

# D R A F T

## SUMMARY

Excludes sick leave pay from definition of “payroll” for purpose of workers’ compensation calculations.

### A BILL FOR AN ACT

Relating to definition of “payroll” under Workers’ Compensation Law; amending ORS 656.005.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 656.005 is amended to read:

656.005. (1) “Average weekly wage” means the Oregon average weekly wage in covered employment, as determined by the Employment Department, for the last quarter of the calendar year preceding the fiscal year in which the injury occurred.

(2) “Beneficiary” means an injured worker, and the spouse in a marriage, child or dependent of a worker, who is entitled to receive payments under this chapter. “Beneficiary” does not include:

(a) A spouse of an injured worker living in a state of abandonment for more than one year at the time of the injury or subsequently. A spouse who has lived separate and apart from the worker for a period of two years and who has not during that time received or attempted by process of law to collect funds for support or maintenance is considered living in a state of abandonment.

(b) A person who intentionally causes the compensable injury to or death of an injured worker.

(3) “Board” means the Workers’ Compensation Board.

1 (4) “Carrier-insured employer” means an employer who provides workers’  
2 compensation coverage with the State Accident Insurance Fund Corporation  
3 or an insurer authorized under ORS chapter 731 to transact workers’ com-  
4 pensation insurance in this state.

5 (5) “Child” includes a posthumous child, a child legally adopted prior to  
6 the injury, a child toward whom the worker stands in loco parentis, a child  
7 born out of wedlock and a stepchild, if such stepchild was, at the time of the  
8 injury, a member of the worker’s family and substantially dependent upon  
9 the worker for support. A dependent child who is an invalid is a child, for  
10 purposes of benefits, regardless of age, so long as the child was an invalid  
11 at the time of the accident and thereafter remains an invalid substantially  
12 dependent on the worker for support. For purposes of this chapter, a de-  
13 pendent child who is an invalid is considered to be a child under 18 years  
14 of age.

15 (6) “Claim” means a written request for compensation from a subject  
16 worker or someone on the worker’s behalf, or any compensable injury of  
17 which a subject employer has notice or knowledge.

18 (7)(a) A “compensable injury” is an accidental injury, or accidental injury  
19 to prosthetic appliances, arising out of and in the course of employment re-  
20 quiring medical services or resulting in disability or death; an injury is ac-  
21 cidental if the result is an accident, whether or not due to accidental means,  
22 if it is established by medical evidence supported by objective findings, sub-  
23 ject to the following limitations:

24 (A) No injury or disease is compensable as a consequence of a  
25 compensable injury unless the compensable injury is the major contributing  
26 cause of the consequential condition.

27 (B) If an otherwise compensable injury combines at any time with a pre-  
28 existing condition to cause or prolong disability or a need for treatment, the  
29 combined condition is compensable only if, so long as and to the extent that  
30 the otherwise compensable injury is the major contributing cause of the  
31 disability of the combined condition or the major contributing cause of the

1 need for treatment of the combined condition.

2 (b) "Compensable injury" does not include:

3 (A) Injury to any active participant in assaults or combats which are not  
4 connected to the job assignment and which amount to a deviation from cus-  
5 tomary duties;

6 (B) Injury incurred while engaging in or performing, or as the result of  
7 engaging in or performing, any recreational or social activities primarily for  
8 the worker's personal pleasure; or

9 (C) Injury the major contributing cause of which is demonstrated to be  
10 by a preponderance of the evidence the injured worker's consumption of al-  
11 coholic beverages or the unlawful consumption of any controlled substance,  
12 unless the employer permitted, encouraged or had actual knowledge of such  
13 consumption.

14 (c) A "disabling compensable injury" is an injury which entitles the  
15 worker to compensation for disability or death. An injury is not disabling  
16 if no temporary benefits are due and payable, unless there is a reasonable  
17 expectation that permanent disability will result from the injury.

18 (d) A "nondisabling compensable injury" is any injury which requires  
19 medical services only.

20 (8) "Compensation" includes all benefits, including medical services, pro-  
21 vided for a compensable injury to a subject worker or the worker's benefi-  
22 ciaries by an insurer or self-insured employer pursuant to this chapter.

23 (9) "Department" means the Department of Consumer and Business Ser-  
24 vices.

