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BOARD NEWS

Adoption of Permanent Rule Amendments: OAR 438-022; OAR 438-015-0019 – Effective January 1, 2026

At the Board's December 18, 2025, meeting, the Members voted to adopt permanent rule amendments to Oregon Administrative Rule (OAR) chapter 438, division 22, "Rulemaking Procedures," and OAR 438-015-0019 "Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute."

Amendments to division 22 include adding a note directing the reader where to find the Attorney General's Model Rules for Rulemaking, allowing notice of proposed rulemaking actions to be provided by email, and notifying persons and organizations how to request to receive notice of rulemaking actions by email or mail.

Amendments to OAR 438-015-0019 increase the cap on reasonable costs and expenses a claimant can recover after finally prevailing against a claim denial from \$1,500 to \$3,500, and provide for annual adjustments to the cap based on increases, if any, to the state average weekly wage, consistent with the changes made to ORS 656.386(2) by House Bill 2799 (2025).

The rule amendments became effective January 1, 2026.

Modernization Update

The Workers' Compensation Board (WCB) is pleased to provide an update regarding its ongoing project to implement a comprehensive electronic case management system. WCB is currently focused on completing the second of the three-stage procurement process required by the State of Oregon to move towards selecting and contracting with a vendor.

WCB actively worked on the project through 2025. During fall 2025, WCB completed documentation of agency business requirements for the new system and drafted the initial vendor request for proposals (RFP).

WCB is currently moving forward to present its RFP draft for review to the Oregon Department of Justice and Oregon Department of Administrative Services - Enterprise Information Services. Once review and finalization are complete, the RFP will be posted to the online Oregon Buys procurement system to seek vendor bids. After vendors have had the opportunity to submit their proposals, WCB will review and evaluate submissions. WCB expects the evaluations to take place by spring 2026.

WCB will provide updates as we continue moving forward with this exciting project.

Electronic Notice of Rulemaking

Following adoption of permanent amendments to OAR 438-022-0010, interested parties will be able to opt in to receive electronic notice of rulemaking actions as of January 1, 2026.

Those currently on the Board's mailing list will continue to receive notice by mail unless they notify the Board's rules coordinator that they wish to be removed. To opt out of receiving notices by mail, contact the Board's rules coordinator by writing to 2601 25th St SE Ste 150, Salem OR 97301, by fax to 503-373-1684, or by email to autumn.k.blake@wcb.oregon.gov.

To sign up for electronic notice:

1. Navigate to the Board's website www.oregon.gov/wcb.
2. Click "Email updates" in the banner.

What you need to know **Email updates** Board meetings

3. Enter the email address to receive notifications.
4. Under Workers' Compensation Board - WCB Rules, select "Rulemaking Chapter 438," and submit your changes.

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CASE NOTES**OVERPAYMENT: Analyzing Applicability Clause, 2022 Amendments to ORS 656.268 Applied – New Provision in ORS 656.268(16)(b) Applied to Portion of Declared Overpayment**

Kiera L. Ervin, 77 Van Natta 646 (December 23, 2025). Analyzing the applicability clause for the 2022 amendments that added ORS 656.268(16)(b), a new provision regarding overpayment declarations, the Board determined that the amendments applied because the claim existed on or arose after January 1, 2024, and the overpayment dispute had not been finally determined before January 1, 2024. Applying ORS 656.268(16)(b), the Board held that the carrier was prohibited from declaring an overpayment for that portion of the overpayment that pertained to temporary disability compensation paid more than two years before the carrier's declaration, but not for the portion that pertained to temporary disability compensation paid less than two years before the declaration. Accordingly, the Board remanded the overpayment matter to the carrier for processing consistent with its order.

TEMPORARY DISABILITY: Analyzing New Provision in ORS 656.268(1)(a), Claimant Not Entitled to Additional Temporary Disability Because Physician's Medically Stationary Date Opinion Was Not Retroactive

Kiera L. Ervin, 77 Van Natta 653 (December 23, 2025). Applying the applicability clause for the 2022 amendments that added ORS 656.268(1)(a), a new provision regarding retroactive medically stationary date opinions, the Board determined that the amendments applied because the claim existed on or arose after January 1, 2024, and the temporary disability dispute had not been finally determined before January 1, 2024. Turning to ORS 656.268(1)(a), the Board held that a physician's medically stationary date opinion was not prohibited under the statute because the physician's August 2, 2021, opinion that the claimant's conditions were medically stationary as of August 2, 2021, was not retroactive. Therefore, the Board determined that the claimant had not established error in the reconsideration process that found that her conditions were medically stationary as of August 2, 2021.

APPELLATE DECISIONS UPDATE**ATTORNEY FEES: Board Order Did Not Explain Application of Rule Factors**

Acuna v. SAIF, 346 Or App 29 (December 24, 2025). Applying ORS 656.382(3) and OAR 438-015-0010(4), the Court of Appeals reversed the Board's decision in *Mark Acuna, 75 Van Natta 407 (2023)*, previously noted in **NCN 42:7**, to award a \$7,000 attorney fee for the claimant's counsel's services on Board review regarding a discovery penalty issue. Emphasizing that the

statute requires a “reasonable” fee, the court held that the Board’s explanation for reducing the claimant’s attorney’s hours was not based on substantial reason because the Board did not articulate how the attorney fee factors weighed in its conclusion to reduce those hours.

APPELLATE DECISIONS **COURT OF APPEALS**

BACK-UP DENIAL: Undisclosed Material Misrepresentation Reasonably Affected Carrier’s Claim Decision

Alvarez v. SAIF Corporation, 345 Or App 632 (December 17, 2025).

Applying ORS 656.262(6)(a), the Court of Appeals affirmed a Board order that upheld the carrier’s “back-up denial.” Reviewing the Board’s decision for substantial evidence and reason, the court determined that the record supported the Board’s conclusion that the claimant had materially misrepresented the true cause of his injuries and, therefore, that the carrier’s initial acceptance had been procured by fraud, misrepresentation, or other illegal activity.

INJURY V. OCCUPATIONAL DISEASE: Claim Was Properly Analyzed as an Occupational Disease – Board Order Supported by Substantial Evidence

Robey v. Weir Esco, 346 Or App 208 (December 31, 2025). The Court of Appeals affirmed the Board’s order that analyzed the claimant’s claim as an occupational disease rather than an injury. Relying on *Hewlett-Packard Co. v. Renalds*, 132 Or App 288, 292 (1995), the court concluded that the carrier’s Form 1502 indicating that the claim was an injury did not prevent the Board from analyzing the claim as an occupational disease because the Board is tasked with determining the appropriate legal standard. Additionally, the court determined that the Board’s conclusion that the claim was properly analyzed as an occupational disease was supported by substantial evidence.

INJURY V. OCCUPATIONAL DISEASE: Claim Was Properly Analyzed as an Occupational Disease – Board Order Supported by Substantial Evidence

Mamuyac v. Columbia Sportswear, 346 Or App 356 (December 31, 2025). In a nonprecedential memorandum opinion, the Court of Appeals affirmed a Board order that analyzed the claim as an occupational disease rather than an injury. Relying on its decision in *Robey v. Weir Esco*, 346 Or App 208 (December 31, 2025) (summarized above), the court rejected the claimant’s argument that the carrier’s Form 1502 dictated the legal theory for the Board’s analysis of the claim. Further, the court determined that the Board’s conclusion that the claim was properly analyzed as an occupational disease was supported by substantial evidence.