

BRUYNS Fred H * DCBS

From: Timothy P Simmons <tims@compronet.com>
Sent: Tuesday, November 14, 2017 4:34 PM
To: BRUYNS Fred H * DCBS
Subject: RE: Proposed amendment to workers' compensation rule, OAR 436-060-0025

For consideration, concerning both current and proposed language in OAR 436-060-0025:

The wording of (4)(a)(B) could be problematic:

'(B) "New wage earning agreement" means the worker's wage earning agreement changed for reasons other than only a change in rate of pay, including but not limited to **a change of hours** worked or a change of job duties. A job assignment from a temporary service provider or worker leasing company as defined in OAR 436-050 is not considered to be a new wage earning agreement.'
[emphasis added]

Absent clarification, the phrase "change of hours" is open to subjective interpretation when hours fluctuate as a norm.

e.g.:
Two months ago, worker worked mornings [#20 hrs/wk], last month afternoons [#17 hrs/wk], this week evenings [#23 hrs/wk].
Hours, shift and differential pay may fluctuate. But the wage earning agreement should not be considered 'changed' for only those reasons.

The words 'substantive' or, 'permanent,' might help clarify intent?

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From: Oregon Workers' Compensation Division [mailto:ordcbs@public.govdelivery.com]
Sent: Tuesday, November 14, 2017 3:38 PM
To: tims@compronet.com
Subject: Proposed amendment to workers' compensation rule, OAR 436-060-0025

Caption: Determining the worker's weekly wage for the purpose of benefit calculations

Good afternoon:

The Workers' Compensation Division has published notice of proposed amendment of OAR 436-060-0025, "Rate of Temporary Disability Compensation," to its website:

http://wcd.oregon.gov/laws/Documents/Proposed_rules_and_testimony/Div-060-2017-12-18/mailpiece.pdf.

A public rulemaking hearing is scheduled for:

Dec. 18, 2017, 9 a.m.
Room F, Labor & Industries Building
350 Winter St. NE, Salem, Oregon

The public may also listen to the hearing or testify by telephone: Dial-in number is 1-213-787-0529; Access code is 9221262#.

The closing date for written testimony is Dec. 21, 2017.

A summary of the proposed rule changes is included at the bottom of this message.

Please send questions or testimony directly to me at fred.h.bruyns@oregon.gov - do not reply to this listserv message.

Thank you!

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Summary –

The agency proposes to amend OAR 436-060-0025 to:

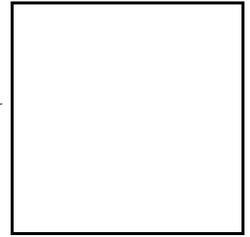
- Restore the method for determining the weekly wage for workers employed through a union hiring hall to the one in place before Jan. 1, 2017; for these workers, insurers must calculate the rate of compensation on the basis of a five-day work week at 40 hours a week, regardless of the number of days actually worked per week;
- Correct a typographical error to explain that the insurer may not include any gap in “earnings” (not “employment”) of more than 14 days that was not anticipated in the wage earning agreement, when calculating the average earnings; and
- Clarify that when a wage earning agreement has been changed due to reasons other than a pay raise, it is a new wage earning agreement.

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