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Legislative Committee Services  
State Capitol Building  
Salem, Oregon 97301  
(503) 986-1813

Background Brief on ...

# Workers' Compensation

*Prepared by: Theresa Van Winkle*

Oregon has had some form of workers' compensation program since 1914. The system is designed to provide appropriate medical treatment and benefits to help injured workers recover and return to work as soon as possible, and to resolve disputes quickly and fairly.

Workers' compensation insurance provides medical treatment and lost wages to employees (or their dependents) in the case of employment-related accidents. In Oregon, workers' compensation insurance is what is known as "no-fault" insurance – this essentially bypasses the concept of one party or the other being at fault, which in turn eliminates lawsuits arising out of work place injuries or illnesses.

Oregon employers are required to either carry workers' compensation insurance or be self-insured. Almost all Oregon employees are covered by workers' compensation, but employees are eligible for benefits whether or not their employers are in compliance with the law. The law specifies the types of employees that are not required to have workers' compensation insurance coverage, including certain corporate officers, partners and family-member business owners, as well as independent contractors (ORS 656.027).

Employers can purchase insurance from the State Accident Insurance Fund (SAIF) Corporation (a publicly owned nonprofit company), from a private insurance company, or self-insure. According to the 2006 year-end figures, SAIF Corporation had about a 46 percent share of the premium in the Oregon market. Private insurance companies (the largest being Liberty Northwest) accounted for about 40 percent, and the remaining 14 percent of premium share is self-insured employers.

## History in Oregon - 1990 Reforms

In 1986, Oregon ranked sixth highest in the nation in average workers' compensation premium rates and had one of the country's highest injury and illness claim frequencies. Medical and disability costs for injured workers were among the highest anywhere, but benefit levels for some types of injuries were among the lowest in the country. Critics of the system had charged that too many benefits were provided for questionable disabilities and too many benefits were going to lawyers and dubious care providers. Significant changes were made in 1990, based upon the recommendations of a management-labor task force (commonly referred to as the "Mahonia Hall Group") convened by then-Governor Neil Goldschmidt.

Generally, the compromise increased benefits to injured workers but decreased the number of workers getting benefits. The definition of “compensable injury” was changed to require work exposure to be the “major contributing cause” of some conditions in order to qualify for benefits. Criteria for reopening claims were tightened. Other changes limited the status of chiropractors, eliminated naturopaths as attending physicians, restricted “palliative” care, eliminated the formal hearings process for resolving treatment disputes, required the use of strict standards in determining disability awards, allowed lump-sum settlements for accepted claims, and doubled benefit awards for certain injuries. There was also a substantial commitment made to the use of return-to-work and safety programs.

### **1995 Reforms**

The system was further revised in 1995 through Senate Bill 369 that set more restrictive limitations on the compensability of pre-existing conditions, stress claims, and injuries involving drug or alcohol abuse. Senate Bill 369 also established a one-year claim-filing deadline, established a new medical fee schedule, and established workers' compensation insurance as the exclusive remedy for worker illness or injury even if the claim is denied. The new law also redefined “casual labor” and increased the penalties on non-complying employers.

As a result of the 1990 and 1995 reforms, the number of accepted disabling claims has gone from 3.7 per 100 workers in 1987 to 1.3 per 100 workers in 2006. Workers' compensation premium rates have also declined significantly over this time period. There will be a 2.3 percent decrease in the workers' compensation “pure” premium rate for 2008, which marks the second straight year for a rate decrease and the 18<sup>th</sup> consecutive year with no rate increase.

### **Management-Labor Advisory Committee**

The Management-Labor Advisory Committee (MLAC), originally known as the “Mahonia Hall Group,” was initially created by Governor

Goldschmidt to draft the 1990 workers' compensation reforms. The MLAC was later put into statute as advisory to the Legislature and the Director of the Department of Consumer and Business Services (DCBS) on matters concerning workers' compensation.

