

**CHAPTER 71**

AN ACT

HB 2338

Relating to workers' compensation benefits for certain beneficiaries; creating new provisions; and amending ORS 656.005, 656.204 and 656.208.

**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)(a) "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.

(b) "Beneficiary" does not include:

[(a)] (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)] (B) A person who intentionally causes the compensable injury to or death of an injured worker.

(3) "Board" means the Workers' Compensation Board.

(4) "Carrier-insured employer" means an employer who provides workers' compensation coverage with the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state.

(5) "Child" means a child of an injured worker, including:

(a) [includes] A posthumous child[.];

(b) A child legally adopted [prior to] before the injury[.];

(c) A child toward whom the worker stands in loco parentis[.];

(d) A child born out of wedlock;

(e) [and] A stepchild, if [such] the stepchild was, at the time of the injury, a member of the worker's family and substantially dependent upon the worker for support[.]; and

(f) A [dependent] child of any age who [is an invalid is a child, for purposes of benefits, regardless of age, so long as the child was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support. For purposes of this chapter, a dependent child who is an invalid is considered to be a child under 18 years of age] was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support.

(6) "Claim" means a written request for compensation from a subject worker or someone on the worker's behalf, or any compensable injury of which a subject employer has notice or knowledge.

(7)(a) A "compensable injury" is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death; an injury is accidental if the result is an accident, whether or not due to accidental means, if it is established by medical evidence supported by objective findings, subject to the following limitations:

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

(B) If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition.

(b) "Compensable injury" does not include:

(A) Injury to any active participant in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties;

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

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

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

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

(8) "Compensation" includes all benefits, including medical services, provided for a compensable injury to a subject worker or the worker's beneficiaries by an insurer or self-insured employer pursuant to this chapter.

(9) "Department" means the Department of Consumer and Business Services.

(10)(a) "Dependent" means any of the [following-named] following relatives of the worker who, at the time of an accident, depended in whole or in part for the relative's support on the earnings of a worker [whose death results from any] who dies as a result of an injury: [Parent, grandparent, stepparent, grandson, granddaughter,

brother, sister, half sister, half brother, niece or nephew, who at the time of the accident, are dependent in whole or in part for their support upon the earnings of the worker. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than parent, spouse in a marriage or children are not included within the term "dependent."]

- (A) A parent, grandparent or stepparent;
- (B) A grandson or granddaughter;
- (C) A brother or sister or half-brother or half-sister; and
- (D) A niece or nephew.

(b) "Dependent" does not include an alien who does not reside within the United States at the time of the accident, other than a parent, a spouse or children, unless a treaty provides otherwise.

(11) "Director" means the Director of the Department of Consumer and Business Services.

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

(b) Except as otherwise provided for workers subject to a managed care contract, "attending physician" means a doctor, physician or physician assistant who is primarily responsible for the treatment of a worker's compensable injury and who is:

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

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

(i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States;

(ii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or possession of the United States; or

(iii) Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States.

(c) Except as otherwise provided for workers subject to a managed care contract, "attending physician" does not include a physician who provides care in a hospital emergency room and refers the

injured worker to a primary care physician for follow-up care and treatment.

(d) "Consulting physician" means a doctor or physician who examines a worker or the worker's medical record to advise the attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 regarding treatment of a worker's compensable injury.

(13)(a) "Employer" means any person, including receiver, administrator, executor or trustee, and the state, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions, who contracts to pay a remuneration for and secures the right to direct and control the services of any person.

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

(c) As used in paragraph (b) of this subsection, "temporary service provider" has the meaning for that term provided in ORS 656.850.

(14) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state or an assigned claims agent selected by the director under ORS 656.054.

(15) "Consumer and Business Services Fund" means the fund created by ORS 705.145.

(16) "Invalid" means one who is physically or mentally incapacitated from earning a livelihood.

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

(18) "Noncomplying employer" means a subject employer who has failed to comply with ORS 656.017.

(19) "Objective findings" in support of medical evidence are verifiable indications of injury or disease that may include, but are not limited to, range of motion, atrophy, muscle strength and palpable muscle spasm. "Objective findings" does not include physical findings or subjective responses to physical examinations that are not reproducible, measurable or observable.

(20) "Palliative care" means medical service rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal or permanently alleviate or eliminate a medical condition.

