ~~[certified by]~~ the director **certifies** to  
 18 perform the vocational evaluation required by subsection (4) of this section.

19 (9) The director shall adopt rules providing:

20 (a) Standards for and methods of certifying individuals qualified by education, training and ex-  
 21 perience to provide vocational assistance to injured workers;

22 (b) Standards for registration of vocational assistance providers;

23 (c) Conditions and procedures under which the certification of an individual to provide voca-  
 24 tional assistance services or the registration of a vocational assistance provider may be suspended  
 25 or revoked for failure to maintain compliance with the certification or registration standards;

26 (d) Standards for the nature and extent of services a worker may receive, for plans for return  
 27 to work and for determining when the worker has returned to work; and

28 (e) Procedures, schedules and conditions relating to the payment for services performed by a  
 29 vocational assistance provider, that are based on payment for specific services performed and not  
 30 fees for services performed on an hourly basis. Fee schedules ~~[shall]~~ **must** reflect a reasonable rate  
 31 for direct worker purchases and for all vocational assistance providers and ~~[shall]~~ **must** be the same  
 32 within suitable geographic areas.

33 (10) Insurers and self-insured employers shall maintain records and make reports to the director  
 34 of vocational assistance actions at times and in the manner as the director may prescribe. The re-  
 35 quirements prescribed ~~[shall]~~ **must** be for the purpose of assisting the Department of Consumer and  
 36 Business Services in monitoring compliance with this section to insure that workers receive timely  
 37 and appropriate vocational assistance. The director shall minimize to the greatest extent possible  
 38 the number, extent and kinds of reports required. The director shall compile a list of organizations  
 39 or agencies registered to provide vocational assistance. **The director shall distribute** a current list  
 40 ~~[shall be distributed by the director]~~ to all insurers and self-insured employers. The insurer shall send  
 41 the list to each worker with the notice of eligibility.

42 (11) ~~[When]~~ **If** a worker is eligible to receive vocational assistance, the worker and the insurer  
 43 or self-insured employer shall attempt to agree on the choice of a vocational assistance provider. If  
 44 the worker agrees, the insurer or self-insured employer may utilize ~~[its]~~ **the insurer's or the self-**  
 45 **insured employer's** own staff to provide vocational assistance. If ~~[they are unable to]~~ **the worker**

1 **and the insurer or self-insured employer cannot** agree on a vocational assistance provider, the  
 2 insurer or self-insured employer shall notify the director and the director shall select a provider.  
 3 Any change in the choice of vocational assistance provider is subject to the approval of the director.

4 (12) Notwithstanding ORS 656.268, **if an insurer or self-insured employer approves a train-**  
 5 **ing program for a worker who** actively *[engaged]* **engages** in training, *[may receive]* **the insurer**  
 6 **or self-insured employer shall pay** temporary disability compensation for *[a maximum of 16*  
 7 *months. The insurer or self-insured employer may voluntarily extend the payment of temporary disa-*  
 8 *bility compensation to a maximum of 21 months. The director may order the payment of temporary*  
 9 *disability compensation for up to 21 months upon good cause shown by the injured worker.]* **the entire**  
 10 **time during which the worker is engaged in the training program, up to a maximum of 21**  
 11 **months.** The costs related to vocational assistance training programs may be paid for periods  
 12 longer than 21 months, but in no event may temporary disability benefits be paid for a period longer  
 13 than 21 months.

14 (13) As used in this section, “vocational assistance provider” means a public or private organ-  
 15 ization or agency that provides vocational assistance to injured workers.

16 (14)(a) Determination of eligibility for vocational assistance does not entitle all workers to the  
 17 same type or extent of assistance.

18 (b) Training *[shall]* **may** not be provided to an eligible worker solely because the worker cannot  
 19 obtain employment, otherwise suitable, that will produce the wage prescribed in subsection (6) of  
 20 this section unless such training will enable the worker to find employment *[which]* **that** will  
 21 produce a wage significantly closer to that prescribed in subsection (6) of this section.

22 (c) *[Nothing in]* This section *[shall be interpreted to]* **does not** expand the availability of training  
 23 under this section.

24 (15) A physical capacities evaluation *[shall]* **must** be performed in conjunction with vocational  
 25 assistance or determination of eligibility for such assistance at the request of the insurer or self-  
 26 insured employer or worker. The request *[shall]* **must** be made to the attending physician or nurse  
 27 practitioner authorized to provide compensable medical services under ORS 656.245. The attending  
 28 physician or nurse practitioner, within 20 days of the request, shall perform a physical capacities  
 29 evaluation or refer the worker for such evaluation or advise the insurer or self-insured employer  
 30 and the worker in writing that the injured worker is incapable of participating in a physical ca-  
 31 pacities evaluation.

32 (16)(a) The Legislative Assembly finds that vocational rehabilitation of injured workers requires  
 33 a high degree of cooperation between all of the participants in the vocational assistance process.  
 34 Based on this finding, the Legislative Assembly concludes that disputes regarding eligibility for and  
 35 extent of vocational assistance services should be resolved through nonadversarial procedures to the  
 36 greatest extent possible consistent with constitutional principles. The director shall adopt by rule  
 37 a procedure for resolving vocational assistance disputes in the manner provided in this subsection.

38 (b) If a worker is dissatisfied with an action of the insurer or self-insured employer regarding  
 39 vocational assistance, the worker must apply to the director for administrative review of the matter.  
 40 Application for review must be made not later than the 60th day after the date the worker was  
 41 notified of the action. The director shall complete the review within a reasonable time.

42 (c) If the worker’s dissatisfaction is resolved by agreement of the parties, the agreement *[shall]*  
 43 **must** be reduced to writing, and the director and the parties shall review the agreement and either  
 44 approve or disapprove it. The agreement is subject to reconsideration by the director under limita-  
 45 tions prescribed by the director, but is not subject to review by any other forum.

1 (d) If the worker's dissatisfaction is not resolved by agreement of the parties, the director shall  
2 resolve the matter in a written order based on a record sufficient to permit review. The order is  
3 subject to review under ORS 656.704. The request for a hearing must be filed within 60 days of the  
4 date the order was issued. At the hearing, the order of the director [*shall*] **may** be modified only if  
5 [*it*] **the order**:

6 (A) Violates a statute or rule;

7 (B) Exceeds the statutory authority of the agency;

8 (C) Was made upon unlawful procedure; or

9 (D) Was characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10 (e) For purposes of this subsection, the term "parties" does not include a noncomplying em-  
11 ployer.

12 **SECTION 2. The amendments to ORS 656.340 by section 1 of this 2019 Act apply to claims**  
13 **for compensation that arise before, on or after the effective date of this 2019 Act but that**  
14 **have not been closed on or before the effective date of this 2019 Act.**