

HB 2797

SUBJECT: Requires subject employer to pay first installment of temporary disability compensation in workers' compensation claim within 14 days after employer has notice or knowledge of claim or has notice or knowledge of employee's disability, whichever is later.

SPONSOR: Representative Doherty

Existing Law:

- Requires the first payment of temporary disability to be paid within 14 days of the employer's knowledge of the claim, if the medical provider authorizes the temporary disability.

This bill:

- Provides that the first payment is due within 14 days of the employer's knowledge of the claim, or the employer's knowledge of the worker's disability, whichever is later, provided a medical provider authorizes temporary disability.

Analysis:

1. This bill amends the statute addressing the timely first payment of temporary disability compensation, also known as wage replacement or "time loss" benefits. Currently a worker is entitled to receive temporary disability payments when they begin losing time or wages from work due to an on-the-job injury. The law requires an insurer to start making payments within 14 days of the employer's knowledge of the claim if a medical provider authorizes the time off from work. This analysis assumes the bill's reference to "disability" means temporary disability when the worker first begins losing time or wages from work.
2. The bill links the payment of temporary disability benefits to the start of the worker's disability. The start of temporary disability does not always coincide with the filing of a workers' compensation claim. Workers may be injured and file a claim but continue working without missing time from work, or may not be "disabled" until later. A worker may also miss time from work, but the employer may not be aware of the claim until later. Under this bill the worker would not start receiving temporary disability benefits until the later of two dates – the employer's knowledge of the claim or their knowledge of the worker's disability.
3. The bill would not affect the timing of the first payment of temporary disability benefits where the worker is injured and is off work immediately, unless the employer is aware of the claim but not of the associated disability until a later date.
4. Under the bill, some workers may have their initial payment of disability benefits made later than under the current processes. This may happen when a worker begins missing work a few days after filing a claim, as the benefits would be due 14 days after the beginning of the temporary disability instead of 14 days after the employer's knowledge of the claim.

5. Some workers could receive the first payment of compensation earlier than under current law. In some claims, the timing of the worker's scheduled days off and the three-day waiting period can cause no benefits to be due on the 14th day after the employer's knowledge of the claim. When that happens, the insurer may wait another 14 days to re-evaluate the benefits due to be paid. The bill's language would require the first payment to be made within 14 days of the start of disability which, in these cases, would be several days earlier.
6. There may be an increase in the accuracy of some first payments as the current timing sometimes requires the insurer to issue the first payment prior to having sufficient information to accurately calculate the amount of benefits. Sometimes, the insurer must adjust subsequent benefit payments to correct the estimated amount of the first payment. However, the number of claims affected is likely to be small as disability more frequently begins at the time a claim is made or the employer has notice or knowledge.
7. The bill's proponents suggest that the department's claims processing audits will be simplified because there won't be a need to focus on the employer's date of knowledge where disability begins after that date. While that is likely in some cases, others will be more complex to review given factors including those mentioned in #5 above. Regardless, auditors will still need to evaluate the employer's date of knowledge to evaluate the timeliness of claim acceptance or denial decisions.

Questions and/or suggested amendments:

1. It would clarify the intent and help avoid potential litigation if the bill defined what is meant by "disability" for the purposes of the employer's knowledge, and what level of knowledge is required to trigger the obligation to pay benefits.
2. The bill changes "...if the attending physician... authorizes the payment..." to "...**and** the attending physician..." Because this portion of the requirement serves as a qualifier for the payment timeframe that precedes it, it isn't clear if this change is intended to adjust or eliminate the timeframe in certain cases.

Fiscal Impact to DCBS: This bill does not change the Workers' Compensation Division's administrative, regulatory, or enforcement functions and responsibilities, and there is no anticipated fiscal impact.

Other Economic Impact: Insurers and self-insured employers may be able to issue more accurate first benefit payments for this smaller portion of claims where disability doesn't begin immediately. Combined with their continuing ability to adjust subsequent benefit payments when needed, the bill's fiscal impact for these parties is expected to be minimal.

Support: Oregon Self-Insurers Association

Opposition: Unknown