

Navigating the Oregon Employment Law and Workers' Compensation Maze: Legislative Updates and Insights

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SBH
LEGAL

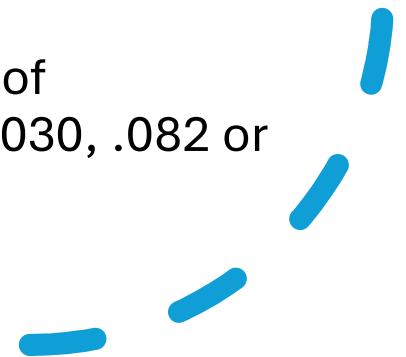
About Us



Workplace Fairness Act - What is it?

Unlawful Employment Practice

- To require or make an offer to settle conditional on a nondisclosure, nondisparagement or no rehire clause unless employee requests such agreement.
- Applies only
 - To employers
 - When employee alleges a claim of discrimination under ORS 659A.030, .082 or .112.



Workplace Fairness Act – How does it work?



Determine if there is any claim or complaint made by the worker covered by the WFA.



Mediator must give unrepresented workers a copy of the model procedures/policy.



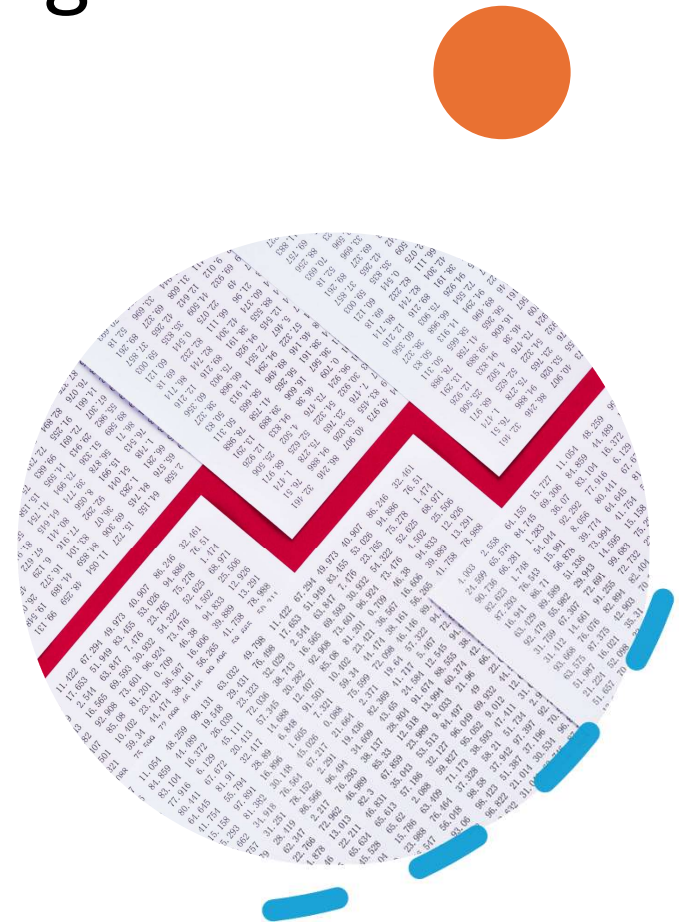
If WFA applies, then worker must request or make first overture to include the clauses.



If WFA does not apply, then none of its restrictions on settlement do either.

SB 999: Aligning Paid Leave Oregon and the Oregon Family Leave Act

- If OFLA leave also qualifies under Paid Leave Oregon and/or FMLA, the leave must be taken concurrently, and not in addition to, Paid Leave Oregon and/or FMLA.
- Amends OFLA's one-year benefit period
- Amends OFLA's definition of "family member" to align with the definition in Paid Leave Oregon
 - now include siblings as well as "any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship."
- Expands job protections
- Health care benefits continue for the duration of leave provided the employee continues to make their regular contributions.



HB 3471 – What is it?

Unlawful Employment Practice

- Employer to offer to negotiate settlement *or* make a settlement offer
- Disposing of all or part of claim conditioned on a “no-rehire provision”
- Unless
 - Prior to offer worker provided written confirmation of willingness to enter agreement with no-rehire provision, and
 - Settlement offer states it is conditioned on a no-rehire provision

HB 3471 – Why was it needed?

