

# House Bill 2797

Sponsored by Representative DOHERTY

## 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**.

Requires subject employer to pay first installment of temporary disability compensation in workers' compensation claim within 14 days after employer has notice or knowledge of claim or has notice or knowledge of employee's disability, whichever is later.

## A BILL FOR AN ACT

1  
2 Relating to payment of temporary disability compensation in workers' compensation claim; creating  
3 new provisions; and amending ORS 656.262.

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

5 **SECTION 1.** ORS 656.262 is amended to read:

6 656.262. (1) Processing of claims and providing compensation for a worker shall be the respon-  
7 sibility of the insurer or self-insured employer. All employers shall assist their insurers in processing  
8 claims as required in this chapter.

9 (2) The compensation due under this chapter shall be paid periodically, promptly and directly  
10 to the person entitled thereto upon the employer's receiving notice or knowledge of a claim, except  
11 where the right to compensation is denied by the insurer or self-insured employer.

12 (3)(a) Employers shall, immediately and not later than five days after notice or knowledge of any  
13 claims or accidents which may result in a compensable injury claim, report the same to their  
14 insurer. The report shall include:

15 (A) The date, time, cause and nature of the accident and injuries.

16 (B) Whether the accident arose out of and in the course of employment.

17 (C) Whether the employer recommends or opposes acceptance of the claim, and the reasons  
18 therefor.

19 (D) The name and address of any health insurance provider for the injured worker.

20 (E) Any other details the insurer may require.

21 (b) Failure to so report subjects the offending employer to a charge for reimbursing the insurer  
22 for any penalty the insurer is required to pay under subsection (11) of this section because of such  
23 failure. As used in this subsection, "health insurance" has the meaning for that term provided in  
24 ORS 731.162.

25 (4)(a) The first installment of temporary disability compensation shall be paid no later than the  
26 14th day after the subject employer has notice or knowledge of the claim **or of the worker's dis-**  
27 **ability, whichever is later, [if] and** the attending physician or nurse practitioner authorized to  
28 provide compensable medical services under ORS 656.245 authorizes the payment of temporary dis-  
29 ability compensation. Thereafter, temporary disability compensation shall be paid at least once each  
30 two weeks, except where the Director of the Department of Consumer and Business Services deter-  
31 mines that payment in installments should be made at some other interval. The director may by rule

**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 convert monthly benefit schedules to weekly or other periodic schedules.

2 (b) Notwithstanding any other provision of this chapter, if a self-insured employer pays to an  
3 injured worker who becomes disabled the same wage at the same pay interval that the worker re-  
4 ceived at the time of injury, such payment shall be deemed timely payment of temporary disability  
5 payments pursuant to ORS 656.210 and 656.212 during the time the wage payments are made.

6 (c) Notwithstanding any other provision of this chapter, when the holder of a public office is  
7 injured in the course and scope of that public office, full official salary paid to the holder of that  
8 public office shall be deemed timely payment of temporary disability payments pursuant to ORS  
9 656.210 and 656.212 during the time the wage payments are made. As used in this subsection, "public  
10 office" has the meaning for that term provided in ORS 260.005.

11 (d) Temporary disability compensation is not due and payable for any period of time for which  
12 the insurer or self-insured employer has requested from the worker's attending physician or nurse  
13 practitioner authorized to provide compensable medical services under ORS 656.245 verification of  
14 the worker's inability to work resulting from the claimed injury or disease and the physician or  
15 nurse practitioner cannot verify the worker's inability to work, unless the worker has been unable  
16 to receive treatment for reasons beyond the worker's control.

17 (e) If a worker fails to appear at an appointment with the worker's attending physician or nurse  
18 practitioner authorized to provide compensable medical services under ORS 656.245, the insurer or  
19 self-insured employer shall notify the worker by certified mail that temporary disability benefits may  
20 be suspended after the worker fails to appear at a rescheduled appointment. If the worker fails to  
21 appear at a rescheduled appointment, the insurer or self-insured employer may suspend payment of  
22 temporary disability benefits to the worker until the worker appears at a subsequent rescheduled  
23 appointment.

24 (f) If the insurer or self-insured employer has requested and failed to receive from the worker's  
25 attending physician or nurse practitioner authorized to provide compensable medical services under  
26 ORS 656.245 verification of the worker's inability to work resulting from the claimed injury or dis-  
27 ease, medical services provided by the attending physician or nurse practitioner are not  
28 compensable until the attending physician or nurse practitioner submits such verification.

29 (g) Temporary disability compensation is not due and payable pursuant to ORS 656.268 after the  
30 worker's attending physician or nurse practitioner authorized to provide compensable medical ser-  
31 vices under ORS 656.245 ceases to authorize temporary disability or for any period of time not au-  
32 thorized by the attending physician or nurse practitioner. No authorization of temporary disability  
33 compensation by the attending physician or nurse practitioner under ORS 656.268 shall be effective  
34 to retroactively authorize the payment of temporary disability more than 14 days prior to its issu-  
35 ance.

