

5-Year Rule Review Report

Rule number: OAR 438-015-0033 (Hourly Rate for Interview or Deposition)

Date adopted: December 16, 2015

Advisory Committee used? Yes No

If yes, identify members. After completing its review, the agency must provide advisory committee members a copy of its report. ORS 183.405(3).

Advisory Committee Members: Nelson Hall, William Repogle, M. Kathryn Olney, Marybeth Wosko. Presiding Administrative Law Judge Joy Dougherty served as facilitator.

1. Did the rule achieve its intended effect? Yes No

a. What was the intended effect?

OAR 438-015-0033 was promulgated to prescribe a reasonable hourly rate for an attorney's actual time spent during a personal or telephonic interview or deposition conducted under ORS 656.214. The hourly rate was set at \$275 in 2015. In June 2020, after additional public meetings regarding the Board's schedule of attorney fees (including its biennial review under ORS 656.388(4)), plus consultation with the Board of Governors of the Oregon State Bar, the Board amended the rule, increasing the hourly rate to \$350. The amended rule also added an annual adjustment tied to changes in the state average weekly wage. As of July 1, 2020, the hourly rate is \$366.

b. How did the rule succeed or fail in achieving this effect?

OAR 438-015-0033 has provided a reasonable hourly rate for attorneys representing injured workers during recorded statements and depositions. The hourly rate for time spent during the interview or deposition was discussed extensively in Board meetings (including interested parties, practitioners, and the general public) throughout 2019 and 2020. As a result of those deliberations, the Members amended the rule to increase the hourly rate and also to provide an annual adjustment tied to the state average weekly wage. The Board is unaware of any problems associated with the implementation and practice of this rule.

2. Was the fiscal impact statement underestimated or overestimated or just about right or unknown? (Check one).

- a. What was the estimated fiscal impact? The Board Members noted that there would be impact to workers' compensation carriers from the increased hourly rate.
 - b. What was the actual fiscal impact? Precise fiscal impact is not determinable, but there is no reason to believe the fiscal impact has been significant to the workers' compensation carriers.
 - c. If the answer to question 2 is unknown, briefly explain why.
3. Have subsequent changes in the law required the rule be repealed or amended?
 Yes No If yes, explain.

In June 2020, the rule was amended to increase the hourly rate to \$350, with an annual adjustment on July 1 by the same percentage increase as made to the state average weekly wage defined in ORS 656.211, if any. As of July 1, 2020, the hourly rate is \$366 per hour.

4. Is the rule still needed? Yes No Explain.

ORS 656.262 (14) requires that the Board adopt rules for the establishment, assessment and enforcement of an hourly attorney fee rate. OAR 438-011-0055 implements that statutory mandate. The amendment of the rule in 2020 was developed in consideration with an advisory committee and public testimony at Board meetings in 2019 and 2020. The rule is still needed to fulfill the statutory requirements.

Dated this 12 day of March, 2021.

Workers' Compensation Board

by: Constance L. Wold Sally Anne Curey
 Constance L. Wold, Board Chair Sally Anne Curey, Board Member

Roger Ousey Barbara Woodford
 Roger Ousey, Board Member Barbara Woodford, Board Member