



Oregon

Tina Kotek, Governor



Workers' Compensation Division

Department of Consumer and Business Services

BULLETIN NO. 391

Sept. 26, 2023

TO: Workers' compensation insurers and self-insured employers

SUBJECT: Retroactive Program benefits effective Oct. 1, 2023

This bulletin notifies insurers and self-insured employers of:

- 1. The annual increase in Retroactive Program benefits, and**
- 2. The methods used to calculate these benefits and determine the amount of Retroactive Program reimbursement.**

NOTE: Each year, the Oregon Employment Department calculates the state average weekly wage. The director reviewed the 2022 increase and the 2023 decrease in the state average weekly wage. To moderate effects on the annual increase to Retroactive Program benefits, the director determined the appropriate conversion factor to be 1.935 percent for injuries occurring on July 1, 2021 through June 30, 2022. Additionally, for purposes of calculating Retroactive Program benefits, the director determined an appropriate base wage of \$1,271.26.

The Retroactive Program benefit, established by ORS 656.506(7) and administered under OAR chapter 436 division 075, is an additional amount paid to eligible workers, or their beneficiaries, when benefit levels are lower than what is currently being paid for like injuries. Program recipients are primarily workers previously determined to have a permanent total disability and beneficiaries of workers who suffered fatal injuries.

COMPUTING PERMANENT TOTAL DISABILITY (PTD) BENEFITS

Workers injured **before July 1, 2022** are eligible for retroactive benefit increases effective Oct. 1, 2023, as follows:

- | | |
|--------------------------|---|
| Worker's Current Benefit | <ol style="list-style-type: none"> 1(a) Determine weekly benefits by first calculating 66.67 percent of the worker's weekly wage at the time of injury, and then multiplying this amount by the conversion factor for the year of injury (see "Yearly Conversion Factors" on page 4). If the weekly benefit calculates to less than \$419.52 (33 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26), increase the benefit to \$419.52. (b) Compare the figure from 1(a) above to \$1,690.78 (133 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26). The lesser figure is the worker's weekly PTD rate. (c) For workers with dates of injury before Oct. 23, 1999, add \$5 for each additional beneficiary, not to exceed five (5) beneficiaries. Add this figure to the figure from 1(b) above. |
|--------------------------|---|

- (d) Multiply the figure from 1(b), or 1(c) if applicable, above by 4.35 to determine the monthly PTD benefit.
- Retroactive Reimbursement 2(a) Determine the statutory monthly PTD benefit due in accordance with ORS 656.206 based on the date of injury.
- (b) The difference between the figures from 1(d) and 2(a) above is the retroactive benefit, reimbursable from the Retroactive Program.

To determine statutory and Retroactive Program benefits due for a partial month, divide the monthly benefit by the **ACTUAL NUMBER OF DAYS** in the month and then multiply by the number of days included in the partial month.

COMPUTING FATAL BENEFITS

Fatal benefits for injuries occurring **before July 1, 2022**, are increased to the following fatal benefit levels:

- The monthly benefit to a surviving spouse or domestic partner is \$3,686.84 (4.35 times 66 and 2/3 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26).
- The monthly benefit to each child of a deceased worker who is under 19 years of age, or who is 19 to 26 years of age and completing secondary education, obtaining a general educational development certificate (GED), or attending a program of higher education, is \$1,382.50 (4.35 times 25 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26).
- The monthly benefit to a child or dependent of a deceased worker that has no surviving parent while attending higher education is \$3,686.84 (4.35 times 66 and 2/3 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26).
- **In no event shall the total monthly benefits paid to all surviving children exceed \$7,373.12¹ (4.35 times 133 and 1/3 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26). If the total exceeds the maximum, the benefits must be reduced proportionately.**

Compute retroactive benefits in the following manner:

1. For fatal claims occurring from injuries before July 1, 2022:
 - (a) Determine the statutory benefit due in accordance with ORS 656.204 based on the date of injury, as modified by the current family status.
 - (b) The difference between the figure from 1(a) above and the benefit levels produced from the bulleted list under “Computing Fatal Benefits” above is reimbursable from the Retroactive Program.

