

# D R A F T

## SUMMARY

Changes definitions of “employer” and “worker” for purposes of workers’ compensation law.

### A BILL FOR AN ACT

Relating to employment status; amending ORS 656.005.

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

**SECTION 1.** ORS 656.005 is amended to read:

656.005. (1) “Average weekly wage” means the Oregon average weekly wage in covered employment, as determined by the Employment Department, for the last quarter of the calendar year preceding the fiscal year in which the injury occurred.

(2)(a) “Beneficiary” means an injured worker, and the spouse in a marriage, child or dependent of a worker, who is entitled to receive payments under this chapter.

(b) “Beneficiary” does not include:

(A) A spouse of an injured worker living in a state of abandonment for more than one year at the time of the injury or subsequently. A spouse who has lived separate and apart from the worker for a period of two years and who has not during that time received or attempted by process of law to collect funds for support or maintenance is considered living in a state of abandonment.

(B) A person who intentionally causes the compensable injury to or death of an injured worker.

(3) “Board” means the Workers’ Compensation Board.

1 (4) "Carrier-insured employer" means an employer who provides workers'  
2 compensation coverage with the State Accident Insurance Fund Corporation  
3 or an insurer authorized under ORS chapter 731 to transact workers' com-  
4 pensation insurance in this state.

5 (5) "Child" means a child of an injured worker, including:

6 (a) A posthumous child;

7 (b) A child legally adopted before the injury;

8 (c) A child toward whom the worker stands in loco parentis;

9 (d) A child born out of wedlock;

10 (e) A stepchild, if the stepchild was, at the time of the injury, a member  
11 of the worker's family and substantially dependent upon the worker for  
12 support; and

13 (f) A child of any age who was an invalid at the time of the accident and  
14 thereafter remains an invalid substantially dependent on the worker for  
15 support.

16 (6) "Claim" means a written request for compensation from a subject  
17 worker or someone on the worker's behalf, or any compensable injury of  
18 which a subject employer has notice or knowledge.

19 (7)(a) A "compensable injury" is an accidental injury, or accidental injury  
20 to prosthetic appliances, arising out of and in the course of employment re-  
21 quiring medical services or resulting in disability or death. An injury is ac-  
22 cidental if the result is an accident, whether or not due to accidental means,  
23 if it is established by medical evidence supported by objective findings, sub-  
24 ject to the following limitations:

25 (A) An injury or disease is not compensable as a consequence of a  
26 compensable injury unless the compensable injury is the major contributing  
27 cause of the consequential condition.

28 (B) If an otherwise compensable injury combines at any time with a pre-  
29 existing condition to cause or prolong disability or a need for treatment, the  
30 combined condition is compensable only if, so long as and to the extent that  
31 the otherwise compensable injury is the major contributing cause of the

1 disability of the combined condition or the major contributing cause of the  
2 need for treatment of the combined condition.

3 (b) “Compensable injury” does not include:

4 (A) Injury to any active participant in assaults or combats that are not  
5 connected to the job assignment and that amount to a deviation from cus-  
6 tomary duties;

7 (B) Injury incurred while engaging in or performing, or as the result of  
8 engaging in or performing, any recreational or social activities primarily for  
9 the worker’s personal pleasure; or

10 (C) Injury the major contributing cause of which is demonstrated to be  
11 by a preponderance of the evidence the injured worker’s consumption of al-  
12 coholic beverages or cannabis or the unlawful consumption of any controlled  
13 substance, unless the employer permitted, encouraged or had actual knowl-  
14 edge of such consumption.

15 (c) A “disabling compensable injury” is an injury that entitles the worker  
16 to compensation for disability or death. An injury is not disabling if no  
17 temporary benefits are due and payable, unless there is a reasonable expect-  
18 tation that permanent disability will result from the injury.

19 (d) A “nondisabling compensable injury” is any injury that requires med-  
20 ical services only.

21 (8) “Compensation” includes all benefits, including medical services, pro-  
22 vided for a compensable injury to a subject worker or the worker’s benefi-  
23 ciaries by an insurer or self-insured employer pursuant to this chapter.

24 (9) “Department” means the Department of Consumer and Business Ser-  
25 vices.

26 (10)(a) “Dependent” means any of the following relatives of the worker  
27 who, at the time of an accident, depended in whole or in part for the  
28 relative’s support on the earnings of a worker who dies as a result of an  
29 injury:

30 (A) A parent, grandparent or stepparent;

31 (B) A grandson or granddaughter;

1 (C) A brother or sister or half-brother or half-sister; and

2 (D) A niece or nephew.