Today, the MLAC is charged with studying the workers' compensation system in areas such as court decisions, adequacy of benefits, medical and legal costs, adequacy of assessments paid into the department's reserve programs, and the operation of programs funded by the Workers' Benefit Fund. The committee also reviews the standards regarding evaluation of permanent disability and advises the DCBS and its Workers' Compensation Division (WCD) on proposed changes in programs. The ten members are appointed by the Governor and confirmed by the Senate. There are five labor and five management representatives. The DCBS director serves as an ex-officio member.

### **Claims Process**

Workers who have work-related injuries or illnesses must file a claim, either with their employer or a physician, to receive workers' compensation benefits. The claim form is sent by the employer or doctor to the insurer, who must accept or deny the claim within 60 days, then notify the WCD within 14 days of acceptance or denial.

If a claim is denied, the injured worker will receive a letter from the insurer explaining why the claim is denied as well as their right to appeal the denial to the Hearings Division of the Workers' Compensation Board. If a claim is accepted, the letter will be a notice of acceptance specifying the medical conditions that will be covered under the claim.

A worker temporarily or permanently disabled by an accepted work-related injury may receive payment from the insurer for medical treatment, lost wages, and permanent disability. Some workers may qualify for vocational services. Oregon's workers' compensation benefits also include death benefits. Claim amounts vary on

the type of benefit rewarded to the worker. When the injured worker's doctor determines that the worker is medically stationary (it is not expected to improve with further treatment or the passage of time) or that the work injury is no longer the major cause of the disability, the worker is notified that the claim will be closed and how much, if any, permanent disability payment is due the worker. If an injured worker fails to seek medical care for more than 30 days without doctor approval, the insurer must close the claim.

### **Medical Service Providers**

Until January 2008, only physicians, osteopaths, and oral and maxillofacial surgeons could function as attending physicians. Providers not designated by statute as an attending physician, such as naturopaths, podiatrists, and physician assistants, could provide compensable medical services for an injured worker without authorization for up to 30 days from the date of the occupational injury or illness or for 12 office visits, whichever came first. Chiropractors could function as an attending physician for any 30-day or 12-visit period within a worker's initial claim, and were considered a non-attending provider once the worker exhausted the treatment limits. House Bill 2756 (2007) implemented recommendations from the MLAC regarding the role of health care providers in Oregon's workers' compensation system (see *Recent Legislation* section).

### **Recent Legislation**

House Bill 2244 (2007) continues the method for calculating permanent partial disability awards for workers' compensation injuries. All workers eligible for permanent partial disability receive an impairment benefit tied to Oregon's average weekly wage. In addition, based on return to work status, the worker's permanent partial disability award could also include an amount for work disability based on the worker's earnings at injury. MLAC is required to review permanent partial disability benefits and make recommendations on a biennial basis.

House Bill 2247 (2007) permanently established

the role of nurse practitioners in the workers' compensation system. Nurse practitioners are allowed to provide compensable medical services to injured workers for up to 90 days, authorize temporary disability payments for up to 60 days, and release the worker to and manage the worker's return to work in that time period. Workers are also allowed to "bring" their nurse practitioner(s) into a managed care organization under specific circumstances.

House Bill 2460 (2007) clarifies that family leave cannot be applied to an employee who cannot work due to a "disabling compensable injury" as stated on an accepted workers' compensation claim. An employee who refuses to accept light duty or modified employment that is suitable prior to becoming medically stationary may use family leave upon refusing the offer of employment without additional written or oral notice.

House Bill 2756 (2007) modifies the timeframe for all health care providers defined as an attending physician from 30 to 60 days from the date of the first visit on the initial claim and from 12 to 18 visits (whichever comes first), and allows podiatrists, naturopaths, and physician assistants to function as an attending physician. A medical service provider who is not qualified to be an attending physician may provide compensable medical service for a period of 30 days from the date of the first visit on the initial claim. A chiropractor serving as an attending physician may authorize the payment of temporary disability benefits for a period not to exceed 30 days from the first visit on the initial claim, and a qualified attending physician that is serving as a worker's attending physician at the time of claim closure may make findings regarding the worker's impairment for the purpose of evaluating disability.

**Staff and Agency Contacts**

John Shilts

Department of Consumer and Business Services

[Workers' Compensation Division](#)

Administrator

503-947-7500

Theresa Van Winkle

[Legislative Committee Services](#)

503-986-1496