



MEMORANDUM

November 20, 2019

To: Board Members
From: Steve Lanning, Board Member
Subject: Draft Rule Amendments Language

Set fourth below is some draft amended rule language for our consideration and discussion at our next meeting.

438-015-0010 General Principles

- (1) Attorney fees for an attorney representing a claimant before the Board or its Hearings Division shall be authorized only if an executed attorney retainer agreement has been filed with the Administrative Law Judge or Board.
- (2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award except as provided by ORS 656.307, 656.382, 656.383 and 656.386.
- (3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.
- (4) In any case where an Administrative Law Judge or the Board is required to determine a reasonable attorney fee, the following factors shall be considered:
 - (a) The time devoted to the case for legal services;
 - (b) The complexity of the issue(s) involved;
 - (c) The value of the interest involved;
 - (d) The skill of the attorneys;

- (e) The nature of the proceedings;
- (f) The benefit secured for the represented party.;
- (g) The risk in a particular case that an attorney's efforts may go uncompensated and the contingent nature of the practice; [and]

(h) The hourly rate for the claimant's attorney as prescribed in section (6); and

(i)The assertion of frivolous issues or defenses.

(5) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.

(6) The hourly rate for a contingent assessed attorney fee award for a claimant's attorney shall be as follows:

(a) For an attorney with 0-7 years of experience representing workers, insurers, and self-insured employers, \$350 per hour of time reasonably devoted to the case;

(b) For an attorney with 8-15 years of experience representing workers, insurers, and self-insured employers, \$400 per hour of time reasonably devoted to the case; or

(c) For an attorney with more than 15 years of experience representing workers, insurers, and self-insured employers, \$450 per hour of time reasonably devoted to the case.

(7) On or before the closure of the hearing record or the filing of the last brief to the Board, a claimant's attorney shall file a statement of services that:

(a) Briefly describes the relevant factors prescribed in section (4), as well as the hourly rate prescribed in section (6); and

(b) Requests a reasonable assessed fee in a specific amount.

(8) The requested fee described in section (7) may be adjusted by the Administrative Law Judge or the Board based on an application of the factors prescribed in section (4) as relevant to the record, including (but not limited to) the specific issue(s) to which the claimant prevails.