

# House Bill 4086

Sponsored by Representative POWER, Senator TAYLOR (Presession filed.)

## 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**.

Amends provisions of workers' compensation law related to beneficiaries.  
Expands scope of retaliation provision for workers' compensation benefits.  
Amends definitions of "beneficiary," "child" and "dependent" and replaces term "invalid" with "incapacitated."

## A BILL FOR AN ACT

1  
2 Relating to workers' compensation benefits; amending ORS 656.005, 656.204, 656.226, 656.232 and  
3 659A.040.

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

5 **SECTION 1.** ORS 656.204 is amended to read:

6 656.204. If death results from an accidental injury, payments must be made as follows:

7 (1)(a) The cost of final disposition of the body and funeral expenses, including but not limited  
8 to transportation of the body, must be paid, not to exceed 20 times the average weekly wage in any  
9 case.

10 (b) The insurer or self-insured employer shall pay bills submitted for disposition and funeral  
11 expenses up to the benefit limit established in paragraph (a) of this subsection. If any part of the  
12 benefit remains unpaid 60 days after the date of death or the date of claim acceptance, whichever  
13 is later, the insurer or self-insured employer shall pay the unpaid amount to the estate of the  
14 worker.

15 (2)(a) If a worker is survived by a spouse, monthly benefits must be paid in an amount equal to  
16 4.35 times 66-2/3 percent of the average weekly wage to the surviving spouse until remarriage. **Only**  
17 **one person may qualify as a spouse for the purposes of this paragraph.** The payment shall  
18 cease at the end of the month in which the remarriage occurs.

19 (b) Upon remarriage, a surviving spouse must be paid 36 times the monthly benefit in a lump  
20 sum as final payment of the surviving spousal benefit.

21 (c) If, after the date of the subject worker's death, the surviving spouse cohabits with another  
22 person, [*for an aggregate period of more than one year and a child has resulted from the*  
23 *relationship*] **such that the relationship would be subject to the provisions of ORS 107.105 to**  
24 **107.136 and 107.700 to 107.735**, the surviving spouse must be paid 36 times the monthly benefit in  
25 a lump sum as final payment of the surviving spousal benefit.

26 (3)(a) If a worker leaves a child under 19 years of age, a monthly benefit equal to 4.35 times 25  
27 percent of the average weekly wage must be paid to each such child until the child becomes 19  
28 years of age.

29 (b) The total benefits provided for in this subsection may not exceed 4.35 times 133-1/3 percent  
30 of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit

**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 for each child must be reduced proportionally.

2 (4)(a) If a worker leaves a dependent, a monthly payment must be made to each dependent that  
 3 is equal to 50 percent of the average monthly support the dependent actually received from the  
 4 worker during the 12 months preceding the occurrence of the accidental injury. If a dependent is  
 5 under the age of 19 years at the time of the accidental injury, the payment to the dependent must  
 6 cease when the dependent becomes 19 years of age. The payment to any dependent must cease under  
 7 the same circumstances that would have terminated the dependency had the injury not happened.

8 (b) The total benefits provided for in this subsection may not exceed 4.35 times 10 percent of the  
 9 average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for  
 10 each dependent must be reduced proportionally.

11 (5) If a child is [*an invalid*] **incapacitated** at the time the child otherwise becomes ineligible for  
 12 benefits under this section, the payment to the child must continue while the child remains an [*in-*  
 13 *valid*] **incapacitated child**. If [*a person*] **an individual** is entitled to payment because the [*person is*  
 14 *an invalid*] **individual is an incapacitated child**, payment must terminate when the [*person*] **indi-**  
 15 **vidual** ceases to be an [*invalid*] **incapacitated child**.

16 (6)(a) If a child or dependent is between 19 and 26 years of age at the time of a worker's death,  
 17 or becomes 19 years of age after the worker's death, monthly benefits must be paid for not more  
 18 than 48 months until the age of 26 during a period in which the child or dependent is completing  
 19 secondary education, is obtaining a general educational development certificate or is attending a  
 20 program of higher education. The child or dependent must provide an insurer or self-insured em-  
 21 ployer with documentation that enables the insurer or self-insured employer to determine the child's  
 22 or dependent's eligibility for monthly benefits.

23 (b) If a child or dependent who is eligible for benefits under this subsection does not have a  
 24 surviving parent, the child or dependent must receive 4.35 times 66-2/3 percent of the average  
 25 weekly wage.

26 (c) As used in this subsection, "attending a program of higher education" means regularly at-  
 27 tending community college, college or university, or regularly attending a course of vocational or  
 28 technical training designed to prepare the participant for gainful employment. A child or dependent  
 29 enrolled in an educational course load of less than one-half of that determined by the educational  
 30 facility to constitute "full-time" enrollment is not "attending a program of higher education."

