



Attorney fee update: Oregon WCB adopts amendments to Division 015 (Attorney Fee) rules

By Kindra F. Long and Kelly J. Niemeyer ■ January 26, 2017

Following the issuance of WCB Administrative Order 2-2016 by the Oregon Workers' Compensation Board, permanent amendments to the attorney fee rules became effective November 1, 2016.

As a result of these amendments, legal services performed by claimant attorneys' *legal staff* may now be considered in determination of a reasonable attorney fee award.¹ Inclusion of an attorney's staff hours will undoubtedly increase the "time devoted to the case," as previously only the claimant attorney's time was considered. The amendments also resulted in inclusion of the "contingent nature of the practice"² of workers' compensation as part of the "risk of going uncompensated" factor for determining a reasonable attorney fee award. While the "contingent nature of the practice" and "risk of going uncompensated" language is somewhat analogous, this expansive wording makes it clear that an Administrative Law Judge or Board is expected to carefully weigh this factor in determining a reasonable attorney fee.

Other notable changes include: (1) a shortened deadline to pay assessed fees (payment must issue within 14 days of an order becoming final³; was previously 30 days); (2) an increase from \$17,500 to \$50,000 for the "thresholds/caps" of attorney fees payable from settlement agreements (Disputed Claim Settlements and Claim Disposition Agreements)⁴; (3) elimination of the "caps" for attorney fees payable from increased permanent partial disability awards⁵; (4) an increase in the "caps" for attorney fees payable from permanent total disability awards (the hearing awards cap increases from \$12,500 to \$20,000, and the Board review award cap increases from \$16,300 to \$30,000)⁶; and, (5) elimination of the "cap" for attorney fees payable from the Board's Own Motion temporary disability awards.⁷

While the net impact of these amendments remain to be seen, one thing is clear: 2016 was a good year for claimants' attorneys. With the implementation of HB 2764⁸ and amendments to the Division 015 rules, employers and insurers can expect to see a continued trend of increased assessed attorney fees.

The full text of WCB Administrative Order 2-2016, Order of Adoption, can be found here: <http://www.oregon.gov/wcb/Documents/wcbrule/rule-filings/2-2016/ooa2-2016c.pdf>. The amended OAR 438-015 rules can be found at: <http://>

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arcweb.sos.state.or.us/pages/rules/oars_400/oar_438/438_015.html.

If you have any questions about WCB Administrative Order 2-2016 – or any other workers' compensation claim issue, please do not hesitate to contact any of the attorneys at Reinisch Wilson Weier PC. ■

¹ OAR 438-015-0010(4)(a).

² OAR 438-015-0010(4)(g).

³ OAR 438-015-0082(2).

⁴ OAR 438-015-0050(1); OAR 438-015-0052(1).

⁵ OAR 438-015-0040(1).

⁶ OAR 438-015-0040(2); OAR 438-015-0055(2), (3).

⁷ OAR 438-015-0080(1), (2).

⁸ Reinisch Wilson Weier attorneys Ned Arenberg and Michael Jones reported on attorney fee rule changes stemming from HB 2764 and WCB Administrative Order 1-2015. These posts can be found at <http://rwwcomplaw.com/increased-claimants-attorney-fee-exposure> and <http://rwwcomplaw.com/attorney-fee-update/>.

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