Chapter 655 — Benefits for Injured Trainees and Inmates

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655.445 [1963 c.472 §§10,12,14; 1967 c.335 §53; 1967 c.637 §§24, 24a; repealed by 1979 c.814 §1]

655.450 [1963 c.472 §11; repealed by 1979 c.814 §1]

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BENEFITS FOR INJURED INMATES OF PENITENTIARY, CORRECTIONAL INSTITUTION OR WORK CAMP

655.505 Definitions for ORS 655.505 to 655.555. As used in ORS 655.505 to 655.555:

(1) “Attending practitioner” means Department of Corrections medical staff, or specialists assisting Department of Corrections medical staff, while the inmate is committed to the physical and legal custody of the Department of Corrections. At all other times, “attending practitioner” means a person licensed in Oregon or another state as a medical doctor, doctor of osteopathy, doctor of optometry, doctor of dentistry or nurse practitioner who provides services within the scope of the license.

(2) “Authorized work or occupational training assignment” means the work assignment of an inmate:

(a) As authorized by ORS 421.305 to 421.340;

(b) As authorized by ORS 421.450 to 421.480;

(c) As authorized by ORS 144.410 to 144.525; or

(d) In any other inmate activity or program, including, but not limited to, on-the-job training established by the

Department of Corrections under section 41, Article I, Oregon Constitution, whether or not compensation has been established by the Director of the Department of Corrections for participation in the activity or program.

(3) “Department” means the Oregon Department of Administrative Services.

(4) “Injury” means:

(a) An accidental injury or accidental injury to prosthetic devices occurring in the course of, and caused in major part by, an authorized work or occupational training assignment requiring medical services and resulting in disability or death; or

(b) Any disease or infection that:

(A) Arises out of, and in the course of, an authorized work or occupational training assignment;

(B) Is caused in major part by ingestion, absorption or inhalation of, or contact with, dust, fumes, vapors, gases, radiation or other substances to which a worker who is not an inmate is not ordinarily subjected or exposed while working;

(C) Requires medical services; and

(D) Results in disability or death.

(5) “Inmate” means a person committed to the physical and legal custody of the Department of Corrections.

(6) “Medical services” means reasonable and necessary services prescribed by an attending practitioner for conditions resulting from injury for a period that the nature of the injury or the process of recovery requires. “Medical services” includes medical, surgical, hospital, nursing, ambulance and other related services, drugs, medicine, crutches and prosthetic appliances, braces and supports and, when necessary, physical restorative services.

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

(8) The terms “beneficiary,” “child” and “dependent” are defined as provided in ORS 656.005. [1963 c.527 §1; 1967 c.504 §10; 1969 c.247 §6; 1969 c.597 §63; 1975 c.631 §1; 1987 c.320 §241; 1991 c.566 §7; 1993 c.500 §50; 1995 c.384 §18; 1997 c.851 §14]

655.510 Inmates to receive benefits for injuries in authorized employment; establishing injury claim; exclusive remedy. (1) Every inmate shall receive benefits as provided in ORS 655.505 to 655.555 for injury sustained in an authorized work or occupational training assignment:

(a) Where the injury is proximately caused by or received in the course of the authorized work or occupational training assignment, with or without negligence of the inmate;

(b) Where the injury is not intentionally self-inflicted;

(c) Where the injury is not a result of a willful violation of work rules or rules regulating inmate conduct or premises security; and

(d) Where the injury does not occur to an active participant in an assault or combat that is not connected to the job assignment and that constitutes a deviation from customary duties.

(2) An injury must be established by medical evidence supported by objective findings. The medical evidence must be substantiated by verifiable pathological indication of injury that includes, but is not limited to, range of motion, atrophy, muscle strength, palpable muscle spasm and diagnostic evidence substantiated by clinical findings. Objective findings do not include physical findings or subjective responses to physical examinations that are not consistently reproducible, measurable or observable, or do not fit an anatomical pattern and that cannot be demonstrated after reasonable medical evaluation. A claimant’s statement to a physician or other party does not constitute objective medical evidence sufficient to substantiate an injury.

(3) The following circumstances do not constitute a basis for establishing an injury:

(a) Compulsion to participate in employment or training;

(b) Disciplinary action taken by the Department of Corrections;

(c) Action taken by the Department of Corrections to protect the safety of persons other than inmates or of other inmates or to maintain order; or

(d) Actions of other inmates.

