

# D R A F T

## SUMMARY

Modifies circumstances under which attorney fees may be awarded and amount of attorney fees awarded in workers' compensation claims.

Requires payment of interest on certain compensable benefits, attorney fees, penalties and costs withheld pending appeal. Allows attorney fees for representation related to or before a managed care organization or Director of Department of Consumer and Business Services under certain circumstances. Requires attorney fees awarded to be equitable in aggregate in relation to fees earned by attorneys representing insurers and self-insured employers.

Instructs Workers' Compensation Board to adjust schedule of attorney fees biennially based on increases to average weekly wage.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1

2 Relating to payments made in workers' compensation claims; creating new  
3 provisions; amending ORS 656.012, 656.262, 656.277, 656.313, 656.382,  
4 656.385, 656.386 and 656.388; and declaring an emergency.

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

6 **SECTION 1.** ORS 656.012 is amended to read:

7 656.012. (1) The Legislative Assembly finds that:

8 (a) The performance of various industrial enterprises necessary to the  
9 enrichment and economic well-being of all the citizens of this state will in-  
10 evitably involve injury to some of the workers employed in those enterprises;

11 (b) The method provided by the common law for compensating injured  
12 workers involves long and costly litigation, without commensurate benefit  
13 to either the injured workers or the employers, and often requires the tax-  
14 payer to provide expensive care and support for the injured workers and

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 their dependents; and

2 (c) An exclusive, statutory system of compensation will provide the best  
3 societal measure of those injuries that bear a sufficient relationship to em-  
4 ployment to merit incorporation of their costs into the stream of commerce.

5 (2) In consequence of these findings, the objectives of the Workers' Com-  
6 pensation Law are declared to be as follows:

7 (a) To provide, regardless of fault, sure, prompt and complete medical  
8 treatment for injured workers and fair, adequate and reasonable income  
9 benefits to injured workers and their dependents;

10 (b) To provide a fair and just administrative system for delivery of med-  
11 ical and financial benefits to injured workers that reduces litigation and  
12 eliminates the adversary nature of the compensation proceedings, to the  
13 greatest extent practicable;

14 (c) **To ensure that injured workers have access to adequate repre-**  
15 **sentation to assist them in obtaining the full benefits allowed by the**  
16 **Workers' Compensation Law;**

17 [(c)] (d) To restore the injured worker physically and economically to a  
18 self-sufficient status in an expeditious manner and to the greatest extent  
19 practicable;

20 [(d)] (e) To encourage maximum employer implementation of accident  
21 study, analysis and prevention programs to reduce the economic loss and  
22 human suffering caused by industrial accidents; and

23 [(e)] (f) To provide the sole and exclusive source and means by which  
24 subject workers, their beneficiaries and anyone otherwise entitled to receive  
25 benefits on account of injuries or diseases arising out of and in the course  
26 of employment shall seek and qualify for remedies for such conditions.

27 (3) In recognition that the goals and objectives of this Workers' Com-  
28 pensation Law are intended to benefit all citizens, it is declared that the  
29 provisions of this law shall be interpreted in an impartial and balanced  
30 manner.

31 (4) In recognition of the exclusivity of the remedies granted under

1 this chapter, it is declared that the provisions of the Workers' Com-  
2 pensation Law shall be interpreted to allow benefits if a reasonable  
3 reading of the law so allows.

4 SECTION 2. ORS 656.262 is amended to read:

5 656.262. (1) Processing of claims and providing compensation for a worker  
6 shall be the responsibility of the insurer or self-insured employer. All em-  
7 ployers shall assist their insurers in processing claims as required in this  
8 chapter.

9 (2) The compensation due under this chapter shall be paid periodically,  
10 promptly and directly to the person entitled thereto upon the employer's re-  
11 ceiving notice or knowledge of a claim, except where the right to compen-  
12 sation is denied by the insurer or self-insured employer.

13 (3)(a) Employers shall, immediately and not later than five days after  
14 notice or knowledge of any claims or accidents which may result in a  
15 compensable injury claim, report the same to their insurer. The report shall  
16 include:

17 (A) The date, time, cause and nature of the accident and injuries.

18 (B) Whether the accident arose out of and in the course of employment.

19 (C) Whether the employer recommends or opposes acceptance of the claim,  
20 and the reasons therefor.

21 (D) The name and address of any health insurance provider for the in-  
22 jured worker.

23 (E) Any other details the insurer may require.

24 (b) Failure to so report subjects the offending employer to a charge for  
25 reimbursing the insurer for any penalty the insurer is required to pay under  
26 subsection (1.1) of this section because of such failure. As used in this sub-  
27 section, "health insurance" has the meaning for that term provided in ORS  
28 731.162.

29 (4)(a) The first installment of temporary disability compensation shall be  
30 paid no later than the 14th day after the subject employer has notice or  
31 knowledge of the claim, if the attending physician or nurse practitioner au-

1 thORIZED to provide compensable medical services under ORS 656.245 author-  
2 izes the payment of temporary disability compensation. Thereafter, temporary  
3 disability compensation shall be paid at least once each two weeks, except  
4 where the Director of the Department of Consumer and Business Services  
5 determines that payment in installments should be made at some other in-  
6 terval. The director may by rule convert monthly benefit schedules to weekly  
7 or other periodic schedules.

