



MEMORANDUM

July 8, 2020

To: Management-Labor Advisory Committee

From: Julia Hier, Claims Policy Analyst

Subject: Notice vs. Filing of an Injury Claim

The purpose of this memorandum is to clarify and correct the information provided on June 30, 2020, related to when a worker must file an injury claim.

ORS 656.265 outlines the timeframe in which a worker must give *notice* of their injury (*See Appendix A*). To date, the Courts and the Workers' Compensation Board have allowed for injury claims to be *filed* beyond the timeframes outlined in ORS 656.265 (beyond 90 days and one year), so long as appropriate notice was provided.

The following cases may be of interest:

- [*Vsetecka v. Safeway Stores, Inc.*](#), 337 Or 502 (2004).
 - Under the second sentence of ORS 656.265(2), the worker's notice must provide enough information about the when, where, and how of an injury to put the employer on notice that the worker may have sustained a compensable injury. The worker's notations in the employer's injury log, made within 30 days of the date of injury and containing the worker's name, the date, and a reference to right wrist pain, were sufficient notice. The worker's claim was filed nearly two years after the date of injury. The court did not explicitly discuss the difference between "notice of accident" and "claim."
- [*Godfrey v. Fred Meyer Stores*](#), 202 Or. App. 673 (2005)
 - Under the third sentence of ORS 656.265(2) (which refers to a report or statement secured from a worker concerning an accident), notice of an accident may be oral. The worker told her supervisor about an injury, and the supervisor entered information into the employer's database. Over a year later, the worker sought medial treatment and filed a claim. The court found her oral notice timely, and the court distinguished "notice of an accident" from "claim."

- [Jose Amador](#), 59 Van Natta 2115 (2007)
 - Claimant had satisfied the notice requirements of ORS 656.265, even though he did not file a formal written claim within a year of the accident.
 - ORS 656.265(4) refers to notice of an accident and does not impose a requirement regarding the timeliness of claim filing.
- [Azam Ansarinezhad](#), 71 Van Natta 1003 (2019)
 - Note: This case is on appeal to the Court of Appeals and oral argument is scheduled for September 28, 2020.
 - The employer argued the “notice” that must be provided within one year under ORS 656.265(4) refers to notice of a claim. But, the Board disagreed. Timely notice of an injury was provided to the employer, even though claimant did not file a formal claim within one year. The claim was *not* barred as untimely. Legislative history was discussed. The board adhered to prior case law precedent.

Occupational disease claims do have a time for filing of the claim. ORS 656.807. *See* Appendix B.

APPENDIX A

ORS 656.265 Notice of accident from worker.

(1)

(a) Notice of an accident resulting in an injury or death shall be given immediately by the worker or a beneficiary of the worker to the employer, but not later than 90 days after the accident. The employer shall acknowledge forthwith receipt of such notice.

(b) Notwithstanding paragraph (a) of this subsection, if an injured worker has not submitted a claim under this chapter but has submitted a claim to a health benefit plan that provides benefits to the worker, and the health benefit plan rejects the claim as being work related, the injured worker may file a claim under this section within 90 days from the date the health benefit plan rejects the claim. If a claim filed under this section is denied, the workers' compensation insurer or self-insured employer shall inform the health benefit plan of the denial and the health benefit plan shall process the claim for payment in accordance with the terms, conditions and benefits of the plan.

(2) The notice need not be in any particular form. However, it shall be in writing and shall apprise the employer when and where and how an injury has occurred to a worker. A report or statement secured from a worker, or from the doctor of the worker and signed by the worker, concerning an accident which may involve a compensable injury shall be considered notice from the worker and the employer shall forthwith furnish the worker a copy of any such report or statement.

(3) Notice shall be given to the employer by mail, addressed to the employer at the last-known place of business of the employer, or by personal delivery to the employer or to a foreman or other supervisor of the employer. If for any reason it is not possible to so notify the employer, notice may be given to the Director of the Department of Consumer and Business Services and referred to the insurer or self-insured employer.

(4) Failure to give notice as required by this section bars a claim under this chapter unless the notice is given within one year after the date of the accident and:

(a) The employer had knowledge of the injury or death;

(b) The worker died within 180 days after the date of the accident; or

(c) The worker or beneficiaries of the worker establish that the worker had good cause for failure to give notice within 90 days after the accident.

(5) The issue of failure to give notice must be raised at the first hearing on a claim for compensation in respect to the injury or death.

(6) The director shall promulgate and prescribe uniform forms to be used by workers in reporting their injuries to their employers. These forms shall be supplied by all employers to injured

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workers upon request of the injured worker or some other person on behalf of the worker. The failure of the worker to use a specified form shall not, in itself, defeat the claim of the worker if the worker has complied with the requirement that the claim be presented in writing.

[1965 c.285 §30a; 1971 c.386 §2; 1981 c.854 §18; 1995 c.332 §29; 2003 c.707 §1; 2015 c.259 §1]

APPENDIX B

ORS 656.807 Time for filing of claims for occupational disease; procedure.

(1) All occupational disease claims shall be void unless a claim is filed with the insurer or self-insured employer by whichever is the later of the following dates:

(a) One year from the date the worker first discovered, or in the exercise of reasonable care should have discovered, the occupational disease; or

(b) One year from the date the claimant becomes disabled or is informed by a physician that the claimant is suffering from an occupational disease.

(2) If the occupational disease results in death, a claim may be filed within one year from the date that the worker's beneficiary first discovered, or in the exercise of reasonable care should have discovered, that the cause of the worker's death was due to an occupational disease.

(3) The procedure for processing occupational disease claims shall be the same as provided for accidental injuries under this chapter.

[Amended by 1953 c.440 §2; 1959 c.351 §2; 1965 c.285 §87a; 1973 c.543 §3; 1981 c.535 §47; 1981 c.854 §55; 1985 c.212 §10; 1987 c.713 §6]