(4) The filing of claims for benefits under ORS 655.505 to 655.555 is the exclusive remedy of an inmate or beneficiary of the inmate for injuries compensable under ORS 655.505 to 655.555 against the state or its political subdivisions or any person or entity that contracts with the Department of Corrections for the services of inmate labor, any person or entity that employs an inmate in a work release program established under ORS 144.420 or any owner or manager of premises where authorized work or occupational training assignments occur, regardless of negligence. This section applies to any work-related injury to, or conditions of, an inmate whether or not the injury is determined

to be compensable under ORS 655.505 to 655.555. [1963 c.527 §§2,4; 1995 c.384 §19]

655.515 Benefits, training and medical services under ORS 655.505 to 655.555. If an inmate sustains an injury as described in ORS 655.510, benefits shall be delivered in a manner similar to that provided for injured workers under the workers' compensation laws of this state, except that:

(1) No benefits, except medical services and any occupational training or rehabilitation services provided by the Department of Corrections, shall accrue to the inmate until the date of release from confinement and shall be based upon the condition of the inmate at that time.

(2) Benefits shall be discontinued during any subsequent period of reconfinement in a penal institution.

(3) Costs of rehabilitation services to disabled inmates shall be paid out of the Insurance Fund established under ORS 278.425 in an amount approved by the Oregon Department of Administrative Services, which shall be the reasonable and necessary cost of such services.

(4) Medical services when the inmate is confined in a Department of Corrections facility shall be those provided by the Department of Corrections. After release, medical services shall be paid only if necessary to the process of recovery and as prescribed by the attending practitioner. No medical services may be paid after the attending practitioner has determined that the inmate is medically stationary other than for reasonable, periodic repair or replacement of prosthetic appliances. The department, by rule, may require that medical and rehabilitation services after release must be provided directly by the state or its contracted managed care organization. [1963 c.527 §3; 1991 c.566 §8; 1995 c.384 §20]

655.520 Filing claim for benefits; initial award; limitations. (1) Claims for entitlement to benefits under ORS 655.505 to 655.555 shall be filed by application with the Oregon Department of Administrative Services as provided by rules adopted by the department, to the extent not inconsistent with ORS 655.505 to 655.555. Such claims shall be filed within the required periods after the injury even though actual benefits may not accrue until release of the inmate from confinement. The department may, before acting upon a claim, require further information for determination of eligibility under ORS 655.505 to 655.555.

(2) When a claim is approved, the department shall make an initial estimate of award conditioned as provided in ORS 655.515. Upon release of the inmate from confinement, the inmate shall apply for an award and the department shall reaffirm or modify its initial award in a manner appropriate to the condition of the inmate upon release.

(3) The rights to benefits under ORS 655.505 to 655.555 shall be barred unless written claim is filed with the department within 90 days after the injury, or if death results therefrom, within 90 days after death. However, if death occurs more than one year after the injury, the right shall be barred unless prior written claim based on the injury has been timely filed. The inmate must make written application for an award no later than 180 days following the release of the inmate from confinement. The requirements of this subsection may be waived by the department on the ground that, for good and sufficient reason, the claim could not be filed on time. [1963 c.527 §5; 1965 c.285 §79d; 1991 c.566 §9; 1995 c.384 §21]

655.525 Procedure for review of claims. Except as otherwise provided by rule of the Oregon Department of Administrative Services, an inmate or the beneficiary of the inmate may obtain review of action taken on the claim as provided in ORS 656.283 to 656.304. [1963 c.527 §6; 1965 c.285 §79e; 1983 c.740 §241a; 1995 c.384 §22]

655.530 Benefits under ORS 655.505 to 655.555 not assignable; exemption. No benefits payable under ORS 655.505 to 655.555 are subject to assignment prior to their receipt by the person entitled thereto, nor shall they pass by operation of law. These benefits and the right to receive them are also exempt from seizure on execution, attachment or garnishment, or by the process of any court. [1963 c.527 §7]

655.535 Charging claims costs. Claims payments and administrative costs of the Oregon Department of Administrative Services shall be charged by the department to the Department of Corrections pursuant to ORS 278.435. [1963 c.527 §§8,12; 1981 c.211 §1; 1987 c.320 §242; 1991 c.566 §10]

655.540 Disposition and use of assessments. (1) The assessments paid to the Oregon Department of Administrative Services by the Department of Corrections shall be credited as a component of the Insurance Fund pursuant to ORS 278.425 and 278.435.