- Proposed by Oregon AFL-CIO
- Their purpose was twofold
 - Deter the practice of forcing workers to resign and not reapply as a condition of settling their workers compensation claim.
 - Require both claimant and defense attorneys to be clear and deliberate about negotiating resignation and no rehire clauses as part of a workers' compensation settlement.
- Concerns among Employment attorneys about agreements they review after the fact.
- Concerns among WC attorneys about scope of practice

HB 3471 – How does it work?

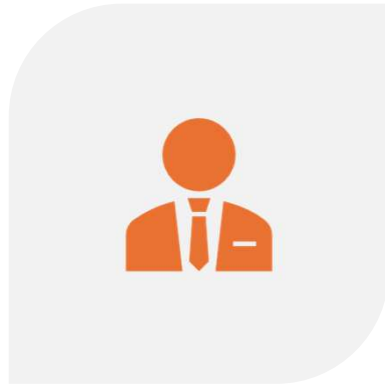
If worker provided written confirmation and offers state settlement is conditioned on provision

- Not violation to make/reject offer including no-rehire provision
- Not violation for employer to require no-rehire provision

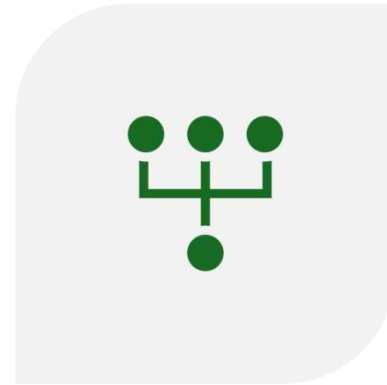
If worker has not provided written confirmation

- Not a violation for employer to make offer stating not conditioned on no-rehire provision

HB 3471 – What is *not* covered?



NO-REHIRE MEANS AGREEMENT BARRING WORKER
FROM SEEKING FURTHER EMPLOYMENT,
REEMPLOYMENT, OR REINSTATEMENT



“EMPLOYMENT RELEASES” CAN ADDRESS OTHER
MATTERS WITHOUT INCLUDING A NO REHIRE
PROVISION

HB 3471 – Other Questions



What is the mediator's liability for Unlawful Employment Practice?



What should a mediator do before mediation/pre-mediation call?
During mediation?



What if during mediation, settlement becomes contingent on a no rehire provision?



What if during mediation, worker withdraws agreement for no rehire provision?

HB 3471 – Other Questions



Mediator liability for
Unlawful Employment
Practice?



Is the release still valid
if there is a violation of
HB 3471?



Does the release
usually waive Unlawful
Employment Practices?



What happens if worker
agrees to resign, but
wants to reapply

Other Changes in Employment Law

HB 2649

- Changes Oregon apprenticeship requirements in public works contracts.
- Increases the percentage of apprenticeship hours from 12 to 15 by 2027.
- Expands the types of public works contracts to which that requirement is applied, adding ODOT projects and every higher education project.
- Penalizes contractors that fail to meet the requirement even if they tried to comply in good faith.

SB 851

- Requires BOLI to prepare a model respectful workplace policy that employers may adopt.
- Requires BOLI to create and make available to employers informational materials identifying harms to employees and employers caused by workplace bullying.
- Goes into effect January 1, 2024.



HB 4138

Overpayments

(Effective January 1, 2024)

HB 4138 – Overpayment



Medically Stationary

Limits back dated status to 60 days prior to determination

Requires notice of medically stationary status in 7 days

- OAR 436-010-0240(6) provider to give notice (no deadline)
- OAR 436-010-0270(1) insurer to give notice of medical rights (immediately)
- OAR 436-060-0015(7) insurer to give notice of impending closure/timeloss (3 days)



Recovering Payments

Caps recovery from PPD to only 50% of award at closure

Cannot declare new overpayment for benefits over 2 years ago



HB 4138

Temporary Disability

HB 4138 – Temporary Disability



New Notice

Must explain why benefits stopping
Put worker on notice for what they
need to do to continue
Benefits cannot end before notice
issues



Retroactive

Increases retroactive authorization
period from 14 days to 45 days
Allows worker additional time to
get in to see AP after getting notice



Exemption

Clarifies timeloss processing
requirements, limitation on
retroactive authorizations, not
applicable on denied claim,
disputed AP, or no notice issued