31 (7) As used in this section, "average weekly wage" has the meaning for that term provided in  
 32 ORS 656.211.

33 **SECTION 2.** ORS 656.226 is amended to read:

34 656.226. [*In case*] **If, prior to and including the date of an accidental injury received by one**  
 35 **or the other as a subject worker**, two unmarried individuals have cohabited [*in this state as*  
 36 *spouses who are married to each other for over one year prior to the date of an accidental injury re-*  
 37 *ceived by one or the other as a subject worker, and children are living as a result of that relation,*]  
 38 **together such that the relationship would be subject to the provisions of ORS 107.105 to**  
 39 **107.136 and 107.700 to 107.735**, the surviving cohabitant [*and the children are*] **is** entitled to com-  
 40 pensation under this chapter the same as if the individuals had been legally married.

41 **SECTION 3.** ORS 656.232 is amended to read:

42 656.232. (1) If a beneficiary is an alien residing outside of the United States or its dependencies,  
 43 payment of the sums due such beneficiary may, in the discretion of the Director of the Department  
 44 of Consumer and Business Services, be made to the consul general of the country in which such  
 45 beneficiary resides on behalf of the beneficiary. The receipt of the consul general to the director for

1 the amounts thus paid shall be a full and sufficient receipt for the payment of the funds thus due  
 2 the beneficiary.

3 *[(2) If a beneficiary is an alien residing outside of the United States or its dependencies, the di-*  
 4 *rector may, in lieu of awarding such beneficiary compensation in the amount provided by this chapter,*  
 5 *award such beneficiary such lesser sum by way of compensation which, according to the conditions and*  
 6 *costs of living in the place of residence of such beneficiary will, in the opinion of the director, maintain*  
 7 *the beneficiary in a like degree of comfort as a beneficiary of the same class residing in this state and*  
 8 *receiving the full compensation authorized by this chapter. The director shall determine the amount of*  
 9 *compensation benefits upon the basis of the rate of exchange between the United States and any foreign*  
 10 *country as determined by the Federal Reserve Bank as of January 1 and July 1 of the year when*  
 11 *paid.]*

12 *[(3)]* (2) All benefit rights shall be canceled upon the commencement of a state of war between  
 13 the United States and the country of a beneficiary's domicile.

14 **SECTION 4.** ORS 659A.040 is amended to read:

15 659A.040. *[(1)]* It is an unlawful employment practice for **any person acting on behalf of** an  
 16 employer to discriminate against a worker with respect to hire or tenure or any term or condition  
 17 of employment because the worker has:

- 18 (1) Applied for **or inquired about** benefits **under ORS chapter 656**; *[or]*
- 19 (2) Invoked or utilized the procedures provided for in ORS chapter 656; or
- 20 (3) *[Has]* Given testimony under the provisions of *[those laws]* **ORS chapter 656**.

21 *[(2) This section applies only to employers who employ six or more persons.]*

22 **SECTION 5.** ORS 656.005 is amended to read:

23 656.005. (1) "Average weekly wage" means the Oregon average weekly wage in covered em-  
 24 ployment, as determined by the Employment Department, for the last quarter of the calendar year  
 25 preceding the fiscal year in which the injury occurred.

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

28 (b) "Beneficiary" does not include[:]

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

33 *[(B)]* a person who intentionally causes the compensable injury to or death of an injured worker.

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

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

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

- 39 (a) A posthumous child;
- 40 (b) A child legally adopted before the injury;
- 41 (c) A child toward whom the worker stands in loco parentis;
- 42 (d) A child born out of wedlock;
- 43 (e) A stepchild, if the stepchild was, at the time of the injury, a member of the worker's family  
 44 and substantially dependent upon the worker for support; and
- 45 (f) A child of any age who was *[an invalid]* **incapacitated** at the time of the accident and

1 thereafter remains [*an invalid*] **incapacitated and** substantially dependent on the worker for sup-  
 2 port.

3 (6) “Claim” means a written request for compensation from a subject worker or someone on the  
 4 worker’s behalf, or any compensable injury of which a subject employer has notice or knowledge.

5 (7)(a) A “compensable injury” is an accidental injury, or accidental injury to prosthetic appli-  
 6 ances, arising out of and in the course of employment requiring medical services or resulting in  
 7 disability or death. An injury is accidental if the result is an accident, whether or not due to acci-  
 8 dental means, if it is established by medical evidence supported by objective findings, subject to the  
 9 following limitations:

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

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

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

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

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

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

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

29 (d) A “nondisabling compensable injury” is any injury that requires medical services only.

30 (8) “Compensation” includes all benefits, including medical services, provided for a compensable  
 31 injury to a subject worker or the worker’s beneficiaries by an insurer or self-insured employer pur-  
 32 suant to this chapter.

33 (9) “Department” means the Department of Consumer and Business Services.