8 (b) Notwithstanding any other provision of this chapter, if a self-insured  
9 employer pays to an injured worker who becomes disabled the same wage at  
10 the same pay interval that the worker received at the time of injury, such  
11 payment shall be deemed timely payment of temporary disability payments  
12 pursuant to ORS 656.210 and 656.212 during the time the wage payments are  
13 made.

14 (c) Notwithstanding any other provision of this chapter, when the holder  
15 of a public office is injured in the course and scope of that public office, full  
16 official salary paid to the holder of that public office shall be deemed timely  
17 payment of temporary disability payments pursuant to ORS 656.210 and  
18 656.212 during the time the wage payments are made. As used in this sub-  
19 section, "public office" has the meaning for that term provided in ORS  
20 260.005.

21 (d) Temporary disability compensation is not due and payable for any  
22 period of time for which the insurer or self-insured employer has requested  
23 from the worker's attending physician or nurse practitioner authorized to  
24 provide compensable medical services under ORS 656.245 verification of the  
25 worker's inability to work resulting from the claimed injury or disease and  
26 the physician or nurse practitioner cannot verify the worker's inability to  
27 work, unless the worker has been unable to receive treatment for reasons  
28 beyond the worker's control.

29 (e) If a worker fails to appear at an appointment with the worker's at-  
30 tending physician or nurse practitioner authorized to provide compensable  
31 medical services under ORS 656.245, the insurer or self-insured employer

1 shall notify the worker by certified mail that temporary disability benefits  
2 may be suspended after the worker fails to appear at a rescheduled appoint-  
3 ment. If the worker fails to appear at a rescheduled appointment, the insurer  
4 or self-insured employer may suspend payment of temporary disability bene-  
5 fits to the worker until the worker appears at a subsequent rescheduled ap-  
6 pointment.

7 (f) If the insurer or self-insured employer has requested and failed to re-  
8 ceive from the worker's attending physician or nurse practitioner authorized  
9 to provide compensable medical services under ORS 656.245 verification of  
10 the worker's inability to work resulting from the claimed injury or disease,  
11 medical services provided by the attending physician or nurse practitioner  
12 are not compensable until the attending physician or nurse practitioner  
13 submits such verification.

14 (g) Temporary disability compensation is not due and payable pursuant  
15 to ORS 656.268 after the worker's attending physician or nurse practitioner  
16 authorized to provide compensable medical services under ORS 656.245 ceases  
17 to authorize temporary disability or for any period of time not authorized  
18 by the attending physician or nurse practitioner. No authorization of tem-  
19 porary disability compensation by the attending physician or nurse practi-  
20 tioner under ORS 656.268 shall be effective to retroactively authorize the  
21 payment of temporary disability more than 14 days prior to its issuance.

22 (h) The worker's disability may be authorized only by a person described  
23 in ORS 656.005 (12)(b)(B) or 656.245 for the period of time permitted by those  
24 sections. The insurer or self-insured employer may unilaterally suspend pay-  
25 ment of temporary disability benefits to the worker at the expiration of the  
26 period until temporary disability is reauthorized by an attending physician  
27 or nurse practitioner authorized to provide compensable medical services  
28 under ORS 656.245.

29 (i) The insurer or self-insured employer may unilaterally suspend payment  
30 of all compensation to a worker enrolled in a managed care organization if  
31 the worker continues to seek care from an attending physician or nurse

1 practitioner authorized to provide compensable medical services under ORS  
2 656.245 that is not authorized by the managed care organization more than  
3 seven days after the mailing of notice by the insurer or self-insured employer.

4 (5)(a) Payment of compensation under subsection (4) of this section or  
5 payment, in amounts per claim not to exceed the maximum amount estab-  
6 lished annually by the Director of the Department of Consumer and Business  
7 Services, for medical services for nondisabling claims, may be made by the  
8 subject employer if the employer so chooses. The making of such payments  
9 does not constitute a waiver or transfer of the insurer's duty to determine  
10 entitlement to benefits. If the employer chooses to make such payment, the  
11 employer shall report the injury to the insurer in the same manner that  
12 other injuries are reported. However, an insurer shall not modify an  
13 employer's experience rating or otherwise make charges against the employer  
14 for any medical expenses paid by the employer pursuant to this subsection.

15 (b) To establish the maximum amount an employer may pay for medical  
16 services for nondisabling claims under paragraph (a) of this subsection, the  
17 director shall use \$1,500 as the base compensation amount and shall adjust  
18 the base compensation amount annually to reflect changes in the United  
19 States City Average Consumer Price Index for All Urban Consumers for  
20 Medical Care for July of each year as published by the Bureau of Labor  
21 Statistics of the United States Department of Labor. The adjustment shall  
22 be rounded to the nearest multiple of \$100.

23 (c) The adjusted amount established under paragraph (b) of this sub-  
24 section shall be effective on January 1 following the establishment of the  
25 amount and shall apply to claims with a date of injury on or after the ef-  
26 fective date of the adjusted amount.

