

2009 LEGISLATION ALERTS

WORKERS' COMPENSATION

VOCATIONAL REHABILITATION

ORS 656.262 – 656.704

2009 OR LAWS CH 35 (HB 2195)

ORS 656.340 generally governs the provision of vocational services. HB 2195 amends the statute to move the provisions governing an appeal of an adverse decision on a vocational matter from ORS 656.283 to 656.340. It does not appear that the mechanics of the appeal have changed.

ORS 656.340 generally provides that the maximum length of a vocational program is 16 months. In the past, the claimant could petition for an extension and receive benefits up to 21 months, subject to an order of the Director. The statute now reads that an insurer or self-insured employer may voluntarily extend the program to a maximum of 21 months. It does not appear that this is an appealable decision.

Effective date: January 1, 2010

MEDICAL SERVICES FOR INJURED WORKERS

ORS 656.245 – 656.622

2009 OR LAWS CH 36 (HB 2197)

ORS 656.245 governs the provision of medical services for injured workers. HB 2197 corrects an omission from HB 2756 (2007), which generally expanded the length of time certain medical service providers could provide services. It also expanded the type of providers who could act as an attending physician. Generally, the time lines began from the "first visit on the initial claim." However, that change was not made for those who are not qualified as

an attending physician, such as an acupuncturist or a psychologist. This provision corrects the error and indicates that the time lines all begin with the "first visit on the initial claim."

Effective date: January 1, 2010

VOCATIONAL ASSISTANCE FOR INJURED WORKERS

ORS 656.340

2009 OR LAWS CH 312 (HB 2705)

ORS 656.340 governs the provision of vocational assistance. The process begins with an evaluation to determine the eligibility of an injured worker for vocational assistance. An evaluation is to be done within five days of having knowledge of the need for services. Previously, the statute required an evaluation if the worker did not return to the worker's regular work or other suitable work. HB 2705 eliminates this requirement if the injured worker has been released for regular work, regardless of whether that worker has returned to any type of work.

Effective date: January 1, 2010

SUPPLEMENTARY TEMPORARY DISABILITY BENEFITS

ORS 656.210

2009 OR LAWS CH 313 (HB 2707)

ORS 656.210 governs the payment of temporary total disability. There is a provision for the payment of supplementary benefits if the injured worker was working more than one job at the time of the injury. HB 2707 sets a deadline of 60 days for a worker to provide documentation

DISCLAIMER

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of wages at the other employment; otherwise, the insurer or self-insured employer need not pay the supplemental benefit. The request for the additional information must be mailed to the injured worker. The insurer and self-insured employer must receive notice of the other employment within 30 days of the initial claim.

Effective date: January 1, 2010

ATTORNEYS' FEES
ORS 656.262 – 656.386
2009 OR LAW CH 526 (HB 3345)

HB 3345 amends the award of attorneys' fees in certain situations. ORS 656.262.11(a) is amended to increase the maximum fee awarded if there has been unreasonable delay or refusal to pay compensation or an unreasonable delay in acceptance or denial of the claim from \$2000 to \$3000 absent extraordinary circumstances. This maximum fee will increase each July 1 at the same percentage increase as made to the average weekly wage defined in ORS 656.211. ORS 656.262 (12)(a) is added to provide a fee for late payment if payment is due on a disputed claim settlement authorized under ORS 656.289. However, before a late payment penalty is due, the claimant or claimant's attorney must give the insurer or self-insured employer notice and five business days to cure the error before a penalty is due. The Director is to adopt a matrix to determine the penalty.

Section 2 amends ORS 656.308. A reasonable attorney fee award under subsection (2)(d) for meaningful

participation in prevailing against a responsibility denial is increased from \$1000 to \$2500 and is to be increased each July 1 consistent with the percentage increase for the average weekly wage as defined in ORS 656.211.

Section 3 allows a fee payable to claimant's attorney in the situation where counsel prevents an order rescinding a notice of closure should not be reversed, or the compensation awarded by a reconsideration order issued under ORS 656.268, should not be reduced or disallowed.

Section 4 provides an increase in the maximum fee from \$2000 to \$3000, absent extraordinary circumstances, when a claimant's attorney prevails or obtains a settlement in cases disputing compensation benefits pursuant to ORS 656.245, 656.247, 656.260, 656.327, or 656.340. These disputes range from medical services to vocational assistance. The maximum fee increases each July 1, consistent with the increase in the average weekly wage, as defined in ORS 656.211.

Effective date: January 1, 2010

Regardless of the date of injury, this act applies to all claims for which an order is issued on or after January 1, 2010.

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