(21) "Party" means a claimant for compensation, the employer of the injured worker at the time of injury and the insurer, if any, of such employer.

(22) "Payroll" means a record of wages payable to workers for their services and includes commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or similar advantage received from the employer. However, "payroll" does not include overtime pay, vacation pay,

bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments to reward workers for safe working practices. Bonus pay is limited to payments which are not anticipated under the contract of employment and which are paid at the sole discretion of the employer. The exclusion from payroll of bonus payments to reward workers for safe working practices is only for the purpose of calculations based on payroll to determine premium for workers' compensation insurance, and does not affect any other calculation or determination based on payroll for the purposes of this chapter.

(23) "Person" includes partnership, joint venture, association, limited liability company and corporation.

(24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment, provided that:

(A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the worker has been diagnosed with such condition, or has obtained medical services for the symptoms of the condition regardless of diagnosis; and

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

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

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

(b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim for worsening in such claims pursuant to ORS 656.273 or 656.278.

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

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

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

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

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

(29) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including reasonable value of board, rent, housing,

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

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

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

**SECTION 2.** ORS 656.204 is amended to read:  
656.204. If death results from *[the]* **an** accidental injury, payments *[shall]* **must** be made as follows:

(1)(a) The cost of final disposition of the body and funeral expenses, including but not limited to transportation of the body, *[shall]* **must** be paid, not to exceed 20 times the average weekly wage in any case.

(b) The insurer or self-insured employer shall pay bills submitted for disposition and funeral expenses up to the benefit limit established in paragraph (a) of this subsection. If any part of the benefit remains unpaid 60 days after **the date of death or the date of claim acceptance, whichever is later**, the insurer or self-insured employer shall pay the unpaid amount to the estate of the worker.

(2)(a) If *[the]* **a** worker is survived by a spouse, monthly benefits *[shall]* **must** be paid in an amount equal to 4.35 times 66-2/3 percent of the average weekly wage to the surviving spouse until remarriage. The payment shall cease at the end of the month in which the remarriage occurs.

*[(b) If the worker is survived by a spouse, monthly benefits also shall be paid in an amount equal to 4.35 times 10 percent of the average weekly wage for each child of the deceased who is substantially dependent on the spouse for support, until such child becomes 18 years of age.]*

*[(c) If the worker is survived by a spouse, monthly benefits also shall be paid in an amount equal to 4.35 times 25 percent of the average weekly wage for each child of the deceased who is not substantially de-*

pendent on the spouse for support, until such child becomes 18 years of age.]

[(d) If a surviving spouse receiving monthly payments dies, leaving a child who is entitled to compensation on account of the death of the worker, a monthly benefit equal to 4.35 times 25 percent of the average weekly wage shall be paid to each such child until the child becomes 18 years of age or the child's entitlement to benefits under subsection (8) of this section ceases, whichever is later.]

[(e) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.]

[(f) In no event shall the total monthly benefits provided for in this subsection exceed 4.35 times 133-1/3 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each child will be reduced proportionally.]

[(3)(a)] **(b)** Upon remarriage, a surviving spouse [shall] **must** be paid 36 times the monthly benefit in a lump sum as final payment of the [claim, but the monthly payments for each child shall continue as before] **surviving spousal benefit**.

[(b)] **(c)** If, after the date of the subject worker's death, the surviving spouse cohabits with another person for an aggregate period of more than one year and a child has resulted from the relationship, the surviving spouse [shall] **must** be paid 36 times the monthly benefit in a lump sum as final payment of the [claim, but the monthly payment for any child who is entitled to compensation on account of the death of the worker shall continue as before] **surviving spousal benefit**.

[(4)(a)] **(3)(a)** If [the] a worker [does not leave a spouse but] leaves a child under [18] **19** years of age, a monthly benefit equal to 4.35 times 25 percent of the average weekly wage [shall] **must** be paid to each such child until the child becomes [18] **19** years of age.

[(b) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.]

[(c)] **(b)** [In no event shall] The total benefits provided for in this subsection **may not** exceed 4.35 times 133-1/3 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each child [will] **must** be reduced proportionally.