27 (6)(a) Written notice of acceptance or denial of the claim shall be fur-  
28 nished to the claimant by the insurer or self-insured employer within 60 days  
29 after the employer has notice or knowledge of the claim. Once the claim is  
30 accepted, the insurer or self-insured employer shall not revoke acceptance  
31 except as provided in this section. The insurer or self-insured employer may

1 revoke acceptance and issue a denial at any time when the denial is for  
2 fraud, misrepresentation or other illegal activity by the worker. If the  
3 worker requests a hearing on any revocation of acceptance and denial al-  
4 leging fraud, misrepresentation or other illegal activity, the insurer or self-  
5 insured employer has the burden of proving, by a preponderance of the  
6 evidence, such fraud, misrepresentation or other illegal activity. Upon such  
7 proof, the worker then has the burden of proving, by a preponderance of the  
8 evidence, the compensability of the claim. If the insurer or self-insured em-  
9 ployer accepts a claim in good faith, in a case not involving fraud, misrep-  
10 resentation or other illegal activity by the worker, and later obtains evidence  
11 that the claim is not compensable or evidence that the insurer or self-insured  
12 employer is not responsible for the claim, the insurer or self-insured em-  
13 ployer may revoke the claim acceptance and issue a formal notice of claim  
14 denial, if such revocation of acceptance and denial is issued no later than  
15 two years after the date of the initial acceptance. If the worker requests a  
16 hearing on such revocation of acceptance and denial, the insurer or self-  
17 insured employer must prove, by a preponderance of the evidence, that the  
18 claim is not compensable or that the insurer or self-insured employer is not  
19 responsible for the claim. Notwithstanding any other provision of this chap-  
20 ter, if a denial of a previously accepted claim is set aside by an Adminis-  
21 trative Law Judge, the Workers' Compensation Board or the court,  
22 temporary total disability benefits are payable from the date any such bene-  
23 fits were terminated under the denial. Except as provided in ORS 656.247,  
24 pending acceptance or denial of a claim, compensation payable to a claimant  
25 does not include the costs of medical benefits or funeral expenses. The  
26 insurer shall also furnish the employer a copy of the notice of acceptance.

27 (b) The notice of acceptance shall:

28 (A) Specify what conditions are compensable.

29 (B) Advise the claimant whether the claim is considered disabling or  
30 nondisabling.

31 (C) Inform the claimant of the Expedited Claim Service and of the hearing

1 and aggravation rights concerning nondisabling injuries, including the right  
2 to object to a decision that the injury of the claimant is nondisabling by  
3 requesting reclassification pursuant to ORS 656.277.

4 (D) Inform the claimant of employment reinstatement rights and respon-  
5 sibilities under ORS chapter 659A.

6 (E) Inform the claimant of assistance available to employers and workers  
7 from the Reemployment Assistance Program under ORS 656.622.

8 (F) Be modified by the insurer or self-insured employer from time to time  
9 as medical or other information changes a previously issued notice of ac-  
10 ceptance.

11 (c) An insurer's or self-insured employer's acceptance of a combined or  
12 consequential condition under ORS 656.005 (7), whether voluntary or as a  
13 result of a judgment or order, shall not preclude the insurer or self-insured  
14 employer from later denying the combined or consequential condition if the  
15 otherwise compensable injury ceases to be the major contributing cause of  
16 the combined or consequential condition.

17 (d) An injured worker who believes that a condition has been incorrectly  
18 omitted from a notice of acceptance, or that the notice is otherwise deficient,  
19 first must communicate in writing to the insurer or self-insured employer the  
20 worker's objections to the notice pursuant to ORS 656.267. The insurer or  
21 self-insured employer has 60 days from receipt of the communication from the  
22 worker to revise the notice or to make other written clarification in re-  
23 sponse. A worker who fails to comply with the communication requirements  
24 of this paragraph or ORS 656.267 may not allege at any hearing or other  
25 proceeding on the claim a de facto denial of a condition based on information  
26 in the notice of acceptance from the insurer or self-insured employer. Not-  
27 withstanding any other provision of this chapter, the worker may initiate  
28 objection to the notice of acceptance at any time.

29 (7)(a) After claim acceptance, written notice of acceptance or denial of  
30 claims for aggravation or new medical or omitted condition claims properly  
31 initiated pursuant to ORS 656.267 shall be furnished to the claimant by the

1 insurer or self-insured employer within 60 days after the insurer or self-  
2 insured employer receives written notice of such claims. A worker who fails  
3 to comply with the communication requirements of subsection (6) of this  
4 section or ORS 656.267 may not allege at any hearing or other proceeding  
5 on the claim a de facto denial of a condition based on information in the  
6 notice of acceptance from the insurer or self-insured employer.

7 (b) Once a worker's claim has been accepted, the insurer or self-insured  
8 employer must issue a written denial to the worker when the accepted injury  
9 is no longer the major contributing cause of the worker's combined condition  
10 before the claim may be closed.

11 (c) When an insurer or self-insured employer determines that the claim  
12 qualifies for claim closure, the insurer or self-insured employer shall issue  
13 at claim closure an updated notice of acceptance that specifies which condi-  
14 tions are compensable. The procedures specified in subsection (6)(d) of this  
15 section apply to this notice. Any objection to the updated notice or appeal  
16 of denied conditions shall not delay claim closure pursuant to ORS 656.268.  
17 If a condition is found compensable after claim closure, the insurer or self-  
18 insured employer shall reopen the claim for processing regarding that con-  
19 dition.

20 (8) The assigned claims agent in processing claims under ORS 656.054  
21 shall send notice of acceptance or denial to the noncomplying employer.

