

Senate Bill 1535

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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**.

Prescribes method for calculating weekly wage for workers in order to determine benefits payable for temporary total disability under workers' compensation law.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to methods for calculating a worker's weekly wage for the purpose of paying benefits for
3 temporary total disability; creating new provisions; amending ORS 656.210; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 656.210 is amended to read:

7 656.210. (1) [*When the*] **If a** total disability is only temporary, [*the*] **a** worker [*shall*] **must** receive
8 during the period of that total disability compensation equal to 66-2/3 percent of wages, but not more
9 than 133 percent of the average weekly wage nor less than the amount of 90 percent of wages a
10 week or the amount of \$50 a week, whichever amount is less. Notwithstanding the limitation im-
11 posed by this subsection, an injured worker who is not otherwise eligible to receive an increase in
12 benefits for the fiscal year in which compensation is paid [*shall*] **must** have the benefits increased
13 each fiscal year by the percentage [*which*] **that** the applicable average weekly wage has increased
14 since the previous fiscal year.

15 (2)(a) For the purpose of this section, the weekly wage of workers [*shall*] **who are regularly**
16 **employed in one job at the time of injury must** be ascertained by:

17 [*(A) For workers employed in one job at the time of injury, by multiplying the daily wage the*
18 *worker was receiving by the number of days per week that the worker was regularly employed; or]*

19 **(A) Averaging the worker's weekly earnings for the 52 weeks before the time of the in-**
20 **jury if the worker is paid on other than a daily or weekly basis, is employed with no earnings**
21 **or with unscheduled or irregular earnings, is employed seasonally, is on call, is paid hourly,**
22 **is paid by piece work or is employed with varying hours, shifts or wages.**

23 **(B) Using the actual weeks of the worker's employment with the employer up to 52 weeks**
24 **before the time of injury, excluding any extended gaps, if the worker was employed fewer**
25 **than 52 weeks or if the worker has extended gaps in employment with the employer. The**
26 **Director of the Department of Consumer and Business Services by rule may define what**
27 **constitutes an extended gap in employment.**

28 **(C) Determining the intent of the wage earning agreement, as determined between the**
29 **employer and the worker, if the worker was employed for fewer than four weeks. For pur-**
30 **poses of this subparagraph, a wage earning agreement may be oral or in writing.**

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 **(D) Using the worker’s average weekly hours during the 52 weeks before the time of the**
 2 **injury, or during a shorter period as provided in subparagraph (B) of this paragraph, multi-**
 3 **plied by the worker’s wage at the time of the injury, if the wage earning agreement changed**
 4 **during the 52 weeks before the time of injury solely because of an increase or decrease in**
 5 **the wage.**

6 **(E) Averaging the worker’s weekly earnings for the weeks worked under the most recent**
 7 **wage earning agreement, calculated by multiplying the worker’s average weekly hours by the**
 8 **worker’s wage at the time of the injury, if the wage earning agreement changed during the**
 9 **52 weeks before the time of the injury because of a change in the number of the worker’s**
 10 **hours, because of a change in job duties or for other reasons, with or without an increase**
 11 **or decrease in the wage.**

12 **(F) Determining the intent of the most recent wage earning agreement, if the worker**
 13 **was employed for fewer than four weeks under a wage earning agreement that changed as**
 14 **described in subparagraph (D) or (E) of this paragraph.**

15 [(B)] **(b) For workers employed in more than one job at the time of injury, the weekly wage**
 16 **of workers must be ascertained** by adding all earnings the worker was receiving from all subject
 17 employment.

18 [(b)] **(c) Notwithstanding paragraph [(a)(B)] (b) of this subsection, the weekly wage, as calcu-**
 19 **lated under paragraph [(a)(A)] (a) of this subsection in accordance with the employment condi-**
 20 **tions that apply to the worker, [shall] must** be used for workers employed in more than one job
 21 at the time of injury unless the insurer, self-insured employer or assigned claims agent for a non-
 22 complying employer receives:

23 (A) Within 30 days [of receipt of] **after receiving** the initial claim, notice that the worker was
 24 employed in more than one job with a subject employer at the time of injury; and

25 (B) Within 60 days [of the date of mailing] **after the mailing date of** a request for verification,
 26 verifiable documentation of wages from [such] **the** additional employment.

