



# Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services  
Workers' Compensation Division  
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Dec. 15, 2009

To: Insurers, self-insured employers, third-party administrators, and other interested parties

Subject: New workers' compensation laws to take effect Jan. 1, 2010

## **Industry Notice**

The 2009 Legislature enacted a number of new laws impacting workers' compensation that take effect on Jan. 1, 2010. This notice summarizes the law changes. To obtain full copies of the legislation, please visit the legislature's Web site at [www.leg.state.or.us](http://www.leg.state.or.us) and select "Bills/Laws" at the top of the page.

The Department of Consumer and Business Services is updating administrative rules, forms, and bulletins to implement the new laws. If applicable, the summaries include affected administrative rules, which can be found at [wcd.oregon.gov/policy/rules/rules.html](http://wcd.oregon.gov/policy/rules/rules.html). Forms and bulletins can be found at [wcd.oregon.gov/policy/bulletins/ab\\_index.html](http://wcd.oregon.gov/policy/bulletins/ab_index.html).

A contact number is listed in each summary if you have questions or need more information.

### **Chiropractor impairment findings (House Bill 2045)**

- Chiropractors may make impairment findings if serving as the attending physician at the time of claim closure. The change applies to claims closed on or after Jan. 1, 2010.
- Please consult ORS 656.245 and rule changes in OAR 436-010-0280 and OAR 436-010 Appendix A.
- *Contact: Medical Section, 503-934-6049*

### **Vocational assistance changes (House Bill 2195 and House Bill 2705)**

- Vocational assistance provider organizations no longer need to be certified by the department. However, providers must register with the department. OAR 436-120-0800 contains rules about the new registration requirements. Bulletin 151 will be updated to reflect this change.
- Individual vocational counselors still must be certified by the department. However, a vocational counselor no longer needs to provide a plan of operation to obtain certification. Please consult OAR 436-120-0810 to review the certification requirements.
- Insurers no longer need to obtain the director's approval to voluntarily make temporary disability payments if a training plan extends more than 16 months (up to the 21-month maximum). Form 1084 will be eliminated and Bulletin 124 will be updated to reflect this change.
- All appeal language for vocational disputes is now located in ORS 656.340(16).
- Bulletin 139 and Form 1644 (Notice of Closure) include updated vocational appeal language.

- Insurers and self-insured employers may forgo a vocational eligibility determination evaluation if a worker is released for regular work, but for whatever reason, has not returned to work. Please consult OAR 436-120-0115 for more information.
- *Contact: Employment Services Team, 503-947-7779 or 800-445-3948*

### **Firefighter cancer presumption (House Bill 2420)**

- The Legislature expanded the occupational disease presumption law for certain firefighters. The presumption applies to occupational disease claims filed on or after Jan. 1, 2010.
- The presumption covers 12 conditions: brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer, multiple myeloma, non-Hodgkin's lymphoma, cancer of the throat or mouth, rectal cancer, breast cancer, and leukemia.
- The presumption has some limitations:
  - It only applies to nonvolunteer (paid) firefighters employed by a political division or subdivision for at least five years.
  - An occupational disease claim using the presumption must be filed within 84 months after the nonvolunteer firefighter ceases employment as a firefighter.
  - The presumption for prostate cancer cannot be used if the firefighter is over age 55.
  - The firefighter's first diagnosis of the condition must be on or after July 1, 2009.
  - The firefighter's tobacco use may impact the use of the presumption.
- The presumption also applies to any city that provides a disability and retirement system by ordinance or charter for firefighters and police officers.
- *Contact: Benefit and Certifications Unit, 503-947-7585*

### **Supplemental disability (House Bill 2707)**

- Supplemental disability benefits are paid to workers employed in more than one job at the time of injury. Workers now have 60 days to respond to an insurer's request for documentation of wages from secondary employment. The notice requirements to the worker have been clarified in OAR 436-060-0035(3)(b).
- There are also new rules about how to calculate supplemental disability if the secondary employment is a volunteer job. Please see OAR 436-060-0035(7) for more details.
- Bulletin 325 and its corresponding forms provide information about how to request reimbursement of supplemental disability.
- *Contact: Benefit and Certifications Unit, 503-947-7585*

### **Attorney fees (House Bill 3345)**

- There are new statutory caps on some attorney fees. These fees will be adjusted annually based on increases in the state average weekly wage. Bulletin 356 will provide the annual adjustments starting July 1, 2010.
  - Finally prevailing in medical and vocational disputes under ORS 656.385(1) – the new cap is \$3,000, absent a showing of extraordinary circumstances. The director has adopted an updated matrix in OAR 436-001-0410.
  - Finally prevailing against a responsibility denial under ORS 656.308(2)(d) – the new cap is \$2,500, absent a showing of extraordinary circumstances. See Workers' Compensation Board (WCB) rules OAR 438-015-0038 and 438-015-0055.
  - For an unreasonable delay or refusal to pay compensation under ORS 656.262(11)(a) – the new cap is \$3,000, absent a showing of extraordinary circumstances. See WCB rule OAR 438-015-0110.

