

DRAFT

SUMMARY

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

1
2 Relating to litigation costs for prevailing claimants; creating new provisions;
3 and amending ORS 656.308, 656.386 and 656.388.

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

5 **SECTION 1.** ORS 656.386 is amended to read:

6 **656.386. (1)(a) For purposes of this section, a “denied claim” is:**

7 **(A) A claim for compensation which an insurer or self-insured em-**
8 **ployer refuses to pay on the express ground that the injury or condi-**
9 **tion for which compensation is claimed is not compensable or**
10 **otherwise does not give rise to an entitlement to any compensation;**

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

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

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

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

4 [(1)(a)] **(2)(a)** In all cases involving denied claims where a claimant
5 finally prevails against the denial in an appeal to the Court of Appeals or
6 petition for review to the Supreme Court, the court shall allow a reasonable
7 attorney fee to the claimant's attorney.

8 **(b)** In such cases involving denied claims where the claimant **finally**
9 prevails [*finally*] in a hearing before an Administrative Law Judge or in a
10 review by the Workers' Compensation Board, [*then*] the Administrative Law
11 Judge or board shall allow a reasonable attorney fee.

12 **(c)** In such cases involving denied claims where an attorney is instru-
13 mental in obtaining a rescission of the denial prior to a decision by the
14 Administrative Law Judge, a reasonable attorney fee shall be allowed.

15 [(b) *For purposes of this section, a "denied claim" is:*]

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

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

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

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

28 [(c) *A denied claim shall not be presumed or implied from an insurer's or*
29 *self-insured employer's failure to pay compensation for a previously accepted*
30 *injury or condition in timely fashion. Attorney fees provided for in this sub-*
31 *section shall be paid by the insurer or self-insured employer.]*

1 [(2)(a) *If a claimant finally prevails against a denial as provided in sub-*
2 *section (1) of this section, the court, board or Administrative Law Judge may*
3 *order payment of the claimant's reasonable expenses and costs for records, ex-*
4 *pert opinions and witness fees.*]

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

8 [(c) *Payments for witness fees, expenses and costs ordered under this sub-*
9 *section shall be made by the insurer or self-insured employer and are in ad-*
10 *dition to compensation payable to the claimant.*]

11 [(d) *Payments for witness fees, expenses and costs ordered under this sub-*
12 *section may not exceed \$1,500 unless the claimant demonstrates extraordinary*
13 *circumstances justifying payment of a greater amount.*]

14 (3) If a claimant requests claim reclassification as provided in ORS
15 656.277 and the insurer or self-insured employer does not respond within 14
16 days of the request, or if the claimant, insurer or self-insured employer re-
17 quests a hearing, review, appeal or cross-appeal to the Court of Appeals or
18 petition for review to the Supreme Court and **the court or** the Director of
19 the Department of Consumer and Business Services, Administrative Law
20 Judge[,] **or** board [*or court*] finally determines that the claim should be
21 classified as disabling, **the court or** the director, Administrative Law
22 Judge[,] **or** board [*or court*] may assess a reasonable attorney fee.

23 (4) In disputes involving a claim for [*costs*] **witness fees and expenses**
24 **and costs for records and expert opinions**, if the claimant prevails on the
25 claim for any increase of **witness fees and expenses and** costs, the Ad-
26 ministrative Law Judge, board, Court of Appeals or Supreme Court shall
27 [*award*] **allow** a 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
29 claimant's compensation, if any, except as otherwise expressly provided in
30 this chapter.

31 **SECTION 2. Section 3 of this 2025 Act is added to and made a part**

1 **of ORS chapter 656.**

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

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

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

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

14 656.308. (1) When a worker sustains a compensable injury, the responsible
15 employer shall remain responsible for future compensable medical services
16 and disability relating to the compensable condition unless the worker sus-
17 tains a new compensable injury involving the same condition. If a new
18 compensable injury occurs, all further compensable medical services and
19 disability involving the same condition shall be processed as a new injury
20 claim by the subsequent employer. The standards for determining the
21 compensability of a combined condition under ORS 656.005 (7) shall also be
22 used to determine the occurrence of a new compensable injury or disease
23 under this section.