22 (9) If an insurer or any other duly authorized agent of the employer for  
23 such purpose, on record with the Director of the Department of Consumer  
24 and Business Services denies a claim for compensation, written notice of  
25 such denial, stating the reason for the denial, and informing the worker of  
26 the Expedited Claim Service and of hearing rights under ORS 656.283, shall  
27 be given to the claimant. A copy of the notice of denial shall be mailed to  
28 the director and to the employer by the insurer. The worker may request a  
29 hearing pursuant to ORS 656.319.

30 (10) Merely paying or providing compensation shall not be considered  
31 acceptance of a claim or an admission of liability, nor shall mere acceptance

1 of such compensation be considered a waiver of the right to question the  
2 amount thereof. Payment of permanent disability benefits pursuant to a no-  
3 tice of closure, reconsideration order or litigation order, or the failure to  
4 appeal or seek review of such an order or notice of closure, shall not pre-  
5 clude an insurer or self-insured employer from subsequently contesting the  
6 compensability of the condition rated therein, unless the condition has been  
7 formally accepted.

8 (11)(a) If the insurer or self-insured employer unreasonably delays or un-  
9 reasonably refuses to pay compensation, **penalties, attorney fees or costs,**  
10 or unreasonably delays acceptance or denial of a claim, the insurer or self-  
11 insured employer shall be liable for an additional amount up to 25 percent  
12 of the amounts then due plus any attorney fees assessed under this section.  
13 The fees assessed by the director, an Administrative Law Judge, the board  
14 or the court under this section shall be [*proportionate to the benefit to the*  
15 *injured worker*] **reasonable attorney fees.** The board shall adopt rules for  
16 establishing the amount of the attorney fee, giving primary consideration to  
17 the results achieved and to the time devoted to the case. [*An attorney fee*  
18 *awarded pursuant to this subsection may not exceed \$3,000 absent a showing*  
19 *of extraordinary circumstances. The maximum attorney fee awarded under this*  
20 *paragraph shall be adjusted annually on July 1 by the same percentage in-*  
21 *crease as made to the average weekly wage defined in ORS 656.211, if any.]*  
22 Notwithstanding any other provision of this chapter, the director shall have  
23 exclusive jurisdiction over proceedings regarding solely the assessment and  
24 payment of the additional amount and attorney fees described in this sub-  
25 section. The action of the director and the review of the action taken by the  
26 director shall be subject to review under ORS 656.704.

27 (b) When the director does not have exclusive jurisdiction over pro-  
28 ceedings regarding the assessment and payment of the additional amount and  
29 attorney fees described in this subsection, the provisions of this subsection  
30 shall apply in the other proceeding.

31 (12)(a) If payment is due on a disputed claim settlement authorized by

1 ORS 656.289 and the insurer or self-insured employer has failed to make the  
2 payment in accordance with the requirements specified in the disputed claim  
3 settlement, the claimant or the claimant's attorney shall clearly notify the  
4 insurer or self-insured employer in writing that the payment is past due. If  
5 the required payment is not made within five business days after receipt of  
6 the notice by the insurer or self-insured employer, the director may assess  
7 a penalty and attorney fee in accordance with a matrix adopted by the di-  
8 rector by rule.

9 (b) The director shall adopt by rule a matrix for the assessment of the  
10 penalties and attorney fees authorized under this subsection. The matrix  
11 shall provide for penalties based on a percentage of the settlement proceeds  
12 allocated to the claimant and for attorney fees based on a percentage of the  
13 settlement proceeds allocated to the claimant's attorney as an attorney fee.

14 (13) The insurer may authorize an employer to pay compensation to in-  
15 jured workers and shall reimburse employers for compensation so paid.

16 (14)(a) Injured workers have the duty to cooperate and assist the insurer  
17 or self-insured employer in the investigation of claims for compensation. In-  
18 jured workers shall submit to and shall fully cooperate with personal and  
19 telephonic interviews and other formal or informal information gathering  
20 techniques. Injured workers who are represented by an attorney shall have  
21 the right to have the attorney present during any personal or telephonic  
22 interview or deposition.

23 (b) **If an injured worker is represented by an attorney, the insurer**  
24 **or self-insured employer shall pay the attorney a reasonable attorney**  
25 **fee based upon an hourly rate for the efforts in scheduling, providing**  
26 **or attending any investigation process required under this subsection.**  
27 **After consultation with the Board of Governors of the Oregon State**  
28 **Bar, the Workers' Compensation Board shall adopt rules for the es-**  
29 **tablishment, assessment and enforcement of an hourly attorney fee**  
30 **rate.**

31 (c) *[However,]* If the attorney is not willing or available to participate in

1 an interview at a time reasonably chosen by the insurer or self-insured em-  
2 ployer within 14 days of the request for interview and the insurer or self-  
3 insured employer has cause to believe that the attorney's unwillingness or  
4 unavailability is unreasonable and is preventing the worker from complying  
5 within 14 days of the request for interview, the insurer or self-insured em-  
6 ployer shall notify the director. If the director determines that the attorney's  
7 unwillingness or unavailability is unreasonable, the director shall assess a  
8 civil penalty against the attorney of not more than \$1,000.