- There are new attorney fees in the following areas:
  - When an insurer fails to timely respond to a request for claim reclassification or for achieving a final determination that a claim should be classified as disabling. The director, administrative law judge, board, or court sets the fee. See ORS 656.386(3) and WCB rules OAR 438-015-0065 and 438-015-0070.
  - When a worker, through the assistance of an attorney, successfully defends an order rescinding a notice of closure. The administrative law judge, board, or court sets the fee. See ORS 656.382(2) and WCB rules OAR 438-015-0065 and 438-015-0070.
  - When a worker, through the assistance of an attorney, successfully defends the compensation awarded by a reconsideration order. The administrative law judge, board, or court sets the fee. See ORS 656.382(2) and WCB rule OAR 438-015-0065 and 438-015-0070.
  - When prevailing against a de facto denial of an initial claim. The administrative law judge, board, or court sets the fee. See ORS 656.386(1)(b)(D).
  - When the insurer fails to make timely payment under a disputed claim settlement, in addition to an attorney fee, a penalty is allowed. The director has adopted a rule and matrix for assessment of fees and penalties in OAR 436-060-0400. See ORS 656.262(12)(a).
- The new fees apply to orders issued on or after Jan. 1, 2010.
- *Contacts: Cathy Ostrand-Ponsioen, Workers' Compensation Division, 503-947-7528 or Roger Pearson, Workers' Compensation Board, 503-934-0123*

#### **Death benefits (Senate Bill 110)**

- There is an increased funeral and final disposition benefit for workers who are fatally injured on the job or die while in permanent total disability status. The new benefit is 20 times the state average weekly wage. Bulletin 111 provides the annual benefit amount.
- Insurers must pay for funeral expenses submitted by the worker's family or estate for 60 days after the fatality claim is accepted, up to the benefit limit. If any benefit remains after 60 days, the unpaid benefit must be sent to the worker's estate.
- There is a new benefit for a surviving child or dependent that attends higher education. If the child has no surviving parents and they are in school, they are eligible for 4.35 times 66 2/3 percent of the average weekly wage. The benefit is payable up to age 23 or until the child stops attending higher education or graduates from an approved institute or program, whichever is earlier. Bulletin 111 provides the annual benefit amount.
- There is also a change related to the payment of unpaid permanent partial disability benefits. If a worker dies before his or her permanent partial disability award is fully paid, and if the worker has no beneficiaries as defined under ORS chapter 656, the insurer must pay the full remainder of the permanent disability benefit to the worker's estate.
- *Contact: Benefit and Certifications Unit, 503-947-7585*

#### **Miscellaneous changes (House Bill 2197)**

- ***Notice of closure updates.*** The Legislature repealed a duplicative notice of closure law (ORS 656.270). All statutory claim closure notice requirements are now found in ORS 656.268. OAR 436-030-0020(6) has been updated to require insurers to print some specific notice language on the Notice of Closure.  
*Contact: Benefit and Certifications Unit, 503-947-7585*
- ***Conform care provider treatment time frames.*** Treatment time frames for "other" health care providers (such as acupuncturists and psychologists) start from the date of the worker's first visit and not the date of injury. See ORS 656.245(2)(b)(A) and OAR 436-010 Appendix A.  
*Contact: Medical Section, 503-934-6049*

- **Employer requirements to participate in re-employment assistance programs.** Employers do not need to provide financial information to participate in worksite modification programs. See ORS 656.622.  
*Contact: Employment Services Team, 503-947-7779 or 800-445-3948*
- **Clarification of time frames for Preferred Worker Program benefits.** The law is now clear that there is a three-year time limit that applies to all three areas of benefits under the Preferred Worker Program – insurance premium waiver, premium assessment waiver, and ratemaking exclusion. See ORS 656.622 and updated rules in OAR 436-110.  
*Contact: Employment Services Team, 503-947-7779 or 800-445-3948*
- **Administrative review of medical fee disputes is not mandatory.** Administrative review of medical fee disputes is not mandatory, and parties can resolve the dispute informally without requesting director review. See ORS 656.248(12).  
*Contact: Medical Section, 503-934-6049*



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John Shilts, Administrator  
Workers' Compensation Division

Distribution: Insurers and self-insured employers (PD8903), third-party administrators (PD8913), and other interested parties