36 (h) The worker's disability may be authorized only by a person described in ORS 656.005  
37 (12)(b)(B) or 656.245 for the period of time permitted by those sections. The insurer or self-insured  
38 employer may unilaterally suspend payment of temporary disability benefits to the worker at the  
39 expiration of the period until temporary disability is reauthorized by an attending physician or nurse  
40 practitioner authorized to provide compensable medical services under ORS 656.245.

41 (i) The insurer or self-insured employer may unilaterally suspend payment of all compensation  
42 to a worker enrolled in a managed care organization if the worker continues to seek care from an  
43 attending physician or nurse practitioner authorized to provide compensable medical services under  
44 ORS 656.245 that is not authorized by the managed care organization more than seven days after  
45 the mailing of notice by the insurer or self-insured employer.

1 (5)(a) Payment of compensation under subsection (4) of this section or payment, in amounts per  
 2 claim not to exceed the maximum amount established annually by the Director of the Department  
 3 of Consumer and Business Services, for medical services for nondisabling claims, may be made by  
 4 the subject employer if the employer so chooses. The making of such payments does not constitute  
 5 a waiver or transfer of the insurer's duty to determine entitlement to benefits. If the employer  
 6 chooses to make such payment, the employer shall report the injury to the insurer in the same  
 7 manner that other injuries are reported. However, an insurer shall not modify an employer's expe-  
 8 rience rating or otherwise make charges against the employer for any medical expenses paid by the  
 9 employer pursuant to this subsection.

10 (b) To establish the maximum amount an employer may pay for medical services for nondisabling  
 11 claims under paragraph (a) of this subsection, the director shall use \$1,500 as the base compensation  
 12 amount and shall adjust the base compensation amount annually to reflect changes in the United  
 13 States City Average Consumer Price Index for All Urban Consumers for Medical Care for July of  
 14 each year as published by the Bureau of Labor Statistics of the United States Department of Labor.  
 15 The adjustment shall be rounded to the nearest multiple of \$100.

16 (c) The adjusted amount established under paragraph (b) of this subsection shall be effective on  
 17 January 1 following the establishment of the amount and shall apply to claims with a date of injury  
 18 on or after the effective date of the adjusted amount.

19 (6)(a) Written notice of acceptance or denial of the claim shall be furnished to the claimant by  
 20 the insurer or self-insured employer within 60 days after the employer has notice or knowledge of  
 21 the claim. Once the claim is accepted, the insurer or self-insured employer shall not revoke accept-  
 22 ance except as provided in this section. The insurer or self-insured employer may revoke acceptance  
 23 and issue a denial at any time when the denial is for fraud, misrepresentation or other illegal ac-  
 24 tivity by the worker. If the worker requests a hearing on any revocation of acceptance and denial  
 25 alleging fraud, misrepresentation or other illegal activity, the insurer or self-insured employer has  
 26 the burden of proving, by a preponderance of the evidence, such fraud, misrepresentation or other  
 27 illegal activity. Upon such proof, the worker then has the burden of proving, by a preponderance  
 28 of the evidence, the compensability of the claim. If the insurer or self-insured employer accepts a  
 29 claim in good faith, in a case not involving fraud, misrepresentation or other illegal activity by the  
 30 worker, and later obtains evidence that the claim is not compensable or evidence that the insurer  
 31 or self-insured employer is not responsible for the claim, the insurer or self-insured employer may  
 32 revoke the claim acceptance and issue a formal notice of claim denial, if such revocation of ac-  
 33 ceptance and denial is issued no later than two years after the date of the initial acceptance. If the  
 34 worker requests a hearing on such revocation of acceptance and denial, the insurer or self-insured  
 35 employer must prove, by a preponderance of the evidence, that the claim is not compensable or that  
 36 the insurer or self-insured employer is not responsible for the claim. Notwithstanding any other  
 37 provision of this chapter, if a denial of a previously accepted claim is set aside by an Administrative  
 38 Law Judge, the Workers' Compensation Board or the court, temporary total disability benefits are  
 39 payable from the date any such benefits were terminated under the denial. Except as provided in  
 40 ORS 656.247, pending acceptance or denial of a claim, compensation payable to a claimant does not  
 41 include the costs of medical benefits or funeral expenses. The insurer shall also furnish the employer  
 42 a copy of the notice of acceptance.

43 (b) The notice of acceptance shall:

44 (A) Specify what conditions are compensable.

45 (B) Advise the claimant whether the claim is considered disabling or nondisabling.