9 (15) If the director finds that a worker fails to reasonably cooperate with  
10 an investigation involving an initial claim to establish a compensable injury  
11 or an aggravation claim to reopen the claim for a worsened condition, the  
12 director shall suspend all or part of the payment of compensation after notice  
13 to the worker. If the worker does not cooperate for an additional 30 days  
14 after the notice, the insurer or self-insured employer may deny the claim  
15 because of the worker's failure to cooperate. The obligation of the insurer  
16 or self-insured employer to accept or deny the claim within 60 days is sus-  
17 pended during the time of the worker's noncooperation. After such a denial,  
18 the worker shall not be granted a hearing or other proceeding under this  
19 chapter on the merits of the claim unless the worker first requests and es-  
20 tablishes at an expedited hearing under ORS 656.291 that the worker fully  
21 and completely cooperated with the investigation, that the worker failed to  
22 cooperate for reasons beyond the worker's control or that the investigative  
23 demands were unreasonable. If the Administrative Law Judge finds that the  
24 worker has not fully cooperated, the Administrative Law Judge shall affirm  
25 the denial, and the worker's claim for injury shall remain denied. If the  
26 Administrative Law Judge finds that the worker has cooperated, or that the  
27 investigative demands were unreasonable, the Administrative Law Judge  
28 shall set aside the denial, order the reinstatement of interim compensation  
29 if appropriate and remand the claim to the insurer or self-insured employer  
30 to accept or deny the claim.

31 (16) In accordance with ORS 656.283 (3), the Administrative Law Judge

1 assigned a request for hearing for a claim for compensation involving more  
2 than one potentially responsible employer or insurer may specify what is  
3 required of an injured worker to reasonably cooperate with the investigation  
4 of the claim as required by subsection (14) of this section.

5 **SECTION 3.** ORS 656.277 is amended to read:

6 656.277. (1)(a) A request for reclassification by the worker of an accepted  
7 nondisabling injury that the worker believes was or has become disabling  
8 must be submitted to the insurer or self-insured employer. The insurer or  
9 self-insured employer shall classify the claim as disabling or nondisabling  
10 within 14 days of the request. A notice of such classification shall be mailed  
11 to the worker and the worker's attorney if the worker is represented. The  
12 worker may ask the Director of the Department of Consumer and Business  
13 Services to review the classification by the insurer or self-insured employer  
14 by submitting a request for review within 60 days of the mailing of the  
15 classification notice by the insurer or self-insured employer. If any party  
16 objects to the classification of the director, the party may request a hearing  
17 under ORS 656.283 within 30 days from the date of the director's order.

18 **(b) If the worker is represented by an attorney and the attorney is**  
19 **instrumental in obtaining an order from the director that reclassifies**  
20 **the claim from nondisabling to disabling, the director shall award the**  
21 **attorney a reasonable assessed attorney fee.**

22 (2) A request by the worker that an accepted nondisabling injury was or  
23 has become disabling shall be made pursuant to ORS 656.273 as a claim for  
24 aggravation, provided the claim has been classified as nondisabling for at  
25 least one year after the date of acceptance.

26 (3) A claim for a nondisabling injury shall not be reported to the director  
27 by the insurer or self-insured employer except:

28 (a) When a notice of claim denial is filed;

29 (b) When the status of the claim is as described in subsection (1) or (2)  
30 of this section; or

31 (c) When otherwise required by the director.

1     SECTION 4. ORS 656.313 is amended to read:

2     656.313. (1)(a) Filing by an employer or the insurer of a request for hear-  
3 ing on a reconsideration order before the Hearings Division, a request for  
4 Workers' Compensation Board review or court appeal or request for review  
5 of an order of the Director of the Department of Consumer and Business  
6 Services regarding vocational assistance stays payment of the compensation  
7 appealed, except for:

8     (A) Temporary disability benefits that accrue from the date of the order  
9 appealed from until closure under ORS 656.268, or until the order appealed  
10 from is itself reversed, whichever event first occurs;

11     (B) Permanent total disability benefits that accrue from the date of the  
12 order appealed from until the order appealed from is reversed;

13     (C) Death benefits payable to a surviving spouse prior to remarriage, to  
14 children or dependents that accrue from the date of the order appealed from  
15 until the order appealed from is reversed; and

16     (D) Vocational benefits ordered by the director pursuant to ORS 656.340  
17 (16). If a denial of vocational benefits is upheld by a final order, the insurer  
18 or self-insured employer shall be reimbursed from the Workers' Benefit Fund  
19 pursuant to ORS 656.605 for all costs incurred in providing vocational bene-  
20 fits as a result of the order that was appealed.

21     (b) If ultimately found payable under a final order, benefits, **including,**  
22 **but not limited to, attorney fees, penalties and costs withheld pending**  
23 **appeal, [withheld under this subsection]** shall accrue interest at the rate  
24 provided in ORS 82.010 from the date of the order appealed from through the  
25 date of payment. The board shall expedite review of appeals in which pay-  
26 ment of compensation has been stayed under this section.

27     (2) If the board or court subsequently orders that compensation to the  
28 claimant should not have been allowed or should have been awarded in a  
29 lesser amount than awarded, the claimant shall not be obligated to repay any  
30 such compensation which was paid pending the review or appeal.