To determine statutory and Retroactive Program benefits due for a partial month, divide the monthly benefit by the **ACTUAL NUMBER OF DAYS** in the month and then multiply by the number of days included in the partial month.

Do not reduce benefits, even if computations under this bulletin indicate benefit levels less than what was previously due.

¹ Benefits paid to children without a surviving parent under ORS 656.204(6)(b) do not count toward the limit.

2. Determine remarriage benefits, regardless of the date of injury, as follows:
 - (a) Determine the remarriage allowance by multiplying the spouse's current monthly benefit (which includes Retroactive Program benefit increases) by 36.
 - (b) Determine the surviving spouse's statutory remarriage allowance in accordance with ORS 656.204 based on the date of injury.
 - (c) The difference between the figures from 2(a) and 2(b) above is reimbursable from the Retroactive Program.

3. Determine burial benefits as follows:
 - (a) Determine the statutory benefit due in accordance with ORS 656.204 based on the date of injury.
 - (b) The difference between the figure from 3(a) above and the July 1, 2022 statutory level of \$26,504.80 (20 times the July 1, 2022 SAWW, \$1,325.24) is reimbursable from the Retroactive Program.

COMPUTING TEMPORARY TOTAL DISABILITY (TTD) BENEFITS

On or after Oct. 1, 2023, TTD benefits paid to **all** workers injured **before** July 1, 1973, are increased. TTD benefits paid to workers injured on or after July 1, 1973, but before April 1, 1974, whose statutory TTD rate is less than \$1,017.01 (80 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26) are also increased.

Workers injured on or after April 1, 1974, are not entitled to Retroactive Program increases to their TTD benefits.

Effective Oct. 1, 2023, TTD benefit increases, reimbursable from the Retroactive Program, are paid in the following manner:

- | | |
|--------------------------------|--|
| Worker's
Current
Benefit | <ol style="list-style-type: none">1(a) Determine weekly benefits by first calculating 66.67 percent of the worker's weekly wage at the time of injury, and then multiplying this amount by the conversion factor for the year of injury (see "Yearly Conversion Factors" on Page 4). If the weekly benefit calculates to less than \$50, the benefit is increased to 90 percent of the weekly wage at the time of injury multiplied by the conversion factor or \$50, whichever is less.(b) Compare the figure from 1(a) above to \$1,017.01 (80 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26). The lesser figure is the worker's weekly TTD rate. |
| Retroactive
Reimbursement | <ol style="list-style-type: none">2(a) Determine the statutory TTD benefits due in accordance with ORS 656.210 based on the date of injury, taking into account the current marital and dependency status. Divide the monthly benefit by 4.35 to determine the weekly TTD benefit.(b) The difference between the figures from 1(b) and 2(a) above is the retroactive benefit, reimbursable from the Retroactive Program. |

Do not reduce worker benefits, even if computations under this bulletin indicate benefit levels less than currently paid.

