

Workers' Compensation **Focus** *on legislative actions*

Special Edition
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Introduction

By John Shilts, Administrator, WCD



The 72nd Oregon Legislative Assembly, which adjourned on August 27, 2003, passed several bills that affect workers' compensation. The Workers' Compensation Division developed two concepts for the session that eventually became Senate Bills 233 and 234. The division's agenda focused on eliminating barriers to efficiency and reducing government oversight.

Both bills streamline processes to make workers' compensation administration more efficient.

SB 233 eliminates inconsistencies in statutory language and facilitates the transition to electronic reporting. This bill adds efficiency and fairness to the service of agency orders and sanctions and provides increased protection to reduce the financial exposure of public funds in the event of insolvency by self-insured employers. This bill allows insurers to transmit proof of coverage electronically to the division. The bill also expands the director's authority to specify by rule the types of self-insured-employer security that are acceptable. This enables the

division to address the current crisis self-insured employers face in finding affordable and appropriate surety bonds and letters of credit.

SB 234 eliminates the requirement for the Management-Labor Advisory Committee to review temporary rules for a permanent disability rating. The division adopts such temporary rules on a case-by-case basis when existing disability-rating rules are not appropriate for the medical circumstances of the case. The rules exist solely for rating the case for which they were developed. Eliminating one layer of review is a step toward streamlining government according to the governor's direction.

The Workers' Compensation Division continues its commitment to collaboration with the workers' compensation community by providing fair and consistent industry regulation; improving internal processes to better serve the community; and increasing access to workers' compensation information, education, and services. Oregon continues to be a leader in workers' compensation reform with a focus on efficient government and streamlining processes. ■

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2003 Legislative Session

By Philip A. Johnson II and Twyla J. Knowles



All bills are available at the Oregon State Legislature Web site, www.leg.state.or.us/bills_pdf.htm. You can also link to the bills from the Oregon Workers' Compensation Division Legislative Web site, www.cbs.state.or.us/external/wcd/administration/legis_up.html.

The division is planning external advisory committees for November to gather public input on the following Administrative Rules: Rule Divisions 001, 009, 010, 030, 060, and 120. Workers' Compensation Division Administrative Rules (temporary, proposed, and permanent) are available online at www.cbs.state.or.us/external/wcd/policy/rules/rules.html. For more information, contact Fred Bruyns, (503) 947-7717.

Major Bills

SB 233 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB233.pdf) effective January 1, 2004, eliminates the additional penalty imposed after claim closure on non-complying employers. It removes the requirement that assigned claims agents for non-complying employers be "Special Assistant Attorney Generals," thus allowing agents to hire private counsel. The bill changes what self-insured employers may use for security deposits; however, this applies only to security established after January 1, 2004. Self-insurers can otherwise maintain their existing securities until maturity of those financial instruments. At that time, replacement securities must meet the new guidelines. The bill establishes joint and several liabilities for all entities operating under one self-insurance certification and allows electronic filing of guaranty contracts. It changes the appeal period for determination of non-subjectivity from 30 to 60 days and the start of the appeal period from the receipt date to the mailing date. Rule making for division 050 is in progress. The Workers Compensation Division conducted a hearing on October 22, 2003. Testimony may be submitted until October 27, 2003 with new rules taking effect January 1, 2004. If you have questions regarding non-complying employers, contact Reg Gregory, (503) 947-7665; for answers to questions regarding self-insured employers, LeRoy McGee, (503) 947-7706. For answers to general questions, contact Mary Schwabe, (503) 947-7651.

SB 234 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB234.pdf) effective January 1, 2004, provides that the Management and Labor Advisory Committee is no longer required to review temporary rules for permanent disability. Contact: Nancy Bieber, (503) 947-7731.

SB 620 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB620.pdf) effective January 1, 2004, applies to all orders not yet final, regardless of the date of injury. The bill allows attorney fees when the insurer unreasonably delays or refuses to pay a claim. It also provides insurer-paid attorney fees when an attorney is "instrumental in obtaining settlement" prior to the contested-case hearing. There is a \$2,000 maximum "absent extraordinary circumstances." Temporary rules for divisions 001, 009, 010, and 120 take effect January 1, 2004. An advisory committee met October 16, 2003. Permanent rule making will commence as soon as possible. Contact: Nancy Bieber, (503) 947-7731.

