



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services

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## Industry Notice

Nov. 29, 2021

**To:** Insurance producers, insurers, and self-insured employers

**Subject:** House Bill 3188 (2021), related to changes in coverage requirements

Effective Jan. 1, 2022, [House Bill 3188](#) amends coverage requirements under Oregon workers' compensation law in several important ways. Insurance producers and their clients should know about these changes, as they may affect clients' insurance needs.

### **New casual labor requirements- ORS 656.027(3)**

Casual labor is labor that costs less than a certain amount. If an employer's total payroll is always below this amount within any 30-day period, the employer is not required to provide workers' compensation coverage.

Under current law, labor that costs less than \$500 is considered casual. Starting Jan. 1, 2022, labor that costs less than \$1,000 will be considered casual. This number may be adjusted in the future based on changes to Oregon's average weekly wage.

### **New definition of worker- ORS 656.005**

Under Oregon law, employers must provide workers' compensation coverage to all workers they employ, except for workers who are covered by specific exemptions. Most such exemptions can be found under ORS 656.027.

Under current law, a worker is defined as any person who performs services for remuneration and is subject to the direction and control of an employer. Starting Jan. 1, 2022, a worker will be defined as any person who performs services for remuneration and is not an independent contractor, as defined by ORS 670.600. Most employers and workers will not be affected by this change, but some employers may need to provide coverage to people who did not previously qualify as workers.

To qualify as an independent contractor under ORS 670.600, a person must meet three requirements:

1. The person must be free from direction and control over the means and manner of providing services.
2. The person must be customarily engaged in an independently established business. To meet this requirement, a person must satisfy at least three of five factors under ORS 670.600(3). These factors include having a business location, having or soliciting multiple clients, and making a significant

investment in the business.

3. If the work being performed requires a construction contractor's license or landscape contractor's license, the person must have that license. If the work requires another kind of license, the person must be responsible for obtaining it.

People who currently qualify as workers will continue to do so after HB 3188 takes effect. This is because, to qualify as a worker under current law, a person must be subject to the direction and control of an employer. A person who is subject to direction and control does not qualify as an independent contractor under ORS 670.600.

However, some people who do not qualify as workers under current law may newly qualify as workers after HB 3188 takes effect. This is because, even if a person is free from direction and control, they may not qualify as an independent contractor if they do not satisfy the other requirements of ORS 670.600. Any person who newly qualifies as a worker after HB 3188 takes effect will be entitled to workers' compensation coverage, unless covered by a specific exemption.

Failure to provide workers' compensation coverage when required can result in substantial penalties. If an employer does not have coverage and a worker is injured and files a claim, people in positions of responsibility, such as corporate officers, members, or partners, may be found personally liable for claims costs and penalties, which may not be dischargeable in bankruptcy. For the purposes of penalties and claim costs, shareholders of a corporation and members of a limited liability company are not protected by limits to their liability.

You can find out more about how to determine if a person is a worker or an independent contractor at <https://www.oregon.gov/IC/pages/index.aspx>. For more information, contact the Workers' Compensation Division, Employer Compliance Unit, at 888-877-5670 (toll-free) or [wcd.employerinfo@dcbs.oregon.gov](mailto:wcd.employerinfo@dcbs.oregon.gov).

Sincerely,



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Sally Coen, Administrator  
Workers' Compensation Division

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