2015 LEGAL/LEGISLATIVE UPDATE

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OREGON WORKERS' COMPENSATION LEGISLATIVE UPDATE

SENATE BILL 371

- Amends ORS 656.268
- The bill requires that if a worker is deceased at a the time of claim closure, the Notice of Closure be mailed to the estate of the worker at the worker's last known address and allows a copy of the Notice of Closure to be mailed to any known or potential beneficiaries to the estate of the deceased worker.
  - Amends the statute to specifically allow beneficiaries of the worker to request reconsideration.
    - If a worker files for reconsideration and dies prior to disposition, the estate may pursue the matter to final disposition.
    - If the worker dies before filing for reconsideration, then the estate or beneficiaries may file the request for reconsideration.
    - Any beneficiary not mailed a copy of the Notice of Closure may request reconsideration within one year of the date of the Notice of Closure.
    - Essentially, this allows the estate of the deceased worker to step into the shoes of the deceased worker through the reconsideration process.

HOUSE BILL 2797

- Amends ORS 656.262(2)-(4)(a)
- Adds "notice or knowledge of disability" to the knowledge or notice of the claim before requiring payment of temporary disability benefits.
- Now requires notice or knowledge of the worker's claim AND notice or knowledge of the worker's disability.

HOUSE BILL 3114

- Amends 656.262
- Amends the notice provision to require that the notice be given by the worker or a beneficiary of the worker within 90 days.
- If the injured worker first presents the claim to a group health carrier (non-workers' compensation) that normally provides benefits to the worker and the health plan rejects the request, the worker then has 90 days from the date of rejection to file the claim under workers' compensation.
- The worker used to be allowed one year to file workers' compensation claim from the date of rejection.

HOUSE BILL 2764
(AKA, "ATTORNEY FEE" BILL)

- Amends ORS 656.012, 656.262, 656.277, 656.313, 656.382, 656.385, 656.386, and 656.388.
- Goes into effect January 1, 2016, but retroactive in that it affects all claims currently open. However, only applies to fees incurred on or after January 1, 2016.
- Policy behind modifications is that it will help provide workers access to adequate representation.

HOUSE BILL 2764 (CONT'D)

- While there are many changes, here are some of the most significant:
  - Hourly Rate for Claimant's Interviews & Depositions
    - Injured workers continue to have a duty to cooperate and assist with an investigation. However, now if the worker is represented, the claimant's attorney is entitled to an hourly rate for actual time spent during a personal or telephonic interview, or a deposition. The Oregon Bar and Board will adopt rules to establish the hourly rate. ORS 656.262(14)(a).
    - It does not appear the hourly rate applies to time spent preparing for the interview/deposition, but we will likely see claimants' attorneys pushing for this.

HOUSE BILL 2764 (CONT'D)

- Reclassification
  - If a worker is represented and obtains an order reclassifying the claim, the attorney is entitled to an attorney fee. ORS 656.277(1)(b).
  - Previously no attorney fee was awarded.
- Unreasonable Refusal to Pay an Attorney Fee
  - If an insurer unreasonably delays or refuses to pay attorney fees or costs, the Board will assess a reasonable attorney fee, not to exceed $4,000. The fee must take into consideration the proportionate benefit to the worker. ORS 656.262(11)(a).
  - Unreasonable delay or refusal to pay compensation will still result in an attorney fee. The limit on the fee was raised from $3,000 to $4,000.

HOUSE BILL 2764 (CONT'D)

- Temporary Disability
  - Claimant's attorneys will earn a new fee if the attorney is instrumental in obtaining temporary disability compensation, prior to a decision by an ALJ or if the claimant prevails in temporary disability dispute.
- Interest on Appeal
  - Attorney fees/costs will now accrue 9% interest on an insurer's appeal of certain unfavorable orders. ORS 656.313(1)(b).
  - When an insurer initiates an appeal, temporary disability benefits and permanent total disability benefits after the unfavorable order, and some death benefits, are already stayed pending appeal and accrue 9% interest. The attorney fees and costs will now be included.

HOUSE BILL 2764 (CONT'D)

- Fees for Defending Fees
  - If an insurer raises an attorney fee, cost, or penalty issue as a separate issue before the Division, Board, or appellate court, and the fee, cost, or penalty is upheld (not reduced, not eliminated), the claimant's attorney will receive a new fee for defending the issue. ORS 656.382(3).
  - If an insurer initiates an appeal to the Board or appellate court, and the matter is briefed, but the insurer withdraws the appeal prior to a decision being issued, and the withdraw results in claimant prevailing over the matter, claimant's attorney is entitled to a new reasonable fee for briefing the matter. ORS 656.382(4).
  - In disputes involving a claim for costs, if claimant prevails on a claim for increased costs, the WCD, WCB, or court will award a reasonable assessed fee. ORS 656.386(4).