SB 757 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB757.pdf) changes how Permanent Partial Disability (PPD) benefits are determined in Oregon. The bill attempts to shift unequal distribution of PPD awards by providing higher awards to those workers unable to return to work who had high incomes at the time of injury. The state currently has two types of PPD benefits: "scheduled" (for specified body extremities) and "unscheduled" (for all other body parts). The criterion for rating scheduled disability is permanent loss of use or function of the injured body part. Losses are rated by degrees (set by statute), then multiplied by a dollar amount (also set by statute). The criteria for rating unscheduled disability is a loss of earning capacity based on specific statutory-impairment criteria modified by age, education, and adaptability. Once disability is rated, a formula translates that rate into dollars to be awarded. Unlike most states, Oregon's multiplier is fixed for scheduled disability and tiered for unscheduled. It does not adjust annually with the State Average Weekly Wage (SAWW). Accordingly, the rate is generally not reflective of a worker's actual wage. Because of that, Oregon benefits are relatively high for workers with scheduled injuries and relatively low for workers with unscheduled injuries. This disparity is magnified when wages are considered; making Oregon among the most generous states for low-wage work-

ers with scheduled disabilities and the least generous for high-wage workers with unscheduled disabilities. Effective January 1, 2004 (but not taking effect until January 1, 2005), this bill eliminates “scheduled” and “unscheduled” disability and replaces them with “impairment” and “work disability.” The major changes: (a) injuries to body parts will be rated in relation to the “whole person” (b) workers with permanent disability will receive an “impairment benefit” that pays all workers the same based on SAWW multiplied by the percentage of impairment (c) workers unable to return to regular work will receive a “disability benefit” based on their impairment modified by age, education, adaptability factors, and earnings at the time of injury and (d) wage-based work disability rates will be limited to a range between 50 and 133 percent of SAWW with annual adjustments. Contact: John Shilts, (503) 947-7514.

HB 3669 (http://pub.das.state.or.us/LEG_BILLS/PDFs/EHB3669.pdf) takes effect January 1, 2004. Nurse practitioners can authorize temporary disability benefits for a worker on an initial claim for up to 60 days. A worker can treat with a nurse practitioner for up to 90 days on a claim. If that worker becomes medically stationary during the 90 days, the nurse practitioner must refer the worker to a qualified physician for a determination of impairment. The bill requires the division to develop informational materials for nurse practitioners. On or after October 1, 2004, nurse practitioners must certify to the director that they have reviewed the informational materials, in order to continue authorizing temporary disability benefits for 60 days and providing compensable medical services for 90 days. Temporary rules will be published soon. Contact: Nancy Bieber, (503) 947-7731.

Key telephone numbers and Web address

WCD general information: (503) 947-7810
TTY: (503) 947-7993
Workers' Compensation Infoline: (800) 452-0288
Fraud Complaint: (800) 452-0288
Ombudsman for Injured Workers: (503) 378-3351
TTY (503) 947-7189, (800) 927-1271
www.oregonwcd.org

Other Bills

SB 63 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB63.pdf) authorizes administrative law judges (ALJs) to postpone hearings in multiple-insurer cases until the addition of all necessary parties. This bill authorizes ALJs to specify what a claimant must do to cooperate with a claim investigation. It also forbids the director from imposing penalties for “late” denials if a hearing gets postponed. Effective January 1, 2004.

SB 285 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB285.pdf) allows insurers and self-insured employers to request reconsideration of closure notices. Reconsideration requests are restricted to disagreement with the findings used to rate impairment and must be filed within seven days after receipt of the closure notice. Division 030 temporary rule will be adopted. Effective January 1, 2004.

SB 286 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB286.pdf) allows a Workers' Compensation Board panel to consist of two members with different backgrounds. The public member is allowed to sit on panels if the employee or employer members are unavailable or unable to agree. Effective January 1, 2004.

Continued

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SSB 914 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB914.pdf) allows the director to either administer and pay supplemental disability for workers employed in more than one job or assign a paying agent. This bill also changes insurers and self-insured employers' reporting requirements to the director. It specifically removes the requirement for reporting disabling injuries within 21 days and inserts denied claims in the list of items required to be reported. Division 060 temporary rule for supplemental disability was adopted on September 22, 2003. Additional Division 060 temporary rules for reporting requirements may also be adopted effective January 1, 2004. Permanent rules will be developed.

SB 924 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB924.pdf) adds interpreters provided through an agent to the list of "non-subject workers" in ORS 656.027. Effective January 1, 2004.

SB 932 (http://pub.das.state.or.us/LEG_BILLS/PDFs/ESB932.pdf) adds an exemption to the requirement for reporting claims within 90 days if worker "had good cause for failure to give notice." Effective January 1, 2004.

HB 2305 (http://pub.das.state.or.us/LEG_BILLS/PDFs/EHB2305.pdf) changes state law to meet federal HIPAA requirements and creates a new model health-care-disclosure form. Effective May 24, 2003.

HB 2526 (http://pub.das.state.or.us/LEG_BILLS/PDFs/EHB2526.pdf) removes the sunset on Hearings Officer Panel laws. Changes "Hearings Officer Panel" to "Office of Administrative Hearings" and "Hearings Officers" to "Administrative Law Judges." Effective May 22, 2003.

HB 3177 (http://pub.das.state.or.us/LEG_BILLS/PDFs/EHB3177.pdf) authorizes DCBS to issue a warrant for amounts owing to the department and authorizes the debt to become a lien on real property. Effective January 1, 2004.

HB 3630 (http://pub.das.state.or.us/LEG_BILLS/PDFs/EHB3630.pdf) requires SAIF to establish a reinsurance program for medical liability insurance for rural doctors. Provides SAIF credits against the annual assessment owed to DCBS. Effective September 17, 2003. Sunsets January 2, 2014. ■

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