



Attorney fee update: Oregon WCB and WCD adopt new administrative rules and amendments pursuant to HB 2764

By Michael H. Jones ■ January 29, 2016

With the issuance of WCB Administrative Order 1-2015 by the Oregon Workers' Compensation Board, adjusters will begin to see \$275-per-hour fees¹ for time spent by a worker's attorney during a deposition or interview of the worker. The Board promulgated OAR 438-015-0033 to set this new "reasonable hourly rate" pursuant to HB 2764.² Additional information concerning HB 2764 can be found [here](#).³

The Board issued its order implementing the new HB 2764 attorney fees on December 16, 2015. The Workers' Compensation Division implemented HB 2764 by adopting WCD Admin. Order 15-065, on December 10, 2015. The Board's attorney fee rules can be found in Division 15 of OAR 438. The Department's rules can be found in Division 1 of OAR 436.

The new rules and amendments became effective January 1, 2016, and apply to orders issued and attorney fees incurred on or after January 1, 2016, regardless of the date on which the claim was filed.⁴

The worker's attorney is required to submit a bill to the employer or insurer within 30 days of completion of the interview or deposition. The bill must include an itemization of the "actual time spent" by the attorney "during" the interview or deposition, a copy of the retainer agreement, and the worker's attorney's signature.⁵ The Board's new billing form can be found [here](#). An employer or insurer may dispute a bill for an interview or deposition by requesting a hearing. Otherwise, the employer or insurer must pay the bill within 30 days of its receipt.⁶

In addition to interviews or depositions of the worker, the new rule amendments provide that a worker's attorney will be entitled to a "reasonable assessed attorney fee" in the following circumstances:

- Where a worker prevails in a claim classification dispute before the Department,⁷ the Hearings Division,⁸ or the Board.⁹
- Where a worker prevails in a dispute concerning temporary disability before the Hearings Division¹⁰ or the Board.¹¹
- Where an employer or insurer requests Board review of an ALJ's order, the matter has been "briefed" at the Board, and the insurer or employer thereafter withdraws the Request for Review.¹²

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New administrative rules pursuant to HB 2764 (continued)

- Where an employer or insurer requests a hearing before an ALJ regarding a reconsideration order,¹³ or Board review of an ALJ's order regarding a reconsideration order,¹⁴ and the ALJ or Board finds that "all or part of" the compensation awarded by the reconsideration order should not be disallowed or reduced.
- Where an employer or insurer requests a hearing "or otherwise seeks a reduction in compensation," and an ALJ determines "all or part of" the compensation awarded should not be disallowed or reduced.¹⁵
- Where an employer or insurer requests Board review of an ALJ's order and the Board finds that "all or part of" the compensation awarded should not be disallowed or reduced.¹⁶
- Where the worker prevails in a dispute regarding costs before an ALJ or the Board.¹⁷

Contact this author or any of our Oregon practice attorneys with any questions or issues about these or other new rules. ■

¹ OAR 438-015-0033(1).

² Codified at ORS 656.262(14)(a).

³ Reinisch Wilson Weier attorney Ned Arenberg previously reported on HB 2764. That post can be found at <http://rwwcomplaw.com/increased-claimants-attorney-fee-exposure>.

⁴ Codified at ORS 656.262(14)(a).

⁵ OAR 438-015-0033(3). Note that the bill may only be for actual time spent "during" an interview or deposition. The rule does not allow a fee for time spent in preparation for, or scheduling of, the interview or deposition.

⁶ Id. at (5).

⁷ ORS 656.277(1)(b); OAR 436-001-0435 (In classification disputes before the director, "the director will determine a reasonable hourly rate of no less than \$150 per hour and no more than \$400 per hour.").

⁸ OAR 438-015-0048.

⁹ OAR 438-015-0055(6).

¹⁰ OAR 438-015-0045.

¹¹ OAR 438-015-0055(1).

¹² OAR 438-015-0070(3) (A matter is considered "briefed" when the employer or insurer has filed its initial brief.).

¹³ OAR 438-015-0065(4).

¹⁴ OAR 438-015-0070(5).

¹⁵ OAR 438-015-0065(1).

¹⁶ OAR 438-015-0070(1).

¹⁷ OAR 438-015-0019(6).

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