1 (C) Inform the claimant of the Expedited Claim Service and of the hearing and aggravation  
2 rights concerning nondisabling injuries, including the right to object to a decision that the injury  
3 of the claimant is nondisabling by requesting reclassification pursuant to ORS 656.277.

4 (D) Inform the claimant of employment reinstatement rights and responsibilities under ORS  
5 chapter 659A.

6 (E) Inform the claimant of assistance available to employers and workers from the Reemploy-  
7 ment Assistance Program under ORS 656.622.

8 (F) Be modified by the insurer or self-insured employer from time to time as medical or other  
9 information changes a previously issued notice of acceptance.

10 (c) An insurer's or self-insured employer's acceptance of a combined or consequential condition  
11 under ORS 656.005 (7), whether voluntary or as a result of a judgment or order, shall not preclude  
12 the insurer or self-insured employer from later denying the combined or consequential condition if  
13 the otherwise compensable injury ceases to be the major contributing cause of the combined or  
14 consequential condition.

15 (d) An injured worker who believes that a condition has been incorrectly omitted from a notice  
16 of acceptance, or that the notice is otherwise deficient, first must communicate in writing to the  
17 insurer or self-insured employer the worker's objections to the notice pursuant to ORS 656.267. The  
18 insurer or self-insured employer has 60 days from receipt of the communication from the worker to  
19 revise the notice or to make other written clarification in response. A worker who fails to comply  
20 with the communication requirements of this paragraph or ORS 656.267 may not allege at any  
21 hearing or other proceeding on the claim a de facto denial of a condition based on information in  
22 the notice of acceptance from the insurer or self-insured employer. Notwithstanding any other pro-  
23 vision of this chapter, the worker may initiate objection to the notice of acceptance at any time.

24 (7)(a) After claim acceptance, written notice of acceptance or denial of claims for aggravation  
25 or new medical or omitted condition claims properly initiated pursuant to ORS 656.267 shall be  
26 furnished to the claimant by the insurer or self-insured employer within 60 days after the insurer  
27 or self-insured employer receives written notice of such claims. A worker who fails to comply with  
28 the communication requirements of subsection (6) of this section or ORS 656.267 may not allege at  
29 any hearing or other proceeding on the claim a de facto denial of a condition based on information  
30 in the notice of acceptance from the insurer or self-insured employer.

31 (b) Once a worker's claim has been accepted, the insurer or self-insured employer must issue a  
32 written denial to the worker when the accepted injury is no longer the major contributing cause  
33 of the worker's combined condition before the claim may be closed.

34 (c) When an insurer or self-insured employer determines that the claim qualifies for claim clo-  
35 sure, the insurer or self-insured employer shall issue at claim closure an updated notice of accept-  
36 ance that specifies which conditions are compensable. The procedures specified in subsection (6)(d)  
37 of this section apply to this notice. Any objection to the updated notice or appeal of denied condi-  
38 tions shall not delay claim closure pursuant to ORS 656.268. If a condition is found compensable  
39 after claim closure, the insurer or self-insured employer shall reopen the claim for processing re-  
40 garding that condition.

41 (8) The assigned claims agent in processing claims under ORS 656.054 shall send notice of ac-  
42 ceptance or denial to the noncomplying employer.

43 (9) If an insurer or any other duly authorized agent of the employer for such purpose, on record  
44 with the Director of the Department of Consumer and Business Services denies a claim for com-  
45 pensation, written notice of such denial, stating the reason for the denial, and informing the worker

1 of the Expedited Claim Service and of hearing rights under ORS 656.283, shall be given to the  
2 claimant. A copy of the notice of denial shall be mailed to the director and to the employer by the  
3 insurer. The worker may request a hearing pursuant to ORS 656.319.

4 (10) Merely paying or providing compensation shall not be considered acceptance of a claim or  
5 an admission of liability, nor shall mere acceptance of such compensation be considered a waiver  
6 of the right to question the amount thereof. Payment of permanent disability benefits pursuant to a  
7 notice of closure, reconsideration order or litigation order, or the failure to appeal or seek review  
8 of such an order or notice of closure, shall not preclude an insurer or self-insured employer from  
9 subsequently contesting the compensability of the condition rated therein, unless the condition has  
10 been formally accepted.