25 (10) "Dependent" means any of the following-named relatives of a worker  
26 whose death results from any injury: Parent, grandparent, stepparent,  
27 grandson, granddaughter, brother, sister, half sister, half brother, niece or  
28 nephew, who at the time of the accident, are dependent in whole or in part  
29 for their support upon the earnings of the worker. Unless otherwise provided  
30 by treaty, aliens not residing within the United States at the time of the  
31 accident other than parent, spouse in a marriage or children are not included

1 within the term “dependent.”

2 (11) “Director” means the Director of the Department of Consumer and  
3 Business Services.

4 (12)(a) “Doctor” or “physician” means a person duly licensed to practice  
5 one or more of the healing arts in any country or in any state, territory or  
6 possession of the United States within the limits of the license of the  
7 licentiate.

8 (b) Except as otherwise provided for workers subject to a managed care  
9 contract, “attending physician” means a doctor, physician or physician as-  
10 sistant who is primarily responsible for the treatment of a worker’s  
11 compensable injury and who is:

12 (A) A medical doctor or doctor of osteopathy licensed under ORS 677.100  
13 to 677.228 by the Oregon Medical Board, or a podiatric physician and sur-  
14 geon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board,  
15 an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry  
16 or a similarly licensed doctor in any country or in any state, territory or  
17 possession of the United States; or

18 (B) For a cumulative total of 60 days from the first visit on the initial  
19 claim or for a cumulative total of 18 visits, whichever occurs first, to any  
20 of the medical service providers listed in this subparagraph, a:

21 (i) Doctor or physician licensed by the State Board of Chiropractic Ex-  
22 aminers for the State of Oregon under ORS chapter 684 or a similarly li-  
23 censed doctor or physician in any country or in any state, territory or  
24 possession of the United States;

25 (ii) Physician assistant licensed by the Oregon Medical Board in accord-  
26 ance with ORS 677.505 to 677.525 or a similarly licensed physician assistant  
27 in any country or in any state, territory or possession of the United States;  
28 or

29 (iii) Doctor of naturopathy or naturopathic physician licensed by the  
30 Oregon Board of Naturopathic Medicine under ORS chapter 685 or a simi-  
31 larly licensed doctor or physician in any country or in any state, territory

1 or possession of the United States.

2 (c) Except as otherwise provided for workers subject to a managed care  
3 contract, “attending physician” does not include a physician who provides  
4 care in a hospital emergency room and refers the injured worker to a pri-  
5 mary care physician for follow-up care and treatment.

6 (d) “Consulting physician” means a doctor or physician who examines a  
7 worker or the worker’s medical record to advise the attending physician or  
8 nurse practitioner authorized to provide compensable medical services under  
9 ORS 656.245 regarding treatment of a worker’s compensable injury.

10 (13)(a) “Employer” means any person, including receiver, administrator,  
11 executor or trustee, and the state, state agencies, counties, municipal corpo-  
12 rations, school districts and other public corporations or political subdi-  
13 visions, who contracts to pay a remuneration for and secures the right to  
14 direct and control the services of any person.

15 (b) Notwithstanding paragraph (a) of this subsection, for purposes of this  
16 chapter, the client of a temporary service provider is not the employer of  
17 temporary workers provided by the temporary service provider.

18 (c) As used in paragraph (b) of this subsection, “temporary service pro-  
19 vider” has the meaning for that term provided in ORS 656.850.

20 (14) “Insurer” means the State Accident Insurance Fund Corporation or  
21 an insurer authorized under ORS chapter 731 to transact workers’ compen-  
22 sation insurance in this state or an assigned claims agent selected by the  
23 director under ORS 656.054.

24 (15) “Consumer and Business Services Fund” means the fund created by  
25 ORS 705.145.

26 (16) “Invalid” means one who is physically or mentally incapacitated from  
27 earning a livelihood.

28 (17) “Medically stationary” means that no further material improvement  
29 would reasonably be expected from medical treatment, or the passage of time.

30 (18) “Noncomplying employer” means a subject employer who has failed  
31 to comply with ORS 656.017.

1 (19) “Objective findings” in support of medical evidence are verifiable  
2 indications of injury or disease that may include, but are not limited to,  
3 range of motion, atrophy, muscle strength and palpable muscle spasm. “Ob-  
4 jective findings” does not include physical findings or subjective responses  
5 to physical examinations that are not reproducible, measurable or observa-  
6 ble.

7 (20) “Palliative care” means medical service rendered to reduce or mod-  
8 erate temporarily the intensity of an otherwise stable medical condition, but  
9 does not include those medical services rendered to diagnose, heal or per-  
10 manently alleviate or eliminate a medical condition.