3 (b) "Dependent" does not include an alien who does not reside within the  
4 United States at the time of the accident, other than a parent, a spouse or  
5 children, unless a treaty provides otherwise.

6 (11) "Director" means the Director of the Department of Consumer and  
7 Business Services.

8 (12)(a) "Doctor" or "physician" means a person duly licensed to practice  
9 one or more of the healing arts in any country or in any state, territory or  
10 possession of the United States within the limits of the license of the  
11 licensee.

12 (b) Except as otherwise provided for workers subject to a managed care  
13 contract, "attending physician" means a doctor, physician or physician as-  
14 sistant who is primarily responsible for the treatment of a worker's  
15 compensable injury and who is:

16 (A) A physician licensed under ORS 677.100 to 677.228 by the Oregon  
17 Medical Board, or a podiatric physician and surgeon licensed under ORS  
18 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial  
19 surgeon licensed by the Oregon Board of Dentistry or a similarly licensed  
20 doctor in any country or in any state, territory or possession of the United  
21 States; or

22 (B) For a cumulative total of 60 days from the first visit on the initial  
23 claim or for a cumulative total of 18 visits, whichever occurs first, to any  
24 of the medical service providers listed in this subparagraph, a:

25 (i) Doctor or physician licensed by the State Board of Chiropractic Ex-  
26 aminers for the State of Oregon under ORS chapter 684 or a similarly li-  
27 censed doctor or physician in any country or in any state, territory or  
28 possession of the United States;

29 (ii) Physician assistant licensed by the Oregon Medical Board in accord-  
30 ance with ORS 677.505 to 677.525 or a similarly licensed physician assistant  
31 in any country or in any state, territory or possession of the United States;

1 or

2 (iii) Doctor of naturopathy or naturopathic physician licensed by the  
3 Oregon Board of Naturopathic Medicine under ORS chapter 685 or a simi-  
4 larly licensed doctor or physician in any country or in any state, territory  
5 or possession of the United States.

6 (c) Except as otherwise provided for workers subject to a managed care  
7 contract, “attending physician” does not include a physician who provides  
8 care in a hospital emergency room and refers the injured worker to a pri-  
9 mary care physician for follow-up care and treatment.

10 (d) “Consulting physician” means a doctor or physician who examines a  
11 worker or the worker’s medical record to advise the attending physician or  
12 nurse practitioner authorized to provide compensable medical services under  
13 ORS 656.245 regarding treatment of a worker’s compensable injury.

14 (13)(a) “Employer” means any person, including receiver, administrator,  
15 executor or trustee, and the state, state agencies, counties, municipal corpo-  
16 rations, school districts and other public corporations or political subdi-  
17 visions, that contracts to pay a remuneration for and secures the right to  
18 direct and control the services of any [*person*] **worker**.

19 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this  
20 chapter, the client of a temporary service provider is not the employer of  
21 temporary workers provided by the temporary service provider.

22 (c) As used in paragraph (b) of this subsection, “temporary service pro-  
23 vider” has the meaning for that term provided in ORS 656.850.

24 (14) “Insurer” means the State Accident Insurance Fund Corporation or  
25 an insurer authorized under ORS chapter 731 to transact workers’ compen-  
26 sation insurance in this state or an assigned claims agent selected by the  
27 director under ORS 656.054.

28 (15) “Consumer and Business Services Fund” means the fund created by  
29 ORS 705.145.

30 (16) “Invalid” means one who is physically or mentally incapacitated from  
31 earning a livelihood.

1 (17) “Medically stationary” means that no further material improvement  
2 would reasonably be expected from medical treatment or the passage of time.

3 (18) “Noncomplying employer” means a subject employer that has failed  
4 to comply with ORS 656.017.

5 (19) “Objective findings” in support of medical evidence are verifiable  
6 indications of injury or disease that may include, but are not limited to,  
7 range of motion, atrophy, muscle strength and palpable muscle spasm. “Ob-  
8 jective findings” does not include physical findings or subjective responses  
9 to physical examinations that are not reproducible, measurable or observa-  
10 ble.

11 (20) “Palliative care” means medical service rendered to reduce or mod-  
12 erate temporarily the intensity of an otherwise stable medical condition, but  
13 does not include those medical services rendered to diagnose, heal or per-  
14 manently alleviate or eliminate a medical condition.