31     (3) If an insurer or self-insured employer denies the compensability of all

1 or any portion of a claim submitted for medical services, the insurer or  
2 self-insured employer shall send notice of the denial to each provider of such  
3 medical services and to any provider of health insurance for the injured  
4 worker. Except for medical services payable in accordance with ORS 656.247,  
5 after receiving notice of the denial, a medical service provider may submit  
6 medical reports and bills for the disputed medical services to the provider  
7 of health insurance for the injured worker. The health insurance provider  
8 shall pay all such bills in accordance with the limits, terms and conditions  
9 of the policy. If the injured worker has no health insurance, such bills may  
10 be submitted to the injured worker. A provider of disputed medical services  
11 shall make no further effort to collect disputed medical service bills from the  
12 injured worker until the issue of compensability of the medical services has  
13 been finally determined.

14 (4) Except for medical services payable in accordance with ORS 656.247:

15 (a) When the compensability issue has been finally determined or when  
16 disposition or settlement of the claim has been made pursuant to ORS 656.236  
17 or 656.289 (4), the insurer or self-insured employer shall notify each affected  
18 service provider and health insurance provider of the results of the disposi-  
19 tion or settlement.

20 (b) If the services are determined to be compensable, the insurer or self-  
21 insured employer shall reimburse each health insurance provider for the  
22 amount of claims paid by the health insurance provider pursuant to this  
23 section. Such reimbursement shall be in addition to compensation or medical  
24 benefits the worker receives. Medical service reimbursement shall be paid  
25 directly to the health insurance provider.

26 (c) If the services are settled pursuant to ORS 656.289 (4), the insurer or  
27 self-insured employer shall reimburse, out of the settlement proceeds, each  
28 medical service provider for billings received by the insurer or self-insured  
29 employer on and before the date on which the terms of settlement are agreed  
30 as specified in the settlement document that are not otherwise partially or  
31 fully reimbursed.

1 (d) Reimbursement under this section shall be made only for medical  
2 services related to the claim that would be compensable under this chapter  
3 if the claim were compensable and shall be made at one-half the amount  
4 provided under ORS 656.248. In no event shall reimbursement made to med-  
5 ical service providers exceed 40 percent of the total present value of the  
6 settlement amount, except with the consent of the worker. If the settlement  
7 proceeds are insufficient to allow each medical service provider the re-  
8 imbursement amount authorized under this subsection, the insurer or self-  
9 insured employer shall reduce each provider's reimbursement by the same  
10 proportional amount. Reimbursement under this section shall not prevent a  
11 medical service provider or health insurance provider from recovering the  
12 balance of amounts owing for such services directly from the worker, unless  
13 the worker agrees to pay all medical service providers directly from the  
14 settlement proceeds the amount provided under ORS 656.248.

15 (5) As used in this section, "health insurance" has the meaning for that  
16 term provided in ORS 731.162.

17 **SECTION 5.** ORS 656.382 is amended to read:

18 656.382. (1) If an insurer or self-insured employer refuses to pay compen-  
19 sation, **costs, attorney fees or penalties** due under an order of an Admin-  
20 istrative Law Judge, board or court, or otherwise unreasonably resists the  
21 payment of compensation, [*except as provided in ORS 656.385*] **costs, attor-**  
22 **ney fees or penalties**, the employer or insurer shall pay to the attorney of  
23 the claimant a reasonable attorney fee as provided in subsection (2) of this  
24 section. To the extent an employer has caused the insurer to be charged such  
25 fees, such employer may be charged with those fees.

26 (2) If a request for hearing, request for review, appeal or cross-appeal to  
27 the Court of Appeals or petition for review to the Supreme Court is initiated  
28 by an employer or insurer[, *and the Administrative Law Judge, board or court*  
29 *finds that the compensation awarded to a claimant should not be disallowed*  
30 *or reduced, or, through the assistance of an attorney, that an order rescinding*  
31 *a notice of closure should not be reversed or the compensation awarded by a*

1 *reconsideration order issued under ORS 656.268 should not be reduced or*  
2 *disallowed, the employer or insurer shall be required to pay to the attorney of*  
3 *the claimant a reasonable attorney fee in an amount set by the Administrative*  
4 *Law Judge, board or the court for legal representation by an attorney for the*  
5 *claimant at and prior to the hearing, review on appeal or cross-appeal.] on*  
6 **any issue, including costs, attorney fees or penalties, the employer or**  
7 **insurer shall be required to pay to the attorney of the claimant a**  
8 **reasonable attorney fee in an amount set by the Administrative Law**  
9 **Judge, board or court for legal representation for the claimant at, and**  
10 **prior to, the hearing, review on appeal or cross-appeal if:**

11 (a) **The employer or insurer does not fully prevail on all issues**  
12 **raised, regardless of whether a decision on the merits occurs;**

13 (b) **An order rescinding a notice of closure is not reversed; or**

14 (c) **The compensation awarded by a reconsideration order issued**  
15 **under ORS 656.268 is not reduced or disallowed.**

16 (3) **If upon reaching a decision on a request for hearing initiated by an**  
17 **employer it is found by the Administrative Law Judge that the employer in-**  
18 **itiated the hearing for the purpose of delay or other vexatious reason or**  
19 **without reasonable ground, the Administrative Law Judge may order the**  
20 **employer to pay to the claimant such penalty not exceeding \$750 and not less**  
21 **than \$100 as may be reasonable in the circumstances.**