27 [(c)] **(d) Notwithstanding ORS 656.005 (7)(c), an injury to a worker employed in more than one**
 28 **job at the time of injury is not disabling if [no] temporary disability benefits are not payable for time**
 29 **lost from the job at injury. Claim costs incurred as a result of supplemental temporary disability**
 30 **benefits paid as provided in subsection (5) of this section may not be included in any data used for**
 31 **ratemaking or individual employer rating or dividend calculations by an insurer, a rating organiza-**
 32 **tion licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the**
 33 **Department of Consumer and Business Services if the injured worker is not eligible for permanent**
 34 **disability benefits or temporary disability benefits for time lost from the job at injury.**

35 [(d)] **(e) For the purpose of this section:**

36 (A) The benefits of a worker who incurs an injury [shall] **must** be based on the wage of the
 37 worker at the time of injury.

38 (B) The benefits of a worker who incurs an occupational disease [shall] **must** be based on the
 39 wage of the worker at the time there is medical verification that the worker is unable to work be-
 40 cause of the disability caused by the occupational disease. If the worker is not working at the time
 41 that there is medical verification that the worker is unable to work because of the disability caused
 42 by the occupational disease, the benefits [shall] **must** be based on the wage of the worker at the
 43 worker’s last regular employment.

44 [(e)] **(f) As used in this subsection, “regularly employed” means actual employment or avail-**
 45 **ability for such employment. For workers not regularly employed and for workers with no**

1 remuneration, **who are hired out of a union hall or who are paid in ways not otherwise de-**
 2 **scribed in this section,** [or whose remuneration is not based solely upon daily or weekly wages,] the
 3 director [of the Department of Consumer and Business Services,] by rule[,] may prescribe methods for
 4 establishing the worker's weekly wage.

5 (3) [No] A disability payment is **not** recoverable for temporary total or partial disability suffered
 6 during the first three calendar days after the worker leaves work or loses wages as a result of the
 7 compensable injury unless the worker is totally disabled after the injury and the total disability
 8 continues for a period of 14 consecutive days or unless the worker is admitted as an inpatient to a
 9 hospital within 14 days of the first onset of total disability. If the worker leaves work or loses wages
 10 on the day of the injury due to the injury, that day [shall be considered] **is** the first day of the
 11 three-day period.

12 (4) [When] **If** an injured worker with an accepted disabling compensable injury is required to
 13 leave work for a period of four hours or more to receive medical consultation, examination or
 14 treatment with regard to the compensable injury, the worker [shall] **must** receive temporary disa-
 15 bility benefits calculated pursuant to ORS 656.212 for the period during which the worker is absent,
 16 until such time as the worker is determined to be medically stationary. However, benefits under this
 17 subsection are not payable if wages are paid for the period of absence by the employer.

18 (5)(a) The insurer of the employer at injury, or the self-insured employer at injury, may elect to
 19 be responsible for payment of supplemental temporary disability benefits to a worker employed in
 20 more than one job at the time of injury. In accordance with rules adopted by the director, if the
 21 worker's weekly wage is determined under subsection [(2)(a)(B)] **(2)(b)** of this section, the insurer
 22 or self-insured employer [shall] **must** be reimbursed from the Workers' Benefit Fund for the amount
 23 of temporary disability benefits paid that exceeds the amount payable pursuant to subsection
 24 [(2)(a)(A)] **(2)(a)** of this section had the worker been employed in only one job at the time of injury.
 25 Such reimbursement [shall] **must** include an administrative fee payable to the insurer or self-insured
 26 employer [pursuant to] **under** rules adopted by the director.

27 (b) If the insurer or self-insured employer elects not to pay the supplemental temporary disabil-
 28 ity benefits for a worker employed in more than one job at the time of injury, the director [shall]
 29 either **shall** administer and pay the supplemental benefits directly or shall assign responsibility to
 30 administer and process the payment to a paying agent selected by the director.

31 (6) The director shall adopt rules for the payment and reimbursement of supplemental temporary
 32 disability benefits under this section.

33 **SECTION 2. (1) The amendments to ORS 656.210 by section 1 of this 2018 Act apply to**
 34 **all claims existing or arising on or after the effective date of this 2018 Act.**

35 **(2) Notwithstanding the application specified in subsection (1) of this section, the**
 36 **amendments to ORS 656.210 by section 1 of this 2018 Act do not apply to a matter for which**
 37 **an order has become final before the effective date of this 2018 Act.**

38 **SECTION 3. This 2018 Act being necessary for the immediate preservation of the public**
 39 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
 40 **on its passage.**