

839-006-0131

Loss of Reinstatement Rights Under ORS 659A.043

(1) An injured worker meeting the requirements for reinstatement under ORS 659A.043 loses the right to reinstatement to the worker's former position when any of the following occurs:

- (a) *[An attending physician or a medical arbiter determines the injured worker is medically stationary, but not physically able to return to the worker's former position;]* **A medical determination by the attending physician or, after an appeal of such determination, by a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, that the worker cannot return to the former position of employment;**
- (b) The worker is eligible for and participates in vocational assistance under ORS 656.340;
- (c) The worker accepts suitable employment with another employer after becoming medically stationary;
- (d) The worker refuses a bona fide offer from the employer of light duty or modified employment which is suitable prior to becoming medically stationary, **except as provided under section (2) of this rule;**
- (e) *[The worker fails to make demand for reinstatement to the former position within seven days of receiving certified notice from the insurer or self-insured employer that the worker's attending physician has released the worker to the former position, as provided in OAR 839-006-0130(5)(d);]* **Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or an authorized nurse practitioner has released the worker for employment unless the worker requests reinstatement within that time period;**
- (f) Three years *[have elapsed]* elapse from the date of injury;
- (g) The worker is discharged for bonafide reasons not connected with the injury and for which others are or would be discharged; or
- (h) The worker clearly and unequivocally abandons employment with the employer.

(2) A worker who refuses an offer of employment under subsection (1)(d) of this rule and who otherwise is entitled to Oregon Family Leave Act (OFLA) leave under ORS 659A.150 to ORS 659A.186:

- (a) Automatically commences a period of OFLA leave upon refusing the offer of employment; and**
- (b) Need not give notice to the employer that would otherwise be required under OAR 839-009-0250 that the employee is commencing a period of OFLA leave. See ORS 659A.162 and ORS 659A.043.**

[(2)] **(3) The right to reinstatement does not apply to:**

- (a) A worker hired on a temporary basis as a replacement for an injured worker;
- (b) A seasonal worker hired for and actually employed for less than six months in a calendar year; or
- (c) A worker whose employment at the time of injury resulted from referral to short-term employment from a hiring hall operating pursuant to a collective bargaining agreement.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 to ORS 659A.186

839-006-0136

Loss of Reemployment Rights Under ORS 659A.046

An injured worker meeting the requirements for reemployment under ORS 659A.046 loses the right to reemployment to an available, suitable position when any of the following occurs:

(1) *[The worker's attending physician or a medical arbiter determines, after the worker is medically stationary, that the worker cannot return to reemployment at any position with the employer;]* **A medical determination by the attending physician or authorized nurse practitioner or, after an appeal of such determination, by a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656, that the worker cannot return to any position of reemployment with the employer.**

- (2) The worker is eligible for and participates in vocational assistance under ORS 656.340;
- (3) The worker accepts suitable employment with another employer after becoming medically stationary;
- (4) The worker refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary. **Except that a worker who refuses an offer of employment under this section, and who otherwise is entitled to Oregon Family Leave Act (OFLA) leave under ORS 659A.150 to 659A.186:**

- (a) Automatically commences a period of OFLA leave upon refusing the offer of employment; and**
- (b) Need not give notice to the employer that would otherwise be required under OAR 839-009-0250 that the employee is commencing a period of OFLA leave. See ORS 659A.162 and ORS 659A.046;**

(5) *[The worker fails to make demand for reemployment to an available, suitable position within seven days of receiving certified mail notice from the insurer or self-insured employer that the worker's attending*

physician has released the worker for reemployment to an available, suitable position, as provided in OAR 839-006-0135(8)(d); **Seven days elapse from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician or authorized nurse practitioner has released the worker for reemployment unless the worker requests reemployment within that time period;**

(6) Three years [*have elapsed*] **elapse** from the date of injury;

(7) The worker is discharged for bona fide reasons not connected with the injury and for which others are or would be discharged; or

(8) The worker clearly and unequivocally abandons employment with the employer.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.046, **ORS 659A.150 to 659A.186**