



Adjust reserves? Get ready for these increased Oregon benefits

By Mary E. Briedé ■ January 23, 2018

Insurers and self-insured employers can expect to see changes in minimum and maximum permanent total disability (PTD) benefits paid to workers and fatal benefits paid to children and dependents starting as of January 1, 2018.

Both the Oregon House and Senate overwhelmingly passed House Bill 2337, which will amend ORS 656.206. Here is what the numbers look like:

- **Minimum** PTD benefits will change *from* 90% of the worker's weekly wages or \$50, whichever amount is less, **to 33% of the state average weekly wage (SAWW).**¹
- **Maximum** PTD benefits will increase *from* a cap at 100% of the SAWW **to a cap at 133% of the SAWW.**

The adjusted minimum and maximum benefits will apply to injuries that occur on or after January 1, 2018.

Changes are also on the horizon for fatal benefits paid on behalf of workers who die from a work-related injury or during a period of PTD. Both chambers unanimously passed House Bill 2338, which amends ORS 656.204 and ORS 656.208. Some of these changes to death benefits took effect on January 1, 2018, regardless of date of death or injury.

Under the previous law, the monthly benefit applies up to age 18 and, as it relates to a worker's child, requires consideration of whether the child substantially depends on the surviving spouse for support. Under HB 2338, each child will receive a monthly benefit equal to 4.35 times 25% of the SAWW until age 19, regardless of whether the child "is substantially dependent" on the surviving spouse. In addition, the worker's children will no longer be subject to a reduction in benefits based on the spousal benefit to the extent total monthly benefits exceed the maximum. A worker's "dependent," as defined in ORS 656.005, will be eligible for the monthly death benefit allowed by law until the dependent's 19th birthday. Each of these adjustments for children and dependents to age 19 years of age will apply to injuries that occur on or after January 1, 2018.

HB 2338 also extends the period of benefits for adult children or dependents attending higher education. Each child or dependent will be entitled to

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receive a monthly benefit for up to 48 months through age 26 so long as he or she “is completing secondary education, is obtaining a general educational development certificate or is attending a program of higher education.” Though the bill does not define “secondary education” or the “general educational development certificate” program, what qualifies as “higher education” has essentially remained unchanged. The bill does, however, require the child or dependent to submit documentation to the insurer or self-insured employer for benefit eligibility. While there is no mandate for what documentation will satisfy this requirement and how often it must be provided, insurers and self-insured employers should reasonably expect sufficient detail to justify the benefit and request monthly documentation when dictated by the circumstances. These adjustments to secondary education benefits will apply to monthly benefits that began to accrue on or after January 1, 2018, regardless of the date the injury occurred.

What does all of this mean for insurers and self-insured employers? First, PTD benefit calculations for injuries occurring on or after January 1, 2018 will need to be adjusted. Any adjustments to benefits for those workers injured before January 1, 2018, may be reimbursed by the Retroactive Program. Second, reserves for PTD and fatal benefits may need to be adjusted given the increases, which began on January 1, 2018.

We will be monitoring the Workers’ Compensation Division for additional changes to these and other workers’ compensation benefits. Feel free to contact an attorney at Reinisch Wilson Weier PC for an update or for any other claims question. ■

¹ The SAWW was decreased to \$963.01 effective July 1, 2017.

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