

Significant laws passed in 2017 affecting workers' compensation

House Bill 2186 (Group self-insurance for public bodies)

Existing law requires self-insured employer groups made up of public employers to be organized as an intergovernmental entity ratified by ordinance. This bill allows public bodies that do not have the statutory authority to pass ordinances, including some special districts, to form a self-insured employer group for workers' compensation if they have already established a self-insurance program for tort liability or property damage.

Effective: Jan. 1, 2018

House Bill 2192 (Terms for Management-Labor Advisory Committee)

The 10-member Workers' Compensation Management-Labor Advisory Committee (MLAC) is charged with reviewing workers' compensation issues and providing recommendations to the Governor and Legislature about policy changes. Five members represent management and five represent labor, with the DCBS director serving as an ex-officio member. The committee members are appointed by the Governor and confirmed by the Senate to two-year terms. This bill increases the length of the appointment to three-year terms.

Effective: Jan. 1, 2018

House Bill 2335 (Medical arbiter panels)

When an insurer closes a workers' compensation claim and the extent of the worker's permanent disability is determined, the worker or insurer may request that DCBS review the claim closure. If the objection is with the findings of the worker's impairment, the law requires DCBS to refer the claim to a medical arbiter for review. Instead of an individual arbiter, the law also allows either the worker or insurer to request a panel of three medical arbiters to conduct the exam. This bill allows DCBS to select two or three medical arbiters when a panel exam is requested, based on criteria that will be set by rule. In cases when a two-member panel is used, it would make scheduling the exam easier, especially in rural areas and when certain specialties are needed, be more convenient for the worker, and reduce costs for the insurer.

Effective: Jan. 1, 2018

House Bill 2336 (Self-insurance streamlining)

This bill gives the DCBS director authority to determine the claims processor for a self-insured employer that defaults, is decertified by the director, or cancels certification. Legislation in 2014 addressed similar situations for self-insured employer groups. This bill makes the process consistent for both individual self-insured employers and self-insured employer groups. Because state funds are used to pay claims for a defaulted or decertified self-insured employer or group, existing law may require the Department of Justice to represent the claims processor in proceedings arising from those claims. This could result in a conflict of interest when there is a dispute between the claims processor and DCBS. House Bill 2336 resolves any potential conflict by establishing that the claims processor may choose its own legal counsel.

This bill also facilitates repayment of DCBS expenditures made to reimburse a claims processing agent for claim costs associated with a self-insured employer or group that is insolvent, in default, or decertified when funds are recovered from a third party on those claims in a proceeding initiated by either the paying agency or worker.

Effective: Jan. 1, 2018

House Bill 2337 (Permanent total disability benefits)

This bill increases the statutory minimum and maximum for permanent total disability benefits. Injured workers who receive a permanent total disability award are not expected to return to regular work at a gainful and suitable occupation. They typically receive the benefit for their lifetime. The benefit is calculated based on the worker's weekly wage subject to minimum and maximum amounts. This bill raises the minimum benefit level to 33 percent of the state average weekly wage and raises the maximum benefit to 133 percent of the state average weekly wage.

Effective: Jan. 1, 2018

House Bill 2338 (Fatality benefits)

Under workers' compensation law, when a worker dies from an on-the-job injury, occupational disease, or while permanently and totally disabled, the worker's surviving spouse, child, and other dependents are entitled to death benefits. This bill allows a child or dependent to receive benefits until the age of 19 and specifies that the benefit level is the same regardless of the child's dependence on the worker's surviving spouse or age at the time of the worker's death. Benefits will be paid for up to 48 months when the child is in a post-secondary education or training program through age 26. The measure applies to benefits associated with injuries or deaths that occur after the measure's effective date. However, the bill specifies that current recipients of fatal benefits for deaths that occurred before the effective date will receive increased benefits through the retroactive program. In addition, eligible children and dependents in an education program will receive benefits under the bill regardless of when the worker was injured or died.

Effective: Jan. 1, 2018

House Bill 3363 (Osteopathic physicians)

This bill changes the term osteopath to osteopathic physician throughout the statutes, including ORS chapter 656. The bill clarifies that doctors of osteopathic medicine practice medicine the same as medical doctors.

Effective: Jan. 1, 2018

Senate Bill 302 (Cannabis terminology)

This bill amends the Uniform Controlled Substances Act to exclude cannabis from the definition of a controlled substance, and makes consistent changes throughout the Oregon Revised Statutes, adding marijuana or cannabis where language already refers to alcohol, illegal drugs, or controlled substances. The bill amends the definition of compensable injury in ORS 656.005. An accidental injury is compensable if it arises out of and in the course of employment.

However, there are specific circumstances in which the injury would not be compensable, including an injury caused by the worker's consumption of alcohol or the unlawful consumption of any controlled substance. This bill separates out cannabis, so if the injury is caused by the worker's consumption of alcohol, cannabis, or the unlawful consumption of a controlled substance, it is not compensable.

Effective: April 21, 2017

Occupational Safety and Health

Senate Bill 92 (Penalties)

This bill allows the DCBS director or an authorized representative the authority to assess civil penalties for violations of state occupational safety and health statute, rules, or orders adopted under the statute. In setting maximum penalties, the director or the director's representative by rule, ORS 654.025(2) shall consider, but may not exceed, the maximum penalties under the federal Occupational Safety and Health Act.

Effective: Jan. 1, 2018

Sensate Bill 93 (Workers' Memorial Scholarship Fund increase)

This bill increases the Workers' Memorial Scholarship Fund to \$1 million, as civil penalty revenue recovered under ORS 654.086 and other circumstances allow.

Effective: Jan. 1, 2018