22 **SECTION 6. ORS 656.385 is amended to read:**

23 **656.385. (1) In all cases involving a dispute over compensation benefits**  
24 **pursuant to, or costs, attorney fees or penalties related to, ORS 656.245,**  
25 **656.247, 656.248, 656.260, 656.327 or 656.340, where a claimant finally prevails**  
26 **after a proceeding including an administrative proceeding before a**  
27 **managed care organization, has commenced, the Director of the Depart-**  
28 **ment of Consumer and Business Services, [or] the Administrative Law Judge**  
29 **or the court shall require the insurer or self-insured employer to pay a**  
30 **reasonable attorney fee to the claimant's attorney for all work performed**  
31 **at the level of the proceeding and for any other work performed on the**

1 **claim prior to commencement of the proceeding.** In such cases, where  
2 an attorney is instrumental in obtaining a settlement of the dispute prior to  
3 a decision by the director, [or] an Administrative Law Judge **or the court,**  
4 the director, [or] Administrative Law Judge **or court** shall require the  
5 insurer or self-insured employer to pay a reasonable attorney fee to the  
6 claimant's attorney. The attorney fee must be based on all work the  
7 claimant's attorney has done relative to the proceeding at all levels before  
8 the department **and for any other work performed on the claim prior**  
9 **to commencement of the proceeding.** The attorney fee assessed under  
10 this section must be proportionate to the benefit to the injured worker. The  
11 director shall adopt rules for establishing the amount of the attorney fee,  
12 giving primary consideration to the results achieved and to the time devoted  
13 to the case. *[An attorney fee awarded pursuant to this subsection may not*  
14 *exceed \$3,000 absent a showing of extraordinary circumstances. The maximum*  
15 *attorney fee awarded under this subsection shall be adjusted annually on July*  
16 *1 by the same percentage increase as made to the average weekly wage defined*  
17 *in ORS 656.211, if any.]*

18 (2) If an insurer or self-insured employer refuses to pay compensation due  
19 under, **or costs, attorney fees or penalties related to,** ORS 656.245,  
20 656.247, **656.248,** 656.260, 656.327 or 656.340 pursuant to an order of the di-  
21 rector, an Administrative Law Judge or the court or otherwise unreasonably  
22 resists the payment of such compensation, the insurer or self-insured em-  
23 ployer shall pay to the attorney of the claimant a reasonable attorney fee  
24 as provided in subsection (3) of this section. To the extent an employer has  
25 caused the insurer to be charged such fees, such employer may be charged  
26 with those fees.

27 (3) If a request for a contested case hearing, review on appeal or cross-  
28 appeal to the Court of Appeals or petition for review to the Supreme Court  
29 is initiated by an insurer or self-insured employer, and the director, Admin-  
30 istrative Law Judge or court finds that the compensation awarded under ORS  
31 656.245, 656.247, **656.248,** 656.260, 656.327 or 656.340 to a claimant should not

1 be disallowed or reduced, the insurer or self-insured employer shall be re-  
2 quired to pay to the attorney of the claimant a reasonable attorney fee in  
3 an amount set by the director, the Administrative Law Judge or the court  
4 for legal representation by an attorney for the claimant at the contested case  
5 hearing, review on appeal or cross-appeal.

6 (4) If upon reaching a final contested case decision where such contested  
7 case was initiated by an insurer or self-insured employer it is found that the  
8 insurer or self-insured employer initiated the contested case hearing for the  
9 purpose of delay or other vexatious reason or without reasonable ground, the  
10 director, [or] Administrative Law Judge or court may order the insurer or  
11 self-insured employer to pay to the claimant such penalty not exceeding \$750  
12 and not less than \$100 as may be reasonable in the circumstances.

13 (5) Penalties and attorney fees awarded pursuant to this section by the  
14 director, an Administrative Law Judge or the courts shall be paid for by the  
15 employer or insurer in addition to compensation found to be due to the  
16 claimant.

17 **SECTION 7.** ORS 656.386 is amended to read:

18 656.386. (1)(a) In all cases involving denied claims where a claimant  
19 finally prevails against the denial in an appeal to the Court of Appeals or  
20 petition for review to the Supreme Court, the court shall allow a reasonable  
21 attorney fee to the claimant's attorney. In such cases involving denied claims  
22 where the claimant prevails finally in a hearing before an Administrative  
23 Law Judge or in a review by the Workers' Compensation Board, then the  
24 Administrative Law Judge or board shall allow a reasonable attorney fee. In  
25 such cases involving denied claims where an attorney is instrumental in ob-  
26 taining a rescission of the denial prior to a decision by the Administrative  
27 Law Judge, a reasonable attorney fee shall be allowed.

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

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

1 to an entitlement to any compensation;

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

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

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

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

14 (2)(a) If a claimant finally prevails against a denial as provided in sub-  
15 section (1) of this section, the court, board or Administrative Law Judge may  
16 order payment of the claimant's reasonable expenses and costs for records,  
17 expert opinions and witness fees.

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

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

24 (d) Payments for witness fees, expenses and costs ordered under this sub-  
25 section may not exceed \$1,500 unless the claimant demonstrates extraor-  
26 dinary circumstances justifying payment of a greater amount.

