



November 2006

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Background Brief on ...

Workers' Compensation

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Background

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), from a private insurance company, or opt to self-insure. According to the 2005 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) account for about 39 percent, and the remaining 14 percent of premium share is self-insured employers.

History in Oregon - 1990 Reforms

In 1986, Oregon ranked 6th 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 on 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. Senate Bill 369 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 1.4 per 100 workers in 2003. Workers’ compensation premium rates also declined significantly over this time period.

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. MLAC was later put into statute as advisory to the Legislature and the Director of the Department of Consumer and

Business Services (DCBS, where the Workers’ Compensation Division is housed) on matters concerning workers’ compensation.

Today, 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 DCBS and its Workers’ Compensation Division 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 director of DCBS serves as an ex-officio member.

Recent Legislation

Senate Bill 757 (2003) modified 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. The provisions sunset on January 1, 2008.

Senate Bill 311 (2005) required DCBS to regulate workers’ compensation independent medical exams and to set up a certification, investigation, and sanction process for exam providers. The bill also required an expedited process for workers to appeal the insurer’s choice of medical examiner based on location.

Senate Bill 386 (2005) redefined and raised the wage threshold that a person with a permanent total disability may earn and still be eligible for prorated workers’ compensation benefits. The bill also clarified several conditions for evaluating and rescinding the permanent total disability status.

House Bill 2091 (2005) consolidated all workers’ compensation contested case reviews under the Workers Compensation Board. A small number of

cases were previously reviewed by the Office of Administrative Hearings.

House Bill 2717 (2005) required Workers' Compensation Board postponed hearings to be held no later than 120 days from the original hearing date under most circumstances and increased the expenditure limit for the board to achieve the new timeline.

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