YEARLY CONVERSION FACTORS

Injury date	Factor	Injury date	Factor
1-1-66 — 6-30-66	12.00548	7-1-93 — 6-30-94 (PTD only)	2.65426
7-1-66 — 6-30-67	11.35459	7-1-94 — 6-30-95 (PTD only)	2.59732
7-1-67 — 6-30-68	11.07948	7-1-95 — 6-30-96 (PTD only)	2.57111
7-1-68 — 6-30-69	10.59913	7-1-96 — 6-30-97 (PTD only)	2.45133
7-1-69 — 6-30-70	10.04234	7-1-97 — 6-30-98 (PTD only)	2.32776
7-1-70 — 6-30-71	9.45386	7-1-98 — 6-30-99 (PTD only)	2.20460
7-1-71 — 6-30-72	9.04296	7-1-99 — 6-30-00 (PTD only)	2.11450
7-1-72 — 6-30-73	8.54227	7-1-00 — 6-30-01 (PTD only)	2.02224
7-1-73 — 3-31-74 (PTD & certain TTD ²)	8.12307	7-1-01 — 6-30-02 (PTD only)	1.97095
4-1-74 — 6-30-74 (PTD only)	8.12307	7-1-02 — 6-30-03 (PTD only)	1.95290
7-1-74 — 6-30-75 (PTD only)	7.64254	7-1-03 — 6-30-04 (PTD only)	1.91138
7-1-75 — 6-30-76 (PTD only)	7.05589	7-1-04 — 6-30-05 (PTD only)	1.84626
7-1-76 — 6-30-77 (PTD only)	6.51327	7-1-05 — 6-30-06 (PTD only)	1.78307
7-1-77 — 6-30-78 (PTD only)	5.94658	7-1-06 — 6-30-07 (PTD only)	1.76214
7-1-78 — 6-30-79 (PTD only)	5.67122	7-1-07 — 6-30-08 (PTD only)	1.67978
7-1-79 — 6-30-80 (PTD only)	5.25966	7-1-08 — 6-30-09 (PTD only)	1.60842
7-1-80 — 6-30-81 (PTD only)	4.86476	7-1-09 — 6-30-10 (PTD only)	1.58788
7-1-81 — 6-30-82 (PTD only)	4.43133	7-1-10 — 6-30-11 (PTD only)	1.55149
7-1-82 — 6-30-83 (PTD only)	4.17354	7-1-11 — 6-30-12 (PTD only)	1.53118
7-1-83 — 6-30-84 (PTD only)	4.02005	7-1-12 — 6-30-13 (PTD only)	1.51114
7-1-84 — 6-30-85 (PTD only)	3.92086	7-1-13 — 6-30-14 (PTD only)	1.47432
7-1-85 — 6-30-86 (PTD only)	3.79957	7-1-14 — 6-30-15 (PTD only)	1.43099
7-1-86 — 6-30-87 (PTD only)	3.68727	7-1-15 — 6-30-16 (PTD only)	1.37822
7-1-87 — 6-30-88 (PTD only)	3.58061	7-1-16 — 6-30-17 (PTD only)	1.34885
7-1-88 — 6-30-89 (PTD only)	3.42695	7-1-17 — 6-30-18 (PTD only)	1.32009
7-1-89 — 6-30-90 (PTD only)	3.26810	7-1-18 — 6-30-19 (PTD only)	1.26236
7-1-90 — 6-30-91 (PTD only)	3.12702	7-1-19 — 6-30-20 (PTD only)	1.21722
7-1-91 — 6-30-92 (PTD only)	2.95841	7-1-20 — 6-30-21 (PTD only)	1.16266
7-1-92 — 6-30-93 (PTD only)	2.85966	7-1-21 — 6-30-22 (PTD only)	1.01935

² Use this conversion factor to compute TTD Retroactive Program benefits for workers receiving TTD at less than \$1,017.01 (80 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26).

RECOVERY FROM THIRD PERSONS

Under OAR 436-075-0090, Retroactive Program benefits are a portion of the paying agency's lien. Immediately report and remit recovered Retroactive Program benefits to the Workers' Compensation Division. For more information, see the contact information below.

ELIGIBILITY BASED ON INJURY DATE

The worker's injury must have occurred **BEFORE** the following dates:

TTD ³	July 1, 1973
PTD	July 1, 2022
Fatal	July 1, 2022

For instructions on requesting Retroactive Program reimbursement, see Bulletin 102.

If you have questions about this bulletin, contact the Reimbursements Team by email, WCD.SIRR-Reimbursements@DCBS.oregon.gov, or by phone, 503-947-7189.



Sally Coen, Administrator
Workers' Compensation Division

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³ Effective July 1, 1977, workers with injuries occurring on or after July 1, 1973, but before April 1, 1974, receiving TTD at a rate less than \$1,017.01 (80 percent of the July 1, 2022 base wage as determined by the director, \$1,271.26) are entitled to Retroactive Program benefits.