OREGON EMPLOYMENT LAW LEGISLATIVE UPDATE

SENATE BILL 454 (PAID SICK LEAVE)

- Effective January 1, 2016, and mandates that employers provide their employees with up to 40 hours sick leave benefits.
- Effective January 1, 2016, all employees, regardless of whether they are temporary, part-time, full-time, salaried, or paid on a commission basis, will begin accruing sick leave. Employees generally must accrue sick leave at the minimum rate of one hour for every 30 hours worked.
  - If the employers use the accrual method, they must allow employees to carryover of at least 40 hours from year to year, or (if the employee agrees) pay the employee for unused sick leave at the end of the year.
- Alternatively, employers may "frontload" or credit eligible employees with a minimum of 40 hours of leave at the beginning of each year.
  - Employers using the frontloading method will not be required to allow for carryover or pay for unused sick leave.
- Subject to certain exceptions, it applies to all private employers with 10+ employees throughout the state, regardless of the location of the employer's primary place of business.

SENATE BILL 454 (CONT'D)

- Extends well beyond "traditional" sick leave, allowing for sick leave to be taken for: employee's own illness, injury, or preventive medical care; or for a qualifying family member's similar needs; for absences resulting from workplace or school closures; for reasons related to domestic violence, sexual assault, or stalking that affect the employee or the employee's family members; for "baby bonding leave" to care for an infant or newly adopted child; or to grieve the death of a family member, to make funeral arrangements, and to make arrangements necessitated by a family member's death.
- In addition to reasons for permitted leave, the new law provides for accruing and carrying over of time from year to year, and mandates that employees can donate their sick time to other employees.
- The new law also imposes two notice requirements on employers:
  - First, employers have to provide a written notice to all employees about the law.
  - Second, employers have a quarterly obligation to update each employee on his or her accrued and available sick time.

HOUSE BILL 3025 (CRIMINAL CONVICTION HISTORY)

- Makes it is an unlawful practice for an employer to exclude a job applicant from an initial interview solely because of the applicant's past criminal conviction. Prohibits an employer from requiring an applicant:
  - to disclose on an employment application a criminal conviction;
  - to disclose, prior to an initial interview, a criminal conviction; or
  - if no interview is conducted, to disclose, prior to a conditional offer of employment, a criminal conviction.

HOUSE BILL 3025 (CONT'D)

- Applies to all employers, unless they are exempt from the new law.
- Does not prohibit employers from notifying applicants that they will later be required to disclose convictions or that a criminal background check will be performed as part of the hiring process.
- Expressly states that it does not foreclose an employer from considering convictions when making hiring decisions.

HOUSE BILL 2007 (PAY DISCUSSION AND DISCLOSURE)

- Amends ORS 659A.885, prohibiting Oregon employers from disciplining an employee who shares wage information under new law.
- It is an unlawful employment practice for an employer to discharge, demote or suspend, or to discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment because the employee has:
  - Inquired about, discussed or disclosed in any manner the wages of the employee or of another employee; or
  - Made a charge, filed a complaint or instituted, or caused to be instituted, an investigation, proceeding, hearing or action based on the disclosure of wage information by the employee.

HOUSE BILL 2007 (CONT'D)

- Does not apply to employees who have access to wage information of employees as part of the job functions of the employee's position and discloses the wages of those employees to individuals not authorized access to the information, unless the disclosure is in response to a charge or complaint or is in furtherance of an investigation, proceeding, hearing or action, including but not limited to an investigation conducted by the employer.
- An aggrieved individual may file a complaint with the state Commissioner of the Bureau of Labor and Industries or a civil action in court.
  - Potential remedies include "injunctive relief and any other equitable relief that may be appropriate," including reinstatement or the hiring of employees with or without back pay of up to two years.

HOUSE BILL 3236 (NON-COMPETE LIMITATION)

- Amends ORS 653.295, Oregon's current non-competition law, to provide that non-competition agreements entered into on or after January 1, 2016, may not have a term exceeding 18 months from the date of the employee's termination.
  - The remainder of a term of an agreement in excess of 18 months is voidable and may not be enforced by an Oregon court.

HOUSE BILL 2600 (HEALTH BENEFITS CONTINUATION DURING LEAVE)

- Requires Oregon employers to continue health insurance coverage for an employee out on Oregon Family Leave Act (OFLA) leave under a new law.
- Requires continuation of group health insurance coverage for an employee on family leave on the same terms as when the employee is not on leave (the employee is still responsible for regular contributions to the cost of premiums).
  - Previously, the law had no requirement for continuation of benefits, except as required by agreement or policy.

QUESTIONS?

- All bills submitted during the session can be viewed at the Oregon Legislature's website: https://olis.leg.state.or.us/liz/2015R1/Measures/list/.
- You can contact me directly at kbalas@sbhlegal.com.