15 (21) “Party” means a claimant for compensation, the employer of the in-  
16 jured worker at the time of injury and the insurer, if any, of the employer.

17 (22) “Payroll” means a record of wages payable to workers for their ser-  
18 vices and includes commissions, value of exchange labor and the reasonable  
19 value of board, rent, housing, lodging or similar advantage received from the  
20 employer. However, “payroll” does not include overtime pay, vacation pay,  
21 bonus pay, tips, amounts payable under profit-sharing agreements or bonus  
22 payments to reward workers for safe working practices. Bonus pay is limited  
23 to payments that are not anticipated under the contract of employment and  
24 that are paid at the sole discretion of the employer. The exclusion from  
25 payroll of bonus payments to reward workers for safe working practices is  
26 only for the purpose of calculations based on payroll to determine premium  
27 for workers’ compensation insurance, and does not affect any other calcu-  
28 lation or determination based on payroll for the purposes of this chapter.

29 (23) “Person” includes a partnership, joint venture, association, limited  
30 liability company and corporation.

31 (24)(a) “Preexisting condition” means, for all industrial injury claims, any

1 injury, disease, congenital abnormality, personality disorder or similar con-  
2 dition that contributes to disability or need for treatment, provided that:

3 (A) Except for claims in which a preexisting condition is arthritis or an  
4 arthritic condition, the worker has been diagnosed with the condition, or has  
5 obtained medical services for the symptoms of the condition regardless of  
6 diagnosis; and

7 (B)(i) In claims for an initial injury or omitted condition, the diagnosis  
8 or treatment precedes the initial injury;

9 (ii) In claims for a new medical condition, the diagnosis or treatment  
10 precedes the onset of the new medical condition; or

11 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the  
12 diagnosis or treatment precedes the onset of the worsened condition.

13 (b) "Preexisting condition" means, for all occupational disease claims, any  
14 injury, disease, congenital abnormality, personality disorder or similar con-  
15 dition that contributes to disability or need for treatment and that precedes  
16 the onset of the claimed occupational disease, or precedes a claim for wors-  
17 ening in such claims pursuant to ORS 656.273 or 656.278.

18 (c) For the purposes of industrial injury claims, a condition does not  
19 contribute to disability or need for treatment if the condition merely renders  
20 the worker more susceptible to the injury.

21 (25) "Self-insured employer" means an employer or group of employers  
22 certified under ORS 656.430 as meeting the qualifications set out by ORS  
23 656.407.

24 (26) "State Accident Insurance Fund Corporation" and "corporation"  
25 mean the State Accident Insurance Fund Corporation created under ORS  
26 656.752.

27 (27) "Subject employer" means an employer that is subject to this chapter  
28 as provided by ORS 656.023.

29 (28) "Subject worker" means a worker who is subject to this chapter as  
30 provided by ORS 656.027.

31 (29) "Wages" means the money rate at which the service rendered is

1 recompensed under the contract of hiring in force at the time of the accident,  
2 including reasonable value of board, rent, housing, lodging or similar ad-  
3 vantage received from the employer, and includes the amount of tips required  
4 to be reported by the employer pursuant to section 6053 of the Internal  
5 Revenue Code of 1954, as amended, and the regulations promulgated pursuant  
6 thereto, or the amount of actual tips reported, whichever amount is greater.  
7 The State Accident Insurance Fund Corporation may establish assumed  
8 minimum and maximum wages, in conformity with recognized insurance  
9 principles, at which any worker shall be carried upon the payroll of the  
10 employer for the purpose of determining the premium of the employer.

11 (30) "Worker" means any person, **other than an independent contrac-**  
12 **tor, who engages to furnish services for a remuneration**, including a  
13 minor whether lawfully or unlawfully employed[, *who engages to furnish*  
14 *services for a remuneration, subject to the direction and control of an employer*  
15 *and includes*] **and** salaried, elected and appointed officials of the state, state  
16 agencies, counties, cities, school districts and other public corporations, but  
17 does not include any person whose services are performed as an adult in  
18 custody or ward of a state institution or as part of the eligibility require-  
19 ments for a general or public assistance grant. For the purpose of deter-  
20 mining entitlement to temporary disability benefits or permanent total  
21 disability benefits under this chapter, "worker" does not include a person  
22 who has withdrawn from the workforce during the period for which such  
23 benefits are sought.

24 (31) "Independent contractor" has the meaning for that term provided in  
25 ORS 670.600.

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