

MEMORANDUM

August 27, 2025

To: Co-chair Strickland, Co-chair Priest, members of MLAC

From: Matt West, WCD Administrator

Subject: Exclusive Remedy in Neighboring States

You asked if the exclusive remedy statutes of Oregon's neighboring states had exceptions similar to, or more expansive than, those in ORS 656.018. In particular you asked if any of these states had an exception for gross negligence.

We reviewed the exclusive remedy statutes of Alaska, California, Idaho, Montana, Nevada, and Washington. Each of these states except Washington voids exclusive remedy protections for uninsured employers¹.

Beyond that, exceptions to exclusive remedy vary from state to state.

- Alaska and Nevada have no exceptions in statute. (Because exclusive remedy law is often developed through litigation, this may not paint the full picture, but a complete review of other states' exclusive remedy caselaw is outside the scope of this memo.)
- Washington law voids exclusive remedy protections in the case of intentional injury.
- California law voids exclusive remedy protections when an injury is caused by an employer or coworker's willful and unprovoked aggression.

California law also provides an exception when an employer conceals the existence of an injury, the employer conceals the connection between the injury and employment, and the worker's injury is aggravated following the employer's concealment. This exception appears to arise mostly in the context of occupational disease claims involving toxic

¹ Idaho limits recoveries to the compensation a worker would have been entitled to under workers' compensation law, plus a 10% penalty and attorney's fees.

exposure, and recovery is limited to those damages proximately caused by the aggravation.

- Idaho law voids exclusive remedy protections when an injury is caused by an employer or coworker's willful and unprovoked aggression "when there is clear and compelling evidence [the aggressor] either specifically intended to harm the employee or engaged in conduct knowing that injury or death to the employee was substantially likely to occur."

By providing that conduct an employer knows is substantially likely to injure a worker can constitute willful and unprovoked aggression even without a specific intent to harm, Idaho probably comes the closest to having an exception for gross negligence among Oregon's neighboring states.

I hope this information is helpful. Please feel free to reach out if you have any questions.