(2) Funds credited to the inmate injury component of the Insurance Fund for the purposes of ORS 655.505 to

655.555 may be used to effect insurance or reinsurance with any authority or instrumentality, public or private, or otherwise to distribute the liability for compensation payable to persons entitled to recover under ORS 655.505 to 655.555. [1963 c.527 §§9,11; 1967 c.335 §54; 1967 c.637 §§25,25a; 1989 c.966 §66; 1991 c.566 §11]

655.545 Liability for benefits contingent on reserves in fund; precedence of expenses; priority among claimants. Liability of the Oregon Department of Administrative Services or the Insurance Fund for the payment of benefits under ORS 655.505 to 655.555 is contingent upon and limited by the availability of reserves in the inmate injury component of the Insurance Fund. In the event that the reserves in the inmate injury component of the Insurance Fund are not sufficient to meet the benefit payments and administration cost for a given period, the expenses of the department shall have precedence over all other claims. Thereafter, priority among claimants is determined according to the time of filing of the claim. [1963 c.527 §10; 1991 c.566 §12]

655.550 Assessment of Oregon Department of Administrative Services for costs of Workers' Compensation Board. The Workers' Compensation Board may from time to time assess the Oregon Department of Administrative Services for the reasonable cost of services provided by the board under ORS 655.505 to 655.555. [1965 c.285 §79g; 1991 c.566 §13]

655.555 Rules for administration of fund for inmate injuries. The Oregon Department of Administrative Services, with the approval of the Department of Corrections, shall adopt rules necessary to administer the inmate injury fund. The rules may provide for procedures, benefits and coverage that vary from the workers' compensation system. [1995 c.384 §24; 1997 c.851 §15]

BENEFITS FOR INJURED OCCUPATIONALLY LIMITED TRAINEES

655.605 Definitions for ORS 655.605 and 655.615. As used in ORS 655.605 and 655.615:

(1) "Department" means the Department of Human Services.

(2) "Employer" means any person who provides on-the-job training for trainees in cooperation with the department or the Commission for the Blind even though no wages or salary is paid to the trainee.

(3) "Employment" means work experience through nonremunerative, on-the-job training as a part of a special training program of the department or the Commission for the Blind occurring on the premises of the employer or at such other places as the department or the Commission for the Blind and the employer may agree.

(4) "Injury" means any personal injury sustained by a trainee by accident, disease or infection arising out of and in the course of employment, or death resulting proximately therefrom as provided in ORS chapter 656.

(5) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident Insurance Fund Corporation created under ORS 656.752.

(6) "Trainee" or "client" means an occupationally limited person who is participating in a special training or evaluation program of the department or the Commission for the Blind in which the trainee is enrolled. [1971 c.581 §1; 1973 c.429 §1; 1979 c.814 §5; 1981 c.184 §1; 1989 c.224 §123; 2001 c.900 §213]

655.615 Payment of benefits to injured occupationally limited trainees. (1) All clients participating in a work evaluation or work experience program of the Department of Human Services are considered as workers subject to ORS chapter 656 for purposes of this section.

(2) The department shall submit a written statement to the State Accident Insurance Fund Corporation that includes a description of the work to be performed by such clients.

(3) Upon receiving the written statement, the corporation may fix assumed wage rates for the clients enrolled in the work evaluation or work experience program, without regard to ORS chapter 652, ORS 653.010 to 653.545 or 653.991, which may be used only for purposes of computations under ORS chapter 656.

(4) The department shall maintain a separate list of the names of those enrolled in its work evaluation or work experience program; and shall, upon request, furnish or make such list available to the corporation. Clients covered under this section are entitled to the benefits of ORS chapter 656 and they are entitled to such benefits if injured as provided in ORS 656.156 and 656.202 while performing any duties arising out of and in the course of their participation in the work evaluation or work experience program, provided the duties being performed are among those described in the written statement referred to in subsection (2) of this section.

(5) The filing of claims for benefits under this section is the exclusive remedy of a trainee or the beneficiary of the

trainee for injuries compensable under ORS chapter 656 against the state, its political subdivisions, its officers and employees, or the person who provides on-the-job training or job evaluation services for the injured client, regardless of negligence except that the exclusive remedy provisions shall not apply in the case of suits brought under the provisions of ORS 656.576 to 656.596 against third parties. [1971 c.581 §2; 1981 c.184 §2; 1983 c.706 §1]

655.990 [Amended by 1965 c.285 §86; 1967 c.359 §698; renumbered as part of 652.990]