



Oregon

Kate Brown, Governor

Department of Consumer and Business Services

Workers' Compensation Division

350 Winter St. NE

P.O. Box 14480

Salem, OR 97309-0405

503-947-7810

Toll free: 800-452-0288

Fax: 503-947-7581

www.wcd.oregon.gov

Dec. 29, 2015

To: Workers' compensation insurers, self-insured employers, service companies, attorneys, employer groups, worker leasing companies, and other interested parties

Subject: [House Bill 2797](#) relating to timely first payment of time loss

INDUSTRY NOTICE

Enrolled House Bill 2797 modifies when an insurer must make its first payment of temporary disability compensation. The bill amends ORS 656.262(4)(a) to provide that the first payment of temporary disability is due within 14 days of the employer's notice or knowledge of the claim *and of the worker's disability*, as long as a qualified medical provider has authorized time off work. The amendments apply to claims *filed on or after Jan. 1, 2016*. OAR 436-060-0150(5)(a) and (b) have been amended, effective Jan. 1, 2016, to address this law change.

Under existing law, if there is medical authorization for payment of time-loss benefits, the duty to begin paying benefits for temporary disability begins no later than 14 days after the employer first has knowledge of a claim. OAR 436-060-0010(3) states that the employer's knowledge date is the earliest of the date the employer (any supervisor or manager) first knew of a claim or of when the employer has enough facts to reasonably conclude that workers' compensation liability is a possibility.

House Bill 2797 adds that the employer must also have knowledge of the worker's disability to start the 14-day clock. The Workers' Compensation Division interprets this provision to mean that the employer (any supervisor or manager) must know, or have enough facts available to reasonably conclude, that the worker cannot perform full regular duties due to the injury or that the worker has lost time or wages due to the injury. As a result, for claims filed on or after Jan. 1, 2016, the 14-day clock starts from the day that the employer has notice or knowledge of a worker's claim and disability.

Please see the attached examples of scenarios to help illustrate how to apply the new law. If you have any questions about the application of House Bill 2797, please contact Barbara Belcher, audit manager, 503-947-7687, or Troy Painter, senior auditor, 503-947-7701.

John L. Shilts, Administrator
Workers' Compensation Division

Example Scenarios

In each scenario, the worker works Monday through Friday with Saturdays and Sundays off.

Scenario No. 1

The worker informs her employer of an injury for which she intends to file a claim on Friday, June 3, 2016, and she leaves work early that day. She seeks treatment on Monday, June 6, 2016, from a qualified physician, who authorizes time off work and sends the authorization to the employer that same day. The date the worker first starts missing work coincides with the employer's knowledge of the claim.

The first payment would be due Friday, June 17, 2016, 14 days from knowledge of claim and disability on June 3.

Scenario No. 2

The worker informs his employer of an injury for which he intends to file a claim on Friday, June 10, 2016. He does not leave work for the injury. On Tuesday, June 14, he is in enough pain that he cannot finish his shift and leaves work early. He goes back to work on Wednesday, June 15, and works the rest of the week.

On Monday, June 20, 2016, the worker goes to his qualified attending physician, who authorizes time off work. The worker drops off a copy of the authorization with his employer that same day.

The first payment would be due Tuesday, June 28, 2016, 14 days from knowledge of disability on June 14.

Scenario No. 3

The worker is injured on Monday, July 11, 2016, fills out a Form 801, and leaves work early because of the injury to go home and rest. The worker returns to work the next day at full hours and wages and continues to work the next two weeks. On Saturday, July 23, the worker goes to an urgent care clinic and seeks treatment. She receives authorization for time off work at that visit. The worker brings the authorization to her employer on Monday, July 25.

The first payment would be due Monday, July 25, 2016, 14 days from knowledge of claim and disability on July 11.

Scenario No. 4

The worker is injured on Wednesday, June 1, 2016. He fills out a Form 801, the employer confirms the worker's intent to file a claim, and the worker continues to work. On the afternoon of Tuesday, June 7, he leaves work early to go see a qualified attending physician. The physician authorizes modified duty work through June 30. The worker returns to modified duty work on Wednesday, June 8, at full hours and wages. But the employer no longer has full-wage modified duty available effective Wednesday, June 22.

The first payment would be due Tuesday, June 21, 2016, 14 days from knowledge of disability on June 7. However, no disability was payable at that time, so the payment would wait until July 5.

Scenario No. 5

The worker is injured (minor laceration to a finger) on the afternoon of Friday, Oct. 7, 2016. The worker fills out a Form 801 but finishes her shift. The finger becomes infected over the weekend, so the worker calls in to work *sick with a fever* on Monday, Oct. 10, and goes to a qualified attending physician. The employer is not aware that the finger was infected or that the fever was associated with the infection. On Tuesday, Oct. 11, the worker brings to work an off-work authorization effective the day before.

The first payment would be due on Tuesday, Oct. 25, 2016, 14 days from knowledge of disability related to the claim on Oct. 11. (The worker calls in sick on Monday, so the employer does not know until Tuesday that the time off is related to the claim.)

Scenario No. 6

The worker is injured on Wednesday, Sept. 7, 2016. He informs the employer of his intent to seek medical attention and files a claim that day. The worker finishes his shift and, the next day, starts a two-week, previously planned vacation. The worker seeks medical attention with a qualified attending physician on Wednesday, Sept. 14, and is taken off work. The worker does not report that to the employer. The treating facility faxes a Form 827 to the insurer (with a full off-work release) on Sept. 20. The worker was scheduled to return to work from vacation on Sept. 22 but does not return because of the off-work authorization.

The first payment would be due on Tuesday, Oct. 4, 2016, 14 days from the employer's (imputed) knowledge of disability on Sept. 20.