



MEMORANDUM

March 24, 2023

To: Erin Seiler, House Committee on Business and Labor

From: Sally Coen, WCD Administrator
Constance Wold, WCB Chair

Subject: HB 3471

At the March 15, 2023, public hearing on House Bill 3471, Members asked several questions about workers' compensation claims and settlements. The information below is provided in response to the questions.

1. What percentage of workers receive medical services for the rest of their life?

The Workers' Compensation Law provides that the insurer's (or self-insured employer's) duty to provide medical services for compensable injuries continues "for the life of the worker."¹ The law limits the types of services that remain compensable after the worker is medically stationary.²

A claim disposition agreement (CDA), which settles benefits a worker may receive for a compensable claim, cannot dispose of the worker's right to medical services for compensable medical conditions.³ A disputed claim settlement (DCS) resolves a disputed claim or medical condition.⁴ After a DCS is approved, the disputed claim or condition remains denied, so the worker has no right to medical services for that claim or condition. Sometimes a CDA and DCS are entered into at the same time.

¹ ORS 656.245(1)(b).

² ORS 656.245(1)(c).

³ ORS 656.236(1)(a).

⁴ ORS 656.289(4).

Using data reported to the department, we would be able to determine how many accepted disabling claims have medical bills for services provided after the worker was determined medically stationary or after the claim was closed.

Based on an initial review of approximately 87,500 claim closures with medically stationary dates between 2019 and 2022, 14,492, or 16.9 percent, had medical bills for services provided after the medically stationary date. Those claims have had an average of 4.2 bills to-date (those workers may continue to receive medical services as time goes on). The average time between the medically stationary date and the service date on the bill is 6.4 months.

2. How many claims settle, and how common is it for an employer to request a no-rehire provision?

The table below shows the number of approved CDAs and DCSs over ten years:⁵

Year	DCS Cases	DCSs with CDAs	CDAs Approved
2021	3,465	2,082	2,837
2020	3,889	2,264	3,246
2019	3,791	2,179	2,954
2018	3,565	1,922	2,923
2017	3,297	1,733	3,142
2016	3,250	1,638	3,040
2015	3,306	1,689	3,212
2014	3,570	1,773	3,235
2013	3,578	1,732	3,222
2012	3,253	1,678	3,045

Because no-rehire provisions are not included in the CDA or DCS and are not approved by the Workers' Compensation Board (WCB) or Administrative Law Judge (ALJ), we do not know how many of these settlements were accompanied by no-rehire agreements.

That said, WCB has some data about the frequency of employment releases for that portion of CDAs and DCSs that were achieved through mediation. When the parties request it, WCB ALJ Mediators facilitate negotiation of employment aspects. In general these are "global settlement" cases, where a current condition DCS and CDA are sought. For the employment release data provided below (2019-2022), these releases generally contained no-rehire provisions. Additionally, they often contained other negotiated concessions such as a neutral job reference,

⁵ Source: <https://www.oregon.gov/dcbs/reports/compensation/disputes/wcb-disputes/Pages/settlements.aspx>

and the employer not contesting the worker's application for unemployment benefits. However, we do not have data regarding who requested the provisions. Although part of the mediation, WCB ALJ Mediators do not sign or approve agreements on employment aspects.

In 2022, 2,374 cases in which a formal request for hearing was filed were settled outside of mediation, and 342 cases (about 14 percent of requests for hearing) were settled through mediation. In 41 percent, or 141, of those mediated cases, there was an employment release.

3. What percentage of workers who agree to a separation agreement are represented by an attorney?

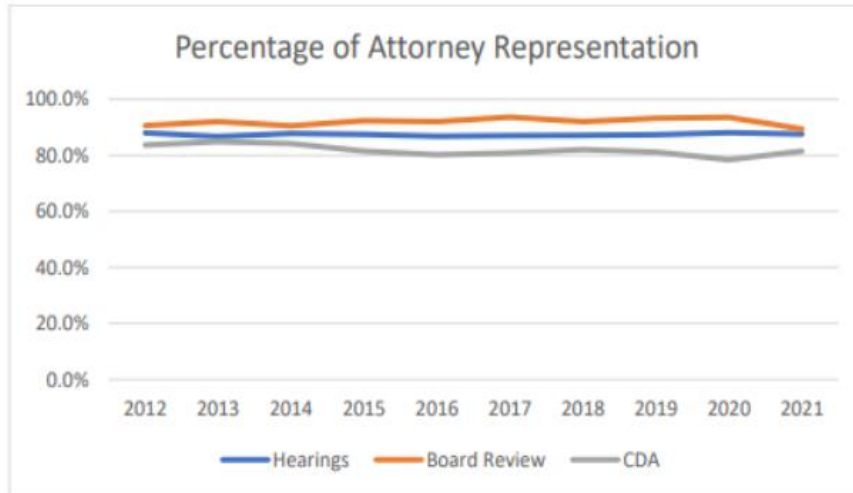
We are unable to determine what percentage of workers who agree to a separation agreement are represented by an attorney, except, as noted above, for mediated cases. For settlements mediated at WCB between 2019 and 2022, we have the following information:

Year	Total Mediations	Total Employment Releases	Workers represented by counsel on cases with employment releases	Unrepresented workers
2022	342	141	140	1
2021	323	152	152	
2020	328	109	109	
2019	323	152	151	1

The WCB has data regarding the number of workers who are represented by an attorney at the time their workers' compensation CDA was submitted to be approved. The excerpt below is from the January 19, 2023, Attorney Fee Report:⁶

⁶ Available here: <https://www.oregon.gov/wcb/Documents/statisticalrpts/011923-atty-fee-stats.pdf>

Claimant Attorney Representation – WCB Litigation and CDAs



This is a line graph showing the percentage of cases involving attorney representation for claimants at the time of the first order at the hearings level (blue or middle line) and the first order at the board review level (orange or top line). For CDAs (grey or bottom line), we capture whether claimant was represented at the time of the submission/request for approval.

Of workers who enter into a CDA, around 80 percent are represented by an attorney regarding their workers' compensation claim.

If you would like additional information, please let us know.