11 (21) “Party” means a claimant for compensation, the employer of the in-  
12 jured worker at the time of injury and the insurer, if any, of such employer.

13 (22) “Payroll” means a record of wages payable to workers for their ser-  
14 vices and includes commissions, value of exchange labor and the reasonable  
15 value of board, rent, housing, lodging or similar advantage received from the  
16 employer. However, “payroll” does not include overtime pay, vacation pay,  
17 **sick leave pay**, bonus pay, tips, amounts payable under profit-sharing  
18 agreements or bonus payments to reward workers for safe working practices.  
19 Bonus pay is limited to payments which are not anticipated under the con-  
20 tract of employment and which are paid at the sole discretion of the em-  
21 ployer. The exclusion from payroll of bonus payments to reward workers for  
22 safe working practices is only for the purpose of calculations based on pay-  
23 roll to determine premium for workers’ compensation insurance, and does not  
24 affect any other calculation or determination based on payroll for the pur-  
25 poses of this chapter.

26 (23) “Person” includes partnership, joint venture, association, limited li-  
27 ability company and corporation.

28 (24)(a) “Preexisting condition” means, for all industrial injury claims, any  
29 injury, disease, congenital abnormality, personality disorder or similar con-  
30 dition that contributes to disability or need for treatment, provided that:

31 (A) Except for claims in which a preexisting condition is arthritis or an

1 arthritic condition, the worker has been diagnosed with such condition, or  
2 has obtained medical services for the symptoms of the condition regardless  
3 of diagnosis; and

4 (B)(i) In claims for an initial injury or omitted condition, the diagnosis  
5 or treatment precedes the initial injury;

6 (ii) In claims for a new medical condition, the diagnosis or treatment  
7 precedes the onset of the new medical condition; or

8 (iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the  
9 diagnosis or treatment precedes the onset of the worsened condition.

10 (b) "Preexisting condition" means, for all occupational disease claims, any  
11 injury, disease, congenital abnormality, personality disorder or similar con-  
12 dition that contributes to disability or need for treatment and that precedes  
13 the onset of the claimed occupational disease, or precedes a claim for wors-  
14 ening in such claims pursuant to ORS 656.273 or 656.278.

15 (c) For the purposes of industrial injury claims, a condition does not  
16 contribute to disability or need for treatment if the condition merely renders  
17 the worker more susceptible to the injury.

18 (25) "Self-insured employer" means an employer or group of employers  
19 certified under ORS 656.430 as meeting the qualifications set out by ORS  
20 656.407.

21 (26) "State Accident Insurance Fund Corporation" and "corporation"  
22 mean the State Accident Insurance Fund Corporation created under ORS  
23 656.752.

24 (27) "Subject employer" means an employer who is subject to this chapter  
25 as provided by ORS 656.023.

26 (28) "Subject worker" means a worker who is subject to this chapter as  
27 provided by ORS 656.027.

28 (29) "Wages" means the money rate at which the service rendered is  
29 recompensed under the contract of hiring in force at the time of the accident,  
30 including reasonable value of board, rent, housing, lodging or similar ad-  
31 vantage received from the employer, and includes the amount of tips required

1 to be reported by the employer pursuant to section 6053 of the Internal  
2 Revenue Code of 1954, as amended, and the regulations promulgated pursuant  
3 thereto, or the amount of actual tips reported, whichever amount is greater.  
4 The State Accident Insurance Fund Corporation may establish assumed  
5 minimum and maximum wages, in conformity with recognized insurance  
6 principles, at which any worker shall be carried upon the payroll of the  
7 employer for the purpose of determining the premium of the employer.

8 (30) "Worker" means any person, including a minor whether lawfully or  
9 unlawfully employed, who engages to furnish services for a remuneration,  
10 subject to the direction and control of an employer and includes salaried,  
11 elected and appointed officials of the state, state agencies, counties, cities,  
12 school districts and other public corporations, but does not include any per-  
13 son whose services are performed as an inmate or ward of a state institution  
14 or as part of the eligibility requirements for a general or public assistance  
15 grant. For the purpose of determining entitlement to temporary disability  
16 benefits or permanent total disability benefits under this chapter, "worker"  
17 does not include a person who has withdrawn from the workforce during the  
18 period for which such benefits are sought.

19 (31) "Independent contractor" has the meaning for that term provided in  
20 ORS 670.600.

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