

House Bill 3188

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Representative Paul Holvey)

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**.

Changes definitions of "employer" and "worker" for purposes of workers' compensation law.

A BILL FOR AN ACT

1
2 Relating to employment status; amending ORS 656.005.

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

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

5 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered em-
6 ployment, as determined by the Employment Department, for the last quarter of the calendar year
7 preceding the fiscal year in which the injury occurred.

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

10 (b) "Beneficiary" does not include:

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

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

16 (3) "Board" means the Workers' Compensation Board.

17 (4) "Carrier-insured employer" means an employer who provides workers' compensation cover-
18 age with the State Accident Insurance Fund Corporation or an insurer authorized under ORS
19 chapter 731 to transact workers' compensation insurance in this state.

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

21 (a) A posthumous child;

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

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

24 (d) A child born out of wedlock;

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

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

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

31 (7)(a) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appli-
32 ances, arising out of and in the course of employment requiring medical services or resulting in

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 disability or death. An injury is accidental if the result is an accident, whether or not due to acci-
 2 dental means, if it is established by medical evidence supported by objective findings, subject to the
 3 following limitations:

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

6 (B) If an otherwise compensable injury combines at any time with a preexisting condition to
 7 cause or prolong disability or a need for treatment, the combined condition is compensable only if,
 8 so long as and to the extent that the otherwise compensable injury is the major contributing cause
 9 of the disability of the combined condition or the major contributing cause of the need for treatment
 10 of the combined condition.

11 (b) "Compensable injury" does not include:

12 (A) Injury to any active participant in assaults or combats that are not connected to the job
 13 assignment and that amount to a deviation from customary duties;

14 (B) Injury incurred while engaging in or performing, or as the result of engaging in or per-
 15 forming, any recreational or social activities primarily for the worker's personal pleasure; or

16 (C) Injury the major contributing cause of which is demonstrated to be by a preponderance of
 17 the evidence the injured worker's consumption of alcoholic beverages or cannabis or the unlawful
 18 consumption of any controlled substance, unless the employer permitted, encouraged or had actual
 19 knowledge of such consumption.

20 (c) A "disabling compensable injury" is an injury that entitles the worker to compensation for
 21 disability or death. An injury is not disabling if no temporary benefits are due and payable, unless
 22 there is a reasonable expectation that permanent disability will result from the injury.

23 (d) A "nondisabling compensable injury" is any injury that requires medical services only.

24 (8) "Compensation" includes all benefits, including medical services, provided for a compensable
 25 injury to a subject worker or the worker's beneficiaries by an insurer or self-insured employer pur-
 26 suant to this chapter.

27 (9) "Department" means the Department of Consumer and Business Services.

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

31 (A) A parent, grandparent or stepparent;

32 (B) A grandson or granddaughter;

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

34 (D) A niece or nephew.

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

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

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

41 (b) Except as otherwise provided for workers subject to a managed care contract, "attending
 42 physician" means a doctor, physician or physician assistant who is primarily responsible for the
 43 treatment of a worker's compensable injury and who is:

44 (A) A physician licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a
 45 podiatric physician and surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical

1 Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly
2 licensed doctor in any country or in any state, territory or possession of the United States; or

3 (B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative
4 total of 18 visits, whichever occurs first, to any of the medical service providers listed in this sub-
5 paragraph, a:

6 (i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of
7 Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any
8 state, territory or possession of the United States;

9 (ii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505
10 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or
11 possession of the United States; or

12 (iii) Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of
13 Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any
14 country or in any state, territory or possession of the United States.

15 (c) Except as otherwise provided for workers subject to a managed care contract, “attending
16 physician” does not include a physician who provides care in a hospital emergency room and refers
17 the injured worker to a primary care physician for follow-up care and treatment.

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

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

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

29 (c) As used in paragraph (b) of this subsection, “temporary service provider” has the meaning
30 for that term provided in ORS 656.850.

31 (14) “Insurer” means the State Accident Insurance Fund Corporation or an insurer authorized
32 under ORS chapter 731 to transact workers’ compensation insurance in this state or an assigned
33 claims agent selected by the director under ORS 656.054.

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

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

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

38 (18) “Noncomplying employer” means a subject employer that has failed to comply with ORS
39 656.017.

40 (19) “Objective findings” in support of medical evidence are verifiable indications of injury or
41 disease that may include, but are not limited to, range of motion, atrophy, muscle strength and
42 palpable muscle spasm. “Objective findings” does not include physical findings or subjective re-
43 sponses to physical examinations that are not reproducible, measurable or observable.

44 (20) “Palliative care” means medical service rendered to reduce or moderate temporarily the
45 intensity of an otherwise stable medical condition, but does not include those medical services ren-

1 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

2 (21) "Party" means a claimant for compensation, the employer of the injured worker at the time
3 of injury and the insurer, if any, of the employer.

4 (22) "Payroll" means a record of wages payable to workers for their services and includes
5 commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or
6 similar advantage received from the employer. However, "payroll" does not include overtime pay,
7 vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments
8 to reward workers for safe working practices. Bonus pay is limited to payments that are not antic-
9 ipated under the contract of employment and that are paid at the sole discretion of the employer.
10 The exclusion from payroll of bonus payments to reward workers for safe working practices is only
11 for the purpose of calculations based on payroll to determine premium for workers' compensation
12 insurance, and does not affect any other calculation or determination based on payroll for the pur-
13 poses of this chapter.

14 (23) "Person" includes a partnership, joint venture, association, limited liability company and
15 corporation.

16 (24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, con-
17 genital abnormality, personality disorder or similar condition that contributes to disability or need
18 for treatment, provided that:

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

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

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

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

28 (b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, con-
29 genital abnormality, personality disorder or similar condition that contributes to disability or need
30 for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim
31 for worsening in such claims pursuant to ORS 656.273 or 656.278.

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

34 (25) "Self-insured employer" means an employer or group of employers certified under ORS
35 656.430 as meeting the qualifications set out by ORS 656.407.

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

38 (27) "Subject employer" means an employer that is subject to this chapter as provided by ORS
39 656.023.

40 (28) "Subject worker" means a worker who is subject to this chapter as provided by ORS
41 656.027.

42 (29) "Wages" means the money rate at which the service rendered is recompensed under the
43 contract of hiring in force at the time of the accident, including reasonable value of board, rent,
44 housing, lodging or similar advantage received from the employer, and includes the amount of tips
45 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of

1 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips
 2 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-
 3 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at
 4 which any worker shall be carried upon the payroll of the employer for the purpose of determining
 5 the premium of the employer.

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

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