

House Bill 2799

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 **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

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.

A BILL FOR AN ACT

Relating to litigation costs for prevailing claimants; creating new provisions; and amending ORS 656.308, 656.386 and 656.388.

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

SECTION 1. ORS 656.386 is amended to read:

656.386. (1)(a) **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.**

(b) **A denied claim may not be presumed or implied from an insurer's or self-insured employer's failure to pay compensation for a previously accepted injury or condition in timely fashion.**

[(1)(a)] **(2)(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.

(b) In such cases involving denied claims where the claimant **finally** 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.

(c) 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.

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 [(b) For purposes of this section, a “denied claim” is:]

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

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

8 [(C) A claim for an aggravation made pursuant to ORS 656.273 (2) or for a new medical condition
9 made pursuant to ORS 656.267, which the insurer or self-insured employer does not respond to within
10 60 days; or]

11 [(D) A claim for an initial injury or occupational disease to which the insurer or self-insured em-
12 ployer does not respond within 60 days.]

13 [(c) A denied claim shall not be presumed or implied from an insurer’s or self-insured employer’s
14 failure to pay compensation for a previously accepted injury or condition in timely fashion. Attorney
15 fees provided for in this subsection shall be paid by the insurer or self-insured employer.]

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

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

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

23 [(d) Payments for witness fees, expenses and costs ordered under this subsection may not exceed
24 \$1,500 unless the claimant demonstrates extraordinary circumstances justifying payment of a greater
25 amount.]

26 (3) If a claimant requests claim reclassification as provided in ORS 656.277 and the insurer or
27 self-insured employer does not respond within 14 days of the request, or if the claimant, insurer or
28 self-insured employer requests a hearing, review, appeal or cross-appeal to the Court of Appeals or
29 petition for review to the Supreme Court and **the court or** the Director of the Department of Con-
30 sumer and Business Services, Administrative Law Judge[, **or** board [or court] finally determines that
31 the claim should be classified as disabling, **the court or** the director, Administrative Law Judge[,
32 **or** board [or court] may assess a reasonable attorney fee.

33 (4) In disputes involving a claim for [costs] **witness fees and expenses and costs for records**
34 **and expert opinions**, if the claimant prevails on the claim for any increase of **witness fees and**
35 **expenses and costs**, the Administrative Law Judge, board, Court of Appeals or Supreme Court shall
36 [award] **allow** a reasonable [assessed] attorney fee to the claimant’s attorney.

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

39 **SECTION 2. Section 3 of this 2025 Act is added to and made a part of ORS chapter 656.**

40 **SECTION 3. (1) As used in this section, “costs and expenses” means costs and expenses**
41 **incurred in a dispute described in subsection (2) of this section for items including, but not**
42 **limited to, records, expert opinions and witness fees.**

43 **(2) A claimant who prevails in a dispute over the entitlement to, or the amount of, any**
44 **benefits under this chapter shall be allowed reasonable costs and expenses payable by the**
45 **insurer or self-insured employer.**

1 **(3) If a claimant prevails in any dispute regarding an entitlement to, or the amount of,**
 2 **costs and expenses, the claimant's attorney shall be allowed a reasonable attorney fee.**

3 **SECTION 4.** ORS 656.308 is amended to read:

4 656.308. (1) When a worker sustains a compensable injury, the responsible employer shall remain
 5 responsible for future compensable medical services and disability relating to the compensable con-
 6 dition unless the worker sustains a new compensable injury involving the same condition. If a new
 7 compensable injury occurs, all further compensable medical services and disability involving the
 8 same condition shall be processed as a new injury claim by the subsequent employer. The standards
 9 for determining the compensability of a combined condition under ORS 656.005 (7) shall also be used
 10 to determine the occurrence of a new compensable injury or disease under this section.

11 (2)(a) Any insurer or self-insured employer who disputes responsibility for a claim shall so indi-
 12 cate in or as part of a denial otherwise meeting the requirements of ORS 656.262 issued in the 60
 13 days allowed for processing of the claim. The denial shall advise the worker to file separate, timely
 14 claims against other potentially responsible insurers or self-insured employers, including other
 15 insurers for the same employer, in order to protect the right to obtain benefits on the claim. The
 16 denial may list the names and addresses of other insurers or self-insured employers. Such denials
 17 shall be final unless the worker files a timely request for hearing pursuant to ORS 656.319. All such
 18 requests for hearing shall be consolidated into one proceeding.

19 (b) No insurer or self-insured employer, including other insurers for the same employer, shall
 20 be joined to any workers' compensation hearing unless the worker has first filed a timely, written
 21 claim against that insurer or self-insured employer, or the insurer or self-insured employer has
 22 consented to issuance of an order designating a paying agent pursuant to ORS 656.307. An insurer
 23 or self-insured employer against whom a claim is filed may contend that responsibility lies with an-
 24 other insurer or self-insured employer, including another insurer for the same employer, regardless
 25 of whether the worker has filed a claim against that insurer or self-insured employer.