24 (2)(a) Any insurer or self-insured employer who disputes responsibility for
25 a claim shall so indicate in or as part of a denial otherwise meeting the re-
26 quirements of ORS 656.262 issued in the 60 days allowed for processing of the
27 claim. The denial shall advise the worker to file separate, timely claims
28 against other potentially responsible insurers or self-insured employers, in-
29 cluding other insurers for the same employer, in order to protect the right
30 to obtain benefits on the claim. The denial may list the names and addresses
31 of other insurers or self-insured employers. Such denials shall be final unless

1 the worker files a timely request for hearing pursuant to ORS 656.319. All
2 such requests for hearing shall be consolidated into one proceeding.

3 (b) No insurer or self-insured employer, including other insurers for the
4 same employer, shall be joined to any workers' compensation hearing unless
5 the worker has first filed a timely, written claim against that insurer or
6 self-insured employer, or the insurer or self-insured employer has consented
7 to issuance of an order designating a paying agent pursuant to ORS 656.307.
8 An insurer or self-insured employer against whom a claim is filed may con-
9 tend that responsibility lies with another insurer or self-insured employer,
10 including another insurer for the same employer, regardless of whether the
11 worker has filed a claim against that insurer or self-insured employer.

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

19 (d) Notwithstanding ORS 656.382 (2), 656.386 and 656.388 **and section 3**
20 **of this 2025 Act**, a reasonable attorney fee shall be awarded to the attorney
21 for the injured worker for the attorney's appearance and active and mean-
22 ingful participation in finally prevailing against a responsibility denial. The
23 fee shall not exceed \$2,500 absent a showing of extraordinary circumstances.
24 The maximum attorney fee awarded under this paragraph shall be adjusted
25 annually on July 1 by the same percentage increase as made to the average
26 weekly wage defined in ORS 656.211, if any.

27 (3) A worker who is a party to an approved disputed claim settlement
28 agreement under ORS 656.289 (4) may not subsequently file a claim against
29 an insurer or a self-insured employer who is a party to the agreement with
30 regard to claim conditions settled in the agreement even if other insurers
31 or employers disclaim responsibility for those claim conditions. A worker

1 who is a party to an approved claim disposition agreement under ORS 656.236
2 (1) may not subsequently file a claim against an insurer or a self-insured
3 employer who is a party to the agreement with regard to any matter settled
4 in the agreement even if other insurers or employers disclaim responsibility
5 for those claim conditions, unless the claim in the subsequent proceeding is
6 limited to a claim for medical services for claim conditions settled in the
7 agreement.

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

9 656.388. (1) No claim or payment for legal services by an attorney repre-
10 senting the worker or for any other services rendered before an Administra-
11 tive Law Judge or the Workers' Compensation Board, as the case may be, in
12 respect to any claim or award for compensation to or on account of any
13 person, shall be valid unless approved by the Administrative Law Judge or
14 board, or if proceedings on appeal from the order of the board with respect
15 to such claim or award are had before any court, unless approved by such
16 court. In cases in which a claimant finally prevails after remand from the
17 Supreme Court, Court of Appeals or board, then the Administrative Law
18 Judge, board or appellate court shall approve or allow a reasonable attorney
19 fee for services before every prior forum as authorized under ORS 656.307 (5),
20 656.308 (2), 656.382 or 656.386 **or section 3 of this 2025 Act.** No attorney fees
21 shall be approved or allowed for representation of the claimant before the
22 managed care organization.

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

26 (3) If an injured worker signs an attorney fee agreement with an attorney
27 for representation on a claim made pursuant to this chapter and additional
28 compensation is awarded to the worker or a settlement agreement is con-
29 summated on the claim after the fee agreement is signed and it is shown that
30 the attorney with whom the fee agreement was signed was instrumental in
31 obtaining the additional compensation or settling the claim, the Adminis-

1 trative Law Judge or the board shall grant the attorney a lien for attorney
2 fees out of the additional compensation awarded or proceeds of the settle-
3 ment in accordance with rules adopted by the board governing the payment
4 of attorney fees.

5 (4) The board shall, after consultation with the Board of Governors of the
6 Oregon State Bar, establish a schedule of fees for attorneys representing a
7 worker and representing an insurer or self-insured employer, under this
8 chapter. The Workers' Compensation Board shall review all attorney fee
9 schedules biennially for adjustment.

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

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

19 (7) Insurers and self-insured employers shall make an annual report to the
20 Director of the Department of Consumer and Business Services reporting
21 attorney salaries and other costs of legal services incurred pursuant to this
22 chapter. The report shall be in such form and shall contain such information
23 as the director prescribes.

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