11 (11)(a) If the insurer or self-insured employer unreasonably delays or unreasonably refuses to  
12 pay compensation, or unreasonably delays acceptance or denial of a claim, the insurer or self-  
13 insured employer shall be liable for an additional amount up to 25 percent of the amounts then due  
14 plus any attorney fees assessed under this section. The fees assessed by the director, an Adminis-  
15 trative Law Judge, the board or the court under this section shall be proportionate to the benefit  
16 to the injured worker. The board shall adopt rules for establishing the amount of the attorney fee,  
17 giving primary consideration to the results achieved and to the time devoted to the case. An attor-  
18 ney fee awarded pursuant to this subsection may not exceed \$3,000 absent a showing of extraor-  
19 dinary circumstances. The maximum attorney fee awarded under this paragraph shall be adjusted  
20 annually on July 1 by the same percentage increase as made to the average weekly wage defined  
21 in ORS 656.211, if any. Notwithstanding any other provision of this chapter, the director shall have  
22 exclusive jurisdiction over proceedings regarding solely the assessment and payment of the addi-  
23 tional amount and attorney fees described in this subsection. The action of the director and the re-  
24 view of the action taken by the director shall be subject to review under ORS 656.704.

25 (b) When the director does not have exclusive jurisdiction over proceedings regarding the as-  
26 sessment and payment of the additional amount and attorney fees described in this subsection, the  
27 provisions of this subsection shall apply in the other proceeding.

28 (12)(a) If payment is due on a disputed claim settlement authorized by ORS 656.289 and the  
29 insurer or self-insured employer has failed to make the payment in accordance with the requirements  
30 specified in the disputed claim settlement, the claimant or the claimant's attorney shall clearly no-  
31 tify the insurer or self-insured employer in writing that the payment is past due. If the required  
32 payment is not made within five business days after receipt of the notice by the insurer or self-  
33 insured employer, the director may assess a penalty and attorney fee in accordance with a matrix  
34 adopted by the director by rule.

35 (b) The director shall adopt by rule a matrix for the assessment of the penalties and attorney  
36 fees authorized under this subsection. The matrix shall provide for penalties based on a percentage  
37 of the settlement proceeds allocated to the claimant and for attorney fees based on a percentage of  
38 the settlement proceeds allocated to the claimant's attorney as an attorney fee.

39 (13) The insurer may authorize an employer to pay compensation to injured workers and shall  
40 reimburse employers for compensation so paid.

41 (14) Injured workers have the duty to cooperate and assist the insurer or self-insured employer  
42 in the investigation of claims for compensation. Injured workers shall submit to and shall fully co-  
43 operate with personal and telephonic interviews and other formal or informal information gathering  
44 techniques. Injured workers who are represented by an attorney shall have the right to have the  
45 attorney present during any personal or telephonic interview or deposition. However, if the attorney

1 is not willing or available to participate in an interview at a time reasonably chosen by the insurer  
 2 or self-insured employer within 14 days of the request for interview and the insurer or self-insured  
 3 employer has cause to believe that the attorney's unwillingness or unavailability is unreasonable  
 4 and is preventing the worker from complying within 14 days of the request for interview, the insurer  
 5 or self-insured employer shall notify the director. If the director determines that the attorney's un-  
 6 willingness or unavailability is unreasonable, the director shall assess a civil penalty against the  
 7 attorney of not more than \$1,000.

8 (15) If the director finds that a worker fails to reasonably cooperate with an investigation in-  
 9 volving an initial claim to establish a compensable injury or an aggravation claim to reopen the  
 10 claim for a worsened condition, the director shall suspend all or part of the payment of compen-  
 11 sation after notice to the worker. If the worker does not cooperate for an additional 30 days after  
 12 the notice, the insurer or self-insured employer may deny the claim because of the worker's failure  
 13 to cooperate. The obligation of the insurer or self-insured employer to accept or deny the claim  
 14 within 60 days is suspended during the time of the worker's noncooperation. After such a denial, the  
 15 worker shall not be granted a hearing or other proceeding under this chapter on the merits of the  
 16 claim unless the worker first requests and establishes at an expedited hearing under ORS 656.291  
 17 that the worker fully and completely cooperated with the investigation, that the worker failed to  
 18 cooperate for reasons beyond the worker's control or that the investigative demands were unrea-  
 19 sonable. If the Administrative Law Judge finds that the worker has not fully cooperated, the Ad-  
 20 ministrative Law Judge shall affirm the denial, and the worker's claim for injury shall remain  
 21 denied. If the Administrative Law Judge finds that the worker has cooperated, or that the investi-  
 22 gative demands were unreasonable, the Administrative Law Judge shall set aside the denial, order  
 23 the reinstatement of interim compensation if appropriate and remand the claim to the insurer or  
 24 self-insured employer to accept or deny the claim.

25 (16) In accordance with ORS 656.283 (3), the Administrative Law Judge assigned a request for  
 26 hearing for a claim for compensation involving more than one potentially responsible employer or  
 27 insurer may specify what is required of an injured worker to reasonably cooperate with the inves-  
 28 tigation of the claim as required by subsection (14) of this section.

29 **SECTION 2. The amendments to ORS 656.262 by section 1 of this 2015 Act apply to claims**  
 30 **filed on or after the effective date of this 2015 Act.**

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