26 (c) Upon written notice by an insurer or self-insured employer filed not more than 28 days or
 27 less than 14 days before the hearing, the Administrative Law Judge shall dismiss that party from
 28 the proceeding if the record does not contain substantial evidence to support a finding of responsi-
 29 bility against that party. The Administrative Law Judge shall decide such motions and inform the
 30 parties not less than seven days prior to the hearing, or postpone the hearing.

31 (d) Notwithstanding ORS 656.382 (2), 656.386 and 656.388 **and section 3 of this 2025 Act**, a
 32 reasonable attorney fee shall be awarded to the attorney for the injured worker for the attorney's
 33 appearance and active and meaningful participation in finally prevailing against a responsibility
 34 denial. The fee shall not exceed \$2,500 absent a showing of extraordinary circumstances. The maxi-
 35 mum attorney fee awarded under this paragraph shall be adjusted annually on July 1 by the same
 36 percentage increase as made to the average weekly wage defined in ORS 656.211, if any.

37 (3) A worker who is a party to an approved disputed claim settlement agreement under ORS
 38 656.289 (4) may not subsequently file a claim against an insurer or a self-insured employer who is
 39 a party to the agreement with regard to claim conditions settled in the agreement even if other
 40 insurers or employers disclaim responsibility for those claim conditions. A worker who is a party
 41 to an approved claim disposition agreement under ORS 656.236 (1) may not subsequently file a claim
 42 against an insurer or a self-insured employer who is a party to the agreement with regard to any
 43 matter settled in the agreement even if other insurers or employers disclaim responsibility for those
 44 claim conditions, unless the claim in the subsequent proceeding is limited to a claim for medical
 45 services for claim conditions settled in the agreement.

1 **SECTION 5.** ORS 656.388 is amended to read:

2 656.388. (1) No claim or payment for legal services by an attorney representing the worker or
3 for any other services rendered before an Administrative Law Judge or the Workers' Compensation
4 Board, as the case may be, in respect to any claim or award for compensation to or on account of
5 any person, shall be valid unless approved by the Administrative Law Judge or board, or if pro-
6 ceedings on appeal from the order of the board with respect to such claim or award are had before
7 any court, unless approved by such court. In cases in which a claimant finally prevails after remand
8 from the Supreme Court, Court of Appeals or board, then the Administrative Law Judge, board or
9 appellate court shall approve or allow a reasonable attorney fee for services before every prior fo-
10 rum as authorized under ORS 656.307 (5), 656.308 (2), 656.382 or 656.386 **or section 3 of this 2025**
11 **Act.** No attorney fees shall be approved or allowed for representation of the claimant before the
12 managed care organization.

13 (2) Any claim for payment to a claimant's attorney by the claimant so approved shall, in the
14 manner and to the extent fixed by the Administrative Law Judge, board or such court, be a lien
15 upon compensation.

16 (3) If an injured worker signs an attorney fee agreement with an attorney for representation on
17 a claim made pursuant to this chapter and additional compensation is awarded to the worker or a
18 settlement agreement is consummated on the claim after the fee agreement is signed and it is shown
19 that the attorney with whom the fee agreement was signed was instrumental in obtaining the addi-
20 tional compensation or settling the claim, the Administrative Law Judge or the board shall grant
21 the attorney a lien for attorney fees out of the additional compensation awarded or proceeds of the
22 settlement in accordance with rules adopted by the board governing the payment of attorney fees.

23 (4) The board shall, after consultation with the Board of Governors of the Oregon State Bar,
24 establish a schedule of fees for attorneys representing a worker and representing an insurer or
25 self-insured employer, under this chapter. The Workers' Compensation Board shall review all attor-
26 ney fee schedules biennially for adjustment.

27 (5) The board shall, in establishing the schedule of attorney fees awarded under this chapter,
28 consider the contingent nature of the practice of workers' compensation law and the necessity of
29 allowing the broadest access to attorneys by injured workers and shall give consideration to fees
30 earned by attorneys for insurers and self-insured employers.

31 (6) The board shall approve no claim for legal services by an attorney representing a claimant
32 to be paid by the claimant if fees have been awarded to the claimant or the attorney of the claimant
33 in connection with the same proceeding under ORS 656.268.

34 (7) Insurers and self-insured employers shall make an annual report to the Director of the De-
35 partment of Consumer and Business Services reporting attorney salaries and other costs of legal
36 services incurred pursuant to this chapter. The report shall be in such form and shall contain such
37 information as the director prescribes.