SB 418

Temporary Disability

(Effective June 1, 2023 and January 1, 2024)

SB 418 – Temporary Disability

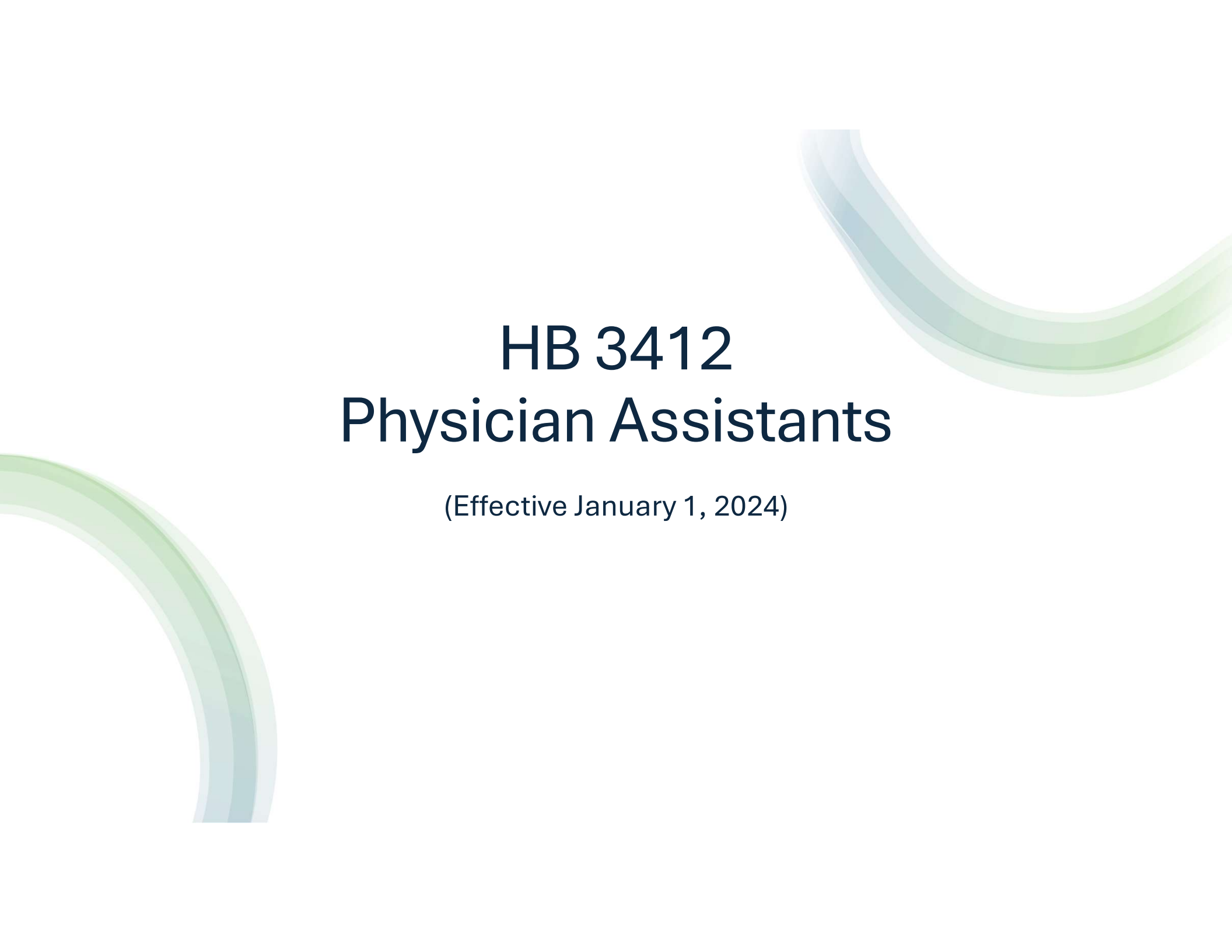
Removes 4-hour limit for medical services – ORS 656.210

Only for compensable medical services

Allows insurer to confirm reason for absence

Exempts new notice requirement

Only applies to accepted, disabling claims



HB 3412

Physician Assistants

(Effective January 1, 2024)

