

Provide access to legal help for injured workers and ensure they get the insurance coverage the worker and employer have been paying for

Oregon's workers' compensation system is complicated. Because of its complexity, injured workers often need the help of an attorney to navigate the system. They might need help getting their claim accepted or the benefits both the worker and employer have been paying for. Unfortunately, many workers who want attorneys have a difficult time finding one.

The law requires injured workers to participate in the investigation and processing of their claims. They must provide statements, attend independent medical examinations and return to modified jobs. At any given time their wage-replacement benefits (time-loss) may be terminated or calculated incorrectly, medical services or bills are denied, claims are closed incorrectly or with awards that are incorrect, or disputes arise over vocational rehabilitation issues. The workers' attorney can provide valuable guidance throughout this process helping the injured worker avoid disputes or get the problem solved more quickly so the worker can get better faster. The injured worker's attorneys' fees are highly regulated by statute and rules created by the Workers' Compensation Board and Workers' Compensation Division. Claimants' attorneys are paid only if they win certain types of disputes. Depending on the type of dispute, the claimant's attorney may sometimes earn a very small fee or sometimes, no fee. All fees are contingent, meaning that if the attorney loses the dispute, they are not paid at all. In the instances stated above, the attorneys get paid nothing for helping the worker. This is in contrast to attorneys for the self-insured or Workers' Compensation insurers -- these fees are not regulated by statute and they are paid for time spent on the claim regardless of the outcome.

Claimants' attorneys provide valuable assistance in a highly technical area, but because fees are so limited, fewer attorneys are choosing to practice in this area and many injured workers claimants are unable to find legal help.

Purpose: This proposed legislation fills in gaps where claimants' attorneys are providing meaningful assistance to injured workers but receiving no compensation for their work. These proposals will help more injured workers access adequate quality legal help to assist them in obtaining the full benefits both the employer and worker have been paying for.

Examples:

- Brent's claim was first denied, but his attorney was able to get his claim accepted and won a penalty against the insurer for unreasonable claim denial. Brent was anxious to get the extra money because he had fallen behind on his bills while his claim had been denied. The penalty check never showed up. Brent called his attorney. The insurer only issued the check several months later, after the attorney filed a hearing request to finally get Brent paid. By that time, Brent's car had been repossessed. Brent asked if the insurer would be penalized for sending his checks late. The attorney explained that the law did not allow for a penalty to be assessed on a penalty, and the law did not allow for his attorney to get paid for being instrumental in pressuring the insurer to do the right thing and finally pay the penalty.
- When Sandy's claim closed, she was awarded some money. Her attorney challenged the award and submitted information confirming that she should have also gotten a work disability award and extra

time-loss. WCD agreed and awarded both. The insurer appealed. Sandy's attorney represented her throughout the insurer's two appeals and wrote lengthy briefs, requiring hours of work. WCB's final decision was that Sandy should be awarded the work disability award but not the extra time-loss. Although Sandy's attorney was instrumental in protecting her right to the work disability award, her attorney did not get paid for any of the work during the appeals. The law only allows the claimants' attorneys to be paid if they win on all challenges to the award. Because she lost part of the challenge, her attorney did not get compensated for the win. Sandy put her work disability award toward her law school student loans. When asked if she would be a claimant's attorney, she responded, "No way, I'm not an idiot! Those guys don't get paid even when they win!"

- Steve had an accepted claim and he thought all his medical bills would be paid. The hospital continued sending him bills even though he told them it was related to his WC claim. They said the WC insurer denied paying it. Steve was lucky, he had an attorney who intervened and tried to get the issue resolved. After many hours of negotiating, Steve's attorney finally had to file a medical dispute. After the dispute was filed, the WC insurer decided to pay the bill. Although the claimant's attorney was instrumental in getting the bill issue resolved, the law does not allow claimants' attorneys to be paid for winning disputes over medical bills.
- Felipe's claim had been denied but his attorney won his claim after a hearing. The judge at the hearing assessed a penalty against the insurer for unreasonable claims processing, giving Felipe some extra funds to pay off the debt he had accrued while his claim was denied. The judge also ordered the insurer to pay Felipe's attorney for getting the denial set aside. The insurer appealed both the penalty and the amount of the attorney's fee. Felipe's attorney spent many hours writing a brief and won the appeal but did not get paid for this extra work because the law does not allow claimants' attorneys to be paid for the work they do to make sure penalties and fees on appeals are actually paid.
- Rick won his claim at hearing, but it cost him money he really didn't have. He had to pay out-of-pocket for several key witnesses to be subpoenaed to the hearing. He won so he was reimbursed for these expenses. But, the insurer refused to pay the full amount of the costs. Rick's attorney spent significant time at a hearing and in an appeal to WCB and eventually won so Rick could get reimbursed. He couldn't believe that his attorney could not get paid for helping him get his money back. The law does not allow Rick's attorney to be paid for winning a dispute over costs.
- Marie had an accepted claim but it was classified as non-disabling. Marie's attorney asked the insurer to reclassify it but the insurer refused. Marie's attorney filed a dispute with WCD and provided medical evidence that established she had lost several days from work and a doctor's letter indicating she was likely to have some permanent disability. WCD ruled that Marie's claim should be classified as disabling, but her attorney was not paid for winning the dispute because the law does not allow claimant's attorneys to be paid for winning a reclassification dispute at this stage.

Ensure Injured Workers Get the Insurance Coverage the Employer & Worker Have Been Paying For And That Injured Workers Get Access to Fair and Balanced Legal Help