

Secretary of State  
Certificate and Order for Filing

**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on December 10, 2015 by the  
Date prior to or same as filing date

Department of Consumer & Business Services/Workers' Compensation Board	Chapter 438	
Agency and Division	Administrative Rules Chapter Number	
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Rules Coordinator	Address	Telephone

to become effective January 1, 2016. Rulemaking Notice was published in the October 2015 Oregon Bulletin.  
Date upon filing or later Month and Year

**RULE CAPTION**

Amends OAR 438-005-0035(1) and Division 015 rules to apply HB 2764 (2015) amendments regarding attorney fees.

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** OAR 438-015-0033, OAR 438-015-0048.

**AMEND:** OAR 438-005-0035; OAR 438-015-0010, OAR 438-015-0019, OAR 438-015-0025, OAR 438-015-0045, OAR 438-015-0055, OAR 438-015-0065, OAR 438-015-0070, OAR 438-015-0110.

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

**Stat. Auth.:** ORS 656.726(5).

**Other Auth.:**

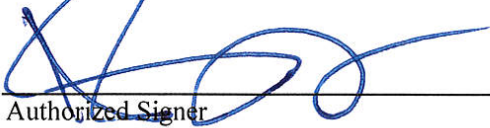
**Stats. Implemented:** HB 2764 (2015), ORS 656.012, ORS 656.236(4), ORS 656.262(11)(a), (14)(a), ORS 656.267(3), ORS 656.289(4), ORS 656.307, ORS 656.308(2), ORS 656.382, ORS 656.386, ORS 656.388, ORS 656.593(1)(a).

**RULE SUMMARY**

Amends OAR 438-005-0035(1) and adopts and amends Division 015 rules to implement HB 2764 (2015), which amended statutes concerning attorney fees under the Workers' Compensation Law. Those changes: (1) amend OAR 438-005-0035(1) to add the phrase "while providing for access to adequate representation for injured workers" to the Board's policy statement; (2) amend OAR 438-015-0010(2) to reference the new statute providing for assessed attorney fees for obtaining temporary disability benefits (HB 2764 § § 9, 10); (3) add OAR 438-015-0019(6) to provide for assessed attorney fees for prevailing over a dispute involving a claim for costs; (4) amend OAR 438-015-0025 to delete references to OAR 438-015-0045 (attorney fees when the claimant requests a hearing regarding temporary disability and prevails) and OAR 438-015-0055(1) (attorney fees when the claimant requests Board review regarding temporary disability and prevails); (5) add OAR 438-015-0033 to establish procedures concerning an attorney fee under ORS 656.262(14)(a), providing for a reasonable hourly rate of \$275 for an attorney's actual time spent during an interview or deposition; (6) amend OAR 438-015-0045 to delete provisions regarding approved attorney fees when the claimant requests a hearing and an Administrative Law Judge (ALJ) awards additional temporary disability benefits and to add provision for award of assessed attorney fee under such circumstances; (7) add OAR 438-015-0048 to provide for assessed attorney fees when the claimant requests a hearing and prevails over a claim reclassification order from the Workers' Compensation Division (WCD); (8) amend OAR 438-015-0055(1) to delete provisions regarding approved attorney fees when the claimant requests Board review and the Board awards additional temporary disability benefits and to add provision for award of assessed attorney fees under such circumstances; (9) add OAR 438-015-0055(6) to provide for assessed attorney fees when the claimant requests Board review and prevails over an ALJ's order regarding a WCD's claim reclassification order; (10) amend OAR 438-015-0065(1) and (3) to include assessed attorney

fees when the carrier requests a hearing and the ALJ finds “all or part of” compensation awarded or compensation awarded by the reconsideration order, respectively, should not be disallowed or reduced; (11) add OAR 438-015-0065(2) to provide for assessed attorney fees when the carrier requests a hearing and raises attorney fees, penalties, or costs and the ALJ does not disallow or reduce such awards; (12) amend OAR 438-015-0070(1) and (3) to include assessed attorney fees when the carrier requests Board review and the Board finds “all or part of” compensation awarded or compensation awarded by the reconsideration order, respectively, should not be disallowed or reduced; (13) add OAR 438-015-0070(2) to provide for assessed attorney fees when the carrier requests Board review and raises attorney fees, penalties, or costs and the Board does not disallow or reduce such awards; (14) add OAR 438-015-0070(3) to provide for assessed attorney fees for the claimant’s attorney’s efforts in briefing the matter when the carrier requests Board review of an ALJ’s order and the matter is briefed, but the carrier withdraws the appeal before a decision from the Board; (15) amend OAR 438-015-0110, regarding cases involving ORS 656.262(11)(a), to include “attorney fees or costs” in the list of items eligible for assessed attorney fees for unreasonable delay or refusal to pay; (16) amend OAR 438-015-0110(1) to provide: “Considers the proportionate benefit to the claimant”; and (17) amend OAR 438-015-0110(3) to raise the maximum assessed attorney fees under ORS 656.262(11)(a), absent a showing of extraordinary circumstances, from \$3,000 to \$4,000.

These amendments are effective January 1, 2016 and apply as follows. Amendments to OAR 438-005-0035, 438-015-0010, 438-015-0019, 438-015-0025, 438-015-0033, 438-015-0045, 438-015-0048, 438-015-0055, 438-015-0065, 438-015-0070, and 438-015-0110 apply to all claims for which an order is issued and attorney fees are incurred on or after January 1, 2016, regardless of the date on which the claim was filed.



Holly J. Somers  
Printed Name

12/16/15  
Date

Note: Permanent rulemakings must be submitted by the 15th day of the month to be included in the next month’s Oregon Bulletin and online OAR Compilation updates.