



December 22, 2025

FIVE-YEAR RULE REVIEW REPORT (ORS 183.405)

OAR 438-015-0125, Bifurcation of Attorney Fee Award (Board Review)

Adopted August 19, 2020, Effective October 1, 2020

The Workers' Compensation Board has completed its review of OAR 438-015-0125 under ORS 183.405. On September 11, 2025, the Board requested comment from the members of the advisory committee and the public as part of its review. The deadline for providing comment was November 10, 2025. The Board received responses from the four practitioners who served on the advisory committee and one additional claimant's attorney. The comments and a staff summary are posted on the Board's website at <https://www.oregon.gov/wcb/legal/Pages/5-yr-review.aspx>. At its December 18, 2025, meeting, the Board directed staff to prepare a report consistent with the staff summary.

1. An advisory committee was used before adopting the rule.

The advisory committee consisted of claimant's attorneys Arthur Stevens III and Theodore Heus, carrier's attorneys William Replogle and Elaine Schooler, the Ombudsman for Injured Workers Jennifer Flood, and Administrative Law Judge Mark Mills, who served as facilitator.

2. The rule has had its intended effect. (ORS 183.450(1)(a))

The rule was requested by several claimant's attorneys to implement a voluntary procedure for the bifurcation of the determination of a reasonable assessed attorney fee from the merits of the underlying claim in certain cases on Board review.

A [July 15, 2024, memorandum](#) prepared by Board staff provides data on the use of the rule. From 2021 through 2023, there were 21 cases in which a claimant's attorney requested bifurcation, an attorney fee was awardable in the underlying case, and the case was subject to the rule.

Feedback from the practitioners is that the rule has had its intended effect. The claimant's attorneys provided feedback that the rule has increased efficiency by requiring fee petitions and arguments only when a worker prevails; decreased concerns about outcomes of certain cases being tied to the amount of attorney fees; allowed claimants to challenge attorney fees without the risk of delaying benefits; allowed settlement of attorney fees between the parties; and brought a greater understanding of contingent attorney fees. A carrier provided feedback that the efficiencies gained by the rule change are limited insofar as the bifurcation process is not widely utilized.

Feedback was also provided that the rule could be more effective in the future if the Board is more expeditious in issuing its decision on attorney fees in bifurcated cases and gives more consideration to the factors in rule when determining the amount of the fee.

3. The anticipated fiscal impact of the rule was not underestimated or overestimated. (ORS 183.405(b))

The Board anticipated that there may be additional costs to parties, practitioners, and the Board to process attorney fee requests in cases in which the voluntary bifurcation procedure is initiated, but the amount of any potential impact was undetermined. It was unknown how many cases would be affected, although it was expected to be a limited number.

The actual fiscal impact of the bifurcation procedure in specific cases is unknown, but based on the feedback received, the impact of the rule on parties and practitioners has not been significant but has been mostly positive.

Adoption of the rule had some fiscal impact on the Board related to data system programming.

4. Subsequent changes in the law have not required the rule to be repealed or amended. (ORS 183.405(1)(c))

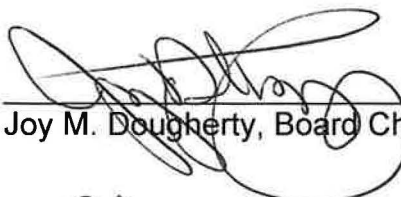


5. There is a continued need for the rule. (ORS 183.405(1)(d))

The feedback provided is that the rule is still needed. While the current rule is limited to cases on Board review, some claimant's attorneys have requested that the bifurcation procedure be expanded to hearings. Carriers have not expressed support for expanding the rule. The Board has not yet considered whether to do so.

6. The rule impacts small businesses. (ORS 183.405(1)(e))

Claimant's attorneys are or are employed by small businesses, on whom the impact has been positive as described above. In addition, a carrier provided feedback that lower costs resulting from stipulated attorney fees may have a positive impact on small businesses' workers' compensation premiums. The carrier cautioned, however, that some efficiency may be lost in cases that require more argument on the issue of attorney fees.

Under ORS 183.405(4), this report will be provided to the Secretary of State and the members of the advisory committee.


Joy M. Dougherty, Board Chair
Roger Ousey, Board Member
Moisés R. Ceja, Board Member
Melissa Douglas, Board Member
Katherine M. Caldwell, Board Member