27 (3) If a claimant requests claim reclassification as provided in ORS  
28 656.277 and the insurer or self-insured employer does not respond within 14  
29 days of the request, or if the claimant, insurer or self-insured employer re-  
30 quests a hearing, review, appeal or cross-appeal to the Court of Appeals or  
31 petition for review to the Supreme Court and the Director of the Department

1 of Consumer and Business Services, Administrative Law Judge, board or  
 2 [the] court finally determines that the claim should be classified as disabling,  
 3 the director, Administrative Law Judge, board or [the] court [may] shall as-  
 4 sess a reasonable attorney fee.

5 **(4) In cases involving a claim for penalties or costs, if the claimant**  
 6 **prevails on the claim for any increase of costs or penalties, the Ad-**  
 7 **ministrative Law Judge, board, Court of Appeals or Supreme Court**  
 8 **shall award a reasonable assessed attorney fee to the claimant's at-**  
 9 **torney for efforts in obtaining any costs or penalties.**

10 [(4)] (5) In all other cases, attorney fees shall be paid from the increase  
 11 in the claimant's compensation, if any, except as otherwise expressly pro-  
 12 vided in this chapter.

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

14 656.388. (1) No claim or payment for legal services by an attorney repre-  
 15 senting the worker or for any other services rendered before an Administra-  
 16 tive Law Judge or the Workers' Compensation Board, as the case may be, in  
 17 respect to any claim or award for compensation to or on account of any  
 18 person, shall be valid unless approved by the Administrative Law Judge or  
 19 board, or if proceedings on appeal from the order of the board with respect  
 20 to such claim or award are had before any court, unless approved by such  
 21 court. In cases in which a claimant finally prevails after remand from the  
 22 Supreme Court, Court of Appeals or board, then the Administrative Law  
 23 Judge, board or appellate court shall approve or allow a reasonable attorney  
 24 fee for services before every prior forum as authorized under ORS 656.307 (5),  
 25 656.308 (2), 656.382 or 656.386. *[No attorney fees shall be approved or allowed*  
 26 *for representation of the claimant before the managed care organization or*  
 27 *Director of the Department of Consumer and Business Services except for*  
 28 *representation at the contested case hearing.]*

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

1 (3) If an injured worker signs an attorney fee agreement with an attorney  
2 for representation on a claim made pursuant to this chapter and additional  
3 compensation is awarded to the worker or a settlement agreement is con-  
4 summated on the claim after the fee agreement is signed and it is shown that  
5 the attorney with whom the fee agreement was signed was instrumental in  
6 obtaining the additional compensation or settling the claim, the Adminis-  
7 trative Law Judge or the board shall grant the attorney a lien for attorney  
8 fees out of the additional compensation awarded or proceeds of the settle-  
9 ment in accordance with rules adopted by the board governing the payment  
10 of attorney fees.

11 (4) The board shall, after consultation with the Board of Governors of the  
12 Oregon State Bar, establish a schedule of fees for attorneys representing a  
13 worker and representing an insurer or self-insured employer, under this  
14 chapter. **The board shall increase the fees in the schedule biennially**  
15 **by the same percentage as any increase made to the average weekly**  
16 **wage, as defined in ORS 656.211, since the last fee schedule adjustment.**

17 (5) The board shall, in establishing the schedule of attorney fees  
18 awarded under this chapter, consider the contingent nature of the  
19 practice of workers' compensation law and the necessity of allowing  
20 the broadest access to attorneys by injured workers regardless of the  
21 amount at issue, and shall ensure that the schedule of attorney fees  
22 is equitable in the aggregate in relation to fees earned by attorneys  
23 representing insurers and self-insured employers.

24 [(5)] (6) The board shall approve no claim for legal services by an attor-  
25 ney representing a claimant to be paid by the claimant if fees have been  
26 awarded to the claimant or the attorney of the claimant in connection with  
27 the same proceeding under ORS 656.268.

28 [(6)] (7) Insurers and self-insured employers shall make an annual report  
29 to the Director of the Department of Consumer and Business Services re-  
30 porting attorney salaries and other costs of legal services incurred pursuant  
31 to this chapter. The report shall be in such form and shall contain such in-

1 formation as the director prescribes.

2 **SECTION 9.** Section 10 of this 2015 Act is added to and made a part  
3 of ORS chapter 656.

4 **SECTION 10.** The claimant's attorney shall be allowed a reasonable  
5 assessed attorney fee if:

6 (1) The claimant's attorney is instrumental in obtaining temporary  
7 disability compensation benefits pursuant to ORS 656.210, 656.212,  
8 656.262, 656.268 or 656.325 prior to a decision by an Administrative Law  
9 Judge; or

10 (2) The claimant finally prevails in a dispute over temporary disa-  
11 bility compensation benefits pursuant to ORS 656.210, 656.212, 656.262,  
12 656.268 or 656.325 after a request for hearing has been filed.

13 **SECTION 11.** Section 10 of this 2015 Act and the amendments to  
14 ORS 656.012, 656.262, 656.277, 656.313, 656.382, 656.385, 656.386 and 656.388  
15 by sections 1 to 8 of this 2015 Act apply to claims for which an order  
16 has not become final, regardless of the date on which the claim was  
17 filed.

18 **SECTION 12.** This 2015 Act being necessary for the immediate  
19 preservation of the public peace, health and safety, an emergency is  
20 declared to exist, and this 2015 Act takes effect on its passage.

21