34 (10)[(a)] “Dependent” means any of the following [*relatives of the worker*] **individuals** who, at the  
 35 time of an accident, depended in whole or in part for the [*relative’s*] **individual’s** support on the  
 36 earnings of a worker who dies as a result of an injury:

37 [(A)] (a) A parent[, *grandparent or stepparent*] **of a worker or the parent’s spouse or domestic**  
 38 **partner;**

39 (b) **A grandparent of a worker or the grandparent’s spouse or domestic partner;**

40 [(B)] (c) [*A grandson or granddaughter*] **A grandchild of a worker or the grandchild’s spouse**  
 41 **or domestic partner;**

42 [(C)] (d) [*A brother or sister or half-brother or half-sister*] **A sibling or stepsibling of a worker**  
 43 **or the sibling’s or stepsibling’s spouse or domestic partner;** and

44 [(D)] (e) [*A niece or nephew*] **Any individual related by blood or affinity whose close asso-**  
 45 **ciation with a worker is the equivalent of a family relationship.**

1       ***[(b) “Dependent” does not include an alien who does not reside within the United States at the time***  
 2 ***of the accident, other than a parent, a spouse or children, unless a treaty provides otherwise.]***

3       (11) “Director” means the Director of the Department of Consumer and Business Services.

4       (12)(a) “Doctor” or “physician” means a person duly licensed to practice one or more of the  
 5 healing arts in any country or in any state, territory or possession of the United States within the  
 6 limits of the license of the licensee.

7       (b) Except as otherwise provided for workers subject to a managed care contract, “attending  
 8 physician” means a doctor, physician or physician assistant who is primarily responsible for the  
 9 treatment of a worker’s compensable injury and who is:

10       (A) A physician licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a  
 11 podiatric physician and surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical  
 12 Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly  
 13 licensed doctor in any country or in any state, territory or possession of the United States; or

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

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

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

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

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

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

33       (13)(a) “Employer” means any person, including receiver, administrator, executor or trustee, and  
 34 the state, state agencies, counties, municipal corporations, school districts and other public corpo-  
 35 rations or political subdivisions, that contracts to pay a remuneration for the services of any  
 36 worker.

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

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

42       (d) For the purposes of this chapter, “subject employer” means an employer that is subject to  
 43 this chapter as provided in ORS 656.023.

44       (14) “Insurer” means the State Accident Insurance Fund Corporation or an insurer authorized  
 45 under ORS chapter 731 to transact workers’ compensation insurance in this state or an assigned

1 claims agent selected by the director under ORS 656.054.

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

3 (16) [“Invalid”] **“Incapacitated”** means [*one who*] **an individual** is physically or mentally [*inca-*  
4 *pacitated from earning*] **unable to earn** a livelihood.

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

7 (18) “Noncomplying employer” means a subject employer that has failed to comply with ORS  
8 656.017.

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

13 (20) “Palliative care” means medical service rendered to reduce or moderate temporarily the  
14 intensity of an otherwise stable medical condition, but does not include those medical services ren-  
15 dered to diagnose, heal or permanently alleviate or eliminate a medical condition.

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

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

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

30 (24)(a) “Preexisting condition” means, for all industrial injury claims, any injury, disease, con-  
31 genital abnormality, personality disorder or similar condition that contributes to disability or need  
32 for treatment, provided that:

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

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

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

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

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

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

3 (25) "Self-insured employer" means an employer or group of employers certified under ORS  
4 656.430 as meeting the qualifications set out by ORS 656.407.

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

7 (27) "Wages" means the money rate at which the service rendered is recompensed under the  
8 contract of hiring in force at the time of the accident, including reasonable value of board, rent,  
9 housing, lodging or similar advantage received from the employer, and includes the amount of tips  
10 required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of  
11 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips  
12 reported, whichever amount is greater. The State Accident Insurance Fund Corporation may estab-  
13 lish assumed minimum and maximum wages, in conformity with recognized insurance principles, at  
14 which any worker shall be carried upon the payroll of the employer for the purpose of determining  
15 the premium of the employer.

16 (28)(a) "Worker" means any person, other than an independent contractor, who engages to fur-  
17 nish services for a remuneration, including a minor whether lawfully or unlawfully employed and  
18 salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts  
19 and other public corporations, but does not include any person whose services are performed as an  
20 adult in custody or ward of a state institution or as part of the eligibility requirements for a general  
21 or public assistance grant.

22 (b) For the purpose of determining entitlement to temporary disability benefits or permanent  
23 total disability benefits under this chapter, "worker" does not include a person who has withdrawn  
24 from the workforce during the period for which such benefits are sought.

25 (c) For the purposes of this chapter, "subject worker" means a worker who is subject to this  
26 chapter as provided in ORS 656.027.

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