

A-Engrossed House Bill 2799

Ordered by the House April 10
Including House Amendments dated April 10

Sponsored by Representative RUIZ, Senator GORSEK; Representatives HUDSON, MUNOZ, Senators CAMPOS, FREDERICK, MEEK (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act would raise and index the cap for witness fees, expenses and costs for a claimant who wins in a case brought against a denial of a workers' comp claim. (Flesch Readability Score: 66.2).

[Digest: The Act would remove the cap on awards for the costs and attorney fees incurred by a worker in a dispute over a workers' comp claim. (Flesch Readability Score: 66.5).]

[Removes the cap on reasonable litigation costs and expenses and attorney fees for a claimant who prevails in a workers' compensation dispute.]

Raises and indexes the cap for witness fees, expenses and costs for a claimant who prevails against a denial in a workers' compensation dispute.

A BILL FOR AN ACT

Relating to litigation costs for prevailing claimants; amending ORS 656.386.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 656.386 is amended to read:

656.386. (1)(a) In all cases involving denied claims where a claimant finally prevails against the denial in an appeal to the Court of Appeals or petition for review to the Supreme Court, the court shall allow a reasonable attorney fee to the claimant's attorney. In such cases involving denied claims where the claimant prevails finally in a hearing before an Administrative Law Judge or in a review by the Workers' Compensation Board, then the Administrative Law Judge or board shall allow a reasonable attorney fee. In such cases involving denied claims where an attorney is instrumental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge, a reasonable attorney fee shall be allowed.

(b) For purposes of this section, a "denied claim" is:

(A) A claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation;

(B) A claim for compensation for a condition omitted from a notice of acceptance, made pursuant to ORS 656.262 (6)(d), which the insurer or self-insured employer does not respond to within 60 days;

(C) A claim for an aggravation made pursuant to ORS 656.273 (2) or for a new medical condition made pursuant to ORS 656.267, which the insurer or self-insured employer does not respond to within 60 days; or

(D) A claim for an initial injury or occupational disease to which the insurer or self-insured employer does not respond within 60 days.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (c) A denied claim shall not be presumed or implied from an insurer's or self-insured employer's
2 failure to pay compensation for a previously accepted injury or condition in timely fashion. Attor-
3 ney fees provided for in this subsection shall be paid by the insurer or self-insured employer.

4 (2)(a) If a claimant finally prevails against a denial as provided in subsection (1) of this section,
5 the court, board or Administrative Law Judge may order payment of the claimant's reasonable ex-
6 penses and costs for records, expert opinions and witness fees.

7 (b) The court, board or Administrative Law Judge shall determine the reasonableness of witness
8 fees, expenses and costs for the purpose of paragraph (a) of this subsection.

9 (c) Payments for witness fees, expenses and costs ordered under this subsection shall be made
10 by the insurer or self-insured employer and are in addition to compensation payable to the claimant.

11 (d)(A) Payments for witness fees, expenses and costs ordered under this subsection may not ex-
12 ceed [~~\$1,500~~] **\$3,500** unless the claimant demonstrates extraordinary circumstances justifying pay-
13 ment of a greater amount.

14 **(B) The amount that may not be exceeded under this paragraph without demonstrating**
15 **extraordinary circumstances shall be adjusted annually on July 1 by the percentage increase,**
16 **if any, in the average weekly wage as most recently computed by the Employment Depart-**
17 **ment under ORS 656.211 and rounded to the nearest multiple of \$100.**

18 (3) If a claimant requests claim reclassification as provided in ORS 656.277 and the insurer or
19 self-insured employer does not respond within 14 days of the request, or if the claimant, insurer or
20 self-insured employer requests a hearing, review, appeal or cross-appeal to the Court of Appeals or
21 petition for review to the Supreme Court and the Director of the Department of Consumer and
22 Business Services, Administrative Law Judge, board or court finally determines that the claim
23 should be classified as disabling, the director, Administrative Law Judge, board or court may assess
24 a reasonable attorney fee.

25 (4) In disputes involving a claim for costs, if the claimant prevails on the claim for any increase
26 of costs, the Administrative Law Judge, board, Court of Appeals or Supreme Court shall award a
27 reasonable assessed attorney fee to the claimant's attorney.

28 (5) In all other cases, attorney fees shall be paid from the increase in the claimant's compen-
29 sation, if any, except as otherwise expressly provided in this chapter.

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