HB 3412 – Physician Assistant

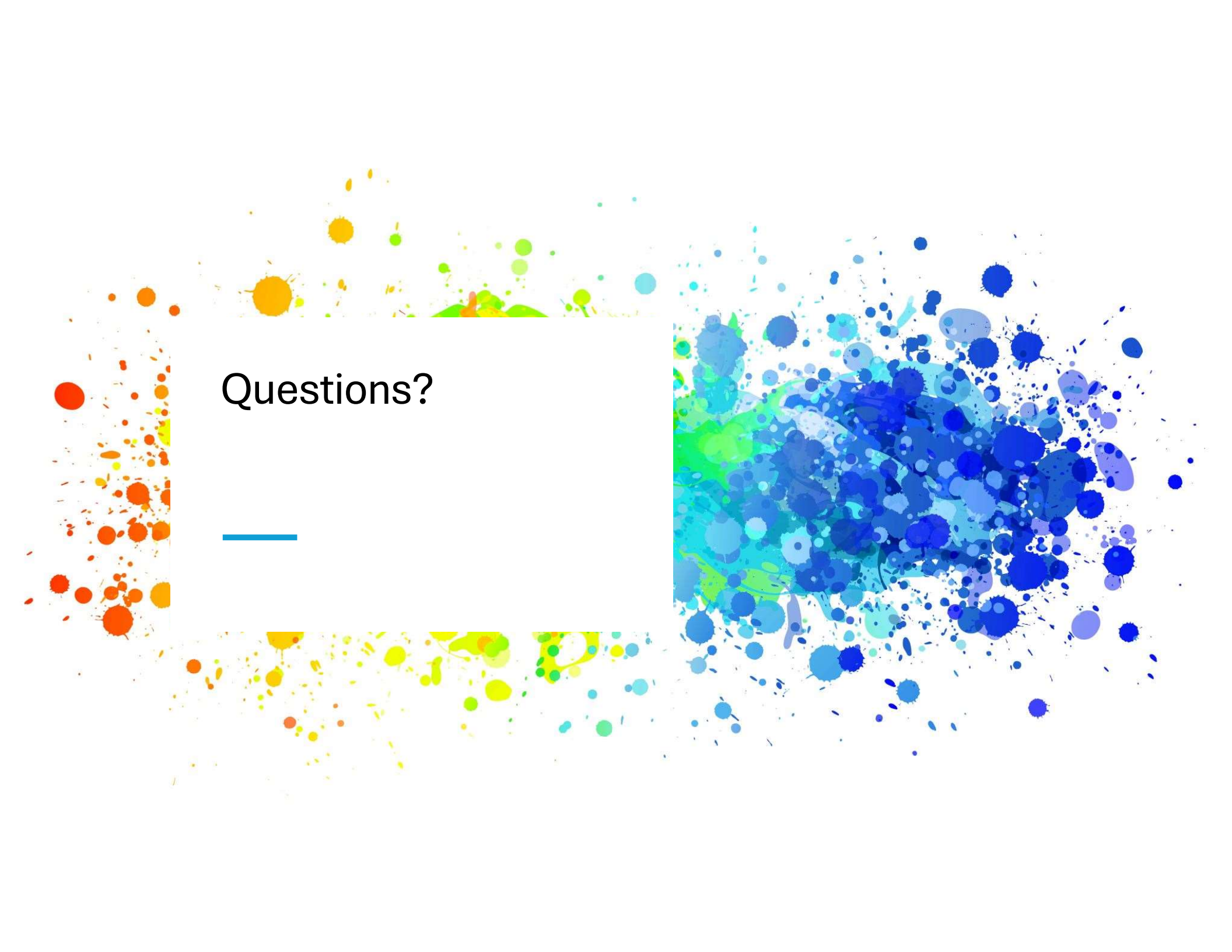
Amending ORS 656.245

No longer Type-B Attending Provider

Can treat for 180 days instead of 60

Can provide temporary disability for 180 days instead of 30

Still cannot rate PPD

The background is a white canvas decorated with various colorful splatters and dots. On the left side, there are splatters in shades of red, orange, and yellow. At the top and bottom, there are splatters in yellow, green, and light blue. On the right side, there is a large, dense cluster of blue and cyan splatters of various sizes. In the center, there is a white rectangular box containing the text "Questions?" and a short blue horizontal line below it.

Questions?

Thank you for attending!

Contact us with Questions:



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