[(5)(a)] **(4)(a)** If [the] a worker leaves a dependent [other than a surviving spouse or a child], a monthly payment [shall] **must** be made to each dependent **that is** equal to 50 percent of the average monthly support **the dependent** actually received [by such dependent] from the worker during the 12 months [next] preceding the occurrence of the accidental injury. If a dependent is under the age of [18] **19** years at the time of the accidental injury, the payment to the dependent [shall] **must** cease when [such] **the** dependent becomes [18] **19** years of age. The payment to any dependent [shall] **must** cease under the same circumstances that would have terminated the dependency had the injury not happened.

[(b) If the dependent who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.]

[(c)] **(b)** [In no event shall] The total benefits provided for in this subsection **may not** exceed 4.35 times 10 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each dependent [will] **must** be reduced proportionally.

[(6)] **(5)** If a child is an invalid at the time the child otherwise becomes ineligible for benefits under this section, the payment to the child [shall] **must** continue while the child remains an invalid. If a person is entitled to payment because the person is an invalid, payment [shall] **must** terminate when the person ceases to be an invalid.

[(7) If, at the time of the death of a worker, the child of the worker or dependent has become 17 years of age but is under 18 years of age, the child or dependent shall receive the payment provided in this section for a period of one year from the date of the death. However, if after such period the child is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.]

[(8)(a)] **(6)(a)** [Benefits under this section which are to be paid as provided in this subsection shall be paid for the child or dependent until the child or dependent becomes 19 years of age. If, however, the child or dependent is attending higher education or begins attending higher education within six months of the date the child or dependent leaves high school, benefits shall be paid until the child or dependent becomes 23 years of age, ceases attending higher education or graduates from an approved institute or program, whichever is earlier.] **If a child or dependent is between 19 and 26 years of age at the time of a worker's death, or becomes 19 years of age after the worker's death, monthly benefits must be paid for not more than 48 months until the age of 26 during a period in which the child or dependent is completing secondary education, is obtaining a general educational development certificate or is attending a program of higher education. The child or dependent must provide an insurer or self-insured employer with documentation that enables the insurer or self-insured employer to determine the child's or dependent's eligibility for monthly benefits.**

(b) If a child or dependent who is eligible for benefits under this subsection [has no] **does not have** a surviving parent, the child or dependent [shall] **must** receive 4.35 times 66-2/3 percent of the average weekly wage [until the child or dependent becomes 23 years of age, ceases attending higher education or graduates from an approved institute or program, whichever is earlier].

(c) As used in this subsection, "attending a **program of higher education**" means regularly attending community college, college or university, or regularly attending a course of vocational or technical training designed to prepare the participant for gainful employment. A child or dependent enrolled in an educational course load of less than one-half

of that determined by the educational facility to constitute “full-time” enrollment is not “attending a program of higher education.”

[9] (7) As used in this section, “average weekly wage” has the meaning for that term provided in ORS 656.211.

**SECTION 3.** ORS 656.208 is amended to read:

656.208. *[(1)]* If *[the]* **an** injured worker dies during the period of **the worker’s** permanent total disability, whatever the cause of death, *[leaving a spouse or any dependents listed in ORS 656.204,]* **and the worker leaves a beneficiary,** payment *[shall]* **must** be made in the same manner and in the same amounts as provided in ORS 656.204.

*[(2)]* *If any surviving spouse to whom the provisions of this section apply remarries, the payments on account of a child or children shall continue to be made to the child or children the same as before the remarriage.*

**SECTION 4.** The Director of the Department of Consumer and Business Services shall adjust under ORS 656.506 (7) the amount and duration of benefits that accrue on and after the effective date of this 2017 Act for injuries that occurred

before the effective date of this 2017 Act. An insurer, or a self-insured employer, shall pay benefits that exceed the amount and duration of benefits that would have been due to a worker under the law that existed at the time of the worker’s injury and the director shall reimburse the insurer or self-insured employer from the Workers’ Benefit Fund.

**SECTION 5.** The amendments to ORS 656.005, 656.204 and 656.208 by sections 1 to 3 of this 2017 Act apply to injuries that occur on or after the effective date of this 2017 Act, except that ORS 656.204 (6)(a) applies to benefits that accrue on or after the effective date of this 2017 Act regardless of the date on which the injury occurred. The insurer shall deduct from the 48-month maximum specified for benefits in ORS 656.204 (6)(a) the number of months during which a child or dependent received benefits after the age of 19 if the child or dependent became 19 years of age before the effective date of this 2017 Act.

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