



NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 438 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES WORKERS' COMPENSATION BOARD

FILED

10/29/2025 3:37 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Implementing HB 2799 (2025) to increase the cap on expenses and costs.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/18/2025 10:30 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Autumn Blake
503-934-0123
autumn.k.blake@wcb.oregon.gov

2601 25th St SE
Ste 150
Salem, OR 97302

Filed By:
Autumn Blake
Rules Coordinator

NEED FOR THE RULE(S)

The Workers' Compensation Board needs to amend OAR 438-015-0019 (Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute) to increase the amount a claimant may recover for expenses and costs after finally prevailing against a claim denial, consistent with House Bill (HB) 2799 (2025).

Under ORS 656.386(2), if a claimant finally prevails against a denied claim, the claimant may recover reasonable expenses and costs for records, expert opinions, and witness fees, not to exceed \$1,500 except in extraordinary circumstances. HB 2799 increases the cap to \$3,500 effective Jan. 1, 2026, and provides for annual increases in the cap by the same percentage increase, if any, to the state average weekly wage.

OAR 438-015-0019 provides the procedure for determining the amount of reasonable expenses and costs incurred by the claimant. Section (2) of the rule includes the \$1,500 cap currently in statute, and needs to be amended to reflect the increased cap as of Jan. 1, 2026, and the annual adjustment.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- HB 2799 (2025): <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureDocument/HB2799>
- Memorandum to Board Members from Autumn Blake, Oct. 13, 2025
- Minutes of Workers' Compensation Board meeting, Oct. 23, 2025

These documents are or will be available on the Board's website at wcb.oregon.gov, or by calling 503-934-0123.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed rule amendments reflect statutory changes increasing the amount of expenses and costs a workers' compensation claimant may recover after prevailing against a claim denial.

FISCAL AND ECONOMIC IMPACT:

In cases where a claimant finally prevails against a claim denial, the insurer or self-insured employer may be ordered to pay reasonable expenses and costs incurred by the claimant, not to exceed \$3,500 unless the claimant demonstrates extraordinary circumstances. However, it is unknown how many cases would reach the maximum amount of allowed costs. Presently, there is a small percentage of cases that award extraordinary costs over \$1,500.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Members of the public who are workers' compensation claimants may be affected by the changes made by HB 2799 if they request a hearing on a claim denial and finally prevail over that denial.

(2)(a) The insurers and self-insured employers that may be required to pay increased amounts for reasonable costs and expenses are generally not small businesses.

(2)(b) and (c) The amended rules will require no additional activities or costs to comply.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of the proposed rule amendments.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Board did not consult an advisory committee in proposing these rule amendments, which are limited to making the rule consistent with statutory changes that will become effective Jan. 1, 2026. An advisory committee is currently considering additional amendments to the rule as it relates to the procedure for a claimant to submit a cost bill. The advisory committee will make recommendations to the Board for possible amendments to the rule at a later date.

AMEND: 438-015-0019

RULE SUMMARY: Increase the cap on reasonable costs and expenses from \$1,500 to \$3,500, and provide for annual adjustments to the cap based on increases, if any, to the average weekly wage.

CHANGES TO RULE:

438-015-0019

Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute ¶

(1) If a claimant finally prevails against a denial under ORS 656.386(1), the Administrative Law Judge or the Board may order payment of the claimant's reasonable expenses and costs for records, expert opinions, and witness fees incurred in the litigation of the denied claim(s). ¶

(2) In ordering payment under section (1), an Administrative Law Judge or the Board may award reasonable expenses and costs that the claimant incurred as a result of the litigation of the denied claim(s) under ORS 656.386(1). If the parties stipulate to the specific amount of the reasonable expenses and costs, the Administrative Law Judge's or the Board's award of expenses and costs shall be included in the order finding that the claimant finally prevails against a denied claim(s) under 656.386(1). In the absence of the parties' stipulation, the Administrative Law Judge or the Board may award reasonable expenses and costs as described in section (1), which the claimant may claim by submitting a cost bill under section (3) to the insurer or the self-insured employer, ~~not to.~~ ¶

(a) Reasonable costs and expenses may not exceed \$13,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount. ¶

(b) The maximum expenses and costs awarded under this section are subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as

made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board will publish the maximum fee by bulletin, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest multiple of \$100.

(3) If an order under section (2) does not specify the amount of a reasonable award for expenses and costs, the claimant shall submit, within 30 days after the order under section (2) becomes final, a cost bill to the insurer or self-insured employer. The cost bill, which may be submitted on a form prescribed by the Board, shall contain, but is not limited to, the following information:

(a) An itemization of the incurred expenses and costs for records, expert opinions, and witness fees that are due to the denied claim(s); and

(b) The claimant's signature confirming that the claimed expenses and costs were incurred in the litigation of the denied claim(s).

(4) If the parties disagree whether a claimed fee, expense, or cost is reasonable, a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.

(5) Unless a hearing is requested by the insurer or self-insured employer under section (4), payments for witness fees, expenses, and costs shall be made by the insurer or self-insured employer within 30 days of its receipt of the cost bill submitted in accordance with section (3) or within 30 days after the order under section (2) becomes final, whichever is later, and are in addition to compensation payable to the claimant and in addition to attorney fees.

(6) In disputes involving a claim for costs, if the claimant prevails on the claim for any increase of costs, the Administrative Law Judge or the Board shall award a reasonable assessed attorney fee to the claimant's attorney. Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.386(2), ~~(4)~~ ORS 656.386(4), OR Ch L 2025 c. 152